

ITLOS/10
27 April 2005

**INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA**

**RESOLUTION ON THE INTERNAL JUDICIAL PRACTICE
OF THE TRIBUNAL**



**RESOLUTION ON THE INTERNAL JUDICIAL PRACTICE
OF THE TRIBUNAL**

adopted on 31 October 1997

The Tribunal,

Acting in accordance with article 40 of the Rules,

Adopts this Resolution.

*Article 1
Use of terms*

In this Resolution:

- (a) "President" means the person presiding over the Tribunal in a particular case;
- (b) "Rules" means the Rules of the Tribunal;
- (c) references to the "Tribunal" include any chamber of the Tribunal.

*Article 2
Preparatory documentation*

1. After the closure of the written proceedings, each judge may within five weeks prepare a brief written note identifying without further elaboration:
 - (a) the principal issues for decision as they emerge from the written pleadings; and
 - (b) points, if any, which should be clarified during the oral proceedings.
2. Notes received by the Registry are circulated to the other judges.
3. On the basis of the written pleadings and the judges' notes, the President draws up a working paper containing:
 - (a) a summary of the facts and the principal contentions of the parties advanced in their written pleadings; and
 - (b) proposals concerning:
 - (i) indications to be given, or questions to be put, to the parties in accordance with article 76 of the Rules;

(ii) evidence or explanations to be requested from the parties in accordance with article 77 of the Rules; and

(iii) issues which, in the opinion of the President, should be discussed and decided by the Tribunal.

4. The Registrar shall send the working paper to the judges as soon as possible and normally within eight weeks after the closure of the written proceedings.

Article 3
Deliberations before the oral proceedings

After the circulation of the working paper and before the date fixed for the opening of the oral proceedings, the Tribunal deliberates in private, as provided for in article 68 of the Rules, in order to allow the judges an opportunity to:

(a) exchange views concerning the written pleadings and the conduct of the case;

(b) consider whether to give any indications, or put any questions, to the parties in accordance with article 76 of the Rules;

(c) consider whether to call upon the parties to produce any evidence or to give any explanations in accordance with article 77 of the Rules; and

(d) consider the nature, scope and terms of the questions and issues which will have to be decided by the Tribunal.

Article 4
Deliberations during oral proceedings

During the course of the oral proceedings, the President may convene brief meetings in order to permit the judges to exchange views concerning the case and to inform each other of possible questions which judges may wish to put to the parties in accordance with article 76 of the Rules.

Article 5
Initial deliberations after oral proceedings

1. Unless the Tribunal decides otherwise, the judges have four working days after the closure of the oral proceedings in order to study the arguments presented to the Tribunal in the case. During this time, judges may also summarize their tentative opinions in writing in the form of speaking notes.
2. If the President considers it appropriate in the light of the oral proceedings, a revised list of issues for examination is circulated.
3. During its initial deliberations after the closure of the oral proceedings, the Tribunal reaches conclusions on what are the issues which need to be decided and then hears the tentative opinions of the judges on those issues, as well as on the correct disposal of the case.
4. The Tribunal next deliberates on each issue in turn, addressing also the question of the disposal of the case and the main reasons for the decision to be given.
5. During these deliberations, judges will be called upon by the President in the order in which they signify their wish to speak.
6. The President may seek to establish a majority opinion as it appears then to exist on each issue and on the reasons to be given.
7. Instead of establishing majority opinions at that stage, the Tribunal may decide that every judge should prepare a brief written note, expressing the judge's tentative opinion on the issues and the correct disposal of the case, for circulation to the other judges before a specified date. The Tribunal resumes its deliberations as soon as possible on the basis of the written notes.

Article 6
Establishment of a Drafting Committee

1. As soon as possible during the deliberations, the Tribunal sets up a Drafting Committee for the case, composed of five judges belonging to the majority as it appears then to exist. Subject to paragraph 2, the members of the Committee are selected on the proposal of the President by an absolute majority of the judges present, taking into account the need to select judges who, from their statements, clearly support the opinion of the majority as it appears then to exist.
2. The President is a member *ex officio* of the Committee unless the President does not share the opinion of the majority as it appears then to exist, in which case the Vice-President acts instead. If the Vice-President is ineligible for the same reason, all the members of the Committee are selected by the Tribunal.
3. Unless the Tribunal or the members of the Committee decide otherwise, the judge who is senior in precedence among the members of the Committee acts as its chairman.

