

**Speech by Mr L. Dolliver M. Nelson,
President of the International Tribunal for the Law of the Sea,
on the occasion of the visit by
Mr Horst Köhler,
President of the Federal Republic of Germany**

1 September 2004

Mr President,
Your Eminence,
Your Excellencies,
Ladies and Gentlemen,

The International Tribunal for the Law of the Sea is greatly honoured today to receive at its headquarters the President and Head of State of the Federal Republic of Germany, Mr Horst Köhler. I welcome you most sincerely on behalf of the Tribunal. Your visit here today is eloquent testimony of the unwavering support which the host country has always given the Tribunal. I would like to take this opportunity to express our deep gratitude for this support.

At the outset, I must recall that Germany played an important part in the making of the new law of the sea. Its active and constructive role in the Conference on the Law of the Sea and in the Secretary-General consultations on the implementation of Part XI bears witness to this.

Mr President,

It was here, in the Free and Hanseatic City of Hamburg, that the Tribunal commenced its activities in October 1996 with a splendid inaugural ceremony in the Great Hall of the Rathaus. In the year 2000, the Tribunal moved to these magnificent permanent premises, which undoubtedly possess some of the most beautiful surroundings in this charming city. The building itself is a model of architectural elegance. It is fully equipped with the most modern courtroom technology, enabling it to deal efficiently and effectively with international maritime disputes.

It should be remembered that as long ago as 1981 the Third United Nations Conference on the Law of the Sea selected Hamburg as the seat of this specialized international judicial institution. This has proved to be an excellent choice.

Hamburg, once a prominent member of the Hanseatic League, has had a long maritime tradition and has contributed much to the development of maritime law. For instance, in 1614 the *Jus Maritimum Hanseaticum* (the Hanseatic Code) was published in Hamburg. It is therefore surely fitting that the international community should have chosen Hamburg as the seat of the Tribunal.

Mr President,

The Tribunal is an institution which was established under the United Nations Convention on the Law of the Sea. It takes its place in the pantheon of international courts and tribunals which have been established - in the words of the 1907 Hague Convention for the Pacific Settlement of International Disputes - with the object "of extending the empire of law and of strengthening the appreciation of international justice" with respect to matters concerning the seas and oceans.

The Tribunal is composed of 21 members enjoying, according to its Statute, "the highest reputation for fairness and integrity and of recognised competence in the field of the law of the sea". I am delighted to see some of our members present here today – Judge Vukas, Vice-President; Judge Marsit, President of the Seabed Disputes Chamber; Judge Yankov, Judge Anderson, Judge Wolfrum and Judge Jesus – all of whom have travelled to Hamburg to take part in this historic event.

The composition of the Tribunal ensures the representation of the principal legal systems of the world and equitable geographical distribution. The application of the principle of equitable geographical distribution has resulted in the Tribunal having more judges from developing countries than is the case with the International Court of Justice in The Hague. In this sense, the composition of the Tribunal is more representative of the international community as a whole.

I would like first to give you a brief overview of the jurisdiction of the Tribunal before providing you with information on the caseload of the Tribunal.

The core competence of the Tribunal is to deal with disputes arising out of the Convention. In other words, whenever a dispute relates to a provision of the Convention, the Tribunal has jurisdiction, subject to some limitations contained in the Convention.

The Tribunal is open to States Parties to the Convention. This means the 144 States which have ratified or acceded to the Convention as well as the European Community. It is also possible for non-States Parties to appear before the Seabed Disputes Chamber.

Cases may be submitted to the Tribunal by way of a special agreement or by a unilateral application in cases where the Tribunal has compulsory jurisdiction - prompt release proceedings, provisional measures proceedings pending the constitution of an arbitral tribunal and disputes submitted to the Seabed Disputes Chamber.

In addition, States Parties have the possibility to select the Tribunal as a means for settling disputes concerning the interpretation or application of the Convention by virtue of declarations to be submitted to the Secretary-General of the United Nations. Pursuant to article 287 of the Convention, if the parties to a dispute have chosen the same procedure, the dispute “may be submitted only to that procedure, unless the parties otherwise agree”. In the absence of declarations or where the parties have not accepted the same procedure, the dispute will be submitted to arbitration under Annex VII, save where otherwise agreed by the parties. At present, there are 35 declarations made under article 287, which represents approximately one quarter of the States Parties. In this respect, I note with pleasure that, in its declaration, Germany has selected this Tribunal as its preferred means for the settlement of disputes concerning the interpretation or application of the Convention.

