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**The Law of the Sea and the International Regulation of Shipping:
The Jurisprudence of ITLOS**

*Keynote Address by H.E. Judge Tomas Heidar, President of the International Tribunal for the
Law of the Sea*

I. Introduction

Ladies and gentlemen,

I am very happy to be here to celebrate the life and work of my friend and colleague from the Rhodes Academy of Oceans Law and Policy, Professor Bob Beckman. I also look forward to the analyses of several aspects of international shipping in the next couple of days. But before we all dive into this, as it were, I would like us to take a step back and consider the law of the sea and its relationship to international shipping.

The law of the sea is a body of public international law governing the rights and obligations of States in ocean affairs, including the 1982 United Nations Convention on the Law of the Sea (“UNCLOS” or “the Convention”),¹ which has been referred to as the “constitution for the oceans”.² UNCLOS provides a comprehensive legal framework for all uses of the oceans, setting out the rights and obligations of States in different maritime zones. It addresses, for example: maritime zones and their delimitation, navigational rights, fisheries, oil exploitation, deep seabed mining, the protection of the marine environment, and marine scientific research.

By contrast, the Convention does not focus on the relations between States and private actors, or the interindividual relations between different private actors, in ocean affairs — what we might call “international shipping”. This, however, does not mean that UNCLOS is silent

¹ 1833 UNTS 3 (adopted 10 December 1982; entered into force 16 November 1994).

² Elisabeth Mann Borgese, “Introduction” in Elisabeth Mann Borgese (ed), *Pacem in maribus* (Dood, Mead & Co 1972), xxiii-xiv; see also Tommy TB Koh, “‘A Constitution for the Oceans’: Remarks by Tommy TB Koh, of Singapore, President of the Third United Nations Conference on the Law of the Sea” in *The Law of the Sea: Official Text of the United Nations Convention on the Law of the Sea* (United Nations 1983) xxxiii-xxvii, available at: <https://www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf> (accessed 2 March 2026).

on these matters. On the contrary, a number of provisions in the Convention address issues that lie at the core of shipping or maritime law, notably the powers and duties that a State has vis-à-vis private vessels, whether those vessels are flying its flag or are foreign.

These provisions, like other provisions of UNCLOS, are developed through, among other things, the jurisprudence of international courts and tribunals entrusted with the settlement of disputes that concern the interpretation or application of the Convention. In this regard, it is worth recalling that UNCLOS sets out compulsory dispute settlement procedures that entail binding decisions. Pursuant to Part XV, section 2, of the Convention, any State Party to the Convention may, subject to certain limitations and optional exceptions, submit any dispute with another State Party concerning the interpretation or application of the Convention to arbitral or judicial settlement, without the need for the other State Party's *ad hoc* consent.

The International Tribunal for the Law of the Sea (“ITLOS” or “the Tribunal”) is one of four means for the settlement of disputes under UNCLOS, along with the International Court of Justice (“the ICJ”), *ad hoc* arbitral tribunals constituted in accordance with Annex VII, and *ad hoc* special arbitral tribunals for particular categories of disputes specified in Annex VIII to the Convention. Thus, the Tribunal is certainly not the exclusive interpreter of the Convention. Nonetheless, it holds a unique position as the only permanent judicial institution created by the Convention itself to address matters concerning its interpretation and application. It will be of no surprise to hear that no other international court or tribunal has handled more cases under the Convention. As the ICJ had the occasion to observe recently, the Tribunal has “since its establishment ... developed a considerable body of jurisprudence on UNCLOS, both in contentious and advisory proceedings.”³ Accordingly, the ICJ was of the view that “it should ascribe great weight to the interpretation adopted by the Tribunal” with respect to the provisions of UNCLOS, with a view to “achiev[ing] the necessary clarity and the essential consistency of international law, as well as legal security”.⁴

Against this background, in my address to you I will attempt to offer an overview of the Tribunal's jurisprudence in so far as it pertains to international shipping under UNCLOS. As will be shown, the Tribunal's jurisprudence has, to a greater or lesser degree, addressed key

³ *Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025* (not yet reported), para. 338.

⁴ *Obligations of States in Respect of Climate Change, Advisory Opinion of 23 July 2025* (not yet reported), para. 338, quoting in part *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66.

aspects concerning the powers and duties of States vis-à-vis private vessels flying their flag and foreign private vessels. In this regard, the Tribunal has paid close heed to the work of institutions such as the International Maritime Organization (“the IMO”) and, alongside them, it has proved itself as a major actor in the development of the legal regime that governs international shipping.

II. Freedom of navigation

In discussing the Tribunal’s perspective on the legal regime of international shipping, there is hardly a better place to start than the Tribunal’s jurisprudence on the freedom of navigation. As has been observed, “[f]reedom of navigation, or the right of unimpeded passage, is a theme that runs through the Convention, taking different forms in different maritime zones.”⁵ In particular, this freedom is the first on the list of freedoms of the high seas laid down in article 87 of UNCLOS. Notably, the freedom of navigation is of utmost importance to international shipping. It is thus understandable that the question of the scope and limits of the freedom of navigation has featured prominently in the Tribunal’s jurisprudence.

The Tribunal’s judgment in the *M/V “Norstar”* case stands out as having the most detailed analysis on the freedom of navigation. The case arose out of the arrest of the Panamanian-flagged oil tanker *M/V “Norstar”* in the Spanish port of Palma de Mallorca at the request of Italian authorities, on charges of tax fraud. According to Italy, the *M/V “Norstar”* bunkered luxury yachts on the high seas using fuel oil that had been purchased in Italy on the false pretence that it was intended for the vessel’s own consumption (and thus exempt from tax). The central question for the Tribunal was whether Italy’s actions amounted to an unlawful interference with the vessel’s freedom of navigation on the high seas under article 87, paragraph 1, of UNCLOS.

The Tribunal had no difficulty in finding that “bunkering on the high seas is part of the freedom of navigation”.⁶ In doing so, the Tribunal confirmed that the freedom of navigation is not confined to a mere movement across maritime spaces but that it extends to other lawful uses of the high seas, and notably to commercial uses such as bunkering, which are crucial to international shipping. The Tribunal further observed that the freedom of navigation applies,

⁵ Myron Nordquist, Satya Nandan, and Shabtai Rosenne (eds), *United Nations Convention on the Law of the Sea 1982: A Commentary*, vol. III (Center for Oceans Law and Policy, University of Virginia, 1995), 81 (para. 87.9(c)).

