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# *Book Review*

**P. Chandrasekhara Rao and Philippe Gautier**
*The International Tribunal for the Law of the Sea: Law, Practice and Procedure* (Edward Elgar, Cheltenham, 2018), ISBN: 978 1 78643 300 8, 392 pp.

## Introduction

In 2016, the International Tribunal for the Law of the Sea (ITLOS or the Tribunal) celebrated its 20th year anniversary. This occasion provided a timely opportunity for both scholars and those directly involved in the work of the Tribunal to reflect on its performance after two decades in operation.[1] The publication *International Tribunal for the Law of the Sea: Law, Practice and Procedure*,[2] co-authored by former judge and former President of ITLOS, P Chandrasekhara Rao and current Registrar of the Tribunal, Philippe Gautier, falls into the latter category.

At the outset, it should be noted that this contribution is not the first collaboration of the two authors, nor is it the first to examine the law and practice of ITLOS. Rao and Gautier's first publication, entitled "The Rules of the International Tribunal for the Law of the Sea: A Commentary" (2006), also shared the same focus on ITLOS.[3] However, as a Commentary on the Rules of ITLOS, it

1 See, e.g., Jin-Hyun Paik, 'ITLOS at Twenty: Reflections on Its Contribution to Dispute Settlement and the Rule of Law at Sea' in Myron H Nordquist, John Norton Moore and Ronán Long (eds), *Legal Order in the World's Oceans: UN Convention on the Law of the Sea* (Brill, Leiden, 2017) 189–209; Mubarak A. Waseem, 'ITLOS at 20: Provisional Measures and the Precautionary Approach' in Stephen Minas and Jordan Diamond (eds), *Stress Testing the Law of the Sea: Dispute Resolution, Disasters & Emerging Challenges* (Brill, Leiden, 2018) 150–169; International Tribunal for the Law of the Sea, *The Contribution of the International Tribunal for the Law of the Sea to the Rule of Law: 1996-2016* (Brill, Leiden, 2018).

2 P Chandrasekhara Rao and Philippe Gautier, *The International Tribunal for the Law of the Sea: Law, Practice and Procedure* (Edward Elgar, Cheltenham, 2018).

3 P Chandrasekhara Rao and Philippe Gautier, *The Rules of the International Tribunal for the Law of the Sea: A Commentary* (Brill, Leiden, 2006).

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revolved only around this particular instrument. Compared to their first publication, the scope of their second is broader. The 2018 contribution assesses the Tribunal's judicial activity in a more comprehensive manner, bringing into its scope of analysis legal documents other than the Rules of the Tribunal, as well as the Tribunal's growing body of jurisprudence.

Furthermore, the title of this contribution may remind readers of another publication by Judge Rao – this time in collaboration Professor Rahmatullah Khan – bearing a somewhat similar title, *The International Tribunal for the Law of the Sea: Law and Practice,* published in 2001.[4] Although following broadly the same themes as the book under review in exploring ITLOS, namely the organisation of the Tribunal, its jurisdiction and procedure, Rao and Khan's contribution is an edited volume consisting of articles written by the then-sitting judges of ITLOS. As such, the depth of this earlier book is more limited than that of Rao's collaboration with Gautier. Moreover, in light of the fact that Rao and Khan's book was published in 2001 when the docket of the Tribunal was still rather light, its analysis did not, and naturally could not, benefit from the Tribunal's decisions rendered since then. The word "practice" in the title of Rao and Gautier's contribution is thus arguably of more relevance.

The Preface of the book sets out in clear terms its goal. The book aims to "provide a comprehensive and clear exposition of the Tribunal's activities" by attempting to answer some specific questions, including

> How is the Tribunal functioning and has it fulfilled the role assigned to it under the United Nations Convention on the Law of the Sea? What are the working methods of the Tribunal and what is its distinct contribution in handling cases? Has the Tribunal contributed in any way to the fragmentation of the law of the sea, as some international lawyers feared? What are the relative advantages of a more [*sic*] wider utilization of the Tribunal in preference to the other available forums of settlement?[5]

These questions indicate that the authors aim to provide in this book not only an exposition of how the Tribunal functions but also an assessment of the Tribunal's performance in the wider context of international law and international dispute settlement.

4 P Chandrasekhara Rao and Rahmatullah Khan, *The International Tribunal for the Law of the Sea: Law and Practice* (Martinus Nijhoff, The Hague, 2001).

