

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

MR. RÜDIGER WOLFRUM,

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 75(a)

AT

THE PLENARY OF THE SIXTIETH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

28 NOVEMBER 2005

Mr. President,

1. On behalf of the International Tribunal for the Law of the Sea, I wish to express my appreciation for the opportunity given to me to address this sixtieth session of the General Assembly on the occasion of its annual examination of the item "Oceans and the law of the sea". I extend to you, Mr President, my personal congratulations, and those of the Tribunal, on your being elected President of the General Assembly.

2. Mr President, I would like to take this opportunity to report to the General Assembly on the developments which have taken place with respect to the Tribunal since the last meeting of the General Assembly. I will then make some remarks regarding the jurisdiction of the Tribunal.

3. As regards organizational matters, I may inform the General Assembly that on 22 June 2005 the Meeting of States Parties elected seven judges to the Tribunal for a term of nine years. Two judges of the Tribunal have been re-elected: Judges Park (Republic of Korea) and Nelson (Grenada). The judges newly elected are Mr Stanislaw Pawlak of Poland, Mr Shunji Yanai of Japan, Mr Helmut Türk of Austria, Mr James Kateka of Tanzania and Mr Albert Hoffmann of South Africa. They, as well as Judges Park and Nelson, will serve until 30 September 2014.

4. In the course of 2005, the Tribunal held its Nineteenth and Twentieth Sessions which were devoted to legal and judicial matters as well as administrative and organizational issues. On 30 September 2005, my predecessor, Judge Dolliver Nelson, completed his three-year term as President of the Tribunal. On 1 October 2005, I was elected President of the Tribunal for a three-year term, and the Tribunal elected Judge Joseph Akl Vice-President and Judge Hugo Caminos President of the Seabed Disputes Chamber.

5. As regards its judicial work, in December 2004, the Tribunal dealt with the "*Juno Trader*" Case. This was the thirteenth case submitted to the Tribunal. It involved urgent proceedings concerning the prompt release of the vessel *Juno Trader* and its crew under article 292 of the Convention. Proceedings were instituted on 18 November 2004 by an Application filed on behalf of Saint Vincent and the Grenadines against Guinea-Bissau. The Tribunal delivered its Judgment on 18 December 2004. It may be noted that, in keeping with its jurisprudence, the Tribunal applied to the "*Juno Trader*" Case the various factors relevant to an assessment of the reasonableness of bonds or other financial security which it had identified in previous judgments.

6. Mr President, I am pleased to state that the Judgment of the Tribunal in the "*Juno Trader*" Case was adopted unanimously and the vessel was released pursuant to the judgment. It is also important to note that, for this case, use was made for the first time of the Trust Fund which is administered by the United Nations (DOALOS) to assist developing countries in the settlement of disputes through the Tribunal.

7. Since the commencement of its activities in October 1996, 13 cases have been brought before the Tribunal. While the Tribunal has broad jurisdiction over any dispute regarding the interpretation and application of the Convention or any agreement related to the purposes of the Convention, the majority of these cases have been confined to instances where the jurisdiction of the Tribunal is compulsory: the prompt release of vessels and crews and the prescription of provisional measures pending the constitution of an arbitral tribunal. It is safe to say that the jurisdictional powers of the Tribunal have not yet been exhausted. For that reason, I would like to thank the sponsors of the draft resolution for noting the Tribunal's continued and significant contribution to the settlement of disputes by peaceful means in accordance with Part XV of the Convention and for underlining the important role and authority of the Tribunal concerning the interpretation or application of the Convention and the Agreement relating to the Implementation of Part XI of the Convention.

8. The jurisdiction of the Tribunal is based not only on the United Nations Convention on the Law of the Sea but it may also be founded on any international agreement related to the purposes of the Convention which specifically confers jurisdiction on the Tribunal. Seven such multilateral agreements have already been concluded. An important example of an international agreement conferring jurisdiction on the Tribunal is the Straddling Fish Stocks Agreement of 1995 which provides that any dispute between States parties to this Agreement concerning the interpretation or application of this Agreement – whether or not they are also parties to the Law of the

Sea Convention – is subject to the mechanism for settling disputes which is set out in Part XV of the Convention (article 30 of the Agreement). The Straddling Fish Stocks Agreement also makes this mechanism applicable to disputes concerning subregional, regional or global fisheries agreements relating to straddling or highly migratory fish stocks. It is interesting to note that the Straddling Fish Stocks Agreement has modified the Tribunal's competence to prescribe provisional measures since it allows the Tribunal to prescribe provisional measures not only to protect the rights of the parties but also to prevent damage to the fish stocks in question. Likewise, the Tribunal is empowered to order provisional measures pending agreement between coastal States and fishing States as concerns the conservation and management of straddling stocks (article 31 of the Agreement).

