

Acceptance speech
on being awarded an honorary doctorate
by the University of Hamburg

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Professor Tilman Repgen, Dean of the Faculty of Law,

Dear colleagues,

Dear students,

I am immensely honoured to stand here today. Coming from academia, I know what it means to be awarded an honorary doctorate. When Professor Proelss came to inform me, about this time last year, of the decision of the University of Hamburg to consider awarding me an honorary doctorate, my first reaction was a sense of embarrassment. I was in a quandary as to whether I deserved such a great honour. I must confess that I am still somewhat embarrassed, and I am most humbled by this award.

After my initial hesitation, however, I decided to accept the honour, not least because the award is not so much the recognition of my achievements as a scholar and practitioner as the recognition of what my Tribunal has accomplished over the past two decades or so. I thought that the award of an honorary doctorate could serve as a good opportunity to reinforce the bond between two Hamburg-based institutions: the University of Hamburg, in particular its Faculty of Law, and the International Tribunal for the Law of the Sea. By combining academic learning and research with practical experience, we both have much to complement, and benefit from, each other in attaining our respective goals. I am truly grateful to the University of Hamburg for conferring this honour on me, and I will do my best to strengthen the bond between our two institutions.

Dear colleagues, dear students,

This afternoon I want to share with you a brief moment to reflect on international law and the rule of law in today's world.

Let me start by saying that it may not be the most auspicious time to speak about international law and the rule of law. Today, international law and the rule of law are faced with serious challenges, perhaps the most serious challenges since the end of the Second World War, more than seven decades ago. If we look around the world, we see waves of populism, nationalism, and extremist ideologies gaining ground in various corners of the earth. We hear loud voices in favour of protectionism and isolationism and face great resentment to migration and regional integration.

This trend has posed a serious threat to the post-1945 liberal international order based on international law and multilateral institutions. Is the era of economic and political progress through openness and engagement drawing to a close? Is the world now entering another era of great uncertainty? What will the consequence of this troubling shift on today's international legal system be? Can international law and the rule of law withstand and overcome this challenge?

While these are serious questions, we should be wary of being too alarmist. Rather, we need to approach them with a sense of balance as concerns the resilience of the international legal system and gravity of challenges it currently faces. We may also need to put these questions in perspective so that we can make better sense of what is transpiring. Maybe a good starting point in this regard is to reflect on what is meant by international rule of law, why it is important, what is required to strengthen the international rule of law, and what the state of the rule of law in today's world is.

Dear colleagues, dear students,

Historically, the notion of the rule of law has mostly been developed in the national context. Thus, the characteristics of the rule of law may vary from one State to another. However, there are some essential common features underlying this notion. For example, the rule of law was developed to prevent those who exercise authority

within the community from wielding unlimited power. The rule of law was a counter-weight or antidote to arbitrary power. It also connotes equality of treatment under the law and the idea that all State activities should be carried out according to the law. Another important feature is that the rule of law presupposes the existence of just law. In this regard, the rule of law is often distinguished from the rule by law. Rule by law means rule by any law laid down by an authority. On the other hand, the rule of law is premised upon the fundamental values and principles of law from which no legislation can depart.

Obviously this notion of the rule of law may not be directly transposable to inter-State relations, given that an international community is, in nature and structure, fundamentally different from a national community. Nevertheless, there is little doubt that this notion is also important in international relations. As we all know, there is no authority above the State in the modern international system, and each State is thus sovereign, having autonomy and freedom of action. In such a decentralized structure, if a State is left unregulated, it is not difficult to expect that the rule of might would prevail, inevitably leading to instability, conflict, and domination by the strong and powerful, as we have often seen in the history of mankind. Therefore, there is a clear need for the rule of law in international relations. That is why the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States emphasized the promotion of the rule of law among nations. That is also why the United Nations has stressed time and again that the rule of law at the national and international levels is essential to maintaining international peace and security, to promoting socio-economic development, and to furthering universal respect for human rights.

Dear colleagues, dear students,

Then how do we achieve the rule of law in international relations? What requirements are necessary to achieve the rule of law? I can point out three: first, a well-developed body of laws; second, a well-developed body of institutions to implement, apply and enforce such laws in a fair and equal manner; and third, a positive attitude of the members of the community toward the rule of law. Only when

all three requirements are met and synchronized with each other can we expect the rule of law to function effectively.

Then what is the state of the rule of law today with respect to these three requirements? Let me deal with them one by one.

The first requirement of the rule of law at the international level is the existence of a well-developed body of law. Such law must be general, clear and made in public. In this regard, I think that international law has made significant progress in the past several decades. Today, international law covers almost every aspect of international relations. International law is certainly general in the sense that it is accepted on a universal basis. While international law, at its origin and in its early days, was developed predominantly by European States, the international law-making process today has become much more democratized.

On the other hand, international law is often criticized for being unclear and ambiguous. The lack of precision of international law may, to some extent, be inevitable owing to the absence in international law of a process of legislation akin to that found in domestic law. However, even in this respect there have been significant improvements. Over the past several decades, the International Law Commission and the United Nations have contributed much to adding precision to international legal rules through codification and the progressive development of international law. Thanks to such efforts, today international rules have become much clearer in the fields of the law of diplomatic and consular relations, the law of treaties, the law of the sea, the law relating to succession of States, and the law on the responsibility of States for international wrongful acts, to name just a few. In addition, the pronouncements of international courts and tribunals have also helped clarify the content and scope of international law in diverse fields.

