A. In the discussion about the multiplication of international courts and tribunals and its alleged consequence for the fragmentation of international law, much attention is drawn to divergent assessments of international law rules in the judgments of different international courts and tribunals.¹ The Tadić saga, involving different views with respect to international responsibility for acts committed by armed groups held by the International Court of Justice and by the International Tribunal for crimes committed in the former Yugoslavia, is the main example usually referred to.² Much less attention is drawn to the admittedly less spectacular circumstance of the existence of judgments of different international courts and tribunals relying on each other and contributing together, through a process of cross-fertilization, to the development of international law. Still, this phenomenon is more frequent than that of conflicts between different international courts and tribunals, and is relevant for the unity of international law. The evolution of the law concerning the binding effect of provisional measures, involving the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Human Rights and arbitral and human rights bodies is a prominent example.³

¹ In the vast literature see T. Treves, Fragmentation of International Law: The Judicial Perspective, in: Comunicazioni e Studi, at 821–875 (2007); more recent contributions include M. J. Aznar Gomez, En torno a la unidad sistémica del derecho internacional, 49 Revista espanola de derecho internacional, 563–594 (2007); B. Simma, Universality of International Law from the Perspective of the Practicioner, 20 European Journal of International Law, 265–297 (2009).


The judgment of 28 September 2010 of the Grand Chamber of the European Court of Human Rights in the Mangouras case is, in my view, a new valuable addition to the examples of cross-fertilization between international courts and tribunals. It seems significant to draw attention to it in an essay in honour of Rüdiger Wolfrum, as it involves, together with the European Court of Human Rights, the International Tribunal for the Law of the Sea, to which Rüdiger has dedicated an immense amount of intellectual, policy and organizational activity as Judge and as President. The Mangouras judgment is also an interesting manifestation of a recently emerging set of legal questions, deriving from the overlap of specialized legal fields: in this case, the law of the sea and the law of human rights, incidentally another area in which Rüdiger Wolfrum has left his mark.

B. Mr. Mangouras was the captain of the ill-fated Prestige, the Bahamian flag vessel which broke down on 13 November 2002 in Spain’s exclusive economic zone causing a leak of fuel oil which produced an ecological disaster (to use the European Court’s expression) on the coasts of Cantabria and Galicia spreading as far as the French coast. He was immediately arrested by the Spanish authorities and imprisoned pending trial for various criminal charges. The investigating judge set bail of three million euros, and later confirmed it. Mr. Mangouras spent 83 days in custody. He was then released after payment of the bail by the shipowner’s insurer. Later he was permitted to leave for Greece, his home country, on condition that the Greek authorities ensured periodic supervision.

Mr. Mangouras brought his case to the European Court of Human Rights alleging that the setting of the three million euros bail constituted a violation of Article 5 paragraph 3 of the European Convention of Human Rights. This article, as interpreted by the European Court of Human Rights, guarantees the release of detainees if reasonable bail is posted. Both the Chamber and the Grand Chamber judgments rejected Mr. Mangouras’ argument that the bail was excessive and not proportionate to his financial circumstances.

Both the Chamber and the Grand Chamber stated that the setting of bail at three million Euros was not in contravention of Article 5

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