Statement of Judge Thomas Mensah, first President of the Tribunal, on the occasion of the tenth anniversary of the Tribunal

Mr President and Judges of the International Tribunal, Excellencies, Distinguished Ladies and Gentlemen,

I am pleased and honoured to be present at this ceremony to celebrate the tenth anniversary of the inauguration of the International Tribunal for the Law of the Sea. I am especially delighted to be back in the premises of the Tribunal and to meet again some of the esteemed colleagues with whom I shared the challenging but most rewarding experience of bringing this institution into operation. I also welcome the opportunity to meet the distinguished judges who have since been elected to contribute to the worthy endeavour that we started ten years ago. I am particularly gratified to note the presence of high officials of the Government of the Federal Republic of Germany and of the Free and Hanseatic City of Hamburg. Their presence is further evidence of the interest and support that the Tribunal has received from them since the very beginning of its existence and operation. I wish to take the opportunity to express my sincere appreciation to the Federal Government and the City Authorities for the unfailing cooperation and ready support that they extended to me and to the Tribunal during the three years of my term as President of the Tribunal. I also wish, on behalf of my wife and myself, to acknowledge the very warm welcome that was extended to us in Hamburg and Germany. We were received with much courtesy and kindness by all sections of the community of this great country and lovely city. We remain eternally grateful to all who made our time here so enjoyable.

The beginning of the Tribunal was a time of great expectation; but it was also a period of uncertainty and anxiety, not only for the Judges, but also for the staff of the Registry staff. We knew that we were embarking on an enterprise of great significance to the maritime world, in particular, and international law, in general. But we were also aware of the difficulties that we would face in living up to the expectations that had been built around the new institution. Our concerns were heightened by the fact that we were operating in a location and in an environment with which most of us were unfamiliar - indeed many of us were total strangers in Germany. But it did not take us long to discover that we had no real cause for concern or worry. By the time of the official inauguration of the Tribunal on 18 October 1996, we had already witnessed unmistakeable evidence of the welcome that was awaiting the Tribunal from the Federal German Government, from the authorities of the City of Hamburg and from the business and legal communities of the City. This welcome was demonstrated in many ways.

The Federal and City authorities went to great lengths to ensure that the Tribunal’s permanent premises would be of the highest status. And pending the completion of the permanent premises, they arranged for temporary premises that were equipped with all the conveniences necessary for the work of the Judges and the Registry. Between them they made the most sumptuous arrangements for the inauguration ceremony on 18 October 1996. Further, the Senate of the City of Hamburg graciously offered the use of the ornate main chamber in the City Hall (the Rathaus) for

the oral proceedings in the first case submitted to the Tribunal before construction of the court room in our temporary premises had been completed. The professional and business community of Hamburg were equally forthcoming with cooperation and practical assistance. For example, when it was not possible for the Tribunal to use the City Hall for the oral proceedings in the second case, the Chamber of Commerce agreed, at very short notice, to offer their Council Chamber to the Tribunal for the hearing.

Finally, the press in Hamburg as well as the national German press showed keen and sympathetic interest in the Tribunal, its fortunes and its work. This interest was shared by the general population of Hamburg. Indeed, we soon came to appreciate that we could not have had a better host State or Host City; and nothing that has happened since has in any way undermined this initial conclusion. Germany and Hamburg have been most welcoming to the Tribunal and very supportive of its work. It is my sincere belief and hope that this relationship will continue and strengthen in the years to come.

The Tribunal commenced operations in October 1996, immediately after its formal inauguration. In the following months the Tribunal embarked on the task of establishing the administrative arrangements and procedures for the discharge of its judicial functions. The first of the tasks was the consideration and adoption of the Rules of the Tribunal. Work on the Rules was completed exactly one year after the inauguration, and the Rules were formally adopted 28 October 1997. The Rules constitute the basic tools for the exercise by the Tribunal of its judicial and related executive and administrative functions. From the very beginning, the Tribunal decided that its Rules should be designed to enable it to respond appropriately to the different types of cases that were likely to be submitted to it and to the requirements of the parties who would appear in those cases. For this purpose, the Tribunal sought to develop Rules that would, as far as possible, be "cost-effective" in that they would enable the Tribunal to deal with cases before it "efficiently and with the minimum of delay and expense ". They were also to be "user-friendly", in terms of content and presentation. The Rules were supplemented by the Resolution on Internal Judicial Practice and by the Guidelines Concerning the Preparation and Presentation of Cases before the Tribunal which were intended to provide guidance to potential parties in cases on how they might meet the requirements set in the Rules of the Tribunal.

