

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
THE REPORT OF THE TRIBUNAL
AT
THE FOURTEENTH MEETING OF THE
STATES PARTIES TO THE
LAW OF THE SEA CONVENTION
14 JUNE 2004

PLEASE CHECK AGAINST DELIVERY

International Tribunal for the Law of the Sea
Tel: 49 (40) 3560-70. Fax: 49 (40) 3560-7245
Website: www.itlos.org. E-mail: itlos@itlos.org

Excellencies, Distinguished Delegates

Mr President,

1. It is a pleasure for me to address this meeting today under your distinguished Presidency. I extend to you, Mr President, my personal congratulations, and those of the Tribunal, on your election as the President of the fourteenth Meeting of States Parties and wish you every success in the discharge of your functions. May I also convey our appreciation to Ambassador Stanislaw Pawlak, your predecessor, for the excellent work he has done.

2. Mr President, on March 2004, Mr Hans Corell left the United Nations after ten years as Under-Secretary-General for Legal Affairs and the Legal Counsel. At the end of April 2004, after 30 years of service, Mrs Annick de Marffy retired from the United Nations as Director of the Division for Ocean Affairs and the Law of the Sea. I should like to commend Mr Corell and Mrs de Marffy for their dedicated work and, in particular, for their continued cooperation with the Tribunal. May I, on behalf of the Tribunal, bid them farewell. I would also like to take this opportunity to congratulate Mr Vladimir Golitsyn on his appointment as Director of the Division for Ocean Affairs and the Law of the Sea.

3. Mr President, I would like to express, on behalf of the Tribunal and on my personal behalf, our deep sympathy at the passing away of Mr Theodore Halkiopoulos of Greece. I must recall that he played an important role during the days of the Conference and of the Preparatory Commission in the establishment of the International Tribunal for the Law of the Sea.

4. The Annual Report of the Tribunal, which covers the period 1 January to 31 December 2003, is before you for your consideration. As is the practice, the Report gives a brief account of the various activities of the Tribunal and also its financial position with respect to the period under review. With your permission, I would like to present to this meeting the work of the Tribunal in 2003 and to add some recent developments.

5. With respect to organizational matters, the Distinguished Delegates are aware that a vacancy had occurred in the Tribunal in 2003 and that at a Special Meeting of States Parties convened on 2 September 2003, Mr Anthony Amos Lucky of Trinidad and Tobago was elected to serve as a member of the Tribunal until 30 September 2011.

6. In the course of last year, the Tribunal held two sessions, the Fifteenth Session from 10 to 21 March 2003 and the Sixteenth Session from 8 to 19 September 2003. The Tribunal also met from 20 September to 8 October 2003 to deal with the dispute between Malaysia and Singapore concerning land reclamation by Singapore in and around the Straits of Johor. It may be noted that the proceedings in this case were conducted in conjunction with the Tribunal's Sixteenth Session.

7. Mr President, the Tribunal's sessions are devoted to legal and judicial matters as well as administrative and organizational issues related to the discharge of the judicial functions of the Tribunal. During the past year, the consideration of legal and judicial matters included a review of the Rules and judicial procedures of the Tribunal which was undertaken by both the Committee on Rules and Judicial Practice and the plenary. Some of the main issues which were discussed were requests for advisory opinions under article 138 of the Rules, secrecy of deliberations, contributions towards the expenses of the Tribunal, bonds and other financial security under article 292 of the Convention, procedure for revision or interpretation of a judgment or order, and the format for the List of cases. Among the administrative and organizational matters dealt with during 2003, I would like to mention the reconstitution of the five committees of the Tribunal, the preparation of the draft budget, draft financial rules and the Annual Report. The Tribunal also dealt with the appointment of staff, the consideration of the Staff Regulations and Rules, the maintenance of the premises and matters relating to the electronic systems and library facilities. A detailed treatment of these matters can be found in the Annual Report.

8. Turning to its judicial work, I mentioned earlier that the Tribunal met last year from 20 September to 8 October 2003 to deal with the *Case concerning Land*

Reclamation by Singapore in and around the Straits of Johor. This case - the twelfth case submitted to the Tribunal so far - concerned a request for provisional measures under article 290, paragraph 5, of the Convention submitted by Malaysia in its dispute with Singapore concerning land reclamation activities carried out by Singapore which allegedly infringed Malaysia's rights in and around the Straits of Johor. The request was filed with the Registry on 5 September 2003 and the Tribunal delivered its Order on 8 October 2003.

