

## 38 INTER ARMA CARITAS – REVIEW OF THE MEMORIAL VOLUME ISSUED TO COMMEMORATE THE 90TH ANNIVERSARY OF THE BIRTH OF GÉZA HERCZEGH (BOOK REVIEW)

*Tamás Török\**

**Gábor Béli et al., Emlékkötet Herczegh Géza születésének 90. évfordulója alkalmából [Studies in the Honor of the 90th Anniversary of the Birth of Géza Herczegh], Studia Europaea, Pécs, 2018, 275 p, ISBN 978-615-5457-85-2**

According to the popular *bonmot*, the age of polyhistorians is over: ‘omniscience’ exists only in terms of the society, but no individual can now be omniscient. This statement is true both in general and for the specific fields of science as well, therefore, readers might show due caution when they come across a book, which is about to challenge the above. Precaution is even more justified if the field of science concerned is a complex one, such as law, in particular public international law: incorporating several exotic topics from martial law to space law – less known and even less used by the professionals themselves. Moreover, the genre of memorial volumes bears the risk of the authors exaggerating the merits of their fellow scholar and being liberal about any problematic element of the oeuvre. Taking the foregoing into account, the lecturers of the University of Pécs undertook an almost impossible challenge when they decided to publish a complex professional volume commemorating the 90th anniversary of the birth of Géza Herczegh, who passed away in 2010 and who has left an exceptionally rich and colorful heritage to posterity.

Modicity and credibility. These are the two principles the editors had to build on, and according to the result achieved, their endeavor has been successful. The volume recalls Géza Herczegh as one of the most talented lawyers of the 20th century, who received, already during his life, the position he had well deserved in the domestic and the international public life of the profession. As an outstanding expert of legal theory, he was a university professor, a member of the academy, a consultant of international law and an author

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of several scholarly documents. However, he was never satisfied with merely the static theoretical work: as a professional of practice, he had contributed to the elaboration of the Geneva protocols of 1977, then he was the director of the Institute for Legal Studies of the Hungarian Academy of Sciences, dean of the Faculty of Law of the Janus Pannonius University (today the University of Pécs), as well as justice and vice-president of the Hungarian Constitutional Court, member of the Venice Commission and of the ICJ. Still, what made him so exceptional was not his imposing career, but the ‘polyhistor attitude’ he applied to reinterpret several fields of international law.

The book presents Géza Herczegh as a ‘value-driven realist’ who honestly believed in the idea, which serves as the basis of humanitarian law and, which is also used as the motto of the ICRC: *inter arma caritas* – in war, charity. Indeed, as a professional, he was capable of stepping over the rigid, positivist legal framework and of assessing the international relations as complex psycho-socio-economic structures built on historical determinations, thus he was always able to see in a teleological way any situation or any given problem. To borrow the words of János Martonyi,

“He knew exactly that international law had its own limitations. He knew that international law also had very special potentials. He also knew that international law had a serious responsibility, too. He could think freely about international law, yet he knew that beyond the limits and the potentials there was something much more important: values.”

He laid down his international lawyer’s *ars poetica* summarizing the above as early as in his first book: “The international community is on the way of becoming really universal and encompassing the whole of humanity irrespectively to races, languages and economic systems.”<sup>1</sup>

The book paints an authentic picture of how the existence in minority experienced as an ethnic Hungarian in Upper Hungary, the family traditions of knowledge and the love for the scholarships of law and history, as well as the desire to know the world well, all made Géza Herczegh an innovator and an indispensable figure of international law in Hungary. The volume presents the image of the polyhistor and the heritage of his work on 275 pages, in three main chapters. The structure goes beyond a mere reflection on the practical necessities of the book’s content and its edition: it conveys a consciously formed message. The present discourse in Hungary about public international law is an organic system based on the joint work of three generations. The heritage of Géza Herczegh and his coeval scholars, the work of the present community of lawyers leaning on the profes-

1 Géza Herczegh, *The Colonial Question and International Law*, Közgazdasági és Jogi Könyvkiadó, Budapest, 1962. p. 7.

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sional and the human values of their predecessors, and the introduction of the next generation of professionals, form – even within the book – integral units built upon each other.

