Chapter 15

Prompt Release of Vessels under the UN Convention on the Law of the Sea*

I Introduction

The UN Convention on the Law of the Sea (hereinafter the Convention) was prompted by the desire to settle all issues relating to the law of the sea, since the problems of ocean space are closely inter-related and need to be considered as a whole. The Convention is a comprehensive instrument, representing the framework for the modern law of the sea.

It contains provisions, in greater or lesser detail, on practically every important issue to do with maritime affairs. In particular, it contains the fundamental rules on the limits of national jurisdiction, on rights of passage, on the coastal state’s sovereign rights over living and non-living resources in the exclusive economic zone, and on the protection of the marine environment. The Convention lays down rules for the jurisdiction of states to prescribe laws and regulations, as well as to police and enforce them. Enforcement powers over foreign vessels, in the sense of arrest and prosecution, are recognized on the part of coastal states and port states. The


1 Preamble to the Convention. On the interpretation of the Convention, including Article 292, see Virginia Commentary to the 1982 Convention.
Convention contains provisions about the investigation, detention and release of foreign vessels. The Convention also contains provisions for the peaceful settlement of disputes, including the creation of the International Tribunal on the Law of the Sea here in Hamburg. In the matter of prompt release of vessels, the Tribunal is accorded a special role by Article 292.

At present, following the adoption of the Agreement on the Implementation of Part XI in July 1994 and the entry into force of the Convention a year ago, many governments are engaged in the domestic processes of ratification of the Convention and the Implementation Agreement. Governments are also giving attention to the organization of the International Sea-Bed Authority and the formation of the Tribunal through the elections to be held on 1 August 1996. It is particularly appropriate, therefore, that this Workshop is being held today in order to take a closer look at the topic of the prompt release of vessels and crews and the role of the Tribunal, prior to its inauguration.

This paper presents a legal analysis and assessment of the relevant provisions of the Convention and related instruments concerning, first, the investigation and detention or arrest of foreign vessels and crews and, secondly, their release from detention or arrest.

II Article 292: General Issues

Article 292 forms part of Section 2 of Part XV (Settlement of Disputes): Section 2 is entitled “Compulsory Procedures Entailing Binding Decisions”. Also included in Section 2 is Article 290 (Provisional Measures), according to which a court or tribunal “may prescribe any provisional measures which it considers appropriate … to preserve the respective rights of the parties to the dispute …”. Article 292 contains a special procedure of a somewhat analogous character.

According to its title, Article 292 concerns the prompt release of vessels and crews. It reads, in part, as follows:

1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and 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, the question of release from detention may be submitted to any court or tribunal …” [emphasis added].

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3 On 16 November 1994, in accordance with Art. 308(1) of the Convention.

4 On 11 April 1996, there were 88 parties to the Convention and 48 states had established their consent to be bound by the Implementation Agreement (but it was not in force).

5 In March 1996, the Assembly elected the Council of the Authority and appointed Mr S.N. Nandan (Fiji) as its Secretary-General.