

HIS LORDSHIP CHIEF JUSTICE SIR ALBERT PALMER
OPENING REMARKS
ON THE OCCASION OF THE JUDICIAL SYMPOSIUM ON
“RESPONSIBILITY IN FISHEIRES”, 5 – 8 AUGUST 2019, HONIARA,
SOLOMON ISLANDS

[Pleasantries]

The Hon. Chief Justice of Kiribati, the Hon. Sir John Muria;
The Hon. Chief Justice of Vanuatu, the Hon. Justice Vincent Lunabek;
Deputy CJ of Solomon Islands;
The Director-General of the Pacific Islands Forum Fisheries Agency (FFA), Dr
Manumatavai Tupou-Roosen
Your Honours, Lordships, Judges,
Magistrates,
Distinguished and Learned Facilitators;
Ladies and Gentlemen,

Good morning and a warm welcome.

On behalf of the National Judiciary of Solomon Islands it is my pleasure and privilege to warmly you to Honiara. For those who are here for the first time a special welcome to you. For those who have been here before, welcome back to Solomon Islands. I trust you have all travelled safely and settled in to your hotels and places of residence for this week.

I wish to take this opportunity to thank Dr. Tupou-Roosen and her team for making this symposium available for all of us to enable us to acquire necessary knowledge and skills in relation to an important aspect of international fisheries law, that on the responsibility of persons and states.

We have also been privileged to have available to assist us throughout this conference, learned and experienced men and women who will be able to share with us and lead us in discussions on this new and important area to upgrade our knowledge, understanding and skills. I thank them for making their time available to come and attend this symposium.

Of-course I acknowledge your attendance out of your busy schedules and work to be able to come as well, thank you.

Context

“Responsibility” in the fisheries context requires a reflection on the rules of international law, in particular the Law of the Sea and the rights and duties of States within that framework. These include: rights and duties within maritime spaces, rights and duties associated with various activities such as shipping, exploration and exploitation of non-living resources, marine scientific research, the laying of submarine cables and pipelines, the construction of artificial islands, platforms and structures on the seabed, and the exploitation of living resources, also generally referred to as “fishing”.

The Law of the Sea is a broad area of international law and many would agree that its core components are codified in the United Nations Convention on the Law of the Sea adopted on 10 December 1982 (hereinafter “Law of the Sea Convention”). Indeed, at its last session, the President of the Third United Nations Conference on the Law of the Sea, Ambassador Tommy Koh of Singapore, remarked that the Law of the Sea Convention is regarded as a “Constitution for the Ocean”.

Solomon Islands participated in the Third United Nations Conference on the Law of the Sea, signed the Law of the Sea Convention on the date of adoption and ratified on 23 June 1997. Like many other coastal States, Solomon Islands enacted laws to give effect to certain aspects of the Law of the Sea Convention after adoption, and even prior to that.¹

An example is the legislation enacted in 1978 to claim maritime zones of the Solomon Islands. That was an important milestone in that it was perhaps one of the first acts of the Solomon Islands exercising its prescriptive jurisdiction within this area of international law. It was important, not least from a strategic perspective, for coastal States to claim new rights and responsibilities that were settled during the early sessions of the Third UN Conference expeditiously with

¹ See for example: *Delimitation of Marine Waters Act* Cap. 95, Act no. 32 of 1978.

the view to strengthening State practice. The maritime zones legislation delineated the maritime zones and worked in tandem with fisheries legislation².

In 1984 fisheries and maritime zones legislation were applied when the State exercised its enforcement jurisdiction over the illegal fishing of a United States purse seiner: the “Jeanette Diana”. The “Jeanette Diana” was found fishing without a licence in the exclusive economic zone of the Solomon Islands and was apprehended. Legal proceedings were instituted and the exercise of adjudicative jurisdiction commenced. The Court convicted the vessel owner and master: the vessel owner, Cosimo Cutri, was fined \$30,000 and the master Joe Finete was fined \$7,000. In addition, the vessel, its catch (30 tonnes of tuna) and gear were forfeited to the Government.³

The “Jeanette Diana” case is one of the first illegal fishing cases for the Solomon Islands and certainly attracted international attention particularly from the flag State. The case is also significant because it led to the negotiation and adoption of a treaty between the United States and the Pacific Island countries providing access by US vessels to the waters of the Pacific Island Parties. As well, that treaty ensured that the United States recognise national laws and the jurisdiction of the Pacific Island Parties, especially the recognition of the sovereign rights of the Pacific Island countries over their exclusive economic zones and sovereignty over territorial seas, archipelagic waters and internal waters.

Moreover, the Jeanette Diana case demonstrates the role of the Court in attributing responsibility in this important sector.

