Current Legal Developments

International Tribunal for the Law of the Sea

The Tomimaru and Hoshinmaru Cases before ITLOS

On 6 August 2007, the International Tribunal for the Law of the Sea ("the Tribunal") handed down judgments in two new cases involving Russia and Japan: the Tomimaru case¹ and the Hoshinmaru case.² Both cases are based on the Tribunal's compulsory jurisdiction to allow prompt release of a ship and its crew under the United Nations Convention on the Law of the Sea 1982 ("the Convention"). This case note will examine the decisions in these cases, including the Tribunal's reasoning and the implications for the development of the law of the sea.

Coastal States have certain sovereign rights to exploit natural resources within their Exclusive Economic Zones ("EEZs") under the Convention. Article 73 allows coastal States to take measures to ensure compliance with their laws within the EEZ. However, Article 73(2) limits these rights by requiring arrested vessels and their crews to be promptly released upon the posting of reasonable bond or other financial security. Article 292 permits States to apply to the Tribunal for prompt release of a vessel and crew as follows:

Prompt Release of Vessels and Crews

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 agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

In both cases, Japan alleged that Russia had breached its obligations under Article 73(2) to release the vessels promptly and sought prompt release on reasonable terms. Japan’s applications were based on Article 292, although Russia disputed their admissibility and that Article 73(2) had been breached. Each case will now be examined in turn.

**The Tomimaru Case**

The *Tomimaru* was a Japanese flagged vessel owned by a Japanese company. The vessel was issued with a fishing licence with a quota to catch certain specific fish species within Russia’s Bering Sea EEZ. Russian authorities inspected the vessel on 31 October 2006 whilst it was in the EEZ and arrested it. In the subsequent investigation, the authorities discovered a quantity of fish not recorded in the vessel’s logbook, including species which the vessel was not licensed to catch, and a catch exceeding its licence quota. The Russian District Prosecutor instituted criminal action against the Master for illegally exploiting natural resources and causing environmental damage. He was detained pending trial, although the crew were released. The local Coast Guard Directorate also took administrative action against the vessel’s owner for violating the fishing licence conditions, which permitted the imposition of a fine and vessel confiscation. On 30 November, the vessel’s owner contacted the Russian authorities to guarantee payment of any fines and to request