

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY
MR L. DOLLIVER M. NELSON,
PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON
AGENDA ITEM 49 (a)
AT
THE PLENARY OF THE FIFTY-NINTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

17 NOVEMBER 2004

CHECK AGAINST DELIVERY

Mr President,

1. It is an honour for me, on behalf of the International Tribunal for the Law of the Sea, to address this fifty-ninth session of the General Assembly on the occasion of its annual examination of the item "Oceans and the law of the sea", and especially on the occasion of the tenth anniversary of the entry into force of the United Nations Convention on the Law of the Sea. I extend to you, Mr President, my personal congratulations, and those of the Tribunal, on your election as the 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, held in November 2003.
3. I am particularly pleased to inform you that the negotiations with the German authorities on the Headquarters Agreement between the Tribunal and the Federal Republic of Germany came to a successful conclusion. The text of the Agreement should be signed before the end of this year. I wish to place on record our deep gratitude to the Federal Republic of Germany for the excellent cooperation extended to the Tribunal in this matter.
4. In the course of this year, the Tribunal held two sessions, the Seventeenth Session from 22 March to 2 April 2004 and the Eighteenth Session from 20 September to 1 October 2004. These sessions were devoted to legal and judicial matters as well as administrative and organizational issues related to the discharge of the judicial functions of the Tribunal.
5. With respect to the judicial work of the Tribunal, I should like to mention that a case is still pending on the docket, the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)* which was submitted to a chamber of the Tribunal. 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.

6. Mr President, since my last report to the General Assembly no new cases have been submitted to the Tribunal. I must, however, point out that on several occasions, requests have been addressed to the Registry for information regarding the institution of prompt-release proceedings and on more than one occasion cases were not instituted because negotiations between the parties proved successful. It is certainly a function of the Tribunal to be easily available to parties, a factor which can facilitate the negotiation process between the parties to the dispute. Thus, the mere existence of the Tribunal, a standing body, assists States to settle their maritime disputes without resorting to litigation.

7. The Tribunal has dealt with twelve cases during its eight-year existence, in which it has delivered six judgments and 26 orders. This bears favourable comparison with the record of other international courts and tribunals in the initial stages of their existence. It is gratifying to note that 17 States Parties from different regions of the world have been engaged in proceedings before the Tribunal. It should also be remarked, and this is generally agreed, that the Tribunal has rendered its decisions within remarkably short periods.

8. Mr President, the Tribunal has already made some contribution to the development of international law with regard to issues such as the nationality of claims, reparation, use of force in law enforcement activities, hot pursuit and the question of the genuine link between the vessel and the flag State. It can be fairly said that the Tribunal has also developed a coherent jurisprudence in prompt-release proceedings under article 292 of the Convention. The cases dealing with the prescription of provisional measures under article 290, paragraph 5, concerned primarily the protection of the marine environment. In these cases, the Tribunal laid emphasis on the duty to cooperate and stressed the importance of exercising "prudence and caution" when

undertaking activities which may have harmful effects on the marine environment. In a sense these decisions can be viewed as helping in the development of international environmental law. In this connection, I would like to thank the sponsors of the draft resolution for noting the continued and significant contribution of the Tribunal to the peaceful settlement of disputes 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.

9. May I recall that out of 145 States Parties to the Convention, only 34 have made written declarations relating to the settlement of disputes under article 287 of the Convention and that 21 States Parties have chosen the Tribunal as the means or one of the means for the settlement of disputes concerning the interpretation or application of the Convention. It is to be hoped that an increasing number of States will utilize the possibility offered by article 287 of the Convention of choosing means for the settlement of disputes concerning the Convention, as is stated in the draft resolution. States may also confer jurisdiction on the Tribunal through international agreements. Seven such multilateral agreements have already been concluded.

10. It should be noted here that, even in the absence of any declaration under article 287 of the Convention, States are obliged to submit their disputes to a procedure entailing binding decisions. By virtue of this provision, States which have not made any declarations are deemed to have accepted arbitration and arbitration would then be the only procedure binding upon the parties, unless they agree otherwise.

