The Rules of the International Tribunal for the Law of the Sea: A Commentary

Edited by
P. Chandrasekhara Rao and Ph. Gautier

Martinus Nijhoff Publishers

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PREFACE

Ever since its inception in 1996, the International Tribunal for the Law of the Sea (the Tribunal) has endeavoured to broaden understanding of the processes that occur within it. It has been striving to make the international adjudication of disputes as attractive as possible to litigants by removing the bottlenecks inhibiting the swift and efficient management of cases.

The Tribunal has undertaken a voluntary obligation through its Rules, the Resolution on the Internal Judicial Practice, the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal and other means to conduct its proceedings "without unnecessary delay or expense" in a continuing effort to meet the very highest standards in international adjudication. The Tribunal has not, of course, completely rejected the procedures and practices obtaining in relation to other established judicial bodies. It is trying hard to seek a balance between innovation and familiar judicial practices so as to be in tune with the current demands of international adjudication.

The key to success in the functioning of any judicial body in modern times is transparency, although, in relation to judicial matters, confidentiality of deliberations should always be maintained. Transparency in any sphere of human endeavour is the best antidote to arbitrary action. While the Tribunal speaks through its judgments, orders and decisions, to explain the actions it takes in particular cases, there is always room for others, through their writings, to do more in this regard. While informed writings concerning the Tribunal and its working by well-known commentators are to be welcomed, academic contributions by judges of the Tribunal also serve a useful purpose. It goes without saying that such contributions do not necessarily represent the views of the Tribunal. Several judges of the Tribunal have made significant contributions through their writings on different aspects of the Tribunal's jurisprudence.

"The International Tribunal for the Law of the Sea: Law and Practice", a book edited by Professor Khan and myself (Kluwer Law International, 2001) and containing articles written by sitting judges of the Tribunal, was a first step towards explaining the constitution, jurisdiction, procedure and practice of the Tribunal. A fuller explanation of the Rules of the Tribunal was still needed. This book seeks to fill that gap. Here too, commentaries on the Rules are provided mainly by judges of the Tribunal. If this Commentary inspires the development of ideas in regard to the interpretation and application of the Rules of the Tribunal, it will have truly made its mark.

Though the Rules of the Tribunal have been largely modelled on those of the International Court of Justice, for more than one reason, they differ from

the latter in several respects. Insofar as the Rules of the Tribunal are drawn from the Rules of the ICJ, the jurisprudence evolving around the latter is a factor that the Tribunal has to take into account when expounding its own Rules. For obvious reasons, the well-known commentaries of Shabtai Rosenne and Genevieve Guyomar on procedures in the International Court of Justice and the Permanent Court of International Justice, respectively, have served as useful guides for this book.

My co-editor, Philippe Gautier, and I gratefully acknowledge the cooperation extended to us by the judges of the Tribunal. It was indeed their inspiration which prompted us to embark on this work. We would like to thank the following officers of the Tribunal in particular for comments on the preliminary drafts and for help in checking references and formatting materials in this book: Ximena Hinrichs, Elisabeth Bowes, Anne-Charlotte Borchert and Anke Egert.

P. Chandrasekhara Rao
Hamburg, June 2006

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Articles 130 to 138	José Luis Jesus	Judge, International Tribunal for the Law of the Sea

LIST OF ABBREVIATIONS

Agreement on Part XI	Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea
AJIL	*American Journal of International Law*
Assembly	Assembly of the International Seabed Authority
Authority	International Seabed Authority
BYIL	*British Yearbook of International Law*
Chandrasekhara Rao/Khan	P. Chandrasekhara Rao/R. Khan (eds.), *The International Tribunal for the Law of the Sea: Law and Practice*, 2001
Convention	United Nations Convention on the Law of the Sea
Council	Council of the International Seabed Authority
Eiriksson	G. Eiriksson, *The International Tribunal for the Law of the Sea*, 2000
Guidelines	Guidelines concerning the Preparation and Presentation of Cases before the Tribunal
Guyomar	G. Guyomar, *Commentaire du Règlement de la Cour internationale de justice adopté le 14 avril 1978: interprétation et pratique*, 1983
ICJ	International Court of Justice
ICLQ	*International and Comparative Law Quarterly*
Max Planck UNYB	*Max Planck Yearbook of United Nations Law*
PCIJ	Permanent Court of International Justice
Preparatory Commission	Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea
Preparatory Commission	Final Draft Rules of the Tribunal as contained in the *Draft Report of the Preparatory Commission under Paragraph 10 of Resolution I containing Recommendations for Submission to the Meeting of States Parties to be convened in accordance with Annex VI, Article 4, of the Convention regarding Practical Arrangements for the Establishment of the International Tribunal for the Law of the Sea*, LOS/PCN/152 (Vol. I), 28 April 1995, pp. 26 et seq.
Resolution	Resolution on the Internal Judicial Practice of the Tribunal

Rosenne	S. Rosenne, *Procedure in the International Court: A Commentary on the 1978 Rules of the International Court of Justice*, 1983
Rules	Rules of the Tribunal
Statute	Statute of the International Tribunal for the Law of the Sea (Annex VI to the Convention)
Tribunal	International Tribunal for the Law of the Sea

COMMENTARY ON THE RULES OF THE TRIBUNAL

COMMENTARY ON THE RULES OF THE TRIBUNAL

PREAMBLE

The Tribunal,

Acting pursuant to article 16 of the Statute of the International Tribunal for the Law of the Sea, Annex VI to the United Nations Convention on the Law of the Sea,

Adopts the following Rules of the Tribunal.

PRÉAMBULE

Le Tribunal,

Agissant en vertu de l'article 16 du Statut du Tribunal international du droit de la mer, qui fait l'objet de l'annexe VI à la Convention des Nations Unies sur le droit de la mer,

Adopte le Règlement du Tribunal ci-après.

COMMENTARY

The Rules of the Tribunal open with a short preamble which makes reference to article 16 of its Statute.

Article 16 of the Statute provides that the Tribunal shall frame rules for carrying out its functions and, in particular, shall lay down rules of procedure.[1] In drafting its rules, the Tribunal took account of the provisions of the Convention and, particularly, those of the Statute.[2] The Statute sets out in broad terms the organization and competence of the Tribunal and its chambers, and the procedure to be followed in cases before them.

The Tribunal commenced deliberations on its rules during its First Session, which took place from 1 to 31 October 1996. It continued its deliberations during its Second, Third and Fourth Sessions within a Working Group of the

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[1] For comments on this provision, see M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989, pp. 363–365.

[2] See T. Treves, "The Rules of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 135.

Whole chaired by Judge Treves.[3] The Tribunal adopted the Rules of the Tribunal on 28 October 1997. Subsequently, some specific provisions of the Rules were amended by the Tribunal on 15 March and 21 September 2001.[4]

The Rules consist of a total of 138 articles, which were adopted concurrently in English and French. They set out the organizational structure of the Tribunal, its chambers and the Registry and provide a set of procedural rules for the conduct of a case. The Rules were designed to "ensure the efficient, cost-effective, and user-friendly administration of justice".[5]

[3] During its First Session, in October 1996, the Tribunal adopted on a provisional basis certain rules of procedure in order to facilitate its work. The Second Session took place from 3 to 28 February 1997, the Third Session from 2 to 29 April 1997 and the Fourth Session from 6 to 31 October 1997.

[4] On 15 March 2001, the Tribunal adopted amendments to articles 111, paragraph 4, and 112, paragraphs 3 and 4, of the Rules. On 21 September 2001, the Tribunal adopted amendments to article 32, paragraph 1, of the Rules.

[5] See ITLOS/Press 7 dated 3 November 1997.

PART I – PARTIE I

USE OF TERMS – EMPLOI DES TERMES

Article 1

For the purposes of these Rules:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982, together with the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention;

(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, Annex VI to the Convention;

(c) "States Parties" has the meaning set out in article 1, paragraph 2, of the Convention and includes, for the purposes of Part XI of the Convention, States and entities which are members of the Authority on a provisional basis in accordance with section 1, paragraph 12, of the Annex to the Agreement relating to the implementation of Part XI;

(d) "international organization" has the meaning set out in Annex IX, article 1, to the Convention, unless otherwise specified;

(e) "Member" means an elected judge;

(f) "judge" means a Member as well as a judge *ad hoc*;

(g) "judge *ad hoc*" means a person chosen under article 17 of the Statute for the purposes of a particular case;

(h) "Authority" means the International Seabed Authority;

(i) "certified copy" means a copy of a document bearing an attestation by or on behalf of the custodian of the original or the party submitting it that it is a true and accurate copy thereof.

Article premier

Aux fins du présent Règlement :

a) on entend par « Convention » la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982 conjointement à l'Accord du 28 juillet 1994 relatif à l'application de la partie XI de la Convention ;

b) on entend par « Statut » le Statut du Tribunal international du droit de la mer qui fait l'objet de l'annexe VI à la Convention ;

c) l'expression « Etats Parties » a le sens défini à l'article premier, paragraphe 2, de la Convention, et inclut, aux fins de la partie XI de la Convention, les Etats et entités qui sont membres de l'Autorité à titre provisoire conformément à la section 1, paragraphe 12, de l'annexe à l'Accord relatif à l'application de la partie XI ;

d) l'expression « organisation internationale » a le sens défini à l'article premier de l'annexe IX à la Convention, sauf indication contraire ;

e) on entend par « Membre » tout juge élu ;

f) on entend par « juge » tout Membre ainsi que tout juge *ad hoc* ;

g) on entend par « juge *ad hoc* » toute personne choisie conformément à l'article 17 du Statut aux fins d'une affaire déterminée ;

h) on entend par « Autorité » l'Autorité internationale des fonds marins ;

i) on entend par « copie certifiée conforme » une copie d'un document dont la personne à laquelle la garde de l'original est confiée ou la partie qui soumet ce document atteste ou fait attester en son nom qu'elle est authentique et fidèle à l'original.

COMMENTARY

Part I, which is headed "use of terms", consists of article 1 only. This article is based on Article 1 of the Rules of the ICJ with regard to the meaning of the expressions "Member" and "judge". The additional terms contained in article 1 derive from article 1 of the Preparatory Commission Draft Rules.[1]

As an introduction to the Rules, article 1 contains a list of definitions regarding some of the terms used in the Rules. This list is not an exhaustive one as there are other expressions defined in specific provisions of the Rules.[2]

The opening phrase of article 1 reproduces an expression which is of general usage in treaty drafting. It indicates that the meanings given to the terms contained therein are for the "purposes of these Rules".

Subparagraph (a) gives an extended meaning of the word "Convention" in view of the adoption, on 28 July 1994, of the Agreement on Part XI. This takes account of the provision in the Agreement on Part XI that the Agreement and Part XI of the Convention shall be interpreted and applied together as a single instrument.[3]

Subparagraph (c) gives to the term "States Parties" the same meaning as that set out in article 1, paragraph 2, of the Convention.[4] This provision of the Convention refers to the States that have ratified or acceded to the Convention, and the entities specified in article 305, paragraph 1 (b) to (f), that are parties to it.[5] However, most of these entities have subsequently become "States Parties" within the meaning of article 1, paragraph 2 (1), of the Convention.[6] Regarding the reference in article 1, subparagraph (c), of the Rules to "States and entities which are members of the Authority on a provisional basis", it may be observed that

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[1] Contained in *Report of the Preparatory Commission under Paragraph 10 of Resolution I Containing Recommendations for Submission to the Meeting of States Parties to be Convened in accordance with Annex VI, Article 4, of the Convention Regarding Practical Arrangements for the Establishment of the International Tribunal for the Law of the Sea*, LOS/PCN/152 (Vol. I) of 28 April 1995, pp. 26 et seq.

[2] See article 4, paragraph 5, regarding "Senior Member" (article 26, paragraph 1, of the Statute uses the expression "senior judge") and article 84, paragraph 4, with respect to "intergovernmental organization".

[3] Article 2 of the Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("Agreement on Part XI"). This article further provides that in the event of an inconsistency between the Agreement on Part XI and Part XI, the provisions of the Agreement shall prevail. See also article 4 of the Agreement on Part XI on consent to be bound.

[4] The terms "State Party" or "States Parties" appear in articles 22, 94, 99, 100 to 104, 110, 116, 119, 120, 123, 125, 133, 136, 137 of the Rules.

[5] For comments on article 1, paragraph 2, of the Convention, see M.H. Nordquist (editor-in-chief), S.N. Nandan/S. Rosenne (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. II, 1993, pp. 37 and 42–43.

[6] For example, Namibia, Marshall Islands, Federated States of Micronesia, and Palau.

provisional membership of the Authority terminated for all States on 16 November 1998.[7]

According to subparagraph (d), the expression "international organization" has the meaning set out in article 1 of Annex IX to the Convention, "unless otherwise specified".[8] There seems however to be only one instance in the Rules in which such term is used in a different manner.[9] For the purposes of the Rules, the only relevant "international organization" to date is the European Community which, at the same time, is also a State Party pursuant to article 1, subparagraph (c), of the Rules.[10]

Subparagraphs (e) and (g) make a distinction between "Member",[11] who is an elected judge in accordance with article 4 of the Statute, and "judge *ad hoc*"[12] who is a person chosen under article 17 of the Statute. Subparagraph (f) clarifies that the expression "judge"[13] refers to both a Member and a judge *ad hoc*. These terms are employed throughout the Rules in a consistent manner. It may be observed that the expression "judge" is also used in the Resolution on the Internal Judicial Practice of the Tribunal adopted in accordance with article 40 of the Rules. Therefore, the Resolution allows a judge *ad hoc* to be selected as a member of the drafting committee.[14] Unlike the Rules, the Statute only uses the term "members" making, where necessary, a distinction between "elected members" and members chosen under article 14 of the Statute.[15]

Subparagraph (i) defines "certified copy", a term which is of particular relevance as regards the documents instituting proceedings and the pleadings in a case.[16]

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[7] See article 7, paragraph 3, of the Agreement on Part XI. See also *International Seabed Authority: Handbook 2005*, p. 4.

[8] For comments on this provision, see M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989, pp. 455–456. The term "international organization" appears in articles 16, 22, 52 and 57 of the Rules.

[9] Article 32, paragraph 3, of the Rules.

[10] It may be observed that the expression "intergovernmental organization" also appears in the Rules (see articles 52, 84, 133, 136 and 137 of the Rules).

[11] The expression "Member" appears in articles 2 to 8, 10, 11, 13, 16 to 18, 20, 21, 23, 28 to 30, 32, 37, 39, 41 and 91 of the Rules.

[12] The expression "judge *ad hoc*" appears in articles 8, 9, 19 to 22, 25, 41, 103 and 104 of the Rules.

[13] The expression "judge" appears in articles 5, 8, 22, 42, 68, 76, 80, 86, 125 and 135 of the Rules.

[14] See article 6 of the Resolution; see also Rosenne, p. 16.

[15] See Nordquist, *op. cit.* note 8, p. 342; the word "judge" appears only in article 26 of the Statute.

[16] The expression "certified copy" appears in articles 54 to 57, 65, 66, 71, 72, 86, 89, 111 and 122 of the Rules.

PART II – PARTIE II

ORGANIZATION – ORGANISATION

Section A. The Tribunal

Subsection 1. The Members

Article 2

1. The term of office of Members elected at a triennial election shall begin to run from 1 October following the date of the election.
2. The term of office of a Member elected to replace a Member whose term of office has not expired shall run from the date of the election for the remainder of that term.

Section A. Le Tribunal

Sous-section 1. Membres

Article 2

1. La période de fonctions des Membres élus à une élection triennale commence à courir le premier octobre qui suit le jour de leur élection.
2. La période de fonctions d'un Membre élu en remplacement d'un Membre n'ayant pas achevé son mandat commence à courir le jour de l'élection pour le reste du mandat.

COMMENTARY

Part II, section A, of the Rules deals with the organization of the Tribunal. Article 2 reproduces Article 2 of the Rules of the ICJ with a modification with regard to the date of commencement of the term of office of Members.[1]

The Tribunal is composed of 21 Members elected by the States Parties to the Convention from among candidates nominated by the States Parties having the qualifications set out in article 2 of the Statute. Members are elected for nine years and may be re-elected. The terms of one third of

[1] See Guyomar, p. 17.

the Members expire every three years and therefore regular elections are held triennially in order to elect seven Members.[2]

Article 5 of the Statute does not specify the date on which the term of office of the Members shall commence. Article 2, paragraph 1, of the Rules supplements the provisions of the Statute by establishing 1 October following the date of the election of a Member as the date of commencement of the term of office of that Member.

Although according to article 4, paragraph 3, of the Statute, the first election was to take place within six months of the entry into force of the Convention, the States Parties deferred it until 1 August 1996 and decided that the First Session of the Tribunal would begin on 1 October 1996.[3] The Members elected at the first election began their terms of office on the latter date and, consequently, "1 October following the date of the election" was established in the Rules as the date of commencement of the terms of judges elected at each triennial election.

The procedure for the triennial elections of seven Members is set out in article 4 of the Statute.[4] These take place on a date established by the Meeting of States Parties, normally between April and June. Obviously, since the term of a Member ends on 30 September of the last year of the term, triennial elections are to take place prior to that date. The Members of the Tribunal must continue to discharge their functions until their places have been filled. Should they be replaced, they must finish any proceedings which they may have begun before the date of their replacement.[5]

The date of commencement of the term of office is of relevance to the working of the Tribunal. This is so with regard to, among other things, the order of precedence of the Members,[6] the commencement of the terms of office of the President and the Vice-President,[7] the selection of the members of the Seabed Disputes Chamber and the Chamber of Summary Procedure,[8] and the entitlements of the Members.

Article 2, paragraph 2, of the Rules complements article 6 of the Statute, which concerns vacancies. It provides that the term of office of a Member elected to fill a vacancy shall run from the date of the election, for the

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[2] See article 5, paragraph 1, of the Statute.

[3] See Report of the first Meeting of States Parties, SPLOS/3, 28 February 1995, p. 7, and Report of the second Meeting of States Parties, SPLOS/4, 26 July 1996, p. 8. See also Eiriksson, p. 32.

[4] The second triennial election took place on 24 May 1999, the third on 19 April 2002, and the fourth on 22 June 2005.

[5] See article 5, paragraph 3, of the Statute and 17 of the Rules. See also Rosenne, p. 19.

[6] See article 4, paragraph 1, of the Rules.

[7] See article 10 of the Rules.

[8] See articles 23 and 28, paragraph 3, of the Rules, respectively.

remainder of the predecessor's term. A vacancy can occur upon the death or resignation of a Member or if a Member, in the unanimous opinion of the other Members, ceases to fulfil the required conditions.[9] The procedure for filling a vacancy is set out in article 6, paragraph 1, of the Statute.[10]

[9] See article 5, paragraph 4, and article 9 of the Statute.

[10] Three elections to fill vacancies have taken place to date: Judge Xu was elected on 16 May 2001 to fill the vacancy arising from the death of Judge Zhao; Judge Ballah was elected on 19 April 2002 to fill the vacancy resulting from the death of Judge Laing; and Judge Lucky was elected on 2 September 2003 to fill the vacancy arising from the death of Judge Ballah.

Article 3

The Members, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

Article 3

Dans l'exercice de leurs fonctions, les Membres sont égaux indépendamment de l'âge, de la date d'élection ou de l'ancienneté dans les fonctions.

COMMENTARY

Article 3 of the Rules repeats *verbatim* Article 3, paragraph 1, of the Rules of the ICJ, a provision which actually consists of six paragraphs. The Tribunal arranged the contents of Article 3 of the Rules of the ICJ in to two articles, namely, articles 3 and 4 of the Rules, presumably to make a distinction between the "functional equality" of the Members of the Tribunal and the principles according to which Members take precedence.[1]

In connection with article 3 of the Rules, attention may be drawn to the special position of the President of the Tribunal regarding organizational matters and the conduct of a case.[2]

[1] See Rosenne, p. 20.
[2] See Eiriksson, p. 39.

Article 4

1. The Members shall, except as provided in paragraphs 3 and 4, take precedence according to the date on which their respective terms of office began.
2. Members whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.
3. A Member who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.
4. The President and the Vice-President of the Tribunal, while holding these offices, shall take precedence over the other Members.
5. The Member who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President of the Tribunal is in these Rules designated the "Senior Member". If that Member is unable to act, the Member who is next after him in precedence and able to act is considered as Senior Member.

Article 4

1. Sous réserve des dispositions des paragraphes 3 et 4, les Membres prennent rang selon la date à laquelle ils sont entrés en fonctions.
2. Les Membres entrés en fonctions à la même date prennent rang entre eux selon l'ancienneté d'âge.
3. Tout Membre réélu pour une nouvelle période de fonctions suivant immédiatement la précédente conserve son rang.
4. Pendant la durée de leurs mandats, le Président et le Vice-Président du Tribunal prennent rang avant tous les autres Membres.
5. Le Membre qui, conformément aux paragraphes précédents, prend rang immédiatement après le Président et le Vice-Président du Tribunal est dénommé « Membre doyen » aux fins du présent Règlement. S'il est empêché, le membre qui prend rang immédiatement après lui et n'est pas lui-même empêché est considéré comme le Membre doyen.

COMMENTARY

This article reproduces paragraphs 2 to 6 of Article 3 of the Rules of the ICJ. It concerns the rules of precedence of the Members of the Tribunal.

The President and Vice-President take precedence before the other Members while the precedence of the other Members is based upon the criteria of the date of commencement of their terms of office and age. Members whose terms of office begin on different dates take precedence

according to the length of continuous service as a Member of the Tribunal. Members whose terms of office begin on the same date take precedence in respect of each other according to seniority of age. As stated above, for a regular election, the effective date is 1 October following the date of the election while, in the case of a vacancy, it is the date of the election. A Member who is re-elected to a new term which is continuous with his previous term retains his precedence.

In accordance with article 4, paragraph 5, the first judge who, on the basis of the criteria of length of continuous service as a Member and age, takes precedence next after the President and the Vice-President is designated the "Senior Member". However, if this Member is unable to act the Member who is next after him in precedence and is able to act is considered to be the Senior Member. It should be noted that, under the Rules, there are certain functions falling upon the Senior Member.[1]

The order of precedence has a bearing on the seating of the judges, since the Vice-President sits to the right of the President while the other Members sit to the left and right of them in order of seniority. The order of precedence is also relevant to voting on the judgment, given that the vote is taken in inverse order of seniority.[2]

It may be observed that, in accordance with article 8 of the Rules, judges *ad hoc* take precedence after the Members and in order of seniority of age.

[1] See article 13 of the Rules.

[2] See article 9, paragraph 1, of the Resolution on the Internal Judicial Practice of the Tribunal.

Article 5

1. The solemn declaration to be made by every Member in accordance with article 11 of the Statute shall be as follows:

   "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously".

2. This declaration shall be made at the first public sitting at which the Member is present. Such sitting shall be held as soon as practicable after his term of office begins and, if necessary, a special sitting shall be held for the purpose.
3. A Member who is re-elected shall make a new declaration only if his new term is not continuous with his previous one.

Article 5

1. Tout Membre doit, conformément à l'article 11 du Statut, faire la déclaration solennelle suivante :

   « Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience ».

2. Cette déclaration est faite à la première audience publique à laquelle le Membre assiste. L'audience a lieu le plus tôt possible après le début de sa période de fonctions et il est tenu au besoin une audience spéciale à cet effet.
3. Un Membre réélu ne renouvelle sa déclaration que si sa nouvelle période de fonctions ne suit pas immédiatement la précédente.

COMMENTARY

This article reproduces literally Article 4 of the Rules of the ICJ.

Article 11 of the Statute requires every judge to make a solemn declaration in open session, before taking up his duties, that he will exercise his powers impartially and conscientiously. This requirement has been regarded as "confirmation of the requirement of independence laid down in article 2 (1) of the Statute".[1] The purpose of article 5 read with article 9 of the Rules is to set out the terms of the solemn declaration of both elected and *ad hoc* judges and when it should be made.

[1] See Eiriksson, p. 37.

Paragraph 1 sets out the actual terms of the solemn declaration to be made by judges.

Paragraph 2 requires that the solemn declaration should be made at the first public sitting at which the Member is present. Such sitting is to be held as soon as practicable after his/her term of office begins. If necessary, a special meeting is to be held for that purpose. In the practice of the Tribunal, the swearing-in ceremony generally takes place at a brief special public sitting of the Tribunal.

In principle, as required under article 11 of the Statute, judges may not enter upon their duties without fulfilling the requirement of making a solemn declaration. The judges elected at the first election met for the first time on 1 October 1996. However, they made their formal declaration under article 5 of the Rules at the ceremonial inauguration of the Tribunal that took place on 18 October 1996. Likewise, judges elected to fill a vacancy have made their declarations at public sittings held some time after the date on which their terms of office began to run.[2] They do not, however, undertake any judicial work until they make the solemn declaration under article 5 of the Rules.[3]

Judges newly elected at triennial elections have made their declarations at public sittings, which were held on the date on which they took up their duties, i.e., on 1 October of the relevant year.[4] This permitted the judges to participate in the election of the President of the Tribunal and the constitution of chambers and committees.

In accordance with paragraph 3, a judge who is re-elected makes a declaration only if his new term is not continuous with his previous one. The terms of office of all judges who have been re-elected to date have been continuous with their previous terms of office and therefore no new swearing-in was necessary. In one case, a Member who had made a solemn declaration in his capacity as judge *ad hoc* was required to make a new declaration after having been elected a Member of the Tribunal.[5]

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[2] Judges elected to fill a vacancy have made the solemn declarations on the first day of the session of the Tribunal at which they were present, i.e. Judge Xu, elected on 16 May 2001, made his declaration on 17 September 2001; Judge Ballah, elected on 19 April 2002, made his declaration on 25 September 2002; and Judge Lucky, elected on 2 September 2003, made his declaration on 8 September 2003.

[3] See Guyomar, p. 29; see Eiriksson, p. 37.

[4] Judge Jesus, elected on 24 May 1999, took the oath on 1 October 1999; Judge Cot, elected on 19 April 2002, took the oath on 1 October 2002; Judges Pawlak, Yanai, Türk, Kateka and Hoffman, elected on 22 June 2005, took the oath on 1 October 2005.

[5] Judge Cot served as judge *ad hoc* in 2001 in *The "Grand Prince" Case* and was elected a Member of the Tribunal on 19 April 2002.

Article 6

1. In the case of the resignation of a Member, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.
2. In the case of the resignation of the President of the Tribunal, the letter of resignation shall be addressed to the Vice-President of the Tribunal or, failing him, the Senior Member. The place becomes vacant on the receipt of the letter.

Article 6

1. Si un Membre démissionne, il en fait part par écrit au Président du Tribunal. Le siège devient vacant à la date de la réception de la lettre de démission.
2. Si le Président du Tribunal démissionne, il en fait part par écrit au Vice-Président du Tribunal ou, à défaut, au Membre doyen. Le siège devient vacant à la date de la réception de la lettre de démission.

COMMENTARY

Article 6 is based on Article 5 of the Rules of the ICJ with modifications as to the manner in which the Member may tender his resignation and the moment upon which the place of the resigning Member would fall vacant.

Paragraph 1 of article 6 reproduces what is stated in article 5, paragraph 4, of the Statute.[1] A Member wishing to resign from the bench must address a letter of resignation to the President of the Tribunal. The resignation takes effect upon receipt of the letter by the President and thereupon the place becomes vacant. It may be observed that there is no requirement of acceptance of the resignation by the President of the Tribunal.

Under paragraph 2, the same procedure applies to the resignation of the President of the Tribunal except that the President must transmit the letter of resignation to the Vice-President, or failing him, the Senior Member; the Vice-President must, as in the case of the other Members, communicate his letter of resignation to the President of the Tribunal.

There has been no instance of a resignation of a Member or a President of the Tribunal.

[1] For a commentary on article 5, paragraph 4, of the Statute, see M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989, pp. 348 and 350.

Article 7

In any case in which the application of article 9 of the Statute is under consideration, the Member concerned shall be so informed by the President of the Tribunal or, if the circumstances so require, by the Vice-President of the Tribunal, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Tribunal specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. The Member concerned may be assisted or represented by counsel or any other person of his choice. At a further private meeting, at which the Member concerned shall not be present, the matter shall be discussed; each Member shall state his opinion, and if requested a vote shall be taken.

Article 7

Si l'application de l'article 9 du Statut est envisagée, le Membre intéressé en est informé par le Président du Tribunal ou, le cas échéant, par le Vice-Président du Tribunal dans une communication écrite qui expose les raisons et indique tous les éléments de preuve s'y rapportant. La possibilité lui est ensuite offerte, à une séance privée du Tribunal, spécialement convoquée à cet effet, de faire une déclaration, de fournir les renseignements ou explications qu'il souhaite donner et de répondre oralement ou par écrit aux questions qui lui sont posées. Le Membre intéressé peut être assisté ou représenté par un conseil ou par toute autre personne de son choix. A une séance privée ultérieure, tenue hors la présence du Membre intéressé, la question est discutée; chaque Membre donne son avis et, si demande en est faite, il est procédé à un vote.

COMMENTARY

Article 7 of the Rules corresponds to article 6 of the Rules of the ICJ with one addition concerning the opportunity given to the judge to be assisted by counsel.

This article has to be read in conjunction with article 9 of the Statute which provides that "if, in the unanimous opinion of the other members of the Tribunal, a member has ceased to fulfil the required conditions, the President of the Tribunal shall declare the seat vacant." Among the "required conditions", are those specified in articles 2, 3, 7 and 8 of the

Statute.[1] Reasons of health or permanent incapacity to exercise functions may also be mentioned.[2] It is of interest to note that the Statute requires the unanimity of the other Members to take a decision on the matter.

The procedure to implement article 9 of the Statute is laid down in article 7 of the Rules which seeks "to ensure fair consideration of the situation of the judge concerned."[3] In such instance, the Member is informed by the President of the Tribunal or, if the circumstances so require, by the Vice-President of the Tribunal, by written statement, that the application of article 9 of the Statute is under consideration. Such written statement must include the grounds for the application of article 9 of the Statute and any relevant evidence. At a private meeting, the judge concerned is then afforded the opportunity to make a statement, to furnish any information or explanations, and to supply answers. He or she may be assisted in this process by counsel or other person of his choice. Subsequently, a further private meeting is held, at which the judge concerned shall not be present, to discuss the matter. During this meeting, each judge states his or her opinion. A vote is only taken if requested.

It may be noted that a judge who has been required to relinquish his appointment in accordance with article 9 of the Statute for reasons other than the state of his health loses his entitlement to a pension.[4]

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[1] See M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989, p. 354.

[2] See Eiriksson, p. 36.

[3] *Ibid.*

[4] See "Pension Scheme Regulations for Members of the International Tribunal for the Law of the Sea", article 1, paragraph 1(b).

Subsection 2. Judges *ad hoc*

Article 8

1. Judges *ad hoc* shall participate in the case in which they sit on terms of complete equality with the other judges.
2. Judges *ad hoc* shall take precedence after the Members and in order of seniority of age.
3. In the case of the resignation of a judge *ad hoc*, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.

Sous-section 2. Juges *ad hoc*

Article 8

1. Les juges *ad hoc* participent aux affaires dans lesquelles ils siègent dans des conditions de complète égalité avec les autres juges.
2. Les juges *ad hoc* prennent rang après les Membres et selon l'ancienneté d'âge.
3. Si un juge *ad hoc* démissionne, il en fait part par écrit au Président du Tribunal. Le siège devient vacant à la date de la réception de la lettre de démission.

COMMENTARY

Subsection 2 of section A deals with some aspects (equality with elected judges, precedence, resignation, solemn declaration) of the office of a judge *ad hoc*, while the matter of the appointment of a judge *ad hoc* is regulated within the subsection regarding the composition of the Tribunal for particular cases.[1]

Article 8 of the Rules is based on Article 7 of the Rules of the ICJ except that the former does not incorporate paragraph 1 of the latter.

Article 17 of the Statute lays down the right of the parties to a case to appoint judges *ad hoc* and provides, in its paragraph 6, that judges *ad hoc* "shall participate in the decision on terms of complete equality with their colleagues." Paragraph 1 of article 8 of the Rules repeats what already appears in the Statute in respect of the status of judges *ad hoc*.

[1] See Part II, Section A, Subsection 5.

Notwithstanding the terms of equality according to which Members and judges *ad hoc* are to perform their functions, there are certain differences between the two categories. Judges *ad hoc* are not to be taken into account for the calculation of the quorum.[2] They cannot exercise the functions of presidency or vice-presidency of the Tribunal, and cannot preside over a case before the Tribunal.[3] However, a judge *ad hoc* may be selected as a member of a drafting committee.[4]

Paragraph 2 of article 8 sets out the rule of precedence of judges *ad hoc* according to which they take precedence after the Members and in order of seniority of age.[5]

Unlike the Rules of the ICJ, paragraph 3 contemplates the possibility of the resignation of a judge *ad hoc*. As in the case of a Member, a judge *ad hoc* wishing to resign must address a letter of resignation to the President of the Tribunal. The place becomes vacant on the receipt of the letter.

It may be noted that, by virtue of article 25 of the Rules, article 8 applies *mutatis mutandis* to the judges *ad hoc* of the Seabed Disputes Chamber. It would apply, in the same manner, to judges *ad hoc* of other chambers.

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[2] See article 41, paragraph 3, of the Rules.

[3] See Eiriksson, p. 44; see articles 12, 13, 26 and 31 of the Rules.

[4] See article 6 of the Resolution on the Internal Judicial Practice of the Tribunal and commentary on article 1, *supra*.

[5] In the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures*, each party appointed a judge *ad hoc*, namely, Judges *ad hoc* Hossain and Oxman, who took precedence in relation to each other in order of seniority of age and took precedence in that order after the Members; for the precedence of the Members, see article 4 of the Rules.

Article 9

1. The solemn declaration to be made by every judge *ad hoc* in accordance with articles 11 and 17, paragraph 6, of the Statute shall be as set out in article 5, paragraph 1, of these Rules.
2. This declaration shall be made at a public sitting in the case in which the judge *ad hoc* is participating.
3. Judges *ad hoc* shall make the declaration in relation to each case in which they are participating.

Article 9

1. La déclaration solennelle que doivent faire les juges *ad hoc* conformément aux articles 11 et 17, paragraphe 6, du Statut est la même que la déclaration prévue à l'article 5, paragraphe 1, du présent Règlement.
2. Cette déclaration est faite en audience publique dans l'affaire à laquelle le juge *ad hoc* participe.
3. Les juges *ad hoc* prononcent une déclaration à l'occasion de toute affaire à laquelle ils participent.

COMMENTARY

Article 9 elaborates the requirement set out in articles 11 and 17, paragraph 6, of the Statute that every judge *ad hoc* participating in a case must make a solemn declaration. It corresponds to Article 8 of the Rules of the ICJ with some modifications. Unlike paragraph 2 of the ICJ provision, article 9 does not make a specific reference to declarations made in cases being dealt with by a chamber. Articles 8 and 9 apply to judges *ad hoc* of special chambers of the Tribunal. By virtue of article 25 of the Rules, the provisions of article 9 apply *mutatis mutandis* to judges *ad hoc* of the Seabed Disputes Chamber.

Paragraph 1 stipulates that the text of the declaration to be made by judges *ad hoc* is that of the declaration made by the Members.[1] In accordance with article 17, paragraph 6, read with article 11, of the Statute, judges *ad hoc* must make their solemn declarations before taking up their duties. Article 9, paragraph 2, of the Rules requires that the declaration be made by a judge *ad hoc* "at a public sitting in the case in which the judge *ad hoc* is participating."[2] Accordingly, if the case is being dealt with

[1] See article 5, paragraph 1, of the Rules.

[2] In the *Southern Bluefin Tuna Cases*, Judge *ad hoc* Shearer made his declaration on 16 August 1999: *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of*

by a chamber of the Tribunal, the declaration by a judge *ad hoc* should be made at a public sitting of the chamber.[3] It may be observed that a judge *ad hoc* is only admitted to participate in the proceedings upon his swearing-in but he would normally receive the copies of the pleadings of the case following his appointment.

A judge *ad hoc* is required under article 9, paragraph 3, of the Rules to make a declaration in respect of each case in which he is participating. Although article 9 omits the last part of Article 8, paragraph 3, of the Rules of the ICJ,[4] it is clear that only one declaration would be required for the whole proceedings of a case, and that a declaration has to be made in relation to "each case", even if the judge *ad hoc* has already done so in a previous case. In the practice of the Tribunal, a judge *ad hoc* who had participated in that capacity in a previous case was required to make a new declaration in respect of a subsequent case.[5] Furthermore, in the *Southern Bluefin Tuna Cases* (*New Zealand* v. *Japan; Australia* v. *Japan*), *Provisional Measures*, the parties in the same interest jointly nominated a judge *ad hoc* who was required to make a solemn declaration in relation to each of the two cases at a public sitting of the Tribunal.[6]

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27 August 1999, ITLOS Reports 1999, p. 280 at p. 283; in *The "Grand Prince" Case*, Judge *ad hoc* Cot made his declaration on 5 April 2001: *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 23; in *The MOX Plant Case*, Judge *ad hoc* Székely made his declaration on 18 November 2001: *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 97; in *The "Volga" Case*, Judge *ad hoc* Shearer made his declaration on 11 December 2001: *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 16; and in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, Judges *ad hoc* Hossain and Oxman made their declarations on 24 September 2003: *Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 12.

[3] In the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, Judge *ad hoc* Orrego Vicuña made his declaration at a public sitting held on 28 December 2005 via a telephone link between Santiago, Chile and Hamburg.

[4] Article 8, paragraph 3, of the ICJ Rules reads as follows: "Judges *ad hoc* shall make the declaration in relation to any case in which they are participating, even if they have already done so in a previous case, but shall not make a new declaration for a later phase of the same case."

[5] Mr Ivan Shearer was judge *ad hoc* in the *Southern Bluefin Tuna Cases* and *The "Volga" Case*.

[6] Mr Shearer was jointly nominated as judge *ad hoc* by Australia and New Zealand: see *Southern Bluefin Tuna, op. cit.* note 2, p. 283.

Subsection 3. President and Vice-President

Article 10

1. The term of office of the President and that of the Vice-President of the Tribunal shall begin to run from the date on which the term of office of the Members elected at a triennial election begins.
2. The elections of the President and the Vice-President of the Tribunal shall be held on that date or shortly thereafter. The former President, if still a Member, shall continue to exercise the functions of President of the Tribunal until the election to this position has taken place.

Sous-section 3. Président et Vice-Président

Article 10

1. Le mandat du Président et celui du Vice-Président du Tribunal prennent effet à la date à laquelle commence à courir la période de fonctions des Membres élus à une élection triennale.
2. Les élections du Président et du Vice-Président du Tribunal ont lieu à cette date ou peu après. Si le Président sortant reste Membre, il continue à exercer les fonctions de Président du Tribunal jusqu'à ce que l'élection à ce poste ait eu lieu.

COMMENTARY

This article is based on Article 10 of the Rules of the ICJ.

Since according to article 12 of the Statute both the President and the Vice-President are elected for three years, it would seem natural that their election should coincide with triennial election of the Members of the Tribunal. The term of office begins to run from the date on which the term of office of judges elected at a regular election begins.

In compliance with article 10, paragraph 2, of the Rules, the Tribunal on 1 October 1999 elected Judge P. Chandrasekhara Rao as President of the Tribunal for the period 1999–2002, commencing on 1 October 1999. On 4 October 1999, the Tribunal elected Judge L. Dolliver M. Nelson as Vice-President for the period 1999–2002, commencing on 1 October 1999. The first election had been held on 5 October 1996, when Judge Thomas Mensah was elected as President and Judge Rüdiger Wolfrum as Vice-President for a term which ended on 30 September 1999.

On 1 October 2002, the Tribunal elected Judge L. Dolliver M. Nelson as President of the Tribunal for the period 2002–2005, commencing on 1 October 2002. On 2 October 2002, the Tribunal elected Judge Budislav Vukas as Vice-President of the Tribunal for the period 2002–2005, commencing on 1 October 2002. On 1 October 2005, the Tribunal elected Judge Rüdiger Wolfrum as President and Judge Joseph Akl as Vice-President of the Tribunal, for the period 2005–2008.

It may be noted that no provision is made in this article for the case where the former President is no longer a Member of the Tribunal. This situation is addressed in article 11, paragraph 1, of the Rules. Note the practice of the ICJ. In 1979, Vice-President M. Nagendra Singh acted as President during the transitory period. Guyomar has remarked that "ceci était également conforme à la pratique antérieure et en parfait accord avec les termes de l'article 11."[1] The Tribunal has not yet faced this situation.

[1] Guyomar, p. 47.

Article 11

1. If, on the date of the election to the presidency, the former President of the Tribunal is still a Member, he shall conduct the election. If he has ceased to be a Member, or is unable to act, the election shall be conducted by the Member exercising the functions of the presidency.
2. The election shall take place by secret ballot, after the presiding Member has declared the number of affirmative votes necessary for election; there shall be no nominations. The Member obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected and shall enter forthwith upon his functions.
3. The new President of the Tribunal shall conduct the election of the Vice-President of the Tribunal either at the same or at the following meeting. Paragraph 2 applies to this election.

Article 11

1. Si, à la date de l'élection à la présidence, le Président sortant reste Membre, l'élection se déroule sous sa direction. S'il a cessé d'être Membre ou est empêché, l'élection se déroule sous la direction du Membre exerçant la présidence.
2. Le vote a lieu au scrutin secret, après que le Membre exerçant la présidence a indiqué le nombre de voix requis pour être élu ; il n'est pas fait de présentation de candidature. Le Membre qui obtient les voix de la majorité des Membres composant le Tribunal au moment de l'élection est déclaré élu et entre immédiatement en fonctions.
3. L'élection du Vice-Président du Tribunal se déroule sous la direction du nouveau Président du Tribunal soit à la même séance soit à la séance qui suit. Les dispositions du paragraphe 2 s'appliquent à cette élection.

COMMENTARY

This article is based on Article 11 of the Rules of the ICJ. It is concerned with the procedure for elections. If the former President of the Tribunal is still a Member, he shall conduct the election of the new President; if not, the Member exercising the functions of the presidency. It may be remarked that the relevant provision in the ICJ Rules has added the words "by virtue of Article 13, paragraph 1, of these Rules", which made it clear that reference was to the Vice-President or the senior judge.

The election shall be held by secret ballot. The Member obtaining the majority of votes of the Members composing the Tribunal at the time of

the election shall be declared elected and shall forthwith enter upon his functions. Before the election, the presiding Member shall declare the number of affirmative votes necessary for the election. There shall be no nomination. In interpreting the equivalent rule of the ICJ, Rosenne stated that "[i]t is assumed that the Court here follows the usual practice and will determine the majority required in a given case on fifty percent plus one of the eligible voters."[1]

Paragraph 3 stipulates that the new President shall conduct the election of the Vice-President, allowing it to be held either at the same meeting or at the following meeting.

[1] Rosenne, p. 36.

Article 12

1. The President of the Tribunal shall preside at all meetings of the Tribunal. He shall direct the work and supervise the administration of the Tribunal.
2. He shall represent the Tribunal in its relations with States and other entities.

Article 12

1. Le Président du Tribunal préside toutes les séances du Tribunal. Il dirige les travaux et contrôle les services du Tribunal.
2. Il représente le Tribunal à l'égard des tiers.

COMMENTARY

This article is based on Article 12 of the Rules of the ICJ. Paragraph 2, which refers to the President's role in representing the Tribunal in its relations with States and other entities, is an addition made by the Tribunal and therefore is new.

It gives a succinct description of the main tasks of the President. He presides at all meetings of the Tribunal, directs the work and supervises the administration of the Tribunal.

The specific functions of the President are found in various articles of the Rules.[1] For instance, in certain cases he has the power to act when the Tribunal is not sitting.[2] The President selects the members of chambers and committees of the Tribunal.[3] The President is responsible for organizing the proceedings in cases before the Tribunal.[4] Hearings in the case are under the control of the President.[5]

[1] See Eiriksson, pp. 51–57.
[2] Article 59, paragraph 3, of the Rules.
[3] Articles 28, paragraph 2, and 29, paragraph 2, of the Rules.
[4] See, e.g., article 45 of the Rules.
[5] Article 26, paragraph 1 of the Statute; see also Eiriksson, *op. cit.* note 1.

Article 13

1. In the event of a vacancy in the presidency or of the inability of the President of the Tribunal to exercise the functions of the presidency, these shall be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.
2. When the President of the Tribunal is precluded by a provision of the Statute or of these Rules either from sitting or from presiding in a particular case, he shall continue to exercise the functions of the presidency for all purposes save in respect of that case.
3. The President of the Tribunal shall take the measures necessary in order to ensure the continuous exercise of the functions of the presidency at the seat of the Tribunal. In the event of his absence, he may, so far as is compatible with the Statute and these Rules, arrange for these functions to be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.
4. If the President of the Tribunal decides to resign the presidency, he shall communicate his decision in writing to the Tribunal through the Vice-President of the Tribunal or, failing him, the Senior Member. If the Vice-President of the Tribunal decides to resign the vice-presidency, he shall communicate his decision in writing to the President of the Tribunal.

Article 13

1. Lorsque la présidence est vacante ou que le Président du Tribunal est empêché de l'exercer, elle est assurée par le Vice-Président du Tribunal ou, à défaut, par le Membre doyen.
2. Lorsque le Président du Tribunal est empêché soit de siéger soit de présider dans une affaire en vertu d'une disposition du Statut ou du présent Règlement, il continue à exercer la présidence à tous égards sauf pour cette affaire.
3. Le Président du Tribunal prend les mesures nécessaires pour que la présidence reste toujours assurée au siège du Tribunal. Lorsqu'il est appelé à s'absenter, il peut, dans la mesure où cela est compatible avec le Statut et avec le présent Règlement, prendre des dispositions pour que la présidence soit exercée par le Vice-Président du Tribunal ou, à défaut, par le Membre doyen.
4. Si le Président du Tribunal décide de démissionner de la présidence, il en informe par écrit le Tribunal par l'intermédiaire du Vice-Président du Tribunal ou, à défaut, du Membre doyen. Si le Vice-Président du Tribunal décide de démissionner de la vice-présidence, il en informe par écrit le Président du Tribunal.

COMMENTARY

Article 13 is based, with very minor editorial changes, on Article 13 of the Rules of the ICJ.

Paragraph 1 provides that when there is a vacancy in the presidency, or the President is unable to perform his functions, the Vice-President or the Senior Member shall act in his place.

When the President is disqualified from sitting or presiding in a particular case he nevertheless shall continue to exercise his general duties, save in respect of that case.

In accordance with the Statute of the Tribunal, the President is required to reside at the seat of the Tribunal, i.e., in Hamburg.[1] The President is enjoined by article 13, paragraph 3, to take necessary measures to ensure the continuous exercise of the functions of the presidency at the seat of the Tribunal. The President in his absence is authorized to arrange, in so far as is compatible with the Statute and the Rules, for these functions to be carried out either by the Vice-President, or failing him, by the Senior Member. This is the main purport of paragraph 3.

Paragraph 4 describes the procedure for resignation of the President and Vice-President. If the President decides to resign the presidency he shall communicate his decision in writing to the Tribunal through the Vice-President, or, failing him, the Senior Member. If the Vice-President decides to resign the vice-presidency, he shall communicate his decision in writing to the President of the Tribunal.

[1] Article 12, paragraph 3, of the Statute.

Article 14

If a vacancy in the presidency or the vice-presidency occurs before the date when the current term is due to expire, the Tribunal shall decide whether or not the vacancy shall be filled during the remainder of the term.

Article 14

Au cas où une vacance de la présidence ou de la vice-présidence du Tribunal se produit avant la date à laquelle le mandat en cours doit expirer, le Tribunal décide s'il doit être pourvu à cette vacance pour la période restant à courir.

COMMENTARY

Article 14 has its source in Article 14 of the Rules of the ICJ. It provides that if a vacancy in the presidency or vice-presidency occurs before the date when the current term is due to expire, the Tribunal has the power to decide whether or not the vacancy shall be filled for the remainder of the term.

This provision gives the Tribunal a certain amount of discretion to decide whether the vacancy should be filled or not.

Subsection 4. Experts appointed under article 289 of the Convention

Article 15

1. A request by a party for the selection by the Tribunal of scientific or technical experts under article 289 of the Convention shall, as a general rule, be made not later than the closure of the written proceedings. The Tribunal may consider a later request made prior to the closure of the oral proceedings, if appropriate in the circumstances of the case.
2. When the Tribunal decides to select experts, at the request of a party or *proprio motu*, it shall select such experts upon the proposal of the President of the Tribunal, who shall consult the parties before making such a proposal.
3. Experts shall be independent and enjoy the highest reputation for fairness, competence and integrity. An expert in a field mentioned in Annex VIII, article 2, to the Convention shall be chosen preferably from the relevant list prepared in accordance with that annex.
4. This article applies *mutatis mutandis* to any chamber and its President.
5. Before entering upon their duties, such experts shall make the following solemn declaration at a public sitting:

   "I solemnly declare that I will perform my duties as an expert honourably, impartially and conscientiously and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal."

Sous-section 4. Experts désignés conformément à l'article 289 de la Convention

Article 15

1. La demande d'une partie visant à la désignation d'experts scientifiques ou techniques conformément à l'article 289 de la Convention est présentée, en principe, avant la clôture de la procédure écrite. Le Tribunal peut prendre en considération une demande présentée au-delà de ce délai mais avant la clôture de la procédure orale si les circonstances de l'espèce le justifient.
2. Lorsque le Tribunal décide de choisir des experts à la demande d'une partie ou d'office, il choisit ceux-ci sur proposition du Président du Tribunal. Celui-ci consulte les parties avant de formuler une telle proposition.
3. Les experts sont indépendants et jouissent de la plus haute réputation d'impartialité, de compétence et d'intégrité. Lorsqu'il s'agit d'un des

domaines mentionnés à l'article 2 de l'annexe VIII à la Convention, l'expert sera de préférence choisi sur la liste appropriée établie conformément à ladite annexe.

4. Les dispositions du présent article s'appliquent *mutatis mutandis* à toute chambre et à son Président.
5. Avant d'entrer en fonctions, les experts font en audience publique la déclaration solennelle suivante :

« Je déclare solennellement que je remplirai mes devoirs d'expert en tout honneur, en pleine et parfaite impartialité et en toute conscience et que j'observerai fidèlement toutes les prescriptions du Statut et du Règlement du Tribunal ».

COMMENTARY

The Preparatory Commission dealt with the question of experts appointed under article 289 of the Convention in article 10 of the Preparatory Commission Draft Rules. The Tribunal in drafting its own rules of procedure made major changes to that article. It was in fact redrafted. The result is a clear and logical draft of an important provision. Article 10, paragraph 4, of the Preparatory Commission Draft Rules, which made mention of experts being appointed by secret ballot, was deleted. The solemn declaration to be made by experts in paragraph 5 was shortened to conform to the solemn declaration made by Members, thus avoiding any questions of confidentiality.

In accordance with article 289 of the Convention, in any dispute involving scientific or technical matters, the Tribunal may, at the request of a party or *proprio motu*, select in consultation with the parties no fewer than two scientific or technical experts.

Article 15, paragraph 1, deals with the case when the request is made by a party. In such an instance the request shall, as a general rule, be made not later than the closure of the written proceedings. A request made prior to the closure of the oral proceedings may be considered by the Tribunal, if appropriate in the circumstances of the case.

Paragraph 2 sets out the procedure for selecting experts by the Tribunal. The Tribunal, whether at the request of a party or *proprio motu*, shall select the experts upon the proposal of the President of the Tribunal who is required to consult the parties before making the proposal.

Paragraph 3 requires that the experts to be chosen shall be independent and enjoy the highest reputation for fairness, competence and integrity. An expert in a field mentioned in Annex VIII, article 2 ((1) fisheries, (2) protection and preservation of the marine environment, (3) marine scientific research, and (4) navigation, including pollution from vessels and

from dumping), shall be chosen preferably from the list prepared in accordance with Annex VIII to the Convention.

Paragraph 5 requires that, before taking up their duties, experts are required to make a solemn declaration at a public sitting. This paragraph contains the declaration.

The Tribunal has not yet appointed any expert under article 289 of the Convention.

Subsection 5. The composition of the Tribunal for particular cases

Article 16

1. No Member who is a national of a party in a case, a national of a State member of an international organization which is a party in a case or a national of a sponsoring State of an entity other than a State which is a party in a case, shall exercise the functions of the presidency in respect of the case.
2. The Member who is presiding in a case on the date on which the Tribunal meets in accordance with article 68 shall continue to preside in that case until completion of the current phase of the case, notwithstanding the election in the meantime of a new President or Vice-President of the Tribunal. If he should become unable to act, the presidency for the case shall be determined in accordance with article 13 and on the basis of the composition of the Tribunal on the date on which it met in accordance with article 68.

Sous-section 5. Composition du Tribunal dans des affaires déterminées

Article 16

1. Aucun Membre qui est ressortissant d'une partie à une affaire, ressortissant d'un Etat membre d'une organisation internationale qui est partie à une affaire, ou a la nationalité de l'Etat qui patronne une entité autre qu'un Etat qui est partie à une affaire, n'exerce la présidence pour cette affaire.
2. Le Membre qui préside dans une affaire à la date à laquelle le Tribunal se réunit conformément à l'article 68 continue à présider dans cette affaire jusqu'à l'achèvement de la phase dont il s'agit, même si un nouveau Président ou un nouveau Vice-Président du Tribunal est élu entre-temps. S'il n'est plus en mesure de siéger, la présidence en l'affaire est déterminée conformément à l'article 13 et d'après la composition du Tribunal à la date à laquelle celui-ci s'est réuni conformément à l'article 68.

COMMENTARY

This article is modelled on Article 32 of the Rules of the ICJ. Since the Convention gives access to international organizations and to entities other than States, it was necessary to reflect this in paragraph 1. Hence a Member is barred from exercising the function of the presidency in respect of a case not only when he or she is a national of a party to the case, but also when he or she is a national of a State member of an international organization which is a party to the case or a national of a sponsoring State of an entity other than a State.

Paragraph 2 ensures that the Member who is presiding in a case when the Tribunal meets for its initial deliberations in accordance with article 68 (which ought to take place after the closure of the written proceedings and before the opening of the oral proceedings) shall continue to preside until the completion of the current phase of the case, notwithstanding if in the meantime a new President or Vice-President has been elected. If he is unable to act, the presidency for the case shall be determined in accordance with article 13, and on the basis of the composition of the Tribunal on the date on which it met in accordance with article 68.

Article 17

Members who have been replaced following the expiration of their terms of office shall continue to sit in a case until the completion of any phase in respect of which the Tribunal has met in accordance with article 68.

Article 17

Les Membres qui ont été remplacés à la suite de l'expiration de leur période de fonctions continuent à siéger dans une affaire jusqu'à l'achèvement de toute phase au titre de laquelle le Tribunal s'est réuni conformément à l'article 68.

COMMENTARY

This provision is based on Article 33 of the Rules of the ICJ. It extends the rule contained in article 16 to all Members of the Tribunal. A Member of the Tribunal whose term has come to an end shall continue to sit in a case until the completion of any phase in respect of which the Tribunal met in accordance with article 68.

Article 18

1. Whenever doubt arises on any point in article 8 of the Statute, the President of the Tribunal shall inform the other Members. The Member concerned shall be afforded an opportunity of furnishing any information or explanations.
2. If a party desires to bring to the attention of the Tribunal facts which it considers to be of possible relevance to the application of article 8 of the Statute, but which it believes may not be known to the Tribunal, that party shall communicate confidentially such facts to the President of the Tribunal in writing.

Article 18

1. En cas de doute sur tout point de l'article 8 du Statut, le Président du Tribunal informe les autres Membres. La possibilité est offerte au Membre concerné de fournir tous renseignements ou explications.
2. Une partie qui désire appeler l'attention du Tribunal sur des faits qu'elle considère comme pouvant concerner l'application de l'article 8 du Statut, mais dont elle pense que le Tribunal n'aurait pas eu connaissance, avise confidentiellement le Président du Tribunal de ces faits par écrit.

COMMENTARY

This provision is based on Article 34 of the Rules of the ICJ. It makes specific reference to article 8 of the Statute, which deals with conditions relating to participation of Members in a particular case. In accordance with that article, a Member of the Tribunal may not participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity. If a Member of the Tribunal believes that for some special reason he ought not to take part in the decision of a particular case, he shall so inform the President. Moreover, if the President is of the view that for some special reason one of the Members of the Tribunal should not sit in a particular case, he shall give him notice accordingly.

Article 18 provides a type of mechanism for the application of article 8 of the Statute. When any doubts arise about the points mentioned in that article, the President shall inform the other Members of the Tribunal. The Member concerned is granted the opportunity to give any information or explanations.

The article further provides that if a party desires to bring to the attention of the Tribunal facts which it considers to be of possible relevance to the application of article 8 of the Statute but which it believes may not be known to the Tribunal, that party shall communicate confidentially such facts to the President in writing. It is believed that the term "party" in this paragraph refers to a party in a case.[1]

These rules in fact have to do with situations where Members of the Tribunal may have to recuse themselves from participating in a case. This matter has not yet been raised in the practice of the Tribunal.

[1] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1102.

Article 19

1. If a party intends to choose a judge *ad hoc* in a case, it shall notify the Tribunal of its intention as soon as possible. It shall inform the Tribunal of the name, nationality and brief biographical details of the person chosen, preferably at the same time but in any event not later than two months before the time-limit fixed for the filing of the counter-memorial. The judge *ad hoc* may be of a nationality other than that of the party which chooses him.
2. If a party proposes to abstain from choosing a judge *ad hoc*, on condition of a like abstention by the other party, it shall so notify the Tribunal, which shall inform the other party. If the other party thereafter gives notice of its intention to choose, or chooses, a judge *ad hoc*, the time-limit for the party which had previously abstained from choosing a judge may be extended up to 30 days by the President of the Tribunal.
3. A copy of any notification relating to the choice of a judge *ad hoc* shall be communicated by the Registrar to the other party, which shall be requested to furnish, within a time-limit not exceeding 30 days to be fixed by the President of the Tribunal, such observations as it may wish to make. If within the said time-limit no objection is raised by the other party, and if none appears to the Tribunal itself, the parties shall be so informed. In the event of any objection or doubt, the matter shall be decided by the Tribunal, if necessary after hearing the parties.
4. A judge *ad hoc* who becomes unable to sit may be replaced.
5. If the Tribunal finds that the reasons for the participation of a judge *ad hoc* no longer exist, that judge shall cease to sit on the bench.

Article 19

1. Si une partie désigne un juge *ad hoc* dans une affaire, elle notifie son intention au Tribunal le plus tôt possible. Elle fait connaître au Tribunal le nom et la nationalité de la personne désignée en fournissant une brève notice biographique, de préférence en même temps, mais en tout état de cause deux mois au plus tard avant l'expiration du délai fixé pour le dépôt du contre-mémoire. Le juge *ad hoc* peut être d'une nationalité autre que celle de la partie qui le désigne.
2. Si une partie est disposée à s'abstenir de désigner un juge *ad hoc* à condition que la partie adverse fasse de même, elle le notifie au Tribunal, qui en informe la partie adverse. Si celle-ci notifie son intention de désigner un juge *ad hoc* ou le désigne, le délai applicable à la partie qui s'est auparavant abstenue de procéder à une désignation peut être prolongé de 30 jours au maximum par le Président du Tribunal.

3. Copie de toute notification concernant la désignation d'un juge *ad hoc* est communiquée par le Greffier à la partie adverse, qui est invitée à présenter dans un délai fixé par le Président du Tribunal, mais ne pouvant excéder 30 jours, les observations qu'elle voudrait faire. Si dans ce délai aucune objection n'est soulevée par la partie adverse et si le Tribunal lui-même n'en voit aucune, les parties en sont informées. En cas de contestation ou de doute, le Tribunal décide, après avoir entendu les parties s'il y a lieu.
4. Un juge *ad hoc* qui n'est plus en mesure de siéger peut être remplacé.
5. Si le Tribunal constate que les raisons qui justifient la participation d'un juge *ad hoc* n'existent plus, ce juge cesse de siéger.

COMMENTARY

This provision is based on Article 35 of the Rules of the ICJ. In paragraph 3 the expression "not exceeding 30 days" was inserted, which is in keeping with the policy of the Tribunal with respect to time-limits.

The concept of judge *ad hoc* was admitted into international judicial practice in 1922 in Article 31 of the Statute of the PCIJ. It has been aptly described as being "mieux adapté au fonctionnement de la justice internationale et de nature à faciliter l'acceptation de la sentence par la partie perdante."[1]

The right to appoint judges *ad hoc* is embodied in article 17 of the Statute. Articles 19 to 22 of the Rules deal with the procedure for the application of the provisions of that article.

Article 19, paragraph 1, provides that a party must notify the Tribunal of its intention to choose a judge *ad hoc* in a case as soon as possible. The Tribunal must be informed of the name, nationality and brief biographical details of the person chosen, either at the same time but no later than two months before the time-limit fixed for the filing of the counter-memorial. This provision expressly stipulates that the *ad hoc* judge may be of a nationality other than that of the party which chooses him.

Under paragraph 2, if a party desires to abstain from choosing a judge *ad hoc*, on condition of a similar abstention by the other party, it shall inform the Tribunal. If that party announces its intention to choose, or chooses, a judge *ad hoc*, the President of the Tribunal may extend by up to 30 days the time-limit for the party which had previously abstained from choosing a judge *ad hoc* in order to choose a judge *ad hoc*.

[1] Guyomar, p. 203, citing C. Rousseau, *Droit international public*, 1953, p. 514.

Pursuant to article 19, paragraph 3, the Registrar shall transmit to the other party any notification relating to the choice of a judge *ad hoc*. That party shall be requested to furnish any observation it may wish to make within a time-limit not exceeding 30 days to be fixed by the President. If there is no objection from the other party within that time-limit and no objection from the Tribunal itself, the parties shall be so informed.

Paragraph 5 simply repeats a rule already embodied in the Rules of the ICJ.

The exercise of the right to appoint judges *ad hoc* is independent of a State's other rights regarding the conduct of the case.[2]

Article 19 of the Rules saw practical application in five cases where judges *ad hoc* participated in cases before the Tribunal.

Mr Jean-Pierre Cot, chosen by France, participated as judge *ad hoc* in *The "Grand Prince" Case*.[3] Mr Alberto Székely, chosen by Ireland, participated as judge *ad hoc* in the *MOX Plant Case*.[4] Mr Ivan Shearer was chosen by Australia and New Zealand to act as judge *ad hoc* in the *Southern Bluefin Tuna Cases*[5] and by Australia in *The Volga Case*.[6] Mr Kamal Hossain, chosen by Malaysia, and Mr Bernard H. Oxman, chosen by Singapore, acted as judges *ad hoc* in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*.[7]

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[2] S. Rosenne, *The Law and Practice of the International Court of Justice, 1920–1996*, Vol. III, 1997, p. 1131.

[3] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at pp. 22–23.

[4] *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 97.

[5] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 283.

[6] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 16.

[7] *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 12.

Article 20

1. If the Tribunal finds that two or more parties are in the same interest and are therefore to be considered as one party only, and that there is no Member of the nationality of any one of these parties upon the bench, the Tribunal shall fix a time-limit within which they may jointly choose a judge *ad hoc*.
2. Should any party among those found by the Tribunal to be in the same interest allege the existence of a separate interest of its own or put forward any other objection, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

Article 20

1. Si le Tribunal constate que deux ou plusieurs parties font cause commune et doivent donc ne compter que pour une seule et qu'il n'y a sur le siège aucun Membre de la nationalité de l'une de ces parties, le Tribunal leur fixe un délai pour désigner d'un commun accord un juge *ad hoc*.
2. Si l'une des parties dont le Tribunal a constaté qu'elles faisaient cause commune invoque l'existence d'un intérêt propre ou soulève toute autre objection, le Tribunal décide, après avoir entendu les parties s'il y a lieu.

COMMENTARY

This article is based on Article 36 of the Rules of the ICJ. Minor drafting changes were made to paragraph 1; for example, the words "to be reckoned" were changed to read "to be considered", being the words used in article 17, paragraph 5, of the Statute. In paragraph 2, the word "amongst" was replaced by "among".

In accordance with article 17, paragraph 5, of the Statute, if several parties are in the same interest, they shall be treated as one party for the purpose of that article, i.e., for the purpose of appointing a judge *ad hoc*; any doubt on that point will be settled by the Tribunal. Article 20 puts this rule of the Statute into effect.

Under paragraph 2, if a party found by the Tribunal to be in the same interest invokes the existence of a separate interest, or submits any other objection, the matter shall be decided by the Tribunal, if necessary after

hearing the parties. It has been observed that this paragraph has more to do with the problem of joinder than with that of the appointment of a judge *ad hoc*.[1]

This article saw practical application in the *Southern Bluefin Tuna Cases*.[2]

[1] Rosenne, p. 89.

[2] Mr Ivan Shearer acted as judge *ad hoc* in *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 283.

Article 21

1. If a Member having the nationality of one of the parties is or becomes unable to sit in any phase of a case, that party is entitled to choose a judge *ad hoc* within a time-limit to be fixed by the Tribunal, or by the President of the Tribunal if the Tribunal is not sitting.
2. Parties in the same interest shall be deemed not to have a Member of one of their nationalities upon the bench if every Member having one of their nationalities is or becomes unable to sit in any phase of the case.
3. If a Member having the nationality of one of the parties becomes able to sit not later than the closure of the written proceedings in that phase of the case, that Member shall resume the seat on the bench in the case.

Article 21

1. Si un Membre ayant la nationalité de l'une des parties n'est pas ou n'est plus en mesure de siéger dans une phase d'une affaire, cette partie est autorisée à désigner un juge *ad hoc* dans un délai fixé par le Tribunal ou, s'il ne siège pas, par le Président du Tribunal.
2. Les parties faisant cause commune ne sont pas considérées comme comptant sur le siège un Membre de la nationalité de l'une d'elles si tout Membre ayant la nationalité de l'une d'elles n'est pas ou n'est plus en mesure de siéger dans une phase d'une affaire.
3. Si un Membre ayant la nationalité de l'une des parties est de nouveau en mesure de siéger avant la clôture de la procédure écrite dans cette phase de l'affaire, il reprend sa place sur le siège.

COMMENTARY

This article is modelled on Article 37 of the Rules of the ICJ.

In paragraph 2, the Tribunal replaced the expression "if the Member of the Court having one of their nationalities" used in Article 37 of the Rules of the ICJ with "if every Member having one of their nationalities" in article 21 of the Rules – which seems more correct.

Under article 21, paragraph 1, if one of the parties has on the bench a judge of its nationality but the judge is or becomes unable to sit in any phase of a case, that party is entitled to choose a judge *ad hoc* within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting.

Paragraph 2 extends the solution contained in paragraph 1 where there are several parties in the same interest.

Paragraph 3 envisages a case where a Member of the Tribunal, having the nationality of one of the parties, later becomes able to sit before the closure of the written proceedings in that phase of the case. That Member is entitled to resume the seat on the bench in the case.

Article 22

1. An entity other than a State may choose a judge *ad hoc* only if:

   (a) one of the other parties is a State Party and there is upon the bench a judge of its nationality or, where such party is an international organization, there is upon the bench a judge of the nationality of one of its member States or the State Party has itself chosen a judge *ad hoc*; or

   (b) there is upon the bench a judge of the nationality of the sponsoring State of one of the other parties.

2. However, an international organization or a natural or juridical person or state enterprise is not entitled to choose a judge *ad hoc* if there is upon the bench a judge of the nationality of one of the member States of the international organization or a judge of the nationality of the sponsoring State of such natural or juridical person or state enterprise.
3. Where an international organization is a party to a case and there is upon the bench a judge of the nationality of a member State of the organization, the other party may choose a judge *ad hoc*.
4. Where two or more judges on the bench are nationals of member States of the international organization concerned or of the sponsoring States of a party, the President may, after consulting the parties, request one or more of such judges to withdraw from the bench.

Article 22

1. Une entité autre qu'un Etat ne peut désigner un juge *ad hoc* que si :

   a) l'une des parties adverses est un Etat Partie et que le Tribunal compte sur le siège un juge de la nationalité de cet Etat ou, lorsque cette partie est une organisation internationale, si le Tribunal compte sur le siège un juge de la nationalité de l'un de ses Etats membres ou si l'Etat Partie a lui-même désigné un juge *ad hoc* ; ou

   b) le Tribunal compte sur le siège un juge de la nationalité de l'Etat qui patronne l'une des parties adverses.

2. Toutefois, une organisation internationale ou une personne physique ou morale ou une entreprise d'Etat ne peut désigner un juge *ad hoc* si le Tribunal compte sur le siège un juge de la nationalité de l'un des Etats membres de cette organisation internationale ou un juge de la nationalité de l'Etat qui patronne cette personne physique ou morale ou entreprise d'Etat.
3. Si une organisation internationale est partie à une affaire et que le Tribunal compte sur le siège un juge de la nationalité d'un Etat membre de cette organisation, la partie adverse peut désigner un juge *ad hoc*.

4. Si le Tribunal compte sur le siège deux ou plusieurs juges de la nationalité des Etats membres de l'organisation internationale concernée ou des Etats qui patronnent une partie, le Président peut, après avoir consulté les parties, demander à un ou plusieurs de ces juges de se retirer.

COMMENTARY

This article deals with the entitlement of entities other than States to choose judges *ad hoc*. Such an entity has the right to choose a judge *ad hoc* only in the following instances:

(i) one of the other parties is a State Party and has upon the bench a judge of its nationality;
(ii) that party is an international organization, e.g., the European Community, and has upon the bench a judge of the nationality of one of its member States; or
(iii) a judge *ad hoc* has already been chosen by the State Party;
(iv) a judge of the nationality of the sponsoring State[1] of one of the other parties is on the bench.

An international organization or natural or juridical person may not choose a judge *ad hoc* when it has upon the bench a judge of the nationality of one of its member States or a judge of the nationality of the sponsoring State of such natural or juridical person or state enterprise.

Conversely, the other party may designate a judge *ad hoc* where an international organization which is a party to a case has upon the bench a judge of the nationality of one of its member States.

The President may, after consulting the parties, request one or more judges to stand down (withdraw from the bench), if there were two or more judges of the nationality of member States of the international organization concerned or of the sponsoring State of a party.

The composition of the special chamber in the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)* reflected the application of article 22, paragraph 2. The composition of the special chamber to deal with this was as follows: President P. Chandrasekhara Rao, Judges Caminos, Yankov and Wolfrum, and judge *ad hoc* Orrego Vicuña.[2]

[1] See article 153, paragraph 2(b), of the Convention.
[2] *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000*, p. 148 at p. 153.

SECTION B. THE SEABED DISPUTES CHAMBER

The Seabed Disputes Chamber enjoys a special status within the Tribunal, given its relationship to the provisions of the Convention setting out the system of exploitation of the resources of the area beyond the limits of national jurisdiction and its innovative jurisdiction in that context over natural and juridical persons. In the negotiation of the Law of the Sea Convention, the Chamber was initially envisaged as an independent tribunal within the framework of the International Seabed Authority and some of provisions of the Convention continue to reflect this, although the Tribunal in organizing its work has sought to ensure the full integration of the Chamber.

The Chamber has institutional links with the International Seabed Authority in three respects: in the role of the Authority to make recommendations on its composition; in the Authority's procedure for seeking advisory opinions; and in the requirement under article 314 of the Convention that amendments to the provisions of the Statute of the Tribunal dealing with the Chamber be subject to the approval of the Authority.

Section B. The Seabed Disputes Chamber

Subsection 1. The members and judges *ad hoc*

Article 23

The members of the Seabed Disputes Chamber shall be selected following each triennial election to the Tribunal as soon as possible after the term of office of Members elected at such election begins. The term of office of members of the Chamber shall begin to run from the date of their selection. The term of office of members selected at the first selection shall expire on 30 September 1999; the terms of office of members selected at subsequent triennial selections shall expire on 30 September every three years thereafter. Members of the Chamber who remain on the Tribunal after the expiry of their term of office shall continue to serve on the Chamber until the next selection.

Section B. Chambre pour le règlement des différends relatifs aux fonds marins

Sous-section 1. Membres et juges *ad hoc*

Article 23

Les membres de la Chambre pour le règlement des différends relatifs aux fonds marins sont choisis après chaque élection triennale du Tribunal le plus tôt possible après le commencement du mandat des Membres élus lors de cette élection. La période de fonctions des membres de la Chambre commence à courir à partir de la date à laquelle ils ont été choisis. La période de fonctions des membres désignés lors de la première sélection expire le 30 septembre 1999 ; la période de fonctions des membres désignés lors des sélections triennales ultérieures expire le 30 septembre, trois ans après chaque sélection. Les membres de la Chambre qui continuent à siéger au Tribunal après l'expiration de leur période de fonctions continuent à siéger à la Chambre jusqu'à ce que les membres suivants soient choisis.

COMMENTARY

The provisions on the composition of the Chamber are set out in article 35 of the Statute, and specify, *inter alia*, that there shall be 11 members, that the representation of the principal legal systems of the world and equitable geographical distribution shall be assured, and that the Assembly of the International Seabed Authority may adopt recommendations of a general nature relating to such representation and distribution. Article 23 adds more specificity to the provision in article 35, paragraph 3, of the Statute which sets out that the members shall be selected every three years. Article 2 of the Rules lays down that the term of office of Members of the Tribunal elected at a triennial election shall begin to run from 1 October following the date of the election. Article 23 links the term of the Chamber to this date, specifying that the selection shall be held as soon as possible after this date, with the term to begin to run from the date of the selection. The terms expire on 30 September three years thereafter.

In the event that the selection is not held precisely on 1 October in the given year, with the result that the term of office of the members of the preceding Chamber will have expired on the previous 30 September, article 23 provides that those Chamber members who remain on the Tribunal after the expiration of the term of office shall continue to serve on the Chamber until the next selection. A provision to the same effect is made for the Chamber of Summary Procedure in article 28, paragraph 3, of the Rules.

Article 24

The President of the Chamber, while holding that office, takes precedence over the other members of the Chamber. The other members take precedence according to their precedence in the Tribunal in the case where the President and Vice-President of the Tribunal are not exercising the functions of those offices.

Article 24

Le Président de la Chambre prend rang avant les autres membres de la Chambre pendant la durée de son mandat de Président. Les autres membres prennent rang suivant le rang qui est le leur au sein du Tribunal lorsque le Président et le Vice-Président du Tribunal n'exercent pas leur mandat.

COMMENTARY

The Tribunal chose to deal in detail in article 24 with the question of precedence of members of the Chamber.

It provides, first, that the President of the Chamber takes precedence before the other members of the Chamber, but specifies that this is the case only "while holding that office", and not, for example, when he or she is precluded by the Statute or the Rules from sitting or from presiding in a particular case.

Article 24 deals further with the precedence of the other members of the Chamber, applying the order of precedence laid down generally in article 4 of the Rules, but providing that the President and Vice-President of the Tribunal, if members of the Chamber, follow the order of precedence prevailing when they are not exercising those functions.[1]

[1] See article 4, paragraph 4, of the Rules.

Article 25

Articles 8 and 9 apply *mutatis mutandis* to the judges *ad hoc* of the Chamber.

Article 25

Les articles 8 et 9 s'appliquent *mutatis mutandis* aux juges *ad hoc* de la Chambre.

COMMENTARY

Article 25 applies to judges *ad hoc* of the Chamber articles 8 and 9 of the Rules *mutatis mutandis*. Special rules apply to judges *ad hoc* of chambers of the Tribunal,[1] including the Seabed Disputes Chamber. The system of *ad hoc* judges does not apply to *ad hoc* chambers of the Seabed Disputes Chamber formed in accordance with article 188, paragraph 1(b), of the Convention.

[1] See article 17, paragraph 4, of the Statute and article 31, paragraph 3, of the Rules.

Subsection 2. The presidency

Article 26

1. The Chamber shall elect its President by secret ballot and by a majority vote of its members.
2. The President shall preside at all meetings of the Chamber.
3. In the event of a vacancy in the presidency or of the inability of the President of the Chamber to exercise the functions of the presidency, these shall be exercised by the member of the Chamber who is senior in precedence and able to act.
4. In other respects, articles 10 to 14 apply *mutatis mutandis*.

Sous-section 2. Présidence

Article 26

1. La Chambre élit son Président au scrutin secret et à la majorité de ses membres.
2. Le Président préside toutes les séances de la Chambre.
3. Lorsque la présidence est vacante ou que le Président de la Chambre est empêché de l'exercer, elle est assurée par le membre de la Chambre qui prend rang le premier et n'est pas lui-même empêché.
4. A tous autres égards, les articles 10 à 14 s'appliquent *mutatis mutandis*.

COMMENTARY

Article 35, paragraph 4, of the Statute stipulates that the Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected. Article 26, paragraph 1, of the Rules provides that the election shall be by secret ballot, as is the case in the election of the President and Vice-President of the Tribunal,[1] the presidents of special chambers[2] and the Registrar, Deputy Registrar and Assistant Registrar.[3] The President of the Chamber is elected by "a majority vote of its members", as in the case of special chambers,[4] thus using neither the general wording in the Statute, "majority of the members

[1] Article 11, paragraph 2, of the Rules.
[2] Article 31, paragraph 1, of the Rules.
[3] Article 32, paragraph 1, and article 33 of the Rules.
[4] Article 31, paragraph 1, of the Rules.

of the Tribunal who are present",[5] nor that for the election of the President and Vice-President of the Tribunal,[6] "majority of the Members composing the Tribunal at the time of the election".

The role of the President of the Chamber, as laid down in paragraph 2, is to preside over all meetings of the Chamber. The comparable Rule setting out the role of the President of the Tribunal, article 12, paragraph 1, goes on to provide that the President shall direct the work and supervise the administration of the Tribunal, a clause which is missing from the article on the functions of the President of the Chamber.

Paragraph 3 provides that in case of a vacancy in the presidency or of the inability of the President to act, the member of the Chamber senior in precedence and able to act shall exercise the functions of the presidency. The same provision applies to special chambers.[7] Precedence in the Chamber is determined in accordance with article 24 of the Rules.[8]

Paragraph 4 provides that, in other respects, articles 10 to 14, dealing with the Presidency and Vice-Presidency of the Tribunal, apply *mutatis mutandis*. This would include some elements of the conduct of the election of the President[9] other than with respect to the majority required for election, the right of the President, when he or she is precluded from sitting or from presiding in a particular case, to continue to exercise the functions of the presidency in other respects[10] and the possibility of the Chamber deciding not to fill a vacancy in the presidency which occurs near the end of the term of office.[11]

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[5] Article 29 of the Statute.
[6] Article 11, paragraphs 2 and 3, of the Rules.
[7] Article 31, paragraph 4, of the Rules.
[8] See comments on article 24, *supra*.
[9] Articles 10 and 11, paragraphs 1 and 2, of the Rules.
[10] Article 13, paragraph 2, of the Rules.
[11] Article 14 of the Rules.

Subsection 3. *Ad hoc* chambers of the Seabed Disputes Chamber

Article 27

1. Any request for the formation of an *ad hoc* chamber of the Seabed Disputes Chamber in accordance with article 188, paragraph 1(b), of the Convention shall be made within three months from the date of the institution of proceedings.
2. If, within a time-limit fixed by the President of the Seabed Disputes Chamber, the parties do not agree on the composition of the chamber, the President shall establish time-limits for the parties to make the necessary appointments.

Sous-section 3. Chambres ad hoc de la Chambre pour le règlement des différends relatifs aux fonds marins

Article 27

1. Toute demande visant à la constitution d'une chambre *ad hoc* de la Chambre pour le règlement des différends relatifs aux fonds marins, conformément à l'article 188, paragraphe 1, lettre b), de la Convention, est formulée dans un délai de trois mois suivant la date de l'introduction de l'instance.
2. Si les parties ne s'entendent pas sur la composition de la chambre dans les délais fixés par le Président de la Chambre pour le règlement des différends relatifs aux fonds marins, le Président fixe les délais dans lesquels les parties doivent procéder aux nominations nécessaires.

COMMENTARY

Article 188, paragraph 1(b), of the Convention provides that a dispute between States Parties referred to in article 187, subparagraph (a), namely a dispute with respect to activities in the Area beyond the limits of national jurisdiction concerning the interpretation of Part XI of the Convention or the Annexes relating thereto, may be submitted, at the request of any party to the dispute, to an *ad hoc* chamber of the Seabed Disputes Chamber formed under article 36 of the Statute. Article 27 of the Rules lays down the procedure for the formation of such an *ad hoc* chamber.

Article 27, paragraph 1, of the Rules provides that the request by a party for the formation of an *ad hoc* chamber shall be made within three months of the institution of proceedings in the case.

Article 36, paragraph 1, of the Statute provides that the *ad hoc* chamber shall consist of three members of the Seabed Disputes Chamber, the members to be determined by the Seabed Disputes Chamber with the approval of the parties. Under article 36, paragraph 2, of the Statute, if the parties do not agree on the composition, each shall appoint one member, with the third to be appointed by agreement. If they disagree, or if any party fails to make an appointment, the President of the Seabed Disputes Chamber shall make the appointment, after consultation with the parties. Under article 27, paragraph 2, of the Rules, the President of the Seabed Disputes Chamber is empowered to fix time-limits for agreement by the parties on the composition, and to establish further time-limits for the parties to make the necessary appointments if they fail to agree within the time-limit.

SECTION C. SPECIAL CHAMBERS

The Statute makes provision for the establishment of special chambers, both standing and *ad hoc*, for dealing with disputes.[1] It makes provision for three categories of special chambers. The conceptual inspiration for these chambers is the same as that of similar chambers of the ICJ.[2]

The Statute confers discretionary powers on the Tribunal to form special chambers as standing chambers for dealing with "particular categories of disputes", with each chamber being composed of three or more of the elected Members of the Tribunal.[3] The Tribunal has so far formed two such standing chambers, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes, each consisting of seven elected Members of the Tribunal.[4]

The Tribunal is also empowered to form an *ad hoc* chamber for dealing with "a particular dispute" submitted to it, if the parties so request.[5] It determines, with the approval of the parties, the composition of such a chamber.[6] This enables the Tribunal to act upon the agreement of the parties while formally preserving its power to constitute the chamber. This new system of chambers helps parties to choose, from among judges of the Tribunal, those whom they want to sit in their case.[7]

An *ad hoc* chamber under article 15, paragraph 2, of the Statute should be of particular interest to parties who are considering arbitration. As in arbitration, in respect of an *ad hoc* chamber the parties are given substantial freedom to choose the judges of the Tribunal who are to sit in such a chamber. If an *ad hoc* chamber does not have a member of the nationality of one of the parties, that party may choose a person to participate as a member of the special chamber, even if the full Tribunal (as distinct from the special chamber) has on the bench a Member of the nationality of that party, since the provisions of article 17, paragraph 4, of the Statute apply only in respect of standing chambers and not an *ad hoc* chamber.[8]

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[1] See article 15. See generally G. Eiriksson, "The Special Chambers of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 93.

[2] See Articles 26, 27 and 29 of the Statute of the ICJ. See generally P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183 at p. 189.

[3] See article 15, paragraph 1, of the Statute.

[4] For the text of the resolutions forming these two chambers and their terms of reference, see *ITLOS Yearbook 1996–1997*, pp. 154, 156 and *ITLOS Yearbook 2002*, pp. 132, 133.

[5] See article 15, paragraph 2 of the Statute.

[6] *Ibid.*

[7] See also Article 26, paragraph 2, of the Statute of the ICJ, read in conjunction with Article 17, paragraph 2, of the Rules of the ICJ.

[8] See P. Chandrasekhara Rao, *op. cit.* note 2, p. 183 at pp. 193–194.

In the *ad hoc* chamber system, the parties can enjoy all the benefits of ordinary arbitration, without having to bear the expenses of the chamber.[9] There is also the added advantage that a judgment given by an *ad hoc* chamber, like the one given by any other special chamber, is considered to have been rendered by the full Tribunal.[10] Judgments given by any of the special chambers are not subject to review by the full Tribunal.[11]

The only *ad hoc* chamber formed by the Tribunal so far was in a case between Chile and the European Community. Since the European Community had chosen a judge of the Tribunal who was of the nationality of a member State of that international organization to participate as a member of the Chamber, Chile chose a judge *ad hoc* to participate as a member of the Chamber.[12]

"With a view to the speedy dispatch of business", the Statute mandates the Tribunal to form annually a chamber, i.e., the Chamber of Summary Procedure, to hear and determine disputes by a "summary procedure".[13] Although it is difficult to define precisely the meaning of "summary procedure", in the nature of things, that expression would appear to indicate that the chamber of summary procedure could deal with disputes that lend themselves to ready solutions or that do not require particularly intricate and detailed interpretation of law.[14]

The Statute and the Rules also indicate some matters that may lend themselves for determination by summary procedure. If the Tribunal is not in session or a sufficient number of Members is not available to constitute a quorum, the Chamber of Summary Procedure is required to be convened to prescribe provisional measures in accordance with article 290 of the Convention.[15] Notwithstanding article 15, paragraph 4, of the

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[9] By virtue of article 19 of the Statute, the expenses of the Tribunal are borne by the States Parties and by the International Seabed Authority on such terms and in such a manner as shall be decided at meetings of the States Parties. Article 19 further provides that when an entity other than a State Party or the International Seabed Authority is a party to a case submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal. The Tribunal is engaged in the task of evolving general criteria which could help in fixing the amount payable by an entity other than a State Party towards the expenses of the Tribunal when a case to which it is a party is submitted to the Tribunal.

[10] See article 15, paragraph 5, of the Statute.

[11] However, by virtue of article 25, paragraph 2, of the Statute, the provisional measures prescribed by the Chamber of Summary Procedure are subject to review and revision by the Tribunal. On the question of the revision or interpretation of a judgment given by a special chamber, see article 129, paragraph 2, of the Rules.

[12] See *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000*, p. 148. See also article 22, paragraph 3, of the Rules.

[13] See article 15, paragraph 3, of the Statute. The expression "the chamber of summary procedure" is used by the Statute itself in article 25, paragraph 2, thereof.

[14] See also in this regard, M.O. Hudson, *The Permanent Court of International Justice 1920–1942. A Treatise*, 1943, p. 346; R. Ostrihansky, "Chambers of the International Court of Justice", 37 *ICLQ* (1988), p. 30 at p. 32.

[15] See article 25, paragraph 2, of the Statute.

Statute, such provisional measures may be adopted at the request of any party to the dispute;[16] they are, however, subject to review and revision by the Tribunal.[17]

The Rules further require the Chamber of Summary Procedure to deal with an application for the release of a vessel or its crew from detention under article 292 of the Convention if the parties so request.[18] This provision has been invoked unsuccessfully on two occasions.[19] In *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release*, the very first case before the Tribunal, the Application of Saint Vincent and the Grenadines under article 292 of the Convention included a request for the submission of the case to the Chamber of Summary Procedure. Since Guinea did not notify the Tribunal of its concurrence with the request within the time-limit provided for in the Rules, the case was dealt with by the Tribunal itself.[20] Again, on behalf of Panama, an application under article 292 of the Convention was filed on 3 July 2001 against Yemen, which contained a request that the case be dealt with by the Chamber of Summary Procedure. The Application was for the release of the *Chaisiri Reefer 2*, a fishing vessel flying the flag of Panama, its cargo and crew. The Application was entered in the List of cases as Case No. 9 and named *The "Chaisiri Reefer 2" Case*. Yemen did not accept Panama's request. Following an agreement between the two parties, the President of the Tribunal, by Order dated 13 July 2001, directed the removal of the case from the List of cases.[21]

The Statute and the Rules do not specify what other types of disputes, other than those specified in article 112 of the Rules, could be handled by the Chamber by Summary Procedure. It is for the Chamber to decide in each case whether the dispute before it is amenable for determination by summary procedure. The Chamber is composed of five of the Tribunal's elected Members.[22] Two more Members of the Tribunal are also selected as alternates for the purpose of replacing Members who are unable to participate in a particular proceeding.[23] The Chamber of Summary Procedure has never met, since no dispute has been brought before it; nor has any contingency arisen in which it could prescribe provisional measures.

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[16] *Ibid.*

[17] Article 25, paragraph 2, of the Statute.

[18] See article 112, paragraph 2, of the Rules.

[19] See P. Chandrasekhara Rao, *op. cit.* note 2, p. 183 at pp. 190–191.

[20] See paragraph 5 of the judgment of the Tribunal delivered on 4 December 1997 in *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 18.

[21] *"Chaisiri Reefer 2" (Panama* v. *Yemen), Order of 13 July 2001, ITLOS Reports 2001*, p. 82 at p. 84.

[22] See article 15, paragraph 3, of the Statute.

[23] *Ibid.*

The jurisdiction of the special chambers provided for in article 15 of the Statute is consensual.[24] Parties may choose between having a dispute heard by the full Tribunal or by any of its special chambers. The parties may even propose particular modifications or additions to the Rules contained in Part III of the Rules which a chamber may apply.[25]

It is the requirement of the Statute that in the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution are assured.[26] A similar requirement is provided for in the selection of the members of the Seabed Disputes Chamber.[27] While there is no similar requirement in relation to the composition of the special chambers provided for in article 15, paragraphs 1 and 3, of the Statute, the Tribunal adheres to the principle underlying such requirement as far as possible. There is also a special requirement that the members of a standing special chamber are to be selected by the Tribunal upon the proposal of the President from among the Members, "having regard to any special knowledge, expertise or previous experience which any of the Members may have in relation to the category of disputes the chamber deals with."[28]

The quorum required to constitute the Tribunal[29] and the Seabed Disputes Chamber[30] is specified in the Statute. The quorum required for meetings of the Chamber of Summary Procedure is specified in article 28, paragraph 6, of the Rules. The Tribunal is empowered to determine the quorum for meetings of a standing special chamber provided for in article 15, paragraph 1, of the Statute whenever it decides to form such a chamber.[31] The Tribunal is further empowered to determine the quorum for meetings of an *ad hoc* chamber provided for in article 15, paragraph 2, of the Statute, following the approval of the parties to the formation of such a chamber.[32]

The members of special chambers provided for in article 15, paragraphs 1 and 3, of the Statute are "selected"[33] upon the proposal of the

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[24] Article 15, paragraph 4, of the Statute.

[25] See article 48 of the Rules. In *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000*, p. 148, the Tribunal made modifications to its Rules as proposed by the parties.

[26] See article 2, paragraph 2, of the Statute.

[27] See article 35, paragraph 2, of the Statute.

[28] See also article 29, paragraph 2, of the Rules.

[29] See article 13, paragraph 1, of the Statute.

[30] See article 35, paragraph 7, of the Statute.

[31] See article 29, paragraph 1, of the Rules.

[32] See article 30, paragraph 3, of the Rules.

[33] The Statute also provides for *selection* in relation to alternate members of the Chamber of Summary Procedure (article 15, paragraph 3) and of the Seabed Disputes Chamber (article 35). In contrast, the Rules of the ICJ provide for *election* of the members of all chambers (Articles 15 to 18 of the Rules of the ICJ).

President of the Tribunal.[34] The Members who are to constitute an *ad hoc* chamber are "determined" by the Tribunal, with the approval of the parties to a dispute.[35]

[34] See articles 28, paragraph 2, and 29, paragraph 2, of the Rules.
[35] See article 30, paragraph 3, of the Rules.

