

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 SIXTEENTH MEETING OF STATES PARTIES TO THE
CONVENTION ON THE LAW OF THE SEA
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Excellencies, Distinguished Delegates

Mr President,

1. It is a great honour for me to address the Meeting of States Parties for the first time in my capacity as President of the Tribunal. I offer to you, Ambassador Wolfe, my warm 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. I also wish to express our gratitude to Ambassador Andreas Mavroyiannis, your predecessor, for the excellent work he has done.
2. The Tribunal has transmitted its Annual Report for the period 1 January to 31 December 2005 to this Meeting. As is the practice, the Report gives an annual review of the various activities of the Tribunal and states its financial position. Since the Report is somewhat lengthy, I propose to present to you a summary thereof and to add a few observations.
3. As regards organizational matters, as I am sure the distinguished delegates are aware, on 22 June 2005 the fifteenth Meeting of States Parties elected seven judges of the Tribunal for a term of nine years. Judges Park and Nelson were re-elected and Mr Pawlak of Poland, Mr Yanai of Japan, Mr Türk of Austria, Mr Kateka of United Republic of Tanzania and Mr Hoffmann of South Africa were elected judges of the Tribunal. They will serve for a term of nine years.
4. My predecessor, Judge Dolliver M. Nelson, completed his three-year term as President of the Tribunal on 30 September 2005. On 1 October 2005, during the Twentieth Session of the Tribunal, I was elected President of the Tribunal for a three-year term. During this session, the Tribunal elected Judge Joseph Akl as Vice-President and Judge Hugo Caminos as President of the Seabed Disputes Chamber.
5. In 2005, the Tribunal held two sessions, the Nineteenth Session from 7 to 18 March 2005 and the Twentieth Session from 26 September to 7 October 2005. These sessions were devoted essentially to legal matters having a bearing on the judicial work of the Tribunal and to other organizational and administrative matters. During its Twentieth Session, the Tribunal reconstituted its Seabed Disputes

Chamber and its three special chambers established in accordance with article 15 of the Tribunal's Statute, i.e. (i) the Chamber of Summary Procedure; (ii) the Chamber for Fisheries Disputes; (iii) and the Chamber for Marine Environment Disputes. The special chambers are established to deal with particular categories of disputes, if the parties so request. I may add that, given the number of existing disputes regarding the delimitation of maritime areas and the Tribunal's competence in these matters, the Tribunal is currently considering the need for the establishment of a new chamber for maritime delimitation. This was discussed at the last session of the Tribunal and will be further examined in September 2006.

6. During its Twentieth Session, the Tribunal also reconstituted its five committees for the period ending 30 September 2006, these being (i) the Committee on Budget and Finance; (ii) the Committee on Rules and Judicial Practice; (iii) the Committee on Staff and Administration; (iv) the Committee on Library and Publications; and (v) the Committee on Buildings and Electronic Systems. During the same session, the Tribunal decided to establish a Committee on Public Relations which is responsible for preparing and proposing measures to promote the work of the Tribunal and for maintaining its relations with other international organizations and institutions.

7. During the past year, the Tribunal and the Committee on Rules and Judicial Practice dealt with legal and judicial matters including a review of the Rules and judicial procedures of the Tribunal. Some of the main issues which were considered concerned the implementation of the Rules in prompt release proceedings where a statement in response has not been submitted by a respondent pursuant to article 111 of the Rules, access to case-related documents, contributions towards the expenses of the Tribunal, rules regarding evidence, the preparation of a guide to proceedings before the Tribunal, bonds and other financial security in prompt release proceedings, the implementation of the Tribunal's decisions, and proceedings before the Seabed Disputes Chamber. The other Committees discussed matters such as budget proposals, budget performance, status of contributions, the audit report, the extension of the Library, Staff Regulations and Rules, recruitment of staff, the staff pension committee, and buildings and electronic systems. Details of these issues are given in the Annual Report.

8. With respect to the judicial work of the Tribunal, I should like to mention that the Special Chamber of the Tribunal formed to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks met on 28 and 29 December 2005 to consider the request of the parties for a further postponement of the time-limits in the proceedings before it. On the basis of the information provided by the parties in support of their request, the Special Chamber, by its Order of 29 December 2005, extended the time-limit for making preliminary objections until 1 January 2008 while maintaining the rights of the parties to revive the proceedings at any time. It may be noted that the Special Chamber stated in its Order that "it is in the interests of the proper administration of international justice that proceedings in the case be conducted without unnecessary delay" (paragraph 14) and considered that "it should facilitate so far as is compatible with the United Nations Convention on the Law of the Sea, the Statute and the Rules, direct and friendly settlement of the dispute between the Parties" (paragraph 15). It further observed that "the Parties have to provide adequate justification for seeking an extension of any time-limit" (paragraph 16). This case is still pending on the docket.

