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General Assembly

Sixty-first session

Official Records

71st plenary meeting
Friday, 8 December 2006, 11.25 a.m.
New York

President: Ms. Al-Khalifa . . . . . (Bahrain)

In the absence of the President, Mrs. Mladineo (Croatia), Vice-President, took the Chair.

The meeting was called to order at 11.25 a.m.

Agenda item 71 (*continued*)

Oceans and the law of the sea

(a) Oceans and the law of the sea

Report of the Secretary-General (A/61/63 and A/61/63/Add.1)

Report of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (A/61/65)

Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its seventh meeting (A/61/156)

Draft resolution (A/61/L.30)

(b) Sustainable fisheries, including through the 1995 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, and related instruments

Report of the Secretary-General (A/61/154)

Draft resolution (A/61/L.38)

The Acting President: I should like to remind speakers that the General Assembly, in its resolution 51/241 of 31 July 1997 decided that, outside the general debate, there shall be a 15-minute limit for speakers in plenary and in the Main Committees.

It is my intention to hear the remaining speakers in the debate and to take action on draft resolution A/61/L.38 this morning. I would therefore like to appeal to speakers to adhere to the 15-minute time limit, given that we still have several speakers in explanation of vote.

I should like to inform members that action on draft resolution A/61/L.30 is postponed to a later date to allow time for the review of its programme budget implications by the Fifth Committee. The Assembly will take action on the draft resolution as soon as the report of the Fifth Committee on its programme budget implications is available.

Mr. Kuzmin (Russian Federation) (*spoke in Russian*): The Russian Federation attaches high priority to the development of international law of the sea and to the discussion of maritime issues by the General Assembly.

We express our appreciation to the Secretary-General for the comprehensive reports he has prepared in 2006 on the law of the sea and on sustainable fisheries. As in past years, the reports contain much useful information and provide a good basis for a comprehensive analysis of the current situation and the

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determination of essential future tasks in ensuring respect for the rights and interests of States, the protection of the marine environment, and the conservation of vulnerable maritime ecosystems.

The major instrument for ensuring effective inter-State cooperation in the global oceans system is the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The Russian Federation advocates the preservation of its integrity, the implementation of Convention rights and freedoms, and compliance by States with their obligations under that instrument of international law. Among the most important of those are freedom of the high seas, the right of transit passage through straits used for international shipping, the right of innocent passage, the right to fish on the high seas and others.

We call on States, including coastal States, fully to meet their obligations under the aforementioned rights and freedoms and in strict compliance with the Convention. In that regard, we note that the rules and laws enacted by straits-bordering States should not allow discrimination in form or in substance among foreign vessels, and their implementation must not in practice amount to infringement of the right of passage.

We note in particular the role of the 1982 instrument in the maintenance of peace and security and the peaceful use of maritime space. We call on States that have not yet done so to become parties to UNCLOS.

The Russian Federation attaches great significance to the operation of bodies established under the Convention, in particular the International Seabed Authority, the Commission on the Limits of the Continental Shelf and the International Tribunal for the Law of the Sea.

There are serious and weighty questions on the current agenda of the International Seabed Authority, the resolution of which will require ongoing attention and significant resources. In that regard, we continue to believe that the Authority should not be assigned any additional workload in the protection of the biological resources of the Area.

The work of the Commission on the Limits of the Continental Shelf grows more active every year, given the rising number of applications submitted by States for the delimitation of their continental shelf beyond 200 nautical miles. We believe that its activities must be in strict compliance with the mandates and procedures established by the relevant provisions of the 1982 Convention.

We call attention to the important role of the International Tribunal for the Law of the Sea in settling disputes over the interpretation or application of the Convention.

I turn now to the issue of ensuring sustainable fisheries. We note the efforts of the international community to combat illegal, unregulated and unreported fishing. We believe it necessary to strengthen the genuine link between flag States and their vessels. We are pleased to recognize the work of the International Maritime Organization in that regard.

In the area of destructive fishing practices, the greatest responsibility for resolving that problem lies with regional fisheries management organizations and States whose vessels are engaged in such practices. We call on countries to cooperate in establishing new regional fisheries management organizations and in increasing the effectiveness of those already in operation. In that context, we note once again the exceptional importance of the 1995 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.

Lastly, we would draw attention to law of the seas activities planned for 2007. In the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, we need to focus on marine genetic resources. We hope that such work will teach us more about resources that are insufficiently understood and the options for their utilization.

In connection with the upcoming annual meeting of States parties to UNCLOS, we wish once again to focus attention on the importance of maintaining the current mandate of that forum to resolve administrative and budgetary issues concerning the operation of the bodies established under the Convention. In particular, next year we will elect new members of the Commission on the Limits of the Continental Shelf and face the serious task of maintaining the Commission’s current level of professionalism and of ensuring that it works smoothly.

In conclusion, we wish to offer our support for both draft resolutions to be adopted under this item, and to thank coordinators Holly Koehler and Carlos Duarte for their efforts in developing those important documents. We also thank the Division for Ocean Affairs and the Law of the Sea and its chief, Mr. Vladimir Golitsyn, for their capable assistance in developing the drafts.

