

Speech by H.E. Judge Albert Hoffmann

President of the International Tribunal for the Law of the Sea

United Nations General Assembly

8 December 2022

Mr Secretary-General,

Mr President,

Excellencies,

Ladies and Gentlemen,

It is an honour to participate in this plenary meeting of the General Assembly, among such distinguished company, to commemorate the 40th anniversary of the adoption of the United Nations Convention on the Law of the Sea. There is no doubt that the Convention constitutes a significant accomplishment in international law.

The Convention brought an end to unilateral claims over the ocean and its resources and established a comprehensive legal framework for maritime activities of States. In particular, the inclusion of compulsory dispute-settlement procedures entailing binding decisions was a major achievement. States that were previously opposed to compulsory dispute settlement in other areas made an exception for the law of the sea. They recognized that the preservation of order in the oceans would be impossible without a mechanism to ensure compliance. In order to build consensus around the innovative concept of compulsory dispute settlement, States Parties to the Convention were therefore given a choice of mechanisms, including the International Tribunal for the Law of the Sea.

As for the Tribunal, its creation can be accounted for by reference to at least two underlying forces, namely the desire to create a new institution, decoupled from the power relations of the old-world order, and the need to create a body with specialized expertise in the law of the sea. The Convention thus established a new judicial body with a central role to play in the international settlement of maritime disputes.

So, we meet today to mark the creation of both a corpus of rules bringing order to the oceans and three new institutions: the Tribunal, the International Seabed Authority and the Commission on the Limits of the Continental Shelf. We celebrate the establishment of the rule of law for the oceans. We pay tribute to the spirit of appreciation of international law and cooperation between States that prevailed at the time and which led to the adoption of the Convention, even if such a spirit has proved more elusive in recent years. As we look with admiration to those who negotiated the complex set of interlocking rights and obligations that make up the Convention, it is also natural that we reflect on how the Convention has evolved over the past 40 years.

As President of the Tribunal, I pay particular attention to the development of the dispute-settlement mechanisms provided for under the Convention. How can the effectiveness of such mechanisms be judged? It can be somewhat difficult to quantify their impact. For example, the prospect of instituting proceedings before the Tribunal might be raised during negotiations between the parties and may ultimately lead to the diplomatic settlement of a particular dispute. Thus the Tribunal, or other judicial body, may have an impact even if a dispute is not submitted to it.

What is more easily quantifiable, however, is the record of the Tribunal's jurisprudence. Here, it is clear that the Tribunal has contributed to both the settlement of those disputes submitted to it and the development of the law of the sea, across the range of legal issues covered by the Convention. In cases involving vessel detention, the Tribunal has developed the concept of the "ship as a unit", clarified questions relating to the nationality of vessels and dealt with issues of reparation. In environmental disputes, the Tribunal has explained how the obligation to protect and preserve the marine environment applies to particular factual situations. In advisory proceedings, the Tribunal has addressed important aspects of the conservation and management of fisheries resources, including the prevention of IUU fishing, while the Tribunal's Seabed Disputes Chamber has elucidated issues concerning the obligations and liability of States Parties with respect to activities in the Area. The Tribunal has also contributed to the development of the law of maritime delimitation, consolidating existing jurisprudence or otherwise adopting an innovative approach, where necessary, in order to effectively settle delimitation disputes.

In several cases in which proceedings have been instituted in accordance with the default mechanism of arbitration as set out in Annex VII to the Convention, the parties have subsequently agreed to transfer the dispute to the Tribunal or to a special ad hoc chamber of the Tribunal. Such cases include three maritime delimitation disputes, most recently the maritime delimitation dispute between Mauritius and Maldives, which is currently pending deliberation before a special chamber of the Tribunal. Such transfers evince the continued confidence of States Parties in the Tribunal.

Finally, I wish to briefly look to the future. Much has changed since the Convention was finalized in 1982. Thanks to scientific and technical advances, our knowledge of the ocean, its resources and the deep seabed has vastly increased. Issues that were not on the agenda during the negotiation of the Convention, such as marine biodiversity in areas beyond national jurisdiction (BBNJ) or the impact of climate change on the oceans including sea-level rise, have become the pressing topics of our times.

I am convinced that the Convention remains relevant in dealing with such challenges and changing circumstances. First, the Convention provides a comprehensive definition of “pollution of the marine environment” and dedicates an entire chapter, namely Part XII, to principles and obligations concerning the protection and preservation of the marine environment, as well as duties with respect to certain sources of pollution. The Convention likewise contains provisions, sometimes referred to as “rules of reference”, which allow new rules and standards, as adopted by relevant international bodies, to be incorporated into the Convention. Thus, for example, any new rules on shipping emissions adopted by the International Maritime Organization, considered to be generally accepted, must be taken into account when determining States’ obligations under the Convention regarding pollution from vessels. Such references may also play a role in relation to agreements adopted within the context of climate change.

Second, we also see that negotiations are continuing on a new BBNJ agreement, which is intended to “ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction”, including “through effective implementation of the provisions of the Convention”. These negotiations

demonstrate the desire of the international community to provide answers to new challenges within the established framework of the Convention. As I stated at the outset of my remarks, the Convention's system for the compulsory settlement of disputes is, without doubt, one of its many outstanding achievements and, therefore, I wish to add my voice to those underlining the value of this system also in the context of a BBNJ agreement. Let me emphasize that the Tribunal stands ready to discharge any mandate, including through its advisory function, that States may wish to entrust to it in this regard.

Our generation has built on the work of those that negotiated the Convention. The Tribunal has, in the exercise of its mandate, contributed to the development of the law of the sea and to the peaceful settlement of disputes. In my encounters with young people, I am greatly encouraged to see their appreciation for the value of the institutions and procedures under the Convention, along with their creativity and their determination when facing new global challenges. I am optimistic that in the hands of the next generation, the Convention will continue to advance the rule of law for the oceans. Our duty to future generations nevertheless continues and should be guided by UNESCO's vision, encapsulated in its inspiring motto "The Ocean We Need for the Future We Want", so that we act with a view to ensuring the health of the ocean and its sustainable use for many more years to come.

Mr President,

Ladies and Gentlemen,

To conclude, I wish to acknowledge the achievement of the many people who brought about the adoption of the Convention and to underline the continuing importance of peaceful dispute-settlement, as enshrined therein. The International Tribunal for the Law of the Sea, inspired by the spirit of the Convention, remains at the service of States to assist in addressing current and future challenges facing the law of the sea!

I thank you for your kind attention.