

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE VLADIMIR GOLITSYN

PRESIDENT OF THE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 73 (a) "OCEANS AND THE LAW OF THE SEA"

AT

THE PLENARY OF THE SEVENTY-FIRST SESSION OF THE

UNITED NATIONS GENERAL ASSEMBLY

7 DECEMBER 2016

Mr President,
Ladies and Gentlemen,

It is an honour for me to address the General Assembly this year on behalf of the International Tribunal for the Law of the Sea during the Assembly's consideration of the agenda item "Oceans and the law of the sea". Before I begin my statement, let me first convey to you, Mr President, my congratulations on your election as President of the General Assembly and wish you every success in the discharge of your responsibilities.

In my statement, I will first address matters concerning the organization of the Tribunal and then refer to the Tribunal's recent judicial work.

First of all, I wish to pay tribute to Judge Antonio Cachapuz de Medeiros from Brazil who passed away on 15 September 2016. Judge Cachapuz de Medeiros had become a Member of the Tribunal on 15 January 2016 and his term of office would have ended on 30 September 2017.

I should like to inform you that the election to fill the seat which became vacant owing to the death of Judge Cachapuz de Medeiros will be held in June 2017, at the next triennial election of seven Members of the Tribunal whose terms of office will expire on 30 September 2017. In this regard, a *note verbale* was sent by the Registrar of the Tribunal to all States Parties to the Convention on 4 November 2016. States Parties will also receive in the coming days a *note verbale* calling for nominations for the triennial election of Judges of the Tribunal.

As regards organizational matters, I also wish to inform you that, on 9 March 2016, the Tribunal re-elected Mr Philippe Gautier Registrar of the Tribunal for a term of office of five years.

Mr President,

As you are aware, 2016 is a very special year for the Tribunal since it commemorates the twentieth anniversary of its establishment. A number of events

were organized to mark this occasion. We are particularly grateful that the Secretary-General of the United Nations, Mr Ban Ki-moon, honoured the Tribunal by visiting our premises on 7 October 2016 and meeting the Members of the Tribunal and the staff of the Registry.

The Secretary-General was one of the speakers at a ceremony that took place on the same day in the City Hall of Hamburg. On that occasion, statements were also made by the President of the Federal Republic of Germany, the First Mayor of the Free and Hanseatic City of Hamburg and myself. More than 500 guests attended this event, which was organized with the support of the Federal Republic of Germany and the Free and Hanseatic City of Hamburg, to both of which I wish to express our gratitude for their generosity.

Mr President,

The ceremony was preceded by a two-day international symposium dedicated to “The contribution of the Tribunal to the rule of law”. This symposium was attended by over 150 participants, among them Judges of the Tribunal, of the International Court of Justice and of other judicial institutions, academics, lawyers and counsel who have appeared before international courts and tribunals. The symposium was made possible with the financial support of the Government of Japan, to whom I would like to express my appreciation for this generous contribution.

Earlier this year, the Tribunal arranged another event in connection with its twentieth anniversary, namely a round table discussion on “The role of the Tribunal in the settlement of law of the sea disputes”. This event was held in New York on 23 June 2016 during the Meeting of States Parties to the United Nations Convention on the Law of the Sea and was well attended. It was organized with the financial contribution of the Korea Maritime Institute for whose generosity I also wish to express our gratitude.

Mr President,

Let me now turn to the Tribunal's judicial activity in the past year. A few days after I gave my last statement before the General Assembly, on 17 December 2015, a new case was submitted to the Tribunal: the *M/V "Norstar"* Case, instituted by Panama against Italy.

According to Panama's Application, the dispute concerns the arrest and detention of the *M/V "Norstar"*, a Panamanian-flagged oil tanker. From 1994 until 1998, the vessel was engaged in supplying gasoil to mega yachts in an area described by Panama as "international waters beyond the Territorial Sea of Italy, France and Spain" and by Italy as "off the coasts of France, Italy and Spain". In 1998, in the context of criminal proceedings, the Public Prosecutor at the Court of Savona, Italy, issued a Decree of Seizure against the *M/V "Norstar"* and requested the assistance of the Spanish authorities for its execution. The vessel was then seized by the Spanish authorities when it was anchored in the bay of Palma de Mallorca, Spain.