The Acting President: In accordance with General Assembly resolution 54/195 of 17 December 1999, I now call on the observer for the International Union for the Conservation of Nature and Natural Resources.

Mr. Cohen (International Union for the Conservation of Nature and Natural Resources): The International Union for the Conservation of Nature and Natural Resources (IUCN) remains concerned about the state of the oceans today. As a conservation organization, we recognize the importance of healthy fish stocks, which provide an important source of protein, particularly in developing countries. We support measures to ensure the conservation and sustainable and equitable use of all marine living resources. It is for that reason that we believe that the research and the science should be done first, and only if there is evidence that potentially destructive practices will not harm vulnerable marine ecosystems should the activity be allowed to proceed. It is important to consider how to further develop tools for precautionary and ecosystem-based management.

The Secretary-General, in his report earlier this year on the impact of fishing on vulnerable marine ecosystems, noted that once seemingly inaccessible deep sea areas, such as seamounts and submarine canyons, were now being affected by fishing activities. The report goes on to note that "it is believed that about 95 per cent of the damage inflicted on deep-water systems associated with seamounts results from bottom-trawling" (*A/60/189, para. 122*). In 2004 in Bangkok, IUCN's highest body — the World Conservation Congress — adopted a resolution calling for an interim prohibition on high seas bottom trawling until such time as effective conservation and management measures were in place to protect the deep sea environment in accordance with international law.

My delegation welcomes language in the sustainable fisheries draft resolution calling for action by regional fisheries management organizations (RFMOs) with competence to regulate bottom fisheries to adopt and implement measures on the basis of the best available scientific information and in accordance with the precautionary and ecosystem approaches. My delegation welcomes the call for a closure to bottom fishing of areas where vulnerable marine ecosystems are known or are likely to occur unless conservation and management measures have been adopted to prevent adverse impacts on them.

However, for areas outside of RFMOs, including where RFMOs are under negotiation, my delegation regrets that an immediate interim prohibition on bottom trawling was not adopted, as there remains no mechanism to ensure effective conservation and management measures for vulnerable deep-sea ecosystems. My delegation hopes that States will adopt interim measures to prevent potential further damage at the first opportunity. As RFMOs are the mechanism through which many high seas fisheries are regulated, we note their importance and support efforts to modernize their mandates, mechanisms and methods where these no longer meet modern standards. We welcome steps by RFMOs to ensure that their decision-making processes are fair, transparent and based on the best available scientific advice. In that regard, we note with concern that the advice of scientists is not always heeded when catch limits are adopted. That must change. We welcome steps by RFMOs to conduct performance reviews based on objective criteria and look forward to the report next year of an independent high-level panel of experts that is developing a model of best practices to improve governance by RFMOs. We encourage RFMOs and States to adopt further area closures where appropriate and to refine and extend the tool of marine protected areas as a means to promote the conservation and sustainable use of marine resources beyond national jurisdiction. We commend the efforts made by the Food and Agriculture Organization of the United Nations (FAO) in this respect vis-à-vis fisheries management.

My delegation underscores the importance of language in the sustainable fisheries draft resolution urging States to exercise effective control over their nationals, including beneficial owners, and vessels flying their flag in order to prevent and deter illegal, unreported and unregulated (IUU) fishing.

Turning to work undertaken with respect to marine genetic resources, my delegation welcomes the

decision to focus the discussion in 2007 in UNCLOS on this topic. We also welcome the decision to reconvene the Open-ended Working Group to study issues related to marine biodiversity in areas beyond national jurisdiction in 2008 and to include genetic resources among the issues to be discussed. We hope that those meetings will lead to a common understanding of the steps necessary to enhance human knowledge about these areas, conserve the integrity and diversity of nature, and ensure that any use of natural resources is equitable and ecologically sustainable and contributes to human well-being.

My delegation also welcomes the entry into force this year of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter — the London Convention. In that regard, we are aware of work with respect to sub-seabed geological sequestration of carbon dioxide in a manner safe for the marine environment as a possible measure to mitigate the harmful effects of increased carbon dioxide in the Earth's atmosphere. While such direct sequestration would be subject to guidance and assessment procedures as described in annexes to the London Convention and the Protocol, we call attention to a possible interest to sequester carbon through iron fertilization of the open ocean. IUCN considers that before any such large-scale fertilization takes place, environmental impact assessments should be conducted to examine the likely outcomes and effects of such activities, including whether iron fertilization would actually sequester carbon dioxide on a long-term basis -that is, in geological time — and whether such fertilization would have any harmful effects on regional ocean chemistry, including on pH levels, water clarity or marine biodiversity. We note with concern that the oceans are becoming less alkaline, which may cause harm to corals, molluscs and other living resources that depend on calcium available in ocean waters.

Finally, we note the welcoming in the oceans and law of the sea omnibus draft resolution of the publication of *The Status of Coral Reefs in Tsunami Affected Countries: 2005*, published by the Global Coral Reef Monitoring Network, of which IUCN is a sponsor and supporter, and we call attention to another joint publication this year — *A Reef Manager's Guide to Coral Bleaching* — which provides strategies to assist managers as they respond to coral- bleaching events.

