

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
THE REPORT OF THE TRIBUNAL
AT
THE FIFTEENTH MEETING OF STATES PARTIES TO THE
CONVENTION ON THE LAW OF THE SEA
16 JUNE 2005

PLEASE CHECK AGAINST DELIVERY

International Tribunal for the Law of the Sea
Tel: 49 (40) 35607-0 Fax: 49 (40) 35607-245
Website: www.itlos.org E-mail: itlos@itlos.org

Excellencies, Distinguished Delegates

Mr President,

1. It is an honour for me to address the Meeting of States Parties on the occasion of its examination of the Annual Report of the Tribunal for the period 1 January to 31 December 2004. I extend to you, Mr President, my personal congratulations, and those of the Tribunal, on your election as the President of this meeting and wish you every success in the discharge of your functions. I also wish to convey our appreciation to Ambassador Allieu I. Kanu, your predecessor, for the excellent work he has done. I also wish to recall with regret that Dr. Kenneth Rattray, a prominent figure whose contribution to the Convention has been unanimously recognized, had recently passed away. Dr. Rattray was one of the celebrated founders of the new Law of the Sea. It was largely due to him that the International Seabed Authority is now established in Jamaica. On my personal behalf and on behalf of the Tribunal, I would like to convey our deep sympathy to his family and to the Government of Jamaica.

2. The Annual Report of the Tribunal for the year 2004 is before you for your consideration. As is the practice, the Report presents an annual review of the activities of the Tribunal and its financial position. With your permission, I take this opportunity to present to this meeting a summary of the Tribunal's work in 2004 and to add a few observations.

3. With respect to organizational matters, Distinguished Delegates are aware that the triennial election of seven judges of the Tribunal whose terms of office expire on 30 September 2005 will be held during this meeting.

4. During the past year, the Tribunal held two sessions, the Seventeenth Session from 22 March to 2 April 2004 and the Eighteenth Session from 20 September to 1 October 2004. The Tribunal also met from 30 November to 18 December 2004 to deal with the "*Juno Trader*" Case.

5. Mr President, the Tribunal's sessions are devoted to legal and judicial matters as well as administrative and organizational issues related to the discharge of the

judicial functions of the Tribunal. In the course of the last year, the Committee on Rules and Judicial Practice and the Plenary reviewed the Rules and judicial procedures of the Tribunal. Some of the main issues which were discussed were the procedure for revision or interpretation of a judgment or order with respect to urgent proceedings before the Tribunal, code of conduct for counsel, *amicus curiae* before international courts and tribunals, contributions towards the expenses of the Tribunal, bonds and other financial security under article 292 of the Convention, rules regarding evidence, and the implementation of the decisions of the Tribunal. As an illustration of the administrative and organizational matters dealt with during 2004, I wish to mention the draft budget proposals for 2005-2006, draft financial rules, Annual Report, appointment of staff, amendments to Staff Regulations and Rules, maintenance of the premises and electronic systems, library facilities and publications. A detailed treatment of these matters can be found in the Annual Report.

6. As regards its judicial work, the Tribunal has had to deal in 2004 with the “*Juno Trader*” Case. This was the thirteenth case submitted to the Tribunal. It involved urgent proceedings concerning the prompt release of the vessel *Juno Trader* and its crew under article 292 of the Convention. Proceedings were instituted on 18 November 2004 by an application filed on behalf of Saint Vincent and the Grenadines against Guinea-Bissau. The Tribunal delivered its Judgment on 18 December 2004. It may be noted that, consistent with its jurisprudence, the Tribunal applied to the “*Juno Trader*” Case the various factors relevant in an assessment of the reasonableness of bonds or other financial security which it had identified in previous judgments. It may also be noted that, in this case, the Respondent questioned the status of the Applicant as flag State of the vessel. In particular, it maintained that, by operation of the law of the detaining State, the ownership of the *Juno Trader* had reverted to the State of Guinea-Bissau and, therefore, Saint Vincent and the Grenadines could no longer be considered as the flag State of the vessel. In this respect, the Tribunal stated that:

In any case, whatever may be the effect of a definitive change in the ownership of a vessel upon its nationality, the Tribunal considers that there is no legal basis in the particular circumstances of this case for holding that

there has been a definitive change in the nationality of the *Juno Trader*.
[paragraph 63 of the Judgment]

7. Mr President, I am pleased to state that the Judgment of the Tribunal in the “*Juno Trader*” Case was adopted unanimously.

8. 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 special chamber of the Tribunal. By Order dated 16 December 2003, the time-limit for making preliminary objections with respect to the case was extended at the request of the parties until 1 January 2006 to enable them to reach a settlement.

9. Mr President, the Tribunal has dealt with thirteen cases so far. In resolving these cases, the Tribunal has already made a significant contribution to the development of international law. In this respect, I would like to refer to General Assembly resolution 59/24 of 17 November 2004, in which the General Assembly noted with satisfaction the continued and significant contribution of the Tribunal to the peaceful settlement of disputes 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 concerning the Implementation of Part XI.

10. Here, I must point out that, on several occasions, requests have been addressed to the Registry for information regarding the institution of prompt-release proceedings, and on more than one occasion cases were not instituted because negotiations between the parties proved successful. It is certainly a function of the Tribunal to be easily available to parties, a factor which can facilitate the negotiation process between the parties to the dispute. Thus, the mere existence of the Tribunal, a standing body, assists States to settle their maritime disputes without resorting to litigation. As has been so well said: “what is important, what is indeed crucial, is that there should always be in the background, as a necessary check on the making of unjustified claims or upon the denial of justified claims, automatically available procedures for the settlement of disputes”.