On 11 March 2016, Italy raised preliminary objections against the jurisdiction of the Tribunal and the admissibility of the Application. Pursuant to the Rules of the Tribunal, proceedings on the merits were suspended, submissions were filed and oral proceedings took place on the preliminary objections raised by Italy. On 4 November 2016, the Tribunal delivered its Judgment on the preliminary objections.

In support of its claim that the Tribunal had no jurisdiction, Italy invoked the "non-existence of a dispute concerning the interpretation or application of the Convention", the "lack of jurisdiction *ratione personae*" and "the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention". The Tribunal rejected these objections.

In addressing Italy's objection based on the non-existence of a dispute, the Tribunal examined the communications sent to Italy concerning the detention of the *M/V "Norstar"*. It noted that "Panama, as the flag State of the *M/V "Norstar"*,

contest[ed] the legality of the detention under the Convention.”¹ It also noted that, except for one response issued by Italy, “[a]ll other communications ... remained unanswered.”² The Tribunal then took the view that “the ... communications sent to Italy and the silence of Italy indicate that ... there is a disagreement between the Parties on points of law and fact”,³ and concluded that “a dispute existed between the Parties at the time of the filing of the Application.”⁴

Examining the question as to whether the dispute concerned the interpretation or application of the Convention, the Tribunal found that, among the articles of the Convention invoked by Panama in its Application, article 87 on the “Freedom of the high seas” and article 300 on “Good faith and abuse of rights” are relevant to the case.

With respect to Italy’s objection based on lack of jurisdiction *ratione personae*, the Tribunal found “that the dispute before it concerns the rights and obligations of Italy”⁵ and that, therefore, “Italy is the proper respondent to the claim made by Panama in these proceedings.”⁶

As regards Italy’s objection “based on the failure by Panama to fulfil its obligations regarding an exchange of views under article 283 of the Convention”,⁷ the Tribunal found that “Panama was justified in assuming that to continue attempts to exchange views could not have yielded a positive result and that it had thus fulfilled its obligation under article 283 of the Convention.”⁸

The Tribunal then turned to Italy’s objections to the admissibility of Panama’s Application. Those objections – which were also rejected by the Tribunal – were based on “the nationality of claims”, “the non-exhaustion of local remedies” as well as on “acquiescence, estoppel and extinctive prescription”. As regards the objection

¹ *M/V “Norstar” (Panama v. Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, to be published, para. 97.

² *Ibid.*, para. 98.

³ *Ibid.*, para. 102.

⁴ *Ibid.*, para. 103.

⁵ *Ibid.*, para. 167.

⁶ *Ibid.*, para. 168.

⁷ *Ibid.*, para. 219.

⁸ *Ibid.*, para. 217.

based on “the nationality of claims”,⁹ the Tribunal, relying on its previous jurisprudence, found that “*the M/V ‘Norstar’*, flying the flag of Panama, is to be considered a unit and therefore the *M/V ‘Norstar’*, its crew and cargo on board as well as its owner and every person involved or interested in its operations are to be treated as an entity linked to the flag State, irrespective of their nationalities.”¹⁰

With respect to the objection of Italy based on “the non-exhaustion of local remedies”,¹¹ the Tribunal noted that the right of Panama to enjoy freedom of navigation on the high seas is a right that belongs to Panama under article 87 of the Convention, and that a violation of that right would amount to a direct injury to that country.¹² It considered that “the claim for damage to the persons and entities with an interest in the ship or its cargo arises from the alleged injury to Panama” and concluded, “[a]ccordingly ... the claims in respect of such damage are not subject to the rule of exhaustion of local remedies.”¹³

Regarding acquiescence, the Tribunal held that “at no stage has the conduct of Panama given scope to infer that it has abandoned its claim or acquiesced in the lapse of its claim.”¹⁴

As to estoppel, the Tribunal considered that “the main elements of estoppel have not been fulfilled in this case”,¹⁵ and, with respect to extinctive prescription, it found that Panama has not failed to pursue its claim since the time when it first made it, so as to render the Application inadmissible.

