

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

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PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE REPORT OF THE TRIBUNAL

AT

THE TWENTY-FOURTH MEETING OF STATES PARTIES TO
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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Mr President,

1. It is an honour for me, in my capacity as President of the International Tribunal for the Law of the Sea, to introduce the Report of the Tribunal for the period 1 January to 31 December 2013 to this twenty-fourth Meeting of States Parties. I offer to you my sincere congratulations on your election to the presidency of this Meeting and my best wishes for success in the discharge of your duties.

2. I also take this opportunity to welcome Niger as the State to have most recently become party to the Convention. With Niger's ratification of the Convention on 7 August 2013, there are now 166 States Parties to the Convention, including the European Union.

Mr President,

Distinguished delegates,

3. The Annual Report of the Tribunal to the Meeting of States Parties is before you. It gives an overview of the various activities of the Tribunal and its financial position in 2013. As is customary, I will focus today on some salient points in this Report and present an update on developments that have taken place since the end of the reporting period.

4. The Tribunal continued to have a busy and challenging judicial agenda during 2013. It acted in four cases raising a number of complex issues, including: provisional measures for the release of a detained vessel and persons on board; the lawfulness of the arrest and confiscation of a vessel; the status of bunkering in support of foreign vessels fishing in the exclusive economic zone; reparation for damage; and IUU fishing. From the procedural perspective, two of these cases concerned the merits of a dispute, one was an urgent proceeding, and one an advisory opinion. Given the range and complexity of the issues involved, it may be said with confidence that the Tribunal dealt expeditiously with its workload. It disposed of two cases in 2013 and one more in April 2014. The request for an advisory opinion remains on the docket and the hearing will take place in September this year.

5. During the last Meeting of States Parties, I took advantage of the opportunity to report on the outcome of the judgment delivered by the Tribunal on 28 May 2013 in the *M/V "Louisa" Case* between Saint Vincent and the Grenadines and the Kingdom of Spain. I will therefore limit myself to simply recalling that the Tribunal concluded in its judgment that no dispute concerning the interpretation or application of the Convention existed between the Parties at the time the Application was filed and that, therefore, it had no jurisdiction *ratione materiae* to entertain the case.

6. The Tribunal was next required to deal with an urgent procedure. I refer to the "*Arctic Sunrise*" Case (*Kingdom of the Netherlands v. Russian Federation*), which concerned a request submitted by the Netherlands to the Tribunal on 21 October 2013 for the prescription of provisional measures under article 290, paragraph 5, of the Convention, pending the constitution of an arbitral tribunal. On 4 October 2013, the Netherlands had instituted arbitral proceedings, under Annex VII to the Convention, against the Russian Federation in a dispute concerning the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation and the detention by Russian authorities of the persons on board the vessel. In a note verbale dated 22 October 2013, the Russian Federation informed the Tribunal that it did not accept the arbitration procedure under Annex VII to the Convention initiated by the Netherlands in regard to this case and that it did not intend to participate in the proceedings before the Tribunal. In that note verbale, the Russian Federation invoked the declaration it had made upon ratifying the Convention on 26 February 1997, stating that it "does not accept procedures provided for in Section 2 of Part XV of the Convention, entailing binding decisions with respect to disputes ... concerning law-enforcement activities in regard to the exercise of sovereign rights or jurisdiction".

7. According to the Netherlands, the Dutch-flagged *Arctic Sunrise* was boarded on 19 September 2013 in the exclusive economic zone of the Russian Federation by Russian authorities who detained the vessel and the 30 persons on board. The hearing in the case was held on 6 November 2013 without participation of the Russian Federation. At the hearing, the Netherlands requested the Tribunal to prescribe provisional measures that would immediately enable the *Arctic Sunrise*

and crew members to leave the maritime zones under the jurisdiction of the Russian Federation.

8. The Tribunal adopted its Order on the Request for provisional measures on 22 November 2013. In relation to the declaration made by the Russian Federation with respect to law-enforcement activities under article 298, paragraph 1, subparagraph (b), of the Convention, the Tribunal stated in its Order that this declaration “*prima facie* applies only to disputes excluded from the jurisdiction of a court or tribunal under article 297, paragraphs 2 and 3, of the Convention” (see paragraph 45 of the Order).

