

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

Judicial work

1. In *The M/V “Norstar” Case (Panama v. Italy)* (Case No. 25), the International Tribunal for the Law of the Sea (“the Tribunal”) delivered its Judgment on 10 April 2019. In the *Case concerning the detention of three Ukrainian naval vessels (Ukraine v. Russian Federation), Provisional Measures*, the Tribunal delivered its Order on provisional measures on 25 May 2019. In *The M/T “San Padre Pio” Case (Switzerland v. Nigeria), Provisional Measures*, the Tribunal delivered its Order on provisional measures on 6 July 2019. In the *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)* (Case No. 28), the Tribunal adopted an order on 27 September 2019 constituting a special chamber of nine judges to hear the case, in accordance with the request of the Parties. On 10 October 2019, the President of the Special Chamber adopted an order fixing the time-limits for the filing of a memorial and counter-memorial. On 19 December 2019, the President of the Special Chamber adopted an order establishing the time-limits for written observations of both parties regarding preliminary objections. In *The M/T “San Padre Pio” (No. 2) Case (Switzerland/Nigeria)* (Case No. 29), the Tribunal adopted an Order on 7 January 2020, fixing the time-limits for the filing of a memorial and counter-memorial by the parties. As of 17 April 2020, Cases No. 28 and 29 are pending before the Tribunal.

2. *Case No. 25. The M/V “Norstar” Case (Panama v. Italy)* was submitted to the Tribunal by an application filed by Panama on 17 December 2015 on the basis of declarations made by Panama and Italy under article 287 of the United Nations Convention on the Law of the Sea (“the Convention”). In its application, Panama claimed compensation from Italy for damage caused by the allegedly illegal arrest of the *M/V “Norstar”*, a Panamanian-flagged vessel, by Spanish officials, at the request of Italy, in the bay of Palma de Mallorca on 24 September 1998. On 11 March 2016, Italy filed preliminary objections to the jurisdiction of the Tribunal and the admissibility of Panama’s application in this case. The Tribunal delivered its Judgment on the preliminary objections on 4 November 2016, rejecting the objections of Italy. Proceedings on the merits of the case then resumed. In its Judgment (on the merits) of 10 April 2019, the Tribunal determined that the decree of seizure issued by Italy in respect of the *M/V “Norstar”*, and its execution, concerned “both alleged crimes committed in the territory of Italy and bunkering activities conducted by the *M/V “Norstar”* on the high seas.” In respect of the bunkering activities of the *M/V “Norstar”* on the high seas, the Tribunal found that they constituted “not only an integral part, but also a central element, of the activities targeted by the Decree of Seizure and its execution.” The Tribunal underlined that “the principle of exclusive flag State jurisdiction is an inherent component of the freedom of navigation under article 87 of the Convention” and held that this principle “prohibits not only the exercise of enforcement jurisdiction on the high seas by States other than the flag State but also the extension of their prescriptive jurisdiction to lawful activities conducted by foreign ships on the high seas.” Noting that the place where enforcement takes place is not the sole criterion in determining the applicability of article 87 to a given situation, the Tribunal determined that article 87, paragraph 1, of the Convention was applicable to the case of the *M/V “Norstar”*, and that Italy, by extending its criminal and customs laws to the high seas, by issuing a decree of seizure, and by requesting the Spanish authorities to execute it, breached the freedom of navigation which Panama, as the flag State of the *M/V “Norstar”*, enjoyed under that provision. The Tribunal awarded Panama compensation for the loss of the *M/V “Norstar”*. The Tribunal further concluded that Italy did not violate article 300 of the Convention.

