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ELABORATION BY ITLOS OF THE LAW OF THE SEA RULES IN DIFFERENT SPHERES OF THE OCEAN ACTIVITY

Abstract: *Ways and methods used by ITLOS in the process of interpretation of the law of sea are discussed in the article. ITLOS elaborated a number of rules, in particular, those concerning grounds for detention of foreign vessels in the EEZ, correlation between municipal law and international law, bond or other financial security, question of confiscation, connection between the ship and the flag state. The ITLOS case law is analyzed. Author studies such cases as Juno Trader" "Saiga" "Hoshinmaru" and others. Particular topics that are subject of the study are: Grounds for detention of foreign vessels in the exclusive economic zone; bond or other financial security as well as the question of confiscation (of the haul in fisheries cases for exemple); and finally the questions of the connection between the ship and the flag state.*

Keywords: *ITLOS, the flag state, the ship state, financial security, grounds for detention, foreign vessels, municipal law, and international law, law of sea, Saiga.*

The number of cases submitted to ITLOS increased recently.

Though the first case was qualified in short as "prompt release of vessels", but in fact it comprised a number of issues connected with the inclusion into the UNCLOS of a new category of sea areas – the exclusive economic zone (EEZ). Later The proceedings continued by a request for provisionsl measures, so that there appeared two *Saiga* cases[1]. So we begin our analysis with the first case and consider issue by issue.

1.Grounds for detention of foreign vessels in the EEZ
a) Saiga cases

The *Saiga* was an oil tanker provisionally registered in St.Vincent and the Grenadines on 12 March 1997, which was pursued and arrested in the Gulf of Guinea, off the coast of West Africa by a Guinean customs patrol boat while supplying fuel oil and water to fishing and other vessels and was detained by Guinean authorities for alleged violation of the legal regime of the Guinean EEZ. Several days before detention the *Saiga* had left Senegal with a load of gas oil en route to the Gulf of Guinea. There it had supplied fuel oil to three fishing vessels licensed by Guinea to fish in its EEZ. Later, when the tanker was beyond the southern limit of the Guinean EEZ, a pursuit was begun. The *Saiga* was attacked and shot at by a Guinean customs patrol boat. Two crew members were seriously injured and the vessel was damaged by gunfire. The vessel and its master were arrested and brought into port of Conakry.

When negotiations by the ship's owner failed to secure the release of the vessel, the ship's owner called upon the flag State for assistance. St Vincent instituted proceedings before the ITLOS for the prompt release of the vessel and crew under Art. 292 UN Convention on the Law of the Sea. The vessel and crew were eventually released and damages were awarded.

Now let us look at the legal side of the matter.

Art.73 of the UNCLOS permits coastal States to exercise enforcement jurisdiction through the seizure of foreign vessels and crews in certain limited circumstances. The creators of the Convention might not fully comprehend the importance of the rule for the maintenance of the legal order of EEZ: as Judge Helmut Tuerk rightly underlines, since the adoption of the EEZ concept, coastal States have with increasing urgency addressed the problem of illegal, unregulated and unreported fishing in their maritime zones[2].

[1] The 'SAIGA' Case (Saint Vincent and the Grenadines v Guinea) (Prompt Release) ITLOS Case No 1 (4 December 1997); The 'SAIGA' Case (Saint Vincent and the Grenadines v Guinea) (Judgment) ITLOS Case No 2 (1 July 1999).

[2] *Helmut Tuerk,* The Contribution of the International Tribunal for the Law of the Sea to International Law, in: 26 Penn St. Int'l L. Rev. 2007-2008, p. 289 at 304.

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The detained vessel and crew, however, shall be promptly released upon the posting of reasonable bond or other security. According to article 292 of the Convention, whenever it is alleged that the detaining State has not complied with its duty under the Convention of prompt release of the vessel the flag State is entitled to request the release of the vessel before the Tribunal. The request of release may be submitted not only by the flag State, but also on its behalf. It is important that in prompt release proceedings, the Tribunal may deal only with the question of the release of the vessel without prejudice to the merits of any case before the appropriate forum in respect of the vessel, its owner or its crew.