The first chapter (‘Teacher, Researcher and Judge – Memories of Géza Herczegh’) recalls through personal reminiscences the worldwide renowned and acknowledged scholar of international law, the colleague, the mentor and the friend.

Elisabeth Sándor-Szalay, in her personal laudation starting off the volume, remembers the educator, mentor, consultant and friend, who lives in the collective memory of the members of the invisible college of international lawyers. By way of his human sociability, his exceptional intelligence and as a native-level speaker of four languages, he could always understand and attentively listen to his colleagues – be it freshmen of the faculty of law or the justices of the Constitutional Court or the ICJ.<sup>2</sup>

The subsequent pages of the chapter contain laudations by three fellow-justices of the ICJ. As recalled by Gilbert Guillaume in his confession of personal tone: Géza Herczegh was naturally determined by his court and university experiences to see the merits of every case with the eye of a judge, but at the same time to always take into account the principles and the rules of international law as well. For him, value-based adjudication also meant the unconditional protection of the court’s dignity; therefore, he held that conscientiousness and the seeking of consensus were of primary importance during his work. Gilbert Guillaume added: due to his perfect command of the French language, it was a constant joy to listen to him speak.<sup>3</sup> Rosalyn Higgins QC primarily focused on the analysis of his professional career in The Hague. Géza Herczegh joined the court when its workload started to increase swiftly. He participated in the hearing of almost thirty cases, including the adjudication of several (among others, *East Timor case*, *Lockerbie case*, *Legality of the use of nuclear weapons in armed conflict case*, the *Case of delimitation between Qatar and Bahrain*, *Gabčíkovo-Nagymaros case*), which had an overarching effect in time. The aim of Géza Herczegh was to support the work of the court and to maintain its good reputation without presenting any ideological or theoretical perspective in his dissenting opinions. Thus, over nine years, he only wrote four declarations and one longer opinion – the latter was related to the *Gabčíkovo-Nagymaros case*.<sup>4</sup> His successor in the office, Peter Tomka mainly concentrated on examining his professional heritage, primarily with regard to the *Lockerbie case*, the *Legality of the use of nuclear weapons in armed conflict case* and the *Gabčíkovo-Nagymaros case*. He underlined and illustrated with examples that, although the exceptional material and dogmatic knowledge of Géza Herczegh, as well as his systematic approach,

2 Erzsébet Szalayné Sándor, ‘Laudáció – Herczegh Géza Gábor tiszteletére’, in Gábor Béli *et al.* (eds.), *Emlékkötet Herczegh Géza születésének 90. évfordulója alkalmából*, Studia Europaea, Pécs, 2018, pp. 9-12.

3 Gilbert Guillaume, ‘Géza Herczegh, juge à la Cour internationale de justice’, in *Id.* pp. 13-16.

4 Rosalyn Higgins QC, ‘Reflections on Judge Geza Herczegh’, in *Id.* pp. 21-23.

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fundamentally determined the foundation of the merits of the above decisions, he never attempted to put himself into the forefront by issuing concurring or dissenting opinions.<sup>5</sup>

To close the chapter, János Martonyi and Iván Gyurcsík, as coeval scholars and friends, share their personal memories with the reader. Both of them underline the special approach that determined Herczegh's way of thinking. The world as we know it today is the result of history, of cultural heritage, and of different cultural environments; therefore, a scholar of international law with a responsible thinking must be aware of the above. With the words of János Martonyi:

“Of course, we always say that he was an international lawyer, as well as a historian; but I think that the point is that he saw the whole, not just parts of it. In the background of international law, he was able to see and to understand the world and its great network of connections.”<sup>6</sup>

Iván Gyurcsík writes very expressively about the heritage of his roots in Upper Hungary; the experience of being the member of an ethnic minority and the spirit-forming effects of a stormy history:

“We were forced to call the start of a new servitude liberation, to call democracy a dictatorship, to call the revolution a counter-revolution, and the intervention force defeating it a revolutionary one. We have to learn to call things by their name, because failing that, we cannot set the rules, hold someone accountable for not complying with them, and thus we cannot prevent politics to become a labyrinth of mischiefs of a narrow faction.”<sup>7</sup>

In the second chapter (‘Self-determination, Humanitarian Law, Protection of Minorities – Studies in the Primary Fields of Research of Géza Herczegh’) there are studies related to the two focus areas of the scientific interest of professor Herczegh in which nine members of the Hungarian community of scholars of public international law lay down their thoughts about the current dilemmas of legislation and application of the law related to humanitarian international law and the to the protection of minorities under public international law.

