CERTAIN OVERSIGHTS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) AND OTHER INTERESTING CASES WHERE RECOUSE TO ITLOS HAS NOT TAKEN PLACE

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I.

The International Tribunal for the Law of the Sea (ITLOS), which was established in accordance with Annex VI of the UN Convention on the Law of the Sea of 1982 (hereinafter UNCLOS),¹ as is well known, was organised and officially constituted when its first twenty-one elected members met in Hamburg, the seat of the Tribunal, in the Federal Republic of Germany, and made a solemn declaration before the UN Secretary General on October 18, 1996.

Since its establishment, ITLOS has dealt with several cases regarding Article 292 of UNCLOS and the arrest and detention of a number of vessels for fishing in areas under the jurisdiction of other coastal states.²

It is interesting to examine the case of the vessel The Volga, which flew the flag of the Russian Federation and which was fishing on February 7, 2002 (with other Russian ships) a few hundred metres outside an Exclusive Economic Zone (EEZ) of 200 nautical miles, which Australia had established around the Heard and McDonald Islands in the Southern Ocean.

The Volga was pursued and arrested by the Australian frigate The Canberra with the use of a helicopter Sea Hawk which belonged to the Australian frigate. The helicopter landed on The Volga, and after discovering 131 tons of fish on

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¹ See also Article 287, 1 (a) of UNCLOS.

² See, for instance, the case of M/V Saiga (case No. 2, St. Vincent and the Grenadines v. Guinea); The Camouco, Panama v. France (case No. 5 of 7-2-2000); The Monte Confurco, Seychelles v. France (case No. 6 of 18-12-2000); The Grand Prince, Belize v. France (case No. 8 of 20-4-2001); The Juno Trader, St. Vincent and the Grenadines v. Guinea-Bissau (case No. 13 of November 18, 2004). For a more detailed discussion, see N.M. Poulantzas, The Law of the Sea (in Greek), 2nd revised and enlarged edition, Athens, 2007, pp. 86–89 and 110–111. (A translation into English of this book, which is still distributed and taught to the students of the University of Piraeus, is now under preparation.).


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the vessel, arrested it. The vessel was escorted by *The Canberra* to the Australian port of Fremantle, a distance of 4,000 miles from the point of arrest of *The Volga*.

On December 2, 2002, the Government of the Russian Federation, the flag state of the vessel, made an application to ITLOS in Hamburg for the immediate release of *The Volga* and its crew after proposing to post a reasonable bond or other financial security, determined in accordance with Article 73, paragraph 2, and Article 292 of UNCLOS.

With its judgment of 23-12-2002, ITLOS decreed the large amount of 1,920,000 Australian dollars as the bond for the release of the ship and its crew.³

It is surprising that the question of the commencement of hot pursuit of *The Volga* outside the EEZ of Australia and the arrest of the vessel on the high seas, which was not lawful, according to Article 111, paragraph 4 of UNCLOS, was not considered by ITLOS.

Had the question of the unlawful commencement of hot pursuit and the arrest of *The Volga* by the Australian authorities been considered by ITLOS (in accordance with Article 111, paragraphs 1 and 4 of UNCLOS), then ITLOS would have ordered the immediate release of the vessel and its crew without the posting of a bond or other financial security.⁴

Moreover, compensation for any loss or damage that may have been sustained by the flag state of the vessel because of the unwarranted pursuit, arrest and detention should have been ordered by ITLOS. However, the Government of the Russian Federation did not claim any compensation or damages in accordance with Article 111, paragraph 8 of UNCLOS.⁵

The Vice-President of ITLOS at that time, Professor Budislav Vukas, in a separate declaration attached to the previously mentioned judgment of the Court, criticised it on the basis of Article 121, paragraph 3 of UNCLOS. Article 121 on the ‘Régime of islands’, in paragraph 3, states that “rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”.

Therefore, he concluded that Australia could not lawfully claim an EEZ around the Heard and McDonald Islands, because they were rocks and could not sustain human habitation or an economic life of their own. The *ad hoc*