

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY
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PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
ON
THE REPORT OF THE TRIBUNAL
AT
THE EIGHTEENTH MEETING OF STATES PARTIES TO THE
CONVENTION ON THE LAW OF THE SEA
16 JUNE 2008

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Excellencies, Distinguished Delegates,

Mr President,

1. I am very honoured to address the Meeting of States Parties on behalf of the International Tribunal for the Law of the Sea. I offer you, Mr President, my warmest congratulations and those of the Tribunal on your election as President of this Meeting and wish you every success in the discharge of your functions. We are also grateful to Ambassador Rosemary Banks, your predecessor, for the excellent work she has done. My congratulations equally go to all members of the Presidency.

2. The Tribunal has prepared its Annual Report for the year 2007, which is before you for your consideration. With your permission, I should like to take this opportunity to highlight some of the issues covered by the report and to add some further observations.

3. Allow me to start with organizational matters. I am sure that you, distinguished delegates, will recall that, on 30 January 2008, at a Special Meeting of States Parties, Mr. Zhiguo Gao of China was elected as a new judge to the Tribunal. He succeeds Judge Guangjian Xu, who had resigned from his office on 15 August 2007. Judge Gao was sworn in as a member of the Tribunal at a public sitting held on 3 March 2008. He will serve for the remainder of his predecessor's term of nine years, which will expire on 30 September 2011.

4. The terms of office of seven other judges will end on 30 September 2008 and the election for the vacant seats has already been held.

5. In 2007, the Tribunal met in two sessions, the Twenty-third Session, from 5 to 16 March 2007 and the Twenty-fourth Session, from 17 to 28 September 2007. During these sessions the Tribunal dealt with a number of legal and judicial matters as well as organizational and administrative issues, such as the preparation of the budget proposals. I will elaborate on those matters in my statement on budgetary matters.

6. The Tribunal devoted a substantial part of its sessions to discussing legal and judicial questions of relevance to its work. It undertook a review of its Rules and judicial procedures and examined the competence of the Tribunal in maritime delimitation cases. Judges also considered reports prepared by the Registry and relating to legal issues concerning pipelines and genetic resources of the seabed. In addition, it considered issues related to proceedings for the prompt release of vessels and crews – such as the application for prompt release under article 292 of the Convention in cases concerning marine pollution, guidelines for the posting of a bond or other financial security with the Registrar, and the time frame for dealing with two or more prompt release proceedings submitted simultaneously.

7. In 2007, the Tribunal had to deal for the first time with the simultaneous submission of two applications for urgent proceedings under article 292 of the Convention. On 6 July 2007, Japan filed two cases against the Russian Federation, seeking the release of two fishing vessels, the *Hoshinmaru* and the *Tomimaru*. In both cases, the Russian authorities had arrested the vessels while fishing in the exclusive economic zone of the Russian Federation. As the Tribunal attaches

great importance to handling prompt release cases in a speedy manner, it delivered its judgments in both cases on 6 August 2007, only one month after receiving the applications from Japan. I am glad to state that both judgments were adopted unanimously.

8. There are certain similarities between the two cases. Both vessels held fishing licences granted by the Russian Federation, which authorized them to fish certain species in particular areas of the Russian exclusive economic zone. In both cases the Russian authorities alleged that the vessels had infringed national fisheries legislation by violating the conditions set down in the licence or by exceeding its limits. However, there was an important difference between the two cases related to the status of the vessels as a result of the national legal proceedings which had been instituted by the Russian authorities. In respect of the *“Tomimaru” Case*, this led the Tribunal to examine the issue of the effect of the confiscation of a vessel by a domestic forum and to clarify the limits of prompt release proceedings as well as their relationship with national court proceedings. For its part, the *“Hoshinmaru” Case* provided an opportunity to elaborate on the Tribunal’s already well-established jurisprudence relating to the reasonableness of bonds.

9. With regard to the *Hoshinmaru*, I should explain that the Russian authorities had demanded a bond of 25 million roubles, which was subsequently reduced to 22 million roubles, for the release of the vessel. As article 73, paragraph 2, of the Convention requires the bond or other security to be “reasonable”, a fundamental question addressed by the Tribunal concerned the reasonableness of the bond set by the Russian authorities.

10. In this regard, I should mention that the Tribunal has developed a coherent jurisprudence on the reasonableness of bonds, in particular, by identifying various relevant factors, which are: the gravity of the alleged offences; the penalties imposed or imposable under the laws of the detaining State; the value of the detained vessel and its cargo; as well as the amount and form of the bond imposed by the detaining State. In the *“Hoshinmaru” Case*, the Tribunal additionally observed that the amount of the bond should be “proportionate” to the gravity of the alleged offence.

