

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

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PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE REPORT OF THE TRIBUNAL

AT

THE TWENTY-SEVENTH MEETING OF STATES PARTIES TO
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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International Tribunal for the Law of the Sea
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Madam President,

1. It is an honour for me to address the Meeting of States Parties in connection with its consideration of the Annual Report of the Tribunal for the year 2016. On behalf of the International Tribunal for the Law of the Sea, I would like to congratulate you, Madam President, on your election to the presidency of this Meeting and wish you every success in the completion of your mandate.

Madam President,

Distinguished delegates,

2. The Annual Report of the Tribunal gives an account of the various activities of the Tribunal for the period 1 January to 31 December 2016. In this statement, my intention is not to repeat the content of the report. Rather I will focus on the main aspects of the report and furnish the Meeting with additional information on developments which have taken place this year.

3. Allow me first to address matters concerning the organization of the Tribunal. I regret to inform you of the death, on 15 September 2016, of Judge Antonio Cachapuz de Medeiros from Brazil. I wish to pay tribute to Judge Antonio Cachapuz de Medeiros and, on behalf of the Tribunal, express my condolences to his family and the Government of Brazil. As indicated in a note verbale sent by the Registrar to all States Parties to the Convention on 4 November 2016, the election to fill the vacancy created by the death of Judge Cachapuz de Medeiros will be held during the current Meeting of States Parties.

4. On the subject of the Registry, I wish to inform you that, in March 2016, the Tribunal re-elected Mr Philippe Gautier as Registrar for a term of office of five years, and that, on 15 March 2017, the Tribunal elected Ms Ximena Hinrichs as Deputy Registrar for a term of office of five years. Ms Hinrichs' term of office will start on 25 June 2017, upon the retirement of the current incumbent, Mr Doo-young Kim. I take this opportunity to express my appreciation to Mr Kim for his highly valued contribution to the work of the Tribunal during the past fifteen years, and wish him well in his future endeavours.

Madam President,
Distinguished delegates,

5. In 2016, the Tribunal delivered its Judgment on preliminary objections in respect of the *M/V “Norstar” Case (Panama v. Italy)*. I wish to recall that, in this case, proceedings were instituted on 17 December 2015, by an application filed by Panama against Italy in a dispute concerning the arrest and detention of the vessel *M/V “Norstar”*. In my statement to the Meeting last year, I referred to the Preliminary Objections raised by Italy on 11 March 2016 against the jurisdiction of the Tribunal and the admissibility of Panama’s Application. Pursuant to the Rules of the Tribunal, upon receipt of the Preliminary Objections by the Registry, proceedings on the merits were suspended. Following the filing of written pleadings, the hearing on the preliminary objections took place from 20 to 22 September 2016. The Tribunal delivered its Judgment on the Preliminary Objections on 4 November 2016. With your permission, I should now like to highlight some elements of this Judgment.

6. The Tribunal first dealt with Italy’s submission that the Tribunal lacked jurisdiction to deal with the case submitted by Panama. The arguments raised by Italy were based on the “non-existence of a dispute concerning the interpretation or application of the Convention”, the “lack of jurisdiction *ratione personae*” and “the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention”. The Tribunal rejected these objections and found that it had jurisdiction to adjudicate upon the dispute.

7. In addressing Italy’s objection based on the non-existence of a dispute, the Tribunal examined the communications sent to Italy concerning the detention of the *M/V “Norstar”*. The Tribunal took the view that these communications and Italy’s silence indicated a disagreement between the Parties on points of law and fact,¹ and concluded that “a dispute existed between the Parties at the time of the filing of the Application.”² In this connection, the Tribunal pointed out that “under international

¹ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, to be published, para. 102.

² *Ibid.*, para. 103.

law, it is for each State to determine the persons, including private persons, who represent the State or are authorized to act on its behalf in its relations with other States, international organizations and international institutions, including international courts and tribunals”, and noted that “[t]his is without prejudice to the specific treaty regimes or other rules on State representation that may be applicable.”³

8. Turning to the question as to whether the dispute between the Parties concerned the interpretation or application of the Convention, the Tribunal, relying on its previous jurisprudence, stated that, in order to determine this matter, it “must establish a link between the facts advanced by Panama and the provisions of the Convention referred to by it and show that such provisions can sustain the claims submitted by Panama (see *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, *Judgment, ITLOS Reports 2013*, p. 4, at p. 32, para. 99).”⁴ On this basis, the Tribunal found that, among the articles of the Convention invoked by Panama in its Application, article 87 on the “Freedom of the high seas” and article 300 on “Good faith and abuse of rights” were relevant to the case.⁵

9. Italy objected to the jurisdiction *ratione personae* of the Tribunal, stating, among others, that “the actual arrest and detention of the vessel was not executed by Italian enforcement officials but by the Spanish authorities.”⁶ After noting that the *M/V “Norstar”* had been arrested upon a request from an Italian Public Prosecutor,⁷ the Tribunal found “that the dispute before it concerns the rights and obligations of Italy”⁸ and that, therefore, “Italy is the proper respondent to the claim made by Panama in these proceedings.”⁹

10. As regards Italy’s objection “based on the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention”,¹⁰

³ Ibid., para. 93.

