INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Proceedings before the International Tribunal for the Law of the Sea

Statement by

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I. Introduction

The International Tribunal for the Law of the Sea has jurisdiction over all disputes concerning the interpretation or application of the United Nations Convention on the Law of the Sea (hereinafter “the Convention”), subject to the provisions of article 297 and to the declarations made in accordance with article 298 of the Convention.

The Tribunal also has jurisdiction over all disputes and all applications submitted to it pursuant to the provisions of any other agreement conferring jurisdiction on the Tribunal. A number of multilateral agreements conferring jurisdiction on the Tribunal have been concluded to date.

According to article 287 of the Convention, a State, when signing, ratifying or acceding to the Convention or at any time thereafter, is free to accept the jurisdiction of the Tribunal for the settlement of disputes concerning the interpretation or application of the Convention by means of a written declaration to be deposited with the Secretary-General of the United Nations. The Tribunal has compulsory jurisdiction to deal with all disputes concerning the interpretation or application of the Convention when the parties to the dispute have accepted the Tribunal as the same procedure for the settlement of the dispute by means of a declaration made under article 287 of the Convention. The dispute may be submitted to the Tribunal at the request of either party by way of unilateral application.

The Tribunal may have jurisdiction over a dispute submitted on the basis of a special agreement concluded between the parties. The parties may also decide, by agreement, to transfer to the Tribunal a dispute that has been instituted before an arbitral tribunal established under article 287.

The jurisdiction of the Tribunal may also be based on jurisdictional clauses inserted in international agreements conferring jurisdiction on the Tribunal or a special chamber of the Tribunal formed pursuant to article 15, paragraph 2, of the Statute, with respect to any dispute arising between the parties as to the interpretation or application of that agreement.

Even in the absence of declarations made under article 287 of the Convention, the Tribunal has compulsory jurisdiction in two instances where the parties to a dispute have failed to agree, within a given period of time, to submit their dispute to another court or tribunal. These instances are requests for the prescription of provisional measures pending the constitution of an arbitral tribunal (article 290, paragraph 5, of the Convention) and requests for the prompt release of vessels and crews (article 292 of the Convention). The majority of cases submitted to the Tribunal since the commencement of its activities in 1996 have been initiated on the basis of these provisions of the Convention. These cases may be instituted by unilateral application from any State Party to the Convention. For such proceedings, the Tribunal makes its decisions without delay, within a period of approximately one month.

The Seabed Disputes Chamber has compulsory and generally exclusive jurisdiction pursuant to article 187 of the Convention over disputes concerning activities in the Area.

II. An overview of the jurisprudence of the Tribunal

Since the commencement of its activities in October 1996, 15 cases have been submitted to the Tribunal. Whilst the jurisdiction of the Tribunal is broad – it has jurisdiction over all disputes regarding the interpretation and application of the Convention or of any other agreement related to the purposes of the Convention – the majority of the cases submitted to the Tribunal so far have been confined to instances where the jurisdiction of the Tribunal is compulsory. This concerns proceedings which require urgent action by the Tribunal and which may be instituted by any State Party to the Convention by means of a unilateral application. In this respect, I refer to two specific proceedings: the prompt release of vessels and crews under article 292 of the Convention and the prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention.

III. Prompt release of vessels and crews

Pursuant to several provisions of the Convention, a State which has detained a ship flying the flag of another State for certain classes of offences has the duty to release

the vessel and/or its crew upon the posting of a reasonable bond. Such provisions are contained in articles 73, paragraph 2, 220, paragraph 7, 226, paragraph 1(b) of the Convention. These provisions cover investigative powers of coastal states in cases of violations of rules concerning fishing and the protection of the environment against pollution. So far States have made use of this procedure only in respect of alleged fishery offences.

