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Settlement of Disputes II
International Tribunal for the Law of the Sea

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Introduction

It gives me great pleasure to speak to you today on the International Tribunal for the Law of the Sea. As you have heard, the Tribunal is a new actor on the international scene, only six years old next week. Its case-work is not yet extensive, and thus I like to use every opportunity such as that presented today to familiarize the international community with our activities.

I will not spend too much time on the details of our work. After a general introduction, I would like to spend most of my allotted time on the jurisdiction and competence of the Tribunal and our working methods and then give a quick overview of the cases which the Tribunal has dealt with. Finally, I would like to close by putting the Tribunal in its international perspective.

First, on some introductory elements:

As Professor Oxman indicated, the Tribunal was a creation of the Law of the Sea

The members are elected on a geographical basis: five are from Africa, five are from Asia, four from the Western Europe and Others Group, four are from Latin America and the Caribbean and three are from Eastern Europe. The term of office is nine years.

Before turning to some jurisdictional details, let me first deal with the question: Why a new Court for the Law of the Sea? I will return to this later, but for now let me emphasize three points made by Professor Oxman earlier: first, there were certain new concepts emerging in the Law of the Sea Conference which would excite some legal controversy; second, there was not universal satisfaction with the only existing court at the time, the International Court of Justice; third, there would be need for a specialized court to deal with Deep Sea Bed Mining, with parties which did not have access to the traditional third party dispute settlement mechanism.

Jurisdiction

I turn now to deal with the jurisdiction of the Tribunal.

At the outset, I must admit that the jurisdictional provisions of the Convention are quite complex (and I commend Professor Oxman for his clear treatment of some of the aspects). The complexity is, however, more evident to the potential general analyst than, perhaps, the Court when faced with a concrete case. Indeed, in confining attention to the jurisdiction of the Tribunal, the treatment of the system laid down in the Convention is immensely simplified.

In my treatment today, I shall use the traditional categories of subject-matter jurisdiction and jurisdiction over persons, but merely for descriptive purposes rather than dogma, and, in fact, in order to introduce the novelties in the Tribunal system and its active role in two types of cases: that of the so-called prompt release of vessels; and the provisional measures in matters before arbitral tribunals.

Turning first to the subject-matter jurisdiction of the Tribunal, it is clear that the main task of the Tribunal will be the resolution of disputes between States Parties concerning the interpretation and appl

the interpretation and application of other international agreements related to the

It can be seen from the foregoing that the Tribunal could have before it quite a disparate set of parties to which the provisions on intervention (articles 31 and 32 of the Statute of the Tribunal) could add. The most novel among them are the natural and legal persons, which do not have access to any other international tribunal at present. It should also be noted that the States Parties could include (under the provisions of article 305 and Annex IX) certain inter-governmental organizations, a category which already includes the European Community.

Now I would like to backtrack to discuss further two categories of cases which are novel to the Tribunal and which have impacted most heavily on its activities: so-called prompt release of vessels and provisional measures in cases of arbitral proceedings.

As for the question of prompt release, the Convention sets out a number of instances where a ship, when arrested by a coastal State, shall be released upon the posting of a reasonable bond or other financial security. To safeguard this right, which is based on a balance of interests of the flag State and the coastal State, the Convention further provides that if the detaining State does not release the ship, the flag State can bring the matter before the Tribunal to call on it to order the detaining State to comply. The jurisdiction of the Tribunal does not extend to the merits of the action taken by the coastal State in arresting the ship, but rather only to the question of the release, including the reasonableness of the bond. Five of the Tribunal's first 10 cases have been submitted under this heading.

The second novel head of jurisdiction is a consequence of the possibility of States Parties bringing cases to arbitration under the system of the Convention. At least at this early stage, the main avenue of dispute settlement is likely to be arbitration.

The procedure for establishing an arbitral tribunal can take some time. Each party has to appoint arbitrators; there has to be agreement on the jointly appointed arbitrators; then the administration has to be set up. The Convention provides that in the period until the arbitration can commence, a party to a dispute may call on the Tribunal to enact provisional measures, for example, to preserve the rights of the parties. Three of the cases before the Tribunal were brought under this heading.

Procedure

Before dealing with the cases before the Tribunal, I wish to say a few words on the Tribunal's working methods.

Six years ago, when we began our work, a review had just been undertaken by leading academics and practitioners on the working methods of the International Court of Justice, specifically addressed to the expense and delay of proceedings. Although incentive was perhaps not needed, this report certainly provided us with reassurance that the international community would welcome efforts to reduce the expense of litigation and enhance efficiency. Indeed,

costs to States Parties, the organs of the Convention, including the Tribunal, shall be cost-effective.

As a point of departure it must be admitted that the Tribunal, when it began its work on establishing its working methods, was aware that it had to take account of factors over which it would have no control, some of them endemic to international disputes. These factors might counter-act whatever attempts we have made to adopt efficient, cost-effective and user-friendly methods of work. I hope, however, that experience will show that the steady implementation of certain provisions which the Tribunal has adopted in its Rules and other documents will enable it to achieve these goals. Examples include: the statement in article 49 of the Rules that proceedings shall be conducted without unnecessary delay or expense; the setting of specific time-limits for the various stages of proceedings; and the indications in article 68 of the Rules and in articles 2 and 3 of the Resolution on the Internal Judicial Practice that the Tribunal will take an early "hands-on" approach in its proceedings. The Tribunal's decision to establish, already at an early stage of its work, two standing special chambers, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes, goes in this direction as well.

It is important also to mention one salient element which is not completely identified in the documents themselves but which is perhaps the most significant aspect of our working methods. I refer to a "spirit of collegiality" which has come to characterize the work of the Tribunal. Already bound together by our common regard for the rule of law and our dedication to the law of the sea, the Judges of the Tribunal have over the course of the first years of work developed efficient working methods which might have been considered impossible in so large a body. We developed a method whereby the views of all Judges were aired and, each being prepared to respect the views of the others, we arrived at results which are truly a group product.

The cases before the Tribunal

I turn now to give a brief overview of the 10 cases dealt with by the Tribunal. This spirit has prevailed in all our work, including the deliberations in our first ten cases. Specific examples include efforts to reach consensus on decisions, the procedures on the use of the official languages and efforts in judicial deliberations to reflect conflicting views in draft decisions.

The cases fall into three categories:

Cases dealing with the prompt release of ships and their crews;

Cases involving requests for provisional measures in disputes submitted to arbitration;

Cases on merits.

You will recall that I have already mentioned the first two categories.

The second substantive case was brought by agreement between Chile and the European Community and related to the fishing for swordfish in the South-Eastern Pacific Ocean. The Tribunal was asked to form a five-Judge Chamber to decide