9. As you are aware, the case between Chile and the European Community is the first case submitted to an ad hoc chamber of the Tribunal. In this respect, I would like to underline the advantages of such ad hoc chambers, in particular when compared to an arbitral tribunal. First, the composition of such a chamber is determined by the Tribunal with the approval of the parties, which may choose any of the 21 judges of the Tribunal that are to sit in the chamber. The parties may also appoint judges ad hoc and such a chamber could for instance be composed of three judges of the Tribunal and two ad hoc judges. In addition, the parties have at their disposal the Rules of the Tribunal to which they may propose particular modifications or additions. Moreover, the parties do not have to bear the expenses of the proceedings before the Tribunal. An ad hoc special chamber therefore combines the advantages of a permanent court with those of an arbitral body but avoids the considerable expense that is often incurred in participating in arbitral proceedings.

10. I am pleased to note that, by signing an agreement on 26 April 2005, Malaysia and Singapore settled their dispute concerning land reclamation by Singapore in and around the Straits of Johor. It may be recalled that on 8 October 2003 the Tribunal prescribed provisional measures under article 290, paragraph 5, of the Convention, ordering, inter alia, the establishment of a group of independent experts with the mandate of assessing the potential harmful effects of the land reclamation activities. Following the issuance of this Order, an arbitral tribunal to which the dispute had been submitted was constituted in accordance with Annex VII to the Convention and the group of independent experts was established by the parties. It may be noted that the parties recorded in the settlement agreement that the recommendations of the group of experts had provided the basis for an amicable, full and final settlement of the dispute. On 1 September 2005, a final award was rendered in the case in accordance with the terms set out in the settlement agreement. In this regard, I would like to emphasize that the Tribunal played a key role in the settlement of this dispute. Permit me to quote from a statement made by the Minister for Foreign Affairs of Singapore, Mr George Yeo, on 16 May 2005 before the Parliament of Singapore that (and I quote from a press release issued by the Ministry of Foreign Affairs of Singapore)

“the involvement of an objective third party – ITLOS [this Tribunal], the Group of Experts and the Arbitral Tribunal – [...] made possible an impartial and objective assessment of the facts of the case and the merits of the competing arguments.”¹
(end of quote)

11. Mr President, the Tribunal held its first session on 1 October 1996 and is thus approaching its tenth anniversary. Within nearly a decade, the Tribunal has established a reputation for the expeditious and efficient management of cases, and has dealt with 13 cases, eleven of which were instituted on the basis of the Tribunal’s compulsory jurisdiction. In the prompt release cases, which have for the most part been connected to fisheries activities, the Tribunal has developed a

¹ See press release issued by the Ministry of Foreign Affairs of Singapore on 16 May 2005 containing “Remarks in Parliament by Singapore Foreign Minister George Yeo on the Settlement Agreement between Singapore and Malaysia on Land reclamation”, paragraphs 2 and 12, available at < <http://www.mfa.gov.sg> >.

coherent jurisprudence particularly in applying relevant factors for determining the reasonableness of bonds. The Tribunal has dealt with marine environmental issues in provisional measures proceedings which have enabled it to contribute towards the development of international environmental law. In respect of a case on the merits – *The M/V “SAIGA” (No. 2) Case* – the Tribunal made some important pronouncements on issues ranging from the freedom of navigation to the enforcement of customs laws, nationality of claims, reparation, use of force in law enforcement activities, hot pursuit and the question of the genuine link between a vessel and its flag State. In this regard, it may be recalled that, in its resolution 60/30 of 29 November 2005, 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.

12. Taking advantage of the broad competence of the Tribunal in disputes and questions relating to the law of the sea, possible litigants could certainly make more use of the judges’ expertise and the efficient procedures before the Tribunal. In this respect, it may be recalled that States Parties may avail themselves at any time of the possibility offered by article 287 of the Convention to make written declarations nominating the Tribunal as their preferred forum for the settlement of maritime disputes. Pursuant to this provision, when both parties to a dispute have accepted the Tribunal as the preferred dispute settlement forum, either party may have recourse to the Tribunal by way of unilateral application. In the absence of declarations, or where the parties have not accepted the same procedure, the dispute may only be submitted to arbitration in accordance with Annex VII to the Convention, unless the parties otherwise agree. Of the current 149 States Parties, 38 States have so far filed declarations under article 287 of the Convention – this represents approximately only one quarter of the States Parties – and 22 of which have chosen the Tribunal as their preferred means, or one of the means, for the settlement of their maritime disputes. As a consequence, arbitration under Annex VII becomes the compulsory means for the settlement of their disputes for the large majority of States Parties. In my opinion, this situation does not fully reflect the

