

STATEMENT BY THE PRESIDENT OF THE TRIBUNAL, MR. THOMAS A. MENSAH, ON AGENDA ITEM 38: "OCEANS AND THE LAW OF THE SEA" AT THE 69TH PLENARY MEETING OF THE FIFTY-THIRD SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY, 24 NOVEMBER 1998

Mr President and Distinguished Delegates,

I wish first of all to express, on behalf of the International Tribunal for the Law of the Sea, sincere appreciation for the opportunity to address this Session of the General Assembly in the context of its consideration of the important item of Oceans and the Law of the Sea.

Permit me, Mr President, to join in the general expression of congratulations to you on your election as President of the Fifty-third Session of the General Assembly. There is no doubt that the important business of the General Assembly will benefit by your wise and experienced leadership. It is a clear evidence of the soundness of the choice that the work of the Session has advanced so successfully to date.

It is a singular honour and personal pleasure for me to speak to the General Assembly on an issue related to the Oceans in the year 1998, the year which the Assembly itself has designated as the International Year of the Oceans. Having spent most of my professional life in the maritime domain, I find it personally gratifying to be playing a modest role in advancing the objective of the United Nations in promoting the peaceful and efficient utilization of ocean space for the development of humankind as a whole. This objective is, of course, symbolically as well as practically epitomized by the 1982 United Nations Convention on the Law of the Sea which was developed under the auspices of the General Assembly.

The Convention has been in force for exactly four years. During that time all the institutions created by it have been put in place and are in operation. The International Tribunal for the Law of the Sea is one of these institutions. Its purpose is to assist the crucial purpose of facilitating the peaceful settlement of disputes which may arise in the interpretation and application of the provisions of the Convention between any of the States Parties. The Tribunal was inaugurated in October 1996, following the election of the Judges by the Meeting of States Parties on 1 August of the same year. We were greatly honoured and encouraged by the presence of His Excellency the Secretary-General of the United Nations at the inaugural ceremony at the seat of the Tribunal in Hamburg. The Secretary-General also participated in the laying of the foundation stone of the permanent premises of the Tribunal.

In the two years since its inauguration, the Tribunal has been privileged to receive consistent support and encouragement from all the States Parties, from the United Nations and from the international community in general. That support is further reflected in the draft resolution before this august Assembly under the agenda item under consideration. The Tribunal is most grateful for this support, and I would like, on behalf of all my colleagues the Judges and the Registrar and the staff of the Registry of the Tribunal, to express profound appreciation to all concerned for the assistance and encouragement they have given us in so many ways. In particular, I wish to thank the delegations which co-sponsored the draft resolution and, especially, the distinguished delegate of Finland, who I am informed co-ordinated the negotiations leading to the text which so comprehensively sets out the various aspects of the law of the sea that need to be addressed by the General Assembly at this time.

As noted in the draft resolution, the International Tribunal has made great strides during its two years of operation, and particularly so in the past year. It has almost completed its organizational arrangements, with the adoption of the Rules and Regulations necessary for the performance of its judicial tasks and related administrative functions. It has established the internal committees and formed the chambers required or permitted under the Statute of the Tribunal. The task of constituting the Registry and its supporting infrastructure has proceeded apace, within the limits of the financial resources made available by the States Parties. With the agreement of the Meeting of States Parties the staff and other resources are to be strengthened incrementally over the next few years.

At the end of 1997 the Tribunal initiated its judicial work with the first application submitted to it in November. The proceedings were commenced almost immediately and judgment on the case was delivered on 4 December 1997. The case involved the meaning and scope of one of the innovative provisions of the Law of the Sea Convention: the article concerning the prompt release of ships and crews arrested in foreign ports. The ruling of the Tribunal has already received extensive comment in academic and professional journals, indicating interest both in this very important aspect of the Convention as well as the work of the Tribunal in general. We are pleased and grateful for the recognition given to this development in the draft resolution.

The Tribunal is now seised of the first dispute on merits to be submitted to it. This case, brought to the Tribunal by agreement between the parties, involves many complex and interesting questions relating to the rights and obligations of States under the Convention on the Law of the Sea and general international law. On present plans, judgment will be delivered in the case before the end of June 1999, less than eighteen months after the submission of the case, and less than two years from the date of the incident giving rise to the dispute. It is our hope that this will provide a practical demonstration of the determination of the Tribunal to make its procedures as expeditious and cost-effective as possible, with due regard to the basic requirements of the judicial process and the right of the parties to be given appropriate opportunities to present their case. The experience to date has shown that the method of work it has established in the Rules and Internal Procedures are appropriate and in line with the expectations of the founding fathers of the Convention and the Tribunal.

With regard to administrative and financial matters, the Tribunal has developed final texts of its Financial and Staff Regulations. In line with the recommendations of the Meeting of States Parties, these have been based on the regulations applied in the United Nations common system in which the Tribunal has decided to participate. As a first step towards this objective, the Tribunal has concluded the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea. This has been supplemented by the necessary arrangements for participation in the United Nations Joint Pension Scheme and for the issue of the United Nations *Laissez-passer* to the Judges and other appropriate personnel of the Tribunal's Registry. In this context, I wish to take the opportunity to express my sincere thanks and appreciation to his Excellency the Secretary-General for the personal interest he showed in the progress of the negotiations for the Agreement. Our thanks also go to the distinguished Legal Counsel and his senior collaborators in the Legal Office as well as in the Division of Ocean Affairs and the Law of the Sea. They have spared no effort in providing the Tribunal and the Registrar and his colleagues with invaluable support, advice and assistance at every turn. It is our fervent hope and expectation that we will continue to benefit from the very useful cooperation from them, and I trust that the General Assembly will give them the

necessary approval, encouragement and, above all, the resources which will enable them to assist us to the extent required in the future.