9. Concerning the non-appearance of the Russian Federation, the Tribunal considered that the absence of a party or failure of a party to defend its case did not constitute a bar to the proceedings and did not preclude the Tribunal from prescribing provisional measures, provided that the parties had been given an opportunity to present their observations on the subject. The Tribunal noted that the Russian Federation had been given ample opportunity to present its observations but had declined to do so. The Tribunal then considered that it had to identify and assess the respective rights of the Parties involved on the best available evidence.

10. The Tribunal then observed that “a difference of opinions exists as to the applicability of the provisions of the Convention in regard to the rights and obligations of a flag State and a coastal State, notably, its articles 56, 58, 60, 87 and 110” (see paragraph 68 of the Order). According to the Tribunal, these provisions appeared to afford a basis on which the jurisdiction of the arbitral tribunal might be founded. Therefore the Tribunal concluded that the Annex VII arbitral tribunal would *prima facie* have jurisdiction over the dispute.

11. While examining the required conditions for the prescription of provisional measures, the Tribunal held that article 290, paragraph 5, of the Convention had to be read in conjunction with article 290, paragraph 1. It also considered that, under the circumstances of the case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation required the prescription by the Tribunal of provisional measures.

12. In its Order, the Tribunal prescribed that “[t]he Russian Federation shall immediately release the vessel *Arctic Sunrise* and all persons who have been detained, upon the posting of a bond or other financial security by the Netherlands which shall be in the amount of 3,600,000 euros, to be posted with the Russian Federation in the form of a bank guarantee”. It also prescribed that upon the posting of this bond or other financial security “the Russian Federation shall ensure that the vessel *Arctic Sunrise* and all persons who have been detained are allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation” (see paragraph 105 of the Order). In addition, the Tribunal decided that the Parties should each submit an initial report not later than 2 December 2013 to the Tribunal. The Netherlands communicated its report to the Tribunal on that date.

13. Next on the Tribunal’s judicial agenda was the *M/V “Virginia G” Case* between Panama and Guinea-Bissau, which had been submitted to the Tribunal on 4 July 2011 through the notification of a special agreement concluded between the Parties. This case related to a dispute concerning the *M/V Virginia G*, an oil tanker flying the flag of Panama, arrested on 21 August 2009 by the authorities of Guinea-Bissau for carrying out without authorization refuelling operations for foreign vessels fishing in Guinea-Bissau’s exclusive economic zone. The vessel and the gas oil on board were confiscated on 27 August 2009. The vessel was subsequently released by decision of the authorities of Guinea-Bissau in 2010. The hearing in the case took place from 2 to 6 September 2013. After deliberations, the Tribunal delivered its Judgment on 14 April 2014.

14. In its Judgment, the Tribunal found that it had jurisdiction over the dispute and rejected the objections raised by Guinea-Bissau to the admissibility of Panama’s claims. These objections were based on the alleged lack of a genuine link between the *M/V Virginia G and Panama*, the nationality of claims and the alleged failure to exhaust local remedies. As a result of having rejected the objections, the Tribunal entered into the merits of the case. The fundamental question it had to address was whether Guinea-Bissau had violated a number of provisions of the Convention when it arrested, and later confiscated, the *M/V Virginia G*.

15. The Tribunal emphasized at the outset that its task was to deal with a dispute relating to bunkering activities in support of foreign vessels fishing in the exclusive economic zone of a coastal State. In this connection, the Tribunal held that “the regulation by a coastal State of bunkering of foreign vessels fishing in its exclusive economic zone is among those measures which the coastal State may take in its exclusive economic zone to conserve and manage its living resources under article 56 of the Convention, read together with article 62, paragraph 4, of the Convention” and noted that “[t]his view is confirmed by State practice which has developed after the adoption of the Convention” (see paragraph 217 of the Judgment). In addition, the Tribunal held that article 58 of the Convention does not prevent coastal States from regulating, under article 56, bunkering of foreign vessels fishing in their exclusive economic zones.

16. In considering the relevant national legislation of Guinea-Bissau, the Tribunal found that it conformed to articles 56 and 62, paragraph 4, of the Convention. At this point, it reviewed the application of this legislation in the case of the *M/V Virginia G*, noting that the fisheries laws and regulations of Guinea-Bissau provided for the possibility of confiscating bunkering vessels. The Tribunal observed that, according to article 73, paragraph 1, of the Convention, the coastal State may take such measures “as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention”. It also stated that providing for the confiscation of a vessel offering bunkering services to foreign vessels fishing in the exclusive economic zone of Guinea-Bissau is not *per se* in violation of article 73, paragraph 1, of the Convention, and that whether or not confiscation is justified in a given case depends on the facts and circumstances.

