INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT BY

MR RÜDIGER WOLFRUM,

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 77(a)

AT

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

10 DECEMBER 2007

Mr President,

1. It is a great honour for me, on behalf of the International Tribunal for the Law of the Sea, to address this sixty-second session of the General Assembly on the occasion of its annual examination 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. It was exactly twenty-five years ago today that the 1982 United Nations Convention on the Law of the Sea was opened for signature. Since then, significant progress has been made towards universal participation in the Convention. With this in mind, allow me to welcome the States which have become Parties to the Convention in 2007, namely, Lesotho, Moldova and Morocco, bringing the total number of States Parties to 155.

3. I would like to take this opportunity to report to the General Assembly on the organizational and judicial developments which have taken place with respect to the Tribunal since the last meeting of the General Assembly.

4. As regards organizational matters, I wish to inform the General Assembly that on 15 August 2007, Judge Guangjian Xu (China) resigned as a member of the Tribunal. Judge Xu had been a judge since 2001. His term of office was due to expire on 30 September 2011. Judge Xu contributed greatly to the work of the Tribunal during his time there. We will miss him both as a colleague and as a friend. In accordance with article 6 of the Statute of the Tribunal, steps have been taken, in consultation with the States Parties, to fill the vacancy. The ensuing election is scheduled to be held on 30 January 2008 at a Special Meeting of States Parties.

5. During the course of 2007, the Tribunal held its Twenty-third and Twenty-fourth Sessions, which were devoted to legal and judicial matters as well as administrative and organizational issues. At its Twenty-third Session, on 6 March 2007, Mr Doo-young Kim

(Republic of Korea) was re-elected Deputy Registrar. The Deputy Registrar was elected by secret ballot from among candidates nominated by the judges of the Tribunal. He will serve for a term of five years.

6. I would also like to report that, at its Twenty-third Session, on 16 March 2007, the Tribunal formed the Chamber for Maritime Delimitation Disputes as a standing special chamber, pursuant to article 15, paragraph 1, of the Statute. This Chamber is available to deal with maritime delimitation disputes which the parties agree to submit to it concerning the interpretation or application of any relevant provision of the Convention and of any other agreement which confers jurisdiction on the Tribunal. I would like to note that the establishment of this new special chamber may be seen as the expression of the Tribunal's interest in delimitation matters. The Tribunal is certainly ready to handle any maritime boundary dispute which States might wish to submit to it. May I also observe that such a dispute could include issues which are closely linked or are ancillary to maritime delimitation, such as issues of sovereignty over islands or land territory. In this respect, may I add that we are grateful to the sponsors of the draft resolution for welcoming the establishment by the Tribunal of the Chamber for Maritime Delimitation Disputes.

Mr President,

7. Last year I reported to the General Assembly that the Tribunal was organizing a series of workshops in different regions of the world in order to raise awareness of the advantages which the Tribunal can offer in settling disputes relating to the law of the sea. A first workshop was held in Dakar last year, at the invitation of the Government of the Republic of Senegal and with the participation of representatives of 13 African States. This year, three other regional workshops have taken place: (i) a joint workshop organized by the Tribunal and the Intergovernmental Oceanographic Commission of UNESCO was held in Libreville (Gabon) on 26 and 27 March 2007, with the participation of representatives of 17 African States; (ii) with the cooperation of the Government of Jamaica, a workshop was held in Kingston from 16 to 18 April 2007 and

was attended, *inter alia*, by representatives of 19 Caribbean States; and finally (iii), at the invitation of the Government of Singapore, a workshop was held in that country, from 29 to 31 May 2007, in which representatives of 17 Asian States participated. I would like to extend our sincere thanks to the Governments of Senegal, Gabon, Jamaica and Singapore, to the International Seabed Authority and to the Intergovernmental Oceanographic Commission of UNESCO for the invaluable support they provided for the organization of these workshops. I should also like to take this opportunity to convey our appreciation to the Korea International Cooperation Agency (KOICA) for its generous funding and the International Foundation for the Law of the Sea for its cooperation. Further regional workshops are planned to be held in Bahrain, Buenos Aires, Cape Town and Manila in 2008.

8. I am pleased to report that the International Foundation for the Law of the Sea held its first Summer Academy from 29 July to 26 August 2007 at the seat of the Tribunal and focused on the “Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives”. 33 participants from 28 different countries attended lectures given by experts in law of the sea and maritime law, including judges from the Tribunal, practitioners, representatives of international organizations and scientists. I am grateful to the International Foundation for the Law of the Sea for organizing this event. An interesting – and to a certain extent unique - feature of the programme is that it offers the participants a comprehensive overview of issues relating to both law of the sea and maritime law. Furthermore, participation in the summer academy of students from developing countries was ensured through grants offered by KOICA and the Nippon Foundation.

