Statement of Mr Satya Nandan, Secretary-General of the International Seabed Authority, on the occasion of the tenth anniversary of the Tribunal

Mr. President,

I would like to congratulate the Tribunal for the Law of the Sea on the occasion of the tenth anniversary of its establishment. I also congratulate you Mr. President and your colleagues, the Judges of the Tribunal both past and present, as well as the two Registrars who have served the Tribunal and the staff of the Registry.

Ten years is a very short time in the life of an institution such as the Tribunal which is mandated to deal with disputes arising from the application and interpretation of the modern law of the sea as contained in the 1982 United Nations Convention on the Law of the Sea. Time has moved rather rapidly since the entry into force of the Convention. It seems that it was only yesterday that I presided over the Meeting of States Parties to the Convention which in 1996 elected the first group of 21 judges from some thirty-four candidates. It was a moment of anticipation and expectation as to how the Tribunal will operate, when it might get its first case and what its calendar of work would be.

The past ten years have shown that things have moved faster than expected. The Tribunal was fortunately well served by the substantive preparatory work done by the Preparatory Commission reflecting the views of the more than 100 governments who participated in the preparatory process. This enabled the Tribunal to quickly organize itself, adopt its Rules of procedure, appoint a Registrar and the necessary staff and open its doors for business. What is most significant is that the cases began to come earlier than anticipated. It is very creditable that the Tribunal has had to deal with some thirteen cases. It has had to deal with numerous cases calling for new and unfamiliar situations, and unique procedures for which special machinery and procedures requiring urgent action is prescribed in the Convention. The urgency of the situation in cases for provisional measures or prompt release of vessels or crew demanded organizational efficiencies and intense activity over short periods of time. Although this is new and untested ground, it is noteworthy that from all accounts, so far every judgement has been implemented. There have also been two ground-breaking cases on the merits. These cases attest to the usefulness of the Tribunal and also to the usefulness of the innovative procedures contained in the Convention to deal with certain delicate, difficult and urgent matters in a timely manner.

The fact that the Tribunal is currently experiencing a slow period is not unique. In the history of other similar International Tribunals, including the International Court of Justice, you will find that they too have experienced slow periods, sometimes spanning over a number years. The paucity of contentious cases on the law of the sea at this time is not limited to the Tribunal. It is a general phenomenon which is also being experienced by other courts and tribunals.

One reason for this could be that we may have done a good job in setting out the principles and norms governing the ocean space in the Convention. It is no secret that the 1982 Convention has been extremely successful. It has provided clarity and certainty in the law of the sea. As a result the disputes concerning the law of the sea are considerably reduced. The issues that arise are not on what is the applicable law as was the case prior to the Convention, but rather how the law should be interpreted and applied in particular situations. More often than not the differences between states on law of the sea matters is resolved through consultations and negotiations, something this Tribunal, to its credit, has also encouraged. Where a third-party procedure is used, it is unfortunate that the tendency for states is to use ad-hoc arbitral tribunals rather than an established judicial body.

Notwithstanding the paucity of cases at this time, the fact is that compulsory dispute settlement procedure is the essential cement that binds the provisions of the Convention together. The International Tribunal for the Law of the Sea, as a specialized Tribunal is the cornerstone of that structure and has a central role in the interpretation and application of the Convention. Indeed, on some matters such as disputes arising from the implementation of the regime for the mining of minerals from the deep seabed, the Tribunal, through its Seabed Disputes Chamber, has the exclusive jurisdiction. The Tribunal also has exclusive jurisdiction on certain fisheries issues. The President of the Tribunal has an important role in establishing arbitral tribunals either at the request of the parties or where the parties cannot agree on its composition.

There is an intrinsic relationship between the Tribunal and the International Seabed Authority. Both institutions are creatures of the Convention. They are also tied by their early history. In the original concept for a deep seabed mining regime a Tribunal was contemplated as an organ of the Authority. Its jurisdiction was limited to disputes arising from the implementation of that regime. Later as the Convention package evolved into a comprehensive instrument covering all aspects of the Law of the Sea, the need for a specialized Tribunal having jurisdiction over matters covering the traditional Law of the Sea was recognized.

As parallel negotiations proceeded in the First Committee of the Conference which dealt with seabed matters, and in the Plenary of the Conference which covered disputes on all other matters, it became apparent that a single Tribunal with wide jurisdiction would be more practical and cost effective. Initially it was also thought that the seat of the Tribunal would be at the seat of the Authority. Later, the Authority and the Tribunal were seen as two independent institutions and treated as such. The Seabed Disputes Tribunal, however, became a Chamber of the International Tribunal for the Law of the Sea but with its own jurisdiction as prescribed in the Convention, thus functioning as a Court within a Court.

The Seabed Disputes Chamber is an essential part of the regime for deep seabed mining in the international area. Its jurisdiction is prescribed in article 187. It can form ad hoc chambers from among its members and it also has jurisdiction to provide advisory opinions at the request of either the Assembly or the Council of the Authority

on legal questions arising within the scope of their activities. The only exception to the jurisdiction of the Seabed Dispute Chamber is the option available to any party to have recourse to binding commercial arbitration on disputes of a contractual nature referred to in article 187. Even in such cases, if the question of interpretation of Part XI and related Annexes, and provisions of the 1994 Implementation Agreement relating to Part XI arises, the matter has to be referred to the Seabed Disputes Chamber for a ruling. However, the Convention, in article 189, provides for an important limitation on the jurisdiction of the Seabed Disputes Chamber with regard to challenges to the discretionary powers of the Authority. In such cases the Tribunal may not substitute its discretion for that of the Authority.

