Ceremony celebrating the 20th anniversary of
the International Tribunal for the Law of the Sea
7 October 2016

Banquet hall

Statement: approximately 15 minutes

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Your Excellency, Mr Ban Ki-moon, United Nations Secretary-General,
Your Excellency, Mr Joachim Gauck, Federal President of Germany,
Your Excellency, Mr Golitsyn, President of the International Tribunal for the Law of the Sea,
Honourable Ms Wirtz, Under-Secretary of State, Federal Ministry of Justice and Consumer Protection,
Honourable Members of the Tribunal,
Excellencies,
Ladies and Gentlemen,

"Each person has the inherent right to a place on Earth, wherever they happen to have been born", Kant stated in the Groundwork of the Metaphysics of Morals [Doctrine of right]. A place on Earth. Hmmm. On land… Does that mean Kant forgot about the sea?

Immanuel Kant wrote some clever things about the appropriation of external property, first establishing that the world is the common property of humankind, but that it is inevitable that we leave this natural state and establish a law of reason. He also anticipated the principles of the United Nations. And this categorical imperative also applies on the high seas. But even with Kant it is clear that all too often considerations about law and justice are restricted to the land.

The fundamentals of the appropriation of private property do not address the maritime perspectives of the law – they are problems of common usage. It was always the internationalization of trade which opened up the legal perspectives towards the sea: Europeans argued about who the sea belongs to when transporting

spices from India or sugar-cane and gold from Brazil to Europe. Hugo Grotius wrote – in defence of the economic interests of his country – the first principle of the international law of the sea: “Each nation is free to reach any other nation by way of the sea for the purpose of carrying out trade there.” This is an “evident and unassailable axiom of international law”. With the concept of the freedom of the seas, Grotius - who subsequently had to leave the Netherlands and flee to Hamburg as a result of religious persecution – was putting forward the argument of the small versus the great, insisting on the equality of nations as the basis for the use of the seas. This was the response to a form of international commerce which was unregulated or simply based on power. Even with Grotius, that response goes hand in hand with the view that the peaceful resolution of conflicts of interest is possible only when international agreements exist.

An enormous undertaking, since still opposing the principle of the freedom of the seas was that of the territorial ownership of coastal States. How much more complex it all becomes when these two principles have to be harmonized by all nations, with their conflicting interests and different coastal formations, in one single agreement.

The Third United Nations Conference on the Law of the Sea lasted nine years, from 1973 to 1982. Until then, it was the largest diplomatic conference in the history of humanity. Representatives from more than 160 States negotiated the most comprehensive treaty in the history of international law: the United Nations Convention on the Law of the Sea encompasses a total of 320 articles. They concern not only shipping routes and coastal rights, but also the use of the seas and oceans in their entirety and the joint management of the living resources of the sea – the heritage of all humankind.

The General Assembly adopted the Convention on 30 April 1982. The original title is “The United Nations Convention on the Law of the Sea”, or “UNCLOS” in short. It was placed before the international community of States in Jamaica, on 10 December 1982, with 159 signatories, a unique achievement in political and legal history. A particularly important area of the Convention is the mechanisms set out in Part XV on the settlement of disputes and the decision to establish a tribunal for the law of the sea under the auspices of the United Nations. Article 1 of Annex VI states:

“[t]he seat of the Tribunal shall be in the Free and Hanseatic City of Hamburg in the Federal Republic of Germany.”

Germany’s application had been a major project of the Federal Government under Chancellor Helmut Schmidt and Foreign Minister Hans-Dietrich Genscher, the Hamburg Senate and the Hamburg members of the *Bundestag.* Hans-Ulrich Klose, who, as mayor, played a crucial role, says today: “It was the name ‘Hamburg’ which was the big draw – in New York, ‘Hamburg’ was on everyone’s lips.”

The Bonn Government also argued that our country has a particular interest in the peaceful settlement of conflicts and no maritime boundary disputes were likely to emanate from Germany. Germany, with its short coastline, belonged to the disadvantaged group of land-locked States [application of 18 March 1981].

Today, we see things differently. Since reunification, Germany’s coastline has become considerably longer and we have opened up eastwards on sea and land. As an exporting nation, Germany has a great interest in the maritime economy. We have a huge container fleet and the most interdependent economy.

The codifying of the law of the sea, merchant shipping law and the peaceful settlement of conflicts is an essential concern of the Federal Republic of Germany. This is also the case for intergovernmental commercial jurisdiction, for which the Hanseatic city of Hamburg would also be a good base.