⁶ *M/V “Norstar” (Panama v. Italy)*, Judgment, *ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 219.

spatially, not only on the high seas but also in a coastal State's exclusive economic zone, by virtue of article 58, paragraph 1, of the Convention.⁷ By contrast, as the Tribunal explained, the freedom of navigation does not apply in the internal waters of a coastal State, where the coastal State exercises sovereignty. Accordingly, the freedom of navigation does not encompass a vessel's right to leave the port of a coastal State and to sail towards the high seas.⁸

The Tribunal then discussed the acts that might constitute a breach of the freedom of navigation. As the Tribunal explained, "any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties."⁹ The Tribunal thus noted that not only "physical or material interference with navigation of foreign ships on the high seas" but "even acts which do not involve physical interference or enforcement on the high seas may constitute a breach of the freedom of navigation."¹⁰ Specifically, in the view of the Tribunal, "any act which subjects activities of a foreign ship on the high seas to the jurisdiction of States other than the flag State constitutes a breach of the freedom of navigation, save in exceptional cases expressly provided for in the Convention or in other international treaties."¹¹

Against this backdrop, the Tribunal held that a State would violate the freedom of navigation if it extended its domestic criminal and customs laws to lawful activities, such as bunkering, carried out by foreign ships on the high seas, unless such extension was justified by the Convention or other international treaties.¹² In this connection, the Tribunal explained that the extension of a State's prescriptive jurisdiction over foreign ships on the high seas may in itself violate the freedom of the high seas, even if the enforcement is not carried out on the high seas but in internal waters.¹³

The Tribunal's judgment in *M/V "Norstar"*, therefore, is a strong testament to the importance of the freedom of navigation and especially of the right of private vessels in principle not to be subjected to the jurisdiction of third States for lawful activities carried out

⁷ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 220; see already *Delimitation of the Maritime Boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Judgment, ITLOS Reports 2017*, p. 4, at p. 121, para. 426.

⁸ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 221.

⁹ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 222.

¹⁰ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, paras. 222–223.

¹¹ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 224.

¹² *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, para. 225.

¹³ *M/V "Norstar" (Panama v. Italy), Judgment, ITLOS Reports 2018–2019*, p. 10, at p. 74, paras. 225–226.

on the high seas.¹⁴ Of course, this does not mean that private vessels are immune from the powers of third States. For example, the Convention entitles every State to seize pirate ships on the high seas.¹⁵ The relationship between the freedom of navigation and a State's power to seize pirate ships lies at the merits of a case currently pending before a Special Chamber of the Tribunal¹⁶ — a fact that demonstrates, in and of itself, that the Tribunal's jurisprudence has a continuing role to play in the refinement of the concept of the freedom of navigation.

More broadly, private vessels are subject to the jurisdiction of coastal States in their exclusive economic zone or contiguous zone to the extent that this is provided for by the Convention or other international treaties. Indeed, several cases entertained by the Tribunal raised the question of whether there was a legal basis for the coastal State to exercise its jurisdiction over foreign vessels in its exclusive economic zone.¹⁷ Crucially, vessels are also subject to the jurisdiction of the State whose nationality they bear. This raises the question of the nationality of ships, which is another recurring theme in the jurisprudence of the Tribunal.

III. Genuine link

The connection between a ship and a State by means of the institution of “nationality” ensures that some State — the “flag State” — has authority over ships and conduct taking place aboard.¹⁸ Indeed, it has been observed that “[t]he ascription of nationality to ships is one of the principal means by which public order is maintained at sea.”¹⁹ Thus, article 92 of UNCLOS stipulates that “[s]hips shall sail under the flag of one State only” and that they are subject to

¹⁴ See *M/V “Norstar” (Panama v. Italy)*, Judgment, *ITLOS Reports 2018–2019*, p. 10, at p. 73, para. 216.

¹⁵ Article 105 UNCLOS; for the relevant definitions, see articles 101 and 103 UNCLOS.

¹⁶ See *M/T “Heroic Idun” (No. 2) (Marshall Islands/Equatorial Guinea)*, Order of 13 May 2025 (not yet reported).

¹⁷ See, for example, *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 54, para. 126; *“Arctic Sunrise” (Kingdom of the Netherlands v. Russian Federation)*, Provisional Measures, Order of 22 November 2013, *ITLOS Reports 2013*, p. 230, at p. 231, para. 1; *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, *ITLOS Reports 2014*, p. 4, at p. 70, paras. 222–223; see also *M/T “San Padre Pio” (No. 2) (Switzerland/Nigeria)*, Order of 7 January 2020, *ITLOS Reports 2020–2021*, p. 155.

¹⁸ Douglas Guilfoyle, “Article 91” in Alexander Proelß (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Hart 2017), 693 (MN 1); Doris König, “Flag of Ships”, *Max Planck Encyclopedia of Public International Law online* (article last updated April 2009), para. 1.

¹⁹ Robin Churchill, Vaughan Lowe, and Amy Sander, *The law of the sea* (4th edn, Manchester University Press 2022), 463; see also Richard Barnes, “Flag States” in Donald Rothwell, Alex Oude Elferink, and Karen Scott (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2016), 304; Doris König, “Flag of Ships”, *Max Planck Encyclopedia of Public International Law online* (article last updated April 2009), para. 1.

that State’s jurisdiction, in particular, its exclusive jurisdiction on the high seas. As the Tribunal has pointed out, this is “a corollary of the open and free status of the high seas”.²⁰

The Convention further provides that “[e]very State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag”, and it adds that “[t]here must exist a genuine link between the State and the ship.”²¹ The reference to the requirement for a “genuine link” raises two questions. The first concerns the precise meaning of the expression “genuine link”; the second concerns the consequences of the absence of a genuine link between the ship and the flag State. Guidance on both questions is provided through recourse to the Tribunal’s jurisprudence.

