

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

10 JUNE 2013

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Mr President,

1. It is with great pleasure that I address this twenty-third Meeting of States Parties to the United Nations Convention on the Law of the Sea in my capacity as President of the International Tribunal for the Law of the Sea, on the occasion of the consideration of the Report of the Tribunal for the period 1 January to 31 December 2012.

2. It is a particular honour for me to speak here today under your able guidance, Mister President. I would like to congratulate you on your election to the presidency of this Meeting. My most sincere good wishes for the successful completion of the mission with which you have been entrusted.

3. On this occasion, I would also like to welcome three new States Parties to the Convention: on 24 September 2012, Ecuador acceded to the Convention and Swaziland ratified it; 23 January 2013 saw the accession of Timor-Leste. This brings the total of States Parties to the impressive number of 165.

Mr President,

Ladies and Gentlemen,

4. The Annual Report, which you have before you, gives an account of the various activities of the Tribunal and its financial position in the year 2012. The report is self-explanatory but I consider it useful to highlight some of its main aspects and also to update you on recent developments since the end of the reporting period.

5. Two thousand twelve was a remarkably busy year for the Tribunal. Again, as in the year before, the Tribunal was actively dealing with four complex cases relating to a variety of issues. The scope of those cases encompassed maritime delimitation, requests for the release of detained vessels, including a warship, and claims for damages arising out of the arrest of vessels. In terms of procedure, the work of the Tribunal was also quite varied, ranging from cases on the merits to urgent proceedings and, for the first time, including a counter-claim brought before the Tribunal. Of the four

cases dealt with in 2012, two were disposed of by the Tribunal in the same year and a third was completed in the first half of 2013.

6. I will now offer a few more details on the judicial work of the Tribunal in 2012. As I already reported to the twenty-second Meeting of States Parties, the Tribunal gave a judgment on 14 March 2012 in its first maritime delimitation case: the dispute concerning the delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (case No.16). Let us recall that, in this judgment, the Tribunal determined the maritime boundary between the Parties in relation to the territorial sea, the exclusive economic zone and the continental shelf, including the delimitation of the continental shelf beyond 200 nautical miles, a determination unprecedented in international adjudication.

7. Next on the agenda of the Tribunal was its case No. 18, the *M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*. Proceedings in this case were instituted on 24 November 2010. In a first phase of the proceedings, the Tribunal had to pronounce on a Request for the prescription for provisional measures submitted by Saint Vincent and the Grenadines under article 290, paragraph 1, of the Convention. By Order dated 23 December 2010, the Tribunal found that the circumstances were not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention.

8. The case then entered the merits phase. Further to the filing of written pleadings by the Parties, the hearing on the merits took place from 4 to 12 October 2012. Deliberations of the Tribunal immediately followed the hearing and, on 28 May 2013, the Tribunal delivered its judgment in the case.

9. This dispute concerned the M/V "Louisa", a vessel flying the flag of Saint Vincent and the Grenadines, which was boarded, searched and detained by Spanish authorities on 1 February 2006. Saint Vincent and the Grenadines maintained that the M/V "Louisa" was engaged in conducting surveys of the sea floor with a view to locating oil and gas deposits. According to the Spanish authorities, the vessel was seized in connection with

criminal proceedings instituted in respect of the commission of “the crime of possession and depositing weapons of war ... together with the continued crime of damaging Spanish historical patrimony”. Four persons were arrested and detained in Spain for different periods in connection with these criminal proceedings.

10. In its final submissions made at the hearing, Saint Vincent and the Grenadines requested the Tribunal *inter alia* to declare that the Respondent had violated a number of provisions of the Convention and that the boarding and detention of the M/V “Louisa” was unlawful. The Tribunal was also requested to declare that the detention of four individuals was unlawful and abused their human rights in violation of the Convention and to order reparations to those individuals and to Saint Vincent and the Grenadines.

11. Spain in its final submissions requested the Tribunal *inter alia* to adjudge and declare that the Application submitted by Saint Vincent and the Grenadines was not admissible and had to be dismissed and that the Tribunal had no jurisdiction in the case.

