

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE JOSE LUIS JESUS

PRESIDENT OF THE  
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 76 "Oceans and the law of the sea"

AT

THE PLENARY OF THE SIXTY-FOURTH SESSION OF THE  
UNITED NATIONS GENERAL ASSEMBLY

4 DECEMBER 2009

Mr President,

1. It is a great honour for me to address this sixty-fourth session of the General Assembly on behalf of the International Tribunal for the Law of the Sea on the occasion of the consideration of the item "Oceans and the law of the sea". I take this opportunity to congratulate you, Mr President, on your election as President of the General Assembly.

2. As an institution created by the 1982 Law of the Sea Convention, the Tribunal is very pleased to note that, in the current year, three more States have joined the Convention, bringing the total number of Parties to it to 160. I take this opportunity to welcome Chad, the Dominican Republic and Switzerland as they become the newest States Parties to the Convention.

Mr President,

3. As has been the practice, I shall report to the General Assembly on the developments concerning the Tribunal since I last addressed this august body. I will also seize the opportunity to make a few comments of a general nature on the jurisdiction of the Tribunal.

4. As regards the membership of the Tribunal, I would like to inform you that, at a Special Meeting of States Parties to the Convention held in New York on 6 March 2009, Mr Jin-Hyun Paik, of the Republic of Korea, was elected member of the Tribunal. The special meeting took place following the death of Judge Choon-Ho Park in 2008. Judge Paik was sworn in as a member of the Tribunal at a public sitting which took place on 16 March 2009. He will hold office for the remainder of his predecessor's term, which ends on 30 September 2014.

5. Concerning the judicial work of the Tribunal, I would like to remind you that, in December 2000, at the request of the parties (Chile and the European Community), the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* was submitted to a Special Chamber formed under article 15, paragraph 2, of the Statute of the Tribunal.

In March 2001, the parties informed the Chamber that they had reached a provisional arrangement concerning the dispute and requested that the proceedings before the Chamber be suspended. The time-limits in the proceedings were therefore extended by an order dated 15 March 2001. At the request of both parties further extensions were decided by the Chamber in 2003, 2005 and 2007. The Special Chamber met in December last year and in its order dated 11 December 2008 decided on a further one year-extension of the time-limit for the submission of the pleadings in the case.

The Chamber is scheduled to meet once again in Hamburg on 15 and 16 of the current month.

6. In 2009, the Tribunal held its Twenty-seventh and Twenty-eighth Sessions, which were devoted to judicial and legal matters, as well as to administrative and organizational issues. At its Twenty-seventh Session, on 17 March 2009, the Tribunal amended two articles of its Rules relating to the posting of a bond or other financial security in prompt release proceedings. These amendments were introduced in order to facilitate the implementation of the decisions of the Tribunal in such cases. Under the amended articles, in cases of prompt release of vessels and crew, the Tribunal now has the option to determine that a bond or other financial security be posted either with the detaining State or with the Registrar of the Tribunal. Prior to these amendments, the Rules of the Tribunal stipulated that the bond or other financial security had to be posted with the detaining State, unless the parties agreed otherwise. The text of the amendments introduced to articles 113, paragraph 3, and 114, paragraphs 1 and 3, are posted on the Tribunal's website.

In addition, in order to assist parties in implementing the amended articles, the Tribunal issued, on the same date, *Guidelines concerning the posting of a bond or other financial security with the Registrar*, the text of which is also displayed on our website.

Mr President,

7. With a view to facilitating the submission of disputes to the Tribunal, we have continued our efforts to promote knowledge about the Convention's dispute-settlement system and the procedures for the settlement of law of the sea disputes available at the Tribunal. In this context, last October, the Tribunal organized another regional workshop which was held in Cape Town, South Africa. Representatives of 12 States from the Southern Africa region participated in the workshop. The workshop was organized in cooperation with the Government of the Republic of South Africa, the Friedrich Ebert Foundation and the International Foundation for the Law of the Sea.

On behalf of the Tribunal, I would like to seize this occasion to express our appreciation to the host country and to both foundations for their support and assistance. It is to be recalled that six other regional workshops have already been organized in different regions. A further regional workshop is planned for the South Pacific Islands and is scheduled to take place in early 2010.

Mr President,

8. I would like to recall that the Convention provides States Parties with different options for the settlement of disputes, the Tribunal being one of such options. Indeed, under article 287 of the Convention, States Parties may select through a written declaration their preferred court or tribunal for the settlement of disputes. Of the current 160 States Parties, 40 have filed declarations under article 287 of the Convention and of those 40 States Parties, 26 have chosen the Tribunal as the means or one of the means for the settlement of disputes arising out of the interpretation or application of the provisions of the Convention.

9. The choice of procedure under article 287 of the Convention is of particular relevance as, if a State Party does not make such choice, it is deemed to have chosen arbitration under Annex VII of the Convention as the default procedure. In this respect, I am pleased to note that in 2009 two States Parties, Switzerland and Angola, made declarations under article 287 by which they chose the International Tribunal for the Law of the Sea as the forum of choice.

It is to be hoped that, as encouraged by the draft resolution contained in document A/64/L.18, an increasing number of States will make such declarations.

10. I am also pleased to note that even when States Parties have not made declarations under article 287 on the choice of forum and, as a result, are subject to the Annex VII arbitral tribunal procedure, disputant parties may reach an agreement to transfer to the Tribunal their dispute initially submitted to Annex VII arbitration. Use has already been made of this possibility in two cases submitted to the Tribunal: *The M/V "SAIGA" (No. 2) Case between Saint Vincent and the Grenadines and Guinea*, and the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean between Chile and the European Community*. The advantages of doing so are multiple, from substantial cost reduction for the contending parties to the expeditious handling of cases in the judicial setting of a specialized jurisdiction.

Mr President

11. I would like to recall that the jurisdiction of the Tribunal is not limited to disputes arising out of the interpretation or application of the Convention. As noted in the draft resolution, the Tribunal also has jurisdiction to entertain disputes concerning the interpretation or application of an international agreement related to the purposes of the Convention which is submitted to it in accordance with the agreement.\* In this context, I am glad to note that a growing number of such agreements relating, *inter alia*, to fisheries, marine pollution, conservation of marine resources and underwater cultural heritage make reference to the Tribunal as a means for the settlement of disputes that may arise therefrom.

12. Provisions conferring jurisdiction on the Tribunal are also being included in bilateral agreements related to law of the sea matters. The inclusion of jurisdictional clauses in such agreements may prove to be useful for easing tension between States, by providing a judicial mechanism for any disputant State to seek early judicial resolution of a dispute that may arise out of the interpretation or application of such bilateral agreements.

13. In this regard, I am grateful to the sponsors of the draft resolution for noting with satisfaction the continued and significant contribution of the Tribunal to the settlement of disputes by peaceful means.

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\* See article 288, paragraph 2, of the Convention.

Mr President,

14. Once again, I would like to thank you for the opportunity to address this Plenary. I also take this opportunity to thank the Secretary-General, the Legal Counsel and the Director of the Division for Ocean Affairs and the Law of the Sea for their continued cooperation in and support for the activities of the Tribunal.

I thank you all for your attention.