The Rules and related procedural provisions adopted by the Tribunal were almost immediately put to test in dealing with actual cases. In a relatively short period, the Tribunal was called upon to deal with a number of important cases, involving major issues and principles of the law of the sea and general international law. In this context it is important to note that the States Parties that have been parties in the cases include States from all regions of the world and at different stages of economic and industrial development.

On this occasion I think it is fitting and proper to call attention to an aspect of the work of the Tribunal that I believe will be of interest to commentators on the work of international judicial institutions. I refer here to the internal dynamics of the Tribunal,

particularly in respect of its deliberations and decision-making processes. With a membership of 21, the International Tribunal for the Law of the Sea is certainly one of the largest judicial bodies at the national or international level. Because of this fears were expressed in some quarters that the Tribunal might find it difficult to reach well-considered decisions, especially in cases involving complicated issues of law and policy. Other observers, noting the fact that the Judges of the Tribunal were elected on the basis of a pre-determined geographical allocation of seats, suggested that the differences in the backgrounds of the Judges would either make it difficult for the Tribunal to reach decisions quickly or that its decisions might not be based on the merits of the cases. The implication was that the position of the judges would, somehow, be dictated by their different cultural or political orientations. I am pleased to be able to say that these fears have been proved to be wholly without foundation. An examination of the judgments and orders of the Tribunal demonstrates clearly that there has been a total absence of any grouping of judges that can even remotely be attributed to regional, cultural or political orientations of the judges. The fact is that most decisions of the Tribunal have been taken with large majorities, with only a few cases in which there have been sharp differences of opinion between groups of judges. Where there have been divisions of opinion, the differences have cut across any lines based on region, legal traditions or political orientation. In all cases where groups of judges have taken different sides in the debate, their positions have clearly been based on the considered views of the judges, based on their respective appreciations of the facts of the case and the legal arguments advanced by the parties. Having had the great privilege of serving as the first President of the Tribunal and presiding over its deliberations in the first thee years, I wish to record my satisfaction with the thorough and highly professional way in which all the Judges have approached their judicial functions, as well as the maturity and intellectual openness with which they reacted to opposing views and positions. In many cases the candid but respectful exchange of views made it possible for the Tribunal to find ways to reach broad consensus on difficult and complicated issues, with due regard to any differences in approach and nuance that needed to be recognized. In a few cases, it has not been possible to obtain full agreement between the different groups; but in every case, the spirit of collegiality was never absent; and there was always respect for the views of others both in the debate and also in the statements by which different judges have outlined the nature and bases of their disagreement with their colleagues. I am particularly pleased to be able to say that this spirit has continued to characterize the work of the Tribunal under the leadership of all my distinguished successors. I have no doubt that these very useful and positive features will remain with the Tribunal in the years to come.

Mr President and Distinguished Guests, for me it is not easy to accept that ten years have already elapsed since we met here to initiate the new institution. Ten years in the life of an international institution such as the Tribunal may not be a very long time; but these ten years have been far more eventful than any of us expected or even imagined. The Tribunal has not only succeeded in installing itself physically and organizationally in its premises, but it has also completed the complicated task of organizing itself for the effective discharge of its judicial functions. And, contrary to what some people had expected, it has actually dealt with a number of important cases, and

it has issued judgments and orders relating to some of the major issues of international law of the sea and general international law.