12. In its judgment, the Tribunal found, by 19 votes to 2, that it had no jurisdiction to entertain the Application filed by Saint Vincent and the Grenadines. The Tribunal distinguished two aspects of the case before it: one involving the detention of the vessel M/V “Louisa” and the persons connected therewith and the other concerning the treatment of these persons.

13. The first aspect related to the claim originally submitted by Saint Vincent and the Grenadines, in support of which it had invoked a number of provisions of the Convention, including *inter alia* articles 73 and 87. After a careful examination of all provisions invoked, the Tribunal came to the conclusion that none of them could serve as a basis for the claims submitted in respect of the detention of the M/V “Louisa” and its crew.

14. Thus, with regard to article 73 of the Convention, the Tribunal noted that the M/V “Louisa” was not detained for the reason that the laws and regulations of Spain concerning the living resources in the exclusive economic zone had been violated. The

detention was made in the context of criminal proceedings relating to alleged violations of Spanish laws on “the protection of the underwater cultural heritage and the possession and handling of weapons of war in Spanish territory.”

15. With regard to article 87 of the Convention, dealing with the freedom of the high seas, in particular the freedom of navigation, the Tribunal observed that the M/V “Louisa” was detained when it was docked in a Spanish port. The Tribunal was of the view that article 87 cannot be interpreted in such a way as to grant the M/V “Louisa” a right to leave the port and gain access to the high seas notwithstanding its detention in the context of legal proceedings against it.

16. The second aspect of the case identified by the Tribunal, concerning the treatment of persons connected with the M/V “Louisa”, was introduced by Saint Vincent and the Grenadines on the basis of article 300 of the Convention only after the closure of the written proceedings. It was discussed during the oral proceedings and included in the final submissions of Saint Vincent and the Grenadines.

17. The Tribunal considered that reliance on article 300 of the Convention generated a new claim in comparison to the claims presented in the Application. It further observed that it is a legal requirement that any new claim to be admitted must arise directly out of the application or be implicit in it. The Tribunal considered that it could not allow a dispute brought before it by an application to be transformed in the course of proceedings into another dispute which is different in character, and was of the view that article 300 of the Convention could not serve as a basis for the claims submitted by Saint Vincent and the Grenadines.

18. The Tribunal concluded 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 before it.

Mr President,
Ladies and Gentlemen,

19. Cases 16 and 18 were of course not the only ones dealt with by the Tribunal during the year 2012. On 2 November 2012, the Tribunal also adopted an Order on the admissibility of a counter-claim submitted by Guinea-Bissau in its Counter-Memorial in case No. 19, the *M/V “Virginia G” Case (Panama/Guinea-Bissau)*.

20. This case was submitted to the Tribunal on 4 July 2011. The dispute relates to the oil tanker *M/V “Virginia G”*, which, according to Panama, was arrested by the authorities of the Republic of Guinea-Bissau on 21 August 2009 in the Exclusive Economic Zone of Guinea-Bissau, whilst carrying out refuelling activities. The vessel, which was sailing under the flag of Panama, was released on 22 October 2010. Panama is seeking reparation for the damage allegedly suffered.

21. The Parties submitted written pleadings in this case in accordance with the time-limits fixed by Orders of the President and the Tribunal. Panama filed a Memorial on 23 January 2012 and a Reply on 28 August 2012; Guinea-Bissau filed a Counter-Memorial on 11 June 2012 and a Rejoinder on 28 November 2012.

22. In its Counter-Memorial, Guinea-Bissau filed a counter-claim, stating that “Panama violated [article] 91 of the Convention by granting its nationality to a ship without any genuine link to Panama, which facilitated the practice of illegal actions of bunkering without permission in the EEZ of Guinea-Bissau”. By way of the counter-claim, Guinea-Bissau seeks damages and costs allegedly resulting therefrom. Panama requested the Tribunal “to dismiss, reject or otherwise refuse” the counter-claim. In addition, it requested authorization from the Tribunal to file an additional pleading in response to that part of Guinea-Bissau’s Rejoinder concerning the counter-claim.