Section C. Special chambers

Article 28

1. The Chamber of Summary Procedure shall be composed of the President and Vice-President of the Tribunal, acting ex officio, and three other Members. In addition, two Members shall be selected to act as alternates.
2. The members and alternates of the Chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal.
3. The selection of members and alternates of the Chamber shall be made as soon as possible after 1 October in each year. The members of the Chamber and the alternates shall enter upon their functions on their selection and serve until 30 September of the following year. Members of the Chamber and alternates who remain on the Tribunal after that date shall continue to serve on the Chamber until the next selection.
4. If a member of the Chamber is unable, for whatever reason, to sit in a given case, that member shall be replaced for the purposes of that case by the senior in precedence of the two alternates.
5. If a member of the Chamber resigns or otherwise ceases to be a member, the place of that member shall be taken by the senior in precedence of the two alternates, who shall thereupon become a full member of the Chamber and be replaced by the selection of another alternate.
6. The quorum for meetings of the Chamber is three members.

Section C. Chambres spéciales

Article 28

1. La Chambre de procédure sommaire est composée du Président et du Vice-Président du Tribunal, membres de droit, et de trois autres Membres. En outre, deux Membres sont choisis comme suppléants.
2. Les membres et suppléants de la chambre sont choisis par le Tribunal sur la proposition du Président du Tribunal.
3. Le choix des membres et suppléants de la chambre a lieu chaque année le plus tôt possible après le premier octobre. Les membres de la chambre et les suppléants entrent en fonctions dès qu'ils ont été désignés et restent en fonctions jusqu'au 30 septembre de l'année suivante. Les membres de la chambre et les suppléants qui continuent à siéger au Tribunal après cette date restent en fonctions jusqu'à ce que les membres et les suppléants suivants soient choisis.

4. Si un membre de la chambre est empêché, pour quelque motif que ce soit, de siéger dans une affaire donnée, il est remplacé aux fins de cette affaire par celui des deux suppléants qui prend rang le premier.
5. Si un membre de la chambre démissionne ou cesse de faire partie de cette chambre pour tout autre motif, sa place est occupée par celui des deux suppléants qui prend rang le premier; celui-ci devient alors membre titulaire de la chambre et un nouveau suppléant est choisi pour le remplacer.
6. Le quorum pour les réunions de la chambre est de trois membres.

COMMENTARY

Article 28 elaborates on the requirements of article 15, paragraph 3, of the Statute. It corresponds to Article 15 of the Rules of the ICJ, with modifications in relation to the selection of members and alternates of the chamber and the quorum required for meetings of the chamber.

Although it is not required by the Statute, the Rules provide (in article 28, paragraph 1) as with the Rules of the ICJ, that the President and the Vice-President of the Tribunal should *ex officio* be members of the Chamber of Summary Procedure; no such requirement obtains in the case of other chambers. The Chamber of Summary Procedure is also a continuing special chamber, in the same sense that the Tribunal is a continuing body.

Paragraph 2 deals with the procedure to be followed in the selection of the members and alternates of the Chamber. The Tribunal makes the selection upon the proposal of the President of the Tribunal. Such proposals are invariably made in consultation with Members of the Tribunal. Voting may not be required if the proposal receives approval of the Tribunal otherwise.

The terms of seven Members expire at the end of every three years. The term of office of Members elected at a triennial election begins from 1 October following the date of the election.[1] Paragraph 3 of article 28 enables the new Members to take part in the selection of members and alternates of the Chamber. The selection is required to take place as soon as possible after 1 October in each year. The members and alternates enter upon their functions on their selection and serve until 30 September of the following year. If they remain on the Tribunal after that date, they continue to serve on the chamber until the next selection. This enables the Chamber of Summary Procedure generally to function without a

[1] See article 2 of the Rules. The judges met for the first time on 1 October 1996, even though the Tribunal was inaugurated on 18 October 1996.

break, since, under paragraph 6, the quorum for meetings of the Chamber is three members.

The question is whether the members of the Chamber may be re-elected. Article 17, paragraph 2, of the Preparatory Commission draft, like Article 15, paragraph 2, of the Rules of the ICJ, provided that the members of the Chamber may be "re-elected". Article 28, paragraph 3, of the Rules of the Tribunal omits the provision. It appears that this article does not favour immediate "re-election" of the members of the Chamber.

Paragraphs 4 and 5 deal with the two alternative members of the Chamber who, by virtue of article 15, paragraph 3, of the Statute, are selected for the purpose of replacing members who are unable to participate in a particular proceeding. Under paragraph 4, if a member of the Chamber is unable, for whatever reason, to "sit in a given case",[2] that member is replaced "for the purposes of that case" by the senior in precedence of the two alternates. The question of seniority of the Members of the Tribunal is dealt with in article 4 of the Rules.[3]

Paragraph 5 covers not a case-related but a vacancy-related eventuality. It deals with a contingency not expressly referred to in article 15, paragraph 3, of the Statute. It refers to the situation that arises when a member of the Chamber "resigns or otherwise ceases to be a member" and provides that the place of that member be taken by the senior in precedence of the two alternates. The substitute member becomes then a full member of the Chamber and the consequent vacancy in the place of the alternate is filled by the selection of another alternate by the Tribunal. Hence, there is no question of members of a chamber who have been replaced, in accordance with article 5 of the Statute, continuing to serve on the chamber.

[2] The expression "to participate in a particular proceeding" in article 15, paragraph 3, of the Statute becomes the expression "to sit in a given case" in article 28, paragraph 4, of the Rules.

[3] See also the reference to seniority in article 26, paragraph 1, of the Statute.

Article 29

1. Whenever the Tribunal decides to form a standing special chamber provided for in article 15, paragraph 1, of the Statute, it shall determine the particular category of disputes for which it is formed, the number of its members, the period for which they will serve, the date when they will enter upon their duties and the quorum for meetings.
2. The members of such chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal from among the Members, having regard to any special knowledge, expertise or previous experience which any of the Members may have in relation to the category of disputes the chamber deals with.
3. The Tribunal may decide to dissolve a standing special chamber. The chamber shall finish any cases pending before it.

Article 29

1. Lorsque le Tribunal décide de constituer une chambre spéciale permanente prévue à l'article 15, paragraphe 1, du Statut, il détermine la catégorie d'affaires en vue de laquelle la chambre est constituée, le nombre de ses membres, la durée de leurs pouvoirs, la date de leur entrée en fonctions et le quorum requis pour les réunions.
2. Les membres de cette chambre sont choisis par le Tribunal sur la proposition du Président du Tribunal parmi les Membres, compte tenu des connaissances particulières, des aptitudes techniques ou de l'expérience que chacun a pu acquérir en ce qui concerne la catégorie de différends dont la chambre doit connaître.
3. Le Tribunal peut décider la dissolution d'une chambre spéciale permanente. Celle-ci devra terminer les affaires en instance devant elle.

COMMENTARY

Article 29 is an amplification of the provisions concerning standing special chambers provided for in article 15, paragraph 1, of the Statute. It corresponds to Article 16 of the Rules of the ICJ, with modifications with regard to the selection of the members of the standing special chamber.

The Statute leaves it to the Tribunal to form standing special chambers composed of three or more of its elected Members and to specify the "particular categories of disputes" to be dealt with by such chamber. Article 29, paragraph 1, of the Rules provides that, whenever the Tribunal decides to form a standing special chamber, it needs to determine the following: (a) the particular category of disputes for which the chamber

is formed, (b) the number of members of the chamber, (c) the period for which the members will serve, (d) the date when the members will enter upon their duties, and (e) the quorum for meetings of the chamber.

On 14 February 1997, the Tribunal formed two standing special chambers: the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes.[1] The Fisheries Chamber is available to deal with disputes concerning the relevant provisions of the Convention dealing with the conservation and management of marine living resources and any other agreement relating to the conservation and management of marine living resources that confers jurisdiction on the Tribunal. The Marine Environment Chamber is available to deal with disputes concerning the provisions of the Convention dealing with the protection and preservation of the marine environment, special conventions and agreements relating to the protection and preservation of the marine environment referred to in article 237 of the Convention and any agreement relating to the protection and preservation of the marine environment that confers jurisdiction on the Tribunal.

Each chamber consists of seven members and its members are selected for a term of three years. The quorum required for meetings of each chamber is five members.

By separate resolutions adopted on 8 October 1999, the Tribunal constituted these chambers once more for a three-year period.[2] Again, on 2 October 2002, the Tribunal selected the members of the two chambers for a further three-year period.[3]

Article 29, paragraph 2, like article 28, paragraph 2, in the case of the Chamber of Summary Procedure, provides that the members of a standing special chamber are selected by the Tribunal upon the proposal of the President, from among the Members. It is a requirement of the provision that, while making the selection, the Tribunal have "regard to any special knowledge, expertise or previous experience which any of the Members may have in relation to the category of disputes the chamber deals with." The fulfilment of this requirement, in practice, lies within the subjective satisfaction of the Tribunal. Nevertheless, the very fact that article 29 underlines certain factors relevant in connection with the selection process carries a special message in this regard.

Paragraph 3 refers to the power of the Tribunal to dissolve a standing special chamber provided for in article 15, paragraph 1, of the Statute. This power flows logically from the power of the Tribunal to form such

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[1] For the text of the resolutions forming these two chambers, see *ITLOS Yearbook 1996–1997*, pp. 154, 156.

[2] See *ITLOS Yearbook 1999*, pp. 117–119.

[3] For the text of the resolutions of 7 October 2002 on the two Chambers, see *ITLOS Yearbook 2002*, pp. 132, 133.

chambers as it considers necessary for dealing with particular categories of disputes. Paragraph 3 adds a condition that, even after a standing special chamber is dissolved, the chamber has to finish "any cases pending before it." It is the chamber as an institution that is mandated to finish any cases pending before it. Notwithstanding the dissolution of a standing chamber provided for in article 15, paragraph 1, of the Statute, its members continue to sit to finish any cases pending before the chamber before its dissolution.

Provision for dissolution of a standing special chamber applies only to a chamber provided for in article 15, paragraph 1, of the Statute and to no other chamber.

The expression "any cases pending before it" appears only in this provision.[4] It appears that this expression refers to the period of time elapsing between the entering of the application instituting proceedings before the chamber in the List of cases and the final judgment,[5] provided the parties agree to have their dispute heard and determined by the standing special chamber.

[4] See article 17 of the Rules which deals with situations arising from replacement of Members following the expiration of their terms of office.

[5] See also Rosenne, p. 42, in relation to the expression "cases pending before it" in Article 16, paragraph 3, of the Rules of the ICJ.

Article 30

1. A request for the formation of a special chamber to deal with a particular dispute, as provided for in article 15, paragraph 2, of the Statute, shall be made within two months from the date of the institution of proceedings. Upon receipt of a request made by one party, the President of the Tribunal shall ascertain whether the other party assents.
2. When the parties have agreed, the President of the Tribunal shall ascertain their views regarding the composition of the chamber and shall report to the Tribunal accordingly.
3. The Tribunal shall determine, with the approval of the parties, the Members who are to constitute the chamber. The same procedure shall be followed in filling any vacancy. The Tribunal shall also determine the quorum for meetings of the chamber.
4. Members of a chamber formed under this article who have been replaced, in accordance with article 5 of the Statute, following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

Article 30

1. La demande tendant à constituer une chambre spéciale pour connaître d'un différend déterminé ainsi qu'il est prévu à l'article 15, paragraphe 2, du Statut est formulée dans un délai de deux mois suivant la date de l'introduction de l'instance. Dès réception de la demande émanant de l'une des parties, le Président du Tribunal s'informe de l'assentiment de la partie adverse.
2. Une fois acquis l'accord des parties, le Président du Tribunal s'informe de leurs vues au sujet de la composition de la chambre et rend compte au Tribunal.
3. Le Tribunal choisit, avec l'assentiment des parties, les Membres qui siégeront à la chambre. Les vacances éventuelles sont pourvues suivant la même procédure. Le Tribunal détermine également le quorum pour les réunions de la chambre.
4. Les membres d'une chambre constituée en application du présent article qui ont été remplacés conformément à l'article 5 du Statut à la suite de l'expiration de leur période de fonctions continuent à siéger dans toutes les phases de l'affaire, quelqu'en soit le stade lors de ce remplacement.

COMMENTARY

Article 30 is an amplification of the provisions concerning the *ad hoc* chambers provided for in article 15, paragraph 2, of the Statute. It corresponds to Article 17 of the Rules of the ICJ, with modifications in relation to the time-limit within which a request for the formation of an *ad hoc* chamber is required to be made, the manner of determining the Members who are to constitute the chamber and the quorum required for meetings of the chamber.

The Statute empowers the Tribunal to form an *ad hoc* chamber whenever the parties so request.[1] Article 30, paragraph 1, of the Rules prescribes a time-limit within which a request for the formation of a special chamber ought to be made. It provides that such a request has to be made within two months from the date of the institution of proceedings,[2] in order to enable the Tribunal to deal with a case as quickly as possible. Upon receipt of such a request, the President is required to ascertain whether the other party assents.

Further steps may follow only if the other party assents to the formation of an *ad hoc* chamber. No specific time-limit is fixed for the other party to convey its assent, although it is presumed that this will be done at the earliest possible time and, in any event, before the Tribunal fixes time-limits for the completion of further steps in the proceedings.

When the parties have agreed to the formation of an *ad hoc* chamber, article 15, paragraph 2, of the Statute requires the Tribunal to determine the composition of such a chamber with the approval of the parties. Article 30, paragraph 2, of the Rules imposes a duty on the President to ascertain first the views of the parties regarding the composition of the chamber and then to report to the Tribunal accordingly. Under article 30, paragraph 3, the Tribunal determines, with the approval of the parties, the Members of the Tribunal who are to constitute the chamber. Whereas article 30, paragraph 2, refers to the ascertainment of the views of the parties regarding "the composition of the chamber" in general, paragraph 3 refers to the determination, with the approval of the parties, of "the Members who are to constitute the chamber". Approval of the parties is crucial in respect of all aspects of the composition of a chamber. Vacancies that may occur in an *ad hoc* chamber may be filled only with the approval of the parties.

The position of the judges *ad hoc* will continue to be governed by articles 19 to 22 of the Rules. The Tribunal also determines the quorum for meetings of the chamber.

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[1] See article 15, paragraph 2.

[2] On institution of proceedings, see article 24 of the Statute and article 107 of the Rules.

Article 30, paragraph 4, deals with the consequences of the expiration of the terms of office of Members of the Tribunal who are also members of a chamber. It states that, notwithstanding such expiration, Members of the Tribunal would continue to sit in the chamber in all phases of the case "whatever the stage it has then reached."

An *ad hoc* chamber is formed only after the institution of proceedings. The critical date for the application of paragraph 4 appears to be the date of the formation of the chamber, although the proceedings as such may have been instituted prior to that date.

Article 31

1. If a chamber when formed includes the President of the Tribunal, the President shall preside over the chamber. If it does not include the President but includes the Vice-President, the Vice-President shall preside. In any other event, the chamber shall elect its own President by secret ballot and by a majority of votes of its members. The member who, under this paragraph, presides over the chamber at the time of its formation shall continue to preside so long as he remains a member of that chamber.
2. Subject to paragraph 3, the President of a chamber shall exercise, in relation to cases being dealt with by that chamber and from the time it begins dealing with the case, the functions of the President of the Tribunal in relation to cases before the Tribunal.
3. The President of the Tribunal shall take such steps as may be necessary to give effect to article 17, paragraph 4, of the Statute.
4. If the President of a chamber is prevented from sitting or acting as President of the chamber, the functions of the presidency of the chamber shall be assumed by the member of the chamber who is the senior in precedence and able to act.

Article 31

1. Si, au moment de sa constitution, une chambre compte parmi ses membres le Président du Tribunal, elle est présidée par le Président. Si elle compte parmi ses membres le Vice-Président mais non le Président, elle est présidée par le Vice-Président. Sinon, la chambre élit son Président au scrutin secret et à la majorité de ses membres. Le membre qui, conformément au présent paragraphe, préside la chambre au moment de sa constitution continue à en assurer la présidence tant qu'il en reste membre.
2. Sous réserve du paragraphe 3, le Président d'une chambre exerce, à l'égard des affaires portées devant cette chambre et à partir du moment où elle commence à examiner l'affaire, les fonctions du Président du Tribunal à l'égard des affaires soumises à celui-ci.
3. Le Président du Tribunal prend les mesures nécessaires pour appliquer aux chambres les dispositions de l'article 17, paragraphe 4, du Statut.
4. Si le Président d'une chambre est empêché de siéger ou de présider, la présidence est assurée par le membre de la chambre qui prend rang le premier et n'est pas lui-même empêché.

COMMENTARY

This article corresponds to Article 18 of the Rules of the ICJ, except that the former, unlike the latter, does not deal with issues concerning elections to all chambers, but contains an additional provision on the obligation of the President of the Tribunal to give effect to article 17, paragraph 4, of the Statute.[1] It makes provisions common to all the special chambers provided for in article 15 of the Statute.

If a chamber when formed does not include the President or Vice-President of the Tribunal, the chamber elects its own President. Paragraph 1 of article 31 does not exclude the possibility of an *ad hoc* judge being elected as the President of the chamber, though it is very unlikely to occur in practice. In contrast, Article 18 of the Rules of the ICJ appears to provide that in such an eventuality only a Member of the Court could be President of an *ad hoc* chamber.[2]

Paragraph 2 of article 31 specifies two things. First, the expression "subject to paragraph 3" in paragraph 2, read with paragraph 3, clearly indicates that it is the President of the Tribunal and not the President of a chamber who is to take such steps as may be necessary to give effect to article 17, paragraph 4, of the Statute. As noted earlier, article 17, paragraph 4, is not applicable to an *ad hoc* chamber.[3] Second, in relation to a case being dealt with by a chamber, the President of that chamber exercises, from the time the chamber begins dealing with the case, the functions of the President of the Tribunal in relation to cases before the Tribunal. No function of the President of the Tribunal will therefore fall within the ambit of the functions of the President of a chamber before the chamber begins dealing with the case.

Paragraph 3 corresponds to Article 91, paragraph 2, of the Rules of the ICJ and article 107, paragraph 2, of the Preparatory Commission Draft Rules.

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[1] See, however, Article 91, paragraph 2, of the Rules of the ICJ.
[2] See Rosenne, p. 46.
[3] See also article 108, paragraph 4, of the Rules.

SECTION D. THE REGISTRY

When reference is made to the Tribunal in the Statute and the Rules, the term "Tribunal" is generally used to designate the judicial body consisting of 21 elected judges which gives judgments, orders and advisory opinions.[1] However, the term "Tribunal" has also a broader meaning, referring to the international organization established by the 1982 United Nations Convention on the Law of the Sea.[2] As an international organization, the Tribunal covers not only the judicial body but also the secretariat ("Registry"), which assists the judges and ensures the functioning of the institution. In this respect, it may be noted that the Tribunal, as an international organization,[3] is composed only of two organs: an organ consisting of international judges, i.e., independent persons elected by the States Parties to the Convention, and a secretariat (Registry).[4]

The Statute of the Tribunal, like the Statute of the ICJ, does not use the term "Registry"; it simply refers to the appointment of a Registrar and "of such other officers as may be necessary" (article 12, paragraph 2). Specific provisions on the Registry may be found in articles 32 to 39 of the Rules of the Tribunal. They regulate the following matters: appointment of the Registrar, Deputy Registrar, Assistant Registrar and staff of the Registry (articles 32 to 35); functions to be discharged by the Registrar (article 36); functions of the Deputy Registrar and rules applicable in cases of absence or vacancy (article 37); organization of the Registry (article 38); and resignation and removal from office of the Registrar, Deputy Registrar or Assistant Registrar (article 39).

Articles 32 to 39 of the Rules have been largely inspired by the corresponding provisions contained in Articles 22 to 29 of the Rules of the ICJ. The contents of both the Rules of the Tribunal and the Rules of

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[1] See, e.g., article 2, paragraph 1, of the Statute: "The Tribunal shall be composed of a body of 21 independent members . . .".

[2] See, e.g., article 1, paragraph 2, of the Statute: "The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany."

[3] The Tribunal was set up by a treaty, it has at least one organ of its own, it functions in accordance with international law, and its legal personality is evidenced by the conclusion of agreements with the United Nations and the Federal Republic of Germany. See Ph. Gautier, "The International Tribunal for the Law of the Sea: Activities in 2003", 3 *Chinese Journal of International Law* (2004), p. 241 at pp. 242–243.

[4] While "classical" international organizations are composed of three organs (a plenary organ, an organ with limited participation, and a secretariat), this structure should not be considered as an essential requirement of the definition of an international organization. The situation of the Tribunal is not unique; reference may be made to the International Criminal Court or to several institutions ("treaty-based organizations") established by multilateral treaties (concluded, for instance, in the fields of the environment, human rights or humanitarian law) consisting of a single organ ("secretariat"). See P. Sands and P. Klein, *Bowett's Law of International Institutions*, 2001, p. 16.

the ICJ are largely identical, with the exception of the rule providing for the possibility for the Tribunal to appoint an Assistant Registrar and the provisions relating to the terms of office and resignation of the Registrar, Deputy Registrar and Assistant Registrar.

Regarding the Registry, the Rules of the Tribunal have been supplemented by other texts adopted on their basis, principally the Staff Regulations and Staff Rules of the Tribunal and the Instructions for the Registry.

The functions to be carried out by the Registry are not limited to legal tasks required for the cases (such as correspondence with the parties, assistance to the President, judges, or to the drafting Committee, collection of documentation, legal studies, preparation of judicial records) but relate to all aspects of an administration. These tasks cover a broad spectrum of matters: legal matters; contributions, budget and purchases; staff matters; linguistic and conference services; library; building and security; archives; electronic equipment; press and information; and publications.[5]

While the Tribunal is not *sensu stricto* a United Nations institution, it maintains close relations with the United Nations. In 1997, the Tribunal was granted observer status at the United Nations General Assembly and in 1998 it concluded an agreement on cooperation and relationship with the United Nations. On the basis of this agreement, an administrative arrangement was concluded in 2002 with the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs of the United Nations. The Tribunal applies the United Nations Common System of salaries and allowances and its Staff Regulations and Rules, as well as its Financial Regulations and Rules, are modelled on United Nations Regulations and Rules. It may also be noted that staff members participate in the United Nations Joint Staff Pension Fund and have access to the United Nations Administrative Tribunal.

The Registry is headed by the Registrar, who is elected by the judges of the Tribunal for a term of five years. As the head of the secretariat (or Registry), the Registrar carries out his/her functions under the control of the Tribunal. In most instances, this control is exercised by the

[5] Reference to the tasks to be carried out by the Registry or the Registrar may be found in the following provisions of the Rules: articles 19, paragraph 3; 36; 37; 38; 42, paragraph 2; 51; 54, paragraph 4; 55, paragraph 1; 56, paragraph 3; 63, paragraph 2; 65; 66; 71, paragraph 3; 72; 84, paragraphs 2 and 3; 85, paragraphs 2 and 3; 86, paragraphs 1, 2 and 6; 96, paragraph 2; 97, paragraph 3; 101, paragraph 2; 105, paragraph 1; 106, paragraphs 1 and 2; 108, paragraph 2; 111, paragraph 4; 114, paragraphs 1 and 2; 125, paragraph 3; 131, paragraph 2; 133, paragraphs 1 and 2; 136; and 137. Reference to these tasks is also made in paragraphs 1, 5, 9, 10, 11, 13 and 18 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal; articles 2, paragraphs 2 and 4; and 7, paragraph 5 of the Resolution on the Internal Judicial Practice of the Tribunal; and article 1, paragraph 2, to article 41 of the Instructions for the Registry (http://www.itlos.org/documents_publications/documents/instr_r_en.doc).

President[6] of the Tribunal who, according to article 12, paragraph 1, of the Rules, shall "supervise the administration of the Tribunal". In this respect, the relationship between the President and the Registrar has been compared with "the relationship between the political and civilian heads of a ministry"[7] within a national system.

[6] It may be noted that some powers are retained by the Tribunal, except where it decides to delegate them to the President; see, e.g., article 35, paragraph 1, or article 36, paragraph 3, of the Rules.

[7] P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183 at p. 204. Judge Chandrasekhara Rao, who was President of the Tribunal from 1999 to 2002, goes on to state:

> What can the President do in exercising such supervisory powers? He cannot ask the administration to act in disregard of the applicable legal provisions. Supervisory powers are intended to be used for securing due compliance with the Statute, the Rules, . . . and also for giving directions in areas not covered by such instruments, at least until such time as the Tribunal has had occasion to deal with them.

Section D. The Registry

Article 32

1. The Tribunal shall elect its Registrar by secret ballot from among candidates nominated by Members. The Registrar shall be elected for a term of five years and may be re-elected.
2. The President of the Tribunal shall give notice of a vacancy or impending vacancy to Members, either forthwith upon the vacancy arising or, where the vacancy will arise on the expiration of the term of office of the Registrar, not less than three months prior thereto. The President of the Tribunal shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received in sufficient time.
3. Nominations shall be accompanied by the relevant information concerning the candidates, in particular information as to age, nationality, present occupation, academic and other qualifications, knowledge of languages and any previous experience in law, especially the law of the sea, diplomacy or the work of international organizations.
4. The candidate obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected.

Section D. Le Greffe

Article 32

1. Le Tribunal élit son Greffier au scrutin secret parmi les candidats proposés par les Membres. Le Greffier est élu pour une période de cinq ans et est rééligible.
2. En cas de vacance effective ou imminente, le Président du Tribunal avise les Membres soit dès l'ouverture de cette vacance soit, si la vacance doit résulter de l'expiration du mandat du Greffier, trois mois au moins avant l'expiration de ce mandat. Le Président du Tribunal fixe une date pour la clôture de la liste des candidats de telle façon que les propositions et renseignements les concernant puissent être reçus en temps utile.
3. Les propositions doivent s'accompagner de tous renseignements utiles sur les candidats et indiquer notamment leur âge, leur nationalité, leur profession, leurs titres universitaires, leurs connaissances linguistiques et leur expérience du droit et en particulier du droit de la mer, de la diplomatie ou des affaires des organisations internationales.

4. Le candidat qui obtient les voix de la majorité des Membres composant le Tribunal au moment de l'élection est déclaré élu.

COMMENTARY

Article 32 elaborates on the provision contained in article 12, paragraph 2, of the Statute concerning the appointment of a Registrar. Like the Registrar of the ICJ, the Registrar of the Tribunal is elected by the judges. The election is held by secret ballot. According to the decision adopted by the Meeting of States Parties,[1] the Registrar has a rank equivalent to an Assistant Secretary-General of the United Nations. Like the Deputy Registrar (or the Assistant Registrar), the Registrar is a staff member of the Registry and is subject to the provisions of the Staff Regulations with the exception of the articles concerning appointment, separation from service and resignation, age limit, disciplinary measures and mechanism for complaints and appeals.[2]

Initially, in the Rules adopted in 1997, the term of office of the Registrar (and Deputy Registrar) was seven years, a period of time similar to the term of office of the Registrar of the ICJ. The term was subsequently reduced to five years by an amendment to article 32, paragraph 1, of the Rules. The amendment was adopted by the Tribunal on 21 September 2001 and entered into force upon its adoption. This amendment was based on the practice of other international courts[3] and on the recommendation made by the Joint Inspection Unit with regard to the term of office of the Registrar of the ICJ.[4]

The Registrar is elected from among candidates nominated by Members of the Tribunal. This means that, in order to be considered at the time of the election, candidatures have to be endorsed and presented by at least one Member of the Tribunal. Article 32, paragraph 2, describes the

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[1] See Report of the fourth Meeting of States Parties SPLOS/8, 10 April 1996, p. 4, and Revised budget estimates for the International Tribunal for the Law of the Sea covering the period 1996–1997, SPLOS/WP.3/Rev.1, 10 April 1996, p. 6.

[2] See regulation 12.7(a) of the Staff Regulations of the Tribunal: "These Regulations apply to all staff members of the Registry, with the exception of regulations 4.1, 9.1, 9.2, 9.5, 10 and 11, which do not apply to the Registrar, the Deputy Registrar or the Assistant Registrar."

[3] As an illustration, reference may be made to the terms of office of the heads of the following institutions: Secretary-General of the Permanent Court of Arbitration (5 years); Registrar of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (4 years); Registrar of the International Criminal Court (5 years).

[4] The recommendation was that the term of office of the Registrar be reduced to three years, with the expectation that it would be renewed, subject to performance approved by the Court. The recommendation was based on the fact that the long terms of office of the Registrar and Deputy Registrar, "especially in view of the restricted grounds for their removal, could compromise the effectiveness of the Court for prolonged periods in the event that the performance of a selected candidate is not satisfactory." See P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 204 at pp. 204–205, and note 116.

procedure for the nomination of candidates. Within the time-limits specified under this provision, the President is required to give notice of the vacancy to the Members in order to enable them to present candidates.

Article 32, paragraph 3, specifies the kind of information which should accompany the nominations of candidates. While it is not expressly required that the Registrar should possess a degree in law, this requirement may be deduced from the nature of his/her functions, the practice of other international courts and tribunals as well as the fact that candidates are required, under article 32, paragraph 3, of the Rules, to provide the Tribunal with information regarding "any previous experience in law, and especially the law of the sea, diplomacy or the work of international organizations." Paragraph 4 relates to the voting and requires that the candidate should obtain a majority of votes to be elected.

It is only after the entry into force of the Convention in 1994 that concrete steps were taken to set up the Registry. In its resolution 49/28 of 6 December 1994, the General Assembly of the United Nations requested the

> Secretary-General, from within existing resources, to convene a meeting of States parties relating to the organization of the International Tribunal for the Law of the Sea in New York . . . to designate before 16 May 1995 a United Nations staff member with secretariat support to be charged with making preparations of a practical nature for the organization of the Tribunal, including the establishment of a library.[5]

Pursuant to the resolution, Mr Gritakumar Chitty, a United Nations official, was designated.[6] The Meeting of States Parties also decided that arrangements would be made for the establishment of the Registry for a first functional phase from 1 August 1996 (date of the election of the 21 Judges) until 31 December 1997.[7] The first meeting of the Tribunal took place in Hamburg on 1 October 1996. With a view to ensuring the functioning of the Tribunal, it was necessary, pending the formal adoption of the Rules, to adopt provisionally rules regarding the election of officials. On 8 October 1996, the Tribunal adopted provisionally article 24 of the draft Rules on the election of the Registrar prepared by the Preparatory Commission, with minor drafting changes. On 21 October 1996, the Members of the Tribunal elected Mr Chitty (Sri Lanka) as the first Registrar of the Tribunal from candidates nominated by the Members of the Tribunal.

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[5] Resolution 49/28 of 6 December 1994, paragraph 11.

[6] Report of the second Meeting of States Parties, SPLOS/4, 26 July 1995, paragraph 14. Mr Chitty had previously been serving as a Principal Law of the Sea/Ocean Affairs Officer in the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, New York.

[7] See Revised budget estimates for the International Tribunal for the Law of the Sea covering the period 1996–1997, SPLOS/WP.3/Rev.1, 10 April 1996, pp. 4, 6–7; Report of the fourth Meeting of States Parties, SPLOS/8, 10 April 1996, p. 4.

Article 32 of the Rules corresponds to the provision provisionally adopted in 1996 with one exception; in paragraph 3, information regarding knowledge of languages has been added to the list of information to be provided by candidates. This is in line with the wording included in the corresponding provision (Article 22, paragraph 3) of the Rules of the ICJ.

Following the announcement by the Registrar on 27 April 2000 of his intention to resign from his office, the President "gave notice of the vacancy through various channels, including the public media, so that Members could nominate candidates from (a) the list of persons responding to the notice or (b) any other person whom they knew".[8] This procedure is not contemplated under the Rules but, as noted by a former President of the Tribunal, is certainly not incompatible with them.[9] On 21 September 2001, the Tribunal elected Mr Philippe Gautier (Belgium) as Registrar from candidates nominated by the Members of the Tribunal. He had served as Deputy Registrar of the Tribunal from 1997 to 2001.[10]

[8] P. Chandrasekhara Rao, *op. cit.* note 4, p. 204.

[9] *Ibid.*

[10] Previously, Mr Gautier was head of the Law of the Sea/Antarctica desk in the Ministry of Foreign Affairs of Belgium (1991–1995) and head of the Treaties Division of the same Ministry (1995–1997). He is visiting Professor at the Catholic University of Louvain.

Article 33

The Tribunal shall elect a Deputy Registrar; it may also elect an Assistant Registrar. Article 32 applies to their election and terms of office.

Article 33

Le Tribunal élit un Greffier adjoint; il peut également élire un Greffier assistant. L'article 32 s'applique à leur élection et à la durée de leur mandat.

COMMENTARY

Article 33 provides for the appointment of a Deputy Registrar. It extends to the election and term of office of the Deputy Registrar the rules contained in article 32. Accordingly, the Deputy Registrar, like the Registrar, is elected from among candidates nominated by the Members of the Tribunal and similar qualifications are required for both offices. The Deputy Registrar has a rank equivalent to a Director (D-2) in the United Nations Secretariat.

On 8 October 1996, the Tribunal adopted provisionally an amended version[1] of article 25 of the Preparatory Commission Draft Rules on the election of the Deputy Registrar, as follows: "The Tribunal shall elect a Deputy Registrar. The provisions of article 24 of these Rules shall apply to the election and term office of the Deputy Registrar". On 25 October 1996, the Tribunal elected Mr Philippe Gautier (Belgium) as Deputy Registrar from candidates nominated by the Members of the Tribunal.

The office of Deputy Registrar became vacant on 21 September 2001 following the election of Mr. Gautier as Registrar. In accordance with the decision adopted by the Tribunal at its Twelfth Session, the vacancy was publicly announced through various channels, including the public media, and a date for the closure of the list of candidates was fixed on 31 January 2002. On 13 March 2002, the Members of the Tribunal elected Mr. Doo-young Kim (Korea) as Deputy Registrar of the Tribunal from candidates nominated by the Members of the Tribunal.[2]

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[1] Unlike article 25 of the Preparatory Commission Draft Rules, the provision provisionally adopted did not make reference to the appointment of an Assistant Registrar, see *infra*.

[2] Prior to his election, Mr. Kim served as Director of the International Legal Affairs Division of the Treaties Bureau of the Korean Ministry of Foreign Affairs and Trade. He is Lecturer in Law of the Sea at Korea University, Seoul.

Article 33 contemplates the possibility of appointing an Assistant Registrar, an office which is unknown in the Rules of the ICJ. The reasons for this new post may be found in the wording contained in article 25 of the Preparatory Commission Draft Rules (which was not retained in the Rules adopted by the Tribunal), according to which the Tribunal may also elect an Assistant Registrar, "if considered necessary to carry out the functions relating to the Seabed Disputes Chamber".[3] The need for an Assistant Registrar was then directly linked to the specific functions of the Seabed Disputes Chamber, a "tribunal within the Tribunal" having exclusive jurisdiction to deal with issues relating to the exploration and exploitation of the deep seabed resources. As has been mentioned above, the rule on the election of the Deputy Registrar provisionally adopted on 8 October 1996 did not include a reference to the post of Assistant Registrar. It was, however, agreed at that time that that decision should not be understood as a decision to eliminate the post of Assistant Registrar. During its deliberations on the Rules, the Tribunal eventually decided to retain reference, in article 33, to a post which had been included in the Preparatory Commission Draft Rules. While the post did not exist at that time and was not provided for in the budget of the Tribunal, it was recognized that there could be a need for it in the future. A decision to create such a post under the budget and to appoint an Assistant Registrar would depend on the needs of the Tribunal and, therefore, there was no reason to limit *ab initio* the functions of such official solely to the matters dealt with by the Seabed Disputes Chamber. It was also decided that the Assistant Registrar would be elected by the Members of the Tribunal and that article 32 would also be applicable to his/her election.

[3] See Preparatory Commission Draft Rules, p. 42.

Article 34

Before taking up their duties, the Registrar, the Deputy Registrar and the Assistant Registrar shall make the following solemn declaration at a meeting of the Tribunal:

"I solemnly declare that I will perform my duties as Registrar (Deputy Registrar or Assistant Registrar as the case may be) of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 34

Avant leur entrée en fonctions, le Greffier, le Greffier adjoint et le Greffier assistant font devant le Tribunal la déclaration solennelle suivante:

« Je déclare solennellement que je remplirai en toute loyauté, discrétion et conscience les devoirs qui m'incombent en ma qualité de Greffier (Greffier adjoint ou Greffier assistant selon le cas) du Tribunal international du droit de la mer et que j'observerai fidèlement toutes les prescriptions du Statut et du Règlement du Tribunal ».

COMMENTARY

There is little to be said about this provision. The wording contained in article 27 of the Preparatory Commission Draft Rules was modelled on Article 24 of the Rules of the ICJ. Compared to the latter provision, article 27 of the draft added *in fine* the following expression: "and that I will maintain and preserve the secrecy of any confidential information coming to my knowledge as a consequence of holding such office, even after my separation from service".[1] This addition was omitted both in the text of article 26 provisionally adopted on 8 October 1996 and in article 34 of the Rules. There was indeed no reason to retain this addition given the fact that (a) the secrecy of the deliberations of the Tribunal is already covered in article 42 of the Rules; and (b) the obligation to

[1] Preparatory Commission Draft Rules, p. 42.

preserve the secrecy of confidential information coming to the knowledge of officials of the Registry by reason of their position falls under the Staff Regulations of the Tribunal.[2]

[2] See regulation 1.5 of the Staff Regulations of the Tribunal:
Staff members shall exercise the utmost discretion in regard to all matters of official business. They shall not communicate to any person any information coming to their knowledge by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Registrar. Nor shall they at any time use such information to private advantage. These obligations do not cease upon separation from the Registry.

Article 35

1. The staff of the Registry, other than the Registrar, the Deputy Registrar and the Assistant Registrar, shall be appointed by the Tribunal on proposals submitted by the Registrar. Appointments to such posts as the Tribunal shall determine may, however, be made by the Registrar with the approval of the President of the Tribunal.
2. The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
3. Before taking up their duties, the staff shall make the following solemn declaration before the President of the Tribunal, the Registrar being present:

   "I solemnly declare that I will perform my duties as an official of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 35

1. Les fonctionnaires du Greffe autres que le Greffier, le Greffier adjoint et le Greffier assistant sont nommés par le Tribunal, sur la proposition du Greffier. Toutefois, le Tribunal peut décider que, pour les postes qu'il déterminera, les nominations seront faites par le Greffier avec l'approbation du Président du Tribunal.
2. La considération dominante dans le recrutement, l'emploi et la fixation des conditions d'emploi du personnel doit être la nécessité d'assurer au Tribunal les services de personnes possédant les plus hautes qualités de travail, de compétence et d'intégrité. Sera dûment prise en considération l'importance d'un recrutement effectué sur une base géographique aussi large que possible.
3. Avant son entrée en fonctions, tout fonctionnaire fait la déclaration solennelle suivante devant le Président du Tribunal et en présence du Greffier:

   « Je déclare solennellement que je remplirai en toute loyauté, discrétion et conscience les devoirs qui m'incombent en ma qualité de fonctionnaire du Greffe du Tribunal international du droit de la mer et que j'observerai fidèlement toutes les prescriptions du Statut et du Règlement du Tribunal ».

COMMENTARY

Article 35 deals with the appointment of officials of the Registry who are not elected by the Tribunal. Paragraph 1 specifies the procedure for appointment while paragraph 2 identifies the criteria to be taken into account in the recruitment of staff. Paragraph 3 contains the text of the solemn declaration to be made by each member of the staff. The wording is identical to the declaration to be made by the Registrar, Deputy Registrar and Assistant Registrar under article 34 of the Rules.

Article 35 has to be read together with the relevant provisions included in the Staff Regulations and Staff Rules of the Tribunal which are modelled on the Staff Regulations and Staff Rules of the United Nations. Appointments of staff members in the Professional category are made by the Tribunal on proposals submitted by the Registrar. For staff members in the General Service category and short-term staff, appointments are made "by the Registrar with the approval of the President of the Tribunal".[1] The Staff Rules of the Tribunal also contain specific provisions on appointment. They *inter alia* provide for the constitution of an appointment and promotion board entrusted with the task of proposing to the Registrar candidates who fulfil the requirements for the post concerned.[2] For appointment of staff in the Professional category, the Registrar will consider proposals made by the appointment and promotion board and on this basis submit to the Tribunal with the prior approval of the President recommendations regarding candidates to be short-listed (usually three candidates). The appointment is then made by the Tribunal or the Tribunal authorizes the President to make such an appointment. For staff members in the General Service category, proposals are submitted by the Registrar to the President for his approval, on the basis of the proposals made by the appointment and promotion board. In practice, before the selection of a candidate is made, all short-listed candidates are required to participate in a written test and attend an interview.

Two main criteria to be taken into account in the recruitment of staff are listed in article 35, paragraph 2: the necessity of securing the highest standards of efficiency, competence and integrity and the importance of recruiting the staff on as wide a geographical basis as possible. The wording of this provision is based on article 101, paragraph 3, of the Charter of the United Nations. Additional provisions on criteria to be followed in the selection of staff members may be found in the Staff Regulations. Regulation 4.2 follows closely the wording of article 35, paragraph 2, of the Rules. Regulation 4.3 states that the selection has to be made "without distinction as to race, sex or religion" while regulation 4.4

[1] See regulation 4.1, paragraphs (a) and (b) of the Staff Regulations of the Tribunal.
[2] Rule 104.14 of the Staff Rules of the Tribunal.

provides for consideration to be given to the candidatures of "persons already in the service of the Tribunal". This corresponds to the provision contained in regulation 4.3 of the Staff Regulations of the United Nations.

The Staff Regulations of the Tribunal sets out "the broad principles of personnel policy and administration for the staffing of the Registry"[3] and apply to all staff members of the Tribunal. Staff members are persons recruited by the Tribunal and who receive a letter of appointment.[4] The Staff Rules (100 series) of the Tribunal apply only to staff members recruited for a period of no less than six months.[5] This covers the incumbents of the posts which have been provided for under the budgets of the Tribunal and approved by the Meeting of States Parties.[6] Information on staff is available in the Yearbooks published by the Tribunal.

[3] See "Scope and purpose" of the Staff Regulations.

[4] The definition does not cover consultants or other individual contractors in respect of whom the application of the Staff Regulations is excluded.

[5] Pursuant to rule 100.1 of the Staff Rules of the Tribunal, the Staff Rules apply only to staff members "appointed by the Tribunal or by the Registrar with the approval of the President of the Tribunal, except staff members specifically engaged for conferences and other short-term services." A specific set of rules applies to staff engaged on short-term appointments for conference and other short-term service for a period not exceeding six consecutive months. At present, the United Nations Staff Rules 300 series are applied *mutatis mutandis* to this category of staff.

[6] The current number of staff is, however, not sufficient to cover all the needs of the Tribunal and the Tribunal recruits additional staff on a short-term basis to service its meetings or to provide support during oral hearings and deliberations (e.g., interpreters, verbatim reporters, translators, secretaries).

Article 36

1. The Registrar, in the discharge of his functions, shall:

(a) be the regular channel of communications to and from the Tribunal and in particular shall effect all communications, notifications and transmission of documents required by the Convention, the Statute, these Rules or any other relevant international agreement and ensure that the date of dispatch and receipt thereof may be readily verified;

(b) keep, under the supervision of the President of the Tribunal, and in such form as may be laid down by the Tribunal, a List of cases, entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(c) keep copies of declarations and notices of revocation or withdrawal thereof deposited with the Secretary-General of the United Nations under articles 287 and 298 of the Convention or Annex IX, article 7, to the Convention;

(d) keep copies of agreements conferring jurisdiction on the Tribunal;

(e) keep notifications received under article 110, paragraph 2;

(f) transmit to the parties certified copies of pleadings and annexes upon receipt thereof in the Registry;

(g) communicate to the Government of the State in which the Tribunal or a chamber is sitting, or is to sit, and any other Governments which may be concerned, the necessary information as to the persons from time to time entitled, under the Statute and the relevant agreements, to privileges, immunities or facilities;

(h) be present in person or represented by the Deputy Registrar, the Assistant Registrar or in their absence by a senior official of the Registry designated by him, at meetings of the Tribunal, and of the chambers, and be responsible for preparing records of such meetings;

(i) make arrangements for such provision or verification of translations and interpretations into the Tribunal's official languages as the Tribunal may require;

(j) sign all judgments, advisory opinions and orders of the Tribunal and the records referred to in subparagraph (h);

(k) be responsible for the reproduction, printing and publication of the Tribunal's judgments, advisory opinions and orders, the pleadings and statements and the minutes of public sittings in cases and of such other documents as the Tribunal may direct to be published;

(l) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the Tribunal;

(m) deal with inquiries concerning the Tribunal and its work;
(n) assist in maintaining relations between the Tribunal and the Authority, the International Court of Justice and the other organs of the United Nations, its related agencies, the arbitral and special arbitral tribunals referred to in article 287 of the Convention and international bodies and conferences concerned with the codification and progressive development of international law, in particular the law of the sea;
(o) ensure that information concerning the Tribunal and its activities is accessible to Governments, the highest national courts of justice, professional and learned societies, legal faculties and schools of law and public information media;
(p) have custody of the seals and stamps of the Tribunal, of the archives of the Tribunal and of such other archives as may be entrusted to the Tribunal.

2. The Tribunal may at any time entrust additional functions to the Registrar.
3. In the discharge of his functions the Registrar shall be responsible to the Tribunal.

Article 36

1. Dans l'exercice de ses fonctions, le Greffier :

a) sert d'intermédiaire pour les communications émanant du Tribunal ou adressées à celui-ci et en particulier assure toutes communications, notifications et transmissions de documents prévues par la Convention, le Statut, le présent Règlement ou par tout autre accord international pertinent, en veillant à ce que la date de leur expédition et de leur réception puisse être facilement contrôlée ;
b) tient, sous le contrôle du Président du Tribunal et dans la forme prescrite par le Tribunal, un rôle des affaires, qui sont inscrites et numérotées dans l'ordre selon lequel les actes introductifs d'instance ou les demandes d'avis consultatif parviennent au Greffe ;
c) conserve des copies des déclarations et des notifications de révocation ou de retrait de telles déclarations déposées auprès du Secrétaire général de l'Organisation des Nations Unies conformément aux articles 287 et 298 de la Convention ou à l'article 7 de l'annexe IX à la Convention ;
d) conserve des copies des accords conférant compétence au Tribunal;
e) conserve les notifications reçues conformément à l'article 110, paragraphe 2 ;
f) transmet aux parties des copies certifiées conformes de toutes les pièces de procédure et des documents annexés, dès leur réception au Greffe ;

g) communique au gouvernement de l'Etat où siège ou doit siéger le Tribunal ou une chambre et à tous autres gouvernements intéressés les renseignements nécessaires au sujet des personnes appelées à bénéficier de privilèges, immunités ou facilités en vertu du Statut et des accords pertinents ;

h) assiste en personne ou charge le Greffier adjoint, le Greffier assistant ou en leur absence un fonctionnaire de rang élevé du Greffe, désigné par lui, d'assister aux séances du Tribunal ou des chambres et fait établir sous sa responsabilité les comptes rendus de ces séances ;

i) prend les dispositions nécessaires pour que soient faites ou vérifiées les traductions et interprétations dont le Tribunal peut avoir besoin dans les langues officielles du Tribunal ;

j) signe les arrêts, avis consultatifs et ordonnances du Tribunal ainsi que les comptes rendus visés à la lettre h) ci-dessus ;

k) fait reproduire, imprimer et publier sous sa responsabilité les arrêts, avis consultatifs et ordonnances du Tribunal, les pièces de procédure, les exposés écrits et les procès-verbaux des audiences publiques dans chaque affaire, ainsi que tout autre document dont le Tribunal ordonne la publication ;

l) assume la responsabilité de tous les travaux administratifs et en particulier de la comptabilité et de la gestion financière conformément aux méthodes appliquées par le Tribunal en matière financière ;

m) donne la suite qu'appellent les demandes de renseignements concernant le Tribunal et son activité ;

n) contribue à assurer le maintien des relations entre le Tribunal et l'Autorité, la Cour internationale de Justice et les autres organes de l'Organisation des Nations Unies et les organismes apparentés, les tribunaux arbitraux et arbitraux spéciaux mentionnés à l'article 287 de la Convention et les conférences et organismes internationaux s'occupant de la codification et du développement progressif du droit international, et en particulier du droit de la mer ;

o) fait en sorte que des renseignements sur le Tribunal et son activité soient mis à la disposition des gouvernements, des cours et tribunaux nationaux les plus élevés, des associations professionnelles, sociétés savantes, facultés et écoles de droit ainsi que des moyens d'information ;

p) assure la garde des sceaux et cachets ainsi que des archives du Tribunal et de toutes autres archives confiées à celui-ci.

2. Le Tribunal peut à tout moment confier d'autres fonctions au Greffier.

3. Dans l'exercice de ses fonctions, le Greffier est responsable devant le Tribunal.

COMMENTARY

Article 36, which follows closely Article 26 of the Rules of the ICJ, states the functions to be carried out by the Registrar. It contains in paragraph 1 a list of the functions of the Registrar. As mentioned in paragraph 2 of article 36, the Tribunal may also entrust additional functions to the Registrar. The general functions listed in paragraph 1 are supplemented by detailed provisions contained in other relevant articles of the Rules, the Resolution on the Internal Judicial Practice of the Tribunal and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, articles 2 to 29 of the Instructions for the Registry[1] as well as provisions contained in the Financial Regulations and Rules of the Tribunal and in the Staff Regulations and Rules of the Tribunal. Paragraph 3 states that, in the discharge of those functions, the Registrar "shall be responsible to the Tribunal". Therefore, unless decided otherwise it will be for the Tribunal to verify whether a breach of duties entails the responsibility of the Registrar and to inflict a sanction.[2] This does not imply that the Registrar reports only to the Tribunal. As explained earlier,[3] the provision has to be combined with article 12, paragraph 1, of the Rules, which refers to the role of the President in the supervision of the administration of the Tribunal.[4]

According to article 36, paragraph 1(a), of the Rules, the Registrar is the "regular channel of communications to and from the Tribunal". This also covers, "unless otherwise stated", all communications to the Tribunal in cases submitted to it, as mentioned in article 51 of the Rules. Paragraph 1(g) of article 36 addresses a specific case of notification i.e. communications concerning persons entitled to privileges and immunities or facilities.[5] In practice, these communications are mainly, but not exclusively, addressed to the host country.[6]

An important task of the Registrar is to keep the List of cases. Article 36, paragraph 1(b), requires that the List be kept under the supervision of

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[1] See, e.g., article 1, paragraph 2, of the Instructions for the Registry: "The Registrar is the head of the Registry. The Registrar is responsible for all departments of the Registry and is authorized to control the staff and direct the work of the Registry." See p. 84, note 5, *supra*.

[2] In this respect, see article 39, paragraph 2, of the Rules.

[3] See p. 84, *supra*.

[4] See also article 1, paragraph 1, of the Instructions for the Registry. See p. 84 note 5, *supra*.

[5] The persons concerned may be judges (including judges *ad hoc*), staff members, experts appointed under article 289 of the Convention, counsel, advocates, witnesses or experts.

[6] The Rules envisage the possibility of the Tribunal sitting in another country (Statute, article 1, paragraph 3) or exercising its functions with regard to the obtaining of evidence at a place or locality to which the case relates (Rules, article 81). Those provisions have not been implemented to date. In practice, communications are sent to States (other than the host country) to facilitate transit at airport of persons who have to be present at the hearing, e.g., as witnesses or experts, in Hamburg.

the President "and in such form as may be laid down by the Tribunal". The form under which the List of cases has to be kept was the subject of a decision taken by the Tribunal at its Seventeenth Session.[7]

Paragraph 1(c) of article 36 requires the Registrar to keep copies of declarations made by States Parties to the Convention under articles 287 and 298 of the Convention. It refers to "copies" and does not request the Registrar to "have the custody of the declarations".[8] Since States Parties to the Convention are required to deposit their declarations with the Secretary-General of the United Nations and the Tribunal is not an organ of the United Nations, the Registrar may only receive copies of such declarations. These copies are transmitted to the Tribunal in accordance with article 4 of the relationship agreement with the United Nations.[9] Likewise, pursuant to paragraph 1(d) of article 36, the Registrar has only to keep copies of agreements conferring jurisdiction on the Tribunal, since the Tribunal is not likely to be designated as depositary of such agreements.[10] The situation is different with respect to the notifications sent under article 110, paragraph 2(a), of the Rules. These notifications are addressed directly to the Tribunal and therefore the Registrar is required to keep custody of them under article paragraph 1(e) of article 36.

The Registrar, as a "notary public", has to certify, pursuant to article 36, paragraph 1(f), that copies of pleadings received by one party and to be sent to the other party are true and accurate copies[11] of the documents concerned.[12] Under paragraph 1(j), the Registrar has also to sign all judgments, orders, advisory opinions and records of meetings of the Tribunal. This refers to article 125, paragraph 3, of the Rules, which provides that the judgment shall be signed by the President and the Registrar. Likewise, records of meetings are also signed by the President on the basis of the

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[7] The List includes the following entries: official title; class of case (contentious or advisory proceedings; merits; provisional measures under article 290, paragraph 5, of the Convention; prompt release proceedings); parties; method of submission; notification; incidental proceedings; written proceedings; oral proceedings; composition; and result.

[8] The expression may be found in Article 26, subparagraph (c), of the Rules of the ICJ.

[9] Article 4, paragraph 1(a)(i), of the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea requires the Secretary-General of the United Nations to transmit periodically to the Tribunal "copies of communications received by the Secretary-General in the capacity of depositary of the Convention or depositary of any other agreement which confers jurisdiction on the International Tribunal." Relevant extracts of the declarations are published in the Tribunal's *Yearbooks*.

[10] In practice, the Registry collects information on international agreements containing provisions which confer jurisdiction on the Tribunal. The list, which is not necessarily exhaustive, and relevant extracts from the agreements are published in the *Yearbooks* of the Tribunal. It may be added that whenever a case is instituted on the basis of a special agreement or on the basis of an agreement other than the Convention, a certified copy of the agreement must be transmitted to the Registrar (see articles 55, paragraph 2, and 57, paragraph 1, of the Rules).

[11] See article 1, subparagraph (i), of the Rules.

[12] See, e.g., article 54, paragraph 4, of the Rules.

supervisory functions entrusted to the President pursuant to article 12, paragraph 1, of the Rules.

Article 36, paragraph 1(h), requires the Registrar to be present or represented at meetings of the Tribunal or its chamber. In practice, both the Registrar and the Deputy Registrar attend all meetings of the Tribunal. The Registrar has to ensure that a record of the meetings is prepared. Unlike the corresponding provisions contained in Article 26 of the Rules of the ICJ, which use the term "minutes", paragraph 1(h) of article 36 of the Rules of the Tribunal refers to the term "record" of meetings of the Tribunal while paragraph 1(k) of the same provision uses the term "minutes" when referring to public sittings in cases dealt with by the Tribunal.[13] The minutes of public sittings are signed by the President and the Registrar in accordance with article 86, paragraph 6, of the Rules and are published, in the original language used by the parties, in the volumes *"Pleadings, Minutes of Public Sittings and Documents"*.

Whenever a party has to provide translations of documents (see article 64, paragraphs 2 and 3) or interpretations of statements (see article 85, paragraph 2) into one of the official languages of the Tribunal, the Registrar is required to ensure that such interpretations or translations are accurate. Paragraph 1(i) recalls this obligation.

Paragraph 1(l) covers in a few words the general function of the Registrar as the head of an administration with particular insistence placed on financial administration. As mentioned earlier, the Rules have to be supplemented in this respect by numerous provisions contained in the Financial Regulations and Rules of the Tribunal, with respect to budgetary and financial matters, and in the Staff Regulations and Rules of the Tribunal, with respect to staff matters. Regarding the ICJ, it has been noted that the Registrar is the "chief administrative officer" of the Court "although unlike the Secretary-General and equivalent officers of international organizations, he has less independence than they enjoy, being always responsible to the Court or the President and subject to their decisions".[14] This comment applies equally to the Tribunal. In this respect, it is useful to refer to the important functions carried out by the Tribunal with respect to the functioning of the Registry, such as appointment of staff, organization of the Registry, approval of Staff Regulations, adoption of budget proposals and any other proposal to be submitted to the Meeting of States. Those questions are considered by the Tribunal at sessions devoted to legal matters not directly related to cases and administrative matters, which take place on a regular basis. In order to discharge these administrative tasks efficiently, the following committees composed of judges have been constituted within the Tribunal: the Committee on Budget and

[13] See also article 86 of the Rules.
[14] Rosenne, p. 57.

Finance, the Committee on Staff and Administration, the Committee on Buildings and Electronic Systems and the Committee on Library and Publications. It is also interesting to note that the Registrar, given his/her functions as executive officer of the Registry, is responsible not only to the Tribunal but also, to a certain extent, to the Meeting of States Parties, given the competence it exercises in financial matters.[15]

In addition to the function of the Registrar as the custodian of the archives (article 36, paragraph 1(p)), article 36, paragraph 1 also touches upon the question of relations with the public (see article 36, paragraph 1(m) and paragraph 1(o)). In particular, it requests the Registrar to ensure that information on the Tribunal is widely accessible. This is done mainly through the publications of the Tribunal,[16] the dissemination of copies (in soft-cover form) of judgments and orders of the Tribunal, the posting of updated information on the website of the Tribunal and lectures or briefings on the Tribunal. Due attention is also paid to the need to maintain relations between the Tribunal and other bodies, especially the International Seabed Authority, other judicial bodies competent to deal with law of the sea matters (ICJ and arbitral tribunals), and the United Nations. In this respect, it is worthwhile mentioning that the Tribunal has entered into arrangements with several international institutions.[17] Those arrangements are usually concluded in the form of administrative arrangements by exchange of letters signed by the Registrar. More formal arrangements are signed by the President. In this context, reference may also be made to visits paid by the President or the Registrar to some organizations[18] or to visits of representatives of international organizations or bodies[19] to Hamburg.

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[15] In this respect, attention may be drawn to regulation 4.7 of the Financial Regulations of the Tribunal, which provides that the "Registrar shall be accountable to the Meeting of States Parties for the proper management of the financial resources in accordance with these Regulations and the Financial Rules."

[16] *Yearbooks*, *Reports of Judgments, Advisory Opinions and Orders*, *Pleadings, Minutes of Public Sittings and Documents*, and *Basic Texts* of the Tribunal.

[17] As of 31 January 2006, arrangements were concluded with the following organizations or bodies: Appellate Body Secretariat of the World Trade Organization (WTO); Division for Ocean Affairs and the Law of the Sea of the United Nations Secretariat; Inter-American Court of Human Rights; Intergovernmental Oceanographic Commission of UNESCO; International Bureau of the Permanent Court of Arbitration; International Hydrographic Bureau of the International Hydrographic Organization; International Labour Office; Legal Affairs Division of the WTO secretariat; Registry of the European Court of Human Rights; Registry of the ICJ; secretariat of the Asian-African Legal Consultative Organization; secretariat of the International Maritime Organization; secretariat of the International Seabed Authority; and the United Nations Environment Programme. These agreements contain provisions on exchange of information (subject to internal rules on confidentiality); designation of contact persons; and exchange of publications. Specific provisions on exchange of information are included in arrangements concluded with international organizations which maintain lists of experts pursuant to article 2 of Annex VIII to the Convention.

[18] Appellate Body of WTO; European Court of Human Rights, European Court of Justice; ICJ.

[19] Chairman of the International Law Commission; President of the Inter-American Court of Human Rights.

Article 37

1. The Deputy Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Registrar until the office has been filled.
2. If the Registrar, the Deputy Registrar and the Assistant Registrar are unable to carry out the duties of Registrar, the President of the Tribunal shall appoint an official of the Registry to discharge those duties for such time as may be necessary. If the three offices are vacant at the same time, the President, after consulting the Members, shall appoint an official of the Registry to discharge the duties of Registrar pending an election to that office.

Article 37

1. Le Greffier adjoint assiste le Greffier et le remplace pendant son absence ou, en cas de vacance du poste, jusqu'à ce que celui-ci soit pourvu.
2. Si le Greffier, le Greffier adjoint et le Greffier assistant sont empêchés de s'acquitter des fonctions de Greffier, le Président du Tribunal désigne un fonctionnaire du Greffe pour remplir ces fonctions pendant le temps nécessaire. Si les trois postes sont simultanément vacants, le Président désigne, après avoir consulté les membres, un fonctionnaire du Greffe pour remplir les fonctions de Greffier jusqu'à l'élection d'un nouveau Greffier.

COMMENTARY

Article 37 deals mainly with issues relating to the absence of the Registrar or the vacancy of the office of the Registrar. The purpose of the provision is to ensure the continuous exercise of the functions of the Registrar at the seat of the Tribunal. Whenever the Registrar is absent (e.g., for vacations, missions or health reasons), the Deputy Registrar is by the nature of his/her functions called upon to carry out the functions of Registrar.[1] If no elected official is available, the President, usually upon recommendation from the Registrar, will appoint an official of the Registry to discharge those duties for such time as may be necessary. In the case of absence, the Deputy Registrar (or the other official concerned) will sign the correspondence as Officer-in-charge. The term "vacancy" refers to the period of time during which the office of Registrar is vacant (e.g., following the end of the term of office of the Registrar or the resignation

[1] The Assistant Registrar (when appointed) would act as Registrar in the absence of both the Registrar and the Deputy Registrar.

of the Registrar). In this event, the same rules as those applicable to absence will apply. In the practice of the Tribunal, during the period of vacancy of the office of Registrar (from 1 July 2001 to 21 September 2001), the Deputy Registrar exercised the functions of Registrar as Acting Registrar.

Article 37, paragraph 1, of the Rules also briefly addresses the functions of the Deputy Registrar. It simply mentions that the Deputy Registrar shall "assist" the Registrar. As mentioned above, the Deputy Registrar (and this would apply to a certain extent to the Assistant Registrar) has to be able to act as Registrar in the latter's absence or whenever the post is vacant. Accordingly, the Deputy Registrar has to be closely associated with all the tasks carried out by the Registrar. Article 30 of the Instructions for the Registry clarifies this requirement.[2]

[2] 1. The Deputy Registrar and the Assistant Registrar share the duties devolving upon the Registrar both in connection with the exercise of the judicial and advisory powers of the Tribunal and in connection with the direction of the Registry.

2. In dividing the work between the Registrar and the Deputy Registrar, the Registrar will ensure that both of them are constantly in touch with the work of the Tribunal and of the Registry.

Article 38

1. The Registry consists of the Registrar, the Deputy Registrar, the Assistant Registrar and such other staff as required for the efficient discharge of its functions.
2. The Tribunal shall determine the organization of the Registry and shall for this purpose request the Registrar to make proposals.
3. Instructions for the Registry shall be drawn up by the Registrar and approved by the Tribunal.
4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar and approved by the Tribunal.

Article 38

1. Le Greffe se compose du Greffier, du Greffier adjoint, du Greffier assistant et de tous autres fonctionnaires dont il a besoin pour s'acquitter efficacement de ses fonctions.
2. Le Tribunal arrête l'organisation du Greffe et, à cet effet, invite le Greffier à lui soumettre des propositions.
3. Des instructions pour le Greffe sont établies par le Greffier et approuvées par le Tribunal.
4. Le personnel du Greffe est assujetti à un statut du personnel établi par le Greffier et approuvé par le Tribunal.

COMMENTARY

As specified by article 38, paragraph 1, of the Rules, which repeats the wording of Article 28 of the Rules of the ICJ, the staffing of the Registry depends on the needs of the Tribunal for its efficient functioning. This is in line with the principle of cost-effectiveness which, pursuant to decisions of the Meeting of States Parties, should apply to all aspects of the Tribunal.[1] In practice, the staffing of the Tribunal has followed an evolutionary approach. During the organizational phase, from 1 August 1996 to 31 December 1997, the Registry consisted of 21 staff members.[2] After this initial period, in 1998 the Registry was composed of 27 staff members.[3] Since then, the number of staff has increased slightly to cover the

[1] See Report of the second Meeting of States Parties, SPLOS/4, 26 July 1995, p. 9.
[2] Seven in the Professional category and 14 in the General Service category.
[3] Eleven in the Professional category and 16 in the General Service category.

basic needs of the Tribunal (archives, linguistic services, legal office) and in 2003 reached the current level (37 staff members).[4]

Article 38, paragraph 2, underlines the role of the Tribunal in the organization of the Registry. Normally, decisions taken in those matters are based on proposals submitted by the Registrar. The Rules identify two important documents to be drafted and submitted to the Tribunal for its approval: the Instructions for the Registry and the Staff Regulations. The Instructions were approved by the Tribunal on 8 October 1998 and the Staff Regulations on 17 March 2000. Both texts were drafted with the active participation of the Members of the Tribunal.

[4] For the period 2005–2006, the Registry comprises 37 staff members (17 in the Professional category and 20 in the General Service category).

Article 39

1. The Registrar may resign from office with two months' notice tendered in writing to the President of the Tribunal. The Deputy Registrar and the Assistant Registrar may resign from office with one month's notice tendered in writing to the President of the Tribunal through the Registrar.
2. The Registrar may be removed from office only if, in the opinion of two thirds of the Members, he has either committed a serious breach of his duties or become permanently incapacitated from exercising his functions. Before a decision to remove him is taken under this paragraph, he shall be informed by the President of the Tribunal of the action contemplated, in a written statement which shall include the grounds therefor and any relevant evidence. When the action contemplated concerns permanent incapacity, relevant medical information shall be included. The Registrar shall subsequently, at a private meeting of the Tribunal, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. He may be assisted or represented at such meeting by counsel or any other person of his choice.
3. The Deputy Registrar and the Assistant Registrar may be removed from office only on the same grounds and by the same procedure as specified in paragraph 2.

Article 39

1. Le Greffier peut donner sa démission en adressant par écrit un préavis de deux mois au Président du Tribunal. Le Greffier adjoint et le Greffier assistant peuvent donner leur démission en adressant par écrit un préavis d'un mois au Président du Tribunal par l'intermédiaire du Greffier.
2. Le Greffier ne peut être relevé de ses fonctions que si, de l'avis des deux tiers des Membres, il a manqué gravement aux obligations qui lui incombent ou n'est plus en mesure d'exercer ses fonctions. Avant qu'une décision soit prise en application du présent paragraphe, le Greffier est informé par le Président du Tribunal de la mesure envisagée dans une communication écrite qui en expose les raisons et indique tous les éléments de preuve s'y rapportant. Lorsque la mesure est envisagée du fait que le Greffier n'est plus en mesure d'exercer ses fonctions, les informations pertinentes de nature médicale sont jointes à cette communication. La possibilité lui est ensuite offerte, à une séance privée du Tribunal, de faire une déclaration, de fournir les renseignements ou explications qu'il souhaite donner et de répondre oralement ou par écrit aux questions qui lui sont posées. Il peut se faire assister ou représenter à cette séance par un conseil ou par toute autre personne de son choix.

3. Le Greffier adjoint et le Greffier assistant ne peuvent être relevés de leurs fonctions que pour les mêmes raisons et selon la même procédure que celles spécifiées au paragraphe 2.

COMMENTARY

The functions of the Registrar come to an end at the expiry of the term of office of five years except in the event of re-election. Article 39 contemplates two grounds on which the functions of the incumbent would cease before the end of the term: resignation (paragraph 1) and removal (paragraph 2). It also specifies the rules applicable to the resignation or removal from office of the Deputy Registrar and the Assistant Registrar.

Resignation of the Registrar (or any other official of the Registry) does not require any acceptance before it takes effect. In addition, the resignation will come into effect within a relatively short period of notice: two months in the case of the Registrar; one month for the other elected officials.[1] Nothing, however, prevents a longer period being agreed upon.

The provisions on removal correspond to Article 29 of the Rules of the ICJ, an article which was first introduced in 1972 in order to fill a gap. Indeed, before 1972, the Rules of the ICJ did not contain any provision for the removal of the Registrar from office while they included such provisions with respect to judges of the Court. Removal from office is a particularly serious procedure and article 39, paragraph 2, of the Rules of the Tribunal furnishes several guarantees, should this procedure ever be initiated. The decision has to be taken by a two-thirds majority. Two grounds are contemplated which would justify removal from office: serious breach of duties or permanent incapacity. The reasons for the proposed action must be given in writing before the Tribunal meets. At a "private meeting" of the Tribunal, the Registrar is then given the opportunity of making a statement, of furnishing information or supplying answers. The expression "private meeting"[2] underlines the fact that the deliberations of the Tribunal remain secret, as required by article 42 of the Rules. The provision is inspired by the procedure contained in article 7 of the Rules regarding the situation where a Member of the Tribunal ceases to fulfil the required conditions. In the case of a procedure concerning a Member, article 7 (which corresponds to Article 6 of the Rules of the ICJ) expressly states that the matter shall be discussed at "a further private meeting at which the Member concerned shall not be present". Regarding the Registrar's removal, this "further" meeting is contemplated

[1] The time-limit was complied with when the first Registrar of the Tribunal resigned on 27 April 2001, with effect from 1 July 2001.

[2] The same expression is used in article 7 of the Rules.

neither in article 39 of the Rules of the Tribunal nor in Article 29 of the Rules of the ICJ. Given the fact that article 36, paragraph 1(h), of the Rules (which corresponds to Article 26, paragraph 1(f), of the Rules of the ICJ) requires that the Registrar or another official of the Registry be present at meetings of the Tribunal,[3] the question was raised, in the context of the ICJ's Rules, as to whether this provision would apply to deliberations on the issue of removal.[4] In the case of the Tribunal, a response to this question may be found in article 39, paragraph 2, of the Rules of the Tribunal. This paragraph contains *in fine* a provision, which is not to be found in Article 29, paragraph 2, of the Rules of the ICJ, according to which the Registrar "may be assisted or represented at such meeting by counsel or any other person of his choice". The same expression appears in article 7 of the Rules and is intended to ensure due process of law. This seems to indicate that, in the case of the Tribunal, the Registrar has under the Rules the right to attend the deliberations of the Tribunal on the subject of his or her removal from office or to be represented at those deliberations.

[3] According to Rosenne, at p. 69, Article 26 of the Rules of the ICJ applies to all meetings of the Court. See also Guyomar, p. 148.

[4] See Rosenne, p. 69, who suggests that the Rules of Procedure of the European Court of Justice (ECJ) could serve as a guide. Article 27, paragraph 8, of those Rules reads as follows: "8. Where the Court sits without the Registrar being present it shall, if necessary, instruct the most junior Judge within the meaning of Article 6 of these Rules to draw up minutes. The minutes shall be signed by that Judge and by the President." However, this provision has to be read together with paragraph 7 of the same article which expressly provides that the ECJ may decide that the Registrar will not attend some of its deliberations. Paragraph 7 reads as follows: "Where the deliberations of the Court concern questions of its own administration, the Advocates General shall take part and have a vote. The Registrar shall be present, unless the Court decides to the contrary."

SECTION E. INTERNAL FUNCTIONING OF THE TRIBUNAL

Section E clearly indicates that the internal functioning of the Tribunal is a matter of open record. This does not mean that the deliberations of the Tribunal should take place in public view. The internal functioning comprehends the internal judicial practice of the Tribunal. The Resolution on the Internal Judicial Practice of the Tribunal adopted by the Tribunal on 31 October 1997,[1] in accordance with article 40 of the Rules, governs the internal judicial practice of the Tribunal. Articles 40 to 42 of the Rules and the Resolution mentioned above cover such matters as the quorum for meetings of the Tribunal, the Seabed Disputes Chamber and special chambers; availability of judges and judges *ad hoc* at meetings; judicial vacations; public holidays; secrecy of the Tribunal's deliberations; the Tribunal's deliberations before, during and after oral proceedings; the Drafting Committee and its deliberations; and voting on judgments.

[1] For the text of the Resolution, see Annex 3.

Section E. Internal functioning of the Tribunal

Article 40

The internal judicial practice of the Tribunal shall, subject to the Convention, the Statute and these Rules, be governed by any resolutions on the subject adopted by the Tribunal.

Section E. Fonctionnement interne du Tribunal

Article 40

La pratique interne du Tribunal en matière judiciaire est régie, sous réserve des dispositions de la Convention, du Statut et du présent Règlement, par toute résolution adoptée en la matière par le Tribunal.

COMMENTARY

This article corresponds to Article 19 of the Rules of the ICJ.

The Resolution on the Internal Judicial Practice of the Tribunal is the only resolution adopted by the Tribunal so far on its internal judicial practice.[1] The Tribunal may adopt more resolutions, if it deems them to be necessary.

The Resolution deals with preparatory documentation in relation to a case after the closure of the written proceedings and before the opening of the oral proceedings,[2] deliberations before the oral proceedings,[3] deliberations during oral proceedings,[4] initial deliberations after oral proceedings,[5] establishment of a drafting committee,[6] work of the drafting committee,[7] deliberations on the draft judgment,[8] adoption of the judgment,[9] etc.

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[1] For an analysis of the Resolution, see D.H. Anderson, "The Internal Judicial Practice of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 197 at pp. 202–204; P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183 at pp. 218–224.

[2] Article 2.

[3] Article 3.

[4] Article 4.

[5] Article 5.

[6] Article 6.

[7] Article 7.

[8] Article 8.

[9] Article 9.

The Resolution permits the Tribunal to vary the procedures and arrangements set out therein in a particular case, for reasons of urgency or if circumstances so justify.[10] Such permission may not, however, be invoked to vary the provisions of the Statute or of the Rules. Although the Resolution is primarily designed for cases to be decided on the merits, it also applies to applications for provisional measures and applications for the prompt release of a vessel or crew, taking account of the nature and urgency of the case.[11]

The Chamber for Summary Procedure deliberates in accordance with the principles and procedures set out in the Resolution, taking account of the summary nature of the proceedings and the urgency of the case.[12] The Resolution also applies both to contentious and advisory proceedings.[13] The Resolution may be revised from time to time in the light of experience gained by the Tribunal.[14] In sum, the Resolution is a flexible system evolved by the Tribunal to promote uniform and non-discriminatory treatment in matters relating to its internal judicial practice.

[10] Article 11, paragraph 1.
[11] Article 11, paragraph 2.
[12] Article 11, paragraph 3.
[13] Article 12.
[14] Article 13.

Article 41

1. The quorum specified by article 13, paragraph 1, of the Statute applies to all meetings of the Tribunal. The quorum specified in article 35, paragraph 7, of the Statute applies to all meetings of the Seabed Disputes Chamber. The quorum specified for a special chamber applies to all meetings of that chamber.
2. Members shall hold themselves permanently available to exercise their functions and shall attend all such meetings, unless they are absent on leave as provided for in paragraph 4 or prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal.
3. Judges *ad hoc* are likewise bound to hold themselves at the disposal of the Tribunal and to attend all meetings held in the case in which they are participating unless they are prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal. They shall not be taken into account for the calculation of the quorum.
4. The Tribunal shall fix the dates and duration of the judicial vacations and the periods and conditions of leave to be accorded to individual Members, having regard in both cases to the state of the List of cases and to the requirements of its current work.
5. Subject to the same considerations, the Tribunal shall observe the public holidays customary at the place where the Tribunal is sitting.
6. In case of urgency the President of the Tribunal may convene the Tribunal at any time.

Article 41

1. Le quorum prescrit à l'article 13, paragraphe 1, du Statut s'applique à toutes les séances du Tribunal. Le quorum prescrit à l'article 35, paragraphe 7, du Statut s'applique à toutes les séances de la Chambre pour le règlement des différends relatifs aux fonds marins. Le quorum prescrit pour une chambre spéciale s'applique à toutes les réunions de cette chambre.
2. Les Membres doivent être disponibles à tout moment pour exercer leurs fonctions et assistent à toutes les séances du Tribunal, à moins d'en être empêchés pour cause de congé conformément aux dispositions du paragraphe 4, de maladie ou autre motif grave dûment justifié auprès du Président du Tribunal, qui en rend compte au Tribunal.
3. Les juges *ad hoc* sont de même tenus d'être à la disposition du Tribunal et d'assister à toutes les séances concernant les affaires auxquelles ils participent, à moins d'en être empêchés pour cause de maladie ou autre

motif grave dûment justifié auprès du Président du Tribunal, qui en rend compte au Tribunal. Ils ne sont pas comptés pour le calcul du quorum.

4. Le Tribunal fixe les périodes et la durée des vacances judiciaires ainsi que les périodes et les conditions des congés à accorder aux Membres, en tenant compte dans l'un et l'autre cas de l'état du rôle des affaires et des travaux en cours.
5. Sous réserve des mêmes considérations, le Tribunal observe les jours fériés en usage au lieu où il siège.
6. En cas d'urgence, le Président du Tribunal peut convoquer le Tribunal à tout moment.

COMMENTARY

This article corresponds to Article 20 of the Rules of the ICJ, with minor modifications. It includes additional provisions in regard to the quorum required for meetings of the Seabed Disputes Chamber and of the Special Chambers.

It may be recalled that article 13 of the Statute states that "all available members of the Tribunal shall sit" and that "a quorum of 11 elected members shall be required to constitute the Tribunal". Article 41, paragraph 1, of the Rules clarifies that the quorum so specified applies to all meetings of the Tribunal, whether they be on judicial or other matters.

Similarly, article 35, paragraph 7, of the Statute prescribes that a quorum of seven of the members selected by the Tribunal is required to constitute the Seabed Disputes Chamber. Article 41, paragraph 1, of the Rules clarifies that the quorum so specified applies to all meetings of this Chamber, whether they be on judicial or other matters.

The Statute does not specify the quorum required to constitute the special chambers provided for in article 15 therein. Article 41, paragraph 1, of the Rules states that the quorum specified for a special chamber applies to all meetings of that chamber. It does not indicate where such quorum is specified. Article 28, paragraph 6, of the Rules states that the quorum for meetings of the Chamber of Summary Procedure is three members.

Neither the Statute nor the Rules specify the quorum for standing special chambers or an *ad hoc* chamber provided for in article 15, paragraphs 1 and 2, of the Statute. Article 29, paragraph 1, of the Rules calls upon the Tribunal to determine the quorum for meetings of a standing special chamber whenever it decides to form such a chamber.[1] Similarly,

[1] In its Resolution on the Chamber for Fisheries Disputes, adopted on 7 October 2002, the Tribunal recorded that the quorum required for meetings of the Chamber is five members. Similarly, in its Resolution on the Chamber for Marine Environment Disputes, adopted on 7 October 2002, the Tribunal recorded that the quorum required for meetings of the Chamber is five members. See *ITLOS Yearbook 2002*, pp. 132–133.

article 30, paragraph 3, of the Rules calls upon the Tribunal to determine the quorum for meetings of an *ad hoc* chamber whenever it decides to constitute the chamber.[2]

In sum, the purpose of article 41, paragraph 1, of the Rules is to clarify that the quorum specified for the Tribunal, the Seabed Disputes Chamber and any of the special chambers is the same for all meetings of those bodies, whether they be to deal with judicial or other matters.

Article 41, paragraph 2, of the Rules corresponds to Article 23, paragraph 3, of the Statute of the ICJ and Article 20, paragraph 2, of the Rules of the ICJ. The Tribunal is a standing court. Consequently, article 41, paragraph 2, of the Rules requires Members to hold themselves "permanently available to exercise their functions". Furthermore, it requires Members to attend all "such" meetings, i.e., "all meetings" mentioned in article 41, paragraph 1, of the Rules.[3]

The obligation of Members to attend all meetings of the Tribunal applies, except in any of the following contingencies: (a) they are absent on leave as provided for in article 41, paragraph 4; (b) they are prevented from attending a meeting (i) by illness or (ii) for any other serious reasons as provided for in paragraph 2. Thus, either illness or any other "serious reasons" that have the effect of *preventing* a Member from attending meetings of the Tribunal may justify a Member's non-attendance. The convenience of a Member may not be used as a ground for not attending the meetings of the Tribunal. The obligations of the Members to hold themselves permanently available to exercise their functions in the Tribunal override other obligations, if any, of the Members.

Since the Tribunal has not yet prescribed conditions of leave to be accorded to individual Members, the question of a Member being absent from meetings because of being on leave as provided for in paragraph 4 does not arise. Whenever a Member is prevented from attending a meeting, that Member is under a duty to explain the reasons for the same to the President of the Tribunal, who in turn is required to keep the Tribunal informed.

Paragraph 3 explains that what is said of an elected judge in relation to attendance at meetings of the Tribunal in paragraph 2 applies to judges *ad hoc* with equal force in the case in which they are participating. It clarifies that judges *ad hoc* are not taken into account for the calculation of the quorum.

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[2] In its Order of 20 December 2000, constituting the Special Chamber to deal with the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, the Tribunal decided that the quorum required for meetings of the Special Chamber is three members of that Chamber. See *ITLOS Reports 2000*, p. 148 at p. 153.

[3] See also Rosenne, p. 50.

The obligations of the Members and judges *ad hoc* under paragraphs 2 and 3 apply in respect of the Tribunal or, as the case may be, the Seabed Disputes Chamber and the Special Chambers.

Paragraph 4 deals with judicial vacations of the Tribunal and the periods and conditions of leave to be accorded to individual Members. Although the provision is drafted in what appears to be mandatory language, it is apparent that the need to prescribe judicial vacations and conditions of leave arises only when, in the opinion of the Tribunal, the state of the List of cases and the requirements of its current work so demand. As the workload of the Tribunal is still light, judges return to their respective places of residence as soon as the meetings and sessions of the Tribunal are concluded. Bearing such factors as these in mind, the Tribunal has not yet found it convenient to declare "judicial vacations" or to fix leave conditions applicable to judges.

The expression "Subject to the same considerations" in paragraph 5 refers to the considerations set out in the paragraph which immediately precedes it, namely, paragraph 4. In short, the Tribunal may observe the public holidays customary at Hamburg, having regard to the state of the List of cases and to the requirements of its current work.

Even if a judicial vacation is declared or the Tribunal is observing holidays, paragraph 6 enables the President of the Tribunal to convene the Tribunal at any time "in case of urgency". Such cases in respect of the Tribunal are specified in articles 290, paragraph 5[4] (provisional measures), 292[5] (prompt release of vessels and crews) and 294[6] (preliminary proceedings) of the Convention. Further, article 102 of the Rules requires the Tribunal to decide, as a matter of priority, issues concerning intervention under articles 31 and 32 of the Statute. In the case of the Seabed Disputes Chamber, article 191 of the Convention mandates that its advisory opinions be given as a matter of urgency.[7]

[4] See also article 90, paragraph 1, of the Rules.
[5] See also article 112, paragraph 1, of the Rules.
[6] See also article 96, paragraph 2, of the Rules.
[7] See also article 132 of the Rules.

Article 42

1. The deliberations of the Tribunal shall take place in private and remain secret. The Tribunal may, however, at any time decide in respect of its deliberations on other than judicial matters to publish or allow publication of any part of them.
2. Only judges and any experts appointed in accordance with article 289 of the Convention take part in the Tribunal's judicial deliberations. The Registrar, or his Deputy, and other members of the staff of the Registry as may be required shall be present. No other person shall be present except by permission of the Tribunal.
3. The records of the Tribunal's judicial deliberations shall contain only the title or nature of the subjects or matters discussed and the results of any vote taken. They shall not contain any details of the discussions nor the views expressed, provided however that any judge is entitled to require that a statement made by him be inserted in the records.

Article 42

1. Les délibérations du Tribunal sont et restent secrètes. Toutefois, le Tribunal peut à tout moment décider de publier tout ou partie de ses délibérations sur des questions autres que judiciaires ou d'autoriser cette publication.
2. Seuls les juges et les experts désignés conformément à l'article 289 de la Convention prennent part aux délibérations en matière judiciaire. Le Greffier ou son adjoint et tous autres fonctionnaires du Greffe dont la présence peut être requise y assistent. Aucune autre personne ne peut être présente si ce n'est avec l'autorisation du Tribunal.
3. Les comptes rendus des délibérations du Tribunal en matière judiciaire se bornent à indiquer le titre ou la nature des questions ou sujets débattus et le résultat des votes. Ils ne mentionnent pas le détail des discussions ou les opinions émises; toutefois tout juge a le droit de demander qu'une déclaration faite par lui soit inscrite au compte rendu.

COMMENTARY

This article corresponds to Article 54, paragraph 3, of the Statute of the ICJ and Article 21 of the Rules of the ICJ, with minor modifications.

Paragraph 1 lays down the confidentiality rule in regard to the deliberations of the Tribunal, whether they are on judicial matters or on matters other than judicial. It states that all deliberations take place "in private

and remain secret."[1] The Tribunal is, however, given the discretion to publish in full or in part, its deliberations on other than judicial matters. It is well-known that the PCIJ had published the records of all its deliberations concerning the adoption, amendment and revision of its Rules. The ICJ, departing from the practice of the PCIJ, has not published or allowed publication of any of its deliberations, save to the extent that some of the internal decisions reached have been reproduced in its Yearbook.[2] That Court has had occasion to refer in a case to the "drafting records" of some of its 1946 Rules.[3] The Tribunal has so far maintained the confidentiality rule in respect of all its deliberations.

In sum, article 42, paragraph 1, of the Rules imposes a strict embargo on making judicial deliberations public. This provision in Part II of the Rules is not subject to modifications by virtue of article 48 in Part III of the Rules. What the provision seeks to protect is the confidentiality of the "deliberations", that is, reasons for and against something under discussion in the Tribunal and the expression of views by judges of the Tribunal during such deliberations. It does not prohibit the publication of decisions reached as a result of such deliberations at an appropriate time. For instance, after the Tribunal completes its deliberations and adopts its judgment or advisory opinion, such a judgment or opinion may disclose a number of matters specified in articles 125 and 135 of the Rules, respectively. Except to the extent so disclosed, the deliberations shall remain secret. In practice, all paper copies and electronic versions of documents relating to judicial deliberations are shredded or deleted, apart from one written copy and one electronic copy that are kept in the archives.

The confidentiality rule is a characteristic feature of any true court, whether municipal or international. It is designed to subserve the independence of the judicial mind and any violation of the rule could compromise the integrity of the judicial process as well as the dignity of the Tribunal.[4] It appears that the confidentiality provision conveys, by necessary implication, the power of the Tribunal to expunge the portion of an opinion of a judge that is in breach of it.

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[1] See article 68 of the Rules and article 3 of the Resolution on the Internal Judicial Practice of the Tribunal which also deal with the meetings of the Tribunal in private.

[2] See Rosenne, p. 52.

[3] *Ibid.*

[4] See Sir Robert Jennings's decision, as appointing authority, in relation to an opinion delivered by a Finnish third party judge on a decision given by the Iran-United States Claims Tribunal in case A/28 (*United States* v. *Iran*, Dec. No. 130–A28–FT) on 19 December 2000, as set out in S.D. Murphy (ed) "Contemporary Practice of the United States", 95 *AJIL* (2001), pp. 895 et seq. See also generally, D.H. Anderson, "The Internal Judicial Practice of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 197 at p. 202.

Paragraph 2 permits only judges and any experts, appointed in accordance with article 289 of the Convention,[5] to "take part in the Tribunal's judicial deliberations". What constitutes "judicial deliberations" is not precisely defined in the Rules. It is beyond doubt that the expression "judicial deliberations" includes the Tribunal's deliberations in respect of a case. Deliberations in respect of the Rules of the Tribunal, the Resolution on the Internal Judicial Practice of the Tribunal, the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal and such other matters may also be characterized as judicial, but there is as yet no definite pronouncement of the Tribunal in this regard. "Judicial deliberations" do not cover the deliberations on purely administrative matters of the Tribunal.

Paragraph 2 requires the Registrar, or his Deputy, and other members of the staff of the Registry as may be required, to be present whenever the Tribunal is engaged in judicial deliberations. These officials, unlike the judges and experts appointed under article 289 of the Convention, do not "take part" in the Tribunal's judicial deliberations but are present to give such assistance as the Tribunal may seek in such matters as preparing the records of the Tribunal's judicial deliberations and undertaking research on legal issues.[6] In practice, both the Registrar and his Deputy are invariably present; subject to the approval of the President, members of legal and administrative staff of the Registry as may be required are also present.[7] The Staff Regulations of the Tribunal require staff members not to communicate to any person any information coming to their knowledge by reason of their official position which has not been made public.[8] Other persons may be present by permission of the Tribunal.[9]

Paragraph 3 stipulates as to what the "records" of the Tribunal's judicial deliberations should contain and what they should not contain.[10] Such records shall contain only (a) the title or nature of the subjects or matters discussed and (b) the results of any vote taken; they shall not contain (a) any details of the discussions or (b) the views expressed. A judge,

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[5] Before entering upon their duties, such experts make a solemn declaration that they would observe the Rules (see article 15, paragraph 5, of the Rules). This includes the obligation to abide by the confidentiality rule in article 42 of the Rules. To date, no expert has been appointed in accordance with article 289 of the Convention.

[6] See also article 36, paragraph 1(h), of the Rules.

[7] See also article 15 of the Instructions for the Registry adopted by the Tribunal on 17 March 2000 (http://www.itlos.org/documents_publications/documents/instr_r_en.doc).

[8] See regulation 1.5.

[9] A cartographer was once invited to be present at a meeting of the Tribunal engaged in judicial deliberations.

[10] Paragraph 3 uses the word "records" in preference to the word "minutes" contained in Article 21, paragraph 3, of the Rules of the ICJ. Generally speaking, the expression "minutes" signifies the written record of what was said in a meeting. Paragraph 3 does not permit such a record; it imposes restrictions on what the records should contain.

however, is entitled to require that a statement made by him be inserted in the records. In view of the clear stipulation in paragraph 3, it appears that the records of the Tribunal's judicial deliberations should not refer to the judges' written notes,[11] working papers prepared by the President of the Tribunal,[12] lists of issues prepared by the President to facilitate discussion in the Tribunal,[13] speaking notes of judges,[14] drafts of judgment prepared by the Drafting Committee, including written proposals submitted by its members to the Drafting Committee,[15] drafts of separate or dissenting opinions,[16] and records of meetings between the President and the agents of the parties, etc.

The Registrar of the Tribunal is responsible for preparing records of the meetings of the Tribunal, including the records of judicial deliberations of the Tribunal.[17]

[11] See article 2, paragraph 1, of the Resolution on the Internal Judicial Practice of the Tribunal.
[12] See article 2, paragraph 3, of the Resolution.
[13] See article 5 of the Resolution.
[14] *Ibid.*
[15] See article 7 of the Resolution.
[16] See article 8 of the Resolution.
[17] See article 36, paragraph 1(h), of the Rules.

Section F. Official languages

Article 43

The official languages of the Tribunal are English and French.

Section F. Langues officielles

Article 43

Les langues officielles du Tribunal sont le français et l'anglais.

COMMENTARY

Unlike the Statute of the ICJ (Article 39, paragraph 1), the Statute of the Tribunal does not contain a provision specifying the official languages of the Tribunal.

This question was discussed by the Preparatory Commission but no decision was reached. No provision was included in this respect in the Preparatory Commission Draft Rules.

It was only in May 1995, during the second Meeting of the States Parties to the Convention (New York, 15–19 May 1995), that the following decision was adopted:

The decisions taken regarding the official and working languages of the Tribunal and the use of other languages are as follows:

(i) The official languages of the Tribunal were English and French. Decisions of the Tribunal should be given in the two official languages and the Tribunal should determine which of the two texts was considered as authoritative; . . .[1]

Article 43 of the Rules implements this decision, as does article 125, paragraph 1(m).

