

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY
MR. RÜDIGER WOLFRUM
PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
ON
THE REPORT OF THE TRIBUNAL
AT
THE SEVENTEENTH MEETING OF STATES PARTIES TO THE
CONVENTION ON THE LAW OF THE SEA
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Madam President,
Excellencies, Distinguished Delegates,

1. It is a great honour for me, on behalf of the International Tribunal for the Law of the Sea, to address the Meeting of States Parties. Madam President, I warmly congratulate you on your election as President of this Meeting and wish you every success in the discharge of your functions. I also wish to express our gratitude to Ambassador Raymond Wolfe, your predecessor, for the work he has done and the invaluable support he has given the Tribunal.
2. I would like to welcome all States which have ratified the Convention since the last Meeting of States Parties, namely, Belarus, Lesotho, Moldova, Montenegro, Morocco and Niue, bringing the total number of parties to 155, which we take as an indication that we are moving towards universal participation in the Convention.
3. At the end of February 2007, Mr. Vladimir Golitsyn retired from the United Nations as Director for the Division for Ocean Affairs and the Law of the Sea. I would like to commend Mr. Golitsyn for his dedicated services to the United Nations, in particular for his continued cooperation with the Tribunal, and to take this opportunity to congratulate Mr. Václav Mikulka on his appointment as Mr. Golitsyn's successor.
4. The Annual Report, which you have before you, gives an account of the various activities of the Tribunal for the period 1 January to 31 December 2006 and its financial position in 2006. The Annual Report is self-explanatory but it appears useful to present to you the main aspects of the work of the Tribunal in 2006 and to report on recent developments. I will then make some general remarks on the jurisdiction of the Tribunal.
5. On 19 September 2006, the Tribunal re-elected Mr. Philippe Gautier Registrar of the Tribunal and on 6 March 2007, Mr. Doo-young Kim was re-elected Deputy Registrar. They will both serve for a term of five years.
6. The Tribunal held two sessions in 2006: the Twenty-first Session from 6 to 17 March and the Twenty-second Session from 18 to 29 September. These sessions were devoted to matters relating to the judicial work of the Tribunal as well as other organizational and administrative matters. The different committees of the Tribunal discussed various budgetary and administrative matters including issues such as budget proposals, budget performance, status of contributions, conditions of service and compensation for Members, the audit report, staff regulations and rules, recruitment of staff, the extension of the Library, and buildings and electronic systems. Moreover, a substantive part of the Tribunal's sessions was allocated to the examination of legal and judicial matters including a review of the Rules and judicial procedures of the Tribunal. This was undertaken both by the plenary of the Tribunal and the Committee on Rules and Judicial Practice and covered items such as the competence of the Tribunal in maritime delimitation cases, bonds and other financial security, matters relating to article 292 of the Convention, and the *Guide to proceedings before the Tribunal*. As announced last year, the *Guide* is now available in the six official languages of the United Nations. I should like to take this opportunity to thank the Government of China for its assistance in preparing the Chinese version.

7. A question of great significance which was examined by the Tribunal concerned its general competence in maritime delimitation cases. In this regard, it is to be noted that article 288 of the Convention confers jurisdiction on the Tribunal, as well as on the International Court of Justice or on an arbitral tribunal, to deal with any dispute concerning the interpretation or application of the Convention. In this context, it is also noted that maritime delimitation disputes are disputes concerning the interpretation or application of the Convention (e.g., articles 15, 74 and 83) and therefore that such disputes are subject to compulsory binding settlement under Part XV, section 2, of the Convention if and to the extent that section 1 does not provide otherwise.

8. It is further to be observed that the competence of the Tribunal and other courts or tribunals referred to in article 287 of the Convention is excluded only when a State has made a declaration in accordance with article 298, paragraph 1(a), of the Convention. If a State has made such a declaration, the sea-boundary dispute would be subject to compulsory conciliation if the conditions for conciliation provided for in article 298, paragraph 1(a) are met. I would like to point out that the parties to a dispute on issues of maritime delimitation may at any time agree to submit the dispute to the Tribunal through the notification of a special agreement. May I emphasize that the Tribunal may give advisory opinions in maritime delimitation matters in accordance with the provisions of article 138 of the Rules.