In closing, I thank all States and all organizations as well as the Secretariat, in particular the staff of the Division for Ocean Affairs and the Law of the Sea, for their efforts during the past year to protect the world's oceans.

The Acting President: In accordance with General Assembly resolution 51/6 of 24 October 1996, I now call on Mr. Satya Nandan, Secretary-General of the International Seabed Authority.

Mr. Nandan (International Seabed Authority): I wish to record my appreciation for the Secretary-General's report on oceans and the law of the sea and for the report on sustainable fisheries. As usual, these reports provide a comprehensive account of recent developments in the law of the sea, and, together with the report on the work of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea, serve as essential background for the consideration by the General Assembly of agenda item 71 on oceans and the law of the sea. I would like to compliment the secretariat of the Division for Ocean Affairs and the Law of the Sea for having prepared these reports.

I wish also to thank the Division's secretariat for its close cooperation with the Authority in areas of mutual interest. I especially wish to express my gratitude for the cooperation, assistance and friendship to the Division's Director, Mr. Vladimir Golitsyn, as he prepares for his retirement. I would also like to express my appreciation to the coordinators of the two draft resolutions before the Assembly, Minister Carlos Duarte of Brazil and Ms. Holly Koehler of the United States, for their outstanding work. I am particularly grateful for the references to matters relating to the International Seabed Authority in parts V and VI of the draft resolution contained in document A/61/L.30.

Since the sixtieth session of the General Assembly, the International Seabed Authority has held its twelfth session, at its headquarters in Kingston, Jamaica. During that session, the Authority elected one half of its Council members for a four-year term. It elected 15 members of the Finance Committee and 25 members of the Legal and Technical Commission. On the substantive aspects of its work, the Council of the Authority continued to consider the draft regulations for Prospecting and Exploration of Polymetallic Sulphides and Cobalt-Rich Ferromanganese Crusts in the international seabed area, which it had begun to

consider at the previous session. In response to its request to the secretariat at its previous session, the Council had before it a detailed analysis and elaborations on a number of issues in the draft regulations. In responding to that request, the secretariat had convened a workshop in 2006 specifically designed to address some of the technical issues which needed to be further elaborated on. Following a discussion of the draft regulations, the Council requested the Secretariat to present, at its thirteenth session, a revised draft on polymetallic sulphides, taking into account the outcomes of the technical workshop and the discussions in the Council during the twelfth session. The Council decided to give priority to the regulations on polymetallic sulphides in 2007. The regulations concerning cobalt-rich crusts will be considered in a separate set of regulations following the completion of the regulations on polymetallic sulphides.

With the increase in our knowledge of deep-sea marine mineral resources, there is growing recognition that such deposits are associated with specific faunas. It is also acknowledged that, for the purposes of protecting and preserving the natural resources of the Area and preventing damage to the flora and fauna of the marine environment, additional knowledge must be acquired on the faunal species for which these deposits provide habitats. Such knowledge can best be developed through the use of standardized taxonomy for species identification and through the acquisition of data and information on the distribution of faunal species in and around the deposits.

Accordingly, the Authority's first workshop in March 2006 was on cobalt-rich ferromanganese crusts deposits and the diversity and distribution patterns of seamount fauna. Its purposes were to assess patterns of diversity and endemism of seamount fauna, including the factors that drive those patterns, to examine gaps in the current knowledge of those patterns with a view to encouraging collaborative research to address them, and to provide the Legal and Technical Commission with recommendations to assist it in developing environmental guidelines for future contractors.

The second workshop, on the technical and economic considerations for mining cobalt-rich ferromanganese crusts and polymetallic sulphides deposits of the International Seabed Area, was convened in August 2006 to address some of the issues that had been raised by the Council in its consideration of the draft regulations. It provided an opportunity for experts to outline the steps that may be taken by potential miners in their effort to identify commercial deposits of cobalt-rich ferromanganese crusts and polymetallic sulphides deposits in the Area; possible criteria for lease block selection under the draft regulations for the two types of deposits; and technological issues associated with developing both mineral resources. They considered the supply of and demand for the metals of commercial interest in those deposits, which contain cobalt, nickel, manganese, copper, lead, zinc, silver and gold, and the outlook for those metals, in particular the demand for them in the fast-growing economy of the People's Republic of China in the short, medium and long term. Experts also considered a cost comparison of the implementation of environmental regulations for a polymetallic sulphides mining operation in the Area and a comparable land-based mining operation for one or more of the same metals, and hypothetical mines of cobalt-rich ferromanganese crusts and polymetallic sulphides in the Area. The proceedings of those workshops are currently being prepared for publication by the Authority.

Interest in the mineral resources of the deep seabed currently revolves around three types of deposits. The early interest of prospective miners was in polymetallic nodules. These potato-shaped objects contain nickel, copper, cobalt and manganese. More recently, since the discovery of two other types of deposits — namely, polymetallic sulphides and cobalt-rich ferromanganese crusts — there has been considerable interest in mining these resources. Polymetallic sulphides, also known as massive sulphides, contain a range of metals that include copper, iron, gold, zinc and silver. Cobalt-rich ferromanganese crusts contain, inter alia, cobalt, iron, manganese, nickel, platinum and titanium.

