

## **Report on Oceans and the Law of the Sea: Relevant activities of the Tribunal in 2002**

### **I. Judicial work of the Tribunal in 2002**

During 2002, the “*Volga*” Case (*Russian Federation v. Australia*), *Prompt Release*, was submitted to the Tribunal. The *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, which was submitted to a special chamber of the Tribunal in 2000, is still pending. Proceedings in the case were postponed in 2001.

#### **A. Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)**

Following an agreement between Chile and the European Community, the Tribunal, by Order dated 20 December 2000, formed a Special Chamber to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean, and made provision in respect of preliminary objections and for the filing of the written pleadings in this case.

By separate letters dated 9 March 2001, the parties informed the President of the Special Chamber that they had reached a provisional arrangement concerning the dispute and requested that the proceedings before the Chamber be suspended. In their letters, each party reserved its right to revive the proceedings at any time. Further to the request of the parties, the President of the Special Chamber, by Order dated 15 March 2001, extended the time-limit for making preliminary objections. Under the Order, the time-limit of 90 days for the making of preliminary objections would commence from 1 January 2004 and each party would have the right to request that the time-limit should begin to apply from any date prior to 1 January 2004.

#### **B. The “*Volga*” Case (*Russian Federation v. Australia*)**

On 2 December 2002, an Application under article 292 of the United Nations Convention on the Law of the Sea was filed by the Russian Federation against Australia for the release of the vessel *Volga* and three members of its crew. Australia filed its Statement in Response with the Registry on 7 December 2002. The hearing was held on 12 and 13 December 2002.

The *Volga* is a long-line fishing vessel flying the flag of the Russian Federation with a fishing license provided by it. On 7 February 2002, the *Volga* was arrested by Australian military personnel beyond the limits of the exclusive economic zone of the Australian territory of Heard Island and the McDonald

Islands for alleged illegal fishing in the Australian fishing zone. Australian authorities seized the vessel including the catch, nets and equipment. Three members of the crew were charged with criminal offences and were admitted to bail on certain conditions.

The Russian Federation submitted that the bond sought by Australia imposed conditions for the release of the vessel and the three members of the crew which were neither permissible nor reasonable under article 73, paragraph 2, of the Convention. Australia maintained that the bond sought by the Australian authorities was reasonable and requested the Tribunal to reject the application made by the Russian Federation.

On 23 December 2002, the Tribunal delivered its judgment. The Tribunal unanimously found that it had jurisdiction to entertain the application made by the Russian Federation, and that the application, with respect to the allegation of non-compliance with article 73, paragraph 2, of the Convention, was admissible.

Dealing with the Applicant's allegation that the Respondent had not complied with article 73, paragraph 2, of the Convention concerning the release of the vessel and its three crew members, the Tribunal referred to the "Camouco" Case where it had indicated factors relevant in an assessment of the reasonableness of bonds or other financial security ("They include the gravity of the alleged offences, the penalties imposed or imposable under laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of bond imposed by the detaining State and its form", Judgment of 7 February 2000, paragraph 67). It also confirmed the statement made in the "Monte Confurco" Case according to which "[t]his is by no means a complete list of factors, Nor does the Tribunal intend to lay down rigid rules as to the exact weight to be attached to each of them" (Judgment of 18 December 2000, paragraph 67). The Tribunal then proceeded to deal with the application of the various factors in the Case.

The Tribunal took note of the concern of the Respondent with regard to the depletion of stocks of Patagonian Toothfish in the Southern Ocean. It "understands the international concerns about illegal, unregulated and unreported fishing and appreciates the objectives behind the measures taken by States, including the States Parties to CCAMLR, to deal with the problem". The Tribunal, however, emphasized that, in prompt release proceedings, it is called upon to decide if the bond set was reasonable in terms of article 292 of the Convention. It added that the penalties provided by the law of Australia in respect of the alleged offences indicate that these offences are considered to be grave under Australian law.

The Tribunal noted that, according to the laws of Australia, the maximum total of fines imposable on the three officers of the *Volga* is AU\$ 1,100,000 and that the vessel, its equipment and fish on board are liable to forfeiture. It took the view that the amount of AU\$ 1,920,000 sought by the Respondent for the release of the vessel, which represents the full value of the vessel, fuel, lubricants and

fishing equipment and is not in dispute between the parties, is reasonable in terms of article 292 of the Convention.

With respect to the three crew members, the Tribunal noted that, according to information it received from the parties during its deliberations, the Full Court of the Supreme Court of Western Australia upheld the appeal of the three officers of the *Volga* on 16 December 2002 and ordered that they be permitted to leave Australia upon the amount of bail already posted, and was informed that the officers left Australia on 20 December 2002. The Tribunal therefore considered that setting a bond in respect of the three officers no longer served any practical purpose.

The Tribunal observed that, besides requiring a bond, Australia has made the release of the vessel conditional upon the fulfilment of two conditions: that the vessel carry a VMS (vessel monitoring system) and that information concerning particulars about the owner and ultimate beneficial owners of the ship be submitted to its authorities. The Tribunal considered that these non-financial conditions could not be considered as components of the bond or other financial security for the purposes of article 292 of the Convention.

The Tribunal also stated that the circumstances of the seizure of the *Volga* were not relevant to the proceedings for prompt release under article 292 and therefore could not be taken into account in the assessment of the reasonableness of the bond.

With regard to the proceeds of the catch found on board the *Volga* at the time of arrest, the Tribunal declared that, although the proceeds represent a guarantee to the Respondent, they have no relevance to the bond to be set for the release of the vessel in this case.