9. According to article 138 of the Rules, the Tribunal may give an advisory opinion on a legal question "if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion". The question to be put to the Tribunal should be framed in legal terms and raise issues of international law. Regarding requests for advisory opinions in maritime delimitation matters, questions such as which international law principles or rules are relevant to a particular dispute might be posed. Advisory proceedings can therefore help to clarify the applicable law in a dispute and serve as a tool to further negotiations in the peaceful dispute-settlement process. Parties to an international agreement providing for the submission of requests for an advisory opinion could be States or international organizations but the opinion should be requested by the body which has been authorized to this effect, as provided for in article 138.

Madam President,

10. Last year, I informed the Meeting of States Parties that the Tribunal was considering the need for the establishment of a new chamber for dealing with maritime delimitation disputes. I would now like to report that at its Twenty-third Session, on 16 March 2007, the Tribunal adopted a resolution to form a standing special chamber, pursuant to article 15, paragraph 1, of the Statute. The chamber will be known as the Chamber for Maritime Delimitation Disputes and will be available to deal with disputes in this field which the parties agree to submit to it concerning the interpretation or application of any relevant provision of the Convention and of any other agreement which confers jurisdiction on the Tribunal. The Chamber is composed of eight members of the Tribunal whose term of office will end on 30 September 2008.

11. The Chamber for Maritime Delimitation Disputes is an alternative for States facing problems in this field. It is a specialized chamber whose members have been selected on account of their special knowledge, expertise and previous experience in maritime delimitation matters. Its composition is global as the members selected represent the different regions of the world and legal systems. Provision has also been made to safeguard the interests of particular States, since, if there is no judge of the nationality of a State concerned in the Chamber, any member of it should give place to a judge of the Tribunal having the nationality of the State concerned. Should this prove impossible, the State concerned is entitled to choose a judge *ad hoc*. On the other hand, the Chamber for Maritime Delimitation Disputes is a standing chamber that functions in accordance with the established procedure set out in the Rules of the Tribunal. It is therefore ready to act whenever seized of a maritime delimitation case. Its decisions are considered to be decisions of the Tribunal and are therefore final and binding. Like other proceedings before the Tribunal, States Parties to the Convention will incur no court costs or fees in proceedings before the Chamber.

12. A further important question currently under consideration by the Tribunal relates to the prompt release of vessels and crews under article 292 of the Convention in the event of marine pollution. Since its establishment, the Tribunal has been seized of applications for prompt release in seven cases. All these applications were submitted on the basis of article 73 of the Convention for alleged violation of fisheries laws in the exclusive economic zone. They were based, in particular, on paragraph 2 of article 73, which allows for the release of arrested vessels and their crews upon the posting of a reasonable bond or other security. As noted by the Tribunal in the "*Volga*" Case (*Russian Federation v. Australia*), in addition to article 73, paragraph 2, there are two other provisions of the Convention which concern the prompt release of vessels and crews upon the posting of a bond or other security, that is, article 220, paragraph 7, and article 226. These two articles relate to the submission of an application for prompt release in cases concerning pollution of the marine environment.

13. I should now like to comment on articles 220, paragraph 7, and 226, paragraph 1(b). According to article 220, paragraph 6, a coastal State may detain a vessel for certain pollution offences, namely, for a violation in its exclusive economic zone of internationally applicable anti-pollution standards if such violation results in a discharge causing major damage or threat of damage to its coastline. In these circumstances, paragraph 7 of article 220 compels the coastal State to allow the vessel to proceed upon the posting of a bond whenever bonding is required by appropriate procedures established by the International Maritime Organization or other agreed procedure. Requirements for bonding or other appropriate financial security have been established in various International Maritime Organization (IMO) conventions, such as the Convention on Limitation of Liability for Maritime Claims of 1976 and the International Convention on Civil Liability for Oil Pollution Damage of 1969 and the 1992 Protocol thereto. Thus, whenever it is alleged that the coastal State has not complied with paragraph 7 of article 220, the flag State of the vessel is entitled under article 292 of the Convention to request the release of the vessel before the Tribunal.

14. I would like to emphasize that applications for the prompt release of vessels and crews do not necessarily have to be submitted by the flag State as the

competent authorities of the flag State may, for instance, authorize the shipowner to submit an application “on behalf of the flag State”. Such authorization may be given for a particular case but also in general and in advance. Interested delegations will find a model form in the *Guide to proceedings before the Tribunal*, copies of which are available at this meeting.