5 Rao and Gautier (n 2), at p. xii.

### Structure and Main Content of the Book

The book is divided into six chapters. Chapter 1 – the "Introduction" – is followed by three chapters dedicated to examining the institutional aspects of the Tribunal (Chapter 2), its jurisdiction (Chapter 3) and procedure (Chapter 4). Chapter 5 then turns its attention to taking stock of the Tribunal's contribution to the development of international law. The last chapter, Chapter 6, entitled "Assessment", serves as the conclusion.

Chapter 1 provides an overview of both the history of development of the United Nations Convention on the Law of the Sea (LOSC or the Convention)[6] and an overview of the structure of the dispute settlement system in Part XV of the Convention. As such, this chapter is highly useful for those who are less familiar with the LOSC and its dispute settlement procedures. However, as the focus of the book is on ITLOS, it would perhaps be helpful if the authors included some discussion on the history and development of ITLOS itself. One question worth exploring could be the rationale for the establishment of ITLOS – yet another permanent tribunal existing alongside the International Court of Justice (ICJ), which had at the time heard disputes concerning law of the sea in several instances. Similar to the discussion on the development of the LOSC and Part XV, the authors could make use of the records of negotiations during the Third United Nations Conference on the Law of the Sea to shed light on this question.

Chapter 2 looks at the institutional overview of the Tribunal in different themes, namely the Tribunal's legal status, seat, privileges and immunities, the judiciary, experts under Article 289 of the Convention, Seabed Disputes Chamber, Special Chambers, Committees, Official Languages, the Registry, Expenses of the Tribunal and Relations with other Institutions. Each of these issues was examined in a detailed manner with reference to articles drawn primarily from the Statute and the Rules of the Tribunal. In addition, resort was also had to other legal documents, particularly those in relation to the Tribunal's privileges and immunities and its relationship with the United Nations. As one can expect, with administrative issues as its focus, this chapter is quite technical and can therefore be tedious to read at times. However, the authors did a commendable job of making the chapter more interesting by supplementing the rules with cases and illustrations from practice. This can

6 United Nations Convention on the Law of the Sea (LOSC), Montego Bay, 10 December 1982, in force 16 November 1994, 1833 *UNTS* 3.

be seen, for example, with rules on *ad hoc* judges,[7] *ad hoc* Special Chambers,[8] Chamber of Summary Procedure,[9] and expenses.[10]

Chapter 3 is dedicated to analysing the Tribunal's jurisdiction in different types of proceedings, including: contentious, prompt release, provisional measures and advisory proceedings. Interestingly, at the outset, the authors acknowledged the distinction maintained by the ICJ between jurisdiction and admissibility issues, but concluded that "there is no need to establish a too rigid distinction between the two notions".[11] Following that logic, one finds an exposition of admissibility issues nested in Section 2 on jurisdiction *ratione personae,*[12] and a whole Section 9 dealing with issues of admissibility in the examination of the jurisdiction of ITLOS. In terms of substance, Chapter 3 examines issues pertinent to the Tribunal's jurisdiction, including jurisdiction *ratione personae,*[13] jurisdiction *ratione materiae,*[14] consent to jurisdiction,[15] jurisdiction of the Seabed Disputes Chamber,[16] jurisdiction in prompt release proceedings,[17] provisional measures,[18] admissibility,[19] advisory jurisdiction,[20] and applicable law.[21] The analysis of each legal issue is accompanied by an abundance of case law to illustrate the way in which the issue of jurisdiction has been addressed, and how the relevant articles of the LOSC, the ITLOS Statute and the ITLOS Rules have been interpreted and applied. As such, Chapter 3 serves as highly comprehensive reference material to understand the Tribunal's jurisdiction.

What is perhaps most intriguing in Chapter 3 is that, in discussing the Tribunal's jurisdiction, the authors took into account not only the decisions rendered by ITLOS itself, but also the awards of various Annex VII arbitral tribunals. For example, reference was made to: *Chagos MPA* to illustrate the interpretation of "dispute concerning the interpretation and application of

7 Rao and Gautier (n 2), at pp. 52–53.
8 *Ibid.*, at p. 59.
9 *Ibid.*, at p. 61.
10 *Ibid.*, at p. 69.
11 *Ibid.*, at p. 84.
12 *Ibid.*, at p. 87.
13 *Ibid.*, at p. 85.
14 *Ibid.*, at p. 89.
15 *Ibid.*, at p. 100.
16 *Ibid.*, at p. 120.
17 *Ibid.*, at p. 125.
18 *Ibid.*, at p. 128.
19 *Ibid.*, at p. 137.
20 *Ibid.*, at p. 154.
21 *Ibid.*, at p. 166.

