

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JOSÉ LUIS JESUS

PRESIDENT

OF THE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE REPORT OF THE TRIBUNAL

AT

THE TWENTY-FIRST MEETING OF STATES PARTIES TO THE UNITED NATIONS

CONVENTION ON THE LAW OF THE SEA

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Mr President,

1. It is with great pleasure that I address the twenty-first Meeting of States Parties to the United Nations Convention on the Law of the Sea in my capacity as President of the International Tribunal for the Law of the Sea, on the occasion of its consideration of the Annual Report of the Tribunal for the period 1 January to 31 December 2010.

2. I would like to congratulate you, Mr President, on your election to the presidency of this Meeting. It is a particular pleasure for me to speak here today under your able guidance. I wish you much success in your mission. I would also like to congratulate your predecessor in the Chair, Ambassador Arif Havas Oegroseno, for his leadership and for the cooperation extended to the Tribunal.

3. Allow me to take this opportunity to pay tribute to a former colleague at the Tribunal, Judge Anatoly Kolodkin, who passed away this year. Judge Kolodkin was a native of Russia and served the Tribunal for 12 years before retiring at the end of 2008.

4. We shall remember his contributions to our collective judicial work and we praise him for his friendly and cooperative approach in his relations with colleagues. May his soul rest in peace.

Mr President,

5. The Annual Report of the Tribunal to the Meeting of States Parties is before you. It reviews the activities of the Tribunal during the period of 1 January to 31 December 2010 and provides other information as well. For your convenience, I will summarize its main points here today. Budgetary matters will be addressed in a separate statement to be made by the Registrar of the Tribunal.

6. Last year I had the pleasure of announcing to this Meeting that the Tribunal had received two new cases. The first of such cases – Case No. 16 - was introduced in December 2009 by Bangladesh and Myanmar and it relates to the dispute between the two countries concerning the delimitation of their maritime boundary in the Bay of Bengal. The written phase of the proceedings in this case is running its course and the final pleading should be filed by 1 July this year. The oral proceedings are scheduled to take place in September this year. The Judgment in the case is expected to be delivered in the first quarter of 2012.

7. The second case received – Case No. 17 – concerned a request to the Seabed Disputes Chamber of the Tribunal for an advisory opinion. This request was made by the International Seabed Authority on 6 May 2010 and addressed the following three issues:

1. What are the legal responsibilities and obligations of States Parties to the Convention with respect to the sponsorship of activities in the Area in accordance with the Convention, in particular Part XI, and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982?

2. What is the extent of liability of a State Party for any failure to comply with the provisions of the Convention, in particular Part XI, and the 1994 Agreement, by an entity whom it has sponsored under Article 153, paragraph 2 (b), of the Convention?

3. What are the necessary and appropriate measures that a sponsoring State must take in order to fulfil its responsibility under the Convention, in particular Article 139 and Annex III, and the 1994 Agreement?

8. Oral proceedings were held in September 2010, in which nine States Parties, the International Seabed Authority, the Intergovernmental Oceanographic Commission (IOC) of UNESCO and the International Union for Conservation of Nature and Natural Resources participated. This hearing was preceded by written statements filed by twelve States Parties to the Convention¹. Statements were also

¹ United Kingdom, Nauru, Republic of Korea, Romania, Netherlands, Russian Federation, Mexico, Germany, China, Australia, Chile, and Philippines.

filed by the Authority, the Interoceanmetal Joint Organization, the International Union for Conservation of Nature and Natural Resources, and the United Nations Environment Programme.

9. In keeping with the practice of the Tribunal and in conformity with article 191 of the Convention, which states that advisory opinions “shall be given as a matter of urgency”, the Chamber scheduled the delivery of the Advisory Opinion for 1 February 2011. Though this report concerns the Tribunal’s activities in 2010, I am pleased to note that the Advisory Opinion was delivered as scheduled in February this year, nine months after the Seabed Disputes Chamber received the request. The decision of the Chamber is available on the Tribunal’s website.

Mr President,

10. Since we last met in this forum, another case – Case 18 – has been submitted to the Tribunal. On 23 November 2010, Saint Vincent and the Grenadines filed an Application against Spain. It relates to a dispute concerning the arrest by the authorities of Spain of the M/V “Louisa”, a vessel flying the Vincentian flag. By a statement filed on 8 December 2010, Spain maintained, *inter alia*, that the vessel had been arrested in the course of criminal proceedings for alleged violation of laws relating to the Spanish historical patrimony. Saint Vincent and the Grenadines maintained that the vessel was involved in scientific research with a valid permit from the coastal State and requested the Tribunal to award damages in the amount of “not less than US \$10,000,000”.

11. The time-limits for the filing of the written pleadings in this case have been set by Orders of the President of the Tribunal, dated 12 January and 28 April, 2011, and the first round of the written proceedings is scheduled to conclude by 10 November 2011.

12. The application submitted by Saint Vincent and the Grenadines also included a request for the prescription of provisional measures under article 290, paragraph 1,

of the Convention. By means of this incidental proceeding, the Tribunal was requested, *inter alia*, to order Spain to release the vessel and return the property seized.

13. Oral proceedings on the request for provisional measures were held on 10 and 11 December 2011 and the Tribunal delivered its Order on 23 December 2010.

Mr President,

14. Apart from its case-related sessions, the Tribunal held two regular sessions in 2010; during these it considered certain legal and judicial-related matters, including, in particular, matters pertaining to its jurisdiction, its Rules and its judicial procedures.

15. The Tribunal also considered matters of an administrative and budgetary nature, including the preparation of the budget for the cycle 2011-2012, the implementation of the current budget, the cash flow situation, the status of contributions, the conditions of service and compensation of the members of the Tribunal, certain aspects of the Staff Regulations and Staff Rules, the recruitment of Registry staff and appointment of the auditor for 2009 – 2012. Matters concerning the permanent premises of the Tribunal were also considered.