11. Applying this test to the bond set by the Russian authorities led the Tribunal to the conclusion that the amount of 22 million roubles was too high. The charge against the Master of the *Hoshinmaru* was that he had inaccurately reported the fish species which the vessel had caught and, in particular, that one species had been wrongfully declared to be another, cheaper one. The Tribunal observed that this was not to be considered a minor offence. It stressed that the “[m]onitoring of catches, which requires accurate reporting, is one of the essential means of managing marine living resources” (paragraph 99 of the Judgment). Nevertheless, it held that it was not reasonable to calculate the bond on the basis of the maximum penalties which are applicable under domestic law or on the basis of the confiscation of the vessel, given the circumstances of the case. The Tribunal fixed the bond for the release of the *Hoshinmaru* at 10 million roubles. The Tribunal also decided that the Master and crew of the *Hoshinmaru* should be released unconditionally.

12. The *“Hoshinmaru” Case* is an example of the effectiveness of international dispute settlement and the difference it can make for States and individuals. After the Tribunal had given its judgment on 6 August 2007, the Russian authorities received the required bond on 16 August

2007 and released the vessel and its crew on the same day – only ten days after the Tribunal's judgment. This demonstrates that the importance of prompt release proceedings stems not only from the commercial interest of shipowners to recover their vessels quickly. A distinct and important humanitarian aspect is also attached to prompt release proceedings. Routinely, not only vessels but also their crews are held and the Tribunal's intervention may make all the difference.

13. The *Tomimaru* – unlike the *Hoshinmaru* – had been confiscated. It had been arrested in October 2006 and the Russian courts had then ordered the confiscation of the vessel. National legal proceedings had reached an advanced stage when Japan seized the Tribunal of the case, although a supervisory review was still pending before the Supreme Court of the Russian Federation. After the closure of the hearing, the Russian Federation informed the Tribunal that the complaint concerning the vessel had been dismissed. The Tribunal had to consider if it was prevented from entertaining the case under these circumstances – bearing in mind article 292, paragraph 3, of the Convention, which states that the Tribunal shall deal with prompt release cases “without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew”.

14. This provision shows that an underlying objective of prompt release proceedings is to maintain a balance between the interests of the flag State and of the coastal State. On this basis, the Tribunal followed, in its judgment, a balanced approach to the question as to whether it can still exercise jurisdiction after a vessel has been confiscated.

15. On the one hand, the Tribunal maintained that a decision to confiscate taken in unjustified haste would jeopardize the operation of article 292 of the Convention and be inconsistent with international standards of due process of law. The right of the shipowner and of the flag State to have recourse to available domestic judicial remedies must be safeguarded, as should their right to resort to the prompt release procedure. No allegation to this effect had been made during the “*Tomimaru*” proceedings, however.

16. On the other hand, the Tribunal stated that confiscation eliminates the provisional character of the detention of the vessel and thus renders the procedure for its prompt release without object. This does not prevent the Tribunal from considering an application for prompt release while proceedings are still pending before the domestic courts of the detaining State. As soon as domestic proceedings come to an end, however, the situation changes: a decision of the Tribunal contradicting the national courts would then affect national competencies in a way which contravenes article 292, paragraph 3, of the Convention. It is therefore important for flag States and shipowners to act promptly in such situations. They need to take speedy action either to exhaust the possibilities provided under the national judicial system of the detaining State or to initiate the prompt release procedure before the Tribunal.

17. In the case of the *Tomimaru*, action came too late. The Tribunal therefore came to the conclusion that the application for prompt release was without object and considered it unnecessary to pronounce expressly upon the submissions of the parties.

18. With respect to the judicial work of the Tribunal, I should further like to mention the dispute between Chile and the European Community concerning the conservation and sustainable

exploitation of swordfish stocks. The case is still pending on the docket since proceedings were initiated in the year 2000. The parties have requested several times that the time-limit for making preliminary objections be extended as they have reached a provisional arrangement concerning the dispute. The Special Chamber of the Tribunal which was formed to deal with the case met on 29 and 30 November 2007 to consider a further request of the parties to grant such postponement. The Special Chamber – after receiving information from the parties in support of their request – adopted an order which again extended the time-limit for making preliminary objections, until 1 January 2009, maintaining the rights of the parties to revive the proceedings at any time.

19. These cases show that the Tribunal can make an important contribution to the settlement of international disputes in various ways and even without coming to a final and binding judgment on the merits of cases. The institution of proceedings may in itself facilitate solving a dispute by negotiations between the parties, as has already been demonstrated in the practice of the Tribunal.

