**THE INTEGRATED MARITIME POLICY AND THE MEDITERRANEAN**

**High-Level Mediterranean Conference organized by the European Commission, the Government of the Republic of Slovenia and the University Center for Euro-Mediterranean Studies**

**Piran, Slovenia, 10 June 2008**

**Intervention of Judge Tullio Treves**

**On behalf of the International Tribunal for the Law of the Sea**

Excellencies, Ladies and Gentlemen,

It it is an honor for me to participate in this High-Level Conference on behalf of the International Tribunal for the Law of the Sea and of its President, Judge Ruediger Wolfrum, who is presently engaged in New York and sends his best wishes to all of you.

The International Tribunal for the Law of the Sea wishes to express its gratitude for the invitation to participate in this event to the European Commission, to the Government of Slovenia that is now exercising the Presidency of the Council of the European Union, and to the newly established University Centre for Euro-Mediterranean Studies. The Tribunal sees in this invitation an acknowledgment of the role that, as a universally-based body entrusted with the function of custodian of the United Nations

Convention on the Law of the Sea, it can exercise in a regional framework such as that of the present Conference.

Most of the States here represented, as well as the European Community, are parties to the Law of the Sea Convention. Consequently, they are bound by the dispute-settlement system set out in the Convention, and, if certain conditions are satisfied, are submitted to the jurisdiction of the Law of the Sea Tribunal.

An efficient mechanism for the settlement of disputes is an essential instrument for the governance of the seas in all geographical frameworks: universal, regional, sub-regional as well as bilateral. While difficulties and tensions can in many cases be eased through negotiation and other peaceful means, the awareness that the relationships between States as regards law of the sea matters are regulated by international law, and that there are adjudicating bodies to which recourse can be had in order to clarify the content of the law and to apply it to specific disputes, is in itself an instrument inducing States to self-restraint and peaceful behaviour, in other words, is an instrument of good governance.

The UN Law of the Sea Convention contains such efficient mechanism for the settlement of disputes. It is a complex and articulated system, based on the principle of compulsory jurisdiction. In it the specialized judicial body I have the honor to represent today plays a very relevant part.

States Parties to the Convention (unless certain exceptions apply) are entitled to set in motion a judicial or arbitral procedure entailing a binding final decision, whenever they are involved in a dispute concerning the interpretation or application of the Law of the Sea Convention. This applies also as regards other international agreements concerning the law of the sea that provide for submission to the mechanism of the Law of the Sea Convention of the disputes relating to their interpretation and application. Various such agreements have in fact been concluded and some of them are already in force, in particular the 1995 UN Fish Stocks Agreement, to which are parties the European Community and its member States, as well as a number of other Mediterranean States.

The dispute-settlement mechanism of the Law of the Sea Convention and related agreements includes, of course, traditional State-to-State law of the sea disputes. Among others, it includes disputes concerning delimitation of maritime areas between neighbouring States, which, unless specific declarations to the contrary have been filed with the UN Secretary General, can be submitted unilaterally by one party to a court or tribunal. In order to facilitate the settlement of these disputes, the International Tribunal for the Law of the Sea has established in 2007 a specialized Chamber of eight members, to which States can, if they so agree, submit delimitation cases. Two other Chambers, concerning Fisheries and Marine environmental cases had been previously established for the same purpose.

Apart from the above mentioned traditional law of the sea cases, under the Law of the Sea Convention specific aspects and procedures are to be signalled that contribute to the good governance of the seas and oceans.

Firstly, provisional measures can be prescribed (with binding effect) not only to preserve the respective rights of the parties to a pending dispute, but also in order "to prevent serious harm to the marine environment", and, under the 1995 Fish Stocks Agreement, to "prevent damage to the stock in question".

Secondly, a special procedure before the Law of the Sea Tribunal has been introduced to obtain the prompt release of vessels and crews which have been detained for alleged fisheries or pollution offences. This procedure can be triggered not only by the flag State of the detained vessel but also "on behalf" of such State by the interested private party.

Both these procedures have been successfully utilized before the Law of the Sea Tribunal. In particular, in environment-related disputes, provisional measures have been so applied as to help parties to reach a final settlement of their dispute.

The Barcelona Convention and its related Protocols, as well as other instruments concerning Mediterranean cooperation do not contain provisions for an equivalent efficient system for the settlement of disputes. Even though this fact may be explained in light of political and historic considerations, it seems today, at least in my personal view, an anachronism, in light of the much more developed provisions of the Law of the Sea Convention to which most Mediterranean States (as well as the European Community) are parties. It must be underlined, however, that the Mediterranean instruments are not totally devoid of judicial protection.

In fact, there is a measure of overlap between these instruments and the Law of the Sea Convention. Thus, the judicial and arbitral bodies to which a dispute concerning the application and interpretation of the Convention has been submitted may have to take into account, or even to apply other rules of international law, including the Mediterranean ones, in force between the parties. Article 31, paragraph 3(c), of the Vienna Convention on the Law of Treaties is relevant in this context.

Moreover, as regards the States parties to the Barcelona Convention and Protocols, that are also members of the European Community, the rules set out in the Convention and Protocols to which the Community is a party, are considered as Community law. In light of this, they may be submitted, in case of an alleged violation, to the European Court of Justice. The case of the *Etang de Berre*, in which the European Commission invoked against France a violation of the Athens Protocol to the Barcelona Convention on land-based pollution seems a very pertinent example. Whether this possibility strengthens the Barcelona system or enhances the likelihood of its fragmentation may be debated.

In conclusion, the International Tribunal for the Law of the Sea stands at the disposal of the parties to the Law of the Sea Convention to help them – through its impartial, efficient and user-friendly mechanisms – to ensure, by settling disputes on the basis of the law, peaceful cooperation and good governance on the seas. The Tribunal does not only serve in case the conditions for compulsory jurisdiction, at the request of one party, are satisfied. It is also ready to settle disputes on the basis of the agreement of the parties, and, if conditions are met, to provide advisory opinions.