Whenever it is alleged that the detaining State has not complied with these provisions, the flag State of the vessel is entitled under article 292 of the Convention – a provision which constitutes a counterpart to the rights granted to coastal States – to request before the Tribunal the release of the vessel and the crew. I should also add that such an application does not necessarily have to be submitted by the flag State itself; the competent authorities of the flag State may authorize the ship owner, for example, to institute proceedings "on behalf of the flag State". This procedure for the prompt release of vessels and crews as well as the possibility for private parties, if properly authorized by the flag State, to appear before the Tribunal are considered significant innovations provided by the Convention.

Let me lead you through the two most recent cases decided by the Tribunal, namely the *"Hoshinmaru" Case* and the *"Tomimaru" Case*. Both cases were submitted by Japan against the Russian Federation.

The first of the two cases concerned an application for the release of the fishing vessel *Hoshinmaru* and of 17 members of its crew. In this regard, allow me to highlight the following issues. In both cases the vessels had been arrested by Russian authorities for alleged violations of the Russian national laws concerning fisheries. When arrested, both vessels were fishing under a valid licence in the right season and in the area assigned to them. In the *"Hoshinmaru" Case* it was alleged (and actually not denied) that the captain of the vessel had incorrectly reported the catch of sockeye salmon by declaring some part of it as the cheaper chum salmon. The vessel had a licence to catch a certain amount of both species. In the *"Tomimaru" Case* the vessel was accused of having caught fish it was not licensed to catch.

With regard to admissibility in the *“Hoshinmaru” Case*, the Respondent, the Russian Federation, claimed that the application should become moot as the Russian authorities had set a bond subsequent to the filing of the application by Japan. The Tribunal dismissed this claim and observed that the decisive date for determining the issues of admissibility was the application filing date; however, it recognized that events subsequent to the filing of an application may render an application without object. In support of its conclusion, the Tribunal reiterated its jurisprudence in the *M/V “SAIGA” Case*.

The Respondent also argued that the criteria on the basis of which it had set the bond had been agreed with Japan within the framework of the Russian-Japanese Commission on Fisheries. This argument gave rise to issues of acquiescence and the status of a protocol or minutes of meetings. In this regard, the Tribunal recognized that a protocol or minutes of meetings of a joint commission may be the source of rights and obligations but, in the case before it, the acquiescence of the Japanese representatives to the alleged agreed procedure for setting bonds had not been sufficiently established. Relying on the jurisprudence of the International Court of Justice, the Tribunal observed that, in the context of the case, tacit consent or acquiescence could not be presumed.

On the question of the reasonableness of the bond of 22,000,000 roubles (approximately US$ 862,000) set by the Respondent, the Tribunal, consistent with its jurisprudence, applied to the *“Hoshinmaru” Case* the various factors for determining a reasonable bond which it had developed in previous judgments. It may be noted that, in this case, the Tribunal observed that the amount of a bond should be “proportionate” to the gravity of the alleged offences. In the view of the Tribunal, a violation of the rules on reporting may be sanctioned by the detaining State; but the Tribunal considered it unreasonable for a bond to be set on the basis of the maximum penalties which could be applicable to the owner and the master of the vessel. Furthermore, given the circumstances of the case, the Tribunal also found it unreasonable to calculate the bond on the basis of the confiscation of the vessel. The Tribunal then fixed the bond for the release of the vessel, including its catch on board, at a total amount of 10,000,000 roubles, which is significantly lower than the sum requested by the Russian Federation and slightly higher than the security suggested by Japan (8,000,000 roubles). The Tribunal also decided that the master

and crew of the *Hoshinmaru* should be released unconditionally. This too was a contested issue. The Respondent had argued that the crew had not been detained since it was free to leave, whereas the Applicant took the opposite position, arguing that somebody had to take care of the vessel. The Tribunal did not find it necessary to decide as to whether or not the crew had been detained.