expectations or even the intentions of the drafters of the Convention. In practice, arbitration becomes the mandatory forum not only in the event that the relevant declarations do not identify the same forum but also whenever a dispute involves any of the 111 States Parties which have not made a declaration. The present situation therefore makes recourse to arbitration the rule and the choice of the ICJ or the Tribunal the exception despite the fact that these two judicial bodies are institutions representing the community of States. 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 more than one occasion.

13. I would like to underline the fact that, notwithstanding the existence of declarations made under article 287 of the Convention, parties may at any time submit, a particular dispute to the Tribunal, or to one of its chamber, by notification of a special agreement – and parties have indeed done so on two occasions.

14. It is of interest to note that the jurisdiction of the Tribunal may also be based on jurisdictional clauses inserted in international agreements relating to the law of the sea. Through such clauses, jurisdiction may be conferred on the Tribunal or, alternatively, a special chamber of the Tribunal. There are at present a number of international agreements which contain provisions making specific reference to dispute settlement procedures contained in Part XV and conferring therewith jurisdiction on the Tribunal, a prominent example being the Straddling Fish Stocks Agreement of 1995. With respect to these agreements, the procedures of Part XV apply, whether a party to the agreement is a State Party to the Convention or not. In this regard, I would like to refer to the recommendation contained in General Assembly resolution 60/30 that States parties to an international agreement related to the purposes of the Convention may submit any dispute concerning the interpretation or application of that agreement to the Tribunal, if a provision conferring jurisdiction on the Tribunal is contained therein. The inclusion of such jurisdictional clauses has become an established practice and, in fact, it can only be of benefit to the parties if such a clause is inserted in every new maritime agreement. Parties may otherwise be left in a situation of uncertainty as to the adjudication of a potential dispute. States may therefore consider inserting a provision conferring

jurisdiction on the Tribunal, or on a special chamber of the Tribunal, in future agreements which are the subject of negotiations. The Convention on the Removal of Wrecks currently under consideration at IMO constitutes the next opportunity to implement the approach on the dispute settlement system as established by the Convention on the Law of the Sea.

15. Distinguished delegates, I wish to note that such jurisdictional clauses may also be included in bilateral agreements in order to facilitate the settlement of disputes regarding these agreements. Interested delegations will find model clauses conferring jurisdiction on the Tribunal or on a special chamber of the Tribunal in the Guide to proceedings before the Tribunal which will be made available at the meeting

16. Similarly, article 22 of the Statute allows the Tribunal to exercise jurisdiction over disputes relating to the interpretation or application of treaties which are already in force, and which are related to the subject-matter covered by the Convention, provided that all the parties to that treaty so agree. This article could be used by the parties to a treaty concluded before the entry into force of the Convention in order to adjust its provisions for the settlement of disputes to the mechanism provided for in Part XV of the Convention, or to incorporate such a mechanism into a treaty where no settlement of dispute provision exists.

17. I would like to recall that 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. In particular, the Chamber may be requested to give an opinion on the conformity with the Convention of a proposal on any matter before the Assembly. It should be noted that resort to advisory proceedings may be a way to overcome conflicting legal views.

18. I would also like to refer to the Tribunal's competence to give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention provides for the submission of a request for such an opinion to the Tribunal. The advisory jurisdiction of the Tribunal is based on article 21 of the Statute, according to which the Tribunal has jurisdiction with respect to "all matters

specifically provided for in any other agreement which confers jurisdiction on the Tribunal". The advisory function of the Tribunal may offer an alternative to contentious proceedings and could be an interesting option for those seeking a non-binding opinion on a legal question or an indication as to how a particular dispute may be solved through direct negotiations. Such proceedings could be of particular assistance to parties to a dispute in the process of reaching a solution by negotiation, for example in maritime delimitation cases. According to article 138 of the Rules, a request for an advisory opinion before the Tribunal is transmitted to the Tribunal "by whatever body" authorized 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, directly or through an international "body", for example the Meeting of States Parties to the Convention. In this respect, reference may be made to a similar procedure contained in article 66, paragraph 2(b), of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, which provides that a State which is party to a dispute with one international organization may "through a Member State of the United Nations if necessary, request the General Assembly or the Security Council ... to request an advisory opinion of the International Court of Justice in accordance with Article 65 of the Statute of the Court".

