

Statement of Judge Rüdiger Wolfrum, President of the International Tribunal for the Law of the Sea, on the occasion of the tenth anniversary of the Tribunal

Madam President,
Mr Michel, Legal Counsel of the United Nations,
Mr Nandan, Secretary General of the International Seabed Authority,
State Secretary Hennerkes,
Judges,
Excellencies,
Ladies and Gentlemen,

It is an honour to stand before you all today and to address you on behalf of the International Tribunal for the Law of the Sea.

We have heard from each of the earlier speakers about various aspects of the Tribunal's work and activities over the last ten years and I would like to thank them for their words of congratulation. I am particularly grateful to you, Madam President, for addressing the role of the Tribunal and its relation to the International Court of Justice. I, too, am looking forward to intensified cooperation.

Permit me to use this occasion to put the first decade of the Tribunal's contribution to the peaceful settlement of law of the sea related disputes into an historical context:

As laid down in Part XV of the United Nations Convention on the Law of the Sea, parties to a dispute concerning the interpretation or application of the Convention have recourse to a multi-faceted scheme for the settlement of their disputes, including a diplomatic and a legal process.

History has shown that recourse to diplomatic means has played a predominant role in the peaceful settlement of disputes and that conciliation, negotiation or mediation can – and often does – play a valuable role in settling a potential dispute. Recourse to diplomatic means for the settlement of disputes continues to be extremely important despite the establishment of a number of international courts and tribunals. It should not be forgotten that some cultures prefer negotiations to third party dispute settlement. It is for that reason that international courts or tribunals sometimes have to satisfy themselves that these means have been exhausted. I should note in this context, that the Secretary-General of the United Nations in particular plays a crucial role in bringing the parties of a conflict together. When working towards the common objective of ensuring that international peace is preserved, the means by which a dispute is resolved is less relevant than the fact that it has been resolved.

If, however, a diplomatic compromise seems unlikely, States may seek a legal settlement to the dispute and prefer that a binding decision be rendered on the basis of the application of legal principles.

Recourse to permanent international judicial bodies such as this Tribunal, the International Court of Justice, the World Trade Organization's Appellate Body, or to regional bodies such as the Inter-American Court of Human Rights or the European Court of Justice can trace its roots back to classical times. Examples of disputes being submitted to third parties for judicial settlement may be found in India, the Islamic world, China, and Ancient Greece.

The Middle Ages witnessed a development in international adjudication whereby disputes were often submitted to the Pope or Holy Roman Emperor for settlement but a growing trend for resolving disputes through the use of force may be traced back to the fifteenth century. It was not until the eighteenth century that the concept of judicial settlement by way of an arbitral body was firmly established and it is generally recognized that the Jay Treaty of 1794 marked the beginnings of modern-day arbitration. Almost a century later, the Alabama Claims arbitration in 1872 gave rise to a development in dispute resolution, following which States became more inclined to include a dispute settlement clause in multilateral or bilateral agreements.

The desire of the international community to shift the emphasis away from armed conflict and to establish a permanent institution to facilitate dispute settlement led to the convening of the Hague Peace Conferences and the 1899 Hague Convention on the Pacific Settlement of International Disputes – which established the first standing international court, the Permanent Court of Arbitration, in 1900.

In the wake of the First and Second World Wars, international relations took on a new importance and the impetus for the peaceful settlement of disputes developed, together with a recognised need for the establishment of judicial institutions to pursue this goal: the Permanent Court of International Justice was established in 1922 and the International Court of Justice in 1946.

The twentieth century bore witness to the value of settling international disputes through an international court, whether by means of its contentious jurisdiction or its advisory competence, and recourse to these means in modern diplomatic practice has become widely accepted.

As the Secretary-General of the United Nations, Mr Kofi Annan, remarked on the occasion of the 60th anniversary of the International Court of Justice, the rules of international law “play an increasing role in our global society. They regulate relations between States. They provide frameworks for cooperation and coexistence. They encourage multilateral action to address multifaceted problems.” He went on to state that the expansion of international law is one of the signal achievements of the post-war era.

The last decade has seen the creation of a new generation of judicial bodies, each pursuing the fundamental goal of furthering the rule of law and providing States and other entities with a peaceful mechanism for the resolution of disputes. I am happy

to say that the Tribunal has established itself as a key player within this group. The establishment of several specialized international courts reflects the growing complexity of international law, to which you also referred, Madam President. However, I would like to emphasize that the law of the sea is part and parcel of international law; the rules of the United Nations Convention on the Law of the Sea, as well as those of other, more specific international treaties concerning the use or the management of the sea, are to be seen in the broader context of international law. Any other view would deprive the law of the sea of its dogmatic basis. It would also be historically incorrect. Law of the sea issues stand at the beginning of the development of modern international law as established by Hugo Grotius.