With regard to polymetallic nodules, the pace of the development of these resources has been slow. The Authority has issued exploration licenses to eight entities, all of them State-supported. It has always been my belief that until the private sector gets involved, the prospects for commercial mining of minerals from the deep seabed will remain uncertain. The two main inhibiting factors for commercial mining have been the lack of development of mining technology and the price of metals. For commercial mining purposes, the two are interrelated.

The rising demand for metals in emerging economies in recent years has altered the economic environment considerably. It has caused metal prices to surge. According to *The Economist* magazine of 10 September 2006,

> "The prices of both oil and metal have roughly tripled since 2002 ... The past few years have seen the sharpest rise in commodity prices in modern history, with metal prices in real terms gaining twice as much as the booms of 1970s and 1980s."

It is therefore not surprising that the private sector has begun to show interest in marine mineral deposits. In that respect, recent developments in the exploration for and exploitation of polymetallic sulphides have been most promising. In 1997, Nautilus Minerals Inc., a private company, obtained exploration licenses for polymetallic sulphides in Papua New Guinea's waters. After extensive surveys to locate suitable deposits, the company went public in the past few months and has been able to attract partnerships and financing from some of the largest land-based mining companies in the world, such as Barrick Gold Corporation, the leading producer of gold in the world; the Metalloinvest Group, Russia's largest iron ore producer and its fifth largest steel producer; Anglo American PLC, the world's leading producer of platinum and diamonds and a significant producer of gold and iron ore; and Teck Cominco Limited, a world leader in the production of zinc, copper and coal. Nautilus has also secured the services of the Belgium-based Jan De Nul Group, one of the world's leading international dredging companies, to construct a specialized deep-sea mining vessel for its mining operations. The 191-metre vessel, to be named the *Jules Verne*, is expected to be completed in 2009 in order to meet Nautilus's target date for the commencement of commercial production.

If indeed Nautilus and its partners are successful, the effect will be revolutionary in terms of seabed mining and the world's mineral resource base. Although the world's first mining operation on the seafloor is most likely to take place in the national jurisdiction of a State, it is nevertheless an exciting prospect for the Authority. The technology developed for the operation and the experience gained in deep seafloor mining can also be applied in the international seabed area, where most of the seafloor deposits are to be found. The Authority has monitored the development of Nautilus closely, and its personnel and principals participate in workshops and seminars of the Authority.

An important mandate of the Authority is to promote marine scientific research in the international area and to provide opportunities for developing-country scientists to participate in such activities. In order to be able to effectively discharge that responsibility, the Assembly of the Authority, at its twelfth session, adopted a resolution establishing an endowment fund for marine scientific research in the Area from the exploration fees paid to the Authority by contractors for polymetallic nodule deposits. The purpose of the endowment fund is to facilitate the participation of qualified scientists from developing countries, who do not otherwise have the opportunity to participate in research activities in the Area conducted by international scientists and contractors of the Authority. The knowledge and experience gained will assist developing countries in scientific research activities and in the management of marine areas under their jurisdiction.

I would like to take this opportunity to express my appreciation to members of the Authority who have contributed to the voluntary trust fund in order to enable developing-country members of the Legal and Technical Commission and the Finance Committee to participate in the work of those two important bodies. It is gratifying to note that the contributions made to this fund have come from developed and developing countries. I appeal to those who have not yet contributed to consider doing so, as full participation in the institutions of the Authority is a factor in its effective operation.

One of the difficulties that the Authority continues to encounter is the lack of adequate participation of its members in its annual sessions. At the Authority's twelfth session, there was considerable discussion on this matter and an appeal was made to delegations to participate in the annual sessions of the Authority.

A proposal was made that the appeal be specially focused on landlocked countries, since they were the largest group of absentees and might not fully realize the relevance to themselves of ocean and seabed issues, particularly with regard to the international seabed area and its resources, which are the common heritage of mankind and from which all States, coastal and

landlocked alike, are to benefit. The Authority is currently developing rules and regulations for mining which will have a long-term effect on the system for deep seabed mining, including the potential proceeds from such activities.

I therefore appeal to all member States of the Authority to attend its annual sessions and participate fully in its work, as that is an obligation that stems from being a party to the Convention. Attendance at meetings is a matter of serious concern as it affects the quorum for meetings of the Assembly of the Authority. I am pleased that the issue of attendance is addressed in part VI, paragraph 32 of the draft resolution contained in document A/61/L.30. The next session of the Authority will be held from 9 to 20 July 2007.

Finally, as Chairman of the United Nations Conference that adopted the 1995 Fish Stocks Agreement, I would like to express my satisfaction at the outcome of the Review Conference held earlier this year. The purpose of the Review Conference, in accordance with the terms of the Agreement, was to assess the effectiveness and adequacy of the provisions of the Agreement and, if necessary, to propose means for strengthening the substance and methods of implementation in order to better address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

The Review Conference has come up with proposals for a comprehensive set of measures that, if implemented, would go a long way towards strengthening the provisions of the Agreement and ensuring its better implementation. In draft resolution A/61/L.38, the General Assembly would endorse these proposals.

