

**STATEMENT BY JUDGE HUGO CAMINOS, OBSERVER OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA.**

**Asian-African Legal Consultative Organization
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It is a great honor for me to address, once again, a Session of the Asian African Legal Consultative Organization as a representative of the International Tribunal for the Law of the Sea.

I bring greetings and best wishes for a successful session at your Headquarters in New Delhi from the President of the Tribunal, Dr. Rüdiger Wolfrum and my colleagues in Hamburg. We all wish to congratulate AALCO on the inauguration of your new premises in this beautiful capital.

Your Organization is devoted to the consideration of issues related to international law, to exchange views on matters of common concern to the Member States, having legal implications, and to communicate its views on those questions to the United Nations and to the International Law Commission.

As members of the Hamburg Tribunal, we are well aware of your achievements, in the field of the law of the sea. With good reason the brief on this subject prepared for this Session states: "The role played by the AALCO in the development of the UNCLOS has been historical and well recognized". AALCO'S contribution to the strengthening of the rule of law in international relations must also be commended.

The International Tribunal for the Law of the Sea is a specialized judicial body established by the United Nations Convention on the Law of the Sea as one of the options available to the parties to the Convention under article 287, for the compulsory settlement of disputes concerning the interpretation or application of the Convention. UNCLOS regulates all aspects of the ocean space, its uses and its resources and includes, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine scientific research. This explains the characterization of UNCLOS as comprehensive constitution for the oceans.

As a specialized court of law, the jurisdiction of the International Tribunal for the Law of the Sea is limited to matters related to this area of international law, including those contained in UNCLOS as, those I have just mentioned, for example, maritime delimitation or fisheries disputes. On the other hand, the Tribunal is not only open to States, but also to international organizations which are entitled, in accordance with Annex IX of the Convention, to become parties to it.

In cases over activities in the international seabed area, the Seabed Disputes Chamber, has jurisdiction in such disputes as those between States

Parties, the Authority or the Enterprise, State enterprises and natural or juridical persons, and between the Authority and a prospective contractor.

Furthermore, entities, other than States Parties, that enter into an agreement under which the Tribunal may also have jurisdiction in disputes where the parties to it can be States, or international organizations and entities, not parties to the Convention, are allowed to have access to the Tribunal.

Independently of the freedom of choice of procedure by the parties to the Convention, the Tribunal has compulsory jurisdiction in two legal proceedings which require urgent action: provisional measures and prompt release of vessels and crews.

While, as we have seen, the Tribunal has jurisdiction over all disputes concerning the interpretation and application of the Convention or of any other agreement related to the purposes of the Convention, most of the 13 cases submitted to the Tribunal until now, have been limited to the two above urgent proceedings.

To date, the Tribunal has received seven applications for prompt release. The Tribunal, in five of these cases, ordered the release of the ship or its crew upon the posting of a reasonable bond. In these cases, most of them related to fisheries, the Tribunal has established a consistent jurisprudence in the determination of a reasonable bond, and on the requirements to demonstrate the status as flag State. The Tribunal has also acted with efficiency and expeditiousness. Its judgments were delivered in full compliance with its Rules in approximately thirty days. As stated by President Wolfrum, "The urgency of these 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 may be considered an appropriate and cost effective mechanism for parties faced with the arrest of vessels and crews".

The Tribunal has prescribed provisional measures pending the constitution of an arbitral tribunal to which a dispute is being submitted, in four cases (art. 290 para. 5 of the Convention). In these proceedings, the Tribunal must first consider that the arbitral tribunal would have prima facie jurisdiction and that the urgency of the situation requires the prescription of provisional measures. The measures prescribed by the Tribunal are binding and they may be decided not only to preserve the rights of the parties, but also "to prevent serious damage to the marine environment".

The first two requests for provisional measures, were the *Southern Bluefin Tuna Cases*, between New Zealand and Australia, on the one hand, and Japan on the other. In its Order of 27 August 1999, the Tribunal stated that "the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment (para.70). It also declared 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 the stock of southern bluefin tuna” (para. 77). It has been expressed that the Tribunal’s intervention at the stage of provisional measures played a very significant role in bringing the parties back to negotiations with each other, and that the eventual result was that the Southern Bluefin Tuna Commission was revitalized.

In the *MOX Plant Case*, Ireland v. United Kingdom, concerning the potential harmful effects on the marine environment of the Irish Sea resulting from the extension of a nuclear plant. In its Order of December 2001, the Tribunal stressed that “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment” (para.82). It also stated that prudence and caution required that the parties exchange information concerning risks or effects of the operation of the plant (para.84).

