INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Statement by

JUDGE JOSÉ LUÍS JESUS,
President of the
International Tribunal for the Law of the Sea

at the

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Asian-African Legal Consultative Organization

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CHECK AGAINST DELIVERY

Mr President,

May I, on behalf of the Tribunal, convey to you our congratulations on your election as President of the Forty-eighth Annual Session of AALCO. I also extend my congratulations to the Vice-President for his election. I wish both of you every success during your tenure.

I would also like to express our gratitude to your predecessor, Mr Narinder Singh, for his leadership.

Mr President,

It is a great honour and a pleasure for me, in my capacity as President of the International Tribunal for the Law of the Sea, to address this important gathering of legal advisers and jurists of Asian and African countries. I am pleased to note that, in a meeting scheduled for tomorrow afternoon, we will have an opportunity to provide participants with information on the role of and the procedures at the Tribunal.

We are thankful for the invitation extended to us to participate in this meeting.

Mr President,
Distinguished Participants,

The International Tribunal for the Law of the Sea is an institution created by the 1982 United Nations Convention on the Law of the Sea (hereinafter "the Convention"), an instrument that has been ratified by an overwhelming number of countries in Asia and Africa. The Tribunal is therefore in a way your own creation and I am glad to note that amongst the 21 sitting judges of whom the Tribunal is composed, 10 are from Asian and African countries.

The Tribunal has entertained 15 cases, of which 13 have been resolved and one is still pending before a special Chamber. These cases involved States from different regions, including States from Asia and Africa. As a new institution, which has been in existence for only 13 years, the Tribunal, and its jurisdiction, are admittedly not well known to the wider public. To overcome this, , the Tribunal has been organizing regional workshops to assist State officials working in the field of law of the sea or international law in general to better understand the jurisdiction of the Tribunal and enhance their knowledge of the dispute-settlement system established under the Convention.

In 2008, the Tribunal – in cooperation with the International Foundation for the Law of the Sea – organized two regional workshops, in Bahrain and Buenos Aires, on the procedures at the Tribunal. These workshops followed similar workshops held in 2006 and 2007 in Dakar, Libreville, Kingston and Singapore.

In 2007, with the support of the Nippon Foundation, the Tribunal also established an annual capacity-building and training programme on dispute settlement under the Convention. Officials and researchers from different countries have benefited from this programme since its inception in 2007.

Likewise, the Tribunal continues to administer an internship programme which began in 1997. In 2004, with the support of the Korea International Cooperation Agency (KOIKA) the Tribunal was able to offer interns from developing countries financial assistance with their participation in the programme.

I would like to highlight the role of the Summer Academy organized by the International Foundation for the Law of the Sea whose sessions are held at the premises of the Tribunal. As I speak, the third edition of this Summer Academy is taking place there. I am grateful to the Foundation for running this event. Since it began in 2007, a large number of participants from different countries have benefited from high-level lectures on matters relating both to law of the sea and maritime law, including matters related to the procedures and jurisprudence of the Tribunal.

The Tribunal functions as a full court and in chambers. It has a Seabed Disputes Chamber, a Chamber for Maritime Delimitation Disputes, a Chamber for Marine Environment Disputes, a Chamber for Fisheries Disputes and a Chamber of Summary Procedure. In addition to the Standing Chambers of the Tribunal, parties to a dispute may request the Tribunal to establish an *ad hoc* chamber to deal with a particular dispute. Chile and the European Community already took advantage of this option in the year 2000, when they submitted to an *ad hoc* chamber of the Tribunal the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean.*

Mr President,

The International Tribunal for the Law of the Sea is entrusted by the Convention with the authority to settle disputes concerning the law of the sea. However, in accordance with the Convention, the Tribunal is not the only court available for that purpose to disputant parties.

To settle law of the sea-related disputes States may choose, in accordance with article 287 of the Convention, through a written declaration, the Tribunal, the International Court of Justice (ICJ) or arbitration in accordance with Annexes VII and VIII of the Convention. If disputant States have not previously made a choice or have not chosen the same means of dispute settlement, arbitration in accordance with Annex VII of the Convention applies as the default compulsory means of dispute settlement.[1] A State wishing to avoid compulsory arbitration should therefore consider making a declaration in accordance with article 287, by choosing another means of dispute settlement.

The compulsory mechanism, as embodied in Part XV, is perhaps one of the most important and innovative features of the Convention dispute-settlement system although its impact is somewhat diluted by the exclusion from it of certain categories of dispute in respect of the rights of the coastal State relating to fisheries and scientific research in its exclusive economic zone (EEZ)[2] and by the possibility for States to opt out of this compulsory mechanism for certain categories of dispute.[3]

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[1] See article 287, paragraph 3, of the Convention.
[2] See article 297 of the Convention.
[3] See article 298 of the Convention.