It may be observed that, unlike previous cases the Tribunal has dealt with, the *"Hoshinmaru" Case* did not entail fishing without a licence. The Tribunal, however, noted that the offence committed by the master was not a minor one nor one of a purely technical nature and that *[I quote]* "[m]onitoring of catches, which requires accurate reporting, is one of the most essential means of managing marine living resources" *[end of quote]* (see paragraph 99 of the Judgment).

I am glad to report that, upon the payment of the bond by Japan, the *Hoshinmaru* and its crew were released a mere ten days after the delivery of the Tribunal's judgment and on the same day as the receipt of the bond by the Russian Federation. This highlights the parties' prompt compliance with the Tribunal's decision.

According to article 292 of the Convention, in prompt release proceedings, the Tribunal may deal only with the question of the release of the vessel without prejudice to the merits of any case before the appropriate domestic forum in respect of the vessel, its owner or its crew. In its jurisprudence, the Tribunal has strictly applied this requirement of the Convention.

This issue was of particular relevance in Case no. 15, the *"Tomimaru" Case*.

The Respondent, the Russian Federation, claimed that the *Tomimaru* had been confiscated in accordance with the decisions of the domestic fora. After the closure of the hearing, the Russian Federation informed the Tribunal that its Supreme Court had dismissed the complaint concerning the confiscation of the vessel. The Russian Federation argued that the case had been dealt with on the merits before the Russian courts and that the relevant decisions had entered into force and been executed. On that basis, it claimed that, in accordance with article 292, paragraph 3, of the Convention, when examining applications for release, the Tribunal should deal

only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum and, therefore, the Tribunal would have no competence to deal with the application.

Accordingly, the Tribunal had to examine the question as to whether confiscation renders an application for the prompt release of a vessel without object. Here, the Tribunal noted the following *[I quote]*:

> article 73 of the Convention makes no reference to confiscation of vessels. The Tribunal is aware that many States have provided for measures of confiscation of fishing vessels in their legislation with respect to the management and conservation of marine living resources. (paragraph 72 of the Judgment)
>
> *[end of quote]*

The Tribunal then expressed the view that confiscation of a fishing vessel must not be used in such a way as to upset the balance of the interests of the flag State and of the coastal State which is established in the Convention. After observing that a decision to confiscate eliminates the provisional character of the detention of the vessel rendering the procedure for its prompt release without object, the Tribunal noted that confiscation decided in unjustified haste would jeopardize the implementation of article 292 of the Convention. The Tribunal also emphasized that a decision to confiscate a vessel does not prevent the Tribunal from considering an application for prompt release while proceedings are still before the domestic courts of the detaining State. What makes this judgment notable is its assessment of the interplay between national and international rules as well as its consideration of the relevance to the Tribunal of national judicial decisions.

In the *“Tomimaru” Case*, the Tribunal concluded that the application of Japan no longer had any object and that the Tribunal was not required to give a decision thereon.

The Tribunal has been seized of applications for prompt release in nine cases so far. In six of these cases, the Tribunal ordered the release of the vessel or its crew upon

the posting of a reasonable bond. In respect of these six cases, it can be fairly said that the Tribunal has developed a coherent jurisprudence, particularly in applying relevant factors for determining a reasonable bond. In one case, the Tribunal decided that it lacked jurisdiction, the reason being that the applicant had not demonstrated its status as flag State of the vessel concerned. This underlines the importance that the Tribunal attaches to the matter of the registration of ships. In a further case, proceedings were discontinued. Here, the availability of the relief provided by the Tribunal helped in reaching an out-of-court settlement. In a third case – already mentioned - the application was considered without object. It is of interest to note that all prompt release cases submitted to the Tribunal have been connected with fisheries. In particular, the *"Camouco"*, the *"Monte Confurco"*, the *"Grand Prince"* and the *"Volga"* cases raised issues concerning the problem of illegal, unreported and unregulated fishing in the Southern Ocean. This was not so in the *"Tomimaru"* and *"Hoshinmaru"* cases.