the Convention",[22] limitations to jurisdiction under Article 297 LOSC, and exchange of views under Article 283; *South China Sea* and *Arctic Sunrise* to illustrate optional exceptions under Article 298; *Barbados* v. *Trinidad and Tobago* for exchange of views under Article 283; *Southern Bluefin Tuna* and *South China Sea* for alternative dispute settlement procedures under Article 281. This cross-reference to Annex VII arbitral awards is interesting for two reasons. First, and perhaps as an unintended consequence, it shows that after 20 years of existence, ITLOS still has not had the opportunity to deal with various key provisions in Part XV relating to jurisdictional issues and thereby to impart its wisdom on the interpretation these provisions. Thus, decisions rendered by other dispute settlement bodies have to be taken into account. It should be added that the decision to bring cases to international courts and tribunals rests entirely with States. This decision is, in turn, informed by a host of considerations which do not necessarily relate to the law itself, and over which the Tribunal has little control.

Second, and from a broader perspective, the fact that arbitral awards were consulted in a contribution focusing on the procedural rules of ITLOS provides important material to rebut any fears or claims of fragmentation of law of the sea – or public international law for that matter – stemming from the availability of multiple dispute settlement bodies under the Convention.[23] Fragmentation of international law is one of the questions that the authors aimed to address and, in fact, they concluded in the last Chapter that "[t]he judicial decisions delivered so far by international courts and tribunals on the basis of the Convention have not led to any significant divergences of judicial pronouncements".[24] This conclusion is strengthened by the fact that, as evident in Chapter 3, arbitral decisions have been embraced

22 *Ibid*., at p. 92.

23 See, e.g., ED Brown, 'Dispute Settlement and the Law of the Sea: the UN Convention Regime' (1997) 21(1) *Marine Policy* 17–43; Robin Churchill, 'Dispute Settlement in the Law of the Sea – The Context of the International Tribunal for the Law of the Sea and Alternatives to It' in Malcom Evans (ed), *Remedies in International Law: The Institutional Dilemma* (Hart Publishing, Oxford, 1998) 85-109; Georgios Zekos, 'Competition or Conflict in the Dispute Settlement Mechanism of the Law of the Sea Convention' (2003) 56 *Revue Hellenique de Droit International* 153–165, at 154; Donald Rothwell, 'Oceans Management and the Law of the Sea in the Twenty-First Century' in Alex G Oude Elferink and Donald Rothwell, *Oceans Management in the 21st Century: Institutional Frameworks and Responses* (Martinus Nijhoff, Leiden, 2004) 329–356; Luiz Eduardo Salles, *Forum Shopping in International Adjudication: The Role of Preliminary Objections* (Cambridge University Press, Cambridge, 2014).

24 Rao and Gautier (n 2), at p. 338.

by those who are or were directly involved in the work of the Tribunal. This provides clear proof that international tribunals, or at least tribunals under the LOSC, do not draw a sharp line between their own decisions and those of their counterparts. This should thus alleviate any lingering concerns over conflict of jurisprudence between different LOSC tribunals giving rise to fragmentation of international law.

Chapter 4 on procedure is heavily based on the Statute and Rules of the Tribunal and is organised into different themes. Here again, the chapter benefits from a wealth of case law and examples of practice to illustrate the application of relevant provisions. It is perhaps worth mentioning also that when it comes to procedural issues, the role of the Registry is particularly important. Thus, insights provided by the incumbent Registrar regarding the Tribunal's practice are useful in drawing attention to the finer details of the procedure before the Tribunal, especially when they are not discussed in the Tribunal's official documents, or orders and judgments. Examples in this regard include illustrations on the practice of providing legal assistance to States,[25] organisation of the case,[26] the time given to deliberations,[27] and preparation of draft judgment.[28] In addition to relevant case law, this chapter also contains the authors' own assessment or explanation of the Tribunal's approach, most noticeably in relation to assessing evidence.[29] The authors also, where appropriate, highlighted the similarities and differences in the procedure adopted by the ITLOS and the ICJ. Comparison was made, for instance, with regard to the Rules of the two bodies,[30] burden of proof,[31] standard of proof,[32] and provisional measures proceedings.[33] This comparison provides the answer to one of the questions set out in the Preface regarding the comparative advantages of ITLOS in relation to other judicial bodies.

