

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

MR. L. DOLLIVER M. NELSON,

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 52 (a)

AT

THE PLENARY OF THE FIFTY-EIGHTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

24 NOVEMBER 2003

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Mr. President,

Excellencies, ladies and gentlemen,

1. It is an honour for me, on behalf of the International Tribunal for the Law of the Sea, to address this 58th session of the General Assembly in the annual review and consideration of the item: Oceans and the law of the sea. It is a particular pleasure for me to speak to a General Assembly that meets under the Presidency of Mr. Julian Robert Hunte, Minister for External Affairs, of St. Lucia. I extend to you, Mr. President, my personal congratulations, and those of the Tribunal, on your election as President of the General Assembly.

2. Mr. President, I would like to take this opportunity to report to the General Assembly on the developments which have taken place with respect to the Tribunal since the last General Assembly meeting.

3. First of all - it is with great regret that I inform you of the death, on 29 March 2003, of our esteemed colleague Judge Lennox Fitzroy Ballah of Trinidad and Tobago. Mr. Ballah had been a member of the Tribunal since April 2002. His term of office was due to expire on 30 September 2011. At a Special Meeting of States Parties to the United Nations Convention on the Law of the Sea convened on 2 September 2003, Mr. Anthony Amos Lucky (Trinidad and Tobago) was elected to fill the vacancy for the remainder of his predecessor's term in accordance with article 6 of the Statute of the Tribunal.

4. With respect to organizational matters, I may inform the General Assembly that during the current year the Tribunal held two sessions, the Fifteenth Session from 10 to 21 March 2003, and the Sixteenth Session from 8 to 19 September 2003. These sessions were devoted to administrative and legal matters.

5. Mr. President, last year I was unable to address the General Assembly as the Tribunal was engaged in hearing the “*Volga*” Case between the Russian Federation and Australia. The Russian Federation submitted this case to the Tribunal on 2 December 2002 by an Application under article 292 of the United Nations Convention on the Law of the Sea (prompt release of vessels and crews). The Tribunal delivered its judgment on 23 December 2002.

6. In this case, the Tribunal was for the first time faced with the issue of non-financial conditions attached by the detaining State to the security required for the release of the vessel. In this regard, the Tribunal held that the inclusion of additional non-financial conditions in such a security would defeat the object and purpose of article 73, paragraph 2, of the Convention.

7. On the problem of continuing illegal, unregulated and unreported fishing in the Southern Ocean the Tribunal had this to say:

“The Tribunal understands the international concerns about illegal, unregulated and unreported fishing and appreciates the objectives behind the measures taken by States, including the States Parties to CCAMLR, to deal with the problem.” [paragraph 68 of the Judgment]

8. This year, the Tribunal heard its twelfth case. The case was instituted by Malaysia against Singapore on 5 September 2003. It concerned Malaysia's request for provisional measures under article 290, paragraph 5, of the Convention, in its dispute with Singapore regarding land reclamation by Singapore in and around the Straits of Johor. The Tribunal delivered its Order on 8 October 2003.

9. The Tribunal once again stressed the central role and cardinal importance of cooperation between the parties in the protection and preservation of the marine environment and reiterated the statement made in *The MOX Plant Case* (Order of 3 December 2001, paragraph 82) that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law ...".

10. The Tribunal was of the view that "prudence and caution require that Malaysia and Singapore establish mechanisms for exchanging information and assessing the risks or effects of the land reclamation works" (paragraph 99) and, with a view to achieving this objective, the Tribunal did prescribe provisional measures pending a decision by the Annex VII arbitral tribunal.

11. Mr. President, I am pleased to note that the Order of the Tribunal in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor* was

adopted unanimously, and that the two *ad hoc* judges who participated in the proceedings also joined the unanimity.

12. Mr. President, the dispute between Malaysia and Singapore has been submitted to the arbitral tribunal provided for in Annex VII to the Convention. In accordance with the terms of that Annex, I was requested by the Government of Singapore, on 9 September 2003, to appoint three members of that arbitral tribunal and the President of that tribunal from among those three members. This is a special power conferred on the President by Annex VII. I am pleased to report that, after consultation with the parties, I appointed on 9 October 2003 the three members of the arbitral tribunal and the President of the arbitral tribunal from among those members.