16. In addition, the Members of the Tribunal exchanged views on recent developments concerning law of the sea matters of interest to the Tribunal in its activities.

17. The Tribunal also considered the text of an Agreement with the United Nations extending the competence of the United Nations Appeals Tribunal to applications alleging non-compliance with the terms of appointment or contracts of employment of staff members of the Registry. This Agreement has been signed and entered into force in July 2010.

Mr President,

18. Though this is not an activity of the Tribunal as such, I believe it to be useful to inform you about the role the President of the Tribunal has been playing in relation to the appointment of arbitrators for arbitral tribunals constituted under Annex VII to the Convention.

19. In accordance with article 3 of Annex VII to the Convention, if the parties are unable to reach an agreement on the appointment of one or more of the members of the arbitral tribunal to be appointed by agreement, or on the appointment of the president of the arbitral tribunal, these appointments shall be made by the President of the International Tribunal for the Law of the Sea at the request of a party to the dispute and in consultation with the parties.

20. In 2010 the President of the Tribunal had the opportunity to discharge this responsibility in relation to the composition of the Annex VII arbitral tribunal instituted in respect of the dispute between Bangladesh and India concerning the delimitation of the maritime boundary between the two countries in the Bay of Bengal. In consultation with the parties, he appointed the three arbitrators and the president of the arbitral tribunal.

21. Likewise, upon request from the Government of Mauritius and in consultation with the parties, the President of the Tribunal this year appointed the three arbitrators and the president of the Annex VII arbitral tribunal instituted in respect of the dispute between Mauritius and the United Kingdom concerning the "Marine Protected Area" related to the Chagos Archipelago.

Mr President,

22. The Tribunal is pursuing its efforts to promote greater understanding of the dispute settlement system established by the Convention. For this purpose, it has organized eight regional workshops aimed at legal professionals from developing

countries who are working for their respective governmental authorities. The most recent workshop, to which all Pacific Island States and territories of the region were invited, took place last August in Fiji. On behalf of the Tribunal, I should like to express my gratitude to the Government of Fiji for its hospitality and most valuable assistance in organizing this workshop. I would also like to express my gratitude to the Korea International Cooperation Agency - KOICA - for its financial assistance to this programme. Without KOICA's help these workshops would not have been possible.

23. The Tribunal also continues to lend its support to the capacity-building and training programme on dispute settlement under the Convention. Established in 2007 with financial support from the Nippon Foundation, this nine-month long training programme takes place every year. The 2010 programme participants attended lectures on topical issues on the law of the sea and maritime law as well as training courses on negotiation and maritime delimitation. During the reporting period, nationals of Argentina, Brazil, Greece, Mozambique, Oman, South Africa and Togo participated in the programme. On behalf of the Tribunal, I should like to express my gratitude to the Nippon Foundation for its continued financial assistance to this training programme.

24. The internship programme we have run since 1997 continues to generate a great deal of interest. In 2010, 18 participants from 16 different countries and various regions of the world were accepted on the programme. Of these interns, 7 received grants from the fund established by the Korea International Cooperation Agency – KOICA. Intended for interns from developing countries, these grants cover their expenses during their participation in the programme. At the end of 2010, a total of 223 interns from 73 States had participated in the internship programme.

25. The Tribunal, in collaboration with the International Foundation for the Law of the Sea, is also associated with the organization of a four-week long Summer Academy, which takes place annually on the Tribunal's premises. The fourth Summer Academy was held from 25 July to 20 August 2010 under the theme "Uses

and protection of the sea – Legal, economic and natural science perspectives”. Thirty-one participants from 29 different countries attended.

26. In this connection, I would like to recall that the Tribunal has established a trust fund for training in law of the sea and maritime fields to be financed through voluntary contributions. The object of the fund is to provide financial assistance to applicants from developing countries participating in the Tribunal’s internship programme and the Summer Academy, as well as to cover expenses incurred with respect to the implementation of the programme².

Mr President,

27. I am pleased to note that Malawi and Thailand are the most recent countries to have become parties to the Convention on the Law of the Sea. This brings the Convention a step closer to universality. We now have 162 States Parties to the Convention. Of these, 44 have made a declaration concerning the procedure for the settlement of disputes relating to the interpretation or application of the Convention, and of these 30 have selected the Tribunal as a means for the settlement of law of the sea disputes, pursuant to article 287 of the Convention.

28. I am also pleased to note that, since my last report to the Meeting of States Parties, two more States – Ireland and France – have become parties to the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted on 23 May 1997, thus bringing the number of States Parties to it to 40. I should like to recall that, in its resolutions on the law of the sea passed every year, the General Assembly of the United Nations has recommended that States that have not yet done so consider ratifying or acceding to this Agreement.

Mr President,

² See doc SPLOS/205.

29. My term of office as President of the Tribunal will come to an end on 30 September this year. Since this is the last time I am addressing this Meeting in my capacity as President of the Tribunal, I should like to seize this opportunity to convey to you, Mr President, to your predecessors in the Chair and to all delegates my sincere appreciation for the cooperation and assistance which you and they have offered to the Tribunal and to myself. I should also like to extend my most sincere gratitude to the Legal Counsel and, in particular, to the Director of DOALOS, Mr Tarassenko, and his staff for the excellent cooperation and invaluable assistance that the Tribunal and I have received from them.

30. I take also this opportunity to thank the members of the delegation of Germany, who year after year have brought together delegates at their Permanent Mission to participate with the President of the Tribunal in an informal exchange of views and experience on the role and activities of the Tribunal.

I thank you for your attention.