Having rejected all of Italy's objections to the jurisdiction of the Tribunal and the admissibility of the Application, the Tribunal, in its Judgment, found that it has jurisdiction to adjudicate the dispute and decided that Panama's Application is admissible.

⁹ *Ibid.*, para. 232.

¹⁰ *Ibid.*, para. 231.

¹¹ *Ibid.*, para. 273.

¹² *Ibid.*, para. 270.

¹³ *Ibid.*, para. 271.

¹⁴ *Ibid.*, para. 304.

¹⁵ *Ibid.*, para. 307.

The Judgment of the Tribunal completes the preliminary objections stage of proceedings in the *M/V "Norstar" Case*. Proceedings on the merits have resumed and an Order was issued by the President of the Tribunal on 29 November 2016 to fix the time-limits for the filing of the Memorial of Panama and the Counter-Memorial of Italy.

Mr President,

Let me briefly recall that another case is currently on the Tribunal's docket; namely that concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean. This case is pending before a Special Chamber of the Tribunal formed to deal with this dispute. Oral proceedings in this case will be held in February 2017.

Those two cases, with their different subject-matter, are a good illustration of a development which the Tribunal has seen over the years, namely that its case law has not only increased but has also diversified. In fact, the Tribunal has received a number of cases dealing with a wide range of matters under the Convention. The scope of those cases covers maritime delimitation, requests for the release of detained vessels, claims for damages arising out of the alleged unlawful arrest of vessels, issues concerning responsibilities and liabilities of States in respect of deep seabed mining as well as illegal, unreported and unregulated fishing (IUU fishing).

Much progress has been achieved in this respect since the Tribunal's establishment in 1996. In particular, cases have in recent years been brought before the Tribunal, enabling it to broaden and deepen its jurisprudence from the viewpoint of both substantial and procedural law. Thus, the Tribunal has been able to further establish itself as a key player in the dispute-settlement system under the Convention and consolidate its position as the central forum for the peaceful settlement of disputes in the field of the law of the sea.

Mr President,

I also wish to take the opportunity to update you briefly on the Tribunal's training activities, namely the internship programme and the Nippon fellowship programme.

The Tribunal's internship programme is aimed at university students and about 15 internships of a duration of three months are available each year. Since the establishment of the programme in 1997, 326 interns from 94 States have benefitted from this opportunity.

I wish to highlight that the Tribunal's internship programme also offers scholarships to participants from developing countries in order to support them financially during their stay in Hamburg. For that purpose, the Tribunal has set up a trust fund. In the past, grants were made to this fund by the Korea Maritime Institute (KMI) and the China Institute of International Studies. In 2016, a further grant was made by KMI and I wish to express our sincere appreciation for its valued support.

The Nippon fellowship programme is a capacity-building and training programme designed to provide junior to mid-level government officials and researchers with advanced legal training in international dispute settlement in the law of the sea. This year, the participants come from Cameroon, Cambodia, the Democratic Republic of Congo, Portugal and Thailand. To sum up, since the establishment of the programme in 2007, 65 fellows from 54 States have participated in it. I should like to express my gratitude to the Nippon Foundation for its generous funding of the programme.

I should also like to take this opportunity to reiterate the concluding part of the statement I made at the ceremony marking the twentieth anniversary of the Tribunal: "Building on the experience of the last 20 years, the Tribunal stands ready to meet the challenges of the future. We, the Judges of the Tribunal, are ready to serve the international community and the States Parties to the Convention for the settlement of their disputes related to the implementation and application of the Convention."

Let me also express my appreciation to the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs for its continued cooperation and support for the Tribunal.

Mr President, I wish the General Assembly every success in its important deliberations at this session.

Thank you for your attention.