

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE ALBERT HOFFMANN

PRESIDENT OF THE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 72(a) "OCEANS AND THE LAW OF THE SEA"

FOR

THE PLENARY OF THE SEVENTY-SEVENTH SESSION OF THE

UNITED NATIONS GENERAL ASSEMBLY

9 DECEMBER 2022

Mr President,
Distinguished delegates,

It is an honour for me to address the General Assembly this year on behalf of the International Tribunal for the Law of the Sea during the Assembly's consideration of the agenda item "Oceans and the law of the sea". Allow me first to convey to you, Mr President, my congratulations on your election as President of the General Assembly. I wish you every success in this distinguished office.

Mr President,
Distinguished delegates,

At the outset, I wish to inform you of the judicial work of the Tribunal.

Since my last address to the General Assembly in December last year, noteworthy developments have occurred with regard to three cases, the first of which is the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean*. Let me briefly recall that Mauritius had initially, in June 2019, instituted Annex VII arbitral proceedings against the Maldives. Later, by special agreement concluded on 24 September 2019, Mauritius and the Maldives agreed to transfer their dispute to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Tribunal's Statute. Accordingly, the Special Chamber was constituted by an Order of the Tribunal dated 27 September 2019.

I further recall that, on 28 January 2021, the Special Chamber delivered a judgment on the preliminary objections raised by the Maldives in December 2019. The Special Chamber concluded that it had jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard was admissible.

Following the Special Chamber's judgment on preliminary objections, the merits phase of the case resumed. Written proceedings were conducted over the course of two rounds, with all pleadings filed within the prescribed time limits. Pursuant to the Order of the President of the Special Chamber dated 18 August 2022, the oral

proceedings were opened on 17 October 2022, that is, about two months after the Maldives filed its Rejoinder. The hearing was held from 17 October to 24 October 2022 and comprised two rounds of oral arguments. Thereafter, the Special Chamber withdrew to deliberate on the case. The date of the reading of the judgment will be announced in due course.

This brings me to the developments concerning a second case, *The M/T “San Padre Pio” (No. 2) Case (Switzerland/Nigeria)*. It may be recalled that, on 17 December 2019, Switzerland and Nigeria transmitted a special agreement and notification to the Tribunal to submit to it their dispute concerning the arrest and detention of the Swiss-flagged vessel M/T “*San Padre Pio*”, its crew and cargo.

In this case, oral proceedings were originally scheduled to be held in September 2021. However, further to a request from Switzerland, the hearing was postponed by Order of the President of 10 August 2021, “until a later date to be fixed after consultations with the Parties”. In its request, Switzerland had referred to “the ongoing implementation of a Memorandum of Understanding (MoU) concluded by Switzerland and Nigeria on 20 May 2021 regarding the issue of the M/T ‘San Padre Pio’”.

By letter dated 10 December 2021, the Agent of Switzerland then informed the Tribunal that, as of that day, the vessel had “exited the exclusive economic zone of Nigeria, and entered the exclusive economic zone of Bénin”. In the same letter, the Agent “request[ed] the Tribunal to record the discontinuance of the *M/T ‘San Padre Pio’ (No. 2) case* ... in accordance with Article 105 of the ITLOS Rules and to remove the case from Tribunal’s List of cases”. In a letter dated 24 December 2021, the Agent of Nigeria confirmed that “Nigeria has no objection whatsoever to the discontinuance of the case by the Tribunal as already notified by Switzerland”.

Therefore, in accordance with article 105 of the Rules of the Tribunal, the President of the Tribunal, by Order dated 29 December 2021, placed on record the discontinuance, by agreement of the Parties, of the proceedings and ordered that the case be removed from the list of cases.

As international dispute settlement is based on the principle of consent, the will of the parties plays a fundamental role in the conduct of proceedings before an international court or tribunal. The discontinuance of proceedings before a final judgment is delivered may also rely on consent, when the parties to the dispute communicate jointly or separately their agreement to terminate the proceedings. In such cases, recourse to judicial settlement may have assisted the parties in achieving an out-of-court settlement.

I conclude this overview of the Tribunal's judicial work with a development that occurred only a few weeks ago. On 10 November 2022, the Tribunal received an application under article 292 of the United Nations Convention on the Law of the Sea for the prompt release of the M/T "*Heroic Idun*", a crude carrier flying the flag of the Marshall Islands, and of its 26 crew members. According to the application, on 12 August 2022, while the M/T "*Heroic Idun*" was in the exclusive economic zone of Sao Tome and Principe, it was approached by a vessel of the navy of Equatorial Guinea and asked to follow its route into Malabo. The M/T "*Heroic Idun*" was then directed to an anchorage on Bioko Island, Equatorial Guinea, where it was kept in detention. The application further stated that the Master and 14 crew members were disembarked and taken to a government-owned facility, while the remaining 11 crew members were detained on the vessel.