13. A case is still pending on the docket, the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, which was submitted to a chamber of the Tribunal. The time-limit for making preliminary objections with respect to the case was extended at the request of the parties to enable them to reach a settlement.

14. Mr. President, the Tribunal, as already mentioned, has dealt with twelve cases so far. In its decisions, which have been delivered within remarkably short periods, the Tribunal has made significant pronouncements on several aspects of the Convention. I would like to convey our special gratitude to the sponsors of the draft resolution for noting the continued contribution of the Tribunal to the peaceful settlement of disputes in

accordance with Part XV of the Convention and for underlining the important role and authority of the Tribunal concerning the interpretation or application of the Convention and the Agreement relating to the Implementation of Part XI of the Convention.

15. I should like to mention that 32 States Parties have made written declarations relating to the settlement of disputes under article 287 of the Convention and that 19 States Parties have chosen the Tribunal as the means or one of the means for the settlement of disputes concerning the interpretation or application of the Convention. It is to be hoped that an increasing number of States will utilize the possibility offered by article 287 of the Convention of choosing means for the settlement of disputes concerning the interpretation or application of the Convention as stated in the draft resolution. Another alternative that States may use is to confer jurisdiction on the Tribunal through international agreements. Several such multilateral agreements have already been concluded.

16. Mr. President, the cases dealt with by the Tribunal to date have been largely confined to instances where the Tribunal has been granted special jurisdiction – the prompt release of vessels and crews and the prescription of provisional measures. It is fitting for me to bring to the attention of the Distinguished Delegates that the Tribunal has competence under the Convention, and remains ready, to resolve a much wider range of disputes concerning the interpretation or application of the Convention.

17. Mr. President, I wish to draw the attention of the Distinguished Delegates to General Assembly resolution 55/7 entitled "Oceans and the Law of the Sea" of 30 October 2000 whereby the General Assembly requested the Secretary-General to establish and administer a voluntary trust fund to assist States in the settlement of disputes through the Tribunal. Only one State has so far made contributions to the Fund. I hope that more contributions would be forthcoming to make this Fund meaningful.

18. As reported last year to the General Assembly, the Tribunal has taken steps to strengthen its relationships with other international organizations and bodies. During the current year, the Tribunal has concluded such arrangements with the Intergovernmental Oceanographic Commission of UNESCO, the Secretariat of the International Seabed Authority, the European Court of Human Rights, and the Inter-American Court of Human Rights.

19. The Agreement on the Privileges and Immunities of the Tribunal entered into force on 30 December 2001. There are, however, only thirteen States which have become parties to it. I should like to mention, in this regard, General Assembly resolution 57/141 of 12 December 2002, in which the Assembly called upon States that have not done so to consider ratifying or acceding to the Agreement. This has also been included in this year's draft resolution.

20. As of 1 November 2003, there was an unpaid balance of assessed contributions to the overall budget of the Tribunal in the amount of US\$ 1,704,736 for the 1996/97 to 2003

Budgets of the Tribunal. The Tribunal is aware of the difficulties this situation may raise with respect to its proper functioning. The Registrar will send notes verbales to the States Parties concerned in December 2003, reminding them of their outstanding contributions to the budgets of the Tribunal.

21. I should like to state that there has been full and cordial cooperation between the Tribunal and the host country, the Federal Republic of Germany. Negotiations on the Headquarters Agreement between the Tribunal and Germany started in 1996. However, the Headquarters Agreement has not yet been concluded. The relations with the host country are currently governed by the Convention on the Privileges and Immunities of the Specialized Agencies of 1947. It has to be noted that the Tribunal operates within the United Nations system and therefore has to be treated in a manner consistent with the practice with respect to the United Nations institutions.

22. Mr. President, since it is the first time that I am able to present this statement to the General Assembly, I take this opportunity of expressing my profound appreciation of the work of my predecessors, Judge Thomas Mensah and Judge Chandrasekhara Rao.

23. I wish also to place on record our deep appreciation to the Federal Republic of Germany and, in particular, to the Free and Hanseatic City of Hamburg for the excellent cooperation extended to us.

24. Mr. President, I conclude by expressing my gratitude to you and the Distinguished Delegates for the opportunity granted me to address this august assembly. I also wish to thank the Distinguished Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for their support. Mr. President and Distinguished Delegates, I now wish the General Assembly every success in its important deliberations at this session.