Another major development in the past year has been the adoption by the Meeting of States Parties of the Agreement on the Privileges and Immunities of the Tribunal. This Agreement was opened for signature on 1 July 1997, and will enter into force upon ratification by ten States Parties. This Agreement is of crucial importance to the effective functioning of the Tribunal and it is, therefore, essential that it is brought into force as soon as possible. I wish to avail myself of this unique occasion to appeal to the Governments of all States Parties to expedite the necessary constitutional and other procedures to enable them to sign and ratify the Agreement at the earliest practical opportunity.

The Tribunal and the authorities of the Federal Republic of Germany are in the final stages of the negotiations on the Agreement relating to the privileges and immunities of the Tribunal in its headquarters State. It is expected that a final agreement will be concluded soon. In this connection I wish to reiterate our appreciation and thanks to the Government of Germany and the City of Hamburg not only for the cooperative spirit in which these negotiations have proceeded but also for the many facilities which they have so generously and readily made available to us in diverse ways. Between them they have done all that is necessary and possible to accommodate the needs of the Tribunal and its staff at its headquarters in the Free and Hanseatic City of Hamburg.

In this regard, I am pleased to inform you, Mr President and Distinguished Delegates, that work on the magnificent premises being erected for the Tribunal by the Government of the Federal Republic of Germany and the City of Hamburg has progressed according to plan, and it is now expected that we will be in a position to move into it either at the end of 1999 or very early in the year 2000. It is my hope, and the hope of all my colleagues at the Tribunal, that the United Nations will once again be suitably represented on that occasion.

Mr President, I am pleased and honoured indeed to be able to report that the International Tribunal for the Law of the Sea is now firmly established and fully operational. It looks forward to the future with confidence and cautious optimism. In this it counts on the continued support and help of the States Parties, the United Nations and the global maritime community.

Mr President, the International Tribunal for the Law of the Sea is a pivotal part of the elaborate and comprehensive scheme of law and institutional framework established by the 1982 Convention on the Law of the Sea. In addition to its role as one of the procedures which States Parties may choose for the settlement of disputes concerning the interpretation and application of the Convention, the Tribunal acts also as a compulsory forum for dealing with various cases which the international community considers must be resolved peacefully and expeditiously. These range from disputes between States and other appropriate entities in connection with activities for the exploration for and exploitation of the resources of the international seabed area, to the release of arrested and detained vessels and their crews and to the prescription of provisional measures to preserve the rights of parties in dispute or to prevent irreversible harm to the marine environment.

The Judges of the Tribunal and the Registrar and the staff of the Registry recognize the importance of the mandate of the Tribunal and they are determined to discharge the responsibilities which have been placed on them. But they are also keenly aware that they need

the material and moral support of States, of the United Nations and of the international community as a whole for the successful achievement of the objectives underlying the establishment of the Tribunal. In reporting to you the modest but significant achievements of the past two years, I wish to take the opportunity to appeal to you, Mr President and distinguished delegates, for your kind support and assistance to the Tribunal and its effective operation in the coming years. The Tribunal acknowledges with thanks the generous recognition given to it in the draft resolution. It is most appreciative of the very kind words about its work to date. It seeks your further and continuing help in other areas. In this regard I wish to call special attention to two major areas in which the General Assembly may be of further assistance to the Tribunal. The first is to urge the States Parties to the Convention to make the necessary declarations concerning the choice of procedures under article 287 of the Convention. As you are all aware, the jurisdiction of the Tribunal and the other procedures enumerated in article 287 over disputes derive basically from the choice made by the States involved in the disputes. This choice is made by means of the declaration specified in the Convention. It is, therefore, important that as many as possible of the States Parties make these declarations. And, naturally, it would be most welcome to the Tribunal if States Parties give the most serious consideration to including the Tribunal in their choice of procedure. The Tribunal will be grateful and honoured to be given the opportunity to assist the international community in the peaceful settlement of disputes which may arise in the implementation of the most comprehensive treaty to have been negotiated under the auspices of the United Nations.

The second matter of concern to the Tribunal is one which is alluded to in the draft resolution. This is the issue of resources to the Tribunal. In this regard reference needs to be made to the resources made available to the Tribunal in the periodic budgets approved by the States Parties. The Tribunal is immensely grateful to the States Parties for the very helpful provisions of financial and other support which it has received to date. Although these have been extremely useful and met most of its needs, they have unfortunately not satisfied all its requirements. We do of course recognize the very serious constraints under which all governments have to operate, and we accept that we also have to make necessary economies in our operations. We only request that due account will continue to be given to the necessity of ensuring that the resources given to us are adequate to ensure effective operation in all aspects of our work. But even more importantly, the Tribunal must be assured that the budgetary appropriations approved will in fact be available to it. For this to happen it is imperative that all States Parties and other entities concerned pay their assessed contributions fully and on time. In the past this has not been the case, and this has caused serious difficulties to the Tribunal. The Tribunal would be most grateful to the General Assembly for any help which it may be able to give in urging and encouraging all States Parties to discharge their financial commitments to the Tribunal without delay. In doing so they will be making an invaluable and indispensable contribution to the viable existence and effective operation of the institution which they have established for the worthy objective of ensuring that disputes are settled peacefully in accordance with the principles of the United Nations Charter.

Mr. President, I end by reiterating my appreciation to you and the Distinguished Delegates for the opportunity to address you. I also wish to thank again the Distinguished Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for the continuing support. On behalf of the Tribunal, and the Registrar, I wish to thank the sponsors of the draft resolution for its references to the role and activities of the Tribunal. Mr President and Distinguished Delegates, I now wish the General Assembly every success in its important deliberations at this Session.