Rüdiger Wolfrum and I were elected to the International Tribunal for the Law of the Sea (“ITLOS” or “Tribunal”) in 1996, re-elected for a second term in 1999 and for a third term in 2008. We are thus among the few longest-serving judges of the Tribunal. I was President of the Tribunal from 1999 to 2002 and Judge Wolfrum from 2005 to 2008. Students of the jurisprudence of the Tribunal will not have failed to notice that, except on a few occasions, Judge Wolfrum and I walked on the same side of the street. Though I am a common law trained judge and Wolfrum a civil law trained judge, we have achieved a fine intellectual rapport; our understanding of municipal law concepts and analogies has been very close. My contribution to this Festschrift concerns a subject which Wolfrum would, I hope, readily appreciate.

A. The Legal Status of the Tribunal

The Tribunal is a creation of the United Nations Convention on the Law of the Sea (“the Convention”). The Convention calls it a tribunal. Is this a court or less than that? What is the conception of the Convention with regard to the Tribunal? How has the Tribunal conceived its judicial power and function? The answers to these questions depend upon the role assigned to the Tribunal by the Convention within the framework of dispute-settlement, and also the jurisprudence of the Tribunal in the course of the last thirteen years or so of its existence. Not very many cases have been decided by the Tribunal so far, but the fifteen cases in which it has given judgments or orders reveal the mind of the Tribunal and the way it is likely to follow in future years. Other sources which need to be looked at include the Statute of the Tribunal (“the Statute”), the Rules of the Tribunal (“the Rules”), the Resolution on the Internal Judicial Practice of the Tribunal (“the Resolution”) and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal (“the Guidelines”).

It is well-known that all courts of law are tribunals of justice, but the reverse may not necessarily be so. Where does the Tribunal stand in
this respect? To students of municipal law, especially within common law countries, a tribunal within the municipal sphere is generally an administrative body which is entrusted with the task of settling disputes and is almost, but not completely, a court of law. It does not have all the trappings of a court and enjoys only the status of a quasi-judicial body, i.e., a body, unlike a court of law, which need not necessarily consist of judicial members, which has the power to regulate its procedure, which may choose not to hear oral evidence, and which is not bound by the provisions of procedural codes but is required only to follow principles of natural justice. To them, it makes no difference whether a tribunal is a standing or an ad hoc body in this respect. In those countries, even students of law appear to treat the Tribunal as something less than a court.

The preparatory work of the Third United Nations Conference on the Law of the Sea does not reveal any proposal at the Conference which would have called the proposed tribunal a court. No reasons are apparent for not naming the Tribunal a court. There was, of course, considerable opposition at the Conference to the establishment of any standing tribunal on the lines of the present Tribunal. It is, perhaps, possible that some Conference participants were keen to ensure that, in the context of the new law of the sea, the proposed tribunal should not be called a court, in case that might lessen the standing of the International Court of Justice (“ICJ”) as the only court so named.

Whatever the reason, from the standpoint of public perception the Tribunal is put at a disadvantage. There is the additional disadvantage that the name of the Tribunal is rather too long; it is indeed a mouthful and thus not user-friendly. The name should have been as short as that of the ICJ or the International Criminal Court. That said, there is no confusion in the Convention with regard to the true legal character of the Tribunal. The misconception, if any, is superimposed on the Tribunal by the legal community which is familiar with the municipal law distinction between courts and tribunals.

B. A World Court on the Law of the Sea

In Part XV, section 2, of the Convention dealing with compulsory procedures entailing binding decisions, four means are specified for the

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