Hamburg and the International Tribunal for the Law of the Sea

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1. It is well known that need was felt, in the course of centuries, to establish precise and definitive rules concerning the sea and its use related either on navigation or on the explotation of mineral and biological resources. In view of this purpose, tentative effort was made in 1930 by the League of Nations, and after the second war, by the United Nations, in 1958 and 1960. However, all these attempts have failed. Finally, a new conference, which lasted for nine years, from 1973 to 1982, succeeded in concluding at Montego Bay, Jamaica, on 10 December 1982, the United Nations Convention on the Law of the Sea, (UNCLOS) which remains up to now one of the most complex all-encompassing treaty in the history.
2. In the course of the last conference, general purpose was to establish rules on the settlement of disputes concerning for instance the navigation of warships, the protection and preservation of the marine environment, piracy, submarine cables, boundary delimitation. It is true that maritime disputes have traditionally been settled by negotiation and other political means, or by arbitration and judicial process. In this regard, it is well known the contribution made either by the International Court of Justice or its predecessor at the Hague. In any way, decision was taken in the course of the third United Nations Conference on the Law of the Sea to set up an additional tribunal, although not necessarily with exclusive jurisdiction.

3 Under the Montego Bay Convention (Part XV, section 1), parties to a dispute may agree to settle a dispute by any peaceful means of their choice. Where the “voluntary” procedures (section 1) fail to a resolution of the dispute, section 2 prescribes compulsory dispute settlement procedures that entail binding decisions. In this respect, parties may choose by means of a written declaration one or more of the following forum (Convention, article 287):

* the International Tribunal for the Law of the Sea;
* the International Court of Justice;
* an arbitral tribunal (establish under Annex VII to the Convention); and
* a special arbitral for certain categories of disputes established under Annex VIII to the Convention.

It has became established practice to make specific reference to Part XV dispute settlement in law of the sea-related international agreements, as for instance the Convention on the Protection of the Underwater Cultural Heritage (UNESCO, 2 November 2001).

1. .Approved and constituted the new tribunal questions arose on its location. States then presented candidatures. In 1986, Germany offered to provide premises for the Tribunal at the expense of the Federal Government, including a substantial contribution from the city of Hamburg. The German proposal was approved.

According to article 1, paragraph 2, of its Statute, “the seat of the Tribunal is in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany”, although “the Tribunal may sit and exercise its functions elsewhere whenever it considers this desirable,” alternative indeed very difficult to occur. As a matter of fact, the Tribunal is now located in a magnificent site of 32,000 square kilometer, at a site on the Elbechaussee in Nienstedten, overlooking the river Elba. In this site, the Scröeder’sche Villa, a protected historical building, has been integrated.

4. As aware, the Free and Hanseatic City of Hamburg has close relation with maritime interests and rules, not only because of its location but also because of historic, cultural and economic factors. State of the Federal Republic of Germany, it is composed mainly of the Free and Hanseatic City of Hamburg, on the Elbe near its entrance into the North Sea. The largest seaport and the second largest city of Germany, Hamburg has great shipyards, machinery plants, food processing factories, and chemical industries. Qualified as “the gateway to the world of knowledge”, it is also a free port with an important fishing fleet. It has numerous technical and medical institutes, a university founded just after the first world war. As professor at the University of Sao Paulo, I usually stay at the Gästehaus der Universität, located downtown, at Rottenbaumchaussée, near to the Alster. Hamburg is also known by its active cultural and musical life. Incidentally, Brahms and Mendelsohn were born there.

Hamburg originated in the Carolingian castle of Hammaburg. Since the Middle Age, it has been governed by a senate. It became (834) an archiepiscopal see and the missionary center for northen Europe. It quickly grew to commercial importance and in 1241 formed an alliance with Lübeck which later became the basis of the Hanseatic League. Other cities joined this association, and a strong league grew up. Ports and in land towns from Holand to Poland entered the league, but the north German cities remained the principal members. Hamburg accepted the Reformation in 1529. With the arrival of English cloth merchants (expelled from Antwerp), Dutch Protestant, and Portuguese Jews, it continued to prosper. In 1815 it joined the German Confederation as a separate state. It retained its statehood after joining the German Empire (1817) and the Weimar Republic (1919). In the Second World the city was heavily damage by air raids.