Responsibility of States under international law

² Fisheries Act 1972.

³ See Fisheries Act 1972, s.16.

While relatively new, the subject of State responsibility has been considered by prominent international lawyers for some time. The role of the International Law Commission (ILC) in preparing articles on the responsibility of States for internationally wrongful acts is noteworthy. In 2001 the ILC completed its work on State responsibility, begun forty years earlier. The resultant *Articles on Responsibility of States for Internationally Wrongful Acts*⁴ codify and promote the development of international law.

Responsibility flows from an internationally wrongful act and international law governs the characterisation of when an act of a State is “internationally wrongful”. Without going into any detail, the ILC Articles on State Responsibility state two elements of an internationally wrongful act of a State: attribution, and breach of an international obligation.⁵

These elements and the following questions ought to be considered in more detail during this symposium:

- In what circumstances can an act of a State be considered “internationally wrongful” in the fisheries context?
- Can the breach of an international conservation and management measure be considered a breach of an international obligation?
- In what circumstances can responsibility be attributed to more than one State for the breach of an international obligation?

⁴ Available at: http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf

⁵ ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, art 2. In identifying the two elements, the ILC relied on decisions of international courts and tribunals particularly the judgment of the Permanent Court of International Justice in the Phosphates in Morocco Case, 1938, *PCIJ Series A/B*, No 74, 10. See also James Crawford, *The International Law Commission's Articles on State Responsibility Introduction, Text and Commentaries* (Cambridge University Press, 2002).

Responsibility of International Organisations

On the question of the responsibility of international organisations, the International Law Commission has also prepared draft articles.⁶ The draft ILC articles on the responsibility of international organisations mimic the Articles on State Responsibility. Although these articles have not received significant attention, they are nonetheless of value when considering the responsibility of international organisations that have international legal personality and associated rights and responsibilities on the international plane.

Regional fisheries management organisations, or RFMOs, are in fact international organisations and they derive their being from the Law of the Sea Convention. Each RFMO has the requisite international legal personality, and certain rights and duties under international law. Given their management competence, RFMOs have broader responsibilities than fisheries advisory bodies such as the FFA.

This symposium needs to elaborate on the responsibilities of international organisations like RFMOs and fisheries advisory bodies. Pertinent questions include:

- In what circumstances can an international organisation, such as an RFMO, commit an internationally wrongful act?
- If an international organisation is held responsible, what are the responsibilities of its member States?

⁶ ILC Draft Articles on the Responsibility of International Organizations, Sixty-third session, Geneva 26 April – 3 June and 4 July-12 August 2011, UNGA A/CN.4/L.778.

- Can an international organisation bring an international claim against a State (or a group of States) for damages sustained?
- Can an international organisation bring an international claim against another international organisation for an internationally wrongful act such as the violation of rights under international law or discriminatory treatment?
- Can a State bring an international claim against an international organisation for an internationally wrongful act such as the violation of rights under international law or discriminatory treatment?

Responsibility of Persons

The responsibility of persons under international law is an emerging area. A person would normally only have rights and responsibilities under international law if they have international legal personality.

While the Law of the Sea Convention is focussed on States and their rights and responsibilities, there is little mention of the rights and duties of persons. There are however specific obligations of States to protect human life as in article 98 (Duty to render assistance) and article 146 (Protection of human life). Article 137 paragraph 3 of the Law of the Sea Convention appears to be the only provision expressly attributing a right to persons.⁷

⁷ "Article 137"

Legal status of the Area and its resources

Indeed, the International Tribunal for the Law of the Sea, whose jurisdiction concerns primarily the interpretation and application of the Law of the Sea Convention, has in its jurisprudence referred to “considerations of humanity” or “humans rights” as they are more generally known.

Consider the following questions:

- Has the practice of States elaborated upon the responsibility of persons?
- Has the practice of international organisations elaborated upon the responsibility of persons?
- In what circumstances can a natural or juridical person be held responsible for an internationally wrongful act?

These are among the questions that need to be explored under the third theme of this symposium.

Final remarks

This symposium appears to be the first judicial meeting of its kind that discusses responsibility in the context of fisheries. The subject matter is noteworthy both for the region and internationally, and it is incumbent upon us to evaluate, question and discuss its application in depth.

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1. No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources, nor shall any State or natural or juridical person appropriate any part thereof. No such claim or exercise of sovereignty or sovereign rights nor such appropriation shall be recognized.
 2. All rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be alienated in accordance with this Part and the rules, regulations and procedures of the Authority.
 3. No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals recovered from the Area except in accordance with this Part. Otherwise, no such claim, acquisition or exercise of such rights shall be recognized.”

