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Summary record of the 24th meeting
Held at Headquarters, New York, on Wednesday, 4 November 2009, at 10 a.m.

Chairman: Mr. Benmehidi . . . . . (Algeria)

Contents

09-59293 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 106: Measures to eliminate international terrorism (*continued*) (A/C.6/64/L.12)

1. **Mr. Morrill** (Canada), introducing draft resolution A/C.6/64/L.12, said that initially the text had merely updated the previous year's resolution on the same subject. However, during an informal consultation several delegations had called for the insertion of wording expressing a greater sense of urgency about the completion of the work of the Ad Hoc Committee established by General Assembly resolution 51/210. Other delegations had raised the concern that inserting such wording could be perceived as an attempt to put pressure on particular States or a group of States. In a further consultation, it was agreed that an updated text along the lines of the original proposal seemed to be the only way forward. As stated in paragraph 23 of the draft resolution, it was expected that the Ad Hoc Committee would meet from 12 to 16 April 2010.

Agenda item 83: The rule of law at the national and international levels (*continued*) (A/C.6/64/L.14)

2. **Mr. Barriga** (Liechtenstein), introducing draft resolution A/C.6/64/L.14, said that the text mainly updated the previous year's resolution on the same subject. Paragraph 7 welcomed the dialogue with Member States, initiated by the Rule of Law Coordination and Resource Group and the Rule of Law Unit, on promoting the rule of law at the international level. It was understood that paragraph 11, on the need to provide the Rule of Law Unit with the necessary funding and staff, did not carry any budgetary implications.

3. **Mr. Jesus** (President of the International Tribunal for the Law of the Sea) said that the Tribunal was a judicial body created by the 1982 United Nations Convention on the Law of the Sea, which had been ratified by 158 States. Its 21 sitting judges came from every region of the world. The Tribunal played a major role in the settlement of disputes arising from the law of the sea. In its contentious jurisdiction, it could deal with any dispute concerning the interpretation or application of the provisions of the Convention that was submitted to it in accordance with Part XV of the Convention (Settlement of Disputes). It could also entertain any dispute concerning the interpretation or application of an international agreement related to the purposes of the Convention that was submitted to it in accordance with the agreement, as well as any dispute relating to the interpretation or application of a treaty already in force concerning the subject matter covered by the Convention, if all the parties to such a treaty so agreed. Disputes relating to the Convention might turn upon such matters as illegal, unreported or unregulated fishing; the conservation of marine living resources; the protection and preservation of the marine environment; navigational issues; the prompt release of vessels and crews in cases of alleged violation of coastal States' fisheries or of marine environment regulations and standards; provisional measures to protect the marine environment or the rights of the parties to a dispute submitted to arbitration under Annex VII to the Convention; compensation for damage or wrongful acts against a State party related to activities covered by the Convention; or the laying and repairing of submarine cables and pipelines on the continental shelves of coastal States.

4. Apart from the competence of its Seabed Disputes Chamber to issue advisory opinions at the request of the Assembly or the Council of the International Seabed Authority, the Tribunal, functioning as a full court, also had advisory jurisdiction under article 138 of its Rules to give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provided for the submission to the Tribunal of a request for such an opinion. Although non-binding, advisory opinions could play an important role in clarifying a legal point that might arise in the interpretation or application of the law. Recourse to advisory opinions could clarify legal questions relating, for instance, to flag State responsibility regarding illegal, unreported or unregulated fishing; the legal effect, if any, on the baselines of coastal States of major land invasion by seawater caused by sea-level rise; and issues raised during the work of the Commission on the Limits of the Continental Shelf or the International Seabed Authority, or arising from different approaches to the interpretation of the Convention's provisions.

5. The Seabed Disputes Chamber, composed of 11 of the Tribunal's 21 judges, had exclusive jurisdiction over disputes concerning the legal regime of the Convention applicable to the exploration and exploitation of the resources of the area of the seabed beyond the continental shelves of coastal States ("the

Area"). The Chamber could also entertain requests for advisory opinions relating to proposals or legal questions concerning the Area. Other standing chambers of the Tribunal were the Chamber for Marine Environment Disputes, the Chamber for Fisheries Disputes and the Chamber for Maritime Delimitation. Parties to a dispute could refer a case either to the Tribunal as a full court, or to a standing chamber, and could also request the Tribunal to establish a special chamber to deal with a particular dispute. In 2000 a special chamber had been established to deal with the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean*. That case was still pending. Fifteen cases in all had so far been referred to the Tribunal, and 13 had been resolved.