Although both are highly insightful, Chapters 3 and 4 share a common drawback. That is, the authors were rather coy in discussing issues that have proven to be controversial concerning the Tribunal's exercise of jurisdiction and its procedure. At first glance, the lack of a critical appraisal of the Tribunal's performance in chapters 3 and 4 may be explained by the inclusion of chapters 5

25 *Ibid.*, at p. 174.
26 *Ibid.*, at p. 185.
27 *Ibid.*, at p. 222.
28 *Ibid.*, at p. 223.
29 *Ibid.*, at p. 214.
30 *Ibid.*, at p. 172.
31 *Ibid.*, at p. 205.
32 *Ibid.*, at p. 216.
33 *Ibid.*, at p. 227.

and 6, which are devoted to assessing the Tribunal's performance. However, a perusal of both of these chapters shows that some contested issues are not sufficiently addressed. Two issues stand out in this regard. First, the exercise of advisory jurisdiction by the full Tribunal in the Advisory Opinion on IUU Fishing[34] in the absence of explicit provisions to that effect under the Convention was criticised by many States during the proceedings,[35] and subsequently by several scholars.[36] However, the authors did not clearly acknowledge the contentious nature of the Tribunal's decision. The authors only mentioned the diverging views surrounding this ITLOS decision in one sentence, i.e., "while some States argued against the advisory jurisdiction of the Tribunal, others considered that the Tribunal possesses such jurisdiction".[37] No comments were offered on the cogency of the Tribunal's reasoning. Such silence could be contrasted with the authors' readiness to comment on the contested nature of an arbitral tribunal's decision in *Southern Bluefin Tuna*.[38]

Similarly, when examining the issue of applicable law under Article 293, the authors emphasised from the outset the distinction between jurisdiction and applicable law;[39] then promptly referred to *M/V Saiga* (*No. 2*) as an example of the Tribunal dealing with issues which were not provided for under the Convention. However, the authors failed to mention that this particular decision, which used Article 293 as the key to expand the scope of the Tribunal's jurisdiction beyond the LOSC, was not without controversy. Although the Tribunal's reasoning regarding Article 293 in *M/V Saiga* (*No. 2*) was subsequently followed by an Annex VII arbitral tribunal in *Guyana* v. *Suriname*,[40] this approach was

34 Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion [2015] ITLOS Case No 21.

35 See, e.g., China, France, Ireland, Thailand, the United Kingdom, available at: https://www.itlos.org/en/cases/list-of-cases/case-no-21/; accessed 31 December 2018.

36 Michael A Becker, 'Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC)' (2015) 109(4) *American Journal of International Law* 851–858; Tom Ruys and Anne Sophie Soete, 'Creeping Advisory Jurisdiction of International Courts and Tribunals? The Case of the International Tribunal for the Law of the Sea' (2016) 29(1) *Leiden Journal of International Law* 155–176; Massimo Lando, 'The Advisory Jurisdiction of the International Tribunal for the Law of the Sea: Comments on the Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission' (2016) 29(2) *Leiden Journal of International Law* 441–461.

37 Rao and Gautier (n 2), at p. 157.

38 *Ibid.*, at p. 117.

39 *Ibid.*, at p. 166.

40 *Arbitration between Guyana and Suriname* (*Guyana/Suriname*) (2007) RIAA XXX 1 [405]–[406].

outright rejected in another case, namely *MOX Plant* arbitration.[41] The contradiction in the application of Article 293 was passed unnoticed, which could be juxtaposed with the authors' readiness to flag the contradiction in the application of other articles, such as that of Article 281 between two arbitral tribunals in *Southern Bluefin Tuna* and *South China Sea.*[42] Moreover, although it is true that, as the authors noted, "the law to be applied by the Tribunal is not confined to provisions contained in the Convention",[43] it is worth emphasising that ITLOS should only resort to sources of law other than the Convention to the extent that it is necessary to resolve a dispute concerning "the interpretation and application of the Convention" as stipulated in Article 288(1). The lack of critique offered towards the Tribunal's expansion of competence through the prism of applicable law by those involved in the case is perhaps understandable, but nonetheless regrettable.

Finally, it is interesting to note the absence of any discussion of a procedural issue which has attracted a high level of attention in the past years before the LOSC tribunals, including ITLOS, namely the non-appearance of a party to the dispute. Non-appearance was at issue in the *Arctic Sunrise* case before ITLOS in the provisional measures phase, in which Russia decided not to participate in the proceedings. Article 28 of the Statute of ITLOS was at stake in this case. Curiously the Tribunal itself did not apply – or even mention – Article 28 in its Provisional Measures Order when discussing the legal effects of Russia's appearance, preferring instead to rely on the ICJ's jurisprudence on this matter.[44] The Tribunal's lack of engagement with Article 28 ITLOS Statute caught the attention of several judges, who, in turn, were not hesitant to provide some thoughts on the application of Article 28 and the implications of non-appearance on the legal proceedings before ITLOS.[45] It is not clear why the issue of non-appearance did not feature in Chapter 4 on Procedure.