The first issue to be decided by ITLOS was: which provision of the UN Convention on the Law of the Sea the ship was arrested under. Under Art. 292 UN Convention on the Law of the Sea, the procedure for prompt release only applies if a vessel and crew have been detained pursuant to a provision in the convention providing for prompt release. The only such provisions are Arts 73 (2) (fisheries in the EEZ); and 220 (6) and (7); as well , Art.226 (1c), the latter two relating to threats to the marine environment. St. Vincent argued that the arrest had been made pursuant to Guinea's jurisdiction over fisheries in the EEZ, because the *Saiga* had been arrested for supplying fishing vessels with gas oil. In response, Guinea insisted that the *Saiga* had been arrested for smuggling gas oil. In its oral statements Guinea argued that the arrest of the *Saiga* was legitimate as it was executed at the conclusion of hot pursuit following a violation of customs laws.

The ITLOS held that it considered appropriate an approach based on assessing whether the allegations made are arguable or are of a sufficiently plausible character in the sense that the Tribunal may rely upon them for the present purposes. By applying such a standard the Tribunal does not foreclose that if a case were presented to it requiring full examination of the merits it would reach a different conclusion[3].

When assessing the legality of the detention of not a fishing vessel, but an oil tanker, the Tribunal had to nouch upon the *notion of "activity in the EEZ"*; the Tribunal did not explore it in detail, taking the point of view that it might be correct to assess the tanker's activity of bunkering the fishing vessels as being in defiance to the exclusive jurisdiction of the coastal state. It observed that arguments can be advanced to support the qualification of 'bunkering of fishing vessels' as an activity the regulation of which can be assimilated to the regulation of the exercise by the coastal State of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone[4].

In connection with the above the position of the Tribunal as to the *correlation between municipal law and international law* seems to be odd. Guinea asserted that the bunkering tanker broke its customs legislation, which was *not* provided by the Maritime Code[5] . The Tribunal referred to Art. 40 Maritime Code of Guinea which establishes Guinea's jurisdiction in the EEZ and declared that it is not bound by the classification given by a State. The Tribunal can, on the basis of the arguments developed above, conclude that, for the purposes of the present proceedings, the action of Guinea can be seen within the framework of article 73 of the Convention. It said that the classification as 'customs' of the prohibition of bunkering of fishing vessels makes it very arguable that the Guinean authorities acted from the beginning in violation of international law, while the classification under article 73 permits the assumption that Guinea was convinced that in arresting the M/V *Saiga* it was acting within its rights under the Convention. It is the opinion of the Tribunal that, given the choice between a legal classification, that implies a violation of international law and one that avoids such implication it must opt for the latter. Louise Angelique de La Fayette sees this conclusion "surprising"[6]. In my view the Tribunal based itself on an old maxima "doubts must be interpreted in favor of the accused", though its task was to establish the

[3] *Saiga (No 1)* para. 51.

[4] *Saiga (No 1)* para. 57

[5] Journal officiel de la République de Guinée, 30 November 1995,

[6] *Louise Angelique de La Fayette,* op.cit, para. 12.

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genuine essense of the rule concerning the jurisdiction of a coastal state in EEZ.

The problem of *correlation between municipal law and international law* was also touched upon by ITLOS in connection with the issue of exhaustion of local remedies which is in fact a procedural question embedded in a customary rule determining the order of shifting a case from national to international level[7]. The Tribunal paid attention to the problem for the first time during the litigation on the *Saiga* case. The detaining State then argued that the flag state should have exhausted local remedies, that is to comply with the decision of the coastal state's court of justice before turning to the Tribunal with the request for interim measures. The Tribunal noted that the question had to be answered in accordance with international law, because rights of the flag State were violated, not those of the vessel and its master, and that States did not have to exhaust local remedies. Then the Tribunal connected the question with the outcome of the merits, and did not assess it as a preliminary one[8].

b) "Camouco" Case

In the *"Camouco" Case*[9] the Tribunal interpreted the correlation between a *customary international law norm of exhaustion of local remedies and national legislation* of France.