⁴ Ibid., para. 110.

⁵ Ibid., paras 122 and 132.

⁶ Ibid., para. 137.

⁷ Ibid., paras 163 and 42.

⁸ Ibid., para. 167.

⁹ Ibid., para. 168.

¹⁰ Ibid., para. 219.

the Tribunal found that “Panama was justified in assuming that to continue attempts to exchange views could not have yielded a positive result and that it had thus fulfilled its obligation under article 283 of the Convention.”¹¹ After recalling its previous jurisprudence on article 283 of the Convention, the Tribunal added that “the absence of a response from one State Party to an attempt by another State Party to exchange views on the means of settlement of a dispute arising between them does not prevent the Tribunal from finding that the requirements of article 283 have been fulfilled.”¹²

11. The Tribunal then dealt with Italy’s submission that Panama’s claim was inadmissible. In support of its submission, Italy raised objections based on “the nationality of claims”, “the non-exhaustion of local remedies” as well as on “acquiescence, estoppel and extinctive prescription”. Those objections were also rejected by the Tribunal.

12. As regards the objection based on “the nationality of claims”,¹³ the Tribunal, relying on its previous jurisprudence, found that “the *M/V ‘Norstar’*, flying the flag of Panama, is to be considered a unit and therefore the *M/V ‘Norstar’*, its crew and cargo on board as well as its owner and every person involved or interested in its operations are to be treated as an entity linked to the flag State, irrespective of their nationalities.”¹⁴

13. Regarding the objection of Italy based on “the non-exhaustion of local remedies”,¹⁵ the Tribunal was of the view that “the right of Panama to enjoy freedom of navigation on the high seas is a right that belongs to Panama under article 87 of the Convention, and that a violation of that right would amount to a direct injury” to that country.¹⁶ Relying on its previous jurisprudence, the Tribunal considered that “the claim for damage to the persons and entities with an interest in the ship or its cargo arises from the alleged injury to Panama” and concluded, “[a]ccordingly ... the

¹¹ *Ibid.*, para. 217.

¹² *Ibid.*, para. 215.

¹³ *Ibid.*, para. 232.

¹⁴ *Ibid.*, para. 231.

¹⁵ *Ibid.*, para. 273.

¹⁶ *Ibid.*, para. 270.

claims in respect of such damage are not subject to the rule of exhaustion of local remedies.”¹⁷

14. Concerning acquiescence, the Tribunal held that “at no stage has the conduct of Panama given scope to infer that it has abandoned its claim or acquiesced in the lapse of its claim.”¹⁸ In addition, relying on the principle of estoppel set out in its previous jurisprudence,¹⁹ the Tribunal considered that “the main elements of estoppel have not been fulfilled in this case.”²⁰ In respect of extinctive prescription, it noted that “neither the Convention nor general international law provides a time-limit regarding the institution of proceedings before it”,²¹ and found that Panama had not failed to pursue its claim since the time when it first made it, so as to render the Application inadmissible.²²

15. Accordingly, in its Judgment on the Preliminary Objections, the Tribunal found that it had jurisdiction to adjudicate upon the dispute and that Panama’s Application was admissible. With the adoption of its Judgment, proceedings on the merits have resumed and an Order was issued by the President of the Tribunal on 29 November 2016, fixing the time-limits for the filing of the Memorial of Panama and the Counter-Memorial of Italy.

16. I will refer now to the dispute between Ghana and Côte d’Ivoire concerning delimitation of the maritime boundary in the Atlantic Ocean. As reported to the Meeting during my statement last year, the Special Chamber formed to deal with this case delivered an Order on a Request for the prescription of provisional measures filed by Côte d’Ivoire on 25 April 2015. Subsequently, the Parties submitted their written pleadings in respect of the merits case, and the oral proceedings took place from 6 to 16 February this year. The Special Chamber is conducting its deliberations on the case and I wish to inform the Meeting that the judgement of the Chamber is expected to be delivered by the end of September 2017.

¹⁷ *Ibid.*, para. 271.

¹⁸ *Ibid.*, para. 304.

¹⁹ *Ibid.*, para. 306.

²⁰ *Ibid.*, para. 307.

²¹ *Ibid.*, para. 311.

²² *Ibid.*, para. 313.

Madam President,
Distinguished delegates,

17. During the period under review, the Tribunal held two sessions devoted to legal and judicial matters as well as organizational and administrative matters. The Annual Report which is before you includes a review of these matters. As usual, the Registrar will present a report on the budgetary matters of the Tribunal to the Meeting in a separate statement.