Chapter 5, entitled "Contribution to the Development of International Law", differs from the preceding chapters in its approach. The authors took a step back and disengaged themselves from the specific issues, and instead

41 *MOX Plant* (*Ireland* v. *United Kingdom,*) Order N° 3 Suspension of Proceedings on Jurisdiction and Merits, and Request for Further Provisional Measures [19], available at <http://www.pca-cpa.org/MOX%20Order%20no3a614.pdf?fil_id=81>; accessed 31 December 2018.

42 Rao and Gautier (n 2), at p. 294.

43 *Ibid.*, at p. 166.

44 *'Arctic Sunrise'* (*Kingdom of the Netherlands* v. *Russian Federation*) (Provisional Measures, Order of 22 November 2013) ITLOS Reports 2013, 230 [48], [51].

45 *Arctic Sunrise'* (*Kingdom of the Netherlands* v. *Russian Federation*) (Provisional Measures, Order of 22 November 2013), Separate Opinion of Judge Paik; Separate Opinion of Judges Wolfrum and Kelly, ITLOS Reports 2013, 230.

attempted to take stock of the Tribunal's jurisprudence from the perspective of the contributions made to international law and the administration of justice.[46] When an assessment of the contribution of an international court or tribunal to the development of the law is conducted, the first question that necessarily springs to mind is: what is meant by "development of international law" by international courts? The authors briefly provided an answer to this question at the beginning of Chapter 5, stating that international courts "interpret and clarify legal rules, and provide answers which ensure a consistent implementation of international law. It is from that perspective that judicial courts and tribunals contribute to the development of international law".[47] Adopting this approach, Chapter 5 consists of the assessment of two main groups of issues – albeit of unequal lengths – first, the contribution to the judicial practice in Part 1, and second, the contribution to the development of international law in six subsequent parts relating to six different legal issues, namely sources of law, human rights, status and duties of flag States, bunkering activities, protection of the marine environment and state responsibility.

In the discussion on the contribution of ITLOS to judicial practice, the authors highlighted the Tribunal's contribution to ensuring comity among international courts and tribunals, establishing inherent functions and inherent power, using provisional measures creatively, delimiting the continental shelf beyond 200 nm, establishing advisory jurisdiction, and ensuring effective administration of justice. Three of the authors' observations are worth further reflection. First, the authors drew attention to the Tribunal's effort to "give adequate care to the existing international jurisprudence" resulting in "a more or less homogenous jurisprudence in law of the sea matters".[48] At the same time, the authors acknowledged this practice can also be seen with the ICJ and arbitral bodies. Thus, it should be noted that such an effort is not a unique contribution of ITLOS. Second, when discussing the inherent powers of ITLOS, the authors argued that "international courts and tribunals possess inherent powers, i.e., powers which, although not expressly provided for in their statutes, are necessary for the discharge of their judicial functions".[49] This inherent power, in their view, served as the basis for the Tribunal to include in the Rules powers which are not expressly provided for in its Statute. The concept of "inherent powers", especially when it comes to international courts, is not at all straightforward. Whereas it is perhaps reasonable to assume that the powers

46 Rao and Gautier (n 2), at p. 290.
47 *Ibid.*, at p. 289.
48 *Ibid.*, at p. 291.
49 *Ibid.*, at p. 295.

of international courts, including ITLOS, should not be limited only to what is expressly provided for in the constituent instruments, the authors were again reluctant to mention or address the problems that have arisen surrounding the expansion of the Tribunal's power through its Rules, most prominently the problems of legitimacy and judicial activism. Finally, it is not entirely clear on what grounds the issue of "delimitation of the continental shelf beyond 200 nm" could be considered an issue of judicial practice. It seems more fitting as an issue of substance.

