

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY
P. CHANDRASEKHARA RAO
PRESIDENT
OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
ON
THE REPORT OF THE TRIBUNAL
AT
THE TWELFTH MEETING OF THE
STATES PARTIES TO THE
LAW OF THE SEA CONVENTION
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Mr. President,

On behalf of the International Tribunal for the Law of the Sea, I convey to you our good wishes on your election as the President of this Meeting. It gives me particular pleasure to speak to this Meeting of States Parties under the presidency of Ambassador Don MacKay, a distinguished representative of New Zealand. New Zealand has played an important positive role in the development of the new law of the sea. The Tribunal's Annual Report 2001 gives a brief account of our activities from 1 January to 31 December 2001. I propose to place before you a further account of our activities since then.

At the outset, I regret to inform you that Judge Edward Arthur Laing passed away in Belize on 11 September 2001. His term was due to expire on 30 September this year. Judge Laing made an active contribution to the Tribunal's work. You will soon be electing a new judge to replace Judge Laing until 30 September 2002. The triennial election of seven judges of the Tribunal whose terms of office expire on 30 September 2002 will also be held during this meeting.

I informed the last meeting of States Parties that the first Registrar of the Tribunal would be ending his term of office with effect from 1 July 2001 and that steps were being taken to elect his successor. Though this was not strictly required by the Rules of the Tribunal, notice of the vacancy was given through diplomatic missions in New York, the UN website, international organizations and selected newspapers in the official languages of the Tribunal. This process gave our judges a wide range of candidates from which to choose. The Tribunal elected, on 20 September 2001, Mr. Philippe Gautier of Belgium, as its Registrar. First elected as Deputy Registrar of the Tribunal in 1997, Mr. Gautier has to his credit valuable experience in the administration of the Tribunal. Following the same procedure as in the case of the election of the Registrar, the Tribunal elected, on 12 March 2002, Mr. Doo-young Kim of the Republic of Korea as its Deputy Registrar. Mr. Doo-young Kim will be joining the Tribunal soon.

Immediately prior to the election of the Registrar, the Tribunal, after due consideration of the practice of other similar bodies, amended article 32 of the Rules of

the Tribunal, reducing the term of office of the Registrar and of the Deputy Registrar from seven to five years. The full text of the amendment is available on our website.

On the judicial side of the Tribunal's work, during 2001 the Tribunal was seized of three cases: the "Grand Prince" Case between Belize and France; the "Chaisiri Reefer 2" Case between Panama and Yemen; and the MOX Plant Case between Ireland and the United Kingdom. The judgment in the "Grand Prince" Case was delivered on 20 April 2001. It underlines the important need to establish the status of the applicant as the flag State at all relevant times before an application for the release of a vessel or its crew from detention is made in accordance with article 292 of the Convention. As regards the "Chaisiri Reefer 2" Case, at the request of the parties the proceedings were discontinued and the case was removed from the List of cases. I mention this as a case in which the availability of relief by the Tribunal helped to promote an out-of-court settlement.

The third case - the MOX Plant Case - raised a request for provisional measures under article 290, paragraph 5, of the Convention. It involved important issues concerning the protection of the marine environment. In its Order of 3 December 2001, the Tribunal found that, in the circumstances of the case, the urgency of the situation did not require the prescription of the provisional measures requested by Ireland, in the short period before the constitution of the Annex VII arbitral tribunal. However, the Tribunal did prescribe certain provisional measures in the matter of cooperation between the parties and declared, among other things, that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention". I am glad to note that the parties have appointed Judge Mensah of our Tribunal as the President of the Annex VII arbitral tribunal in the MOX Plant Case.

The Tribunal held its first meeting on 1 October 1996. It is now five years old. During the first year, the Tribunal worked on its Rules, the Resolution on the Internal Judicial Practice of the Tribunal and the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal, and thus equipped itself to handle its judicial business. The Tribunal, during the subsequent years, dealt with ten cases. It has

shown full commitment and skill in resolving complex disputes in accordance with the Convention within remarkably short periods. The Tribunal has eschewed doctrinaire approaches in its expositions of the provisions of the Convention. This is in no small measure due to the fact that almost all the judges of the Tribunal were involved in drawing up the Convention. The Tribunal is the only body whose judges were also the draftsmen of the instrument they are asked to interpret and apply.