6. Most of the cases brought to the Tribunal involved urgent proceedings, either provisional measures under article 290, paragraph 5, of the Convention, or proceedings for the prompt release of vessels and crews, under article 292. Both kinds of proceedings fell within the Tribunal's compulsory jurisdiction and required only one State to bring the case. Provisional measures could be ordered to protect the rights of parties in dispute or to protect the marine environment from the threat of serious harm. Under article 290 of the Convention, if a dispute had been submitted to an arbitral tribunal under Annex VII to the Convention, either party could request the Tribunal to order provisional measures even though it was not dealing with the merits of the case. The purpose of that procedure was to ensure that the rights of the parties, or the marine environment, were not left unprotected during the time taken to constitute the arbitral tribunal. The Tribunal had so far entertained four cases of provisional measures under article 290, paragraph 5: the two *Southern Bluefin Tuna* cases, the *Mox Plant* case and the *Land Reclamation* case. Another novel procedure was that provided by article 73 of the Convention for the prompt release of vessels and crews where they had been detained for alleged violation of the fisheries regulations of the coastal State, or of international rules and standards for the prevention, reduction and control of pollution of the marine environment, referred to in article 220 or 226, paragraph 1 (b). All nine prompt release cases so far dealt with by the Tribunal fell under article 73 of the Convention. The Tribunal would order the release of the detained vessel or crew to take place upon the posting of a bond or guarantee which it had determined to be reasonable. The prompt release procedure took less than a month from the submission of the application to the delivery of the Tribunal's decision. It enabled flag States and ship owners to avoid vessels remaining idle for long periods until a competent domestic court had ruled on the case, and also enabled crew members to be released quickly from detention. It also ensured that sufficient funds would be available to pay any fines imposed by the domestic courts of the detaining State.

7. Under article 287 of the Convention, States parties could choose one or more specified courts or tribunals to which they would submit disputes relating to the law of the sea. Over 30 States parties had so far made a declaration on their choice. If disputant States, having made such a declaration, had not chosen the same means of settlement, or if they had not made any declaration at all, arbitration under Annex VII to the Convention would become the compulsory means of settlement. A State party to a dispute could also notify the other party, at any time after the failure of negotiations to reach a compromise, that it was instituting arbitral proceedings under Annex VII. If they wished to avoid the possibility of compulsory arbitration and the associated costs, States should consider making a declaration under article 287 of the Convention.

8. One possible reason why so few cases had so far been referred to the Tribunal over its 13 years of existence was that States preferred to avoid the jurisdiction of international courts and tribunals whenever possible. Over the same period, the International Court of Justice had received only six or seven cases on the law of the sea, all relating to the delimitation of maritime boundaries. He was hopeful that as disputes matured and exploitation of the resources of the international seabed began, more cases would be submitted to the Tribunal and its Seabed Disputes Chamber.

9. To contribute to improved knowledge of the dispute settlement system established by the Convention, the Tribunal had organized seven regional workshops. The most recent workshop, to which southern African countries had been invited, had taken place in Cape Town. In 2007 the Tribunal had established an annual capacity-building and training programme on dispute settlement. Five government officials and researchers from China, Gabon, Indonesia and Romania had so far benefited from the programme.

10. **Mr. Charles** (Trinidad and Tobago) said his country was among the 30 States which had accepted the competence of the Tribunal, under article 287 of the Convention on the Law of the Sea, to settle any dispute relating to the law of the sea. Its decision to do so was the fruit of its experience of compulsory arbitration of a dispute, in accordance with Annex VII of the Convention. Given the developments currently taking place in the legal regime governing the mineral resources of the seabed, it was to be expected that a number of disputes would be referred to the Seabed Disputes Chamber.

11. **Ms. Millicay** (Argentina) recalled that when the Convention was being negotiated, it had been difficult to strike a balance between the various methods of dispute settlement. Her own country had opted for the Tribunal, but most of the others had not, perhaps because it seemed easier to rely on the default solution of compulsory arbitration. She wondered how many countries had made a positive decision at all under article 287, such as opting for the jurisdiction of the International Court of Justice instead of the International Tribunal for the Law of the Sea.

12. **Mr. Eesiah** (Liberia) expressed his appreciation of the informative presentation given by the President of the International Tribunal.

