DIGEST

CHINA

Mixed Disputes and the Jurisdictional Puzzle in Two Pending Cases: *Mauritius v. U.K. and The Philippines v. China*

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1. Introduction

Under the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), Annex VII arbitration is the default judicial means[1] for resolving a narrow scope of "any *dispute concerning the interpretation or application* of this Convention" subject to Article 297 and Article 298 exceptions.[2] According to this default procedure, States face little difficulty in unilaterally initiating *ad hoc* arbitration. Notwithstanding that the Tribunal is seized of the dispute under the default procedure, this jurisdiction under a compromissory clause[3] defined by Article 286 in narrow terms, has led to frequent objections to the competence of the UNCLOS Annex VII Tribunal.[4]

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1 *See* United Nations Convention on the Law of the Sea ("UNCLOS"), 1833 U.N.T.S. 397, art. 287. ¶ 3 (default when no preference has been made with respect to the means of dispute resolution available under Article 287. ¶ 1); art. 287. ¶ 5 (default if the Parties have not accepted the same procedure available under Article 287, ¶ 1).

2 UNCLOS art. 286. [Emphasis added]

3 It means the basis of jurisdiction - the consent from States - has been made in the 'compromissory' clause of a treaty, normally providing for jurisdiction over disputes concerning interpretation or application of the treaty. *See* J. Charney, *Compromissory Clauses and the Jurisdiction of the International Court of Justice*, 81 Am. J. Int'l. L. 855-856 (1987).

4 For analysis of the difference between Seisin and jurisdiction, *see* C. Amerasinghe, Jurisdiction of International Tribunals 66-68 (2003).