20. I would like to recall that States Parties may also benefit from the Tribunal's involvement in ways other than through contentious proceedings. As an alternative, they may request the Tribunal to give advisory opinions, which can be of great benefit in the solution of international disputes. Advisory opinions of this nature are not binding on the parties and are therefore no substitute for contentious proceedings leading to a final and binding settlement of a dispute. States seeking a non-binding opinion on a legal question or an indication as to how a particular dispute may be solved through direct negotiations should consider this option, however. They could take advantage of the Tribunal's broad competence in disputes and questions relating to the law of the sea, its efficient procedures and the wide and diverse expertise of its judges.

21. These advisory opinions could be of particular assistance in a broad range of disputes and I wish to mention maritime delimitation cases as a prime example. These cases are often characterized by their political sensitivity and their legal and technical complexity. States may be reluctant to submit to a final and binding decision by a third party but may also face difficulties in solving the dispute by bilateral negotiations without any third-party involvement. Here the Tribunal's advisory function may guide parties to a mutually satisfactory result.

22. According to article 21 of the Statute, the Tribunal has jurisdiction with respect to "all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". Such agreement may vest competence to issue an advisory opinion in the Tribunal. Any form of international agreement qualifies, be it bilateral or multilateral. The agreement may provide for requesting an advisory opinion concerning a specific legal point or a question of a general nature. The corresponding procedural norm in the Rules of the Tribunal is article 138, which specifies that a request for an advisory opinion is to be transmitted to the Tribunal "by whatever body" is authorized pursuant to the respective international agreement. The notion of "body" leaves the parties room to choose their preferred option. On this basis, States can consider requesting an advisory opinion from the Tribunal, directly or through an international "body", for example the Meeting of States Parties to the Convention, in relation to a legal question concerning any provision of the Convention.

23. In addition, the Seabed Disputes Chamber may give advisory opinions at the request of the Assembly or the Council of the International Seabed Authority on legal questions arising within the scope of their activities.

24. Mr President, within little more than a decade, the Tribunal has established a reputation for the expeditious and efficient management of cases and has dealt with 15 cases, thirteen of which were instituted on the basis of the Tribunal's compulsory jurisdiction. In its resolution 62/215 adopted on 22 December 2007 the General Assembly noted with satisfaction the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means in accordance with Part XV of the Convention and underlined the Tribunal's important role and authority concerning the interpretation or application of the Convention and the Agreement relating to the implementation of Part XI of the Convention. I am also pleased to note that the General Assembly expressly welcomed the establishment by the Tribunal of the Chamber for Maritime Delimitation Disputes, thereby showing its appreciation of the Tribunal's constant striving to prepare for future challenges.

25. Moreover, the General Assembly has once again encouraged States Parties to make declarations under article 287 of the Convention with regard to their choice of procedure for the settlement of disputes. So far, of 155 States Parties only 39 States have exercised their right, and of those 39 only 23 have chosen the Tribunal as their preferred means, or one of the means, for the settlement of their maritime disputes. The Tribunal welcomes the most recent declaration in this respect, which was filed by Trinidad and Tobago on 17 October 2007.

26. I may recall in this regard that States Parties do not have to bear any court costs when having recourse to the Tribunal. Parties may, however, have to cover a considerable amount of their own costs, for instance, for the preparation of written pleadings, the professional fees of counsel and advocates or travel expenses. It would not be in the interest of justice if States were prevented from instituting proceedings before the Tribunal by those costs. Thus, a trust fund has been established to assist States Parties in the settlement of disputes through the Tribunal. Any State Party may apply for financial assistance from the fund which is administered by the United Nations (Division for Ocean Affairs and the Law of the Sea). Voluntary contributions to the fund serve to widen access to justice, in particular, by developing countries. I wish to thank the Government of Finland, which last year made a contribution to the fund, bringing the current balance to US\$ 104,412.

27. Mr President, I wish to report that the Tribunal is also actively involved in promoting knowledge about the Convention and its dispute-settlement procedures.

28. The Tribunal – in cooperation with the International Foundation for the Law of the Sea – continues to organize a series of law of the sea workshops in different regions of the world with the generous support of the Korea International Cooperation Agency (KOICA). In 2006 and 2007 workshops were run in Dakar, Libreville, Kingston and Singapore. The year 2008 has already taken us to Bahrain and Buenos Aires. These workshops are intended to provide government experts working in the maritime field with insight into the Convention's dispute settlement system. Special attention is given to the jurisdiction of the Tribunal and participants receive information on the procedures for bringing cases to it. The workshops benefit from the participation of judges

who come from the relevant regions. On behalf of the Tribunal I would like to express our gratitude to the governments of the States that hosted the workshops for their invaluable support. I also wish to convey our appreciation for the generous funding which we have received and continue to receive from KOICA.

