

**STATEMENT BY JUDGE ALBERT HOFFMANN, OBSERVER OF THE  
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA.**

**Asian-African Legal Consultative Organization**  
FORTY-SIXTH SESSION  
CAPE TOWN, REPUBLIC OF SOUTH AFRICA  
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I am highly honored to address the Asian African Legal Consultative Organization at its 46<sup>th</sup> Session as a representative of the International Tribunal for the Law of the Sea.

On behalf of the President of the Tribunal, Dr. Rüdiger Wolfrum, I would like to thank AALCO for inviting the Tribunal to your session this year as an observer. Judge Hugo Caminos represented the Tribunal at the 45<sup>th</sup> Session of AALCO in New Delhi in April last year.

As you know, I am from South Africa, so I also wish to welcome all the African and Asian delegates and observers to my country. I hope that you will have a wonderful visit. I invite you all to enjoy the warmth of South African hospitality.

*Contribution of AALCO to UNCLOS III*

First, I would like to recall the significant contribution of AALCO to the negotiations at the Third United Nations Conference for the Law of the Sea. The meetings of the AALCO from 1970 to 1982, though conducted outside of UNCLOS III, were acknowledged to have had an important influence on the outcome of UNCLOS III and on the 1982 United Nations Convention for the Law of the Sea.<sup>1</sup>

The Tribunal follows with great interest the issues important to the member States of AALCO. We note that issues concerning the law of the sea continue to occupy a place of significance in your work programme.

*"A Constitution for the oceans"*

The 1982 United Nations Convention on the Law of the Sea regulates all aspects of the ocean space, its uses and its resources and includes, among others, such matters as fisheries, archipelagic States, maritime delimitation, regime of islands, protection and preservation of the marine environment, marine

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<sup>1</sup> T Koh and S Jayakumar, "The Negotiating Process of the Third United Nations Conference on the Law of the Sea", in M. H. Nordquist (ed), *United Nations Convention on the Law of the Sea 1982, A Commentary*, vol. 1, (Center for Oceans Law and Policy, University of Virginia, 1985), p. 59.

scientific research. The comprehensive scope of the Convention makes it truly a “constitution for the oceans.”<sup>2</sup>

Today, the Convention has 154 States parties plus the European Community. Forty (40) States Members of the AALCO have ratified or have acceded to the Convention. The goal of the Convention is universal participation. Every year, in a resolution, the General Assembly calls on all States that have not done so, to consider becoming parties to the Convention.<sup>3</sup>

#### *Dispute settlement options and written declarations under article 287*

As you know, the Tribunal is established by the United Nations Convention on the Law of the Sea as one of the options available to the parties to the Convention under article 287 for the compulsory settlement of disputes concerning the interpretation or application of the Convention. The other options being the International Court of Justice in the Hague, arbitration under Annex VII or special arbitral tribunal under Annex VIII.

There is no hierarchy between the various options. It is up to the parties to choose which dispute settlement procedure they prefer. In article 287, paragraph 1 of the Convention, States and entities, when signing, ratifying or acceding to the Convention, or at any time thereafter, may make declarations specifying the forums for the settlement of disputes which they accept.

In practice, only 36 States, out of 154 States Parties, have made declarations under article 287. Twenty-four States have chosen the Tribunal as first choice. Twenty-three States have chosen the ICJ as first, second or third choice. Fifteen States have made declarations in favour of arbitration as first, second or third choice. Since, in the absence of declarations, States are deemed to have chosen arbitration, this shows clearly that in most cases arbitration will be the only means of settling disputes, except where the parties decide otherwise. I would like to take this opportunity to reiterate that written declarations in favour of the Tribunal under article 287 may be made at the time of ratification, accession or at any time thereafter.

On the matter of written declarations, allow me to quote paragraph 27 of the General Assembly Resolution 61/222 of 16 March 2007, where the General Assembly,

*Encourages* States parties to the Convention that have not yet done so to consider making a written declaration choosing from the means set out in article 287 of the Convention for the settlement of disputes concerning the interpretation

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<sup>2</sup> The phrase “A Constitution for the Oceans” is attributed to Ambassador Tommy Koh in the statements made on 6 and 11 December 1982 at the final session of UNCLOS III, in M. H. Nordquist (ed), *United Nations Convention on the Law of the Sea 1982, A Commentary*, vol. 1, (Center for Oceans Law and Policy, University of Virginia, 1985), p. 11.

<sup>3</sup> See paragraph 3, A/RES/61/222 of 16 March 2007.

or application of the Convention and the Agreement, bearing in mind the comprehensive character of the dispute settlement mechanism provided for in Part XV of the Convention. (end of quote)

Let me emphasize that declarations under article 287 are not the only way to bring a case before the Tribunal. It is always possible for the parties to a dispute to submit a case to the Tribunal on the basis of an agreement. Two cases have already been submitted to the Tribunal on the basis on an agreement. (Saint Vincent and the Grenadines/Guinea and Chile/European Community).

