DECLARATION OF JUDGE *AD HOC* COT

[*Translation*]

1. I agree on the whole with the judgment rendered in the *"Grand Prince" Case*. However, I wish to offer a few brief comments, firstly as to the question of jurisdiction, and secondly as to the role of lawyers in proceedings before the International Tribunal for the Law of the Sea.

I. Jurisdiction under article 292 of the United Nations Convention on the Law of the Sea

2. The Tribunal, having rejected the Application because Belize did not establish its *locus standi*, did not pronounce itself as to the question of its jurisdiction. I agree with this approach; standing to proceed should be examined before the jurisdiction of the Tribunal. But, since the question of jurisdiction was at the heart of the deliberations, I wish briefly to address it. I believe that the Tribunal should have declined jurisdiction in any event.

3. Article 292 of the Convention provides for a specific prompt release procedure. This exceptional proceedure is "without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew".

4. The Agent of Belize argued in support of the Tribunal's jurisdiction by accusing France of introducing a new concept of international law, that of "prompt confiscation". He contended that France, by instituting its criminal proceedings, had evaded the obligations of the Convention and emptied article 292 of all content. He in fact proposed the re-characterisation of the measures decided by the *tribunal correctionnel* of Saint-Denis, treating them as detention of the vessel within the meaning of article 292, thus establishing the jurisdiction of the Tribunal.

5. The accusation of fraud against the Convention is a serious one, which should not be taken lightly. I find nothing in the record of this case justifying it. The offences with which the captain of the *Grand Prince* was charged are established. The captain penetrated 50 miles into the exclusive economic zone of France. He knew that he had to declare his cargo upon entering the zone and he did not do so. He knew that fishing was prohibited and he nevertheless engaged in it. He readily admitted the facts.

6. French criminal procedure permits direct summons to a hearing when there is no cause for conducting an investigation. In this case, the relevant facts being undisputed, there was no reason for an investigation.

7. In the present case, the speed with which the criminal proceedings were conducted does not appear to me to constitute in any sense a violation of article 292, but rather, on the contrary, an application of the spirit of that

provision. The purpose of article 292 is to avoid undue detention of a vessel. It is not intended to preclude application of criminal law by the coastal State to offences committed in the exclusive economic zone. It would be a peculiar reading of this provision to see in it a kind of impunity afforded to offenders by the payment of a bond. The "reasonable bond" would thus replace the penalties provided for by the law of the coastal State. It would no longer serve to ensure the appearance of the offender, but to give him the option of an alternative penalty to that defined by the national law. This would prejudge further proceedings before the appropriate domestic forum.

8. In order to speak of "fraud against the Convention" or of "prompt confiscation", it would be necessary to establish that the criminal prosecution was prompted by an intention of evading the provisions of article 292 of the Convention. In such a case, the Tribunal would then be entitled to proceed to recharacterize the national proceedings and to declare itself as having jurisdiction. That is obviously not so in the present case, where the facts were admitted, the offence established, and the proceedings by means of direct summons strictly in compliance with the Code of Criminal Procedure.

II. The role of lawyers before the Tribunal

9. Lawyers play an irreplaceable role before international tribunals in aiding the administration of justice. The emergence of new international fora, judicial or quasi-judicial, the introduction of non-governmental organizations or organizations of private persons into the process, have led to a significant development of international dispute settlement. We should welcome this and encourage this new synergy.

10. I note, however, that the role of lawyers has been questioned in recent years before several international fora. The special panel constituted by the World Trade Organization refused Saint Lucia the right to be defended by private lawyers in the case of the *Regime for the Importation, Sale and Distribution of Bananas*. The Appellate Body did not confirm that decision. In the case of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* before the International Court of Justice, Judge Oda criticised the fact that Congo was represented by a Belgian lawyer acting as agent.

11. The situation is not the same before the International Tribunal for the Law of the Sea. Article 292 of the Convention provides that the application for release "may be made only by or on behalf of the flag State of the vessel". It is generally agreed that this provision establishes the special role of private parties and their lawyers in the context of such proceedings.

12. The members of international courts and tribunals are chosen "from among persons enjoying ... recognized competence in the field of the law of the sea" or "in international law" (Statute of the Tribunal, article 2; See also I.C.J. Statute, Article 2, to the same effect). These fora should be able to rely upon the distinguished contributions of lawyers arguing at the bar in the performance of their task.

13. The lack of a specialized bar before the Tribunal, of a minimum level of qualification in international law, of rules of professional conduct and of an organization entrusted with the task of enforcing them, may nevertheless pose a problem. In addition, there is the danger, underscored by Judge Oda, of a proliferation of applications that are manifestly unfounded, inspired by law firms for reasons having nothing to do with the interests of the applicant State.

14. The delegation of sovereignty by the flag State in appointing a lawyer as agent raises a different kind of problem. The dispute before the Tribunal remains an inter-State dispute. However, the lawyer-agent is not necessarily in close contact with the authorities of the flag State. The credibility and reliability of the information he provides as to the legal position of the flag State may be questionable. In the present case, the Tribunal had to be satisfied with incomplete and contradictory information concerning the registration of the vessel and the position of Belize as to the nationality of the *Grand Prince*.

15. These are difficult questions. It falls primarily to the States parties to a dispute to answer them. They, acting in sovereign fashion, organize their representation and the defence of their interests. They do so at their own risk.

(*Signed*) Jean-Pierre Cot