The Tribunal had the opportunity to expound on the first question in its Judgment in *M/V “SAIGA” (No. 2)*.²² There, the Tribunal noted that neither the wording of article 91 of UNCLOS nor its context — articles 92 and 94 — provided an answer regarding the meaning of “genuine link”.²³ Nonetheless, the Tribunal recalled the drafting history of the provision, which could be traced back to the Articles on the Law of the Sea adopted by the International Law Commission (“the ILC”) in 1956.²⁴ While the ILC had proposed the “genuine link” as a criterion “for purposes of recognition of the national character of the ship by other States”,²⁵ its proposal was not adopted in the subsequent Geneva Convention on the High Seas of 1958.²⁶ Instead, the Geneva Convention on the High Seas merely stipulated that a “State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”²⁷ — a provision reflected in article 94, paragraph 1, of UNCLOS.²⁸ Therefore, the Tribunal concluded that “the purpose of the provisions of [UNCLOS] on the

²⁰ *M/V “Norstar” (Panama v. Italy)*, Judgment, *ITLOS Reports 2018–2019*, p. 10, at p. 73, para. 216; see also *S.S. “Lotus”*, Judgment, 1927, *P.C.I.J., Ser. A, No. 10*, p. 4, at p. 25.

²¹ Article 91(1) of UNCLOS.

²² *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at pp. 39-42, paras. 75-88.

²³ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at pp. 40-41, para. 80.

²⁴ Articles concerning the law of the sea, *Report of the International Law Commission on the Work of its Eighth Session*, [1956]-II YBILC 256.

²⁵ Article 29(1) (third sentence) of the Articles concerning the law of the sea, *Report of the International Law Commission on the Work of its Eighth Session*, [1956]-II YBILC 256; see *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 41, para. 80.

²⁶ See article 5(1) of the Convention on the High Seas (adopted 29 April 1958; entered into force 30 September 1962), 450 UNTS 11; see also *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 41, para. 80.

²⁷ Article 5(1) (third sentence) of the Convention on the High Seas.

²⁸ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 41, para. 81.

need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State”.²⁹

The Tribunal reaffirmed this interpretation in its subsequent judgment in *M/V “Virginia G”*, where it rejected the view that the provision on genuine link should be read “as establishing prerequisites or conditions to be satisfied for the exercise of the right of the flag State to grant its nationality to ships.”³⁰ Instead, according to the Tribunal, the genuine link means that “once a ship is registered, the flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures and practices.”³¹

The Tribunal’s reading of the concept of “genuine link” has been criticized by part of the literature and called into question in light of the pressing issue of the so-called “flags of convenience”, namely State registries that are open to foreign-controlled vessels.³² Specifically, it has been suggested that the Tribunal’s jurisprudence provides implicit support to the practice of flags of convenience,³³ which in turn is accused of undermining compliance with safety, labour and environmental protection standards, and with maritime governance more broadly.³⁴ This issue has received renewed attention following the emergence of the “dark fleet” or “shadow fleet”, namely ships engaging in illegal operations for the purposes of circumventing sanctions, evading compliance with safety or environmental regulations, avoiding insurance costs, or engaging in other illegal activities.³⁵ In particular, it has been argued that the current

²⁹ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 10, at p. 42, para. 83; see also *M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 45, para. 112.

³⁰ *M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 44, para. 110.

³¹ *M/V “Virginia G” (Panama/Guinea-Bissau), Judgment, ITLOS Reports 2014*, p. 4, at p. 45, para. 113.

³² See Tullio Scovazzi, “ITLOS and Jurisdiction over Ships” in Henrik Ringbom (ed), *Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea* (Brill 2015), 385; Doris König and Tim René Salomon, “Flags of Convenience”, *Max Planck Encyclopedia of Public International Law online* (article last updated February 2022), paras. 1-2; see also David Matlin, “Re-evaluating the Status of Flags of Convenience under International Law” (1991) 23 *Vanderbilt Journal of Transnational Law* 1017, 1019-1020.

³³ Tullio Scovazzi, “ITLOS and Jurisdiction over Ships” in Henrik Ringbom (ed), *Jurisdiction over Ships: Post-UNCLOS Developments in the Law of the Sea* (Brill 2015), 388.

³⁴ Robin Churchill, “Dispute Settlement in the Law of the Sea: Survey for 2014” (2015) 30 *International Journal of Marine and Coastal Law* 585, 594; Doris König and Tim René Salomon, “Flags of Convenience”, *Max Planck Encyclopedia of Public International Law online* (article last updated February 2022), para. 3.

³⁵ For the definition, see International Maritime Organization, Resolution A.1192(33) of 6 December 2023, “Urging member states and all relevant stakeholders to promote actions to prevent illegal operations in the maritime sector by the ‘dark fleet’ or ‘shadow fleet’”, A 33/Res.1192 (11 December 2023), para. 1; see also International Maritime Organization, “Report of the Legal Committee on the Work of its 110th Session”, LEG 110/18/1 (24 April 2023), para. 5.9.

conception of the genuine link enables ships in the dark fleet to register in States that are either unable or unwilling to discharge their obligations as flag States.³⁶

It bears highlighting, however, that the Tribunal's interpretation of the term "genuine link" was not made in the abstract but in a particular context. Both in *M/V "SAIGA" (No. 2)* and in *M/V "Virginia G"*, the Tribunal was called upon to decide whether the respondent State was entitled to disregard the nationality granted by the applicant State to the ship in question on account of an alleged lack of a genuine link. In *M/V "SAIGA" (No. 2)*, Guinea contended that it "[wa]s not bound to recognise the Vincentian nationality" of the ship owing to the alleged absence of a genuine link;³⁷ in *M/V "Virginia G"*, Guinea-Bissau argued that it was "not ... bound to acknowledge the right of navigation", in its exclusive economic zone, of a ship that lacked a genuine link with the flag State.³⁸ In both cases, the Tribunal concluded that UNCLOS did not permit States to unilaterally challenge the validity of the registration of a ship in a flag State or to refuse to recognize the right of that ship to fly the flag of the flag State.³⁹ In short, the Tribunal rejected the view that the non-opposability of nationality is among the consequences that flow from a State's unilateral appreciation that no genuine link exists between the ship and the flag State. By contrast, the Tribunal was not required to determine whether any other consequences might ensue from a finding that a genuine link is absent, in the sense that the flag State is unable — or perhaps unwilling — to exercise effective jurisdiction and control over a ship flying its flag. In this sense, the Tribunal's pronouncements on the "genuine link" are not inconsistent with an interpretation of the term according to which the flag State must have the capacity to exercise effective jurisdiction and control over the vessel.⁴⁰

The Tribunal has not yet been called to pronounce on how to ensure that the flag State indeed has the requisite capacity for effective jurisdiction and control over vessels flying, or seeking to fly, its flag. In this regard, institutions such as the IMO have stepped in to facilitate

³⁶ Robert Beckman, Trung Nguyen, and Joel Ong, "Possible Actions by Coastal States to Protect Their Marine Environment from Oil Tankers in the Dark Fleet" (2025) 40 *International Journal of Marine and Coastal Law* 3, 26; see also Trung Nguyen, "The Challenges of Dark Ships to the Safety and Security of Commercial Shipping and the Way Forward" (2023) 8 *Asia-Pacific Journal of Ocean Law and Policy* 310, 321.