The Tribunal has acted in prompt release proceedings with remarkable efficiency and speed, having delivered its decisions, in accordance with its Rules, within the time-frame of approximately one month. The Convention requires that these cases be processed without delay. The Tribunal was even able to do so when Japan submitted two prompt release cases on the same day and the Tribunal was required to deliver two judgments in a period normally reserved for one. The urgency of prompt release proceedings is justified in view of the financial burden resulting from the detention of a vessel as well as the humanitarian considerations regarding detained crews. Prompt release proceedings before the Tribunal may be considered an appropriate and cost-effective mechanism for parties faced with the arrest of vessels and crews.

IV. Provisional measures

As already mentioned, pursuant to article 290, paragraph 5, of the Convention, the Tribunal has the power to prescribe provisional measures "[p]ending the constitution of an arbitral tribunal to which a dispute is being submitted … if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and that the urgency of the situation so requires …". Here, a State Party may unilaterally request the Tribunal to prescribe provisional measures in a dispute against another State

Party pending the final decision to be given not by the Tribunal itself, but by an arbitral tribunal yet to be constituted.

In this respect, it is of interest to note important innovations introduced by the Convention: firstly, the measures prescribed by the Tribunal are binding upon the parties. Secondly, the Tribunal may prescribe provisional measures not only to preserve the respective rights of the parties but also to "prevent serious harm to the marine environment". In addition, the Tribunal may follow up the measures it has prescribed by requesting the parties to submit reports on compliance.

The procedure for the prescription of provisional measures under article 290, paragraph 5, of the Convention has already been invoked in four cases dealing with the protection of the marine environment: the *Southern Bluefin Tuna Cases*, the *MOX Plant Case*, and the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*.

In the *Southern Bluefin Tuna Cases*, between New Zealand and Australia on the one hand and Japan on the other, regarding the depletion of a fish stock, the Tribunal stated, in its Order of 27 August 1999, that "the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment" (paragraph 70). An important finding in the Tribunal's Order was that "the parties should in the circumstances act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to stock of southern bluefin tuna" (paragraph 77). It has been observed that the provisional measures prescribed by the Tribunal have assisted the parties in finding a solution. For instance, Professor Crawford, who acted as counsel in the *Southern Bluefin Tuna Cases*, stated that (I quote):

> "There, the Tribunal's intervention at the stage of provisional measures played a very significant role in bringing the parties – Australia, New Zealand and Japan – back to negotiations with each other… the eventual result was that the Southern Bluefin Tuna Commission was revitalized. It is now functioning well".
> (end of quote)

In the *MOX Plant Case*, the Tribunal was faced with a dispute between Ireland and the United Kingdom regarding the potentially harmful impact on the marine environment of the extension of a nuclear plant. In its Order of 3 December 2001, the Tribunal emphasized the parties' duty to cooperate in the protection and preservation of the marine environment. It also stressed the importance of procedural rights in environmental matters, such as the requirement that the parties exchange information concerning the risks or effects of performing the activities concerned.

The *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, relating to a dispute between Malaysia and Singapore, addressed the matter of the impact on the environment of land reclamation activities carried out by Singapore. The Tribunal, in its Order of 8 October 2003, once again stressed the importance for the protection of the marine environment of cooperation between the parties as well as the need to establish mechanisms for exchanging information. It also requested the parties to set up a joint group of independent experts to conduct a study to determine the potential effects of the land reclamation activities on the marine environment.

Regarding the *Land Reclamation in and around the Straits of Johor*, I would like to mention that on 26 April 2005 Malaysia and Singapore settled their dispute by signing an appropriate agreement. On 1 September 2005, a final arbitral award was made in the case in accordance with the terms specified in the settlement agreement. It should be noted that the provisional measures ordered by the Tribunal in 2003 were instrumental in bringing the parties together and providing a successful diplomatic solution to the dispute. In this respect, I would like to refer to the remarks made by the Minister for Foreign Affairs of Singapore, Mr George Yeo, on 16 May 2005 before the Parliament of Singapore (I quote from a press release issued by the Ministry of Foreign Affairs of Singapore):

