

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE JOSE LUIS JESUS

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON
AGENDA ITEM 74 (a) "OCEANS AND THE LAW OF THE SEA"

AT
THE PLENARY OF THE SIXTY-FIFTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

7 DECEMBER 2010

Mr President,

1. I would like to take this opportunity to congratulate you on your election as President of the General Assembly. It is a great pleasure for me to address this session of the General Assembly, on behalf of the International Tribunal for the Law of the Sea, on the occasion of your consideration of agenda item 76 on “Oceans and the law of the sea”.

2. It is my sad duty to inform you of the death of one of our dear colleagues, Judge Paul Bamela Engo, which occurred on 26 April 2010. Judge Bamela Engo was a member of the Tribunal from its inauguration in October 1996 to 2008. A great part of his professional life was dedicated to the law of the sea. Prior to his election to the Tribunal, he was a prominent negotiator at the Third United Nations Conference on the Law of the Sea, where he played the important role of Chairman of the First Committee. We shall always remember him and his contribution to our work.

Distinguished delegates,

3. We are pleased to report some new developments in our judicial work. Since I addressed this Assembly last year, three new cases have been submitted to the Tribunal: Case No. 16, the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal*; Case No. 17, a request for an advisory opinion on the *responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area*; and Case No. 18, *M/V Louisa (Saint Vincent and the Grenadines v. Spain)*.

Case No. 16, on maritime delimitation

4. Case No. 16, as I have mentioned, relates to the dispute between the People’s Republic of Bangladesh and the Union of Myanmar concerning the delimitation of their maritime boundary in the Bay of Bengal.

5. In a letter dated 13 December 2009 and filed in the Registry of the Tribunal on 14 December 2009, the Minister of Foreign Affairs of Bangladesh notified the President of the Tribunal of declarations issued under article 287 of the Convention by Myanmar, on 4 November 2009, and by Bangladesh, on 12 December 2009, in which both countries accepted the jurisdiction of the Tribunal as the forum for settlement of their maritime boundary dispute.

6. In the same letter, the Minister of Foreign Affairs of Bangladesh invited the Tribunal to exercise jurisdiction over the dispute “[g]iven Bangladesh’s and Myanmar’s mutual consent to the jurisdiction of ITLOS”.

7. In light of the agreement of the parties as reflected in their declarations dated 4 November 2009 and 12 December 2009, respectively, to submit their dispute to the Tribunal for adjudication and in the notification sent by Bangladesh, the case was entered in the list of cases on 14 December 2009.

8. Subsequently, the President of the Tribunal held consultations with the representatives of the parties in order to ascertain their views on issues concerning the conduct of the case.

9. As a result of these consultations, the President set the time-limits for the presentation of the memorial and the counter-memorial. The Tribunal, subsequently issued an order dated 17 March 2010, in which it set the time-limits for the filing of the reply and the rejoinder. The written proceedings are now under way; Bangladesh submitted its memorial and Myanmar its counter-memorial on 1 July and 1 December 2010 respectively, as scheduled, and the written phase of the proceedings should conclude by 1 July 2011. Both parties have chosen judges *ad hoc* to sit in the case.

Case No. 17 – Request for an advisory opinion

10. In May 2010, the Tribunal's Seabed Disputes Chamber received a request for an advisory opinion from the International Seabed Authority. This case has been entered in the list as Case No. 17. The written and oral proceedings, in which a significant number of States parties and international organizations participated, have taken place. Twelve States and four international organizations made written submissions and during the 3-day hearing, held before the Seabed Disputes Chamber in Hamburg, nine States and three international organizations made oral presentations.

11. The Chamber is now deliberating on the case. Since, under the Convention, advisory opinions are to be given as a matter of urgency, a decision is expected in early 2011.

12. This request for an advisory opinion is a significant development in our work. As the first case brought before the Seabed Disputes Chamber, the body with exclusive jurisdiction to entertain disputes arising out of the interpretation or application of the provisions of the Convention concerning activities in the Area¹ or requests for advisory opinions made by the Assembly or the Council of the Authority on legal questions arising within the scope of their activities, it has enormous potential. As seabed activities increase, the number of disputes brought before the Chamber will, in all likelihood, also increase.

Case No. 18 – The *M/V Louisa*

13. . On 24 November 2010, Saint Vincent and the Grenadines instituted proceedings against Spain before the Tribunal in a dispute concerning a vessel flying the flag of the former, the MV "Louisa", which was allegedly arrested by the Spanish authorities on 1 February 2006 and held since that date.