This country detained a Panaman vessel in the waters of France's overseas territory. The question of prompt release was handed to ITLOS. France insisted that Panama had no right to turn to the Tribunal since the case was pending in a municipal court at the time. According to France's rivalry, Panama, Art.292 UNCLOS did not requiere the prior exhaustion of local remedies. Tribunal noted that, according to France Constitution, international treaties had priority before the country's laws, though the Criminal Code did not say this explicitly. The Tribunal found that a delay of Panama's application to the Tribunal would constitute a breach of Art.292 by France. This article, in its opinion, was autonomous from the Constition of France. Thus the Tribunal demonstarted that international law and municipal law had to be applied each separately in the manner recognized by the respective legal system.

c) MV "Louisa" Case

24 November 2010 Saint Vincent and the Grenadines has instituted proceedings against Spain in a dispute concerning the MV Louisa flying her flag. According to the Applicant, the MV Louisa was involved in conducting sonar and cesium magnetic surveys of the sea floor of the Bay of Cadiz in order to locate and record indications of oil and gas. The Applicant maintains that the vessel was involved in scientific research with a valid permit from the coastal state. The Applicant states that the vessel was arrested for alleged violations of Spain's historical patrimony or marine environment laws, that various members of the crew were arrested but have since been released and that the vessel is being held without bond in the port of El Puerto de Santa Maria.

Spain contended that the vessel was involved in treasure hunting in the bay of Cadiz. St Vincent and Grenadines requested for a declaration that Spain has violated Articles 73, 83, 226, 245, and 303, in as much as, to pay as damages amounting to USD 30 million which include the damages arising from the arrest and detention of the crew members[10].

The decision of the Tribunal it contributes to the development of the law of the sea.
First, this might be the first use and application of the underwater cultural heritage concept provided by UNCLOS. Many authors underline that the case concerns human rights violation against the protection of undercultural heritage; that was the reason why the Parties to the dispute both Saint Vincent and Spain in their pleadings before the Tribunal admitted the fact

[7] See, in general: *Antônio Augusto Cançado Trindade,* The Access of Individuals to International Justice, OUP, 2011.

[8] *Saiga (No 2) (Judgment)* para. 89-102.

[9] The 'Camouco' Case (Panama v France) (Prompt Release) (Judgment) ITLOS Case No 5 (7 February 2000).

[10] The M/V "Louisa" Case (Saint Vincent and the Grenadines v. Kingdom of Spain)

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that the Tribunal deciding the case will contribute to the development of international law in large scale[11].

Second, the most important question in this case, in my view, is whether the survey by MV Louisa should be classified as a fundemental research which is not a part of exploration with the goal to exploit natural resources in the sence of Art.77 Convention.

d)"Virginia G" Case

On 4 July 2011 proceedings were instituted in a dispute between Panama and Guinea – Bissau regarding the vessel *"Virginia G"*[12] flying the flag of Panama. Both countries agreed to submit the dispute to arbitration, but later changed it to ITLOS.

According to the statement of claim submitted by Panama the oil tanker *"Virginia G"* was carrying out refuelling operations for fishing vessels in the exclusive economic zone of Guinea – Bissau, when it was arrested on 21 August 2009 by Guinean authorities. In that statement Panama maintains that while the tanker was released on 22 October 2010 without the imposition of any penalty, it suffered serious damages during 14 months of detention. Panama therefore claims reparation for the damages suffered by the *"Virginia G"*.

As far as January 2013 ITLOS issued the Order on the admissibility of the Case[13].

The future litigation promises to be quite interesting and important for the law of the sea, since at least two difficult questions can be posed:

– legality of the activity of bunkering by the ship in the EEZ. As we remember from "Saiga" case, ITLOS was not clear enough about this activity as a part of activity exclusively belonging to the coastat state;

-existence of geniune link between Panama and the vessel, since Guinea – Bissau defended itself affirming the missing of the link and declaring that granting its flag to the vessel Panama contributed to its illegal actions in the EEZ of Guinea – Bissau.

e)"ARA Libertad" Case

The Argentine frigate "ARA Libertad" arrived in the port of Tema, near Accra, Ghana, on 1 October 2012. The vcessel's departure from this port was prevented by Ghanaian authorities pursuint to a decision of the High Court of Accra.