> "Singapore and Malaysia jointly implemented the [Tribunal's] Order by appointing a group of four experts to carry out the joint study.
> […]
> "Looking back, I would like to highlight two hallmarks of the joint study and settlement negotiations. One is the involvement of an objective third party – ITLOS [this Tribunal], the Group of Experts and the Arbitral

> Tribunal – which made possible an impartial and objective assessment of the facts of the case and the merits of the competing arguments."*
> (end of quote)

Certainly, these cases have enabled the Tribunal to contribute towards the development of international environmental law, in particular, by stressing the duty of cooperation, the notion of prudence and caution and the importance of procedural rights as essential components of environmental obligations. It should also be noted that in its orders for provisional measures the Tribunal adopted a pragmatic approach and prescribed measures which in its view would assist the parties in finding a solution. As in prompt release cases, in provisional measures proceedings the Tribunal delivered its orders within remarkably short periods. This underlines the fact that the Tribunal offers parties cost-effective procedures.

V. Cases on the merits

The jurisdiction of the Tribunal is not limited to urgent proceedings. On the contrary, its jurisdiction includes any dispute relating to the law of the sea and, as an illustration, we may refer to disputes regarding maritime boundaries, fisheries, sea pollution, or marine scientific research.

The parties may submit a particular dispute to the Tribunal at any time, by means of a special agreement and this has already been done on two occasions. In the *M/V "SAIGA" (No. 2) Case*, Saint Vincent and the Grenadines and Guinea, two States Parties to the Convention, agreed to submit to the Tribunal the merits of the dispute relating to the arrest and detention of the vessel *Saiga*. In its Judgment delivered on 1 July 1999, the Tribunal made some pronouncements concerning issues such as the freedom of navigation, enforcement of customs laws, nationality of claims, reparation, use of force in law-enforcement activities, hot pursuit and the question of the genuine link between the vessel and its flag State, thereby making an important contribution to the development of international law regarding these aspects. It should be noted that the Tribunal delivered its Judgment within 15 months

*See press release issued by the Ministry of Foreign Affairs of Singapore on 16 May 2005 containing "Remarks in Parliament by Singapore Foreign Minister George Yeo on the Settlement Agreement between Singapore and Malaysia on Land reclamation", paragraphs 2 and 12, available at www.mfa.gov.sg

of the proceedings being instituted. Compared with other judicial bodies, this can certainly be considered a reasonable period of time.

Another case submitted to the Tribunal by means of a special agreement is the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean*. The dispute has been submitted to a special chamber of the Tribunal consisting of four of its judges and one judge *ad hoc*. In this case – which is still pending on the docket – one of the parties to the dispute is an international organization, namely the European Community.

VI. The potential use of the Tribunal

The Tribunal has dealt with 15 cases so far. In resolving these cases, the Tribunal has already made a significant contribution to the development of international law. In this respect, I would like to refer to resolution A/RES/59/24 of 17 November 2004, in which the United Nations General Assembly noted with satisfaction the Tribunal's continued and significant contribution to the peaceful settlement of disputes in accordance with Part XV of the Convention and underlined the Tribunal's important role and authority concerning the interpretation or application of the Convention and the Agreement concerning the Implementation of Part XI.

It is, however, evident that more use could be made of the Tribunal. Let me mention some areas which I consider promising. There is no doubt that the Tribunal is competent to deal with environmental matters, as evidenced by the numerous provisions in the Convention relating to the protection of the marine environment. So far, the Tribunal has dealt with marine environment issues in the context of provisional-measures proceedings. Provisional-measures proceedings constitute a specific procedure provided for under article 290, paragraph 5, of the Convention, in respect of which the Tribunal has compulsory competence.
Given the number of existing disputes regarding the delimitation of maritime areas and the Tribunal's competence in these matters, it is strange to observe that no such case has as yet been submitted to the Tribunal.