### *Jurisdiction of the Tribunal*

Let me now refer you briefly to the jurisdiction of the Tribunal. As you know, the core competence of the Tribunal is to deal with disputes arising out of the Convention. In other words, whenever a dispute relates to a provision of the Convention (with its 320 articles) or whenever it is alleged that a State has not complied with a provision of the Convention, the Tribunal is competent.

For example, issues relating to the delimitation of maritime areas, the detention or arrest of a vessel, damages resulting from oil pollution, overexploitation of fishery resources, are disputes that may be brought to the Tribunal for resolution.

With respect to disputes relating to the Convention, the Tribunal is open to States Parties to the Convention. This means the 154 States which have ratified or acceded to the Convention, plus the European Community.

Under the Convention, it is also possible for non-States Parties, such as the Authority, a state enterprise or a natural or juridical person, to appear before the Seabed Disputes Chamber of the Tribunal with respect to disputes relating to the exploration and exploitation of the deep seabed area.

The Tribunal may also acquire jurisdiction over disputes arising out of other agreements. Article 21 of the Statute provides that the jurisdiction of the Tribunal comprises all matters provided for in any other agreement which confers jurisdiction on the Tribunal. A number of agreements have been concluded which contain provisions stipulating that disputes arising out of the interpretation or application of these agreements could be submitted to the Tribunal. As an illustration, two of such agreements are the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The most recent convention that has adopted the dispute settlement procedure of the Convention is the Nairobi International Convention on the

Removal of Wrecks, 2007.<sup>4</sup> A list of the agreements and the relevant provisions contained therein are published in the Tribunal's Yearbook and made available on the website of the Tribunal.<sup>5</sup> The list does not claim to be exhaustive and is based on information brought to the attention of the Registry of the Tribunal.

### *Advisory proceedings*

I wish to add that the Tribunal is not only competent to deal with contentious proceedings, i.e., cases involving disputes between two States. It may also give an advisory opinion on legal questions. Indeed, the Convention provides that the International Seabed Authority may address requests for advisory opinions to the Seabed Disputes Chamber, a chamber consisting of 11 members of the Tribunal.

Requests for advisory opinions may also be submitted to the Tribunal pursuant to article 138 of the Rules of the Tribunal, which states that the Tribunal "may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion".

### *Jurisprudence of the Tribunal*

In its 10-year existence, the Tribunal has delivered decisions in 13 cases on several issues on the law of the sea, including the prompt release of vessels and their crews, protection and preservation of the marine environment, fisheries, the commissioning of a nuclear facility and the movement of radioactive materials, reclamation activities, freedom of navigation, nationality of claims, use of force in law enforcement activities, hot pursuit and the question of the genuine link between a vessel and its flag State. On the occasion of the Tribunal's tenth-year anniversary, Judge Rosalyn Higgins, the President of the International Court of Justice, stated that (and I quote) "within a decade, the Tribunal has pronounced interesting law, built a reputation for its efficient and speedy management of cases and shown innovative use of information technology" (end of quote). The General Assembly has also recognized (and I quote), "the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means in accordance with Part XV of the Convention, and underlines

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<sup>4</sup> Adopted 18 May, 2007.

<sup>5</sup> The other agreements in the list include the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; the Agreement for the Conservation of Fishery Resources in the High Seas of the South-East Pacific; the Convention on the Protection of the Underwater Cultural Heritage; the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; the Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean.

the important role and authority of the Tribunal concerning the interpretation or application of the Convention and the Agreement.” (end of quote)<sup>6</sup>

### *Chambers of the Tribunal*

Unless otherwise provided, cases are dealt with by the Tribunal, consisting of 21 judges. Parties to a case may also request that the case be heard by a chamber composed of three or more of the elected judges. They may choose a standing chamber: *Chamber for Marine Environment Disputes*; *Chamber for Fisheries Disputes*; *Chamber of Summary Procedure*; and *Chamber for Maritime Delimitation Disputes*.

They may also request the constitution of an *ad hoc* chamber, in which case the composition of the chamber will be determined by the Tribunal with the approval of the parties. Here, I would like to quote what President Wolfrum has said of the many advantages of *ad hoc* chambers in his Statement before the 61<sup>st</sup> Session of the General Assembly on 8 March 2006.

The system of *ad hoc* special chambers, which was used for the first time by Chile and the European Community, is a flexible mechanism that combines the advantages of a permanent court with those of an arbitral body. The parties have control over the chamber's composition, as they may choose any of the 21 judges who are to sit in the chamber and may also appoint judges *ad hoc* if the chamber does not include a member of the nationality of the parties. Under the Statute, a judgment given by any of the chambers is considered as rendered by the Tribunal. A further advantage is that the parties have at their disposal the Rules of the Tribunal, which allow the case to be processed swiftly. The parties have a certain degree of flexibility in that they may propose modifications or additions to the Rules. Interested delegations will find detailed information on the Tribunal's proceedings and its special chambers in the *Guide to proceedings before the Tribunal*. (end of quote)

### *Work of the Tribunal*

The Tribunal, at its Twenty-Second and Twenty-third Sessions, dealt with a number of legal matters that have a bearing on its judicial work. One of the issues considered by the Tribunal concerned the competence of the Tribunal on disputes on maritime delimitation. Article 288 of the Convention confers jurisdiction on the Tribunal, as well as the ICJ or an arbitral tribunal, to deal with any dispute concerning the interpretation or application of the Convention.

