

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

1. The International Tribunal for the Law of the Sea delivered its judgment in the *M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)*, (Case No. 18) on 28 May 2013 and issued its order in the *"ARA Libertad" Case (Argentina v. Ghana), Provisional Measures*, (Case No. 20) on 15 December 2012. Two further cases remain pending before the Tribunal: the *M/V "Virginia G" Case (Panama/Guinea-Bissau)* (Case No. 19); and *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), (Request for Advisory Opinion submitted to the Tribunal)* (Case No. 21).

2. *Case No.18.* The case concerned the M/V "Louisa", a vessel flying the flag of Saint Vincent and the Grenadines, which was boarded, searched and detained by Spanish authorities on 1 February 2006. Saint Vincent and the Grenadines maintained that the M/V "Louisa" was engaged in conducting surveys of the sea floor with a view to locating oil and gas deposits. According to the Spanish authorities, the vessel was seized in connection with criminal proceedings instituted in respect of the commission of "the crime of possession and depositing weapons of war ... together with the continued crime of damaging Spanish historical patrimony". Four persons were arrested and detained in Spain for different periods in connection with these criminal proceedings.

In its judgment, the Tribunal distinguished two aspects of the case before it: one involving the detention of the vessel M/V "Louisa" and the persons connected therewith and the other concerning the treatment of these persons. The first aspect related to the claim originally submitted by Saint Vincent and the Grenadines on the basis of articles 73 (Enforcement of laws and regulations of the coastal State), 87 (Freedom of the high seas), 226 (Investigation of foreign vessels), 227 (Non-discrimination with respect to foreign vessels) and 303 (Archaeological and historical objects found at sea) of the United Nations Convention on the Law of the Sea. In this regard, the Tribunal was of the view that articles 73, 87, 226, 227 and 303 of the Convention could not serve as a basis for the claims submitted by Saint Vincent and the Grenadines in respect of the detention of the M/V "Louisa" and its crew. The second aspect was introduced by Saint Vincent and the Grenadines on the basis of article 300 of the Convention only after the closure of the written proceedings. With respect to the applicability of article 300 of the Convention in the case, the Tribunal considered that this reliance on article 300 of the Convention had generated a new claim in comparison to the claims presented in the Application submitted by Saint Vincent and the Grenadines. Observing that it is a legal requirement that any new claim to be admitted must arise directly out of the application or be implicit in it, the Tribunal held that it could not allow a dispute brought before it by an application to be transformed in the course of proceedings into another dispute which is different in character, and that article 300 of the Convention could not serve as a basis for the claims submitted by Saint Vincent and the Grenadines. For these reasons, the Tribunal found that no dispute concerning the interpretation or application

of the Convention had existed between the Parties at the time of the filing of the Application in November 2010 and that, therefore, it had no jurisdiction *ratione materiae* to entertain the case before it.

3. *Case No. 20.* On 30 October 2012, Argentina sent to Ghana a notification instituting arbitral proceedings in a dispute between them concerning the detention in the port of Tema (Ghana) of the frigate “ARA Libertad”, a ship of the Argentine Navy. In the said notification, Argentina requested Ghana, as a provisional measure, to release the ship from detention. On 14 November 2012, pending the constitution of the arbitral tribunal, Argentina instituted provisional measures proceedings before the International Tribunal for the Law of the Sea, pursuant to article 290, paragraph 5, of the United Nations Convention on the Law of the Sea. As a provisional measure, Argentina requested the Tribunal to order Ghana to enable the Argentine warship Frigate ARA Libertad to leave the Tema port and the jurisdictional waters of Ghana. The Tribunal delivered its Order on 15 December 2012. In its Order, the Tribunal observed that, “*in accordance with general international law, a warship enjoys immunity*” (paragraph 95) and that “*any act which prevents by force a warship from discharging its mission and duties is a source of conflict that may endanger friendly relations among States*” (paragraph 97). It then concluded that “*under the circumstances of the present case, pursuant to article 290, paragraph 5, of the Convention, the urgency of the situation requires the prescription by the Tribunal of provisional measures and prescribed, as a provisional measure, that Ghana should forthwith and unconditionally release the frigate ARA Libertad.*”

4. *Case No. 19.* On 4 July 2011, proceedings were instituted between Panama and Guinea-Bissau in a dispute regarding a compensation claim for damage resulting from the arrest of the vessel *Virginia G* flying the flag of Panama. Written proceedings have been completed in this case. Oral proceedings are scheduled to begin on 2 September 2013.

5. *Case No. 21.* On 28 March 2013, the International Tribunal for the Law of the Sea received a request from the Sub-Regional Fisheries Commission (SRFC) to render an Advisory Opinion on questions relating to Illegal, unreported and unregulated (IUU) fishing activities. The SRFC is located in Dakar, Senegal and comprises seven member states: Cape Verde, the Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone. In an Order issued on 24 May 2013, the Tribunal decided that the SRFC and several other intergovernmental organizations were likely to be able to furnish information on the questions submitted to the Tribunal and invited them as well as the States Parties to the United Nations Convention on the Law of the Sea to present written statements by 29 November 2013.