

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



**STATEMENT BY
H.E. JUDGE JIN-HYUN PAIK**

**PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA**

ON

AGENDA ITEM 78 (a) "OCEANS AND THE LAW OF THE SEA"

AT

**THE SEVENTY-THIRD SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

11 DECEMBER 2018

STATEMENT OF H.E. JUDGE JIN-HYUN PAIK, PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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Madam President,
Ladies and Gentlemen,

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". Before I begin my statement, allow me first to convey to you, Madam President, my congratulations on your election as President of the General Assembly. I wish you every success in this distinguished office.

Before advising you about the work of the Tribunal, it is with great regret that I must inform you of the passing of Judge and former President P. Chandrasekhara Rao on 11 October 2018. Judge Chandrasekhara Rao was a member of the Tribunal from 1996 to 2017 and its President from 1999 to 2002. Between 2000 and 2009, he served as President of the Special Chamber constituted to deal with the *Case concerning the Conservation and Sustainable Exploitation of Swordfish in the South-Eastern Pacific Ocean*. On behalf of the Tribunal, I wish to pay tribute to Judge Chandrasekhara Rao for his contribution to the work of the Tribunal and the development of the international law of the sea.

Madam President, permit me to turn now to the judicial work of the Tribunal. In September this year, the Tribunal held hearings on the merits in 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 a vessel, the *M/V "Norstar"*, an oil tanker flying the Panamanian flag.

Preliminary objections were raised by Italy on 11 March 2016 and the Tribunal delivered its Judgment on these preliminary objections on 4 November 2016. In the period under review, the Parties submitted their written pleadings in respect of the merits of the case, and the Tribunal held hearings from 10 to 15 September 2018. The Tribunal is now deliberating that case, and plans to deliver its judgment in the spring of 2019.

In this regard, allow me to mention that disputes arising from the arrest of vessels have already been brought before the Tribunal in cases on the merits, mainly in connection with claims for damages resulting from allegedly illegal arrest and detention. The Tribunal has awarded reparations in two such cases, namely the *M/V "Saiga" (No. 2) Case* and the *M/V "Virginia G" Case*. The current case - the *M/V "Norstar" Case* - also raises issues relating to the allegedly unlawful arrest and detention of a vessel and claims for reparation. You will understand that, since it is *sub judice*, I cannot comment on this case at present.

I should mention that two other proceedings are available to States Parties to the Convention in cases where a vessel is detained. I wish to refer to prompt release

proceedings under article 292 of the Convention, whereby the flag State of a vessel detained for fishery offences in the exclusive economic zone or pollution offences may seek the release of the vessel and its crew upon the posting of a reasonable bond. A request for the release of a detained vessel, as a provisional measure under article 290 of the Convention, may also be an option when the urgency of the situation so requires.

I wish to add that cases submitted to the Tribunal so far involve wide-ranging subjects, encompassing but not limited to maritime delimitation disputes, law of fisheries, the exploitation of the Area and the preservation and protection of the marine environment.

Madam President,

This year's draft resolution on oceans and the law of the sea - I quote - "[e]ncourages States Parties to the Convention that have not yet done so to consider making a written declaration, choosing from the means set out in article 287 of the Convention for the settlement of disputes concerning the interpretation or application of the Convention" - end of quote.

In this respect, I note that, so far, 52 States have made such written declarations and that 40 have chosen the Tribunal as the means, or one of the means, for the settlement of disputes concerning the interpretation and application of the Convention.

That said, I wish to recall that, even in the absence of declarations made under article 287 of the Convention, the Tribunal is competent to deal with any dispute submitted to it on the basis of an agreement between the parties concerned. The Tribunal is also competent to deal with urgent cases in two instances: first, proceedings for the prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention, and, second, applications for the prompt release of vessels and crews under article 292 of the Convention. For such urgent proceedings, the Tribunal renders its decision within a period of approximately one month.

I should add that, in light of the experience gained by the Tribunal in handling urgent proceedings, there is no reason to doubt that it could deal with a case on the merits within a relatively short period of time, in particular if the parties were to indicate that they expected an expeditious solution to their dispute.

In this context, I may observe that the Rules of the Tribunal contain provisions which may be used to shorten the time spent in dealing with a case, if the circumstance so requires. For example, under article 109 of the Rules of the Tribunal, in proceedings before special chambers of the Tribunal formed pursuant to article 15 of the Statute, parties may, with the chamber's consent, agree to dispense with oral proceedings. Likewise, pursuant to articles 117 to 121 of the Rules of the Tribunal, oral proceedings are not required in some disputes which may be brought before the Seabed Disputes Chamber.