The jurisdiction of the Tribunal is not limited to disputes arising out of the Convention. In accordance with article 21 of the Statute, the jurisdiction of the Tribunal comprises all matters provided for in any other agreement which 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.

Finally, it may be added that the Tribunal is not only competent to deal with contentious proceedings. It may also give advisory opinions on legal questions.

The Tribunal has so far dealt with 12 cases during its eight-year existence. This record may not appear particularly impressive. However, it compares favourably to the record of other international courts and tribunals in the initial stages of their existence. Moreover, it has to be borne in mind that the Tribunal is a new judicial body whose jurisdiction is not general – unlike that of the Hague Court – but is instead limited, in the main, to settling disputes concerning the interpretation and application of the Convention on the Law of the Sea.

The Tribunal has not yet fully developed its potential as the specialized judicial organ of the international community for the settlement of disputes concerning the interpretation or application of the Convention on the Law of the Sea. The last eight years represent only a chapter of its earliest beginnings.

The majority of disputes which have been submitted to the Tribunal relate to cases where the Tribunal has a special compulsory jurisdiction: the prompt release of vessels and the prescription of provisional measures.

A State Party is entitled to submit to the Tribunal in certain specific circumstances the question of release from detention of a vessel flying its flag where the authorities of another State Party have detained the vessel and “it is alleged that the detaining State has not complied with the provisions of the Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security”.

The Tribunal has so far interpreted and applied the provisions on prompt release of detained vessels and crews under the Convention in six cases. These cases involved, as litigants, States from different regions of the world: the Russian Federation, Australia, Saint Vincent and the Grenadines, Guinea, France, and Panama. In all these prompt release cases, the Tribunal has been primarily engaged in clarifying and refining the notion of what is meant by a reasonable bond in the relevant provisions of the Convention. It is essentially a process related to the interpretation and application of the Convention, which is the central task of this specialized international tribunal. It is of some interest to remark that four of these cases, the “*Camouco*”, the “*Monte Confurco*”, the “*Grand Prince*” and the “*Volga*”, raised questions with respect to the problem of illegal, uncontrolled and undeclared fishing in the Southern Ocean.

The Tribunal has a special residual compulsory jurisdiction with respect to the prescription of provisional measures. It has the power, under certain circumstances, to prescribe such measures “pending the constitution of an arbitral tribunal to which a dispute has been submitted”.

It is interesting to note that the cases which were submitted to the Tribunal under this procedure dealt primarily with the protection of the marine environment. In these cases, the Tribunal stressed the central role and cardinal importance of cooperation between the parties. “The duty to cooperate”, it said, “is a fundamental principle in the prevention of pollution of the marine environment”. These cases have enabled the Tribunal to contribute towards the development of international marine environmental law.

In discharging its responsibilities in relation to these two types of urgent proceedings, the Tribunal has always adhered to strict time limits and has utilised all the resources at its disposal to the fullest extent possible. The Tribunal will continue to give high priority to efficiency in future cases submitted to it.

As noted before, the Tribunal, to date, has been largely engaged in cases where it has been granted special compulsory jurisdiction – the prompt release of vessels and crews and the prescription of provisional measures. However, I should like to point out that the Tribunal has competence under the Convention to resolve a much wider range of disputes concerning the interpretation or application of the Convention, and remains ready and willing to do so.

It is therefore important for the Tribunal to provide States Parties with full information on its role and functions and the services it may render whenever a dispute or a legal question arises which relates to the law of the sea. I take this opportunity to inform you that the diplomatic corps will be invited to attend a session to be held at the Tribunal in 2005. At this session, a lecture will be given on “The Role of the International Tribunal for the Law of the Sea in the International Dispute Settlement System”. This will be followed by a round of discussions, a tour of the premises and a reception. The invitation will in due course be sent to all embassies and consulates in Hamburg.

I should like to note the establishment in December 2003 of the International Foundation for the Law of the Sea, which was set up to promote the work of the Tribunal. The Foundation was created upon the joint initiative of representatives of trade and industry, the academic world and public institutions, and has the support of the Senate of Hamburg and the Government of the Federal Republic of Germany. As a strong supporter of the Tribunal, the Foundation has the mission not only of promoting the work of the Tribunal but also of assisting the further implementation of the Convention.

Mr President,

In conclusion, I wish to express once again our deepest gratitude to you for your presence at the seat of the Tribunal. I assure you that all of us in the Tribunal will long remember this historic occasion.