At the same meeting in 1995, the States Parties also adopted decisions regarding the possibility for parties to use, at their expense, another

[1] Report of the second Meeting of States Parties, SPLOS/4, 26 July 1995, p. 8, paragraph 25(b)(i).

language for their written and oral pleadings or to request, at no cost to the parties, the translation of the decision of the Tribunal into an official language of the United Nations chosen by the parties.[2] These decisions are reflected in articles 64 and 85 of the Rules.[3]

[2] *Ibid.*, paragraph 25(b)(ii) and (iii).
[3] See the commentary on articles 64 and 85, *infra.*

PART III – PARTIE III

PROCEDURE – PROCÉDURE

Section A. General Provisions

Section A (General Provisions) of Part III of the Rules is an innovation introduced by the Tribunal. There is no such section in the Rules of the ICJ or in the draft articles prepared by the Preparatory Commission. Although many of the articles in section A are to be found in the Rules of the ICJ and in the draft articles prepared by the Preparatory Commission, they are not presented in a separate section as they are in the Rules of the Tribunal.

The articles in section A set out general principles for the procedure to be adopted in cases before the Tribunal. In many cases the practical implications and requirements of these general principles are elaborated more fully in the relevant articles in other sections of Part III.

The first general principle articulated in section A is that, as a general rule, proceedings in cases before the Tribunal shall be in two phases: written and oral (article 44). This is in line with a procedure that has been a customary feature of international adjudication. The purpose of the two-phase proceedings is to enable the Tribunal to have the benefit of the fullest presentation of the cases of the parties. The written phase gives to the parties the opportunity to present the broad outlines of their case, with full supporting documentation, and to set out the legal basis of their contentions and the authorities on which they rely to support their arguments.[1] The written phase also gives to the other party an adequate indication of the main lines of the case of the opposing party.[2] In the oral proceedings the parties are given the opportunity to submit evidence and legal arguments on the aspects of their case which they or the Tribunal consider require further elaboration to enable the Tribunal to reach a decision on how to dispose of the case.[3]

Another principle emphasized by section A is the need to have due regard to the views and wishes of the parties in determining the procedure to be adopted in a case (article 45). Giving due regard to the views and wishes of the parties is a natural consequence of the general principle that, in the final analysis, the exercise of jurisdiction by the Tribunal

[1] "The purpose of the written proceedings is to present the whole of the cases of all parties fully documented and on a broad canvas", S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1081.

[2] Thus the respondent is required in its counter-memorial to give, *inter alia*, statements of the relevant facts and the law and its submissions. Rosenne suggests that one reason for requiring this is to "prevent the other party from being taken by surprise at a later stage", Rosenne, p. 112, commentary on Article 49 of the Rules of the ICJ. See also note 7 to the commentary on article 44, *infra*.

[3] "The purpose of the oral proceedings is to enable matter which, upon perusal of the whole of the arguments of each side appears superfluous for the decision of the Court, to be put aside", S. Rosenne, *The Law and Practice of the International Court, 1920–2005*, Vol. III, 2006, p. 1038.

depends on the consent of the parties to the dispute. The objective of article 45 is to ensure that the views and wishes of the parties with regard to procedure are clearly ascertained as early as possible. For that purpose the article authorizes and requires the President to consult the parties and seek their views.

One other principle that is emphasized in section A of Part III is the need to avoid unnecessary delay and expense in the proceedings. Avoidance of delay underlies and is promoted by several provisions in section A and also in other sections of the Rules. In section A the need to avoid delay is emphasized by provisions such as the provision which requires the fixing of specified periods for the completion of steps in the proceedings (article 46), the provision which empowers the Tribunal to join the proceedings or parts of the proceedings in two or more cases (article 47) and, most importantly, the provision which expressly mandates that the proceedings before the Tribunal be conducted without unnecessary delay or expense (article 49). The same objective is behind the provision that authorizes the Tribunal to issue guidelines regarding the manner in which submissions of the parties may be presented to the Tribunal (article 50).

Articles 51 to 53 in section A prescribe the channels of contact between the Tribunal and the parties to cases. In general, these provisions state that communications to the Tribunal should be addressed through the Registrar (article 51) and that communications from the Tribunal to the parties should be transmitted through the agents of the parties (article 52). For the latter purpose, there is a general provision which mandates the appointment of agents by all parties to cases before the Tribunal (article 53).

Section A. General provisions

Article 44

1. The proceedings consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Tribunal and to the parties of memorials, counter-memorials and, if the Tribunal so authorizes, replies and rejoinders, as well as all documents in support.
3. The oral proceedings shall consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts.

Section A. Dispositions générales

Article 44

1. La procédure a deux phases: l'une écrite, l'autre orale.
2. La procédure écrite comprend la communication au Tribunal et aux parties de mémoires, contre-mémoires et, si le Tribunal en autorise la présentation, des répliques et dupliques ainsi que de tous documents à l'appui.
3. La procédure orale consiste en l'audition par le Tribunal des agents, conseils, avocats, témoins et experts.

COMMENTARY

Paragraph 1 of article 44 affirms the two-phase character of proceedings before the Tribunal. In that respect the article adopts the principle enshrined in Article 43 of the Statute of the ICJ. There is no equivalent provision in the Statute of the Tribunal, so it was necessary to cater for the matter in the Rules of the Tribunal.[1]

The Tribunal decided to adopt the traditional procedure in international adjudication involving two phases, i.e., the written phase in which the parties submit written pleadings, followed by a second stage of oral presentations by the parties. As noted earlier, the purpose of the two-phase proceedings is to enable the Tribunal to have the benefit of the

[1] Article 44 does not include all the provisions in Article 43 of the Court's Statute. Paragraphs 3 and 4 of Article 43 of the Court's Statute do not appear in article 44 of the Tribunal's Rules but are included elsewhere: paragraph 3 (communications to be sent to the Registrar) and paragraph 4 (certified copies of pleadings and documents to be sent to the other party) are included in articles 51 and 66, respectively, of the Tribunal's Rules.

fullest presentation of the case of the parties. The written phase of the proceedings enables the parties to present the broad outlines of their cases, supported by full documentation, and to indicate the legal basis of their contentions and the authorities in support of their arguments. It is also necessary in order to give to the other party an adequate picture of the opposing party's case and the legal basis of that party's contentions.

The written phase may itself consist of two stages, namely, a first stage involving the submission of a memorial by the applicant and a counter-memorial by the respondent, and a second stage consisting of the submission of a reply and a rejoinder (articles 61 and 62). However, the second stage is not automatic. It only takes place if both the parties agree that there shall be a reply and a rejoinder, or if the Tribunal otherwise authorizes that a reply and rejoinder be submitted.

Detailed provisions concerning the written phase of the proceedings are in subsection 2 of Part III of the Rules.

The oral phase of the proceedings provides the opportunity for the parties to elaborate on aspects of their case that need further clarification or amplification. On the whole, the oral proceedings provide an opportunity, both for the parties and the Tribunal, to isolate and put aside matters which, having regard to the information already available in the written pleadings, do not appear to require further airing for the disposal of the case.[2] Accordingly, the parties are expected and required to refrain from repeating in the oral proceedings arguments that have been fully advanced in their written pleadings.[3] The parties may also present evidence to support their contentions. Evidence may be in the form of documents or provided by witnesses or experts. Arguments on points of law and conclusions to be drawn from the evidence adduced are presented by agents, counsel or advocates (articles 53, 73, 75). Evidence on issues of fact may be given by witnesses (article 78). Witnesses are called by the parties but may also appear at the instance of the Tribunal (article 77, paragraph 2). Opinion on technical or other specialized subjects may be presented by experts designated by the parties (article 78). Experts may also be appointed by the Tribunal itself (article 82). Witnesses and experts may be examined, cross-examined and re-examined on their evidence (article 80).

Detailed provisions on the procedure to be followed in the oral proceedings are in subsection 4 of Part III of the Rules.

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[2] See p. 129, note 3, *supra*.

[3] Thus, in article 75, paragraph 1, of the Rules, the parties are urged to confine their oral presentations to "the issues that still" (i.e. after the written pleadings) divide them, and not to "go over the whole ground covered by the pleadings". The same request is addressed to the parties in paragraph 15 of the *Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal.*

The language of paragraph 1 of article 44 suggests that written and oral pleadings are mandatory features of the procedure of the Tribunal. In this regard, it may be noted that the ICJ considers that the two-phase character of the procedure is a requirement of its Statute and that it cannot be dispensed with even with the consent of the parties.[4] However, it has been pointed out that the situation may be different in the case of the Tribunal since there is no provision in its Statute mandating a two-phase procedure.[5] There is some merit in this view and there are provisions in the Rules of the Tribunal which lend support to the contention that, unlike the situation in the ICJ, the two-phase procedure is not necessarily a mandatory feature of the Tribunal's procedure. Thus, for example, article 48 of the Tribunal's Rules provides that the parties may jointly propose particular modifications or additions to the Rules contained in this part (Part III), and such modifications or additions may be applied by the Tribunal or a chamber if they are considered to be appropriate in the circumstances of the case. Since article 44 is included in Part III of the Rules, there would be no legal impediment to the Tribunal or a chamber agreeing, upon the joint proposal of both parties to a particular case, to modify the procedure in order to dispense with oral proceedings in that case. In addition, Eiriksson notes that there is "a hint" in article 109, paragraph 3, of the Rules that oral proceedings may not be required in a case before a special chamber established pursuant to article 15 of the Statute.[6] It is also pertinent to note that written pleadings are not mandatory in all proceedings before the Tribunal. Thus, in relation to prompt release proceedings, paragraph 4 of article 111 of the Rules can be read as giving to the detaining State the option not to submit a "statement in response" prior to the hearing referred to in article 112, paragraph 3, of the Rules.[7]

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[4] Rosenne has observed that the mandatory character of Article 43, paragraph 1, of the Statute of the ICJ has been emphasized by the Court which has insisted that, even with the consent of the parties, it is not authorized to waive the need for oral proceedings on the merits of a case. See S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1324.

[5] Eiriksson, p. 149. Eiriksson points out that there is no provision in the Statute "which could be read as making two-part proceedings mandatory." According to the author, article 44, paragraph 1, of the Rules is "descriptive and envisages situations where the proceedings consist of only one of the two stages."

[6] *Ibid.*

[7] However, considerable unease has been expressed about possible undesirable consequences of this provision. In particular it has been pointed out that a statement in response is required "to give notice to the applicant of the nature of the case to be presented by (the respondent)" and, accordingly, a deliberate decision of a respondent not to submit a statement in response could result in an "unfair advantage" over the other party. See *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, ITLOS Reports 2004*, Separate Opinion of Judge Chandrasekhara Rao, p. 64 at pp. 68–69. Similar views were expressed in the Separate Opinion of Judge Lucky in the same case (*ITLOS Reports 2004*, p. 83 at p. 87).

Article 45

In every case submitted to the Tribunal, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose, he may summon the agents of the parties to meet him as soon as possible after their appointment and whenever necessary thereafter, or use other appropriate means of communication.

Article 45

Dans chaque affaire dont le Tribunal est saisi, le Président se renseigne auprès des parties au sujet des questions de procédure. A cette fin, il peut convoquer les agents des parties aussitôt après leur nomination et chaque fois que cela est nécessaire par la suite, ou utiliser tous autres moyens de communication qu'il juge appropriés.

COMMENTARY

Article 45 is based on Article 31 of the Rules of the ICJ. However, the version in the Tribunal's Rules goes further than the corresponding provision of the ICJ by making it clear that the President may not only summon the agents to meet him but can also seek their views by using "other appropriate means of communication." This provision is another illustration of the importance attached to the views and wishes of the parties in determining the procedure to be adopted in cases before the Tribunal. It requires and authorizes the President to consult the parties on questions of procedure. Such consultations will relate to, *inter alia*, the time-limits to be fixed for the presentation of pleadings (article 59, paragraph 1); the dates for the oral proceedings (article 69); and the order in which the parties are to present their oral submissions, including the time to be allocated to each of the parties for this purpose (article 73).

In general, consultations on questions of procedure are held with the agents. However, it may be necessary for the Tribunal to seek or accept the views and wishes of other appropriate authorities of the State. This may be particularly necessary in the period when a party has not yet appointed an agent. Thus, for example, in *The M/V "SAIGA" Case, (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release*, the communication from Guinea requesting a postponement of the date of the hearing fixed by the President was sent by the Minister of Justice. At the time Guinea had not yet appointed an agent.[1]

[1] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 18.

The importance attached to this aspect of the Tribunal's procedure is evidenced by the fact that the Tribunal invariably includes in the introductory recitals of its judgments passages which record the consultations that were held pursuant to article 45 of the Rules. An example of this is to be found in the Judgment in *The M/V "SAIGA" Case* which states: "In accordance with article 45 of the Rules of the Tribunal, the President of the Tribunal consulted the parties and ascertained their views with regard to the hearing."[2]

The reference to "other appropriate means of communication" enables the Tribunal and the President to take advantage of modern developments in information technology, such as electronic mail and teleconferences. The Tribunal has affirmed its intention to make full use of the new information technology in all relevant areas of its operation in the effort to avoid delay and expense in proceedings before it.[3] This is particularly important for the Tribunal because its jurisdiction extends to certain disputes which need to be dealt with expeditiously. Thus, article 45 envisages the possibility that, instead of summoning the agents or other representatives of the parties to the seat of the Tribunal for consultations on questions of procedure, the President will seek the views of the parties through the medium of the telephone, including the teleconference which enables consultations to be held simultaneously with several parties while they are at their respective locations.

Teleconferencing has proved to be extremely useful and it has frequently been used by the President in seeking the views of the agents on questions of procedure, especially where the parties are located at long distances from the Tribunal and from each other, or where it is necessary for agreement to be reached speedily in order to make the requisite arrangements for the hearing to be held within a short time. As with meetings held with the agents, consultations held with the agents by teleconference are routinely chronicled in the introductory recitals in the judgments of the Tribunal.[4]

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[2] *Ibid.*; similar recitations are contained in all judgments and orders. See for example, *Land Reclamation in and around the Straits of Johor, (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 13. In some cases specific reference is not made to article 45 of the Rules as, for example, in *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 at p. 26.

[3] This approach is given concrete expression in paragraph 10 of the Guidelines where it is expressly stated that pleadings may be submitted "through facsimile or electronic means in clear form."

[4] Examples of such recitations are in *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 14, and in *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 23.

Article 46

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

Article 46

Les délais pour l'accomplissement d'actes de procédure peuvent être fixés par l'indication d'une période déterminée, étant entendu qu'une date précise doit toujours y être spécifiée. Ils doivent être aussi brefs que la nature de l'affaire le permet.

COMMENTARY

This article is identical to the corresponding provision in the Rules of the ICJ (Article 48). Its purpose is to provide certainty to the parties regarding what is expected of them with respect to any particular step in the proceedings. It also underscores the need to avoid unnecessary delay at all stages of the proceedings.

This rule requires the Tribunal to fix time-limits for the completion of different "steps" in the proceedings, e.g. the submission of a memorial or a counter-memorial. The time-limit fixed by the Tribunal for any particular step must not merely give a period (such as six months or fourteen days) but should actually indicate the specific date on which the required action must be completed. Thus, for example, while article 59 of the Rules provides that the time-limit for each pleading shall not exceed six months, the Order of the Tribunal fixing the time-limits for each party to submit a particular pleading will always specify a specific date.[1]

The final sentence of article 46 is another reflection of the Tribunal's general policy to avoid delay in the proceedings. That policy is further highlighted by paragraph 1 of article 59 which prescribes a maximum period of not more than six months as the time-limit for the filing of each written pleading. Although paragraph 2 of article 59 states that the Tribunal may extend the time-limit beyond the specified period, it also

[1] Thus, for example, the Order of 23 February 1998 in *The M/V "SAIGA" (No. 2) Case* fixed the time-limits for the pleadings as follows: 19 June 1998 for the Memorial of Saint Vincent and the Grenadines; 18 September 1998 for the Counter-Memorial of Guinea; 30 October 1998 for the Reply of Saint Vincent and the Grenadines; and 11 December 1998 for the Rejoinder of Guinea. See *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Order of 23 February 1998, ITLOS Reports 1998*, p. 18 at p. 19.

stipulates that an extension should only be granted if there is adequate justification for doing so.

In line with the general policy to give due regard to the views of the parties with respect to procedure, the time-limits are fixed after consultation with the parties.[2]

[2] Article 59, paragraph 1. In *The M/V "SAIGA" (No. 2) Case*, the timetable set by the Tribunal for the submission of pleadings was proposed by the parties in the Agreement submitting the dispute to the Tribunal. See *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 14. The Tribunal, with the agreement of the parties, made modifications to the schedule: *ibid.*, p. 18.

Article 47

The Tribunal may at any time direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Tribunal may, without effecting any formal joinder, direct common action in any of these respects.

Article 47

Le Tribunal peut à tout moment ordonner que les instances dans deux ou plusieurs affaires soient jointes. Il peut ordonner aussi que les procédures écrites ou orales, y compris la présentation de témoins, aient un caractère commun ; ou il peut, sans opérer de jonction formelle, ordonner une action commune au regard d'un ou plusieurs éléments de ces procédures.

COMMENTARY

This article is identical to Article 47 of the Rules of the ICJ. The current version of the ICJ Rule was adopted in 1978 and it is considered as representing a "consolidation" of the jurisprudence and practice that has been developed both in the PCIJ and in the ICJ.[1]

The issue of joinder arises mainly, though not exclusively, in two situations, namely, (a) where several States institute proceedings against one and the same State in respect of a dispute arising from the same or similar facts and (b) when one State institutes proceedings against more than one State in respect of a dispute arising from the same or similar facts or incidents.[2]

Article 47 of the Tribunal's Rules was adopted with due regard to the jurisprudence of the ICJ as well as the relevant provisions of the Statute

[1] Rosenne notes that the question of joinder arose in the general practice of the PCIJ and also in the ICJ not only in connection with the appointment of judges *ad hoc* but also generally; and that the Court adopted different solutions to the problem as it arose in different contexts. According to him, the revised rule adopted in 1978 consolidated in "an elegant way" the jurisprudence and practice that had arisen from the various solutions adopted by the Court from time to time. See Rosenne, p. 108.

[2] The issue of joinder may also arise in connection with counter-claims under article 98 of the Rules. In considering whether a counter-claim made by a party is directly connected with the subject matter of the original claim, and if the issue raised in the counter-claim comes within the jurisdiction of the Tribunal, the Tribunal is required to take a decision whether the counter-claim should be joined to the original proceedings. See Eiriksson, pp. 239–240.

of the Tribunal. In particular, it is intended to apply to cases that involve more than one applicant or one respondent, dealing with the same or similar subject matter and identical or similar basic legal issues. Thus, the issue of joinder is closely linked to the issue of whether, and if so to what extent, several parties in a case or cases before the Tribunal can be considered to be "in the same interest" within the meaning of paragraph 5 of article 17 of the Statute. Although the existence of "the same interest" is a requirement only when the Tribunal is deciding whether parties may jointly choose a judge *ad hoc*, it will in most cases also be relevant in determining whether it is necessary or advisable to join all or any parts of the proceedings.[3] In any case, the Tribunal will order a joinder of proceedings only when it is satisfied that the conditions for joinder are satisfied.

The agreement of the parties is not a condition precedent for an order to join proceedings. However, it is unlikely that the Tribunal will order a joinder if there is strong objection from all the parties in the case. An order of joinder or for common action by the parties on any aspect of their case involves a determination by the Tribunal regarding the nature and scope of the interests that the States involved in a case are deemed to be advancing in the case. Further, a decision to join the proceedings or any aspect thereof could have a practical impact on the way in which the States are able to present their case.[4] Accordingly, it appears axiomatic that, in taking a decision to join proceedings or to adopt other procedures in accordance with article 47 of the Rules, the Tribunal will have due regard to the views and wishes of the parties. This is what happened in the *Southern Bluefin Tuna Cases (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures*, the only case to date in which the Tribunal has ordered a joinder of proceedings. In that case, the decision of the Tribunal to join the proceedings was taken in full consultation with, and with the agreement of, the parties. In the first place, although the two cases had been brought separately by Australia and New Zealand against Japan, both Applicants had stated in their separate Requests for provisional measures that they appeared as "parties in the same interest" and, as such,

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[3] In theory, it would be perfectly permissible for the Tribunal to decide that there is a "same interest" sufficient for the parties to appoint a common judge *ad hoc* without necessarily ordering a joinder of all aspects of the proceedings. A precedent for this view is the position adopted by the ICJ in *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 3 and *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, ibid.*, p. 175 *(Fisheries Jurisdiction Cases)*, where it decided that the parties should have a common judge *ad hoc*, but did not order a formal joinder of the cases. See Rosenne, p. 109.

[4] Rosenne at p. 109 refers to the decision of the ICJ on the issue of joinder in the *Fisheries Jurisdiction Cases* to illustrate the impact that joinder could have on the presentation of the cases by parties. In that case, the Court decided not to join the proceedings because, *inter alia*, "while the basic legal issues in each case appeared to be identical, there were differences between the positions of the two Applicants." See *Fisheries Jurisdiction Cases, I.C.J. Reports 1974*, p. 3 at p. 6 and p. 175 at p. 177.

had jointly nominated one judge *ad hoc*.[5] Furthermore, the Order to join the proceedings was made by the Tribunal after consultations by the President with the parties had revealed that they were agreeable to the cases being dealt with in common. This was made particularly evident by the agreement of the parties that Japan should present a single response to the two separate Requests from Australia and New Zealand.[6]

Article 47 is drafted in sufficiently broad terms to cover the different situations in which it may be necessary or desirable to combine some or all of the stages of the proceedings. The possibilities envisaged range from formal joinder where all the stages of the proceedings are joined, leading to a single judgment that is binding on all the parties, to the consolidation of only certain specified stages of the proceedings, such as the filing of pleadings or the presentation of evidence. The rule also makes it possible for the Tribunal, without necessarily ordering a formal joinder of proceedings, to direct that certain specified aspects of the procedure, such as the presentation of evidence on a particular issue, may be made in common by one or more of the parties.

Article 47 states that an order to join proceedings may be made by the Tribunal "at any time" during the proceedings. This means that it is open to the Tribunal to order a joinder or common action at any stage of the proceedings if and when it becomes clear to it that the conditions for such joinder or common action exist. Thus, in the *Southern Bluefin Tuna Cases* the order to join the proceedings was made by the Tribunal on 16 August 1999, after consultations with the parties had revealed that a joinder of the proceedings would be acceptable to all of them.

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[5] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 283.

[6] *Ibid.* In its Order for the joinder of the cases, the Tribunal specifically noted the fact that both Australia and New Zealand had stated that "they appear as parties in the same interest." See *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Order of 16 August 1999, ITLOS Reports 1999*, p. 274 at p. 275.

Article 48

The parties may jointly propose particular modifications or additions to the Rules contained in this Part, which may be applied by the Tribunal or by a chamber if the Tribunal or the chamber considers them appropriate in the circumstances of the case.

Article 48

Les parties peuvent proposer d'un commun accord d'apporter aux articles contenus dans la présente partie des modifications ou additions particulières que le Tribunal ou une chambre peut adopter s'il ou elle les estime appropriées aux circonstances de l'espèce.

COMMENTARY

This provision is based on Article 101 of the Rules of the ICJ, although there is a significant difference between the two versions as regards the scope of their application. Article 101 of the ICJ's Rules expressly excludes from its scope certain rules relating to procedure. The excluded rules are those dealing with the content and form of judgments as well as the time and manner of their delivery.[1] In respect of the equivalent provision of the ICJ's Rules, it has been explained that the result of the restriction is that the parties are only entitled to propose modifications to the "provisions concerning the relations of the parties to the Court or *inter se*, and not to those provisions of the Rules which relate to the formation and publication of the Court's decision."[2]

The draft provision on this point in the Preparatory Commission Draft Rules was based verbatim on Article 101 of the Rules of the ICJ.[3] However, the Tribunal did not accept the recommendation to adopt the approach of the Court which restricts the scope of application of the rule. Consequently, the article adopted by the Tribunal applies to all provisions included in Part III of the Rules. Thus it is, in principle, permissible for the parties jointly to propose modifications or additions to the provisions

[1] Articles 93 to 97 inclusive of the Court's Rules (the equivalent provisions in the Rules of the Tribunal would be articles 124 and 125).

[2] Rosenne, p. 208.

[3] Article 118 of the Preparatory Commission Draft Rules would have excluded from its scope the provisions on the content and manner of promulgation of the judgment as well as provisions relating to the language of the judgment and how an award of costs should be indicated in the judgment.

relating to the timing and manner of promulgation of judgments. Further the right of the parties to propose modifications or additions extends not only to the procedural rules of the Tribunal itself but also to those of the Seabed Disputes Chamber and other chambers established pursuant to article 15 of the Statute.[4]

The difference in the Rules of the Tribunal and the ICJ on this point may, in fact, have no significant effect in practice. Both provisions make it clear that a proposal for modification or addition submitted jointly by the parties is subject to the approval of the body to which it is addressed. In every case the modification or addition proposed by the parties "may be applied" if the body concerned "considers them appropriate in the circumstances of the case". Hence, it is always for the Court or the Tribunal (or a chamber) to determine whether a modification or addition proposed by the parties is appropriate for application in the circumstances of the particular case.

It may also be worth noting that the approach adopted in article 48 of the Tribunal's Rules is especially suitable for the Tribunal because it enables it to respond more readily to the requirements of certain special features of its jurisdiction. One of these special features is the fact that access to the Tribunal is open not only to States that are not parties to the Convention but also to entities that are not States.[5] Where the parties to a case before the Tribunal include a non-State entity or entities or where the subject of the dispute involves commercial or industrial information, the parties may find it more suitable to adopt, in relation to the presentation and delivery of the judgment,[6] a procedure different from that which would apply under the normal Rules of the Tribunal.[7] In such a case, it is more desirable for the Tribunal to be able to accept an agreed proposal from the parties, pursuant to article 48, to modify the procedure solely for that particular case, without being obliged to adopt a formal amendment to the relevant rule.

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[4] Rosenne has criticised the fact that the provision on the internal judicial practice of the Court (Article 19 of the ICJ Rules) is excluded from the scope of application of Article 101 of the ICJ Rules. See Rosenne, p. 48. To the extent that this criticism is valid, it must apply also to article 48 of the Tribunal's Rules, for article 48 does not apply to the provision of the Rules relating to the Tribunal's internal judicial practice (article 40) since that article is not included in Part III of the Rules.

[5] Article 291 of the Convention states that access to the Tribunal may be open to entities other than States Parties; and article 20 of the Statute provides that the Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to an agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to the dispute.

[6] On the reading of the judgment, see article 30, paragraph 4, of the Statute; see also articles 29 and 33 of the Statute.

[7] Thus, for instance, under the UNCITRAL Arbitration Rules, awards are in principle not available to the public, although awards may be made public with the consent of all the parties in the case (article 32, paragraph 5).

Article 48 applies in the same way to a chamber of the Tribunal as it does to the full Tribunal. In particular, where a modification or addition has been proposed by the parties in a case before a chamber, the decision whether the modification or addition is appropriate in the circumstances of the case will be made by that chamber itself, and not by the Tribunal. The only exception is where a request to modify the Rules to be applied by an *ad hoc* chamber is made before the chamber has been constituted. In that case the decision on the request may be made by the Tribunal itself.[8]

[8] As happened, for example, in *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000*, p. 148.

Article 49

The proceedings before the Tribunal shall be conducted without unnecessary delay or expense.

Article 49

La procédure devant le Tribunal est conduite sans retard ni dépenses inutiles.

COMMENTARY

Article 49 is an innovation of the Tribunal. There is no provision equivalent to it either in the Rules of the ICJ or in the Preparatory Commission Draft Rules.

The article is the result of a deliberate decision of the Tribunal; and it provides a basic policy underpinning for many of the innovations that have been introduced in the procedure of the Tribunal.[1] The decision was, in part, the result of the study of precedents in existing and past international judicial institutions, including evaluations of these precedents by learned commentators.[2] The provision also enables the Tribunal to respond appropriately to certain features of the Tribunal's jurisdiction that require more expeditious procedures than are normally available in international adjudication. These special features include the jurisdiction, under article 292 of the Convention, to consider applications for the prompt release of vessels and their crew detained in foreign ports; and the competence, pursuant to article 290 of the Convention, to prescribe provisional measures either to preserve the respective rights of the parties or to prevent serious harm to the marine environment, where a dispute has been submitted to the Tribunal itself or is to be submitted to an arbitral tribunal that is yet to be constituted.

Examples of the innovations introduced in the procedure of the Tribunal in pursuance of the policy enunciated in article 49 include (a) the establishment of a maximum time-limit of six months for the filing of pleadings (article 59); (b) the introduction of procedures to shorten the time required

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[1] "The Tribunal decided that, without limiting the right of the parties to a fair trial and to argue fully their case, its proceedings should be as expeditious and cost-effective as possible." See T. Treves, "The Rules of the International Tribunal for the Law of the Sea" in Chandrasekhara Rao/Khan, p. 135 at p. 136.

[2] For an indication of the factors considered by the Tribunal in determining its working methods, see D. Anderson, "The Internal Judicial Practice of the International Tribunal for the Law of the Sea" in Chandrasekhara Rao/Khan, p. 197 at pp. 200–202.

for the deliberations of the Tribunal (e.g. article 5 of the Resolution); (c) the issuance of guidelines to assist parties in cases before the Tribunal (article 50); and (d) the express acceptance of the use of electronic means of communication at all stages in the proceedings before the Tribunal (article 45 and paragraph 10 of the Guidelines).[3]

[3] On this aspect in general, see Anderson, *op. cit.* note 2, pp. 204–212. On the further possibilities for the use of new information technology in the procedure of the Tribunal, see E. Laing, "Automation of International Judicial Bodies: A Preliminary Analysis" in Chandrasekhara Rao/Khan, pp. 217–230.

Article 50

The Tribunal may issue guidelines consistent with these Rules concerning any aspect of its proceedings, including the length, format and presentation of written and oral pleadings and the use of electronic means of communication.

Article 50

Le Tribunal peut établir des lignes directrices conformes au présent Règlement concernant tout aspect de sa procédure, y compris la longueur, le format et la présentation des pièces de procédure écrite et orale ainsi que l'utilisation de moyens de communication électronique.

COMMENTARY

Article 50 is another innovation introduced by the Tribunal. There is no equivalent provision either in the Rules of the ICJ or in the Preparatory Commission Draft Rules. In the discussions of the Rules, there was unanimous agreement that it would be useful to include such a provision in order to signal that the Tribunal intended to implement the policy of administering justice in an efficient, expeditious and cost-effective manner, in particular by limiting the length and format of pleadings.[1]

Article 50 is facultative rather than mandatory. It states only that the Tribunal may issue guidelines. Any such guidelines must be consistent with the Rules of the Tribunal (and *a priori* applicable provisions of the Statute and Convention). There is no limitation as to the scope of the guidelines: they may cover "any aspects of the proceedings" of the Tribunal, including but not limited to, the aspects specifically mentioned in the article.

To implement article 49, the Tribunal has so far issued one set of Guidelines, namely, the *Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal*. These Guidelines, consisting of nineteen paragraphs,

[1] "At the outset of its work, the Tribunal took the decision that it should attempt to administer justice fairly and efficiently, without unnecessary delay or expense." See D. Anderson, "The Internal Judicial Practice of the International Tribunal for the Law of the Sea" in Chandrasekhara Rao/Khan, p. 197 at pp. 199–200. Indeed, until late in the discussions of the Rules, it had been agreed to include in the Preamble to the Rules a paragraph to state: "Having regard to the need to administer justice in an efficient, expeditious and cost-effective manner." It was subsequently decided that it would be more appropriate to include this idea in the body of the Rules.

relate to different aspects of the preparation and presentation of cases before the Tribunal.[2]

The first part of the Guidelines deals with written proceedings. The paragraphs dealing with the format of pleadings are largely modelled on the ICJ's "Rules for the preparation of typed and printed texts".[3] There are also paragraphs specifying the manner in which material and supporting documents in written pleadings should be organized and arranged.[4]

The second part deals with oral proceedings. Apart from general requests to the parties to keep oral statements as succinct as possible and to keep within the time allocated for the presentation of their oral statements, this part contains indications to parties regarding arrangements for the oral proceedings and the material and documentation that they are expected to provide in connection with their oral presentations.[5]

The third part, consisting of only one paragraph, states that the Guidelines apply *mutatis mutandis* to advisory proceedings as they apply to contentious proceedings.[6]

With regard to the use of electronic means of communication, the Guidelines confirm that, as an alternative to submission in person or through courier or regular mail, pleadings may also be submitted "through facsimile or electronic means in clear form." Documents and communications sent to the Tribunal electronically will be deemed to have been submitted on the dates on which they are received in the Tribunal. The only requirement is that such pleadings, documents and other communications must be "followed without unreasonable delay by the paper originals thereof."[7]

The Guidelines are not mandatory, although the clear expectation is that parties should as far as possible endeavour to adhere to their provisions. The non-mandatory character of the Guidelines is underlined, for example, by the use of the word "should" rather than "shall" in the formulation of the various paragraphs. Another indication of the non-binding nature of the Guidelines is to be found in paragraph 14 which enumerates the documents and information that each party should submit to the Tribunal prior to the opening of the oral proceedings. While these materials are obviously useful to the Tribunal, the paragraph expressly

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[2] For a discussion of the evolution and main elements of the Guidelines, see P. Chandrasekhara Rao, "The ITLOS and its Guidelines" in Chandrasekhara Rao/Khan, pp. 187–193.

[3] The Registry of the Tribunal has issued its own *Rules for the Preparation of Typed and Printed Texts* which are available for consultation by the parties, see www.itlos.org.

[4] Paragraphs 3 to 6 of the Guidelines.

[5] Paragraphs 14 to 18 of the Guidelines.

[6] Paragraph 19 of the Guidelines.

[7] Paragraph 10 of the Guidelines. This is a flexible implementation of article 65 of the Rules of the Tribunal which, on a strict interpretation, requires that the original of a pleading should be received in the Registry on the date on which the pleading has to be filed.

states that none of them "will be treated as documents or parts of the pleadings." One consequence of this is that article 71 on the presentation of documents does not apply to such materials.

The Guidelines are subject to review by the Tribunal in the light of developments.[8] It also goes without saying that the current Guidelines are not necessarily the only ones that could be issued by the Tribunal. As indicated earlier, article 49 states that Guidelines may be issued on "all aspects" of the procedure of the Tribunal. It is therefore likely that other Guidelines on other aspects of the Tribunal's procedure will be developed, either separately or as part of the revision of the current Guidelines.

[8] "The Tribunal would keep the Guidelines under review for adaptation where appropriate." See Chandrasekhara Rao, *op. cit.* note 2, p. 193.

Article 51

All communications to the Tribunal under these Rules shall be addressed to the Registrar unless otherwise stated. Any request made by a party shall likewise be addressed to the Registrar unless made in open court in the course of the oral proceedings.

Article 51

Toute communication destinée au Tribunal conformément au présent règlement est adressée au Greffier sauf indication contraire. Toute demande formulée par une partie est de même adressée au Greffier, à moins qu'elle ne soit présentée lors d'une audience du Tribunal pendant la procédure orale.

COMMENTARY

This article is modelled on Article 30 of the Rules of the ICJ. Its purpose is to emphasize that the Registrar is the official and regular channel of communication to and from the Tribunal. In that sense it is a reiteration of the provision in paragraph 1(a) of article 36 of the Rules which states that the Registrar "shall be the regular channel of communications to and from the Tribunal."

Strictly speaking article 51 does not belong to Part III of the Rules since its scope goes beyond the provisions of that Part. Indeed, it may be argued that the article is superfluous since, pursuant to article 36 of the Rules, all communications destined for the Tribunal should be sent through the Registrar. Nevertheless, the inclusion of the article in Part III serves an important purpose in the context. It reminds parties and potential parties that the normal and preferred channel for the submission of documents and information relating to cases is through the Registrar.

It is also worth noting that article 51 does not affect the right of the President to initiate and react to approaches with States and parties in cases where the Statute or Rules of the Tribunal provide that such approaches are to be made by the President.[1]

As expressly stated therein, the rule does not apply to information that a party may submit to the Tribunal in open court during the course of oral proceedings. Such information will be duly received by the Tribunal

[1] For example, consultations with the agents pursuant to article 45 of the Rules are held by the President, and it is entirely within the discretion of the President to decide whether and to what extent the Registrar may be involved in the discussions.

which will then decide on the action that it deems appropriate. Appropriate action in such a case may include requesting a response from the other party or parties and a determination as to the effect, if any, that the exchange should have on the disposal of the case by the Tribunal. Thus, in the course of the oral proceedings in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*, the parties were permitted to place on record information on issues that had emerged as significant after the closure of the written proceedings. First Malaysia gave a clarification on the matters that were of "primary concern" to it and how those concerns might be significantly reduced.[2] In response the Agent of Singapore, after having been given time to consider the new situation, read out in open court a "commitment" that Singapore had previously made to Malaysia in the course of their previous negotiations on the matter in dispute.[3] Further, in its final submissions, the Agent of Singapore made another statement regarding future measures that may be taken by Singapore.[4] The Tribunal not only accepted the new information provided by the parties but it actually made express reference to it and "placed on record" the commitments made by the parties therein.[5]

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[2] Malaysia stressed, however, that infilling works in Area D at Pulau Tekong was of primary concern and that if Singapore were to give clear undertakings to the Tribunal that no effort would be made to infill Area D pending the decision of the Annex VII arbitral tribunal, and if these undertakings were likewise made a matter of formal judicial record, Malaysia's concerns would be significantly reduced.

See *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003*, *ITLOS Reports 2003*, p. 10 at p. 24.

[3] [T]he Agent of Singapore, at the public sitting on 27 September 2003, read out a 'commitment' that the Government of Singapore had already made in its Note of 2 September 2003, as follows:

> If, after having considered the material [that is to say the material we have provided Malaysia with] Malaysia believes that Singapore had missed some point or misinterpreted some data and can point to a specific and unlawful adverse effect that would be avoided by suspending some part of the present works, Singapore would carefully study Malaysia's evidence. If the evidence were to prove compelling, Singapore would seriously re-examine its works and consider taking such steps as are necessary and proper, including a suspension, [and I emphasize that] to deal with the adverse effect in question.

Ibid.

[4] [W]hen presenting its final submissions during the public sitting held on 27 September 2003, the Agent of Singapore stated:

> Concerning Malaysia's first [requested measure] for Singapore to stop its reclamations works immediately, which was modified by the Malaysian Agent this morning, . . . Singapore is pleased to inform the Tribunal that regarding Area D, no irreversible action will be taken by Singapore to construct the stone revetment around Area D pending the completion of the joint study, which should be completed within a year.

Ibid., p. 25.

[5] In its Order, the Tribunal stated that it "places on record the commitments" in the above statements, *ibid.*

Article 52

1. All communications to the parties shall be sent to their agents.
2. The communications to a party before it has appointed an agent and to an entity other than a party shall be sent as follows:

   (a) in the case of a State, the Tribunal shall direct all communications to its Government;
   (b) in the case of the International Seabed Authority or the Enterprise, any international organization and any other intergovernmental organization, the Tribunal shall direct all communications to the competent body or executive head of such organization at its headquarters location;
   (c) in the case of state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall direct all communications through the Government of the sponsoring or certifying State, as the case may be;
   (d) in the case of a group of States, state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall direct all communications to each member of the group according to subparagraphs (a) and (c) above;
   (e) in the case of other natural or juridical persons, the Tribunal shall direct all communications through the Government of the State in whose territory the communication has to be received.

3. The same provisions apply whenever steps are to be taken to procure evidence on the spot.

Article 52

1. Toutes les communications destinées aux parties sont envoyées à leurs agents.
2. Les communications destinées à une partie avant la désignation par celle-ci d'un agent et à une entité autre qu'une partie sont envoyées selon les modalités suivantes :

   a) dans le cas d'un Etat, le Tribunal adresse toutes les communications au gouvernement de cet Etat ;
   b) dans le cas de l'Autorité internationale des fonds marins ou de l'Entreprise, de toute organisation internationale et de toute autre organisation intergouvernementale, le Tribunal adresse toutes les communications à l'organe compétent ou au chef de secrétariat de ladite organisation au siège de cette dernière ;
   c) dans le cas des entreprises d'Etat ou des personnes physiques ou morales visées à l'article 153, paragraphe 2, lettre b), de la Convention,

le Tribunal transmet toutes les communications par l'intermédiaire du gouvernement de l'Etat qui les patronne ou de l'Etat certificateur, selon le cas ;

d) dans le cas d'un groupe d'Etats, d'entreprises d'Etat ou de personnes physiques ou morales visés à l'article 153, paragraphe 2, lettre b), de la Convention, le Tribunal adresse toutes les communications à chaque membre du groupe conformément aux lettres a) et c) ci-dessus ;

e) dans le cas d'autres personnes physiques ou morales, le Tribunal transmet toutes les communications par l'intermédiaire du gouvernement de l'Etat sur le territoire duquel la communication doit être reçue.

3. Il en est de même s'il s'agit de faire procéder sur place à l'établissement de tous moyens de preuve.

COMMENTARY

There is no provision corresponding to this article in the Rules of the ICJ. The nearest equivalent in the Rules of the ICJ is paragraph 1 of Article 40 which states in part that "all communications concerning the case are to be sent [to the address for service of the agent at the seat of the Court]". However, some of the provisions of article 52 (paragraph 2, subparagraph (a), and paragraph 3) are based on Article 44 of the Statute of the ICJ for which there is no equivalent in the Statute of the Tribunal.

Paragraph 1 of article 52 is based on the principle that the agent of a State or of another entity which is a party to a case before the Tribunal is the official intermediary between the Tribunal and the State or entity concerned.[1] It follows from this not only that communications intended for a party should be sent through the agent but also that any communication addressed to the agent is deemed to have been sent to the party.[2] For this purpose the agent is required to have a designated "address for service" to which all communications are to be sent.

Of course, the provision applies only if an agent is appointed, and after such an appointment has been made. Although parties are expected and required to be represented by agents, this does not preclude the possibility of communication or consultation with a party in the absence of

[1] On the status and role of the agent in general see S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1165 et seq.

[2] In the case of the ICJ, this principle is expressly enunciated in the last sentence of Article 40, paragraph 1, of the Rules of the Court which states that "Communications addressed to the agents of the parties shall be considered as having been addressed to the parties themselves." This provision was not retained in the Rules of the Tribunal, but the principle is clearly implied by other provisions of the Rules, especially paragraph 1 of article 56 which states that "all steps on behalf of the parties after proceedings have been instituted shall be taken by agents" and that "all communications concerning the case are to be sent" to the address for service designated by the agent.

an agent. Such communication or consultation may be unavoidable, for example, in the period when no agent has been appointed by the respondent. It may also be necessary where a State involved in a case fails to enter an appearance, either because it is challenging the jurisdiction of the Tribunal or for some other reason.[3]

Article 52, paragraph 2, deals with two different situations, namely, (a) where a State or entity that is a party in a case before the Tribunal has not yet appointed its agent and (b) where a communication is to be sent to a State or entity that is not a party in the case in question.[4] In line with the practice of the ICJ in this regard, subparagraph (a) provides that, where the entity to be addressed is a State, communications should be directed to its Government. In such a situation documents and other communications will be sent through normal diplomatic channels or other appropriate means. In general, communications will be addressed either in care of the diplomatic representation of the State in the country of the seat of the Tribunal (Germany) or to the high officials of the State who are normally considered as having the capacity to act in the name of the State without further legitimatization. This is, in fact, the practice adopted by the Tribunal. Prior to the appointment of agents, the Tribunal routinely sends communications to the Minister of Foreign Affairs, directly to the relevant national capital and also in care of the Ambassador of the country concerned in Germany.

Subparagraphs (b) to (e) of paragraph 2 deal with the situation where the party to a case or the entity to which communications are to be addressed is not a State. These provisions are necessary to cater for one of the special features of the Tribunal's jurisdiction, i.e. the fact that entities other than States may be parties in cases before the Tribunal.[5] The

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[3] In *The "Grand Prince" Case*, France did not appoint an agent upon receipt of the Application of Belize. Instead, it filed "observations regarding the Application" in which it requested the Tribunal, "by means of an order and without need of holding public hearings for that purpose, to declare that the Application was without object and that it must therefore be rejected." These observations were communicated to the Tribunal by a letter from the Director of Legal Affairs of the Ministry of Foreign Affairs. It soon became clear that France was not refusing to appear before the Tribunal because France promptly responded to the Tribunal's request for additional documentation. Following consideration of the observations of France, the Tribunal informed France, through the Registrar, that it "consider[ed] that the issues arising out of the Application and the observations of France on questions of jurisdiction and admissibility require a full examination consistent with principles of administration of justice . . .". France subsequently decided to appoint an agent and to choose a judge *ad hoc*. Prior to the appointment of the agent, contact with France had been maintained through the Ministry of Foreign Affairs. See *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at pp. 21–23.

[4] For instance, where States Parties to the Convention are notified of the submission of a case in accordance with article 24, paragraph 3, of the Statute of the Tribunal. Similarly, article 32, paragraph 2, of the Statute provides that, where a case that has been submitted to the Tribunal pursuant to article 21 or 22 of the Statute involves the interpretation of an international agreement, all parties to the agreement must be notified of the case.

[5] Article 291, paragraph 2, of the Convention and article 20, paragraph 2, of the Statute.

specific non-State entities referred to in subparagraphs (b), (c) and (d) are those mentioned in the Convention and the Statute as potential actors in the regime for the exploration and exploitation of the resources of the Area. In respect of these non-State entities, article 52 provides that such communications should be sent, in the case of the International Seabed Authority or any international organization, to the competent body or executive head of such organization, or, in the case of state enterprises or natural or juridical persons, through the Governments that sponsored or certified the entities in the manner required by the Convention.[6]

The Convention and the Statute of the Tribunal both provide for the possibility of the Tribunal exercising jurisdiction in cases involving non-State entities other than those referred to in article 153 of the Convention. These entities are referred to in paragraph 2(e) of article 52 as "other natural or juridical persons". In respect of these entities, paragraph 2(e) of article 52 provides that the communication shall be sent to the Government of the State in whose territory the communication is to be received. In general, the communication should be sent, in the case of a natural person, to the Government of the State of which the person is a national or resident and, in the case of a juridical person, to the Government of the State in which the body has its official headquarters or otherwise has a recognized address. In that respect the provision follows the principle prescribed for the ICJ in paragraph 1 of Article 44 of the Statute of the Court.[7]

Paragraph 3 of article 52 states that the same provisions apply whenever steps are to be taken to procure evidence on the spot. In other words, the persons to be addressed in each case will, at least in the first instance, be the entities referred to in the relevant provisions of the article. However, in some cases, sending the communications to the persons referred to therein may not be sufficient. Thus, for example, it may well be that evidence in connection with a case involving a natural or juridical person can only be procured in the territory of a State that is not itself a party to the case in question. In such a situation, it may be advisable, and indeed necessary, to seek the authorization and cooperation of bodies and authorities other than the party or parties in the case. In particular, the Tribunal may find it appropriate not only to inform and seek the approval of the State for the measures to be taken on its territory but also to agree with the relevant authorities concerning the modalities of the Tribunal's operations within the territory of that State.

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[6] These matters are governed by article 153, paragraph 2(b), of the Convention and Annex III to the Convention, especially article 4 thereof.

[7] Article 44, paragraph 1, of the Statute of the Court provides that "[f]or the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served."

Article 53

1. The parties shall be represented by agents.
2. The parties may have the assistance of counsel or advocates before the Tribunal.

Article 53

1. Les parties sont représentées par des agents.
2. Les parties peuvent se faire assister devant le Tribunal par des conseils ou des avocats.

COMMENTARY

This is another article of the Rules which has no corresponding provision in the Rules of the ICJ because, for the Court, the matter is dealt with in Article 42 of its Statute. The wording of article 53 of the Tribunal's Rules is almost identical to the first two paragraphs of that provision.

The representation of parties in cases by agents has long been an accepted feature of international arbitral procedure and it was introduced into the procedure of the PCIJ and the ICJ without much question.[1] The principle was adopted by the Tribunal as one of the basic assumptions underlying the procedural regime established in the Rules and related documents. Thus, as has already been noted above, all communications intended for the parties are to be addressed to the agents, except in the cases where no agent has been appointed (article 52, paragraph 1). Other aspects of the procedure in which the role of the agent is crucial include consultations to be held by the President regarding questions of procedure (article 45); the requirement that the original of every pleading shall be signed by the agent (article 65, paragraph 1); and the provision that, at the conclusion of a party's last statement at the hearing, the final submissions of the party shall be read by the agent, with a copy of the written text thereof signed and communicated to the Tribunal and also transmitted to the other party (article 75, paragraph 2).

Paragraph 1 of article 53 makes it mandatory for the parties to appoint agents. The appointment of the agent responds to a practical necessity since, without an agent, it would be very difficult for the rest of the procedure to proceed as expected.[2] It was partly for this reason that the

[1] See S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1168. Rosenne states that it was "taken for granted".

[2] "[La désignation des agents] est indispensable . . . La nomination des agents répond à

Tribunal decided to apply the system of representation by agents to all parties in cases before the Tribunal. In the Preparatory Commission Draft Rules, it had been envisaged that a different system would apply to entities other than States Parties when appearing as parties in cases before the Tribunal.[3] However, this proposal was not accepted, and the text of article 53, as adopted by the Tribunal, extends to all parties in cases before the Tribunal itself, as well as before the Seabed Disputes Chamber and other chambers, regardless of whether such parties are States or non-State entities.[4]

While the appointment of an agent is necessary for the full development of the procedure of the Tribunal, the process need not be completely frustrated by the temporary non-appointment of an agent. Pending the appointment of an agent, the Tribunal may (and normally will) communicate with the appropriate authorities of the State, either directly or through normal diplomatic channels, or both.[5] This procedure has in fact been followed by the Tribunal in several instances where it was necessary to obtain the views of parties or to request action from them in the period before their agents were appointed. Thus, in *The "Grand Prince" Case*, France did not appoint an agent upon receipt of the Application from Belize, and its "observations" on the Application were communicated to the Tribunal by a letter from the Director of Legal Affairs of the Ministry of Foreign Affairs of France. The observations of France were duly considered by the Tribunal, after seeking the views of Belize thereon. It was after France was informed of the Tribunal's reaction to the observations that it decided to appoint an agent. In the period prior to the appointment of an agent, the Tribunal continued to communicate with the Ministry of Foreign Affairs.[6]

In relation to the Tribunal, the agent appointed by a party is the official representative of that party in all matters relating to the case for which the agent has been appointed.[7] In that capacity the agent is the

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d'impérieuses nécessités pratiques." [The nomination of agents is indispensable. The appointment of agents is an absolute necessity for practical reasons.] See Guyomar, p. 261.

[3] Article 127, paragraph 3, of the Preparatory Commission Draft Rules provided that an entity which is not a State Party "may have the assistance of counsel or advocates" when it is a party in a case before the Seabed Disputes Chamber. This provision was not adopted by the Tribunal. Further, the Tribunal included in article 115 of the Rules a general rule for the Seabed Disputes Chamber which states that "[p]roceedings in contentious cases before the Seabed Disputes Chamber and its *ad hoc* chambers shall . . . be governed by the Rules applicable in contentious cases before the Tribunal."

[4] Eiriksson, p. 152.

[5] See the commentary to article 52, paragraph 2(a), *supra*.

[6] The observations of France on the Application by Belize, referred to in note 3, commentary to article 52, *supra*, were sent to the Tribunal by the Director of Legal Affairs of the Ministry of Foreign Affairs on 28 March 2001, seven days before France appointed an agent.

[7] "Les agents sont les représentants des Etats qui les ont désignés. Ils parlent et agissent au nom de ces Etats avec toutes les conséquences que cela peut impliquer . . .". [The agents are

official and authoritative link between the Tribunal and the party.[8] As a general rule, it is only the agent whose actions and declarations are binding on the party which that agent represents.[9] However, the Tribunal will also consider as binding on the party acts and declarations emanating from high officials of the State who, under international law and practice, are deemed to have the capacity to engage the responsibility of the State.[10]

Article 53 does not contain any indications as to how or by whom the agent is to be appointed, and there are no established criteria or qualifications for persons to be appointed as agents. The general view is that the decision as to who may be appointed as agent of a State is entirely within the discretion of the competent authorities of that State.[11] In general, the Tribunal will accept an appointment by any of the high officials of the State mentioned in article 7, paragraph 2, of the 1969 Vienna Convention on the Law of Treaties for the purposes of adopting the text of a treaty.[12] In practice, the Tribunal has in many cases accepted the designation of

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the representatives of the States which appoint them. They speak and act in the name of these States, with all the consequences that it entails . . .]. See Guyomar, p. 265.

[8] Therefore, to use language common at the beginning of the century in international arbitration practice, the agent is the intermediary between the Court and the appointing government. As far as the Court is concerned, the agent has exclusive control over the relations between the Government and the Court in respect of that particular case. See Rosenne, *op. cit.* note 1, p. 1170.

[9] "En matière de procédure et en matière politique, seules les déclarations de l'agent engagent la responsabilité du gouvernement qu'il représente." [Both in matters of procedure and in matters of substance, only declarations made by the agent engage the responsibility of the Government which he is representing.] B. Schenk Graf von Stauffenberg (ed.), *Statut et Règlement de la Cour permanente de Justice internationale: Eléments d'Interprétation, 1934*, p. 320, quoted by Rosenne, *op. cit.* note 1, p. 1171, note 9.

[10] In *The "Grand Prince" Case*, the Tribunal based its decision that Belize was not the flag State of the vessel *Grand Prince* largely on the contents of a note verbale from the Ministry of Foreign Affairs of Belize stating that the vessel had been de-registered by Belize, even though other documents submitted by Belize, and repeated submissions by the Agent of Belize in the proceedings, affirmed that de-registration had not occurred at the time of the arrest of the vessel by France, *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at pp. 39, 43, 44. It is pertinent to note in this connection that the note verbale was not submitted directly to the Tribunal by the Ministry of Foreign Affairs but had been submitted by the Respondent with the acquiescence of the Agent of Belize. In his Declaration, Vice-President Nelson, after stating the presumption that a note verbale from the Ministry of Foreign Affairs must be treated as one coming from the Minister of Foreign Affairs, referred to the Minister of Foreign Affairs as the "direct agent of the chief of the State" and concluded that the note verbale from the Ministry of Foreign Affairs "should enjoy a special status." See *"Grand Prince" (Belize* v. *France), Prompt Release, ITLOS Reports 2001*, Declaration of Vice-President Nelson, p. 47.

[11] "The appointment of an agent is a matter for the competent authority of the State concerned." See Rosenne, *op. cit.* note 1, p. 1167.

[12] In addition to the three "high officials" of State i.e. the Head of State, the Head of Government and the Minister for Foreign Affairs, article 7 of the Vienna Convention also lists heads of diplomatic missions and representatives accredited by States to international conferences or organizations, for the purpose of adopting the text of a treaty.

agents made by authorities other than these high officials.[13] This is particularly so with applications for the prompt release of vessels and their crews under article 292 of the Convention where the applications have, for the most part, been made "on behalf of the flag State" and not directly by the State itself.[14] In this respect, some disquiet has been expressed about the possibility that persons designated as agents might not be suitable for a number of reasons.[15] Nevertheless, the received opinion is that it is for the parties themselves to determine whom they choose to represent them in cases before the Tribunal.[16]

Paragraph 2 of article 53 provides that the parties may be assisted by counsel or advocates before the Tribunal. The wording of this paragraph differs from the formulation used in the equivalent provision in the Statute of the ICJ which appears to leave some doubt as to whether counsel and

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[13] The persons from whom the Tribunal has accepted the designation of agents have included officials of the Ministry of Foreign Affairs below the status of Minister, as well as the Attorney General or Minister of Justice of the State. In *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release*, the communication appointing the Agent of Saint Vincent and the Grenadines was issued by the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines. The Commissioner for Maritime Affairs had, in turn, been authorized by the Attorney General of Saint Vincent and Grenadines to present the Application on behalf of Saint Vincent and the Grenadines. See *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 26.

[14] In respect of applications for the prompt release of vessels and their crews pursuant to article 292 of the Convention, article 110 of the Rules prescribes the procedure by which States may authorize persons to bring applications before the Tribunal on their behalf. While, strictly speaking, article 110 does not deal with the appointment of the agent, it may, nevertheless, have a bearing on the appointment of the agent because the person authorized to submit an application on behalf of the flag State might also have the capacity to designate the agent of the party for the purpose of the application.

[15] In his Declaration in *The "Grand Prince" Case*, Judge *ad hoc* Cot noted that the role of lawyers representing States had been questioned by, among others, the ICJ and a special panel constituted by the World Trade Organization (WTO). In particular, he stated that "[t[he lack of a specialized bar before the Tribunal, of a minimum level of qualification in international law, of rules of professional conduct and of an organization entrusted with the task of enforcing them, may nevertheless pose a problem." He noted in addition that "there is the danger . . . of a proliferation of applications that are manifestly unfounded, inspired by law firms for reasons having nothing to do with the interests of the applicant State." Judge *ad hoc* Cot also drew attention to a different kind of problem posed by the "delegation of sovereignty by the flag State in appointing a lawyer as agent." He noted that "the lawyer-agent is not necessarily in close contact with the authorities of the flag State" and, as a result, the "credibility and reliability of the information he provides as to the legal position of the flag State may be questionable." See *"Grand Prince" (Belize* v. *France), Prompt Release, ITLOS Reports 2001*, Declaration of Judge *ad hoc* Cot, p. 51 at pp. 52–53. See also J.-P. Cot, "Appearing 'for' or 'on behalf of' a State: The Role of Private Counsel before International Tribunals" in N. Ando/E. McWhinney/R. Wolfrum (eds.) *Liber Amicorum Judge Shigeru Oda*, Vol. 2, 2002, pp. 835–847*;* also P. Chandrasekhara Rao, "The International Tribunal for the Law of the Sea — An Evaluation", *ibid.*, Vol. 1, p. 667 at p. 673.

[16] "La liberté des parties est totale quant au choix des personnes à investir de la fonction d'agent." [The parties have complete freedom as regards the persons to be invested with the function of agent.] See Guyomar, p. 263. Judge Cot accepts this view. As he puts it, States parties to a dispute "organize their representation and the defence of their interests. They do so at their own risk." See *"Grand Prince" (Belize* v. *France), Prompt Release, ITLOS Reports 2001*, Declaration of Judge *ad hoc* Cot, p. 51 at p. 53.

advocates are deemed to be assisting the parties or the agents.[17] Indeed, there is a strong body of opinion that maintains that counsel and advocates assist the agents rather than the parties directly.[18] However, the Tribunal decided to follow what it interpreted to be the approach of the ICJ and it adopted a version of article 53 that links counsel and advocates directly to the parties and not the agents. But this does not affect the fact that it is only the agent who can, through his actions or statements, engage the responsibility of the party which appointed him.[19]

As with agents, there are no established criteria or qualifications for persons to be appointed as counsel or advocates.[20] Similarly, there is no clear yardstick for determining who may be designated variously as counsel or advocates, nor any guidance on the required or special attributes of counsel as opposed to advocates. Consequently, it is a matter for the litigating party to select whomever it wishes to serve as members of its delegation at the oral proceedings and to designate them to act in the capacity of counsel, advocate, technical expert or adviser.[21] However, it is important for the parties to remember at all times that they must have due regard to the status of the Tribunal in selecting persons to appear before it on their behalf.[22]

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[17] Although the English wording of Article 42, paragraph 2, of the ICJ's Statute is ambiguous, the French text makes it plain that it is the parties who may be assisted by counsel or advocates. Article 53, paragraph 2 of the Tribunal's Rules adopts this reading of the ICJ provision but removes the ambiguity in the English version by making it plain that it is "the parties" who may be assisted by counsel or advocates.

[18] "Il fut entendu que les conseils et les avocats assistent les agents mais qu'ils ne représentent pas à proprement parler les parties." [It must be understood that counsel and advocates assist the agents and that, strictly speaking, they do not represent the parties.] See Guyomar, p. 258.

[19] See note 8, *supra*.

[20] "[I]l n'existe pas de liste d'avocats agréés auprès de la Cour. Les agents se font assister de toutes personnes qu'ils choisissent, et ni le Statut ni le Règlement n'apportent de limitation à leur choix." [[T]here is no approved list of advocates to appear before the Court. The agents may be assisted by whomever they choose. Neither the Statute nor the Rules place any limitation on their freedom of choice.] Statement by the Registrar of the ICJ in *I.C.J. Pleadings, Électricité de Beyrouth Company (France* v. *Lebanon)*, p. 531, quoted by Guyomar, p. 266, note 22, and Rosenne, *op. cit.* note 1, p. 1181, note 25.

[21] It is for the State to designate the members of its delegation. An agent can also serve as counsel, and senior political figures can also attend as members of the State's delegation without necessarily being designated as counsel or advocates.

[22] Rosenne, *op. cit.* note 1, p. 1180.

Section B. Proceedings before the Tribunal

Subsection 1. Institution of proceedings

Article 54

1. When proceedings before the Tribunal are instituted by means of an application, the application shall indicate the party making it, the party against which the claim is brought and the subject of the dispute.
2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.
3. The original of the application shall be signed by the agent of the party submitting it or by the diplomatic representative of that party in the country in which the Tribunal has its seat or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent governmental authority.
4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.
5. When the applicant proposes to found the jurisdiction of the Tribunal upon a consent thereto yet to be given or manifested by the party against which the application is made, the application shall be transmitted to that party. It shall not however be entered in the List of cases, nor any action be taken in the proceedings, unless and until the party against which such application is made consents to the jurisdiction of the Tribunal for the purposes of the case.

Section B. Procédure devant le Tribunal

Sous-section 1. Introduction de l'instance

Article 54

1. Lorsqu'une instance est introduite devant le Tribunal par une requête, celle-ci indique la partie requérante, la partie contre laquelle la demande est formée et l'objet du différend.
2. La requête indique, autant que possible, les moyens de droit sur lesquels le demandeur entend fonder la compétence du Tribunal ; elle indique en outre la nature précise de la demande et contient un exposé succinct des faits et moyens sur lesquels cette demande repose.

3. L'original de la requête est signé soit par l'agent de la partie qui l'introduit, soit par le représentant diplomatique de cette partie dans le pays où le Tribunal a son siège, soit par une autre personne dûment autorisée. Si la requête porte la signature d'une personne autre que le représentant diplomatique, cette signature doit être légalisée par ce dernier ou par l'autorité gouvernementale compétente.
4. Le Greffier transmet immédiatement au défendeur une copie certifiée conforme de la requête.
5. Lorsque le demandeur entend fonder la compétence du Tribunal sur un consentement non encore donné ou manifesté par la partie contre laquelle la requête est formée, la requête est transmise à cette dernière. Toutefois, elle n'est pas inscrite au rôle des affaires du Tribunal et aucun acte de procédure n'est effectué tant que la partie contre laquelle la requête est formée n'a pas accepté la compétence du Tribunal aux fins de l'affaire.

COMMENTARY

In accordance with article 24 of the Statute, contentious cases may be brought before the Tribunal either by notification of a special agreement or by written application. In either case, the subject of the dispute and the parties must be indicated. Article 54 deals with cases introduced by written application. Article 54 is based upon Article 38 of the Rules of the ICJ, with no modification of substance.[1] It is quite straightforward as to an application on the merits, but must be combined with the relevant rules in the following proceedings: provisional measures (article 89); intervention (article 99); prompt release (articles 110 and 111); interpretation of a judgment (article 126); and revision of a judgment (articles 127 and 128). Applications before the Seabed Disputes Chamber are governed by articles 115 to 119 of the Rules.

The only difficulty relates to paragraph 5 of article 54. It concerns the so-called *forum prorogatum*. The solution adopted by the ICJ in 1978 in Article 38, paragraph 5, of its Rules, allows for some protection against arbitrary proceedings, yet leaves open the possibility of consent to the jurisdiction of the Court or, here, the Tribunal.[2]

No special mention is made of non-State Parties. The Preparatory Commission had added a paragraph 6 to article 44 of its Draft Rules on the issue:

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[1] On Article 38 of the Rules of the ICJ, see Rosenne, pp. 91–94; S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1234–1240; Guyomar, pp. 230–246.

[2] For a recent instance of *forum prorogatum*, see *Certain Criminal Proceedings in France (Republic of the Congo* v. *France), Order of 11 July 2003, I.C.J. Reports 2003*, pp. 143–144.

6. When proceedings are instituted by entities other than States Parties, the provisions of Part V of these Rules shall apply as appropriate.

It appears that this provision was not considered necessary by the Tribunal. If the request is initiated by or against an international organization, common sense must prevail as to the interpretation of article 54. The notions of "diplomatic representative" and of "competent governmental authority" in paragraph 3 of article 54 must be understood as concerning, among others, the competent authorities of the international organization.

Article 55

1. When proceedings are brought before the Tribunal by the notification of a special agreement, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to any other party.
2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, insofar as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

Article 55

1. Lorsqu'une instance est introduite devant le Tribunal par la notification d'un compromis, cette notification peut être effectuée conjointement par les parties ou par une ou plusieurs d'entre elles. Si la notification n'est pas faite conjointement, une copie certifiée conforme en est immédiatement transmise par le Greffier à toute autre partie.
2. La notification est toujours accompagnée de l'original ou d'une copie certifiée conforme du compromis. La notification indique en outre l'objet précis du différend ainsi que les parties, pour autant que cela ne résulte pas déjà clairement du compromis.

COMMENTARY

Article 55 corresponds to Article 39 of the Rules of the ICJ, with no modification of substance.[1] Notification of the special agreement may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, the Registrar is required to communicate a certified copy of it to any other party. In *The M/V "SAIGA" (No. 2) Case*, the Agent of Guinea notified the Tribunal of the exchange of letters of 20 February 1998 constituting the special agreement provided for by article 55 of the Rules[2] to transfer the arbitration proceedings to the Tribunal. Article 55, paragraph 2, indicates what the notification of a special agreement must contain.

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[1] On Article 39 of the ICJ Rules, see Rosenne, p. 95; S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1233–1240; Guyomar, pp. 247–256.

[2] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at pp. 14–17.

Article 56

1. Except in the circumstances contemplated by article 54, paragraph 5, all steps on behalf of the parties after proceedings have been instituted shall be taken by agents. Agents shall have an address for service at the seat of the Tribunal or in the capital of the country where the seat is located, to which all communications concerning the case are to be sent.
2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent.
3. When proceedings are brought by notification of a special agreement, the party or parties making the notification shall state the name of its agent or the names of their agents, as the case may be. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent if it has not already done so.

Article 56

1. Sauf dans les circonstances envisagées à l'article 54, paragraphe 5, tous les actes accomplis au nom des parties après l'introduction d'une instance le sont par des agents. Les agents doivent avoir au siège du Tribunal, ou dans la capitale du pays où le siège est situé, un domicile élu auquel sont adressées toutes les communications relatives à l'affaire.
2. Lorsqu'une instance est introduite par une requête, le nom de l'agent du demandeur est indiqué. Dès la réception de la copie certifiée conforme de la requête ou le plus tôt possible après, le défendeur fait connaître au Tribunal le nom de son agent.
3. Lorsqu'une instance est introduite par la notification d'un compromis, le nom de l'agent ou des agents, selon le cas, est indiqué par la ou les parties procédant à la notification. Si cela n'a pas déjà été fait, toute autre partie au compromis fait connaître au Tribunal le nom de son agent dès qu'elle reçoit du Greffier une copie certifiée conforme de la notification ou le plus tôt possible après.

COMMENTARY

Article 56 corresponds to Article 40 of the Rules of the ICJ and is self-explanatory. Appointment of agents is the sovereign prerogative of the parties to the proceedings. There has been some discussion as to the

capacity of agents appointed under article 292 of the Convention and acting "on behalf" of the flag State.[1]

It provides for the possibility for parties to choose between the seat of the Tribunal, i.e. Hamburg, and the capital of the country where the seat of the Tribunal is located, i.e. Berlin, as the address for service of the agents. The embassies are located in Berlin and not in Hamburg. Modern means of communication, as well as the proximity of the two cities, called for this facility.

[1] See the commentary on article 110 of the Rules of the Tribunal, *infra*.

Article 57

1. Whenever proceedings are instituted on the basis of an agreement other than the Convention, the application or the notification shall be accompanied by a certified copy of the agreement in question.
2. In a dispute to which an international organization is a party, the Tribunal may, at the request of any other party or *proprio motu*, request the international organization to provide, within a reasonable time, information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. If the Tribunal considers it necessary, it may suspend the proceedings until it receives such information.

Article 57

1. Lorsque l'instance est introduite sur la base d'un accord autre que la Convention, la requête ou la notification doit être accompagnée d'une copie certifiée conforme dudit accord.
2. Dans le cas d'un différend auquel est partie une organisation internationale, le Tribunal peut, à la demande de toute autre partie ou d'office, demander à l'organisation internationale concernée d'indiquer, dans un délai raisonnable, qui de l'organisation ou de ses Etats membres a compétence pour une question précise qui s'est posée. Si le Tribunal le juge nécessaire, il peut suspendre l'instance jusqu'à ce qu'il reçoive lesdits renseignements.

COMMENTARY

Article 57 is new and has no equivalent in the Rules of the ICJ.

Article 57, paragraph 1, of the Rules replaces article 47 of the Preparatory Commission Draft Rules and the proposals of Judge Treves. The initial proposals contained specifications as to applications by States and other entities which were not parties to the Convention. These were deleted in the final text.

Article 57, paragraph 2, deals with the problem of distribution of competences between an international organization and its member States. Its wording is inspired by article 5, paragraph 5, of Annex IX to the Convention. It is an important clarification, given the complexity of the distribution of competences in law of the sea issues within the framework of the only non-State entity party to the Convention that is a potential party to litigation at present, the European Community. The provision allows for a certain discretion of the Tribunal. The Preparatory Commission

Draft Rules called for mandatory suspension of the proceedings "until the issue is resolved under the framework of the organization concerned and communicated accordingly to the Tribunal."[1] The final text provides that the Tribunal "may suspend the proceedings" until it receives the necessary information, which is quite a different and far more flexible drafting, thus giving discretionary powers to the Tribunal in this regard.

[1] Preparatory Commission Draft Rules, article 47, paragraph 4, p. 53.

Article 58

In the event of a dispute as to whether the Tribunal has jurisdiction, the matter shall be decided by the Tribunal.

Article 58

En cas de contestation sur le point de savoir si le Tribunal est compétent, le Tribunal décide.

COMMENTARY

Article 58 of the Rules follows the wording of Article 36, paragraph 6, of the Statute of the ICJ. Article 36, paragraph 6, of the Statute of the ICJ has been qualified as a "pivotal" provision.[1] It embodies the principle affirmed in the *Alabama Claims Arbitration*.[2] The ICJ considered, in the *Nottebohm Case*, that the principle was sanctioned by general international law:

> Article 36, paragraph 6, suffices to invest the Court with power to adjudicate on its jurisdiction in the present case. But even if this were not the case, the Court, "whose function is to decide in accordance with international law such disputes as are submitted to it" (Article 38, paragraph 1, of the Statute), should follow in this connection what is laid down by general international law. The judicial nature of the Court and the rule of general international law referred to above are sufficient to establish that the Court is competent to adjudicate on its own jurisdiction in the present case.[3]

Article 288, paragraph 4, of the Convention provides:

> 4. In the event of a dispute as to whether a court or tribunal has jurisdiction, the matter shall be settled by decision of that court or tribunal.

The provision may well be considered as the linchpin of the system of compulsory settlement of disputes included in the Convention. Freedom of choice of the procedure by the respondent (article 287 of the Convention) must be combined with the obligation to accept a compulsory procedure

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[1] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. II, 1997, p. 846. See also the observations of Judge Nelson in his Separate Opinion in *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), ITLOS Reports 1999*, p. 116 at pp. 118–119.

[2] "Decision and award made by the tribunal of arbitration constituted by virtue of the first article of the treaty concluded at Washington the 8th of May, 1871, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland", reported in J.B. Moore, *History and Digest of the International Arbitrations to which the United States has been a Party*, Vol. 1, 1898, pp. 653 et seq.

[3] *Nottebohm (Preliminary Objection), Judgment, I.C.J. Reports 1953*, p. 111 at p. 120.

entailing a binding decision. If a party is allowed to challenge the *compétence de la compétence* of the court or tribunal, the obligation vanishes.[4]

As the rule was provided for in the text of the Convention, it was not repeated in the Statute of the Tribunal. But the Tribunal found it necessary to recall the principle in the same words in its Rules for the sake of completeness. Obviously, the provision does not add or detract from any element of article 288, paragraph 4, of the Convention.

The Tribunal did not find it necessary to refer to article 58 of the Rules, and/or article 288, paragraph 4, of the Convention, in the cases in which its jurisdiction was challenged.[5]

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[4] See S. Rosenne, *op. cit.* note 1, p. 847, note 23; M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn, (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989, pp. 46–48.

[5] In *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 104, Ireland invoked article 288, paragraph 1, of the Convention as the basis of jurisdiction of the Annex VII arbitral tribunal, but not paragraph 4.

Subsection 2. The written proceedings

Article 59

1. In the light of the views of the parties ascertained by the President of the Tribunal, the Tribunal shall make the necessary orders to determine, *inter alia*, the number and the order of filing of the pleadings and the time-limits within which they must be filed. The time-limits for each pleading shall not exceed six months.
2. The Tribunal may at the request of a party extend any time-limit or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid. It may not do so, however, unless it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views within a time-limit to be fixed by the Tribunal.
3. If the Tribunal is not sitting, its powers under this article may be exercised by the President of the Tribunal, but without prejudice to any subsequent decision of the Tribunal.

Sous-section 2. Procédure écrite

Article 59

1. A la lumière des vues des parties recueillies par le Président du Tribunal, le Tribunal rend les ordonnances nécessaires pour fixer notamment le nombre et l'ordre des pièces de procédure ainsi que les délais pour leur présentation. Les délais pour chaque pièce de procédure n'excèdent pas six mois.
2. Le Tribunal peut, à la demande d'une partie, proroger un délai ou décider de considérer comme valable un acte de procédure fait après l'expiration du délai fixé ; il ne peut toutefois le faire que s'il estime la demande suffisamment justifiée. Dans l'un et l'autre cas, la possibilité est offerte à la partie adverse de faire connaître ses vues dans un délai fixé par le Tribunal.
3. Si le Tribunal ne siège pas et sous réserve de toute décision ultérieure qu'il pourrait prendre, les pouvoirs que lui confère le présent article peuvent être exercés par le Président du Tribunal.

COMMENTARY

The provision corresponds to Article 44 of the Rules of the ICJ and clarifies the powers of the Tribunal in the conduct of cases regarding the number and the order of filing of the pleadings. As noted by Guyomar in her comment on Article 44 of the Rules of the ICJ:

> It was agreed that the parties would not have an absolute right to set time-limits since this matter relates to the organization of the work of the Court. However, the Court should take into account any agreement arrived at by the parties, but without being bound by that agreement. The Court would have the possibility of changing its calendar, even if that calendar had been set by an understanding between the parties.[1] [Translation from French]

Although article 59 of the Rules of the Tribunal is based on Article 44 of the Rules of the ICJ, it contains in paragraph 1 a sentence which does not appear either in the ICJ text or in the text prepared by the Preparatory Commission. This provision sets out the so-called "six-month" rule[2] according to which "[t]he time-limits for each pleading shall not exceed six months." The purpose of the rule is to make the proceedings expeditious.[3] As may be seen from paragraph 2, the "six-month" rule is not inflexible. In this respect, it may be noted that the Tribunal has already made use of the powers conferred on it under this paragraph. In *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*, the Tribunal, at the request of a party, extended the time-limit for the filing of pleadings beyond six months.[4] In the *Case Concerning the Conservation and*

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[1] Il fut entendu que les parties ne devaient pas avoir de droit absolu en matière de fixation des délais; car cette question conditionne l'organisation du travail de la Cour. Celle-ci devait tenir compte de tout accord intervenu entre elles, mais sans être liée par cet accord. Elle aurait en particulier la possibilité de modifier les délais, même si ceux-ci étaient fixés par le compromis . . .
Guyomar, p. 285.

[2] The provision originated in a suggestion by the late Keith Highet, that no written pleading should take more than six months and oral proceedings should follow the last written pleading by no more than six months; see "Problems in the Preparation and Presentation of a Case from the Point of View of Counsel and of the Court" in C. Peck and R.S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice – Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, 1997, p. 127 at pp. 132–133. According to Highet,

> [T]he ideal to be achieved would be (i) for no written pleading to require more than six months to prepare, and (ii) for oral proceedings to follow the last written pleading by no more than six months. The first leg of such a rule could obviously not be enforced in cases brought by special agreement, where the parties have carefully provided otherwise.

[3] See also article 49 of the Rules.

[4] In its Order of 23 February 1998 in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*, the Tribunal fixed the time-limits for the submission of the pleadings in the case, see *ITLOS Reports 1998*, p. 18 at p. 19. The Agent of Guinea subsequently sent a letter wherein, referring to certain difficulties, he asked for a postponement of at least two months of the time-limit for the submission of the Counter-Memorial of Guinea, originally fixed as 18 September 1998. By Order of 16 September 1998, the Tribunal, having found

Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community), the Tribunal had recourse to this provision to accede to the request of the parties to suspend the proceedings pending the settlement of their dispute.[5]

The Guidelines set down a list of requirements on the format and other practical directions for the submission of the pleadings.[6]

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that there was adequate justification for the request and having ascertained the views of the parties, extended the time-limit to 16 October 1998, see *ITLOS Reports 1998*, p. 72 at p. 73. By an Order of 6 October 1998, the Tribunal extended the time-limit for the filing of the Reply of Saint Vincent and the Grenadines from 30 October 1998 to 20 November 1998 and the time-limit for the filing of the Rejoinder of Guinea from 11 December 1998 to 28 December 1998, see *ITLOS Reports 1998*, p. 78 at p. 79.

[5] By Order of 20 December 2000, the Tribunal constituted a Special Chamber to deal with the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*. In the said order, the Tribunal fixed the time-limits for the submission of a memorial by each of the parties under the "six-month" rule. It decided that,

> if no preliminary objection is made in writing within 90 days from the institution of proceedings, or if the Special Chamber rejects the preliminary objection or objections, if any, made, or in case of other issues not affected by the judgment of the Special Chamber on the preliminary objection or objections, the written proceedings shall consist of:
> – a Memorial presented by each of the Parties within *six months* from the date of the judgment on the preliminary objection or, if no preliminary objection is made within the time-limit specified above, within *six months* after the expiry of the period of 90 days from the institution of proceedings; . . . (emphasis added)

Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000, p. 148 at pp. 153–154.

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 Special Chamber be suspended. Further to the request of the parties and since the Special Chamber was not sitting, an order was issued on 15 March 2001 by the President of the Special Chamber. In the said order, it was decided that the Order of the Tribunal of 20 December 2000 should apply, subject to the following modification: "for the words 'the institution of proceedings', wherever they occur, the words '1 January 2004' shall be substituted". Accordingly, the time-limit of 90 days at the expiry of which the "six-month" rule for the presentation of the Memorials would apply, would begin as from 1 January 2004. However, the Order provides that either party retains the right to request that the time-limit of 90 days shall begin to apply from any date prior to 1 January 2004, in which case the said time-limit shall begin to apply from the date on which such a request is received by the other party, see *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 15 March 2001, ITLOS Reports 2001*, p. 4 at pp. 5–6.

[6] The Guidelines, *inter alia*, provide as follows:

1. Every pleading and its supporting documents should be printed or typewritten or prepared electronically. . . . In addition, parties should present the text of their pleadings in electronic form. The parties should consult the Registry's *Rules for the Preparation of Typed and Printed Texts*.
2. A pleading should be as short as possible.

. . .

12. The time-limits fixed in each case for the filing of the pleadings are not to be understood by the parties as authorizations to hold back a pleading until the last possible moment.

Article 60

1. The pleadings in a case begun by means of an application shall consist, in the following order, of: a memorial by the applicant and a counter-memorial by the respondent.
2. The Tribunal may authorize or direct that there shall be a reply by the applicant and a rejoinder by the respondent if the parties are so agreed or if the Tribunal decides, at the request of a party or *proprio motu*, that these pleadings are necessary.

Article 60

1. Dans une affaire introduite par une requête, les pièces de procédure comprennent, dans l'ordre, un mémoire du demandeur et un contre-mémoire du défendeur.
2. Le Tribunal peut autoriser ou prescrire la présentation d'une réplique du demandeur et d'une duplique du défendeur si les parties sont d'accord à cet égard ou si le Tribunal décide, à la demande d'une partie ou d'office, que ces pièces sont nécessaires.

COMMENTARY

This article is based on Article 45 of the Rules of the ICJ. Paragraph 1 follows the long-standing practice of consecutive pleadings in cases instituted by application. According to paragraph 2, the filing of additional pleadings will depend, as in the case of the ICJ, on an agreement to this effect between the parties or a decision of the Tribunal which has to satisfy itself that this is necessary. In discussing paragraph 2 of Article 45 of the Rules of the ICJ, Rosenne observes that "[t]he purpose of the reply and rejoinder essentially is to clarify issues raised in the initial round of pleadings, and these pleadings normally contain submissions although the Rules do not make this obligatory."[1]

[1] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1264.

Article 61

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Tribunal, after ascertaining the views of the parties, decides otherwise.
2. If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a memorial and counter-memorial, within the same time-limits.
3. The Tribunal shall not authorize the presentation of replies and rejoinders unless it finds them to be necessary.

Article 61

1. Dans une affaire introduite par la notification d'un compromis, le nombre et l'ordre de présentation des pièces de procédure sont ceux que fixe le compromis lui-même, à moins que le Tribunal, après s'être renseigné auprès des parties, n'en décide autrement.
2. Si le compromis ne contient aucune disposition à cet égard et si, par la suite, les parties ne se mettent pas d'accord sur le nombre et l'ordre de présentation des pièces de procédure, chacune des parties dépose un mémoire et un contre-mémoire dans les mêmes délais.
3. Le Tribunal n'autorise la présentation de répliques et de dupliques que s'il l'estime nécessaire.

COMMENTARY

This provision follows closely Article 46 of the Rules of the ICJ. In accordance with paragraph 1, when a case is submitted to the Tribunal by a special agreement, the number and order of the pleadings will in principle follow what is provided for in the agreement by the parties. However, the Tribunal retains the power to decide otherwise, after ascertaining the views of the parties.[1]

In the absence of provisions to this effect in the special agreement, the rule in paragraph 2 is that each party shall file simultaneously two rounds

[1] It may be noted that in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)* and in the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, the Tribunal, in determining the number and order of filing of the pleadings, followed the provisions included to this effect in the special agreements concluded by the parties.

of pleadings.[2] This, according to Rosenne, "is the classic procedure of international arbitration, and reflects the principle of the equality of States."[3] The rule is not absolute and does not exclude the possibility for the parties to agree otherwise.

According to paragraph 3, the number of pleadings is normally limited to two for each party. The submission of any additional pleading is subject to a determination by the Tribunal which must be satisfied that this is necessary. The provision intends to avoid lengthy and unnecessary proceedings and is in line with the requirement under article 49 of the Rules that the proceedings be "conducted without unnecessary delay or expense."

[2] In the absence of provisions to this effect in the special agreement, the Tribunal could have considered adopting the principle of the presentation of a memorial followed by a counter-memorial. This would have reduced the number of pleadings (in the absence of replies and rejoinders) to one for each party and would have avoided the situation where either party in its memorial is obliged to guess the arguments which will be presented by the other party.

[3] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1292.

Article 62

1. A memorial shall contain: a statement of the relevant facts, a statement of law and the submissions.
2. A counter-memorial shall contain: an admission or denial of the facts stated in the memorial; any additional facts, if necessary; observations concerning the statement of law in the memorial; a statement of law in answer thereto; and the submissions.
3. A reply and rejoinder shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.
4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

Article 62

1. Le mémoire contient: un exposé des faits sur lesquels la demande est fondée, un exposé de droit et les conclusions.
2. Le contre-mémoire contient : la reconnaissance ou la contestation des faits mentionnés dans le mémoire ; le cas échéant, un exposé additionnel des faits ; des observations relatives à l'exposé de droit contenu dans le mémoire ; un exposé de droit en réponse ; et les conclusions.
3. La réplique et la duplique ne répètent pas simplement les thèses des parties mais s'attachent à faire ressortir les points qui les divisent encore.
4. Toute pièce de procédure énonce les conclusions de la partie qui la dépose, au stade de la procédure dont il s'agit, en les distinguant de l'argumentation, ou confirme les conclusions déjà présentées.

COMMENTARY

This article follows closely the text of Article 49 of the Rules of the ICJ. Article 62 of the Rules of the Tribunal specifies the essential requirements to be fulfilled by each of the written pleadings. The memorial should contain three parts: a statement of the relevant facts, a statement of law, and the submissions (paragraph 1) and the counter-memorial should include an admission or denial of the facts stated in the memorial and, if necessary, any additional facts, observations concerning the statement of law in the memorial, and the submissions (paragraph 2). In order to ensure the effectiveness of proceedings before the Tribunal, it is necessary, as stated in paragraph 3, that a reply and a rejoinder do "not

merely repeat the parties' contentions" but "be directed to bringing out the issues that still divide them".[1]

The task of the Tribunal is to decide upon the submissions of the parties.[2] The pleading must then contain a clear statement regarding the submissions made by the party concerned. This requirement is specifically addressed in paragraph 4. That said, it is possible for either party to modify its submissions on the basis of the arguments developed by the other party or in light of the circumstances of the case. In other words, as stated by Rosenne, "[t]he submissions represent the progressive formulation of the difference in the course of the pleadings, and the final submissions are the ultimate expression of the position of each party in the dispute."[3] It is therefore necessary to state in every pleading the party's submissions at the relevant stage of the case, "distinctly from the arguments presented" or to "confirm the submissions previously made".[4]

Rosenne, in his commentary on the Rules and practice of the ICJ, observes that "[a] degree of solemnity attaches to the submissions, and that emphasizes their importance as defining the precise issue on which the Court's decision is required. . . . The efficiency of judicial settlement to resolve that dispute between the parties depends on their careful drafting."[5] This author explains that the ICJ

> has been concerned with defining more precisely what a submission is, and more particularly a final submission, and with distinguishing the final submission from the arguments in support as the basis for its decision . . . The function of the submission is to indicate to the Court the party's suggestion for the appropriate wording of the operative clause of the judgment, while the function of the supporting arguments is to suggest the appropriate reasons on which that decision might be based.[6]

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[1] In commenting on the similar provision in Article 49 of the Rules of the ICJ, Rosenne points out that:

> [t]he purpose of the reply and rejoinder essentially is to clarify issues raised in the initial round of pleadings. . . . If the case is very complicated, the issues may not be fully brought out, and the contrary points of views of the parties not completely set out, until the completion of the written proceedings. It is only at that stage that the parties will be in a position to determine whether they will require to bring witnesses and experts in the oral proceedings.

S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1264 (footnotes omitted).

[2] See article 125, paragraph 1(g), of the Rules of the Tribunal, which states that a judgment shall contain "the submissions of the parties".

[3] S. Rosenne, *op. cit.* note 1, p. 1266.

[4] The Rules distinguish between submissions and final submissions. The latter are mentioned in article 75, paragraph 2, in Part III, section B, subsection 4 "Oral proceedings", which states that "[a]t the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions . . .".

[5] S. Rosenne, *op. cit.* note 1, p. 1266 (footnotes omitted).

[6] S. Rosenne, *op. cit.* note 1, pp. 1269–1270.

The Guidelines include additional instructions as to the contents of the pleadings. As an illustration, reference may be made to paragraph 8, according to which "[a] party should in its pleading deal specifically with each allegation of fact in the pleading of the other party of which it does not admit the truth; it will not be sufficient for it to deny generally the facts alleged by the other party."

Article 63

1. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of the contentions contained in the pleading. Parties need not annex or certify copies of documents which have been published and are readily available to the Tribunal and the other party.
2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed. A copy of the whole document shall be filed in the Registry, unless it has been published and is readily available to the Tribunal and the other party.
3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Article 63

1. Sont jointes à l'original de toute pièce de procédure des copies certifiées conformes de tous documents pertinents produits à l'appui des thèses formulées dans cette pièce. Les parties peuvent s'abstenir de joindre des documents ou des copies certifiées conformes de documents qui ont été publiés sous une forme qui les rend facilement accessibles au Tribunal et à la partie adverse.
2. Si un de ces documents n'est pertinent qu'en partie, il suffit de joindre en annexe les extraits nécessaires aux fins de la pièce dont il s'agit ou de l'identification du document. Copie du document complet est déposée au Greffe, à moins qu'il n'ait été publié sous une forme qui le rende facilement accessible au Tribunal et à la partie adverse.
3. Au moment du dépôt d'une pièce de procédure, il est fourni un bordereau de tous les documents annexés à cette pièce.

COMMENTARY

With minor changes, this article follows the text of Article 50 of the Rules of the ICJ. Paragraph 1 requires that certified copies of any relevant documents submitted in support of the contentions contained in the pleading be annexed to the original of the pleading.[1] The last sentence in paragraph 1 does not appear in the corresponding paragraph of Article 50 of the ICJ Rules. It reads as follows: "Parties need not annex or certify copies of documents which have been published and are readily available to the Tribunal and the other party." It is aimed at avoiding voluminous and lengthy annexes being attached to the pleading to the extent the documents concerned are easily available.

Paragraph 2 is intended to reduce further the requirement of paragraph 1 to the extent that only parts of a document are relevant. In this case, only such extracts as are necessary for the purpose of the pleading in question or for identifying the document need to be annexed.[2] However, "[a] copy of the whole document shall be filed in the Registry, unless it has been published and is readily available to the Tribunal and the other party." According to Rosenne, the expression "readily available", also found in Article 50, paragraph 2, of the Rules of the ICJ, "may open the way to a subjective approach and lead to uncertainty. In that respect, the place in which the Court is sitting for the oral proceedings may become of relevance."[3]

The Registrar has to ensure compliance with the formal requirements under the Rules.[4] In the event that the documentation submitted does

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[1] In commenting on paragraph 1 of Article 50 of the ICJ Rules, Rosenne states that it "requires that certified copies of the documents in support should be annexed to every pleading, although the Rules give no indication of what that means", S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1278 (footnote omitted). However, one thing is clear: as this author declares, the

> sanction for non-compliance with the requirement . . . is in fact ultimately substantive rather than procedural; if an assertion made in a pleading is unsupported by evidence, and challenged by the other party, the Court will be entitled to regard that assertion as unproved, and to draw the *appropriate consequences for its decision.*

Ibid., p. 1281 (emphasis added). These considerations could be applicable to the Rules of the Tribunal.

[2] See Rosenne, *op. cit.* note 1, p. 1279.

[3] *Ibid.*

[4] See Guidelines, paragraph 11, which provides: "Where a pleading or an application or a declaration does not satisfy the formal requirements of the Rules of the Tribunal, the Registrar will return the same to the party seeking to file it for rectification. Where necessary, the Registrar will consult the President."

not satisfy these requirements (e.g., documents not legible, translation missing, documents referred to in a pleading which is not annexed to it), parties are informed accordingly and requested to submit additional or corrected documents.[5]

[5] In *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea)*, *Judgment, ITLOS Reports 1999*, p. 10 at p. 19, the Tribunal stated that:

> [a]t a meeting with the representatives of the parties on 4 February 1999, the President ascertained the views of the parties regarding issues to be addressed by evidence or submissions during the oral proceedings and requested the parties to complete the documentation in accordance with article 63, paragraphs 1 and 2, and article 64, paragraph 3, of the Rules.