9. I should also like to draw your attention to a further international agreement conferring jurisdiction on the Tribunal, namely, the Convention on the Protection of the Underwater Cultural Heritage of 2001. Similarly, this Convention applies Part XV of the Law of the Sea Convention *mutatis mutandis* to any dispute between parties to it – whether or not they are parties to the Law of the Sea Convention (article 25 of the Underwater Cultural Heritage Convention).

10. These international agreements are indeed useful developments and we would like to encourage States to consider making use of the possibility of including similar provisions in future agreements concerning the law of the sea which are the subject of international negotiations. I am grateful to the sponsors of the draft resolution for having

noted that States parties to an international agreement related to the purposes of the Convention may submit to the Tribunal any dispute concerning the interpretation or application of that agreement which is submitted to it in accordance therewith.

11. A provision conferring jurisdiction on the Tribunal could also be included in bilateral agreements in respect of disputes arising out of the interpretation or application of the relevant agreement. According to such a provision, a dispute concerning the agreement should, at the request of any party to it, be submitted to the Tribunal, or to an *ad hoc* chamber of the Tribunal, if the dispute is not solved by diplomatic means within a certain period. The provision could also contain details of the method of selecting the judges or judges *ad hoc* who would sit in the chamber. In this respect, the procedure set out in article 3 of Annex VII to the Convention could serve as a model. The inclusion of such provisions in international agreements is a logical development. It follows a pattern established during the 19th century as regards arbitration and during the 20th century in respect of the International Court of Justice. As for the Tribunal, such development would certainly enhance the central role it plays in the settlement of disputes regarding law of the sea matters. May I refer, in this respect, to a statement made by Dr Joe Borg, Commissioner for Fisheries and Maritime Affairs of the European Union, on the occasion of his visit to the Tribunal on 2 September 2005, (and I quote) that:

“the EU, where appropriate, could also offer to include a provision in the agreements relating to the Law of the Sea which it concludes with third countries binding the parties to refer the settlement of any disputes to ITLOS.”

(end of quote)

12. May I further emphasize that parties may, at any time, conclude a special agreement to submit a dispute to the Tribunal or to an *ad hoc* special chamber of the Tribunal, in accordance with article 15, paragraph 2, of the Statute. An *ad hoc* special chamber is a suitable alternative for parties considering arbitration. In fact, the composition of this *ad hoc* special chamber is determined by the Tribunal with the approval of the parties, giving them control over the chamber's composition. The parties are entitled to choose, from among the 21 judges of the Tribunal, those whom they want to sit in the chamber, while they may also appoint judges *ad hoc* if the chamber does not include a member of the nationality of the parties. The parties may at any time consult with the President of the Tribunal on any questions regarding the composition of the chamber. They have at their disposal the Rules of the Tribunal, which may be amended, at their request, in particular proceedings. In their special agreement, the parties may indicate the specific questions upon which the chamber is requested to give a judgment and a judgment issued by an *ad hoc* chamber is considered to have been rendered by the full Tribunal. Finally, the parties do not have to bear the expenses of the proceedings before the Tribunal or one of its chambers.

13. In the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* – a case which is still pending on the docket – Chile and the European Community have taken advantage of this *ad hoc* system. At their request, the Tribunal constituted a chamber composed of five

members, of whom four are judges of the Tribunal and one is a judge *ad hoc* chosen by Chile. It may be recalled that by Order dated 16 December 2003, the time-limit for making preliminary objections with respect to the case was extended at the request of the parties until 1 January 2006 to enable them to reach a settlement. So far, the swordfish case is the only one submitted to an *ad hoc* chamber and in my view, the potential offered by this alternative – we could call it “arbitration within the Tribunal” – has not yet been fully realized. In this connection, I would like to thank the sponsors of the draft resolution for noting the possibility provided for in the Tribunal’s Statute whereby disputes may be submitted to a chamber of the Tribunal.