3. *Case No. 26.* On 16 April 2019, Ukraine submitted a request to the Tribunal for the prescription of provisional measures in respect of a dispute with the Russian Federation concerning “the immunity of three Ukrainian naval vessels and the twenty-four servicemen on board”. The Request was made pursuant to article 290, paragraph 5, of the Convention, pending the constitution of an arbitral tribunal. On 31 March 2019, Ukraine had instituted arbitral proceedings under Annex VII to the Convention against the Russian Federation. The dispute relates to an incident on 25 November 2018, in which three Ukrainian naval vessels and their 24 servicemen were arrested and detained by authorities of the Russian Federation. Ukraine requested the Tribunal to indicate provisional measures requiring the Russian Federation to promptly release the three Ukrainian naval vessels and return them to the custody of Ukraine, to suspend criminal proceedings against the 24 detained Ukrainian servicemen and refrain from initiating new proceedings, and to release the 24 detained Ukrainian servicemen and allow them to return to Ukraine. By note verbale dated 30 April 2019, the Russian Federation informed the Tribunal “of its decision not to participate in the hearing on provisional measures in the case instituted by Ukraine”. Public hearings were held on 10 May 2019. In its Order on provisional measures of 25 May 2019, the Tribunal took the view that “what occurred appears to be the use of force in the context of a law enforcement operation rather than a military operation” and thus held that *prima facie* the exception set out in article 298, paragraph 1(b), of the Convention, which relates to military activities, did not apply and that the Annex VII arbitral tribunal would have jurisdiction over the dispute submitted to it. The Tribunal considered that “the rights claimed by Ukraine on the basis of articles 32, 58, 95 and 96 of the Convention are plausible under the circumstances.” Pending a decision by the Annex VII arbitral tribunal, the Tribunal ordered that the Russian Federation should immediately release the three Ukrainian naval vessels, and return them to the custody of Ukraine and immediately release the 24 detained Ukrainian servicemen and allow them to return to Ukraine. The Tribunal did not consider it necessary to require the Russian Federation to suspend criminal proceedings against the 24 detained Ukrainian servicemen and refrain from initiating new proceedings. However, Ukraine and the Russian Federation were ordered to refrain from taking any action which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal.

4. *Case No. 27.* On 21 May 2019, Switzerland submitted a request to the Tribunal for the prescription of provisional measures in respect of a dispute with Nigeria concerning the arrest and detention of the *M/T “San Padre Pio”*, its crew and cargo. The Request was made pursuant to article 290, paragraph 5, of the Convention, pending the constitution of an arbitral tribunal. On 6 May 2019, Switzerland had instituted arbitral proceedings against Nigeria under Annex VII to the Convention. The dispute relates to events which occurred on 22-23 January 2018, including the interception and arrest by the Nigerian navy of the *M/T “San Padre Pio”*, a motor tanker flying the flag of Switzerland, while it was “engaged in one of several ship-to-ship (‘STS’) transfers of gasoil.” In its Request, Switzerland asked the Tribunal to order Nigeria to immediately take all measures necessary to ensure that all restrictions on the liberty, security and movement of the “*M/T “San Padre Pio”* her crew and cargo are immediately lifted to allow and enable them to leave Nigeria. In particular, Switzerland requested that Nigeria shall: (a) enable the “*M/T “San Padre Pio”*” to be resupplied and crewed so as to be able to leave, with her cargo, her place of detention and the maritime areas under the jurisdiction of Nigeria and exercise the freedom of navigation; (b) release the Master and the three other officers of the “*San Padre Pio*” and allow them to leave the territory and maritime areas under the jurisdiction of Nigeria; and (c) to suspend all court and administrative proceedings and refrain from initiating new ones which might aggravate or extend the dispute submitted to the Annex VII arbitral tribunal. In its Order, the Tribunal considered that at least some of the provisions invoked by Switzerland appeared “to afford a basis on which the jurisdiction of the Annex VII arbitral tribunal might be founded” and accordingly concluded “that a dispute concerning the interpretation or application of the Convention *prima facie* appears to have existed on the date of the institution of the arbitral proceedings.” The Tribunal considered that, under the circumstances of the present case, the arrest and detention of the *M/T “San Padre*

