



**Speech by Federal President Gauck  
at the ceremony to mark 20 years of the International  
Tribunal for the Law of the Sea  
in Hamburg on 7 October 2016**

It is a great pleasure for me to join you in this historic venue to celebrate a historic event. Twenty years ago, on 1 October 1996, the International Tribunal for the Law of the Sea held its constitutive session. Please accept my sincere congratulations on reaching this anniversary.

I would like to thank the Free and Hanseatic City of Hamburg for supporting Germany's bid to host the Tribunal so resolutely and with such perseverance. The bond between man and the sea shaped the history of this great commercial and maritime city and has continued to mould its present. Hamburg is furthermore a long-standing home to the law of the sea. The establishment of the International Tribunal for the Law of the Sea here on the Elbe marked the proud culmination of this tradition.

However, the Tribunal is first and foremost a great asset for the international community and its pursuit of the peaceful settlement of disputes. This pursuit is likewise a key priority of German politics.

The oceans form the largest habitat on our planet, and the "Tribunal of the Seas" is responsible for them all. This is why the international community attaches such outstanding significance to the ITLOS when it comes to the settlement of disputes concerning the sea. In the 20 years since its establishment, the Tribunal has earned people's trust and esteem. We definitely have cause to celebrate today.

But at the same time, as we know, this anniversary comes at a time when the international family is being pulled in different directions. Wars and troubles dominate world affairs. In many places, greater emphasis is being placed on national interests than on the benefits of international cooperation. Furthermore, defensive posturing

against globalisation is becoming ever more widespread and is making itself felt in the European Union, but also throughout the world. I would therefore also like to share some thoughts with you today on the challenges international law faces in these uncertain times.

However, on a solemn occasion like this, our attention should be given first to the institution we are fêting, the Tribunal itself, and its work in one of the oldest areas of international law. When the Dutchman Hugo Grotius, that great pioneer of the development of international law, propounded the idea of freedom of the seas in 1605, this was a provocation – politically, economically and ecclesiastically. At the time, Grotius sought to defend the rights of free navigation and free trade of the still nascent Dutch state against Spain and Portugal. The question of who is entitled to the resources and riches of the sea – of *mare liberum* or *mare clausum* – has remained the defining conflict of the international law of the sea to this very day.

The Convention on the Law of the Sea is the most comprehensive multilateral agreement ever concluded. Its 320 articles cover almost all issues relating to the delimitation and use of the seas, as well as marine research and protection. Now, as then, the Convention is impressive because it – among other things – raises questions of global justice and distribution. The fact that – although national interests diverged and international economic ideas differed – agreement was reached on a binding legal regime for the seas is a powerful testament to the formative strength of international law, especially since the States Parties agreed that disputes were in principle to be brought before a tribunal. The grand idea of safeguarding peace by means of the law thus received a decisive boost. We would like to see more of this at international level.

The Tribunal has indeed assumed an important function. It decides cases of considerable legal, economic and political significance, including for example disputes concerning global maritime trade and the delimitation of maritime zones. Even if the Tribunal has not differed from most other newly established international courts in that the number of cases brought before it has only grown slowly, it has nonetheless made some noticeable rulings, for example as regards the conservation of the marine environment.

Peace, security and justice can only be achieved within a global, consensus-based system of rules. And when I say “achieved”, I have chosen my words with great care. For as we see every day, the mere existence of international legal norms does not guarantee a peaceful, secure or just world. What ultimately makes the difference is the interplay between international law and politics.

International law aims to channel power into accepted courses and to guarantee that states show each other mutual respect, "as communities equal in law and equal in honour," as the jurist Alfred Verdross once put it. The exercise of power is thereby civilised and subjected to control. But to fulfil this function, international law is itself reliant on those exercising power, on their willingness and their ability to agree on common interests and values, and to make this consensus, once it exists, lasting and binding. How well this works depends on the international political environment. And international law has always had its good times and its less good periods.