23. Pursuant to article 98, paragraph 1, of the Rules of the Tribunal, “a party may present a counter-claim provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.” In its

Order dated 2 November 2012, the Tribunal found that the counter-claim presented by Guinea-Bissau satisfied those conditions and that it was admissible under article 98, paragraph 1, of the Rules. Considering that, “[i]n order to ensure equality between the Parties, Panama should be given an opportunity to file an additional pleading confined to the counter-claim as presented by Guinea-Bissau”, the Tribunal also authorized the submission of such pleading and fixed 21 December 2012 as the pertinent time-limit.

24. Panama filed an additional pleading within this time-limit, thereby concluding the written proceedings in this case. I may add that, after consultation with the Parties, oral proceedings have been scheduled to take place from 2 to 6 September 2013.

Mr President,
Ladies and Gentlemen,

25. Shortly before the end of 2012, the Tribunal was seized of a fourth case to be considered during that year, the *ARA Libertad Case (Argentina v. Ghana)*. It related to a request, filed by Argentina on 14 November 2012, for the prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention. The dispute, which generated significant media interest worldwide, concerned the detention by Ghana of the Argentine warship “ARA Fragata Libertad”. The case was entered in the Tribunal’s List of cases as case No. 20.

26. The ARA Libertad arrived on a courtesy visit in the port of Tema, near Accra, on 1 October 2012. The vessel was scheduled to leave the port on 4 October 2012 but was prevented from doing so by the Ghanaian authorities pursuant to a decision of the High Court of Accra taken in connection with a commercial lawsuit. On 30 October 2012, Argentina instituted arbitration proceedings, under Annex VII to the Convention, against Ghana concerning the detention of the vessel.

27. The Tribunal held a hearing in the case on 29 and 30 November 2012. At the hearing, Argentina requested the Tribunal to prescribe that Ghana unconditionally enable the ARA Libertad to leave the port and the jurisdictional waters of Ghana and to

be resupplied to that end. Ghana requested the Tribunal to reject the request for provisional measures filed by Argentina.

28. On 15 December 2012, the Tribunal, unanimously, delivered its Order in this case. The Tribunal considered “that article 32 [of the Convention] affords a basis on which *prima facie* jurisdiction of the Annex VII arbitral tribunal might be founded”. It further considered that “in accordance with general international law, a warship enjoys immunity” and that “any act which prevents by force a warship from discharging its mission and duties is a source of conflict that may endanger friendly relations among States”.

29. The Tribunal concluded that “under the circumstances of the present case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation requires the prescription by the Tribunal of provisional measures that will ensure full compliance with the applicable rules of international law, thus preserving the respective rights of the Parties”. Therefore, it prescribed that “Ghana shall forthwith and unconditionally release the frigate ARA Libertad, shall ensure that the frigate ARA Libertad, its Commander and crew are able to leave the port of Tema and the maritime areas under the jurisdiction of Ghana, and shall ensure that the frigate ARA Libertad is resupplied to that end”.

30. I am glad to report that the Order of the Tribunal was complied with. The ARA Libertad was released as prescribed by the Tribunal and, on 19 December 2012, left the maritime areas under the jurisdiction of Ghana.

Mr President,
Ladies and Gentlemen,

31. This account of the Tribunal’s judicial work in the year 2012 shows that the Tribunal is playing a growing role in international adjudication and that the dispute settlement system established by the Convention is operating ever more frequently and effectively. The Tribunal will gladly continue to offer its contribution to this development.

32. In this context, I am glad to report to you that the Tribunal received a new case in early 2013. On 28 March 2013, the Sub-Regional Fisheries Commission (SRFC) requested the Tribunal to render an Advisory Opinion. The SRFC is based in Dakar, Senegal, and comprises seven member States, all of which are States Parties to the Convention: Cape Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone.