János Bruhács took on the challenge of providing an analysis of the relation between the Third World and international law by focusing on the changes that occurred in the past decades in the field of the nations' right to self-determination, as well as its elements

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5 Peter Tomka, ‘Judge Géza Herczegh – The First Hungarian at the International Court of Justice’, *in Id.* pp. 29-39.

6 János Martonyi, ‘Köszöntő’, *in Id.* pp. 41-43.

7 Iván Gyurcsík, ‘Derével, bölcsességgel – Jogainkért Herczegh Géza emlékére’, *in Id.* pp. 45-49.

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of guarantee developed by today. By focusing on the relation between political and economic independence, the study underlines the serious deficit in the terms of the latter, aggravated further by the present system of institutions of international investment law, in particular the role of investment protection agreements and the international courts of arbitration.<sup>8</sup>

Péter Kovács examined the relationship between the development of humanitarian international law and the sanctioning of its violation, with special regard to the often difficult questions connected to the international acceptance and the national non-acceptance of the Statute of Rome. He argues, with a rich illustration of examples, for the *raison d'être* of the international criminal court, and he also presents the – often legally and politically absurd – arguments used by certain countries against the ratification of the Rome Statute. The study is also a manifesto for humanitarianism: as emphasized by the author, there are imperatives of international humanitarian law that we must always hold to.<sup>9</sup>

Gábor Sulyok also discussed the field of humanitarian international law, he examined the state of humanitarian interventions after the turn of the millennium. After reviewing the most important related military actions of the past decade, he concludes that, as a continuing tendency that started in the last decade of the past century, the repression of the serious and mass violations of human rights and humanitarian law usually takes the form of multilateral actions. However, it is beyond doubt that if the latter was not an option for any reason, the states would again resort to the tool of unilateralism. At the same time, the selectivity of humanitarian interventions is a serious problem: although there is often more than one country intervening in a conflict, for different motivations, a comprehensive intervention to primarily help the ones in need does not take place.<sup>10</sup>

Gábor Kajtár emphasizes in his study about the right to self-defense that, by now, its own concepts of necessity, proportionality and imputability apply, therefore, its specific legal institutions may be clearly distinguished from one another. The general prohibition of the use of force between states and the right to self-defense [Articles 2(4) and 51 of the Charter of the UN] form a unified norm, which is – in his opinion – at the same time, a *ius cogens*. The normative clauses of the two articles are inseparable: if we increase the extent of the right to self-defense, it shall automatically reduce the personal, material and temporal effect of the general prohibition of the use of force. Therefore, if we did not consider the right to self-defense a *ius cogens*, then, with the amendment of a simple norm of customary law, an acknowledged – indeed, particularly important – *ius cogens* norm could be modified.<sup>11</sup>

8 János Bruhács, 'A harmadik világ és a nemzetközi jog Herczegh Géza gondolatainak fényében', in Id. pp. 53-64.

9 Péter Kovács, 'A humanitárius nemzetközi jog fejlesztésének és megsértése szankcionálásának összefüggései Herczegh Géza írásai alapján, a Római Statútumra történő kitékintéssel', in Id. pp. 65-84.

