

Institution of Proceedings – Introduction de l'instance

NOTIFICATION OF SPECIAL AGREEMENT

(a) Letter from Mr Antonio Skarmeta, Ambassador of Chile to Germany,
to the Registrar dated 18 December 2000



Botschaft der Republik Chile

Berlin, December 18th., 2000.

Mr. Gritakumar E. Chitty
The Registrar
International Tribunal for the Law of the Sea
WexStrasse 4
20355 Hamburg

Advanced copy per fax N° 040 - 35607275

Upon the instruction of the Government of the Republic of Chile, I am writing to inform you that, further to the recent exchange of views between representatives of Chile and the European Community, including through the good offices of the President of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal"), the Government of Chile proposes that the dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean be not proceeded with in accordance with the arbitral procedure instituted by Chile under article 287, paragraph 3, of the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and that the said dispute be submitted to a special chamber of the Tribunal to be formed in accordance with article 15, paragraph 2, of the Statute of the Tribunal, on the following terms:

1. The special chamber shall be composed of five members, of whom one will be a judge *ad hoc* chosen by Chile in accordance with article 17 of the Statute of the Tribunal.
2. The parties shall make a request to the Tribunal to determine the composition of such a chamber with their approval.
3. The special chamber is requested to decide, on the basis of the Convention, the following issues to the extent that they are subject to compulsory procedures entailing binding decisions under Part XV of the Convention:

On behalf of Chile:

- (a) whether the European Community has complied with its obligations under the Convention, especially articles 116 to 119 thereof, to ensure conservation of swordfish, in the fishing activities undertaken by vessels flying the flag of any of its member States in the high seas adjacent to Chile's exclusive economic zone;
- (b) whether the European Community has complied with its obligations under the Convention, in particular article 84 thereof, to co-operate directly with Chile as a coastal State for the conservation of swordfish in the high seas adjacent to Chile's exclusive economic zone as also to report its catches and other information relevant to this fishery to the competent international organization and to the coastal State;
- (c) in relation to the foregoing, whether the European Community has challenged the sovereign right and duty of Chile, as a coastal State, to

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prescribe measures within its national jurisdiction for the conservation of swordfish and to ensure their implementation in its ports, in a non-discriminatory manner, as well as the measures themselves, and whether such challenge would be compatible with the Convention;

- (d) whether the obligations arising under articles 300 and 297, paragraph 1 (b), of the Convention, as also the general thrust of the Convention in that regard, have been fulfilled in this case by the European Community.

On behalf of the European Community:

- (e) whether the Chilean Decree 598 which purports to apply Chile's unilateral conservation measures relating to swordfish on the high seas is in breach of, *inter alia*, articles 87, 89 and 116 to 119 of the Convention;
- (f) whether the "Galapagos Agreement" signed in Santiago de Chile on 14 August 2000 was negotiated into in keeping with the provisions of the Convention and whether its substantive provisions are in consonance with, *inter alia*, articles 64 and 116 to 119 of the Convention;
- (g) whether Chile's actions concerning the conservation of swordfish are in conformity with article 300 of the Convention and whether Chile and the European Community remain under a duty to negotiate an agreement on cooperation under article 64 of the Convention;
- (h) whether the jurisdiction of the special chamber extends to the issue referred to in paragraph 3 (c) above.

4. The proceedings of the special chamber shall be governed by the provisions contained in Part III, sections A, B and C, of the Rules of the Tribunal. In particular, any preliminary objection shall be dealt with by the special chamber in accordance with the provisions of article 97, paragraphs 1 to 6, of the Rules of the Tribunal.

5. The proceedings shall be deemed to have been instituted within the meaning of article 97, paragraph 1, of the Rules of the Tribunal on the date on which the parties have notified the Tribunal of their request to submit to a special chamber of the International Tribunal for the Law of the Sea the dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean.

6. (a) If no preliminary objection is made in writing within 90 days from the institution of proceedings, or if the special chamber rejects the preliminary objection or objections, if any, made, or in case of other issues not affected by the judgment of the special chamber on the preliminary objection or objections, the parties request the special chamber to authorize that the written proceedings shall consist of:



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- a Memorial presented by each of the parties within 6 months from the date of the judgment on the preliminary objection;
 - a Counter-Memorial presented by each of the parties within 3 months after the date on which each party has received the certified copy of the Memorial of the other party.
- (b) The special chamber may authorize the presentation of reply and rejoinder only when it finds them to be necessary.

7. The present letter together with the letter of response thereto of the European Community shall be notified to the Registrar of the Tribunal in accordance with article 24, paragraph 1, of the Statute of the Tribunal.

8. The present letter together with the letter of response of the European Community shall not amount, on the part of the European Community, to a declaration for the purposes of article 287, paragraph 1, of the Convention.

9. The approval of the European Community to the submission of the dispute to a special chamber of the Tribunal on these terms will be indicated by the written response of the European Community to this letter. Upon confirmation of the approval of the European Community by its letter of response, the provisions contained in the present letter shall become effective on the date of the letter of response.

For the Republic of Chile



ANTONIO SKARMETA
Ambassador of Chile to the
Federal Republic of Germany

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(b) Letter from Mr Jean-Louis Dewost, The Director General, Legal Service, European Commission, to the Registrar dated 19 December 2000, attached:

- Letter from Mr Antonio Skarmeta, Ambassador of Chile to Germany, to the Registrar dated 18 December 2000 (reproduced as (a) above)



EUROPEAN COMMISSION

LEGAL SERVICE
The Director General

Brussels, 19.12.2000
JUR(00) 51221 --

Mr. Gritakumar E. Chitty
The Registrar
International Tribunal for the Law of the Sea
Am internationalen Seegerichtshof 1
22609 Hamburg
Germany

Advance copy per fax: 0049 (40) 3560 7275

Dear Mr. Chitty,

I am in receipt of the letter dated 18 December 2000 of the Ambassador of Chile to the Federal Republic of Germany in relation to the submission of a dispute between the Republic of Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean, which is annexed herewith.

On behalf of the European Community, I have the honour to confirm that the provisions contained in the aforesaid letter of Chile are acceptable to the European Community.

Yours sincerely,



Jean-Louis Dewost