In advisory proceedings, if the request for an advisory opinion states that the question necessitates an urgent answer, the Seabed Disputes Chamber shall take

all appropriate steps to accelerate the procedure (Rules, article 132). The Chamber, or its President if the Chamber is not sitting, shall decide whether oral proceedings shall be held (Rules, article 133, paragraph 4).

Madam President,

Allow me to say a few words about the current negotiations in the intergovernmental conference on an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

I wish to draw the attention of the Member States of the United Nations to the importance of incorporating a robust dispute-settlement mechanism in the future instrument, as such a mechanism would ensure compliance with it. In this regard, consideration could be given to the possibility of incorporating Part XV, on dispute settlement, of the Convention in the new instrument, following the example of the other agreements which have been concluded to implement provisions of the Convention. It might also be useful to consider the possibility of requesting the Tribunal for an advisory opinion in the new instrument. In this connection, you may recall that the Tribunal's jurisdiction comprises "all matters specifically provided for in any [agreement other than the Convention] which confers jurisdiction on the Tribunal" (article 21 of the Statute of the Tribunal).

Madam President,

With respect to organizational matters, I may inform the General Assembly that, during the current year, the Tribunal has held two administrative sessions, the Forty-fifth Session from 12 to 23 March 2018 and the Forty-sixth Session from 17 to 28 September 2018. These sessions were devoted to legal and judicial matters as well as organizational and administrative matters.

On 25 September 2018, the Tribunal adopted a decision concerning its own procedure. It decided to amend article 60, paragraph 2, and article 61, paragraph 3, of its Rules, relating to the adoption by the Tribunal of a decision authorizing a second round of written pleadings. Article 60, paragraph 2, refers to the procedure when a case is submitted to the Tribunal by way of an application, while article 61, paragraph 3, refers to the procedure to be followed when a case is submitted by way of a special agreement. Under the amended provisions, the President of the Tribunal may authorize a second round of written pleadings if the Tribunal is not sitting. Prior to the amendment, articles 60 and 61 stipulated that only the Tribunal should give authorization. The amendment was adopted in the interest of expedient and cost-effective administration of justice.

Madam President, distinguished delegates,

An efficient system for the peaceful settlement of disputes requires that comprehensive information on the role of the Tribunal be provided to the government officials who, in their respective administrations, are responsible for dealing with law of the sea matters. Likewise, it is important to transmit information and knowledge to the younger generation in order to ensure that lawyers and officials, early in their

career, are made aware of the tools available to States with a view to the peaceful settlement of international disputes. In this respect, I would like to draw your attention to the capacity-building programmes on the peaceful settlement of disputes under the Convention, which are offered by the Tribunal.

On 2 and 3 May 2018, the Tribunal, in collaboration with the Government of the Republic of Cabo Verde, organized a regional workshop in Mindelo (Cabo Verde), on the topic of “The role of the International Tribunal for the Law of the Sea in the settlement of disputes related to the law of the sea”. This workshop was the thirteenth in a series held in different regions of the world to provide experts from various States with practical information on dispute-settlement procedures before the Tribunal. Representatives from eight Western and Central African States attended the workshop and the Sub-Regional Fisheries Commission also sent a delegate. I take this opportunity to extend our sincere gratitude to the Government of the Republic of Cabo Verde, the Korea Maritime Institute and the China Institute of International Studies for their invaluable support for the organization of this event.

A further aspect of the Tribunal’s capacity-building activities is its internship programme, which annually gives twenty students from around the world the opportunity to gain a deeper understanding of the work and functions of the Tribunal. Special trust funds have been established with assistance from the Korea Maritime Institute, the Korea International Cooperation Agency and the China Institute of International Studies, to provide financial support to applicants from developing countries.

Furthermore, a nine-month capacity-building and training programme on dispute settlement under the United Nations Convention on the Law of the Sea, organized in cooperation with the Nippon Foundation, has been offered since 2007 for the benefit of young governmental officials and researchers. Six fellows are participating in the current, twelfth, cycle of the programme. They are nationals of the following countries: Argentina, Benin, Comoros, Papua New-Guinea, Singapore and Ukraine. I wish to take this opportunity to express my sincere gratitude to the Nippon Foundation for its commitment to the programme.

I would like to add that the twelfth Summer Academy, on “Promoting Ocean Governance and Peaceful Settlement of Disputes”, organized by the International Foundation for the Law of the Sea, was held at the premises of the Tribunal in Hamburg from 22 July to 17 August 2018. Thirty-nine participants from 30 countries attended lectures and workshops dealing with the law of the sea and maritime law. I would like to express my deep gratitude to the above-mentioned institutions for their support.

This brings me to the end of my address. Before concluding, let me 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 attention.