In the subsequent exposition of the Tribunal's contribution to the development of international law, the authors focused on the six groups of substantive issues "in respect of which international law has developed on the basis of the decisions of the Tribunal".[50] In analysing the Tribunal's contribution, however, the authors adopted a descriptive style of writing, mostly reciting the relevant parts of the decisions, without necessarily explaining how these judicial pronouncements "developed" international law. As a result, it is not easy to see with respect to certain issues what the contribution of ITLOS exactly is. The authors could have made it clearer that for several of these issues, ITLOS was in fact the first international court to provide answers to long-standing questions, thereby providing a much-needed clarification of the scope of the legal rule or of the meaning of the term in question. Examples of the former category include the clarification of "genuine link" in establishing vessels' nationality, flag States' obligations, and effective character of the general obligations to protect the marine environment. In addition, when there were diverging views on a particular matter, ITLOS provided important guidance on the direction in which the law is to develop. This can be seen with respect to the legal status of bunkering and delimitation of the outer continental shelf. It is not difficult to agree with the authors that the Tribunal's decisions on these issues were important in developing the law. However, some analysis would have added value to the discussion.

The last chapter, Chapter 6, is only four pages. It provides an overall assessment of ITLOS. The authors generally viewed the Tribunal's performance in a positive light, recalling the praises that it has received in the past years. The authors also acknowledged that the Tribunal has been under-utilised and offered several reasons to explain why ITLOS would be "a more attractive means of dispute settlement than arbitration".[51] The authors concluded with the observation that fragmentation of international law has not materialised, and the risks

50 *Ibid.*, at p. 290.
51 *Ibid.*, at p. 337.

"have been largely overestimated".[52] It can be seen that in this short chapter, the authors attempted to answer several of the questions put forward in the beginning of the book. The answers were swift, concise, and not accompanied by too much analysis.

## Conclusion

The authors set out to examine the law, practice and procedure of ITLOS, in the course of which they provided answers to some guiding questions set out in the Preface. Some of these answers were scattered in different chapters of the book, but most can be found in the last chapter. The authors adopted a neutral style of writing throughout the book, mostly concentrating on explaining what the relevant rules and procedures are and how they have been interpreted and applied in practice. Little explanation and scrutiny of the Tribunal's approach, reasoning and conclusions are provided. In the few places in which observations are offered, the authors had the tendency to support the approach or defend the outcome adopted by the Tribunal, for example with regard to examination of evidence,[53] admissibility of *amicus curiae*,[54] exercise of advisory jurisdiction.[55] Hence, the book could benefit from a more critical perspective to provide a more balanced view on the work of the Tribunal.

These shortcomings, however, do not detract from the value of this publication. It is an excellent reference book for readers who are interested in the operation of ITLOS. The Tribunal's rules and procedures are carefully examined and richly illustrated with up-to-date jurisprudence from not only ITLOS but also the ICJ and Annex VII arbitral tribunals. The observations provided by two people involved in the Tribunal's work for decades add helpful insights and enrich the examination. As such, the book provides useful groundwork for scholars who wish to delve into specific issues relating to the Tribunal, or for practitioners whose goal is to gain a better understanding of the way the Tribunal functions.

It is to be recalled that when it first came into being, not everyone welcomed the Tribunal's establishment with warmth and enthusiasm. In fact, the existence of ITLOS was initially met with a high level of scepticism, with Judge Oda

52 *Ibid.*, at p. 338.
53 *Ibid.*, at p. 214.
54 *Ibid.*, at p. 284.
55 *Ibid.*, at p. 301.

of the ICJ going so far as to calling ITLOS "a great mistake".[56] Even though, as the authors conceded, to date "the number of cases are [sic] not so numerous as to keep the Tribunal fully occupied",[57] Rao and Gautier's contribution provides a wealth of material to prove that ITLOS is not a "mistake" and has functioned well over the past two decades. Therefore, although not indicated as one of its purposes, the book has done a wonderful job of promoting the Tribunal as an active and efficient judicial body for law of the sea disputes.

Finally, as mentioned in the Introduction, this contribution was not the first collaboration between Rao and Gautier. However, it would unfortunately be the last. Judge Rao passed away in October 2018, just months after the book was published. As a former President and one of the longest serving judges of ITLOS, he was a towering figure at the Tribunal. In Judge Rao's *In Memoriam*, his co-author, Mr. Gautier, was confident that "his works will live on".[58] This publication will no doubt be one of them.

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56 Shigeru Oda, 'Dispute Settlement Prospects in the Law of the Sea' (1995) 44(4) *International and Comparative Law Quarterly* 863–872.

57 Rao and Gautier (n 2), at p. 337.

58 Philippe Gautier, 'In Memoriam: Judge, P Chandrasekhara Rao', https://www.itlos.org/press-media/itlos-newsletters/itlos-newsletter-20184/; accessed 31 December 2018.