The efficacy of these proposals, however, lies in their full and faithful implementation at regional and national levels. It is therefore the responsibility of all States, but especially members of regional fisheries management organizations, to give effect to these measures through their organizations and also at national levels. I hope it will be possible for the Secretary-General to report to the General Assembly in due course on the progress made at regional and national levels in the implementation of the important and urgent measures contained in the proposals.

The Acting President: In accordance with General Assembly resolution 51/204 of 17 December 1996, I now call on Mr. Rüdiger Wolfrum, President of the International Tribunal for the Law of the Sea.

Mr. Wolfrum (International Tribunal for the Law of the Sea): It is an honour for me to address the sixty-first session of the General Assembly on the occasion of its annual examination of the agenda item entitled “Oceans and the law of the sea”. As is the practice, I would like to report on the developments which have taken place with respect to the Tribunal since the last meeting of the General Assembly. I will then make general comments on the work and the jurisdiction of the Tribunal.

With regard to organizational matters, on 19 September 2006, the Tribunal re-elected Mr. Philippe Gautier as its Registrar for a term of five years.

The Tribunal’s twenty-first and twenty-second sessions were devoted essentially to legal matters. In particular, consideration was given to the competence of the Tribunal in maritime delimitation cases. Disputes relating to maritime boundaries are, as a general rule, to be considered disputes concerning the interpretation and application of the Convention in accordance with article 288 of the instrument. Under article 298, States parties may, however, exclude certain maritime delimitation disputes from compulsory dispute settlement. If a State has made such a declaration, it will be bound to refer the sea-boundary dispute to compulsory conciliation if the conditions for such conciliation are met.

Such conditions are peculiar to the compulsory conciliation procedure. They do not — and I emphasize this point — apply to adjudication by the Tribunal, the International Court of Justice or arbitration. This aspect is of relevance regarding so-called “mixed” delimitation cases, namely, cases in which a maritime dispute involves the concurrent consideration of an unsettled dispute concerning sovereignty or other rights over continental or insular land territory.

The competence of the Tribunal, or any other court or tribunal under Part XV of the Convention, to deal with the main claim concerning maritime delimitation includes the associated question of delimitation over land or islands.

Maritime boundaries cannot be determined in isolation without reference to territory. Moreover, several provisions of the Convention deal with issues

of sovereignty and the interrelation between land and sea. Accordingly, issues of sovereignty or other rights over continental or insular land territory, which are closely linked or ancillary to maritime delimitation, are concerned with the interpretation or application of the Convention and therefore are covered by the jurisdiction of the Tribunal under article 288 of the Convention.

Parties to a dispute on issues of maritime delimitation may at any time agree to submit the dispute to the Tribunal through a special agreement whereby parties can also overcome any limitations or exceptions to compulsory jurisdiction since nothing prevents them from submitting to the Tribunal any maritime delimitation case involving issues regarding land boundaries or cases involving disputed sovereignty over islands.

Regarding the judicial work of the Tribunal, I would like to mention that the Special Chamber of the Tribunal, formed to deal with a dispute between Chile and the European Community concerning the conservation and sustainable exploitation of swordfish stocks, met on 28 and 29 December 2005 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 29 December 2005, extended the time limit for making preliminary objections to 1 January 2008.

I would like to point out that the system of ad hoc chambers, which was used for the first time by Chile and the European Community, is a flexible mechanism that combines the advantages of a permanent court with those of an arbitral body. The parties have control over the chamber's composition, as they may choose any of the 21 judges who are to sit in the chamber and may also appoint judges ad hoc. A judgment given by any of the chambers is considered as rendered by the Tribunal.

A further advantage is that the parties have at their disposal the rules of the Tribunal, which allow the case to be processed swiftly. The parties have a certain degree of flexibility in that they may propose modifications or additions to the rules. It is evident that the ad hoc chambers constitute an interesting and, in particular, cost-effective alternative to arbitration. Detailed information on the Tribunal's proceedings and its special chambers is to be found in the guide to proceedings before the Tribunal, copies of which are available here. I encourage every representative to take some copies to distribute at his or her mission or at home.

This year, the International Tribunal for the Law of the Sea celebrated its tenth anniversary. The ceremony was attended by the President of the International Court of Justice, the Legal Counsel of the United Nations, the Secretary-General of the International Seabed Authority, representatives of the Federal Government of Germany and of the Senate of the Free and Hanseatic City of Hamburg, as well as legal advisors and other representatives from more than 80 States. The celebration continued with a symposium on assessments of and prospects for the jurisprudence of the Tribunal, organized by the International Foundation for the Law of the Sea.

The celebration of the tenth anniversary was a perfect opportunity to strengthen the relationship between the International Court of Justice and the Tribunal. On that occasion, Judge Rosalyn Higgins, the President of the International Court of Justice, declared that "within a decade, the Tribunal has pronounced interesting law, built a reputation for its efficient and speedy management of cases, and shown innovative use of information technology". Judge Higgins also emphasized that the mutual respect prevailing between the two judicial institutions helped them in achieving their "common goal of a mutually reinforcing corpus of international law in the settlement of international legal disputes".