On 30 October 2012 Argentina instituted arbitration proceedings against Ghana concerning the detention of the frigate. In addition Argentina submitted a request for the prescription of provisional measures under Art.290 (5) of the United Nations Convention on the Law of the Sea[14]

By the Order of 15 December[15] ITLOS prescribed, pending a decision by the Annex VII arbitral tribunal, that Ghana shal forthwith and unconditionally release the frigate "ARA Libertad", shall ensure that its Commander and crew are able to leave the port of Tema and the maritime areas under the jurisdiction of Ghana, and shall ensure that the frigate is resupplied to that end.

As we can see the wording of the order is rather hard which might be explained by the status of the detained ship as a warship. The Tribunal did not give any explanations to its Order, but one cannot but agree with Argentina who claimed that the Republic of Ghana, by detaining the warship, keeping it detained, not allowing it to refuel and adopting several judicial measures agains it, "violated the international obligation of respecting the immunity from jurisdictrion and execution enjoyed by suc vessel pureuant to Art.32 of UNCLOS"[16]

[11] See: *Bjarni Mar Magnusson ,* Current Legal Developments. ITLOS. Judgement in the Dispute concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal (14 march 2012), in: The International Journal of Maritime and Coastal Law 27 (2012) 623-633.

[12] ITLOS/ Press 168 5 July 2011.

[13] The M/V "Virginia G" Case. (Panama v. Guinea – Bissau). Order 2012/3, 2 November 2012.

[14] ITLOS/Press 188, 15 December 2012.

[15] *"ARA Libertad" Case.* Request to prescribe provisional measures. Order. 15 December 2012.

[16] Order. 15 December 2012, para.72.

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2.Bond or other financial security
a) Saiga cases

A very important part of the problem of prompt release of vessels is the practical application of the rule of paying a bond or other security. The Convention having allowed the bond did not specify neither the rules and conditions to be observed when assessing the amount of the bond or other security nor the curcumstances in which a flag state can submit the matter to the Tribunal[17].

In the *Saiga* case the question of the bond was a procedural one: since Art.73(2) provides that arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security an issue arises, whether a bond has to be posted before recourse may be had to Art. 292 UN Convention on the Law of the Sea. After *Saiga's* arrest no bond had been posted by St Vincent. The Tribunal held that the posting of a bond was not a precondition for the applicability of Art. 292 UN Convention on the Law of the Sea. It was 'a requirement of the provisions of the Convention whose infringement makes the procedure of article 292 applicable'[18]

b) "Camouco" Case

One of the most important cases in this respect was the *"Camouco" Case.* The detaining state – France insisted that in case the Tribunal would decide that the *Camouco* were to be released upon the deposit of a bond, France requested that the bond be no less than 20 mln French Francs. In its judgment of February 7, 2000, the Tribunal ordered the prompt release of the vessel on the deposit of a financial security of eight million French Francs, approximately 1.2 million US Dollars. The Tribunal observed in this case that Article 292 of the Convention provides for a quick, independent remedy during which local remedies-as France had argued-could normally not be exhausted.

Most important is that ITLOS specified the factors relevant in an assessment of the reasonableness of bonds or other financial security, though the Tribunal underlined, that the list in no case may be regarded as exhaustive and that the very approach to the specifying the factors must be reasonble and their assessment must be an objective one[19].

The factors are as follows:

– the gravity of the alleged offenses,
– 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.

c) "*Monte Confurco" Case*

A case involving the Seychelles and France concerned the vessel *Monte Confurco*[20], registered in the Republic of the Seychelles, and licensed by it to fish in international waters. The vessel was apprehended by France for alleged illegal fishing and failure to announce its presence in the exclusive economic zone of the Kerguelen Islands.