The Tribunal concluded that the bond as sought by Australia was not reasonable within the meaning of article 292 of the Convention and that the allegation made by the Applicant was well-founded. Consequently, it ordered that Australia must promptly release the *Volga* upon the posting of a bond or other financial security to be determined by the Tribunal.

The Tribunal determined, by 19 votes to 2, that the bond or other security for the release of the vessel shall be of AU\$ 1,920,000 to be posted with Australia. The Tribunal determined unanimously that the bond shall be in the form of a bank guarantee from a bank present in Australia or having corresponding arrangements with an Australian bank or, if agreed to by the parties, in any other form. It further decided that each party should bear its own costs.

## **II. Organizational matters**

## **A. Election of the President and Vice-President**

On 1 October 2002, the Tribunal elected Judge Dolliver Nelson President of the Tribunal. The President entered upon his functions forthwith. On 2 October 2002, Judge Budislav Vukas was elected Vice-President. As provided for in article 12 of the Statute, the President and the Vice-President are both elected for a term of three years.

## **B. Chambers**

### **1. Seabed Disputes Chamber**

The Seabed Disputes Chamber is established in accordance with Part XI, section 5, of the Convention and article 14 of the Statute. The Seabed Disputes Chamber deals with disputes arising out of, and has exclusive jurisdiction over disputes relating to, the exploration and exploitation of the International Seabed Area. In accordance with article 35, paragraph 1, of the Statute, the Seabed Disputes Chamber consists of 11 judges selected by the members of the Tribunal from among themselves. The members of the Chamber are selected triennially.

Pursuant to articles 35 of the Statute and 23 of the Rules, the terms of office of members of the Chamber expired on 30 September 2002. On 2 October 2002, the Tribunal selected new members of the Seabed Disputes Chamber. As required by the Statute, the judges of the Chamber were selected in such a manner as to ensure the representation of the principal legal systems of the world and equitable geographical distribution. The members of the Chamber entered upon their duties forthwith and elected Judge Marsit as President of the Chamber. The composition of the Chamber, in order of precedence, is as follows: Judge Marsit, President; Judges Caminos, Yankov, Chandrasekhara Rao, Park, Mensah, Anderson, Jesus, Xu, Ballah and Cot, members.

The terms of office of the members of the Chamber expire on 30 September 2005.

### **2. Special Chambers**

#### **(a) Chamber of Summary Procedure**

The Chamber of Summary Procedure, established in accordance with article 15, paragraph 3, of the Statute, may hear and determine a case by summary procedure if the parties so request. The Chamber consists of five members and two alternates. In accordance with article 28 of the Rules, the President and the Vice-President of the Tribunal are *ex officio* members of the Chamber, with the President of the Tribunal serving as President of the Chamber. The Chamber is constituted annually.

On 2 October 2002, the Chamber was constituted for the period ending on 30 September 2003. The members of the Chamber, in order of precedence, are as follows: President Nelson; Vice-President Vukas; Judges Akl, Marsit and Cot, members; Judges Jesus and Ballah, alternates.

**(b) Chamber for Fisheries Disputes**

The Chamber for Fisheries Disputes, established in accordance with article 15, paragraph 1, of the Statute, is available to deal with disputes concerning the conservation and management of marine living resources, which parties may agree to submit to it. The Chamber consists of seven members. As decided by the Tribunal, the members of the Chamber are selected for a three-year term.

The terms of office of the members of the Chamber, selected on 4 October 1999, expired on 30 September 2002. On 2 October 2002, the Tribunal selected new members of the Chamber for Fisheries Disputes. The members of the Chamber entered upon their duties forthwith and elected Judge Caminos as President of the Chamber. The composition of the Chamber, in order of precedence, is as follows: Judge Caminos, President; Judges Yamamoto, Kolodkin, Park, Wolfrum, Ndiaye and Jesus, members.

The terms of office of the members of the Chamber expire on 30 September 2005.

**(c) Chamber for Marine Environment Disputes**

The Chamber for Marine Environment Disputes, established in accordance with article 15, paragraph 1, of the Statute, is available to deal with disputes relating to the protection and preservation of the marine environment, which parties may agree to submit to it. The Chamber consists of seven members. As decided by the Tribunal, the members of the Chamber are selected for a three-year term.

The terms of office of the members of the Chamber, selected on 4 October 1999, expired on 30 September 2002. On 2 October 2002, the Tribunal selected new members of the Chamber for Marine Environment Disputes. The members of the Chamber entered upon their duties forthwith and elected Judge Treves as President of the Chamber. The composition of the Chamber, in order of precedence, is as follows: Judge Treves, President; Judges Marotta Rangel, Yankov, Bamela Engo, Akl, Anderson and Xu, members.

The terms of office of the members of the Chamber expire on 30 September 2002.

**(d) Chamber under article 15, paragraph 2, of the Statute**

Pursuant to article 15, paragraph 2, of the Statute, the Tribunal shall form a

chamber for dealing with a particular dispute, if the parties so request. The composition of such a chamber is determined by the Tribunal with the approval of the parties in the manner provided for in article 30 of the Rules.

By Order dated 20 December 2000, the Tribunal formed a Special Chamber to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-eastern Pacific Ocean. The composition of the Special Chamber to deal with the case is as follows: Judge Chandrasekhara Rao, President; Judges Caminos, Yankov and Wolfrum and Judge *ad hoc* Orrego Vicuña, members.