19. While recourse to the Tribunal incurs no court costs for the States Parties, each party nevertheless has to bear its own costs, for instance, for the preparation of pleadings, the professional fees of counsel and advocates or travel expenses. In this regard, I wish to draw the attention of the distinguished delegates to the trust fund to assist States Parties in the settlement of disputes through the Tribunal. The fund is administered by the United Nations (DOALOS). In 2005, an amount of \$20,000 was awarded to Guinea-Bissau. The fund currently stands at \$70,621.17

20. As mentioned earlier, the Tribunal will soon be completing ten years since its inception. I have therefore the pleasure to announce that a series of events will take place at the end of September 2006 to celebrate the first decade of the Tribunal's existence. Invitations in this regard have been sent to all States Parties to the Convention, representatives of international organizations and distinguished

personalities. The Tenth Anniversary Ceremony will take place at the seat of the Tribunal on 29 September 2006 with statements to be given, among others, by the, the President of the International Court of Justice, the Legal Counsel of the United Nations and the Secretary-General of the International Seabed Authority. The ceremony will be followed by a symposium entitled "The Jurisprudence of the International Tribunal for the Law of the Sea: Assessment and Prospects" to take place on 29 and 30 September 2006.

21. I wish to report that the Tribunal is cooperating with the International Foundation for the Law of the Sea in organizing a series of regional law of the sea workshops in different regions of the world in order to promote knowledge of the Convention and the dispute settlement procedure contained therein. These workshops will benefit from the participation of the judges of the Tribunal from the relevant regions. The Tribunal has also deemed it useful to provide advocates, counsel and government legal advisers with information explaining the manner in which cases are instituted and conducted before the Tribunal. For these purposes a Guide to proceedings before the Tribunal has been prepared by the Registry.

22. I am also glad to report that the International Foundation for the Law of the Sea intends to organize a "Summer Academy" for the summer 2007, which will take place at the Tribunal's premises over a period of four weeks, with courses in law of the sea and maritime law. The academy will be open to students, young governmental officials and professionals from all over the world with expertise in law of the sea matters. This will constitute a useful complement to the internship programme administered by the Tribunal, in which a total of 30 interns from 20 countries participated in 2005. I wish to inform the distinguished delegates that 17 of these interns from 13 countries benefited from the grant provided by the Korea International Cooperation Agency and, on behalf of the Tribunal, I wish to express our gratitude to the Korea International Cooperation Agency for this generous contribution.

23. As regards the Agreement on the Privileges and Immunities of the Tribunal. I have the pleasure to report to you that since last year, seven States have become parties to the Agreement, which brings the total to [23]. I should like to refer, in this

regard, to General Assembly resolution 60/30, in which the Assembly recommends to States that have not yet done so to consider ratifying or acceding to the Agreement.

24. Mr President, I also wish to place on record my great appreciation for the excellent cooperation extended to the Tribunal by the German authorities. In this respect, we are looking forward to the entry into force of the Headquarters Agreement between the Tribunal and the Federal Republic of Germany, which was signed on 14 December 2004.

25. The Tribunal has taken further steps to develop its relations with other international organizations and bodies. During the past year, administrative arrangements were concluded with the International Bureau of the Permanent Court of Arbitration and the United Nations Environment Programme.

26. Regarding the budget of the Tribunal, I wish to inform the Meeting that as of 31 May 2006 there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996/1997 to 2005 in the amount of €1,820,240; the outstanding amount in relation to the 2006 budget is €2,245,562. 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 years 1996/1997 to 2006. May I therefore refer here to the appeal made by the General Assembly in resolution 60/30 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

27. I am pleased to report that, on 2 September 2005, His Excellency Mr Joe Borg, Commissioner for Fisheries and Maritime Affairs of the European Union visited the Tribunal. On this occasion Mr Borg delivered a statement entitled "Ocean and the Law of the Sea: towards new horizons" and was received by the then President of the Tribunal, Judge Nelson. Under my presidency the working relationship with the European Union has been further deepened.

28. I am also glad to report that, on 6 October 2005, the Tribunal hosted the first information session on the work of the Tribunal for the diplomatic corps accredited in Germany. Diplomatic and consular representatives of 53 States as well as representatives of international organizations based in Germany and of the German Foreign Office attended the event.

29. Mr 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 continuous support of the Tribunal's work.

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