14. The Application instituting these proceedings before the Tribunal includes a request for provisional measures under article 290, paragraph 1, of the Convention.

¹ See the *chapeau* of article 187 of the Convention

The proceedings concerning the provisional measures are under way and the hearings have been scheduled to take place on 10 and 11 of the current month. As concerns the case on the merits, consultations will soon take place with the parties for the setting up of the time-limits for the presentation of the written pleadings.

Discontinuance of Case No. 7

15. You may recall that Case No. 7, *Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* (Chile/European Union) was submitted to an ad hoc Special Chamber of the Tribunal formed under article 15, paragraph 2, of the Statute of the Tribunal. To date, this is the only contentious case that has been submitted to a chamber of the Tribunal. Since 2001, the time-limits for the proceedings had been extended by successive orders at the request of both parties; the case was ultimately discontinued last December at the request of the two parties. Although the Chamber did not deal with the substance of this case, the fact that it had been filed with the Tribunal may have helped the parties to reach an out of court agreement. As stated by the President of the Special Chamber “[t]he Tribunal may assist the parties in more than one way. Adjudication is, of course, the main function of the Tribunal. It may also assist the parties, where appropriate, in reaching direct settlement of the dispute between them”.²

16. In 2010, the Tribunal held its Twenty-ninth and Thirtieth Sessions, which were devoted to judicial and legal issues, as well as to administrative and organizational matters. The judges also exchanged views on developments concerning law of the sea matters of interest to their judicial function on the basis of information papers prepared by the Registry.

Mr President,

² See Protocol of Session during which the Order of discontinuance was read out.

17. The Tribunal has continued to disseminate information on the law of the sea dispute settlement system by holding regional workshops on the relevant provisions of the Convention, the procedures available at the Tribunal and the practical steps needed in dealing with a case.³ One such workshop was recently organized in Fiji, in cooperation with the Government of Fiji and the Korea International Cooperation Agency (KOICA), for legal representatives of the Pacific Island nations. On behalf of the Tribunal, I would like to take this opportunity to express our appreciation to the host country, Fiji, for its support and cooperation.

18. In 2007, with the support of the Nippon Foundation, the Tribunal established an annual capacity-building and training programme on dispute settlement under the Convention. In its 2008-2009 cycle, five government officials and researchers from China, Gabon, Indonesia, Kenya and Romania benefited from this programme. The current cycle includes seven participants from Argentina, Brazil, Greece, Mozambique, Oman, South Africa and Togo. During the nine-month programme, they will also be exposed to the work of various international organizations with mandates related to the law of the sea and maritime law. We are grateful to the Nippon Foundation for its commitment to facilitating, by its financial support, the dissemination of information concerning law of the sea and the orderly use of the oceans to new generations.

19. This capacity-building programme complements the Tribunal's internship programme, which was launched in 1997. To date, a total of 205 interns have been admitted. This year, 18 participants from different countries participated in the programme; nine of them benefited from the KOICA grant that provides financial assistance to candidates from developing countries. I would like to convey our gratitude to the Korea International Cooperation Agency (KOICA) for their continued financial assistance.

³ Eight regional workshops have been organized in west, east and southern Africa, in the Middle East, in Latin America, in the Caribbean and in the Pacific.

20. I am also pleased to inform you that the fourth International Foundation for the Law of the Sea Summer Academy was held at the Tribunal's premises from 25 July to 21 August 2010. I am grateful to the Foundation for organizing this event, during which 31 participants from 29 countries attended specialists' lectures on the law of the sea and maritime law.

21. In October 2009, the Tribunal established a Trust Fund aimed at providing financial assistance to participants in the Tribunal's internship programme from developing countries. In April 2010, the Fund received its first contribution, in the amount of €25,000, from a Hamburg-based Korean company. States, intergovernmental organizations and agencies, national institutions, non-governmental organizations and international financial institutions, as well as natural and juridical persons, are invited to make voluntary financial or other contributions to the Fund; details may be obtained from the Registry of the Tribunal.

Mr President,

22. Before concluding, I would like to welcome the Republic of Malawi, which recently became a party to the Convention, and to congratulate it on becoming the one hundred and sixty-first party to one of the most important treaties ever negotiated. I would also like to take this opportunity to thank the Secretary-General, the Legal Counsel and especially the Director of the Division for Ocean Affairs and the Law of the Sea for their continued cooperation with and support for the Tribunal's activities

I thank you all for your attention.