Madam President,
Distinguished delegates,

18. In 2016, the Tribunal commemorated the twentieth anniversary of its establishment and a number of events were organized to mark this occasion. As you are aware, a round table discussion on “The role of the Tribunal in the settlement of law of the sea disputes” was held in New York on 23 June 2016 during the twenty-sixth Meeting of States Parties. This event was organized with the financial contribution of the Korea Maritime Institute for whose generosity I wish to express our gratitude.

19. The solemn ceremony to mark the Tribunal’s twentieth anniversary took place on 7 October in the City Hall of Hamburg. During the ceremony, statements were made by Mr Ban Ki-moon, Secretary-General of the United Nations, Mr Joachim Gauck, President of the Federal Republic of Germany, Mr Olaf Scholz, First Mayor and President of the Senate of the Free and Hanseatic City of Hamburg, and myself. The ceremony, which was attended by more than 500 guests, was organized with the support of the Federal Republic of Germany and the Free and Hanseatic City of Hamburg. I wish to express to both our gratitude for their generous support.

20. The twentieth anniversary ceremony was preceded by a two-day international symposium on “The contribution of the Tribunal to the rule of law”, which was held on 5 and 6 October 2016, and by a visit by the Secretary-General of the United Nations to the Tribunal on 7 October. The symposium was attended by over 150 participants,

among them judges of the Tribunal, judges of the International Court of Justice as well as of other judicial institutions, academics, lawyers and counsel who have appeared before international courts and tribunals. As a follow-up to this event, this year the Tribunal held at its premises a symposium entitled "ITLOS at 20: Looking into the future". The four main topics which were under discussion at this symposium were seabed mining, marine biological diversity, sustainable fisheries and climate change. Both events were made possible with the financial support of the Government of Japan, to whom I wish to express my appreciation for their generous contribution.

Madam President,
Distinguished delegates,

21. The Tribunal has established various training programmes with the aim of providing capacity building in the field of the law of the sea and dispute settlement. During the period 2016-2017, for the tenth time, a capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. Fellows from Cambodia, Cameroon, Democratic Republic of the Congo, Portugal and Thailand participated in this nine-month programme. I wish to express our gratitude to the Nippon Foundation for its contribution to the programme.

22. Another capacity-building programme is the Tribunal's internship programme, which offers training opportunities to university students. In order to provide financial assistance to participants from developing countries, special trust funds have been established with the support of the Korea Maritime Institute and the China Institute of International Studies. In 2016, a contribution to the trust fund for the law of the sea was made by the Korea Maritime Institute and I wish to express our sincere appreciation to this institution for its contribution to the programme.

23. The Tribunal also provides support to the International Foundation for the Law of the Sea, which organizes the annual Summer Academy. Last year, the Academy was held at the Tribunal's premises from 24 July to 19 August 2016.

24. The regional workshops organized by the Tribunal in recent years also contribute to the enhancement of capacity building. A few days ago, on 5 and 6 June, a further workshop on the settlement of disputes related to the law of the sea - the twelfth so far - took place in San José, Costa Rica. It was organized with the assistance of the Korea Maritime Institute and in cooperation with the Ministry of Foreign Affairs of Costa Rica. I therefore wish to express my sincere appreciation to both the Ministry of Foreign Affairs of Costa Rica and the Korea Maritime Institute for their generosity and excellent cooperation. Representatives of 12 States from Central America and the Caribbean region attended the workshop.

Madam President,
Distinguished delegates,

25. As you are aware, the preparatory committee established by General Assembly resolution 69/292 for the development of an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction will meet for its fourth session from 10 to 21 July 2017. Among the many questions to be discussed by the preparatory committee is that of a mechanism for the settlement of disputes. Allow me to share some thoughts with you on this matter, which I will do in my personal capacity and as judge of the Tribunal.

26. As an agreement on marine biological diversity in areas beyond national jurisdiction will supplement the 1982 Convention, it may be assumed that it will incorporate a dispute-settlement mechanism based on the provisions of Part XV of the Convention. In this connection, I wish to express the view that such a mechanism should include the possibility of requesting advisory opinions from the Tribunal on matters arising out of the new agreement.

27. Moreover, I would like to take this opportunity to encourage negotiators to clarify the interplay between the application of Part XV of the Convention and other parallel arrangements or declarations conferring jurisdiction on other judicial bodies. In particular, in light of recent developments, it would be useful to clarify the relationship between declarations made under article 36 of the Statute of the

International Court of Justice and the application of article 282 of the Convention. The legislative history of the Convention does not provide sufficient clarity on this matter.

Madam President,
Distinguished delegates,

28. My term of office as President of the Tribunal will come to an end in September this year. Since this is my last address to the Meeting of States Parties in my capacity as President of the Tribunal, I wish to express to you, Madam President, and all delegates my gratitude for the cooperation extended to the Tribunal and to me personally during the past three years. I conclude by conveying my appreciation to the Director of DOALOS and her staff for the continued cooperation and support provided to us.

I thank you for your attention.