

The contribution of ITLOS to the development of the Law of the Sea

OC - (ILA-14135) - THE CONTRIBUTION OF GENERAL PRINCIPLES OF LAW TO THE DEVELOPMENT OF THE LAW OF THE SEA: AN EMPIRICALLY-INDUCTIVE STUDY OF THE JURISPRUDENCE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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Abstract

This paper presents an empirically-inductive research of the reference to general principles of law, as codified in Article 38(1)(c) of the Statute of the International Court of Justice, in the jurisprudence of the International Tribunal for the Law of the Sea (ITLOS). General principles of law are the third – and still undefined – source of international law, after treaties and customary international law. Although not expressly listed as part of the applicable law in Article 293 of the United Nations Convention on the Law of the Sea, general principles inform and guide ITLOS' decision-making and they may even have contributed to ITLOS' development of the law of the sea.

What role do general principles play in ITLOS' jurisprudence and what is their contribution to the development of the law of the sea? How many general principles did the Court ascertain and what are their main characteristics? What is the relationship between the general principles ascertained by ITLOS with the maritime general principles identified by the principal judicial organ of the United Nations – the International Court of Justice? This paper answers these and similar questions by relying on the author's newly-created database of general principles ascertained by international courts and tribunals and assesses the contribution of the general principles ascertained by ITLOS to the development of the law of the sea.

Palavras-chave : general principles, sources of international law, law of the sea