11. It is, however, clear that more use could be made of the Tribunal in the future. In this respect, it should be noted that eleven cases have been referred to the Tribunal on account of its compulsory jurisdiction (prompt release of vessels and crews, and provisional measures pending the constitution of an arbitral tribunal), whereas two cases have been instituted by special agreement between the parties. I take this opportunity to recall here that article 287 of the Convention offers States the choice of one or more means for the settlement of disputes concerning the interpretation or application of the Convention. Out of the current 148 States Parties to the Convention, 35 have filed declarations under article 287 of the Convention and 21 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 pursuant to the recommendation in General Assembly resolution 59/24 of 17 November 2004 an increasing number of States will make declarations under article 287 of the Convention with regard to their choice of means of settlement of disputes concerning the Convention.

12. Furthermore, it should be noted that in the absence of declarations under article 287 of the Convention or if the parties have not selected the same forum, the dispute may be submitted only to arbitration, unless the parties otherwise agree. I would like, in this respect, to draw the attention of the Distinguished Delegates to the possibility for parties to submit their disputes to a special chamber of the Tribunal, in accordance with article 15, paragraph 2, of the Statute. This is indeed a real alternative to arbitration.

13. As mentioned earlier, parties may submit, at any time, a particular dispute to the Tribunal by means of a special agreement. States may also confer jurisdiction on the Tribunal through international agreements and there are currently seven international agreements which make reference to the Tribunal in respect of the settlement of disputes arising from their interpretation or application. There are, however, other alternatives that might be of interest to possible users. In particular, I would refer to advisory proceedings. Under such proceedings, the Tribunal may give an advisory opinion on a legal question if an international agreement related to the

purposes of the Convention provides for the submission to the Tribunal of such an opinion.

14. Mr President, the cases dealt with by the Tribunal to date have been largely confined to instances where the Tribunal has a special compulsory jurisdiction – the prompt release of vessels and crews and the prescription of provisional measures. It is timely for me to bring to the attention of the Distinguished Delegates that the Tribunal has the competence under the Convention, and remains ready, to resolve a much wider range of disputes concerning the interpretation and application of the Convention. I have especially in mind disputes concerning maritime boundaries. The Tribunal includes in its composition judges who have acted as counsel in important maritime boundary disputes; judges with wide experience in the delimitation and demarcation of maritime boundaries. The Tribunal is competent and equipped to resolve disputes concerning sea-boundaries.

15. States Parties which appear before the Tribunal do not bear the expenses relating to the proceedings; however, they have to finance expenses incurred, for instance, for the preparation of the pleadings, the professional fees of counsel and advocates or the travel expenses. In this regard, I wish to draw the attention of the Distinguished Delegates to the voluntary trust fund to assist States Parties in the settlement of disputes through the Tribunal. The fund is administered by the United Nations (DOALOS). It is important to note that for the first time the fund was used last year on the occasion of the *“Juno Trader” Case*.

16. Mr President, I am particularly pleased to inform you that the negotiations with the German authorities on the Headquarters Agreement between the Tribunal and the Federal Republic of Germany came to a successful conclusion. The text of the Agreement was signed on 14 December 2004. I wish to place on record our profound gratitude to the Federal Republic of Germany for the excellent cooperation extended to the Tribunal in this matter.

17. The Annual Report gives an account of the status of the Agreement on the Privileges and Immunities of the Tribunal, which entered into force on 30 December 2001. Since I last reported to the Meeting, three States have acceded

to the Agreement, which brings the total to sixteen States Parties. I should like to refer, in this regard, to the recommendation in General Assembly resolution 59/24, in which the Assembly called upon States that have not done so to consider ratifying or acceding to the Agreement.

18. 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 Labour Office and the Secretariat of the Asian-African Legal Consultative Organization.

19. I wish to report to the Meeting that, as of 31 May 2005, there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996 to 2004 in the amount of € 1,595,915; the outstanding amount in relation to the 2005 budget is € 2,779,905. In view of the significant amount of outstanding contributions, if pending contributions are not received shortly, the Tribunal will face short-term liquidity problems and recourse will have to be made to the Working Capital Fund. 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 2005. May I therefore refer here to the appeal made by the General Assembly in resolution 59/24 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

20. Mr President, I am pleased to report that, on 1 September 2004, His Excellency Mr Horst Köhler, President of the Federal Republic of Germany, accompanied by 140 members of the diplomatic corps, was received at the Tribunal. I made a statement on the work of the Tribunal on this occasion¹.

21. I am also pleased to report that, in commemoration of the tenth anniversary of the entry into force of the Convention on the Law of the Sea, a symposium on maritime delimitation took place on the premises of the Tribunal on 25 and 26 September 2004. This symposium demonstrated the importance of maritime

¹ The text of the statement is available on the website of the Tribunal: <http://www.itlos.org>

delimitation issues. Clearly these questions continue to attract the interest of practitioners, experts and Government officials. As I have stated before, as far as the Tribunal is concerned, it is ready, and possesses the necessary expertise, to deal with cases relating to maritime delimitation.

22. Finally, I wish to draw the attention of the Distinguished Delegates to the Internship Programme of the Tribunal and the grant provided by the Korea International Cooperation Agency for funding participation in the programme. In 2004, nine interns coming from nine countries have benefited from the KOICA grant. On behalf of the Tribunal, I wish to express our gratitude to the Korea International Cooperation Agency for this generous contribution.

23. I take this opportunity to repeat that the Tribunal continues to seek the material and moral support of the international community as a whole for the successful achievement of the objectives underlying its establishment.

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