The Tribunal was requested on behalf of Seychelles to order the prompt release of the *Monte Confurco* and its master. France requested the Tribunal to declare that the bond set by the competent French authorities-56.4 million French Francs-was reasonable and that the application was inadmissible. The Tribunal in its judgment of December 18, 2000 ordered the prompt release of the vessel and its master by France upon the furnishing of a security of eighteen million French Francs by the Seychelles, as the bond set by the national French court was not considered reasonable[21].

In this case ITLOS commented also on the character and goal of the financial security. IT-

[17] *Martin Dixon, Robert McCorquodale & Sarah Williams*, Cases & Materials on International Law, OUP, 2011, p.366.

[18] *Saiga (No 1)* para. 76.

[19] The 'Camouco' Case (Panama v France) (Prompt Release) (Judgment) ITLOS Case No 5 (7 February 2000). para 67.

[20] The "Monte Confurco" Case *(Seychelles v. France) (Prompt Release),* Judgment of December 18, 2000, 4 Int'l Trib. L. of the Sea Rep. of Judgments Advisory Opinons and Orders, 86-117 (2000), available at http://www.itlos.org/start2_en.html

[21] *Helmut Tuerk, op.cit, p.308.*

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LOS observed that Art. 73 UN Convention on the Law of the Sea 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. The bond, so ITLOS, serves the interest of the detaining State to secure appearance in its courts and the payment of penalties and for its assessment this compromise must be born in mind. The object of both articles 73 and 292 of the LOS Convention is to reconcile the interests of coastal States in enforcing its laws and regulations with those of the flag State to see its vessel and crew promptly released[22]. And, the balance of interests emerging from Art. 73 and 292 UN Convention on the Law of the Sea provides the guiding criterion for ITLOS in its assessment of the reasonableness of the bond.

d) "Volga" Case

The Russian vessel *Volga*[23] was arrested in 2000 by Australia for alleged illegal fishing in the Australian fishing zone. The Russian Federation submitted an application to the Tribunal requesting the release of the Volga and its crew, the conditions for release imposed by Australia being neither permissible nor reasonable under the Convention.

Australia requested that the Tribunal reject the application, maintaining that the bond sought was reasonable in the circumstances of the case. In its judgment of December 23, 2002, the Tribunal took note of the concern of Australia with regard to the depletion of stocks of Patagonian Toothfish in the Southern Ocean and also stated that the amount of 1,920,000 Australian Dollars sought for the release of the vessel was reasonable in terms of Article 292 of the Convention.

The Volga case is remarkable in that it was the first (and the only one by now) case where a non-financial bond was imposed. The Tribunal, however, took the view that the non-financial conditions laid down by Australia could not be considered as components of the bond or other financial security for the purposes of that provision of the Convention.

Australia as a detaining state tried to obligate the vessel to carry a Vessel Monitoring System (VMS)[24] . The Tribunal declared that the inclusion of additional non-financial conditions in such a security would defeat object and purpose of article 292.[25]

Some scholars find this decision not fair. They pose the question: should the Tribunal look at the words that the Convention or statute say or should it look at the purpose, i.e, the reason for which that statute was introduced? However, the Tribunal did not answer or even consider the question. Concerning the form of the bond the Tribunal ruled that it will be a bank guarantee from a bank operating in the detaining State or a bank having corresponding arrangements with it.[26]

e) Juno Trader Case

In the *Juno Trader* case[27] the ITLOS ruled on the nature of the obligation of prompt release of the vessels and crews in relation to the amount of the bond. It declared that this obligation «includes elementary considerations of humanity and due process of law» and the requirement of the reasonableness of the bond is dictated by a concern for fairness.[28] This statement seems important at a time when one witness extremely severe inhuman penalties, including imprisonment, imposed to the crew members of vessels,

[22] The "Monte Confurco" Case, para.70-73.

[23] The "Volga" Case (Russia v. Australia) (Prompt Release), Judgment of December 23, 2002, 6 Int'l Trib. L. of the Sea Rep. of Judgments Advisory Opinons and Orders 10-41 (2002), available at http://www.itlos.org/start2_en.html

[24] The "Volga" Case ,p. 77

[25] ibid

[26] Ibid, para 93.

