

Declaration of Judge Wolfrum

1. I have voted in favour of the Advisory Opinion endorsing its findings and most of its reasoning. However, in my view the Advisory Opinion could and should have been more explicit in some of its reasoning. On several issues, in particular in respect of the international responsibility of States dealt with in responding to Questions 2 and 3 the Advisory Opinion has been very brief. In dealing with this issue which is a central point of this Advisory Opinion the Tribunal could have further developed its own jurisprudence specifically on the reparation of damages.

2. As noted in paragraph 147 in the Advisory Opinion the Tribunal expressed its view concerning the rules on reparation under international law in paragraph 170 of its Judgment in the *M/V "SAIGA" (No. 2) Case*, where it stated:

It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" (*Factory at Chorzów, Merits, Judgment No.13, 1928, P.C.I.J., Series A, No. 17, p. 47*).

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999, p. 10, at p. 65, para. 170)

3. This jurisprudence was referred to again and elaborated upon in its Judgment in the case *M/V "Virginia G" (Panama/Guinea Bissau)* of 14 April 2014 in paragraphs 428 to 430. In paragraph 429 the Tribunal noted that the Draft Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts (hereinafter "the ILC Draft Articles on State Responsibility"), in article 1, reaffirm: "Every internationally wrongful act of a State entails the international responsibility of that State". The ILC Draft Articles on State Responsibility, in article 31, paragraph 1, further provide: "The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act". The Tribunal further observed (paragraph 430) that the Seabed Disputes Chamber of the Tribunal, in its Advisory Opinion, stated that several of the ILC Draft Articles on State

Responsibility are considered to reflect customary international law (see *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 56, para. 169).

4. It is article 31 of the Draft Articles on State Responsibility that the Tribunal could have further elaborated upon notwithstanding the fact that it may be difficult in a case where a State has allegedly not complied with its due diligence obligations to establish the compensation to be paid by the latter. Nevertheless the obligation to make full reparation is an important element of the rules on international responsibility worth to be emphasized and it would have been appropriate to at least directly refer to the applicability of article 31 of the Draft Articles on State Responsibility instead of referring in paragraph 146 to the *M/V “SAIGA” (No. 2) Case*.

5. The Tribunal should have finally drawn attention to article 30 of the ILC Draft Articles on State Responsibility. This provision reads:

The State responsible for the internationally wrongful act is under an obligation:

(a) to cease that act, if it is continuing;

(b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.

This provisions which equally is one of the central elements in the regime on international responsibility of States is of particular relevance in the context dealt with here since it provides the coastal States with the means to demand from the flag States to refashion their national law concerning fisheries so that it meets the international obligations entered into by the latter and the international standards set by the competent international organizations regional or universal. But it should be noted that the rules on international responsibility apply in general. As such they should be a considered a means to permanently improve the national laws on fisheries so that it meets the relevant internationally accepted rules and standards.

(signed) R. Wolfrum