INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

STATEMENT BY

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PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

at

THE PLENARY OF THE SIXTY-SEVENTH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY

on the occasion of

THE COMMEMORATION OF THE THIRTIETH ANNIVERSARY OF
THE OPENING FOR SIGNATURE OF
THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

New York, 10 December 2012

Statement by Judge S. Yanai, President of the International Tribunal for the Law of the Sea, to the United Nations General Assembly on the occasion of the commemoration of the thirtieth anniversary of the opening for signature of the 1982 United Nations Convention on the Law of the Sea
New York, 10 December 2012

Mr President,
Ladies and Gentlemen,

1. On behalf of the International Tribunal for the Law of the Sea, I wish to say how honoured I am to be able to address the United Nations General Assembly on the occasion of the celebration of the 30th anniversary of the opening for signature of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the Convention").

2. The adoption of the Convention was one of the pivotal moments in the development of international law. From the very beginning, the instrument, whose preamble states that it establishes "*a legal order for the seas and oceans*", was regarded as a "*constitution for the oceans*". It sets out existing law and defines the rules applicable to new domains, in particular in Part V on the exclusive economic zone (EEZ) and Part XI on the Area, which is "*the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction*" (Convention, article 1(1)(1)). The text establishes a comprehensive legal framework regulating the most important resource on the planet; it defines the status of different maritime areas and introduces a broadly mandatory mechanism for the settlement of disputes.

3. The International Tribunal for the Law of the Sea ("the Tribunal") plays a key role in Part XV on the settlement of disputes. A guiding notion for the Third United Nations Conference on the Law of the Sea was the recognition that efficient means of settling disputes had to be established if the Convention were to be applied effectively. The Tribunal enjoys an innovative jurisdiction *ratione personae* in that States Parties are not

the only entities authorised to appear before it. Under the Convention it is also open to entities other than States Parties and to international organizations. The list of cases heard by the Tribunal bears witness to this innovation. For example, the European Union was a party in a dispute brought before an *ad hoc* Special Chamber of the Tribunal in the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)*. The Seabed Disputes Chamber, in which the Tribunal sits in restricted composition, is also open to entities other than States Parties (States, international Seabed Authority, natural or legal persons).

4. The Tribunal began its work in 1996. In its 16 years of existence, 20 cases have come before it, covering a broad spectrum of legal questions: urgent proceedings (provisional measures, prompt release of vessels and crews); activities at sea (navigation, fisheries, legal status of ships under international law, international shipping regime, use of force, protection and preservation of the marine environment, liability and redress); and delimitation of maritime areas. Over this period, the Tribunal has established a reputation for the expeditious and efficient management of cases.

Mr President,

5. Article 287 of the Convention incorporates the "*Montreux formula*", an ingenious mechanism devised by the negotiators as a compromise. Under that provision, a State Party may accept, by means of a declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of the Convention: the International Tribunal for the Law of the Sea; the International Court of Justice; an arbitral tribunal constituted in accordance with Annex VII; or a special arbitral tribunal constituted in accordance with Annex VIII. If no choice is made or if there is no agreement between the choices, arbitration will be the compulsory means of settlement. As at 1 December 2012, 47 States had made declarations to this effect, 34 of them having opted for the Tribunal as a means of settlement. It is my hope that States will take this opportunity of the celebration of the thirtieth anniversary of the opening for signature of the Convention to make such declarations.

Mr President,

6. This option given to States to choose one or more international courts or tribunals has sometimes given rise to fears of a fragmentation of international law and of conflicting judgments being delivered by different international courts and tribunals. This concern has proved to be unfounded. The Tribunal has regularly referred to judgments of the International Court of Justice and its predecessor, the Permanent Court of International Justice, and to decisions by other courts and tribunals, both on substantive issues and on procedural points.

7. Adjudication by the Tribunal can play an important role in maintaining peace, one of the primary objectives of the Convention (see the preamble, first paragraph). Among other things, by taking an impartial decision on the grievances underlying a dispute, it can defuse international tensions. For example, when it delivered its judgment in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)* on 14 March 2012, the Tribunal set at rest a dispute in relation to a complex delimitation which had divided the parties for more than three decades. The judgment was welcomed by the parties, which can now exploit the natural resources in their maritime areas. Furthermore, if States are in dispute, they may also avail themselves of advisory proceedings in order to obtain from the Tribunal an opinion on a point of law on which they disagree, and this can help in formulating a diplomatic solution.

8. In ruling, the Tribunal has regard to "*considerations of humanity*". Thus, in the *M/V "SAIGA" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), judgment ITLOS Reports 1999, p. 10*, it found that international law did not permit the use of excessive and unreasonable force in arresting a vessel (paragraph 155).

9. It should be noted that urgent proceedings enable the Tribunal to deal with certain cases very quickly – in about one month from the submission of the request or application to the decision. Such proceedings take two forms: provisional measures under article 290 of the Convention and prompt release of vessels and crews. These proceedings have seen a degree of success (15 different proceedings have been brought on this basis), which bears witness to their usefulness and the wisdom shown by the negotiators of the Convention who established them.

Mr President,

10. The International Tribunal for the Law of the Sea is busier than ever and, as its President, I can only welcome this. The quality of our decisions and the general confidence inspired by the outcomes of our cases are a product of the collegiate character of our work. Through this approach we can strive to meet the expectations of States turning to us to find a solution to their disputes as quickly as possible. The Tribunal must respond to the needs of the international community and do so by remaining consistent in its interpretation of the Convention so as to ensure the legal predictability counted on by the States Parties. The Tribunal must also maintain its commitment to the quality and efficiency of its work. By carefully balancing continuity and change, the Tribunal will continue to be the benchmark in the settlement of disputes relating to the seas and oceans. That is the challenge we will have to meet over the coming years.