The 1990s were one of its best periods. The fall of the Wall, the unification of Germany, the collapse of the Soviet Union and the democratic revolutions in eastern Europe created a political climate from which the international legal order profited immensely. It seemed as if the decades of paralysis in the UN Security Council, resulting from the East-West conflict, were over. The international community demonstrated its desire to cooperate more closely by creating numerous new institutions and bodies of rules. International jurisdiction also experienced a period of rapid expansion – and not just as regards the law of the sea. Numerous new international tribunals were established – bringing the total to roughly 150 – reflecting the realisation that obligations are an inherent part of international law.

The development of international criminal law was without a doubt one milestone on this road. The creation of the International Tribunals for the Former Yugoslavia and for Rwanda, and above all the establishment of the International Criminal Court in 1998, clearly confirmed that international law was not solely concerned with states and their sovereignty and interests. A key concern of international law is namely people's welfare, the "value of humanity". Hopes grew at the time due to the dynamism that entered international law in the 90s. The growth of international law, the strengthening of human rights and judicial protection all lent support to the idea that the international community could move towards a "law for the world population" or an "international constitutional state."

Unfortunately, the wishful thinking of those days has given way to a rather different reality. The old world order built around the East-West conflict no longer exists, but it has not yet been replaced by a new comprehensive, enduring and peaceful order. A sense of unease induced by international interconnectedness and globalisation, and everything that goes with it, is becoming tangible. A belief that the nation state is the sole instance able to solve problems is enjoying a renaissance in many quarters.

The climate for the further development of international law has worsened as a result. Nevertheless, we should not forget that international law has always developed by leaps and bounds, and not equally in all areas. Nor is it always highly politicised issues that are regulated. Our daily lives are governed by many international norms that are so uncontentious we are barely aware of their existence. When you're buying bananas, for example, you probably don't think about the international Codex Alimentarius which was adopted to ensure that only safe foodstuffs can be sold. Even time itself is subject to international standards. The vast majority of the rules and arrangements agreed on by the international community for practical reasons remain unaffected by crises.

The altered political climate does, however, make itself felt on international law wherever political interests are fought over, for example in the UN Security Council. No lasting agreement underpinning the international prohibition on the use of force has yet been reached, although hopes had been high a quarter of a century ago. The homogeneity that made it possible for the Security Council to take unanimous decisions in the 1990s no longer exists. The Security Council is now just as polarised as it was before the Berlin Wall came down. We have recently been compelled to note that certain states are now discrediting the existing rules-based system for the use of force enshrined in the UN Charter because they attach greater importance to their own quest for power. Millions of people are paying the price for this paralysis of the Security Council. I can only appeal to all those who bear responsibility not to condemn the principle of collectively safeguarding peace to failure.

Great hopes have also given way to disillusionment and anxiety as regards human rights protection. Fundamental rights such as freedom of the press and freedom of assembly are under attack in places not necessarily far from Germany's borders. Around the world, millions of people are on the move, displaced by war and the most serious human rights abuses.

In the conflict-ridden world of today, international law is also liable to be fought over more aggressively than we were used to in the harmonious 1990s. Old powers have revived old prerogatives on the world stage. Aspiring powers are emerging as ambitious co-authors of the international legal order. The readiness to view international law as a system that binds states' interests to higher common interests, above all human rights, has diminished.

In its stead, priorities are emerging which reveal a certain remove from the development of international law in the past decades. The stress on state sovereignty combined with a qualifying of individual

rights is of course not new. But when states start calling for a significantly more restrictive interpretation of human rights, we must all sit up and take note.

Very intense debates are thus likely on any new international law projects. Some are already taking place, for example in the negotiations on key issues like the regulation of cyberspace.

The development of international law remains a contentious field, because conflicts of interest are an unavoidable part of coexistence in the international community. In addition, the international legal order is not perfect. But seen from a historical perspective, remarkable progress has in fact been made. The multiplicity of multilateral treaties, international organisations and courts that exist today form a common order – representing a degree of accord and joint management that even a forerunner of international law such as Hugo Grotius would have thought inconceivable.

The core element of this order is and remains the Charter of the United Nations. The major objectives enshrined in the Charter have lost none of their relevance.

Making progress on the further development of international law will require tremendous efforts and considerable staying power. It is a painful and bitter fact that fundamental norms are being violated time and again. But that must not result in the goal of a humane order being put up for negotiation. An order must be built equally on values, law and peace if it is to be worthy of its name.

