

Statement of the President of the International Tribunal for the Law of the Sea, Judge Rüdiger Wolfrum, on the occasion of the Tenth Anniversary Ceremony at the *Vertretung der Freien und Hansestadt Hamburg*, Berlin, 18 September 2006

Madam Minister,
Senator of Justice,
Your Excellencies,
Ladies and Gentlemen,

It is an honour to stand before you today on behalf of the International Tribunal for the Law of the Sea and to have the opportunity to address the distinguished representatives of so many States, in addition to those of the Federal Ministry of Justice and the Federal Ministry of Foreign Affairs.

I would first like to express my sincere appreciation to the Senator of Justice, Mr Carsten-Ludwig Lüdemann for his warm welcome and to the *Vertretung der Freien und Hansestadt Hamburg* for hosting the ceremony today to celebrate the Tenth Anniversary of the Tribunal.

The City of Hamburg can indeed be proud of its positioning as a global centre of maritime excellence. As one of the top ten ports in the world Hamburg is, as you mentioned, home to numerous shipping companies, classification societies and marine insurance companies. Many international lawyers specialized in the law of the sea and international maritime law are based in Hamburg, while the University of Hamburg, the Max Planck Research School for Maritime Affairs and the Bucerius Law School all provide teaching and research facilities for students of these subjects. Taking this into consideration together with eight centuries of Hamburg's maritime history, it would be difficult to find a more suitable location for the Tribunal.

I am also most grateful to Ms Brigitte Zypries, the Federal Minister of Justice, for addressing this gathering and for reiterating the close relationship between the Tribunal and the Government of the Federal Republic of Germany, as well as the importance and potential of the Tribunal a decade after its inception. The Tribunal is most appreciative of the constant support that has been provided by the German Authorities, both Federal and City, who have gone to great lengths to ensure that the Tribunal has found a welcoming home in Germany and that its first ten years have passed so smoothly.

You may be wondering why the Tribunal has chosen to come to Berlin to open the celebrations for its Tenth Anniversary. Today's ceremony is the first in a series of events that will be taking place over the next two weeks in Hamburg. It was, however, felt to be of particular importance that the Tribunal hold an event for the diplomatic corps in the capital itself and that an opportunity be created for Ambassadors to meet and converse with the Members of the Tribunal. I hope that this event proves to be informative and that the discussion that will take place in small regional groups over lunch can be of assistance in answering all of your questions about the role and activities of the Tribunal.

While this ten year anniversary does of course mark a significant milestone for the Tribunal it is also true to say that ten years constitute a relatively short period of time for any international organization, let alone a global international judicial institution. Permit me to look back briefly at this first chapter in the existence of the Tribunal before I proceed to look ahead at the future of the Tribunal and the role it can play in the peaceful settlement of law of the sea related disputes.

As you are aware, the Tribunal is a standing court created by the United Nations Convention on the Law of the Sea of 1982 to play a central role in the peaceful settlement of disputes relating to the law of the sea.

The election of the first 21 judges of the Tribunal by the then 100 States Parties to the Convention took place in New York on 1 August 1996. The judges convened for the first time in Hamburg on 1 October 1996 and the inauguration of the Tribunal took place in the presence of the Secretary-General of the United Nations, Mr Boutros Boutros-Ghali, in the town hall of Hamburg on 18 October 1996.

The judges took up their work immediately, drafting the Rules of Procedure, Guidelines concerning the Preparation and Presentation of Cases and the Resolution on Internal Judicial Practice within the first year, and saw the first case submitted shortly after their completion. Since then thirteen cases have been submitted to the Tribunal.

While the jurisdiction of the Tribunal is broad – it has jurisdiction over all disputes regarding the interpretation and application of the Convention or of any other agreement related to the purposes of the Convention – the majority of the cases submitted to the Tribunal so far have been confined to instances where the jurisdiction of the Tribunal is compulsory. This concerns proceedings which require urgent action by the Tribunal and which may be instituted by any State Party to the Convention by means of a unilateral application, that is the prompt release of vessels and crews and the prescription of provisional measures.

Certain provisions of the Convention empower a State to detain a vessel flying the flag of another State in specific circumstances, for example, in respect of fishery or pollution offences. Article 292 of the Convention gives a State Party the right to submit an application to the Tribunal requesting the release of the vessel flying its flag when it is alleged that the detaining State has not complied with the provisions for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security.

The Tribunal has been seized with applications for the prompt release of vessels and crews in seven cases and it can be fairly said that the Tribunal has developed a coherent jurisprudence in applying relevant factors for determining the reasonableness of bonds. It is of some interest to note that four of these cases, the “*Camouco*”, the “*Monte Confurco*”, the “*Grand Prince*” and the “*Volga*”, raised issues concerning the problem of illegal, uncontrolled and undeclared fishing in the Southern Ocean.

The Tribunal also has compulsory jurisdiction with respect to the prescription of provisional measures under article 290, paragraph 5, of the Convention. It has the power to prescribe such measures pending the constitution of an arbitral tribunal to which the dispute is being submitted. This procedure has already been invoked in the *Southern Bluefin Tuna Cases*, the *MOX Plant Case*, and the land reclamation case, all of which were disputes dealing with the protection of the marine environment. Each of these cases has enabled the Tribunal to make a significant contribution towards the development of international environmental law.