15. A further provision relating to prompt release is article 226, paragraph 1(b), which is concerned with the following scenarios: (i) the arrest by coastal States of vessels in cases of pollution by dumping (article 216); (ii) the arrest by port States in respect of any discharges outside the internal waters, territorial sea or exclusive economic zone (article 218); and (iii) the arrest by coastal States in respect of any violation of its anti-pollution laws and regulations (article 220). In any of these situations, article 226, paragraph 1(b) provides that “release shall be made promptly subject to reasonable procedures such as bonding or other appropriate financial security”. Thus, this provision is one of those which, pursuant to article 292 of the Convention, provides for the release of the vessel “upon the posting of a reasonable bond or other financial security”. I should, however, add that, if the release of a vessel were to present an unreasonable threat of marine environmental damage, the coastal State could make its release conditional “upon [the vessel’s] proceeding to the nearest appropriate repair yard”. In this case, “the flag State of the vessel must be promptly notified”, “and may seek release of the vessel in accordance with Part XV” (article 226, paragraph 1(c)).

16. I should add that the scope of the prompt release procedure under article 292 is limited as it relates to the situations described in articles 73, 220, and 226. However, vessels can be arrested for violations of other provisions of the Convention. In these cases, even if proceedings under article 292 of the Convention cannot be instituted, States could still request the release of the ship and its crew as a provisional measure under article 290, paragraph 5.

17. Turning now to the judicial work of the Tribunal, I would note that a case is pending on the docket, namely, 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 special chamber of the Tribunal formed to deal with that particular dispute. On the basis of the information provided by the parties, the Special Chamber, by its Order dated 29 December 2005, extended the time-limit within which preliminary objections may be made to 1 January 2008 while maintaining the rights of the parties to revive the proceedings at any time.

Madam President,

18. Last year, the Tribunal celebrated its tenth anniversary. To mark this occasion, a ceremony was held on 29 September 2006 in the presence of the President of the International Court of Justice, the Legal Counsel of the United Nations and the Secretary-General of the International Seabed Authority. Representatives of the Federal Government of Germany and of the Senate of the Free and Hanseatic City of Hamburg as well as legal advisors and other representatives from more than 80 States were also present. The ceremony was followed by a symposium on “The jurisprudence of the Tribunal: Assessment and Prospects”, organized by the International Foundation for the Law of the Sea. A

mobile exhibition on the Tribunal had been prepared for that occasion, and is now on display outside this conference room. You are kindly invited to take a look at it.

19. The anniversary ceremony was a perfect opportunity to reflect on the Tribunal's contribution to the settlement of maritime disputes. As stated by the Legal Counsel of the United Nations on that occasion, the Tribunal has established a jurisprudence which has already contributed to the development of international law of the sea in a notable way and plays an important role in the pacific settlement of disputes relating to the application of the Convention. The anniversary was also an opportunity to reinforce our cordial relations with the International Court of Justice, whose President, Judge Rosalyn Higgins, declared (and I quote) that "within a decade, the Tribunal has pronounced interesting law, built a reputation for its efficient and speedy management of cases and shown innovative use of information technology" (end of quote). Judge Higgins also emphasized that the mutual respect prevailing between the two judicial institutions helped them in achieving their (and I quote) "common goal of a mutually reinforcing corpus of international law in the settlement of international legal disputes" (end of quote).

20. In this context, I am pleased to observe that the General Assembly, in its resolution 61/222 of 20 December 2006, noted with satisfaction the continued and significant contribution made by 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. In this regard, may I remind you that, of the current 155 States Parties, only 41 States have so far exercised their choice of filing declarations under article 287 of the Convention; and of these 41 States, 22 have chosen the Tribunal as their preferred means, or one of the means, for the settlement of their maritime disputes. It is therefore to be hoped that an increasing number of States will make declarations under article 287 of the Convention with regard to their choice of procedure, as has been recommended by the General Assembly on several occasions. States Parties should take greater advantage of the broad competence of the Tribunal and consider selecting it as their preferred forum for the settlement of disputes concerning the interpretation or application of the Convention.