In this respect, comments are sometimes made to the effect that the competence of the Tribunal is limited to maritime disputes *stricto sensu* and that the Tribunal could

not deal with mixed delimitation cases, i.e., cases involving issues of maritime and territorial delimitation.

On this point, I would like to make the following observations:

On the basis of the Convention, the Tribunal's competence regarding delimitation issues is identical to that of the International Court of Justice (ICJ) or that of an arbitral tribunal. Therefore there is no reason to prefer arbitration or the ICJ on those grounds.

States may always submit a mixed delimitation dispute to the Tribunal on the basis of a special agreement, pursuant to article 21 of the Statute.

The Convention does not contain a provision which would expressly exclude mixed delimitation disputes from the dispute-settlement mechanism contained in Part XV. Certainly, under article 298 of the Convention, States may make a declaration to exclude disputes relating to the delimitation of maritime areas from the ''compulsory procedures entailing binding decisions''. Approximately 11 States have made such a declaration, among them China, the Republic of Korea and the Russian Federation. But, in the absence of a declaration, it may be argued that mixed delimitation cases are subject to the compulsory mechanism provided for by the Convention. A further argument to that effect may be found in article 298 itself. According to this provision, States which have excluded disputes relating to boundary delimitations have the obligation, if negotiations do not succeed within a reasonable period of time, to submit the matter to conciliation at the request of any party to the dispute. Here, article 298, paragraph 1(a)(i), of the Convention provides for an exception to an exception since it excludes from the scope of conciliation ''any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory''. This provision is interesting for the reason that, read *a contrario*, it indicates that when there is no declaration excluding delimitation disputes under article 298 of the Convention, the Tribunal is competent under Part XV of the Convention to deal with a mixed delimitation case.

I take this opportunity to recall that the Convention provides States Parties with three options for the settlement of disputes: the Tribunal, the International Court of Justice and arbitration. Under article 287 of the Convention, States Parties may select by a written declaration their preferred means for the settlement of disputes. Of the current 157 States Parties (i.e., 156 States and one international organization, the European Community), 38 have filed declarations under article 287 of the Convention and 24 States Parties have chosen the Tribunal as the means or one of the means for the settlement of disputes concerning the Convention. It is to be hoped that an increasing number of States will make declarations under article 287 of the Convention as concerns their choice of procedure for settling disputes, as recommended by the General Assembly.

It should be noted that, in the absence of written declarations under article 287 of the Convention or if the parties have not selected the same forum, the dispute may be submitted only to arbitration, unless the parties agree otherwise. Here, it should be observed that the parties to a dispute may, at any time, reach an agreement to bring a dispute before the Tribunal.

Furthermore, I would like to draw your attention to the possibility for parties to submit a dispute to an *ad hoc* special chamber of the Tribunal, in accordance with article 15, paragraph 2, of the Statute. This was considered a suitable alternative by Chile and the European Community in the *Swordfish* case. A special chamber of this nature is an interesting alternative for parties considering arbitration. Indeed, the composition of this special chamber is determined by the Tribunal with the approval of the parties, giving them control over the chamber's composition. The parties are also entitled to appoint a judge *ad hoc* if the chamber does not include a member of the nationality of one of the parties. Furthermore, the parties to a dispute do not have to bear the expenses of the proceedings before the Tribunal. They also have at their disposal the Rules of the Tribunal which, at the request of the parties, may be amended in particular proceedings. In my view, the potential offered by this option – we could call it "arbitration within the Tribunal" – has not yet been fully realized.

> States may also confer jurisdiction on the Tribunal through appropriate provisions included in international agreements. There are seven international agreements which make reference to the Tribunal in respect of the settlement of disputes. A prominent example is the Straddling Fish

> Stocks Agreement of 1994. Such a provision conferring jurisdiction on the Tribunal could also be included in bilateral agreements. This would certainly enhance the central role of the Tribunal in the settlement of disputes regarding law of the sea matters.