A novel feature of the Seabed Disputes Chamber is that its jurisdiction extends to disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons concerning the interpretation or application of a relevant contract or a plan of work, or acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interest. Thus, non-states are enabled to have direct access to an international tribunal in their own right without the need for assistance from their state of nationality.

Mr. President,

It is now twelve years since the International Seabed Authority was established. It too completed its internal organization and began to fully function. It has three main organs, a 149 - member Assembly, i.e. all the parties to the 1982 Convention, a 36 – member Council and a Secretariat. It also has two advisory bodies – the Legal and Technical Commission which advises the Council on technical matters and a Finance Committee which advises the Council and the Assembly on financial matters.

The Authority began its legislative functions by adopting in 2000 the Regulations for the Prospecting and Exploration for Polymetallic Nodules in the Area. Following this, it issued seven exploration contracts or licenses to entities from China, France, India, Japan, the Republic of Korea, the Russian Federation and an East European Consortium based in Poland. These were previously registered as “pioneer investors” with the Preparatory Commission. Since then the Authority has issued an eighth license for exploration to the Federal Institute of Geosciences and Natural Resources of Germany. All the areas allocated are located in the Clarion Clipperton Fracture Zone in the north pacific ocean, except that of India which is in the south central Indian ocean.

The Council of the Authority is currently considering Regulations for the Prospecting and exploration of Polymetallic Massive Sulphide deposits found along the ridges where tectonic plates meet (the so-called chimneys or smokers) and cobalt-rich crusts found on sea mounts. These deposits are three dimensional and their sub-surface depth and breadth are not readily discernible as in the case with polymetalic nodules which are two dimensional and are found mainly on the surface of the seabed.

The Authority is also engaged in promoting marine scientific research in the deep seabed and collaborates for this purpose with groups of international scientists engaged in the study of the deep sea environment. This will enable the Authority to establish environmental monitoring regulations and guidelines for the contractors on a more informed and scientific basis.

The Authority so far has conducted its work in a very cooperative and harmonious atmosphere. All decisions on substantive matters have been taken by consensus. The rules of procedure for decision making, especially in the Council, which acts as the executive body of the Authority, is such as to encourage decisions by consensus. Similarly, the relationship between the Authority and the Contractors is very cooperative. The result is that we have not had an opportunity to bring any matters of dispute to the Seabed Disputes Chamber nor have we had to seek any advisory opinion from the Tribunal. I don't know if this is good news or bad news. But these are early days. As the work of the Authority intensifies in the future especially if commercial mining takes off the situation may change.

Mr. President,

Given my previous responsibilities at the United Nations, and my involvement in the preparation for the establishment of the Tribunal, I would be remiss, if on this occasion, as a personal note, I were not to recall the very generous contribution to the International Tribunal for the Law of the Sea made by the Government of the Federal Republic of Germany and by the Free and Hanseatic City of Hamburg. They began serious planning and preparation for the seat of the Tribunal to be located in Hamburg in the mid 1980's. This entailed the making of the necessary financial commitment by the Federal Government and the planning, design and construction of the building which now houses the Tribunal. As the then Under Secretary-General for Ocean Affairs and the Law of the Sea and the Special Representative of the Secretary-General for the Law of the Sea, I recall the many visits to New York made by officials from the Federal Ministry of Works and the Mayor and representatives of the City of Hamburg. I also recall my many visits to Bonn and Hamburg in connection with the seat of the Tribunal. In addition, there were a number of visits made by a technical team from the United Nations which included personnel from Building Management and Conferences Services. The UN Secretariat team was led by Mr. Gritakumar Chitty who was later appropriately appointed the first Registrar of the Tribunal. He has been involved and contributed significantly to every phase in the development of the Tribunal – from the deliberations in the Conference and the Preparatory Commission, to its final establishment.

The preparatory phase involved an international competition for the design of the building, and the selection of the design and work on the technical details for the internal facilities for the Tribunal, taking into account the United Nations standards and practice. These were jointly undertaken by the Federal Government and the City of Hamburg. The Tribunal is indebted to the City of Hamburg for very generously providing the land in this very exclusive and desirable wooded area of the city, along the banks of

River Elbe and in view of one of Europe's most important thoroughfares which should be a constant reminder to the Tribunal of its close and abiding association with the sea.

In recalling this historical perspective of the Tribunal, I should mention the many personalities of the host country who worked so very hard to ensure that the Tribunal was indeed established in Hamburg and that the facilities were well provided. Among them, were the first Mayors of Hamburg, Mr. Von Dohnanyi, and specially his successor Dr. Henning Voscherau, who devoted considerable time and effort to this project, as well as the Senate and the State Parliament. Among the other individuals who deserve mention are Professor Kossack from the Planning Office in Hamburg, Parliamentarian Horst Grunenberg, Judge Plambeck, Dr. Lampe and Architects Von Branca – father and daughter – and numerous members from the Ministry for Construction of Public Buildings.

I should also refer to the important contributions of the representatives of Germany at the Third United Nations Conference on the Law of the Sea who campaigned for the establishment of the Tribunal in Germany. In this respect I refer to Ambassador Dreher who first submitted the offer by Germany to host the Tribunal, Ambassadors Tono Eitel and Duisberg, Dr. Lutz Gusseck from the Justice Ministry, Ms. Renate Platzoder and Mr. Joachim Koch. We should also acknowledge the important contribution of the Curatorium that was established to promote the establishment of the Tribunal.

The perseverance and the patience of all those from the host country who have been involved in this enterprise in the face of the long delay before the Tribunal was finally established in Hamburg is something to be admired. Now that the Tribunal is well established it would be fair to say that the Tribunal belongs as much to the people of the Free and Hanseatic City of Hamburg and to the people of Germany, as it does to the world at large.

I wish the Tribunal every success.