13. **Mr. Jesus** (President of the International Tribunal for the Law of the Sea) emphasized his willingness to attend the Committee at any time to discuss matters of mutual concern. Replying to the point raised by the representative of Argentina, he said that if a State party to the Convention made no decision at all in accordance with article 287, it would be bound in the event of a dispute relating to the law of the sea to have recourse to arbitration in accordance with Annex VII. In that case arbitration was a compulsory procedure which could be instituted by the other party to the dispute. He had gained the impression that for some States, the absence of a declaration under article 287 was a deliberate act of policy. The consequences of compulsory arbitration could, however, be costly for those States. Where two States parties to the Convention were in dispute, they could unilaterally refer their case to the Tribunal. If one of them had chosen the Tribunal as its forum and the other had chosen the International Court of Justice, the two disputants could agree between themselves to take their case to the International Court or to arbitration; the State which had opted for the Tribunal remained free in that respect. States stood to gain by making a declaration under article 287, because they thereby avoided the automaticity of an Annex VII procedure and its associated costs.

14. **Mr. Appreku** (Ghana) expressed appreciation of the President's statement. As for the infrequency of recourse to the Tribunal by States, he was aware from discussions with States parties to the Convention that there was a reluctance to seek advisory opinions from the Tribunal on issues of interpretation. The question had arisen of the competence of the Commission on the Limits of the Continental Shelf in the event of a divergence of views stemming from article 76, paragraph 8, of the Convention. It had not been clear whether the appropriate forum for resolving such differences of interpretation would be the International Tribunal, the International Court of Justice, the General Assembly or the States parties themselves.

15. **Mr. Jesus** (President of the International Tribunal for the Law of the Sea) reiterated that the Tribunal was ready at all times to assist States by means of its advisory opinions or dispute settlement mechanisms.

16. **The Chairman** said that the Committee favoured all mechanisms for the peaceful settlement of disputes. The President of the International Tribunal had explained the free choice available to States parties to the Convention among the various mechanisms for resolving disputes relating to the law of the sea. He would be interested in future to learn the President's opinion on the question whether that very freedom of choice posed a risk of the fragmentation of international law. That possibility would inevitably be a matter of concern for the Committee, given its role in streamlining the rule of law at the international level and reinforcing the development of international law and its codification.

Agenda item 80: United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (A/64/495)

17. **Mr. Appreku** (Ghana), Chairman of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, expressed appreciation of the assistance provided to the Programme of Assistance by the Codification Division of the Office of Legal Affairs. He also drew attention to the Best Website Award made to the United Nations

Audiovisual Library by the International Association of Law Librarians. As for the Programme itself, there was currently a widespread view that its progress was being hindered by its dependence on voluntary sources of funding and that it should be funded from the regular budget of the United Nations.

18. **Ms. Šurkovă** (Slovakia) expressed appreciation of the UNITAR fellowship programme in public international law, organized within the Programme of Assistance and held during the summer of 2009 at the Peace Palace in The Hague. She would recommend organizing similar programmes in other regions. She emphasized the importance of adequate funding for programmes and fellowships on international law conducted under the auspices of the United Nations.

19. **Mr. Charles** (Trinidad and Tobago) welcomed the recent organization, in Saint Vincent and the Grenadines, of a workshop on international law for public officials from Caribbean countries. He urged Member States to contribute to the various trust funds aimed at promoting the dissemination of international law.

20. **Mr. Simonoff** (United States of America) said that the Programme of Assistance made a major contribution to educating students and practitioners throughout the world in international law. Knowledge of international law, and the activities of the Programme of Assistance, were important tools for furthering the rule of law at the national and international levels.

21. **Mr. Alday** (Mexico) said his Government would continue to support the Programme of Assistance and would also look for ways to strengthen the Audiovisual Library project. He would welcome more information about the possibility of providing funding from the regular budget for the Library, mentioned in paragraph 89 of the report (A/64/495).

22. **Ms. Zuluaga** (Colombia) expressed her Government's appreciation of the Programme of Assistance.

23. **Mr. Appreku** (Ghana), Chairman of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, thanked members of the Committee for their support of the Programme of Assistance. He was also grateful to the Secretariat for its assistance in the digitization project for Ghana's corpus of treaties. He emphasized the primacy of international law, on which the Charter of the United Nations was based, and which should be at the top of the Organization's agenda. He drew attention to the recent establishment by the African Union of its own Commission on International Law, which would focus on the codification and development of international law in Africa and on the teaching of international law.

The meeting rose at 11.35 a.m.