In *"Camouco" (Panama* v. *France)*, *Prompt Release*, *Judgment, ITLOS Reports 2000*, p. 10 at p. 15, the Tribunal stated that "the Agent of Panama sent documents in order to complete the documentation in accordance with article 63, paragraphs 1 and 2, and article 64, paragraph 3, of the Rules. Copies of these documents were transmitted to the Agent of France." See also *"Volga" (Russian Federation* v. *Australia)*, *Prompt Release*, *Judgment*, *ITLOS Reports 2002*, p. 10 at p. 15, where the Tribunal stated that "[o]n 11 December 2002, the Agent of the Russian Federation and the Agent of Australia submitted documents in order to complete the documentation, in accordance with article 63, paragraph 1, and article 64, paragraph 3, of the Rules. Copies of the documents presented by each party were forwarded to the other party."

Article 64

1. The parties shall submit any pleading or any part of a pleading in one or both of the official languages.
2. A party may use a language other than one of the official languages for its pleadings. A translation into one of the official languages, certified as accurate by the party submitting it, shall be submitted together with the original of each pleading.
3. When a document annexed to a pleading is not in one of the official languages, it shall be accompanied by a translation into one of these languages certified as accurate by the party submitting it. The translation may be confined to part of an annex, or to extracts therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Tribunal may, however, require a more extensive or a complete translation to be furnished.
4. When a language other than one of the official languages is chosen by the parties and that language is an official language of the United Nations, the decision of the Tribunal shall, at the request of any party, be translated into that official language of the United Nations at no cost for the parties.

Article 64

1. Les parties présentent les pièces de procédure en tout ou en partie dans l'une ou l'autre des langues officielles ou les deux.
2. Une partie peut, pour les pièces de procédure qu'elle présente, employer une langue autre qu'une des langues officielles. Dans ce cas, une traduction dans une des langues officielles, certifiée exacte par elle, doit être jointe à l'original de chaque pièce.
3. Si un document annexé à une pièce de procédure n'est pas rédigé dans une des langues officielles, une traduction dans une de ces langues, certifiée exacte par la partie qui la fournit, doit l'accompagner. La traduction peut être limitée à une partie ou à des extraits d'une annexe mais, en ce cas, elle est accompagnée d'une note explicative indiquant les passages traduits. Le Tribunal peut toutefois demander la traduction d'autres passages ou une traduction intégrale.
4. Lorsque les parties choisissent une langue autre qu'une des langues officielles et que cette langue est une des langues officielles de l'Organisation des Nations Unies, la décision du Tribunal sera traduite, à la demande d'une partie, en cette langue officielle de l'Organisation des Nations Unies sans frais pour les parties.

COMMENTARY

Article 43 of the Rules provides that "[t]he official languages of the Tribunal are English and French."[1] In conformity with this provision, article 64, paragraph 1, of the Rules states that "[t]he parties shall submit any pleading or any part of a pleading in one or both of the official languages."

Paragraph 2 of article 64 of the Rules allows a party to use a language other than one of the official languages for its pleadings. In this case, the party shall submit, together with the original of each pleading, a translation into one of the official languages, certified as accurate by the party using a non-official language. The same obligation applies to the presentation of a document annexed to a pleading when it is not in one of the official languages. The translation in this case may be limited to part of an annex, or to extracts therefrom, but it must be accompanied by an explanatory note indicating what passages of the document are translated. However, the Tribunal, which is in control of the proceedings, may require to be provided with a more extensive or a complete translation of the document.

Under paragraph 4, when the parties choose a non-official language and that language is an official language of the United Nations, at the request of any party, the decision of the Tribunal shall be translated into that official language of the United Nations at no cost for the parties. This distinction between a non-official language and a non-official language that is an official language of the United Nations does not appear in the ICJ Rules.[2]

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[1] While the Statute of the Tribunal is silent on the question of official languages, Article 39 of the Statute of the ICJ retains French and English as the official languages of the Court (see also Article 51 of the Rules of the ICJ). Commenting on Article 39 of the ICJ Statute, Rosenne states that that "provision differs from the generality of the language practice of the United Nations; and does not take account of the fact that the present Statute is itself drawn up in five authentic texts", S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1284. In the case of the Tribunal, the question of official languages was decided by the Meeting of States Parties in favour of English and French (see Report of the second Meeting of States Parties, SPLOS/4, 26 July 1995, paragraph 25(b)(i)). Although the Tribunal is independent from the United Nations, its Statute, which is contained in Annex VI to a United Nations Convention, is drawn up in six languages.

[2] In *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 34, the Applicant requested, pursuant to article 64, paragraph 4, of the Rules, that the Tribunal prepare a Spanish translation of its Judgment. The Tribunal noted that article 64, paragraph 4, of the Rules "deals with the situation where the parties chose a language other than English or French for their written pleadings" and observed that this condition was not fulfilled in the case. Therefore, the Tribunal could not "accede to the request of the Applicant that the Judgment be translated into Spanish pursuant to that provision."

Article 65

1. The original of every pleading shall be signed by the agent and filed in the Registry. It shall be accompanied by a certified copy of the pleading, any document annexed thereto and any translations, for communication to the other party. It shall also be accompanied by the number of additional copies required by the Registry; further copies may be required should the need arise later.
2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of receipt of the pleading in the Registry which will be regarded by the Tribunal as the material date.
3. If the Registrar arranges for the reproduction of a pleading at the request of a party, the text must be supplied in sufficient time to enable the pleading to be filed in the Registry before expiration of any time-limit which may apply to it. The reproduction is done under the responsibility of the party in question.
4. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of the President of the Tribunal. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates.

Article 65

1. L'original de toute pièce de procédure est signé par l'agent et déposé au Greffe. Il est accompagné d'une copie certifiée conforme de la pièce, de tout document annexé et de toute traduction, pour communication à la partie adverse. Il est également accompagné du nombre d'exemplaires additionnels requis par le Greffe ; il pourra toutefois être demandé ultérieurement d'autres exemplaires si le besoin s'en fait sentir.
2. Toute pièce de procédure est datée. Quand une pièce doit être déposée à une date déterminée, c'est la date de sa réception au Greffe qui est retenue par le Tribunal.
3. Si, à la demande d'une partie, le Greffier fait reproduire une pièce de procédure, le texte doit en être remis assez tôt pour permettre le dépôt de la pièce au Greffe avant l'expiration du délai fixé. La reproduction est faite sous la responsabilité de la partie intéressée.
4. La correction d'une erreur matérielle dans un document déposé est loisible à tout moment avec l'assentiment de la partie adverse ou avec l'autorisation du Président du Tribunal. Toute correction ainsi faite est notifiée à la partie adverse de la même manière que la pièce de procédure à laquelle elle se rapporte.

COMMENTARY

With minor drafting changes, article 65 of the Rules follows the text of Article 52 of the Rules of the ICJ as adopted in 1978.[1] Paragraph 1 of article 65 requires that the original of every pleading be signed by the agent and filed in the Registry. It shall be accompanied by a certain number of additional copies required by the Registry: (i) a certified copy of the pleadings and of any document annexed thereto and any translations, for communication to the other party; (ii) the number of additional copies required by the Registry; and (iii) further copies that may be required later.

The Guidelines contain detailed requirements regarding the preparation and presentation of the pleadings. For example, "[u]nless otherwise specified by the Registrar, each party should furnish to the Registry 125 additional copies of its pleading with supporting documents";[2] the pleadings should be printed or typewritten or prepared electronically in a specified format; the parties should present the text of their pleadings in electronic form; and the parties should consult the Registry's *Rules for the Preparation of Typed and Printed Texts*.[3] Other provisions of the Guidelines specify that every pleading should contain a table of contents with a list of documents, including material in electronic or digital form, and that it should be divided into paragraphs, numbered consecutively.[4]

By paragraph 2 of article 65, all pleadings have to be dated. When a pleading has to be filed within a certain date, it is the date on which the Registry receives the pleading which is regarded by the Tribunal as the material date.[5]

In the event that the Registrar arranges for the reproduction of a pleading at the request of a party, paragraph 3 of article 65 provides that the text must be supplied in sufficient time to enable the pleading to be filed in the Registry before the expiration of any time-limit which may apply to it. The reproduction is the responsibility of the party in question.[6]

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[1] On 14 April 2005, the ICJ amended Article 52 of the Rules of the ICJ by deleting paragraph 3 of that article.

[2] See Guidelines, paragraph 9.

[3] *Ibid.*, paragraph 1.

[4] *Ibid.*, paragraphs 3 and 6.

[5] *Ibid.*, paragraph 10:

> Upon receipt of a pleading, the Registrar will endorse on it the date of its receipt in the Registry. All pleadings, documents and other communications may be submitted to the Tribunal directly in person or through courier or regular mail. They may also be submitted through facsimile or electronic means in clear form. In determining whether a party has submitted its pleadings, documents or other communications within the time-limits fixed by or under the Rules, the date on which the Tribunal receives them through facsimile or electronically will be regarded as the material date provided they are followed without unreasonable delay by the paper originals thereof.

[6] The corresponding provision in the Rules of the ICJ (Article 52, paragraph 3) uses the

Paragraph 4 of article 65 relates to the correction of errors in any document which has been filed. Such correction may be made at any time with the consent of the other party or by leave of the President. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates. This provision has been referred to on several occasions in cases submitted to the Tribunal.[7]

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word "printing" instead of "reproduction". As a former President of the ICJ explains it, the 1946 Rules of the Court required the printing of the pleadings and the amendment of the Rules in 1972 eliminated this obligation "not only to save expense but also taking into account that shorter time-limits might be more readily fixed if printing is no longer a requirement and other modern methods of reproduction are equally authorized", E. Jiménez de Aréchaga, "The amendments to the Rules of Procedure of the International Court of Justice", Gilberto Amado Memorial Lecture delivered on 15 June 1972, United Nations, p. 7. As stated earlier, paragraph 13 of the Guidelines does not require that the pleadings be printed, although this remains an option.

[7] In *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 90, the Tribunal stated that "the Agent of Seychelles transmitted to the Tribunal a list of corrections to the initial submission. These corrections, being of a formal nature, were accepted by leave of the President of the Tribunal in accordance with article 65, paragraph 4, of the Rules of the Tribunal." In *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at pp. 97–98, the Tribunal took into consideration the fact that "the Agent of Ireland proposed corrections to paragraphs 7 and 8 of the Request and the Agent of the United Kingdom informed the Tribunal, in accordance with article 65, paragraph 4, of the Rules, that he had no objections to these corrections being made." It also noted that "the Agent of the United Kingdom proposed corrections to paragraph 192 of the Written Response and the Agent of Ireland informed the Tribunal, in accordance with article 65, paragraph 4, of the Rules, that he had no objections to these corrections being made." In addition, the Tribunal observed that "the Agent of the United Kingdom proposed corrections to paragraph 190 of the Written Response and, in accordance with article 65, paragraph 4, of the Rules, the Agent of Ireland, while expressing no objections to these corrections being made, reserved his position on the contents of the proposed corrections." In *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 15, the Tribunal stated that "the Agent of the Russian Federation transmitted to the Tribunal a correction of the Application. This correction was accepted by leave of the President in accordance with article 65, paragraph 4, of the Rules."

Article 66

A certified copy of every pleading and any document annexed thereto produced by one party shall be communicated by the Registrar to the other party upon receipt.

Article 66

Copie certifiée conforme de toute pièce produite par une partie et de tout document annexé est transmise par le Greffier, dès leur réception, à la partie adverse.

COMMENTARY

This provision corresponds to the wording of article 60, paragraph 4, of the Preparatory Commission draft. It does not appear in the Rules of the ICJ. Pursuant to article 66 of the Rules of the Tribunal, the Registrar, upon receipt of a pleading submitted by a party, has to transmit a certified copy thereof to the other party. The certified copy should normally be provided by the party submitting the pleading, as required by article 65, paragraph 1. When this is not done, the practice in urgent proceedings is that the Registrar would make a copy of the original pleading and certify it as a true and accurate copy thereof.[1] The requirement contained in article 66 is important in order to ensure that parties are properly informed of every document filed by one of them. The formal part ("recitals") of the judgments and orders of the Tribunal usually takes note of the communication of such "certified copies".[2] It may also be noted that the Registrar has a similar duty to communicate a certified copy of the document instituting proceedings before the Tribunal under article 54, paragraph 4, (application) and under article 55, paragraph 1 (notification of a special agreement which is not effected jointly).

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[1] For the meaning of "certified copy", see article 1, paragraph (i), of the Rules.

[2] See, e.g., *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 23, where the Tribunal stated that

> [o]n 26 November, 29 November, 1 December and 3 December 2004, the Registrar and Deputy Registrar sent letters to the Agent of Saint Vincent and the Grenadines requesting the completion of documentation. On 30 November and 3 December 2004, the Agent of Saint Vincent and the Grenadines submitted documents in order to complete the documentation, in accordance with article 63, paragraph 1, and article 64, paragraph 3, of the Rules. Copies of the documents presented by the Applicant were forwarded to the Respondent.

Article 67

1. Copies of the pleadings and documents annexed thereto shall, as soon as possible after their filing, be made available by the Tribunal to a State or other entity entitled to appear before the Tribunal and which has asked to be furnished with such copies. However, if the party submitting the memorial so requests, the Tribunal shall make the memorial available at the same time as the counter-memorial.
2. Copies of the pleadings and documents annexed thereto shall be made accessible to the public on the opening of the oral proceedings, or earlier if the Tribunal or the President if the Tribunal is not sitting so decides after ascertaining the views of the parties.
3. However, the Tribunal, or the President if the Tribunal is not sitting, may, at the request of a party, and after ascertaining the views of the other party, decide otherwise than as set out in this article.

Article 67

1. Aussitôt que possible après leur dépôt, des copies des pièces de procédure et des documents annexés seront communiquées par le Tribunal, à leur demande, aux Etats ou autres entités admis à ester devant lui. Toutefois, si la partie présentant le mémoire le demande, le Tribunal met le mémoire à disposition en même temps que le contre-mémoire.
2. Des copies des pièces de procédure et des documents annexés sont rendues accessibles au public à l'ouverture de la procédure orale ou antérieurement si le Tribunal ou, s'il ne siège pas, le Président en décide ainsi après s'être renseigné auprès des parties.
3. Cependant, à la demande d'une partie et après s'être renseigné auprès de la partie adverse, le Tribunal ou, s'il ne siège pas, le Président peut en décider autrement.

COMMENTARY

This article makes "transparency and not confidentiality . . . the basic principle followed by the Rules as regards the possibility for States and other entities entitled to appear before the Tribunal and for the public at large to have access to the written pleadings of the case."[1]

[1] T. Treves, "The Procedure before the International Tribunal for the Law of the Sea: The Rules of the Tribunal and Related Documents", 11 *Leiden Journal of International Law* (1998), p. 565 at p. 573.

It may be noted that Article 53 of the Rules of the ICJ takes a different approach. The decision to make the pleadings available to a State entitled to appear before the Court, or to make them accessible to the public, can only be taken by the Court after ascertaining the views of the parties. States may ask to be furnished with copies of the pleadings and documents at any time, whereas availability to the public only applies "on or after the opening of the oral proceedings".[2]

Paragraph 1 of article 67 of the Rules of the Tribunal aims at making the procedure expeditious by allowing States or other entities entitled to appear before the Tribunal to request to take cognizance of the written pleadings at an early stage. On the basis of this provision, article 99, paragraph 1, of the Rules fixes a 30-day time-limit after the counter-memorial becomes available to a State entitled to appear before the Tribunal for such State to submit its application for permission to intervene under the terms of article 31 of the Statute.[3]

Paragraph 1 of article 67 of the Rules further states, "[h]owever, if the party submitting the memorial so requests, the Tribunal shall make the memorial available at the same time as the counter-memorial." This, as Treves observes, "[i]s in order to avoid any inequality of treatment." He also considers it "reasonable to apply the same principle in the furnishing of copies of the reply when a rejoinder is to be filed, even though this aspect is not mentioned in Article 67."[4]

Under paragraph 2 of article 67, pleadings and documents shall be accessible to the public at the beginning of the oral proceedings. Notwithstanding this, the Tribunal, or the President if the Tribunal is not sitting, may decide, after ascertaining the views of the parties, to make the pleadings and documents available to the public before the beginning of the oral proceedings.

Paragraph 3 establishes an exception to the regime adopted in paragraphs 1 and 2. According to this provision, "the Tribunal, or the President if the Tribunal is not sitting, may, at the request of a party, and after ascertaining the views of the other party, decide otherwise than as set out in this article."[5]

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[2] Article 53, paragraph 2, of the Rules of the ICJ. See also, T. Treves, *op. cit.* note 1, p. 573.

[3] See T. Treves, *op. cit.* note 1, p. 568, where he explains that article 67
> has made it possible for the Rules to fix a 30-day time-limit from the moment the requesting state has taken [cognizance of the written pleadings] for such State to submit its request for permission to intervene in the proceedings. This shortens the time needed for the Tribunal to decide whether such permission can be granted. The time limit fixed in the Rules for submitting preliminary objections is 90 days at the latest after the institution of proceedings while the time limit in the Rules of the ICJ is that fixed for the delivery of the counter-memorial. This change may make an important difference in terms of time.

[4] *Ibid.*, p. 574.

[5] Similarly, under article 26 of the Statute, the oral hearings, which normally are open to the public, may be held in the absence of the public if so decided by the Tribunal or requested by the parties.

Subsection 3. Initial deliberations

Article 68

After the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal shall meet in private to enable judges to exchange views concerning the written pleadings and the conduct of the case.

Sous-section 3. Délibération initiale

Article 68

Après la clôture de la procédure écrite et avant l'ouverture de la procédure orale, le Tribunal se réunit en chambre du conseil afin que les juges puissent procéder à un échange de vues sur les pièces de procédure écrite et sur la conduite de l'affaire.

COMMENTARY

This article was not included in the Preparatory Commission Draft Rules and does not have a precedent in the Rules of the ICJ. The Tribunal considered it useful to encourage judges to acquaint themselves individually and collectively with the substance of the case before the beginning of the oral proceedings.[1] To reach such result it seemed appropriate to stress the importance, in the procedure of the Tribunal, of the deliberations mentioned in article 1 of the Resolution concerning the Internal Judicial Practice of the ICJ (adopted on 12 April 1976). At this deliberation, to be held after the termination of written proceedings and before the beginning of the oral proceedings,

> the judges exchange views concerning the case, and bring to the notice of the Court any point in regard to which they consider it may be necessary to call for explanations during the course of the oral proceedings.[2]

[1] T. Treves, "The Rules of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 135 at pp. 139–140; Eiriksson, p. 173, in a similar vein, states that article 68 is an indication that the Tribunal will "take an early 'hands-on' approach to its proceedings."

[2] Resolution, article 1, paragraph (i).

As it has been observed, and the observation is as valid for the Tribunal as it is for the ICJ, this deliberation "provides the first opportunity for members of the Court to discuss the case with judges *ad hoc*."[3] It would seem, nevertheless, that in the practice of the ICJ, this deliberation is not very important as it is held immediately before the beginning of the oral proceedings and does not include a detailed discussion based on the study of the written proceedings.[4]

To stress the importance it meant it to have, the Tribunal decided to provide for initial deliberations in its Rules. Article 68 is the sole article of a subsection entitled "Initial Deliberations", placed between the subsections on written and oral proceedings.

The Resolution on the Internal Judicial Practice of the Tribunal gives more details as regards the objectives to be pursued in the initial deliberations.[5] Article 3, entitled "Deliberations before the oral proceedings", states:

> After the circulation of the working paper and before the date fixed for the opening of the oral proceedings, the Tribunal deliberates in private, as provided for in article 68 of the Rules, in order to allow the judges an opportunity to:
>
> (a) exchange views concerning the written pleadings and the conduct of the case;
> (b) consider whether to give any indications, or put any questions, to the parties in accordance with article 76 of the Rules;
> (c) consider whether to call upon the parties to produce any evidence or to give any explanations in accordance with article 77 of the Rules; and
> (d) consider the nature, scope and terms of the questions and issues which will have to be decided by the Tribunal.

According to this article, the point in time when the deliberations are to be held is "before the date fixed for the opening of the oral proceedings" (as already indicated in article 68 of the Rules) and "after the circulation of the working paper" prepared by the President under article 2, paragraph 3, of the Resolution. This paper is to be based on the written pleadings and the judges' notes (referred to in article 2, paragraph 1, of the Resolution). This confirms that the function of the initial delibera-

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[3] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1563, note 11.

[4] This information is set out in the Report of a Study Group whose members were Professors Bowett, Crawford, Sir Ian Sinclair and Sir Arthur Watts, and prepared by Sir Arthur Watts, on "The International Court of Justice: Efficiency of Procedures and Working Methods", in D.W. Bowett et al., *The International Court of Justice: Process, Practice and Procedure*, 1997, p. 27. The Study Group concludes at p. 52 that "[i]t is doubtful whether such a meeting can fulfil the purposes of the meeting originally envisaged in Article 1" of the Resolution on the Internal Judicial Practice of the ICJ.

[5] Resolution, article 3.

tions is to promote full acquaintance by each judge with the case as it has developed. Under article 2, paragraph 3(a), of the Resolution, the paper prepared by the President shall set out a summary of the facts and the principal contentions of the parties and, under paragraph 3(b),

> (b) proposals concerning:
>
> (i) indications to be given, or questions to be put, to the parties in accordance with article 76 of the Rules;
> (ii) evidence or explanations to be requested from the parties in accordance with article 77 of the Rules; and
> (iii) issues which, in the opinion of the President, should be discussed and decided by the Tribunal.

Article 2, paragraph 3(b), sub-paragraphs (i) and (ii) and article 3, paragraphs (b) and (c), of the Resolution, by making the linkage with activities mentioned in articles 76 and 77 of the Rules, clarify why the initial deliberations as regulated in the Resolution go beyond what is provided for in article 68, so as to include other matters that, according to the above mentioned rules, may arise "at any time prior to or during the hearing" (article 76, paragraph 1, of the Rules) or "at any time" (article 77, paragraph 1, of the Rules).

Initial deliberations in accordance with article 68 have been held in all cases considered by the Tribunal, and are mentioned in the introductory part of the respective judgments or orders. In some cases only the date of the deliberations is indicated and a reference to article 68 is made.[6] In other cases, there is also the indication that the Tribunal "noted the points and issues it wished the parties specially to address"[7] or that the deliberations concerned "the written pleadings and the conduct of the case."[8] In most cases the initial deliberations have been held the day before the beginning of the hearing. It must be noted, however, that this refers to prompt release and provisional measures proceedings that have

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[6] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 18; *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 19; *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 15; *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 91; *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 23; *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 16; *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 23.

[7] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 at p. 26; *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 283.

[8] *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 98; *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 13.

an urgent character. In *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*, a case decided on the merits, the initial deliberations began seven days prior to the opening of the oral hearing.[9]

As a matter of fact, in the practice of the Tribunal, questions and requests for explanations have been discussed during the initial deliberations and put to the parties after such deliberations. It must be stressed that the mention of such questions and explanations in article 3 of the Resolution does not preclude the possibility of addressing them to the parties at a different moment consistent with the indications in articles 76 and 77 of the Rules.

Article 68 of the Rules, as well as article 3 of the Resolution, applies in all cases submitted to the Tribunal. The Resolution provides in article 11, paragraph 1, that the Tribunal may "vary the procedures and arrangements set out above in a particular case for reasons of urgency or if circumstances so justify."

In provisional measures and prompt release cases, no exception to the application of the Resolution is allowed, although deliberations concerning such cases must take "account of the nature and urgency of the case" (article 11, paragraph 2, of the Resolution).

As the Resolution cannot detract from a rule, adaptations of the initial deliberations are possible for reasons of urgency or in light of the special nature of provisional measures or prompt release proceedings, but such deliberations cannot be dispensed with altogether.

The practice of the Tribunal shows that in cases concerning provisional measures and prompt release of vessels and crew, the initial deliberations tend to be shorter (usually one day) than in cases on the merits (in *The M/V "SAIGA" (No. 2) Case* the initial deliberations extended over three days). Moreover, as already noted, in cases of an urgent nature, the initial deliberations are normally held on the day before the opening of the hearing, while in *The M/V "SAIGA" (No. 2) Case*, a few days elapsed between the end of the initial deliberations and the opening of the hearing.

The initial deliberations are also to be held when a party does not participate in the proceedings, or when, even while participating, it has not submitted written pleadings before the oral hearings. This has happened in *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release.* In this case, the Respondent did not file a statement in response, claiming it was entitled not to do so under article 111, paragraph 4, of the Rules.[10] The Tribunal held its initial deliberations on

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[9] The initial deliberations were held on 1, 2 and 5 March 1999, and the oral hearing was opened on 8 March 1999: *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 19.

[10] On the imbalance this situation can entail, see *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, ITLOS Reports 2004*, Separate Opinion of Judge Chandrasekhara Rao, p. 64.

30 November and 1 December 2004, prior to the scheduled opening of the oral hearing on 1 December 2004.[11]

The importance given by the Rules to the initial deliberations and to the moment in time at which they are held during the proceedings is further emphasized in provisions that consider the composition of the Tribunal as at the time these deliberations are held as decisive for two distinct purposes.[12] Firstly, the composition of the bench at the time of the initial deliberations determines its composition for the completion of any phase of the case when one or more Members have been replaced. Article 17 of the Rules states that:

> Members who have been replaced following the expiration of their terms of office shall continue to sit in a case until the completion of any phase in respect of which the Tribunal met in accordance with article 68.

Secondly, the composition of the bench at the time of initial deliberations is also decisive where a new President is elected during the consideration of a case by the Tribunal. The Member who is presiding "on the date on which the Tribunal meets in accordance with article 68 shall continue to preside in that case until completion of the current phase of the case." Should that Member become unable to act, the presidency for the case shall be determined "on the basis of the composition of the Tribunal on the date on which it met in accordance with article 68."[13]

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[11] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, op. cit.* note 5, p. 17 at p. 23. This is the only prompt release case in which the initial deliberations extended over two days. This is connected with the failure of the Respondent to make it clear whether it would submit a statement in response or other documents before the hearing.

[12] Eiriksson, pp. 35, 173; T. Treves, *op. cit.* note 1, p. 140.

[13] Article 16 of the Rules. The different principle followed in Article 18, paragraph 2, of the Rules of the ICJ as regards the presidency of chambers is repeated in article 30, paragraph: 4, of the Rules.

Subsection 4. Oral Proceedings

The Statute of the Tribunal proceeds on the (unstated) basis that the proceedings will be in two parts: written and oral.[1] In particular, paragraph 1 of article 26 of the Statute of the Tribunal provides that "[t]he hearing shall be under the control" of the President of the Tribunal or the presiding judge.[2] According to paragraph 2, the hearing is to be held in public unless it is decided otherwise. Article 27 of the Statute specifies that "[t]he Tribunal shall make orders for the conduct of the case," for questions of form and timing of arguments, and for arrangements connected with the taking of evidence.

Subsection 4 of section B (Proceedings before the Tribunal) of Part III of the Rules (Procedure) gives effect to articles 26 and 27 of the Statute. Subsection 4 provides for the oral proceedings before the Tribunal and consists of twenty articles (articles 69 to 88). Articles 69 and 70 concern the time and place of the oral proceedings; articles 71 to 84 concern the presentation of arguments and evidence and the making of inquiries; and articles 85 to 88 regulate the use of languages, transcripts, answers to questions and the closure of the oral proceedings.

The Preparatory Commission prepared, as part of the final Draft Rules of the Tribunal, a series of draft articles to regulate oral proceedings.[3] These draft articles were based on the terms of Articles 54 to 72 of the Rules of the ICJ in the version of 1978.[4] In regard to oral proceedings and all other questions, the Members of the Tribunal, when they met in Hamburg in 1996 and 1997, were charged with the task of implementing the terms of the 1982 United Nations Convention on the Law of the Sea, including in particular the Statute of the Tribunal, together with the 1994 Agreement on Part XI which provided that all institutions created by the Convention should be "cost-effective".[5] The Members of the Tribunal readily accepted the logic of drawing upon the accumulated experience of the PCIJ and the ICJ to a considerable extent, but subject always to the terms of the constitutive treaties. Some regard was also paid to the experience of other multi-member courts and tribunals, both global

[1] The Statute does not contain a provision similar to Article 43 of the Statute of the ICJ. The equivalent in the case of the Tribunal is article 44 of the Rules.

[2] Article 13 of the Statute, concerning the quorum, refers to disputes being "heard and determined by the Tribunal".

[3] Articles 64 to 82 of the Preparatory Commission Draft Rules, pp. 59 et seq.

[4] For commentaries on those articles, see Rosenne, pp. 122 et seq.; Guyomar, pp. 347 et seq.

[5] Section 1, paragraph 2, of the Annex to the Agreement on Part XI. For comment, see D.H. Anderson, "The Effective Administration of International Justice – Early Practice of the International Tribunal for the Law of the Sea", in J. Frowein et al. (eds.), *Negotiating for Peace – Liber Amicorum Tono Eitel*, 2003, p. 529 at p. 533.

and regional.[6] The need for cost-effectiveness was reflected in the adoption of a judicial policy according to which, in regard to oral proceedings, the Tribunal would play a pro-active role in controlling all aspects of the hearing, whilst maintaining scrupulously procedural fairness as between the parties. In particular, the Members of the Tribunal were concerned to avoid oral presentations that were overly long or repetitious.[7] To this end, they adopted the guiding principle in article 49 of the Rules.

The terms of articles 69 to 88 of the Rules should be read also with the Guidelines, including several paragraphs which are specifically applicable to oral proceedings.[8] In particular, paragraph 14 calls upon the parties to submit, shortly before the start of a hearing, three documents: first, a brief note on the points still dividing the parties; secondly, a "skeleton argument" or outline of its oral arguments; and, finally, a list of authorities with extracts for the judges' folders. This paragraph was followed in all its aspects during the hearing on the merits of *The M/V "SAIGA" (No. 2) Case*,[9] as well as in several urgent proceedings before the Tribunal. Paragraph 15 of the Guidelines specifies that oral statements should not repeat the facts and arguments contained in the written pleadings, whilst paragraph 16 provides for time-limits for oral presentations. In all hearings, the parties have respected the time-limits for their presentations. The Tribunal has not followed the indicative timings in paragraph 17: instead, the Tribunal has adopted a flexible approach and has sat during both the morning (starting at 10.00) and afternoon of the same day where necessary. The Rules are silent about the question of visual displays, yet these play an increasingly important role in oral proceedings before international courts and tribunals. Paragraph 18 of the Guidelines states that "Visual demonstration facilities for display of maps, charts, diagrams, illustrations of texts, etc., which a party intends to exhibit to the Tribunal will at the request of that party be provided by the Registrar upon payment of fees, if any, fixed for that purpose." In practice, oral statements and testimony by witnesses have frequently been illustrated by visual displays, both still and moving.

To sum up, the terms of the articles in the Rules regulating oral proceedings, namely articles 69 to 88, have to be read together with the Statute, the general provisions contained in Part III of the Rules and the Guidelines.

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[6] Examples included the Dispute Settlement Body of the World Trade Organization and the European Court of Human Rights.

[7] They were aware of the criticism directed at the ICJ in this regard: see, for instance, D.W. Bowett et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, 1997.

[8] On the Guidelines, see P. Chandrasekhara Rao, "The ITLOS and its Guidelines", in Chandrasekhara Rao/Khan, p. 187.

[9] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10.

Subsection 4. Oral proceedings

Article 69

1. Upon the closure of the written proceedings, the date for the opening of the oral proceedings shall be fixed by the Tribunal. Such date shall fall within a period of six months from the closure of the written proceedings unless the Tribunal is satisfied that there is adequate justification for deciding otherwise. The Tribunal may also decide, when necessary, that the opening or the continuance of the oral proceedings be postponed.
2. When fixing the date for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, the Tribunal shall have regard to:

   (a) the need to hold the hearing without unnecessary delay;
   (b) the priority required by articles 90 and 112;
   (c) any special circumstances, including the urgency of the case or other cases on the List of cases; and
   (d) the views expressed by the parties.

3. When the Tribunal is not sitting, its powers under this article shall be exercised by the President.

Sous-section 4. Procédure orale

Article 69

1. La procédure écrite une fois close, la date d'ouverture de la procédure orale est fixée par le Tribunal. Cette date est fixée au cours de la période de six mois suivant la clôture de la procédure écrite, sauf si le Tribunal estime qu'il y a lieu d'en décider autrement. Le Tribunal peut aussi prononcer, le cas échéant, le renvoi de l'ouverture ou de la suite de la procédure orale.
2. Lorsqu'il fixe la date d'ouverture ou de la suite de la procédure orale ou en prononce le renvoi, le Tribunal prend en considération :

   a) la nécessité de tenir ses audiences sans retard indu;
   b) la priorité prescrite par les articles 90 et 112 ;
   c) toutes circonstances particulières, y compris l'urgence de l'affaire ou des autres affaires figurant sur le rôle des affaires ;
   d) les vues exprimées par les parties.

3. Si le Tribunal ne siège pas, les pouvoirs que lui confère le présent article sont exercés par le Président.

COMMENTARY

The Preparatory Commission adopted a draft article 64[1] which followed closely the terms of Article 54 of the Rules of the ICJ in the version dating from 1972.[2] This version, departing from the earlier Rules based upon the Rules of the PCIJ,[3] gave the Court a wide discretion in deciding upon the date for the start of oral proceedings.[4] The Preparatory Commission's sole substantive change to that article was the requirement that, when fixing dates for oral proceedings, the Tribunal should have regard to the views of the parties to the case.

When the newly-elected judges gathered in Hamburg in 1996 and 1997 in order to consider the Preparatory Commission Draft Rules, they were aware of certain criticisms which were being expressed at that time concerning the working methods of the Court, including the oral procedures.[5] In order to avoid the risk of delays in holding oral proceedings, delays which were then a feature of proceedings in the Hague, the Members of the Tribunal accepted a suggestion made by a well-known practitioner before the Court, Mr. Keith Highet, that there should be a "rule of thumb" according to which no stage in a case should take more than six months.[6] This time frame was considered to be appropriate both for the written pleadings (article 59, paragraph 1 of the Rules) and for the commencement of the oral proceedings (paragraph 1 of the present article).[7] At the same time, it was accepted that some flexibility should be retained by the Tribunal for exceptional circumstances. Similarly, after considering the possibility of imposing a time-limit for the length of any postponement of the opening or continuance of oral proceedings in a case, the Tribunal decided to retain flexibility and to refrain from specifying a maximum period for postponements.

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[1] Preparatory Commission Draft Rules, p. 59.

[2] Replacing Articles 49 to 51 of the version of the Rules dating from 1946.

[3] The PCIJ's Rules had provided in detail for the priorities in taking up pending cases during each session, thereby reducing the Court's flexibility. For details, see Guyomar, at pp. 348–350.

[4] Rosenne, p. 122.

[5] See, for example, A. Watts, "The International Court of Justice: Efficiency of Procedures and Working Methods – Report of the Study Group established by the British Institute of International and Comparative Law" in D.W. Bowett et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, 1997, p. 27 at pp. 40–44 concerning the length and timetabling of oral proceedings.

[6] K. Highet, "Problems in the Preparation and Presentation of a Case from the Point of View of Counsel and of the Court", in C. Peck and R.S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice – Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, 1997, p. 127, at pp. 132 et seq.

[7] P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183 at pp. 216–217; T. Treves, "The Procedure Before the International Tribunal for the Law of the Sea: The Rules of the Tribunal and Related Documents", 11 *Leiden Journal of International Law* (1998), p. 565 at pp. 567 et seq.

A second substantive change was made by the Members of the Tribunal to the Preparatory Commission Draft Rules. In the listing of the criteria for fixing the date for the opening of oral proceedings, pride of place was accorded to a new criterion, namely the need to hold the hearing without unnecessary delay. This provision represents a particular application of the general principle stated in article 49 of the Rules. It reflects the judicial policy of the Tribunal in regard to the conduct of proceedings.

Articles 26 and 27 of the Statute of the Tribunal provide for the hearing in cases to be under the control of the President or another presiding judge and for the making of orders by the Tribunal for the conduct of cases.

Pursuant to those provisions, paragraph 1 of article 69 of the Rules gives to the Tribunal the power to fix the date for the opening of the oral proceedings. The power is circumscribed in the sense that the date has to fall within six months of the closure of the written proceedings unless there is adequate justification for fixing a later date. The power to postpone the opening or continuance of the oral proceedings is also conferred on the Tribunal.

Paragraph 2 of article 69 lists four criteria for fixing the date. First is the need to hold the hearing without any unnecessary delay, in accordance with the general judicial policy of the Tribunal. The second criterion is the priority required by the Convention and the Statute for the hearing by the Tribunal of requests submitted under article 290 of the Convention for the prescription of provisional measures and applications under article 292 of the Convention for the prompt release of vessels and crews. The third consideration is the presence of a special circumstance such as the urgency of the case or other cases pending before the Tribunal or the existence of an application to intervene under article 31 of the Statute which has to be given priority in accordance with article 102 of the Rules. The final criterion for the Tribunal is the attitude of the parties to the case. Article 45 of the Rules provides that the President is to ascertain the views of the parties on questions of procedure. Article 69, paragraph 2, of the Rules complements article 45 by stating that regard has to be paid to those views, but without making those views determinative. In any case, the views may often be divergent.

Article 69 applies also to the postponement of the opening or continuation of oral proceedings. In *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release*, the President of the Tribunal fixed a date for the opening of oral proceedings which caused difficulties for the Respondent on account of the late receipt of documentation. Accordingly, the Tribunal in its Order of 21 November 1997 decided to postpone further oral proceedings until 27 November 1997,[8] a shorter time than that

[8] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Order of 21 November 1997, ITLOS Reports 1997*, p. 10 at p. 11.

requested by the Respondent. Both parties were represented when the oral proceedings were resumed. Similarly, in *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release*, the President of the Tribunal, acting in accordance with article 112, paragraph 3, of the Rules, fixed 1 December 2004 for the opening of oral proceedings. On 26 November 2004, the Respondent requested a postponement. On 1 December 2004, the Tribunal opened the oral proceedings at a public sitting and adopted an Order postponing the continuation of the hearing until 6 December 2004.[9] When the hearing was resumed on that date, both parties were represented.

Paragraph 3 of article 69 of the Rules provides that when the Tribunal is not sitting, the powers under article 69 are exercised by the President.

[9] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Order of 1 December 2004, ITLOS Reports 2004*, p. 10 at p. 11.

Article 70

The Tribunal may, if it considers it desirable, decide pursuant to article 1, paragraph 3, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Tribunal. Before so deciding, it shall ascertain the views of the parties.

Article 70

S'il le juge souhaitable, le Tribunal peut décider, conformément à l'article premier, paragraphe 3, du Statut, que la suite de la procédure dans une affaire se déroulera en tout ou en partie ailleurs qu'au siège du Tribunal. Il se renseigne au préalable auprès des parties.

COMMENTARY

Article 1, paragraph 2, of the Statute provides that the seat of the Tribunal is the Free and Hanseatic City of Hamburg in the Federal Republic of Germany. This is followed by paragraph 3 which authorizes the Tribunal to sit and exercise its functions elsewhere whenever it considers this desirable. In order to implement this paragraph, the Preparatory Commission drafted an article based upon the terms of Article 65 of the Rules of the ICJ.[1] The draft was accepted by the Members of the Tribunal as article 70 of the Tribunal's Rules.

The first sentence of article 70 recapitulates the effect of the Statute and adds the clarification that all or part of the proceedings in a case may be held away from the seat of the Tribunal. The second sentence requires the Tribunal to ascertain the views of the parties before any decision is taken to hold proceedings away from the seat. In regard to the ICJ, the view has been expressed that in practice the consent of the parties would probably be indispensable.[2]

Article 70 is complemented by article 81 of the Rules which provides for the possibility of the Tribunal obtaining evidence at a place or locality to which the case relates.

To date, article 70 has never been applied in practice.[3] All the proceedings of the Tribunal have been held in Hamburg.[4] However, there

[1] Preparatory Commission Draft Rules, draft article 65, p. 59.
[2] Guyomar, p. 359.
[3] Similarly, the ICJ has not held any hearing away from The Hague, although it visited the locality to which the Gabčíkovo-Nagymaros project related, See *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Order of 5 February 1997, I.C.J. Reports 1997*, p. 3.
[4] Sittings have been held in Hamburg in the Great Hall of the City Hall (*Rathaus)* (1997–1998),

could arise a case in which it may appear, both to the parties and to the Tribunal or a chamber, to be desirable to hold part or all of the proceedings at a place away from Hamburg, if only for logistical reasons. Another consideration may be the desirability of paying a visit to the scene in accordance with article 81 of the Rules, possibly coupled with the taking of oral evidence from witnesses who may be unable for personal reasons to travel to Hamburg.

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the Chamber of Commerce (1998), the Tribunal's temporary premises in the Wexstrasse (1998–2000) and the Tribunal's permanent premises in Nienstedten, a suburb of Hamburg (2001 to date).

Article 71

1. After the closure of the written proceedings, no further documents may be submitted to the Tribunal by either party except with the consent of the other party or as provided in paragraph 2. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within 15 days of receiving it.
2. In the event of objection, the Tribunal, after hearing the parties, may authorize production of the document if it considers production necessary.
3. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Tribunal.
4. If a new document is produced under paragraph 1 or 2, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.
5. No reference may be made during the oral proceedings to the contents of any document which has not been produced as part of the written proceedings or in accordance with this article, unless the document is part of a publication readily available to the Tribunal and the other party.
6. The application of this article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Article 71

1. Après la clôture de la procédure écrite et sous réserve du paragraphe 2, aucun document nouveau ne peut être présenté au Tribunal, si ce n'est avec l'assentiment de la partie adverse. L'assentiment de la partie adverse est réputé acquis si celle-ci ne s'oppose pas à la production du document 15 jours au plus après qu'il lui a été transmis.
2. A défaut d'assentiment, le Tribunal peut, après avoir entendu les parties, autoriser la production du document s'il l'estime nécessaire.
3. La partie désirant produire un nouveau document le dépose en original ou en copie certifiée conforme, avec le nombre d'exemplaires requis par le Greffe, qui en assure la communication à la partie adverse et informe le Tribunal.
4. Lorsqu'un nouveau document a été produit conformément au paragraphe 1 ou 2, la possibilité est offerte à la partie adverse de présenter des observations à son sujet et de soumettre des documents à l'appui de ses observations.
5. La teneur d'un document qui n'aurait pas été produit dans le cadre de la procédure écrite ou conformément au présent article ne peut être mentionnée au cours de la procédure orale, à moins que ce document ne

fasse partie d'une publication facilement accessible au Tribunal et à la partie adverse.

6. L'application du présent article ne saurait en soi constituer un motif destiné à retarder l'ouverture ou la suite de la procédure orale.

COMMENTARY

Article 27 of the Statute empowers the Tribunal to make orders for the conduct of cases, including the submission of evidence. The Preparatory Commission prepared a draft article 66[1] which was based closely on the terms of Article 56 of the Rules of the ICJ in the version of 1972, implementing a specific provision in the Court's Statute concerning the late submission of documentation.[2] The Tribunal's Statute contains no direct equivalent of this provision in the Court's Statute. Nonetheless, the members of the Preparatory Commission decided to include in the Tribunal's draft Rules an article similar to Article 56 of the ICJ's Rules in order to implement the general power in article 27 of the Statute in regard to the specific question of the late submission of documentation. The Members of the Tribunal made a small change to the proposed wording of paragraph 1 of article 71 reducing the time-limit for lodging objections from one month to 15 days. The second sentence of paragraph 1 was made into paragraph 3 for reasons of style.

Article 71 regulates the situation that arises when, after the closure of the written proceedings, one party discovers a document and wishes to submit it as part of its case. This situation arises not infrequently in international litigation, especially in cases with an historical, environmental or scientific background.[3]

The rule is that a new document may not be admitted unless the other party consents or the Tribunal authorizes its production. The procedure is that the party submits the original or a certified copy of the document (plus the standard number of copies) to the Registry, which communicates it to the other party and informs the Tribunal (paragraph 3). (The Registry also arranges translations, as appropriate.) There are then two possibilities: objection or silence from the other party. The latter may lodge an objection to its production with the Registry within 15 days, a

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[1] Preparatory Commission Draft Rules, p. 59.

[2] Article 52 of the ICJ's Statute reads: "After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents."

[3] For practice in the ICJ, see S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1302 et seq. For comment from the Bench, see R. Higgins, "Respecting Sovereign States and Running a Tight Courtroom", 50 *ICLQ* (2001), p. 121 at pp. 128–131.

relatively short time-limit chosen in order to avoid unnecessary delays.[4] Silence on the part of the other party after 15 days is taken to signify consent to production, but the other party still retains its right to submit comments and documents in support of its comments. In the event of objection, the decision on the question of the production of the document is taken by the Tribunal after hearing the views of the parties. Such views could be heard either during a public sitting or by the President during consultations with the two agents. The Tribunal may authorize production of the document "if it considers production necessary" (paragraph 2). "Necessary" is a sterner test than "desirable", but no doubt the Tribunal would adopt a flexible approach and pay regard to the interests of both justice and procedural fairness.

The decision at this interlocutory stage is confined to the question of production and does not extend to questions of the document's substantive admissibility or probative value which belong to the merits. In a case where the Tribunal authorizes production of a document, the other party then has an opportunity to comment on its terms and to submit documents in support of its comments (paragraph 4). Paragraph 6 of article 71 makes clear that these procedures are not in themselves to constitute a ground for delaying the opening or continuation of the oral proceedings.

Paragraph 5 of article 71 provides that documents not included in the written pleadings or admitted under paragraph 1 or 2 of article 71 may not be referred to in the oral proceedings unless they are part of publications readily available to the Tribunal and the other party.

The filing of documents between the closure of the written proceedings and the opening of the oral proceedings has happened in several recent cases before the ICJ.[5] The experience of the Tribunal has been similar, in all types of proceedings. Thus, in *The M/V "SAIGA" (No. 2) Case*[6] further documents were submitted by both parties without objection. Similarly, both parties submitted documents during the oral proceedings in *The "Camouco" Case* without objection.[7] In *The "Grand Prince" Case*, France submitted certain documents during the oral proceedings: the Agent of Belize did not object to the production of the documents but commented upon their terms.[8] In *The "Volga" Case*, objection was taken by the Russian Federation to the submission during the oral proceedings of a new document

[4] In line with article 49 of the Rules.

[5] In February 2002, the Court issued Practice Direction IX to the effect that parties should refrain from submitting new documents after the closure of the oral proceedings, that reasons for any such request should be given, and that authorization would be granted only in exceptional circumstances: *I.C.J. Yearbook 2001–2002*, p. 5.

[6] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 19.

[7] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 16.

[8] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 24.

by Australia, the respondent. The Tribunal decided to request the Russian Federation to submit comments on the document within a specified time-limit and such comments were received within that limit.[9] During the oral proceedings in *The "Juno Trader" Case*, Guinea-Bissau submitted two additional documents. Copies were communicated to Saint Vincent and the Grenadines, which submitted comments on the contents, all in the course of a single day.[10] The *"Camouco", "Grand Prince", "Volga"* and *"Juno Trader"* cases were all urgent cases, being applications for the prompt release of vessels and their crews under article 292 of the Convention.

Article 71 is expressed to apply to "documents" which connotes written words and paper. The term should be given a wider scope to include maps, charts, photographs and video films. In other words, if after the close of the written proceedings a party requests permission to show a video film during the oral proceedings, the procedures set out in article 71 become applicable.

[9] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 17.

[10] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at pp. 24–25.

Article 72

Without prejudice to the provisions of these Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Tribunal to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications of the point or points to which their evidence will be directed. A certified copy of the communication shall also be furnished for transmission to the other party.

Article 72

Sans préjudice des règles concernant la production de documents, chaque partie fait connaître au Greffier, en temps utile avant l'ouverture de la procédure orale, les moyens de preuve qu'elle entend invoquer ou dont elle a l'intention de demander au Tribunal d'obtenir la production. Cette communication contient la liste des noms, prénoms, nationalités, qualités et domiciles des témoins et experts que cette partie désire faire entendre, avec l'indication des points sur lesquels doit porter la déposition. Copie certifiée conforme de cette communication doit être également fournie pour transmission à la partie adverse.

COMMENTARY

The Preparatory Commission prepared a draft article 67[1] which followed the wording of Article 57 of the 1978 Rules of the ICJ. The Members of the Tribunal accepted the draft but deleted the words "in general terms" which had appeared in the second sentence after the word "indications". No doubt the view was taken that an indication must necessarily be cast in general terms without any need to say so explicitly.

Article 72 regulates preparations for hearings. In particular, the article requires each party to give information concerning the evidence which it intends to introduce during the hearing or which it intends to request the Tribunal to obtain. Such evidence may include both evidence relating to matters of fact and testimony from expert witnesses. Article 72 calls for a list of witnesses and experts to be delivered to the Registrar

[1] Preparatory Commission Draft Rules, p. 60.

in sufficient time before the opening of the oral proceedings. This list should include the full names, nationalities, descriptions and places of residence of all witnesses and experts. In addition, the list should indicate the point or matters to which their evidence will be directed. All this information is transmitted to the other party.

Article 72 is complemented by the first sentence of paragraph 1 of article 78 which provides that the parties may call witnesses or experts whose names appear on the list.

One of the features of the work of the Tribunal has been the frequency with which witnesses have been heard. Indeed, in the very first hearing, held in *The M/V "SAIGA" Case*,[2] two witnesses were called by the Applicant, having been previously announced under article 72 of the Rules. This pattern was repeated when the Tribunal came to hear the merits of that dispute[3] when witnesses as to questions of fact were called by both sides. In the *Southern Bluefin Tuna Cases*, an expert scientific witness was called by New Zealand and Australia, information having been communicated in advance under article 72.[4] Experts were heard in the *"Camouco"*,[5] *"Monte Confurco"*,[6] *"Grand Prince"*[7] and *"Land Reclamation"*[8] cases. In the last-mentioned case, following consultations between the President and the agents of the parties, an expert who had been notified to the Tribunal in accordance with article 72 also acted as one of the counsel for the Applicant. The expert was cross-examined on her testimony. As regards the subjects of their expertise, the experts included valuers of ships, a fisheries scientist and environmental scientists. In all cases, information about the witnesses and experts was communicated in advance in accordance with article 72.

In *The "Camouco" Case*, the Applicant included in its application for the prompt release of the vessel and its crew the request that the Respondent should permit the master of the *Camouco* to travel from Réunion, where he was under judicial control, to Hamburg in order to attend the hearing.[9] The request would appear to have related to article 72, both as regards the production of evidence by the Applicant and the obtaining of evidence by the Tribunal at the request of a party. The Tribunal referred

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[2] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 19.

[3] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 19.

[4] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 284.

[5] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 15.

[6] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86, at p. 91.

[7] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 21.

[8] *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10, at pp. 13–14.

[9] *"Camouco", op. cit.* note 5, at p. 17.

the request to the Agent of the Respondent who indicated that the French authorities had imposed the restrictions on the master's movements in order to ensure his appearance before the court in Réunion to answer charges of illegal fishing. In the course of consultations between the President of the Tribunal and the agents of the parties, the Applicant requested the Tribunal to issue an order for the appearance of the master. The Tribunal considered the request and decided not to make an order.[10]

[10] For further details, see Eiriksson at p. 185.

Article 73

1. The Tribunal shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.
2. The Tribunal, after ascertaining the views of the parties, shall determine the order in which the parties will be heard, the method of handling the evidence and examining any witnesses and experts and the number of counsel and advocates to be heard on behalf of each party.

Article 73

1. Le Tribunal détermine si les parties doivent plaider avant ou après la production des moyens de preuve, la discussion de ces moyens étant toujours réservée.
2. Le Tribunal, après s'être renseigné auprès des parties, fixe l'ordre dans lequel les parties sont entendues, la méthode applicable à la présentation des moyens de preuve et à l'audition des témoins et experts ainsi que le nombre des conseils et avocats qui prennent la parole au nom de chaque partie.

COMMENTARY

The Preparatory Commission prepared draft article 68[1] which followed the wording of Article 58 of the Rules of the ICJ, which in turn was based on similar wording in the Rules of the PCIJ.[2] The Members of the Tribunal made two drafting changes to the second paragraph. First, the paragraph was cast in the active rather than the passive voice, and secondly the cross-reference to the rule concerning consultations with the parties (now article 45) was omitted as unnecessary. These changes did not affect the substantive meaning of the article.

Paragraph 1 represents a particular application to the production of evidence of the general rule set out in article 27 of the Statute to the effect that the Tribunal "shall make orders for the conduct" of each case. In the majority of cases before the Tribunal, a feature has been the calling of witnesses and experts to give oral testimony. The question of the timing of oral testimony has first been discussed by the President and the agents of the parties to each case in accordance with article 45 of

[1] Preparatory Commission Draft Rules, p. 60.
[2] For the history, see Guyomar, at p. 384.

the Rules and the Tribunal has then taken its decision on the arrangements for the conduct of the hearing as a whole. Experts and witnesses have been called, typically, at a suitable point during the course of the argument advanced by the party calling them, rather than before or after the argument. A suitable point has often been shortly after the end of the general introductory statement, particularly in cases where witnesses on questions of fact have been called.[3] In other instances, an expert has been called at the point when the question for expert opinion, such as the value of a vessel[4] or the likely effect on the marine environment of a future action,[5] has been reached in counsel's presentation. In all instances, the other party has been accorded the right to cross-examine each witness or expert as well as to comment on the testimony given. Similarly, re-examination by the party calling the witness has been allowed, provided that no attempt has been made to introduce new issues.

Paragraph 2 deals with three separate issues. First is the order in which the parties are to be heard. Usually, there is no dispute between the parties over this issue and any uncertain points are, in practice, resolved during the course of the President's meeting with the agents held pursuant to article 45 of the Rules. The second issue is the method of handling evidence, an issue that is also dealt with in paragraph 1. In practice, all aspects of evidence are discussed by the President and the agents before the Tribunal takes its decision. The third issue is the number of counsel and advocates to be heard on behalf of each party. In order to ensure procedural fairness, the Tribunal affords to each party an equal time for the presentation of its evidence and argument. However, it is for each party to decide how many counsel and advocates to use, as long as they keep within the allotted time, as well as how much of the allotted time to use. There is no objection to the giving of a single address by an agent who is also counsel. Like other courts, the Tribunal benefits from the expertise of agents, counsel and advocates.

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[3] The hearings on the merits of *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*, provide an example: *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at pp. 20–21.

[4] An example is provided by *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 16.

[5] In *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 14, the Applicant called an environmental expert during the course of counsel's address: see also, ITLOS/PV.03/01.

Article 74

The hearing shall, in accordance with article 26, paragraph 2, of the Statute, be public, unless the Tribunal decides otherwise or unless the parties request that the public be not admitted. Such a decision or request may concern either the whole or part of the hearing, and may be made at any time.

Article 74

L'audience, conformément à l'article 26, paragraphe 2, du Statut, est publique à moins que le Tribunal n'en décide autrement ou que les parties ne demandent le huis-clos. Une décision ou une demande en ce sens peut concerner les débats en tout ou en partie et intervenir à tout moment.

COMMENTARY

The Preparatory Commission drafted an article 69 in terms that followed those of Article 59 of the Rules of the ICJ.[1] The text was intended to implement in the Rules the terms of article 26, paragraph 2, of the Statute of the Tribunal, to which the rule refers. The Members of the Tribunal decided to adopt the substance of the proposed text, but to change the word "demand" of the parties to the "request" in the interests of precision. The French text ("demander") remained unchanged.

One of the differences between the Tribunal and arbitration is that proceedings before the Tribunal are in principle held in public, whereas proceedings before an arbitral tribunal are not public unless the parties so agree. The public nature of the process extends to the oral as well as the written proceedings in the sense that the latter are made available by the Registry in accordance with article 67 of the Rules.

The Tribunal has not held any hearings behind closed doors.

[1] Preparatory Commission Draft Rules, p. 60.

Article 75

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings or merely repeat the facts and arguments these contain.
2. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

Article 75

1. Les exposés oraux prononcés au nom de chaque partie sont aussi succincts que possible eu égard à ce qui est nécessaire pour une bonne présentation des thèses à l'audience. A cet effet, ils portent sur les points qui divisent encore les parties, ne reprennent pas tout ce qui est traité dans les pièces de procédure, et ne répètent pas simplement les faits et arguments qui y sont déjà invoqués.
2. A l'issue du dernier exposé présenté par une partie au cours de la procédure orale, l'agent donne lecture des conclusions finales de cette partie sans récapituler l'argumentation. Copie du texte écrit signé par l'agent est communiquée au Tribunal et transmise à la partie adverse.

COMMENTARY

The Preparatory Commission proposed a draft article 70,[1] couched in terms taken directly from Article 60 of the Rules of the ICJ. The Court first adopted its present Article 60 in 1972 in an effort to enable the President to exercise greater control over the proceedings. The Members of the Tribunal did not change the substance of the draft prepared by the Preparatory Commission.

The Tribunal adopted article 75 of its Rules together with article 50 concerning the issue of Guidelines.[2] Paragraph 14 of the Guidelines calls for the submission prior to the opening of the oral proceedings of a note on the issues dividing the parties, a brief outline of its arguments (a type

[1] Preparatory Commission Draft Rules, p. 60.
[2] For the text of the Guidelines, see Annex 4.

of skeleton argument, used in some common law legal systems), and a list of authorities. Paragraph 15 reads: "The oral statements should be as succinct as possible and should not repeat the facts and arguments contained in the written pleadings." Paragraph 16 provides that "[t]he parties should keep within the time allotted for the presentation of their oral statements."

Paragraph 1 is intended to limit the length of the arguments advanced by the parties. It has been described as being "essentially exhortatory in character".[3] Since most parties in international litigation are sovereign States, it has been considered that an international court or tribunal cannot interfere with the manner of presentation of a State's legal case. However, this passive approach is prone to result in lengthy hearings and the resulting delays have attracted criticism.[4] The judicial policy of the Tribunal was set out in article 49 of the Rules to the effect that proceedings shall be conducted without unnecessary delay or expense. This more proactive approach was coupled with paragraph 16 of the Guidelines concerning respect for time-limits. In all cases before the Tribunal, a timetable has been established, after consultation with the parties, according to which the parties have been allocated equal time for the presentation of their evidence, including witnesses, and argument. It is perhaps more the timetable than the content of paragraph 1 which influences the length of speeches.

Paragraph 2 calls for the making by the agent, both orally and in writing, of formal submissions at the end of the oral presentation. The formulation of specific submissions, which may evolve or be refined during the course of the proceedings, helps to clarify the respective positions of the parties. The Registrar is responsible for transmitting a copy of the written submissions of each party to the other party. It is the practice of the Tribunal to include the text of the submissions of the parties in the judgment or order.

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[3] Rosenne, at p. 131.

[4] Notably in "The International Court of Justice: Efficiency of Procedures and Working Methods – Report of the Study Group established by the British Institute of International and Comparative Law", D.W. Bowett et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, 1997, pp. 27 et seq. Judge Higgins argues that the deference due to a sovereign State is reflected in the need for consent before the Court may exercise jurisdiction over it, without any further "added value" in the course of the proceedings: R. Higgins, "Respecting Sovereign States and Running a Tight Courtroom", 50 *ICLQ* (2001), p. 121 at pp. 131 et seq. This view is surely correct. Moreover, where both parties are sovereign States, the principle of the sovereign equality of States applies. Where States have submitted a dispute to a court or tribunal, the latter remains in control of the proceedings whilst they subsist.

Article 76

1. The Tribunal may at any time prior to or during the hearing indicate any points or issues which it would like the parties specially to address, or on which it considers that there has been sufficient argument.
2. The Tribunal may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.
3. Each judge has a similar right to put questions, but before exercising it he should make his intention known to the President of the Tribunal.
4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President of the Tribunal.

Article 76

1. Le Tribunal peut, à tout moment avant ou durant les débats, indiquer les points ou les problèmes qu'il voudrait voir spécialement étudier par les parties ou ceux qu'il considère comme suffisamment discutés.
2. Le Tribunal peut, durant les débats, poser des questions aux agents, conseils et avocats ou leur demander des éclaircissements.
3. La même faculté appartient à chaque juge qui, pour l'exercer, fait connaître son intention au Président du Tribunal.
4. Les agents, conseils et avocats peuvent répondre immédiatement ou dans un délai fixé par le Président du Tribunal.

COMMENTARY

The Preparatory Commission adopted a draft article 71[1] which, subject to one change, followed the terms of Article 61 of the Rules of the ICJ. The change was at the end of paragraph 1 where the term "sufficient argument" was altered to "insufficient argument". The Members of the Tribunal reverted to the formula in the ICJ's rule, considering that the effect of the Preparatory Commission's proposal would have been to render the two tests in paragraph 1 almost indistinguishable.

The Tribunal has regularly exercised the power in paragraph 1 of article 76 to indicate points and issues which it would like the parties to address.[2] This practice results from the holding of the initial deliberations

[1] Preparatory Commission Draft Rules, p. 61.

[2] For example, *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 20, paragraph 19; *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 19; *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at pp. 283–284, paragraph 20.

under article 68 of the Rules and article 3 of the Resolution.[3] The practice also reflects the Tribunal's policy to remain proactive in the conduct of the proceedings. The Tribunal has not had occasion to indicate points on which it considers that there has been sufficient argument.

The Tribunal also holds meetings during the course of hearings, in accordance with the terms of article 4. This has resulted in questions being put by the Tribunal to the agents of the parties in accordance with paragraph 2 of article 76. These questions are conveyed by the President to the agents during his consultations with them or transmitted by the Registrar to them by means of a communication.

In practice, questions have not been posed by individual judges. So far, questions by individual judges have been first discussed in deliberations, before or during the oral proceedings, and have then either been included in some shape or form in the Tribunal's questions or they have been withdrawn by the judge concerned.

When questions have been asked, the parties have responded during the second round of argument or in writing. The President has indicated a time-limit for the submission of written answers. When dealing with urgent applications for prompt release or provisional measures, the time-limit is usually a short one since, after the closure of the oral proceedings, the Tribunal resumes its deliberations almost immediately.

[3] For the text of the Resolution, see Annex 3.

Article 77

1. The Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.
2. The Tribunal may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

Article 77

1. Le Tribunal peut à tout moment inviter les parties à produire les moyens de preuve ou à donner les explications qu'il juge nécessaires à l'éclaircissement de tout aspect des problèmes considérés ou peut lui-même chercher à obtenir d'autres renseignements à cette fin.
2. Le Tribunal peut, s'il y a lieu, faire déposer un témoin ou un expert pendant la procédure.

COMMENTARY

The Preparatory Commission included in its Draft Rules an article 72[1] which followed the wording of Article 62 of the Rules of the ICJ. The Members of the Tribunal saw no reason to modify the draft.

Article 77 sets out several ways in which the Tribunal may adopt an active role and seek information in the form of written or oral evidence. Article 77 supplements article 76 in the following ways. First, the specific power in paragraph 1 of article 77 may be exercised not only prior to and during the hearing but also after the closure of the oral proceedings. Secondly, the Tribunal is empowered to call upon the parties to produce documents and other evidence that the parties have not included in the presentation of their respective cases. This power may be considered to be akin to the procedure in certain national courts known as discovery of documents. Thirdly, the Tribunal may itself seek to acquire information necessary for the elucidation of a matter at issue, a power supplemented by article 81 of the Rules concerning visits to the scene of a case. Finally, the Tribunal is empowered to arrange for the attendance of witnesses and experts of its own choosing to give evidence.

The Tribunal exercised its power under paragraph 1 of article 77 to seek information in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the*

[1] Preparatory Commission Draft Rules, p. 62.

Grenadines v. *Guinea), Provisional Measures* in the following circumstances. Following the closure of the oral proceedings (in which the Applicant had sought *inter alia* an order for the release of the *M/V Saiga* from detention in Conakry) and whilst the Tribunal was deliberating, information was received from the Agent of the Applicant to the effect that the vessel had been released from detention and had reached Dakar. The Tribunal decided to instruct the Registrar to inform the parties that "in accordance with article 77, paragraph 1, of the Rules, the Tribunal was ready to receive, not later than 9 March 1998, observations which they might wish to provide regarding this release" (paragraph 37 of the Order).[2] Relevant information was received from the parties within the deadline and note was taken of this information.[3]

The question of seeking information arose also in *The "Grand Prince" Case*.[4] Paragraph 92 of the judgment in that case reads:

> The Tribunal considered the question whether there was any need to seek further clarification in the matter of registration of the *Grand Prince* in Belize. The documents before the Tribunal bearing on registration of the vessel and, as a consequence, on its nationality – the provisional patent of navigation, the note verbale of the Ministry of Foreign Affairs, the IMMARBE communications and other documents – are not in dispute. The issue concerns the legal effects to be attached to these documents for the purposes of the present proceedings. In view of this, the Tribunal decided that it should deal with the question in the light of the material placed before it.

A minority of nine judges referred to article 77 of the Rules in their joint dissenting opinion.[5]

In *The "Volga" Case*,[6] an application for the prompt release from detention of the fishing vessel *Volga* and three members of the crew, information was received after the closure of the oral proceedings and during the Tribunal's deliberations to the effect that the three men had been permitted to leave Australia following a change in the conditions of their bail. In terms of article 292 of the Convention, the men were no longer subject to a form of detention in Australia. Both parties were invited by the Tribunal to submit their observations on this information by a specified date. The Agent of Australia confirmed that the three men had left Australia and this was communicated to the Agent for the Respondent.[7]

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[2] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 at p. 38.

[3] *Ibid.*

[4] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17.

[5] *Ibid.*, Dissenting Opinion of Judges Caminos, Marotta Rangel, Yankov, Yamamoto, Akl, Vukas, Marsit, Eiriksson and Jesus, p. 66 at p. 69.

[6] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10.

[7] *Ibid.*, at pp. 24–26.

The Tribunal has not yet taken a decision in a case to exercise its powers under article 77 to arrange for the giving of oral evidence. (Instead, the Tribunal has sought explanations by indicating under article 76 points that it would like the parties to address.)

The power set out in paragraph 2 of article 77 to "arrange for" the attendance of a witness or expert to give evidence does not amount to a power to compel attendance. In other words, there is no equivalent of the *sub poena*, as known in many common law jurisdictions. The exercise of the power may have financial implications: article 83 of the Rules is relevant in this connection.

Article 78

1. The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to article 72. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall make a request therefore to the Tribunal and inform the other party, and shall supply the information required by article 72. The witness or expert may be called either if the other party raises no objection or, in the event of objection, if the Tribunal so authorizes after hearing the other party.
2. The Tribunal may, at the request of a party or *proprio motu*, decide that a witness or expert be examined otherwise than before the Tribunal itself. The President of the Tribunal shall take the necessary steps to implement such a decision.

Article 78

1. Les parties peuvent faire entendre tous les témoins et experts qui figurent sur la liste communiquée au Tribunal conformément à l'article 72. Si, à un moment quelconque de la procédure orale, l'une des parties veut faire entendre un témoin ou expert dont le nom ne figure pas sur cette liste, elle présente la demande au Tribunal et en informe la partie adverse en fournissant les renseignements prescrits par l'article 72. Le témoin ou expert peut être entendu si la partie adverse ne s'y oppose pas ou, en cas d'objection, si le Tribunal l'autorise, après avoir entendu la partie adverse.
2. Le Tribunal peut, à la demande d'une partie ou d'office, décider que l'audition d'un témoin ou expert sera effectuée en dehors du Tribunal. Le Président du Tribunal prend les mesures nécessaires afin de donner effet à une telle décision.

COMMENTARY

The Preparatory Commission included in its Draft Rules an article 73 based upon the terms of Article 63 of the Rules of the ICJ, a provision added to the Rules in 1978. The Members of the Tribunal accepted the Preparatory Commission's proposed wording without making any change.

Paragraph 1 deals with the calling of witnesses and experts to give oral evidence before the Tribunal. In principle, a party may call any person whose name has been communicated to the Tribunal in accordance with article 72 of the Rules. At the same time, the Tribunal retains its general power to control the conduct of proceedings and in exceptional cir-

cumstances a witness on the list may not be called to give evidence.[1] Thus, in *The M/V "SAIGA" Case*, the Applicant communicated three names, including that of a person who, it was proposed, would give evidence about another incident involving a vessel off the coasts of Guinea similar to that involving the *M/V Saiga*. After deliberating, the Tribunal decided that this witness should not be called since his evidence was not relevant to the actual incident that had given rise to the case.[2]

Paragraph 1 also regulates the situation where a party wishes to call a witness whose name has not been communicated in advance. Upon making the request, the party is to give the information specified in article 72. The other party expresses its view upon the request. The Tribunal then decides whether or not to accede to the request. This situation has not arisen so far in the Tribunal's practice.

Paragraph 2 allows for the possibility of the Tribunal deciding to hear a witness or expert who is not present in the courtroom. This possibility may arise from the request of a party or at the instance of the Tribunal. The decision could be implemented in several ways. The decision on the means of implementation is for the President to take. For example, the witness or expert could be examined by means of a two-way video link, using the courtroom's modern technology. This would allow the Tribunal and counsel to hear the testimony of the witness or expert in very much the same way as if the person were present in the courtroom. So far, the Tribunal has not had occasion to apply article 78, paragraph 2, in practice.

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[1] Eiriksson, p. 183.

[2] *ITLOS Pleadings, Minutes and Documents 1997, M/V "SAIGA" (Saint Vincent and the Grenadines v. Guinea), Prompt Release*, p. 103 (Minutes of the public sitting held on 27 November 1997).

Article 79

Unless on account of special circumstances the Tribunal decides on a different form of words,

(a) every witness shall make the following solemn declaration before giving any evidence:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";

(b) every expert shall make the following solemn declaration before making any statement:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief".

Article 79

Sauf au cas où, tenant compte de circonstances spéciales, le Tribunal choisirait une formule différente,

a) tout témoin fait, avant de déposer, la déclaration solennelle suivante :

« Je déclare solennellement, en tout honneur et en toute conscience, que je dirai la vérité, toute la vérité et rien que la vérité » ;

b) tout expert fait, avant de présenter son exposé, la déclaration solennelle suivante :

« Je déclare solennellement, en tout honneur et en toute conscience, que je dirai la vérité, toute la vérité et rien que la vérité et que mon exposé correspondra à ma conviction sincère ».

COMMENTARY

Article 79 is based precisely upon the wording of Article 64 of the Rules of the ICJ.

The Tribunal has heard many witnesses and experts. Before giving their evidence, the witnesses have made the solemn declaration set out in subparagraph (a) and the experts that in subparagraph (b). On 25 September 2003, during the oral proceedings in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor*,[1] a Professor of

[1] *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 14.

Geomorphology at a University in Malaysia made a statement as a member of the delegation of Malaysia and then, after having made the solemn declaration in subparagraph (b) of article 79, was examined as an expert by counsel for Singapore. This sequence of events was agreed following consultations between the President and the agents of the parties.

The Tribunal has not encountered circumstances that have caused it to vary the standard forms of words. The formula for witnesses and experts is familiar in common law jurisdictions.

Article 80

Witnesses and experts shall, under the control of the President of the Tribunal, be examined by the agents, counsel or advocates of the parties starting with the party calling the witness or expert. Questions may be put to them by the President of the Tribunal and by the judges. Before testifying, witnesses and experts other than those appointed under article 289 of the Convention shall remain out of court.

Article 80

Les témoins et experts, sous l'autorité du Président du Tribunal, sont interrogés par les agents, conseils et avocats des parties en commençant par la partie qui a demandé à entendre le témoin ou l'expert. Des questions peuvent leur être posées par le Président du Tribunal et les juges. Avant de déposer, les témoins et les experts autres que ceux désignés conformément à l'article 289 de la Convention doivent demeurer hors de la salle d'audience.

COMMENTARY

The Preparatory Commission took Article 65 of the Rules of the ICJ as the basis for considering the procedures for the giving of evidence and proposed two purely drafting changes in what became draft article 75.[1] First, in the opening sentence the phrase "under the control of the President" was moved from the end to the middle of the sentence. Second, in the final sentence the term "witnesses other than experts" was used. The Members of the Tribunal accepted the main lines of the proposal as article 80 of the Rules, but made further changes to the same two sentences. At the end of the first sentence, the phrase "starting with the party calling the witness or expert" was added. This change corresponds with the practice in the ICJ. In the final sentence, the rule laid down was made applicable not only to witnesses but additionally to experts, thus departing from the practice in the ICJ. At the same time, the reference to "experts" was qualified by the insertion of the phrase "other than those appointed under article 289 of the Convention".

Article 80 lays down the rules for the giving of oral evidence before the Tribunal. The first sentence provides for the examination of witnesses and experts. This examination is under the control of the President. In

[1] Preparatory Commission Draft Rules, p. 62.

the practice of the Tribunal, as with other international courts, the party calling the witness or expert examines the person first, followed by the other party, in what is often known as cross-examination, and finally by the first party in re-examination. The examination, cross-examination and re-examination of witnesses by two counsel were permitted in several instances in *The M/V "SAIGA" (No. 2) Case*.[2] A request by the Agent of Guinea in the same proceedings to cross-examine a witness for a second time after the end of his re-examination was refused by the President, who ruled that further cross-examination was not permitted except where new matters had been introduced in re-examination.[3] A feature in this case was the submission of signed statements by the witnesses: these statements were in the nature of proofs of evidence.[4]

The normal order for the examination of a witness can be varied, for example, if the President decides to ask questions first. This course would be particularly appropriate in the case of a witness or expert called by the Tribunal in accordance with article 77 of the Rules. A second example is provided by the *Southern Bluefin Tuna Cases*: examination on the *voir dire*.[5] Under this procedure, following consultations between the President and the parties, the first examination of an expert called by New Zealand and Australia was conducted by a member of the team of counsel for the Respondent. This initial examination was directed towards the limited question of the qualifications and independence of the expert. It was followed by the examination-in-chief of the expert by counsel for Australia and then his cross-examination by the same member of the team of counsel for the Respondent. The time taken to examine the expert on the *voir dire* counted against the time allocated to the Respondent for the presentation of its case.[6]

The second sentence of article 80 empowers not only the President but also the judges to put questions to witnesses and experts. In the practice of the Tribunal, only the President has exercised this power to date. This can be explained by two principal factors. First, the Tribunal holds regular deliberations before and during the hearing and so individual judges have ample opportunity to propose questions that, if acceptable to colleagues, the President can then pose on behalf of the Tribunal. Secondly, the Tribunal is a large judicial body and its Members are well aware of

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[2] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at pp. 20–21.

[3] *Ibid.*, p. 21.

[4] *Ibid.*

[5] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 284.

[6] *ITLOS Pleadings, Minutes and Documents 1999, Vol. 4, Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures*, pp. 386 et seq. (minutes of the public sitting held on 18 August 1999, 10.00 a.m.). Further details are set out in Eiriksson, pp. 185–186.

the need to exercise restraint. Nonetheless, the power of each judge to ask questions remains.

The final sentence of article 80 deals with the conduct of witnesses and experts. They are to remain outside the courtroom until they are called to give evidence. This is to avoid any risk of a witness adjusting his or her testimony in the light of what has been said in the courtroom before being called to give evidence. After the examination of a witness has been completed, there is no longer a reason to require the witness to leave the courtroom. The practice of the Tribunal in applying this rule to experts as well as witnesses differs from that of the ICJ. This difference is explained by the consideration that it is not always easy to distinguish an expert from a witness.

The last sentence makes clear that the reference to "experts" does not include experts appointed under article 289 of the Convention.[7]

[7] Unnecessarily in the view of Eiriksson, p. 184.

Article 81

The Tribunal may at any time decide, at the request of a party or *proprio motu*, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with article 52.

Article 81

Le Tribunal peut à tout moment décider, à la demande d'une partie ou d'office, d'exercer ses fonctions relatives à l'établissement des preuves sur les lieux auxquels l'affaire se rapporte, dans des conditions qu'il détermine après s'être renseigné auprès des parties. Les dispositions nécessaires sont prises conformément à l'article 52.

COMMENTARY

Article 1, paragraph 3, of the Tribunal's Statute provides that the Tribunal "may sit and exercise its functions" away from its seat "whenever it considers this desirable". In order to implement this power, the Preparatory Commission proposed a draft article 76[1] which followed the terms of Article 66 of the Rules of the ICJ (a provision added in 1978). The Members of the Tribunal adopted the proposal as article 81 with only a minor drafting change – placing the reference to the request of a party before that to the initiative of the Tribunal.

Article 81, which complements article 70 of the Rules, provides for the possibility of the Tribunal paying a visit to the scene of a case as a means of obtaining first-hand evidence. The locality will normally lie within the jurisdiction of one or both parties.[2] A decision has to be taken by the Tribunal, either at the request of a party or both parties or at its own initiative, in a suitable case, for example where a geographical setting or a continuing state of affairs can be viewed by the members of the bench. Maritime boundary cases and marine disputes with environmental aspects may fall within those conditions. A decision to pay a visit in a particular case can be taken at any stage, but the most convenient time will often

[1] Preparatory Commission Draft Rules, p. 62.

[2] The example of a maritime boundary dispute is given in Eiriksson, p. 187. In *The Grisbadarna Case (Norway* v. *Sweden)*, the arbitrators paid a visit to the disputed territorial waters of Norway and Sweden before reaching their decision (J.B. Scott, *Hague Court Reports* (1916), p. 121 at p. 125; *Reports of International Arbitral Awards*, Vol. XI, p. 147 at p. 157).

be found to lie between the closure of the written pleadings and the opening of the oral proceedings.

Visits to the scene are rare in international practice[3] and the Tribunal has not had occasion to date to exercise this power. Arrangements for visits are made in accordance with article 52 of the Rules. In practice, the Registrar makes the arrangements in consultation with the agents and the Governments concerned. The arrangements should take account of the need for procedural fairness as between the parties, as well as for the safety and status of the members of the bench.[4]

The decision to pay a visit would have budgetary implications.

[3] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1361.

[4] Article 10 of the Statute states that "[T]he members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities." Article 13, paragraph 1, of the Agreement on the Privileges and Immunities of the Tribunal provides that "Members of the Tribunal shall, when engaged on the business of the Tribunal, enjoy the privileges, immunities, facilities and prerogatives accorded to heads of diplomatic missions . . .".

Article 82

1. If the Tribunal considers it necessary to arrange for an inquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the inquiry or expert opinion, stating the number and mode of appointment of the persons to hold the inquiry or of the experts and laying down the procedure to be followed. Where appropriate, the Tribunal shall require persons appointed to carry out an inquiry, or to give an expert opinion, to make a solemn declaration.
2. Every report or record of an inquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

Article 82

1. Toute décision du Tribunal visant à faire procéder à une enquête ou à une expertise est prise, les parties entendues, par une ordonnance, qui précise l'objet de l'enquête ou de l'expertise, fixe le nombre et le mode de désignation des enquêteurs ou experts et indique les formalités à observer. Le cas échéant, le Tribunal invite les enquêteurs ou experts à faire une déclaration solennelle.
2. Tout rapport ou procès-verbal concernant l'enquête et tout rapport d'expert est communiqué aux parties auxquelles la possibilité est offerte de présenter des observations.

COMMENTARY

Article 82 is based on the terms of Article 67 of the Rules of the ICJ.

Article 82 provides for the possibility of the Tribunal obtaining information by means of an inquiry or an expert opinion. If the Tribunal is minded to arrange for an inquiry or expert opinion, it hears the views of the parties before making an order. The latter defines the terms of reference, the mode of appointment of the persons concerned and the procedure to be followed. Where appropriate, which will often be the case, the persons appointed may be required to make a solemn declaration. The report or record of the inquiry team or the opinion of the expert(s) is communicated to parties who are given the opportunity to comment upon it.[1]

[1] This rule is consistent with the modern procedure in many common law jurisdictions where, for example, nautical assessors or master mariners sit with the judges in cases about collisions between ships; see the decision of the English Court of Appeal in the case of *Owners*

The Tribunal has not had occasion to apply this article to date.[2] Part of the explanation is that the parties in fact-specific cases, such as *The M/V "SAIGA" (No. 2) Case*,[3] have themselves called many witnesses.

of Bow Spring v. *Owners of Manzanillo II* on 28 July 2004 that the advice of the master mariners is to be disclosed to the parties who are then afforded an opportunity to make submissions as to whether the judge should accept the advice. The decision is reported at [2004] *England and Wales Court of Appeal (Civil Division)* 1007; [2005] 1 *The Weekly Law Report* 144.

[2] The ICJ exercised the power in *The Corfu Channel Case* by appointing a Committee of Experts, see *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 4 at p. 9.

[3] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10.

Article 83

Witnesses and experts who appear at the instance of the Tribunal under article 77, paragraph 2, and persons appointed by the Tribunal under article 82, paragraph 1, to carry out an inquiry or to give an expert opinion, shall, where appropriate, be paid out of the funds of the Tribunal.

Article 83

Les sommes à verser aux témoins et experts qui se présentent sur l'initiative du Tribunal conformément à l'article 77, paragraphe 2, et aux enquêteurs et experts désignés conformément à l'article 82, paragraphe 1, sont prélevées sur les fonds du Tribunal s'il y a lieu.

COMMENTARY

Article 83 is based on the terms of Article 68 of the Rules of the ICJ.

Article 83 provides for the payment by the Tribunal, in appropriate circumstances, of witnesses and experts who have appeared at the instance of the Tribunal in accordance with article 77, paragraph 2, or who have been appointed by the Tribunal to carry out an inquiry or give an expert opinion in accordance with article 82, paragraph 1.

The funds of the Tribunal are provided by the States Parties to the Convention and administered by the Registrar in accordance with the Financial Regulations and the Financial Rules of the Tribunal.

Article 84

1. The Tribunal may, at any time prior to the closure of the oral proceedings, at the request of a party or *proprio motu*, request an appropriate intergovernmental organization to furnish information relevant to a case before it. The Tribunal, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing and fix the time-limits for its presentation.
2. When such an intergovernmental organization sees fit to furnish, on its own initiative, information relevant to a case before the Tribunal, it shall do so in the form of a memorial to be filed in the Registry before the closure of the written proceedings. The Tribunal may require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also authorize the parties to comment, either orally or in writing, on the information thus furnished.
3. Whenever the construction of the constituent instrument of such an intergovernmental organization or of an international convention adopted thereunder is in question in a case before the Tribunal, the Registrar shall, on the instructions of the Tribunal, or of the President if the Tribunal is not sitting, so notify the intergovernmental organization concerned and shall communicate to it copies of all the written proceedings. The Tribunal, or the President if the Tribunal is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the intergovernmental organization concerned, fix a time-limit within which the organization may submit to the Tribunal its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.
4. In the foregoing paragraphs, "intergovernmental organization" means an intergovernmental organization other than any organization which is a party or intervenes in the case concerned.

Article 84

1. A tout moment avant la clôture de la procédure orale, le Tribunal peut, à la demande d'une partie ou d'office, demander à une organisation intergouvernementale appropriée des renseignements relatifs à une affaire portée devant lui. Le Tribunal décide, après avoir consulté le plus haut fonctionnaire de l'organisation intéressée, si ces renseignements doivent lui être présentés oralement ou par écrit et dans quels délais.

2. Lorsqu'une telle organisation intergouvernementale juge à propos de fournir de sa propre initiative des renseignements relatifs à une affaire portée devant le Tribunal, elle doit le faire par un mémoire déposé au Greffe avant la clôture de la procédure écrite. Le Tribunal a la faculté de faire compléter ces renseignements oralement ou par écrit sur la base des demandes qu'il jugerait à propos d'énoncer, ainsi que d'autoriser les parties à présenter des observations orales ou écrites au sujet des renseignements ainsi fournis.
3. Lorsque l'interprétation de l'acte constitutif d'une telle organisation intergouvernementale, ou d'une convention internationale adoptée en vertu de cet acte est mise en cause dans une affaire soumise au Tribunal, le Greffier, sur les instructions du Tribunal ou, si celui-ci ne siège pas, du Président, en avise cette organisation et lui communique toute la procédure écrite. Le Tribunal ou, s'il ne siège pas, le Président peut fixer, à compter du jour où le Greffier a communiqué la procédure écrite et après avoir consulté le plus haut fonctionnaire de l'organisation intergouvernementale intéressée, un délai dans lequel l'organisation pourra présenter au Tribunal des observations écrites. Ces observations sont communiquées aux parties et peuvent être débattues par elles et par le représentant de ladite organisation au cours de la procédure orale.
4. Dans les paragraphes précédents, l'expression « organisation intergouvernementale » s'entend d'une organisation intergouvernementale autre qu'une organisation qui est partie ou qui intervient dans l'affaire en cause.

COMMENTARY

This provision corresponds to Article 34, paragraphs 2 and 3, of the Statute of the ICJ and Article 69[1] of the Rules of the ICJ. The rule in Article 69 was adopted in 1945 to allow for a limited participation of international organizations in the proceedings before the ICJ, barring any full *locus standi*. For many years, it appeared that Articles 34 and 69, referred to above, would remain dead letters. Amendments to the Rules of the ICJ in 1972 and 1978 introduced a certain flexibility in the drafting, providing for consultation between the Court and the interested international organization and allowing a certain discretion in the implementation of the provision.

[1] On Article 69 of the Rules of the ICJ, see Rosenne, pp. 142–144; S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. II, 1997, pp. 638–655; Guyomar, pp. 443–447. See also *infra* the commentary on article 133 of the Rules of the Tribunal on requests to furnish information addressed to international organizations in advisory proceedings.

Since 1978, the provision has been invoked several times before the ICJ. In particular, the Court notified the Secretary-General of the proceedings in the *Application of the Genocide Convention* case,[2] where there was no specific issue relating to interpretation of the Charter of the United Nations, thus extending the interpretation of Article 34 of the Statute and inviting the United Nations to comment as an *amicus curiae*.

The Tribunal has not yet had an opportunity to apply article 84 of its Rules. Urgent proceedings do not often have an adequate framework for such collaboration with international organizations. But one may well imagine in the future the Tribunal calling upon the expertise of the International Maritime Organization, the Commission for the Conservation of Antarctic Marine Living Resources, or the like when considering the merits of a case.

Paragraph 4 makes it clear that article 84 does not apply to an intergovernmental organization which is a party to, or intervenes in, the case concerned.

Apart from article 84, one may envisage other forms of contributions by non-State entities, including international organizations referred to in article 84 in contentious proceedings, short of intervention provided for by articles 31 and 32 of the Statute.[3] The Tribunal may probably deal with such a situation along the lines followed by the ICJ.

Participation of non-governmental organizations (NGOs) in judicial proceedings is quite another matter. The Statute and the Rules of the Tribunal are silent on the issue and seem to preclude any *locus standi* in contentious proceedings. NGOs could only appear as experts or witnesses called by a party to the bar or by statements included in the pleadings of a party.[4]

But this traditional approach has been criticized.[5] The law of the sea deals with issues calling for considerable expertise in matters such as fisheries, the environment and the like. NGOs have, on occasion, informally communicated their views and information to judges or the Tribunal on such issues by ordinary mail or e-mail. In such a field, "[th]ere is furthermore a growing tendency to confer on NGOs rights to act in inter-

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[2] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993*, p. 3 at p. 9.

[3] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1372–1375 on the submission of evidence by a third State, citing *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 4 and *Trial of Pakistani Prisoners of War, Interim Protection, Order of 13 July 1973, I.C.J. Reports 1973*, p. 328.

[4] S. Rosenne, *op. cit.* note 1, pp. 653–654.

[5] See, e.g., P. Sands, "International Law, the Practitioner and Non-State Actors" in C. Wickremasinghe (ed.), *The International Lawyer as Practitioner*, 2000, pp. 103–124; C. Tomuschat, "International Law: Ensuring the Survival of Mankind on the Eve of a New Century – General Course on Public International Law", *Recueil des Cours – Collected Courses of the Hague Academy of International Law*, Vol. 281, 1999, pp. 157–159. On this issue see more generally H. Ascensio, "L'*amicus curiae* devant les juridictions internationales", 105 *Revue Générale de Droit International Public* 2001, pp. 897–930.

national proceedings as attorneys for the protection of the common good."[6] The Tribunal may be called upon in future to deal with presentation of *amicus curiae* briefs, not involving the conferring of any procedural rights. The ICJ has, in its Practice Direction XII, adopted in July 2004, accepted statements or documents submitted by NGOs in advisory procedures.[7]

[6] Tomuschat, *op. cit.* note 5, p. 157.

[7] See ICJ *Practice Directions* <http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasic_practice_directions_20040730_I-XII.htm.> at 18 May 2005 (last updated 30 July 2004).

Article 85

1. Unless the Tribunal decides otherwise, all speeches and statements made and evidence given at the hearing in one of the official languages of the Tribunal shall be interpreted into the other official language. If they are made or given in any other language, they shall be interpreted into the two official languages of the Tribunal.
2. Whenever a language other than an official language is used, the necessary arrangements for interpretation into one of the official languages shall be made by the party concerned. The Registrar shall make arrangements for the verification of the interpretation provided by a party at the expense of that party. In the case of witnesses or experts who appear at the instance of the Tribunal, arrangements for interpretation shall be made by the Registrar.
3. A party on behalf of which speeches or statements are to be made, or evidence is to be given, in a language which is not one of the official languages of the Tribunal shall so notify the Registrar in sufficient time for the necessary arrangements to be made, including verification.
4. Before entering upon their duties in the case, interpreters provided by a party shall make the following solemn declaration:

   "I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete".

Article 85

1. Sauf décision contraire du Tribunal, toutes les plaidoiries, déclarations ou dépositions faites en audience dans une des langues officielles du Tribunal sont interprétées dans l'autre langue officielle. Si elles sont faites dans une autre langue, elles sont interprétées dans les deux langues officielles du Tribunal.
2. Lorsqu'une langue autre qu'une langue officielle est employée, il incombe à la partie intéressée de prendre toutes dispositions pour assurer l'interprétation dans l'une des langues officielles. Le Greffier prend les dispositions voulues pour contrôler l'interprétation assurée par une partie, aux frais de celle-ci. Dans le cas de témoins ou d'experts qui se présentent sur l'initiative du Tribunal, l'interprétation est assurée par les soins du Greffe.
3. Si une langue autre qu'une des langues officielles du Tribunal doit être utilisée pour les plaidoiries, déclarations ou dépositions d'une partie, celle-ci en avise le Greffier à temps pour lui permettre de prendre toutes dispositions nécessaires, y compris pour le contrôle.
4. Avant de prendre leurs fonctions dans une affaire, les interprètes fournis par une partie font la déclaration solennelle suivante :

« Je déclare solennellement, en tout honneur et en toute conscience, que mon interprétation sera fidèle et complète ».

COMMENTARY

Article 85 corresponds to Article 70 of the Rules of the ICJ with no change in substance.[1] The Tribunal provides facilities for simultaneous interpretation. By application of paragraphs 1 to 3, witnesses and experts have been called by parties and have given evidence in Russian (*The "Juno Trader" Case*[2] and *The M/V "SAIGA" (No. 2) Case*[3]) and Wolof (*The M/V "SAIGA" (No. 2) Case*), as well as in Spanish (*The "Camouco" Case*,[4] *The "Monte Confurco" Case*,[5] and *The "Grand Prince" Case*[6]). In these instances, arrangements were made with the Registrar for the statements made in Russian, Spanish and Wolof to be interpreted into the official languages of the Tribunal.

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[1] On Article 70 of the Rules of the ICJ, see Rosenne, p. 145; S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1340–1342; Guyomar, pp. 447–455.

[2] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 26.

[3] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 20.

[4] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 16.

[5] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 80 at pp. 92–93.

[6] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 10 at pp. 23–24.

