Contribution to the report of the Secretary-General on oceans and the law of the sea

Judicial work

1. The International Tribunal for the Law of the Sea ("the Tribunal") delivered its advisory opinion in the *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), (Request for Advisory Opinion submitted to the Tribunal)* (Case No. 21) on 2 April 2015. On 25 April 2015, the Special Chamber of the Tribunal formed to deal with the *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* (Case No. 23) issued an order prescribing provisional measures further to a request submitted by *Côte d'Ivoire* on the basis of article 290, paragraph 1, of the Convention.

2. *Case No. 21*. In its Request for an advisory opinion, the Sub-Regional Fisheries Commission ("the SRFC") had submitted, to the Tribunal the following four questions : (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? In its advisory opinion, the Tribunal found that it had jurisdiction to entertain the Request submitted to it by the SRFC and that its jurisdiction in the case before it was limited to the exclusive economic zones of the SRFC Member States. In response to the first question, the Tribunal found that a flag State is under an obligation to ensure that vessels flying its flag are not engaged in IUU fishing activities within the exclusive economic zones of the SRFC Member States. It is obliged to take necessary measures, including enforcement measures, to ensure compliance by vessels flying its flag with the laws and regulations enacted by the SRFC Member States concerning marine living resources within their exclusive economic zones for purposes of conservation and management of these resources. The flag State is further obliged to adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities in the exclusive economic zones of the SRFC Member States which undermine the flag State's responsibility under article 192 of the United Nations Convention for the Law of the Sea (" the Convention") for protecting and preserving the marine environment and conserving the marine living resources which are an integral element of the marine environment. The Tribunal qualified these obligations as obligations of "due diligence". In response to the second question, the Tribunal found that the SRFC Member States may hold liable the flag State of a vessel conducting IUU fishing activities in their exclusive economic zones for a breach, attributable to the flag State, of its international obligations, referred to in the reply to the first question. The liability of the flag State does not arise from a failure of vessels flying its flag to comply with the laws and regulations of the SRFC Member States concerning IUU fishing activities, as the violation of such laws and regulations by vessels is not *per se* attributable to the flag State. The liability of the flag State arises from its failure to comply with its "due diligence" obligations concerning IUU fishing activities conducted

by vessels flying its flag. The flag State is not liable if it has taken all necessary and appropriate measures to meet its “due diligence” obligations. In response to the third question, the Tribunal found that, in cases where an international organization, in the exercise of its exclusive competence in fisheries matters, concludes a fisheries access agreement with an SRFC Member State, which provides for access by vessels flying the flag of its member States to fish in the exclusive economic zone of that State, the obligations of the flag State become the obligations of the international organization. In the case before it, the Tribunal observed that such international organization was the European Union. According to the Tribunal, only the international organization may be held liable for any breach of its obligations arising from the fisheries access agreement, and not its member States. Therefore, if the international organization does not meet its “due diligence” obligations, the SFRC Member States may hold the international organization liable for the violation of their fisheries laws and regulations by a vessel flying the flag of a member State of that organization and fishing in the exclusive economic zones of the SRFC Member States within the framework of a fisheries access agreement between that organization and such Member States. In response to the fourth question, the Tribunal identified a number of obligations of the SRFC Member States in ensuring the sustainable management of shared stocks. Concerning shared stocks occurring in the exclusive economic zones of the SRFC Member States, these obligations include the obligation to cooperate with the competent international to ensure that the maintenance of those stocks is not endangered by overexploitation, as well as the obligation to seek to agree upon the measures necessary to coordinate and ensure the conservation and development of such shared stocks. In relation to tuna species, the Tribunal referred to the obligation of the SRFC Member States to cooperate directly or through the SRFC with a view to ensuring conservation and promoting the objective of optimum utilization of such species in their exclusive economic zones.

