

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



YEAR 2000

20 December 2000

List of cases:
No. 7

**CASE CONCERNING THE CONSERVATION AND
SUSTAINABLE EXPLOITATION OF SWORDFISH STOCKS
IN THE SOUTH-EASTERN PACIFIC OCEAN**

(CHILE/EUROPEAN COMMUNITY)

Constitution of chamber

ORDER

Present: President CHANDRASEKHARA RAO; *Vice-President* NELSON; *Judges* CAMINOS, MAROTTA RANGEL, YANKOV, YAMAMOTO, KOLODKIN, PARK, BAMELA ENGO, MENSAH, AKL, ANDERSON, VUKAS, WOLFRUM, LAING, TREVES, MARSIT, EIRIKSSON, NDIAYE, JESUS; *Registrar* CHITTY.

THE TRIBUNAL,

composed as above,

after deliberation,

Having regard to articles 15, paragraphs 2 and 4, 17 and 27 of the Statute of the Tribunal (hereinafter "the Statute"),

Having regard to articles 19, 22, 30, 31, 45, 48 and 59 of the Rules of the Tribunal (hereinafter "the Rules"),

Makes the following Order:

1. Whereas Chile and the European Community are parties to the United Nations Convention on the Law of the Sea (hereinafter "the Convention");
2. Whereas the Ambassador of Chile to the Federal Republic of Germany addressed to the Registrar of the Tribunal a letter dated 18 December 2000 which reads as follows:

...

Upon the instruction of the Government of the Republic of Chile, I am writing to inform you that, further to the recent exchange of views between representatives of Chile and the European Community, including through the good offices of the President of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal"), the Government of Chile proposes that the dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean be not proceeded with in accordance with the arbitral procedure instituted by Chile under article 287, paragraph 3, of the United Nations Convention on the Law of the Sea (hereinafter "the Convention") and that the said dispute be submitted to a special chamber of the Tribunal to be formed in accordance with article 15, paragraph 2, of the Statute of the Tribunal, on the following terms:

1. The special chamber shall be composed of five members, of whom one will be a judge *ad hoc* chosen by Chile in accordance with article 17 of the Statute of the Tribunal.
2. The parties shall make a request to the Tribunal to determine the composition of such a chamber with their approval.
3. The special chamber is requested to decide, on the basis of the Convention, the following issues to the extent that they are subject to compulsory procedures entailing binding decisions under Part XV of the Convention:

On behalf of Chile:

- (a) whether the European Community has complied with its obligations under the Convention, especially articles 116 to 119 thereof, to ensure conservation of swordfish, in the fishing activities undertaken by vessels flying the flag of any of its member States in the high seas adjacent to Chile's exclusive economic zone;
- (b) whether the European Community has complied with its obligations under the Convention, in particular article 64 thereof, to co-operate directly with Chile as a coastal State for the conservation of swordfish in the high seas adjacent to Chile's exclusive economic zone as also to report its catches and other information relevant to

this fishery to the competent international organization and to the coastal State;

- (c) in relation to the foregoing, whether the European Community has challenged the sovereign right and duty of Chile, as a coastal State, to prescribe measures within its national jurisdiction for the conservation of swordfish and to ensure their implementation in its ports, in a non-discriminatory manner, as well as the measures themselves, and whether such challenge would be compatible with the Convention;
- (d) whether the obligations arising under articles 300 and 297, paragraph 1 (b), of the Convention, as also the general thrust of the Convention in that regard, have been fulfilled in this case by the European Community.

On behalf of the European Community:

- (e) whether the Chilean Decree 598 which purports to apply Chile's unilateral conservation measures relating to swordfish on the high seas is in breach of, *inter alia*, articles 87, 89 and 116 to 119 of the Convention;
- (f) whether the "Galapagos Agreement" signed in Santiago de Chile on 14 August 2000 was negotiated into in keeping with the provisions of the Convention and whether its substantive provisions are in consonance with, *inter alia*, articles 64 and 116 to 119 of the Convention;
- (g) whether Chile's actions concerning the conservation of swordfish are in conformity with article 300 of the Convention and whether Chile and the European Community remain under a duty to negotiate an agreement on cooperation under article 64 of the Convention;
- (h) whether the jurisdiction of the special chamber extends to the issue referred to in paragraph 3 (c) above.

4. The proceedings of the special chamber shall be governed by the provisions contained in Part III, sections A, B and C, of the Rules of the Tribunal. In particular, any preliminary objection shall be dealt with by the special chamber in accordance with the provisions of article 97, paragraphs 1 to 6, of the Rules of the Tribunal.

5. The proceedings shall be deemed to have been instituted within the meaning of article 97, paragraph 1, of the Rules of the Tribunal on the date on which the parties have notified the Tribunal of their request to submit to a special chamber of the International Tribunal for the Law of the Sea the dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean.