Article 86

1. Minutes shall be made of each hearing. For this purpose, a verbatim record shall be made by the Registrar of every hearing, in the official language or languages of the Tribunal used during the hearing. When another language is used, the verbatim record shall be prepared in one of the official languages of the Tribunal.
2. In order to prepare such a verbatim record, the party on behalf of which speeches or statements are made in a language which is not one of the official languages shall supply to the Registry in advance a text thereof in one of the official languages.
3. The transcript of the verbatim record shall be preceded by the names of the judges present, and those of the agents, counsel and advocates of the parties.
4. Copies of the transcript shall be circulated to the judges sitting in the case and to the parties. The latter may, under the supervision of the Tribunal, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the meaning and scope thereof. The judges may likewise make corrections in the transcript of anything they have said.
5. Witnesses and experts shall be shown that part of the transcript which relates to the evidence given or the statements made by them, and may correct it in like manner as the parties.
6. One certified copy of the corrected transcript, signed by the President of the Tribunal and the Registrar, shall constitute the authentic minutes of the hearing. The minutes of public hearings shall be printed and published by the Tribunal.

Article 86

1. Un procès-verbal de chaque audience est établi. A cette fin, le Greffier établit un compte rendu intégral de chaque audience dans la langue ou les langues officielles du Tribunal utilisées durant l'audience. Si une autre langue est utilisée, le compte rendu est établi dans l'une des langues officielles du Tribunal.
2. Pour établir ce compte rendu, la partie, au nom de laquelle des plaidoiries ou déclarations sont faites dans une langue autre qu'une des langues officielles du Tribunal, en fournit d'avance un texte au Greffe dans l'une des langues officielles.
3. Doivent précéder le texte du compte rendu les noms des juges présents et ceux des agents, conseils et avocats des parties.
4. Copie du compte rendu ainsi établi est adressée aux juges siégeant en l'affaire ainsi qu'aux parties. Celles-ci peuvent, sous le contrôle du Tribunal,

corriger le compte rendu de leurs plaidoiries ou déclarations, sans pouvoir toutefois en modifier le sens et la portée. Les juges peuvent de même corriger le compte rendu de ce qu'ils ont dit.

5. Les témoins et experts reçoivent communication du compte rendu de leur déposition ou exposé et peuvent le corriger de la même manière que les parties.
6. Une copie certifiée conforme du compte rendu corrigé, signée par le Président du Tribunal et le Greffier, constitue le procès-verbal authentique de l'audience. Le procès-verbal des audiences publiques est imprimé et publié par le Tribunal.

COMMENTARY

Article 86 corresponds to Article 71 of the Rules of the ICJ, with no change in substance.[1] Corrections to the transcript of verbatim records by the parties have not given rise to any particular difficulty. Verbatim records are published on the Tribunal's website. They do not, however, have official status. After correction and editorial review, the verbatim records constitute the minutes of public hearings which are signed by the President and the Registrar. The minutes are recorded in the original language of the statements made. Whenever a statement is made in a language other than one of the official languages of the Tribunal, the statement is recorded in one of the official languages of the Tribunal. The minutes of public hearings are published in the volume "Pleadings, Minutes of Public Sittings and Documents" with some delay,[2] as the preparation for publication is quite a difficult and lengthy task.

[1] On Article 71 of the Rules of the ICJ, see Rosenne, p. 146; S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1337–1339; Guyomar, pp. 456–466.

[2] *ITLOS Pleadings, Minutes of Public Sittings and Documents 1997, Vol. 1* and *ITLOS Pleadings, Minutes of Public Sittings and Documents 1998, Vol. 2* were published in 2002, while *ITLOS Pleadings, Minutes of Public Sittings and Document 1999, Vol. 4* was published in 2005.

Article 87

Any written reply by a party to a question put under article 76 or any evidence or explanation supplied by a party under article 77 received by the Tribunal after the closure of the oral proceedings shall be communicated to the other party, which shall be given the opportunity of commenting upon it. The oral proceedings may be reopened for that purpose, if necessary.

Article 87

Toute réponse écrite faite par une partie à une question posée conformément à l'article 76 ou tous moyens de preuve ou explications fournis par une partie conformément à l'article 77 et reçus par le Tribunal après la clôture de la procédure orale sont communiqués à la partie adverse, à qui la possibilité est offerte de présenter des observations. S'il y a lieu, la procédure orale peut être rouverte à cette fin.

COMMENTARY

Article 87 corresponds to Article 72 of the Rules of the ICJ, with no change in substance.[1] It has not given rise to any particular difficulty. In urgent proceedings, such as prompt release proceedings or provisional measures, it is inevitable that certain arguments or pieces of evidence appear late in the day and be submitted after closure of the oral proceedings. In *The "Volga" Case*, the oral proceedings were declared closed on 13 December 2002. The Agent of Australia informed the Tribunal by facsimile on 17 December 2002 of a decision of the Supreme Court of Western Australia upholding the appeal of the three members of the crew as to their bail conditions. The Registrar, upon instructions of the Tribunal, asked the Agent of Australia on 18 December 2002 to provide further information on the status of the crew. The information was provided by facsimile on 19 and 21 December 2002 and communicated to the other party. The Tribunal delivered its judgment on 23 December 2002.[2]

[1] On Article 72 of the Rules of the ICJ, see Rosenne, p. 147; Guyomar, pp. 466–467.

[2] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at pp. 24–26.

Article 88

1. When, subject to the control of the Tribunal, the agents, counsel and advocates have completed their presentation of the case, the President of the Tribunal shall declare the oral proceedings closed. The agents shall remain at the disposal of the Tribunal.
2. The Tribunal shall withdraw to consider the judgment.

Article 88

1. Quand les agents, conseils et avocats ont fait valoir, sous le contrôle du Tribunal, tous les moyens qu'ils jugent utiles, le Président du Tribunal prononce la clôture de la procédure orale. Les agents restent à la disposition du Tribunal.
2. Le Tribunal se retire en chambre du conseil pour délibérer.

COMMENTARY

Article 88 corresponds to Article 54, paragraphs 1 and 2, of the Statute of the ICJ.[1]

At the end of oral proceedings, the President traditionally asks the agents to remain at the disposal of the Tribunal to provide the Tribunal with any further assistance that may be needed and also declares that the oral proceedings are closed. Such a request does not require the agents to remain in Hamburg or Berlin. It nonetheless allows the President to stay in contact with the agents after formal closure of the proceedings. This is particularly helpful in the case of follow-up of provisional measures (article 95 of the Rules).[2]

Formal closure of the oral proceedings is important, in particular in view of questions relating to admissibility of documents and evidence. The rule is that documents should be submitted before the closure of the written proceedings (article 71 of the Rules) and oral evidence during the oral proceedings (articles 72 to 88 of the Rules). However, the Tribunal may allow production of a document after the closure of the written proceedings if it "considers production necessary" (article 71) and may "at any time" call upon the parties to produce such evidence that it may consider to be necessary for the elucidation of the case (article 77 of the Rules).[3]

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[1] On Article 54, paragraph 1, of the Statute of the ICJ, see S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1378–1379.

[2] See *infra* the commentary on article 95 of the Rules.

[3] See *supra* the commentary on articles 71 and 77 of the Rules.

Section C. Incidental Proceedings

Subsection 1. Provisional Measures

The Rules concerning provisional measures are based upon article 290 of the Convention and article 25 of the Statute.

Most systems of international dispute settlement confer on the respective court or tribunal the competence to indicate or prescribe provisional measures. This is true in respect of the ICJ, the Court of Justice of the European Communities, the Inter-American Court of Human Rights and the European Court of Human Rights. According to article 25, paragraph 1, of the Statute, provisional measures may also be prescribed by the Seabed Disputes Chamber, or by the Chamber of Summary Procedure under article 25, paragraph 2, of the Statute. Although not expressly mentioned in the Statute, chambers of the Tribunal dealing with a particular category of disputes (article 15, paragraph 1, of the Statute) or a particular dispute as requested by the parties to that dispute (article 15, paragraph 2, of the Statute) may also prescribe provisional measures, since article 107 of the Rules contains a general provision according to which the Rules applicable in contentious cases apply to proceedings before chambers.

Provisions concerning provisional measures are contained in article 31 of the 1995 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*. These provisions constitute a *lex specialis vis-à-vis* article 290 of the Convention.

As established in international jurisprudence, the power of international courts and tribunals to prescribe provisional measures is a discretionary and exceptional one. This is reflected in article 290, paragraph 1, of the Convention which states that a court or tribunal "may prescribe any provisional measures which it considers appropriate under the circumstances . . ."

Generally speaking, in international adjudication, provisional measures seek to safeguard the rights of parties to a dispute or to prevent irreparable damage pending the final decision. This broadly defined objective has been further specified in international jurisprudence, particularly in orders and judgments of the ICJ.[1] On the basis of existing international jurisprudence, provisional measures are meant to preserve the respective rights

[1] See, e.g., J. Sztucki, *Interim Measures in the Hague Court*, 1983; K. Oellers-Frahm, *Die einstweilige Anordnung in der internationalen Gerichtsbarkeit*, 1975; H.W.A. Thirlway, "The Indication of Provisional Measures by the International Court of Justice", in: R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994, pp. 1 et seq.; F.G. Jacobs, "Interim Measures in the Law and Practice of the Court of Justice of the European Communities" in: *ibid.*, pp. 37 et seq.; T. Buergenthal, "Interim Measures in the Inter-American Court of Human Rights" in: *ibid.*, pp. 69 et seq.; R. Bernhardt, "Interim Measures of Protection under the European

of the parties to the dispute or to ensure that no irreparable harm will be caused to disputed rights. In either case the final decision should not be anticipated by a decision on provisional measures.

Article 290, paragraph 1, of the Convention introduces one additional element since it empowers the court or tribunal having jurisdiction to settle disputes under Part XV of the Convention to prescribe provisional measures not only to preserve the respective rights of the parties to the dispute but also "to prevent serious harm to the marine environment." This indicates the emphasis the Convention places on the protection of the marine environment and broadens the competence of the respective court or tribunal. The Tribunal has alluded to this competence three times.[2]

Article 290 of the Convention, in fact, deals with two types of provisional measures – those that are prescribed by the court or tribunal which has jurisdiction to decide on the merits of the case, and those that are prescribed by the Tribunal pending the constitution of an arbitral tribunal in accordance with article 290, paragraph 5, of the Convention. As far as the question of jurisdiction is concerned the two proceedings differ. This is reflected in the Rules.

Convention on Human Rights" in: *ibid.*, pp. 95 et seq.; R. Wolfrum, "Provisional Measures of the International Tribunal for the Law of the Sea" in: Chandrasekhara Rao/Khan, pp. 173 et seq.; T. Mensah, "Provisional Measures in the International Tribunal for the Law of the Sea (ITLOS)", 62 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2002), pp. 43 et seq.

[2] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 295; *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at pp. 108, 110; *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at pp. 22, 25, 26.

Section C. Incidental proceedings

Subsection 1. Provisional measures

Article 89

1. A party may submit a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention at any time during the course of the proceedings in a dispute submitted to the Tribunal.
2. Pending the constitution of an arbitral tribunal to which a dispute is being submitted, a party may submit a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention:

   (a) at any time if the parties have so agreed;
   (b) at any time after two weeks from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal.

3. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the parties or for the prevention of serious harm to the marine environment.
4. A request for the prescription of provisional measures under article 290, paragraph 5, of the Convention shall also indicate the legal grounds upon which the arbitral tribunal which is to be constituted would have jurisdiction and the urgency of the situation. A certified copy of the notification or of any other document instituting the proceedings before the arbitral tribunal shall be annexed to the request.
5. When a request for provisional measures has been made, the Tribunal may prescribe measures different in whole or in part from those requested and indicate the parties which are to take or to comply with each measure.

Section C. Procédures incidentes

Sous-section 1. Mesures conservatoires

Article 89

1. Une partie peut présenter une demande en prescription de mesures conservatoires conformément à l'article 290, paragraphe 1, de la Convention, à tout moment de la procédure engagée relative au différend soumis au Tribunal.

2. En attendant la constitution d'un tribunal arbitral saisi d'un différend, une partie peut présenter une demande en prescription de mesures conservatoires conformément à l'article 290, paragraphe 5, de la Convention:

   a) à tout moment si les parties en conviennent ainsi ;
   b) à tout moment après un délai de deux semaines à compter de la notification à la partie adverse d'une demande en prescription de mesures conservatoires, si les parties ne conviennent pas de soumettre la question à toute autre cour ou tout autre tribunal.

3. La demande est présentée par écrit et indique les mesures sollicitées, les motifs sur lesquels elle se fonde et les conséquences éventuelles de son rejet en ce qui concerne la préservation des droits respectifs des parties ou la prévention de dommages graves au milieu marin.
4. La demande en prescription de mesures conservatoires présentée conformément à l'article 290, paragraphe 5, de la Convention indique également les moyens de droit sur la base desquels le tribunal arbitral devant être constitué aurait compétence, ainsi que l'urgence de la situation. Une copie certifiée conforme de la notification ou de tout autre document introduisant l'instance devant le tribunal arbitral est annexée à la demande.
5. Lorsqu'une demande en prescription de mesures conservatoires lui est présentée, le Tribunal peut prescrire des mesures totalement ou partiellement différentes de celles qui sont sollicitées, et indiquer les parties qui doivent prendre ou exécuter chaque mesure.

COMMENTARY

The Preparatory Commission Draft Rules[1] do not fully cover the content of article 89 of the Rules. Article 89, paragraphs 2 and 4, of the Rules do not have an equivalent in the Draft Rules. Only paragraphs 1, 3 and 5 – all being of a purely technical nature – correspond in substance to article 83 of the Draft Rules.

The specific provisions in the Rules on the procedure to be followed in deciding on the request for the prescription of provisional measures are supplemented by the general rules of procedure before the Tribunal, such as the provisions on transmission of the application to the other party (article 54, paragraph 4, of the Rules) and the ascertainment by the President of the views of the other party (article 45 of the Rules).

Article 89, paragraph 1, of the Rules deals with the submission of a request for the prescription of provisional measures in accordance with article 290, paragraph 1, of the Convention. Article 89, paragraph 1, of the Rules adds only that a request for the prescription of provisional mea-

[1] Preparatory Commission Draft Rules, articles 83 to 88, at pp. 65 et seq.

sures may be submitted at any time during the proceedings. Whether there is a need for the prescription of provisional measures very much depends upon the development of the situation underlying the dispute between the parties.

Either party to the main proceedings may submit a request for the prescription of provisional measures. The party initiating the provisional measures proceedings is in the technical position of applicant and pleads first at the hearing.[2] The elements to be included in the request are outlined in paragraph 3.

Paragraph 2 deals with the request for the prescription of provisional measures under article 290, paragraph 5, of the Convention. It is the particularity of this procedure that, at the moment when the request is submitted, the Tribunal has no jurisdiction to decide the case on the merits. Paragraph 2 covers two different situations; either the parties to the dispute agree to submit a request for the prescription of provisional measures or the request is filed by one party unilaterally. In the latter case the request may not be filed earlier than two weeks after the date on which the other party is notified of a request for provisional measures and under the condition that the parties have not agreed upon the jurisdiction of a court or tribunal other than the Tribunal to prescribe provisional measures.

Paragraph 2 specifies the earliest date when a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention may be submitted, but it does not specify the latest date by which such request may be filed. In the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures*, the Tribunal was faced with this question. A request for provisional measures was submitted by Malaysia to Singapore on 4 July 2003, the same day on which Malaysia had sent Singapore the notification instituting arbitral proceedings under Annex VII to the Convention.[3] The request for the prescription of provisional measures, however, was only submitted to the Tribunal by Malaysia on 5 September 2003.[4] The decision of the Tribunal was delivered on 8 October 2003, while the arbitral tribunal was to be constituted not later than 9 October 2003.[5] This issue, which was raised by Singapore, was dealt with by the Tribunal under the topic of urgency.[6]

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[2] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1429–1430.

[3] Malaysia's request for provisional measures was referred to in the notification and the accompanying statement of claim, both dated 4 July 2003.

[4] *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 11.

[5] *Ibid.*, at p. 22.

[6] See commentary to paragraph 4 of this article, *infra.*

Before dealing with a request for provisional measures, the Tribunal has to establish whether, *prima facie*, the arbitral tribunal which is to be constituted would have jurisdiction. The arbitral tribunal is not bound by the Tribunal's decision; it may decide that it lacks jurisdiction. This was the situation in the *Southern Bluefin Tuna Cases (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures*. The Tribunal found that the arbitral tribunal would, *prima facie*, have jurisdiction over the disputes,[7] whereas the arbitral tribunal found that it had no such jurisdiction.[8]

According to paragraph 3, which deals with applications under article 290, paragraphs 1 and 5, of the Convention, the request shall be in writing and specify the measures requested, the reasons for the measures and the possible consequences, if the request is not granted, for the preservation of the respective rights of the parties or for the prevention of serious harm to the marine environment. This language corresponds to the requirements of article 290, paragraph 1, of the Convention. Although paragraph 3 does not specifically require the requesting party to substantiate that the urgency of the situation justifies the prescription of provisional measures, such obligation follows from the nature of provisional measures.[9]

Paragraph 4 deals with a request made under article 290, paragraph 5, of the Convention and overlaps with paragraph 3. In addition to the requirements in paragraph 3, when the request is made under article 290, paragraph 5, of the Convention the requesting party has to provide the Tribunal with information necessary to establish that *prima facie* the arbitral tribunal would have jurisdiction and that the situation is urgent.

It is to be noted that article 89, paragraph 4, of the Rules refers to urgency as a prerequisite for the prescription of provisional measures, whereas paragraph 1, concerning a request for provisional measures in a dispute over which the Tribunal has jurisdiction on the merits, does not. The notion of urgency in paragraph 4 does not refer to the urgency of the situation as such but to the necessity to make a decision before the arbitral tribunal is constituted. This became an issue in the *Case concerning*

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[7] *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 295. The Tribunal had to decide whether there was a legal dispute and whether an arbitral tribunal under article 287 of the Convention or a dispute settlement mechanism provided for in the Convention for the Conservation of Southern Bluefin Tuna of 1993 had jurisdiction over the disputes: *ibid.*, at pp. 293–294.

[8] *Southern Bluefin Tuna Case (Australia and New Zealand v. Japan), Award on Jurisdiction and Admissibility, August 4, 2000*, 39 *International Legal Materials 1359* (2000) at p. 1391.

[9] The ICJ clearly expressed the necessity of urgency in *Passage through the Great Belt (Finland* v. *Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports 1991*, p. 12 at p. 17, where it stated

> [w]hereas provisional measures under Article 41 of the Statute are indicated 'pending the final decision' of the Court on the merits of the case, and are therefore only justified if there is urgency in the sense that action prejudicial to the rights of either party is likely to be taken before such final decision is given. . . .

Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. *Singapore), Provisional Measures*. Singapore argued that there was no need for the Tribunal to prescribe provisional measures since the arbitral tribunal had to be constituted not later than 9 October 2003. The Tribunal, however, found:

67. *Considering* that, under article 290, paragraph 5 of the Convention, the Tribunal is competent to prescribe provisional measures prior to the constitution of the Annex VII arbitral tribunal, and that there is nothing in article 290 of the Convention to suggest that the measures prescribed by the Tribunal must be confined to that period;
68. *Considering* that the said period is not necessarily determinative for the assessment of the urgency of the situation or the period during which the prescribed measures are applicable and that the urgency of the situation must be assessed taking into account the period during which Annex VII arbitral tribunal is not yet in a position to "modify, revoke or affirm those provisional measures";
69. *Considering* further that the provisional measures prescribed by the Tribunal may remain applicable beyond that period;[10]

Thus, the Tribunal took into consideration that provisional measures prescribed by the Tribunal may remain effective even after the establishment of the arbitral tribunal. It therefore made a distinction between the period in which a provisional measure may be prescribed, namely pending the constitution of the arbitral tribunal, and the period which was relevant for assessing the urgency of the situation.

[10] *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 22.

Article 90

1. Subject to article 112, paragraph 1, a request for the prescription of provisional measures has priority over all other proceedings before the Tribunal.
2. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date for a hearing.
3. The Tribunal shall take into account any observations that may be presented to it by a party before the closure of the hearing.
4. Pending the meeting of the Tribunal, the President of the Tribunal may call upon the parties to act in such a way as will enable any order the Tribunal may make on the request for provisional measures to have its appropriate effects.

Article 90

1. Sans préjudice de l'article 112, paragraphe 1, la demande en prescription de mesures conservatoires a priorité sur toutes autres procédures devant le Tribunal.
2. Le Tribunal ou, s'il ne siège pas, le Président fixe la date de la procédure orale au plus tôt.
3. Le Tribunal prend en considération toutes observations qui peuvent lui être présentées par une partie avant la clôture de cette procédure.
4. En attendant que le Tribunal se réunisse, le Président du Tribunal peut inviter les parties à agir de manière que toute ordonnance du Tribunal sur la demande en prescription de mesures conservatoires puisse avoir les effets voulus.

COMMENTARY

Article 90 of the Rules follows in substance article 84 of the Preparatory Commission Draft Rules.[1] Draft article 84 also contained provisions concerning the Chamber of Summary Procedure which are now to be found in article 91 of the Rules.

According to paragraph 1, a request for provisional measures has priority over all other proceedings before the Tribunal. This principle, however, is limited since according to article 112, paragraph 1, of the Rules, to which article 90, paragraph 1, of the Rules refers, applications for the release of vessels or crews have priority over all other proceedings before the Tribunal. Therefore the wording of paragraph 1 establishes relative

[1] Preparatory Commission Draft Rules, pp. 65–66.

priority only *vis-à-vis* all proceedings except proceedings in accordance with article 292 of the Convention. This may mean in practice that the Tribunal will have to interrupt its proceedings on provisional measures to allow for the proceedings on an application for the prompt release of a vessel or its crew if it is not possible, as is in fact required under article 112, paragraph 1, of the Rules, to deal with both the application and the request at the same time.

According to paragraph 2, the Tribunal shall determine the earliest possible date for a hearing. Such decision is to be taken by the Tribunal or, if the Tribunal is not sitting, by the President.[2] When determining the date for the hearing the Tribunal or the President, as the case may be, will have to take into account the views expressed by the parties as specified in article 69, paragraph 2(d), of the Rules. The overarching principle of fair trial makes it necessary that the Tribunal seek the views of the parties before making procedural decisions such as fixing the dates for a hearing. This view is reflected in the practice of the Tribunal.

Paragraph 3, however, suggests by implication that if the parties wish to make observations – which they ordinarily do – they are under an obligation to present their views concerning facts or the interpretation and application of law before the closure of the hearing. Thereafter, no new observations may be introduced except where both parties so agree.

Paragraph 4 gives the President the power to call upon the parties to act in a particular way or to refrain from certain activities if such acts or activities would diminish the potential effects of a provisional measure. One may imagine such intervention from the side of the President, for example, if such act would cause irreparable or significant damage to the marine environment. It is evident that the President will make use of this power only in exceptional cases.

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[2] The President of the Tribunal has fixed the dates of the hearing on several occasions. See, e.g., *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Order of 20 January 1998, ITLOS Reports 1998*, p. 4 at p. 5; *Southern Bluefin Tuna (New Zealand* v. *Japan), Order of 3 August 1999, ITLOS Reports 1999*, p. 262 at p. 263; *Southern Bluefin Tuna (Australia* v. *Japan), Order of 3 August 1999, ITLOS Reports 1999*, p. 268 at p. 269; *MOX Plant (Ireland* v. *United Kingdom), Order of 13 November 2001, ITLOS Reports 2001*, p. 89.

Article 91

1. If the President of the Tribunal ascertains that at the date fixed for the hearing referred to in article 90, paragraph 2, a sufficient number of Members will not be available to constitute a quorum, the Chamber of Summary Procedure shall be convened to carry out the functions of the Tribunal with respect to the prescription of provisional measures.
2. The Tribunal shall review or revise provisional measures prescribed by the Chamber of Summary Procedure at the written request of a party within 15 days of the prescription of the measures. The Tribunal may also at any time decide *proprio motu* to review or revise the measures.

Article 91

1. Si le Président du Tribunal constate qu'à la date fixée pour la procédure orale visée à l'article 90, paragraphe 2, un nombre suffisant de ses Membres ne sera pas disponible pour constituer le quorum, la Chambre de procédure sommaire est convoquée afin de remplir les fonctions du Tribunal pour la prescription de mesures conservatoires.
2. Le Tribunal réexamine ou révise les mesures conservatoires prescrites par la Chambre de procédure sommaire à la demande d'une partie, faite par écrit dans un délai de 15 jours après la prescription de ces mesures. Le Tribunal peut également à tout moment décider d'office de réexaminer ou de réviser ces mesures.

COMMENTARY

Article 91, paragraph 1, of the Rules corresponds in part to article 84, paragraph 2, of the Preparatory Commission Draft Rules.[1] During its deliberations on the Rules, the Tribunal decided to modify the draft provision to reflect article 25 of the Statute of the Tribunal.

Paragraph 1 deals with the situation where fewer than eleven judges will be available on the date fixed for the hearing; eleven elected judges are required to constitute a quorum in accordance with article 13, paragraph 1, of the Statute. In such a situation the Chamber of Summary Procedure shall be convened and will decide on the request for the prescription of provisional measures. The composition of the Chamber of Summary Procedure is governed by article 28 of the Rules.

[1] Preparatory Commission Draft Rules, p. 65.

According to paragraph 1, the Chamber carries out the functions of the Tribunal although under paragraph 2 its decision may be reviewed or revised by the Tribunal. Such review may be undertaken at the request of a party to the dispute or on the Tribunal's own initiative.

The Rules do not provide guidance as to how the Chamber is to act. However, in principle, the Rules applicable to proceedings on provisional measures before the Tribunal as a whole govern the proceedings before the Chamber. According to article 11, paragraph 3, of the *Resolution on the Internal Judicial Practice of the Tribunal*, adopted on 31 October 1997, the Chamber of Summary Procedure deliberates in accordance with the principles and procedures set out in the Resolution, taking into account the summary nature of the proceedings and the urgency of the case.

Article 92

The rejection of a request for the prescription of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

Article 92

Le rejet d'une demande en prescription de mesures conservatoires n'empêche pas la partie qui l'avait introduite de présenter en la même affaire une nouvelle demande fondée sur des faits nouveaux.

COMMENTARY

Article 92, which corresponds to Article 75, paragraph 3, of the Rules of the ICJ, does not constitute a deviation from the general principle of *res judicata* since the party submitting another request for the prescription of provisional measures must prove that the new request is based upon new facts. Article 92 adds a new element to the decision of the Tribunal as to the admissibility of the request. Facts are new if they were neither existent at the time of the delivery of the order, nor known to the party which had filed the request for provisional measures. However, article 92 of the Rules is not to be understood as a mechanism whereby a party may undo mistakes committed in the proceedings on the first request. Facts cannot be considered to be new facts within the meaning of article 92 of the Rules if the party concerned could or should have known them. Article 127 of the Rules concerning revision of judgments, which refers to "the discovery of some fact of such a nature as to be a decisive factor", gives an indication as to what may also be considered as "new" in the meaning of article 92 of the Rules.

Article 93

A party may request the modification or revocation of provisional measures. The request shall be submitted in writing and shall specify the change in, or disappearance of, the circumstances considered to be relevant. Before taking any decision on the request, the Tribunal shall afford the parties an opportunity of presenting their observations on the subject.

Article 93

Une partie peut faire une requête tendant à ce qu'une décision concernant des mesures conservatoires soit rapportée ou modifiée. La requête doit être présentée par écrit et doit indiquer que les circonstances les justifiant ont changé ou ont cessé d'exister. Avant de prendre une décision concernant cette requête, le Tribunal donne aux parties la possibilité de présenter des observations à ce sujet.

COMMENTARY

Article 93 of the Rules, which is inspired by Article 76, paragraph 2, of the Rules of the ICJ, provides for the possibility to request the modification or revocation of provisional measures and thus constitutes a special case for requesting review of a decision of the Tribunal. Article 93 of the Rules is *lex specialis* to article 127 of the Rules.

The request for modification or revocation may be submitted by any party to the dispute, not only the party that has requested the prescription of the provisional measures.

The request is to be made in writing. The party requesting the revocation or modification of provisional measures must set out the change in or the disappearance of circumstances which were relevant for the prescription of the original provisional measures. It is not sufficient that circumstances which were referred to in the order prescribing provisional measures have changed, where these were of no relevance to the prescription of the measures or the content of the order.

Before the Tribunal makes a decision it will give the parties to the dispute the opportunity to present their observations on the request. Article 93 does not indicate whether these should be presented in writing or whether there will be a hearing. This is at the discretion of the Tribunal.

Unlike under article 127, paragraph 2, of the Rules, the Tribunal does not decide separately on the admissibility of the request for modification or revocation and on how to modify the original provisional measures.

The decision on modification or revocation will be in the form of an order by the Tribunal which has prescribed the original provisional measures. A special situation exists, however, in respect of provisional measures under article 290, paragraph 5, of the Convention. If the arbitral tribunal under Annex VII to the Convention has been constituted, then it is for that tribunal to decide on the request for modification or revocation as indicated in the last sentence of article 290, paragraph 5, of the Convention.

Article 94

Any provisional measures prescribed by the Tribunal or any modification or revocation thereof shall forthwith be notified to the parties and to such other States Parties as the Tribunal considers appropriate in each case.

Article 94

Toute mesure conservatoire prescrite par le Tribunal ou toute décision du Tribunal la modifiant ou la rapportant est immédiatement notifiée aux parties et, selon le cas d'espèce et si le Tribunal le juge approprié, à d'autres Etats Parties.

COMMENTARY

As stated by article 94 of the Rules, prescribed provisional measures are to be notified to the parties to the dispute. As far as further notification is concerned, the Tribunal has some discretion. Other States Parties may also be notified as the Tribunal considers appropriate in each case.[1]

[1] See, e.g., *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 300, operative paragraph 3.

Article 95

1. Each party shall inform the Tribunal as soon as possible as to its compliance with any provisional measures the Tribunal has prescribed. In particular, each party shall submit an initial report upon the steps it has taken or proposes to take in order to ensure prompt compliance with the measures prescribed.
2. The Tribunal may request further information from the parties on any matter connected with the implementation of any provisional measures it has prescribed.

Article 95

1. Chaque partie informe le Tribunal au plus tôt des dispositions qu'elle a prises pour mettre en oeuvre les mesures conservatoires prescrites par le Tribunal. En particulier, chaque partie présente un rapport initial sur les dispositions qu'elle a prises ou qu'elle se propose de prendre pour se conformer sans retard aux mesures prescrites.
2. Le Tribunal peut demander aux parties un complément d'information concernant toutes questions relatives à la mise en oeuvre des mesures conservatoires prescrites par lui.

COMMENTARY

Article 95 of the Rules is based upon Article 78 of the Rules of the ICJ. It can be seen as a rudimentary mechanism which allows the Tribunal to monitor the implementation of prescribed provisional measures. Each party to the dispute has to furnish the Tribunal with information on its compliance with any provisional measures prescribed by the Tribunal. The parties are under an obligation to submit an initial report on the steps undertaken or planned to be undertaken to ensure compliance. The Tribunal reminds the parties of this obligation.[1]

[1] The standard version of this reminder reads: "*Considering* that, pursuant to article 95, paragraph 1, of the Rules, each party is required to submit to the Tribunal a report and information on compliance with any provisional measures prescribed . . .". See, e.g., *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 at p. 39; *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 297; *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 110; *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 26.

Paragraph 2 gives the Tribunal the additional power to ask for further information. Such further information may be requested where the information provided by the parties is not sufficient or if the Tribunal is of the opinion that the provisional measures prescribed have not been effectively implemented. The Tribunal may thus take a proactive role to ensure the implementation of the provisional measures it has prescribed.[2] As far as provisional measures prescribed by the Tribunal under article 290, paragraph 5, of the Convention are concerned, this competence ceases to exist upon the constitution of the arbitral tribunal.[3]

[2] The Tribunal has entrusted the President to request further information in the following cases: *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 at p. 39; *Southern Bluefin Tuna (New Zealand* v. *Japan; Australia* v. *Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280 at p. 297; *MOX Plant (Ireland* v. *United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, p. 95 at p. 110; compare with *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10, where no such request was included in the order.

[3] See, e.g., *Land Reclamation in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at p. 27, where the Tribunal stated that "it is consistent with the purpose of proceedings under article 290, paragraph 5, of the Convention that parties submit reports to the Annex VII arbitral tribunal, unless the arbitral tribunal decides otherwise".

Subsection 2. Preliminary proceedings

Article 96

1. When an application is made in respect of a dispute referred to in article 297 of the Convention, the Tribunal shall determine at the request of the respondent or may determine *proprio motu*, in accordance with article 294 of the Convention, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded.
2. The Registrar, when transmitting an application to the respondent under article 54, paragraph 4, shall notify the respondent of the time-limit fixed by the President of the Tribunal for requesting a determination under article 294 of the Convention.
3. The Tribunal may also decide, within two months from the date of an application, to exercise *proprio motu* its power under article 294, paragraph 1, of the Convention.
4. The request by the respondent for a determination under article 294 of the Convention shall be in writing and shall indicate the grounds for a determination by the Tribunal that:
   (a) the application is made in respect of a dispute referred to in article 297 of the Convention; and
   (b) the claim constitutes an abuse of legal process or is *prima facie* unfounded.
5. Upon receipt of such a request or *proprio motu*, the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the parties may present their written observations and submissions. The proceedings on the merits shall be suspended.
6. Unless the Tribunal decides otherwise, the further proceedings shall be oral.
7. The written observations and submissions referred to in paragraph 5, and the statements and evidence presented at the hearings contemplated by paragraph 6, shall be confined to those matters which are relevant to the determination of whether the claim constitutes an abuse of legal process or is *prima facie* unfounded, and of whether the application is made in respect of a dispute referred to in article 297 of the Convention. The Tribunal may, however, request the parties to argue all questions of law and fact, and to adduce all evidence, bearing on the issue.
8. The Tribunal shall make its determination in the form of a judgment.

Sous-section 2. Procédures préliminaires

Article 96

1. Lorsqu'une requête est présentée au sujet d'un différend visé à l'article 297 de la Convention, le Tribunal décide à la demande du défendeur, ou peut décider d'office, conformément à l'article 294 de la Convention, si la prétention du requérant constitue un abus des voies de droit ou s'il est établi *prima facie* qu'elle est fondée.
2. En transmettant une requête au défendeur conformément à l'article 54, paragraphe 4, le Greffier informe le défendeur du délai, fixé par le Président du Tribunal, dans lequel il peut demander une décision conformément à l'article 294 de la Convention.
3. Le Tribunal peut également décider, dans un délai de deux mois suivant la date de présentation d'une requête, d'examiner d'office la question de l'applicabilité de l'article 294, paragraphe 1, de la Convention.
4. La demande, par le défendeur, d'une décision conformément à l'article 294 de la Convention est présentée par écrit et indique les motifs permettant au Tribunal d'établir que :

   a) la requête concerne un différend visé à l'article 297 de la Convention;
   b) la prétention du requérant constitue un abus des voies de droit ou est *prima facie* dénuée de fondement.

5. Dès réception d'une telle demande ou d'office, le Tribunal ou, s'il ne siège pas, le Président fixe un délai ne dépassant pas 60 jours dans lequel les parties peuvent présenter leurs observations et conclusions écrites. La procédure sur le fond est suspendue.
6. Sauf décision contraire du Tribunal, la suite de la procédure est orale.
7. Les observations et conclusions écrites mentionnées au paragraphe 5 et les exposés et moyens de preuve présentés pendant les audiences envisagées au paragraphe 6 sont limités aux points ayant trait à la question de savoir si l'objet de la requête constitue un abus des voies de droit ou si elle est *prima facie* dénuée de fondement, et si la requête concerne un différend visé à l'article 297 de la Convention. Toutefois le Tribunal peut inviter les parties à débattre tous points de fait et de droit et à produire tous moyens de preuve qui ont trait à la question.
8. Le Tribunal statue par voie d'arrêt.

COMMENTARY

Article 96, the sole article of a subsection entitled "Preliminary Proceedings" corresponds, with rather important changes, to article 94 of the Preparatory

Commission Draft Rules. It develops a procedure concerning the "preliminary proceedings" mentioned in article 294 of the Convention. The purpose of these proceedings is to prevent *in limine litis* abusive utilization of legal proceedings in disputes referred to in article 297 of the Convention. Paragraph 1 of article 294 is as follows:

> A court or tribunal provided for in article 287 to which an application is made in respect of a dispute referred to in article 297 shall determine at the request of a party, or may determine *proprio motu*, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded. If the court or tribunal determines that the claim constitutes an abuse of legal process or is *prima facie* unfounded, it shall take no further action in the case.

It does not seem appropriate to dwell in a Commentary to the Rules on the interpretation of this provision of the Convention, even though such interpretation is not devoid of difficulties. These concern, in particular, the meaning of the expression "a dispute referred to in article 297", the notion of "abuse of legal process", and the meaning of the determination that the claim is "*prima facie* unfounded"; further questions concern the effect of the judgment making the determination mentioned in this paragraph.[1]

Article 294, paragraph 2, of the Convention is of more relevance to the concerns of the present Commentary, as it gives some indications regarding procedure. Paragraph 2 is as follows:

> Upon receipt of the application, the court or tribunal shall immediately notify the other party or parties of the application, and shall fix a reasonable time-limit within which they may request it to make a determination in accordance with paragraph 1.

The "application" mentioned in paragraph 2 can only be the "application [. . .] in respect of a dispute referred to in article 297" mentioned in paragraph 1. But who is to determine that the application is indeed in respect of a dispute referred to in article 297? Article 294 only indicates that in this case the respondent shall be granted a time-limit within which it may request a determination as to whether, under paragraph 1, the conditions are satisfied for a determination that the claim constitutes an abuse of legal process or is *prima facie* unfounded, and that, if such determination is made, the court or tribunal shall take no further action in the case. The procedure to be followed and the rights, within such procedure, of the original applicant are not indicated.

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[1] An examination of these question is in T. Treves, "Preliminary Proceedings in the Settlement of Disputes under the United Nations Law of the Sea Convention: Some Observations", in N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 1, 2002, p. 749, especially at pp. 751–752, 758–759.

Article 96 of the Rules sets out the answers given by the Tribunal to these and other connected questions. It must be recalled, nevertheless, that the ICJ and an arbitral tribunal might also be called upon to entertain "preliminary proceedings" under article 294 of the Convention. They will have to address these questions on the basis of general principles and *ad hoc* procedural decisions, and the choices so made might be different from those set out in article 96 of the Rules of the Tribunal.

Paragraph 1 of article 96 of the Rules repeats the essence of the first sentence of article 294, paragraph 1, of the Convention.

According to article 96, paragraph 2, of the Rules, the respondent, when notified of the application, shall be granted a time-limit to request a determination under article 294. This implies that the President of the Tribunal or the Tribunal, in order to fix such time-limit, must have come to the preliminary conclusion that the application is "in respect of a dispute referred to in article 297." It might be argued that the preliminary assessment that the dispute is one referred to in article 297 has to be made by the Tribunal, or by the President only if the Tribunal is not sitting, because it requires something more than the fixing of a time-limit. It may be also be argued, on the other hand, that it is preferable to make the fixing of the time-limit an automatic or routine feature of notifications under article 54, paragraph 4, of the Rules.[2] Even following this view, it would be necessary to make some reasonable assessment, in order not to fix such time-limit in cases that manifestly have nothing to do with article 297 (for example, cases concerning delimitation of maritime areas).

Article 54, paragraph 4, of the Rules, to which article 96, paragraph 2, refers, provides that when proceedings before the Tribunal are instituted by means of an application "[t]he Registrar shall forthwith transmit to the respondent a certified copy of the application." In light of these provisions, when an application is submitted to the Tribunal, there will be only one notification, which may include reference to the time-limit fixed by the President under article 294, paragraph 2, of the Convention.

Once the notification is transmitted to the respondent, it is up to the respondent to decide whether to institute "preliminary proceedings." The incidental "preliminary proceedings" are instituted by the request mentioned in article 96 of the Rules. The form and contents of such a request are indicated in paragraph 4 of article 96. The requirement that the request indicate the grounds for the determination by the Tribunal that "(a) the application is made in respect of a dispute referred to in article 297 of the Convention" concerns the main question of admissibility of the preliminary proceedings; while the requirement that "(b) the claim consti-

[2] This seems to be the view of Eiriksson at p. 232.

tutes an abuse of legal process or is *prima facie* unfounded" concerns the "merits" of these proceedings (even though it can be argued that this would make the claim on the merits in the principal proceedings inadmissible).

The procedure set out in article 96, paragraphs 5 and following, is similar to that concerning preliminary objections under article 97 of the Rules. As provided in paragraphs 5 and 6, the procedure includes a written and an oral phase. The suspension of the proceedings on the merits is consistent with the incidental character of the preliminary proceedings.

Article 96, paragraph 5, of the Rules seems to indicate that the written observations are to be submitted by both parties within a time-limit not exceeding 60 days. This might seem to be at odds with the proper balance between the parties in light of the requirement that the request mentioned in paragraph 4 should state "the grounds" for the determination under article 294, paragraph 1, of the Convention. If these grounds are stated at length, the written observations by the party making the request will be unnecessary or repetitious. The proper balance will not be jeopardized, however, if the grounds in the request are stated in brief, so that the written observations can function, for both parties, as arguments to prepare the ground for the oral hearing. In order to obtain this result, and to keep the "preliminary proceedings" as short as possible, it seems advisable that the time-limit fixed for submitting the request should be short. Additionally, the balance between the parties might be maintained and the proceedings better articulated by interpreting, as it has been suggested, the 60-day time-limit as the maximum time-limit within which the written observations might be made in sequence rather than at the same time.[3]

According to article 294, paragraph 1, of the Convention, the Tribunal may make the determination "whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded" *proprio motu* and not merely at the request of a party. Paragraph 2 of article 294 of the Convention provides for the fixing of a time-limit "upon receipt of the application" and does not refer to such *proprio motu* determination. It would seem that the Convention leaves completely open the procedural requirements of such a determination.

Article 294 of the Convention might be read as entrusting the competent court or tribunal with a kind of "policing of the proceedings" power in order to eliminate, on its own initiative and without procedural conditions to be satisfied, claims that constitute an abuse of legal process or manifestly unfounded claims. In article 96, paragraph 3, of the Rules,

[3] Eiriksson, at p. 233, seems to hold a similar view. Of course the organization of the written phase can be made easier if the agreement of the parties is obtained.

read with article 96, paragraph 5, however, the Tribunal seems to have chosen to interpret differently the *proprio motu* determination in article 294, reading it as a *proprio motu* institution of the "preliminary proceedings."

This interpretative choice, which seems implicit in the Rules, is consistent with the notions of due process and of maintaining the balance between the parties. It seems, however, that it may have a strong influence on the likelihood (or lack thereof) of the resort by the Tribunal to *proprio motu* determination under article 294, paragraph 1, of the Convention. Much will depend on the policy the Tribunal will follow in fixing the time-limit for the request mentioned in article 294, paragraph 1. A time-limit longer than two months will make it extremely unlikely that the Tribunal will consider pre-empting a possible request by a party by taking the initiative *proprio motu*. It would be wrong, however, to conclude that, whenever the request is not made by the respondent party within the time-limit, the Tribunal should act *proprio motu*. There may be many reasons for the respondent not to make the request and the Tribunal ought to respect such reasons. It is only when the abusive character of the claim or its being *prima facie* unfounded are so evident that it would be grossly unjust not to stop the claim at the very beginning of the case that the Tribunal might find it advisable to act on its own initiative.[4]

Paragraph 7 of article 96 of the Rules attempts to restrict the written observations and the submissions to the questions necessary to make the determination mentioned in article 294, paragraph 1, of the Convention. The first sentence of paragraph 7 is similar to paragraph 5 of article 97 of the Rules concerning "preliminary objections", which was in turn inspired by paragraph 5 (current paragraph 7) of Article 79 of the Rules of the ICJ concerning the same subject.

Just as in the proceedings concerning "preliminary objections" it may be found that the objection does not possess "an exclusively preliminary character", in "preliminary proceedings" it may happen that the questions bearing on the determination under article 294, paragraph 1, of the Convention cannot be separated from the other issues in the dispute. The second sentence of paragraph 7 of article 96 of the Rules envisages this possibility in stating that the Tribunal may request the parties to argue all questions of law and fact, and to adduce all evidence, bearing on the issue.

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[4] Eiriksson, at p. 232 argues that *proprio motu* action by the Tribunal "would seem to be appropriate first and foremost in the situation where the respondent has chosen not to defend the case." Even though this view concerns a case in which it appears particularly appropriate for the Tribunal to consider using its power of acting on its own initiative, such case does not seem very likely. It will happen only in the relatively few situations in which the decision not to defend the case has been made public within the time-limit mentioned in article 294, paragraph 1, of the Convention. The difficulty of proceeding *proprio motu* "in the absence of any reaction whatsoever from the respondent State" is underlined by S. Rosenne, "Settlement of Fisheries Disputes in the Exclusive Economic Zone", 73 *AJIL* (1979), p. 89, at p. 102.

In such a case, the purpose of article 294 of the Convention, to decide *in limine litis* the question of whether the claim constitutes an abuse of legal process or is *prima facie* unfounded, seems to be frustrated. Argument on all questions of law and fact may open the way to a complete examination of the dispute which is incompatible with a *prima facie* determination as to whether the claim is unfounded and makes it highly unlikely that the claim will be found to constitute an abuse of legal process. For this reason, it does not seem likely that the Tribunal will wish to request the parties to argue all questions of law and fact, and to adduce all evidence bearing on the issue, within the short time-limit set for the "preliminary proceedings." It is more likely that it will reject the request and provide for the continuation of the case.

The possibility of requesting the parties to argue the case fully may also become a very expedient tool for the Tribunal to prevent the possible abuse of "preliminary proceedings."

As far as the form of the decisions taken in "preliminary proceedings" is concerned, article 96, paragraph 8, of the Rules states that the form of the Tribunal's "determination" shall be that of a judgment. The word "determination" corresponds to the verb "determine" in paragraph 1 and seems to cover decisions to accept and to reject the request, as well as the decision where the Tribunal requests the parties to argue all questions of law and fact. Analogy with the form of decision by which the Tribunal declares that a preliminary objection "does not possess, in the circumstances of the case, an exclusively preliminary character"[5] would seem to confirm this conclusion. In such cases, the fixing of the time-limit for the further proceedings may be made by a separate order.

The consequence, set out in the second sentence of article 294, paragraph 1, of the Convention, of the determination that the claim constitutes an abuse of legal process or is *prima facie* unfounded, that the court or tribunal "shall take no further action in the case" becomes the basis for providing, in the operative part of the judgment, or in a separate order, for the removal of the case from the List of cases.

Paragraph 3 of article 294 of the Convention addresses the relationship between "preliminary proceedings" and proceedings concerning "preliminary objections." It states:

> Nothing in this article affects the right of any party to a dispute to make preliminary objections in accordance with the applicable rules of procedure.

[5] Article 97, paragraph 6, of the Rules of the Tribunal, concerning preliminary objections. See also Article 79, paragraph 9, of the Rules of the ICJ.

In light of this provision, the question may be raised as to whether preliminary objections must wait until preliminary proceedings are concluded. In other terms: must preliminary proceedings be considered as "preliminary" also to proceedings on preliminary objections? Neither the Convention nor the Rules of the Tribunal give an answer to this question.

It would seem that the answer depends, at least in part, on the "applicable rules of procedure." These are the rules for making preliminary objections. In proceedings before the Tribunal, the time-limit for preliminary objections is rather short, 90 days from the institution of proceedings (article 97, paragraph 1, of the Rules). The possibility of making preliminary objections after the "preliminary proceedings" are concluded seems thus excluded, or made very narrow, because of the time necessary for such proceedings. This possibility would, nonetheless, exist if the term "merits" in paragraph 5 of article 96 of the Rules ("[t]he proceedings on the merits shall be suspended") is interpreted as including all proceedings apart from the "preliminary" proceedings.[6] On the other hand, there seems to be no obstacle to making "preliminary objections", within the time-limit set for them, before the "preliminary proceedings" are concluded. If preliminary objections are raised at the same time as the request for a determination under article 294 of the Convention, it will be possible for the Tribunal to conduct both incidental proceedings at the same time, taking advantage of the fact that the time-limits set for the written observations and submissions are the same in both proceedings. Such way of proceeding, while being economical in terms of time, may not always be appropriate in the circumstances of the case, however. It may be advisable for the Tribunal to seek the agreement of the parties as to the timing for dealing with the two incidental proceedings.

[6] On the different meanings of the term "merits", see G. Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Vol. 2, 1986, pp. 448–449.

Subsection 3. Preliminary objections

Article 97

1. Any objection to the jurisdiction of the Tribunal or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing within 90 days from the institution of proceedings.
2. The preliminary objection shall set out the facts and the law on which the objection is based, as well as the submissions.
3. Upon receipt by the Registry of a preliminary objection, the proceedings on the merits shall be suspended and the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the other party may present its written observations and submissions. It shall fix a further time-limit not exceeding 60 days from the receipt of such observations and submissions within which the objecting party may present its written observations and submissions in reply. Copies of documents in support shall be annexed to such statements and evidence which it is proposed to produce shall be mentioned.
4. Unless the Tribunal decides otherwise, the further proceedings shall be oral.
5. The written observations and submissions referred to in paragraph 3, and the statements and evidence presented at the hearings contemplated by paragraph 4, shall be confined to those matters which are relevant to the objection. Whenever necessary, however, the Tribunal may request the parties to argue all questions of law and fact and to adduce all evidence bearing on the issue.
6. The Tribunal shall give its decision in the form of a judgment, by which it shall uphold the objection or reject it or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Tribunal rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.
7. The Tribunal shall give effect to any agreement between the parties that an objection submitted under paragraph 1 be heard and determined within the framework of the merits.

Sous-section 3. Exceptions préliminaires

Article 97

1. Toute exception à la compétence du Tribunal ou à la recevabilité de la requête ou toute autre exception sur laquelle une décision est demandée avant que la procédure sur le fond se poursuive doit être présentée par écrit 90 jours au plus tard après l'introduction de l'instance.
2. L'acte introductif de l'exception contient l'exposé de fait et de droit sur lequel l'exception est fondée ainsi que les conclusions.
3. Dès réception par le Greffe de l'acte introductif de l'exception, la procédure sur le fond est suspendue et le Tribunal ou, s'il ne siège pas, le Président fixe un délai ne dépassant pas 60 jours, dans lequel la partie adverse peut présenter ses observations et conclusions écrites. Le Tribunal fixe un nouveau délai ne dépassant pas 60 jours à compter de la date de réception de ces observations et conclusions, dans lequel la partie qui soulève l'exception peut présenter ses observations et conclusions écrites en réponse. Les documents à l'appui sont annexés à ces exposés sous forme de copies et les moyens éventuels de preuve sont indiqués.
4. Sauf décision contraire du Tribunal, la suite de la procédure est orale.
5. Les observations et conclusions écrites mentionnés au paragraphe 3 et les exposés et moyens de preuve présentés pendant les audiences envisagées au paragraphe 4 sont limités aux points ayant trait à l'exception. Toutefois, le Tribunal peut, le cas échéant, inviter les parties à débattre tous points de fait et de droit et à produire tous moyens de preuve qui ont trait à la question.
6. Le Tribunal statue dans un arrêt par lequel soit il retient l'exception, soit la rejette, soit déclare que cette exception n'a pas dans les circonstances de l'espèce un caractère exclusivement préliminaire. Si le Tribunal rejette l'exception ou déclare qu'elle n'a pas un caractère exclusivement préliminaire, il fixe les délais pour la suite de la procédure.
7. Le Tribunal donne effet à tout accord intervenu entre les parties et tendant à ce qu'une exception soulevée en vertu du paragraphe 1 soit tranchée lors de l'examen au fond.

COMMENTARY

This article introduces a number of relevant changes to Article 79 of the 1978 Rules of the ICJ (which article 95 of the Preparatory Commission Draft Rules repeated with minimal changes). It is worth noting at the outset that the ICJ later amended Article 79, paragraphs 1, 2 and 3 of

its Rules[1] and Practice Direction V.[2] The first of the changes to paragraph 1 of Article 79 of the ICJ Rules, while not following entirely article 97, paragraph 1, of the Rules of the Tribunal, takes into account the reasons that had made the Tribunal depart from the precedent of the ICJ Rules. The main differences between article 97 of the Rules of the Tribunal and Article 79 of the ICJ Rules (in its 1978 version as well as in the amended version of 2001) concern the time-limit for submitting preliminary objections and the written phase of the procedure. The new paragraphs 2 and 3 of Article 79 of the Rules of the ICJ, introduced with the 2001 amendments, find no corresponding provisions in article 97 of the Rules of the Tribunal.

Paragraph 1 of article 97 omits the last sentence of Article 79, paragraph 1, of the Rules of the ICJ (set out in the 1978 version and retained in 2001) according to which "[a]ny such objection made by a party other than the respondent shall be filed within the time-limit fixed for the delivery of that party's first pleading." This sentence, introduced in the ICJ Rules having in mind the situation in the *Monetary Gold* case,[3] in which the Court allowed the applicant to raise a preliminary objection to jurisdiction, might now apply to "non-party interveners."[4] Its omission in article 97 of the Rules seems to indicate that the Tribunal considered it preferable not to engage in questions such as those mentioned above. It may be argued that, even in the absence of such provision, the Tribunal can reach an equivalent result applying its powers under article 27 of the Statute.

Article 97, the sole article of a subsection entitled "Preliminary Objections" of a section entitled "Incidental Proceedings", indicates in paragraph 1 that it concerns "any objection to the jurisdiction of the Tribunal or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits . . .".

The Tribunal has interpreted the time-limit set for such objections as concerning only the request to consider the objections within incidental proceedings entailing the suspension of the proceedings on the merits. In *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*, Saint Vincent and the Grenadines contended that objections concerning

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[1] The amendments are available on the ICJ website at www.icj-cij.org. See S. Rosenne, "The International Court of Justice: Revision of Articles 79 and 80 of the Rules of Court", 14 *Leiden Journal of International Law* (2001), pp. 77–87; D.W. Prager, "The 2001 Amendments to the Rules of Procedure of the International Court of Justice", 1 *The Law and Practice of International Courts and Tribunals* (2002), p. 155 at pp. 163 et seq.

[2] The amendment is available on the ICJ website www.icj-cij.org. See A. Watts, "The ICJ's Practice Directions of 30 July 2004", 3 *The Law and Practice of International Courts and Tribunals* (2004), p. 385 at p. 386.

[3] Rosenne, p. 162. See *Monetary Gold Removed from Rome in 1943*, *Judgment*, *I.C.J. Reports 1954*, p. 19 at p. 26.

[4] S. Rosenne, *op. cit.* note 1, p. 79.

admissibility raised by Guinea more than 90 days from the institution of proceedings were not receivable because they had been raised after the expiry of the time-limit set out in article 97, paragraph 1, of the Rules. The Tribunal rejected this contention, stating that:

Article 97 deals with objections to jurisdiction or admissibility that are raised as preliminary questions to be dealt with in incidental proceedings [. . .] Accordingly, the time-limit in the article does not apply to objections to jurisdiction or admissibility which are not requested to be considered before any further proceedings on the merits.[5]

When it adopted the provisions concerning preliminary objections, the Tribunal was inspired by the need to reconcile expeditiousness with equal treatment of the parties. The time-limit for submitting preliminary objections set out in Article 79, paragraph 1, of the 1978 ICJ Rules (stating that these objections had to be made "within the time-limit fixed for the delivery of the counter-memorial") had been criticized because it allowed the respondent to wait until the last minute to present its preliminary objections. It would enjoy a "free ride" because, if its objection were to be rejected, it would obtain the advantage of doubling the time available to prepare the counter-memorial.[6]

The time-limit adopted by the Tribunal in paragraph 1 of article 97 of the Rules (the objection must be made within 90 days from the institution of proceedings) aims at avoiding this possibility and at dealing as quickly as possible with the preliminary objection. This time-limit is half of the maximum time-limit of six months set out in article 59 of the Rules for submitting the memorial. It comes nine months before the time-limit for submitting the counter-memorial.

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[5] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 33. The ICJ has made equivalent findings: *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom) (Libyan Arab Jamahiriya* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1998*, p. 9 at p. 26 and p. 115 at p. 131, respectively; *Avena and other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 12 at p. 29 (see comments in D. Müller, "Procedural Developments at the International Court of Justice", 3 *The Law and Practice of International Courts and Tribunals* (2004), p. 553 at pp. 557–560). P. Weckel, "Chronique de jurisprudence internationale", 108 *Revue générale de droit international public* (2004), p. 731 at pp. 732–733, in commenting on the *Case concerning Avena and other Mexican Nationals*, remarks that on the point here examined there was a precedent in the judgment of the Tribunal in *The M/V "SAIGA" (No. 2) Case* and regrets that neither the judgment nor the pleadings in the *Avena* case make reference to it. In his view, this is evidence of the "cloisonnement qui subsiste entre les activités des tribunaux internationaux" (the compartmentalization of the activities of international tribunals).

[6] K. Highet, "Problems in the Preparation and Presentation of a Case from the Point of View of Counsel and of the Court", in C. Peck and R.S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice — Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, 1997, p. 127 at p. 135; M. Shaw, "The International Court of Justice: A Practical Perspective", 46 *ICLQ* (1997), p. 831 at p. 859.

However, in submitting the preliminary objection 90 days after the institution of proceedings, the defendant has nothing else on which to base the objection but the application of the plaintiff. It was necessary to address the fact that it is likely that the plaintiff's arguments may not be fully developed in the application.[7] Article 97, paragraph 3, provides that the other party may present, within 60 days, written observations and submissions in response to the preliminary objection and that, within a further time-limit of 60 days, the objecting party may present written observations and submissions in reply.

The oral proceedings thus take place (according to article 97, paragraph 4) following a written phase in which both parties have the same opportunity to present their arguments. Notwithstanding the more elaborate written proceedings, the overall duration of the incidental preliminary objections proceedings should be considerably shorter than of such proceedings before the ICJ when the Rules of the Tribunal were adopted. The opening of the hearing should be fixed after seven months from the institution of proceedings while, according to the 1978 Rules of the ICJ, the hearing may be fixed only after the time-limit for the filing of the written observations and submissions by the party against whom the objections are raised has elapsed.

The ICJ has neither been insensitive to the criticisms concerning the time-limit set out in its 1978 Rules nor, it would seem, to the provision adopted by the Tribunal on this subject. As mentioned, in 2001 it adopted amendments to its Rules, some of which concern preliminary objections. According to Article 79, paragraph 1, of the ICJ Rules, as amended, a preliminary objection must be submitted "as soon as possible, and not later than three months after the delivery of the Memorial."

In order to introduce sufficient flexibility, the rule adopted by the ICJ permits submitting preliminary objections "as soon as possible" and thus even before the delivery of the Memorial, if the information available in the request instituting proceedings is sufficient.[8]

With the amendment to Article 79, paragraph 1, of the ICJ Rules, and in light of the 2004 amendment to Practice Direction V, the overall duration of the preliminary objection phase before the ICJ has been

[7] In the discussions leading to the 1972 Rules of the ICJ the proposal that the time-limit for submitting a preliminary objection should run from the time of the submission of the application was criticized because the objecting party would not have had sufficient information and because this would have led to lack of balance between the positions of the parties. See E. Jiménez de Aréchaga, "The Amendments to the Rules of Procedure of the International Court of Justice", 67 *AJIL* (1973), p. 1 at p. 19.

[8] The last mentioned element of the new text of Article 79, paragraph 1, of the ICJ Rules (the "as soon as possible" clause) may be derived from article 41 of the ICSID Arbitration Rules (which repeats, however, the time-limit of the deposit of the Counter-Memorial set out in the old text of Article 79). See D.W. Prager, "The 2001 Amendments to the Rules of Procedure of the International Court of Justice", *op. cit.* note 1, p. 155, at pp. 163 et seq.

considerably shortened. While its duration seems to have become the same as that set out in article 97 of the Rules (seven months from institution of proceedings to the earliest date of the hearing), its placement in the proceedings remains different as this phase starts later before the ICJ than before the Tribunal.

The solution adopted by the ICJ is not as radical as that set out in the Rules of the Tribunal. The ICJ seems to consider it essential that the State wishing to raise a preliminary objection have full knowledge of the plaintiff's arguments, which may make it necessary, in its view, to wait for the deposit of the Memorial. The Tribunal has followed the opinion that arguments unknown at the time of the institution of proceedings will in any case emerge in the written observations submitted by the plaintiff.

The two solutions adopted, although different, are reasonable responses to a difficulty arising in practice. The solution given by the Tribunal seems based on the idea that it is preferable to deal with jurisdiction, admissibility and other preliminary questions together with the merits and that, if a separate phase of the proceedings for preliminary questions is unavoidable, it is preferable to dispose of it as soon as possible.[9] As regards the solution adopted by the ICJ, it seems to reflect the view that to deal with preliminary questions in a separate phase of the proceedings is something normal and useful.

Paragraphs 2 to 7 of article 97 correspond, in essence, to paragraphs 4 to 10 of Article 79 of the ICJ Rules as amended in 2001 (and to paragraphs 2 to 8 of the 1978 version). Apart from the developments in paragraph 3, described above, concerning the written phase, the rather numerous changes are mostly of a drafting nature.

Paragraph 5 of article 97 merges what is set out in paragraphs 7 and 8 of Article 79 of the ICJ Rules. The sentence in paragraph 8 of Article 79 of the ICJ Rules, according to which the Court may request the parties to argue all questions of law and fact "in order to enable [it] to determine its jurisdiction at the preliminary stage of the proceedings" has, nevertheless, been omitted in paragraph 5. This is not merely a drafting change. It broadens the reasons for which full argument may be requested, permitting deeper insight as to whether the objection possesses "an exclusively preliminary character" which is one of the possible conclusions the Tribunal may reach under paragraph 6. It would seem reasonable to think that the Tribunal will use this possibility, which might make the task of the parties more burdensome and time-consuming, sparingly.

[9] See the observations of Eiriksson at p. 234.

As was remarked in scholarly comment on the ICJ Rules, paragraph 7 of Article 79 confirms that in this article "the concept of preliminary objections is processual, not juridical."[10] As regards article 97 of the Rules of the Tribunal, this view was implicit in the statement of the Tribunal, quoted above, in paragraph 53 of the Tribunal's judgment in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*. In other words, questions that logically and juridically are preliminary to questions on the merits may be examined together with the merits if they are raised together with the merits or if there is an agreement between the parties to that effect. The latter situation was the case, as regards an objection concerning jurisdiction, in *The M/V "SAIGA" (No. 2) Case*, as the parties had agreed that "the written and oral proceedings [. . .] shall comprise a single phase dealing with all aspects of the merits (including damages and costs) and the objection as to jurisdiction raised in the Government of Guinea's Statement of Response dated 30 January 1998."[11]

The 2001 amendment to Article 79 of the ICJ Rules introduces new paragraphs 2 and 3, codifying the practice of isolating, in a separate preliminary phase of the proceedings, questions of jurisdiction and admissibility upon the initiative of the Court even in the absence of a request under paragraph 1. The new paragraphs are as follows:

> 2. Notwithstanding paragraph 1 above, following the submission of the application and after the President has met and consulted with the parties, the Court may decide that any questions of jurisdiction and admissibility shall be determined separately.
> 3. Where the Court so decides, the parties shall submit any pleadings as to jurisdiction and admissibility within the time-limits fixed by the Court and in the order determined by it, notwithstanding article 45, paragraph 1.

It seems that the "isolation" of the questions of jurisdiction and admissibility envisaged in these paragraphs cannot overrule (and can be overruled by) an agreement of the parties under paragraph 10. Even though the Court needs to meet and consult the parties, and not necessarily obtain their agreement, it would seem that in light of possible conflicts with an agreement under paragraph 10, the agreement of the parties will continue to be sought and obtained by the Court as has happened in the practice preceding the amendment.

In article 97 of the Rules, there is nothing that corresponds to the new paragraphs 2 and 3 of Article 79 of the ICJ Rules. It would seem that there is no obstacle to the Tribunal seeking the agreement of the parties

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[10] Rosenne, p. 167.
[11] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea); op. cit.* note 5, p. 15.

at an early stage of the proceedings for separate pleadings and consideration of questions of jurisdiction and admissibility. In the absence of a specific rule, it may be questionable whether the Tribunal could decide on such separate pleadings and consideration after a mere meeting and consultation with the parties without obtaining their agreement.

Subsection 4. Counter-claims

Article 98

1. A party may present a counter-claim provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.
2. A counter-claim shall be made in the counter-memorial of the party presenting it and shall appear as part of the submissions of that party.
3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Tribunal shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

Sous-section 4. Demandes reconventionnelles

Article 98

1. Une partie peut présenter une demande reconventionnelle pourvu qu'elle soit en connexité directe avec l'objet de la demande de la partie adverse et qu'elle relève de la compétence du Tribunal.
2. La demande reconventionnelle est présentée dans le contre-mémoire de la partie dont elle émane et figure parmi ses conclusions.
3. Si le rapport de connexité entre la demande présentée comme demande reconventionnelle et l'objet de la demande de la partie adverse n'est pas apparent, le Tribunal, après avoir entendu les parties, décide s'il y a lieu ou non de joindre cette demande à l'instance initiale.

COMMENTARY

Article 98 of the Rules, which deals with counter-claims, corresponds to Article 80 of the ICJ Rules as drafted in 1978.[1] On 5 December 2000, the ICJ amended Article 80 (as well as Article 79) of its Rules.[2] Therefore, it might be considered whether a similar amendment should be made to article 98 of the Rules.

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[1] ICJ, Acts and Documents Concerning the Organization of the Court, No. 5, 1989, pp. 143, 145.

[2] ICJ, Basic Documents, Rules of the Court (1978), as amended on 5 December 2000, see http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicrulesofcourt_20001205.html

In article 98 of the Rules, the decision of the Tribunal to join the counter-claim to the original proceedings (paragraph 3), depends upon two essential conditions: (a) the direct connection of the counter-claim with the subject-matter of the claim of the other party, and (b) the fact that the counter-claim comes within the jurisdiction of the Tribunal. These substantive conditions, contained in article 98, paragraph 1, of the Rules, are also contained in Article 80, paragraph 1, of the ICJ Rules. However, it is interesting to note that, in the 2000 version of its Rules, the ICJ has reversed the order in which the two conditions are mentioned: jurisdiction now comes first, while in 1978 the "direct connection" requirement preceded it.

Article 21 of the Statute ("Jurisdiction"), states that:

> The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

The final words of this article, as well as those of article 20, paragraph 2,[3] of the Statute, could be wrongly interpreted as giving the States Parties to the Convention and other entities complete freedom to conclude agreements conferring jurisdiction on the Tribunal in respect of cases concerning any kind of questions.

However, such an interpretation does not seem to be consistent with article 288 of the Convention, which deals with the jurisdiction of all courts and tribunals referred to in article 287. According to article 288 of the Convention, these courts and tribunals, including the Tribunal, have jurisdiction over any dispute concerning the interpretation or application of the Convention,[4] and "over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention . . .".[5]

Thus, all disputes which can be submitted to the Tribunal must deal with the Convention or relate to its purposes. This view may also be inferred from the name of the Tribunal and from the specific competence[6]

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[3] Article 20, paragraph 2, of the Statute provides: "The Tribunal shall be open to entities other than States Parties . . . in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case."

[4] Article 288, paragraph 1, of the Convention.

[5] Article 288, paragraph 2, of the Convention. In this sense, article 22 of the Statute is clearer than article 20, paragraph 2, of the Statute (see note 3). According to article 22 of the Statute, "[i]f all the parties to a treaty or convention already in force and *concerning the subject-matter covered by this Convention* so agree, any disputes concerning the interpretation or application of such treaty or convention may . . . be submitted to the Tribunal." (Emphasis added).

[6] See article 2, paragraph 1, of the Statute.

of its Members.[7] This limitation is to be applied both to claims and to counter-claims.

The only difference between paragraph 1 of article 98 of the Rules and the current Article 80 of the Rules of the ICJ is of a drafting nature, namely, while paragraph 1 of article 98 of the Rules has retained the earlier ICJ text, the new Article 80 of the ICJ Rules at the beginning of paragraph 1, reads "[t]he Court may entertain a counter-claim . . .". This wording is closer to the practice of the ICJ, as the ICJ has only entertained the counter-claims which in its opinion satisfied the conditions contained in paragraph 1 of Article 80 of its Rules. On the other hand, even today, a party may have a different view on this matter, and nothing could prevent it from "presenting a counter-claim." Of course, the Court or the Tribunal may have a different opinion than the party concerned, and they could reject counter-claims which do not satisfy the conditions set out in paragraph 1.

Paragraph 2 of article 98 determines the manner in which the counter-claim may be presented: it must be made in the counter-memorial, and it must appear as part of the submissions of the party presenting it.

Compared with article 98 of the Rules, Article 80 of the 2000 version of the Rules of the ICJ contains an additional provision which safeguards the equality of the parties, namely, the second sentence in Article 80, paragraph 2, of the Rules of the ICJ, which states that the other party is entitled "to present its views in writing on the counter-claim, in an additional pleading . . . irrespective of any decision of the Court . . . concerning the filing of further written pleadings." This safeguard was adopted because, under Article 45, paragraph 2, of the ICJ Rules, the Court may decide that a reply and a rejoinder of the parties are not necessary. Such a decision would prevent the other party from making observations with regard to the counter-claim. The Tribunal may consider whether a similar safeguard might be incorporated into its Rules. It may be further noted that even if the Tribunal authorizes a reply and a rejoinder, the applicant would be in a position to express its opinion concerning the counter-claim only once, while the defendant would have the opportunity to explain its counter-claim twice: in the counter-memorial and in the rejoinder.[8]

Paragraph 3 refers to a situation in which the Tribunal must hear the parties before deciding whether or not the counter-claim shall be joined to the original proceedings. The Tribunal is bound to do so only "[i]n the event of doubt as to the connection between the question presented

[7] See B. Vukas, "The Definition of the Law of the Sea", N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 2, 2002, p. 1303 at p. 1309.
[8] See Guyomar, p. 521.

by way of counter-claim and the subject-matter of the claim of the other party . . .".

Paragraph 3 reproduces the previous version of the ICJ Rules. The scope of the new text of Article 80, paragraph 3, of the ICJ Rules is more general. It reads as follows:

> Where an objection is raised concerning the application of paragraph 1 or whenever the Court deems necessary, the Court shall take its decision thereon after hearing the parties.

Article 98, paragraph 3, of the Rules of the Tribunal, might be re-examined, keeping in view the need to define more precisely its relationship with paragraph 1 and to provide for hearing the parties also when doubts arise concerning the jurisdiction of the Tribunal.

It should be pointed out that article 98 deals only with the presentation of a counter-claim and not with the decision on the counter-claim which will be settled in the judgment on the merits.[9]

[9] See S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1276–1277.

Subsection 5. Intervention

Article 99

1. An application for permission to intervene under the terms of article 31 of the Statute shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, an application submitted at a later stage may however be admitted.
2. The application shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall set out:

   (a) the interest of a legal nature which the State Party applying to intervene considers may be affected by the decision in that case;
   (b) the precise object of the intervention.

3. Permission to intervene under the terms of article 31 of the Statute may be granted irrespective of the choice made by the applicant under article 287 of the Convention.
4. The application shall contain a list of the documents in support, copies of which documents shall be annexed.

Sous-section 5. Intervention

Article 99

1. Une requête à fin d'intervention fondée sur l'article 31 du Statut est déposée trente jours au plus tard après la date à laquelle le contre-mémoire est mis à disposition conformément à l'article 67, paragraphe 1, du présent Règlement. Toutefois, dans des circonstances exceptionnelles, le Tribunal peut connaître d'une requête présentée ultérieurement.
2. La requête doit être signée comme il est prévu à l'article 54, paragraphe 3, et indiquer le nom et l'adresse de l'agent. Elle précise l'affaire qu'elle concerne et spécifie :

   a) l'intérêt d'ordre juridique qui, selon l'Etat Partie demandant à intervenir, est pour lui en cause ;
   b) l'objet précis de l'intervention.

3. Une requête à fin d'intervention fondée sur l'article 31 du Statut peut être admise indépendamment du choix fait par le requérant en vertu de l'article 287 de la Convention.

4. La requête contient un bordereau des documents à l'appui, qui sont annexés sous forme de copies.

COMMENTARY

This article corresponds to Article 81 of the Rules of the ICJ. It deals with the procedure regarding permission to intervene under the terms of article 31 of the Statute of the Tribunal, as well as the legal grounds for filing such an application. Article 31 of the Statute provides that every State Party to the Convention is entitled to submit a request to the Tribunal to be permitted to intervene if that State Party considers "that it has an interest of a legal nature which may be affected by the decision in any dispute . . .". Rosenne calls this type of intervention "discretionary intervention"; Treves calls it "optional' intervention."[1] This situation must be distinguished from the situation in which the interpretation or application of the Convention is in question, where every party to the Convention has the right to intervene. Such an intervention has been envisaged in article 32 of the Statute (which corresponds to Article 63 of the Statute of the ICJ) and in article 100 of the Rules. According to the above mentioned authors, this intervention could be called "intervention as of right."[2]

Pursuant to article 99 of the Rules, an application for permission to intervene must be filed "not later than 30 days after the counter-memorial becomes available . . .", while Article 81, paragraph 1, of the ICJ Rules requires that the request be filed "as soon as possible, and not later than the closure of the written proceedings." Both jurisdictions permit the submission of an application at a later stage "[i]n exceptional circumstances".

The Rules of the Tribunal, as well as those of the ICJ, require that the application for permission to intervene be signed in the manner provided for in respect of an application instituting proceedings.[3] In addition to the requirement that the application must state the name of the agent, article 99, paragraph 2, of the Rules requires that his or her address be provided.[4]

Article 99, paragraph 2(a), of the Rules indicates the legal considerations to be set out in an application for permission to intervene. The rea-

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[1] Rosenne, p. 173; T. Treves, "The Rules of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 135 at p. 143.

[2] *Ibid.*

[3] See article 54, paragraph 3, of the Rules and Article 38, paragraph 3, of the ICJ Rules.

[4] Compare with Article 81, paragraph 2, of the Rules of the ICJ, which requires that the application state the name of the agent.

son for an application for permission to intervene by a State Party to the Convention is that its "interest of a legal nature . . . may be affected by the decision in that case". These terms, copied from Article 81, paragraph 2(a), of the ICJ Rules, are not self-explanatory. According to one view, they exclude intervention based on "political interests"[5] and "the potential intervenor is not under an obligation to prove that the interest of a legal nature exists. What is necessary, but also required, is merely that the applicant prove *prima facie* that such right might exist."[6]

Even less precise is the term "object" in paragraph 2(b) of article 99 of the Rules. Does it mean the precise *aspect* of the case in respect of which the applicant wants to intervene, or the *goal* which the applicant would like to achieve by its intervention? In commenting on the application by Malta for permission to intervene in the *Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*,[7] rejected by the ICJ, Guyomar includes both meanings of the term "object".[8] In his comment on Article 82, paragraph 2(b), of the ICJ Rules, Wolfrum concludes that this rule "requires the intending intervenor to indicate the *objective* pursued by the intervention."[9]

Paragraph 3 of article 99 of the Rules states that the Tribunal may grant permission to intervene "irrespective of the choice made by the applicant under article 287 of the Convention." It also covers applicants who have not made any choice under article 287, which means that it includes all the States Parties to the Convention.

It may be inferred from article 103, paragraph 4, and article 104, paragraph 3, of the Rules that the intervenor does not possess the status of a party to the case. However, article 31, paragraph 3, of the Statute makes it clear that the "decision of the Tribunal in respect of the dispute shall be binding upon the intervening State Party in so far as it relates to matters in respect of which that State Party intervened."

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[5] R. Wolfrum, "Intervention in the Procedures before the International Court of Justice and the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 161 at p. 165.

[6] *Ibid.*

[7] *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Application for Permission to Intervene, Judgment, I.C.J. Reports 1981*, p. 3.

[8] Guyomar, p. 531.

[9] R. Wolfrum, *op. cit.* note 5, p. 165 (emphasis added).

Article 100

1. A State Party or an entity other than a State Party referred to in article 32, paragraphs 1 and 2, of the Statute which desires to avail itself of the right of intervention conferred upon it by article 32, paragraph 3, of the Statute shall file a declaration to that effect. The declaration shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, a declaration submitted at a later stage may, however, be admitted.
2. The declaration shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall:

   (a) identify the particular provisions of the Convention or of the international agreement the interpretation or application of which the declaring party considers to be in question;
   (b) set out the interpretation or application of those provisions for which it contends;
   (c) list the documents in support, copies of which documents shall be annexed.

Article 100

1. Un Etat Partie ou une entité autre qu'un Etat Partie visée à l'article 32, paragraphes 1 et 2, du Statut, qui désire se prévaloir du droit d'intervention que lui confère l'article 32, paragraphe 3, du Statut dépose à cet effet une déclaration. Ladite déclaration est déposée trente jours au plus tard après la date à laquelle le contre-mémoire est mis à disposition conformément à l'article 67, paragraphe 1, du présent Règlement. Toutefois, dans des circonstances exceptionnelles, le Tribunal peut connaître d'une déclaration présentée ultérieurement.
2. La déclaration doit être signée comme il est indiqué à l'article 54, paragraphe 3, et indiquer le nom et l'adresse de l'agent. Elle précise l'affaire qu'elle concerne et :

   a) indique les dispositions de la Convention ou de l'accord international dont la partie déclarante estime que l'interprétation ou l'application est en cause ;
   b) contient un exposé de l'interprétation qu'elle donne de ces dispositions ou de l'application qu'elle en fait ;
   c) inclut un bordereau des documents à l'appui, qui sont annexés sous forme de copies.

COMMENTARY

Article 100 of the Rules corresponds to Article 82 of the ICJ Rules. The differences between the two provisions relate mainly to the following: the jurisdiction of the Tribunal, which is not restricted to States,[1] and the question of the time-limit within which a declaration for intervention must be filed. Under this provision, States Parties to the Convention and entities that are parties to other relevant agreements do not apply for permission to intervene, as in article 99; they exercise their right to intervene which is conferred upon them by article 32, paragraph 3, of the Statute by filing a declaration to that effect.

As in the case of applications for permission to intervene,[2] the formal requirements applicable to all applications as contained in article 54, paragraph 3, of the Rules also apply to declarations made under article 100 of the Rules.

Paragraph 2 also contains a list of elements which a declaration shall contain.

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[1] Article 32 of the Statute provides that whenever the interpretation or application of the Convention (or, pursuant to article 21 or 22 of the Statute, an international agreement) is in question, the Registrar shall notify all States Parties to the Convention (or all the parties to the agreement). Such parties then have the right to intervene in the proceedings under article 32, paragraph 3. While only States have the right to intervene in proceedings before the ICJ (ICJ Statute, Article 63), the Court may "request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative" (ICJ Statute, Article 34, paragraph 2). On 29 September 2005, Article 43 of the ICJ Rules was amended and its new paragraph 2 provides as follows: "Whenever the construction of a convention to which a public international organization is a party may be in question in a case before the Court, the Court shall consider whether the Registrar shall so notify the public international organization concerned. Every public international organization notified by the Registrar may submit its observations on the particular provisions of the convention the construction of which is in question in the case."

[2] See *chapeau* of article 99, paragraph 2, of the Rules.

Article 101

1. Certified copies of the application for permission to intervene under article 31 of the Statute, or of the declaration of intervention under article 32 of the Statute, shall be communicated forthwith to the parties to the case, which shall be invited to furnish their written observations within a time-limit to be fixed by the Tribunal or by the President if the Tribunal is not sitting.
2. The Registrar shall also transmit copies to: (a) States Parties; (b) any other parties which have to be notified under article 32, paragraph 2, of the Statute; (c) the Secretary-General of the United Nations; (d) the Secretary-General of the Authority when the proceedings are before the Seabed Disputes Chamber.

Article 101

1. Copie certifiée conforme de la requête à fin d'intervention fondée sur l'article 31 du Statut ou de la déclaration d'intervention fondée sur l'article 32 du Statut est immédiatement transmise aux parties, qui sont priées de présenter des observations écrites dans un délai fixé par le Tribunal ou, s'il ne siège pas, par le Président.
2. Le Greffier transmet également copie de la requête ou de la déclaration : a) aux Etats Parties ; b) à toute autre partie à laquelle doit être adressée la notification prévue à l'article 32, paragraphe 2, du Statut; c) au Secrétaire général de l'Organisation des Nations Unies ; d) au Secrétaire général de l'Autorité lorsque l'affaire est devant la Chambre pour le règlement des différends relatifs aux fonds marins.

COMMENTARY

Article 101 corresponds *mutatis mutandis* to Article 83 of the Rules of the ICJ. It is self-explanatory.

It may be noted, however, that only the parties to the case "shall be invited to furnish their written observations . . ." (paragraph 1). Certified copies of the application are also transmitted to States Parties and the other entities referred to in paragraph 2.

Article 102

1. The Tribunal shall decide whether an application for permission to intervene under article 31 of the Statute should be granted or whether an intervention under article 32 of the Statute is admissible as a matter of priority unless in view of the circumstances of the case the Tribunal determines otherwise.
2. If, within the time-limit fixed under article 101, an objection is filed to an application for permission to intervene, or to the admissibility of a declaration of intervention, the Tribunal shall hear the State Party or entity other than a State Party seeking to intervene and the parties before deciding.

Article 102

1. La décision du Tribunal sur l'admission d'une requête à fin d'intervention fondée sur l'article 31 du Statut ou la recevabilité d'une intervention fondée sur l'article 32 du Statut est prise par priorité à moins que, vu les circonstances de l'espèce, le Tribunal n'en décide autrement.
2. Si, dans le délai fixé conformément à l'article 101, il est fait objection à une requête à fin d'intervention ou à la recevabilité d'une déclaration d'intervention, le Tribunal entend, avant de statuer, l'Etat Partie, ou l'entité autre qu'un Etat Partie, désireux d'intervenir ainsi que les parties.

COMMENTARY

This article reproduces verbatim Article 84 of the ICJ Rules. The only difference concerns the possibility that entities other than States Parties could appear before the Tribunal. Consequently, the Tribunal must "hear the State Party or entity other than a State Party seeking to intervene and the parties before deciding."[1]

The Tribunal, in deciding to deal with an application or a declaration as a matter of priority, will take into account all the relevant circumstances. Generally speaking, it seems that the decision on intervention is not as urgent as in the other cases where priority is demanded by the Rules: requests for provisional measures,[2] and applications for release of vessels and crews.[3] A decision to grant permission to intervene in a dispute presupposes that the Tribunal has jurisdiction to entertain such a

[1] See article 102, paragraph 2, of the Rules.
[2] See article 90, paragraph 1, of the Rules.
[3] See article 112, paragraph 1, of the Rules.

dispute. Accordingly, the Tribunal would not take a decision on the application for permission to intervene where the jurisdiction of the Tribunal or the admissibility of the claim is disputed.[4]

In respect of paragraph 2, it is worth recalling Rosenne's remark that, even in the absence of objection of a party to intervention, the application for permission to intervene will not necessarily be granted.[5] The element of objection is only one of the elements which the Tribunal shall take into account in evaluating whether the conditions listed in articles 99 or 100 are fulfilled.

[4] Rosenne, p. 180.

[5] *Ibid.*; Guyomar, pp. 548–549; *Nuclear Tests (Australia* v. *France; New Zealand* v. *France), Application for Permission to Intervene, Orders of 20 December 1974, I.C.J. Reports 1974*, pp. 530, 535.

Article 103

1. If an application for permission to intervene under article 31 of the Statute is granted, the intervening State Party shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Tribunal. A further time-limit shall be fixed within which the parties may, if they so desire, furnish their written observations on that statement prior to the oral proceedings. If the Tribunal is not sitting, these time-limits shall be fixed by the President.
2. The time-limits fixed according to paragraph 1 shall, so far as possible, coincide with those already fixed for the pleadings in the case.
3. The intervening State Party shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.
4. The intervening State Party shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Article 104

1. If an intervention under article 32 of the Statute is admitted, the intervenor shall be supplied with copies of the pleadings and documents annexed and shall be entitled, within a time-limit to be fixed by the Tribunal, or the President if the Tribunal is not sitting, to submit its written observations on the subject-matter of the intervention.
2. These observations shall be communicated to the parties and to any other State Party or entity other than a State Party admitted to intervene. The intervenor shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.
3. The intervenor shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Article 103

1. Si une requête à fin d'intervention fondée sur l'article 31 du Statut est admise, l'Etat Partie intervenant reçoit une copie des pièces de procédure et des documents annexés et a le droit de présenter une déclaration écrite dans un délai fixé par le Tribunal. Il est fixé un autre délai dans lequel les parties peuvent, si elles le désirent, présenter des observations écrites sur cette déclaration avant la procédure orale. Si le Tribunal ne siège pas, les délais sont fixés par le Président.

2. Les délais fixés conformément au paragraphe 1 coïncident autant que possible avec ceux qui sont déjà fixés pour le dépôt des pièces de procédure en l'affaire.
3. L'Etat Partie intervenant a le droit de présenter au cours de la procédure orale des observations sur l'objet de l'intervention.
4. L'Etat Partie intervenant n'est pas autorisé à désigner un juge *ad hoc* ou à s'opposer à un accord aux fins du désistement de l'instance conformément à l'article 105, paragraphe 1.

Article 104

1. Si une intervention fondée sur l'article 32 du Statut est déclarée recevable, l'intervenant reçoit une copie des pièces de procédure et des documents annexés et a le droit de présenter, dans un délai fixé par le Tribunal ou, s'il ne siège pas, par le Président, des observations écrites sur l'objet de l'intervention.
2. Ces observations sont communiquées aux parties et à tout autre Etat Partie, ou entité autre qu'un Etat Partie, autorisé à intervenir. L'intervenant a le droit de présenter au cours de la procédure orale des observations sur l'objet de l'intervention.
3. L'intervenant n'est pas autorisé à désigner un juge *ad hoc* ou à s'opposer à un accord aux fins du désistement de l'instance conformément à l'article 105, paragraphe 1.

COMMENTARY

Articles 103 and 104 of the Rules contain useful provisions enabling an efficient procedure regarding both types of intervention: "discretionary intervention" and "intervention as of right".

All the paragraphs in both articles, except the last one, reproduce the current text of Articles 85 and 86 of the Rules of the ICJ, which reflect a modest evolution of those rules since the creation of the ICJ.[1]

Although article 17 of the Statute makes it clear that judges *ad hoc* can be chosen in specific circumstances only by the parties to a dispute, the clarification given in article 103, paragraph 4, and article 104, paragraph 3, of the Rules is useful.

The exclusion of the right to choose a judge *ad hoc* or "to object to an agreement to discontinue the proceedings . . ." is a useful element in avoiding the possibility of the intervenors becoming parties in the cases

[1] Rosenne, pp. 181–182.

in which they intervene. However it must not be forgotten that, even if the intervenors are not parties to the case, the interpretation given by the judgment will be binding upon them to the extent specified in articles 31, paragraph 3, and 32, paragraph 3, of the Statute.

Subsection 6. Discontinuance

Article 105

1. If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Tribunal in writing that they have agreed to discontinue the proceedings, the Tribunal shall make an order recording the discontinuance and directing the Registrar to remove the case from the List of cases.
2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Tribunal shall record this fact in the order for the removal of the case from the List, or indicate in, or annex to, the order the terms of the settlement.
3. If the Tribunal is not sitting, any order under this article may be made by the President.

Article 106

1. If, in the course of proceedings instituted by means of an application, the applicant informs the Tribunal in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Registry, the respondent has not yet taken any step in the proceedings, the Tribunal shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the List of cases. A copy of this order shall be sent by the Registrar to the respondent.
2. If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Tribunal shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Tribunal shall make an order recording the discontinuance of the proceedings and directing the Registrar to remove the case from the List of cases. If objection is made, the proceedings shall continue.
3. If the Tribunal is not sitting, its powers under this article may be exercised by the President.

Sous-section 6. Désistement

Article 105

1. Si, à un moment quelconque avant l'arrêt définitif sur le fond, les parties, conjointement ou séparément, notifient au Tribunal par écrit qu'elles sont convenues de se désister de l'instance, le Tribunal rend une ordonnance prenant acte du désistement et chargeant le Greffier de rayer l'affaire du rôle des affaires.
2. Si les parties sont convenues de se désister de l'instance parce qu'elles sont parvenues à un arrangement amiable et si celles-ci le souhaitent, le Tribunal soit fait mention de ce fait dans l'ordonnance prescrivant la radiation de l'affaire du rôle, soit indique les termes de l'arrangement dans l'ordonnance ou dans une annexe à celle-ci.
3. Si le Tribunal ne siège pas, toute ordonnance rendue conformément au présent article peut être prise par le Président.

Article 106

1. Si, au cours d'une instance introduite par requête, le demandeur fait connaître par écrit au Tribunal qu'il renonce à poursuivre la procédure, et si, à la date de la réception par le Greffe de ce désistement, le défendeur n'a pas encore fait acte de procédure, le Tribunal rend une ordonnance prenant acte du désistement et chargeant le Greffier de rayer l'affaire du rôle des affaires. Copie de ladite ordonnance est adressée par le Greffier au défendeur.
2. Si, à la date de la réception du désistement, le défendeur a déjà fait acte de procédure, le Tribunal fixe un délai dans lequel le défendeur peut déclarer s'il s'oppose au désistement. Si, dans le délai fixé, il n'est pas fait objection au désistement, celui-ci est réputé acquis et le Tribunal rend une ordonnance en prenant acte et chargeant le Greffier de rayer l'affaire du rôle des affaires. S'il est fait objection, l'instance se poursuit.
3. Si le Tribunal ne siège pas, les pouvoirs que lui confère le présent article peuvent être exercés par le Président.

COMMENTARY

Articles 105 and 106 of the Rules correspond to Articles 88 and 89 of the Rules of the ICJ. The differences between the two sets of rules are almost insignificant. Both envisage two basic situations: (a) discontinuance

as a result of an agreement between the applicant and the respondent or acquiescence (article 105, paragraphs 1 and 2; article 106, paragraph 2, of the Rules) and (b) discontinuance on the basis of a unilateral decision of the applicant, where the respondent has not yet taken any step in the proceedings (article 106, paragraph 1, of the Rules).

The first situation is based on the principle that, if the proceedings before the Tribunal have been instituted by means of an agreement between the parties, they can be discontinued only with the agreement of the parties. Such an agreement can be reached expressly (article 105, paragraph 1) or by acquiescence of the respondent to the decision of the applicant not to go on with the proceedings (article 106, paragraph 2).

In the second situation, the Tribunal is entitled to make an order on discontinuance without asking the opinion of the respondent, if the applicant informs the Tribunal in writing that it is not going on with the proceedings and "if . . . the respondent has not yet taken any step in the proceedings . . ."[1] This provision should not be given a restrictive meaning. Any step taken by the respondent not only in respect of the merits of the case, but also in respect of jurisdiction and the admissibility of the application, should prevent the Tribunal from making an order of discontinuance without first seeking the views of the respondent. It may be recalled that in the *French Nationals in Egypt* case, the ICJ considered the appointment of an agent by the respondent as a step in the proceedings.[2]

Paragraph 1 of article 105 deals with the agreement of the parties to discontinue the proceedings, regardless of how the proceedings were instituted or the fact that a settlement of the dispute between the parties has been reached.[3] On the other hand, paragraph 2 of article 105 provides for discontinuance as a consequence of the settlement of a dispute. In such a case, if the parties so desire, the Tribunal is required to record this fact in the order for the removal of the case from the List of cases, or indicate in, or annex to, the order the terms of the settlement.