[27] The "*Juno Trader"* Case (Saint Vincent and the Grenadines v. Guinea-Bissau) (Prompt Release), Judgment of December 18, 2004, 8 Int'l Trib. L. of the Sea Rep. Of Judgments Advisory Opinons and Orders 17-92 (2004), available at http://www.itIos.org/start2_– en.html

[28] The "Juno Trader" case, para 77.

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who happen to be the least responsible for violations of conservation and management measures, including those on the preservation of the marine environment, in the EEZ.

f) Hoshinmaru Case

The Hoshinmaru Case[29]*,* focused on the question of the reasonableness of the bond, concerned a dispute submitted by Japan on July 6, 2007 regarding the detention of that fishing vessel by the authorities of the Russian Federation for the alleged infringement of national fisheries legislation in its exclusive economic zone. On July13 – more than five weeks after the detention of the vessel – Russia set a bond of twenty-five million Roubles (approximately 980,000 US Dollars) and claimed that the application was therefore inadmissible.

Japan maintained that the amount of the bond was unreasonable and did not meet the requirements of Article 292 of the Convention. Both parties further disagreed as to whether the crew and the Master were being detained along with the vessel. In its judgment of August 6, 2007, the Tribunal confirmed its previous jurisprudence regarding the reasonableness of a bond or other financial security and, *inter alia,* stated that it did not consider it reasonable for a bond to be set on the basis of the maximum penalties applicable to the owner and the Master, nor that a bond be set on the basis of the confiscation of the vessel given the circumstances of the case. The amount of the bond should be proportionate to the gravity of the alleged offences. The Tribunal thus considered the amount of the bond fixed by the Russian Federation not to be reasonable and decided that the *Hoshinmaru,* including its catch on board, should be promptly released upon the posting of a bond or other security as determined by the Tribunal and that the Master and the crew should be free to leave without any conditions. It further determined that the bond should amount to ten million Roubles (approximately 390,000 US Dollars). On August 16, 2007 the bond was received by the Russian Federation and the vessel and crew were released on the same day.

3.Question of confiscation
a)"Tomimaru" Case

The *Tomimaru Case*[30] was submitted by Japan on the same day as the *Hoshinmaru Case* and also concerned the detention of that fishing vessel by the authorities of the Russian Federation for the alleged infringement of national fisheries legislation in its exclusive economic zone. In that case, the Tribunal had to deal with the thorny issue of the effects of the confiscation of a fishing vessel-a measure that many States have in their legislation with respect to the conservation and management of natural resources. The crew had been allowed to leave the Russian Federation long before the application was submitted by Japan.

The competent Russian Courts had decided to confiscate the vessel and Russia thus maintained that the application by Japan had been rendered without object. In its judgment of August 6, 2007 the Tribunal expressed the view that the decision to confiscate eliminates the provisional character of the detention of the vessel rendering the procedure for its prompt release without object. It, however, also observed that such a decision should not be taken in such a way as to prevent the ship owner from having recourse to available domestic judicial remedies, or as to prevent the flag State from resorting to the prompt release procedure set forth in the Convention. The Tribunal further underscored that a decision to confiscate the vessel did not prevent it from considering an application for prompt release while proceedings are still before the domestic courts of the detaining State. Note was taken of the fact that the decision of the Supreme Court of the Russian Federation, which confirmed the decision of the lower courts to confiscate the *Tomimaru,* had brought to an end the procedures before the

[29] *The "Hoshinmaru " Case* (Japan v.Russian Federation), Prompt Release, Judgment of 6 August 2007, ITLOS Reports, 2005-2007, p.18.

[30] *The "Tomimaru " Case* (Japan v.Russian Federation), Prompt Release, Judgment of 6 August 2007, ITLOS Reports, 2005-2007, p.74.

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domestic courts. The Tribunal thus found that the application of Japan no longer had any

object and that it was therefore not called upon to give a decision thereon.