I should like to mention General Assembly resolution 56/12 of 28 November 2001, in which the Assembly, while noting the contribution of the Tribunal to the peaceful settlement of disputes in accordance with the Convention, underlined what it referred to as the Tribunal's "important role and authority concerning the interpretation or application of the Convention". While the Tribunal's accomplishments in the course of the last five years or so have not been insignificant, it is obvious that the Tribunal has not been put to full use. The Tribunal will be able to live up to the community expectations only when litigants, especially States, make full use of it.

It is to be hoped that, in line with the Tribunal's important role in the dispute-settlement scheme of the Convention, an increasing number of States will also make declarations under article 287 of the Convention choosing the Tribunal as the means for the settlement of disputes concerning the Convention.

In the resolution I just referred to, the General Assembly made several recommendations of interest to the Tribunal. Of these, from our standpoint, three recommendations require special mention. First, under the heading "effective functioning" of the Tribunal, the Assembly made an appeal to all States Parties to pay their assessed contributions to the Tribunal in full and on time. I wish to report to you that, as of 28 February 2002, there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996 to 2001 in the amount of US\$ 1,189,879; the outstanding amount in relation to the 2002 budget is US\$ 5,677,976.

Second, the Assembly called upon States that have not done so to consider ratifying or acceding to the Agreement on the Privileges and Immunities of the Tribunal. It is a matter of special satisfaction that, ten States having become parties to it, the

Agreement entered into force on 30 December 2001. The vast majority of States have yet to take steps to become parties to this Agreement, which has a bearing on the effective functioning of the Tribunal.

Third, the Assembly underlined the importance of the Trust Fund established by the Secretary-General of the United Nations, pursuant to General Assembly resolution 55/7, for the purpose of assisting States in the settlement of disputes through the Tribunal. It invited States and others to make voluntary contributions to the Trust Fund. So far only one State – the United Kingdom – has made a contribution of US\$ 24,865 to the Fund. I hope that more contributions will be forthcoming to make this Fund meaningful. It is a shared objective that financial hardship should not stand in the way of seeking recourse to the Tribunal. Steps should also be taken to see that wide publicity is given to the availability of this Fund.

I am glad to draw to your attention that the Tribunal has taken steps to strengthen its relations with other organizations working in the law of the sea field. The Tribunal has continued to strengthen its relations further with the United Nations. By letters exchanged in May and June 2001, the Tribunal and the United Nations entered into an agreement whereby the competence of the United Nations Administrative Tribunal has been extended to the staff members of the Tribunal. More recently, in March of this year, it was agreed, by an exchange of letters, that the Division for Ocean Affairs and the Law of the Sea would provide all the administrative services of the Tribunal required in New York. As before, when required there has been a continuous flow of information and assistance, at both formal and informal levels, from various quarters of the United Nations, especially in administrative, personnel and financial matters. The Agreement on Cooperation and Relationship between the United Nations and the Tribunal has been playing a key role in bringing the Tribunal continuously closer to the United Nations. I wish to place on record our special appreciation to Mrs. De Marffy and her officers in the Division for Ocean Affairs for all the help we have been given.

Agreements to cooperate in information-sharing have also been entered into by our Registry with the Appellate Body Secretariat of the World Trade Organization, the Legal Affairs Division of the WTO Secretariat and the International Hydrographic

Organization in February and March of this year. The Tribunal hopes to have similar arrangements with interested organizations. Earlier, in 2001, the Tribunal and the ICJ also reached agreement concerning the exchange of their respective publications.

Except where otherwise provided for by the Statute and Rules, the Tribunal generally maintains an open-door policy for the public in respect of its activities and premises. Information about the activities of the Tribunal is conveyed to the public through brochures, press releases and the Tribunal's website. The Tribunal's website has been in operation since 9 November 2001 and its address is: www.itlos.org for the English version and www.tiddm.org for the French version. On 9 March 2002, the Tribunal held an open day to give members of the public an opportunity to visit its new headquarters building and to learn about the work of the Tribunal. More than three thousand four hundred people visited the Tribunal's premises that day. It is proposed to hold such open days again in the future.

The relations between the Tribunal and the host country, the Federal Republic of Germany, have remained very cordial. However, the Headquarters Agreement has yet to be finalized. We hope that this long-standing issue will be resolved soon, in accordance with well-established international conventions and practices in this regard.

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