9. I am also glad to report that the Tribunal, with the support of the Nippon Foundation, has established a capacity-building and training programme on dispute settlement under the Convention. Five young government officials and researchers are benefiting from this programme, which commenced in July 2007 and will finish in March 2008. During the programme, participants attend lectures on topical issues related to the law of the sea and maritime law and training courses on negotiation and

delimitation. They also visit institutions working in the fields of law of the sea, maritime law and settlement of disputes (for example, the International Maritime Organization, UNESCO, the International Court of Justice and International Oil Pollution Compensation Funds). At the same time, participants are carrying out individual research on selected topics. I would like to express our appreciation to the Nippon Foundation for its generous funding.

10. The Tribunal's internship programme began in 1997 and, this year, 19 people, each from a different country, have participated in the programme. 15 of these interns benefited from the grant provided by KOICA, to whom, once more, I should like to convey our appreciation for its valued contribution.

11. I have the pleasure to report that, since December last year, six States have expressed their consent to be bound by the Agreement on the Privileges and Immunities of the Tribunal. They are Belgium, Chile, Germany, Greece, Poland and the Russian Federation, bringing the total to 35. This year's draft resolution also included the recommendation that States that have not yet done so consider ratifying or acceding to the Agreement.

12. I am also particularly pleased to report that the necessary notifications for the entry into force of the Headquarters Agreement were exchanged on 11 April 2007 and the Agreement thereby entered into force on 1 May 2007. Allow me to convey to the German Government our great appreciation for the excellent cooperation extended to us.

13. The Tribunal has continued to take steps to develop its relationships with other international organizations and bodies and, during this year, an administrative arrangement was concluded between the Tribunal and the Food and Agriculture Organization of the United Nations.

14. With regard to staff appointments, in my statement to the last Meeting of States Parties, I explained that we had followed the recommendation in General Assembly resolution 61/222 and vacancy announcements had been disseminated more widely in order to recruit staff on as wide a geographical basis as possible. I also mentioned that, for recent appointments, vacancy announcements had been sent to the embassies of States Parties in Berlin and to the permanent missions in New York, in addition to being posted on the Tribunal's website and advertised in the press. Recently, the Tribunal appointed a Kenyan national as its Head of Budget and Finance and a Polish national as its Librarian. A French national has also been recruited as a French language translator. I note with appreciation that the sponsors of the draft resolution have welcomed the actions taken by the Tribunal in promoting the recruitment of geographically representative staff as reported to the last Meeting of States Parties.

15. As at 30 November 2007, there was an unpaid balance of assessed contributions to the overall budget of the Tribunal amounting to € 1,742,030 for the 1996/97 to 2007-2008 (year 2007) budgets of the Tribunal. The Registrar sent notes verbales to the States Parties concerned in July and December 2007, reminding them of their outstanding contributions to the budgets of the Tribunal. We are grateful to the sponsors of the draft resolution for incorporating an appeal to States Parties in this matter.

16. I also wish to draw the attention of the Distinguished Delegates to the trust fund for assisting States Parties in the settlement of disputes through the Tribunal, which is administered by the United Nations Division for Ocean Affairs and the Law of the Sea. This is an important mechanism which enables developing countries to request financial assistance for expenses incurred in connection with cases submitted to the Tribunal, as provided for in the terms of reference of the fund, which are contained in an annex to General Assembly resolution 55/7 of 30 October 2000. We would like to thank the Governments of the United Kingdom and Finland, which have made contributions to the fund. The fund is still relatively modest, currently standing at $104, 412. I would like to seize this opportunity to encourage States to consider the possibility of making voluntary financial contributions to it.

17. I will turn now to the judicial work of the Tribunal. This year the Tribunal delivered two judgments in urgent proceedings regarding prompt release of vessels: one in the *"Hoshinmaru" Case* and the other in the *"Tomimaru" Case*. In addition, the Special Chamber formed to deal with the *Case between Chile and the European Community concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean* rendered an Order regarding the postponement of time-limits.

18. On 6 July 2007, two applications for prompt release under article 292 of the Convention were filed with the Tribunal by Japan against the Russian Federation. The Tribunal had to deal with the simultaneous submission of two applications involving the same parties, which was a new situation that put considerable pressure on the parties and the Tribunal itself. Nevertheless, the judgments in the *"Hoshinmaru" Case* and the *"Tomimaru" Case* were handed over promptly, on 6 August 2007, in line with the time-limits fixed in the Rules. I am pleased to state that the judgments in both cases were adopted unanimously.