³⁷ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 39, para. 75.

³⁸ *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, *ITLOS Reports 2014*, p. 4, at p. 41, para. 102.

³⁹ *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at pp. 41-42, paras. 82-83; *M/V "Virginia G" (Panama/Guinea-Bissau)*, Judgment, *ITLOS Reports 2014*, p. 4, at pp. 44-45, paras. 111-112.

⁴⁰ For this interpretation, see Robin Churchill, Vaughan Lowe, and Amy Sander, *The law of the sea* (4th edn, Manchester University Press 2022), 470.

the prevention of the registration of vessels in circumstances where effective flag State control is not guaranteed. In the past 25 years, the IMO has adopted a series of guidelines and measures to combat fraudulent registration of vessels and to bolster the monitoring by States of vessels flying their flag.⁴¹ Thus, for example, the adoption of amendments to Chapter XI-1 of the International Convention for the Safety of Life at Sea (“SOLAS”), to introduce a mandatory Continuous Synopsis Record, permits tracking the changes in a ship’s flag, ownership, classification society, and management, thus thwarting the chance of fraudulent registrations and enhancing effective monitoring by the flag State.⁴²

Thus, in its jurisprudence the Tribunal has rejected the contention that some formal preconditions — such as the nationality of a vessel’s owners — might operate as a bar to the granting of nationality to that vessel for want of a genuine link. However, the Tribunal has not yet had the opportunity to address a situation where, following the granting of nationality, a flag State is unwilling or unable to exercise the effective jurisdiction and control that is part and parcel of the notion of the “genuine link”.⁴³ The Tribunal’s jurisprudence remains open on this issue.⁴⁴ In this regard, it suffices to observe that the Tribunal has underscored the important duties that attach to the flag State over vessels flying its flag. This might therefore be an appropriate segue to discuss those important duties of the flag State, as outlined in the Convention and interpreted by the Tribunal.

IV. Flag State duties

The attribution of nationality by a State to a vessel entails the flag State’s power to exercise jurisdiction — often exclusive jurisdiction — over that vessel. In other words, the flag State

⁴¹ For example, Resolution A.923(22) of 29 November 2001, “Measures to prevent the registration of ‘phantom’ ships”, A 22/Res.923 (22 January 2002); Resolution A.1142(31) of 4 December 2019, “Measures to prevent the fraudulent registration and fraudulent registries of ships”, A 31/Res.1142 (10 January 2020); Resolution A.1192(33) of 6 December 2023, “Urging member states and all relevant stakeholders to promote actions to prevent illegal operations in the maritime sector by the ‘dark fleet’ or ‘shadow fleet’”, A 33/Res.1192 (11 December 2023).

⁴² See Resolution A.959(23) of 5 December 2003, “Format and guidelines for the maintenance of the Continuous Synopsis Record (CSR)”, A 23/Res.959 (4 March 2003); Resolution MSC.194(80) of 20 May 2005, “Adoption of amendments to the International Convention for the Safety of Life at Sea, 1974, as amended”.

⁴³ See again *M/V “Virginia G” (Panama/Guinea-Bissau)*, *Judgment*, *ITLOS Reports 2014*, p. 4, at p. 45, para. 113; see also *ibid.*, Dissenting Opinion of Judge Jesus, p. 338, at p. 349, paras. 48-50, who points out that this issue has not been addressed in the Tribunal’s jurisprudence.

⁴⁴ For a discussion of this issue see, among others, Vincent Cogliati-Bantz, “Disentangling the ‘Genuine Link’: Enquiries in Sea, Air and Space Law” (2010) 79 *Nordic Journal of International Law* 383, 411-413; Robin Churchill, Vaughan Lowe, and Amy Sander, *The law of the sea* (4th edn, Manchester University Press 2022), 471; Robin Churchill, “The meaning of the ‘genuine link’ requirement in relation to the nationality of ships: A study prepared for the International Transport Workers’ Federation” (October 2000), available at: <<https://orca.cardiff.ac.uk/id/eprint/45062/1/itf-oct2000.pdf>> (accessed 2 March 2026), 72.

may prescribe, implement, and enforce its domestic law, as well as international law, with respect to that vessel, and usually it may do so at the exclusion of all other States.⁴⁵ Yet, it would be misleading to assume that the flag State is at liberty to choose whether or not to prescribe and enforce the law. Rather, a wide range of duties attach to the flag State, primarily under UNCLOS but also under other related instruments. On several occasions, the Tribunal has had the opportunity to elaborate on these duties as they manifest themselves in specific circumstances.

In the *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, the Tribunal was called upon to opine, among other things, on the obligations and responsibility of the flag State in cases where vessels flying its flag engage in illegal, unreported, and unregulated (“IUU”) fishing within the exclusive economic zone of third States.⁴⁶ This question was in fact more complicated than it might seem at first, for two reasons. First, under UNCLOS, it is the coastal State that bears the primary duty for taking the necessary measures to prevent, deter and eliminate IUU fishing in its exclusive economic zone.⁴⁷ Second, as the Tribunal observed, “the issue of flag State responsibility for IUU fishing activities is not directly addressed in the Convention.”⁴⁸ Yet, the Tribunal did not stop its analysis there. Instead, it set out to examine the question “in light of general and specific obligations of flag States under the Convention for the conservation and management of marine living resources.”⁴⁹

In this regard, the Tribunal pointed out that there exist “general obligations which are to be met by the flag State in all maritime areas regulated by the Convention, including the exclusive economic zone of the coastal State”⁵⁰ Key among them is the provision found in article 94 of the Convention, which stipulates, among other things, that “[e]very State shall effectively exercise its jurisdiction and control in administrative, technical and social matters

⁴⁵ See Richard Barnes, “Flag States” in Donald Rothwell, Alex Oude Elferink, and Karen Scott (eds), *The Oxford Handbook of the Law of the Sea* (OUP 2016), 304; Doris König, “Flag of Ships”, *Max Planck Encyclopedia of Public International Law online* (article last updated April 2009), para. 18.

