

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY
L. DOLLIVER M. NELSON
PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
ON
THE REPORT OF THE TRIBUNAL
AT
THE THIRTEENTH MEETING OF THE
STATES PARTIES TO THE
LAW OF THE SEA CONVENTION
9 JUNE 2003

PLEASE CHECK AGAINST DELIVERY

International Tribunal for the Law of the Sea
Tel: 49 (40) 3560-70. Fax: 49 (40) 3560-7245
Website: www.itlos.org. E-mail: itlos@itlos.org

Mr. President,

(22 May 2003)

1. On behalf of the Tribunal, I extend to you my congratulations on your election as the President of this Meeting and wish you every success in the discharge of your functions. May I also convey our gratitude to Ambassador Don Mackay, your predecessor, for the excellent work he has rendered.

2. Mr. President, I have the sad duty to report the death of our colleague and friend, Judge Lennox Fitzroy Ballah of Trinidad and Tobago on 29 March 2003. The Tribunal mourns the loss of a dear friend and colleague. He was elected for a term of nine years, which would have ended on 30 September 2011. A vacancy has therefore occurred in the Tribunal for the remainder of Judge Ballah's term. In accordance with article 6, paragraph 1, of the Statute of the Tribunal, the Registrar invited States Parties by a note verbale dated 24 April 2003 to submit their nominations between 30 April 2003 and 29 June 2003. States Parties were also informed that, after consultations with the former President of the Meeting of States Parties, I have considered it advisable to have the election held on 2 September 2003. I can now confirm that the election will be held on that date.

3. It is an honour for me to address the Meeting of States Parties on the occasion of its consideration of the Annual Report of the Tribunal for the period 1 January to 31 December 2002. The Annual Report gives a brief account of the various activities of the Tribunal and also its financial position in 2002. With your permission, I wish to present to this meeting some of the judicial and other work of the Tribunal in 2002 and to add some recent developments.

4. With regard to organizational matters, distinguished delegates are aware that the twelfth Meeting of States Parties elected seven Judges of the Tribunal for a term of nine years. Five Judges have been re-elected: Judges Caminos, Ndiaye, Treves, Xu and Yankov. The newly elected Judges are the late Mr. Lennox Fitzroy Ballah (Trinidad and Tobago) and Mr. Jean-Pierre Cot (France).

5. My predecessor, Judge Chandrasekhara Rao, completed his three-year term as President of the Tribunal on 30 September 2002. On 1 October 2002, during the

Fourteenth Session of the Tribunal, I was elected as President of the Tribunal for a three-year term. During this session, the Tribunal elected Judge Budislav Vukas as Vice-President and Judge Mohamed Mouldi Marsit as President of the Seabed Disputes Chamber.

6. In the course of last year, the Tribunal held two sessions, the Thirteenth Session from 4 to 15 March 2002 and the Fourteenth Session from 25 September to 8 October 2002. The Tribunal's sessions are devoted essentially to administrative matters and legal matters not directly related to cases. During its Fourteenth Session, the Tribunal reconstituted its Seabed Disputes Chamber and its three special chambers established in accordance with article 15 of the Tribunal's Statute: (i) the Chamber of Summary Procedure; (ii) the Chamber for Fisheries Disputes; and (iii) the Chamber for Marine Environment Disputes. The composition of these chambers is set out in the report. The special chambers are established to deal with particular categories of disputes. Any of the chambers will be competent to hear disputes if the parties so request. Under the Statute, a judgment given by any chamber is considered as rendered by the Tribunal.

7. During the Fourteenth Session, the Tribunal also reconstituted its committees: (i) the Committee on Budget and Finance; (ii) the Committee on Rules and Judicial Practice; (iii) the Committee on Staff and Administration; (iv) the Committee on Library and Publications; and (v) the Committee on Buildings and Electronic Systems. During the past year, the Tribunal and its Committees considered, among other things, issues that have a bearing on its judicial work, such as costs to be borne by parties in judicial proceedings, requests for advisory opinions under the article 138 of the Rules, bonds and other financial security under article 292 of the Convention, and secrecy of the Tribunal's deliberations. The Tribunal also discussed administrative matters not directly related to cases such as budget proposals, budget performance, the staff assessment fund, audit report, staff regulations and rules, recruitment of staff, buildings and electronic systems, and library facilities. Details of these issues are given in the Annual Report.

