

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 25 (a)

AT

THE PLENARY OF THE FIFTY-SEVENTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

10 DECEMBER 2002

Mr. President,

1. On behalf of the International Tribunal for the Law of the Sea, I wish to express my appreciation for the opportunity given to me to address this 57th session of the General Assembly in connection with the discussion of the item: Oceans and the law of the sea. It is an honour for me to stand before this august body on the occasion of the twentieth anniversary of the opening for signature of the 1982 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.

A. Organization of the Tribunal

2. Mr. President, I would like to seize this opportunity to report to the General Assembly the developments which have taken place with respect to the Tribunal since the last General Assembly meeting.

3. As regards organizational matters, I may inform the General Assembly that on 19 April 2002 the Meeting of States Parties elected seven Judges of the Tribunal for a term of nine years. Five Judges of the Tribunal have been re-elected: Judges Caminos (Argentina), Ndiaye (Senegal), Treves (Italy), Xu (China) and Yankov (Bulgaria). The Judges newly elected are Mr. Lennox Fitzroy Ballah (Trinidad and Tobago) and Mr. Jean-Pierre Cot (France).

4. The Fourteenth Session of the Tribunal was held from 25 September to 8 October 2002. It was devoted to administrative and legal matters. On 30 September 2002, my predecessor, Judge Chandrasekhara Rao, completed his three-year term as President of the Tribunal. On 1 October 2002, I was elected as President of the Tribunal for a three-year term. During the same session, the Tribunal elected Judge Budislav Vukas as Vice-President and Judge Mohamed Mouldi Marsit as President of the Seabed Disputes Chamber.

5. Earlier, during its Thirteenth Session, in March 2002, the Tribunal elected Mr. Doo-young Kim of the Republic of Korea as its Deputy Registrar for a term of five years.

6. Mr. President, last year my predecessor was not able to address the General Assembly as the Tribunal was engaged in hearing Ireland's request for provisional measures under article 290, paragraph 5, of the Convention, in its dispute with the United Kingdom regarding the MOX plant located at Sellafield, international movements of radioactive materials and the protection of the marine environment of the Irish Sea. The request was filed with the Registry on 9 November 2001 and the Tribunal delivered its Order on 3 December 2001.

7. In its Order, the Tribunal found that, in the circumstances of the case, the urgency of the situation did not require the prescription of the provisional measures requested by Ireland, in the short period before the constitution of the

Annex VII arbitral tribunal. However, the Tribunal did prescribe a provisional measure in the matter of cooperation between the parties. Indeed, it considered that “the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention” (para. 82). In the view of the Tribunal, “prudence and caution require that Ireland and the United Kingdom cooperate in exchanging information concerning risks or effects of the operation of the MOX plant and in devising ways to deal with them, as appropriate” (para. 84).

8. I am glad to report that a former President of the Tribunal, Judge Mensah, has been appointed by the parties as President of the Annex VII arbitral tribunal in the MOX Plant Case.

9. As last year, the Tribunal is currently dealing with a case involving urgent proceedings. A request for the release of a vessel, the *Volga*, and its crew has been submitted to the Tribunal by the Russian Federation against Australia on 2 December 2002. We expect a judgment to be delivered by the Tribunal before the end of this year.

10. That being said, 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. The time-limit for making preliminary objections with respect to the case was extended at the request of the parties to enable them to reach a settlement during the extended period. This illustrates the fact that direct negotiations can be a flexible and effective means for the peaceful settlement of disputes, as stated in the Manila Declaration on the Peaceful Settlement of International Disputes.

11. Eleven cases submitted to the Tribunal so far constitute a respectable record for a newly-established international court. It is also rewarding to note that the Tribunal has been addressed by representatives of developing and developed countries from different regions of the world, including Australia, Belize, Chile, France, Guinea, Ireland, Japan, New Zealand, Panama, the Russian Federation, Saint Vincent and the Grenadines, Seychelles and the United Kingdom, and by the European Community.