Paragraph 3 of both articles 105 and 106 authorizes the President to make any order under the said articles, if the Tribunal is not sitting. The President has so far made only one order dealing with discontinuance under 105, paragraph 2, of the Rules. On 13 July 2001, the President ordered the removal of *The "Chaisiri Reefer 2" Case (Panama* v. *Yemen)* from the List of cases, as the parties had agreed to discontinue the proceedings following settlement of the dispute concerning the arrest of the *Chaisiri Reefer 2*. As a consequence thereof, the parties required that the Tribunal

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[1] Rules, article 106, paragraph 1.

[2] *Protection of French Nationals and Protected Persons in Egypt, Order of 29 March 1950, I.C.J. Reports 1950*, p. 59.

[3] Rosenne, p. 185.

annex to the Order the communications which led to the release of the vessel *Chaisiri Reefer 2*, its cargo and crew. The President acceded to the request and ordered that the case be removed from the List of cases.[4]

[4] *"Chaisiri Reefer 2" (Panama* v. *Yemen), Order of 13 July 2001, ITLOS Reports 2001*, p. 82.

Section D. Proceedings before special chambers

Article 107

Proceedings before the special chambers mentioned in article 15 of the Statute shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the special chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Section D. Procédure devant les chambres spéciales

Article 107

La procédure devant les chambres spéciales prévues à l'article 15 du Statut est, sous réserve des dispositions de la Convention, du Statut et du présent Règlement les visant expressément, réglée conformément aux dispositions du présent Règlement applicables en matière contentieuse devant le Tribunal.

COMMENTARY

Article 107 corresponds to Article 90 of the Rules of the ICJ, with minor modifications. It is largely self-explanatory. It applies to all special chambers provided for in article 15 of the Statute.

According to article 15 of the Statute, the special chambers may hear and determine disputes only. Article 107 of the Rules provides that proceedings before the special chambers are governed by the Rules applicable in contentious cases before the Tribunal, subject, however, to the provisions of the Convention, the Statute and the Rules relating specifically to the special chambers.

No provision exists either in the Statute or in the Rules for the special chambers to render advisory opinions. There has been no occasion so far for the Tribunal to pronounce itself on the question whether a chamber may render advisory opinions.

Article 108

1. When it is desired that a case should be dealt with by one of the chambers which has been formed in accordance with article 15, paragraph 1 or 3, of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompany it. Effect shall be given to the request if the parties are in agreement.
2. Upon receipt by the Registry of this request, the President of the Tribunal shall communicate it to the members of the chamber concerned.
3. Effect shall be given to a request that a case be brought before a chamber to be formed in accordance with article 15, paragraph 2, of the Statute as soon as the chamber has been formed in accordance with article 30 of these Rules.
4. The President of the Tribunal shall convene the chamber at the earliest date compatible with the requirements of the procedure.

Article 108

1. Une demande tendant à ce qu'une affaire soit portée devant une chambre déjà constituée conformément à l'article 15, paragraphe 1 ou 3, du Statut est formulée dans l'acte introductif d'instance ou l'accompagne. Il est fait droit à cette demande s'il y a accord entre les parties.
2. Dès réception de cette demande par le Greffe, le Président du Tribunal en donne communication aux membres de la chambre intéressée.
3. Il est fait droit à une demande tendant à ce qu'une affaire soit portée devant une chambre constituée conformément à l'article 15, paragraphe 2, du Statut, dès que la chambre aura été constituée conformément à l'article 30 du présent Règlement.
4. La chambre est convoquée par le Président du Tribunal pour la date la plus rapprochée suivant les exigences de la procédure.

COMMENTARY

This article corresponds to Article 91 of the Rules of the ICJ, except in relation to its paragraph 3. Paragraph 1 of article 108 applies to standing special chambers and the Chamber of Summary Procedure. Paragraph 3 applies to an *ad hoc* chamber. These two paragraphs apply when the chambers referred to in them have been formed by the Tribunal. They are supplementary to articles 28 and 29 of the Rules.

Paragraph 1 states that, when a party desires that a case be dealt with either by a standing special chamber or the Chamber of Summary Procedure, a request to this effect is required to be made in the docu-

ment instituting the proceedings or accompany it. Since no chamber may deal with a dispute unless the parties so request,[1] the President of the Tribunal ascertains whether the other party assents to the request of the applicant. Effect is given to the request if the parties are in agreement. Whether or not the parties are in agreement is for the chamber to decide. To facilitate this task, paragraph 2 provides that, upon receipt by the Registry of the applicant's request, it is to be communicated by the President of the Tribunal to the members of the chamber concerned.

Paragraph 2 omits the second sentence of Article 91, paragraph 2, of the Rules of the ICJ, in view of the provision made in article 31, paragraph 3, of the Rules of the Tribunal.

Paragraph 3 applies as soon as the chamber has been formed in accordance with article 30 of the Rules. As soon as the chamber is formed, effect is given to a request that a case be brought before that chamber.

Paragraph 4 applies to the chambers referred to in article 108 of the Rules. It requires the President to convene the chamber at the earliest date compatible with the requirements of the procedure.

[1] See, however, article 25, paragraph 2, of the Statute and article 91 of the Rules.

Article 109

1. Written proceedings in a case before a chamber shall consist of a single pleading by each party. The time-limits concerning the filing of written pleadings shall be fixed by the chamber, or its President if the chamber is not sitting.
2. The chamber may authorize or direct the filing of further pleadings if the parties are so agreed, or if the chamber decides, *proprio motu* or at the request of one of the parties, that such pleadings are necessary.
3. Oral proceedings shall take place unless the parties agree to dispense with them and the chamber consents. Even when no oral proceedings take place, the chamber may call upon the parties to supply information or furnish explanations orally.

Article 109

1. Dans une affaire portée devant une chambre, la procédure écrite consiste en la présentation par chaque partie d'une seule pièce. Les délais concernant le dépôt des pièces de la procédure écrite sont fixés par la chambre ou, si elle ne siège pas, par son Président.
2. La chambre peut autoriser ou prescrire la présentation d'autres pièces de procédure si les parties sont d'accord à cet égard ou si elle décide, d'office ou à la demande d'une partie, que ces pièces sont nécessaires.
3. Une procédure orale a lieu, à moins que les parties n'y renoncent d'un commun accord avec le consentement de la chambre. Même en l'absence de procédure orale, la chambre a la faculté de demander aux parties de lui fournir verbalement des renseignements ou des explications.

COMMENTARY

Article 109 corresponds to Article 92 of the Rules of the ICJ, with modifications with regard to the fixing of time-limits for the filing of written pleadings.

Paragraph 1 applies to all chambers. Written proceedings in a case before a chamber consist of a single pleading by each party. It is the chamber (or its President, if the chamber is not sitting) that is competent to fix the time-limits concerning the filing of written pleadings.[1] Unlike

[1] This rule may be modified by the Tribunal or by a chamber, as the case may be, if the parties so request. See article 48 of the Rules of the Tribunal. In *Conservation and Sustainable Exploitation of Swordfish Stocks (Chile/European Community), Order of 20 December 2000, ITLOS Reports 2000*, p. 148, the Tribunal, pursuant to the agreement of the parties, fixed the time-limits for the first round of written pleadings.

Article 92, paragraph 1, of the Rules of the ICJ and article 109, paragraph 1, of the Preparatory Commission draft, this paragraph does not assign any role either to the Tribunal or to its President in this regard. It is implicit in article 109, paragraph 1, of the Rules that the authority fixing the time-limits may also extend any time-limit if there is adequate justification for doing so.[2]

Paragraph 2 provides for the filing of a further round of pleadings if it should be decided by the chamber that such pleadings are necessary. That decision may be made if the parties are agreed, or by the chamber acting *proprio motu* or at the request of one of the parties.

Paragraph 3 requires oral proceedings in principle, but they may be dispensed with if the parties so request and the chamber consents. Notwithstanding the mandatory language of the provision, the chamber itself may dispense with oral proceedings if it considers that such proceedings are not necessary.[3] Even when oral proceedings are not considered necessary, the chamber may call upon the parties to supply information or to "furnish explanations orally". Furnishing explanations orally is not tantamount to holding oral proceedings.

[2] See article 59 read with article 107 of the Rules.
[3] See Rosenne, pp. 190–191.

Section E. Prompt release of vessels and crews

Article 110

1. An application for the release of a vessel or its crew from detention may be made in accordance with article 292 of the Convention by or on behalf of the flag State of the vessel.
2. A State Party may at any time notify the Tribunal of:
   (a) the State authorities competent to authorize persons to make applications on its behalf under article 292 of the Convention;
   (b) the name and address of any person who is authorized to make an application on its behalf;
   (c) the office designated to receive notice of an application for the release of a vessel or its crew and the most expeditious means for delivery of documents to that office;
   (d) any clarification, modification or withdrawal of such notification.
3. An application on behalf of a flag State shall be accompanied by an authorization under paragraph 2, if such authorization has not been previously submitted to the Tribunal, as well as by documents stating that the person submitting the application is the person named in the authorization. It shall also contain a certification that a copy of the application and all supporting documentation has been delivered to the flag State.

Section E. Prompte mainlevée de l'immobilisation du navire ou prompte libération de son équipage

Article 110

1. Une demande de mainlevée de l'immobilisation du navire ou de libération de son équipage au titre de l'article 292 de la Convention peut être faite par l'Etat du pavillon ou en son nom.
2. Un Etat Partie peut à tout moment notifier au Tribunal :
   a) les autorités nationales compétentes pour autoriser des personnes à présenter une demande en son nom au titre de l'article 292 de la Convention ;
   b) le nom et l'adresse de toute personne autorisée à présenter une demande en son nom ;
   c) le bureau désigné pour recevoir la notification d'une demande de mainlevée de l'immobilisation d'un navire ou de libération de son

équipage et les moyens les plus rapides pour faire parvenir des documents à ce bureau ;

d) toute clarification, modification ou retrait d'une telle notification.

3. Une demande faite au nom de l'Etat du pavillon doit être accompagnée de l'autorisation visée au paragraphe 2, si cette autorisation n'a pas été précédemment communiquée au Tribunal, ainsi que des documents attestant que la personne qui présente la demande est la personne désignée dans l'autorisation. Elle doit également comporter une attestation certifiant que copie de la demande et de tous documents à l'appui a été fournie à l'Etat du pavillon.

COMMENTARY

This article and the subsequent articles 111 to 114 of the Rules relating to the procedure for the prompt release of vessels and crews correspond to articles 89 to 93 of the Preparatory Commission Draft Rules. The aim of these articles is to provide the procedural rules that are necessary to give effect to the provisions of article 292 of the Convention, which institutes the novel international proceedings of prompt release of vessels and crews.

The Preparatory Commission Draft Rules considered proceedings under article 292 of the Convention to be incidental proceedings and included the relevant rules relating to these proceedings in subsection 2 of section D (entitled "Incidental Proceedings"). In the view of the Tribunal, these proceedings are independent and self-contained. They are not incidental to proceedings on the merits. Therefore, in the Rules adopted by the Tribunal on 28 October 1997, the provisions concerning prompt release were included in a separate section E of Part III of the Rules. The Tribunal confirmed its understanding of the nature of these proceedings in its judgment in the first case of prompt release submitted to it, *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release*. The Tribunal stated that "[t]he independence of proceedings under article 292 of the Convention vis-à-vis other international proceedings emerges from article 292 itself and from the Rules of the Tribunal. . . . These proceedings are thus not incidental to proceedings on the merits as are the proceedings for interim measures . . . They are separate, independent proceedings."[1]

Articles 110 to 113 of the Rules lay down the conditions for jurisdiction of the Tribunal and admissibility of an application for prompt release

[1] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 27.

of a vessel or its crew from detention, in conformity with the provisions of article 292 of the Convention. Pursuant to that article, the jurisdiction of the Tribunal to entertain an application for prompt release of a vessel or its crew is subject to three conditions.

First, the flag State of the detained vessel and the State whose authorities are detaining the vessel should both be States Parties to the Convention. The Tribunal would also have jurisdiction to entertain an application for prompt release in a dispute between two States which are not Parties to the Convention if they agreed to submit the dispute to the Tribunal, pursuant to article 21 of the Statute.

Second, article 292, paragraph 1, of the Convention also stipulates that the application may be submitted to the Tribunal if the parties failed to agree to submit the question of release from detention to another court or tribunal within 10 days from the time of detention.

How soon after the 10-day period should an application for release be submitted to the Tribunal? The question arose in *The "Camouco" Case (Panama* v. *France), Prompt Release*. France objected to the admissibility of the application made on behalf of Panama, which was filed more than three months after the detention of the vessel. The Tribunal stated that

> [t]he 10-day period referred to in article 292, paragraph 1, of the Convention is to enable the parties to submit the question of release from detention to an agreed court or tribunal. It does not suggest that an application not made to a court or tribunal within the 10-day period or to the Tribunal immediately after the 10-day period will not be treated as an application for "prompt release" within the meaning of article 292.[2]

The third condition for establishing the jurisdiction of the Tribunal relates to the nationality of the vessel. The Tribunal must verify that the detained vessel has the nationality of the State making the application for release and is entitled to fly its flag. If this condition is not fulfilled, that State lacks the *locus standi* for seizing the Tribunal.

At what point in time should the status of the applicant State as the flag State of the vessel be assessed? In certain judgments in prompt release cases, the Tribunal did not explicitly take a position on this question. In *The M/V "SAIGA" Case*, the Tribunal noted "that Guinea did not contest that Saint Vincent and the Grenadines is the flag State of the vessel."[3] In *The "Camouco" Case*,[4] and in *The "Monte Confurco" Case (Seychelles* v. *France), Prompt Release*,[5] the Tribunal stated that the status of the applicant State

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[2] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 28. See also Dissenting Opinion of Judge Vukas, p. 60 at p. 62.

[3] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 26.

[4] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 26.

[5] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 105.

as the flag State, "both at the time of the incident in question and now, is not disputed." In *The "Volga" Case (Russian Federation* v. *Australia), Prompt Release*, the Tribunal said that the "status of the Russian Federation as the flag State of the *Volga* is not disputed."[6] However, the Tribunal stated in its judgment in *The "Grand Prince" Case (Belize* v. *France), Prompt Release*, that the applicant should be the flag State of the vessel when the application is made.[7] The Tribunal concluded "that the documentary evidence submitted by the Applicant fails to establish that Belize was the flag State of the vessel when the Application was made."[8] The Tribunal reaffirmed its jurisprudence in its judgment in *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release*. It found "that there is no legal basis for the Respondent's claim that Saint Vincent and the Grenadines was not the flag State of the vessel on 18 November 2004, the date on which the Application for prompt release was submitted."[9] It may also be added that legal opinions have addressed the question of the relevant time for establishing the status of the applicant State as the flag State of the detained vessel. They consider prompt release proceedings under article 292 of the Convention to be a form of diplomatic protection subject to the general principle of international law concerning the continuity of nationality, as relied upon in the jurisprudence of the International Court of Justice.[10] On that basis, the relevant time would be the time of the commission of the wrongful act by the vessel, as well as the time of the detention of the vessel and of the submission of the application for prompt release.[11]

In the six prompt release cases adjudicated to date, the Tribunal verified whether the conditions mentioned above were met before establishing its jurisdiction. In one of those cases, *The "Grand Prince" Case*, the Tribunal decided that it had no jurisdiction to entertain the application for prompt release submitted by Belize because that State did not have the *locus standi* to request the release of a vessel not entitled to fly its flag.[12]

Under article 292, paragraph 2, of the Convention, the application for release may be made only by or on behalf of the flag State of the vessel.

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[6] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 30.

[7] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 38.

[8] *Ibid.*, p. 44.

[9] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 37.

[10] See *"Grand Prince" (Belize* v. *France), Prompt Release, ITLOS Reports 2001*, Separate Opinion of Judge Treves, p. 63 at pp. 63–64; see also J.-P. Quéneudec, "A propos de la procédure de prompte mainlevée devant le Tribunal international du droit de la mer", 7 *Annuaire du Droit de la mer* (2002), p. 79 at p. 85.

[11] Quéneudec, *op. cit.* note 10, pp. 85–86.

[12] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 44.

This compromise formulation was reached at the Third United Nations Conference on the Law of the Sea between the advocates of the exclusive right of the flag State to submit an application for release and those who supported conferring this right on the owner or operator of the vessel, as in the original proposal of the United States presented in 1973 before the Sea Bed Committee.[13] From the seven applications for prompt release submitted to the Tribunal to date, only one application was made by the flag State of the vessel.[14] All other applications were made on behalf of the flag State.

In order to act on behalf of a State before an international court or tribunal, a juridical or natural person must be authorized to do so by the authorities of that State. Such authorization can be of a general nature, granted before any dispute arises, or specific to a particular dispute. Paragraphs 2 and 3 of article 110 of the Rules[15] stipulate the requirements for submitting an application on behalf of a State Party. States Parties are invited to notify the Tribunal at any time of the State authorities competent to authorize persons to make an application on a State's behalf and the name and address of any person authorized to make such application. States Parties are also invited to designate an office to receive notice of an application and the most expeditious means for delivery of documents to that office. When no such office is designated, the Registrar transmits the application by courier and facsimile to the Minister of Foreign Affairs of the State concerned and often to the Embassy of that State in Germany.

The practice of the Tribunal shows that the authorizations to make applications in the prompt release proceedings held to date related to disputes concerning specific vessels. The question arises as to determining the authorities of the flag State that are competent to deliver an authorization to submit an application on its behalf, in the absence of previous notification of such authorities in accordance with article 110, paragraph 2(a), of the Rules. In *The M/V "SAIGA" Case*, Guinea argued that the authorization given to the Applicant's Agent was not in conformity with the provisions of article 110, paragraph 2, of the Rules. The Tribunal noted that "a certified copy of the authorization of the Attorney General of Saint Vincent and the Grenadines on behalf of the Government of

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[13] A/AC.138/97, article 8, paragraph 2, reproduced in *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction*, Vol. II (1973), General Assembly Official Records – Twenty-eighth Session, Supplement No. 21 (A/9021), p. 23.

[14] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*. p. 10 at p. 14.

[15] Paragraphs 2 and 3 of article 110 of the Rules are more detailed than the corresponding paragraphs 2 and 3 of article 89 of the Preparatory Commission Draft Rules.

Saint Vincent and the Grenadines to the Commissioner for Maritime Affairs of Saint Vincent and the Grenadines and the original of the authorization of the Commissioner for Maritime Affairs to the Agent were submitted to the Registrar and form part of the record."[16] The Tribunal dismissed the objection of Guinea.[17] Of the six applications submitted to the Tribunal on behalf of flag States, two authorizations were granted by the Minister for Foreign Affairs of Panama (*The "Camouco" Case* and *The "Chaisiri Reefer 2" Case (Panama* v. *Yemen), Prompt Release*) and three by the Attorney General of the flag State (Saint Vincent and the Grenadines with respect to *The M/V "SAIGA" Case* and *The "Juno Trader" Case* and Belize with respect to *The "Grand Prince" Case*). The Minister of Agriculture and Marine Resources of Seychelles granted one authorization with respect to *The "Monte Confurco" Case*.

The Tribunal has adopted instructions to the Registrar in order to permit him to ensure that an authorization to submit an application on behalf of a flag State is duly delivered by a competent authority of that State and to assist interested parties, in this regard, if necessary.[18]

Although the application may be submitted on behalf of the flag State, this State nevertheless remains the applicant in the proceedings and is represented by an agent in accordance with article 53, paragraph 1, of the Rules. The agent is generally, but not necessarily, the same person as the one authorized to make the application. The flag State may regain control of the proceedings at any time. Consequently, article 110, paragraph 3, requires that the application contain a certification that a copy of the application and all supporting documentation has been delivered to the flag State.[19]

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[16] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 10 at p. 26.

[17] *Ibid.*

[18] See *ITLOS Yearbook 2001*, p. 57.

[19] For a comprehensive examination of prompt release proceedings and the Rules of the Tribunal, see R. Lagoni, "The Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea: A Preparatory Report", 11 *International Journal of Marine and Coastal Law* (1996), pp. 147–164; D.H. Anderson, "Investigation, Detention and Release of Foreign Vessels under the UN Convention on the Law of the Sea of 1982 and Other International Agreements", *ibid.*, pp. 165–177; T. Treves, "The Proceedings Concerning Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea", *ibid.*, pp. 179–200; B.H. Oxman, "Observations on Vessel Release under the United Nations Convention on the Law of the Sea", *ibid.*, pp. 201–215; and J. Akl, "La procédure de prompte mainlevée du navire ou prompte libération de son équipage devant le Tribunal international du droit de la mer", 6 *Annuaire du Droit de la Mer* (2001), pp. 219–246; T. Treves, "Le Règlement du Tribunal international de droit de la mer entre tradition et innovation", XLIII *Annuaire français de Droit international* (1997), p. 341 at pp. 362–365; P. Chandrasekhara Rao, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183 at pp. 227–236.

Article 111

1. The application shall contain a succinct statement of the facts and legal grounds upon which the application is based.
2. The statement of facts shall:

   (a) specify the time and place of detention of the vessel and the present location of the vessel and crew, if known;
   (b) contain relevant information concerning the vessel and crew including, where appropriate, the name, flag and the port or place of registration of the vessel and its tonnage, cargo capacity and data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew;
   (c) specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with;
   (d) contain any further information the applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in the proceedings.

3. Supporting documents shall be annexed to the application.
4. A certified copy of the application shall forthwith be transmitted by the Registrar to the detaining State, which may submit a statement in response with supporting documents annexed, to be filed as soon as possible but not later than 96 hours before the hearing referred to in article 112, paragraph 3.
5. The Tribunal may, at any time, require further information to be provided in a supplementary statement.
6. The further proceedings relating to the application shall be oral.

Article 111

1. La demande doit contenir un exposé succinct des faits et des moyens de droit sur lesquels la demande repose.
2. L'exposé des faits doit :

   a) préciser, s'ils sont connus, le moment et le lieu de l'immobilisation du navire et l'endroit où se trouvent le navire et son équipage ;
   b) contenir des renseignements pertinents concernant le navire et l'équipage, notamment, le cas échéant, le nom du navire, son pavillon, le port ou le lieu où il est immatriculé et son tonnage, sa capacité de port, ainsi que les données pertinentes pour la détermination de sa valeur ; le nom et l'adresse du propriétaire du navire et/ou de l'exploitant et des renseignements concernant son équipage ;

c) préciser le montant, la nature et les conditions de la caution ou autre garantie financière que l'Etat qui a immobilisé le navire a pu exiger ainsi que la mesure dans laquelle ces exigences ont été respectées ;
d) contenir tout autre renseignement que le demandeur considère comme pertinent pour la détermination du montant d'une caution ou autre garantie financière raisonnable ou pour toute autre question qui se pose en l'espèce.

3. Des documents à l'appui seront annexés à la demande.
4. Une copie certifiée conforme de la demande est immédiatement transmise par le Greffier à l'Etat qui a procédé à l'immobilisation ou à l'arrestation, lequel peut, en réponse, présenter un exposé avec documents à l'appui annexés, le plus tôt possible, mais au plus tard 96 heures avant l'audience visée à l'article 112, paragraphe 3.
5. Le Tribunal peut, à tout moment, demander que d'autres renseignements lui soient fournis dans un exposé complémentaire.
6. La suite de la procédure concernant la demande est orale.

COMMENTARY

Article 111 of the Rules deals with the written part of the proceedings on prompt release of vessels and crews. Its provisions correspond to those of article 89, paragraphs 4, 5 and 6 of the Preparatory Commission Draft Rules. However, the Tribunal introduced some significant changes to the provisions concerning this part of the proceedings.

As in any other proceedings before the Tribunal, an application for prompt release should contain a statement of the facts and the legal grounds on which the application for release is based. This statement should be succinct, owing to the urgency and special nature of the proceedings, which are limited under article 292, paragraph 3, of the Convention, to "the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew." It should nevertheless address the legal grounds upon which the jurisdiction of the Tribunal is said to be based in accordance with the requirements of article 292 of the Convention. The statement of facts should contain a set of basic elements, listed in paragraph 2, subparagraphs (a), (b), (c) and (d) of article 111 of the Rules. The information required is essential for the evaluation of the facts of the case by the Tribunal and its determination with regard to the merits of the application for release.

The written proceedings are confined to the application by or on behalf of the flag State and to a statement in response that the detaining State may submit under article 111, paragraph 4, of the Rules. Memorial and

counter-memorial, reply and rejoinder are not envisaged in prompt release proceedings.

The Preparatory Commission Draft Rules did not set a time limit for the filing of the detaining State's statement in response. In contrast, under the Rules as originally adopted by the Tribunal, the statement in response was to be filed no later than 24 hours before the hearing. This short period of time between the closure of the written proceedings and the opening of the oral proceedings was intended to allow the applicant some time to prepare its oral submissions and to afford the judges the opportunity to study the statement in response before their initial deliberations held pursuant to article 68 of the Rules.

Experience gained after the first three prompt release cases dealt with by the Tribunal demonstrated that the 24-hour time-limit was too short for the parties, the judges and the Registry. On 15 March 2001, the Tribunal therefore amended article 111, paragraph 4, which now provides that the statement in response is to be filed "as soon as possible but not later than 96 hours" before the hearing.[1]

For the first time in prompt release proceedings before the Tribunal, the Respondent in *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release*, did not file a statement in response notwithstanding the fact that the Tribunal had extended the time-limit for the filing of this statement at the Respondent's request. In a letter dated 2 December 2004, on the day on which the extended time-limit expired, the Respondent stated that it was not in a position to file a statement in response, even within the extended time-limit, and added that, under article 111, paragraph 4, of the Rules, the filing of a statement in response was not mandatory. This unprecedented situation created an imbalance between the two parties by giving undue advantage at the hearing to the Respondent at the other party's expense. The Applicant complained that "[t]he Republic of Guinea-Bissau has had an opportunity to study our arguments in depth from 18 November, the date of submission of our Application, until 6 December, which was yesterday. To study their arguments we had last night. . . . The Tribunal might perhaps want to grasp this opportunity to review the rules of procedure so that greater or more straightforward equity may be established between the parties."[2] At a later session of the Tribunal, a comprehensive exchange of views on the subject took place among the Members of the Tribunal and a review was undertaken of the various ways and means provided by the Rules which

[1] For the rationale behind the amendment see the commentary on article 112, *infra*.

[2] See *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release*, Oral Argument of Saint Vincent and the Grenadines, ITLOS/PV.04/04, p. 14, quoted in *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, ITLOS Reports 2004*, Separate Opinion of Judge Chandrasekhara Rao, p. 64 at p. 68.

would permit equality between the parties to be restored. As stated by Judge P. Chandrasekhara Rao in his Separate Opinion in *The "Juno Trader" Case*, "[t]here are several ways whereby the principle of equal opportunities for the parties may be allowed full play, not all of which may entail amendment of the Rules."[3]

In the light of the expeditious nature of the proceedings, the means for communicating the statement in response as well as the application and all related documents are flexible. They can be transmitted by electronic means or by facsimile. However, the original of all documents, duly signed, should thereafter be delivered to the Registry. The Registrar verifies that all the supporting documents referred to in the application or in the statement in response are annexed and requests the parties to provide any missing documents. In this respect, reference may be made to the provisions relating to written proceedings as contained in the Guidelines, which apply to the application and to the statement in response in prompt release cases.

Under article 111, paragraph 5, of the Rules, the Tribunal may at any time require further information to be provided in a supplementary statement. It should be noted that new documents might be submitted to the Tribunal by both parties subject to the conditions mentioned in article 71 of the Rules. Pursuant to articles 76 and 77 of the Rules, in a number of prompt release cases dealt with by the Tribunal, questions were put to the parties requesting them to address certain points and issues or to provide additional information. The parties replied to the questions either orally during the hearing or by submitting written statements and relevant documents within a time limit decided by the Tribunal.[4]

The Tribunal decided to include paragraph 6 in article 111 in order to establish a clear distinction between the written and the oral phases of the proceedings. Such distinction was absent in the Preparatory Commission Draft Rules. In fact, article 90, paragraph 2, of the Draft Rules provided that the hearing would "afford the parties an opportunity of being represented and submitting their oral or written observations."[5] The Tribunal decided that a written statement in response or written observations should be submitted at the written stage of the proceedings and that, after the closure of the written proceedings, "[t]he further proceedings relating to the application shall be oral."

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[3] *Ibid.*, p. 69.

[4] See, e.g., *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at pp. 16–17.

[5] Preparatory Commission Draft Rules, p. 67.

Article 112

1. The Tribunal shall give priority to applications for release of vessels or crews over all other proceedings before the Tribunal. However, if the Tribunal is seized of an application for release of a vessel or its crew and of a request for the prescription of provisional measures, it shall take the necessary measures to ensure that both the application and the request are dealt with without delay.
2. If the applicant has so requested in the application, the application shall be dealt with by the Chamber of Summary Procedure, provided that, within five days of the receipt of notice of the application, the detaining State notifies the Tribunal that it concurs with the request.
3. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date, within a period of 15 days commencing with the first working day following the date on which the application is received, for a hearing at which each of the parties shall be accorded, unless otherwise decided, one day to present its evidence and arguments.
4. The decision of the Tribunal shall be in the form of a judgment. The judgment shall be adopted as soon as possible and shall be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing. The parties shall be notified of the date of the sitting.

Article 112

1. Le Tribunal donne priorité aux demandes de mainlevée de l'immobilisation de navires ou de libération de leur équipage sur toutes autres procédures devant le Tribunal. Toutefois, lorsqu'il est saisi d'une demande de mainlevée de l'immobilisation d'un navire ou de libération de son équipage et d'une demande en prescription de mesures conservatoires, le Tribunal prend les dispositions voulues pour se prononcer promptement sur l'une et l'autre demande.
2. Si le demandeur a formulé cette requête dans sa demande, celle-ci est soumise à la Chambre de procédure sommaire à la condition que dans un délai de cinq jours à compter de la signification de la demande, l'Etat qui a procédé à l'immobilisation notifie au Tribunal qu'il consent à ladite requête.
3. Le Tribunal ou le Président, si le Tribunal ne siège pas, fixe le plus tôt possible dans un délai de 15 jours à compter du premier jour ouvrable qui suit la date de la réception de la demande, la date d'une audience à laquelle chaque partie a le droit, à moins que le Tribunal en décide autrement, à un jour pour présenter ses preuves et arguments.

4. Le Tribunal statue par voie d'arrêt. L'arrêt est adopté le plus rapidement possible et est lu en audience publique du Tribunal qui a lieu au plus tard 14 jours après la clôture des débats. Notification est faite aux parties de la date de ladite audience.

COMMENTARY

Article 112 deals with the urgent nature of prompt release proceedings. This is derived from the terms of article 292 of the Convention and is inherent in the object and purpose of this article; its title itself reads "prompt release of vessels and crews". Article 292 asserts the urgency of the proceedings at various levels.

First, paragraph 1 of article 292 gives the flag State and the detaining State ten days only from the time of detention within which the question of release may be submitted to any court or tribunal agreed upon by them. Failing agreement within this short time-limit, the flag State may submit the question of release to a court or tribunal accepted by the detaining State under article 287 or to the Tribunal. Second, paragraph 3 of article 292 provides that the "court or tribunal shall deal without delay with the application." Third, paragraph 4 of article 292 provides that "the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew."

The Tribunal asserted the urgent nature of the proceedings in the first prompt release case submitted to it. The Tribunal declared that "[t]he proceedings for prompt release of vessels and crews are characterized by the requirement, set out in article 292, paragraph 3, of the Convention, that they must be conducted and concluded 'without delay'" and that the "Rules of the Tribunal give effect, in various ways, to the provision mentioned above that applications for release be dealt with without delay."[1]

The requirement that the "Tribunal shall give priority to applications for release of vessels or crews over all other proceedings before the Tribunal"[2] derives from the urgent nature of the proceedings. On the other hand, requests for the prescription of provisional measures under article 290, paragraphs 1 and 5, of the Convention are also urgent in nature and article 90 of the Rules provides that "[s]ubject to article 112, paragraph 1, a request for the prescription of provisional measures has priority over all other proceedings before the Tribunal." If the Tribunal

[1] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 26.

[2] Article 112, paragraph 1, of the Rules.

is simultaneously seized of an application for release and a request for the prescription of provisional measures, article 112, paragraph 1, of the Rules requires that the Tribunal take appropriate measures to ensure that "both the application and the request are dealt with without delay."

Article 112, paragraph 2, of the Rules provides the Tribunal and the parties with another way of dealing with applications for prompt release on an urgent basis. It provides that the Chamber of Summary Procedure shall deal with the application, subject to two conditions: that the applicant has so requested in the application and that the detaining State notifies the Tribunal within five days of receipt of notice of the application that it concurs with the request.

The Tribunal has modified the procedure set out in article 90, paragraph 3, of the Preparatory Commission Draft Rules,[3] pursuant to which prompt release applications were to be dealt with by the Chamber of Summary Procedure at the request of the applicant "unless, within one week of the receipt of the notice of the application, but in any event not later than ten days following receipt of the said notice, the detaining State notifies the Tribunal that the proceedings should be before the Tribunal", since the time-limit envisaged under this procedure appeared incompatible with the urgent nature of prompt release proceedings. In addition, it raised difficulties regarding administrative arrangements for the hearing since the detaining State was given too long a period within which to express its objections.

Of the seven prompt release applications submitted to the Tribunal to date, two applications contained a request pursuant to article 112, paragraph 2, of the Rules, for the applications to be dealt with by the Chamber of Summary Procedure. These were the application of Saint Vincent and the Grenadines for the release of the *M/V Saiga* and the application of Panama for the release of the vessel *Chaisiri Reefer 2*. With regard to the first request, Guinea did not notify the Tribunal of its concurrence with the request within the time-limit provided for in article 112, paragraph 2, of the Rules.[4] In the second request, Yemen also failed to notify the Tribunal of its concurrence with Panama's request. It should be noted, however, that the proceedings in the latter case were discontinued by

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[3] Article 90, paragraph 3, of the Preparatory Commission Draft Rules reads as follows:
If the applicant has so requested, and if the Tribunal is not in session, or a sufficient number of its Members is not available to constitute a quorum, the hearing and determination shall be made by the Chamber of Summary Procedure constituted under article 15, paragraph 3, of the Statute and article 17 of these Rules, unless, within one week of the receipt of notice of the application, but in any event not later than ten days following receipt of the said notice, the detaining State notifies the Tribunal that the proceedings should be before the Tribunal.

[4] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 18.

agreement of the Parties in accordance with article 105, paragraph 2, of the Rules, six days before the date of commencement of the hearing.[5]

Article 112, paragraph 3, of the Rules, as originally adopted by the Tribunal in 1997, provided that the Tribunal or the President should fix the earliest possible date, but not exceeding ten days from the date of receipt of the application, for a hearing. Paragraph 3 further specified that each of the parties should be accorded one day to present its evidence and arguments. In conformity with the policy stated in article 49 of the Rules that the proceedings "be conducted without unnecessary delay or expense", the 1997 version of article 112, paragraph 4, of the Rules, which underlines the urgent nature of the proceedings, provided that the judgment "shall be read at a public sitting of the Tribunal to be held not later than ten days after the closure of the hearing." These provisions were applied literally to the proceedings in the first three prompt release applications submitted to the Tribunal. In *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release; The "Camouco" Case (Panama* v. *France), Prompt Release*; and *The "Monte Confurco" Case (Seychelles* v. *France), Prompt Release*, the President of the Tribunal fixed the date of the hearing not later than ten days after the filing of the application and the judgment was rendered not later than ten days after the closure of the hearing. In each case, the whole proceedings took 22 days from the date of the filing of the application in the Registry to the date of the reading of the judgment.

Experience showed that these deadlines in prompt release proceedings were too restrictive and caused great difficulties to the parties, the Members of the Tribunal and the staff of the Registry.[6] For the respondent State, the short period of nine days from receipt of the application by the Registry was barely sufficient to prepare its case, coordinate with its various administrative departments and appear at the opening of the oral proceedings. Not all countries, particularly developing countries, are adequately equipped to deal with international proceedings with efficiency and promptness. In *The M/V "SAIGA" Case*, the Government of Guinea reported difficulties in receiving certain documentation and requested the postponement of the hearing, which was deferred for six days by an Order of the Tribunal.[7] At the same time, the applicant State received the

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[5] See *"Chaisiri Reefer 2" (Panama* v. *Yemen), Order of 13 July 2001, ITLOS Reports 2001*, p. 82.

[6] See J. Akl, "Question of time-limits in urgent proceedings before the Tribunal", in M.H. Nordquist/J.N. Moore (eds.), *Current Marine Environmental Issues and the International Tribunal for the Law of the Sea*, 2001, p. 75 at pp. 77–79.

[7] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Order of 21 November 1997, ITLOS Reports 1997*, p. 10; see also Ph. Gautier, "La procédure devant le Tribunal international du droit de la mer", 12 *Espaces et Ressources Maritimes* (1998), p. 24 at p. 43; Ph. Gautier, "Les affaires de 'prompte mainlevée' devant le Tribunal international du droit de la mer", *The Global Community, Yearbook of International Law and Jurisprudence 2003*, Vol. I, p. 79 at pp. 87–88.

respondent State's statement in response on the eve of the opening of the hearing and had little time to react to the respondent's arguments. The deadlines also proved to be a heavy burden on the President and the Members of the Tribunal, particularly the members of the drafting committee. Moreover, the different stages of the deliberations, drafting and approval of the judgment in accordance with the provisions of the Resolution[8] had to be accelerated in prompt release proceedings, owing to the pressure of time. The judges had to remain in session for ten consecutive days, including Saturdays and Sundays, and often were required to attend evening meetings. This pace of work also weighed heavily upon the relatively small staff of the Registry, especially upon the interpreters and translators.

For the foregoing considerations, the Tribunal, on 15 March 2001, adopted amendments to article 111, paragraph 4,[9] and article 112, paragraphs 3 and 4. Pursuant to the amendments relating to article 112, the Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date for a hearing "within a period of 15 days commencing with the first working day following the date on which the application is received", and the judgment "shall be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing."

The adoption of the above amendments to the Rules does not imply that the length of prompt release proceedings will necessarily be extended by nine days. The example of *The "Volga" Case (Russian Federation* v. *Australia), Prompt Release*, dealt with by the Tribunal under the amended articles 111 and 112 of the Rules, is significant. The Russian Federation submitted its application on 2 December 2002 and the Tribunal rendered its judgment on 23 December 2002. For practical reasons, it was not possible to make full use of the time allowed by the amended provisions of the Rules. "If the Tribunal had availed itself of using the maximum period of time permissible under the Rules, the proceedings would have ended on 1 January 2003, which would have caused a number of logistical problems."[10]

Article 91 of Preparatory Commission Draft Rules provided that the decision of the Tribunal or the Chamber of Summary Procedure should be in the form of an order, since it considered prompt release proceedings to be incidental proceedings. The Tribunal took another view and considered the proceedings under article 292 of the Convention as independent self-contained proceedings concluded by a decision in the form

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[8] Article 11, paragraphs 1 and 2, of the Resolution, however, permit a certain degree of flexibility "taking account of the nature and urgency of the case."

[9] See commentary to article 111, *supra*.

[10] See Ph. Gautier, "The International Tribunal for the Law of the Sea: Activities in 2002", 2 *Chinese Journal of International Law* (2003), p. 341 at p. 355.

of a judgment. Article 92 of the Preparatory Commission Draft Rules stated that the Tribunal shall terminate its proceedings upon receipt of notification from the detaining State of the release of the vessel and its crew. Article 92 of the draft was not incorporated in the Rules adopted by the Tribunal and, in accordance with article 112, paragraph 4, of the Rules, the judgment terminates the proceedings before the Tribunal.

Article 113

1. The Tribunal shall in its judgment determine in each case in accordance with article 292 of the Convention whether or not the allegation made by the applicant that the detaining State has not complied with a provision of the Convention for the prompt release of the vessel or the crew upon the posting of a reasonable bond or other financial security is well-founded.
2. If the Tribunal decides that the allegation is well-founded, it shall determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew.
3. The bond or other financial security for the release of the vessel or the crew shall be posted with the detaining State unless the parties agree otherwise. The Tribunal shall give effect to any agreement between the parties as to where and how the bond or other financial security for the release of the vessel or crew should be posted.

Article 113

1. Dans son arrêt, le Tribunal détermine dans chaque affaire conformément à l'article 292 de la Convention si l'allégation du demandeur selon laquelle l'Etat qui a immobilisé le navire n'a pas respecté une des dispositions de la Convention concernant la mainlevée de l'immobilisation du navire ou la libération de son équipage dès le dépôt d'une caution raisonnable ou d'une autre garantie financière, est ou non bien fondée.
2. Si le Tribunal décide que l'allégation est bien fondée, il détermine le montant, la nature et la forme de la caution ou autre garantie financière à déposer pour obtenir la mainlevée de l'immobilisation du navire ou la libération de son équipage.
3. La caution ou autre garantie financière en vue de la mainlevée de l'immobilisation du navire ou de la libération de son équipage sera déposée auprès de l'Etat qui a immobilisé le navire à moins que les parties n'en décident autrement. Le Tribunal fait droit à tout accord entre les parties concernant le lieu de dépôt de la caution ou autre garantie financière et la manière dont elle devrait être déposée.

COMMENTARY

Article 113 of the Rules relates to the admissibility of an application for prompt release for a vessel or its crew, to the determination by the Tribunal of the merits of the claim with respect to the release of the vessel or its crew, and to the amount, nature and form of the bond or financial security to be posted.

Paragraph 1 of this article reiterates the basic condition for admissibility of an application for release of a vessel or its crew laid down in article 292 of the Convention, namely the allegation by the applicant that "the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security." Several provisions of the Convention stipulate that vessels and crews can be detained by the authorities of States Parties and subjected to penal or civil judicial proceedings and enforcement measures. However, the prompt release procedure is only available in certain cases of detention where the Convention contains specific provisions for the release of the vessel or its crew upon the posting of a reasonable bond or financial security. In its first Judgment in a prompt release case, the Tribunal identified three such provisions: "article 73; paragraph 2; article 220, paragraphs 6 and 7; and, at least to a certain extent, article 226, paragraph 1(c)."[1] The Tribunal did not pronounce on the validity of the so called non-restrictive interpretation of article 292 of the Convention which advocated possible recourse to the prompt release procedure in cases of unlawful detention under other provisions of the Convention. Nevertheless, several judges in their dissenting or separate opinions refuted this interpretation.[2] All applications for prompt release submitted to the Tribunal to date were based on the allegation that the detaining State had not complied with the provisions of article 73 of the Convention relating to the enforcement of laws and regulations of the coastal state adopted in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone.

Several objections to the admissibility of applications for prompt release were raised by respondent States. In *The "Grand Prince" Case (Belize* v. *France), Prompt Release*, France filed observations regarding the Application of Belize and requested the Tribunal by means of an order and without holding a public hearing, to declare that the Application was without object and that it must therefore be rejected. France relied on the fact that the vessel was confiscated by a domestic judicial decision, which was provisionally enforced even though it was subject to appeal. The Tribunal deliberated on this issue and directed the Registrar to inform France that "[t]he Tribunal considers that the issues arising out of the Application and the observations of France on questions of jurisdiction and admissibility require a full examination consistent with principles of administration of justice and the urgent nature of prompt release proceedings in accor-

[1] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 28.

[2] See *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, ITLOS Reports 1997*, Dissenting Opinion of Vice-President Wolfrum and Judge Yamamoto, p. 46 at pp. 49–50; Dissenting Opinion of Judges Park, Nelson, Chandrasekhara Rao, Vukas and Ndiaye, p. 53 at pp. 61–62.

dance with the United Nations Convention on the Law of the Sea and the Rules of the Tribunal."[3] The Tribunal maintained that the procedure it adopted was "without prejudice to any decision which the Tribunal will take with regard to its jurisdiction and the admissibility of the Application."[4] The Tribunal did not have to deal with the question of confiscation of the vessel since it found that it had no jurisdiction to entertain the Application.[5]

Another objection to the admissibility of an application, based on the grounds of its delayed submission, was raised before the Tribunal and rejected by it in *The "Camouco" Case*.[6]

In *The "Camouco" Case (Panama* v. *France), Prompt Release*, the respondent maintained that legal proceedings were pending before a domestic court and that the Application clearly pointed to "a situation of *lis pendens* which casts doubts on its admissibility."[7] The Tribunal rejected the objection and stated that "[a]rticle 292 provides for an independent remedy and not an appeal against a decision of a national court."[8] The Tribunal in the same judgment also rejected the objection to admissibility of the Application based on the rule of exhaustion of local remedies set out in article 295 of the Convention. The Tribunal declared that "[n]o limitation should be read into article 292 that would have the effect of defeating its very object and purpose. Indeed article 292 permits the making of an application within a short period from the date of detention and it is not normally the case that local remedies could be exhausted in such a short period."[9]

In this context, it is worth recalling that a proposal to incorporate a provision in the Preparatory Commission Draft Rules explicitly excluding the requirements of article 295 in the procedure of article 292 of the Convention, whose " purpose was to avoid a misunderstanding to the effect that article 295 was applicable to 292", failed to gain acceptance. The majority of representatives argued that the inclusion of this proposal was "superfluous in view of the content and thrust of articles 292 and 295 of the Convention [. . .] that covered different situations."[10]

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[3] *"Grand Prince" (Belize* v. *France), Prompt Release, Judgment, ITLOS Reports 2001*, p. 17 at p. 22.

[4] *Ibid.*

[5] *Ibid.*, at p. 44. See the comments on the subject of confiscation in *"Grand Prince" (Belize* v. *France), Prompt Release, ITLOS Reports 2001*, Separate Opinion of Judge Anderson, p. 54 at pp. 55–57; Separate Opinion of Judge Laing, p. 58 at pp. 61–62; Declaration of Judge *ad hoc* Cot, p. 51 at pp. 51–52. See also B. Oxman and V. Bantz, "Un droit de confisquer? L'obligation de prompte mainlevée des navires" in V. Coussirat-Coustère (ed.), *La mer et son droit: Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec*, 2003, pp. 479–499.

[6] "*Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 28.

[7] *Ibid.*

[8] *Ibid.*, at p. 29.

[9] *Ibid.*

[10] "Chairman's summary of discussions – Revised draft Rules of the International Tribunal for the Law of the Sea", LOS/PCN/SCN.4/L.10, paragraphs 46–53, in LOS/PCN/152 (Vol. III), p. 140 at pp. 147–148.

Another objection to the admissibility of a prompt release application was raised on the basis that a bond or other financial security had not been offered or posted. The Tribunal held that the posting of a bond or financial security is not a requirement for the applicability of the prompt release procedure. Article 292 of the Convention can be invoked "when the posting of the bond has not been possible, has been rejected or is not provided for in the coastal State's laws or when it is alleged that the required bond is unreasonable."[11]

Once an application is found to be admissible, the Tribunal must decide on the merits of the case, namely whether the allegation of the flag State is well-founded. The merits aspect of a prompt release case has a limited scope. It encompasses the verification that the detaining State has not complied with a provision of the Convention for prompt release of a vessel or its crew upon the posting of a bond or other financial security, the evaluation of the reasonableness of the bond imposed by the detaining State and, finally, the determination of the elements of a reasonable bond. The provisions of article 292 of the Convention do not explicitly include the requirement that there be a determination as to whether or not the allegation of the flag State is well-founded. The Tribunal incorporated this requirement in its Rules on the assumption that the normal function and duty of any judicial organ is to verify and determine whether an alleged claim is well-founded in fact and in law. The practice of the Tribunal has evolved in relation to its approach to the questions of admissibility of an application for release and the merits of the application in the operative provisions of the judgment. In the first two prompt release cases, the operative provisions of the judgments included a finding on admissibility that covered all of the requirements set out in article 292 of the Convention other than the question of jurisdiction.[12] In both cases, however, the reasoning in the judgment concluded that the allegations were "well founded for the purposes of these proceedings."[13] In subsequent cases, a separate finding in the operative provisions of the judgment recorded the decision of the Tribunal that the application for release was well-founded.[14]

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[11] *The M/V "SAIGA" Case, op. cit.* note 1, at pp. 34–35; *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at pp. 30–31.

[12] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 36; *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 34; see however in the same case Declaration of Judge Mensah, p. 38, and Dissenting Opinion of Judge Treves, p. 73.

[13] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 34; *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 33.

[14] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 114; *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 38.

The prompt release procedure is limited in its scope. Article 292, paragraph 3, of the Convention provides that the court or tribunal "shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew." Well aware of this limitation of its jurisdiction under this article, the Tribunal has declined to deal with questions falling outside the ambit of article 292 and has rejected claims not directly related to the question of release. The Tribunal asserted this principle in its first prompt release judgment where it held that "the Tribunal is not called upon to decide whether the arrest of the *M/V Saiga* was legitimate. It is called upon to determine whether the detention consequent to the arrest is in violation of a provision of the Convention 'for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security.'"[15] The Tribunal reaffirmed its jurisprudence in *The "Volga" Case (Russian Federation* v. *Australia), Prompt Release*, where it stated that "[i]n the view of the Tribunal, matters relating to the circumstances of the seizure of the *Volga* as described in paragraphs 32 to 33 are not relevant to the present proceedings for prompt release under article 292 of the Convention. The Tribunal therefore cannot take into account the circumstances of the seizure of the *Volga* in assessing the reasonableness of the bond."[16] The Tribunal reiterated its jurisprudence in the same terms in *The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release.*[17] Likewise, in *The "Camouco" Case*, the Tribunal rejected Panama's argument that France had failed to comply with article 73, paragraphs 3 and 4, of the Convention, (relating to the exclusion of imprisonment from the penalties imposable and the obligation to notify the flag State of the arrest of a vessel) in these terms: "The scope of the jurisdiction of the Tribunal in proceedings under article 292 of the Convention encompasses only cases in which 'it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security'. As paragraphs 3 and 4, unlike paragraph 2, of article 73 are not such provisions, the submissions concerning their alleged violation are not admissible."[18] In its judgment in *The "Monte Confurco" Case (Seychelles* v. *France), Prompt Release*,[19] the Tribunal

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[15] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 31.

[16] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 36.

[17] *"Juno Trader" (Saint Vincent and the Grenadines* v. *Guinea-Bissau), Prompt Release, Judgment, ITLOS Reports 2004*, p. 17 at p. 43.

[18] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 29.

[19] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 106.

reaffirmed the same jurisprudence. In *The "Camouco" Case*, the Tribunal stated that these considerations would also apply to claims relating to the provisions of the Convention on freedom of navigation or to the incompatibility of the coastal State's laws with the provisions of the Convention.[20]

The second aspect of the merits of a prompt release application, if proved to be well-founded, is the assessment by the Tribunal of the reasonableness of the bond, and eventually, the determination of "the amount, nature and form of the bond or financial security to be posted for the release of the vessel or crew", as stated in article 113, paragraph 2, of the Rules. The provisions of article 292 give little indication about the bond besides the requirement that it should be "reasonable". The Tribunal has identified and developed its own criteria for assessing the nature of "a reasonable bond". In making such an assessment, the Tribunal will treat the laws of the detaining State and the decisions of its courts as "relevant facts"[21] but is not bound by them. The Tribunal asserts the international character of its proceedings in these terms:

> "When under article 292 of the Convention the Tribunal is called upon to determine what constitutes a reasonable bond, its determination must be based on the Convention and other rules of international law not incompatible with the Convention."[22]

Proceeding from this principle, the Tribunal decided in two instances that the bond should be in the form of a bank guarantee, while the domestic court imposed a bond to be paid in cash, by certified cheque or bank draft.[23] Furthermore, the Tribunal in the same instances ordered the release of the Master who, while not imprisoned, was under court supervision and was not allowed to leave the territory of the detaining State, on the ground that this situation was not compatible with the obligation of release.[24] More recently, the Tribunal decided that non-financial conditions imposed by the authorities of the detaining State (carriage of a Vessel Monitoring System and provision of information on the ultimate beneficial owners of the vessel), could not be considered components of a bond or other financial security under article 73, paragraph 2, of the Convention, and would defeat that provision's "object and purpose".[25]

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[20] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 30.

[21] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 108.

[22] *Ibid.*, at p. 109.

[23] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at pp. 22, 33; *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 113.

[24] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at pp. 32–33; *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 112.

[25] *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 35.

The Tribunal also held the view that "a 'good behaviour bond', to prevent future violations of the laws of a coastal State cannot be considered as a bond or security within the meaning of article 73, paragraph 2, of the Convention read in conjunction with article 292 of the Convention."[26]

The Tribunal has progressively developed its understanding of the factors relevant for assessing the reasonableness of a bond or for determining a reasonable bond. In its first judgment, the Tribunal declared that "the criterion of reasonableness encompasses the amount, the nature and the form of the bond or financial security. The overall balance of the amount, form and nature of the bond or financial security must be reasonable."[27] The Tribunal specified the main factors relevant to an assessment of the reasonableness of a bond or financial security as follows:

> The Tribunal considers that a number of factors are 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 the laws of the detaining State, the value of the detained vessel and of the cargo seized, the amount of the bond imposed by the detaining State and its form.[28]

Moreover, the Tribunal prudently added in a subsequent case that "[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."[29] More generally, the Tribunal declared that:

> Article 73 identifies two interests, the interest of the coastal State to take appropriate measures as may be necessary to ensure compliance with the laws and regulations adopted by it on the one hand and the interest of the flag State in securing prompt release of its vessels and their crews from detention on the other hand. It strikes a fair balance between the two interests.[30]

The Tribunal further added that "[t]he balance of interests emerging from articles 73 and 292 of the Convention provides the guiding criterion for the Tribunal in its assessment of the reasonableness of the bond."[31] The first two versions of the Preparatory Commission Draft Rules contained a provision to the effect that the bond or other financial security "shall not exceed the value of the vessel."[32] This provision was deleted in the final Preparatory Commission Draft Rules.

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[26] *Ibid.*, at p. 36.

[27] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 35.

[28] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 31.

[29] *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 109.

[30] *Ibid.*, at p. 108.

[31] *Ibid.*

[32] Article 88.B, paragraph 3, Supplement to the draft Rules of the Tribunal, LOS/PCN/SCN. 4/WP. 2/Add. 1, in LOS/PCN/152 (Vol. II), p. 72 at p. 74 and article 91, paragraph 1,

The reasonable bond or financial security determined by the Tribunal must be posted "for the release of the vessel or crew." In its first judgment on prompt release, the Tribunal indicated that "[s]uch release must be effected upon the posting of a reasonable bond or other financial security. The Tribunal cannot accede to the request of Saint Vincent and the Grenadines that no bond or financial security (or only a 'symbolic bond') should be posted. The posting of a bond or security seems to the Tribunal necessary in view of the nature of the prompt release proceedings."[33]

Guinea did not "comply promptly with the decision of the Tribunal concerning the release of the vessel or its crew" as prescribed by article 292, paragraph 4, of the Convention. The considerable delay in releasing the *Saiga* after the posting of the bond was due to difficulties between the two parties in agreeing on the terms of the bond and that not all the factors that contributed to the delay in releasing the vessel were due to the fault of Guinea.[34] In its later judgments, the Tribunal laid down specific indications about the terms and content of the bond or financial security to be posted and the conditions of its payment.[35]

Article 292 of the Convention did not specify with whom or where the bond or financial security should be posted. This question was discussed at length during the elaboration of the Preparatory Commission Draft Rules. Some delegations were of the opinion that the bond should be posted only with the detaining State while others felt that the bond should be posted with the Tribunal.[36] The Preparatory Commission Draft Rules provided in article 91, paragraph 2, that the bond or financial security shall be posted with the Tribunal, unless a bond or security has been posted earlier with the detaining State, or at the request of the flag State, the Tribunal determines, after ascertaining the views of the detaining State, that it should be posted with that State. The Tribunal opted for a simpler procedure in article 113, paragraph 3, of its Rules. The bond or financial security shall be posted with the detaining State unless the parties agree otherwise, as to where and how the bond or security should

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Draft Rules of the Tribunal (Part I), LOS/PCN/SCN. 4/WP.2/Rev. 1/Part1, in LOS/PCN/152 (Vol. II), p. 76 at p. 116.

[33] *M/V "SAIGA" (Saint Vincent and the Grenadines* v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 at p. 35.

[34] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 64.

[35] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at pp. 33–34; *"Monte Confurco" (Seychelles* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 86 at p. 113; *"Volga" (Russian Federation* v. *Australia), Prompt Release, Judgment, ITLOS Reports 2002*, p. 10 at p. 38.

[36] See "Chairman's summary of discussions – Revised draft Rules of the International Tribunal for the Law of the Sea", LOS/PCN/SCN.4/L.10, paragraphs 67–69, in LOS/PCN/152 (Vol. III), p. 140 at p. 150 and Addendum, LOS/PCN/SCN.4/L.10/Add.1, paragraphs 63–70, in LOS/PCN/152 (Vol. III), p. 152 at pp. 162–163.

be posted. In this case, the Tribunal gives effect to the agreement of the parties. To date, all the decisions of the Tribunal on prompt release provided that the bond or other financial security should be posted with the detaining State. The Applicant in *The "Camouco" Case* requested the Tribunal to order a bank guarantee "to be entrusted to the care of the Tribunal in order that it may be duly delivered to the French authorities." The Tribunal noted that under article 113, paragraph 3, of its Rules, such posting requires the agreement of the parties and decided, in the absence of such agreement, that it "cannot accede to the request of the Applicant."[37]

[37] *"Camouco" (Panama* v. *France), Prompt Release, Judgment, ITLOS Reports 2000*, p. 10 at p. 33.

Article 114

1. If the bond or other financial security has been posted with the Tribunal, the Registrar shall promptly inform the detaining State thereof.
2. The Registrar shall endorse or transmit the bond or other financial security to the detaining State to the extent that it is required to satisfy the final judgment, award or decision of the competent authority of the detaining State.
3. The bond or other financial security, to the extent that it is not required to satisfy the judgment, award or decision, shall be endorsed or transmitted to the flag State.

Article 114

1. Si la caution ou autre garantie financière a été déposée auprès du Tribunal, le Greffier en informe promptement l'Etat qui a immobilisé le navire.
2. Le Greffier endosse ou transmet la caution ou autre garantie financière à l'Etat qui a immobilisé le navire, pour autant qu'elle est requise pour qu'il soit donné suite à l'arrêt, sentence ou décision définitive de l'autorité compétente de l'Etat qui a procédé à l'immobilisation.
3. La caution ou autre garantie financière, pour autant qu'elle n'est pas requise pour qu'il soit donné suite à tout arrêt, sentence ou décision, est endossée ou transmise à l'Etat du pavillon.

COMMENTARY

Article 114 of the Rules lays down the procedure to be followed should a bond or other financial security be posted with the Tribunal. Its provisions pertain to the execution of the judgment and specify the administrative functions performed by the Registrar in this respect.

This article has not yet been applied since a bond or other financial security has not yet been posted with the Tribunal.

The Tribunal is considering adopting instructions to the Registrar that complete the provisions of this article in order to give him guidelines for the exercise of his powers and responsibilities under this article and to permit him, if necessary, to assist interested parties.

Section F. Proceedings in contentious cases before the Seabed Disputes Chamber

Article 115

Proceedings in contentious cases before the Seabed Disputes Chamber and its *ad hoc* chambers shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the Seabed Disputes Chamber and its *ad hoc* chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Section F. Procédure en matière contentieuse devant la Chambre pour le règlement des différends relatifs aux fonds marins

Article 115

En matière contentieuse, la procédure devant la Chambre pour le règlement des différends relatifs aux fonds marins ou ses chambres *ad hoc* est, sous réserve des dispositions de la Convention, du Statut et du présent Règlement visant expressément la Chambre pour le règlement des différends relatifs aux fonds marins ou ses chambres *ad hoc*, réglée conformément aux dispositions du présent Règlement applicables en matière contentieuse devant le Tribunal.

COMMENTARY

Section F of the Rules lays down the procedure in contentious cases before the Seabed Disputes Chamber. The procedure in advisory proceedings is dealt with in section H (articles 130 to 138).

The general rule laid down in article 115 is that proceedings in contentious cases before the Chamber and its *ad hoc* chambers shall be governed by the Rules applicable in contentious cases before the Tribunal. This general rule, however, is subject to the application of provisions of the Convention or the Rules relating specifically to the Chamber or its *ad hoc* chambers.

Section F lays down special provisions with respect to the following cases:

(a) cases where one of the parties is a state enterprise or a natural or juridical person (articles 117 to 121);

(b) proceedings on the suspension of a State Party from the exercise of the rights or privileges of membership of the Assembly of the International Seabed Authority (article 122);
(c) rulings pursuant to a referral by a commercial arbitral tribunal under article 188, paragraph 2, of the Convention (article 123).

The procedure in cases exclusively between States Parties or between States Parties and the International Seabed Authority is the same as in cases before the Tribunal sitting as a whole (articles 115 and 116 of the Rules).

Article 116

Articles 117 to 121 apply to proceedings in all disputes before the Chamber with the exception of disputes exclusively between States Parties and between States Parties and the Authority.

Article 117

When proceedings before the Chamber are instituted by means of an application, the application shall indicate:

(a) the name of the applicant and, where the applicant is a natural or juridical person, the permanent residence or address or registered office address thereof;
(b) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;
(c) the sponsoring State, in any case where the applicant is a natural or juridical person or a state enterprise;
(d) the sponsoring State of the respondent, in any case where the party against which the claim is brought is a natural or juridical person or state enterprise;
(e) an address for service at the seat of the Tribunal;
(f) the subject of the dispute and the legal grounds on which jurisdiction is said to be based; the precise nature of the claim, together with a statement of the facts and legal grounds on which the claim is based;
(g) the decision or measure sought by the applicant;
(h) the evidence on which the application is founded.

Article 118

1. The application shall be served on the respondent. The application shall also be served on the sponsoring State in any case where the applicant or respondent is a natural or juridical person or a state enterprise.
2. Within two months after service of the application, the respondent shall lodge a defence, stating:

(a) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;
(b) an address for service at the seat of the Tribunal;
(c) the matters in issue between the parties and the facts and legal grounds on which the defence is based;

(d) the decision or measure sought by the respondent;
(e) the evidence on which the defence is founded.

3. At the request of the respondent, the President of the Chamber may extend the time-limit referred to in paragraph 2, if satisfied that there is adequate justification for the request.

Article 119

1. Within two months after service of the application in accordance with article 118, paragraph 1, where the respondent is a State Party in a case brought by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), of the Convention, the respondent State may make an application in accordance with article 190, paragraph 2, of the Convention for the sponsoring State of the applicant to appear in the proceedings on behalf of the applicant.
2. Notice of an application under paragraph 1 shall be communicated to the applicant and its sponsoring State. If, within a time-limit fixed by the President of the Chamber, the sponsoring State does not indicate it will appear in the proceedings on behalf of the applicant, the respondent State may designate a juridical person of its nationality to represent it.
3. Within two months after service of the application in accordance with article 118, paragraph 1, on the sponsoring State of a party, such State may give written notice of its intention to submit written or oral statements in accordance with article 190, paragraph 1, of the Convention.
4. Upon receipt of such a notice, the President of the Chamber shall fix the time-limit within which the sponsoring State may submit its written statements. The sponsoring State shall be notified of such time-limit. It shall also be notified of the date of the hearing. The written statements shall be communicated to the parties and to any other sponsoring State of a party.
5. At the request of the respondent or a sponsoring State, the President of the Chamber may extend a time-limit referred to in this article, if satisfied that there is adequate justification for the request.

Article 120

1. When proceedings are brought before the Chamber by the notification of a special agreement, the notification shall indicate:

(a) the parties to the case and any sponsoring States of the parties;
(b) the subject of the dispute and the precise nature of the claims of the parties, together with a statement of the facts and legal grounds on which the claims are based;

(c) the decisions or measures sought by the parties;
(d) the evidence on which the claims are founded.

2. The notification shall also provide information regarding participation and appearance in the proceedings by sponsoring States Parties in accordance with article 190 of the Convention.

Article 121

1. The Chamber may authorize or direct the filing of further pleadings if the parties are so agreed or the Chamber decides, *proprio motu* or at the request of a party, that these pleadings are necessary.
2. The President of the Chamber shall fix the time-limits within which these pleadings are to be filed.

Article 116

Les articles 117 à 121 sont applicables aux procédures relatives à tout différend devant la Chambre, à l'exception des différends exclusivement entre Etats Parties et entre les Etats Parties et l'Autorité.

Article 117

Lorsqu'une instance est introduite devant la Chambre par une requête, celle-ci indique :

a) le nom du requérant et, lorsqu'il s'agit d'une personne physique ou morale, son domicile ou adresse ou l'adresse de son siège commercial ;
b) le nom du défendeur et, lorsqu'il s'agit d'une personne physique ou morale, son domicile ou adresse ou l'adresse de son siège commercial ;
c) dans toute affaire où le requérant est une personne physique ou morale ou une entreprise d'Etat, l'Etat qui patronne le requérant ;
d) dans toute affaire où la partie contre laquelle la requête est formée est une personne physique ou morale ou une entreprise d'Etat, l'Etat qui patronne le défendeur ;
e) une adresse au siège du Tribunal pour toute notification ;
f) l'objet du différend et les moyens de droit invoqués pour fonder la compétence; la nature précise de la demande, ainsi qu'un exposé des faits et des moyens de droit sur lesquels elle repose ;
g) les conclusions du requérant ;
h) les moyens de preuve.

Article 118

1. La requête est notifiée au défendeur. Elle est également notifiée à l'Etat qui patronne dans toute affaire où le requérant ou le défendeur est une personne physique ou morale ou une entreprise d'Etat.
2. Dans les deux mois qui suivent la notification de la requête, le défendeur présente un mémoire en défense. Ce mémoire contient :

   a) le nom du défendeur et, lorsqu'il s'agit d'une personne physique ou morale, son domicile ou adresse ou l'adresse de son siège commercial ;
   b) une adresse au siège du Tribunal pour toute notification ;
   c) les questions en litige entre les parties et les faits et moyens de droit de la défense ;
   d) les conclusions du défendeur ;
   e) les moyens de preuve.

3. A la demande du défendeur, le Président de la Chambre peut proroger le délai visé au paragraphe 2 s'il estime la demande suffisamment justifiée.

Article 119

1. Tout Etat contre lequel une requête est formée par une personne physique ou morale patronnée par un autre Etat Partie pour un différend visé à l'article 187, lettre c), de la Convention peut, dans les deux mois qui suivent la notification de la requête conformément à l'article 118, paragraphe 1, former, conformément à l'article 190, paragraphe 2, de la Convention, une requête tendant à ce que l'Etat qui patronne le requérant comparaisse au nom de celui-ci.
2. Toute requête formée en vertu du paragraphe 1 est notifiée au demandeur et à l'Etat ayant accordé son patronage. Si, dans le délai fixé par le Président de la Chambre, l'Etat qui patronne n'indique pas qu'il comparaîtra au nom du demandeur, l'Etat défendeur peut charger une personne morale possédant sa nationalité de le représenter.
3. Dans les deux mois qui suivent la notification de la requête à l'Etat qui patronne une partie, conformément au paragraphe 1 de l'article 118, cet Etat peut manifester par écrit son intention de présenter des observations écrites ou orales conformément à l'article 190, paragraphe 1, de la Convention.
4. Dès qu'il reçoit cette notification, le Président de la Chambre fixe le délai dans lequel l'Etat qui patronne peut présenter ses observations écrites. L'Etat qui patronne est informé dudit délai. Il est également informé de la date de l'audience. Les observations écrites sont transmises aux parties et à tout autre Etat qui patronne une partie.

5. A la demande du défendeur ou de l'Etat qui patronne, le Président de la Chambre peut proroger tout délai visé au présent article s'il estime la demande suffisamment justifiée.

Article 120

1. Lorsque l'instance est introduite devant la Chambre par la notification d'un compromis, la notification indique :

   a) les parties à l'affaire et tout Etat Partie qui patronne les parties ;
   b) l'objet du différend et la nature précise des demandes des parties ainsi qu'un exposé des faits et des moyens de droit sur lesquels elles reposent ;
   c) les conclusions des parties ;
   d) les moyens de preuve.

2. La notification fournit également des informations concernant la participation à la procédure et la comparution des Etats Parties qui patronnent, conformément à l'article 190 de la Convention.

Article 121

1. La Chambre peut autoriser ou prescrire la présentation d'autres pièces de procédure si les parties sont d'accord à cet égard ou si elle décide, d'office ou à la demande d'une partie, que ces pièces sont nécessaires.
2. Le Président de la Chambre fixe les délais dans lesquels ces pièces de procédure doivent être présentées.

COMMENTARY

Articles 116 to 121 envisage the possibility of an expedited procedure in cases in which one of the parties is a state enterprise or a natural or juridical person, analogous to the procedure before special chambers. The procedure differs as to whether the proceedings are instituted by an application or by a notification of a special agreement. In the case of an application, the proceedings would consist of a detailed application[1] and statement of defence.[2] In the case of a notification, the proceedings would consist solely of the notification, which would be expected to provide all

[1] Article 117.
[2] Article 118, paragraph 2.

the necessary information.[3] Further written pleadings would not follow unless authorized or directed by the Chamber.[4]

The application shall contain the names and, in the case of natural or juridical persons, the addresses of the applicant and respondents as well as their sponsoring States, if any,[5] and the address for service of the applicant in Hamburg.[6]

The application shall indicate the subject of the dispute, the legal grounds on which jurisdiction is based and the precise nature of the claim, together with a statement of the facts and legal grounds on which the claim is based.[7] Given that, as a rule, no further written pleadings are envisaged, the information should be provided in some detail, as compared to an application instituting proceedings before the Tribunal sitting as a whole.[8]

The application must also indicate the decision or measure sought by the applicant[9] and the evidence on which it is founded.[10]

The application shall be served on the respondent and on the sponsoring State in cases where the applicant or respondent is a natural or juridical person or a state enterprise.[11]

Within two months of the service of the application, the respondent shall lodge a defence.[12] If the respondent so requests, the President of the Chamber may extend the two-month time-limit if satisfied that there is adequate justification for the request.[13]

The defence shall indicate the name of the respondent and, in the case of a natural or juridical person, its address, as well as an address for service in Hamburg.[14] The defence shall state the matters at issue between the parties and the facts and legal grounds on which the defence is based.[15] Again, some detail is expected. The defence shall also indicate the decision or measure sought by the respondent[16] and the evidence on which the defence is founded.[17]

Where the parties have concluded a special agreement to bring the dispute before the Chamber, the proceedings are instituted by the notification

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[3] Article 120.
[4] Article 121.
[5] Article 117, subparagraphs (a) to (d).
[6] Article 117, subparagraph (e).
[7] Article 117, subparagraph (f).
[8] Note the absence of the word "succinct" found in article 54, paragraph 2, of the Rules.
[9] Article 117, subparagraph (g).
[10] Article 117, subparagraph (h).
[11] Article 118, paragraph 1.
[12] Article 118, paragraph 2.
[13] Article 118, paragraph 3.
[14] Article 118, paragraph 2, (a) and (b).
[15] Article 118, paragraph 2(c).
[16] Article 118, paragraph 2(d).
[17] Article 118, paragraph 2(e).

by the parties of the special agreement. The notification shall indicate the names of the parties and any sponsoring States.[18] It shall state the subject of the dispute and the precise nature of the claims of the parties, together with a statement of the facts and legal grounds on which the claims are based.[19] The notification shall indicate the decisions or measures sought by the parties[20] and the evidence on which the claims are based.[21]

No further pleadings will be filed unless the Chamber authorizes or directs that there be further pleadings.[22] The Chamber may do so if the parties are so agreed or the Chamber decides, *proprio motu* or at the request of a party, that these pleadings are necessary. If the Chamber decides to authorize or direct the filing of further pleadings, the President of the Chamber shall fix the time-limits within which they are to be filed.[23]

Article 190 of the Convention envisages two situations where the sponsoring State of a natural or juridical person which is a party to a case before the Chamber may participate in the proceedings. These situations are regulated by articles 119 and 120, paragraph 2, of the Rules.

The first situation arises under article 190, paragraph 2, of the Convention where an action is brought against a State Party in a dispute between parties to a contract under article 187, subparagraph (c), of the Convention by a natural or juridical person sponsored by another State Party. In that case the State Party against which the action is brought may request that the sponsoring State appear in the proceedings on behalf of that person, failing which it may arrange to be represented by a juridical person of its nationality. Article 119, paragraphs 1 and 2, of the Rules lays down the procedure in these cases. A time-limit of two months is set from the service of the application under article 118, paragraph 1, during which the respondent State may request that the sponsoring State appear on behalf of the applicant.[24] The request shall be communicated to the applicant and its sponsoring State. If, within a time-limit set by the President of the Chamber, the sponsoring State does not indicate that it will appear in the proceedings on behalf of the applicant, the respondent State may designate a juridical person of its nationality to represent it.[25]

In the second situation, the sponsoring State of a natural or juridical person which is a party to a dispute may exercise its right under article 190, paragraph 1, of the Convention to participate in the proceedings

[18] Article 120, paragraph 1(a).
[19] Article 120, paragraph 1(b).
[20] Article 120, paragraph 1(c).
[21] Article 120, paragraph 1(d).
[22] Article 121, paragraph 1.
[23] Article 121, paragraph 2.
[24] Article 119, paragraph 1.
[25] Article 119, paragraph 2.

by submitting written or oral statements. Article 119, paragraphs 3 and 4, of the Rules deals with this situation. A two-month time-limit from the service of the application under article 118, paragraph 1, of the Rules is laid down during which the sponsoring State may give written notice of its intention to submit written or oral statements.[26] Upon receiving notice of the intention of the sponsoring State to submit a written statement, the President shall fix the time-limit for the submission of the statement and inform the sponsoring State.[27] The sponsoring State shall also be notified of the date of the hearing. The written statements shall be communicated to the parties and to any other sponsoring State of a party.[28]

At the request of the respondent or a sponsoring State, the President of the Chamber may extend a time-limit if satisfied that there is adequate justification for the request.[29]

The foregoing rules apply to proceedings instituted by an application. In cases instituted by notification of a special agreement, it can be expected that the nature of the participation of the sponsoring States under article 190 of the Convention will have been laid down, in which case the notification shall provide information regarding participation and appearance in the proceedings.[30]

[26] Article 119, paragraph 3.
[27] Article 119, paragraph 4.
[28] Article 119, paragraph 4.
[29] Article 119, paragraph 5.
[30] Article 120, paragraph 2.

Article 122

Proceedings by the Council on behalf of the Authority under article 185, paragraph 2, of the Convention shall be instituted by means of an application in accordance with article 162, paragraph 2 (u), of the Convention. The application shall be accompanied by a certified copy of the decision or resolution of the Council upon which it is based and the full records of all discussions within the Authority on the matter.

Article 122

Une instance introduite en vertu de l'article 185, paragraphe 2, de la Convention fait l'objet d'une requête présentée par le Conseil au nom de l'Autorité, conformément à l'article 162, paragraphe 2, lettre u), de la Convention. La requête est accompagnée d'une copie certifiée conforme de la décision ou de la résolution du Conseil sur laquelle elle se fonde ainsi que d'un compte rendu intégral de toutes les discussions qui ont eu lieu sur cette question au sein de l'Autorité.

COMMENTARY

Under article 185 of the Convention, a State Party which has "grossly and persistently" violated the provisions of Part XI of the Convention may be suspended from the exercise of the rights and privileges of membership in the International Seabed Authority by the Assembly of the Authority upon the recommendation of the Council.[1] The Council makes its recommendation under article 162, paragraph 2(t), of the Convention and the Assembly acts on the recommendation under article 160, paragraph 2(m), of the Convention.

However, under article 185, paragraph 2, of the Convention, no action of suspension may be taken until the Seabed Disputes Chamber has found that a State Party has grossly and persistently violated the provisions of Part XI. In these cases, under article 162, paragraph 2(u), the Council shall institute proceedings on behalf of the Authority before the Chamber.

Article 122 of the Rules lays down the procedure for such proceedings. The proceedings are treated as contentious proceedings between the Authority and the State Party concerned, instituted by an application by the Council. The application shall be accompanied by a certified copy

[1] Article 185, paragraph 1, of the Convention.

of the decision or resolution of the Council upon which it is based and the full records of all discussions within the Authority on the matter.

The subsequent procedure would be determined by the Tribunal in accordance with the Rules relating to proceedings instituted by an application.

Article 123

1. When a commercial arbitral tribunal, pursuant to article 188, paragraph 2, of the Convention, refers to the Chamber a question of interpretation of Part XI of the Convention and the annexes relating thereto upon which its decision depends, the document submitting the question to the Chamber shall contain a precise statement of the question and be accompanied by all relevant information and documents.
2. Upon receipt of the document, the President of the Chamber shall fix a time-limit not exceeding three months within which the parties to the proceedings before the arbitral tribunal and the States Parties may submit their written observations on the question. The parties to the proceedings and the States Parties shall be notified of the time-limit. The States Parties shall be informed of the contents of the submission.
3. The President of the Chamber shall fix a date for a hearing if, within one month from the expiration of the time-limit for submitting written observations, a party to the proceedings before the arbitral tribunal or a State Party gives written notice of its intention to submit oral observations.
4. The Chamber shall give its ruling in the form of a judgment.

Article 123

1. Lorsque, en vertu de l'article 188, paragraphe 2, de la Convention, un tribunal arbitral commercial renvoie à la Chambre une question d'interprétation de la partie XI de la Convention et des annexes y relatives, à laquelle sa décision est subordonnée, le document présentant la question à la Chambre contient un exposé précis de la question d'interprétation et est accompagné de tous les éléments d'information et documents pertinents.
2. Dès réception du document, le Président de la Chambre fixe un délai n'excédant pas trois mois dans lequel les parties à la procédure devant le tribunal arbitral et les Etats Parties peuvent présenter des observations écrites sur la question posée. Les parties à la procédure et les Etats Parties sont informés dudit délai. Les Etats Parties sont informés du contenu de la soumission.
3. Le Président de la Chambre fixe une date pour l'audience si, dans un délai d'un mois après l'expiration du délai pour présenter des observations écrites, une partie à la procédure devant le tribunal arbitral ou un Etat Partie manifeste par écrit son intention de présenter des observations orales.
4. La Chambre statue par voie d'arrêt.

COMMENTARY

Under article 188, paragraph 2, of the Convention, disputes concerning the interpretation or application of a contract referred to in article 187, subparagraph (c)(i), shall be submitted, at the request of any party to the dispute, to binding commercial arbitration, unless the parties otherwise agree. However, a commercial arbitral tribunal to which the dispute is submitted shall have no jurisdiction to decide any question of interpretation of the Convention. When the dispute also involves a question of the interpretation of Part XI and the Annexes relating thereto, with respect to activities in the Area, that question shall be referred to the Seabed Disputes Chamber for a ruling.

If, at the commencement of or in the course of such arbitration, the arbitral tribunal determines, either at the request of any party to the dispute or *proprio motu*, that its decision depends upon a ruling of the Chamber, the arbitral tribunal shall refer such question to the Chamber for such ruling. Article 123 of the Rules sets out the procedure for dealing with such a referral.

In such cases, the document submitting the question to the Chamber shall contain a precise statement of the question and be accompanied by all relevant information and documents.[1]

The subsequent proceedings envisage a role both for the parties to the proceedings before the arbitral tribunal and for States Parties in general. The role of States Parties, even when not involved in the particular dispute, is based on their interest in any question of interpretation of the Convention, an interest which is recognized by their right under article 32, paragraph 3, of the Statute of the Tribunal to intervene in proceedings relating to the interpretation or application of the Convention.

The proceedings consist of the submission of written observations which the parties to the arbitral proceedings or States Parties may wish to make. If a party to the arbitral proceedings or a State Party indicates it wishes to make oral submissions, the proceedings will also consist of an oral hearing.

As for the written proceedings, the President of the Chamber, upon receipt of the document submitting the question to the Chamber, shall fix a time-limit not exceeding three months within which the parties to the proceedings before the arbitral tribunal and the States Parties may submit their written observations on the question, and the parties to the proceedings and the States Parties shall be notified of the time-limit.[2] At this stage of the proceedings, States Parties in general, unlike the parties

[1] Article 123, paragraph 1, of the Rules.
[2] Article 123, paragraph 2, of the Rules.

to the arbitral proceedings, will have little knowledge of the matter. The Rules thus provide that the States Parties shall be informed of the "contents of the submission".[3]

As for the oral proceedings, if, within one month from the expiration of the time-limit for submitting written observations, a party to the proceedings before the arbitral tribunal or a State Party gives written notice of its intention to submit oral observations, the President of the Chamber shall fix a date for a hearing.[4]

The Chamber shall give its ruling in the form of a judgment.[5] The arbitral tribunal shall then proceed to render its award in conformity with the ruling of the Chamber.[6]

[3] *Ibid.*
[4] Article 123, paragraph 3, of the Rules.
[5] Article 123, paragraph 4, of the Rules.
[6] Article 188, paragraph 2(b), of the Convention.

Section G. Judgments, interpretation and revision

Subsection 1. Judgments

Article 124

1. When the Tribunal has completed its deliberations and adopted its judgment, the parties shall be notified of the date on which it will be read.
2. The judgment shall be read at a public sitting of the Tribunal and shall become binding on the parties on the day of the reading.

Section G. Arrêts, interprétation et révision

Sous-section 1. Arrêts

Article 124

1. Lorsque le Tribunal a achevé son délibéré et adopté son arrêt, notification est faite aux parties de la date à laquelle il en sera donné lecture.
2. L'arrêt est lu en audience publique du Tribunal ; il est considéré comme ayant force obligatoire pour les parties du jour de son prononcé.

COMMENTARY

Article 124 of the Rules is modelled on Article 94 of the Rules of the ICJ. It differs from article 110 of the Preparatory Commission Draft Rules.[1]

Article 30 of the Statute lays down certain formal requirements with respect to judgments which are amplified and made more specific by articles 124 and 125 of the Rules.

Article 124, paragraph 1, of the Rules reiterates in substance part of article 30, paragraph 4, of the Statute, namely that the parties will be notified of the date when the judgment is to be read. It is the practice of the Tribunal to give a general indication of that date at the end of the hearing. The formal notification of that date is made to the parties only after the deliberations have been completed and the judgment has been adopted. The Tribunal also informs the public about the date of the public sitting at which the judgment will be read.

[1] Preparatory Commission Draft Rules, p. 76.

Although paragraph 1 does not refer to the Seabed Disputes Chamber or to special chambers established in accordance with the Statute, article 124 of the Rules also applies to their judgments.

Paragraph 2, of article 124 of the Rules reiterates another element of article 30, paragraph 4, of the Statute, namely, that the judgment will be read at a public sitting of the Tribunal. Article 110 of the Preparatory Commission Draft Rules provided that in a matter of urgency the judgment could be read by the President alone. This option has not been included in the Rules. Since paragraph 2 refers to a sitting of the Tribunal, the rules on quorum are applicable, which means that at least eleven Members of the Tribunal have to participate in the public hearing (article 13, paragraph 1, of the Statute) and seven members if the judgment is rendered by the Seabed Disputes Chamber (article 35, paragraph 7, of the Statute). According to article 28, paragraph 6, of the Rules, three judges constitute the quorum for meetings of the Chamber of Summary Procedure. Accordingly, three judges of the Chamber must be present when a judgment is read.[2]

[2] As regards other special chambers, the quorum is as specified by the Tribunal in accordance with articles 29, paragraph 1, and 30, paragraph 3, of the Rules.

Article 125

1. The judgment, which shall state whether it is given by the Tribunal or by a chamber, shall contain:

   (a) the date on which it is read;
   (b) the names of the judges participating in it;
   (c) the names of the parties;
   (d) the names of the agents, counsel and advocates of the parties;
   (e) the names of the experts, if any, appointed under article 289 of the Convention;
   (f) a summary of the proceedings;
   (g) the submissions of the parties;
   (h) a statement of the facts;
   (i) the reasons of law on which it is based;
   (j) the operative provisions of the judgment;
   (k) the decision, if any, in regard to costs;
   (l) the number and names of the judges constituting the majority and those constituting the minority, on each operative provision;
   (m) a statement as to the text of the judgment which is authoritative.

2. Any judge may attach a separate or dissenting opinion to the judgment; a judge may record concurrence or dissent without stating reasons in the form of a declaration. The same applies to orders.
3. One copy of the judgment, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal and other copies shall be transmitted to each party. Copies shall be sent to: (a) States Parties; (b) the Secretary-General of the United Nations; (c) the Secretary-General of the Authority; (d) in a case submitted under an agreement other than the Convention, the parties to such agreement.

Article 125

1. L'arrêt, dont le texte indique s'il est rendu par le Tribunal ou par une chambre, comprend :

   a) l'indication de la date à laquelle il en est donné lecture ;
   b) les noms des juges qui y ont pris part ;
   c) l'indication des parties ;
   d) les noms des agents, conseils et avocats des parties ;
   e) les noms des experts désignés conformément à l'article 289 de la Convention ;
   f) l'exposé sommaire de la procédure ;
   g) les conclusions des parties ;
   h) les circonstances de fait ;

i) les motifs de droit sur lesquels il est fondé ;
j) le dispositif ;
k) la décision relative aux frais, s'il y a lieu ;
l) l'indication du nombre et des noms des juges ayant constitué la majorité et de ceux ayant constitué la minorité sur chaque point du dispositif ;
m) l'indication du texte faisant foi.

2. Tout juge peut joindre à l'arrêt l'exposé de son opinion individuelle ou dissidente ; un juge peut faire constater son accord ou son dissentiment sans en donner les motifs sous la forme d'une déclaration. La même règle s'applique aux ordonnances.
3. Un exemplaire de l'arrêt, signé par le Président et le Greffier et revêtu du sceau du Tribunal, est déposé aux archives du Tribunal, et un autre est remis à chaque partie. Des copies sont adressées par le Greffier : a) aux Etats Parties ; b) au Secrétaire général de l'Organisation des Nations Unies; c) au Secrétaire général de l'Autorité; d) dans une affaire soumise aux termes d'un accord autre que la Convention, aux parties à l'accord.

COMMENTARY

Article 125 closely follows Article 95 of the Rules of the ICJ.

The judgment shall first indicate whether it was given by the Tribunal or a chamber, in spite of the fact that a judgment given by a chamber is considered as rendered by the Tribunal.[1]

Although not mentioned in the Rules, the judgment – as with orders on provisional measures – starts with a title which may give an indication of the main issue in dispute.[2]

The judgment shall indicate the date on which it is read and the names of the judges, which includes the judges *ad hoc*, participating in the judgment. The names are listed according to seniority. Participation in the judgment is not equivalent to participation in the public sitting at which the judgment is read.[3] The practice of the Tribunal reflects this. No change in the format of the judgment was made in those cases where judges who had participated in the deliberations of the judgment were not able to participate in the public sitting. The minutes of the public sitting indicate who was present at the sitting.

The judgment shall also indicate the names of the parties and their

[1] See article 15, paragraph 5, of the Statute.
[2] For example, the Tribunal's Order of 8 October 2003 had the title *"Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore), Provisional Measures."*
[3] For a different approach, see Eiriksson at p. 267.

agents, counsel and advocates as well as the names of any experts appointed under article 289 of the Convention. The latter point has been added to the Rules and has no equivalent in Article 95 of the Rules of the ICJ.

The judgment shall contain a summary of the proceedings. In this section of the judgment, in cases where oral proceedings have been held, the dates of the oral hearing and the persons who addressed the Tribunal, including witnesses or experts, are given.

The submissions of the parties are to be set out in the judgment. The judgment will reflect where the submissions have changed during the course of the proceedings. The judgment shall also set out the facts of the case.

The judgment shall state the reasons of law on which it is based; this is a requirement already referred to in article 30, paragraph 1, of the Statute.[4] To give a convincing reasoning serves several functions. In this part of the judgment, the Tribunal assesses the legal arguments advanced by the parties and gives its own authoritative interpretation of the law. The principle of fair trial, a principle enshrined in international human rights treaties, requires that a court or tribunal provide the legal reasoning on which the judgment is based. The legal reasoning is equally the Tribunal's contribution to the peaceful settlement of the legal dispute as a contribution to the interpretative development of the Convention.

The judgment ends with its operative provisions or *dispositif* which are preceded by wording such as, "For these reasons the Tribunal . . . finds" or "decides". The decision itself is linked to the reasons but is to be distinguished therefrom. Part of the *dispositif* may be a decision on the costs. The text of the operative provisions of the judgment determines the substantive obligations between the parties as decided by the Tribunal (*res judicata*).

The *dispositif* is expressed in terms of a decision. If the decision contains more than one operative provision, the Tribunal shall, as required under article 125, paragraph 1(l), of the Rules, vote on each provision separately. This is reflected in the *dispositif*, where the judges who voted in favour or against each provision are identified by name. The *dispositif* may be phrased positively or negatively or in a combination thereof such as, for example, in the judgment in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)*. In this judgment, the Tribunal rejected all the objections raised by Guinea against admissibility and decided "that Guinea violated the rights of Saint Vincent and the Grenadines under the Convention in arresting the *Saiga* . . .".[5]

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[4] Article 111, paragraph 1(h), of the Preparatory Commission Draft Rules required the Tribunal to set out the "reasons of fact and law on which [the judgment] is based". The Tribunal returned to the wording of Article 95, paragraph 1, of the Rules of the ICJ.

[5] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 71.

Finally, according to article 125, paragraph 1(m), of the Rules, the Tribunal has to determine which text of the judgment is authoritative. In practice, judgments are given in English and French. Both texts are treated as authoritative.

According to article 30, paragraph 3, of the Statute, any judge is entitled to deliver a separate opinion if the judgment does not represent in whole or in part the unanimous opinion of the judges.[6] Article 125, paragraph 2, of the Rules amplifies this issue further. It identifies three types of documents in which an individual opinion can be expressed: declarations, separate opinions and dissenting opinions.[7] Separate opinions are those where a judge, although having voted with the majority, feels inclined to indicate reasons different from those set out in the judgment. Sometimes a judge only intends to focus on a particular point. Declarations may focus on certain points, recording concurrence or dissent without giving reasons. In practice, declarations are used to express an opinion on a judgment or on one particular point in the reasoning in a concise form. In a dissenting opinion, a judge sets out the reasons for not joining the majority. The Resolution on the Internal Judicial Practice of the Tribunal confirms that separate and dissenting opinions may be given individually or collectively.[8] The same applies to declarations although not expressly stated in the Resolution.

It may not always be easy to distinguish between a separate and a dissenting opinion, the decisive test being whether the judge voted in favour or against one or more of the operative provisions.

Declarations, separate opinions and dissenting opinions are attached to the judgment in that order; each type of opinion is organized in order of seniority of the judges.

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[6] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, pp. 1583 et seq. emphasizes the relevance of separate and dissenting opinions.

[7] Article 95, paragraph 2, of the Rules of the ICJ is not as specific.

[8] See article 8, paragraph 6, of the Resolution.

Subsection 2. Requests for the Interpretation or Revision of a Judgment

According to article 296, paragraph 1, of the Convention any decision rendered by a court or tribunal having jurisdiction under the Convention shall be final (*res judicata*). This principle is reiterated by article 33, paragraph 1, of the Statute. Therefore the question has arisen as to whether or not interpretation of a judgment would violate this basic principle if the parties to a dispute have not previously agreed to the submission of a dispute regarding the interpretation of the judgment.[1] The power to interpret a judgment derogates from the principle that the jurisdiction of an international tribunal to decide a legal dispute rests upon the consent of the parties to the dispute. This, however, does not mean that an express agreement is needed to confer jurisdiction on an international court or tribunal to interpret its own judgment. The original consent of the parties which was the basis for the jurisdiction of the court or tribunal also covers the competence of that court or tribunal to interpret its judgments. This is confirmed by article 33, paragraph 3, of the Statute since it explicitly provides that the Tribunal is competent to interpret its decision upon the request of any party.

