Anniversary Conference on the Occasion of the 80th Birthday of János Bruhács

Report on the 'Anniversary Conference on the Occasion of the 80th Birthday of János Bruhács' Organized by University of Pécs, 4 October 2019, Pécs

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Abstract

On 4 October 2019, the Department of International and European Law at University of Pécs, Faculty of Law organized an anniversary conference to celebrate the 80th birthday of professor emeritus János Bruhács. The conference held in Pécs brought together speakers representing universities and research institutions from all over Hungary. The four sections of the conference dealt with topics ranging from international humanitarian law to international environmental law and the question of fragmentation of the international legal order. The organizers sought to address issues, which represented important fields of research in the works of Professor Bruhács.

Keywords: conference report, János Bruhács, humanitarian law, environmental law, fragmentation.

1. Introductory Notes

It is an important tradition in legal academia to acknowledge long-standing scholarly and teaching achievements. On 4 October 2019, the Department of International and European Law at University of Pécs, Faculty of Law held such a conference to celebrate the 80th birthday of *professor emeritus* János Bruhács.

János Bruhács's career is exemplary and internationally acclaimed. He graduated in 1964 from the Janus Pannonius University, Faculty of Law in Pécs (one of the predecessor institutions of the current University of Pécs). From that time on, he has continuously worked as a lecturer at University of Pécs, Faculty of Law, where he led the Department of International and European Law for 16 years, and also served as vice-dean and dean of the Law Faculty. Today, he still actively participates in teaching and research as a *professor emeritus* of University of Pécs (and of Károli Gáspár University of the Reformed Church, Budapest). In 2012 he was awarded the Order of Merit of the Republic of Hungary and was also

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awarded the Ágost Pulszky Memorial Medal in 2013. His research interests include – among others – international water law, environmental law, minority rights, and state responsibility in international law. The quality and recognition of his scientific work is demonstrated by the fact that he had been a member of the Hungarian delegation of the Danube Commission, the Council of Europe Working Group on the Environment, the Hungarian-Czechoslovak negotiations regarding the Gabčíkovo-Nagymaros project and the 2003 Pan-European Conference on the Environment. In addition, he is an arbitrator at the Permanent Court of Arbitration in the Hague and also at the OSCE Court of Conciliation and Arbitration.

The anniversary conference organized in Pécs brought together speakers representing universities and research institutions from all over Hungary. The four sections of the conference dealt with topics ranging from international humanitarian law to international environmental law and the question of fragmentation of the international legal order – it was the intention of the organizers to address issues which represented important fields of research in the works of Professor Bruhács. In the following we give a brief account of some of the presentations.

2. State of Play in the Field of International Humanitarian Law

Gábor Sulyok, senior research fellow, Institute for Legal Studies of Eötvös Loránd Research Network, elaborated in his presentation on the demarcation of humanitarian intervention, peace enforcement and robust peacekeeping. First, the concept of humanitarian intervention had to be clarified, which remains unclear even today. Sulyok considers humanitarian intervention to be a type of intervention which was already present in international law before the 20th century. It can be performed by a state, a group of states, or even an international organization. It targets another state and aims to prevent violations of rights by using violence. Its application becomes necessary when violations of the most important first-generation human rights are detected. Its other characteristic is that it takes place without the consent of the 'target' state; it however needs to be commensurate with the violations that triggered it in the first place – all the while respecting international humanitarian law and, in any event, can only be applied as a last resort.

The other two concepts examined appeared due to the failure of first-generation peacekeeping and humanitarian intervention. Peace-enforcement operations are large-scale actions. They appeared only after the breakup of the bipolar world order. Typically, state actors use heavy weaponry to strategically apply violence in a complex and precarious security environment. However, it is consistent with humanitarian intervention in the sense that it can only be used as a last resort, and that these operations must respect the rules of international humanitarian law.

Finally, robust peacekeeping appeared at the turn of the millennium. It emerged due to the failure of the second-generation peacekeeping method, *i.e.*

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peace-enforcement operations. However, in practice, it is almost the same as the latter. Their delimitation is complicated, so it can only happen case by case. Essentially, the mandate for the operation must be examined, since neither humanitarian intervention nor peace enforcement, nor robust peacekeeping may be launched without the authorization by the UN Security Council. Therefore, the mandate for the operations can and should always be examined.