Although, as I have already stated, disputes concerning the law of the sea may be brought before different international courts and tribunals, the International Tribunal for the Law of the Sea has core competence to deal with all disputes and all applications submitted to it in accordance with the Convention. As an international judicial body with specialized jurisdiction, the Tribunal holds a very particular position for playing a major role in the settlement of international law of the sea-related disputes. This role is enhanced by the fact that the Convention confers on the Tribunal certain functions which are indeed unique in international adjudication.

As is the case of other standing courts, the Tribunal has both contentious and advisory jurisdiction. In particular, it has jurisdiction over (a) any dispute concerning the interpretation or application of the provisions of the Convention which is submitted to it in accordance with Part XV;[4] (b) any dispute concerning the interpretation or application of an international agreement related to the purposes of the Convention, which is submitted to it in accordance with the agreement; and[5] (c) any dispute concerning the interpretation or application of a treaty already in force concerning the subject-matter covered by the Convention if all the parties to such a treaty so agree.[6]

The Tribunal, as a full court, also has jurisdiction to entertain requests for advisory opinions,[7] Based on an international agreement related to the purposes of the Convention.

In addition, the Seabed Disputes Chamber, composed of 11 of the 21 judges of the Tribunal, has quasi-exclusive jurisdiction over any disputes related to activities in the Area[8] and has also jurisdiction to entertain any request for advisory opinions related to the legal regime concerning the Area, as embodied in Part XI and related annexes of the Convention and the 1994 New York Agreement on the implementation of Part XI of the Convention.

The jurisdiction of the Tribunal *ratione personae* also represents an interesting development of procedural international law. Traditionally, as is known, only States have access to international courts. In the case of the International Tribunal for the Law of the Sea, however, there has been a notable development in procedural law in this respect. Apart from States, international organizations may be parties to disputes before the Tribunal and, in the case of its Seabed Disputes Chamber, the International Seabed Authority, the Enterprise or natural and juridical persons or a state enterprise may also be parties to disputes.[9]

The Tribunal has simplified procedures for dealing expeditiously with specific cases, in accordance with its Statute and the Rules. They are urgent proceedings in the sense that they are dealt with in record time and usually within a period of less than

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[4] See articles 288, paragraph 1, of the Convention and articles 21 and 22 of the Statute of the Tribunal.
[5] See article 288, paragraph 2.
[6] See article 22 of the Statute of the Tribunal.
[7] See article 138 of the Rules of the Tribunal and article 21 of the Statute of the Tribunal.
[8] See articles 187 and 188, paragraphs 1 and 2(a) of the Convention.
[9] See articles 187 and 288 of the Convention and articles 20, paragraph 2, and 37 of the Statute of the Tribunal (Annex VI of the Convention).

a month, from the filing of the application to the delivery of the judgment. This seems too good to be true in the current practice of courts and tribunals. The swiftness of action has been a mark of the work of the Tribunal since its inception 13 years ago.

We have in our Rules two types of urgent proceedings: provisional measures under article 290, paragraph 5, of the Convention; and the prompt release of vessels and crews under article 292. They both fall under the compulsory jurisdiction of the Tribunal. The Tribunal has so far received 15 cases, 13 of them[10] involving urgent proceedings.

In connection with cases brought before the Tribunal, I would like to remind States Parties that a trust fund has been established by the General Assembly in order to give financial assistance to developing States for settling their disputes through the Tribunal.

Some aspects of the concrete application of the jurisdiction of the Tribunal will be highlighted by the Registrar of the Tribunal tomorrow, in the course of the special meeting, as he will explain the procedural details of bringing a case before the Tribunal. During the special meeting, Judge Yanai and myself will also address issues related to the role of the Tribunal on delimitation of maritime boundaries and on piracy, respectively.

In concluding, I would like to thank the Secretary-General of AALCO, Professor Rahmat bin Mohamad, for the cooperation extended to the Tribunal.

Finally, I would also like to thank the host country, Malaysia, for its hospitality. It is a great pleasure to be here in this beautiful country.

I thank you all for your attention.

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[10] *The M/V "SAIGA" Case (Saint Vincent and the Grenadines* v. *Guinea); The M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines* v. *Guinea); Southern Bluefin Tuna Cases (New Zealand* v. *Japan; Australia* v. *Japan); The "Camouco" Case (Panama* v. *France); The "Monte Confurco" Case (Seychelles* v. *France); The "Grand Prince" Case (Belize* v. *France); The "Chaisiri Reefer 2" Case (Panama* v. *Yemen); The MOX Plant Case (Ireland* v. *United Kingdom); The "Volga" Case (Russian Federation* v. *Australia); Case concerning Land Reclamation by Singapore in and around the Straits of Johor (Malaysia* v. *Singapore); The "Juno Trader" Case (Saint Vincent and the Grenadines* v. *Guinea-Bissau); The "Hoshinmaru" Case (Japan* v. *Russian Federation); The "Tomimaru" Case (Japan* v. *Russian Federation).*