Germany has a special interest in protecting all that has been achieved in international law and making further progress – due to the obligations stemming from our past and in the awareness of our growing international responsibility. Legitimacy, stability and predictability – procured, that is, through joint rules – are valuable assets for all states, even powerful ones.

States thus bear a shared responsibility in this context. Safeguarding peace and international security, and guaranteeing that human rights are respected are tasks for the international community as such. They are joint challenges that call for sound judgement and determined action. Sound judgement to properly account for international law's special relationship with the global political situation at any given time. Determined action to defend basic principles of international law in politically difficult times.

Sound judgement and determined action both require support from international courts. When the International Tribunal for the Law of the Sea was established 20 years ago, the international community was guided by the far-sighted conviction that strengthening

international jurisdiction brought a gain – a gain for peace, which outweighed the loss of state sovereignty.

International law aspires to general validity. It is thus worrying when states refuse to cooperate with international courts or to comply with their rulings. The ITLOS has not been spared such experiences, as all of you gathered here today are aware, although at the same time we must note that these have tended to be isolated incidents. But even the European Court of Human Rights has registered a trend whereby states refuse to listen to the Court when it rules that basic rights and freedoms must be given better protection. Even in States Parties that are proud of their legal traditions and their support for the rule of law, people do not always care to be reminded of obligations that involve recognition of supra-national judicial supervision.

This also affects international criminal courts. Considerable efforts are thus still required if we are to hold to account all those responsible for the most serious crimes. And we have to work harder than ever to convince our partners to give the International Criminal Court the necessary backing.

Merely establishing international courts is not enough. It is by providing long-term political and institutional support that we reveal what they are worth to us, and whether we are willing to make full use of their potential to promote peace and justice. And strong support from the international community is what I wish your Tribunal on its 20<sup>th</sup> anniversary.

The Tribunal has trodden a successful path over the past 20 years. I am confident that it will continue to gain importance, for it has already done remarkable work resolving disputes. And in these crisis- and conflict-ridden times, it is more necessary than ever to settle disputes quickly and convincingly.

The debate on the further development of the international legal order will also affect the international law of the sea. The Tribunal's future pronouncements on the protection of the seabed as the "common heritage of mankind" will be of significance across legal fields that go far beyond the law of the sea.

As the challenges grow, so too does the responsibility that you bear. I am sure that with you, honoured members of the Tribunal, this responsibility is in good hands. May the jurisprudence of this court help protect the accomplishments of international law as it continues to develop. And may the Tribunal, working constructively with other international courts and tribunals, raise awareness of the fact that national sovereignty, if correctly understood, cannot imply a retreat from international responsibility.

Let us therefore pool our resources to work with perseverance and sound judgement, taking into account the various needs and interests of individual states, towards the magnificent goal of peace through law.

In presenting my fundamental thoughts to you today, I did not only speak about today's anniversary – and there was an important reason for this, namely the situation currently facing the international community. The unresolved conflicts, the blockades in organisations including the United Nations Security Council – in your presence, Secretary-General Ban Ki-moon, I wanted to draw our attention to this problematic situation. In the anniversary of this Tribunal, we are celebrating a milestone in the long struggle for the supremacy of the law. I underline the fact that this is a milestone, but we are celebrating it because it represents progress.

I stand here before you as someone who was born during the war and who as a young man could never have imagined that the seat of a very important international court of jurisdiction would be here one day in Germany, with its dreadful history of guilt, perversion of justice and violations of the law.

When I link this wonderful development with the legal tradition of this city, we become aware that terrible conditions, even the most terrible, can be changed by transformative processes. However, we need enough people to play a part in this change for the better. And hence my congratulations to all of you in positions of responsibility here go hand in hand with the hope that willingness will grow worldwide to continue working on the triumph of the rule of law, rather than stopping this process at some point along the way.

Secretary-General of the United Nations, I would like to thank you for your extensive endeavours to this end. We bid you farewell as Secretary-General with immense gratitude and respect. You have achieved great things, and on this occasion I want to thank you not only for being here, but also for what you have done for the international community.

I extend my very best wishes to you, Secretary-General, and to you, Vladimir Golitsyn, President of the Tribunal.

Thank you.