Bence Kis Kelemen, assistant lecturer at the University of Pécs analyzed the Syrian air strikes in 2017-2018 from a humanitarian law aspect.[1] The US attacked Al Shayrat Airport in Syria with 59 Tomahawk rockets on 6 April 2017. The reason for this was the use of a chemical weapon by the Assad regime two days earlier. Following this attack, the US, France and the UK bombed Damascus and Western Homs in a concerted action on 13 April 2018. The reason for this was a chemical weapons attack that happened a week earlier. The US justified the attacks by reference to retaliation, prevention, and repression, whereas in the latter case France referred to the emergency situation, and the UK referred to humanitarian intervention. The presentation addressed the question of whether these attacks could be justified under the rules of international humanitarian law. The most important characteristic of both attacks was stated immediately by the speaker: the Assad regime had violated the ban on the use of chemical weapons.

The US countermeasure may be legitimate since it can be interpreted as a response to an infringement that would exclude the unlawfulness of the act. Nonetheless it did not meet any additional requirements established under customary international humanitarian law, since the result of the countermeasure must also be reversible and must not take on a violent or punitive nature. In fact, both the large number of Tomahawk missiles and the bombing have reached the level of an armed attack.

The British regarded the attack as legitimate as a humanitarian intervention, since it met the conditions they applied. These conditions include that there should be convincing evidence, in the form accepted by the international community as a whole, of a humanitarian disaster that requires immediate intervention and that it is objectively obvious that there is no practical alternative to using violence to save human lives. However, the requirements of necessity and proportionality in the action must still be respected. This condition was met by the British act. Nevertheless, a significant part of the international community did not support the 2018 bombing, meaning that no new customary rule regarding the applicability of humanitarian intervention was introduced for lack of *opinio iuris*.

3. Protection of the Environment via Law: A European Focus

A session was dedicated to international and EU environmental law due to the honored professor's particular interest in this subject.

1 For a more general analysis of targeted killings *see* Bence Kis Kelemen, 'Targeted Killings and Human Rights Law', *Hungarian Yearbook of International Law and European Law,* Vol. 6 (2018), pp. 245-259.

Attila Pánovics, senior lecturer at the University of Pécs spoke of the climate agreement prepared at the 2015 Paris summit. He pointed out how the Paris Convention on Climate Change was a decisive step towards a global environmental pact, which is novel in its approach, since it constitutes a major step towards preserving the climate, but also incorporates human rights aspects. Not only did the states attending the 2015 summit seek to list key elements of international environmental law, they also enshrined a human right to the environment in the pact – more specifically, the right to protect ecosystems, preserve their integrity and, where necessary, and a right to restore them. The rights and obligations contained in the Convention mean that for the first time, the human right to the environment would be enshrined in a binding international treaty. Overall, the fate of the Paris Convention on Climate Change will have a profound effect on the future development of international environmental law.

Gábor Kecskés, research fellow, Institute for Legal Studies of Eötvös Loránd Research Network, and head of the Environmental Law and Environmental Policy Research Group examined the implementation of the EU's Environmental Liability Directive in Hungary. He stressed that the directive had an extremely important role to play in shaping EU environmental policy and protection, yet it has a very serious shortcoming, namely the lack of a precise definition of environmental damage. In addition, it evaluated the reporting obligations of Hungary and Poland. The directive requires Member States to report to the European Commission on specific environmental damages. These two countries were at the forefront of producing these reports, as in 2016, out of a total of 1,200 reports, 1,000 were distributed among them. In his presentation he also stated that further conceptual clarifications were necessary. A distinction had to be made between the 'user' of the environment, those who are burdening the environment, and the polluters. There is further a need to develop a comprehensive system of environmental safeguards in order to render EU environmental policy more effective.