12. It is nevertheless obvious that the Tribunal has not been put to full use. Most of the cases before the Tribunal were referred to it on account of its compulsory jurisdiction. In nine cases the Tribunal was called upon to exercise its compulsory jurisdiction under article 292 and article 290, paragraph 5, of the Convention whereas two cases have been instituted by special agreement between the parties. The Tribunal will be able to live up to the community expectations only when litigants make full use of it.

13. In this respect, I should like to mention that 32 States Parties have made written declarations relating to the settlement of disputes under article 287 of the Convention and that 18 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. Furthermore, several multilateral agreements have been concluded conferring jurisdiction on the Tribunal. It is to be hoped that an increasing number of States will also utilize the possibility offered by article 287 of the Convention of choosing means for the settlement of disputes concerning the Convention, as it is stated in the draft resolution.

14. I would like to add that we are pleased that, at the occasion of the twentieth anniversary of the Convention, a number of States have expressed their consent to become parties to the Convention.

B. Relations with other international organizations and bodies

15. The Tribunal is aware of the fact that it is part of an international legal community consisting of different judicial bodies and international organizations competent in the field of the law of the sea. Therefore, the Tribunal has taken steps to establish relationships with other international organizations and bodies. During the current year, administrative arrangements have been concluded between our Registry and the Division for Ocean Affairs and the Law of the Sea of the United Nations, the Appellate Body Secretariat of the World Trade Organization, the Legal Affairs Division of the WTO Secretariat, the International

Hydrographic Organization, the International Maritime Organization and the European Court of Human Rights. At the end of 2001, the Tribunal and the International Court of Justice also agreed to exchange their respective publications.

C. Agreement on Privileges and Immunities

16. The Agreement on the Privileges and Immunities of the Tribunal entered into force on 30 December 2001. There are, however, only twelve States which have become parties to it. I should like to mention, in this regard, General Assembly resolution 56/12 of 28 November 2001, in which the Assembly called upon States that have not done so to consider ratifying or acceding to the Agreement. This has also been included in the draft resolution of this year.

D. Financial situation of the Tribunal

17. As of 1 December 2002, there was an unpaid balance of assessed contribution to the overall budget of the Tribunal in the amount of US\$ 1,752,532, for the 1996/97 to 2002 Budgets of the Tribunal. The Tribunal is conscious of the difficulties this situation may raise with respect to the functioning of the Tribunal. The Registrar has already sent notes verbales to the States Parties concerned in September 2002, reminding them of their outstanding contributions to the budgets of the Tribunal.

E. Relations with the host country

18. I should like to mention that there has been full cooperation between the Tribunal and the host country, the Federal Republic of Germany. However, no progress has been made towards the conclusion of the Headquarters Agreement between the Tribunal and the Government of the Federal Republic of Germany. This does not mean that the current relations are taking place in a legal vacuum. The relations with the host country are currently governed by the Convention on the Privileges and Immunities of the Specialized Agencies of 1947. Likewise, the Tribunal is part of the United Nations system and therefore has to operate and be treated in a manner consistent with the United Nations practice.

19. Mr. President, I would like to add words of gratitude to the Federal Republic of Germany and, in particular, to the Free and Hanseatic City of Hamburg for their continuous support. In this respect, I wish to note with appreciation and welcome the proposal to set up an international foundation for the law of the sea in Hamburg, designed to promote the role of the Tribunal and its seat as a focal point for the settlement of disputes concerning the law of the sea.

20. Mr. President, I end by reiterating my appreciation to you and the Distinguished Delegates for the opportunity to address you. I also wish to thank again 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. On behalf

of the Tribunal, and the Registrar, I wish to thank the sponsors of the draft resolution for its references to the role and activities of the Tribunal.

Mr. President and Distinguished Delegates, I now wish the General Assembly every success in its important deliberations at this session.