In these 10 years, there has been excellent cooperation with the United Nations and the Division for Ocean Affairs and the Law of the Sea in several aspects, in particular with regard to the participation of the Tribunal at the meeting of States parties. Given the interest of the States parties in the Tribunal, we would certainly welcome the States parties' meeting at least once in Hamburg in the future.

It is evident that the potential of the Tribunal has not yet been fully utilized. Possible litigants could take advantage of the judges' skills and cost-effective procedures before the Tribunal. States may, in accordance with article 287 of the Convention, make written declarations nominating the Tribunal as the preferred forum for the settlement of their disputes concerning the Convention. Of the current 152 States parties to the Convention, just 39 have made

declarations under article 287 and only 22 of those — alone or sometimes together with the International Court of Justice — have accepted the compulsory jurisdiction of the Tribunal. In the absence of a declaration, parties are deemed to have accepted arbitration.

In practice, arbitration has proven to be the general rule, while selecting the Tribunal or the International Court of Justice remains the exception. It is doubtful whether that development was anticipated when the Convention was negotiated and adopted. It is to be hoped that an increasing number of States will make declarations in accordance with article 287 of the Convention, as stated in the draft resolution. I very much appreciate the promotion the Tribunal is receiving in that respect by the General Assembly.

A further alternative to conferring jurisdiction on the Tribunal is through the insertion of jurisdictional clauses in international agreements related to the law of the sea. Eight such multilateral agreements have already been concluded, the most well-known being the Straddling Fish Stocks Agreement of 1995. It might, however, be useful for future international agreements to indicate the default forum in the absence of declarations or agreements on the procedure for settlement. The Tribunal, as an international maritime court, is perfectly placed to play exactly that role.

That leads me to the recurring question of the potential fragmentation of international law — an issue that arose out of the process of international judicial decentralization. The establishment of such specialized judicial bodies is a positive development, since such bodies fulfil complementary needs and have therefore a role to play in maintaining the coherence of international law.

With a view to ameliorating a possible fragmentation, I suggested at the informal meeting of legal advisors that a meeting of presidents of all international courts and the Chairman of the International Law Commission should be organized in order to exchange views on ways to improve the unity of international law. I assume that such a meeting will take place in 2007, which I consider an important step to consolidate the international jurisprudence.

I also wish to report that the Tribunal is organizing a series of workshops on the settlement of law of the sea-related disputes in different regions of the world, in cooperation with the Korea International Cooperation Agency of the Republic of Korea and the International Foundation for the Law of the Sea. The purpose of the workshops is to provide governmental experts with insight into the procedures for the settlement of disputes contained in part XV of the Convention.

At the invitation of the Government of the Republic of Senegal, the first regional workshop took place in Dakar from 31 October to 2 November. The workshop was attended by representatives of different ministries of 13 African States, who discussed the topic of the role of the International Tribunal for the Law of the Sea in the settlement of disputes relating to the law of the sea in West Africa. I would like to sincerely thank the Government of the Republic of Senegal for its support in organizing the workshop. Further regional workshops will be held by the Tribunal in Jamaica and Singapore in 2007. We are grateful to the Governments of Jamaica and Singapore for their kind cooperation, and to the Secretary-General of the International Seabed Authority for agreeing to be our host in Jamaica.

I also wish to place on record my great appreciation for the excellent cooperation extended to the Tribunal by the German authorities. That was evident in particular at the celebration of the tenth anniversary, which took place in Hamburg and Berlin.

Let me briefly touch upon a budgetary issue that is of concern to the Tribunal. As of 15 November, there was an unpaid balance of assessed contributions to the overall budget of the Tribunal amounting to roughly €2 million for the 1996-1997 to 2005-2006 budgets. The Registrar sent notes verbales to the States parties concerned in July and November, reminding them of their outstanding contributions. We are grateful to the sponsors of the draft resolution for incorporating an appeal to States parties in that matter.

Allow me to touch upon one further issue. The costs for bringing a case before the Tribunal may deter a State with limited resources from doing so. I wish to draw the attention of the Assembly to the trust fund to assist States parties in the settlement of disputes through the Tribunal, administered by the United Nations Division for Ocean Affairs and the Law of the Sea. An application for assistance may be submitted by any State party to the Convention, and the financial assistance will be provided on the basis of the

recommendations of a panel of experts. In the year 2005, $20,000 was awarded to Guinea-Bissau.

There is also the possibility of taking up offers by qualified lawyers to work on a reduced fee basis, a list of whom is maintained by the Division. The fund stands currently at roughly $70,000. I wish therefore to invite States, international organizations, national institutions and non-governmental organizations, as well as natural and juridical persons, to consider the possibility of making voluntary financial contributions to this fund.

Madam President, I conclude by reiterating my gratitude to you and to the General Assembly for the opportunity granted to me to address this body. I also wish to thank the Secretary-General, the Legal Counsel and, in particular, the Director of the Division for Ocean Affairs and the Law of the Sea for their ongoing support.

The Acting President: We have heard the last speaker in the debate on agenda item 71 and its sub-items (a) and (b).

We shall now proceed to consider draft resolution A/61/L.38. The Assembly will now take a decision on the draft resolution, entitled "Sustainable fisheries, including through the 1995 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, and related instruments".