The original judgment in the case establishes the parameters for the procedure on the interpretation of the judgment. According to the principle of *res judicata* the interpretation of a judgment cannot go beyond the scope of the judgment. The interpretative judgment may only ascertain or clarify what constitutes the *res judicata*; neither new facts may be considered nor is it possible to obtain a decision on issues which the principal judgment did not decide.

The jurisdiction to revise a judgment is based upon similar principles. Unlike the Statute of the ICJ, the Statute of the Tribunal has no provision empowering the Tribunal to revise a judgment. The Rules nevertheless provide for such possibility and the competence of the Tribunal may therefore be considered as deriving from the original consent of the parties to submit the dispute to the Tribunal.

Proceedings on the interpretation of judgments are entirely new cases and not incidental proceedings directly relating to the original proceedings.[2] They are given a separate entry in the Tribunal's List of cases.

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[1] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1669.

[2] *Ibid.*, at p. 1677.

Subsection 2 of section G of the Rules on requests for the interpretation or revision of a judgment is mainly concerned with the formal procedure for the submission of a request for interpretation or for revision of a judgment, the procedure to be followed by the Tribunal and the form in which the decision is delivered. The Rules concerning an application for the revision of a judgment also cover some points of substance.

Subsection 2. Requests for the interpretation or revision of a judgment

Article 126

1. In the event of dispute as to the meaning or scope of a judgment, any party may make a request for its interpretation.
2. A request for the interpretation of a judgment may be made either by an application or by the notification of a special agreement to that effect between the parties; the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated.
3. If the request for interpretation is made by an application, the requesting party's contentions shall be set out therein, and the other party shall be entitled to file written observations thereon within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting.
4. Whether the request is made by an application or by notification of a special agreement, the Tribunal may, if necessary, afford the parties the opportunity of furnishing further written or oral explanations.

Sous-section 2. Demandes en interprétation ou en révision

Article 126

1. En cas de contestation sur le sens ou la portée d'un arrêt, toute partie peut présenter une demande en interprétation.
2. Une demande en interprétation d'un arrêt peut être introduite soit par une requête, soit par la notification d'un compromis conclu à cet effet entre les parties ; elle indique avec précision le point ou les points contestés quant au sens ou à la portée de l'arrêt.
3. Si la demande en interprétation est introduite par une requête, les thèses de la partie qui la présente y sont énoncées et la partie adverse a le droit de présenter des observations écrites dans un délai fixé par le Tribunal ou, s'il ne siège pas, par le Président.
4. Que la demande en interprétation ait été introduite par une requête ou par la notification d'un compromis, le Tribunal peut, s'il y a lieu, donner aux parties la possibilité de lui fournir par écrit ou oralement un supplément d'information.

COMMENTARY

Article 126 of the Rules follows in substance Article 98 of the ICJ Rules.[1]

Paragraph 1 spells out the limitations to the procedure for interpretation of a judgment and identifies the possible applicants.

The legal dispute submitted to the Tribunal is a disagreement on the perceived lack of clarity concerning the meaning or the scope of a judgment. As the PCIJ has stated in the *Chorzów Factory (Interpretation) Case* the content of the words "dispute as to the meaning or the scope of the judgment" is to be established by taking into consideration that a decision of the Court has no binding force except between the parties in respect of that particular case.[2] This means that only those issues which have been settled by the Tribunal with binding force among the parties may become the subject of an interpretation case; all other issues which the Tribunal may have touched upon, in particular *obiter dicta* cannot become such a subject. Accordingly, there must be a difference of opinion between the parties concerning the scope and the meaning of those points in the judgment in question that have been decided with binding force.[3]

Article 126, paragraph 1, of the Rules refers to a "judgment" which may call for interpretation; it does not make a distinction as to the type of judgment that can be the subject of proceedings in interpretation. Decisions of the Tribunal in prompt release cases are rendered in the form of a judgment.[4] Therefore, there is no doubt about the admissibility of a request for interpretation of such judgments. The same is true in respect of a judgment on preliminary objections in accordance with article 97, paragraph 6, of the Rules.[5]

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[1] Article 98, paragraph 1, of the Rules of the ICJ, however, contains a reference to the equivalent of article 33, paragraph 3, of the Statute of the Tribunal, which was omitted in article 126 following the Tribunal's deliberations.

[2] *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 1 at pp. 10–11.

[3] *Ibid.* The position of the PCIJ was confirmed by the ICJ in *Request for Interpretation of the Judgment of 20 November 1950 in the Asylum Case, Judgment, I.C.J. Reports 1950*, p. 395 at p. 402, where the ICJ stated that:

> (1) The real purpose of the request must be to obtain an interpretation of the judgment. This signifies that its object must be solely to obtain clarification of the meaning and the scope of what the Court has decided with binding force, and not to obtain an answer to questions not so decided . . .
>
> (2) In addition, it is necessary that there should exist a dispute as to the meaning or scope of the judgment.

To decide whether the first requirement stated above is fulfilled, one must bear in mind the principle that it is the duty of the Court not only to reply to the questions as stated in the final submissions of the parties, but also to abstain from deciding points not included in those submissions.

The ICJ reiterated points (1) and (2) in *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 192 at p. 217.

[4] Article 112, paragraph 4, of the Rules.

[5] See *Request for Interpretation of the Judgment of 11 June 1998 in the Case concerning the* Land and

Although paragraph 1 of article 126 of the Rules only refers to judgments, requests for interpretation may also be admissible in respect of orders concerning provisional measures. Article 33, paragraph 3, of the Statute, which forms the basis for the competence of the Tribunal, speaks of decisions and not only of judgments. Considering that the competence of the Tribunal concerning the interpretation of decisions is enshrined in a provision on finality and binding force of decisions of the Tribunal, decisions which settle an issue between the parties in a final way are eligible for proceedings in interpretation.

Article 126, paragraph 1, identifies the potential parties to such proceedings, that is, the applicant and the respondent. Since articles 31 and 32 of the Statute provide that decisions of the Tribunal are binding upon intervening States parties, they too may initiate interpretation proceedings to the extent that the decision is binding on them.[6]

The wording of paragraph 1 clearly indicates that any party may initiate interpretation proceedings unilaterally.[7]

Paragraph 2 of article 126 of the Rules confirms what already follows from paragraph 1, namely, that a request for interpretation may be initiated unilaterally. Such request, however, may be submitted through a special agreement. In the latter case, such agreement shall identify the precise points in dispute. An agreement among the parties does not preclude the Tribunal from ascertaining that the request remains within the limits of the interpretation procedure, namely, that it is a dispute on the meaning or the scope of what the Tribunal has decided with binding force amongst the parties to the dispute.

Paragraph 3 deals with a unilateral application only. In this case the points in dispute will be indicated in the application of the party initiating the proceedings. The other party is entitled to file its observations thereon within a time-limit set either by the Tribunal or the President if the Tribunal is not sitting. The Tribunal forms its opinion as to whether there is a dispute only on the basis of the submissions of the applicant and those of the respondent.

The reference in paragraph 4 to written or oral explanations indicates that it is left to the discretion of the Tribunal to consider whether it will decide the case on the basis of written submissions only or whether it will hold oral proceedings. Since interpretation cases deal with disputes, the proceedings will be contentious in character and, accordingly, the relevant Rules on proceedings in contentious cases will apply.

Maritime Boundary between Cameroon and Nigeria (Cameroon *v.* Nigeria), Preliminary Objections *(Nigeria* v. *Cameroon), Judgment, I.C.J. Reports 1999*, p. 31 at p. 35.

[6] See article 31, paragraph 3, and article 32, paragraph 3, of the Statute, respectively.

[7] See *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), op. cit.* note 4, at p. 216.

Article 127

1. A request for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Tribunal and also to the party requesting revision, always provided that such ignorance was not due to negligence. Such request must be made at the latest within six months of the discovery of the new fact and before the lapse of ten years from the date of the judgment.
2. The proceedings for revision shall be opened by a decision of the Tribunal in the form of a judgment expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

Article 127

1. La révision d'un arrêt ne peut être demandée qu'en raison de la découverte d'un fait de nature à exercer une influence décisive et qui, avant le prononcé de l'arrêt, était inconnu du Tribunal et de la partie qui demande la révision, sans qu'il y ait, de sa part, faute à l'ignorer. La demande doit être formée six mois au plus après la découverte du fait nouveau et avant l'expiration d'un délai de dix ans à dater de l'arrêt.
2. La procédure de révision s'ouvre par une décision du Tribunal constatant expressément, dans un arrêt, l'existence du fait nouveau, lui reconnaissant les caractères qui donnent ouverture à la révision, et déclarant de ce chef la demande recevable.

COMMENTARY

Article 127 of the Rules follows in substance Article 61, paragraph 1, of the Statute of the ICJ which again, in substance, is identical to Article 61, paragraph 1, of the Statute of the PCIJ.[1]

The PCIJ was not faced with an application for revision of any of its judgments. The ICJ has decided three applications for revision to date,

[1] The rules on revision of a judgment in fact originate from a compromise adopted in the Hague Convention on the Pacific Settlement of Disputes of 1899: R. Geiß, "Revision Proceedings before the International Court of Justice", 63 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2003), p. 167 at p. 170. The most striking argument in a confrontational discussion seems to have been a quotation from Abraham Lincoln, "nothing is settled until it is settled right" quoted at p. 171. For further details on the legislative history of Article 61 of the Statute of the ICJ, see pp. 170–171.

all three cases having been declared inadmissible.[2] Judge Ndiaye has argued in his dissenting opinion in *The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea)* that the *Saiga* had not been registered properly, that this constituted a new fact, and that "the discovery of this new fact gives Guinea legal grounds to request the revision of judgments given in the course of the . . . proceedings."[3]

The revision of a judgment, at least in theory, infringes upon the principle enshrined in article 33, paragraph 1, of the Statute that judgments of international courts or tribunals are final and binding to a greater extent than interpretation proceedings, since interpretation will remain within the scope of the original judgment.[4] If the Tribunal declares a request for revision of its judgment to be admissible, such judgment may lose its binding force as between the parties. A new judgment will be rendered which will have to take into account the new relevant facts. Therefore, the request for the revision of a judgment will only be declared admissible in exceptional cases. The rationale to provide for such curtailment of the *res judicata* principle rests in the overarching principle of equity.

Paragraph 1 of article 127 sets out the limits within which a request for revision of a judgment may be made; it equally restricts the Tribunal's competence in dealing with such a request. The request must be based upon the discovery of some fact and such fact must be of such a nature as to be a decisive factor. This fact must have been unknown to the Tribunal and to the party requesting the revision of the judgment. Finally, ignorance of the fact must not have been due to negligence.

According to paragraph 1, revision may be requested in respect of judgments. This clearly includes judgments on the merits and in prompt release cases. No reference is made which would restrict the procedure to final judgments or judgments on the merits. The question is whether a revision may be sought in respect of judgments rendered in accordance with article 96, paragraph 8, of the Rules (preliminary proceedings) and in accordance with article 97, paragraph 6, of the Rules (preliminary objections). Since the revision of a judgment constitutes an exception to

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[2] *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1985*, p. 192; *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina), Judgment, I.C.J. Reports 2003*, p. 7; *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras), Judgment, I.C.J. Reports 2003*, p. 392.

[3] *M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines* v. *Guinea), ITLOS Reports 1999*, Dissenting Opinion of Judge Ndiaye, p. 234 at p. 255.

[4] S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vol. III, 1997, p. 1671.

the *res judicata* principle, this raises the question whether judgments on admissibility or jurisdiction constitute a *res judicata*. If this were not the case, there would be no point in a party submitting a request for revision. It could instead refer to the new fact in the proceedings on the merits and again claim inadmissibility or lack of jurisdiction. In the *South West Africa Cases, Second Phase*, the ICJ found it unnecessary to pronounce on issues such as whether a decision on a preliminary objection constitutes a *res judicata*.[5] Further, Article 61, paragraph 3, of the Statute of the ICJ empowers the Court to require previous compliance with the terms of the judgment before it admits proceedings in revision. This may suggest that a revision may be requested only in respect of judgments on the merits. Nevertheless, the Federal Republic of Yugoslavia (Serbia and Montenegro) sought revision not of a judgment on the merits but rather of a judgment on preliminary objections concerning the Court's jurisdiction in the *Genocide Convention Case*. This request was not dismissed by the ICJ on the ground that the judgment was not one on the merits. The Court did not even raise this point but simply examined the request under Article 61 of the Statute of the ICJ, in particular as to whether the applicant had discovered new facts.[6]

Nothing in the Rules of the Tribunal qualifies the term judgment as used in article 127, paragraph 1. All judgments of the Tribunal are meant to settle finally a legal dispute between the parties. Accordingly, a request for revision may be filed in respect of all judgments of the Tribunal, at least in theory. This interpretation is not in conflict with article 128, paragraph 4, of the Rules, which empowers the Tribunal to make its admission of the request for revision conditional on previous compliance with the original judgment. This provision, which was inspired by Article 61, paragraph 3, of the Statute of the ICJ, leaves such decision to the discretion of the Tribunal. It cannot be interpreted to mean that a revision may only be sought with respect to judgments on the merits.

No revision may be sought under article 127 of the Rules in respect of an order on provisional measures since article 93 of the Rules contains a particular provision on the revision of provisional measures orders.

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[5] *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6 at p. 36. In the *Corfu Channel Case*, after the judgment on the merits which did not decide the question of compensation, Albania challenged the jurisdiction of the ICJ with regard to the assessment of damages. In its judgment on the amount of compensation to be awarded the Court stated, while referring to Article 60 of its Statute, that its jurisdiction had been established by its judgment of 9 April 1949 and that the matter was *res judicata*: *Corfu Channel, Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949*, p. 244 at p. 248.

[6] *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina)*, *op. cit.* note 2; see also Geiß, *op. cit.* note 1, at p. 175.

A request for revision of a judgment may be made unilaterally; this will be the normal situation. Nothing excludes the submission of an application for revision by special agreement of the parties to the dispute.

The admissibility of the revision proceedings depends on the fulfilment of the requirements of article 127, paragraph 1, of the Rules. As the ICJ has confirmed in its judgment on *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening) (*El Salvador* v. *Honduras*), the requirements for the admissibility of revision proceedings cannot be overcome by consent.[7]

Article 127, paragraph 1, of the Rules requires the applicant to prove the discovery of some fact. This requires distinguishing between matters of fact and matters of law, since appeals against a judgment of the Tribunal are excluded.[8]

In practice, various issues have been alleged to constitute facts by parties requesting the revision of a judgment. In the case concerning the *Continental Shelf* between Tunisia and Libya, Tunisia relied on the discovery of a resolution of the Libyan Council of Ministers, which allegedly determined the "real course" of the north-western boundary of a petroleum concession granted by Libya.[9] The ICJ seems to have accepted this as a fact.[10] El Salvador based its request for revision in the case concerning the *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)* on modern scientific evidence which allegedly proved a so-called "avulsion" as well as on the discovery of a further copy of the so-called *Carta Esférica* and a further copy of the report of the *El Activo* expedition.[11] The ICJ avoided any decision on whether these constituted

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[7] *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the* Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) *(El Salvador* v. *Honduras), op. cit.* note 2, at p. 400.

[8] The Franco-German Mixed Arbitral Tribunal in *Heim et Chamant* c. *Etat allemand* (1922) held that "la notion de *fait* ne doit pas être mise en opposition absolue avec celle de *droit*, dont il n'est pas toujours facile de la distinguer, mais qu'elle doit s'entendre d'une façon plus large . . ." [the concept of *fact* should not be taken as the exact opposite of the concept of *law*, from which it cannot always be easily distinguished; the concept of *fact* should be interpreted more widely . . .], *Recueil des décisions des Tribunaux arbitraux mixtes*, Vol. 3, p. 50 at p. 55; see also W.M. Reisman, *Nullity and Revision: The Review and Enforcement of International Judgments and Awards*, 1971, p. 425 and Geiß, *op. cit.* note 1, at p. 176.

[9] *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), op. cit.* note 2, at p. 198. See also E. Decaux, "L'arrêt de la Cour internationale de Justice sur la demande en révision et interprétation de l'arrêt du 24 février 1982 en l'affaire du *plateau continental (Tunisie/Libye)*, arrêt du 10 décembre 1985", XXXI *Annuaire français de Droit international* (1985), pp. 324 et seq.

[10] *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), op. cit.* note 2, at p. 203, where the Court stated that "the 'new fact', i.e., the fact the discovery of which is relied on to support the application for revision, is solely the boundary co-ordinates."

[11] *Ibid.*, at p. 401.

facts by ruling out their relevance.[12] The Federal Republic of Yugoslavia (Serbia and Montenegro) based its application for revision on the fact that it had been newly admitted to the United Nations and that the Federal Republic was neither a party to the Statute of the ICJ nor bound by the Genocide Convention.[13] The ICJ did not consider these as facts but as legal consequences.[14]

The most limited interpretation of the notion of facts as referred to in article 127, paragraph 1, would be to refer only to events which bear empirical scrutiny, such as maps or geographical features such as the course of a deep water channel or the size of a particular fish stock or the environmental damage caused by an oil spill. However, it is also arguable that every issue which is open to juridical proof constitutes a fact within the meaning of paragraph 1. Since not only judgments on the merits may become the subject of revision, the notion of facts must be interpreted in such a way as to allow for such revision. Therefore the wider interpretation, namely, that all issues which are open for juridical proof constitute facts within the meaning of article 127, paragraph 1, of the Rules appears to be acceptable.

The word "discovery" in article 127, paragraph 1, of the Rules indicates that the facts in question must have existed when the judgment to be revised was given and must not have been known at that time to either the applicant or the Tribunal. It is of no relevance, however, whether or not it was possible to prove such facts at the time of the delivery of the judgment. If a fact can be proven, for example, due to new scientific developments only after the delivery of the judgment, such a fact may become relevant in a revision case.[15] Facts which have arisen after the judgment was given cannot be considered new facts within the meaning of article 127, paragraph 1, of the Rules.[16] Therefore it is necessary to distinguish between the origin of a fact and the possibility to prove it.[17]

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[12] *Ibid.*, at pp. 407 and 410.

[13] *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina), op. cit.* note 2, at p. 12.

[14] *Ibid.*, at p. 30; see also M. Craven, "The *Bosnia* Case Revisited and the 'New' Yugoslavia", 15 *Leiden Journal of International Law* (2002), pp. 323 et seq.; Geiß, *op. cit.* note 1.

[15] In *Monastery of Saint-Naoum, Advisory Opinion*, the PCIJ held that fresh documents did not in themselves amount to new facts, but that it depended on their content whether they constituted evidence of facts previously unknown (*Monastery of Saint-Naoum, Advisory Opinion, 1924, P.C.I.J., Series B, No. 9*, p. 22). This interpretation may be too narrow. Documents may constitute new facts if they prove for the applicant a fact which it could not previously prove.

[16] See in this respect the reasoning of the ICJ in *Application for Revision of the Judgment of 11 July 1996 in the Case concerning* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Preliminary Objections *(Yugoslavia* v. *Bosnia and Herzegovina), op. cit.* note 2, at p. 30; contra Dissenting Opinion of Judge Vereshchetin, *ibid.*, at p. 50.

[17] In this respect, see *Jean-François Ferrandi* v. *Commission of the European Communities, Case*

As far as the standard of knowledge is concerned, the ICJ held in respect of the request for revision submitted by Tunisia that "[t]he Court must be taken to be aware of every fact established by the material before it, whether or not it expressly refers to such fact in its judgment."[18] It further stated that a party cannot argue that it was unaware of a fact which was only referred or alluded to in the pleadings of its opponent, or in a document annexed thereto.[19] If the applicant in the revision case knew or should have known of the fact when the judgment was delivered such fact cannot be used to justify a request for revision. The words "ignorance not due to negligence" raise the question of what efforts a party has to make in order to observe due diligence. Concerning the request of Tunisia for revision, the ICJ held that "the reasonable and appropriate course of action to be taken by Tunisia . . . would have been to seek to know the co-ordinates of the Concession."[20] With respect to the standard of diligence, the ICJ stated that "[n]ormal diligence would require that, when sending a delegation to negotiate a continental shelf delimitation . . . a State should first try to learn the exact co-ordinates of the other party's concession."[21] In the end, the ICJ rejected Tunisia's application for revision on the grounds that the co-ordinates for the concession boundary were obtainable, that it was in Tunisia's own interests to obtain them and that Tunisia had failed to demonstrate why it would have been impossible to seek such information or that it had made an attempt to do so.[22] The jurisprudence to date makes it quite evident that the revision procedure must not be used by the applicant to smooth over mistakes made by it in the original proceedings. Given the exceptional character of revision proceedings, a high standard is to be applied in respect of the preparation and conduct of the original case by the applicant. If careful preparation would have avoided the situation leading to the request for revision, this would give rise at least to the presumption of negligence.[23]

C-403/85, 1991 European Court Reports, p. I-01215, at paragraph 12, where it was stated that medical findings contained in reports made after the contested judgment might be described as new facts relevant for a revision.

[18] See *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), op. cit.* note 2, at p. 203.

[19] *Ibid.*

[20] *Ibid.*, at p. 205.

[21] *Ibid.*, at p. 206.

[22] *Ibid.*, at p. 207. Similarly, the European Court of Justice rejected an application for revision because the applicant knew of the existence of an audit report at the time of the judgment and nothing had prevented the applicant from ascertaining its contents or from asking the Court to call for its production: *Fonderie Acciaierie Giovanni Mandelli* v. *Commission of the European Communities, Case 56–70, 1971 European Court Reports*, p. 00001.

[23] Bin Cheng, *General Principles of Law as applied by International Courts and Tribunals*, 1953, p. 368.

It is for the party seeking the revision of a judgment to prove the existence of such fact and its ignorance until the date when the original judgment is delivered.

The facts must be of such a nature as to constitute a decisive factor. This means that the Tribunal must ascertain whether it would have made a different decision had it been aware of the relevant fact. This excludes facts of a merely additional character which the Tribunal did not consider at the time of deliberating the original judgment or which the Tribunal found unnecessary to refer to in its judgment. It also excludes facts which only endorse the findings of the Tribunal, even if such findings would have been more specific in its reasoning if the Tribunal had known such fact. Facts will only be decisive within the meaning of paragraph 1 if they could have led to a change in the judgment, even in part. A fact will further be decisive if the judgment was based entirely on a fact and the applicant can prove its non-existence.

Article 127, paragraph 1, second sentence, of the Rules contains an absolute time-limit of ten years from the date of the judgment and a relative time-limit within which the request for revision must be made, namely, within six months of the discovery of the new fact. The issue as to when a new fact has been discovered may become quite controversial.[24] What will be necessary, however, is that the knowledge of the new fact has reached the competent public authorities of the party requesting revision.

Paragraph 2 provides that the proceedings for revision shall be opened by a decision of the Tribunal in the form of a judgment. This judgment has to record three findings, namely, that there is a new fact, that the new fact is of such a nature as to require the original judgment to be reconsidered and that for these reasons the request for revision is admissible. These proceedings are similar in nature to those under article 97 of the Rules; they constitute a special case for a decision on the admissibility of a request. Accordingly, the procedural rules of article 97 of the Rules may be applied *mutatis mutandis* to the proceedings under article 127 of the Rules. Article 97, paragraph 5, of the Rules is of particular relevance in this respect.

Article 127, paragraph 2, of the Rules provides for a two-stage proceeding. The findings of the Tribunal in the first stage are limited to establishing whether a new fact was discovered and whether, *prima facie*, such new fact may lead to an alteration of the original judgment. This does not include a decision as to whether such new fact will lead to a revision of the original judgment. The Tribunal will only have to decide whether the applicant has made a plausible case. In taking such decision,

[24] See Reisman, *op. cit.* note 8, p. 47.

the Tribunal will also have to consider the counter-arguments the respondent may advance. A judgment rendered on this basis does not preclude the Tribunal in the second stage from finding that, although the request for revision was admissible, the new fact was not decisive within the meaning of article 127, paragraph 1, of the Rules.[25]

The judgment on the admissibility of the request is of a procedural nature since it is meant to open the possibility for revision in the second stage. As can be seen from article 128, paragraph 4, of the Rules the original judgment remains final and binding.

Paragraph 2 precludes the Tribunal from combining these two stages of the proceedings in revision. This is due to the fact that in the second stage a full reassessment of the case may become necessary.

[25] This interpretation is in line with the reasoning of the ICJ concerning the request for revision by Tunisia in *Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case concerning the* Continental Shelf (Tunisia/Libyan Arab Jamahiriya) *(Tunisia* v. *Libyan Arab Jamahiriya), op. cit.* note 2, at pp. 213–214; see also K.P.E. Lasok, *The European Court of Justice, Practice and Procedure*, 1994, p. 522.

Article 128

1. A request for the revision of a judgment shall be made by an application containing the particulars necessary to show that the conditions specified in article 127, paragraph 1, are fulfilled. Any document in support of the application shall be annexed to it.
2. The other party shall be entitled to file written observations on the admissibility of the application within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting. These observations shall be communicated to the party making the application.
3. The Tribunal, before giving its judgment on the admissibility of the application, may afford the parties a further opportunity of presenting their views thereon.
4. If the Tribunal decides to make the admission of the proceedings in revision conditional on previous compliance with the judgment, it shall make an order accordingly.
5. If the Tribunal finds that the application is admissible it shall fix time-limits for such further proceedings on the merits of the application as, after ascertaining the views of the parties, it considers necessary.

Article 128

1. Une demande en révision d'un arrêt est introduite par requête contenant les éléments nécessaires pour établir que les conditions prescrites au paragraphe 1 de l'article 127 sont remplies. Tout document présenté à l'appui de la requête doit y être joint.
2. La partie adverse a le droit de présenter des observations écrites sur la recevabilité de la requête dans un délai fixé par le Tribunal ou, s'il ne siège pas, par le Président. Ces observations sont communiquées à la partie dont émane la requête.
3. Avant de rendre son arrêt sur la recevabilité de la demande, le Tribunal peut à nouveau donner aux parties la possibilité de présenter leurs vues à ce sujet.
4. Si le Tribunal décide de subordonner l'ouverture de la procédure de révision à une exécution préalable de l'arrêt, il rend une ordonnance à cet effet.
5. Si la requête est déclarée recevable, le Tribunal fixe, après s'être renseigné auprès des parties, les délais pour toute procédure ultérieure qu'il estime nécessaire sur le fond de la demande.

COMMENTARY

Article 128 follows in substance Article 99 of the Rules of the ICJ.

Paragraph 1 specifies that the applicant must present such particulars to the Tribunal as are necessary for the Tribunal to make a decision as to whether the applicant has a plausible case in requesting the revision of a judgment.

Such request together with all documents submitted by the applicant will be transmitted to the other party under paragraph 2. The Tribunal, or the President if the Tribunal is not sitting, will determine the time-limit within which the other party may respond to the request. The observations received by the Tribunal from the respondent shall be communicated to the applicant.

The fact that paragraph 2 refers only to written observations and that no reference is made to the possibility of oral observations (unlike article 126, paragraph 4, of the Rules) indicates that the revision proceedings may only be written. Nothing, however, precludes the Tribunal from invoking article 96, paragraph 6, of the Rules and from taking a decision to hold oral proceedings.

Paragraph 3 proceeds on the assumption that the Tribunal will be able to take its decision on the basis of the information submitted by the applicant and the written observations submitted by the respondent. It is within the Tribunal's discretion, however, to open another round of proceedings for the exchange of views. This may be in written form or in the form of a hearing.

As indicated earlier, paragraph 4 was inspired by Article 61, paragraph 3, of the Statute of the ICJ. It enables the Tribunal to make the admissibility of the request for revision conditional on previous compliance with the judgment already delivered. Whether the Tribunal will exercise these functions is within its discretion and depends upon the scope of the original judgment and upon what effect a revision might have. Paragraph 4 is intended to forestall any delay in the implementation of the judgment.[1]

The decision to make the admission of the proceedings in revision conditional on previous compliance with the judgment shall be made in the form of an order.

After having found the request for revision to be admissible, the Tribunal will take the necessary steps for the revision proceedings, referred to as proceedings on the merits. In these proceedings the Tribunal will ascertain

[1] For discussion of the legislative history of Article 61 of the Statute of the ICJ, see R. Geiß, "Revision Proceedings before the International Court of Justice", 63 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2003), p. 167 at pp. 170–171.

the decisive character of the new fact and will render a new judgment on the merits, taking into consideration this fact. The proceedings will be governed, without prejudice to article 129 of the Rules, by articles 59 to 88 of the Rules.

Article 129

1. If the judgment to be revised or to be interpreted was given by the Tribunal, the request for its revision or interpretation shall be dealt with by the Tribunal.
2. If the judgment was given by a chamber, the request for its revision or interpretation shall, if possible, be dealt with by that chamber. If that is not possible, the request shall be dealt with by a chamber composed in conformity with the relevant provisions of the Statute and these Rules. If, according to the Statute and these Rules, the composition of the chamber requires the approval of the parties which cannot be obtained within time-limits fixed by the Tribunal, the request shall be dealt with by the Tribunal.
3. The decision on a request for interpretation or revision of a judgment shall be given in the form of a judgment.

Article 129

1. Si l'arrêt à réviser ou à interpréter a été rendu par le Tribunal, celui-ci connaît de la demande en interprétation ou en révision.
2. Si l'arrêt a été rendu par une chambre, celle-ci, si cela est possible, connaît de la demande en interprétation ou en révision. Si cela n'est pas possible, une chambre, composée conformément aux dispositions pertinentes du Statut et du présent Règlement, connaît de la demande en interprétation ou en révision. Lorsque, conformément aux dispositions du Statut et du présent Règlement, la composition de la chambre exige l'assentiment des parties et que celui-ci ne peut être obtenu dans les délais fixés par le Tribunal, le Tribunal connaît de la demande.
3. La décision sur la demande en interprétation ou en révision d'un arrêt prend la forme d'un arrêt.

COMMENTARY

Article 129 of the Rules applies to judgments on interpretation and revision alike. The corresponding Article 100 of the Rules of the ICJ is less specific concerning the interpretation or revision of judgments delivered by a chamber.

Paragraph 1 states the obvious. The interpretation or revision of a judgment of the Tribunal falls within the sole competence of the Tribunal. Since, according to article 127, paragraph 1, of the Rules, a request for revision may be submitted up to ten years after the judgment was rendered, one cannot assume that the Tribunal must retain the same composition

as it had for the original judgment. It is for the Tribunal, as it is composed at the date of the submission of the application for interpretation or revision, to render the judgment on interpretation or revision.

Paragraph 1 applies *mutatis mutandis* to the Seabed Disputes Chamber since the latter, although referred to as a "chamber", technically constitutes a tribunal within the Tribunal, with its own jurisdiction distinct from that of the Tribunal. This interpretation is endorsed by the fact that the Seabed Disputes Chamber may form *ad hoc* chambers of its own and does not contradict article 15, paragraph 5, of the Statute, which qualifies the judgments rendered by the Seabed Disputes Chamber as judgments of the Tribunal. This provision refers to the form in which the judgment is given and is not meant to eliminate the differences between the respective jurisdictions of the two bodies.

Paragraph 2 deals only with the interpretation or revision of judgments delivered by a chamber. It follows the basic principle that it is for the respective judicial organ which delivered the original judgment to decide on the interpretation or revision of the judgment to the extent that this is possible. In this respect account has to be taken of the fact that apart from the Chamber of Summary Procedure (article 15, paragraph 3, of the Statute), article 15 of the Statute distinguishes between two different types of chambers namely chambers dealing with particular categories of disputes (article 15, paragraph 1, of the Statute) and chambers dealing with particular issues submitted to them if the parties so request (article 15, paragraph 2, of the Statute). The former chambers are of a more permanent nature (although they may be dissolved by the Tribunal), while the latter deal only with a particular case.

On this basis paragraph 2 is to be interpreted as follows. If the chamber having rendered the original judgment still exists in its original composition, it is for this chamber to deliver the judgment on interpretation or revision, as the case may be. If such chamber no longer exists in its original composition, the same type of chamber will be established in accordance with the Statute[1] and the Rules.[2] The third sentence of paragraph 2 refers to chambers established in accordance with article 15, paragraph 2, of the Statute, whose composition requires the approval of the parties to the dispute. Where no agreement can be reached on the chamber's composition within the time-limits fixed by the Tribunal, the competence to deal with the request for interpretation or revision passes to the Tribunal. This is in line with article 15, paragraph 5, of the Statute, according to which judgments given by a chamber shall be considered as rendered by the Tribunal.

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[1] Article 15 of the Statute.
[2] Articles 29 to 31 of the Rules.

As far as an *ad hoc* chamber of the Seabed Disputes Chamber is concerned,[3] the competence to render a judgment on interpretation or revision passes to the Seabed Disputes Chamber if the parties do not agree on the composition of the former within the time-limits fixed by the President of the Seabed Disputes Chamber. This is the only logical solution taking into consideration that the jurisdiction of the Seabed Disputes Chamber and that of the Tribunal differ.

According to article 129, paragraph 3, the decision on a request for interpretation or revision shall be given in the form of a judgment. This is a matter of consequence. A judgment may only be interpreted or revised by a decision of a court in the same form.

[3] Article 27 of the Rules provides for the establishment of an *ad hoc* chamber of the Seabed Disputes Chamber in accordance with article 188, paragraph 1(b), of the Convention.

Section H. Advisory Proceedings

Advisory proceedings in international adjudication were considered a novelty at the time of the establishment of the Permanent Court of International Justice (PCIJ). Although a few domestic courts in some countries seemed to have embraced this procedure at an earlier date,[1] it was not until the Covenant of the League of Nations[2] was adopted that it became an internationally acceptable judicial procedure. As explained by one of the participants in the drafting of the Covenant, "[t]he provision [*on advisory opinions*] seems to have grown out of suggestions to be found in various early drafts of the Covenant"[3] and "[t]he term 'advisory opinion' was introduced by the drafting committee on April 5, 1919, when Article 14 assumed its final form. . . ."[4]

Although Article 14 of the Covenant, in establishing the competence of the Permanent Court of International Justice, stated that "[t]he Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly", the first Statute of the PCIJ did not include any provision on the advisory competence of the Court.

Mindful of Article 14 of the Covenant, the draft Statute that was proposed by the Advisory Committee of Jurists did in fact include a provision conferring on the PCIJ the power to give an advisory opinion. However, during consideration of the draft Statute by the first Assembly of the League of Nations, "[i]t was unanimously recommended that the entire article proposed by the Advisory Committee of Jurists be deleted, on the ground, as M. Fromageot of France put it, that, in view of the terms of Article 14 of the Covenant, 'the Court could not refuse to give advisory opinions. It was therefore unnecessary to include a rule to the same effect in the constitution of the Court.'"[5]

Although, as stated above, the Statute of the PCIJ did not address the issue of advisory opinions, the PCIJ nonetheless included in its Rules of

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[1] M.O. Hudson, "Advisory Opinions of National and International Courts", 37 *Harvard Law Review* (1923–1924), p. 970 at pp. 984, 985.

[2] Article 14 of the Covenant of the League of Nations reads as follows:

> The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

[3] M.O. Hudson, *The Permanent Court of International Justice 1920–1942*, 1943, at p. 107.

[4] *Ibid.*, at p. 108.

[5] S. Schwebel, "Was the Capacity to Request an Advisory Opinion wider in the Permanent Court of International Justice than it is in the International Court of Justice?", 62 *BYIL* (1991), p. 77 at pp. 78–79.

Procedure a number of articles[6] on advisory opinions, based on the authority given to it by Article 14 of the Covenant of the League of Nations.

Since then, advisory proceedings have become a common procedure and have played an important role in international law.[7] Together with contentious proceedings, advisory proceedings today form an integral part of the competence of international courts.

The precedent set by the PCIJ and the experience gained in dealing with advisory opinions have been followed by the Statute and Rules of the ICJ and more recently by the Statute and Rules of the Tribunal.

In the case of the Tribunal, which is the principal focus of the present commentary, the provisions of the Rules of the PCIJ and of the ICJ and the experience gained by these Courts in dealing with their advisory function have been reflected, *mutatis mutandis*, in the Convention, namely, in Annex VI, which contains the Statute of the Tribunal, and in Part XI, which establishes the advisory competence of the Seabed Disputes Chamber, respectively.

Furthermore, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, in proposing draft Rules of the Tribunal, drew heavily on the past judicial practice of the international courts that preceded the Tribunal, namely the PCIJ and the ICJ. The present articles of the Rules of the Tribunal under this section dedicated to advisory proceedings are no exception to this course of action. Such articles are therefore to be seen as an application and further development of a well established procedure elaborated and tested during decades of international judicial practice.

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[6] Articles 71 to 74 of the 1922 Rules of the PCIJ. For the historical development of these articles, see Guyomar, pp. 644 et seq.

[7] The Permanent Court in its 19 years of work gave twenty-seven advisory opinions which made a significant contribution to international law.

Section H. Advisory proceedings

Article 130

1. In the exercise of its functions relating to advisory opinions, the Seabed Disputes Chamber shall apply this section and be guided, to the extent to which it recognizes them to be applicable, by the provisions of the Statute and of these Rules applicable in contentious cases.
2. The Chamber shall consider whether the request for an advisory opinion relates to a legal question pending between two or more parties. When the Chamber so determines, article 17 of the Statute applies, as well as the provisions of these Rules concerning the application of that article.

Section H. Procédure consultative

Article 130

1. Dans l'exercice de ses attributions consultatives, la Chambre pour le règlement des différends relatifs aux fonds marins applique les dispositions de la présente section et s'inspire, dans la mesure où elle les reconnaît applicables, des dispositions du Statut et du présent Règlement qui s'appliquent en matière contentieuse.
2. La Chambre recherche si la demande d'avis consultatif a trait à une question juridique pendante entre deux ou plusieurs parties. Si la Chambre en décide ainsi, l'article 17 du Statut s'applique ainsi que les dispositions du présent Règlement qui pourvoient à l'application de cet article.

COMMENTARY

Neither the Convention nor the Statute of the Tribunal makes specific reference to the advisory competence of the Tribunal acting as a full court. However, such possibility does not seem to be expressly or tacitly excluded. In drafting its Rules, the Tribunal confirmed this view by adopting article 138, which allows it, acting as a full court, to entertain requests for an advisory opinion, "on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion."

The Convention is, however, clear in relation to the advisory functions of the Seabed Disputes Chamber and includes two instances in which the Chamber is competent to give advisory opinions: at the request of the

Assembly of the International Seabed Authority (ISBA) under paragraph 10 of article 159 "on the conformity with this Convention of a proposal before the Assembly on any matter" and under article 191, at the request of the Assembly or the Council of ISBA, on "legal questions arising within the scope of their activities."

Article 130 deals with the advisory functions of the Seabed Disputes Chamber.

Paragraph 1 of article 130 is modelled on article 40, paragraph 2, of the Statute, which states that:

> In the exercise of its functions relating to advisory opinions, the Chamber shall be guided by the provisions of this Annex [the Statute] relating to procedure before the Tribunal to the extent to which it recognizes them to be applicable.

This provision attempts to assimilate, to the extent possible, the procedures to be followed by the Seabed Disputes Chamber in dealing with an advisory opinion to those of the Statute and of the Rules applicable in contentious cases.

The Statute here did not innovate. Indeed, it incorporated a well-established rule of international judicial practice which started with the PCIJ, whose Statute was revised in 1929 to include "an article providing that, in the exercise of its advisory functions, the Court should be guided by the provisions of the Statute which applied in contentious cases to the extent to which it recognized them to be applicable."[1]

This approach was later retained in Article 68 of the ICJ Statute and Article 102, paragraph 2, of its Rules. Article 102, paragraph 2, of the Rules states that the Court shall also be guided by the provisions of the Statute and of the Rules which apply in contentious cases to the extent to which it recognizes them to be applicable.

The issue may be raised as to what rules applicable in contentious cases might also be applicable to advisory proceedings under this provision. Part of the answer to this question is given by section H of Part III of the Rules of the Tribunal, the provisions of which indicate some of the procedures applicable in contentious proceedings that should be observed by the Chamber in discharging its advisory functions. However the complete answer can only be given in accordance with the circumstances of a particular case.

Paragraph 2 of article 130 is modelled on the proposal contained in article 137, paragraph 3, of the Preparatory Commission Draft Rules.[2]

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[1] S. Schwebel, "Was the Capacity to Request an Advisory Opinion wider in the Permanent Court of International Justice than it is in the International Court of Justice?", 62 *BYIL* (1991), p. 77 at p. 81.

[2] Article 137, paragraph 3, of the Preparatory Commission Draft Rules reads as follows: "When an advisory opinion is requested upon a legal question which is pending between two

The Preparatory Commission's draft article 131 is based on Article 102, paragraph 3, of the Rules of the ICJ, which itself was inspired by an equivalent article of the PCIJ applicable to advisory opinions, proposed by Judge Anzilotti in 1927, which was "providing that, on a question relating to an existing dispute between two or more States, Article 31 of the Statute [of the PCIJ] (relating to the maintenance of national judges and the appointment of judges *ad hoc*) should apply."[3]

Article 130, paragraph 2, of the Rules states the same thing. Sitting judges who have the nationality of any of the parties to a pending legal question between them that is the object of a request for an advisory opinion, should continue to sit in advisory proceedings in the same way that they are entitled to sit in a contentious case, in accordance with the provisions of article 17 of the Statute. Likewise, each of the parties are entitled to choose a judge *ad hoc* in an advisory proceeding related to a pending legal question between them, just as they are entitled to choose judges *ad hoc* in a contentious case, in accordance with the provisions of article 17 referred to above.

This is an illustration of the similarity of procedures in advisory and contentious cases.

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or more States Parties, article 17 of the Statute concerning the nationality of Members shall apply, as also the provisions of these Rules concerning the application of that article."

[3] *Ibid.*, at p. 80.

Article 131

1. A request for an advisory opinion on a legal question arising within the scope of the activities of the Assembly or the Council of the Authority shall contain a precise statement of the question. It shall be accompanied by all documents likely to throw light upon the question.
2. The documents shall be transmitted to the Chamber at the same time as the request or as soon as possible thereafter in the number of copies required by the Registry.

Article 131

1. Une demande d'avis consultatif sur les questions juridiques qui se posent dans le cadre de l'activité de l'Assemblée ou du Conseil de l'Autorité contient l'énoncé précis de la question. Il y est joint tous documents pouvant servir à élucider la question.
2. Ces documents sont transmis à la Chambre en même temps que la demande ou le plus tôt possible après celle-ci, dans le nombre d'exemplaires requis par le Greffe.

COMMENTARY

The idea that requests for an advisory opinion should only be made by organs of some organizations, and not by individual States, has been dominant since the days of the PCIJ. Article 14 of the Covenant of the League of Nations, which conferred on the PCIJ the power to give advisory opinions, stated that, "[T]he Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

In fact, all requests for advisory opinions addressed to the PCIJ were transmitted by the Council. Although the PCIJ has been criticized by some authors for taking a liberal approach (by entertaining some requests for advisory opinions which were in fact in the interests of individual States or international organizations), the fact remains that it was via this collective body that such requests found their way on to the docket of the Court.

Likewise, in the case of the ICJ, the bodies authorized to request an advisory opinion are the General Assembly and the Security Council of the United Nations, and some international organizations, pursuant to Article 65, paragraph 1, of the ICJ Statute, which states that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

The bodies so authorized by the Charter are spelled out in Article 96, which provides that:

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.
2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

The idea entertained by some countries that individual States should be allowed to request an advisory opinion was rejected in San Francisco by the drafters of the Charter of the United Nations. However, this has to be interpreted in the proper context, for States can present a request to the General Assembly or to other authorized organs and specialized agencies, asking that these bodies request an advisory opinion from the ICJ. As stated by F. Sloan, "it is possible for States to ask an authorized organ to request an advisory opinion and this has in fact been done on several occasions. The organ will, of course, have to make the final decision and assume itself the responsibility for the request."[1]

In a way, the procedure contained in article 131, paragraph 1, of the Rules retains the long standing judicial practice of the PCIJ and the ICJ of not accepting requests for advisory opinions made by individual States or international organizations that are not specifically authorized to do so.

Paragraph 1 of article 131 deals only with requests made in the context of the Seabed Disputes Chamber whose jurisdiction is confined to disputes with respect to activities in the Area[2] (that is, the seabed and ocean floor beyond the limits of national jurisdiction).

Article 138 of the Rules seems to complement and, indeed, go beyond this approach by recognizing the competence of the Tribunal as a full court, to entertain requests for an advisory opinion on a legal question, transmitted to it "by whatever body" is authorized by or in accordance with an international agreement, if such "agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion."

Article 131, paragraph 1, of the Rules also mandates that the request "shall contain a precise statement of the question" and that it "shall be accompanied by all documents likely to throw light upon the question."

The requirement of "a precise statement of the question" to be included in the request for an advisory opinion had already been framed in the

[1] F. Sloan, "The Advisory Jurisdiction of the International Court of Justice", 38 *California Law Review* (1950), p. 830 at p. 836.

[2] Convention, article 187.

context of the Rules of the PCIJ, to respond to the need to set clear limits on the advisory jurisdiction of the Court.

Requests for advisory opinions, a novelty in the then judicial practice, generated a great deal of controversy in the League of Nations. As put by Judge Moore, "No subject connected with the organisation of the Permanent Court of International Justice has caused so much confusion and proved to be so baffling as the question whether and under what conditions the Court shall undertake to give 'advisory' opinions."[3]

Being a very controversial matter at that time, it was only natural that, in framing the procedures according to which a request for an advisory opinion could be received, the Court would want to set quite clear limits as to the object of the request.

In the case of the Seabed Disputes Chamber, what kind of question may be posed in a request for an advisory opinion? This issue seems to raise a number of possibilities. Is it a question of a legal nature arising within the scope of the activities of the Council and the Assembly, a legal point of a political question, or a question concerning future international law?

Since the days of the PCIJ, the issue has been raised as to the extent to which the question should be limited to the interpretation of the law as it exists and to the extent to which guidance might be sought with regard to the creation of new law. In this context, some guidance might be found in Hudson when he states that "[i]t is of course unnecessary to point out to Anglo-American lawyers versed in case law that the Court by its decisions and opinions does develop international law, and to a limited degree does create new law. But it does this by accepted judicial methods – by applying established principles to novel fact situations, by analogy, by interpretation – not by legislative fiat."[4]

In the case of the Seabed Disputes Chamber, the question should be of a legal nature, as directed by article 191 of the Convention. Therefore, it seems that the Chamber should not be requested to answer a question which primarily involves a determination of fact. Even in the case contemplated in article 159, paragraph 10, of the Convention, the determination of whether or not a proposal before the Assembly of the Authority is in conformity with the Convention amounts to a question of a legal nature which consists in ascertaining the conformity of such a proposal with the provisions related to the purposes of the Convention. In a way, it consists in determining the "legality" of such a proposal as regards the Convention.

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[3] J. Moore, "The Question of Advisory Opinions", in *Acts and Documents concerning the Organisation of the Court, P.C.I.J., Series D, No. 2*, 1922, at p. 383.

[4] F. Sloan, *op. cit.* note 1, pp. 840–841.

The experience of the PCIJ in the *Status of Eastern Carelia Case*[5] might provide some guidance to the Seabed Disputes Chamber in this regard. In that case, the PCIJ, in its reply to a request for an advisory opinion, stated that "[t]he Court does not say that there is an absolute rule that the request for an advisory opinion may not involve some enquiry as to facts, but, under ordinary circumstances, it is certainly expedient that the facts upon which the opinion of the Court is desired should not be in controversy, and it should not be left to the Court itself to ascertain what they are."[6]

The ICJ has expressed somewhat similar views in the *Namibia*[7] and *Western Sahara*[8] cases. As put by Rosenne, "the Court [the ICJ] has set at rest doubts over the meaning of the expression 'legal question' by explaining that it does not oppose legal to factual issues and that normally, to enable a court to pronounce itself on legal questions, it must also be acquainted with, take into account, and if necessary make findings on relevant factual issues."[9]

Likewise, article 191 of the Convention indicates that the request by the Assembly or the Council should address issues of a legal nature arising within the scope of their activities, which seems to imply that such requests should abstain from asking academic, abstract or hypothetical questions not related to a specific dispute before such organs. This article also seems to exclude advisory opinions of a political nature. The request may, however, deal with legal questions raised by a political question, especially in the context of article 159, paragraph 10, of the Convention.

In the case of advisory opinions that may be requested from the Tribunal acting as a full court under article 21 of the Statute, it seems that a more liberal approach is followed. Indeed, article 21 seems to indicate that such opinions could deal with "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal." The language of this provision is admittedly very broad. However, it is difficult to envisage an advisory opinion that would not primarily address legal questions.

Article 131, paragraph 2, of the Rules requires that the documents that may elucidate the question to be answered by the Seabed Disputes Chamber shall be transmitted to it at the same time as the request or as soon as possible thereafter. This requirement, imposed by the urgency of the proceedings, does not seem very different from the requirements in contentious case.

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[5] *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5.*

[6] *Ibid.*, at p. 28.

[7] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

[8] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12.

[9] Rosenne, p. 214.

Article 132

If the request for an advisory opinion states that the question necessitates an urgent answer the Chamber shall take all appropriate steps to accelerate the procedure.

Article 132

Si la demande d'avis consultatif indique que la question requiert une réponse urgente, la Chambre prend toutes mesures utiles pour accélérer la procédure.

COMMENTARY

Neither the Statute of the PCIJ, nor that of the ICJ, included a provision treating a request for an advisory opinion as a matter of urgency. In the case of the PCIJ, although there were no rules demanding urgent treatment of such requests, some requests were in fact dealt with as a matter of urgency, usually at the indication of the requesting body.

The matter of urgency would later find its way into the 1946 Rules of the ICJ, whose Article 82 gave the Court the power to accelerate the proceedings if it thought an urgent answer was required. This Rule (now Article 103 of the Rules of the ICJ) was later amended to allow for the indication of urgency to be made by the requesting body.[1]

Article 132 of the Rules of the Tribunal seems to take a somewhat different approach from that adopted by article 191 of the Convention which, after all, is its source. Article 191 states:

> The Seabed Disputes Chamber shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency.

This article of the Convention seems to indicate that, irrespective of whether or not there is a request for an urgent answer, under the Convention there is always an obligation on the part of the Seabed Disputes Chamber to treat all requests made by the Assembly or the Council for advisory opinions on legal questions arising within their scope of activities as a matter of urgency. It therefore seems to indicate that the normal *modus operandi* of the Seabed Disputes Chamber in dealing with advisory opinions is one of urgency.

[1] See Guyomar, pp. 667–668; Rosenne, p. 216.

Urgency in responding to a request for an advisory opinion is a necessity imposed by the Convention and therefore cannot depend on a statement or an indication to that effect by the requesting organ.

The rationale behind article 191 of the Convention seems to lie in the fact that the Assembly and the Council are organs of an organization dealing with important economic activities related to the exploration and the exploitation of seabed minerals, involving huge amounts of resources. Therefore, it is to be expected that such activities cannot be suspended for a lengthy or indefinite period, in order to avoid or minimize any economic losses.

By requiring, as it does, that advisory opinions on legal questions arising within the scope of activities of these two organs be answered "as a matter of urgency", article 191 ensures that such activities are halted for as short a period of time as possible, thereby minimizing any economic losses.

Article 132 of the Rules partly resembles the equivalent provision of Article 103 of the Rules of the ICJ. However, while the Rules of the ICJ impose urgency where this is indicated by the requesting body, in the case of the Seabed Disputes Chamber it is clear from article 191 of the Convention that advisory opinions shall always be given as a matter of urgency. Article 132 seems rather to be of relevance to advisory proceedings held before the Tribunal, pursuant to article 138 of the Rules.

The urgency of the matter implies the timely convening of the Seabed Disputes Chamber, if it is not in session, in order to deal with the request for an advisory opinion.

The convening of the Seabed Disputes Chamber to consider a request for an advisory opinion as a matter of urgency might raise practical difficulties since the judges comprising the Chamber are at the same time judges of the Tribunal. If, at the time when a request is received, the Tribunal is in judicial session dealing with a contentious case or an urgent case of prompt release of a vessel or its crew under article 292 of the Convention or provisional measures under article 290 of the Convention, the Tribunal would have to determine which proceedings should be accorded priority.[2]

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[2] For another view, see T. Treves, "Advisory Opinions under the Law of the Sea Convention", in M. Nordquist/J. Moore (eds.), *Current Marine Environmental Issues and the International Tribunal for the Law of the Sea* (2001), p. 90. [In his article, Judge Treves, who chaired the working group on the drafting of the Rules, explains that the "special urgency" referred to in article 132 is intended to provide guidance to the Tribunal whenever it has to deal at the same time with provisional measures or prompt release proceedings which, in accordance with articles 90 and 112 of the Rules, have "priority over all other proceedings before the Tribunal". Under these circumstances, an express statement in the request for an advisory opinion "that the question necessitates an urgent answer" (Rules, article 132) "may make the consideration of the request more 'urgent' than it would be under the general urgency clause of article 191 of the Convention.", T. Treves, *op. cit.*, p. 90 (Editors' *note*)].

Article 133

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States Parties.
2. The Chamber, or its President if the Chamber is not sitting, shall identify the intergovernmental organizations which are likely to be able to furnish information on the question. The Registrar shall give notice of the request to such organizations.
3. States Parties and the organizations referred to in paragraph 2 shall be invited to present written statements on the question within a time-limit fixed by the Chamber or its President if the Chamber is not sitting. Such statements shall be communicated to States Parties and organizations which have made written statements. The Chamber, or its President if the Chamber is not sitting, may fix a further time-limit within which such States Parties and organizations may present written statements on the statements made.
4. The Chamber, or its President if the Chamber is not sitting, shall decide whether oral proceedings shall be held and, if so, fix the date for the opening of such proceedings. States Parties and the organizations referred to in paragraph 2 shall be invited to make oral statements at the proceedings.

Article 133

1. Le Greffier notifie immédiatement la demande d'avis consultatif à tous les Etats Parties.
2. La Chambre ou, si elle ne siège pas, son Président, identifie les organisations intergouvernementales susceptibles de fournir des informations sur la question. Le Greffier notifie cette demande à ces organisations.
3. Les Etats Parties et les organisations visées au paragraphe 2 sont invitées à présenter des exposés écrits sur la question dans les délais fixés par la Chambre ou, si elle ne siège pas, par son Président. Ces exposés sont communiqués aux Etats Parties et aux organisations ayant présenté des exposés écrits. La Chambre ou, si elle ne siège pas, son Président peut fixer de nouveaux délais dans lesquels ces Etats Parties et organisations peuvent présenter des exposés écrits sur les exposés présentés.
4. La Chambre ou, si elle ne siège pas, son Président, décide si une procédure orale aura lieu et en fixe, le cas échéant, la date d'ouverture. Les Etats Parties et les organisations visées au paragraphe 2 sont invitées à présenter des exposés oraux au cours de ladite procédure.

COMMENTARY

This article is substantially different from the equivalent Article 105 of the ICJ Rules. It might assist the streamlining of the procedures if the two articles were to be more closely aligned.

As in contentious cases,[1] paragraph 1 of this article establishes a procedure of notification to all States Parties, which, under article 1, paragraph 2(2), of the Convention, includes international organizations parties to the Convention or other entities parties to the Convention, in accordance with article 305 of the Convention. Notification of States Parties follows the longstanding practice followed in the PCIJ and ICJ and responds to the need to publicise advisory proceedings.

Paragraph 2 allows the Seabed Disputes Chamber, or its President if the Chamber is not sitting, to identify the intergovernmental organizations that might be able to provide information relevant to the object of the request for the advisory opinion. These intergovernmental organizations are then invited to provide information on the question in accordance with article 133, paragraph 3, of the Rules.

Paragraph 2 addresses the issue of *amicus curiae* and seems to impose an obligation on the Registrar to give notice of the request for an advisory opinion to intergovernmental organizations which have been identified as likely to be able to furnish information on the question.

Admittedly, the intergovernmental organizations referred to in this paragraph are those that are not parties to the Convention, since organizations that are parties to it would be given notice of the request under paragraph 1 as "States Parties", within the meaning of article 1, paragraph 2(2), of the Convention.

Article 133, paragraph 2, however, does not address the contribution that some non-governmental organizations could make to the elucidation of certain issues that might come before the Seabed Disputes Chamber for an advisory opinion. In this day and age, the important role of some non-governmental organizations deserves to be recognized by the Tribunal.

Today, there are important and credible non-governmental organizations that could provide information whenever the issue before the Seabed Disputes Chamber is related to their main activities and concerns. On matters of protection of the marine environment and preservation of marine resources, to name just a few areas, non-governmental organizations could also be of great assistance to the work of the Seabed Disputes Chamber in dealing with a particular request for an advisory opinion. Consideration should be given to the question as to how assistance from non-governmental organizations could be sought.

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[1] See article 24, paragraph 3, of the Statute.

Paragraph 3 deals with the question of the submission of written statements by States Parties and intergovernmental organizations within time-limits fixed by the Seabed Disputes Chamber or its President if the Chamber is not sitting.

The following questions may arise in connection with this paragraph: What happens, for example, if a State Party or an intergovernmental organization provides information to the Seabed Disputes Chamber without being invited to do so? Bearing in mind that such State or organization would be providing information only, could such information, provided without a previous request from the Seabed Disputes Chamber or its President, be taken into consideration if it is found to be relevant to the case, or should it be simply discarded or ignored for lack of a prior invitation? This situation could have been avoided had the approach of Article 105, paragraph 1, of the ICJ Rules[2] been incorporated into the Tribunal's Rules.

Likewise, in some cases it might make sense for the Seabed Disputes Chamber to have the authority to request information from entities other than States Parties to the Convention, bearing in mind that requests for advisory opinions to the Chamber necessarily deal with matters governed by the legal regime of the common heritage of mankind. There is therefore a need to secure the principle of universality of the Convention.

The comments made in relation to paragraph 3 also apply to paragraph 4.

[2] Article 105, paragraph 1, of the Rules of the ICJ reads as follows: "Written statements submitted to the Court shall be communicated by the Registrar to any States and organizations which have submitted such statements."

Article 134

The written statements and documents annexed shall be made accessible to the public as soon as possible after they have been presented to the Chamber.

Article 134

Les exposés écrits et les documents annexés sont rendus accessibles au public le plus rapidement possible après avoir été présentés à la Chambre.

COMMENTARY

This provision ensures public access to the written statements and documents submitted in advisory proceedings.

In dealing with this matter, the Preparatory Commission prepared a provision contained in article 143 of the Draft Rules which was based, almost *ipsis verbis*, on the equivalent provision contained in Article 106 of the Rules of ICJ. The provision of the Preparatory Commission Draft Rules reads as follows:

> The Chamber, or its President if the Chamber is not sitting, may decide that the written statements and annexed documents shall be made accessible to the public on or after the opening of the oral proceedings. If the request for advisory opinion relates to a legal question which is pending between two or more States Parties, the views of those States Parties shall be ascertained.

The Tribunal, in adopting the current text of article 134, departed from the ICJ practice. Firstly, it permits public access to the written statements even before the oral proceedings take place and, secondly, it dropped the second phrase of the draft article on the need to ascertain the views of the States Parties where the request for an advisory opinion relates to a pending legal question between two or more States Parties, before allowing public access to the written statement and documents.

In contentious cases, however, article 67, paragraph 2, of the Rules adopts a narrower procedure by allowing the public to have access to the pleadings and documents only on the opening of the oral proceedings. Public access at an earlier time is possible but only after ascertaining the views of the parties. One would think that if there is opposition from one or both parties then public access to the pleadings and documents would not be allowed before the oral proceedings.

The different approach taken in article 134 of the Rules might only make some sense in those cases in which the advisory opinion to be delivered by the Seabed Disputes Chamber is not related to a pending dispute between States Parties. However it might well be that the object of a request for an advisory opinion relates to a legal question pending between two or more States Parties, a possibility which is contemplated in paragraph 2 of article 130.[1]

[1] Article 130, paragraph 2, reads as follows: "The Chamber shall consider whether the request for an advisory opinion relates to a legal question pending between two or more parties. When the Chamber so determines, article 17 of the Statute applies, as well as the provisions of these Rules concerning the application of that article."

Article 135

1. When the Chamber has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Chamber.
2. The advisory opinion shall contain:

   (a) the date on which it is delivered;
   (b) the names of the judges participating in it;
   (c) the question or questions on which the advisory opinion of the Chamber is requested;
   (d) a summary of the proceedings;
   (e) a statement of the facts;
   (f) the reasons of law on which it is based;
   (g) the reply to the question or questions put to the Chamber;
   (h) the number and names of the judges constituting the majority and those constituting the minority, on each question put to the Chamber;
   (i) a statement as to the text of the opinion which is authoritative.

3. Any judge may attach a separate or dissenting opinion to the advisory opinion of the Chamber; a judge may record concurrence or dissent without stating reasons in the form of a declaration.

Article 135

1. Lorsque la Chambre a achevé son délibéré et adopté son avis consultatif, celui-ci est lu en audience publique de la Chambre.
2. L'avis consultatif comprend :

   a) l'indication de la date à laquelle il est prononcé ;
   b) les noms des juges qui y ont pris part ;
   c) la question ou les questions sur lesquelles l'avis consultatif de la Chambre a été demandé ;
   d) l'exposé sommaire de la procédure ;
   e) les circonstances de fait ;
   f) les motifs de droit sur lesquels il est fondé ;
   g) la réponse à la question ou aux questions posées à la Chambre ;
   h) l'indication du nombre et des noms des juges ayant constitué la majorité et de ceux ayant constitué la minorité sur chaque question posée à la Chambre ;
   i) l'indication du texte faisant foi.

3. Tout juge peut joindre à l'avis consultatif de la Chambre l'exposé de son opinion individuelle ou dissidente; un juge peut faire constater son accord ou son dissentiment sans en donner les motifs sous la forme d'une déclaration.

COMMENTARY

This article, which is modelled on Article 107 of the ICJ Rules, extends the same procedural treatment relating to the reading and the content of the Tribunal's decision, and the joining of separate or dissenting opinions applicable in a contentious case before the Tribunal, to advisory opinions.

Paragraph 1 applies to the advisory opinions that fall within the jurisdiction of the Seabed Disputes Chamber. In the case of an advisory opinion given by the Tribunal in accordance with article 138 of the Rules, the advisory opinion would have to be read at a public sitting of the Tribunal as a full court, along the lines of the practice of the PCIJ and the ICJ, applying *mutatis mutandis* article 135 of the Rules, as mandated by article 138, paragraph 3, of the Rules.

Paragraph 2 outlines the elements that should be included in the advisory opinion. This provision is basically the same as article 125, paragraph 1, of the Rules relating to contentious cases, on which it was modelled.

Paragraph 3 allows judges to attach a separate or a dissenting opinion to the advisory opinion or to record, in the form of a declaration, concurrence or dissent without stating reasons. This paragraph is similar to the provisions applicable to contentious cases.

Article 136

The Registrar shall inform the Secretary-General of the Authority as to the date and the time fixed for the public sitting to be held for the reading of the opinion. He shall also inform the States Parties and the intergovernmental organizations immediately concerned.

Article 136

Le Greffier avertit le Secrétaire général de l'Autorité des date et heure fixées pour l'audience publique à laquelle il sera donné lecture de l'avis consultatif. Il avertit également les Etats Parties et les organisations intergouvernementales directement intéressées.

COMMENTARY

This provision follows the pattern set in Article 108 of the Rules of the ICJ, by imposing on the Registrar the duty to inform the chief administrative officer of the body which requested the advisory opinion, States parties, as well as the international organizations immediately concerned, of the date and the hour fixed for the reading of the advisory opinion.

There would be no harm in also notifying entities other than States Parties, bearing in mind the object of universality of the Convention, especially as these opinions, as stated before, are related to the international seabed regime which is of concern to all States, whether or not they are parties to the Convention. As already stated, in the case of the ICJ, Article 108 of the Rules also allows for notification of States non-members of the United Nations.

Article 137

One copy of the advisory opinion, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal, others shall be sent to the Secretary-General of the Authority and to the Secretary-General of the United Nations. Copies shall be sent to the States Parties and the intergovernmental organizations immediately concerned.

Article 137

Un exemplaire de l'avis consultatif, signé par le Président et le Greffier et revêtu du sceau du Tribunal, est déposé aux archives du Tribunal, un autre est remis au Secrétaire général de l'Autorité et au Secrétaire général de l'Organisation des Nations Unies. Des copies sont adressées aux Etats Parties ainsi qu'aux organisations intergouvernementales directement intéressées.

COMMENTARY

This article is an amended version of article 146 of the Preparatory Commission Draft Rules, which was modelled on Article 109 of the Rules of the ICJ, which in turn reflects the practice of the PCIJ.[1] Signed and sealed copies of the opinion are to be placed in the Tribunal's archives and sent to the Secretary-General of the United Nations as the depositary of the Convention and to the Secretary-General of the Authority as the chief executive officer of the requesting organization.

Copies are also to be sent to States Parties and other international organizations immediately concerned. In the case of Article 109 of the ICJ Rules a copy is also sent to all States members of the United Nations, and other States and international organizations immediately concerned. Article 137 of the Rules of the Tribunal should contemplate the possibility of also sending a copy of the advisory opinion to entities other than States Parties, bearing in mind that such opinions deal with seabed-related activities, and therefore cover matters of concern to all States, irrespective of whether or not they are parties to the Convention.

[1] See Guyomar, pp. 691–692.

Article 138

1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.
2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.
3. The Tribunal shall apply *mutatis mutandis* articles 130 to 137.

Article 138

1. Le Tribunal peut donner un avis consultatif sur une question juridique dans la mesure où un accord international se rapportant aux buts de la Convention prévoit expressément qu'une demande d'un tel avis est soumise au Tribunal.
2. La demande d'avis consultatif est transmise au Tribunal par tout organe qui aura été autorisé à cet effet par cet accord ou en vertu de celui-ci.
3. Le Tribunal applique *mutatis mutandis* les articles 130 à 137.

COMMENTARY

The text of this article has no precedent in the Rules of the PCIJ or in the Rules of the ICJ. Nor was it proposed in the Preparatory Commission Draft Rules. It came about as a proposal presented during the drafting of the Rules of the Tribunal in 1996.

Two main views could be adduced in connection with this article: One position could be that the Tribunal, acting as a full court, does not have any basis in the Convention or, for that matter, in the Statute to ascribe to itself advisory jurisdiction. Such jurisdiction was only conferred by the Convention on the Seabed Disputes Chamber.

The opposite argument could be that, while not explicitly providing for the advisory jurisdiction of the Tribunal, there is nothing in the Convention or in the Statute itself to exclude or reject such jurisdiction. Therefore, one could say that there is nothing wrong for the Tribunal, as a full court, to be able to provide advisory opinion when requested by international agreements, specifically conferring advisory competence upon it.

In addition, there are certain provisions in the Convention that could be interpreted as providing a legal basis for the Tribunal's advisory jurisdiction. One such provision is article 288, paragraph 2, of the Convention,

which states that, "A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement."

Article 21 of the Statute confers a broad jurisdiction on the Tribunal which also includes an advisory function, by stating that "[t]he jurisdiction of the Tribunal comprises all disputes and *all applications* submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal" (emphasis added).

Article 138 of the Rules of Tribunal seems to follow this latter approach.

Indeed, article 21 of the Statute is broad enough to provide a legal basis for the Tribunal's jurisdiction to entertain advisory opinions conferred upon it by international agreements. Article 138 of the Rules seems to be a legitimate interpretation of article 21 of the Statute.

A question may be raised as to whether the expression "international agreement" would include bilateral agreements between States or between States and international organizations. It appears that both types of agreements would indeed be considered "international agreements" for the purposes of article 138 of the Rules.

As to the meaning of the expression "body", it appears that any organ, entity, institution, organization or State that is indicated in such an international agreement as being empowered to request, on behalf of the parties concerned, an advisory opinion of the Tribunal, in accordance with the terms of the agreement, would be a "body" within the meaning of article 138, paragraph 2, of the Rules. Since such body is only the conveyor of the request, it seems to be of little relevance to dwell on the nature of such body. Its legitimacy to transmit the request is derived from the authority given to it by the agreement and not by its nature or any other structural or institutional considerations.

Since section H of Part III of the Rules on advisory proceedings was essentially addressing the specific cases of advisory opinions to be entertained by the Seabed Disputes Chamber, article 138, paragraph 3, provides for the *mutatis mutandis* application of this section to requests for advisory opinions submitted to the Tribunal as a full court.

Finally, considering that under an international agreement, requests for an advisory opinion on any matter can be made to the Tribunal, this article raises the question of whether such an agreement conferring advisory jurisdiction on the Tribunal could also include issues relating to the international seabed regime. Article 138 does not seem to apply to requests for an advisory opinion on matters covered by or related to the activities of the international seabed regime, since, under the Convention, the Seabed Disputes Chamber enjoys exclusive jurisdiction over such matters.

To date, no request for an advisory opinion has been made, either to the Tribunal, or to the Seabed Disputes Chamber.

ANNEXES

ANNEX I

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Article 1
General provisions

1. The International Tribunal for the Law of the Sea is constituted and shall function in accordance with the provisions of this Convention and this Statute.
2. The seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.
3. The Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable.
4. A reference of a dispute to the Tribunal shall be governed by the provisions of Parts XI and XV.

Section 1. Organization of the Tribunal

Article 2
Composition

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea.
2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Article 3
Membership

1. No two members of the Tribunal may be nationals of the same State. A person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.
2. There shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations.

Article 4
Nominations and elections

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2 of this Annex. The members of the Tribunal shall be elected from the list of persons thus nominated.
2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.
3. The first election shall be held within six months of the date of entry into force of this Convention.

4. The members of the Tribunal shall be elected by secret ballot. Elections shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by a procedure agreed to by the States Parties in the case of subsequent elections. Two thirds of the States Parties shall constitute a quorum at that meeting. The persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties.

Article 5
Term of office

1. The members of the Tribunal shall be elected for nine years and may be re-elected; provided, however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years.
2. The members of the Tribunal whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General of the United Nations immediately after the first election.
3. The members of the Tribunal shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any proceedings which they may have begun before the date of their replacement.
4. In the case of the resignation of a member of the Tribunal, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of that letter.

Article 6
Vacancies

1. Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Registrar shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in article 4 of this Annex, and the date of the election shall be fixed by the President of the Tribunal after consultation with the States Parties.
2. A member of the Tribunal elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 7
Incompatible activities

1. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the seabed or other commercial use of the sea or the seabed.
2. No member of the Tribunal may act as agent, counsel or advocate in any case.
3. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

Article 8
Conditions relating to participation of members in a particular case

1. No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity.
2. If, for some special reason, a member of the Tribunal considers that he should not take part in the decision of a particular case, he shall so inform the President of the Tribunal.
3. If the President considers that for some special reason one of the members of the Tribunal should not sit in a particular case, he shall give him notice accordingly.
4. Any doubt on these points shall be resolved by decision of the majority of the other members of the Tribunal present.

Article 9
Consequence of ceasing to fulfil required conditions

If, in the unanimous opinion of the other members of the Tribunal, a member has ceased to fulfil the required conditions, the President of the Tribunal shall declare the seat vacant.

Article 10
Privileges and immunities

The members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy diplomatic privileges and immunities.

Article 11
Solemn declaration by members

Every member of the Tribunal shall, before taking up his duties, make a solemn declaration in open session that he will exercise his powers impartially and conscientiously.

Article 12
President, Vice-President and Registrar

1. The Tribunal shall elect its President and Vice-President for three years; they may be re-elected.
2. The Tribunal shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.
3. The President and the Registrar shall reside at the seat of the Tribunal.

Article 13
Quorum

1. All available members of the Tribunal shall sit; a quorum of 11 elected members shall be required to constitute the Tribunal.
2. Subject to article 17 of this Annex, the Tribunal shall determine which members are available to constitute the Tribunal for the consideration of a particular dispute, having regard to the effective functioning of the chambers as provided for in articles 14 and 15 of this Annex.
3. All disputes and applications submitted to the Tribunal shall be heard and determined by the Tribunal, unless article 14 of this Annex applies, or the parties request that it shall be dealt with in accordance with article 15 of this Annex.

Article 14
Seabed Disputes Chamber

A Seabed Disputes Chamber shall be established in accordance with the provisions of section 4 of this Annex. Its jurisdiction, powers and functions shall be as provided for in Part XI, section 5.

Article 15
Special chambers

1. The Tribunal may form such chambers, composed of three or more of its elected members, as it considers necessary for dealing with particular categories of disputes.
2. The Tribunal shall form a chamber for dealing with a particular dispute submitted to it if the parties so request. The composition of such a chamber shall be determined by the Tribunal with the approval of the parties.
3. With a view to the speedy dispatch of business, the Tribunal shall form annually a chamber composed of five of its elected members which may hear and determine disputes by summary procedure. Two alternative members shall be selected for the purpose of replacing members who are unable to participate in a particular proceeding.
4. Disputes shall be heard and determined by the chambers provided for in this article if the parties so request.
5. A judgment given by any of the chambers provided for in this article and in article 14 of this Annex shall be considered as rendered by the Tribunal.

Article 16
Rules of the Tribunal

The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure.

Article 17
Nationality of members

1. Members of the Tribunal of the nationality of any of the parties to a dispute shall retain their right to participate as members of the Tribunal.
2. If the Tribunal, when hearing a dispute, includes upon the bench a member of the nationality of one of the parties, any other party may choose a person to participate as a member of the Tribunal.
3. If the Tribunal, when hearing a dispute, does not include upon the bench a member of the nationality of the parties, each of those parties may choose a person to participate as a member of the Tribunal.
4. This article applies to the chambers referred to in articles 14 and 15 of this Annex. In such cases, the President, in consultation with the parties, shall request specified members of the Tribunal forming the chamber, as many as necessary, to give place to the members of the Tribunal of the

nationality of the parties concerned, and, failing such, or if they are unable to be present, to the members specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be considered as one party only. Any doubt on this point shall be settled by the decision of the Tribunal.
6. Members chosen in accordance with paragraphs 2, 3 and 4 shall fulfil the conditions required by articles 2, 8 and 11 of this Annex. They shall participate in the decision on terms of complete equality with their colleagues.

Article 18
Remuneration of members

1. Each elected member of the Tribunal shall receive an annual allowance and, for each day on which he exercises his functions, a special allowance, provided that in any year the total sum payable to any member as special allowance shall not exceed the amount of the annual allowance.
2. The President shall receive a special annual allowance.
3. The Vice-President shall receive a special allowance for each day on which he acts as President.
4. The members chosen under article 17 of this Annex, other than elected members of the Tribunal, shall receive compensation for each day on which they exercise their functions.
5. The salaries, allowances and compensation shall be determined from time to time at meetings of the States Parties, taking into account the workload of the Tribunal. They may not be decreased during the term of office.
6. The salary of the Registrar shall be determined at meetings of the States Parties, on the proposal of the Tribunal.
7. Regulations adopted at meetings of the States Parties shall determine the conditions under which retirement pensions may be given to members of the Tribunal and to the Registrar, and the conditions under which members of the Tribunal and Registrar shall have their travelling expenses refunded.
8. The salaries, allowances, and compensation shall be free of all taxation.

Article 19
Expenses of the Tribunal

1. The expenses of the Tribunal shall be borne by the States Parties and by the Authority on such terms and in such a manner as shall be decided at meetings of the States Parties.

2. When an entity other than a State Party or the Authority is a party to a case submitted to it, the Tribunal shall fix the amount which that party is to contribute towards the expenses of the Tribunal.

Section 2. Competence

Article 20
Access to the Tribunal

1. The Tribunal shall be open to States Parties.
2. The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.

Article 21
Jurisdiction

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Article 22
Reference of disputes subject to other agreements

If all the parties to a treaty or convention already in force and concerning the subject-matter covered by this Convention so agree, any disputes concerning the interpretation or application of such treaty or convention may, in accordance with such agreement, be submitted to the Tribunal.

Article 23
Applicable law

The Tribunal shall decide all disputes and applications in accordance with article 293.

Section 3. Procedure

Article 24
Institution of proceedings

1. Disputes are submitted to the Tribunal, as the case may be, either by notification of a special agreement or by written application, addressed to the Registrar. In either case, the subject of the dispute and the parties shall be indicated.
2. The Registrar shall forthwith notify the special agreement or the application to all concerned.
3. The Registrar shall also notify all States Parties.

Article 25
Provisional measures

1. In accordance with article 290, the Tribunal and its Seabed Disputes Chamber shall have the power to prescribe provisional measures.
2. If the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum, the provisional measures shall be prescribed by the chamber of summary procedure formed under article 15, paragraph 3, of this Annex. Notwithstanding article 15, paragraph 4, of this Annex, such provisional measures may be adopted at the request of any party to the dispute. They shall be subject to review and revision by the Tribunal.

Article 26
Hearing

1. The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President. If neither is able to preside, the senior judge present of the Tribunal shall preside.
2. The hearing shall be public, unless the Tribunal decides otherwise or unless the parties demand that the public be not admitted.

Article 27
Conduct of case

The Tribunal shall make orders for the conduct of the case, decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 28
Default

When one of the parties does not appear before the Tribunal or fails to defend its case, the other party may request the Tribunal to continue the proceedings and make its decision. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its decision, the Tribunal must satisfy itself not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and law.

Article 29
Majority for decision

1. All questions shall be decided by a majority of the members of the Tribunal who are present.
2. In the event of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote.

Article 30
Judgment

1. The judgment shall state the reasons on which it is based.
2. It shall contain the names of the members of the Tribunal who have taken part in the decision.
3. If the judgment does not represent in whole or in part the unanimous opinion of the members of the Tribunal, any member shall be entitled to deliver a separate opinion.
4. The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the parties to the dispute.

Article 31
Request to intervene

1. Should a State Party consider that it has an interest of a legal nature which may be affected by the decision in any dispute, it may submit a request to the Tribunal to be permitted to intervene.
2. It shall be for the Tribunal to decide upon this request.
3. If a request to intervene is granted, the decision of the Tribunal in respect of the dispute shall be binding upon the intervening State Party in so far as it relates to matters in respect of which that State Party intervened.

Article 32
Right to intervene in cases of interpretation or application

1. Whenever the interpretation or application of this Convention is in question, the Registrar shall notify all States Parties forthwith.
2. Whenever pursuant to article 21 or 22 of this Annex the interpretation or application of an international agreement is in question, the Registrar shall notify all the parties to the agreement.
3. Every party referred to in paragraphs 1 and 2 has the right to intervene in the proceedings; if it uses this right, the interpretation given by the judgment will be equally binding upon it.

Article 33
Finality and binding force of decisions

1. The decision of the Tribunal is final and shall be complied with by all the parties to the dispute.
2. The decision shall have no binding force except between the parties in respect of that particular dispute.
3. In the event of dispute as to the meaning or scope of the decision, the Tribunal shall construe it upon the request of any party.

Article 34
Costs

Unless otherwise decided by the Tribunal, each party shall bear its own costs.

Section 4. Seabed Disputes Chamber

Article 35
Composition

1. The Seabed Disputes Chamber referred to in article 14 of this Annex shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them.
2. In the selection of the members of the Chamber, the representation of the principal legal systems of the world and equitable geographical distribution shall be assured. The Assembly of the Authority may adopt rec-

ommendations of a general nature relating to such representation and distribution.

3. The members of the Chamber shall be selected every three years and may be selected for a second term.
4. The Chamber shall elect its President from among its members, who shall serve for the term for which the Chamber has been selected.
5. If any proceedings are still pending at the end of any three-year period for which the Chamber has been selected, the Chamber shall complete the proceedings in its original composition.
6. If a vacancy occurs in the Chamber, the Tribunal shall select a successor from among its elected members, who shall hold office for the remainder of his predecessor's term.
7. A quorum of seven of the members selected by the Tribunal shall be required to constitute the Chamber.

Article 36
Ad hoc chambers

1. The Seabed Disputes Chamber shall form an *ad hoc* chamber, composed of three of its members, for dealing with a particular dispute submitted to it in accordance with article 188, paragraph 1(b). The composition of such a chamber shall be determined by the Seabed Disputes Chamber with the approval of the parties.
2. If the parties do not agree on the composition of an *ad hoc* chamber, each party to the dispute shall appoint one member, and the third member shall be appointed by them in agreement. If they disagree, or if any party fails to make an appointment, the President of the Seabed Disputes Chamber shall promptly make the appointment or appointments from among its members, after consultation with the parties.
3. Members of the *ad hoc* chamber must not be in the service of, or nationals of, any of the parties to the dispute.

Article 37
Access

The Chamber shall be open to the States Parties, the Authority and the other entities referred to in Part XI, section 5.

Article 38
Applicable law

In addition to the provisions of article 293, the Chamber shall apply:

(a) the rules, regulations and procedures of the Authority adopted in accordance with this Convention; and
(b) the terms of contracts concerning activities in the Area in matters relating to those contracts.

Article 39
Enforcement of decisions of the Chamber

The decisions of the Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.

Article 40
Applicability of other sections of this Annex

1. The other sections of this Annex which are not incompatible with this section apply to the Chamber.
2. In the exercise of its functions relating to advisory opinions, the Chamber shall be guided by the provisions of this Annex relating to procedure before the Tribunal to the extent to which it recognizes them to be applicable.

Section 5. Amendments

Article 41
Amendments

1. Amendments to this Annex, other than amendments to section 4, may be adopted only in accordance with article 313 or by consensus at a conference convened in accordance with this Convention.
2. Amendments to section 4 may be adopted only in accordance with article 314.
3. The Tribunal may propose such amendments to this Statute as it may consider necessary, by written communications to the States Parties for their consideration in conformity with paragraphs 1 and 2.

ANNEX II

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

RULES OF THE TRIBUNAL

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RULES OF THE TRIBUNAL

Adopted on 28 October 1997
(amended on 15 March and 21 September 2001)

Preamble

The Tribunal,

Acting pursuant to article 16 of the Statute of the International Tribunal for the Law of the Sea, Annex VI to the United Nations Convention on the Law of the Sea,

Adopts the following Rules of the Tribunal.

PART I

USE OF TERMS

Article 1

For the purposes of these Rules:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982, together with the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention;
(b) "Statute" means the Statute of the International Tribunal for the Law of the Sea, Annex VI to the Convention;
(c) "States Parties" has the meaning set out in article 1, paragraph 2, of the Convention and includes, for the purposes of Part XI of the Convention, States and entities which are members of the Authority on a provisional basis in accordance with section 1, paragraph 12, of the Annex to the Agreement relating to the implementation of Part XI;
(d) "international organization" has the meaning set out in Annex IX, article 1, to the Convention, unless otherwise specified;
(e) "Member" means an elected judge;
(f) "judge" means a Member as well as a judge *ad hoc*;
(g) "judge *ad hoc*" means a person chosen under article 17 of the Statute for the purposes of a particular case;
(h) "Authority" means the International Seabed Authority;
(i) "certified copy" means a copy of a document bearing an attestation by or on behalf of the custodian of the original or the party submitting it that it is a true and accurate copy thereof.

PART II

ORGANIZATION

Section A. The Tribunal

Subsection 1. The Members

Article 2

1. The term of office of Members elected at a triennial election shall begin to run from 1 October following the date of the election.
2. The term of office of a Member elected to replace a Member whose term of office has not expired shall run from the date of the election for the remainder of that term.

Article 3

The Members, in the exercise of their functions, are of equal status, irrespective of age, priority of election or length of service.

Article 4

1. The Members shall, except as provided in paragraphs 3 and 4, take precedence according to the date on which their respective terms of office began.
2. Members whose terms of office began on the same date shall take precedence in relation to one another according to seniority of age.
3. A Member who is re-elected to a new term of office which is continuous with his previous term shall retain his precedence.
4. The President and the Vice-President of the Tribunal, while holding these offices, shall take precedence over the other Members.
5. The Member who, in accordance with the foregoing paragraphs, takes precedence next after the President and the Vice-President of the Tribunal is in these Rules designated the "Senior Member". If that Member is unable to act, the Member who is next after him in precedence and able to act is considered as Senior Member.

Article 5

1. The solemn declaration to be made by every Member in accordance with article 11 of the Statute shall be as follows:

   "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously".

2. This declaration shall be made at the first public sitting at which the Member is present. Such sitting shall be held as soon as practicable after his term of office begins and, if necessary, a special sitting shall be held for the purpose.
3. A Member who is re-elected shall make a new declaration only if his new term is not continuous with his previous one.

Article 6

1. In the case of the resignation of a Member, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.
2. In the case of the resignation of the President of the Tribunal, the letter of resignation shall be addressed to the Vice-President of the Tribunal or, failing him, the Senior Member. The place becomes vacant on the receipt of the letter.

Article 7

In any case in which the application of article 9 of the Statute is under consideration, the Member concerned shall be so informed by the President of the Tribunal or, if the circumstances so require, by the Vice-President of the Tribunal, in a written statement which shall include the grounds therefor and any relevant evidence. He shall subsequently, at a private meeting of the Tribunal specially convened for the purpose, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. The Member concerned may be assisted or represented by counsel or any other person of his choice. At a further private meeting, at which the Member concerned shall not be present, the matter shall be discussed; each Member shall state his opinion, and if requested a vote shall be taken.

Subsection 2. Judges *ad hoc*

Article 8

1. Judges *ad hoc* shall participate in the case in which they sit on terms of complete equality with the other judges.
2. Judges *ad hoc* shall take precedence after the Members and in order of seniority of age.
3. In the case of the resignation of a judge *ad hoc*, the letter of resignation shall be addressed to the President of the Tribunal. The place becomes vacant on the receipt of the letter.

Article 9

1. The solemn declaration to be made by every judge *ad hoc* in accordance with articles 11 and 17, paragraph 6, of the Statute shall be as set out in article 5, paragraph 1, of these Rules.
2. This declaration shall be made at a public sitting in the case in which the judge *ad hoc* is participating.
3. Judges *ad hoc* shall make the declaration in relation to each case in which they are participating.

Subsection 3. President and Vice-President

Article 10

1. The term of office of the President and that of the Vice-President of the Tribunal shall begin to run from the date on which the term of office of the Members elected at a triennial election begins.
2. The elections of the President and the Vice-President of the Tribunal shall be held on that date or shortly thereafter. The former President, if still a Member, shall continue to exercise the functions of President of the Tribunal until the election to this position has taken place.

Article 11

1. If, on the date of the election to the presidency, the former President of the Tribunal is still a Member, he shall conduct the election. If he has ceased to be a Member, or is unable to act, the election shall be conducted by the Member exercising the functions of the presidency.

2. The election shall take place by secret ballot, after the presiding Member has declared the number of affirmative votes necessary for election; there shall be no nominations. The Member obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected and shall enter forthwith upon his functions.
3. The new President of the Tribunal shall conduct the election of the Vice-President of the Tribunal either at the same or at the following meeting. Paragraph 2 applies to this election.

Article 12

1. The President of the Tribunal shall preside at all meetings of the Tribunal. He shall direct the work and supervise the administration of the Tribunal.
2. He shall represent the Tribunal in its relations with States and other entities.

Article 13

1. In the event of a vacancy in the presidency or of the inability of the President of the Tribunal to exercise the functions of the presidency, these shall be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.
2. When the President of the Tribunal is precluded by a provision of the Statute or of these Rules either from sitting or from presiding in a particular case, he shall continue to exercise the functions of the presidency for all purposes save in respect of that case.
3. The President of the Tribunal shall take the measures necessary in order to ensure the continuous exercise of the functions of the presidency at the seat of the Tribunal. In the event of his absence, he may, so far as is compatible with the Statute and these Rules, arrange for these functions to be exercised by the Vice-President of the Tribunal or, failing him, by the Senior Member.
4. If the President of the Tribunal decides to resign the presidency, he shall communicate his decision in writing to the Tribunal through the Vice-President of the Tribunal or, failing him, the Senior Member. If the Vice-President of the Tribunal decides to resign the vice-presidency, he shall communicate his decision in writing to the President of the Tribunal.

Article 14

If a vacancy in the presidency or the vice-presidency occurs before the date when the current term is due to expire, the Tribunal shall decide whether or not the vacancy shall be filled during the remainder of the term.

Subsection 4. Experts appointed under article 289 of the Convention

Article 15

1. A request by a party for the selection by the Tribunal of scientific or technical experts under article 289 of the Convention shall, as a general rule, be made not later than the closure of the written proceedings. The Tribunal may consider a later request made prior to the closure of the oral proceedings, if appropriate in the circumstances of the case.
2. When the Tribunal decides to select experts, at the request of a party or *proprio motu*, it shall select such experts upon the proposal of the President of the Tribunal, who shall consult the parties before making such a proposal.
3. Experts shall be independent and enjoy the highest reputation for fairness, competence and integrity. An expert in a field mentioned in Annex VIII, article 2, to the Convention shall be chosen preferably from the relevant list prepared in accordance with that annex.
4. This article applies *mutatis mutandis* to any chamber and its President.
5. Before entering upon their duties, such experts shall make the following solemn declaration at a public sitting:

   "I solemnly declare that I will perform my duties as an expert honourably, impartially and conscientiously and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Subsection 5. The composition of the Tribunal for particular cases

Article 16

1. No Member who is a national of a party in a case, a national of a State member of an international organization which is a party in a case or a national of a sponsoring State of an entity other than a State which is a party in a case, shall exercise the functions of the presidency in respect of the case.
2. The Member who is presiding in a case on the date on which the Tribunal meets in accordance with article 68 shall continue to preside in that case until completion of the current phase of the case, notwithstanding the election in the meantime of a new President or Vice-President of the Tribunal. If he should become unable to act, the presidency for the case shall be determined in accordance with article 13 and on the basis of the composition of the Tribunal on the date on which it met in accordance with article 68.

Article 17

Members who have been replaced following the expiration of their terms of office shall continue to sit in a case until the completion of any phase in respect of which the Tribunal has met in accordance with article 68.

Article 18

1. Whenever doubt arises on any point in article 8 of the Statute, the President of the Tribunal shall inform the other Members. The Member concerned shall be afforded an opportunity of furnishing any information or explanations.
2. If a party desires to bring to the attention of the Tribunal facts which it considers to be of possible relevance to the application of article 8 of the Statute, but which it believes may not be known to the Tribunal, that party shall communicate confidentially such facts to the President of the Tribunal in writing.

Article 19

1. If a party intends to choose a judge *ad hoc* in a case, it shall notify the Tribunal of its intention as soon as possible. It shall inform the Tribunal of the name, nationality and brief biographical details of the person chosen, preferably at the same time but in any event not later than two months before the time-limit fixed for the filing of the counter-memorial. The judge *ad hoc* may be of a nationality other than that of the party which chooses him.
2. If a party proposes to abstain from choosing a judge *ad hoc*, on condition of a like abstention by the other party, it shall so notify the Tribunal, which shall inform the other party. If the other party thereafter gives notice of its intention to choose, or chooses, a judge *ad hoc*, the time-limit for the party which had previously abstained from choosing a judge may be extended up to 30 days by the President of the Tribunal.
3. A copy of any notification relating to the choice of a judge *ad hoc* shall be communicated by the Registrar to the other party, which shall be requested to furnish, within a time-limit not exceeding 30 days to be fixed by the President of the Tribunal, such observations as it may wish to make. If within the said time-limit no objection is raised by the other party, and if none appears to the Tribunal itself, the parties shall be so informed. In the event of any objection or doubt, the matter shall be decided by the Tribunal, if necessary after hearing the parties.
4. A judge *ad hoc* who becomes unable to sit may be replaced.
5. If the Tribunal finds that the reasons for the participation of a judge *ad hoc* no longer exist, that judge shall cease to sit on the bench.