4.Connection between the ship and the flag state

a) "Saiga 2" Case

The question of 'genuine link' between ship and flag State was an occasion to comment on some international treaties. The detaining State – Guinea – argued that the ship's owner was not of Vincentian nationality and St Vincent could not exercise jurisdiction over it and there was therefore no 'genuine link' between the ship and St Vincent. Guinea based itself on Art.91 of the Convention on the law of the sea concerning the obligation to have a 'genuine link". The Tribunal interpreted the article together with some separate conventions elaborating on the obligation and said that their purpose was to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships may be challenged by other States[31].

The Tribunal refused to admit that the absence of a genuine link between the flag State and the ship allows third State to refuse to recognize the nationality of the ship. It inferred from the provisions of the LOS and other international conventions that the need for a genuine link is not a condition for the grant and validity of the nationality of a ship vis-a-vis other States but it rather aims at ensuring more effective implementation of the dutuies of the flag State.[32]

ITLOS pronounced also on the issue of the nationality of claims. It considered that the applicant State, namely St. Vincent and the Grenadines, had the right to protect not only the vessel flying its flag but also the crew serving on board, irrespective of their nationality. The Tribunal explained that in modern shipping ships have crews of multinational composition and, if each person having suffered damage were obliged to seek protection from his or her national State, «undue hardship would ensue».[33] Professor Haritini Dipla rightly notes that ITLOS emphasized the attention that should be given to the crew of arrested vessel and their protection under the law of the sea rules[34], which is not at all usual for the law of the sea.

Beside the beforementioned issues, the Tribunal in this Judgement made several important pronouncements concerning issues such as freedom of navigation, enforcement of customs laws, nationality of claims, reparation etc thereby making an important contribution to the development of international law regarding these aspects.[35]

b)"Juno Trader" Case

The "*Juno Trader"*[36] *Case* was submitted to the Tribunal on behalf of the flag State of the vessel, Saint Vincent and the Grenadines, against Guinea-Bissau. The dispute concerned the detention of that vessel and its crew by Guinea-Bissau for the alleged infringement of national fisheries legislation in its exclusive economic zone. Guinea-Bissau objected to the jurisdiction of the Tribunal on the grounds that, according to its national legislation, the ownership of the vessel *Juno Trader* had reverted to the State of Guinea-Bissau and that, therefore, Saint Vincent and the Grenadines no longer could be considered the flag State of the vessel.

The Tribunal, however, considered that, whatever may be the effect of a definitive change in the ownership of a vessel upon its nationality, there was no basis in the particular

[31] *Saiga (No 2) (Judgment)* para. 83.

[32] Ibid.

[33] *Saiga (No 2) (Judgment),* para 107.

[34] *Haritini Dipla,* The role of the International Court of Justice and the International Tribunal on the Law of the Sea in the progressive development of the law of the sea , in: UNRESOLVED ISSUES AND NEW CHALLENGES TO THE LAW OF THE SEA, Vaughan Lowe General Editor , 2006, p.244.

[35] See *Helmut Tuerk*, The Contribution of ITLOS to International Law of the Sea. p.313

[36] The "Juno Trader" Case *(Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release,* Judgment of December 18, 2004, 8 Int'l Trib. L. of the Sea Rep. Of Judgments Advisory Opinons and Orders 17-92 (2004), *available at* http://www.itlos.org/start2_en.html

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circumstances of the case for holding that there had been such a definitive change. In its judgment of December 18, 2004, the Tribunal thus ordered the prompt release of the vessel *Juno Trader,* upon the posting of a bond of 300,000 Euros. It also declared that all members of the crew should be free to leave Guinea-Bissau without any conditions.

b)"Juno Trader" Case

The fishing trawler *Grand Prince*[37] at that time flying the flag of Belize, was arrested by the French authorities in the exclusive economic zone of the Kerguelen Islands for alleged illegal fishing. The competent French court confirmed the seizure of the vessel, and fixed a bond for its release in the amount of eleven million French Francs, which was later followed by a confiscation order. On April 20, 2001, the Tribunal delivered its judgment in that case and found that it had no jurisdiction under Article 292 of the Convention to entertain the application as the documentary evidence submitted by the applicant failed to establish that Belize was the flag State of the vessel when the application was made. This decision underlines the importance the Tribunal attaches to the matter of registration of ships.

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