10 Gábor Sulyok, 'Humanitárius intervenció az ezredforduló után', in Id. pp. 85-118.

11 Gábor Kajtár, 'Az önvédelem jogának jus cogens természete', in Id. pp. 119-127.

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Zsuzsanna Csapó presented the collision models of the ICC and of the African International Criminal Court established with the Malabo Protocol, amalgamating the models of the ECtHR and CJEU as well as of the two courts in The Hague, but which remained a plan in the absence of signatory states. Though the study examines hypothetical cases, it elaborates a test connected to setting up regional criminal courts. At the same time, the author counts with the fact that, although the regional courts of human rights have not derogated the concept of universal human rights, this analogy is not applicable to criminal courts because of the fact that the primary interests of the states are at stake.<sup>12</sup>

Bence Kis Kelemen examined the connection between the application of a living shield and international humanitarian law. The author presents in detail the current legal debates related to the application of a living shield that focus primarily on loosening the principles of proportionality and precaution, as well as the challenges raised by asymmetric conflicts. In a reassuring way, the author concludes that, although the inclusion of the principle of proportionality poses an inherent danger to the enforcement of the principle of humanity, the example of living shields is a good example of how this principle is able, together with the precautionary requirements, to restrict the principle of military necessity and thus the international humanitarian law as well.<sup>13</sup>

Elisabeth Sándor-Szalay's essay provides a complex overview – with historical, sociological and policy elements, in addition to the legal ones – of the system of international protection of the rights of national minorities, with a special emphasis on the relevant activity of the Council of Europe. According to the analysis, the most important result in the past decades was that the integration of minority rights and freedoms – based on the Framework Convention for the Protection of National Minorities – into the system of the wider protection of human rights under international law implied the possibility of a dynamic interpretation of the law for the independent Advisory Committee engaged in the monitoring, and sometimes even the overwriting of ideas that the states' parties had when signing the convention. Thus far, the framework character of the convention combine with its 'living instrument' nature, offered a possibility for the document to fulfil a real standard-setting function and to be able to develop levels of expectation in terms of the specific minority rights.<sup>14</sup>

Norbert Tóth discusses the emergence and the identifiability of the conceptual elements of national minority in terms of customary international law: although in these days, multilateralism experiences a serious crisis, the methods of proof necessary for the devel-

12 Zsuzsanna Csapó, 'Afrikai Nemzetközi Büntetőbíróság versus ICC? Egy esetleges regionális nemzetközi büntetőbíróság felállításának gondolata', *in* Id. pp. 129-146.

13 Bence Kis Kelemen, 'Az élő pajzs és a humanitárius nemzetközi jog, avagy átütheti-e a katonai szükségesség a humanitás elvének pajzsát?', *in* Id. pp. 147-164.

14 Erzsébet Szalayné Sándor, 'A nemzeti kisebbségek jogainak védelme – mint a nemzetközi együttműködés körébe tartozó emberi jogok védelmének szerves része', *in* Id. pp. 165-174.

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opment of norms of customary law are present in the practice. As a tool for it, the author presents the International Law Commission's Draft conclusions on identification of customary international law and with its help he provides an overview of the possible manifestations of the state practice, laying down the foundations for customary law in terms of rules of international minority law and of the *opinio iuris*.<sup>15</sup>

The third chapter ('Tribute to the works of Géza Herczegh – studies by members of the college for advanced studies') offers a chance for the next generation of lawyers to pay tribute to the past and to introduce themselves: we can read the studies prepared by a team of students of the Óriás Nándor College for Advanced Studies of Pécs in the fields of legal history, diplomacy history and humanitarian law.

Instead of a summary, it is worth recalling the thoughts of János Martonyi, which faithfully summarize the message of the memorial volume: a work of consistent structure, high professional quality, not only commemorating the past, but also laying great emphasis on the future:

“[...] there are great changes ahead and it would be very good to have with us today, tomorrow and the day after tomorrow the wisdom, the joy, the standard, the objectivity, the reservedness and the truth-telling of Géza Gábor Herczegh, and of course, above all, a very-very strong Hungarian and moral commitment that he represented.”

Though the celebrated scholar is no longer among us, the book is a testament of these values being the legacy for both the present and the future generations of lawyers, from which they may profit in the practice as well.

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15 Norbert Tóth, 'A "nemzeti kisebbség" fogalmi elemei a nemzetközi szokásjogban – a szokásjogi norma azonosításának lehetősége', *in* Id. pp. 189-204.