I would like to highlight one of these cases in order to give you a more detailed example of the Tribunal’s work: the land reclamation case concerned a dispute between Malaysia and Singapore on the impact on the environment of land reclamation activities by Singapore. In its Order of 8 October 2003, the Tribunal stressed the importance of cooperation between the parties in the protection and preservation of the marine environment. In its decision, the Tribunal also relied on the notion of “prudence and caution” to request the parties to establish mechanisms for exchanging information, and ordered that the parties establish a joint group of independent experts with the clear mandate to conduct a study with a view to determining the potential effects of the land reclamation activities.

On 26 April 2005, Malaysia and Singapore settled their dispute by signing an agreement to this effect. As has been noted by the parties, the provisional

measures ordered by the Tribunal in 2003 were instrumental in bringing the parties together and promoting a successful diplomatic solution of the dispute.

In addition to the proceedings concerning compulsory jurisdiction, two cases on the merits have been submitted to the Tribunal in the first ten years: in the *M/V "SAIGA" (No. 2) Case* the Tribunal was called upon to deliberate such issues 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 its flag State. It delivered its judgment in this case a mere fifteen months after the institution of proceedings.

Another case on the merits, which is still pending on the docket, is the dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean. Interestingly, this case was not submitted to the Tribunal as a whole but was brought instead before a special *ad hoc* chamber of five judges. At the request of the parties the proceedings have been postponed while a diplomatic solution is sought. Nevertheless each party has reserved the right to revive the proceedings at any time.

While the majority of the cases dealt with by the Tribunal so far have concerned prompt release and provisional measures proceedings, the types of disputes which may be submitted to the Tribunal under the Convention relate to all legal matters concerning the ocean space and its resources, such as fishing, pollution, maritime delimitation, navigation, status of ships, scientific research, and exploration and exploitation of natural resources. With thirteen cases on the Tribunal's List of Cases, it is clear that the Tribunal has not yet been given the opportunity to develop its full potential as the specialized judicial organ for the settlement of disputes relating to the law of the sea.

The Tribunal's jurisdiction does not however rest with the Convention alone. States may also confer jurisdiction on the Tribunal through international agreements relating to the purposes of the Convention and a growing number of agreements relating *inter alia* to fisheries, marine pollution, conservation of marine resources and underwater cultural heritage, make reference to the Tribunal in respect of the settlement of disputes. The inclusion of such jurisdictional clauses has become an established practice and, in fact, can only be of benefit to the parties if such a clause is inserted in every new maritime agreement. Parties may otherwise be left in a situation of uncertainty as to the adjudication of a potential dispute. States may therefore consider inserting a provision conferring jurisdiction on the Tribunal, or on a special chamber of the Tribunal, in future agreements which are the subject of negotiations. At the moment a convention on wreck removal is being drafted and we appreciate that Italy and Germany have initiated to insert therein a dispute settlement clause of the type I have just referred to. We hope that other States will join this initiative which would – if adopted – constitute a further step in strengthening the rule of law at sea.

I would also like to mention that the Tribunal is not only competent to settle disputes but may be called upon as an advisory body, where, in accordance with the Rules of the Tribunal, a request for an advisory opinion may be transmitted to the Tribunal by whatever body is authorised pursuant to an international agreement related to the purposes of the Convention. On this basis, States might wish to consider submitting a request for an advisory opinion, in particular considering that such opinions may be used as a valuable tool for the clarification of a legal situation.

Looking ahead, I feel that it is important for the Tribunal to demonstrate the advantages it offers so that States are aware of the role that the Tribunal can play in international adjudication. Permit me to conclude with a brief summary of these advantages:

The Tribunal is a permanent, international, independent and neutral judicial body. Its 21 international judges are recognized experts in the field of the law of the sea and represent the principal legal systems of the world.

Parties to a dispute may choose to submit the dispute either to the full Tribunal of 21 judges or to one of the four standing chambers, the Seabed Disputes Chamber, the Chamber of Summary Procedure, the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes. Alternatively, parties may prefer to establish an *ad hoc* chamber consisting of at least 3 members. Flexibility is available to parties in the composition of an *ad hoc* chamber – its members may be chosen from among the judges of the Tribunal and *ad hoc* judges may also be designated by each party, providing a comparable alternative to arbitration.

All decisions of the Tribunal are binding and a decision of a chamber is deemed to be a decision of the Tribunal. Consistency in the decisions delivered by the Tribunal or by one of its chambers is assured.

As a permanent and standing body, the Tribunal has established and adheres to a transparent and expeditious procedure. The time-frame of the cases adjudicated so far testifies to this with prompt release and provisional measures proceedings decided in less than four weeks.

The availability of the Tribunal's Rules of procedure and their adaptability assists in the prompt consideration of a dispute. The provision that the Rules may be adapted to suit the needs of the parties on a case-by-case basis lends further flexibility to the parties.

The Tribunal's state-of-the-art facilities are next to none. The Tribunal's main courtroom with seating for 250 may be converted into three smaller courtrooms,

each equipped with advanced technology. The parties are provided with fully-equipped conference rooms for the duration of the hearing and have access to the Tribunal's extensive library.

Finally, recourse to the Tribunal incurs no court costs or fees payable to the Tribunal for States Parties to the Convention.

In conclusion, I would like to reiterate that in its first decade of existence, the Tribunal has already made a substantial contribution to the development of international law. Under the Convention and all other agreements conferring jurisdiction upon it, the Tribunal has the competence and the means to deal with a wide range of disputes and is well equipped to discharge its functions speedily, efficiently and cost-effectively. I hope that the Tribunal is called upon in the next decade of its existence to realise its full potential.

Thank you.