⁴⁶ See *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, *Advisory Opinion*, 2 April 2015, *ITLOS Reports 2015*, p. 4, at p. 8, para. 2 (first and second questions).

⁴⁷ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, *Advisory Opinion*, 2 April 2015, *ITLOS Reports 2015*, p. 4, at p. 33, para. 106.

⁴⁸ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, *Advisory Opinion*, 2 April 2015, *ITLOS Reports 2015*, p. 4, at p. 34, para. 110.

⁴⁹ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, *Advisory Opinion*, 2 April 2015, *ITLOS Reports 2015*, p. 4, at p. 34, para. 110.

⁵⁰ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC)*, *Advisory Opinion*, 2 April 2015, *ITLOS Reports 2015*, p. 4, at p. 34, para. 111.

over ships flying its flag.” For some time, scholarship had treated this provision “as concerned only with seaworthiness, manning and the like.”⁵¹ The Tribunal, however, was of a different view. Noting that the list of measures to be taken by the flag State, as laid down in paragraph 2 of article 94, was not exhaustive, the Tribunal considered that “the flag State, in fulfilment of its responsibility to exercise effective jurisdiction and control in administrative matters, must adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities which will undermine the flag State’s responsibilities under the Convention in respect of the conservation and management of marine living resources.”⁵²

To this, the Tribunal added the “specific obligations [imposed] on the flag State in article 58, paragraph 3, and article 62, paragraph 4, of the Convention with regard to its activities within the exclusive economic zone of the coastal State, in particular in respect of fishing activities conducted by nationals of the flag State.”⁵³ The Tribunal also noted that these obligations “are further specified in fisheries access agreements concluded between coastal States and flag States concerned.”⁵⁴

In the Tribunal’s view, the obligations under the Convention concerning the conservation and management of marine living resources entail that “flag States are obliged to take the necessary measures to ensure that their nationals and vessels flying their flag are not engaged in IUU fishing activities”⁵⁵ and, in that connection, that they bear an obligation to ensure “compliance by vessels flying [their] flag with the laws and regulations concerning conservation measures adopted by the coastal State.”⁵⁶ The Tribunal pointed out that this obligation of the flag State “to ensure that vessels flying its flag are not involved in IUU fishing” is an obligation “of conduct” — that is, an obligation “‘to deploy adequate means, to exercise best possible efforts, to do the utmost’ to prevent IUU fishing by ships flying its flag.”⁵⁷

⁵¹ Robin Churchill, “Dispute Settlement in the Law of the Sea: Survey for 2015 — Part I” (2016) 31 *International Journal of Marine and Coastal Law* 555, 565; cf. Douglas Guilfoyle, “Article 94” in Alexander Proelß (ed), *United Nations Convention on the Law of the Sea: A Commentary* (Hart 2017), 710 (MN 5).

⁵² *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at pp. 36-37, para. 119.

⁵³ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 34, para. 111.

⁵⁴ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 34, para. 112.

⁵⁵ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 38, para. 124.

⁵⁶ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 39, para. 127; see also *ibid.*, p. 38, para. 123.

⁵⁷ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 40, para. 129, quoting *Responsibilities and obligations of States with*

The Tribunal explained that such an obligation of conduct does not amount to an obligation of the flag State “to achieve compliance by fishing vessels flying its flag in each case with the requirement not to engage in IUU fishing in the exclusive economic zones” of coastal States.⁵⁸ Rather, it is a due diligence obligation of the flag State “to take all necessary measures to ensure compliance and to prevent IUU fishing by fishing vessels flying its flag.”⁵⁹ As the Tribunal explained, this due diligence obligation comprises a series of aspects, including the obligation of the flag State “to adopt the necessary measures prohibiting its vessels from fishing in the exclusive economic zone” of other States; the obligation to provide for “enforcement mechanisms to monitor and secure compliance” with the flag State’s domestic laws and regulations in these matters; as well as the obligation to investigate allegations that its vessels have been involved in IUU fishing, when such allegations are reported to the flag State by the coastal State concerned.⁶⁰

By expounding on the obligations and responsibility of the flag State for vessels engaged in IUU fishing — “an area neglected by the letter of the Convention”⁶¹ —, the Tribunal demonstrated that any silences in the Convention can be addressed through careful interpretation, which ensures that the Convention remains relevant even decades after its adoption.⁶² For some, the Tribunal did not sufficiently elaborate on the reasoning behind its interpretation.⁶³ Nonetheless, a fuller account of the interpretative process can be gleaned from the separate opinion appended by Judge Paik to the Advisory Opinion. According to him, the obligation of the flag State to ensure that its vessels comply with the laws and regulations of the coastal State when fishing in its exclusive economic zone does not only arise under the

respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, at p. 41, para. 110.

⁵⁸ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 40, para. 129.

⁵⁹ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 40, para. 129.

⁶⁰ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at pp. 42-43, paras. 135-139.

⁶¹ Maria Gavouneli, “Introductory note to *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (ITLOS)*” (2015) 54 *International Legal Materials* 890, 891; see also Natalie Klein and Kate Parlett, *Judging the Law of the Sea: Judicial Contributions to the UN Convention on the Law of the Sea* (OUP 2022), 315.

⁶² Nilüfer Oral, “The Contribution of ITLOS to the Development of International Law for Protection of the Marine Environment and Conservation of Living Resources” in Patrícia Galvão Teles and Manuel Almeida Ribeiro (eds), *Case-Law and the Development of International Law: Contributions by International Courts and Tribunals* (Brill 2022), 194-195.

⁶³ See, for example, *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, Separate Opinion of Judge Paik, p. 102, at p. 102, para. 1; Lan Ngoc Nguyen, *The Development of the Law of the Sea by UNCLOS Dispute Settlement Bodies* (CUP 2023), 96.