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<sup>6</sup> Paragraph 24, A/RES/61/222.

Therefore, disputes relating to maritime boundaries are considered disputes concerning the interpretation or application of the Convention.

The Tribunal has noted that its jurisdiction over jurisdiction over maritime delimitation disputes also include those which involve issues of land or islands. In his Statement before the 61st Session of the General Assembly, President Wolfrum stated that (and I quote)

This approach is in line with the principle of effectiveness and enables the adjudicative body in question to truly fulfill its function. Maritime boundaries cannot be determined in isolation without reference to territory. Moreover, several provisions of the Convention deal with issues of sovereignty and the inter-relation between land and sea. Accordingly, issues of sovereignty or other rights over continental or insular land territory, which are closely linked or ancillary to maritime delimitation, concern the interpretation or application of the Convention and therefore fall within its scope. (end of quote)

### *Costs*

The expenses relating to the functioning of the Tribunal are covered by the contributions of the States Parties. Therefore, submitting a case to the Tribunal would not require the payment of court or any administrative fees. The parties to the case have only to bear the expenses relating to counsel and advocates, together with the accommodation expenses during their stay in Hamburg for the hearing.

A trust fund was set up in 2000 in order to assist developing States, which are parties to a case before the Tribunal with respect to expenses. The fund is maintained by the secretariat of the Convention, the United Nations Division on Ocean Affairs and the Law of the Sea (DOALOS). In 2005, the Fund awarded US \$20,000 to Guinea-Bissau to defray its expenses related in the Juno Trader Case (St. Vincent and the Grenadines v. Guinea-Bissau).<sup>7</sup> As of 31 December 2006, the balance of the fund was US \$85,869.<sup>8</sup>

### *Workshops*

I would like to inform the members States of AALCO of the regional workshops on the role of the Tribunal on the settlement of disputes under the Convention. So far, the Tribunal has organized four workshops. The first workshop took place in Dakar, Senegal from 31 October to 2 November 2006. It was attended by representatives of different ministries of 13 Western African

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<sup>7</sup> Paragraph 55, A/60/63 of 4 March 2005.

<sup>8</sup> Paragraph 358, A/62/66 of 12 March 2007

States. The second was in Kingston, Jamaica from 16 to 18 April 2007. It was attended by representatives of 19 Latin American and Caribbean States.

A joint workshop was also organized by the Gabonese authorities and the Intergovernmental Oceanographic Commission of UNESCO in conjunction with the Meeting of the Advisory Board of Experts on the Law of the Sea (ABELOS) in Libreville on 26 and 27 March 2007. It was attended by representatives of 17 States that participated in the meeting of ABELOS.

The fourth workshop was held in Singapore from 29 to 31 May 2007. The Singapore Workshop was attended by representatives of 17 States from the Northeast, Southeast and South Asia.

In his statement at the opening of the Singapore Workshop, Deputy Prime Minister S Jayakumar encouraged States to turn to the Tribunal in settling disputes related to the law of the sea. Singapore, as you know, was the respondent State in a provisional measures case concerning land reclamation in the Straits of Johore brought by Malaysia to the Tribunal. Singapore and Malaysia subsequently resolved the dispute. Singapore has acknowledged the role played by third-party institutions, including the Tribunal, in resolving the dispute with Malaysia.

#### *Training programme on dispute settlement*

I also wish to inform you that the Tribunal recently entered into an agreement with the Nippon Foundation of Japan, to organize a training programme on dispute settlement under the Convention. The programme has been developed to offer young government officials and researchers working in the field of the law of the sea or dispute settlement in-depth knowledge of the dispute-settlement mechanisms available to States under Part XV of UNCLOS.

Five participants have been selected to join the 2007-2008 programme which will last for 8 months from July 2007 to March 2008. Lectures, case studies, and training will enable participants to acquire a deeper understanding of the dispute-settlement mechanisms under the Convention. Study visits will be made to organizations dealing with law of the sea matters. Lectures will be given on law of the sea issues (fisheries, environment, climate change, delimitation, and the international seabed area).

I would like to encourage, in particular, AALCO's Center for Research and Training to take note of this training programme and of the deadlines for application. This year's application process has been completed.

In conclusion, I wish to reiterate my gratitude to AALCO for its invitation to the Tribunal to participate as an observer and for granting me the opportunity to address the organization on matters concerning the Tribunal. On behalf of the Tribunal, I would like to wish AALCO success in its deliberations at this session.

Thank you very much.