

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

JUDGE JOSE LUIS JESUS

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 70 (a)

AT

THE PLENARY OF THE SIXTY-THIRD SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

5 DECEMBER 2008

Mr President,

1. It is an honour for me, in my new capacity as President of the International Tribunal for the Law of the Sea, to address this General Assembly on the occasion of its examination of the item "Oceans and the law of the sea". On behalf of the Tribunal, I would like to extend to you, Mr. President, our congratulations on your election as the President of this session of the General Assembly. I wish you every success in the discharge of your functions.

2. It falls upon me the sad duty to inform you of the death, on 12 November 2008, of Judge Choon-Ho Park, of the Republic of Korea. Judge Park had been a member of the Tribunal since its inauguration in October 1996, and made an important contribution to its work. We will miss a dear friend and colleague. Judge Park's term of office was due to expire in September 2014. A vacancy has therefore occurred in the Tribunal for the remainder of his term. Steps are being taken, in consultation with the States Parties, to fill the vacancy created by his death in accordance with article 6 of the Statute of the Tribunal.

Mr President,

3. I would like to take this opportunity to report to the General Assembly on the developments regarding the Tribunal that took place since the last debate on this agenda item. I will add a few observations on the jurisdiction and work of the Tribunal. Before doing so, allow me to welcome Liberia and Congo as the States Parties having most recently joined the United Nations Convention on the Law of the Sea.

4. Regarding organizational matters, I would like to inform this Assembly that, on 13 June 2008, the eighteenth Meeting of States Parties elected seven judges for a term of nine years. Of those judges, five were re-elected: Judges Marotta Rangel (Brazil), Chandrasekhara Rao (India), Akl (Lebanon), Wolfrum (Germany) and myself (Cape Verde). Two judges were elected. They are Mr Boualem Bouguetaia (Algeria) and Mr Vladimir Golitsyn (Russian Federation), who were sworn in as members of

the Tribunal at a public sitting held on 1 October 2008. They, as well as the five re-elected judges, will serve until 30 September 2017.

5. Earlier this year, at a Special Meeting of States Parties held on 30 January 2008, Mr Zhiguo Gao of China was elected as a new judge of the Tribunal to replace Judge Guangjian Xu, who had resigned from office on 15 August 2007. Judge Gao was sworn in as a member of the Tribunal at a public sitting which took place 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.

6. In 2008, the Tribunal held its Twenty-Fifth and Twenty-Sixth Sessions which were devoted to legal and judicial matters of relevance to the Tribunal's work, as well as organizational and administrative matters. On 30 September 2008, my predecessor, Judge Wolfrum, completed his three-year term as President of the Tribunal. During the Session, on 1 October 2008, I was elected as President of the Tribunal for a three-year term. On 2 October 2008, Judge Helmut Türk was elected as Vice-President of the Tribunal and Judge Treves as President of the Seabed Disputes Chamber.

Mr President,

7. It might be of interest to draw the attention of States to a number of special procedures that are unique to the Tribunal. The Tribunal has a core competence to deal with all disputes and all applications submitted to it in accordance with the Convention. Some aspects of the jurisdiction of the Tribunal are indeed unique, a feature that distinguishes it from the other courts and tribunals referred to in article 287 of the Convention. Allow me to highlight some aspects of these procedures.

8. I should first refer to the Tribunal's advisory competence which is twofold. On the one hand, the Seabed Disputes Chamber has exclusive competence to give advisory opinions either at the request of the Council and the Assembly of the International Seabed Authority on legal questions arising within the scope of their activities (article 191 of the Convention); or at the request of the Assembly on the conformity with the Convention of a proposal before the Assembly on any matter

(article 159, paragraph 10, of the Convention). It is likely that some of those questions may arise, and the Council or the Assembly, as the case may be, may make use of the advisory procedure of the Seabed Disputes Chamber.

9. Apart from the advisory role of the Seabed Disputes Chamber, the Tribunal, acting as a full court, “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”, as provided for in article 138 of the Rules. This article further indicates that the request for an advisory opinion is to be transmitted to the Tribunal by “whatever body” is authorized under such an agreement to do so. As the international community faces new challenges in ocean activities, such as piracy and armed robbery, advisory proceedings before the Tribunal on legal questions concerning the application and interpretation of provisions of the Convention may prove to be a useful tool to States.

10. Another unique procedure relates to article 290, paragraph 5, of the Convention, which confers on the Tribunal compulsory jurisdiction to prescribe provisional measures where a dispute on the merits has been submitted to an arbitral tribunal under Annex VII of the Convention. Under that provision, the Tribunal is empowered to prescribe provisional measures “pending the constitution of an arbitral tribunal to which a dispute is being submitted ...if it considers that *prima facie* the tribunal which is to be constituted would have jurisdiction and the urgency of the situation so requires”.