While access to international courts or tribunals has traditionally been granted to States, the Statute has expanded the Tribunal's jurisdiction to entities other than States Parties. This is another significant innovation of the Convention – an alternative which has not yet been fully explored.

Article 20, paragraph 2, of the Statute widens the jurisdiction *ratione personae* when it provides that the Tribunal "shall be open to entities other than States Parties … in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case". This provision has to be read with article 21 of the Statute, according to which the Tribunal has jurisdiction with respect to "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". In accordance with the said provisions, "entities other than States Parties" can have access to the Tribunal in respect of any dispute submitted under an agreement, if the agreement specifically confers jurisdiction on the Tribunal.

In this respect, however, several questions may be raised; for example, the meaning of the term "entities". This term is quite broad and may include private bodies, such as private commercial corporations or non-governmental organizations. Further, the reference in article 20 of the Statute to "any other agreement" conferring jurisdiction on the Tribunal differs from article 288, paragraph 2, of the Convention, which states that jurisdiction may be conferred on the Tribunal by "an international agreement related to the purposes of the Convention". Since there is as yet no precedent here, it will be left to the Tribunal to decide on these open questions.

The Convention provides for the establishment of the Seabed Disputes Chamber, composed of 11 members selected by the Tribunal. This Chamber has jurisdiction over disputes regarding activities in the international seabed area in accordance with Part XI of the Convention and the 1994 Implementation Agreement. Its jurisdiction is compulsory. Parties to these disputes may be States Parties, the International

Seabed Authority, or state enterprises and natural or juridical persons, if certain conditions are met; for instance, the entity must possess the nationality of a State Party and be sponsored by this State.

The Seabed Disputes Chamber is competent to deal with different categories of disputes. These include disputes between States Parties concerning the interpretation or application of Part XI of the Convention and the 1994 Implementation Agreement; disputes between a State Party and the International Seabed Authority, for example, concerning acts or omissions of the Authority or of a State Party, alleged to be in violation of the Convention; and contractual disputes concerning the interpretation or application of a contract between a juridical person and the Authority.

The Seabed Disputes Chamber has another important function, which is to give advisory opinions at the request of the Assembly or the Council of the Seabed Authority on legal questions arising within the scope of their activities.

In addition to the *ad hoc* special chamber mentioned earlier and the Seabed Disputes Chamber, the Tribunal has established four other chambers in accordance with article 15 of its Statute: (i) the Chamber of Summary Procedure; (ii) the Chamber for Fisheries Disputes; (iii) the Chamber for Marine Environment Disputes; and (iv) the Chamber for Maritime Delimitation Disputes. Any of these chambers is competent to deal with a case if the parties to the dispute so request. As can be seen, the parties may avail themselves of flexible dispute settlement procedures according to their needs.

VII. Outlook

In December 2000, at the request of Chile and the European Community, the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)* was submitted to a special chamber formed under article 15, paragraph 2, of the Statute of the Tribunal. In March 2001, the parties informed the Chamber that they had reached a provisional arrangement concerning the dispute and requested that the proceedings before the Chamber be suspended. The time-limits in the proceedings were

therefore extended and in November last year they were extended anew until 1 January 2009. The Special Chamber is expected to meet before the end of this year.

The question of the *Swordfish Case* has attracted the attention of various scholars as it has also been submitted to the World Trade Organization (WTO). I should explain that the parties' claims before the Special Chamber of the Tribunal concern issues of conservation and management of living resources as well as freedom of fishing on the high seas as they relate to the substantive obligations set out in the Convention and pursuant to Part XV thereof. On the other hand, before the WTO, trade-related issues, such as freedom of transit under the 1994 General Agreement on Tariffs and Trade, were presented. There, the parties, having reached a provisional arrangement, agreed to suspend the process for establishing a WTO panel to deal with this question.