29. Furthermore, I am glad to report that the Tribunal, with the support of the Nippon Foundation, has established a capacity-building and training programme on dispute settlement under the Convention. Five young government officials and researchers from Bangladesh, Cameroon, Mauritania, Nigeria and Peru have taken part in this programme, which lasted from July 2007 to March 2008. Participants attended lectures on issues related to the law of the sea and maritime law. They also received training on negotiation and maritime delimitation. In addition, participants visited institutions working in the fields of law of the sea, maritime law and settlement of disputes. At the same time they carried out individual research on selected topics. I would like to express our appreciation to the Nippon Foundation for its generous funding. I should also mention that the Foundation has granted further funding to enable the programme to continue in 2008-2009 so that new fellows will start in July 2008.

30. Another step towards enhancing knowledge of maritime affairs is the Summer Academy organized by the International Foundation for the Law of the Sea for the first time in 2007. The Academy was held from 29 July to 26 August 2007 at the seat of the Tribunal and focused on the "Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives". It brought 33 participants from 28 different countries to Hamburg. They attended lectures given by experts in law of the sea and maritime law, including judges from the Tribunal, practitioners, representatives of international organizations and scientists. The Summer Academy's programme covers issues relating to both law of the sea and maritime law. It therefore offers participants a comprehensive and – to a certain extent – unique overview. Students from developing countries benefited from grants offered by KOICA and the Nippon Foundation, enabling them to participate in the programme. I am glad that the Summer Academy will continue. It will be held this year from 3 to 31 August.

31. The Summer Academy also complements the Tribunal's internship programme which was established in 1997. From that time to the end of 2007, 179 interns from 63 States gained first-hand experience of the way in which the Tribunal functions. In 2007, 19 people from different countries participated in the programme. I wish to inform the distinguished delegates that 15 of these interns benefited from the grant provided by KOICA, to whom, once more, I should like to convey our appreciation for its valued contribution.

32. As regards the Agreement on the Privileges and Immunities of the Tribunal, I have the pleasure to report to you that in 2007 another six States became parties to the Agreement: Belgium, Chile, Germany, Greece, Poland and the Russian Federation. This brings the total to 35. I should like to refer, in this regard, to General Assembly resolution 62/215, in which the Assembly recommends to States that have not yet done so that they consider ratifying or acceding to the Agreement.

33. Mr. President, I also wish to place on record my great appreciation for the excellent cooperation extended to the Tribunal by the German authorities on the basis of the Headquarters Agreement, which entered into force on 1 May 2007.

34. The Tribunal continues to develop its relations with other international organizations and bodies. An administrative arrangement on cooperation was concluded with the Food and Agriculture Organization of the United Nations last year.

35. I am glad to report that on 3 May 2008 the 'Award for meritorious contribution towards the development, interpretation and implementation of international maritime law' was bestowed upon the Tribunal by the International Maritime Organization and the International Maritime Law Institute. The Secretary-General of the International Maritime Organization, H.E. Mr. Efthimios E. Mitropoulos, presented the award to the Tribunal. I wish to express once more our sincere gratitude for the award. It further demonstrates that the international community values the contribution of the Tribunal's judgments to international law.

36. With regard to staff appointments, I am pleased to observe that the General Assembly in its resolution 62/215 welcomed the actions taken by the Tribunal in observance of its staff rules and regulations and, in particular, its endeavour to recruit the staff on as wide a geographical basis as possible. I am pleased to note that the Tribunal is currently fully staffed. If we consider the posts at the highest level (P4 and above), the Registry is composed of staff members from Belgium, Burkina Faso, Chile, Japan, Kenya, Poland, Republic of Korea, Tunisia and United Kingdom. A list of staff is provided in the Tribunal's annual report.

37. Regarding the budget of the Tribunal, I wish to inform the Meeting that as of 10 June 2008, there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996/1997 to 2005-2006 in the amount of €547,520; the outstanding amount in relation to the 2007-2008 budget is €3,460,354. I should add that the Registrar has sent notes verbales to all States Parties concerned, reminding them of the amount of their arrears in the payment of their contributions to the Tribunal's budgets for the financial years 1996/1997 to 2007. May I therefore refer here to the appeal made by the General Assembly in resolution 62/215 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

38. Mr. President, distinguished delegates, I was elected President of the Tribunal on 1 October 2005 for a three-year term. This term will expire later this year. I am honoured that this office was conferred upon me and that I have had the opportunity to present the Tribunal's reports to this distinguished Meeting. I would like to conclude by expressing my particular appreciation to the Legal Counsel, to the Director of the Division for Ocean Affairs and the Law of the Sea and to his staff for their continued support of the Tribunal's work.

39. With these remarks, I place the Annual Report of the Tribunal for the year 2007 before you for your consideration.