Convention, but it is also established as a rule of customary international law, as evidenced by its inclusion in a series of bilateral fisheries access agreements and the United Nations Fish Stocks Agreement.⁶⁴

As for the content of the due diligence obligation affirmed by the Tribunal, Judge Paik drew attention to “the legal developments related to flag State responsibility in respect of IUU fishing since the adoption of the Convention” which, in his view, “represents one of the most significant developments of international fisheries law”.⁶⁵ For Judge Paik, the Convention itself contemplated that the Tribunal should have regard to such developments when addressing the question before it.⁶⁶ He argued that, instead of prescribing a detailed set of rules for each of the many subjects that it covers, UNCLOS commonly “formulates a general duty, and then refers to and incorporates [] rules or standards developed in other legal instruments into its ambit.”⁶⁷ In Judge Paik’s view, the Convention, and especially Part XII, widely employ “rules of reference”, the effect of which is to render those rules and standards applicable to States not because they are binding as such, but because they are incorporated into the Convention.⁶⁸ In this connection, he pointed to article 94, paragraph 5, of the Convention, which stipulates that States, in taking the necessary measures to discharge their flag State duties, are “required to conform to generally accepted international regulations, procedures and practices”. According to Judge Paik, this provision directs the interpreter to examine the pertinent international agreements and legal instruments that address the subject at hand, in order to give specific content to the due diligence obligation of the flag State.⁶⁹

The thrust of Judge Paik’s logic may be traced in the Advisory Opinion delivered by a unanimous Tribunal almost a decade later in relation to the obligations of States Parties to the Convention regarding the effects of climate change. In its Advisory Opinion, the Tribunal examined, among other things, the obligations of States Parties applicable to specific sources

⁶⁴ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at pp. 108-110, paras. 17-19.*

⁶⁵ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at p. 111, para. 22.*

⁶⁶ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at p. 111, para. 22.*

⁶⁷ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at p. 111, para. 23.*

⁶⁸ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at p. 111, para. 23.*

⁶⁹ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015, Separate Opinion of Judge Paik, p. 102, at p. 111, paras. 25-27.*

of marine pollution from anthropogenic greenhouse gas emissions.⁷⁰ When discussing the obligations concerning pollution from vessels, the Tribunal focused on article 211, paragraph 2, of the Convention. That provision stipulates that “States shall adopt laws and regulations for the prevention, reduction and control of pollution of the marine environment from vessels flying their flag or of their registry.” The provision further specifies that “[s]uch laws and regulations shall at least have the same effect as that of generally accepted international rules and standards established through the competent international organization or general diplomatic conference.” In interpreting those terms, the Tribunal considered that the term “generally accepted international rules and standards” “may refer to those contained in international legal instruments that are accepted by a sufficiently large number of States”.⁷¹ The Tribunal added that “the term ‘the competent international organization’ in this context is understood to refer to the IMO”, and it proceeded to identify the amendments to Annex VI to the International Convention for the Prevention of Pollution from Ships (“MARPOL”), adopted by the IMO in 2011 and 2021, as relevant to the question of the reduction of greenhouse gas emissions.⁷² In doing so, the Tribunal did not only emphasize “the openness of Part XII [of the Convention] to other treaty regimes”,⁷³ but it also highlighted the central role of the IMO in developing those regimes, which complement and promote the framework laid down by the Convention.

Moreover, both advisory opinions of the Tribunal affirmed that the general obligations incumbent on all States Parties to the Convention “to protect and preserve the marine environment” and to take “all measures ... necessary to prevent, reduce and control pollution of the marine environment” under articles 192 and 194 of UNCLOS, respectively, entail specific duties for States — including flag States — in the context of particular issues of concern to contemporary international shipping, i.e., IUU fishing and the harmful effects of climate change. In its 2015 Advisory Opinion, the Tribunal opined that the conservation measures concerning living resources enacted by the coastal State constitute an integral element in the protection and preservation of the marine environment, and that the flag State is therefore under an obligation to ensure compliance by vessels flying its flag with those

⁷⁰ See *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at pp. 98-109, paras. 259-291.

⁷¹ *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 105, para. 280.

⁷² *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 105, para. 280.

⁷³ *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 57, para. 134.

measures.⁷⁴ In its 2024 Advisory Opinion, the Tribunal was of the view that States bear “the specific obligation to take all measures necessary to ensure that anthropogenic [greenhouse gas] emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment”.⁷⁵

It is worth recalling in this context that the responsibility of a State, in particular a flag State, does not arise from the mere fact that its vessels engage in the harmful activities in question, such as IUU fishing or marine pollution. As the Tribunal has observed, in line with general international law, the conduct of private actors is not attributable as such to the flag State.⁷⁶ Instead, the responsibility of the flag State arises from its own failure to comply with its due diligence obligations.⁷⁷

V. Remedies

Thus far, I have shown that the Tribunal has addressed a wide range of provisions of UNCLOS that concern the substantive rights and obligations of States and vessels flying their flag. In so doing, the Tribunal’s jurisprudence has significantly enriched the international regime that regulates shipping. Yet, as I mentioned in my introduction, the Convention is not confined to allocating substantive rights and obligations to the various States Parties. Rather, it is underpinned by a mechanism for the settlement of disputes arising under the Convention. In this area, too, the Tribunal’s jurisprudence has been instrumental in vindicating the rights recognized under the Convention to the various users of the seas. Before proceeding with specific examples from the Tribunal’s practice, it might be useful to sketch out the various avenues through which the Tribunal can be reached in situations where it is alleged that a vessel does not receive the treatment that the Convention requires.

⁷⁴ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 63, para. 219(3); see also *ibid.*, p. 37, para. 120, and p. 38, para. 124.

⁷⁵ *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at pp. 153-154, para. 441(3)(d).

⁷⁶ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 44, para. 146; see also *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 90, para. 236.

⁷⁷ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC), Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at p. 44, para. 146; see also *Request for Advisory Opinion submitted by the Commission of Small Islands States on Climate Change and International Law, Advisory Opinion, 21 May 2024, ITLOS Reports 2024*, p. 4, at p. 90, para. 236.