Another important development I want to mention is the emergence of *jus cogens*, peremptory norms of international law, which are superior to ordinary international law. The rise of *jus cogens* reflects the endeavour of the international community to rein in the excess of sovereignty. While it may be premature to say that a kind of constitutional order has been in place in the international legal system, we can

discern, through the emergence of the notion of *jus cogens*, a trend toward the rule of law rather than rule by law in international relations.

The second requirement for the rule of law is a well-developed body of institutions. I must admit that this is an area where the international legal system is relatively weak, compared with national legal systems. Yet even in this area, there has been some noticeable progress. A myriad of international organizations and agencies have been established in the past several decades to ensure the implementation of international legal norms. In particular, the United Nations has played a leading role in protecting and promoting the rule of law at the international level. The international dispute-settlement system has been strengthened, especially with the multiplication of international courts and tribunals over the past two decades or so and the substantial increase in the number of disputes submitted to such courts and tribunals. Historically, international adjudication as a means of settling international disputes has been rather marginal but its role has grown significantly. We also witness the advancement of compliance and enforcement techniques in various fields, in particular in the fields of human rights, environmental protection and arms control.

The third requirement for the rule of law at the international level is the positive attitude of members of the community, that is to say the attitude of a State, which is a principal, if not exclusive, actor in the international legal system. You may call the third element the “substructure” of the international legal system or “international legal culture”. While this requirement is often underestimated or totally disregarded in assessing the effectiveness of the rule of law partly because it is by no means easy to measure the attitude of a State, I think that it is critical to the functioning rule of law. As we often see when one State’s legal system is incorporated into another’s, simply transplanting advanced laws and institutions would not necessarily lead to the effective rule of law unless such laws and institutions are harmonized or synchronized with the underlying legal culture. This also applies to an international legal system. Despite all the progress made in international law and institutions, if States do not take international law seriously, we can hardly expect the international rule of law to operate effectively.

There may be several factors in assessing the attitude of a State toward the rule of law, such as the number of treaties and international agreements to which a State is a party, the level of participation in international organizations, or its willingness to submit its disputes to international courts or tribunals. However, what may be more important than those factors is whether a State recognizes and respects international law in its every day interaction with other States. I think that international legal consideration now plays an important part in the decision-making of many States in their relations with other States. They recognize and accept the reality of international law and its relevance to their conduct.

At the same time, one cannot fail to notice some troubling trends in this regard. Several States are reluctant to respect and abide by key international norms. They are unwilling to commit themselves to multilateral agreements. They often prefer to resort to unilateralism and disregard international institutions. Thus, as far as the third requirement is concerned, the picture is mixed, with potentially serious dangers lurking.

Dear colleagues, dear students,

Overall, however, I believe that the rule of law exists, even if it does not yet prevail, in international relations today. If we put the international legal development of past decades in perspective, I would say that international law has greatly expanded, international institutions have considerably strengthened, and the international legal system has matured significantly. I remember that during my law school days in the 1970s, my international law professor spent hour after hour addressing the question as to whether international law is law. These days I spend no time dealing with such a question because it is simply unnecessary.

Certainly, the international rule of law needs to be further strengthened. How can we achieve this? The attainment of the international rule of law depends, to large extent, on a national rule of law situation. Therefore an effective national rule of law is necessary for strengthening international rule of law. However, it would not be sufficient to achieve that end. While a stronger rule of law at the national level will

result in a greater degree of compliance with international law, strengthening the international rule of law requires a lot more.

I believe that concerted action to further develop international law, enforce it equally, and adjudicate it independently is essential. Efforts should also be made to strengthen international institutions. Equally critical is a steady effort to promote awareness and respect for international law, especially among students and younger generations. International legal education is instrumental in this regard.

Dear colleagues, dear students,

We cannot be complacent about the serious challenges facing international law and the rule of law today. We cannot just sit here and hope that they will soon go away. They will not go away unless we fight back. They will not be a trend *en passant* unless we stand up to defend the rule of law we have achieved in the past decades. International law may not lead us to an ideal world or paradise but we can build a world which has a certain minimum public order with international law. As the Reverend Martin Luther King Jr., leader of the civil rights movement in the United States, once said, “judicial decrees may not change the heart, but they can restrain the heartless”. International law and the rule of law may not completely transform the world but they are crucial in maintaining a certain degree of order in this world. They are crucial to the preservation of the global environment, the protection of the human rights of many, especially the most vulnerable, and those who are persecuted, not to mention unprotected, by their own State, preventing atrocities, and the maintaining of international peace and stability. I believe that international rule of law is one of the most important achievements of the international community since the end of the Second World War, and now constitutes one of the pillars sustaining international order in our time. We cannot afford this pillar being undermined by various challenges we are witnessing today. We have to safeguard this pillar and make every effort to do so.

Before closing, I want to take this opportunity to encourage students here to consider international law as your future career. To me, a career in international law is one of the most noble and rewarding professions you could find. By pursuing such a career,

you can work in the interests of your country. More importantly, however, by pursuing such a career you can work in the interests of the international community as a whole, and indeed in the interest of humanity. Yes, you can work for world peace and international justice; you can work for the preservation of the global environment and the world's oceans; you can work for the universal protection of human rights; and you can work for the prevention of atrocities. What can be more rewarding and fulfilling? I am always grateful for the fact that I chose international law as my life-long career. Looking back, the decision to pursue a career in international law was one of the best decisions I have ever made. I hope you will also consider this option and join me and my colleagues on this fascinating path towards achieving international peace and justice through law.

Thank you very much for your attention.