With UNCLOS, the law of the sea convention, the peoples of the United Nations have established the first common and completely new law of the sea. The convention on the law of the sea is the binding framework for all nations, the *constitution of the seas.* Everything is regulated in a binding manner: UNCLOS contains provisions on fisheries, shipping, deep seabed mining and matters of environmental protection.

The law of the sea convention entered into force only after Germany and many other industrial nations had acceded to it twelve years later, when a consensus on deep seabed mining had been reached. That was the reason why the work of the Tribunal

for the Law of the Sea only started in 1996. The complex substance of the law of the sea convention gave rise to many new questions, for example by determining that the borders of coastal States lie up to 12 nautical miles seawards.

So it was that Bangladesh and Myanmar disputed their boundary in the Bay of Bengal. The Tribunal had to delimit not only the two countries' mutual claims to coastal waters but also their exclusive economic zones and continental shelves. The Tribunal's judgment made legal history: what was new was that, for the first time, the continental shelf beyond 200 nautical miles was delimited. The Tribunal thus ended a dispute which had overshadowed relations between the States for several decades. Both nations have now enshrined the Tribunal's decision in their national law.

The Members of the Tribunal for the Law of the Sea also assist in arbitral proceedings. Thus it was that Judges Cot, Pawlak and Wolfrum were members of the arbitral tribunal [set up under article 287 of UNCLOS] which decided on the South China Sea dispute, proceedings which were closely monitored by the international community.

Another champion of the International Tribunal for the Law of the Sea in Hamburg was the law of the sea specialist, Elisabeth Mann-Borgese. Evidence of her intellectual influence can be seen in the extent to which the United Nations law of the sea convention is focused on the preservation of the living resources of the sea. Thus the "main role" in one of the first fundamental decisions of the International Tribunal for the Law of the Sea for environmental protection was played by a fish: *Thunnus thynnus*.

The bluefin tuna, a favourite fish in Asian and Australian cuisine, usually grows up to three metres long, and catching it is internationally regulated as it is threatened with extinction. In the *Bluefin Tuna Cases* - involving the application of provisional measures and submitted to the Tribunal at the request of Australia and New Zealand against Japan in 1999 - the Tribunal developed the so-called "precautionary principle", whereby the plausible assumption that the environment has suffered

considerable harm is sufficient to prohibit certain activities. This decision of the Tribunal was also accepted and implemented by the Parties in its entirety.

It was also a question of fish in the advisory opinion issued on behalf of the Sub-Regional Fisheries Commission on involvement in illegal, unreported and unregulated [“IUU”] fishing. Commercial but unlicensed fishing presents an enormous threat to the economy of the coastal States concerned, so the prevention of fish piracy is also key to the elimination of economic migration in West African States, for example. The Tribunal’s advisory opinion establishes the rights and duties both of coastal States and of flag States, i.e., the nations to which the ships of the so-called fish pirates belong (and recommends a moratorium on fishing).

With its fundamental decisions, the International Tribunal for the Law of the Sea is also exceptionally well-equipped to deal with disputes concerning deep seabed mining. The convention on the law of the sea also provides a legal framework for regulating the rights of neighbouring States and the world community in the Arctic, where the ice is disappearing at an increasing rate.

The International Tribunal for the Law of the Sea is an essential component in resolving conflicts and ensuring peace. Maintaining peace is the United Nations’ core concern, where maintaining a dialogue is essential. That is arduous and longwinded. As article 33 of the United Nations Charter states (and I quote): “negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice” (end of quote). These are highly complex forms of communicatively institutionalized procedural reason at world level which should never be underestimated.

So you can see, it is not always necessary for a judgment to be declared: there is much that can be settled beforehand. An important aspect is the training of young lawyers, which is something which the International Foundation for the Law of the Sea (IFLOS) has been doing for ten years, with its Summer Academy on the international law of the sea and merchant shipping law. Then, although two thirds of the earth’s surface is covered in water, lawyers, politicians and diplomats

specializing in maritime law are still in the minority. These young people will in the long term work to ensure that greater attention is paid to the law of the sea.

“We the peoples of the United Nations” states the preamble of the United Nations Charter. And this “we” means Hamburg, Germany and Europe, and all the peoples of the world who make use of the seas and oceans.

We have the United Nations to solve humankind’s problem of protecting the environment, using the seas’ resources and together preserving them in order to combat migration and, above all, to give the peaceful settlement of disputes a chance.

In choosing Hamburg as the seat of the International Tribunal for the Law of the Sea, the United Nations selected a particularly suitable location. We are very proud that the Tribunal is here in Hamburg even if, from the legal standpoint, it is on international territory.

The International Tribunal for the Law of the Sea and Hamburg proclaim the unequivocal message that:

The international law of the sea is the law of peace.

Thank you very much!