I should like to announce that since the introduction of the draft resolution, the following countries have joined as sponsors: Belgium, Belize, Cape Verde, Cyprus, France, Germany, Greece, Luxembourg, Madagascar, Monaco, the Netherlands, Portugal, Saint Lucia, Sierra Leone, Slovenia, Solomon Islands, Spain, Sweden, Trinidad and Tobago, and Vanuatu.

May I take it that the Assembly decides to adopt draft resolution A/61/L.38?

The draft resolution was adopted (resolution 61/105).

Before giving the floor to the speakers in explanation of position after adoption, may I remind delegations that such explanations are limited to 10 minutes and should be made by delegations from their seats.

Mr. Arévalo (Chile) (*spoke in Spanish*): After joining the consensus in adopting the resolution on sustainable fisheries, the Chilean delegation would like to express its satisfaction at having participated in the process of its adoption. We would like to underscore the efforts made by all delegations to arrive at consensus on important aspects of the resolution, highlighting, among other things, measures aimed at the fight against illegal, unreported and unregulated fishing, and the strengthening of the role that regional fisheries management organizations (RFMOs) have in managing high seas fisheries and marine ecosystems so as to ensure above all the conservation and sustainable use of straddling and highly migratory fish stocks, as in the case of mackerel and swordfish resources, respectively.

The Chilean delegation considers that the resolution sets important challenges for RFMOs, providing them with clear mandates for the application of the precautionary approach and for taking measures aimed at ensuring the sustainable use of fishing resources and the protection of vulnerable marine ecosystems, as in the case of cold water corals, hydrothermal vents and seamounts.

Although our delegation shared and continues to share in the concerns of the majority of delegations on the protection of fragile high seas ecosystems, and although we were hoping for an efficient alternative that would allow States to avoid irreversible damage to such ecosystems through regulations applicable to their nationals in the short term, we have achieved the necessary consensus to agree to the resolution that we have adopted. However, we must take very much into account the fact that responsibility now lies with the existing RFMOs and with the States participating in the creation of new RFMOs, since the mandate is directed to such multilateral entities.

In this context, Chile wishes to call on all the participants in the third round to establish the South Pacific Regional Fisheries Management Organization to responsibly undertake the mandate and meet the deadlines that the United Nations has established through this resolution, starting as of now, to work on serious proposals for provisional measures, including the application of the precautionary approach that will make it possible to safeguard the conservation of

important straddling fish stocks, such as mackerel, and the vulnerable marine ecosystems in the high seas area of the South Pacific Ocean.

Mr. Riofrio (Ecuador) (*spoke in Spanish*): Ecuador has joined the consensus to adopt the draft resolution on sustainable fisheries. However, my delegation wishes to place on record its position to the effect that none of the recommendations contained therein concerning the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in 1995, can be interpreted as mandatory on those States that have not yet ratified that Agreement.

Mr. Limeres (Argentina) (*spoke in Spanish*): Argentina has joined the consensus in adopting the draft resolution on fisheries. Nevertheless, we would like to point out that none of the recommendations contained therein may be interpreted as implying that the provisions of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, adopted in New York in 1995, may be deemed to be binding on the States that have not expressly manifested their consent to be bound by that Agreement.

Mr. Niño (Bolivarian Republic of Venezuela) (*spoke in Spanish*): The delegation of the Bolivarian Republic of Venezuela joined in the consensus on draft resolution contained in document A/61/L.38 on sustainable fisheries.

At the international level, my delegation has applied the provisions of the Code of Conduct for Responsible Fisheries and of chapter 18 of Agenda 21, adopted by the United Nations Conference on Environment and Development. It has also actively participated in regional fisheries management organizations such as the Food and Agriculture Organization of the United Nations (FAO) Committee on Fisheries and its subsidiary organs; the Western Central Atlantic Fisheries Commission; the Latin American Fisheries Development Organization; the Commission for Inland Fisheries of Latin America; the International Convention for the Conservation of Atlantic Tunas; and the Inter-American Tropical Tuna Commission. It is also a party to various international instruments such as the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and its Protocol concerning Specially Protected Areas and Wildlife, as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora, as well as the Convention on Biological Diversity.

It is important to note that the Bolivarian Republic of Venezuela is not a party to the United Nations Convention on the Law of the Sea, including 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. Nor are the norms of those international instruments applicable under customary international law, except for those that the Bolivarian Republic of Venezuela has explicitly recognized, or may recognize in future, by incorporating them into its domestic legislation, given that the reasons that have prevented ratification of those instruments still remain.

For that reason, my delegation did not block the consensus on the draft resolution on sustainable fisheries. Nonetheless, it reaffirms its historical position with respect to the United Nations Convention on the Law of the Sea and its associated agreements, which have prompted it to place on record this explicit reservation concerning the content of the draft resolution. I trust that this statement will be accurately reflected in the records.

Mr. Sandoval (Colombia) (*spoke in Spanish*): While the delegation of Colombia joined in the consensus on the adoption of draft resolution A/61/L.38 on sustainable fisheries, it wishes to place on record the fact that those provisions cannot be considered or interpreted in a way that would extend to non-party States the provisions of the 1995 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, because, on the basis of the principle of *pacta tertiis*, a treaty does not create either obligations or rights for a third State without its consent, as stated in article 34 of the Vienna Convention on the Law of Treaties of 1969.