I am fully aware that there is currently a lack of cases before the Tribunal. But I am in no doubt that this is a temporary phenomenon which will soon give way to many busy and productive years for the Tribunal. I do appreciate that the current situation is a source of concern and anxiety to the Judges and the staff of the Registry. And, inevitably, it is also the subject of critical comment outside the Tribunal. However, I believe that a sense of perspective is needed in these matters. The situation in which the Tribunal finds itself is neither unique nor unexpected. It is an experience that has been faced by many other international courts and tribunals. Many of them have gone through long periods of scarcity only to bounce back to years in which they have had full dockets – sometimes more than they can comfortably handle. I am confident that there will be a similar change in the fortunes of the Tribunal. Hence, to the members of the Tribunal and the Registry I have only this to say: Please do not be disheartened or be unduly worried. The time of the Tribunal will surely come. To those who find the current situation uncomfortable, I would ask them to remember that the purpose of a judicial institution such as this Tribunal is not solely to deal with cases in the sense of pronouncing judgments on disputes, although this function is hugely important. Like other international judicial bodies, the Tribunal has other uses. It gives assurance to States that there is a forum to which they can have recourse when they believe that their rights have been disregarded or compromised and it also helps to concentrate the minds of States and their advisers when they are tempted to violate their international obligations by pointing out to them that there is a forum where they may be called to account for their actions and omissions. Furthermore, the declarations and clarifications of the law by the Tribunal can serve as sign posts to States and other actors regarding their legal obligations as well as the penalties and disabilities that they may expect if they fail to discharge these legal obligations. In my view, the Tribunal has already achieved a great deal in the discharge of these functions. In the judgments and orders that it has issued in the cases submitted to it, the Tribunal has helped to clarify the law in a number of important areas. In the process, it has helped several States which were parties in the cases to resolve disputes that might otherwise have resulted in considerable expense and inconvenience for them. For example, it is not fanciful to believe that the provisional measures prescribed by the Tribunal in the Southern Bluefin tuna case greatly assisted the Governments of Australia, Japan and New Zealand to resolve their disagreements regarding the conservation of southern bluefin tuna stocks. The same is true of the provisional measures prescribed by the Tribunal in the Mox Plant case between Ireland and the United Kingdom. Whatever may be the eventual outcome on the merits of the case, it appears undeniable that the measures prescribed by the Tribunal did supply a much-needed impetus to the two governments to develop cooperation in a way that would have been inconceivable before the case was submitted to the Tribunal. Reference may also be made to the effects that decisions of the Tribunal in prompt release cases may have had on the attitude of some States. It is reasonable to believe that these decisions may have had some influence on the conduct of third States. As is well-known, in one case submitted to the Tribunal, the detaining State considered it advisable to release the ship before the case was dealt

with by the Tribunal. This was presumably because the authorities of the State realized that this would be a less expensive course of action. It is possible that the conduct of some other coastal states has been modified in the light of decisions given by the Tribunal in cases that have come before it. All this goes to show that the Tribunal is not only useful when it is dealing with disputes or issuing judgments and orders. The Tribunal also serves just by being there and being available and ready to deal with disputes, if and when they arise.

To the States Parties who may be wondering whether the financial support for the Tribunal is money well spent, I would humbly and respectfully suggest that it might be more helpful for them to view the Tribunal in the way that a motorist regards the organization that provides emergency break down services; or as a swimmer views the security guards who attend to the safety of swimmers at a dangerous beach, or as an insured person considers the company that provides insurance cover for damage. The break down service provider does not cease to be useful merely because the motorist is fortunate to enjoy long periods without needing assistance; the beach security guards are not useless because no swimmer gets into difficulties for weeks and weeks; and an insurance premium is not considered wasted because the insured does not have the need to claim for years. For the same reason, this Tribunal does not become any less necessary or useful just because it is not called upon to deal with disputes for a year or two.

The drafters of the Convention considered it necessary to establish the Tribunal and the other procedures for dispute settlement because they believed that differences would arise between States Parties that would need to be authoritatively settled by a competent and impartial body. The history of the Tribunal during the first ten years of its existence has demonstrated that this expectation of the drafters was both reasonable and realistic. I believe strongly that events in the years to come will reinforce the soundness of their judgment. This Tribunal can, and must, wait if need be until new cases are submitted to it. For even without a case, it performs an essential function. Mr. President, Excellencies, Distinguished Guests and Dear Colleagues, we have good cause to celebrate today. And we have good reason to hope for better things for the Tribunal in the years to come. I join all of you in wishing the Tribunal more cases and greater success in the future. I thank you.