As a general rule, the contentious jurisdiction of the Tribunal comprises all disputes concerning the interpretation or application of the Convention, as well as all disputes concerning the interpretation or application of other agreements that are related to the purposes of the Convention and that allow for dispute settlement by the Tribunal.⁷⁸ Such disputes can of course concern the alleged failure of one State Party to respect the obligations owed to another State Party in relation to vessels flying the latter's flag. The recent case of the "*Zheng He*" is a good example, as are the cases of the *M/V "Louisa"* and the *M/V "Norstar"*.⁷⁹ It must be stressed that the Tribunal's jurisdiction in those cases is not automatic; rather, both disputing parties must have accepted the Tribunal as their preferred forum to settle the dispute. States Parties commonly do so by means of declarations made under article 287 of UNCLOS for prospective disputes. The disputing parties may also do so after the dispute has arisen by means of a special agreement through which they transfer the proceedings to the Tribunal.⁸⁰ States Parties having disputes over vessels have resorted to such agreements since the Tribunal's early days⁸¹ up to the pending case of *M/T "Heroic Idun" (No. 2)*.⁸²

The Convention further lays down two proceedings for which the Tribunal's jurisdiction is "truly" compulsory, in the sense that they may be initiated unilaterally by a State Party without the requirement for any additional form of consent by the other disputing party.⁸³ These are proceedings on provisional measures and on prompt release. Both types of proceedings are handled by the Tribunal as a matter of urgency,⁸⁴ therefore they are well-suited to address situations involving the arrest and detention of vessels, which can be disruptive to international shipping.

⁷⁸ See article 288(1)-(2) of the Convention, and articles 21 and 22 of the Statute of the Tribunal. For the exceptions to this rule, see articles 297 and 298 of the Convention, as well as any provisions governing the scope of jurisdiction under other agreements (for example, article 60(9) of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction).

⁷⁹ "*Zheng He*" (*Luxembourg v. Mexico*), *Order of 8 August 2024*, *ITLOS Reports 2024*, p. 205; *M/V "Louisa"* (*Saint Vincent and the Grenadines v. Kingdom of Spain*), *Judgment*, *ITLOS Reports 2013*, p. 4; *M/V "Norstar"* (*Panama v. Italy*), *Judgment*, *ITLOS Reports 2018–2019*, p. 10.

⁸⁰ P Chandrasekhara Rao and Philippe Gautier, *The International Tribunal for the Law of the Sea: law, practice and procedure* (Edward Elgar 2018), 106 (MN 3.082).

⁸¹ See *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, *Order of 20 February 1998*, *ITLOS Reports 1998*, p. 10.

⁸² *M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea)*, *Order of 27 April 2023*, *ITLOS Reports 2022–2023*, p. 213.

⁸³ P Chandrasekhara Rao and Philippe Gautier, *The International Tribunal for the Law of the Sea: law, practice and procedure* (Edward Elgar 2018), 110 (MN 3.088).

⁸⁴ See articles 90(1) and 112(1), as well as article 112(3)-(4), of the Rules of the Tribunal.

Under article 290 of UNCLOS, the Tribunal may prescribe provisional measures in cases that have been submitted to it, as long as it has *prima facie* jurisdiction over the dispute and the circumstances call for such measures “to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment”.⁸⁵ The Tribunal may also prescribe provisional measures in situations where a case has been submitted to arbitration but the arbitral tribunal has not yet been constituted.⁸⁶ Flag States have frequently resorted to such proceedings before the Tribunal in cases involving the arrest and detention of their vessels.⁸⁷ In several of those cases, the Tribunal has prescribed provisional measures tailored to address the situation — for example, ordering the conditional or unconditional release of the vessel in question and its crew.⁸⁸

Prompt release proceedings are — as their name suggests — designed specifically for situations involving the detention of vessels. Where a State that is detaining a vessel and its crew is obliged under the Convention to release them upon the posting of a reasonable bond or other financial security, the question of the detaining State’s compliance with that obligation may be submitted to the Tribunal under article 292 of the Convention. Cases of that type have commonly been submitted in instances where the coastal State has detained a vessel in the exercise of its jurisdiction with respect to fisheries in its exclusive economic zone,⁸⁹ but they could also arise with respect to marine pollution from vessels.⁹⁰ Among several atypical aspects of this unique procedure, it is worth noting that applications for prompt release need not be

⁸⁵ Article 290(1) of UNCLOS.

⁸⁶ Article 290(5) of UNCLOS.

⁸⁷ See, in addition to the cases mentioned in the following footnote, *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, *Provisional Measures, Order of 11 March 1998*, *ITLOS Reports 1998*, p. 24; *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, *Provisional Measures, Order of 23 December 2010*, *ITLOS Reports 2008–2010*, p. 58; *Zheng He” (Luxembourg v. Mexico)*, *Provisional Measures, Order of 27 July 2024*, *ITLOS Reports 2024*, p. 205.

⁸⁸ *“ARA Libertad” (Argentina v. Ghana)*, *Provisional Measures, Order of 15 December 2012*, *ITLOS Reports 2012*, p. 332; *“Arctic Sunrise” (Kingdom of the Netherlands v. Russian Federation)*, *Order of 25 October 2013*, *ITLOS Reports 2013*, p. 224; *Detention of three Ukrainian naval vessels (Ukraine v. Russian Federation)*, *Provisional Measures, Order of 25 May 2019*, *ITLOS Reports 2018–2019*, p. 283; *M/T “San Padre Pio” (Switzerland v. Nigeria)*, *Provisional Measures, Order of 6 July 2019*, *ITLOS Reports 2018–2019*, p. 375.

⁸⁹ See article 73(2) of UNCLOS, relied upon in *M/V “SAIGA” (Saint Vincent and the Grenadines v. Guinea)*, *Prompt Release, Judgment*, *ITLOS Reports 1997*, p. 16; *“Camouco” (Panama v. France)*, *Prompt Release, Judgment*, *ITLOS Reports 2000*, p. 10; *“Monte Confurco” (Seychelles v. France)*, *Prompt Release, Judgment*, *ITLOS Reports 2000*, p. 86; *“Grand Prince” (Belize v. France)*, *Prompt Release, Judgment*, *ITLOS Reports 2001*, p. 17; *“Chaisiri Reefer 2” (Panama v. Yemen)*, *Order of 6 July 2001*, *ITLOS Reports 2001*, p. 76; *“Volga” (Russian Federation v. Australia)*, *Prompt Release, Judgment*, *ITLOS Reports 2002*, p. 10; *“Juno Trader” (Saint Vincent and the Grenadines v. Guinea-Bissau)*, *Prompt Release, Judgment*, *ITLOS Reports 2004*, p. 17; *“Hoshinmaru” (Japan v. Russian Federation)*, *Prompt Release, Judgment*, *ITLOS Reports 2005–2007*, p. 18; *“Tomimaru” (Japan v. Russian Federation)*, *Prompt Release, Judgment*, *ITLOS Reports 2005–2007*, p. 74.