21. In order to enhance the role of the Tribunal, there are other possibilities which States Parties may use to confer jurisdiction upon it. For instance, parties to a dispute may at any time decide to submit a particular dispute to the Tribunal by notification of a special agreement. Furthermore, as the General Assembly also recommended in its resolution 61/222, parties may also have recourse to the Tribunal with regard to international agreements related to the purposes of the Convention, if such agreements contain a clause conferring jurisdiction upon the Tribunal. Agreements of this kind are the Straddling Fish Stocks Agreement of 1995, the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas, 1993, of the Food and Agriculture Organization of the United Nations, the 1996 Protocol to the Convention on the prevention of marine pollution by dumping of wastes and other matter, 1972, the 2001 Convention on the Protection of the Underwater Cultural Heritage and various other regional fisheries agreements. A new Convention on the Removal of Wrecks was recently adopted at a diplomatic conference held by the International Maritime Organization. This convention contains a settlement of disputes clause that

refers to Part XV of the Law of the Sea Convention. The inclusion of jurisdictional clauses of this nature is a useful development and should become standard practice, as is already the case in the field of fisheries.

22. Returning to fisheries agreements, I would like to recall that disputes concerning high seas fisheries may be submitted to the Tribunal on the basis of the Straddling Fish Stocks Agreement as this agreement incorporates, for disputes concerning its interpretation or application, the mechanism set out in Part XV of the Convention. This mechanism applies to disputes between States parties to the Straddling Fish Stocks Agreement whether or not they are parties to the Law of the Sea Convention (article 30). In addition, the jurisdiction of the Tribunal may be founded on subregional, regional or global fisheries agreements relating to straddling or highly migratory fish stocks since the Straddling Fish Stocks Agreement makes the Part XV mechanism applicable to them. In addition, parties may have recourse to the Tribunal with respect to disputes relating to fisheries whenever these disputes concern the interpretation or application of the provisions of the Convention, subject to the limitations and exceptions contained therein. Furthermore, parties may, at any time, conclude a special agreement to submit a fisheries dispute to the Tribunal and parties have done so on one occasion, namely, the aforementioned case concerning swordfish stocks.

23. A further advantage of having recourse to the Tribunal is that no court costs are incurred for the States Parties. Each party has, however, to bear its own costs for items such as the preparation of pleadings, the professional fees of counsel and advocates or travel expenses. This is an aspect which may deter a State from filing a case before the Tribunal and therefore I wish to draw the attention of the distinguished delegates to the trust fund which was established to assist States Parties in the settlement of disputes through the Tribunal and is administered by the United Nations (Division for Ocean Affairs and the Law of the Sea). Any State Party to the Convention may submit an application for financial assistance or take up the offers, which may be on a reduced-fee basis, made by qualified lawyers, the list of which is to be maintained by the Division for Ocean Affairs and the Law of the Sea. In 2006, Finland made a contribution to the fund, which currently stands at \$87,570. I wish therefore to invite States to consider the possibility of making voluntary contributions to the fund. You may wish to note that intergovernmental organizations, national institutions, non-governmental organizations, as well as natural and juridical persons may also make contributions to the fund.

Madam President,

24. In order to raise awareness of the advantages which the Tribunal can offer in settling disputes relating to the law of the sea, the Tribunal has organized a series of workshops in different regions of the world, with the support of the Korea International Cooperation Agency (KOICA) and in cooperation with the International Foundation for the Law of the Sea. The purpose of the workshops is to provide government experts working in the maritime field with insight into the procedures for the settlement of disputes contained in Part XV of the Convention, with special attention given to the jurisdiction of the Tribunal and the procedures for bringing cases before it. So far, four regional workshops have taken place: (i) at the invitation of the Government of the Republic of Senegal, a first regional workshop devoted to the role of the Tribunal in the settlement of disputes relating to the law of the sea in

West Africa was held in Dakar from 31 October to 2 November 2006, and was attended by representatives of 13 African States; (ii) a joint workshop organized by the Tribunal and the Intergovernmental Oceanographic Commission of UNESCO took place in Libreville (Gabon) on 26 and 27 March 2007 with the participation of representatives of 17 African States; (iii) with the cooperation of the Government of Jamaica, a workshop took place in Kingston from 16 to 18 April 2007 and was attended by representatives of 19 Caribbean States; and finally (iv), at the invitation of the Government of Singapore, a workshop was held in Singapore from 29 to 31 May 2007 in which representatives of 17 Asian States participated. I would like to express, on behalf of the Tribunal, our profound gratitude to the Governments of Senegal, Gabon, Jamaica and Singapore for the invaluable support they provided in the organization of these workshops. I should also like to take this opportunity to convey our appreciation to the Korea International Cooperation Agency for its generous funding.