1. An architectural competition was held in 1989 to select the design of a suitable building to house the Tribunal. The first prize was awarded to the firm of Baron Alexander and Baroness Emannuela von Branca. Pending construction of the headquarters, temporary premises were made available downtown to the Tribunal, which was convened for the first time at its seat on 1 October 1996. Its ceremonial inauguration tooks place a few days later at the City Hall of Hamburg on 18 October, the same day when the foundation stone of the permanent headquarter was laid by the UN Secretary-General on the time, M. Boutros-Gahli.

Thus began the life of the new international institution, whose Rules were elaborated and adopted by the Tribunal itself on 28 October 1997.

Meanwhile, the construction of headquarters followed without interruption. The keys to the newly-constructed building were handed over to Kofi Annan, UN Secretary General on the time, on 3 July 2000.

1. Incidentally, the City Hall (Rathaus) and the plaza in front of it are the heart of the city and should serve as a point of departure and orientation for stroll through town. With its huge size and magnificent 19 th century furnishings, the City Hall is considered a symbol of the city’s self-assurance. Behind an impressive late 19 th northern Renaissance style façade reside both Hamburg’s Senate and the Parliament. The major’s offices are also there.
2. There is a close relation between the Tribunal and the United Nations. As we have mentioned, the Tribunal originates from a decision taken by Third United Nations Conference on the Law of the Sea, decision made now in a special treaty. A mechanism for cooperation between the two entities is established by the Agreement on Cooperation and Relationship signed by the President of the Tribunal 18 December 1997 in New York, entered into force on 8 September 1998. Otherwise, an agreement between the Secretary-General of the United Nations and the President of the Tribunal, dated 26 May 2000 and June 2001, respectively, was concluded to extend the competence of the United Nations Administrative Tribunal to the staff of the Tribunal.

At this point, we shall recall the observer status granted by the General Assembly of the United Nations to the Tribunal (resolution A/RES/51?204 of 12 December 1996). As we know, this status enables the Tribunal to participate in the meetings and the work of the General Assembly when matters of relevance to the Tribunal are being considered.

1. Under its Statute (Part VI of the Convention), the Tribunal is composed of 21 independent members, in representation of “the principal legal systems of the world” and in accordance with “equitable geographical distribution” (article 2). The judges are elected for nine years and may be re-elected (article 5). A quorum of eleven elected members is required to constitute the Tribunal.

The Tribunal is open to States Parties to the Convention and, eventually, to other entities (article 20). All questions are decided by a majority of the members”, and “in the event of an equality of votes”, the President of the Tribunal has a casting vote (article 29). The President is elected by the judges “for three years and may be re-elected” (article 12).

“The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it” in accordance with the Montego Bay Convention, and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal” (Statute, article 21).

The Statute contains rules on special chambers, composed of three or more judges, “as it considers necessary for dealing with particular categories of disputes” (article 15). However, a special chamber is compulsory: the Seabed Disputes Chamber, which has jurisdiction “with respect to activities in the Area” and has its own President. “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction” (Convention, article 1, 1, (1)). “The Area and its resources are the common heritage of mankind” (Convention, article 136). “No State shall claim or exercise sovereignty or soverain rights over any part of the Area or its resources, nor shall any State or natural or judicial person appropriate any part thereof” (article 137).

In relation with the Area, an organization was also established, the Authority, which is, according to the Convention (article 157), “the organization through which States Parties shall, in accordance with Part XI organize and control activities in the Area, particularly with a view to administering.

In the Tribunal German law no longer applies, and English and French are the official languages.

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