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THE TRIBUNAL ON THE LAW OF THE SEA ESTABLISHED

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A big step toward more ocean consciousness has now been made. A new legal order for the oceans has become applicable comprising four forums for the settlement of disputes. One of them, the International Tribunal on the Law of the Sea was established in the Free and Hanseatic City ofHamburg in Germany on October 18, 1996. From an parts of the world, 21 judges, required to have the highest reputation for fairness and integrity and recognized competence in the field of the law of the sea, were elected for three, six, or nine year terms in New York on August 1, 1996. At the inauguration ceremony in Hamburg, the elected judges solemnly declared to act impartially and conscientiously. The Tribunal, which has sole jurisdiction for deep sea mining and in international disputes concerning the prompt release of ships, has thus started to work. This historical event marks an outstanding effort by the United Nations Organization and its member states over the past three decades on improving ocean related matters.

Almost 30 years passed from the time the Maltaesean Ambassador Arvid Pardo addressed the General Assembly of the United Nations on the growing prospect of mining the seabed and asked for a solution beneficial for the world community as a whole in 1967. It wasn't until the statement of the UN Secretary General Brutos Brutos Ghali at the swearing-in ceremony on October 18, 1996, that the Tribunal on the Law of the Sea became part of a system on peaceful dispute settlement as intended by the founders of the United Nations, a sea change in ocean mindedness taking place. The immediate result of Pardo's request was the establishment of the Seabed Commission (1967-1973).

It was soon feIt that the negotiations (1st and 2nd UN Conference 1958 and 1960) and all other legal questions, whether commonly already accepted or not, should become subject of the 3rd UN Conference on the Law of the Sea. What started in 1973 and was expected to last fornot more than two years, turned out to become the longest and biggest negotiation effort for a set of international rules. Finding solutions forusing the sea and the seabed, preserving the ocean environment and settling disputes was to be covered by several dozen topics in more than 400 articles. At the Final Act ceremony at Montego Bay/Jamaica on December 10, 1982, the conference released the 1982 UN Convention on the Law of the Sea, the most comprehensive single document ever produced in

international law and the first global constitution - albeit limited to the oceans - to the community of states for approval. But the process was slow. The enforcement of the convention required ratification by 60 states. Some states objected to the regime on deep sea mining, others wanted the convention to become law without any aIterations and soon.

As this was likely to happen, by 1994 a solution was found by an additional set of regulations, the "Agreement Relating to the Implementation of Part XI of the UN Convention on the Law of the Sea of 10 December 1982." On November 16, 1994, the 1982 Convention came into force. Now, two years later, the number of state parties is 108 and it is only a question of time before the 1982 Convention becomes a truly international instrument on ocean related matters.

The achievements to date are a very significant milestone, although there is still a long way to go until mankind not only uses the oceans peacefully and in mutual interest but understands its impact on the seas and the ocean environment in detail The 1982 Convention provides a very clear vision in this respect. " States have the obligation to protect and preserve the marine environment" (Art. 192). Without a thorough understanding of the seas, their internal processes and movements, their interactions with the atmosphere and the land, this legal demand is unlikely to be observed in the foreseeable future.

Only when the point of knowledge has been reached which enables the actors to distinguish clearly between natural and anthropogenic causes changing ocean structures and behavior, can the obligations to protect and preserve the marine environment be observed. Regrettably, but not surprisingly for a legal document, the 1982 Convention does not offer a readily available master plan to gain the required knowledge. But it provides enough incentives to reach this goal. About one-third of the Convention's provisions are directly related to the marine environment. lt requires minimization of any kind of pollution and is strict on monitoring pollution and environmental assessment (part XII). It deals extensively with marine scientific research (Part XIII) to which the UN office on Ocean Affairs provided a guide for implementation in 1991 and the development and transfer of marine technology (part XIV). But many provisions are hardly more than a broad framework of intentions to cooperate or ask for voluntary action. As long as there is no sufficient commitment and a strong will among the principal demand of Article 192, the general concept of the 1982 Convention on the marine environment could turn out to be too weak to force the responsible actors to act.

To prevent this, the 1982 Convention breaks new ground in international relations. All state parties are bound by compulsory procedures entailing binding decisions on any dispute concerning the interpretation or application of the 1982 Convention, if the specific subject is not excluded (Art. 297,298) and a settlement by conciliation failed (Art. 284). Thus the Convention's obligatory dispute settlements procedure could become the principle source for forcing too reluctant states into greater commitment on ocean matters. The forums available to them are two types of arbitration (according to Annex VII and VIII), the International Court of Justice in The Hague and the International

Tribunal for the Law of the Sea in Hamburg. If no choice has been made, the dispute is subject to arbitration (Art. 287). While there is only limited access for judicial interpretation on the parts of marine research and marine technology, the huge number of provisions on the marine environment are subject to compulsory dispute settlement.

As disputes in this field may soon result in a growing number of cases to the marine forums for judicial review, many decisions are likely to stimulate marine research and technology. What only too often seemed difficult to achieve by diplomatic efforts and international conferences could soon be partly obtained by case law. Once two states are bound by a decision, other states may want or feel obliged to follow suit. Thus, knowledge and understanding of the oceans' complexity and how to act in regard to Article 192 properly will grow case by case. However, the community of states must start and be willing to make use of this opportunity in the first place. Even more paramount is that the arbitrators and judges use the unique chance given to them to promote the ocean issue. Not only a well founded, impartial and a fair interpretation of the 1982 Convention is required, but decisions should also aim to be of the utmost clarity, farsightedness and readabi1ity for the general public. After all, there is still a long way to go to understand the extreme complexity of the oceans. There is still a lot to do for more ocean consciousness in many quarters, or, as the poet Johann W. von Goethe put in 1787: "Until one has experienced the sea around one, one has no idea of the world and its relation to the world. "

The Tribunal on the Law of the Sea, as well as the other marine forums, can do a lot to improve ocean related matters, and, in many respects, they can set the pace. In the past, progress was al1 too often rather slow. We welcome al1 judges and arbitrators to their new task and wish them well.