In the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, Malaysia v. Singapore, the Tribunal was faced with the question of the consequences on the environment of land reclamation activities carried out by Singapore. In its Order of 8 October 2003, the Tribunal reaffirmed the duty of the parties to cooperate and, for this purpose, to enter into consultations forthwith in order to establish promptly a group of independent experts to conduct a study to determine, within a period not exceeding one year, the effects of the land reclamation activities on the marine environment.

On 26 April 2005, Malaysia and Singapore agreed to settle their dispute and on 1 September 2005, the arbitral tribunal rendered its award in accordance with the terms stipulated in the agreement of the parties.

The Order of the Tribunal was no doubt influential in bringing the parties to the negotiating table and facilitating an agreed solution to the dispute. In this regard, the Minister for Foreign Affairs of Singapore, as stated in a press release issued by the Ministry, speaking before the Parliament of Singapore, declared that “Singapore and Malaysia jointly implemented the Order by appointing a group of 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, 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”.

Regarding cases on the merits, the parties to a dispute may submit it to the Tribunal by a special agreement at any time. In the *M/V “SAIGA” (N° 2) Case*, Saint Vincent and the Grenadines agreed to submit to the Tribunal the merits of a dispute concerning the arrest of the vessel *Saiga*. The Tribunal, in its Judgment of 1 July 1999, adopted a number of significant interpretations of the Convention, particularly concerning flags of convenience, hot pursuit, enforcement of customs laws, the espousal of claims relating to crew members not of the nationality of the applicant State, among others.

Another dispute submitted to the Tribunal by special agreement is the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean*. This dispute between Chile and the European Community has been submitted to a special chamber of the Tribunal composed of four judges of the tribunal and one judge *ad hoc*. This case is still pending because both parties have requested on two occasions, the extension of the time-limit for making preliminary objections.

An *ad hoc* special chamber is, indeed, an attractive option for parties considering arbitration since the composition of the special chamber is determined by the Tribunal with the approval of the parties to the dispute. There are also other advantages for the parties: they are entitled to appoint a judge *ad hoc* if the chamber does not include a member of the nationality of one of the parties; the Rules of the Tribunal may be amended at their request in certain proceedings; and last but not least, they do not have to bear the expenses of the proceedings. Quite correctly, President Wolfrum has called this option “arbitration within the Tribunal”.

The jurisdiction of the Tribunal is not limited to disputes that require immediate action under the Convention. It can also emerge from other international agreements and comprise any dispute relating to the law of the sea as, for example, those concerning delimitation, marine scientific research, pollution of the marine environment, fisheries, etc. Article 288, paragraph 2, stipulates that a court or tribunal which State Parties are free to choose for the settlement of disputes concerning the interpretation or application of the Convention “shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement relate to the purposes of this Convention, which is submitted to it in accordance with the agreement”.

Moreover, article 21 of the Statute declares that the jurisdiction of the Tribunal “comprises all matters specifically provided for any other agreement which confers jurisdiction on the Tribunal”. In this case, the extent of the jurisdiction of the Tribunal shall be governed by the provisions of the agreement.

There are seven international agreements which make reference to the Tribunal concerning the settlement of disputes. One of these agreements is the 1995 straddling fish stocks and highly migratory fish stocks which provides for the application of the procedures embodied in Part XV of the Convention. As a State which is not a Party to the Convention is allowed to become a party to Agreement, the latter specifies that Part XV applies *mutates mutandis* to any dispute between States Parties to it concerning its interpretation or application, “whether or not they are also parties to the Convention”.

International agreements related to the purposes of the Convention are a potential source for the jurisdiction of the Tribunal as they extend its competence to decide on a wide range of disputes concerning law of sea matters. In accordance with article 288, paragraph 4, in the event of a dispute as to whether the Tribunal

has jurisdiction, the matter shall be decided by the Tribunal (competence de la competence).

Let me refer briefly to advisory opinions. Besides its competence to deal with different categories of disputes concerning activities in the Area, the Seabed Disputes Chamber has another important function: to give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority on legal questions arising within the scope of their activities.

The Convention does not contain any provision conferring advisory jurisdiction to the Tribunal. However, any other agreement which confers jurisdiction to the Tribunal under article 21 of its Statute may provide for the request of advisory opinions. On this basis, article 318, paragraph 1 of the Rules of the Tribunal states that it “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 to the Tribunal of a request for such an opinion”.

Let me close this brief overview of the competence and judicial work of the Tribunal, by quoting President Wolfrum on his statement to the Informal Meeting of Legal Advisers of Ministries of Foreign Affairs in October 2005, at the Headquarters of the United Nations:

“In conclusion, I would like to reiterate that the Tribunal has already made a substantial contribution to the development of international law. Under the Convention on the Law of the Sea, it has competence and means to deal with a wide range of disputes and is well equipped to discharge its functions speedily, efficiently and cost-effectively”.

Thank you.