9. In its Order the Tribunal once again stressed the cardinal importance of cooperation between the parties in the protection and preservation of the marine environment. The Tribunal considered that it could not be excluded that, in the particular circumstances of this case, the land reclamation works might have adverse effects on the marine environment in and around the Straits of Johor. The Tribunal was of the view that "prudence and caution require that Malaysia and Singapore establish mechanisms for exchanging information [on] and assessing the risks or effects of land reclamation works" (paragraph 99) and, towards this end, the Tribunal did prescribe provisional measures pending a decision by the Annex VII arbitral tribunal.

10. Mr President, I am pleased to note that the Order of the Tribunal in the *Case concerning Land Reclamation by Singapore in and around the Straits of Johor* was adopted unanimously, and that included the two judges *ad hoc* who participated in the proceedings.

11. The dispute between Malaysia and Singapore has been submitted to an arbitral tribunal provided for in Annex VII to the Convention. In accordance with that annex, I was requested to appoint three members of the arbitral tribunal and I can report that in October 2003 these appointments were made.

12. 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.

13. Mr President, I would like to refer to General Assembly resolution 58/240 of 23 December 2003, in which the General Assembly noted with satisfaction the continued contribution of the Tribunal to the peaceful settlement of disputes in accordance with Part XV of the Convention and underlined the Tribunal's "important role and authority concerning the interpretation or application of the Convention". The Tribunal has indeed competence under the Convention to resolve a wide range of disputes concerning the interpretation or application of the Convention. In this respect, States may take advantage of the possibility offered by article 287 of the Convention to make declarations choosing the Tribunal as a forum for the settlement of their maritime disputes. 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; 21 of which 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 pursuant to the recommendation of the General Assembly of 2003 an increasing number of States will make declarations under article 287 of the Convention with regard to their choice of means of settlement of maritime disputes.

14. It may be recalled 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, in this situation, arbitration would then be the only procedure binding upon the parties, unless they agree otherwise. This mechanism has important practical consequences as it may be seen from the Tribunal's practice. None of the twelve cases submitted so far to the Tribunal has been submitted on the basis of declarations made under article 287 of the Convention and six cases have involved, at least initially, the institution of arbitral proceedings under Annex VII to the Convention. In this respect, I would like to draw the attention of the Distinguished Delegates 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. First of all, 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 to a dispute are free to choose any of the 21 judges of the Tribunal who are to sit in such a chamber and, as appropriate, they may choose judges *ad hoc*. 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.

15. The Annual Report gives an account of the status of the Agreement on the Privileges and Immunities of the Tribunal, which entered into force on 30 December 2001. There are, however, only thirteen States which have become parties to it. The Registry has recently sent a note verbale to the States Parties in which it drew the attention of States Parties to the recommendation in General Assembly resolution 58/240 to States that have not done so to consider ratifying or acceding to the Agreement.

16. The Tribunal has taken further steps to develop its relations with other international organizations and bodies. During the past year, administrative arrangements were concluded with the Intergovernmental Oceanographic Commission of UNESCO, the Secretariat of the International Seabed Authority, the European Court of Human Rights and the Inter-American Court of Human Rights, and this year with the International Labour Office.

17. An important chapter of the Annual Report deals with the financial situation of the Tribunal. I wish to report to you that as of 31 May 2004 there was an unpaid balance of assessed contributions in relation to the budgets of the Tribunal for the periods 1996 to 2003 in the amount of US\$ 1,138,323; the outstanding amount in relation to the 2003 budget is US\$ 447,314 and in relation to the 2004 budget US\$ 2,578,618. May I refer here to the appeal made by the General Assembly in

resolution 58/240 to all States Parties to pay their assessed contributions to the Tribunal in full and on time.

18. During the past year, negotiations with the German authorities on the Headquarters Agreement between the Tribunal and the Federal Republic of Germany have continued and I am glad to report that significant progress has been made. At present, the relations with the host country are governed by the Convention on the Privileges and Immunities of the Specialized Agencies of 1947. I wish to thank the German Government for the full and cordial cooperation extended to the Tribunal and hope that an Agreement will soon be concluded.

19. Finally, I wish to draw the attention of the Distinguished Delegates to the Internship Programme of the Tribunal and the grant provided by the Korea International Cooperation Agency for funding of participation in the programme. On behalf of the Tribunal, I wish to express my gratitude to the Korea International Cooperation Agency for this generous contribution.

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