17. Accordingly, the Tribunal examined whether the confiscation of the vessel and the gas oil on board was justified. After finding that neither the boarding and inspection nor the arrest of the *M/V Virginia G* violated article 73, paragraph 1, of the Convention, the Tribunal reiterated that, pursuant to article 73, paragraph 1, of the Convention, the enforcement measures taken have to be “necessary” to ensure compliance with the laws and regulations adopted by the coastal State in conformity with the Convention. Having determined that the *M/V Virginia G* did not have the written authorization required by the legislation of Guinea-Bissau for bunkering, the

Tribunal observed that the failure to obtain a written authorization was rather the consequence of a misinterpretation of the correspondence between the representatives of the fishing vessels and the relevant authorities of Guinea-Bissau than an intentional violation of its laws and regulations. The Tribunal found, in the light of the circumstances of the case, that the confiscation of the vessel and the gas oil on board was not necessary either to sanction the violation committed or to deter the vessels or their operators from repeating this violation. It therefore found that the confiscation by Guinea-Bissau of the *M/V Virginia G* and the gas oil on board was in violation of article 73, paragraph 1, of the Convention.

18. In its Judgment, the Tribunal also found that Guinea-Bissau had violated the requirements of article 73, paragraph 4, of the Convention by failing to notify Panama as the flag State of the detention and arrest of the *M/V Virginia G* and subsequent actions taken against the vessel and its cargo. According to the Tribunal, this deprived Panama of its right as the flag State to intervene at the initial stages of actions taken against the *M/V Virginia G* and during the subsequent proceedings.

19. The Tribunal found that Panama's other allegations were not well founded and that Guinea-Bissau had not violated any other provisions of the Convention. In particular, Guinea-Bissau had not violated article 73, paragraph 2, of the Convention, because its applicable law concerning the prompt release of arrested fishing vessels and their crews upon the posting of a reasonable bond or other financial security was consistent with the provisions of article 73, paragraph 2, of the Convention. According to the Tribunal, Guinea-Bissau had not violated article 73, paragraph 3, of the Convention either, given that no penalty of imprisonment had been imposed on members of the crew of the *M/V Virginia G*. The Tribunal also decided that neither article 110 of the Convention nor article 224 of the Convention was applicable to the enforcement activities undertaken by the coastal State pursuant to article 73, paragraph 1, of the Convention. It further determined that Guinea-Bissau had not violated article 225 of the Convention and that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation was not applicable in this case. Concerning the allegation that Guinea-Bissau had used excessive force in boarding and arresting the vessel, the Tribunal concluded that Guinea-Bissau had

not used excessive force leading to physical injuries or endangering human life during the boarding and sailing of the *M/V Virginia G* to the port of Bissau.

20. Finally, the Tribunal concluded that the counter-claim presented by Guinea-Bissau in its Counter-Memorial, based on the alleged violation by Panama of article 91 of the Convention, was unfounded.

21. In light of its findings that Guinea-Bissau had violated article 73, paragraph 1, and article 73, paragraph 4, of the Convention, the Tribunal decided to award Panama compensation (i) in the amount of US\$ 388,506.00 with interest for the confiscation of the gas oil, as indicated in paragraph 446 (a) of the Judgment; and (ii) in the amount of € 146,080.80 with interest for the costs of repairs to the *M/V Virginia G*, as indicated in paragraph 446 (b) of the Judgment. It decided not to award Panama compensation for either the loss of profit or its other claims, as indicated in paragraphs 439 and 440 of the Judgment.

Mr President,
Distinguished delegates,

22. As reported to the twenty-third Meeting of States Parties, the Tribunal received a new case in early 2013. On 28 March 2013, the Sub-Regional Fisheries Commission (SRFC), an organization whose membership is made up of seven West African States, requested the Tribunal to render an Advisory Opinion under article 138 of the Rules of the Tribunal. The Request for an advisory opinion sets out four questions concerning illegal, unreported and unregulated fishing activities and rights and obligations of coastal States in the management of fish stocks. By Order dated 24 May 2013, the Tribunal invited the States Parties to the Convention, the SRFC, and the intergovernmental organizations identified by the Tribunal as likely to be able to furnish information on the questions asked, to submit written statements relating to the case by 29 November 2013. This time-limit was further extended to 19 December 2013.