19. The *"Hoshinmaru" Case* concerned an application for the release of the fishing vessel "*Hoshinmaru*" and of 17 members of its crew. In this case, the Tribunal was faced with legal questions concerning, among others, the decisive date for determining issues of admissibility, the notion of acquiescence and the status of a protocol or minutes of meetings. In keeping with its jurisprudence, the Tribunal applied to the *"Hoshinmaru" Case* the various factors relevant to an assessment of the reasonableness of bonds or other financial security which it had identified in previous judgments. It may be noted that, in this case, the Tribunal observed that the amount of a bond should be "proportionate" to the gravity of the alleged offences. Accordingly, the Tribunal did not consider the bond set by the Respondent to be reasonable. In particular, the Tribunal considered it unreasonable for a bond to be set in line with the maximum penalties and to be calculated on the basis of the confiscation of the vessel, given the circumstances of the case.

20. Unlike previous prompt release cases the Tribunal has dealt with, the *"Hoshinmaru" Case* did not entail fishing without a licence. The Tribunal, however, noted that the offence committed by the Master should not be considered a minor one or one of a purely technical nature and that *[I quote]* "[m]onitoring of catches, which requires accurate reporting, is one of the most essential means of managing marine living resources" *[end of quote]* (paragraph 99 of the Judgment).

21. I am pleased to report that the parties complied promptly with the Tribunal's decision. In effect, upon Japan's payment of the bond, the "*Hoshinmaru"* and its crew were released, a mere ten days after the delivery of the Tribunal's decision and on the same day as the Russian Federation received the bond.

22. I will deal now with the *"Tomimaru" Case,* which, as stated above, also involved an application for the release of a fishing vessel. This case, however, raised questions of a different nature, which concerned, in particular, the confiscation of a vessel and the relation between national and international rules. In its judgment, the Tribunal observed that the confiscation of a vessel does not result *per se* in an automatic change of the flag or in its loss but changes the ownership of a vessel. After noting that article 73 of the Convention makes no reference to confiscation of vessels, the Tribunal stated that *[I quote]* "many States have provided for measures of confiscation of fishing vessels in their legislation with respect to the management and conservation of marine living resources" *[end of quote]* (paragraph 72 of the Judgment).

23. In its judgment, the Tribunal also expressed the view that confiscation of a fishing vessel must not be used in such a way as to upset the balance between the interests of the flag State and those of the coastal State which is established in the Convention. After observing that a decision to confiscate eliminates the provisional character of the detention of the vessel rendering the procedure for its prompt release without object, the Tribunal noted that confiscation decided in unjustified haste would jeopardize the implementation of article 292 of the Convention. The Tribunal also emphasized that a

decision to confiscate a vessel does not prevent the Tribunal from considering an application for prompt release while proceedings are still before the domestic courts of the detaining State. On this basis, the Tribunal concluded that the application of Japan with regard to the "*Tomimaru"* no longer had any object and that the Tribunal was not required to give a decision thereon.

24. I also wish to report to you on a new development relating to a case which remains on the docket. I refer to the *Case between Chile and the European Community concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean*. On 29 and 30 November 2007, the Special Chamber formed to deal with the dispute met to consider the request of the parties for a further postponement of the time-limits in the proceedings before it. On the basis of the information provided by the parties, the Special Chamber, by its Order of 30 November 2007, extended the time-limit for making preliminary objections until 1 January 2009, while maintaining the rights of the parties to revive the proceedings at any time. This case is still on the docket.

Mr President,

25. This has been a significant judicial year for the Tribunal. In two cases, the Tribunal assisted the parties in resolving their differences. In another case, recourse to the Tribunal enabled the parties to reach a provisional arrangement regarding their dispute. The Tribunal has also continued to apply its transparent and expeditious procedures, which have allowed it to render its decisions within remarkably short periods of time. In this connection, I am grateful to the sponsors of the draft resolution for noting the Tribunal's continued and significant contribution to the settlement of disputes by peaceful means in accordance with Part XV of the Convention and for underlining the Tribunal's authority and the important role it plays in the interpretation and application of the Convention and the Agreement relating to the Implementation of Part XI of the Convention.

26. The two new cases the Tribunal has adjudicated upon this year were confined to instances where the jurisdiction of the Tribunal is compulsory, namely, the prompt release of vessels and crews. I should, however, stress that the primary task of the Tribunal is to settle disputes arising out of the interpretation or application of the Convention. Since only a limited number of States have made declarations under article 287 of the Convention, it is to be hoped that an increasing number will make such declarations, as stated in the draft resolution. This would certainly enhance the role of the Tribunal in the settlement of disputes concerning the Convention.

