

Statement of acceptance of the ‘Award for Meritorious Contribution towards the Development, Interpretation and Implementation of International Maritime Law’, presented to the International Tribunal for the Law of the Sea, on the occasion of the 2008 Graduation Ceremony of the IMO International Maritime Law Institute, 3 May 2008

Secretary-General Mitropoulos, Excellencies, Professors, Graduates,
Distinguished guests, Ladies and Gentlemen,

On behalf of the International Tribunal for the Law of the Sea I would like to express my sincere gratitude to the IMO International Maritime Law Institute for presenting this prestigious award to the Tribunal for its contribution towards the development, interpretation and implementation of international maritime law.

I note with pleasure that the law of the sea has formed an integral part of the Masters programme whose graduates we are celebrating here today, and that one of the Tribunal’s judges, Judge Helmut Türk, has been one of the lecturers on the Masters course.

I wish to add my personal message of congratulations to the graduates of the 2008 Masters programme, to whom I wish the greatest success in implementing the knowledge gathered at the Institute over the past year in your future careers in the maritime sector. I hope to see them in Hamburg one day, in whatever capacity – as an intern, a legal counsel, or as a judge.

Allow me to say a few words about the Tribunal. Created by the United Nations Convention on the Law of the Sea as one of the central fora for the peaceful settlement of disputes relating to the law of the sea, the application and interpretation of the Convention and of any other agreement relating to the purposes of the Convention which confers jurisdiction upon it, in its first twelve years the Tribunal has been successful in helping States of both developed and

developing nations to reach a peaceful solution with respect to cases involving, *inter alia*, the freedom of navigation, prompt release of vessels and their crews, protection and preservation of the marine environment, the commissioning of a nuclear facility and the transshipment of radioactive materials, land reclamation activities, fisheries, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between vessels and their flag States.

Since the commencement of its activities, 15 cases have been submitted to the Tribunal. The majority of the cases dealt with so far have been confined to instances where the jurisdiction of the Tribunal is compulsory. In this respect, I refer to two specific proceedings: the prompt release of vessels and crews under article 292 of the Convention and the prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention.

Prompt release of vessels and crews under article 292 of the Convention

The Tribunal has been seized of applications for prompt release in nine cases so far. In six of these cases, the Tribunal ordered the release of the vessel or its crew upon the posting of a reasonable bond. In respect of these six cases, it can be fairly said that the Tribunal has developed a coherent jurisprudence in applying relevant factors for determining a reasonable bond and that the Tribunal has provided both coastal and flag States with clear and succinct guidelines as to the evaluation of a reasonable bond in cases of detention. It has, in case No. 15, further developed principles concerning the national enforcement procedure, including procedures leading to the confiscation of the vessel in question.

Prescription of provisional measures pending the constitution of an arbitral tribunal under article 290, paragraph 5, of the Convention

The second instance of compulsory jurisdiction I mentioned refers to the Tribunal's power, pursuant to article 290, paragraph 5, of the Convention, to prescribe provisional measures.

The procedure for the prescription of provisional measures under article 290, paragraph 5, of the Convention has already been invoked in four cases dealing with the protection of the marine environment: the *Southern Bluefin Tuna Cases*, the *MOX Plant Case*, and the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*.

Perhaps I could briefly mention two of these cases: in the *MOX Plant Case*, the Tribunal was faced with a dispute between Ireland and the United Kingdom regarding the potentially harmful impact on the marine environment of the extension of a nuclear plant and the transshipment of nuclear material thereto. In its Order of 3 December 2001, the Tribunal emphasized the parties' duty to cooperate in the protection and preservation of the marine environment. It also stressed the importance of procedural rights in environmental matters, such as the requirement that the parties exchange information concerning the risks or effects of performing the activities concerned.

The *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, relating to a dispute between Malaysia and Singapore, addressed the impact of land reclamation activities carried out by Singapore on the marine environment and on access to Malaysia's ports. The Tribunal, in its Order of 8 October 2003, once again stressed the importance for the protection of the marine environment of cooperation between the parties as well as the need to establish mechanisms for exchanging information. It also requested the parties to set up a joint group of independent experts to conduct a study to

determine the potential effects of the land reclamation activities on the marine environment.

These cases have undoubtedly enabled the Tribunal to play a role in the development of international environmental law, in particular, by stressing the duty of cooperation, the notion of prudence and caution and the importance of procedural rights as essential components of environmental obligations. It should also be noted that in each of its orders for provisional measures the Tribunal has adopted a practical approach and prescribed measures which in its view would assist the parties in finding a solution.

To date the Tribunal has decided upon one case on the merits, the *M/V "SAIGA" (No. 2) Case*, concerning the dispute between Saint Vincent and the Grenadines and Guinea relating to the arrest and detention of the vessel *Saiga*.

The Tribunal has been welcomed by the parties to cases as user-friendly and the decisions rendered have often been praised by the international community as offering pragmatic solutions to parties to disputes while avoiding a doctrinal approach. The decisions have not only enabled parties to resolve their disputes but have also contributed to the development of international law in general. The very decision to bestow this esteemed award on the Tribunal for its development, interpretation and implementation of international maritime law bears testimony to this.

Twenty-six years after the adoption of the Convention and twelve years after the inauguration of the Tribunal, the significance of the law of the sea is ever greater, with threats to the oceans ranging from the over-exploitation of marine resources, pollution of the marine environment, piracy and armed robbery at sea, to disputed maritime boundaries. New economic and scientific uses of the seas are also on the increase, raising new legal questions which the Tribunal is

well-placed to answer with its expertise and state-of-the-art facilities. Use of the Tribunal by States, international organizations or private entities for contentious or advisory proceedings can only serve to enhance the harmonized implementation of the Convention and other agreements relating thereto and help reinforce coherence in international law. Given that the Tribunal has established itself as an active and effective body in deciding law of the sea disputes it is an opportune moment for States to consider the choices open to them in the matter of dispute settlement mechanisms.

Thank you.