I should mention in this regard that prompt release cases are treated by the Tribunal, pursuant to its Rules, as urgent proceedings. In accordance with these Rules, a hearing must be fixed at the earliest possible date within 15 days of receipt of an application. Thus, by Order dated 11 November 2022, in my capacity as President of the Tribunal, I fixed 24 November 2022 as the date for the opening of the hearing.

However, by letter dated 14 November 2022, the Agent of the Marshall Islands informed the Tribunal that "Equatorial Guinea caused the Vessel and her crew to be transferred into the jurisdiction, control and custody of Nigeria on 11 November 2022." The Agent further stated that these developments "rendered moot the Marshall Islands' Prompt Release Application" and requested the Tribunal to "take this

correspondence as a formal notification of discontinuance of the proceedings in question under Article 106 (1) of the Rules of the Tribunal.”

I may note that article 106, paragraph 1, of the Rules allows for discontinuance of a case at the request of the applicant when the respondent has not yet taken any steps in the proceedings. At the time the Agent of the Marshall Islands filed the request for discontinuance, the Government of Equatorial Guinea had indeed not taken any steps. Thus, in accordance with article 106, paragraph 1, by Order of the President of the Tribunal of 15 November 2022, the discontinuance of the proceedings was placed on record and the removal of the case from the Tribunal’s list of cases was ordered.

In this context, I wish to recall that, in my last address to the General Assembly in December last year, I drew attention to the unique procedure under article 292 of the Convention. This procedure authorizes a flag State or an entity acting on its behalf to file, before the Tribunal, an application for release when it is alleged that the detaining State has not complied with the provisions of the Convention for the prompt release of a vessel and its crew upon the posting of a reasonable bond or other financial guarantee. In accordance with that procedure, the Tribunal may deal only with the question of release, without prejudice to the consideration of the merits of the case before the appropriate domestic forum. Urgency is another striking feature of prompt release proceedings, requiring that a judgment be rendered in an efficient manner, within a time frame of about 30 days.

From the inception of the Tribunal until 2007, the Tribunal entertained a total of nine applications for prompt release. However, since 2007, no further prompt release applications had been made to the Tribunal until recently, when the application for the prompt release of the M/T “*Heroic Idun*” was filed. Although the case was discontinued, it is of interest to note that, after 15 years, a flag State had recourse to prompt release proceedings, in an urgent situation, with a view to seeking the prompt release of its vessel and crew.

Mr President,
Distinguished delegates,

At this juncture, I would like to turn my focus to the Tribunal's activities in the field of capacity-building. I can inform you, much to my satisfaction, that, following a hiatus due to the COVID-19 pandemic, the Tribunal was able to resume its established practice of holding regional workshops on the settlement of disputes related to the law of the sea. I wish to thank the Government of Cyprus and the Korea Maritime Institute for their financial support of this year's workshop, which was held in Malta, as well as our co-organizers, the IMO International Maritime Law Institute (IMLI). In addition, the Summer Academy, which is organized by the International Foundation for the Law of the Sea, was also held once again on the premises of the Tribunal in 2022.

The Tribunal has further pursued its programmes in support of current and future generations. We have hosted several interns in our internship programme in 2022. I wish to recall that a trust fund set up by the Tribunal is available to support interns from developing countries, and several grants have been contributed to this fund over the years, most notably by the Korea Maritime Institute and the Ministry of Foreign Affairs of the People's Republic of China. I wish to express my sincere gratitude for this support. The Tribunal has also continued its capacity-building and training programme in international dispute settlement in the law of the sea, which has been organized annually since 2007 with the financial support of the Nippon Foundation of Japan. I wish to take this opportunity to express my sincere gratitude to the Nippon Foundation for its enduring commitment to the programme.

I further wish to update you on a noteworthy addition to the Tribunal's capacity-building activities. In 2020, the Tribunal received a generous grant from the Republic of Korea to fund a workshop intended for legal advisers, in particular from developing countries, to familiarize them with the Convention's dispute-settlement mechanisms. While the workshop unfortunately could not take place in 2020 or 2021 owing to the prevailing restrictions, I am pleased to report that the inaugural ITLOS Workshop for Legal Advisers was finally able to be held in September of this year and was attended by participants from 18 South-East Asian and Pacific Small Island Developing States.

Mr President,
Distinguished delegates,

This brings me to the end of my address. Before concluding, allow me to express my appreciation to the Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for the unfailing cooperation and support they have always offered the Tribunal.

I thank you for your kind attention.