27. The choice of procedure under article 287 of the Convention is of particular relevance as, apart from the Tribunal, there are two other compulsory procedures under the Convention, namely, the International Court of Justice and arbitration (Annexes VII and VIII). The default procedure is, however, arbitration. This explains why the provisional measures cases the Tribunal has dealt with under article 290, paragraph 5, of the Convention were the subject of subsequent proceedings before Annex VII arbitral tribunals. I refer to the *Southern Bluefin Tuna* cases, the *MOX Plant* case and the *Land Reclamation* case. In respect of these cases, the Tribunal has not only made a significant contribution to the development of environmental law but has also assisted the parties in resolving their differences. In this regard, allow me to quote from an article published by the distinguished Professor J.G. Merrills that [*I quote*] " it is clear that in all three cases the main substantive contribution came not from the Annex VII tribunal, supposedly there to determine the merits, but rather from ITLOS, exercising its incidental jurisdiction" *[end of quote]*[*]

28. Compared with an arbitral tribunal constituted to deal with a specific case, the Tribunal, as a permanent institution, has the advantage of ensuring consistency in the development of a coherent corpus of jurisprudence. May I add that, in my view, harmonization of international jurisprudence may be achieved only through permanent courts and tribunals. This should be borne in mind when States make their declarations

[*] J.G. Merrills, The Mosaic of International Dispute Settlement Procedures: Complementary or Contradictory?, NILR, LIV (2007), pp. 361-393, at p. 381.

on the choice of dispute settlement under article 287 of the Convention. In this respect, I should like to note that in 2007 one State Party, Trinidad and Tobago, made a declaration under article 287 by which it chose, in order of priority, the International Tribunal for the Law of the Sea and the International Court of Justice.

29. It may also be useful to observe that parties have the option for their dispute to be heard before an *ad hoc* special chamber, in accordance with article 15, paragraph 2, of the Statute. Parties may choose any of the 21 judges to sit in the chamber and may also appoint judges *ad hoc* if the chamber does not include a member of the nationality of the parties. Parties may also propose modifications and additions to the Rules of the Tribunal. Furthermore, parties do not have to bear the costs of proceedings. Indeed, access to the Tribunal and its facilities is not subject to any fees and is free to States Parties. Likewise, the remuneration of judges and Registry staff members is financed through the regular budget of the Tribunal and not by the parties to the dispute. This is particularly advantageous when all the costs relating to the functioning of an arbitral tribunal are taken into consideration (remuneration of arbitrators, registrar and registry staff members, rental of premises, and translation and interpretation services).

30. I should explain that the jurisdiction of the Tribunal is not limited to issues concerning the United Nations Convention on the Law of the Sea and that there are other possibilities which States Parties may use to confer jurisdiction upon it. A dispute may be brought before the Tribunal on the basis of any international agreement related to the purposes of the Convention which specifically confers jurisdiction on the Tribunal. A number of agreements have been concluded which contain provisions stipulating that disputes arising out of the interpretation or application of these agreements could be submitted to the Tribunal. A well-known example of such an agreement is the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995. It is worth noting that this Agreement extends *mutatis mutandis* the mechanism contained in

Part XV of the Convention to any dispute between States Parties to this Agreement – whether or not they are also parties to the Law of the Sea Convention.

31. Recently, in May 2007, a new convention, the Nairobi International Convention on the Removal of Wrecks, was adopted at a diplomatic conference organized by the International Maritime Organization. This convention also contains a dispute-settlement clause that refers to Part XV of the Law of the Sea Convention. The inclusion of jurisdictional clauses of this nature is a useful development and I am therefore thankful to the sponsors of the draft resolution for having noted that States Parties to an international agreement related to the purposes of the Convention may submit to the Tribunal any dispute concerning the interpretation or application of that agreement which is submitted to it in accordance therewith.

32. Provisions conferring jurisdiction on the Tribunal may also be included in bilateral agreements. The Tribunal is the natural choice for States parties when they conclude a treaty relating to law of the sea matters, such as the laying of pipelines, the conservation and management of fisheries resources, marine scientific research, and the management of joint exploitation zones. In the case of agreements concluded by the European Community, the Tribunal is, in fact, the only permanent court available to the parties to the dispute.

33. Mr President, the Tribunal is thus prepared to discharge the functions entrusted to it by the Convention. I would like to conclude by expressing my appreciation to you and the Distinguished Delegates for the opportunity given 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 should now like to wish the General Assembly every success in its important deliberations at this session.