Pio “could irreparably prejudice the rights claimed by Switzerland relating to the freedom of navigation and the exercise of exclusive jurisdiction over the vessel as its flag State if the Annex VII arbitral tribunal adjudges that those rights belong to Switzerland” and that “there is a real and imminent risk of irreparable prejudice to the rights of Switzerland pending the constitution and functioning of the Annex VII arbitral tribunal”. The Tribunal ordered Nigeria to release the *M/T “San Padre Pio”*, its cargo and crew and ensure that the *M/T “San Padre Pio”* its cargo and crew were allowed to leave the territory of Nigeria upon the posting by Switzerland of financial security in the amount of US\$ 14 million with Nigeria and the issuance of an undertaking by Switzerland that the crew would be available and present at the criminal proceedings in Nigeria if the Annex VII arbitral tribunal found that Nigeria’s actions in relation to the event which occurred on 22-23 January 2018 did not constitute a violation of the Convention.

5. *Case No. 28.* The case relates to the dispute between Mauritius and Maldives concerning the delimitation of their maritime boundary in the Indian Ocean. It was submitted to a special chamber of the Tribunal by notification of a special agreement concluded between the Parties on 24 September 2019. At the request of the Parties, the Tribunal, by Order of 27 September 2019, formed the Special Chamber under article 15, paragraph 2, of the Statute. By Order dated 10 October 2019, the President of the Special Chamber fixed 9 April 2020 and 9 October 2020 as the time-limits for the filing of a Memorial by Mauritius and a Counter-Memorial by Maldives, respectively. On 18 December 2019, Maldives filed with the Special Chamber preliminary objections to the jurisdiction of the Special Chamber of the Tribunal and to the admissibility of the claims submitted by the Republic of Mauritius. Pursuant to article 97 of the Rules of the Tribunal, the proceedings on the merits were suspended upon receipt of the preliminary objections by the Registry. By Order of 19 December 2019, the President of the Special Chamber fixed 17 February 2020 as the time-limit for the filing by Mauritius of written observations on the preliminary objections filed by Maldives, and 17 April 2020 as the time-limit for Maldives to present its written observations in reply, pursuant to article 97, paragraph 3, of the Rules.

6. *Case No. 29.* The case relates to the dispute between Switzerland and Nigeria concerning the arrest and detention of the *M/T “San Padre Pio”*, its crew and cargo. The *M/T “San Padre Pio”* is a motor tanker flying the flag of Switzerland, which was arrested by Nigerian authorities while it was allegedly engaged in ship-to-ship transfers of gasoil in Nigeria’s exclusive economic zone. Switzerland had previously instituted arbitral proceedings against Nigeria under Annex VII to the Convention in relation to the arrest and detention of the *M/T “San Padre Pio”*, its crew and cargo. The case was submitted to the Tribunal by notification of a special agreement concluded between the Parties on 17 December 2019. By Order dated 7 January 2020, the President of the Tribunal fixed 6 July 2020 and 9 October 2020 as the time-limits for the filing of a Memorial by Switzerland and a Counter-Memorial by Nigeria, respectively.

Organization of the Tribunal

7. On 3 June 2019, Mr Philippe Gautier submitted his resignation as Registrar of the Tribunal, effective 31 July 2019. On 11 June 2019, a vacancy announcement for the position of Registrar was published and on 19 September 2019, interviews by a panel of judges with nominated candidates took place. On 20 September 2019, the Members of the Tribunal elected Ms Ximena Hinrichs Oyarce (Chile) Registrar of the Tribunal for a term of five years. Prior to her election as Registrar, Ms Hinrichs Oyarce served as Deputy Registrar of the Tribunal. A vacancy announcement for the post of Deputy Registrar was published on 14 October 2019.

Capacity-building

8. Since 1997, the Tribunal has run an internship programme 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 has organized 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 13 and 14 November 2019, the Tribunal organized a regional workshop in Montevideo (Uruguay) in cooperation with the Government of Uruguay and with the financial support of the Korean Maritime Institute. The subject of the workshop was “The role of the International Tribunal for the Law of the Sea in the settlement of disputes related to the law of the sea”. The workshop was attended by representatives of ten States from the region.