⁹⁰ See articles 220(6)-(7) and 226(1)(c) of UNCLOS, both mentioned in *M/V “SAIGA” (Saint Vincent and the Grenadines v. Guinea)*, *Prompt Release, Judgment*, *ITLOS Reports 1997*, p. 16, at p. 28, para. 52.

submitted directly by the flag State, but they can also be submitted “on [its] behalf”.⁹¹ Thus, a private entity such as the vessel’s owner may be authorized by the flag State to file an application on its behalf.⁹² In this sense, as has been argued, the procedure on prompt release “aims at guaranteeing flag states’ rights, but concretely protects ship owners from undue economic and financial losses.”⁹³

As might be clear by this point, the dispute settlement framework of UNCLOS is designed in such a way as to protect the rights recognized with respect to vessels. For its part, the Tribunal has upheld this objective, and this is most evidently demonstrable by the Tribunal’s treatment of questions of admissibility in its jurisprudence. In this regard, it suffices to offer one brief example, concerning the nationality of claims as a condition of admissibility for the invocation of State responsibility.⁹⁴ Under general international law, the State entitled to invoke another State’s responsibility for internationally wrongful acts to natural or legal persons by means of diplomatic protection is the State of nationality.⁹⁵

With this in mind, the respondent in *M/V “SAIGA” (No. 2)* contended that the flag State had no right to seek redress for crew members that were not its nationals.⁹⁶ Having examined the relevant provisions of UNCLOS, the Tribunal concluded that “the Convention considers a ship as a unit, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation for loss or damage caused to the ship by acts of other States and to institute proceedings under ... the Convention. Thus the ship, every thing on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant.”⁹⁷ The Tribunal supported this finding with practical considerations based on the realities of modern maritime transport; the transient and multinational composition of ship’s crews and the multiplicity of interests that may be

⁹¹ Article 292(2) of UNCLOS; see also article 110(3) of the Rules of the Tribunal.

⁹² See Jean-Pierre Cot, “Appearing ‘for’ or ‘on behalf of’ a State: The Role of Private Counsel Before International Tribunals” in Nisuke Ando and others (eds), *Liber amicorum Judge Shigeru Oda*, vol. II (Kluwer Law International 2002), 843.

⁹³ Seline Trevisanut, “Twenty Years of Prompt Release of Vessels: Admissibility, Jurisdiction, and Recent Trends” (2017) 48 *Ocean Development & International Law* 300, 303.

⁹⁴ See article 44(a) of the Articles on Responsibility of States for Internationally Wrongful Acts, Annex to United Nations General Assembly resolution 56/83 of 12 December 2001, UN doc. A/RES/56/83 (28 January 2002).

⁹⁵ See articles 1 and 3 of the Articles on Diplomatic Protection, Annex to United Nations General Assembly resolution 62/67 of 6 December 2007, UN doc. A/RES/62/67 (8 January 2008).

⁹⁶ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 47, para. 103.

⁹⁷ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, *ITLOS Reports 1999*, p. 10, at p. 48, para. 106.

involved in the cargo on board a single ship. It stated that “[i]f each person sustaining damage were obliged to look for protection from the State of which such person is a national, undue hardship would ensue.”⁹⁸

In the subsequent cases of *M/V “Virginia G”* and *M/V “Norstar”*, the Tribunal affirmed that the flag State may seek redress with respect to its vessels without the need to demonstrate any additional links of nationality with the persons involved or interested in the vessels’ operations.⁹⁹ The Tribunal thus emphasized that “the exercise of diplomatic protection by a State in respect of its nationals is to be distinguished from claims made by a flag State for damage in respect of natural and juridical persons involved in the operation of a ship who are not nationals of that State.”¹⁰⁰

The Tribunal’s commitment to upholding the rights under the Convention in cases of violation can also be detected in its approach to reparation. Already from its first case on the merits, the Tribunal emphasized that, where a breach of the Convention has been determined, the flag State is “entitled to reparation for damage suffered directly by it as well as for other loss suffered by the [vessel], including all persons involved or interested in its operation.”¹⁰¹ This approach has been reaffirmed, and reparation has been awarded, in all subsequent cases involving a breach of the Convention.¹⁰²

VI. Conclusion

Ladies and gentlemen,

It may be true that the provisions of UNCLOS are, first and foremost, directed at States. Besides, a glance at the list of cases of ITLOS might give the impression that the main

⁹⁸ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, at p. 48, para. 107.

⁹⁹ *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, at p. 48, paras. 125-129; *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, at pp. 94-95, paras. 229-231.

¹⁰⁰ *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, at p. 48, para. 128; *M/V “Norstar” (Panama v. Italy)*, Preliminary Objections, Judgment, ITLOS Reports 2016, p. 44, at p. 94, para. 229; see also article 18 of the Articles on Diplomatic Protection, Annex to United Nations General Assembly resolution 62/67 of 6 December 2007, UN doc. A/RES/62/67 (8 January 2008).

¹⁰¹ *M/V “SAIGA” (No. 2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment, ITLOS Reports 1999, p. 10, at p. 65, para. 172.

¹⁰² *M/V “Virginia G” (Panama/Guinea-Bissau)*, Judgment, ITLOS Reports 2014, p. 4, at p. 118, para. 434; *M/V “Norstar” (Panama v. Italy)*, Judgment, ITLOS Reports 2018–2019, p. 10, at p. 96, para. 323. It may be noted that the *M/T “Heroic Idun” (No. 2)* case, which is currently pending before a Special Chamber of the Tribunal, also involves a claim for reparation among other claims: see *M/T “Heroic Idun” (No. 2)*, ITLOS/PV.25/C32/11, p. 37, l. 25 – p. 38, l. 3.

addressees of the Tribunal's decisions in contentious cases — the disputing parties — are States. And yet, as I have tried to demonstrate, the Tribunal's jurisprudence has shed light on a series of rules that bear directly on individuals involved in international shipping. In the past thirty years, the Tribunal has shown that it can effectively protect the rights of the various users of the seas and oceans and that it can preserve the delicate balance of often competing interests across changing times. In doing so, the Tribunal contributes to one of the core aims of the Convention: namely, to provide effective governance at sea with the aim of maintaining peace, justice, and progress for all.¹⁰³

I thank you for your attention, and I look forward to the exchanges in the next couple of days.

¹⁰³ See the first and fourth preambular paragraphs of UNCLOS.