This fact is of relevance for the relationship between the International Court of Justice and the international Tribunal for the Law of the Sea, too. You mentioned, Madam President, the fact that in its decisions the Tribunal has frequently referred to jurisprudence, of the International Court of Justice thus emphasizing the principle of consistency of international jurisprudence. Such consistency reflects the need to preserve the unity of international law. May I add one further point. When drafting its rules, the Tribunal took a close look at the rules of the International Court of Justice and its respective jurisprudence. Where we deviated, we did so to meet the particular requirements of this Tribunal, or when we were sure there were compelling reasons for the differences. In respect of the composition of ad hoc chambers and provisional measures, certain particularities are to be found in the Tribunal. Otherwise the rules again reflect, broadly speaking, consistency as far as the rules on the procedure for the settlement of disputes are concerned.

Created by the United Nations Convention on the Law of the Sea as one of the central fora for the peaceful settlement of disputes relating to the law of the sea, the application and interpretation of the Convention and of any other agreement relating to the purposes of the Convention which confers jurisdiction upon it, in its first ten years the Tribunal has been successful in helping States of both developed and developing nations to reach a peaceful solution with respect to cases involving, inter alia, the freedom of navigation, prompt release of vessels and their crews, protection and preservation of the marine environment, the commissioning of a nuclear facility and the movement of radioactive materials, land reclamation activities, fisheries, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between the vessel and its flag State. We are optimistic that other cases, for example concerning delimitation of maritime areas, environmental matters, marine scientific research, or – in particular – the management of the resources of the deep sea bed, will reach the Tribunal in due course and we are prepared to deal with such cases.

The Tribunal has been welcomed by the parties to cases as user-friendly and the decisions rendered have often been praised by the international community as offering pragmatic solutions to parties to disputes while avoiding a doctrinal approach. The decisions have not only enabled parties to resolve their disputes but have also contributed to the development of international law in general, in particular with regard to environmental law.

The Tribunal has proved that its procedure is expeditious, transparent and efficient, in particular through the delivery of decisions in prompt release and provisional measures cases within thirty days, or even within fifteen months in the Saiga 2 case on the merits.

While the establishment of dispute settlement bodies such as the Tribunal has not been able to replace armed conflict, it has proved to be an effective means for the resolution of numerous disputes and a means to the progressive development of international law.

There is, however, still a need for the jurisdiction of international courts in general and of the Tribunal in particular to find acceptance, in order for States to have increasingly recourse to judicial settlement in the event of a dispute arising. You have stated, Madam President, that consistency in jurisprudence is one of the essential means of gaining the confidence of potential parties. In addition, I may emphasize that consistency means consistency not only within its own jurisprudence but also with that of other international adjudicative bodies. In that respect, international courts and tribunals constitute a community formed on the basis of mutual respect and cooperation, and serve the same objective, namely solving disputes in the interests of the preservation of international peace.

By accepting the compulsory dispute settlement mechanism laid down in Part XV of the Convention, States parties are facing up to their responsibility to establish their rights and to protect their duties and responsibilities at an international level.

States can further demonstrate their commitment to the rule of international law and the peaceful settlement of law of the sea disputes either by making a declaration under article 287 of the Convention, or by including provisions in agreements made at a bilateral or multilateral level, concerning any activities relating to the purposes of the Convention.

Ten years after the inauguration of the Tribunal, the significance of the law of the sea is ever greater, with threats to the oceans ranging from the over-exploitation of marine resources, in particular, unregulated fishing, pollution of the marine environment, piracy and armed robbery at sea, to disputed maritime boundaries. Now that the Tribunal has established itself as an active and effective body in deciding law of the sea disputes it is an opportune moment for States to consider the choices open to them in the matter of dispute settlement mechanisms.

It is important to note that the Tribunal, as well as the Seabed Disputes Chamber, is not only competent to settle disputes but may also be called upon as an advisory body where, in accordance with the Rules of the Tribunal, a request for an advisory opinion may be transmitted to the Tribunal by whatever body is authorised pursuant to an international agreement related to the purposes of the Convention. On this basis, States could consider submitting a request for an advisory opinion to the

Tribunal, in particular considering that such opinions may be used as a valuable tool for the clarification of a legal situation, one that could prevent a disagreement from escalating into a dispute.

Before I conclude I would like to quote the words of the first President of the Tribunal, Judge Thomas Mensah, on the occasion of the inauguration of the Tribunal. Judge Mensah stated that “we shall do whatever lies in our power to ensure that this Tribunal will serve the whole of humanity in its search for peace with justice; that it will be one of the custodians of that great principle enshrined in the Charter of the United Nations and in the Convention on the Law of the Sea: the principle that international disputes shall be settled by peaceful means in accordance with the principles of justice and international law.” Judge Mensah declared on that occasion that “We cannot promise more but we promise no less”.

The Tribunal strives to uphold the rules of law as enshrined in the Convention so that it may enable States that have a difference of opinion with respect to its interpretation or application to reach a peaceful resolution of the dispute. We will do so in close cooperation with other international courts and tribunals, in particular the International Court of Justice. I am confident that you will agree with me that the Tribunal has fulfilled these duties in the last ten years and that it will continue to do so, respecting the trust conferred on it by States or other entities, endeavouring to promote the rule of law in matters relating to the oceans, and striving to assist in the settlement of disputes whenever it is called upon by States to do so.

Thank you.