

Commencement speech delivered on 28 September 2018 at the graduation ceremony of the LLM program in International Law of the Vienna University

Herr Direktor Reinisch, Sehr geehrte Professoren, Excellenzen, Damen und Herren, und natürlich, gefeierte Studenten!

Ich möchte mich entschuldigen: obwohl es patriotisch wäre und voll im Sinne unseres Mitteleuropas, hier Deutsch zu sprechen, ich will es nicht : Englisch geht etwas leichter, und die Ideen, die ich mit Ihnen teilen möchte, benötigen eine weniger rudimentäre Artikulation.

So dear students, Ladies and Gentlemen, allow me to continue in the language in which much of my professional life is lived: English.

And here we are: professional life. I thought we could collectively reflect a bit upon what is ahead of you (and to some extent: behind me). This may be the last moment in your life when a professor comes forward and shares her or his insights with you.

That is the starting point: are you now going through a rite of passage as van Gennep described it in 1909? Most probably you are. Separation, liminality, and incorporation are the stages of that passage. Surely, many of you have experienced separation from family, from home and have moved to Vienna to a different, if not outright, alien environment. Liminality, is the in-between phase – no longer member of a familiar community, but not yet of the new professional life. You were students, actually with all those smaller rites assuring separation from the previous life and heralding a new one, that starts with graduation, after the excruciating experience (the ultimate liminality) of writing a thesis.

And here we are, at the third phase, the post-liminal rite which ought to reflect your incorporation into the new world, the new group, to which you now belong. That group is not simply the group of graduate students but - in the immortal words of Louis Henkin - the invisible college of international lawyers..

Welcome in the college!

But beware: professors and courses may have been frightening, frustrating, depressing, (sure they were eye-opening, uplifting empowering as well!), but that was just the preparation for what is to come, what you'll experience as international law in practice and as international politics. Your liminal life unfolded in this wonderful, par excellence Central-European city, a city in which such demigods of international law as Hans Kelsen and Alfred Verdross were active, not to mention those who are on their way to be canonized, now still sitting in this hall.

Graduation, the rite we are going through, opens the door to international law and the practice of an international lawyer. It will not be a joyride. Why?

Let us look at international law in 2018

Does international law bring order and predictability into international relations? It definitely does - to a certain extent. The bulk of the normative material, the invisible part of the iceberg, is still effective: most of the states, most of the time do not impose taxes above the agreed limits, diplomats here in Vienna

and elsewhere enjoy and occasionally abuse their immunities, interstate borders are observed, intellectual property respected and violators held responsible, and the list is endless.

International law is also instrumental in addressing global threats, threats that can only be contained and eliminated through collective action. It is not only climate change which humanity failed to prevent and now tries to limit and adjust to by way of worldwide co-operation (with a few very notable exceptions, to which I will return). There are lesser evils that can only be defeated by collective action, ranging from terrorism, to the deadly pollution of the oceans. The example of yet another treaty concluded in Vienna, the one on the protection of the ozone layer (with all its protocols) proves that stopping a global threat by collective action is possible.

But, as Professor and Judge James Crawford has observed in his Manley O Hudson medal lecture in 2012, the function of international law, namely providing a “normative structure for a rule-based system of international society”, is being tested, “possibly to destruction”.¹ What was true six years ago is much more true today.

The visible part of the iceberg is melting away, the rules on the top of international law, rules concerning the use of force, respect for human rights, the duty of co-operation and the peaceful settlement of disputes, the equality of states are increasingly under attack. The fate of Iraq, Afghanistan, Ukraine, Syria, Yemen, the Democratic Republic of Congo, but also of Turkey and Venezuela show that the foundational rules are unable to constrain a range of destructive forces. Isolationism, withdrawal from collectively determined and co-ordinated action is spreading, be it the Paris Agreement and the ICC left behind by the US or the Global Compact on Migration left by Hungary, yes, together with the US

It is not by chance that this talk refers to intellectuals acting before the First World War. Is it a question of déjà vu? Are we again leaving behind an era here in Europe and amongst OECD states generally that, after 1945, was similar (with the exception of the brutal war in Yugoslavia) to that of the late 19th century, which Stefan Zweig, the son of this country described in the following way:

“When I attempt to find a simple formula for the period in which I grew up, prior to the First World War, I hope that I convey its fullness by calling it the Golden Age of Security. Everything in our almost thousand-year-old Austrian Monarchy seemed based on permanency, and the State itself was the guarantor of this stability. ... In its liberal idealism the nineteenth century was honestly convinced that it was on the straight and unfailing path towards being the best of all worlds. Earlier eras with their wars, famines and revolts were deprecated as times when mankind was still immature and unenlightened, But now it was merely a matter of decades until the last vestige of evil and violence would finally be conquered, and this faith in an uninterrupted and irresistible ‘progress’ truly had the force of religion for a generation”

Do we still acknowledge liberal idealism after the bloodiest century in human history and when great powers openly discard international law as governing and constraining their actions? I, for one, do. The liberalism endorsed here may be called reflective liberalism. It still maintains that human equality, dignity and inalienable individual rights come first, and not states which claim to be the first. I still believe

¹ J. Crawford: International law as discipline and profession, 106 American Society of International Law, Proceedings. 2012, at p. 485

that rational discourse and legal argument should prevail over brute force. I trust that from today you, just like me, are part of a profession which swears to distinguish facts from fancies, truth from lies.

However, admittedly that liberalism must be reflective. Not only do we have to be aware of our history, cultural predisposition (and limits), our tendency to universalise particular preferences but we cannot avoid the political.

“International law exists to advance the values, interests, and preferences that those in dominant positions seek to realise in the world” says Martti Koskenniemi.² But he adds that international law is also a platform giving voice to those, who are excluded from power, “a platform on which claims about violence, injustice, and social deprivation may be made.”³

Young women and men, dear students and, if I may say, dear colleagues, we do have choices; you certainly have decades in front of you during which you may decide whether to promote the hegemon or represent the voiceless.

To assist in that choice, allow me to conclude with a poem by another Austrian, published exactly 110 years ago, when the Great War came to an end:

It is the famous poem, *Archaic Torso of Apollo* written by Rainer Maria Rilke, as translated into English by Stephen Mitchell. The reason for invoking this poem is that - with the passage of time, you will note - international law has come to resemble the archaic torso: it may not be complete, it may require our imagination to see the whole when only the partial is present, but its beauty transpires and changes our life, as this graduation changes yours:

So here it comes:

We cannot know his legendary head
with eyes like ripening fruit. And yet his torso
is still suffused with brilliance from inside,
like a lamp, in which his gaze, now turned to low,

gleams in all its power. Otherwise
the curved breast could not dazzle you so, nor could
a smile run through the placid hips and thighs
to that dark center where procreation flared.

² M. Koskenniemi: What is International Law for? In: M. D. Evans (ed.): *International Law* Oxford University Press, Oxford, Fifth ed. 2018 at p. 47-48.

³ *Ibid*, p. 28


Otherwise this stone would seem defaced
beneath the translucent cascade of the shoulders
and would not glisten like a wild beast's fur:

would not, from all the borders of itself,
burst like a star: for here there is no place
that does not see you. You must change your life.

And, allow me to add: you must change the lives of others. The torso of the never complete international law and the tools to cultivate it, which you acquired at this excellent, 10 years old program, have empowered you to accomplish that.

Fulfil the promise!

Thank you for your attention!

A handwritten signature in black ink, reading "Dr. Nagy Boldizsár". The signature is written in a cursive style with a large initial "D" and "N".

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