It can be seen from the parties' claims that the questions brought before each judicial body differ in nature. There also seems in principle to be no obstacle to parties bringing distinct aspects of a matter to more than one judicial institution. This could be viewed as an expression of the principle of free choice of means, a principle clearly enshrined in Part XV of the Convention. As the cases have been suspended, one cannot but speculate about the possible outcomes.

In my view, the concerns are overstated and some of the recommended measures clearly go beyond what is needed. International courts and tribunals are composed of experts on international law who are conscious of the existence of other fora for settling international disputes. Therefore, in the normal course of action, they will have mutual respect for each other. Allow me to refer in this regard to the relations between the Tribunal and the ICJ.

With regard to the developments of the Tribunal's jurisprudence in respect of the ICJ, the Tribunal, in its decisions, has not hesitated to refer, when appropriate, to the precedents set by that Court. The Tribunal has thereby helped to strengthen the development of a corpus of jurisprudence. In my view, this is a constructive way of maintaining consistency in international law and reinforcing the necessary coherence between general international law and the law of the sea. Harmonization of

jurisprudence also offers a response to questions arising from the establishment of new international courts and tribunals and the multiplication of special regimes, such as the law of the sea.

I should underline that the law of the sea should not be seen as an autonomous regime but as a part of general international law. In effect, numerous provisions in the Convention are today considered part of general international law, and the obligations of States Parties under the Convention entail international legal obligations. Also, Part XV of the Convention on settlement of disputes contains provisions which aim to avoid conflicts of jurisdiction. I refer to article 281 dealing with disputes concerning the interpretation or application of the Convention where the parties have agreed to seek settlement by means of their own choice, and article 282 concerning disputes which are also governed by general, regional or bilateral agreements. Moreover, the Tribunal is required under article 293 of the Convention to apply rules of international law that are not incompatible with the Convention.

When required to apply rules of international law, the Tribunal has found it necessary on a number of occasions to cite relevant decisions of the ICJ. The Tribunal has relied upon the jurisprudence of that Court, for instance, in respect of issues concerning the state of necessity, the existence of a dispute, the ability of a tribunal to examine its jurisdiction *proprio motu*, the exhaustion of negotiations as a precondition for a dispute to be submitted to a court or tribunal, the decisive date for determining issues of admissibility, the notion of acquiescence and the status of a protocol or minutes of meetings.

Finally, let me mention one more procedure which has not yet been tested but deserves to be. I refer to the Tribunal's advisory function, which is a significant innovation in the international judicial system.

The Tribunal's advisory function is based on article 21 of the Statute, which states that the jurisdiction of the Tribunal comprises "all disputes and all applications submitted to it" and "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal." Under article 138 of its Rules, the Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the

submission of a request for such an opinion. The request is to be transmitted to the Tribunal by the body which is authorized under the agreement to do so.

Future international agreements, for instance, between States or between States and international organizations, could provide for recourse to the Tribunal's advisory procedures. Accordingly, the requesting body authorized under the agreement may ask the Tribunal for legal guidance on a specific question. In particular, the Meeting of States Parties to the Convention could decide to request an advisory opinion from the Tribunal on a legal question related to the Convention. It is noteworthy that advisory opinions are non-binding in nature and therefore provide an interesting alternative for conflict resolution.

In effect, advisory procedures before the Tribunal may assist parties in resolving disagreements and even prevent them from engaging in disputes. Opposing parties could ask the Tribunal to determine the principles and rules of international law applicable to a particular situation and undertake to reach an agreement on that basis. Advisory proceedings could also be advantageous for those seeking an indication as to how a specific sea-related matter could be interpreted under the Convention or which would be the applicable law when there is no specific provision governing the matter.

Almost 25 years after the adoption of the Convention, it is not surprising that new economic and scientific uses of the seas continue to increase but that their legal status sometimes remains controversial. New developments require new legal answers which may be given by the Tribunal through its advisory function. This may further enhance the harmonized implementation of the Convention and help reinforce coherence in international law.