11. Since provisional measures under article 290, paragraph 5, of the Convention is a compulsory procedure, any one State alone can submit an application to the Tribunal for the prescription of such measures. The Tribunal may prescribe provisional measures not only “to preserve the respective rights of the parties to the dispute” but also “to prevent serious harm to the marine environment”. The protection of the respective rights of the parties to the dispute is a common feature in rules of procedure of courts and tribunals. The prevention of serious harm to the environment is a specific feature which underlines the importance placed by the Convention in the marine environment. In fact, the Tribunal has entertained a few cases relating to the protection of the environment under article 290, paragraph 5, of

the Convention, whereby it has prescribed provisional measures which were intended to prevent further damage being caused to a particular fish stock or to the marine environment, while protecting the rights of the parties.

12. An additional instance in which the Tribunal may exercise compulsory jurisdiction concerns article 292 of the Convention, which deals with the prompt release of vessels and crews. This provision enables the flag State or an entity acting on its behalf to submit an application to the Tribunal for the prompt release of a vessel or its crew detained by the authorities of a State Party, on account of fisheries or marine pollution offences. The Tribunal has entertained a number of applications for prompt release of fishing vessels and crews detained for alleged violations of fishing laws in the exclusive economic zone of a coastal State, the last two cases of which were dealt with by the Tribunal last year, as already reported to this Assembly. These applications, made on the basis of article 73 of the Convention, have provided the Tribunal with the opportunity to develop a well-established jurisprudence.

13. Prompt release proceedings, as well as the proceedings of provisional measures under article 290, paragraph 5 are indeed an illustration of the positive role that the Tribunal, acting swiftly, may play in maritime matters. The cases handled so far by the Tribunal have not exceeded more than 30 days.

14. The Tribunal is positioned to play a major role on issues pertaining to the law of the sea. While the Tribunal has already made a positive contribution to the peaceful settlement of disputes¹, States have yet to make extensive use of the Tribunal. In this regard, I wish to convey our gratitude to the sponsors of the draft resolution for noting the continued and significant contribution of the Tribunal to the peaceful settlement of disputes in accordance with Part XV of the Convention and for underlining the Tribunal's important role and authority concerning the interpretation or application of the Convention and the Agreement relating to the Implementation of

¹ Fifteen cases have been submitted to the Tribunal so far. Of these cases, 13 have been adjudicated, one case is still pending (*Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*), and one case was removed from the list of cases further to an agreement reached between the parties (*The "Chaisiri Reefer 2" Case (Panama v. Yemen)*). For details on the 13 cases that have been adjudicated, please see the website of the Tribunal at www.itlos.org.

Part XI of the Convention. I should also like to mention that of the 39 States Parties to the Convention that have made declarations under article 287 of the Convention, 24 amongst them 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. I am pleased to note that the draft resolution encourages States Parties to the Convention to consider making a written declaration in accordance with article 287 of the Convention.

Mr President,

15. The Tribunal has undertaken a number of steps with a view to promoting knowledge about the Convention dispute-settlement system as it relates to procedures and proceedings before it. The Tribunal has organized, in cooperation with the International Foundation for the Law of the Sea, a number of regional workshops intended to provide government experts working in the law of the sea or in other legal areas with insight into the procedures before the Tribunal. In 2008, workshops were held in Bahrain and Buenos Aires. In 2006 and 2007, workshops took place in Dakar, Libreville, Kingston and Singapore. On behalf of the Tribunal, I would like to express our appreciation to the host countries of these workshops for their precious cooperation and assistance.

16. On the other hand, the Tribunal established in 2007, with the support of the Nippon Foundation, an annual capacity-building and training programme on dispute settlement under the Convention. During the current cycle (2008-2009), five government officials and researchers from China, Gabon, Indonesia, Kenya and Romania are benefiting from this programme, which takes place from July 2008 to March 2009.

17. This capacity-building programme complements the Tribunal's Internship Programme which began already in 1997. This year, 16 participants, each from a different country, have participated in the programme. Nine of these interns benefited from the grant made available by KOICA to provide financial assistance to enable the participation of candidates from developing countries.

18. On behalf of the Tribunal, I would like to convey our gratitude to KOICA and to the Nippon Foundation for their financial assistance to and sponsorship of this and other programmes.

19. Furthermore, I am glad to report that the Second Summer Academy of the International Foundation for the Law of the Sea on "Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives" was held at the premises of the Tribunal from 3 to 31 August 2008. I am grateful to the International Foundation for the Law of the Sea for organizing this event, during which 32 participants from 26 different countries were able to receive a comprehensive overview of matters relating to both law of the sea and maritime law.

Mr President,

20. I would like to express my appreciation for the opportunity given to the International Tribunal for the Law of the Sea to address this Assembly. I would also like to thank the Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for their assistance.

I thank you.