33. Article 33 of the 2012 Convention on the Determination of the Minimal Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the Sub-Regional Fisheries Commission (CMAC) provides that the Conference of Ministers of the SRFC may authorize the Permanent Secretary of the SRFC to seize the Tribunal on a specific legal matter for its advisory opinion. Consequently, in a resolution adopted pursuant to this provision, the Conference of Ministers authorized the Permanent Secretary to obtain an advisory opinion from the Tribunal on the following matters:

1. What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?
4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

34. The request by the SRFC has been entered in the List of cases of the Tribunal as case No. 21. Pursuant to 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 to the Tribunal of a request for such an opinion. A request for an advisory opinion shall be transmitted to the Tribunal by

whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.

35. In an Order adopted on 24 May 2013, the Tribunal decided that the SRFC and several other intergovernmental organizations were likely to be able to furnish information on the questions submitted to the Tribunal and invited them as well as the States Parties to the Convention to present written statements on the questions contained in the Request, fixing 29 November 2013 as the time-limit for the presentation of such written statements. The Order of the Tribunal has meanwhile been notified by the Registrar to all States Parties and to the intergovernmental organizations concerned.

Mr President,
Ladies and Gentlemen,

36. In addition to its judicial work, the Tribunal held two sessions in 2012, during which it considered legal as well as organizational and administrative matters. During those sessions, the Tribunal also gave consideration to budgetary matters, including the budget of the Tribunal for 2013-2014, the report on budgetary matters for the financial periods 2009-2010 and 2011-2012, the cash flow situation and the status of contributions.

37. Let me underline in this context that several documents relating to the budgetary matters of the Tribunal have been placed before this Meeting of States Parties. The Registrar will present more detailed information on these matters in a separate statement.

Mr President,
Ladies and Gentlemen,

38. Before concluding, allow me briefly to highlight the importance attached by the Tribunal to programmes and initiatives promoting knowledge about the Convention and its dispute settlement procedures.

39. The Tribunal's internship programme, which has been in operation since 1997, continuously provides young students from around the world with an opportunity to get acquainted with the work of the Tribunal. Seventeen participants from 16 different countries benefitted from this programme in 2012. Applicants from developing countries are provided with financial assistance to enable them to participate. For this purpose, a "Trust fund for the law of the sea" has been established by the Tribunal and has received contributions from a company from the Republic of Korea and operating in Hamburg and from the Korea Maritime Institute. I take this opportunity to express my appreciation to them.

40. I also wish to mention the capacity-building and training programme on dispute settlement under the Convention that the Tribunal has been running, with the support of the Nippon Foundation, since 2007. Seven fellows from Armenia, Chile, the Dominican Republic, the Gambia, Guinea, Myanmar and Sri Lanka participated in the programme in 2012. During this nine-month programme, participants attended lectures on issues related to the law of the sea and maritime law, as well as training courses on negotiation and delimitation. I thank the Nippon Foundation for its financial support of this programme.

41. A further initiative of this kind is the Summer Academy held annually on the premises of the Tribunal, in whose organization the Tribunal cooperates with the International Foundation for the Law of the Sea. The sixth Summer Academy took place from 22 July to 18 August 2012 and focused on the theme "Uses and protection of the sea — Legal, economic and natural science perspectives". Thirty-six participants from 32 different countries attended the Academy. I would like to thank the Foundation for its work in this respect.

42. As you may recall from my statement last year, the China Institute of International Studies, in May 2012, provided a grant to finance training activities of the Tribunal. I wish to express our gratitude to the China Institute of International Studies for its generosity.

43. I also should indicate that the Tribunal intends to continue holding regional workshops, whenever possible, to provide representatives of States with information on its jurisdiction and procedural rules. Last week, such a workshop took place in Mexico City, organized in cooperation with the Ministry of Foreign Affairs of Mexico. The workshop was attended by representatives of 15 countries. I would like to express my gratitude to the authorities of Mexico for their efficient assistance in this respect.

Mr President,

44. In concluding, I would like to convey my appreciation to the Legal Counsel, to the Director of the Division for Ocean Affairs and the Law of the Sea and to his staff for the invaluable work accomplished in relation to the Convention and the excellent cooperation extended to the Tribunal.

I thank you for your kind attention.