14. I wish to take this opportunity to draw the attention of the Distinguished Delegates to the fact that the Seabed Disputes Chamber is not only competent to deal with disputes regarding activities in the international seabed area but is also empowered to give advisory opinions. The Chamber can exercise its advisory competence and give an advisory opinion, firstly, at the request of the Assembly or the Council of the International Seabed Authority “on legal questions arising within the scope of their activities” (article 191 of the Convention), and, secondly, at the request of the Assembly, when certain procedural requirements are met, “on the conformity with [the] Convention of a proposal before the Assembly on any matter” (article 159, paragraph 10, of the Convention). Such opinions are given as a matter of urgency. This advisory jurisdiction – although non-binding in nature – could assist the Assembly or the Council of the International Seabed Authority in overcoming any differences in legal opinions which may arise when performing their activities.

15. In this respect, I would like to mention that advisory proceedings are not limited to matters relating to Part XI of the Convention. Under article 138 of its Rules, the Tribunal may also be requested to give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission of a request for such an opinion. The advisory function of the Tribunal is a significant innovation in the international judicial system – provided it can be given a wide interpretation. In such a case, it may offer a potential alternative to contentious proceedings and could be an interesting option for those seeking a non-binding opinion on a legal question or an indication as to how a particular dispute may be solved through direct negotiations. Such proceedings could be of particular assistance to parties to a dispute in the process of reaching a solution by negotiation, for example in maritime delimitation cases. It should not be forgotten that under Article 33 of the UN Charter negotiations are the primary means of settling international disputes. In this respect, the parties could ask the Tribunal to determine the principles and rules of international law applicable to a delimitation dispute and undertake thereafter to establish the boundary on that basis. The parties can always specify in the agreement the questions upon which the Tribunal would be requested to render an advisory opinion. Certainly, recourse to binding settlement procedures could ultimately also be made, if necessary.

16. The Tribunal's advisory function is based on article 21 of the Statute, which states that the jurisdiction of the Tribunal comprises "all disputes and all applications

submitted to it” and “all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.” Accordingly, future international agreements, possibly between States or between States and international organizations, could provide for recourse to the Tribunal’s advisory procedures. A request for an advisory opinion is to be transmitted to the Tribunal by whichever “body” is authorized to make the request in accordance with the provisions of the relevant international agreement. The term “body” refers to the competent organ of any entity, State or organization, which is empowered under the agreement to submit the request.

17. As the Tribunal feels that knowledge of its procedures should be widely promoted, we are planning to hold, during the course of next year, conferences in different areas of the world to present the work of the Tribunal. These conferences will benefit from the participation of the judges coming from the relevant regions.

18. I am glad to report to you that the Tribunal has taken further steps to develop its relationships with other international organizations and bodies and, during this year, an administrative arrangement was concluded between the Tribunal and the United Nations Environment Programme.

19. I would like to mention that, since November last year, eight States have acceded to the Agreement on the Privileges and Immunities of the Tribunal, which brings the total to 21. May I refer, in this regard, to General Assembly resolution 59/24, in which the Assembly called upon States that have not done so to consider ratifying or

acceding to the Agreement. This recommendation has also been included in this year's draft resolution.

20. As at 31 October 2005, there was an unpaid balance of assessed contributions to the overall budget of the Tribunal amounting to €2,413,728 for the 1996/97 to 2005 budgets of the Tribunal. The Tribunal is aware of the difficulties this situation may cause with respect to its functioning. The Registrar will send notes verbales to the States Parties concerned in December 2005, reminding them of their outstanding contributions to the budgets of the Tribunal. We are grateful to the sponsors of the draft resolution for incorporating an appeal to States Parties in this matter.

21. I wish to draw the attention of the Distinguished Delegates to the Internship Programme of the Tribunal and the grant provided by the Korea International Cooperation Agency for funding the participation of candidates from developing countries in the programme. On behalf of the Tribunal, I wish to convey our gratitude to the Korea International Cooperation Agency for this generous contribution.

22. Mr President, I conclude by expressing my appreciation to you and the Distinguished Delegates for the opportunity given me to address this meeting. I also wish to thank the Distinguished Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for their support. Mr President and Distinguished Delegates, I should now like to wish the General Assembly every success in its important deliberations at this session.