

**STATEMENT MADE BY JUDGE
P. CHANDRASEKHARA RAO AT A MEETING
OF AALCO HELD IN NEW DELHI ON 1 JULY 2008**

Mr. President, Honourable Ministers, Secretary General of AALCO,
distinguished delegates:

I am thankful to AALCO for inviting me again to represent my court, the International Tribunal for the Law of the Sea (ITLOS), at the present session of AALCO. I took part in the Abuja session held in July 2002. I was then the President of the Tribunal. Since 2002, my colleagues in the Tribunal have had opportunities to explain to you the activities undertaken by ITLOS.

Let me, at the outset, refer to the eighteenth Meeting of States Parties to the Convention on the Law of the Sea held in New York from 13 to 20 June 2008. As you are aware, the term of office of seven judges will end on 30 September 2008. An election for these vacant seats was held by the Meeting of States Parties on 13 June 2008. Judges Rüdiger Wolfrum from Germany, Vicente Marotta Rangel from Brazil, Chandrasekhara Rao from India, Joseph Akl from Lebanon and Jose Luis Jesus from Cape Verde have been re-elected. The other judges who have been elected to the Tribunal for the first time are: Vladimir Golitsyn from the Russian Federation and Boualem Bouguetaia of Algeria. All the sitting judges who sought re-election have been re-elected. As you are aware, the eighteenth Meeting of States Parties has also taken a new decision in regard to the allocation of seats on the Tribunal and the Commission on the Limits of the Continental Shelf.

ITLOS is a court in whose composition the principle of equitable geographic distribution is given due recognition. A majority of the Tribunal's judges come from developing countries. The first three Presidents of the Tribunal – Judges Mensah from Ghana, Chandrasekhara Rao from India and Dolliver Nelson from Grenada – were from developing countries. It is significant that nobody accuses the Tribunal of showing developing-country bias in its judgments. In an article written in 2006 in the *Singapore Year Book of International Law and Contributors*, Ambassador Tommy Koh, former President of the Third United Nations Conference on the Law of Sea, stated: “(T)here is no basis for the fear that ITLOS would be more easily swayed by pro-developing country or pro-environment

arguments than, say, the ICJ. ITLOS has demonstrated competence and integrity which inspires confidence.” It is well-known that the Tribunal’s judgments have all been accepted and implemented by the parties without any reservations. This shows the total commitment of the Tribunal to impartial administration of justice within the framework of the Convention.

It is also widely noted that the Tribunal’s judgments and orders provide practical solutions to the underlying concerns in cases submitted to the Tribunal. The provisional measures prescribed by it often helped the parties in resolving the main differences between them. Referring to the measures prescribed by the Tribunal in the *Land Reclamation* case, Tommy Koh commented: “This was a brilliant move by the court because it compelled the two parties to return to the cooperative mode and to resolve their differences on the basis of an objective study by independent experts.”

There is no hiding the fact that since its inception in 1996, the Tribunal has dealt with only 15 cases. It is obvious that the Tribunal has not been put to full use. The Tribunal is a standing court and consists of 21 judges. It is to be hoped that States would not want the resources of the Tribunal to be under-utilized. The General Assembly of the United Nations has, time and again, noted with satisfaction the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means. For more than one decade, the Tribunal has demonstrated its competence and impartiality to deal with cases referred to it.

The General Assembly has urged the States Parties to the Convention to make declarations under article 287 of the Convention with regard to their choice of procedure for the settlement of disputes. So far, of 155 States Parties, only 39 States have exercised their right, and, of those 39, only 23 have chosen the Tribunal as their preferred means, or one of the means, for the settlement of their disputes. It is our hope that more and more Asian and African States will make article-287 declarations choosing the Tribunal as their preferred means for the settlements of disputes and that they will approach the Tribunal to resolve their disputes.

I wish to recall here that a voluntary trust fund has been established to assist States Parties in the settlement of disputes through the Tribunal. This fund is administered by the United Nations Division for Ocean Affairs and the Law of the Sea. It should be of special interest to developing countries.

With a view to making the Tribunal's jurisdiction and procedures better known in third world countries, the Tribunal has recently organized workshops in Dakar, Libreville, Kingston, Singapore, Bahrain and Buenos Aires. Those workshops were attended by government officials of the respective regions. The Tribunal hopes to organize more such workshops in the near future. With the support of the Nippon Foundation, the Tribunal has established a capacity-building and training programme on dispute settlement under the Convention. So far, officials from Bangladesh, Cameroon, Mauritania, Nigeria and Peru have taken part in this programme. This programme will be continued in 2008-2009. Then there is the Summer Academy organized by the International Foundation for the Law of the Sea in 2007. Till now, 179 interns from 63 States gained first-hand experience of the way in which the Tribunal functions.

Turning now to the judicial work of the Tribunal, in 2007, the Tribunal, for the first time, dealt with the simultaneous submission of two applications for prompt release of vessels and crews under article 292 of the Convention. Those applications were filed on 6 July 2007. On 6 August 2007, the Tribunal delivered its Judgments. Thus, the Tribunal delivered its Judgments in both cases within one month after receiving the applications. The judges and the Registry worked even on weekends to make this possible. The Judgments were adopted unanimously. The parties – Japan and Russia – implemented those Judgments without delay. This underlines the high importance given by the Tribunal to the expeditious and efficient management of cases. The Tribunal has established new standards in this regard.

If the parties so desire, cases may be dealt with by special chambers. Following an agreement between Chile and the European Community, the Tribunal formed, in 2000, a Special Chamber to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the south-eastern Pacific Ocean. States are encouraged to look at this option in place of *ad hoc* arbitral tribunals.

Very recently, in 2007, the Tribunal established a Chamber for Maritime Delimitation Disputes and this was welcomed by the United Nations General Assembly.

The Tribunal has two types of jurisdiction: contentious and advisory. Not much attention is paid to the Tribunal's advisory jurisdiction. It is well-known that the Assembly or Council of the International Seabed Authority may seek advisory opinions of the Seabed Disputes Chamber. I wish to draw your attention here to article 138 of the Rules of the Tribunal which provides 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. That rule further provides that a request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal. Thus, international organizations, States and even non-State entities may seek opinions of the Tribunal, if an international agreement so provides. Opinions of the Tribunal could thus be sought in regard to a wide range of issues. I notice that at your last session a number of delegations observed that the Convention on the Law of the Sea did not provide clear guidance with regard to the applicable principles for delimitation of maritime boundaries. States may invoke the Tribunal's contentious or advisory jurisdiction for the settlement of maritime boundary disputes or for the indication of applicable legal principles in regard to such disputes.

Before I conclude, I wish to draw your attention to a guide issued by the Tribunal's Registry containing practical information explaining the manner in which cases are instituted and conducted before the Tribunal. The guide is entitled: "A Guide to Proceedings before the Tribunal"; it is available on the website of the Tribunal.

Let me once again thank your organization for giving an opportunity to the Tribunal to place before you an account of its activities.