8. Turning to its judicial work, the Tribunal met last year from 11 to 23 December 2002 to deal with the "*Volga*" Case. The eleventh case submitted to the Tribunal

involved urgent proceedings concerning the prompt release of the vessel *Volga* and members of its crew under article 292 of the Convention. Proceedings were instituted on 2 December 2002 by an application submitted by the Russian Federation against Australia. The Tribunal delivered its Judgment on 23 December 2002. It may be noted that, consistent with its jurisprudence, the Tribunal applied to the “*Volga*” Case the various factors relevant in an assessment of the reasonableness of bonds or other financial security which it had identified in previous judgments. In this case, the Tribunal was for the first time faced with the issue of non-financial conditions attached by the detaining State to the security required for the release of the vessel. In this respect, the Tribunal stated that:

“The object and purpose of article 73, paragraph 2, read in conjunction with article 292 of the Convention, is to provide the flag State with a mechanism for obtaining the prompt release of a vessel and crew arrested for alleged fisheries violations by posting a security of a financial nature whose reasonableness can be assessed in financial terms. The inclusion of additional non-financial conditions in such a security would defeat this object and purpose.” [paragraph 77 of the Judgment]

On the problem of continuing illegal fishing in the Southern Ocean the Tribunal had this to say:

“The Tribunal understands the international concerns about illegal, unregulated and unreported fishing and appreciates the objectives behind the measures taken by States, including the States Parties to CCAMLR, to deal with the problem.” [paragraph 68 of the Judgment]

9. A case is still pending on the docket, the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)*, which was submitted to a chamber of the Tribunal. The time-limit for making preliminary objections with respect to the case was extended at the request of the parties to enable them to reach a settlement during the extended period.

10. I must bring to your attention that, following the Tribunal's Order of 3 December 2001 in the *MOX Plant Case*, a former President of the Tribunal, Judge Mensah, has been appointed by the parties as President of the Annex VII arbitral tribunal in the case.

11. Mr. President, eleven cases have been submitted to the Tribunal so far, which constitutes a respectable record for a newly-established international court. In this respect, I should like to refer to General Assembly resolution 57/141 of 12 December 2002, in which the General Assembly noted the continued contribution of the Tribunal to the peaceful settlement of disputes in accordance with Part XV of the Convention and underlined the Tribunal's "important role and authority concerning the interpretation or application of the Convention".

12. There is no doubt, however, that the Tribunal has not been put to full use. I should like to mention that [32] States Parties have made written declarations relating to the settlement of disputes under article 287 of the Convention and that [19] States Parties 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. It is to be hoped that, in accordance with the recommendation in the General Assembly resolution which I have just mentioned here an increasing number of States will utilize the possibility offered by article 287 of the Convention of choosing means for the settlement of disputes concerning the interpretation or application of the Convention. Another alternative that States may use is to confer jurisdiction on the Tribunal through international agreements. Several such multilateral agreements have already been concluded.

13. The Annual Report gives an account of the status of the Agreement on the Privileges and Immunities of the Tribunal, which entered into force on 30 December 2001. There are, however, only twelve States which have become parties to it. May I take this opportunity to draw your attention to the recommendation in General Assembly resolution 57/141 to States that have not done so to consider ratifying or acceding to the Agreement.

14. I am glad to report to you that the Tribunal has taken steps to strengthen its relationships with other international organizations and bodies. During the past year, administrative arrangements have been concluded between our Registry and the Division for Ocean Affairs and the Law of the Sea of the United Nations, the Appellate Body Secretariat of the World Trade Organization, the Legal Affairs Division of the WTO Secretariat, the International Hydrographic Organization and the International Maritime Organization. During the current year, such arrangements have been concluded with the European Court of Human Rights and the Intergovernmental Oceanographic Commission of UNESCO.

15. An important chapter of the Annual Report deals with the financial situation of the Tribunal. I wish to report to you that as of 31 May 2003, there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996 to 2002 in the amount of US\$ 1,470,234; the outstanding amounts in relation to the 2002 budget is US\$ 632,873 and in relation to the 2003 budget US\$ 1,539,420. May I refer here to the appeal made by the General Assembly in resolution 57/141 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

16. I should like to state that there has been full and cordial cooperation between the Tribunal and the host country, the Federal Republic of Germany. Negotiations on the Headquarters Agreement between the Tribunal and Germany started in 1996. However, the Headquarters Agreement has not yet been concluded. This does not mean that the current relations are taking place in a legal vacuum. The relations with the host country are currently governed by the Convention on the Privileges and Immunities of the Specialized Agencies of 1947. The Tribunal, be it noted, operates within the United Nations system and therefore has to be treated in a manner consistent with United Nations practice. We hope that this issue will soon be resolved in a spirit of goodwill and cooperation.

17. Mr. President, I would like to note with appreciation and welcome the proposal to establish an international foundation for the law of the sea in Hamburg, designed to promote the role of the Tribunal and its seat as a focal point for the settlement of disputes concerning the law of the sea. I wish to thank the Federal Republic of

Germany and, in particular, the Free and Hanseatic City of Hamburg for their continuous support for this project.

With these remarks, I place the Annual Report of the Tribunal before you for your consideration.