Mr. Erciyes (Turkey): I am taking the floor to make a statement in explanation of vote on the draft

resolution on sustainable fisheries, contained in document A/61/L.38 under agenda item 71 (b), which the Assembly has just adopted.

At the outset, I would like to state that Turkey is fully committed to the protection, conservation, management and sustainable use of marine living resources, and attaches great importance to regional cooperation to that end. In that regard, Turkey supports draft resolution A/61/L.38 and particularly welcomes the measures designed to eliminate destructive bottom fisheries.

Turkey, however, disassociates itself from the references made in this resolution to the international instruments to which it is not party. These references, therefore, should not be interpreted as a change in the legal position of Turkey with regard to said instruments.

The Acting President: We have heard the last speaker in explanation of position.

The representative of Singapore has asked to make a statement in exercise of the right of reply.

Mr. Menon (Singapore): In a statement yesterday, the representative of Australia made comments on the Torres Strait, which is an issue that I would like to clarify.

I disagree with the arguments made by the representative of Australia. To begin with, she equated Australia's actions on the Great Barrier Reef with those on the Torres Strait. These are two different situations. Singapore does not object to the measures taken vis-à-vis the Great Barrier Reef for the simple reason that it is not a strait used for international navigation. Australia is within its rights to implement compulsory pilotage in those waters. Those rights do not, however, extend to the Torres Strait, which is used for international navigation.

This leads me to her next assertion — that measures on the Taurus Strait were adopted in a manner consistent with the Convention, including approval by the competent authority. They were not. The Torres Strait is used for international navigation and is governed by part III of the United Nations Convention on the Law of the Sea (UNCLOS). All ships transiting through the Torres Strait therefore have the right of transit passage. They must be allowed to exercise freedom of navigation, in accordance with part III of the United Nations Convention on the Law of the Sea, for the purpose of continuous and expeditious transit of the Strait.

During UNCLOS negotiations on straits used for international navigation, coastal States were allowed to extend the territorial sea adjacent to their coast to 12 nautical miles. That gives them fairly broad jurisdictional powers to regulate ships passing through their territorial sea. However, UNCLOS also specifically provides that if part of the territorial sea comprises a strait used for international navigation, such as the Torres Strait, the sovereignty and jurisdiction of the States bordering such strait must be exercised subject to the provisions of part III of UNCLOS. UNCLOS provides that ships exercising the right of transit passage must comply with the generally accepted international regulations, procedures and practices established by the International Maritime Organization (IMO). Australia's argument is that that competent authority, in this case the IMO, has authorized a system of compulsory pilotage in the Torres Strait.

The fact of the matter is that the Australia position was not supported by the IMO. First, the wording of the IMO Marine Environment Protection Committee (MEPC) resolution 133 did not approve a compulsory pilotage scheme in the Torres Strait. It only approved Australia's system of pilotage, conditioned on Australia's acceptance of the statement that the resolution was recommendatory in nature and provided no legal basis for mandatory pilotage for ships in transit in this or any other strait used for international navigation.

Secondly, at the IMO MEPC meeting where that resolution was adopted, Singapore, the United States and several other delegations made it clear that they did not regard the resolution as the international legal basis for the establishment of a mandatory system of pilotage in the Torres Strait or any other strait used for international navigation.

To remove any doubt, the MEPC met again in October 2006. The MEPC reaffirmed that the earlier decision was recommendatory in nature. Twenty-three delegations also supported the view that the resolution did not provide Australia with the legal basis to impose compulsory pilotage. In short, Australia's move is in contravention of UNCLOS.

The representative of Australia also noted different views on the application of laws and

regulations in respect of transit passage. The provisions of UNCLOS are clear. The right of transit passage is enshrined in it. In my earlier statement, I cautioned against attempts of this nature to modify the meaning of the Convention.

Australia's actions threaten the delicate balance in UNCLOS between the interests of coastal States and the interests of user States in straits used for international navigation. These actions could also encourage other States to act similarly for other straits used for international navigation. The regime in Part III, on straits used for international navigation, is one of the most important compromises achieved in the many years of negotiations leading to the adoption of UNCLOS. Transit passage is vital to the commercial and security interests of major maritime States. It is also vital to the commercial shipping community.

I know that Australia is keen to work with us to resolve this issue, which is gratifying. As I said before, Singapore is also willing to work with Australia. Singapore recognizes the environmental sensitivity of the Torres Strait. We support efforts to address environmental concerns and facilitate safe and efficient shipping; however, this must and can be done in a way that respects the right of transit passage that is enshrined in UNCLOS. It is not a zero-sum game, nor is it a choice between addressing environmental concerns and contravening UNCLOS. We look forward to working with Australia to find a solution that accommodates concerns about the marine environment and concerns about respecting UNCLOS.

The Acting President: May I take it that it is the wish of the General Assembly to conclude its consideration of sub-item (b) of agenda item 71?

It was so decided.

The Acting President: The General Assembly has thus concluded this stage of its consideration of agenda item 71 and its sub-item (a).

The meeting rose at 12.35 p.m.