11. In this regard, I would like to draw attention to the possibility for parties to submit their disputes to a special chamber of the Tribunal, in accordance with article 15, paragraph 2, of the Statute. Such a special chamber is an alternative to arbitration and should be of particular interest to possible users for various reasons. The composition of a special chamber shall be determined by the Tribunal with the approval of the parties, which gives the parties a measure of control over its composition. The parties

to a dispute do not have to bear the expenses of the proceedings before the Tribunal. For example, there are no expenses for remuneration of the members of the chamber, including travel; there are no administrative charges; there are no expenses for interpretation. The parties have at their disposal the Rules of the Tribunal which can be applied in a flexible manner. For instance, the parties may propose certain modifications or additions to the Rules, they may agree on the time-limits for the filing of pleadings or the number of the pleadings or the holding of oral proceedings.

12. It should be noted, however, that the institution of international legal proceedings involves expenses for the States concerned. It is true that, unlike in arbitral proceedings, the parties to a dispute before the Tribunal do not have to share the financial burden relating to the functioning of the Tribunal, since expenses incurred by the Tribunal in dealing with cases submitted to it are financed by States Parties. Nevertheless, parties need to cover expenses for counsel and advocates representing them as well as for accommodation in Hamburg. These costs may be burdensome for States, in particular developing States, whenever they are contemplating bringing a case to the Tribunal. In this respect, I wish to draw the attention of the Distinguished Delegates to General Assembly resolution 55/7 entitled "Oceans and the Law of the Sea" of 30 October 2000 whereby the General Assembly requested the Secretary-General to establish a voluntary trust fund to assist developing States in the settlement of disputes through the Tribunal. Two States have so far made contributions to the fund. Currently, the fund amounts to US\$ 55,000. It is to be hoped that more States would consider making contributions to this fund.

13. Mr President, I am pleased to report that, on 1 September 2004, His Excellency Mr Horst Köhler, President of the Federal Republic of Germany, accompanied by 140 members of the diplomatic corps, was received at the Tribunal. I made a statement on the work of the Tribunal on this occasion¹.

¹ The text of the statement is available on the website of the Tribunal: <http://www.itlos.org>

14. I am also glad to report to the General Assembly that, in commemoration of the tenth anniversary of the entry into force of the Convention on the Law of the Sea, a symposium on Maritime Delimitation took place on the premises of the Tribunal on 25 and 26 September 2004. This event was organized jointly by the International Foundation for the Law of the Sea, the Association internationale du droit de la mer, the Institut du droit économique de la mer (Monaco), the Law of the Sea and Maritime Law Institute of the University of Hamburg, the Federal Maritime and Hydrographical Agency and the Bucerius Law School (Hamburg). More than 150 participants, including a large number of representatives of States, attended this event. This symposium demonstrated the importance of maritime delimitation issues. Clearly these questions continue to attract the interest of practitioners, experts and Government officials. As far as the Tribunal is concerned, it is ready, and possesses the necessary expertise, to deal with cases relating to maritime delimitation.

15. I should also like to mention that the Tribunal has taken further steps to develop its relationship with other international organizations and bodies. During the current year, the Tribunal has concluded administrative arrangements with the International Labour Office and the Asian-African Legal Consultative Organization.

16. Since I spoke to you in November last year, one State has acceded to the Agreement on the Privileges and Immunities of the Tribunal. The Agreement entered into force on 30 December 2001 and to date only fourteen States have expressed their consent to be bound by it. I would like to refer, in this regard, to General Assembly resolution 58/240 of 23 December 2003, in which the Assembly called upon States that have not done so to consider ratifying or acceding to the Agreement. The Registrar sent notes verbales to States Parties in June 2004 making reference to the recommendation of the General Assembly. This recommendation has also been included in the draft resolution of this year.

17. As of 1 November 2004, there was an unpaid balance of assessed contribution to the overall budget of the Tribunal in the amount of US\$ 2,569,684 for the budgets

covering the period from 1996/97 to 2004. The Tribunal is aware of the difficulties this situation may raise with respect to its functioning. The Registrar will send notes verbales to the States Parties concerned in December 2004, reminding them of their outstanding contributions to the budgets of the Tribunal. We are thankful to the sponsors of the draft resolution for incorporating an appeal to States Parties in this matter.

18. I wish to refer 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. It gives me pleasure to inform you that since the grant was put in place earlier this year, 11 interns coming from 11 countries have benefited from the KOICA grant. On behalf of the Tribunal, I wish to convey our gratitude to the Korea International Cooperation Agency for this generous contribution.

19. I take this opportunity to state that the Tribunal continues to seek the moral and material support of the international community and in conclusion, Mr President, I wish to express my appreciation to you and the Distinguished Delegates for the opportunity given to 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 now wish the General Assembly every success in its important deliberations at this session.