

DECLARATION OF JUDGE WOLFRUM

The following is meant to emphasize certain points in the Judgment.

1. I concur with the finding of the Judgment that the Tribunal has no jurisdiction under article 292 of the Convention to adjudicate upon the Application brought by Belize against the French Republic. The Applicant has not established that the *Grand Prince* was registered in the International Merchant Marine Registry of Belize (IMMARBE) when the Application was submitted to the Tribunal, although I have no doubt that the vessel was registered in IMMARBE when it was arrested.

2. I further agree with the Judgment (paragraph 66) that an application under article 292 of the Convention may only be filed on behalf of a State if that State is the flag State of the respective vessel when the application is filed. This interpretation of article 292, paragraph 2, of the Convention is required by its object and purpose. This provision deals with the *locus standi in judicio* of a State, i.e. its right to act as an applicant. It is established that, in general, an applicant in international judicial proceedings must seek to defend its own interests which, under article 292 of the Convention, can only be those of a flag State.

3. I would like to emphasize that the statement made by the Director and Senior Deputy Registrar that "... despite the expiration of the Patent of navigation and Ship station license, the vessel *is still considered* as registered in Belize until final decision of this Administration pending to the result of the court proceeding in which the vessel is engaged at the present time ..." (italics supplied) cannot be regarded as registration within the meaning of article 91 of the Convention or as equivalent thereto. It does not conform to the objective and purpose of registration. The registration of ships has to be seen in close connection with the jurisdictional powers which flag States have over ships flying their flag and their obligation concerning the implementation of rules of international law in respect of those ships. It is one of the established principles of the international law of the sea that, except under particular circumstances, on the high seas ships are under the jurisdiction and control only of their flag States, i.e. the States whose flag they are entitled to fly. The subjection of the high seas to the rule of international law is organized and implemented by means of a permanent legal relationship

between ships flying a particular flag and the State whose flag they fly. This link not only enables but, in fact, obliges States to implement and enforce international as well as their national law governing the utilization of the high seas. The Convention upholds this principle. Article 94 of the Convention establishes certain duties of the flag State. Apart from that, article 91, paragraph 1, third sentence, of the Convention states that there must be a genuine link between the flag State and the ship. This means the registration cannot be reduced to a mere fiction and serve just one purpose, namely to open the possibility to initiate proceedings under article 292 of the Convention on the Law of the Sea. This would render registration devoid of substance – an empty shell. So far this Tribunal has never accepted that a vessel was registered under a particular flag solely on the ground that this State so claimed. In the *M/V “Saiga” Case* as well as in the *M/V “Saiga” (No. 2) Case*, where the nationality was disputed, the Tribunal assessed the evidence submitted (paragraph 44 and paragraphs 55 *et seq.* respectively), including the conduct of the flag State (see Judgment in the *M/V “Saiga” (No. 2) Case*, paragraph 68).

4. Moreover, such an approach, were it to be accepted, would mean that the jurisdiction of the Tribunal would depend upon a decision of national officials, without the State concerned assuming the responsibilities of a flag State in substance. This would be incompatible with the role and function of the Tribunal and would erode the flag State system.

5. Finally, I would like to highlight the newly introduced provision in the legislation of Belize that permits the Belizean authorities to de-register a vessel for violations of international conventions and agreements. I consider this to be a commendable approach, which in an innovative manner strengthens the role of the flag State with a view to a more effective protection of national and international fishery resources or of the marine environment. It is for Belize to ensure that the relevant decisions are not taken in an arbitrary manner and that shipowners may have recourse to a procedure in which they can defend their rights.

(Signed) Rüdiger Wolfrum