Article 7
Work of the Drafting Committee

1. The Drafting Committee meets immediately after its establishment in order to prepare a first draft of the judgment, for completion normally within three weeks. To this end, any member of the Committee may send written proposals for its consideration and inclusion in the draft.
2. The Drafting Committee should prepare a draft judgment which not only states the opinion of the majority as it appears then to exist but which may also attract wider support within the Tribunal.
3. The first draft of the judgment shall be distributed to all the judges in the case. Any judge who wishes to offer amendments or comments submits them in writing to the Committee within three weeks from the date of circulation.
4. After the members of the Committee have received the comments, they will normally meet in order to revise the draft, unless they decide a meeting is not required.
5. When the members of the Committee have completed the second draft of the judgment, the Registrar shall circulate copies to all judges.
6. If the President is not a member of the Committee, its chairman keeps the President informed of work on the draft judgment, as well as its terms.

Article 8
Deliberations on the draft judgment

1. Deliberations on the draft judgment are held as soon as possible after its circulation and in principle not later than three months after the closure of the oral proceedings.
2. The chairman of the Drafting Committee introduces the draft.
3. The draft is examined by the Tribunal in first reading. A judge wishing to modify the draft proposes amendments in writing.
4. At this stage, a judge who, after taking cognizance of the draft judgment, wishes to deliver a separate or dissenting opinion so informs the other judges and puts forward at least an outline of the opinion, making the text available within a time-limit fixed by the Tribunal before the second reading. Such a judge continues to participate in the examination of the draft judgment and cognizance is taken by the Tribunal of such opinions.
5. The Drafting Committee circulates a revised draft judgment for consideration at a second reading, during the course of which the President asks if the judges wish to propose new amendments.

6. Separate or dissenting opinions, which may be individual or collective, should be submitted within a time-limit fixed by the Tribunal. They should take account of any changes made to the draft judgment pursuant to paragraphs 4 and 5 and should concentrate on the remaining points of difference with the judgment.

Article 9
Voting

1. After the Tribunal has completed its second reading of the draft judgment, the President takes the vote in accordance with article 29 of the Statute in order to adopt the judgment. A separate vote is normally taken on each operative provision in the judgment. Any judge may request a separate vote on issues which are separable. Each judge votes by means solely of an affirmative or a negative vote, cast in person and in inverse order of seniority, provided that in exceptional circumstances accepted by the Tribunal an absent judge may vote by appropriate means of communications.

2. A judge who has been absent, because of illness or other reason duly explained to the President, from any part of the hearing or the deliberations may vote provided the Tribunal accepts that the judge has taken a sufficient part in the hearing and the deliberations to be able to reach a judicial determination of all issues of fact and law material to the decision to be given in the case.

Article 10
Experts appointed under article 289 of the Convention

Experts appointed under article 289 of the Convention for a particular case before the Tribunal shall be sent copies of the written pleadings and other documents in the case in good time before the beginning of the deliberations. They sit with the judges during the oral proceedings and take part in the deliberations in accordance with article 42 of the Rules. They receive the written notes and other documents. They may be consulted by the Drafting Committee, as appropriate.

Article 11
Procedures in particular instances

1. The Tribunal may decide to vary the procedures and arrangements set out above in a particular case for reasons of urgency or if circumstances so justify.

2. Deliberations concerning applications for provisional measures and applications for the prompt release of a vessel or crew are conducted in accordance with the principles and procedures set out in this Resolution, taking account of the nature and urgency of the case.

3. The Chamber for Summary Procedure deliberates in accordance with the principles and procedures set out in this Resolution, taking account of the summary nature of the proceedings and the urgency of the case.

Article 12
Application

The foregoing provisions apply whether the proceedings before the Tribunal are contentious or advisory.

Article 13
Review

This Resolution may be reviewed in the light of experience and revised whenever considered appropriate.

(Signed)
Thomas A. MENSAH,
President

(Signed)
Gritakumar E. CHITTY,
Registrar