23. During this first round, written statements were submitted by 22 States Parties, the SRFC and six organizations. In addition, one written statement was submitted by

a State Party to the 1995 Straddling Fish Stocks Agreement. Subsequently, by Order dated 20 December 2013, States Parties and intergovernmental organizations having presented written statements were invited to submit written statements on the first-round statements by 14 March 2014. Written statements were submitted by five States Parties and the SRFC during the second round. All statements have been made available on the website of the Tribunal. I should also report that, pursuant to Order dated 14 April 2014, the hearing in the case will open on 2 September 2014.

24. The judicial work accomplished by the Tribunal in recent years shows that the Tribunal is playing a growing role in international adjudication and the functioning of the dispute-settlement system established by the Convention. Ever since its inception, the Tribunal has striven to ensure that its judicial decisions are taken in an efficient and expeditious manner. This is likely to have helped to boost confidence among parties to cases in seeking recourse to the Tribunal for the settlement of their disputes.

Mr President,
Distinguished delegates,

25. Apart from its judicial work, the Tribunal held two regular sessions in 2013, during which it considered legal as well as organizational and administrative matters. During its sessions, the Tribunal also dealt with budgetary matters, including the preparation of the budget of the Tribunal for 2015-2016, the report on budgetary matters for the financial periods 2011-2012 and 2013-2014, the cash flow situation and the status of contributions. Budgetary matters will be addressed in a separate statement to be made by the Registrar of the Tribunal.

26. The Tribunal has also undertaken important efforts to promote knowledge about the Convention and its dispute-settlement procedures through a number of capacity-building initiatives.

27. One of the Tribunal's capacity-building activities is its internship programme, which gives young government officials and students the opportunity to gain experience relating to the work and functions of the Tribunal. In 2013, twenty interns

from 18 different countries participated in the Tribunal's internship programme. In order to enable applicants from developing countries to participate in the programme, special trust funds have been set up, with the assistance of the Korea Maritime Institute and the China Institute of International Studies. I wish to thank these institutions for their contributions to this programme.

28. In addition, with the support of the Nippon Foundation, the Tribunal has established a capacity-building and training programme on dispute settlement under the Convention. During this nine-month programme, participants attend lectures on topical issues related to the law of the sea and maritime law and training courses on negotiation and delimitation. Fellows from Brazil, Haiti, Indonesia, Lebanon, Philippines, Tanzania and Tunisia participated in the most recent programme, during the period 2013-2014. I take this opportunity to thank the Nippon Foundation for its financial contribution to this initiative.

29. A further capacity-building activity is the Summer Academy, which is organized by the International Foundation for the Law of the Sea in cooperation with the Tribunal. The Academy is held annually on the premises of the Tribunal and the last session took place from 21 July to 16 August 2013. Thirty-six participants from 33 different countries attended this session, which focused on "Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives". I wish to thank the International Foundation for the Law of the Sea for its valuable work.

30. In recent years the Tribunal has organized a series of workshops on the settlement of disputes related to the law of the sea in different regions of the world. The purpose of these workshops is to provide government experts working on maritime and law of the sea matters with insight into the dispute-settlement procedures established in Part XV of the Convention, with special emphasis on the jurisdiction of the Tribunal and the procedural rules applicable to cases before the Tribunal. In 2013, a workshop of this nature took place in Mexico City and was attended by experts from 16 States. I wish to reiterate our sincere gratitude to the Government of Mexico for its cooperation and assistance in organizing this event. In this connection, I wish to report that we are planning further workshops this year, in Kenya and in Ghana.

Mr President,
Distinguished delegates,

31. My term of office as President of the Tribunal will come to an end in September this year. Since this is my last address to the Meeting of States Parties in my capacity as President of the Tribunal, I wish to express to you, Mr President, and all delegates my gratitude for the cooperation extended to the Tribunal and to me during the past three years. I conclude by conveying my appreciation to the Legal Counsel and, in particular, to the Director of DOALOS and her staff for the continued cooperation and support provided to us.

I thank you for your attention.