Article 20

1. If the Tribunal finds that two or more parties are in the same interest and are therefore to be considered as one party only, and that there is no Member of the nationality of any one of these parties upon the bench, the Tribunal shall fix a time-limit within which they may jointly choose a judge *ad hoc*.
2. Should any party among those found by the Tribunal to be in the same interest allege the existence of a separate interest of its own or put forward any other objection, the matter shall be decided by the Tribunal, if necessary after hearing the parties.

Article 21

1. If a Member having the nationality of one of the parties is or becomes unable to sit in any phase of a case, that party is entitled to choose a judge *ad hoc* within a time-limit to be fixed by the Tribunal, or by the President of the Tribunal if the Tribunal is not sitting.
2. Parties in the same interest shall be deemed not to have a Member of one of their nationalities upon the bench if every Member having one of their nationalities is or becomes unable to sit in any phase of the case.
3. If a Member having the nationality of one of the parties becomes able to sit not later than the closure of the written proceedings in that phase of the case, that Member shall resume the seat on the bench in the case.

Article 22

1. An entity other than a State may choose a judge *ad hoc* only if:
   (a) one of the other parties is a State Party and there is upon the bench a judge of its nationality or, where such party is an international organization, there is upon the bench a judge of the nationality of one of its member States or the State Party has itself chosen a judge *ad hoc*; or
   (b) there is upon the bench a judge of the nationality of the sponsoring State of one of the other parties.
2. However, an international organization or a natural or juridical person or state enterprise is not entitled to choose a judge *ad hoc* if there is upon the bench a judge of the nationality of one of the member States of the international organization or a judge of the nationality of the sponsoring State of such natural or juridical person or state enterprise.
3. Where an international organization is a party to a case and there is upon the bench a judge of the nationality of a member State of the organization, the other party may choose a judge *ad hoc*.
4. Where two or more judges on the bench are nationals of member States of the international organization concerned or of the sponsoring States of a party, the President may, after consulting the parties, request one or more of such judges to withdraw from the bench.

Section B. The Seabed Disputes Chamber

Subsection 1. The members and judges *ad hoc*

Article 23

The members of the Seabed Disputes Chamber shall be selected following each triennial election to the Tribunal as soon as possible after the term of office of Members elected at such election begins. The term of office of members of the Chamber shall begin to run from the date of their selection. The term of office of members selected at the first selection shall expire on 30 September 1999; the terms of office of members selected at subsequent triennial selections shall expire on 30 September every three years thereafter. Members of the Chamber who remain on the Tribunal after the expiry of their term of office shall continue to serve on the Chamber until the next selection.

Article 24

The President of the Chamber, while holding that office, takes precedence over the other members of the Chamber. The other members take precedence according to their precedence in the Tribunal in the case where the President and Vice-President of the Tribunal are not exercising the functions of those offices.

Article 25

Articles 8 and 9 apply *mutatis mutandis* to the judges *ad hoc* of the Chamber.

Subsection 2. The presidency

Article 26

1. The Chamber shall elect its President by secret ballot and by a majority vote of its members.
2. The President shall preside at all meetings of the Chamber.
3. In the event of a vacancy in the presidency or of the inability of the President of the Chamber to exercise the functions of the presidency,

these shall be exercised by the member of the Chamber who is senior in precedence and able to act.

4. In other respects, articles 10 to 14 apply *mutatis mutandis*.

Subsection 3. *Ad hoc* chambers of the Seabed Disputes Chamber

Article 27

1. Any request for the formation of an *ad hoc* chamber of the Seabed Disputes Chamber in accordance with article 188, paragraph 1 (b), of the Convention shall be made within three months from the date of the institution of proceedings.
2. If, within a time-limit fixed by the President of the Seabed Disputes Chamber, the parties do not agree on the composition of the chamber, the President shall establish time-limits for the parties to make the necessary appointments.

Section C. Special chambers

Article 28

1. The Chamber of Summary Procedure shall be composed of the President and Vice-President of the Tribunal, acting ex officio, and three other Members. In addition, two Members shall be selected to act as alternates.
2. The members and alternates of the Chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal.
3. The selection of members and alternates of the Chamber shall be made as soon as possible after 1 October in each year. The members of the Chamber and the alternates shall enter upon their functions on their selection and serve until 30 September of the following year. Members of the Chamber and alternates who remain on the Tribunal after that date shall continue to serve on the Chamber until the next selection.
4. If a member of the Chamber is unable, for whatever reason, to sit in a given case, that member shall be replaced for the purposes of that case by the senior in precedence of the two alternates.
5. If a member of the Chamber resigns or otherwise ceases to be a member, the place of that member shall be taken by the senior in precedence of the two alternates, who shall thereupon become a full member of the Chamber and be replaced by the selection of another alternate.
6. The quorum for meetings of the Chamber is three members.

Article 29

1. Whenever the Tribunal decides to form a standing special chamber provided for in article 15, paragraph 1, of the Statute, it shall determine the particular category of disputes for which it is formed, the number of its members, the period for which they will serve, the date when they will enter upon their duties and the quorum for meetings.
2. The members of such chamber shall be selected by the Tribunal upon the proposal of the President of the Tribunal from among the Members, having regard to any special knowledge, expertise or previous experience which any of the Members may have in relation to the category of disputes the chamber deals with.
3. The Tribunal may decide to dissolve a standing special chamber. The chamber shall finish any cases pending before it.

Article 30

1. A request for the formation of a special chamber to deal with a particular dispute, as provided for in article 15, paragraph 2, of the Statute, shall be made within two months from the date of the institution of proceedings. Upon receipt of a request made by one party, the President of the Tribunal shall ascertain whether the other party assents.
2. When the parties have agreed, the President of the Tribunal shall ascertain their views regarding the composition of the chamber and shall report to the Tribunal accordingly.
3. The Tribunal shall determine, with the approval of the parties, the Members who are to constitute the chamber. The same procedure shall be followed in filling any vacancy. The Tribunal shall also determine the quorum for meetings of the chamber.
4. Members of a chamber formed under this article who have been replaced, in accordance with article 5 of the Statute, following the expiration of their terms of office, shall continue to sit in all phases of the case, whatever the stage it has then reached.

Article 31

1. If a chamber when formed includes the President of the Tribunal, the President shall preside over the chamber. If it does not include the President but includes the Vice-President, the Vice-President shall preside. In any other event, the chamber shall elect its own President by secret ballot and by a majority of votes of its members. The member who, under this paragraph, presides over the chamber at the time of its formation shall continue to preside so long as he remains a member of that chamber.

2. Subject to paragraph 3, the President of a chamber shall exercise, in relation to cases being dealt with by that chamber and from the time it begins dealing with the case, the functions of the President of the Tribunal in relation to cases before the Tribunal.
3. The President of the Tribunal shall take such steps as may be necessary to give effect to article 17, paragraph 4, of the Statute.
4. If the President of a chamber is prevented from sitting or acting as President of the chamber, the functions of the presidency of the chamber shall be assumed by the member of the chamber who is the senior in precedence and able to act.

Section D. The Registry

Article 32

1. The Tribunal shall elect its Registrar by secret ballot from among candidates nominated by Members. The Registrar shall be elected for a term of five years and may be re-elected.
2. The President of the Tribunal shall give notice of a vacancy or impending vacancy to Members, either forthwith upon the vacancy arising or, where the vacancy will arise on the expiration of the term of office of the Registrar, not less than three months prior thereto. The President of the Tribunal shall fix a date for the closure of the list of candidates so as to enable nominations and information concerning the candidates to be received in sufficient time.
3. Nominations shall be accompanied by the relevant information concerning the candidates, in particular information as to age, nationality, present occupation, academic and other qualifications, knowledge of languages and any previous experience in law, especially the law of the sea, diplomacy or the work of international organizations.
4. The candidate obtaining the votes of the majority of the Members composing the Tribunal at the time of the election shall be declared elected.

Article 33

The Tribunal shall elect a Deputy Registrar; it may also elect an Assistant Registrar. Article 32 applies to their election and terms of office.

Article 34

Before taking up their duties, the Registrar, the Deputy Registrar and the Assistant Registrar shall make the following solemn declaration at a meeting of the Tribunal:

"I solemnly declare that I will perform my duties as Registrar (Deputy Registrar or Assistant Registrar as the case may be) of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 35

1. The staff of the Registry, other than the Registrar, the Deputy Registrar and the Assistant Registrar, shall be appointed by the Tribunal on proposals submitted by the Registrar. Appointments to such posts as the Tribunal shall determine may, however, be made by the Registrar with the approval of the President of the Tribunal.
2. The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
3. Before taking up their duties, the staff shall make the following solemn declaration before the President of the Tribunal, the Registrar being present:

   "I solemnly declare that I will perform my duties as an official of the International Tribunal for the Law of the Sea in all loyalty, discretion and good conscience and that I will faithfully observe all the provisions of the Statute and of the Rules of the Tribunal".

Article 36

1. The Registrar, in the discharge of his functions, shall:
   (a) be the regular channel of communications to and from the Tribunal and in particular shall effect all communications, notifications and transmission of documents required by the Convention, the Statute, these Rules or any other relevant international agreement and ensure that the date of dispatch and receipt thereof may be readily verified;
   (b) keep, under the supervision of the President of the Tribunal, and in such form as may be laid down by the Tribunal, a List of cases,

entered and numbered in the order in which the documents instituting proceedings or requesting an advisory opinion are received in the Registry;

(c) keep copies of declarations and notices of revocation or withdrawal thereof deposited with the Secretary-General of the United Nations under articles 287 and 298 of the Convention or Annex IX, article 7, to the Convention;

(d) keep copies of agreements conferring jurisdiction on the Tribunal;

(e) keep notifications received under article 110, paragraph 2;

(f) transmit to the parties certified copies of pleadings and annexes upon receipt thereof in the Registry;

(g) communicate to the Government of the State in which the Tribunal or a chamber is sitting, or is to sit, and any other Governments which may be concerned, the necessary information as to the persons from time to time entitled, under the Statute and the relevant agreements, to privileges, immunities or facilities;

(h) be present in person or represented by the Deputy Registrar, the Assistant Registrar or in their absence by a senior official of the Registry designated by him, at meetings of the Tribunal, and of the chambers, and be responsible for preparing records of such meetings;

(i) make arrangements for such provision or verification of translations and interpretations into the Tribunal's official languages as the Tribunal may require;

(j) sign all judgments, advisory opinions and orders of the Tribunal and the records referred to in subparagraph (h);

(k) be responsible for the reproduction, printing and publication of the Tribunal's judgments, advisory opinions and orders, the pleadings and statements and the minutes of public sittings in cases and of such other documents as the Tribunal may direct to be published;

(l) be responsible for all administrative work and in particular for the accounts and financial administration in accordance with the financial procedures of the Tribunal;

(m) deal with inquiries concerning the Tribunal and its work;

(n) assist in maintaining relations between the Tribunal and the Authority, the International Court of Justice and the other organs of the United Nations, its related agencies, the arbitral and special arbitral tribunals referred to in article 287 of the Convention and international bodies and conferences concerned with the codification and progressive development of international law, in particular the law of the sea;

(o) ensure that information concerning the Tribunal and its activities is accessible to Governments, the highest national courts of justice, professional and learned societies, legal faculties and schools of law and public information media;

(p) have custody of the seals and stamps of the Tribunal, of the archives of the Tribunal and of such other archives as may be entrusted to the Tribunal.

2. The Tribunal may at any time entrust additional functions to the Registrar.
3. In the discharge of his functions the Registrar shall be responsible to the Tribunal.

Article 37

1. The Deputy Registrar shall assist the Registrar, act as Registrar in the latter's absence and, in the event of the office becoming vacant, exercise the functions of Registrar until the office has been filled.
2. If the Registrar, the Deputy Registrar and the Assistant Registrar are unable to carry out the duties of Registrar, the President of the Tribunal shall appoint an official of the Registry to discharge those duties for such time as may be necessary. If the three offices are vacant at the same time, the President, after consulting the Members, shall appoint an official of the Registry to discharge the duties of Registrar pending an election to that office.

Article 38

1. The Registry consists of the Registrar, the Deputy Registrar, the Assistant Registrar and such other staff as required for the efficient discharge of its functions.
2. The Tribunal shall determine the organization of the Registry and shall for this purpose request the Registrar to make proposals.
3. Instructions for the Registry shall be drawn up by the Registrar and approved by the Tribunal.
4. The staff of the Registry shall be subject to Staff Regulations drawn up by the Registrar and approved by the Tribunal.

Article 39

1. The Registrar may resign from office with two months' notice tendered in writing to the President of the Tribunal. The Deputy Registrar and the Assistant Registrar may resign from office with one month's notice tendered in writing to the President of the Tribunal through the Registrar.
2. The Registrar may be removed from office only if, in the opinion of two thirds of the Members, he has either committed a serious breach of his duties or become permanently incapacitated from exercising his functions.

Before a decision to remove him is taken under this paragraph, he shall be informed by the President of the Tribunal of the action contemplated, in a written statement which shall include the grounds therefor and any relevant evidence. When the action contemplated concerns permanent incapacity, relevant medical information shall be included. The Registrar shall subsequently, at a private meeting of the Tribunal, be afforded an opportunity of making a statement, of furnishing any information or explanations he wishes to give and of supplying answers, orally or in writing, to any questions put to him. He may be assisted or represented at such meeting by counsel or any other person of his choice.

3. The Deputy Registrar and the Assistant Registrar may be removed from office only on the same grounds and by the same procedure as specified in paragraph 2.

Section E. Internal functioning of the Tribunal

Article 40

The internal judicial practice of the Tribunal shall, subject to the Convention, the Statute and these Rules, be governed by any resolutions on the subject adopted by the Tribunal.

Article 41

1. The quorum specified by article 13, paragraph 1, of the Statute applies to all meetings of the Tribunal. The quorum specified in article 35, paragraph 7, of the Statute applies to all meetings of the Seabed Disputes Chamber. The quorum specified for a special chamber applies to all meetings of that chamber.
2. Members shall hold themselves permanently available to exercise their functions and shall attend all such meetings, unless they are absent on leave as provided for in paragraph 4 or prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal.
3. Judges *ad hoc* are likewise bound to hold themselves at the disposal of the Tribunal and to attend all meetings held in the case in which they are participating unless they are prevented from attending by illness or for other serious reasons duly explained to the President of the Tribunal, who shall inform the Tribunal. They shall not be taken into account for the calculation of the quorum.

4. The Tribunal shall fix the dates and duration of the judicial vacations and the periods and conditions of leave to be accorded to individual Members, having regard in both cases to the state of the List of cases and to the requirements of its current work.
5. Subject to the same considerations, the Tribunal shall observe the public holidays customary at the place where the Tribunal is sitting.
6. In case of urgency the President of the Tribunal may convene the Tribunal at any time.

Article 42

1. The deliberations of the Tribunal shall take place in private and remain secret. The Tribunal may, however, at any time decide in respect of its deliberations on other than judicial matters to publish or allow publication of any part of them.
2. Only judges and any experts appointed in accordance with article 289 of the Convention take part in the Tribunal's judicial deliberations. The Registrar, or his Deputy, and other members of the staff of the Registry as may be required shall be present. No other person shall be present except by permission of the Tribunal.
3. The records of the Tribunal's judicial deliberations shall contain only the title or nature of the subjects or matters discussed and the results of any vote taken. They shall not contain any details of the discussions nor the views expressed, provided however that any judge is entitled to require that a statement made by him be inserted in the records.

Section F. Official languages

Article 43

The official languages of the Tribunal are English and French.

PART III

PROCEDURE

Section A. General provisions

Article 44

1. The proceedings consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Tribunal and to the parties of memorials, counter-memorials and, if the Tribunal so authorizes, replies and rejoinders, as well as all documents in support.
3. The oral proceedings shall consist of the hearing by the Tribunal of agents, counsel, advocates, witnesses and experts.

Article 45

In every case submitted to the Tribunal, the President shall ascertain the views of the parties with regard to questions of procedure. For this purpose, he may summon the agents of the parties to meet him as soon as possible after their appointment and whenever necessary thereafter, or use other appropriate means of communication.

Article 46

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

Article 47

The Tribunal may at any time direct that the proceedings in two or more cases be joined. It may also direct that the written or oral proceedings, including the calling of witnesses, be in common; or the Tribunal may, without effecting any formal joinder, direct common action in any of these respects.

Article 48

The parties may jointly propose particular modifications or additions to the Rules contained in this Part, which may be applied by the Tribunal or by a chamber if the Tribunal or the chamber considers them appropriate in the circumstances of the case.

Article 49

The proceedings before the Tribunal shall be conducted without unnecessary delay or expense.

Article 50

The Tribunal may issue guidelines consistent with these Rules concerning any aspect of its proceedings, including the length, format and presentation of written and oral pleadings and the use of electronic means of communication.

Article 51

All communications to the Tribunal under these Rules shall be addressed to the Registrar unless otherwise stated. Any request made by a party shall likewise be addressed to the Registrar unless made in open court in the course of the oral proceedings.

Article 52

1. All communications to the parties shall be sent to their agents.
2. The communications to a party before it has appointed an agent and to an entity other than a party shall be sent as follows:
   (a) in the case of a State, the Tribunal shall direct all communications to its Government;
   (b) in the case of the International Seabed Authority or the Enterprise, any international organization and any other intergovernmental organization, the Tribunal shall direct all communications to the competent body or executive head of such organization at its headquarters location;
   (c) in the case of state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal

shall direct all communications through the Government of the sponsoring or certifying State, as the case may be;

(d) in the case of a group of States, state enterprises or natural or juridical persons referred to in article 153, paragraph 2 (b), of the Convention, the Tribunal shall direct all communications to each member of the group according to subparagraphs (a) and (c) above;

(e) in the case of other natural or juridical persons, the Tribunal shall direct all communications through the Government of the State in whose territory the communication has to be received.

3. The same provisions apply whenever steps are to be taken to procure evidence on the spot.

Article 53

1. The parties shall be represented by agents.
2. The parties may have the assistance of counsel or advocates before the Tribunal.

Section B. Proceedings before the Tribunal

Subsection 1. Institution of proceedings

Article 54

1. When proceedings before the Tribunal are instituted by means of an application, the application shall indicate the party making it, the party against which the claim is brought and the subject of the dispute.
2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Tribunal is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based.
3. The original of the application shall be signed by the agent of the party submitting it or by the diplomatic representative of that party in the country in which the Tribunal has its seat or by some other duly authorized person. If the application bears the signature of someone other than such diplomatic representative, the signature must be authenticated by the latter or by the competent governmental authority.
4. The Registrar shall forthwith transmit to the respondent a certified copy of the application.
5. When the applicant proposes to found the jurisdiction of the Tribunal upon a consent thereto yet to be given or manifested by the party against

which the application is made, the application shall be transmitted to that party. It shall not however be entered in the List of cases, nor any action be taken in the proceedings, unless and until the party against which such application is made consents to the jurisdiction of the Tribunal for the purposes of the case.

Article 55

1. When proceedings are brought before the Tribunal by the notification of a special agreement, the notification may be effected by the parties jointly or by any one or more of them. If the notification is not a joint one, a certified copy of it shall forthwith be communicated by the Registrar to any other party.
2. In each case the notification shall be accompanied by an original or certified copy of the special agreement. The notification shall also, insofar as this is not already apparent from the agreement, indicate the precise subject of the dispute and identify the parties to it.

Article 56

1. Except in the circumstances contemplated by article 54, paragraph 5, all steps on behalf of the parties after proceedings have been instituted shall be taken by agents. Agents shall have an address for service at the seat of the Tribunal or in the capital of the country where the seat is located, to which all communications concerning the case are to be sent.
2. When proceedings are instituted by means of an application, the name of the agent for the applicant shall be stated. The respondent, upon receipt of the certified copy of the application, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent.
3. When proceedings are brought by notification of a special agreement, the party or parties making the notification shall state the name of its agent or the names of their agents, as the case may be. Any other party to the special agreement, upon receiving from the Registrar a certified copy of such notification, or as soon as possible thereafter, shall inform the Tribunal of the name of its agent if it has not already done so.

Article 57

1. Whenever proceedings are instituted on the basis of an agreement other than the Convention, the application or the notification shall be accompanied by a certified copy of the agreement in question.

2. In a dispute to which an international organization is a party, the Tribunal may, at the request of any other party or *proprio motu*, request the international organization to provide, within a reasonable time, information as to which, as between the organization and its member States, has competence in respect of any specific question which has arisen. If the Tribunal considers it necessary, it may suspend the proceedings until it receives such information.

Article 58

In the event of a dispute as to whether the Tribunal has jurisdiction, the matter shall be decided by the Tribunal.

Subsection 2. The written proceedings

Article 59

1. In the light of the views of the parties ascertained by the President of the Tribunal, the Tribunal shall make the necessary orders to determine, *inter alia*, the number and the order of filing of the pleadings and the time-limits within which they must be filed. The time-limits for each pleading shall not exceed six months.
2. The Tribunal may at the request of a party extend any time-limit or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid. It may not do so, however, unless it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views within a time-limit to be fixed by the Tribunal.
3. If the Tribunal is not sitting, its powers under this article may be exercised by the President of the Tribunal, but without prejudice to any subsequent decision of the Tribunal.

Article 60

1. The pleadings in a case begun by means of an application shall consist, in the following order, of: a memorial by the applicant and a counter-memorial by the respondent.
2. The Tribunal may authorize or direct that there shall be a reply by the applicant and a rejoinder by the respondent if the parties are so agreed or if the Tribunal decides, at the request of a party or *proprio motu*, that these pleadings are necessary.

Article 61

1. In a case begun by the notification of a special agreement, the number and order of the pleadings shall be governed by the provisions of the agreement, unless the Tribunal, after ascertaining the views of the parties, decides otherwise.
2. If the special agreement contains no such provision, and if the parties have not subsequently agreed on the number and order of pleadings, they shall each file a memorial and counter-memorial, within the same time-limits.
3. The Tribunal shall not authorize the presentation of replies and rejoinders unless it finds them to be necessary.

Article 62

1. A memorial shall contain: a statement of the relevant facts, a statement of law and the submissions.
2. A counter-memorial shall contain: an admission or denial of the facts stated in the memorial; any additional facts, if necessary; observations concerning the statement of law in the memorial; a statement of law in answer thereto; and the submissions.
3. A reply and rejoinder shall not merely repeat the parties' contentions, but shall be directed to bringing out the issues that still divide them.
4. Every pleading shall set out the party's submissions at the relevant stage of the case, distinctly from the arguments presented, or shall confirm the submissions previously made.

Article 63

1. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of the contentions contained in the pleading. Parties need not annex or certify copies of documents which have been published and are readily available to the Tribunal and the other party.
2. If only parts of a document are relevant, only such extracts as are necessary for the purpose of the pleading in question or for identifying the document need be annexed. A copy of the whole document shall be filed in the Registry, unless it has been published and is readily available to the Tribunal and the other party.
3. A list of all documents annexed to a pleading shall be furnished at the time the pleading is filed.

Article 64

1. The parties shall submit any pleading or any part of a pleading in one or both of the official languages.
2. A party may use a language other than one of the official languages for its pleadings. A translation into one of the official languages, certified as accurate by the party submitting it, shall be submitted together with the original of each pleading.
3. When a document annexed to a pleading is not in one of the official languages, it shall be accompanied by a translation into one of these languages certified as accurate by the party submitting it. The translation may be confined to part of an annex, or to extracts therefrom, but in this case it must be accompanied by an explanatory note indicating what passages are translated. The Tribunal may, however, require a more extensive or a complete translation to be furnished.
4. When a language other than one of the official languages is chosen by the parties and that language is an official language of the United Nations, the decision of the Tribunal shall, at the request of any party, be translated into that official language of the United Nations at no cost for the parties.

Article 65

1. The original of every pleading shall be signed by the agent and filed in the Registry. It shall be accompanied by a certified copy of the pleading, any document annexed thereto and any translations, for communication to the other party. It shall also be accompanied by the number of additional copies required by the Registry; further copies may be required should the need arise later.
2. All pleadings shall be dated. When a pleading has to be filed by a certain date, it is the date of receipt of the pleading in the Registry which will be regarded by the Tribunal as the material date.
3. If the Registrar arranges for the reproduction of a pleading at the request of a party, the text must be supplied in sufficient time to enable the pleading to be filed in the Registry before expiration of any time-limit which may apply to it. The reproduction is done under the responsibility of the party in question.
4. The correction of a slip or error in any document which has been filed may be made at any time with the consent of the other party or by leave of the President of the Tribunal. Any correction so effected shall be notified to the other party in the same manner as the pleading to which it relates.

Article 66

A certified copy of every pleading and any document annexed thereto produced by one party shall be communicated by the Registrar to the other party upon receipt.

Article 67

1. Copies of the pleadings and documents annexed thereto shall, as soon as possible after their filing, be made available by the Tribunal to a State or other entity entitled to appear before the Tribunal and which has asked to be furnished with such copies. However, if the party submitting the memorial so requests, the Tribunal shall make the memorial available at the same time as the counter-memorial.
2. Copies of the pleadings and documents annexed thereto shall be made accessible to the public on the opening of the oral proceedings, or earlier if the Tribunal or the President if the Tribunal is not sitting so decides after ascertaining the views of the parties.
3. However, the Tribunal, or the President if the Tribunal is not sitting, may, at the request of a party, and after ascertaining the views of the other party, decide otherwise than as set out in this article.

Subsection 3. Initial deliberations

Article 68

After the closure of the written proceedings and prior to the opening of the oral proceedings, the Tribunal shall meet in private to enable judges to exchange views concerning the written pleadings and the conduct of the case.

Subsection 4. Oral proceedings

Article 69

1. Upon the closure of the written proceedings, the date for the opening of the oral proceedings shall be fixed by the Tribunal. Such date shall fall within a period of six months from the closure of the written proceedings unless the Tribunal is satisfied that there is adequate justification for

deciding otherwise. The Tribunal may also decide, when necessary, that the opening or the continuance of the oral proceedings be postponed.

2. When fixing the date for the opening of the oral proceedings or postponing the opening or continuance of such proceedings, the Tribunal shall have regard to:

   (a) the need to hold the hearing without unnecessary delay;
   (b) the priority required by articles 90 and 112;
   (c) any special circumstances, including the urgency of the case or other cases on the List of cases; and
   (d) the views expressed by the parties.

3. When the Tribunal is not sitting, its powers under this article shall be exercised by the President.

Article 70

The Tribunal may, if it considers it desirable, decide pursuant to article 1, paragraph 3, of the Statute that all or part of the further proceedings in a case shall be held at a place other than the seat of the Tribunal. Before so deciding, it shall ascertain the views of the parties.

Article 71

1. After the closure of the written proceedings, no further documents may be submitted to the Tribunal by either party except with the consent of the other party or as provided in paragraph 2. The other party shall be held to have given its consent if it does not lodge an objection to the production of the document within 15 days of receiving it.
2. In the event of objection, the Tribunal, after hearing the parties, may authorize production of the document if it considers production necessary.
3. The party desiring to produce a new document shall file the original or a certified copy thereof, together with the number of copies required by the Registry, which shall be responsible for communicating it to the other party and shall inform the Tribunal.
4. If a new document is produced under paragraph 1 or 2, the other party shall have an opportunity of commenting upon it and of submitting documents in support of its comments.
5. No reference may be made during the oral proceedings to the contents of any document which has not been produced as part of the written proceedings or in accordance with this article, unless the document is part of a publication readily available to the Tribunal and the other party.
6. The application of this article shall not in itself constitute a ground for delaying the opening or the course of the oral proceedings.

Article 72

Without prejudice to the provisions of these Rules concerning the production of documents, each party shall communicate to the Registrar, in sufficient time before the opening of the oral proceedings, information regarding any evidence which it intends to produce or which it intends to request the Tribunal to obtain. This communication shall contain a list of the surnames, first names, nationalities, descriptions and places of residence of the witnesses and experts whom the party intends to call, with indications of the point or points to which their evidence will be directed. A certified copy of the communication shall also be furnished for transmission to the other party.

Article 73

1. The Tribunal shall determine whether the parties should present their arguments before or after the production of the evidence; the parties shall, however, retain the right to comment on the evidence given.
2. The Tribunal, after ascertaining the views of the parties, shall determine the order in which the parties will be heard, the method of handling the evidence and examining any witnesses and experts and the number of counsel and advocates to be heard on behalf of each party.

Article 74

The hearing shall, in accordance with article 26, paragraph 2, of the Statute, be public, unless the Tribunal decides otherwise or unless the parties request that the public be not admitted. Such a decision or request may concern either the whole or part of the hearing, and may be made at any time.

Article 75

1. The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings or merely repeat the facts and arguments these contain.
2. At the conclusion of the last statement made by a party at the hearing, its agent, without recapitulation of the arguments, shall read that party's

final submissions. A copy of the written text of these, signed by the agent, shall be communicated to the Tribunal and transmitted to the other party.

Article 76

1. The Tribunal may at any time prior to or during the hearing indicate any points or issues which it would like the parties specially to address, or on which it considers that there has been sufficient argument.
2. The Tribunal may, during the hearing, put questions to the agents, counsel and advocates, and may ask them for explanations.
3. Each judge has a similar right to put questions, but before exercising it he should make his intention known to the President of the Tribunal.
4. The agents, counsel and advocates may answer either immediately or within a time-limit fixed by the President of the Tribunal.

Article 77

1. The Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal may consider to be necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose.
2. The Tribunal may, if necessary, arrange for the attendance of a witness or expert to give evidence in the proceedings.

Article 78

1. The parties may call any witnesses or experts appearing on the list communicated to the Tribunal pursuant to article 72. If at any time during the hearing a party wishes to call a witness or expert whose name was not included in that list, it shall make a request therefor to the Tribunal and inform the other party, and shall supply the information required by article 72. The witness or expert may be called either if the other party raises no objection or, in the event of objection, if the Tribunal so authorizes after hearing the other party.
2. The Tribunal may, at the request of a party or *proprio motu*, decide that a witness or expert be examined otherwise than before the Tribunal itself. The President of the Tribunal shall take the necessary steps to implement such a decision.

Article 79

Unless on account of special circumstances the Tribunal decides on a different form of words,

(a) every witness shall make the following solemn declaration before giving any evidence:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth";

(b) every expert shall make the following solemn declaration before making any statement:

"I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth, and that my statement will be in accordance with my sincere belief".

Article 80

Witnesses and experts shall, under the control of the President of the Tribunal, be examined by the agents, counsel or advocates of the parties starting with the party calling the witness or expert. Questions may be put to them by the President of the Tribunal and by the judges. Before testifying, witnesses and experts other than those appointed under article 289 of the Convention shall remain out of court.

Article 81

The Tribunal may at any time decide, at the request of a party or *proprio motu*, to exercise its functions with regard to the obtaining of evidence at a place or locality to which the case relates, subject to such conditions as the Tribunal may decide upon after ascertaining the views of the parties. The necessary arrangements shall be made in accordance with article 52.

Article 82

1. If the Tribunal considers it necessary to arrange for an inquiry or an expert opinion, it shall, after hearing the parties, issue an order to this effect, defining the subject of the inquiry or expert opinion, stating the number and mode of appointment of the persons to hold the inquiry or of the experts and laying down the procedure to be followed. Where

appropriate, the Tribunal shall require persons appointed to carry out an inquiry, or to give an expert opinion, to make a solemn declaration.

2. Every report or record of an inquiry and every expert opinion shall be communicated to the parties, which shall be given the opportunity of commenting upon it.

Article 83

Witnesses and experts who appear at the instance of the Tribunal under article 77, paragraph 2, and persons appointed by the Tribunal under article 82, paragraph 1, to carry out an inquiry or to give an expert opinion, shall, where appropriate, be paid out of the funds of the Tribunal.

Article 84

1. The Tribunal may, at any time prior to the closure of the oral proceedings, at the request of a party or *proprio motu,* request an appropriate intergovernmental organization to furnish information relevant to a case before it. The Tribunal, after consulting the chief administrative officer of the organization concerned, shall decide whether such information shall be presented to it orally or in writing and fix the time-limits for its presentation.
2. When such an intergovernmental organization sees fit to furnish, on its own initiative, information relevant to a case before the Tribunal, it shall do so in the form of a memorial to be filed in the Registry before the closure of the written proceedings. The Tribunal may require such information to be supplemented, either orally or in writing, in the form of answers to any questions which it may see fit to formulate, and also authorize the parties to comment, either orally or in writing, on the information thus furnished.
3. Whenever the construction of the constituent instrument of such an intergovernmental organization or of an international convention adopted thereunder is in question in a case before the Tribunal, the Registrar shall, on the instructions of the Tribunal, or of the President if the Tribunal is not sitting, so notify the intergovernmental organization concerned and shall communicate to it copies of all the written proceedings. The Tribunal, or the President if the Tribunal is not sitting, may, as from the date on which the Registrar has communicated copies of the written proceedings and after consulting the chief administrative officer of the intergovernmental organization concerned, fix a time-limit within which the organization may submit to the Tribunal its observations in writing. These observations shall be communicated to the parties and may be discussed by them and by the representative of the said organization during the oral proceedings.

4. In the foregoing paragraphs, "intergovernmental organization" means an intergovernmental organization other than any organization which is a party or intervenes in the case concerned.

Article 85

1. Unless the Tribunal decides otherwise, all speeches and statements made and evidence given at the hearing in one of the official languages of the Tribunal shall be interpreted into the other official language. If they are made or given in any other language, they shall be interpreted into the two official languages of the Tribunal.
2. Whenever a language other than an official language is used, the necessary arrangements for interpretation into one of the official languages shall be made by the party concerned. The Registrar shall make arrangements for the verification of the interpretation provided by a party at the expense of that party. In the case of witnesses or experts who appear at the instance of the Tribunal, arrangements for interpretation shall be made by the Registrar.
3. A party on behalf of which speeches or statements are to be made, or evidence is to be given, in a language which is not one of the official languages of the Tribunal shall so notify the Registrar in sufficient time for the necessary arrangements to be made, including verification.
4. Before entering upon their duties in the case, interpreters provided by a party shall make the following solemn declaration:

   "I solemnly declare upon my honour and conscience that my interpretation will be faithful and complete".

Article 86

1. Minutes shall be made of each hearing. For this purpose, a verbatim record shall be made by the Registrar of every hearing, in the official language or languages of the Tribunal used during the hearing. When another language is used, the verbatim record shall be prepared in one of the official languages of the Tribunal.
2. In order to prepare such a verbatim record, the party on behalf of which speeches or statements are made in a language which is not one of the official languages shall supply to the Registry in advance a text thereof in one of the official languages.
3. The transcript of the verbatim record shall be preceded by the names of the judges present, and those of the agents, counsel and advocates of the parties.

4. Copies of the transcript shall be circulated to the judges sitting in the case and to the parties. The latter may, under the supervision of the Tribunal, correct the transcripts of speeches and statements made on their behalf, but in no case may such corrections affect the meaning and scope thereof. The judges may likewise make corrections in the transcript of anything they have said.
5. Witnesses and experts shall be shown that part of the transcript which relates to the evidence given or the statements made by them, and may correct it in like manner as the parties.
6. One certified copy of the corrected transcript, signed by the President of the Tribunal and the Registrar, shall constitute the authentic minutes of the hearing. The minutes of public hearings shall be printed and published by the Tribunal.

Article 87

Any written reply by a party to a question put under article 76 or any evidence or explanation supplied by a party under article 77 received by the Tribunal after the closure of the oral proceedings shall be communicated to the other party, which shall be given the opportunity of commenting upon it. The oral proceedings may be reopened for that purpose, if necessary.

Article 88

1. When, subject to the control of the Tribunal, the agents, counsel and advocates have completed their presentation of the case, the President of the Tribunal shall declare the oral proceedings closed. The agents shall remain at the disposal of the Tribunal.
2. The Tribunal shall withdraw to consider the judgment.

Section C. Incidental proceedings

Subsection 1. Provisional measures

Article 89

1. A party may submit a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention at any time during the course of the proceedings in a dispute submitted to the Tribunal.

2. Pending the constitution of an arbitral tribunal to which a dispute is being submitted, a party may submit a request for the prescription of provisional measures under article 290, paragraph 5, of the Convention:

   (a) at any time if the parties have so agreed;
   (b) at any time after two weeks from the notification to the other party of a request for provisional measures if the parties have not agreed that such measures may be prescribed by another court or tribunal.

3. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the parties or for the prevention of serious harm to the marine environment.
4. A request for the prescription of provisional measures under article 290, paragraph 5, of the Convention shall also indicate the legal grounds upon which the arbitral tribunal which is to be constituted would have jurisdiction and the urgency of the situation. A certified copy of the notification or of any other document instituting the proceedings before the arbitral tribunal shall be annexed to the request.
5. When a request for provisional measures has been made, the Tribunal may prescribe measures different in whole or in part from those requested and indicate the parties which are to take or to comply with each measure.

Article 90

1. Subject to article 112, paragraph 1, a request for the prescription of provisional measures has priority over all other proceedings before the Tribunal.
2. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date for a hearing.
3. The Tribunal shall take into account any observations that may be presented to it by a party before the closure of the hearing.
4. Pending the meeting of the Tribunal, the President of the Tribunal may call upon the parties to act in such a way as will enable any order the Tribunal may make on the request for provisional measures to have its appropriate effects.

Article 91

1. If the President of the Tribunal ascertains that at the date fixed for the hearing referred to in article 90, paragraph 2, a sufficient number of Members will not be available to constitute a quorum, the Chamber of Summary Procedure shall be convened to carry out the functions of the Tribunal with respect to the prescription of provisional measures.

2. The Tribunal shall review or revise provisional measures prescribed by the Chamber of Summary Procedure at the written request of a party within 15 days of the prescription of the measures. The Tribunal may also at any time decide *proprio motu* to review or revise the measures.

Article 92

The rejection of a request for the prescription of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

Article 93

A party may request the modification or revocation of provisional measures. The request shall be submitted in writing and shall specify the change in, or disappearance of, the circumstances considered to be relevant. Before taking any decision on the request, the Tribunal shall afford the parties an opportunity of presenting their observations on the subject.

Article 94

Any provisional measures prescribed by the Tribunal or any modification or revocation thereof shall forthwith be notified to the parties and to such other States Parties as the Tribunal considers appropriate in each case.

Article 95

1. Each party shall inform the Tribunal as soon as possible as to its compliance with any provisional measures the Tribunal has prescribed. In particular, each party shall submit an initial report upon the steps it has taken or proposes to take in order to ensure prompt compliance with the measures prescribed.
2. The Tribunal may request further information from the parties on any matter connected with the implementation of any provisional measures it has prescribed.

Subsection 2. Preliminary proceedings

Article 96

1. When an application is made in respect of a dispute referred to in article 297 of the Convention, the Tribunal shall determine at the request of the respondent or may determine *proprio motu*, in accordance with article 294 of the Convention, whether the claim constitutes an abuse of legal process or whether *prima facie* it is well founded.
2. The Registrar, when transmitting an application to the respondent under article 54, paragraph 4, shall notify the respondent of the time-limit fixed by the President of the Tribunal for requesting a determination under article 294 of the Convention.
3. The Tribunal may also decide, within two months from the date of an application, to exercise *proprio motu* its power under article 294, paragraph 1, of the Convention.
4. The request by the respondent for a determination under article 294 of the Convention shall be in writing and shall indicate the grounds for a determination by the Tribunal that:
   (a) the application is made in respect of a dispute referred to in article 297 of the Convention; and
   (b) the claim constitutes an abuse of legal process or is *prima facie* unfounded.
5. Upon receipt of such a request or *proprio motu*, the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the parties may present their written observations and submissions. The proceedings on the merits shall be suspended.
6. Unless the Tribunal decides otherwise, the further proceedings shall be oral.
7. The written observations and submissions referred to in paragraph 5, and the statements and evidence presented at the hearings contemplated by paragraph 6, shall be confined to those matters which are relevant to the determination of whether the claim constitutes an abuse of legal process or is *prima facie* unfounded, and of whether the application is made in respect of a dispute referred to in article 297 of the Convention. The Tribunal may, however, request the parties to argue all questions of law and fact, and to adduce all evidence, bearing on the issue.
8. The Tribunal shall make its determination in the form of a judgment.

Subsection 3. Preliminary objections

Article 97

1. Any objection to the jurisdiction of the Tribunal or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing within 90 days from the institution of proceedings.
2. The preliminary objection shall set out the facts and the law on which the objection is based, as well as the submissions.
3. Upon receipt by the Registry of a preliminary objection, the proceedings on the merits shall be suspended and the Tribunal, or the President if the Tribunal is not sitting, shall fix a time-limit not exceeding 60 days within which the other party may present its written observations and submissions. It shall fix a further time-limit not exceeding 60 days from the receipt of such observations and submissions within which the objecting party may present its written observations and submissions in reply. Copies of documents in support shall be annexed to such statements and evidence which it is proposed to produce shall be mentioned.
4. Unless the Tribunal decides otherwise, the further proceedings shall be oral.
5. The written observations and submissions referred to in paragraph 3, and the statements and evidence presented at the hearings contemplated by paragraph 4, shall be confined to those matters which are relevant to the objection. Whenever necessary, however, the Tribunal may request the parties to argue all questions of law and fact and to adduce all evidence bearing on the issue.
6. The Tribunal shall give its decision in the form of a judgment, by which it shall uphold the objection or reject it or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Tribunal rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.
7. The Tribunal shall give effect to any agreement between the parties that an objection submitted under paragraph 1 be heard and determined within the framework of the merits.

Subsection 4. Counter-claims

Article 98

1. A party may present a counter-claim provided that it is directly connected with the subject-matter of the claim of the other party and that it comes within the jurisdiction of the Tribunal.
2. A counter-claim shall be made in the counter-memorial of the party presenting it and shall appear as part of the submissions of that party.
3. In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Tribunal shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

Subsection 5. Intervention

Article 99

1. An application for permission to intervene under the terms of article 31 of the Statute shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, an application submitted at a later stage may however be admitted.
2. The application shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall set out:
   (a) the interest of a legal nature which the State Party applying to intervene considers may be affected by the decision in that case;
   (b) the precise object of the intervention.
3. Permission to intervene under the terms of article 31 of the Statute may be granted irrespective of the choice made by the applicant under article 287 of the Convention.
4. The application shall contain a list of the documents in support, copies of which documents shall be annexed.

Article 100

1. A State Party or an entity other than a State Party referred to in article 32, paragraphs 1 and 2, of the Statute which desires to avail itself of the right of intervention conferred upon it by article 32, paragraph 3, of

the Statute shall file a declaration to that effect. The declaration shall be filed not later than 30 days after the counter-memorial becomes available under article 67, paragraph 1, of these Rules. In exceptional circumstances, a declaration submitted at a later stage may, however, be admitted.

2. The declaration shall be signed in the manner provided for in article 54, paragraph 3, and state the name and address of an agent. It shall specify the case to which it relates and shall:

   (a) identify the particular provisions of the Convention or of the international agreement the interpretation or application of which the declaring party considers to be in question;
   (b) set out the interpretation or application of those provisions for which it contends;
   (c) list the documents in support, copies of which documents shall be annexed.

Article 101

1. Certified copies of the application for permission to intervene under article 31 of the Statute, or of the declaration of intervention under article 32 of the Statute, shall be communicated forthwith to the parties to the case, which shall be invited to furnish their written observations within a time-limit to be fixed by the Tribunal or by the President if the Tribunal is not sitting.
2. The Registrar shall also transmit copies to: (a) States Parties; (b) any other parties which have to be notified under article 32, paragraph 2, of the Statute; (c) the Secretary-General of the United Nations; (d) the Secretary-General of the Authority when the proceedings are before the Seabed Disputes Chamber.

Article 102

1. The Tribunal shall decide whether an application for permission to intervene under article 31 of the Statute should be granted or whether an intervention under article 32 of the Statute is admissible as a matter of priority unless in view of the circumstances of the case the Tribunal determines otherwise.
2. If, within the time-limit fixed under article 101, an objection is filed to an application for permission to intervene, or to the admissibility of a declaration of intervention, the Tribunal shall hear the State Party or entity other than a State Party seeking to intervene and the parties before deciding.

Article 103

1. If an application for permission to intervene under article 31 of the Statute is granted, the intervening State Party shall be supplied with copies of the pleadings and documents annexed and shall be entitled to submit a written statement within a time-limit to be fixed by the Tribunal. A further time-limit shall be fixed within which the parties may, if they so desire, furnish their written observations on that statement prior to the oral proceedings. If the Tribunal is not sitting, these time-limits shall be fixed by the President.
2. The time-limits fixed according to paragraph 1 shall, so far as possible, coincide with those already fixed for the pleadings in the case.
3. The intervening State Party shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.
4. The intervening State Party shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Article 104

1. If an intervention under article 32 of the Statute is admitted, the intervenor shall be supplied with copies of the pleadings and documents annexed and shall be entitled, within a time-limit to be fixed by the Tribunal, or the President if the Tribunal is not sitting, to submit its written observations on the subject-matter of the intervention.
2. These observations shall be communicated to the parties and to any other State Party or entity other than a State Party admitted to intervene. The intervenor shall be entitled, in the course of the oral proceedings, to submit its observations with respect to the subject-matter of the intervention.
3. The intervenor shall not be entitled to choose a judge *ad hoc* or to object to an agreement to discontinue the proceedings under article 105, paragraph 1.

Subsection 6. Discontinuance

Article 105

1. If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Tribunal in writing that they have agreed to discontinue the proceedings, the Tribunal

shall make an order recording the discontinuance and directing the Registrar to remove the case from the List of cases.

2. If the parties have agreed to discontinue the proceedings in consequence of having reached a settlement of the dispute and if they so desire, the Tribunal shall record this fact in the order for the removal of the case from the List, or indicate in, or annex to, the order the terms of the settlement.
3. If the Tribunal is not sitting, any order under this article may be made by the President.

Article 106

1. If, in the course of proceedings instituted by means of an application, the applicant informs the Tribunal in writing that it is not going on with the proceedings, and if, at the date on which this communication is received by the Registry, the respondent has not yet taken any step in the proceedings, the Tribunal shall make an order officially recording the discontinuance of the proceedings and directing the removal of the case from the List of cases. A copy of this order shall be sent by the Registrar to the respondent.
2. If, at the time when the notice of discontinuance is received, the respondent has already taken some step in the proceedings, the Tribunal shall fix a time-limit within which the respondent may state whether it opposes the discontinuance of the proceedings. If no objection is made to the discontinuance before the expiration of the time-limit, acquiescence will be presumed and the Tribunal shall make an order recording the discontinuance of the proceedings and directing the Registrar to remove the case from the List of cases. If objection is made, the proceedings shall continue.
3. If the Tribunal is not sitting, its powers under this article may be exercised by the President.

Section D. Proceedings before special chambers

Article 107

Proceedings before the special chambers mentioned in article 15 of the Statute shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the special chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Article 108

1. When it is desired that a case should be dealt with by one of the chambers which has been formed in accordance with article 15, paragraph 1 or 3, of the Statute, a request to this effect shall either be made in the document instituting the proceedings or accompany it. Effect shall be given to the request if the parties are in agreement.
2. Upon receipt by the Registry of this request, the President of the Tribunal shall communicate it to the members of the chamber concerned.
3. Effect shall be given to a request that a case be brought before a chamber to be formed in accordance with article 15, paragraph 2, of the Statute as soon as the chamber has been formed in accordance with article 30 of these Rules.
4. The President of the Tribunal shall convene the chamber at the earliest date compatible with the requirements of the procedure.

Article 109

1. Written proceedings in a case before a chamber shall consist of a single pleading by each party. The time-limits concerning the filing of written pleadings shall be fixed by the chamber, or its President if the chamber is not sitting.
2. The chamber may authorize or direct the filing of further pleadings if the parties are so agreed, or if the chamber decides, *proprio motu* or at the request of one of the parties, that such pleadings are necessary.
3. Oral proceedings shall take place unless the parties agree to dispense with them and the chamber consents. Even when no oral proceedings take place, the chamber may call upon the parties to supply information or furnish explanations orally.

Section E. Prompt release of vessels and crews

Article 110

1. An application for the release of a vessel or its crew from detention may be made in accordance with article 292 of the Convention by or on behalf of the flag State of the vessel.
2. A State Party may at any time notify the Tribunal of:

   (a) the State authorities competent to authorize persons to make applications on its behalf under article 292 of the Convention;

(b) the name and address of any person who is authorized to make an application on its behalf;
(c) the office designated to receive notice of an application for the release of a vessel or its crew and the most expeditious means for delivery of documents to that office;
(d) any clarification, modification or withdrawal of such notification.

3. An application on behalf of a flag State shall be accompanied by an authorization under paragraph 2, if such authorization has not been previously submitted to the Tribunal, as well as by documents stating that the person submitting the application is the person named in the authorization. It shall also contain a certification that a copy of the application and all supporting documentation has been delivered to the flag State.

Article 111

1. The application shall contain a succinct statement of the facts and legal grounds upon which the application is based.
2. The statement of facts shall:

(a) specify the time and place of detention of the vessel and the present location of the vessel and crew, if known;
(b) contain relevant information concerning the vessel and crew including, where appropriate, the name, flag and the port or place of registration of the vessel and its tonnage, cargo capacity and data relevant to the determination of its value, the name and address of the vessel owner and operator and particulars regarding its crew;
(c) specify the amount, nature and terms of the bond or other financial security that may have been imposed by the detaining State and the extent to which such requirements have been complied with;
(d) contain any further information the applicant considers relevant to the determination of the amount of a reasonable bond or other financial security and to any other issue in the proceedings.

3. Supporting documents shall be annexed to the application.
4. A certified copy of the application shall forthwith be transmitted by the Registrar to the detaining State, which may submit a statement in response with supporting documents annexed, to be filed as soon as possible but not later than 96 hours before the hearing referred to in article 112, paragraph 3.
5. The Tribunal may, at any time, require further information to be provided in a supplementary statement.
6. The further proceedings relating to the application shall be oral.

Article 112

1. The Tribunal shall give priority to applications for release of vessels or crews over all other proceedings before the Tribunal. However, if the Tribunal is seized of an application for release of a vessel or its crew and of a request for the prescription of provisional measures, it shall take the necessary measures to ensure that both the application and the request are dealt with without delay.
2. If the applicant has so requested in the application, the application shall be dealt with by the Chamber of Summary Procedure, provided that, within five days of the receipt of notice of the application, the detaining State notifies the Tribunal that it concurs with the request.
3. The Tribunal, or the President if the Tribunal is not sitting, shall fix the earliest possible date, within a period of 15 days commencing with the first working day following the date on which the application is received, for a hearing at which each of the parties shall be accorded, unless otherwise decided, one day to present its evidence and arguments.
4. The decision of the Tribunal shall be in the form of a judgment. The judgment shall be adopted as soon as possible and shall be read at a public sitting of the Tribunal to be held not later than 14 days after the closure of the hearing. The parties shall be notified of the date of the sitting.

Article 113

1. The Tribunal shall in its judgment determine in each case in accordance with article 292 of the Convention whether or not the allegation made by the applicant that the detaining State has not complied with a provision of the Convention for the prompt release of the vessel or the crew upon the posting of a reasonable bond or other financial security is well-founded.
2. If the Tribunal decides that the allegation is well-founded, it shall determine the amount, nature and form of the bond or financial security to be posted for the release of the vessel or the crew.
3. The bond or other financial security for the release of the vessel or the crew shall be posted with the detaining State unless the parties agree otherwise. The Tribunal shall give effect to any agreement between the parties as to where and how the bond or other financial security for the release of the vessel or crew should be posted.

Article 114

1. If the bond or other financial security has been posted with the Tribunal, the Registrar shall promptly inform the detaining State thereof.

2. The Registrar shall endorse or transmit the bond or other financial security to the detaining State to the extent that it is required to satisfy the final judgment, award or decision of the competent authority of the detaining State.
3. The bond or other financial security, to the extent that it is not required to satisfy the judgment, award or decision, shall be endorsed or transmitted to the flag State.

Section F. Proceedings in contentious cases before the Seabed Disputes Chamber

Article 115

Proceedings in contentious cases before the Seabed Disputes Chamber and its *ad hoc* chambers shall, subject to the provisions of the Convention, the Statute and these Rules relating specifically to the Seabed Disputes Chamber and its *ad hoc* chambers, be governed by the Rules applicable in contentious cases before the Tribunal.

Article 116

Articles 117 to 121 apply to proceedings in all disputes before the Chamber with the exception of disputes exclusively between States Parties and between States Parties and the Authority.

Article 117

When proceedings before the Chamber are instituted by means of an application, the application shall indicate:

(a) the name of the applicant and, where the applicant is a natural or juridical person, the permanent residence or address or registered office address thereof;
(b) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;
(c) the sponsoring State, in any case where the applicant is a natural or juridical person or a state enterprise;
(d) the sponsoring State of the respondent, in any case where the party against which the claim is brought is a natural or juridical person or state enterprise;

(e) an address for service at the seat of the Tribunal;
(f) the subject of the dispute and the legal grounds on which jurisdiction is said to be based; the precise nature of the claim, together with a statement of the facts and legal grounds on which the claim is based;
(g) the decision or measure sought by the applicant;
(h) the evidence on which the application is founded.

Article 118

1. The application shall be served on the respondent. The application shall also be served on the sponsoring State in any case where the applicant or respondent is a natural or juridical person or a state enterprise.
2. Within two months after service of the application, the respondent shall lodge a defence, stating:

(a) the name of the respondent and, where the respondent is a natural or juridical person, the permanent residence or address or registered office address thereof;
(b) an address for service at the seat of the Tribunal;
(c) the matters in issue between the parties and the facts and legal grounds on which the defence is based;
(d) the decision or measure sought by the respondent;
(e) the evidence on which the defence is founded.

3. At the request of the respondent, the President of the Chamber may extend the time-limit referred to in paragraph 2, if satisfied that there is adequate justification for the request.

Article 119

1. Within two months after service of the application in accordance with article 118, paragraph 1, where the respondent is a State Party in a case brought by a natural or juridical person sponsored by another State Party in a dispute referred to in article 187, subparagraph (c), of the Convention, the respondent State may make an application in accordance with article 190, paragraph 2, of the Convention for the sponsoring State of the applicant to appear in the proceedings on behalf of the applicant.
2. Notice of an application under paragraph 1 shall be communicated to the applicant and its sponsoring State. If, within a time-limit fixed by the President of the Chamber, the sponsoring State does not indicate it will appear in the proceedings on behalf of the applicant, the respondent State may designate a juridical person of its nationality to represent it.
3. Within two months after service of the application in accordance with

article 118, paragraph 1, on the sponsoring State of a party, such State may give written notice of its intention to submit written or oral statements in accordance with article 190, paragraph 1, of the Convention.

4. Upon receipt of such a notice, the President of the Chamber shall fix the time-limit within which the sponsoring State may submit its written statements. The sponsoring State shall be notified of such time-limit. It shall also be notified of the date of the hearing. The written statements shall be communicated to the parties and to any other sponsoring State of a party.
5. At the request of the respondent or a sponsoring State, the President of the Chamber may extend a time-limit referred to in this article, if satisfied that there is adequate justification for the request.

Article 120

1. When proceedings are brought before the Chamber by the notification of a special agreement, the notification shall indicate:
   (a) the parties to the case and any sponsoring States of the parties;
   (b) the subject of the dispute and the precise nature of the claims of the parties, together with a statement of the facts and legal grounds on which the claims are based;
   (c) the decisions or measures sought by the parties;
   (d) the evidence on which the claims are founded.
2. The notification shall also provide information regarding participation and appearance in the proceedings by sponsoring States Parties in accordance with article 190 of the Convention.

Article 121

1. The Chamber may authorize or direct the filing of further pleadings if the parties are so agreed or the Chamber decides, *proprio motu* or at the request of a party, that these pleadings are necessary.
2. The President of the Chamber shall fix the time-limits within which these pleadings are to be filed.

Article 122

Proceedings by the Council on behalf of the Authority under article 185, paragraph 2, of the Convention shall be instituted by means of an application in accordance with article 162, paragraph 2 (u), of the Convention.

The application shall be accompanied by a certified copy of the decision or resolution of the Council upon which it is based and the full records of all discussions within the Authority on the matter.

Article 123

1. When a commercial arbitral tribunal, pursuant to article 188, paragraph 2, of the Convention, refers to the Chamber a question of interpretation of Part XI of the Convention and the annexes relating thereto upon which its decision depends, the document submitting the question to the Chamber shall contain a precise statement of the question and be accompanied by all relevant information and documents.
2. Upon receipt of the document, the President of the Chamber shall fix a time-limit not exceeding three months within which the parties to the proceedings before the arbitral tribunal and the States Parties may submit their written observations on the question. The parties to the proceedings and the States Parties shall be notified of the time-limit. The States Parties shall be informed of the contents of the submission.
3. The President of the Chamber shall fix a date for a hearing if, within one month from the expiration of the time-limit for submitting written observations, a party to the proceedings before the arbitral tribunal or a State Party gives written notice of its intention to submit oral observations.
4. The Chamber shall give its ruling in the form of a judgment.

Section G. Judgments, interpretation and revision

Subsection 1. Judgments

Article 124

1. When the Tribunal has completed its deliberations and adopted its judgment, the parties shall be notified of the date on which it will be read.
2. The judgment shall be read at a public sitting of the Tribunal and shall become binding on the parties on the day of the reading.

Article 125

1. The judgment, which shall state whether it is given by the Tribunal or by a chamber, shall contain:

(a) the date on which it is read;
(b) the names of the judges participating in it;
(c) the names of the parties;
(d) the names of the agents, counsel and advocates of the parties;
(e) the names of the experts, if any, appointed under article 289 of the Convention;
(f) a summary of the proceedings;
(g) the submissions of the parties;
(h) a statement of the facts;
(i) the reasons of law on which it is based;
(j) the operative provisions of the judgment;
(k) the decision, if any, in regard to costs;
(l) the number and names of the judges constituting the majority and those constituting the minority, on each operative provision;
(m) a statement as to the text of the judgment which is authoritative.

2. Any judge may attach a separate or dissenting opinion to the judgment; a judge may record concurrence or dissent without stating reasons in the form of a declaration. The same applies to orders.
3. One copy of the judgment, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal and other copies shall be transmitted to each party. Copies shall be sent to: (a) States Parties; (b) the Secretary-General of the United Nations; (c) the Secretary-General of the Authority; (d) in a case submitted under an agreement other than the Convention, the parties to such agreement.

Subsection 2. Requests for the interpretation or revision of a judgment

Article 126

1. In the event of dispute as to the meaning or scope of a judgment, any party may make a request for its interpretation.
2. A request for the interpretation of a judgment may be made either by an application or by the notification of a special agreement to that effect between the parties; the precise point or points in dispute as to the meaning or scope of the judgment shall be indicated.
3. If the request for interpretation is made by an application, the requesting party's contentions shall be set out therein, and the other party shall be entitled to file written observations thereon within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting.
4. Whether the request is made by an application or by notification of a

special agreement, the Tribunal may, if necessary, afford the parties the opportunity of furnishing further written or oral explanations.

Article 127

1. A request for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Tribunal and also to the party requesting revision, always provided that such ignorance was not due to negligence. Such request must be made at the latest within six months of the discovery of the new fact and before the lapse of ten years from the date of the judgment.
2. The proceedings for revision shall be opened by a decision of the Tribunal in the form of a judgment expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

Article 128

1. A request for the revision of a judgment shall be made by an application containing the particulars necessary to show that the conditions specified in article 127, paragraph 1, are fulfilled. Any document in support of the application shall be annexed to it.
2. The other party shall be entitled to file written observations on the admissibility of the application within a time-limit fixed by the Tribunal or by the President if the Tribunal is not sitting. These observations shall be communicated to the party making the application.
3. The Tribunal, before giving its judgment on the admissibility of the application, may afford the parties a further opportunity of presenting their views thereon.
4. If the Tribunal decides to make the admission of the proceedings in revision conditional on previous compliance with the judgment, it shall make an order accordingly.
5. If the Tribunal finds that the application is admissible it shall fix time-limits for such further proceedings on the merits of the application as, after ascertaining the views of the parties, it considers necessary.

Article 129

1. If the judgment to be revised or to be interpreted was given by the Tribunal, the request for its revision or interpretation shall be dealt with by the Tribunal.

2. If the judgment was given by a chamber, the request for its revision or interpretation shall, if possible, be dealt with by that chamber. If that is not possible, the request shall be dealt with by a chamber composed in conformity with the relevant provisions of the Statute and these Rules. If, according to the Statute and these Rules, the composition of the chamber requires the approval of the parties which cannot be obtained within time-limits fixed by the Tribunal, the request shall be dealt with by the Tribunal.
3. The decision on a request for interpretation or revision of a judgment shall be given in the form of a judgment.

Section H. Advisory proceedings

Article 130

1. In the exercise of its functions relating to advisory opinions, the Seabed Disputes Chamber shall apply this section and be guided, to the extent to which it recognizes them to be applicable, by the provisions of the Statute and of these Rules applicable in contentious cases.
2. The Chamber shall consider whether the request for an advisory opinion relates to a legal question pending between two or more parties. When the Chamber so determines, article 17 of the Statute applies, as well as the provisions of these Rules concerning the application of that article.

Article 131

1. A request for an advisory opinion on a legal question arising within the scope of the activities of the Assembly or the Council of the Authority shall contain a precise statement of the question. It shall be accompanied by all documents likely to throw light upon the question.
2. The documents shall be transmitted to the Chamber at the same time as the request or as soon as possible thereafter in the number of copies required by the Registry.

Article 132

If the request for an advisory opinion states that the question necessitates an urgent answer the Chamber shall take all appropriate steps to accelerate the procedure.

Article 133

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all States Parties.
2. The Chamber, or its President if the Chamber is not sitting, shall identify the intergovernmental organizations which are likely to be able to furnish information on the question. The Registrar shall give notice of the request to such organizations.
3. States Parties and the organizations referred to in paragraph 2 shall be invited to present written statements on the question within a time-limit fixed by the Chamber or its President if the Chamber is not sitting. Such statements shall be communicated to States Parties and organizations which have made written statements. The Chamber, or its President if the Chamber is not sitting, may fix a further time-limit within which such States Parties and organizations may present written statements on the statements made.
4. The Chamber, or its President if the Chamber is not sitting, shall decide whether oral proceedings shall be held and, if so, fix the date for the opening of such proceedings. States Parties and the organizations referred to in paragraph 2 shall be invited to make oral statements at the proceedings.

Article 134

The written statements and documents annexed shall be made accessible to the public as soon as possible after they have been presented to the Chamber.

Article 135

1. When the Chamber has completed its deliberations and adopted its advisory opinion, the opinion shall be read at a public sitting of the Chamber.
2. The advisory opinion shall contain:

   (a) the date on which it is delivered;
   (b) the names of the judges participating in it;
   (c) the question or questions on which the advisory opinion of the Chamber is requested;
   (d) a summary of the proceedings;
   (e) a statement of the facts;
   (f) the reasons of law on which it is based;
   (g) the reply to the question or questions put to the Chamber;

(h) the number and names of the judges constituting the majority and those constituting the minority, on each question put to the Chamber;
(i) a statement as to the text of the opinion which is authoritative.

3. Any judge may attach a separate or dissenting opinion to the advisory opinion of the Chamber; a judge may record concurrence or dissent without stating reasons in the form of a declaration.

Article 136

The Registrar shall inform the Secretary-General of the Authority as to the date and the time fixed for the public sitting to be held for the reading of the opinion. He shall also inform the States Parties and the intergovernmental organizations immediately concerned.

Article 137

One copy of the advisory opinion, signed by the President and by the Registrar and sealed, shall be placed in the archives of the Tribunal, others shall be sent to the Secretary-General of the Authority and to the Secretary-General of the United Nations. Copies shall be sent to the States Parties and the intergovernmental organizations immediately concerned.

Article 138

1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.
2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.
3. The Tribunal shall apply *mutatis mutandis* articles 130 to 137.

(*Signed*)
THOMAS A. MENSAH,
President

(*Signed*)
GRITAKUMAR E. CHITTY,
Registrar

ANNEX III

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

RESOLUTION ON THE INTERNAL JUDICIAL PRACTICE OF THE TRIBUNAL

RESOLUTION ON THE INTERNAL JUDICIAL PRACTICE OF THE TRIBUNAL

adopted on 31 October 1997

The Tribunal,

Acting in accordance with article 40 of the Rules,

Adopts this Resolution.

Article 1
Use of terms

In this Resolution:

(a) "President" means the person presiding over the Tribunal in a particular case;
(b) "Rules" means the Rules of the Tribunal;
(c) references to the "Tribunal" include any chamber of the Tribunal.

Article 2
Preparatory documentation

1. After the closure of the written proceedings, each judge may within five weeks prepare a brief written note identifying without further elaboration:

   (a) the principal issues for decision as they emerge from the written pleadings; and
   (b) points, if any, which should be clarified during the oral proceedings.

2. Notes received by the Registry are circulated to the other judges.
3. On the basis of the written pleadings and the judges' notes, the President draws up a working paper containing:

   (a) a summary of the facts and the principal contentions of the parties advanced in their written pleadings; and
   (b) proposals concerning:

(i) indications to be given, or questions to be put, to the parties in accordance with article 76 of the Rules;
(ii) evidence or explanations to be requested from the parties in accordance with article 77 of the Rules; and
(iii) issues which, in the opinion of the President, should be discussed and decided by the Tribunal.

4. The Registrar shall send the working paper to the judges as soon as possible and normally within eight weeks after the closure of the written proceedings.

Article 3
Deliberations before the oral proceedings

After the circulation of the working paper and before the date fixed for the opening of the oral proceedings, the Tribunal deliberates in private, as provided for in article 68 of the Rules, in order to allow the judges an opportunity to:

(a) exchange views concerning the written pleadings and the conduct of the case;
(b) consider whether to give any indications, or put any questions, to the parties in accordance with article 76 of the Rules;
(c) consider whether to call upon the parties to produce any evidence or to give any explanations in accordance with article 77 of the Rules; and
(d) consider the nature, scope and terms of the questions and issues which will have to be decided by the Tribunal.

Article 4
Deliberations during oral proceedings

During the course of the oral proceedings, the President may convene brief meetings in order to permit the judges to exchange views concerning the case and to inform each other of possible questions which judges may wish to put to the parties in accordance with article 76 of the Rules.

Article 5
Initial deliberations after oral proceedings

1. Unless the Tribunal decides otherwise, the judges have four working days after the closure of the oral proceedings in order to study the arguments

presented to the Tribunal in the case. During this time, judges may also summarize their tentative opinions in writing in the form of speaking notes.

2. If the President considers it appropriate in the light of the oral proceedings, a revised list of issues for examination is circulated.
3. During its initial deliberations after the closure of the oral proceedings, the Tribunal reaches conclusions on what are the issues which need to be decided and then hears the tentative opinions of the judges on those issues, as well as on the correct disposal of the case.
4. The Tribunal next deliberates on each issue in turn, addressing also the question of the disposal of the case and the main reasons for the decision to be given.
5. During these deliberations, judges will be called upon by the President in the order in which they signify their wish to speak.
6. The President may seek to establish a majority opinion as it appears then to exist on each issue and on the reasons to be given.
7. Instead of establishing majority opinions at that stage, the Tribunal may decide that every judge should prepare a brief written note, expressing the judge's tentative opinion on the issues and the correct disposal of the case, for circulation to the other judges before a specified date. The Tribunal resumes its deliberations as soon as possible on the basis of the written notes.

Article 6
Establishment of a Drafting Committee

1. As soon as possible during the deliberations, the Tribunal sets up a Drafting Committee for the case, composed of five judges belonging to the majority as it appears then to exist. Subject to paragraph 2, the members of the Committee are selected on the proposal of the President by an absolute majority of the judges present, taking into account the need to select judges who, from their statements, clearly support the opinion of the majority as it appears then to exist.
2. The President is a member ex officio of the Committee unless the President does not share the opinion of the majority as it appears then to exist, in which case the Vice-President acts instead. If the Vice-President is ineligible for the same reason, all the members of the Committee are selected by the Tribunal.
3. Unless the Tribunal or the members of the Committee decide otherwise, the judge who is senior in precedence among the members of the Committee acts as its chairman.

Article 7
Work of the Drafting Committee

1. The Drafting Committee meets immediately after its establishment in order to prepare a first draft of the judgment, for completion normally within three weeks. To this end, any member of the Committee may send written proposals for its consideration and inclusion in the draft.
2. The Drafting Committee should prepare a draft judgment which not only states the opinion of the majority as it appears then to exist but which may also attract wider support within the Tribunal.
3. The first draft of the judgment shall be distributed to all the judges in the case. Any judge who wishes to offer amendments or comments submits them in writing to the Committee within three weeks from the date of circulation.
4. After the members of the Committee have received the comments, they will normally meet in order to revise the draft, unless they decide a meeting is not required.
5. When the members of the Committee have completed the second draft of the judgment, the Registrar shall circulate copies to all judges.
6. If the President is not a member of the Committee, its chairman keeps the President informed of work on the draft judgment, as well as its terms.

Article 8
Deliberations on the draft judgment

1. Deliberations on the draft judgment are held as soon as possible after its circulation and in principle not later than three months after the closure of the oral proceedings.
2. The chairman of the Drafting Committee introduces the draft.
3. The draft is examined by the Tribunal in first reading. A judge wishing to modify the draft proposes amendments in writing.
4. At this stage, a judge who, after taking cognizance of the draft judgment, wishes to deliver a separate or dissenting opinion so informs the other judges and puts forward at least an outline of the opinion, making the text available within a time-limit fixed by the Tribunal before the second reading. Such a judge continues to participate in the examination of the draft judgment and cognizance is taken by the Tribunal of such opinions.
5. The Drafting Committee circulates a revised draft judgment for consideration at a second reading, during the course of which the President asks if the judges wish to propose new amendments.
6. Separate or dissenting opinions, which may be individual or collective, should be submitted within a time-limit fixed by the Tribunal. They should take account of any changes made to the draft judgment pursuant

to paragraphs 4 and 5 and should concentrate on the remaining points of difference with the judgment.

Article 9
Voting

1. After the Tribunal has completed its second reading of the draft judgment, the President takes the vote in accordance with article 29 of the Statute in order to adopt the judgment. A separate vote is normally taken on each operative provision in the judgment. Any judge may request a separate vote on issues which are separable. Each judge votes by means solely of an affirmative or a negative vote, cast in person and in inverse order of seniority, provided that in exceptional circumstances accepted by the Tribunal an absent judge may vote by appropriate means of communications.
2. A judge who has been absent, because of illness or other reason duly explained to the President, from any part of the hearing or the deliberations may vote provided the Tribunal accepts that the judge has taken a sufficient part in the hearing and the deliberations to be able to reach a judicial determination of all issues of fact and law material to the decision to be given in the case.

Article 10
Experts appointed under article 289 of the Convention

Experts appointed under article 289 of the Convention for a particular case before the Tribunal shall be sent copies of the written pleadings and other documents in the case in good time before the beginning of the deliberations. They sit with the judges during the oral proceedings and take part in the deliberations in accordance with article 42 of the Rules. They receive the written notes and other documents. They may be consulted by the Drafting Committee, as appropriate.

Article 11
Procedures in particular instances

1. The Tribunal may decide to vary the procedures and arrangements set out above in a particular case for reasons of urgency or if circumstances so justify.
2. Deliberations concerning applications for provisional measures and applications for the prompt release of a vessel or crew are conducted in accordance

with the principles and procedures set out in this Resolution, taking account of the nature and urgency of the case.

3. The Chamber for Summary Procedure deliberates in accordance with the principles and procedures set out in this Resolution, taking account of the summary nature of the proceedings and the urgency of the case.

Article 12
Application

The foregoing provisions apply whether the proceedings before the Tribunal are contentious or advisory.

Article 13
Review

This Resolution may be reviewed in the light of experience and revised whenever considered appropriate.

(*Signed*)
THOMAS A. MENSAH,
President

(*Signed*)
GRITAKUMAR E. CHITTY,
Registrar

ANNEX IV

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

GUIDELINES CONCERNING THE PREPARATION AND PRESENTATION OF CASES BEFORE THE TRIBUNAL

GUIDELINES CONCERNING THE PREPARATION AND PRESENTATION OF CASES BEFORE THE TRIBUNAL

(ISSUED BY THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ON 28 OCTOBER 1997)

The Tribunal,

Acting pursuant to article 50 of the Rules of the Tribunal,

Issues the following Guidelines.

Written Proceedings

1. Every pleading and its supporting documents should be printed or typewritten or prepared electronically in the format 19 × 26 cm (7 1/2" × 10 1/4"). In addition, parties should present the text of their pleadings in electronic form. The parties should consult the Registry's *Rules for the Preparation of Typed and Printed Texts*.
2. A pleading should be as short as possible.
3. Every pleading should contain a table of contents with a list of documents, including material in electronic or digital form. The table and list should be placed at the beginning of the pleading but before the commencement of Part I.
4. Every pleading and its supporting documents should be arranged, where practicable, in two parts, viz., Part I – memorial or counter-memorial or reply or rejoinder, as the case may be, and Part II – documents in support. The documents should be arranged in the same order as in the table of contents. Each document should be given a heading which should be repeated at the top of each page over which the document extends.
5. If the reproduction in large numbers of a particular annex (e.g., a large map) presents technical problems, the matter should be raised with the Registrar at the earliest opportunity, so that appropriate arrangements can be made.
6. Every pleading should be divided into paragraphs, numbered consecutively, each paragraph being confined to a distinct portion of the subject. It should contain at the end of Part I a short summary of the arguments together with the page and paragraph numbers within which such arguments may be found. The name of the other party and the name and address of the agent should be clearly and properly stated.

7. Whenever the contents of any document are to be referred to in a pleading, it will be sufficient if the pleading states the effect thereof as briefly as possible, without setting out the whole document or any part thereof, unless the precise words of such a document or any part thereof are material.
8. A party should in its pleading deal specifically with each allegation of fact in the pleading of the other party of which it does not admit the truth; it will not be sufficient for it to deny generally the facts alleged by the other party.
9. Unless otherwise specified by the Registrar, each party should furnish to the Registry 125 additional copies of its pleading with supporting documents.
10. Upon receipt of a pleading, the Registrar will endorse on it the date of its receipt in the Registry. All pleadings, documents and other communications may be submitted to the Tribunal directly in person or through courier or regular mail. They may also be submitted through facsimile or electronic means in clear form. In determining whether a party has submitted its pleadings, documents or other communications within the time-limits fixed by or under the Rules, the date on which the Tribunal receives them through facsimile or electronically will be regarded as the material date provided they are followed without unreasonable delay by the paper originals thereof.
11. Where a pleading or an application or a declaration does not satisfy the formal requirements of the Rules of the Tribunal, the Registrar will return the same to the party seeking to file it for rectification. Where necessary, the Registrar will consult the President. In determining whether a party has submitted a pleading, etc., within the time-limit fixed by or under the Rules, the time taken by the Registrar to examine whether the pleading satisfies the requirements of the Rules will be excluded.
12. The time-limits fixed in each case for the filing of the pleadings are not to be understood by the parties as authorizations to hold back a pleading until the last possible moment.
13. It is not a strict requirement that the parties print their pleadings, though this remains an option. If independently printed pleadings are submitted, it is requested that all diskettes and films used for that production be made available to the Registry on request in due course, particularly those which have been used to produce maps in colour.

Oral Proceedings

14. Each party should submit to the Tribunal, prior to the opening of the oral proceedings, (a) a brief note on the points which in its opinion constitute the issues that still divide the parties; (b) a brief outline of the argu-

ments that it wishes to make in its oral statement; and (c) a list of authorities, including, where appropriate, relevant extracts from such authorities, proposed to be relied upon in its oral statement. None of these materials will be treated as documents or parts of the pleadings.

15. The oral statements should be as succinct as possible and should not repeat the facts and arguments contained in the written pleadings.
16. The parties should keep within the time allotted for the presentation of their oral statements.
17. Unless otherwise decided, the Tribunal sits between 09.00 and 13.00 on all days on which the Tribunal holds oral proceedings.
18. Visual demonstration facilities for display of maps, charts, diagrams, illustrations of texts, etc., which a party intends to exhibit to the Tribunal will at the request of that party be provided by the Registrar upon payment of fees, if any, fixed for that purpose.

Advisory Proceedings

19. These Guidelines apply, *mutatis mutandis*, to advisory proceedings as they apply to contentious proceedings.

(*Signed*)
Thomas A. Mensah,
President

(*Signed*)
Gritakumar E. Chitty,
Registrar

BIBLIOGRAPHY

Monographs

N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vols. 1 and 2, 2002

R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994

Bin Cheng, *General Principles of Law as applied by International Courts and Tribunals*, 1953

D.W. Bowett et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, 1997

P. Chandrasekhara Rao/R. Khan (eds.), *The International Tribunal for the Law of the Sea: Law and Practice*, 2001

V. Coussirat-Coustère (ed.), *La mer et son droit: Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec*, 2003

G. Eiriksson, *The International Tribunal for the Law of the Sea*, 2000

G. Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Vol. 2, 1986

J. Frowein et al. (eds.), *Negotiating for Peace – Liber Amicorum Tono Eitel*, 2003

G. Guyomar, *Commentaire du Règlement de la Cour internationale de justice adopté le 14 avril 1978 : interprétation et pratique*, 1983

M.O. Hudson, *The Permanent Court of International Justice 1920–1942. A Treatise*, 1943

K.P.E. Lasok, *The European Court of Justice, Practice and Procedure*, 1994

M.H. Nordquist/J. N. Moore (eds.), *Current Marine Environmental Issues and the International Tribunal for the Law of the Sea*, 2001

M.H. Nordquist (editor-in-chief), S.N. Nandan/S. Rosenne (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. II, 1993

M.H. Nordquist (editor-in-chief), S. Rosenne/L.B. Sohn (volume editors), *United Nations Convention on the Law of the Sea, 1982: A Commentary*, Vol. V, 1989

K. Oellers-Frahm, *Die einstweilige Anordnung in der internationalen Gerichtsbarkeit*, 1975

C. Peck and R.S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice – Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, 1997

W.M. Reisman, *Nullity and Revision: The Review and Enforcement of International Judgments and Awards*, 1971

S. Rosenne, *The Law and Practice of the International Court, 1920–1996*, Vols. II and III, 1997

——, *Procedure in the International Court: A Commentary on the 1978 Rules of the International Court of Justice*, 1983

C. Rousseau, *Droit international public*, 1953

P. Sands and P. Klein, *Bowett's Law of International Institutions*, 2001

J. Sztucki, *Interim Measures in the Hague Court*, 1983

C. Tomuschat, "International Law: Ensuring the Survival of Mankind on the Eve of a New Century – General Course on Public International Law", *Recueil des Cours – Collected Courses of the Hague Academy of International Law*, Vol. 281, 1999

C. Wickremasinghe (ed.), *The International Lawyer as Practitioner*, 2000

Articles

J. Akl, "La procédure de prompte mainlevée du navire ou prompte libération de son équipage devant le Tribunal international du droit de la mer", 6 *Annuaire du Droit de la Mer* (2001), p. 219

J. Akl, "Question of time-limits in urgent proceedings before the Tribunal", in M.H. Nordquist/J.N. Moore (eds.), *Current Marine Environmental Issues and the International Tribunal for the Law of the Sea*, 2001, p. 75

D.H. Anderson, "The Effective Administration of International Justice – Early Practice of the International Tribunal for the Law of the Sea", in J. Frowein et al. (eds.), *Negotiating for Peace – Liber Amicorum Tono Eitel*, 2003, p. 529

——, "Investigation, Detention and Release of Foreign Vessels under the UN Convention on the Law of the Sea of 1982 and Other International Agreements", 11 *The International Journal of Marine and Coastal Law* (1996), p. 165
——, "The Internal Judicial Practice of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 197
H. Ascensio, "L'*amicus curiae* devant les juridictions internationales", 105 *Revue Générale de Droit International Public*, 2001, p. 897
R. Bernhardt, "Interim Measures of Protection under the European Convention on Human Rights", in R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994, p. 95
T. Buergenthal, "Interim Measures in the Inter-American Court of Human Rights", in R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994, p. 69
P. Chandrasekhara Rao, "The ITLOS and its Guidelines", in Chandrasekhara Rao/Khan, p. 187
——, "ITLOS: The First Six Years", 6 *Max Planck UNYB* (2002), p. 183
——, "The International Tribunal for the Law of the Sea – An Evaluation", in N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 1, 2002, p. 667
J-P. Cot, "Appearing 'for' or 'on behalf of' a State: The Role of Private Counsel before International Tribunals", in N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 2, 2002, p. 835
M. Craven, "The *Bosnia* Case Revisited and the 'New' Yugoslavia", 15 *Leiden Journal of International Law* (2002), p. 323
E. Decaux, "L'arrêt de la Cour internationale de Justice sur la demande en révision et interprétation de l'arrêt du 24 février 1982 en l'affaire du *plateau continental* (*Tunisie/Libye*), arrêt du 10 décembre 1985", XXXI *Annuaire français de Droit international* (1985), p. 324
G. Eiriksson, "The Special Chambers of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 93
Ph. Gautier, "Les affaires de 'prompte mainlevée' devant le Tribunal international du droit de la mer", *The Global Community, Yearbook of International Law and Jurisprudence 2003*, Vol. I, p. 79
——, "The International Tribunal for the Law of the Sea: Activities in 2002", 2 *Chinese Journal of International Law* (2003), p. 341
——, "The International Tribunal for the Law of the Sea: Activities in 2003", 3 *Chinese Journal of International Law* (2004), p. 241
——, "La procédure devant le Tribunal international du droit de la mer", 12 *Espaces et Ressources Maritimes* (1998), p. 24
R. Geiß, "Revision Proceedings before the International Court of Justice", 63 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2003), p. 167
R. Higgins, "Respecting Sovereign States and Running a Tight Courtroom", 50 *ICLQ* (2001), p. 121
K. Highet, "Problems in the Preparation and Presentation of a Case from the Point of View of Counsel and of the Court", in C. Peck and R.S. Lee (eds.), *Increasing the Effectiveness of the International Court of Justice – Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court*, 1997, p. 127
M.O. Hudson, "Advisory Opinions of National and International Courts", 37 *Harvard Law Review* (1923–1924), p. 970
F.G. Jacobs, "Interim Measures in the Law and Practice of the Court of Justice of the European Communities", in R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994, p. 37
E. Jiménez de Aréchaga, "The amendments to the Rules of Procedure of the International Court of Justice", Gilberto Amado Memorial Lecture delivered on 15 June 1972, United Nations
——, "The Amendments to the Rules of Procedure of the International Court of Justice", 67 *AJIL* (1973), p. 1
R. Lagoni, "The Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea: A Preparatory Report", 11 *The International Journal of Marine and Coastal Law* (1996), p. 147
E. Laing, "Automation of International Judicial Bodies: A Preliminary Analysis", in Chandrasekhara Rao/Khan, p. 217
T. Mensah, "Provisional Measures in the International Tribunal for the Law of the Sea (ITLOS)", 62 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2002), p. 43

J. Moore, "The Question of Advisory Opinions", in *Acts and Documents concerning the Organisation of the Court, P.C.I.J., Series D, No. 2*, 1922, p. 383
D. Müller, "Procedural Developments at the International Court of Justice", 3 *The Law and Practice of International Courts and Tribunals* (2004), p. 553
S.D. Murphy (ed.), "Contemporary Practice of the United States", 95 *AJIL* (2001), p. 873
R. Ostrihansky, "Chambers of the International Court of Justice", 37 *ICLQ* (1988), p. 30
B.H. Oxman, "Observations on Vessel Release under the United Nations Convention on the Law of the Sea", 11 *The International Journal of Marine and Coastal Law* (1996), p. 201
B. Oxman and V. Bantz, "Un droit de confisquer ? L'obligation de prompte mainlevée des navires", in V. Coussirat-Coustère (ed.), *La mer et son droit : Mélanges offerts à Laurent Lucchini et Jean-Pierre Quéneudec*, 2003, p. 479
D.W. Prager, "The 2001 Amendments to the Rules of Procedure of the International Court of Justice", 1 *The Law and Practice of International Courts and Tribunals* (2002), p. 155
J-P. Quéneudec, "A propos de la procédure de prompte mainlevée devant le Tribunal international du droit de la mer", 7 *Annuaire du Droit de la mer* (2002), p. 79
S. Rosenne, "The International Court of Justice: Revision of Articles 79 and 80 of the Rules of Court", 14 *Leiden Journal of International Law* (2001), p. 77
——, "Settlement of Fisheries Disputes in the Exclusive Economic Zone", 73 *AJIL* (1979), p. 89
P. Sands, "International Law, the Practitioner and Non-State Actors", in C. Wickremasinghe (ed.), *The International Lawyer as Practitioner*, 2000, p. 103
S. Schwebel, "Was the Capacity to Request an Advisory Opinion wider in the Permanent Court of International Justice than it is in the International Court of Justice?", 62 *BYIL* (1991), p. 77
M. Shaw, "The International Court of Justice: A Practical Perspective", 46 *ICLQ* (1997), p. 831
F. Sloan, "The Advisory Jurisdiction of the International Court of Justice", 38 *California Law Review* (1950), p. 830
H.W.A. Thirlway, "The Indication of Provisional Measures by the International Court of Justice", in R. Bernhardt (ed.), *Interim Measures Indicated by International Courts*, 1994, p. 1
T. Treves, "Advisory Opinions under the Law of the Sea Convention", in M. Nordquist/J. Moore (eds), *Current Marine Environmental Issues and the International Tribunal for the Law of the Sea* (2001), p. 81
——, "The Procedure before the International Tribunal for the Law of the Sea: The Rules of the Tribunal and Related Documents", 11 *Leiden Journal of International Law* (1998), p. 565
——, "The Proceedings Concerning Prompt Release of Vessels and Crews before the International Tribunal for the Law of the Sea", 11 *The International Journal of Marine and Coastal Law* (1996), p. 179
——, "Preliminary Proceedings in the Settlement of Disputes under the United Nations Law of the Sea Convention: Some Observations", in N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 1, 2002, p. 749
——, "Le Règlement du Tribunal international de droit de la mer entre tradition et innovation", XLIII *Annuaire français de Droit international* (1997), p. 341
——, "The Rules of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 135
B. Vukas, "The Definition of the Law of the Sea", N. Ando/E. McWhinney/R. Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda*, Vol. 2, 2002, p. 1303
A. Watts, "The International Court of Justice: Efficiency of Procedures and Working Methods – Report of the Study Group established by the British Institute of International and Comparative Law as a Contribution to the UN Decade of International Law", in D.W. Bowett et al. (eds.), *The International Court of Justice: Process, Practice and Procedure*, 1997, p. 27
——, "The ICJ's Practice Directions of 30 July 2004", 3 *The Law and Practice of International Courts and Tribunals* (2004), p. 385
P. Weckel, "Chronique de jurisprudence internationale", 108 *Revue générale de droit international public* (2004), p. 731
R. Wolfrum, "Intervention in the Proceedings before the International Court of Justice and the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 161
——, "Provisional Measures of the International Tribunal for the Law of the Sea", in Chandrasekhara Rao/Khan, p. 173

Documents

I.C.J. Yearbook 2001–2002

International Center for the Settlement of Investment Disputes, Rules of Procedure for Arbitration Proceedings (Arbitration Rules) [http://www.worldbank.org/icsid/basicdoc/partF.htm]

International Court of Justice, Acts and Documents Concerning the Organization of the Court, No. 5, 1989

ITLOS Yearbook 1996–1997

ITLOS Yearbook 1999

ITLOS Yearbook 2001

ITLOS Yearbook 2002

Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, Vol. II (1973), General Assembly Official Records – Twenty-eighth Session, Supplement No. 21 (A/9021)

Report of the Preparatory Commission under Paragraph 10 of Resolution I Containing Recommendations for Submission to the Meeting of States Parties to be Convened in accordance with Annex VI, Article 4, of the Convention Regarding Practical Arrangements for the Establishment of the International Tribunal for the Law of the Sea, LOS/PCN/152 (Vol. I), 28 April 1995 [Report and addenda thereto]; LOS/PCN/152 (Vol. II), 1 May 1995 [Documents of Special Commission 4]; LOS/PCN/152 (Vol. III), 1 May 1995 [Documents of Special Commission 4]

Report of the first Meeting of States Parties, SPLOS/3, 28 February 1995

Report of the second Meeting of States Parties, SPLOS/4, 26 July 1995

Report of the fourth Meeting of States Parties, SPLOS/8, 10 April 1996

Revised budget estimates for the International Tribunal for the Law of the Sea covering the period 1996–1997, SPLOS/WP.3/Rev.1, 10 April 1996

United Nations Commission on International Trade Law (UNCITRAL), UNCITRAL Arbitration Rules (General Assembly resolution 31/98; Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17, chap. V, sect. C)

LIST OF CASES

International Tribunal for the Law of the Sea

M/V "SAIGA" (Saint Vincent and the Grenadines v. *Guinea), Order of 21 November 1997, ITLOS Reports 1997*, p. 10 — *201, 318*

M/V "SAIGA" (Saint Vincent and the Grenadines v. *Guinea), Prompt Release, Judgment, ITLOS Reports 1997*, p. 16 — *67, 134–135, 158, 193, 210, 217, 306–307, 309–310, 316–317, 322, 324–325, 327–328*

M/V "SAIGA" (Saint Vincent and the Grenadines v. *Guinea), Prompt Release, ITLOS Reports 1997*, Dissenting Opinion of Vice-President Wolfrum and Judge Yamamoto, p. 46 — *322*

M/V "SAIGA" (Saint Vincent and the Grenadines v. *Guinea), Prompt Release, ITLOS Reports 1997*, Dissenting Opinion of Judges Park, Nelson, Chandrasekhara Rao, Vukas and Ndiaye, p. 53 — *322*

ITLOS Pleadings, Minutes and Documents 1997, M/V "SAIGA" (Saint Vincent and the Grenadines v. *Guinea), Prompt Release* — *223, 241*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Order of 20 January 1998, ITLOS Reports 1998*, p. 4 — *253*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Order of 23 February 1998, ITLOS Reports 1998*, p. 18 — *136, 172–173*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Provisional Measures, Order of 11 March 1998, ITLOS Reports 1998*, p. 24 — *135, 193, 220, 260–261*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Order of 16 September 1998, ITLOS Reports 1998*, p. 72 — *173*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Order of 6 October 1998, ITLOS Reports 1998*, p. 78 — *173*

ITLOS Pleadings, Minutes of Public Sittings and Documents 1998, Vol. 2, M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Provisional Measures* — *241*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), Judgment, ITLOS Reports 1999*, p. 10 — *137, 164, 175, 182, 193–194, 198, 207, 210, 213, 217, 227, 232, 239, 274, 277, 328, 351*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), ITLOS Reports 1999*, Separate Opinion of Judge Nelson, p. 116 — *169*

M/V "SAIGA" (No. 2) (Saint Vincent and the Grenadines v. *Guinea), ITLOS Reports 1999*, Dissenting Opinion of Judge Ndiaye, p. 234 — *359*

Southern Bluefin Tuna (New Zealand v. *Japan), Order of 3 August 1999, ITLOS Reports 1999*, p. 262 — *253*

Southern Bluefin Tuna (Australia v. *Japan), Order of 3 August 1999, ITLOS Reports 1999*, p. 268 — *253*

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