25. I am pleased to report that the International Foundation for the Law of the Sea will hold the first Summer Academy from 29 July to 26 August 2007 at the seat of the Tribunal. It is intended that the Summer Academy will become a centre of excellence for studies of both international law of the sea and maritime law and will be open to students, young governmental officials and professionals from all over the world with expertise in relevant fields. The topic of the 2007 Summer Academy is: "Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives". The lectures will be given by experts in law of the sea and maritime law, including judges of the Tribunal, professors, advocates and practitioners from the maritime industry. I am grateful to the International Foundation for the Law of the Sea for organizing this event and for its continued support for the activities of the Tribunal. The Academy indeed enhances the Tribunal's internship programme, in which 21 persons from 15 different countries participated in 2006. 14 of these interns benefited from the grant provided by the Korea International Cooperation Agency and once again I should like to express our gratitude to that Agency for its valued contribution.

26. I am also 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. The programme has been developed to offer five young government officials and researchers working in the field of the law of the sea or dispute settlement in-depth knowledge of the dispute-settlement mechanisms available to States under Part XV of the Convention. The programme will run from July 2007 to March 2008 and we expect to pursue this programme during the years to come. Lectures, case studies and training will enable participants to acquire a deeper understanding of the dispute-settlement mechanisms under the Convention. Study visits will be made to organizations dealing with law of the sea matters. Lectures will also be given on current issues of the law of the sea such as fisheries, environment, climate change and delimitation. I wish to place on record our appreciation to the Nippon Foundation for its funding, which has significantly facilitated the organization of this programme.

27. I have the pleasure to report that, since I last addressed the meeting, seven States have expressed their consent to be bound by the Agreement on the Privileges and Immunities of the Tribunal, that is: Argentina, Belgium, Finland, Germany, Italy, Slovenia and Uruguay; bringing the total to 30. I should like to refer, in this regard, to

General Assembly resolution 61/222, in which the Assembly recommends that States that have not yet done so consider ratifying or acceding to the Agreement.

28. I am also particularly pleased to report that the necessary notifications for the entry into force of the Headquarters Agreement were exchanged on 11 April 2007 and the Agreement thereby entered into force on 1 May 2007. Allow me to convey to the German Government our great appreciation for the excellent cooperation extended to us.

29. The Tribunal has taken further steps to develop its relations with other international organizations and bodies, for example, in March of this year, an administrative arrangement was concluded with the Food and Agriculture Organization of the United Nations.

30. Regarding staff appointments, we have followed the recommendation in General Assembly resolution 61/222 that vacancy announcements be disseminated more widely in order to recruit staff on as wide a geographical basis as possible. For the recent appointments, we sent the vacancy announcements to the embassies of States Parties in Berlin and to the permanent missions in New York, in addition to posting them on the Tribunal's website and in the press. Since the last Meeting of States Parties, recruitment has been completed for the posts of Head of Budget and Finance (P4), Librarian (P4) and French Translator (P3) level. The new incumbents of these posts are from Kenya, Poland and France, respectively.

31. In this connection, I would like to point out that, in accordance with the Staff Regulations and Staff Rules of the Tribunal, staff at the Tribunal are selected according to established procedures that follow *mutatis mutandis* the recruitment mechanism applied by the United Nations. The appointing authority is, however, the Tribunal, which exercises its authority in accordance with the principle embodied in article 35, paragraph 2, of the Tribunal's Rules that [I quote]:

The paramount consideration in the recruitment and employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.
[end of quote]

I should emphasize that equitable geographical distribution is assured in the composition of the Tribunal pursuant to the provisions in the Statute and the decisions of the Meeting of States Parties and that the Tribunal, as an international judicial body, must function independently on the basis of the provisions of its Statute.

32. Regarding the budget of the Tribunal, I wish to inform the Meeting that as of 31 May 2007 there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996/1997 to 2006 in the amount of €1,154,870; the outstanding amount in relation to the 2007-2008 budget (year 2007) is €2,521,921. I should add that the Registrar has addressed 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 periods 1996/1997 to 2007. May I therefore refer here to the appeal made by the General

Assembly in resolution 61/222 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

33. Madam President, 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.

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