- 6. (a) If no preliminary objection is made in writing within 90 days from the institution of proceedings, or if the special chamber rejects the preliminary

objection or objections, if any, made, or in case of other issues not affected by the judgment of the special chamber on the preliminary objection or objections, the parties request the special chamber to authorize that the written proceedings shall consist of:

- a Memorial presented by each of the parties within 6 months from the date of the judgment on the preliminary objection;
- a Counter-Memorial presented by each of the parties within 3 months after the date on which each party has received the certified copy of the Memorial of the other party.

(b) The special chamber may authorize the presentation of reply and rejoinder only when it finds them to be necessary.

7. The present letter together with the letter of response thereto of the European Community shall be notified to the Registrar of the Tribunal in accordance with article 24, paragraph 1, of the Statute of the Tribunal.

8. The present letter together with the letter of response of the European Community shall not amount, on the part of the European Community, to a declaration for the purposes of article 287, paragraph 1, of the Convention.

9. The approval of the European Community to the submission of the dispute to a special chamber of the Tribunal on these terms will be indicated by the written response of the European Community to this letter. Upon confirmation of the approval of the European Community by its letter of response, the provisions contained in the present letter shall become effective on the date of the letter of response.

For the Republic of Chile

(Signed)

ANTONIO SKARMETA
Ambassador of Chile to the
Federal Republic of Germany

3. Whereas the Director General of the Legal Service of the European Commission addressed to the Registrar of the Tribunal a letter dated 19 December 2000 which reads as follows:

...

I am in receipt of the letter dated 18 December 2000 of the Ambassador of Chile to the Federal Republic of Germany in relation to the submission of a dispute between the Republic of Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean, which is annexed herewith.

On behalf of the European Community, I have the honour to confirm that the provisions contained in the aforesaid letter of Chile are acceptable to the European Community.

Yours sincerely

(Signed)

Jean-Louis Dewost

4. Whereas, pursuant to article 24, paragraph 1, of the Statute, the Registrar was notified of the exchange of the letters between Chile and the European Community set out in paragraphs 2 and 3, by a letter dated 19 December 2000 from the Government of Chile and by a letter dated 19 December 2000 from the European Community;
5. Whereas, in their respective notifications, the Government of Chile and the European Community stated that Ambassador Jorge Berguño had been appointed Agent of Chile for the purposes of the case and that Mr. Allan Rosas, Principal Legal Adviser, had been appointed Agent of the European Community for the purposes of the case;
6. Whereas the Tribunal thus has before it a request by the two Parties that the dispute be heard and determined by a special chamber formed to deal with it;
7. Whereas, by separate letters dated 19 December 2000, the Parties conveyed their views regarding the composition of the Special Chamber of the Tribunal;
8. Whereas, by the letters referred to in paragraph 7, the Government of Chile notified the Tribunal of its choice of Mr. Orrego Vicuña to sit as judge *ad hoc* in the Chamber, and the European Community confirmed the choice of judge *ad hoc* made by Chile; and no objection to such choice appears to the Tribunal itself;

THE TRIBUNAL,

Unanimously,

1. *Decides* to accede to the request of Chile and the European Community to form a special chamber of five judges to deal with the present case;
2. *Determines*, with the approval of the Parties, the composition of the Special Chamber to deal with this case as follows:

President	P. Chandrasekhara Rao,
Judges	Caminos, Yankov, Wolfrum,
Judge <i>ad hoc</i>	Orrego Vicuña;

3. *Declares* that the Special Chamber as composed above is duly constituted;
4. *Decides* that the proceedings before the Special Chamber shall be governed by the provisions contained in Part III, sections A, B and C, of the Rules and that, in particular, any preliminary objection shall be dealt with by the Special Chamber in accordance with article 97, paragraphs 1 to 6, of the Rules;
5. *Decides* that the quorum required for meetings of the Special Chamber is three members of the Special Chamber;
6. *Decides* that, if no preliminary objection is made in writing within 90 days from the institution of proceedings, or if the Special Chamber rejects the preliminary objection or objections, if any, made, or in case of other issues not affected by the judgment of the Special Chamber on the preliminary objection or objections, the written proceedings shall consist of:
 - a Memorial presented by each of the Parties within six months from the date of the judgment on the preliminary objection or, if no preliminary objection is made within the time-limit specified above, within six months after the expiry of the period of 90 days from the institution of proceedings;
 - a Counter-Memorial presented by each of the Parties within three months after the date on which a certified copy of the last of the two Memorials sent by one Party has been received by the other Party;
7. *Decides* that the Special Chamber may authorize the presentation of Reply and Rejoinder if it finds them to be necessary;
8. *Reserves* the subsequent procedure for further decision by the Special Chamber.

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this twentieth day of December, two thousand, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Chile and to the European Community, respectively.

(Signed)

P. CHANDRASEKHARA RAO,
President.

(Signed)

Gritakumar E. CHITTY,
Registrar.