

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 (“the Tribunal”) delivered its judgment in the *M/V “Virginia G” Case (Panama/Guinea-Bissau)* (Case No. 19) on 14 April 2014. It issued an order prescribing provisional measures in the *“Arctic Sunrise” Case (Kingdom of the Netherlands v. Russian Federation)* (Case No. 22) on 22 November 2013. As of 1 June 2014, one case remains pending before the Tribunal: *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. 19.* The case concerned the *M/V Virginia G*, an oil tanker flying the flag of Panama, arrested on 21 August 2009 by the authorities of Guinea-Bissau for allegedly carrying out unauthorized bunkering activities in support of foreign vessels fishing in Guinea-Bissau’s exclusive economic zone. The vessel and the gas oil on board were confiscated on 27 August 2009. Subsequently, the vessel was released by decision of the authorities of Guinea-Bissau, which was notified to the ship-owner on 6 October 2010. In its Judgment, the Tribunal decided that it had jurisdiction over the dispute and rejected the objections raised by Guinea-Bissau to the admissibility of Panama’s claims and based on the lack of genuine link, nationality of claims and the rule of exhaustion of local remedies. On the merits, the Tribunal had to consider the allegations of Panama that Guinea-Bissau had violated a number of provisions of the United Nations Convention on the Law of the Sea (“the Convention”) when it arrested, and later confiscated the *M/V Virginia G*. In this regard, the Tribunal found that Guinea-Bissau did not violate Panama’s right under article 58, paragraph 1, and article 56, paragraph 2, of the Convention by regulating bunkering of foreign vessels fishing in the exclusive economic zone of Guinea-Bissau. It further decided that by boarding, inspecting and arresting the *M/V Virginia G*, Guinea-Bissau did not violate article 73, paragraph 1, of the Convention. The Tribunal found, however, that by confiscating the *M/V Virginia G* and the gas oil on board, Guinea-Bissau violated article 73, paragraph 1, of the Convention, and that by failing to notify Panama, as the flag State, of the arrest and detention of the *M/V Virginia G* and subsequent actions taken against the vessel and its cargo, it also violated the requirements of article 73, paragraph 4, of the Convention. As regards other allegations of Panama, the Tribunal found that Guinea-Bissau did not violate either article 73, paragraphs 2 and 3, of the Convention or principles reflected in articles 110 and 224 of the Convention. It also decided that Guinea-Bissau did not violate article 225 of the Convention and found that the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation was not applicable in the case. The Tribunal determined that Guinea-Bissau did not use excessive force leading to physical injuries or endangering human life during the boarding and sailing of the *M/V Virginia G* to the port of Bissau. Finally, it concluded that the counter-claim presented by Guinea-Bissau in its Counter-Memorial, based on the alleged violation by Panama of article 91 of the Convention, was unfounded. In light of its findings that Guinea-Bissau violated article 73, paragraph 1, and article 73, paragraph 4, of the Convention, the Tribunal decided to award Panama compensation (i) in the amount of US\$ 388,506.00 with interest, for the confiscation of the gas oil, as indicated in paragraph 446 (a) of the Judgment; and (ii) in the amount of € 146,080.80 with interest, for the costs of repairs to the *M/V Virginia G*, as indicated in paragraph 446 (b) of the Judgment. It decided not to award Panama compensation either for the loss of profit or its other claims, as indicated in paragraphs 439 and 440 of the Judgment.

3. *Case No. 22.* On 4 October 2013, the Netherlands sent to the Russian Federation a notification instituting arbitral proceedings under Annex VII to the Convention, in a dispute concerning the boarding and detention of the vessel *Arctic Sunrise* in the exclusive economic zone of the Russian Federation and the detention of the persons on board the vessel by the authorities of the Russian Federation. In the said notification, the Netherlands, as provisional measures, requested the Russian Federation to immediately enable the *Arctic Sunrise* to leave its place of detention and the maritime zones of the Russian Federation, and to immediately release the crew members, and allow them to leave the territory and maritime zones of the Russian Federation. Pending the constitution of the arbitral tribunal and after the time-limit of two weeks provided for by article 290, paragraph 5, of the Convention, the Netherlands, on 21 October 2013, submitted to the Tribunal a Request for the prescription of provisional measures. The Russian Federation informed the Tribunal on 22 October 2013 that it did not intend to participate in the proceedings before the Tribunal. The Tribunal delivered its Order on 22 November 2013. With regard to the non-appearance of the Russian Federation, the Tribunal stated in its Order that the absence of a party or failure of a party to defend its case does not constitute a bar to the proceedings and does not preclude the Tribunal from prescribing provisional measures, provided that the parties have been given an opportunity of presenting their observations on the subject. Considering 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 of provisional measures”, the Tribunal prescribed, as provisional measures, that the Russian Federation should immediately release the vessel *Arctic Sunrise* and all who had been detained, upon the posting of a bond or other financial security by the Netherlands in the amount of € 3,600,000 to be posted with the Russian Federation in the form of a bank guarantee, and that, upon the posting of this bond or other financial security, the Russian Federation should ensure that the vessel *Arctic Sunrise* and all persons who have been detained would be allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation.

4. *Case No. 21.* On 28 March 2013, the Tribunal received a request from the Sub-Regional Fisheries Commission (“the SRFC”) to render an Advisory Opinion on questions relating to illegal, unreported and unregulated (IUU) fishing activities. The Tribunal, by Order dated 24 May 2013, invited the States Parties, the SRFC and the intergovernmental organizations listed in an annex to that Order to present written statements on the questions submitted to the Tribunal. Within the prescribed time-limit, written statements (first round) were submitted by 22 States Parties, the SRFC and six intergovernmental organizations. In addition, one written statement was received by a State Party to the 1995 Straddling Fish Stocks Agreement. By Order dated 20 December 2013, the President of the Tribunal decided that the States Parties and intergovernmental organizations having presented written statements might submit written statements on the statements made. Within the prescribed time-limit, written statements (second round) were submitted by five States Parties and the SRFC. By Order dated 14 April 2014, the President fixed 2 September 2014 as the date for the opening of the hearing in the case.

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 5 and 6 June 2013, the Tribunal organized a regional workshop in Mexico in cooperation with the Government of Mexico. Representatives of 16 States from the region participated in the workshop.