3. *Case No. 23*. The case relates to the dispute between Ghana and Côte d'Ivoire concerning the delimitation of their maritime boundary. It was submitted to a special chamber of the Tribunal by notification of a special agreement concluded between the Parties on 3 December 2014. At the request of the Parties, the Tribunal, by Order of 12 January 2015, formed a Special Chamber under article 15, paragraph 2, of the Statute and, with the approval of the Parties, determined its composition as follows: Judge Bouguetaia (President), Judges Wolfrum and Paik, Judges ad hoc Mensah and Abraham. On 27 February 2015, Côte d’Ivoire filed with the Special Chamber a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention. In its Request, Côte d’Ivoire asked the Chamber to prescribe that Ghana, *inter alia*, “take all steps to suspend all ongoing oil exploration and exploitation operations in the disputed area”. In its written statement of 23 March 2015, Ghana asked the Special Chamber to deny Côte d’Ivoire’s requests. In its Order of 25 April 2015, having determined that it has *prima facie* jurisdiction over the dispute, the Special Chamber found that Côte d’Ivoire had presented enough material to show that the rights it sought to protect in the disputed area were plausible but that it had not adduced sufficient evidence to support its allegations that the activities conducted by Ghana in the disputed area are such as to create an imminent risk of serious harm to the marine environment. The Special Chamber further considered that there is a risk of irreparable prejudice where, in particular, activities result in significant and permanent modification of the physical character of the area in dispute and where such modification cannot be fully compensated by financial reparations and that any compensation awarded would never be able to restore the *status quo ante* in respect of the seabed and subsoil. The Chamber therefore considered that the exploration and exploitation activities, as planned by Ghana, might cause irreparable prejudice to the sovereign and

exclusive rights invoked by Côte d'Ivoire in the continental shelf and superjacent waters of the disputed area, before a decision on the merits is given by the Special Chamber, and that the risk of such prejudice was imminent. It considered however that an order suspending all exploration or exploitation activities conducted by or on behalf of Ghana in the disputed area, including activities in respect of which drilling had already taken place, would cause prejudice to the rights claimed by Ghana, would create an undue burden on that State and could also cause harm to the marine environment. The Special Chamber found it appropriate, in order to preserve the rights of Côte d'Ivoire, to order Ghana to take all the necessary steps to ensure that no new drilling either by Ghana or under its control takes place in the disputed area. It also ordered Ghana to take all necessary steps to prevent information resulting from past, ongoing or future exploration activities conducted by Ghana, or with its authorization, in the disputed area, that is not already in the public domain, from being used in any way whatsoever to the detriment of Côte d'Ivoire. The Special Chamber further decided that Ghana must carry out strict and continuous monitoring of all activities undertaken by Ghana or with its authorization in the disputed area with a view to ensuring the prevention of serious harm to the marine environment and that the Parties must take all necessary steps to prevent serious harm to the marine environment, including the continental shelf and its superjacent waters, in the disputed area and shall cooperate to that end. The Parties are also obliged to pursue cooperation and refrain from any unilateral action that might lead to aggravating the dispute.

Organization of the Tribunal

4. On 1 October 2014, the Tribunal elected Judge Vladimir Golitsyn (Russian Federation) as its President and Judge Boualem Bouguetaia (Algeria) as its Vice-President, for the triennial period 2014-2017 commencing 1 October 2014. Judge Vicente Marotta Rangel tendered his resignation as a Member of the Tribunal by a letter received by the President of the Tribunal on 18 May 2015. In accordance with article 5, paragraph 4, of the Statute of the Tribunal, in the case of the resignation of a member of the Tribunal, the place becomes vacant on the receipt of the letter.

Capacity-building

5. Since 1997, an internship programme is available at the Tribunal for young government officials or students of law, international relations, public relations, political science, library science and translation. Since 2007, with the support of the Nippon Foundation, the Tribunal organizes a capacity-building and training programme on dispute settlement under the Convention. The Tribunal has also organized a series of workshops on the settlement of disputes related to the law of the sea in different regions of the world. The purpose of these workshops is to provide government experts working on maritime and law of the sea matters with insight into the procedures for the settlement of disputes contained in Part XV of the Convention, with special emphasis on the jurisdiction of the Tribunal and the procedural rules applicable to cases before the Tribunal. On 8 August 2014, the Tribunal organized a regional workshop in Kenya in cooperation with the Government of Kenya and Korea Maritime Institute (KMI). Representatives of seven States from the region participated in the workshop.