Zsuzsanna Horváth, honorary professor of law at the University of Pécs examined the implementation of environmental legislation in the EU. The speaker underlined the significant impact of proper implementation of EU environmental law, a prime example of this being that meeting waste policy objectives would create 400,000 jobs and generate EUR 42 billion a year in waste management and recycling industries. In addition, money lost through environmental law violations and remediation could also be utilized elsewhere if no violation occurred. With this in mind, the European Commission developed a number of new techniques for monitoring the implementation of EU law in this field.

These include the so-called REFIT, the meaningful and effective regulatory program. Its purpose is to create simple, transparent legal instruments for the transposition and application of EU law to enhance the quality of Union legislation. Another purpose of the program is to review earlier acts and to adjust them according to these requirements. In addition, the Commission facilitates implementation through drafting plans of implementation and memoranda in

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the form of explanatory notes to legislation. In addition, a new obligation was created for Member States in 2011. From that time on, Member States are required to provide explanatory notes in their reports on the transposition of each EU act, which will help the Commission eliminate implementation problems. Another such tool is the Pilot Programme, which is essentially a dialogue between the Member State implementing EU law and the Commission. In this context, it is possible to initiate a two-tier, 10-week-long program if the competent authority of the Member State can be expected to remedy the deficiencies of its own accord. Finally, as the speaker pointed out, in 2016, the Environmental Implementation Review (EIR) program was introduced, where implementation is monitored according to Member State specificities. This is a two-step process: in the first phase, country-specific policy reports are produced every two years. These reports take into account the specificities of the Member States under review. These reports may reveal a lack of facilities or infrastructure in the environmental sector or other systemic problems. In the second phase, the Commission, together with the Council, the European Parliament and the Committee of the Regions, discusses the necessary steps to address the remaining problems. In other words, the EIR offers an alternative to the rigorous and procedural infringement procedure. Instead, the EIR is based on dialogue and strategic cooperation with the Member States concerned.

The presentations showed that there is a significant improvement both in international and EU environmental law – a welcome development bearing in mind recent effects of accelerating climate change. The international community may succeed in enforcing human rights regarding nature and climate and in achieving goals to lessen the damages of climate change in the future. Meanwhile, the EU strives to fine-tune the enforcement of environmental legislation which will – ideally and eventually – result in a cleaner and carbon-free Europe with an inclusive economy.

4. Fragmentation and Autonomy in the International Legal Order

A further panel dealt with various issues mostly of general theoretical relevance; in the following we will summarize two of the presentations held in this panel.

László Blutman, professor of law at University of Szeged analyzed the fragmentation of international law. In his view, it is necessary to make some clarifications to the topic in order to examine the trend. Prior to the 20th century, international law was so heterogeneous that it was impossible to speak of unity, so there was no question of fragmentation. Developments in the 20th century have also given rise to international law as a unitary title, in both normative and organizational terms. However, changes after World War II, *e.g.* the emergence of the prohibition on the use of force, the creation of a universal international organization with global powers, and the emergence of private entities have transformed international law. In addition, the emergence of *ius cogens*, permanent international judicial dispute resolution forums, and the

progress of codification also brought about significant changes. It is in this context, that the phenomenon of fragmentation of international law arises.

Nowadays, the fragmentation of international law is considered in scholarly literature as a process which means that law is becoming more heterogeneous as compared to its former state. The vast proliferation of international organizations and international legal norms is tangible evidence for this. This, in turn, undermines the coherence of the individual parts and their ability to act in concert.

Despite the fact that there are indeed phenomena that may indicate fragmentation, such as the fact that two international courts may deliver completely different decisions in the same case, or there is a significant conflict between two international legal norms, the speaker underlined that in his view, these were not sufficient to prove fragmentation. In his opinion, comparative international law, which identifies, analyzes and explains the similarities and differences in the way international actors understand, interpret, apply and understand international law, is the appropriate course for research into the fragmentation of international law. According to his concluding remarks, this perspective can help understand and resolve possible conflicts arising between largely different international legal norms.

Ágoston Mohay, vice-dean and associate professor of law at University of Pécs examined the case-law of the CJEU as to how the autonomy of EU law is compatible with other external judicial bodies interpreting and applying it. One of the aspects to be examined is whether the jurisdiction of the judicial body established in international treaties which the EU intends to conclude is compatible with the autonomy of EU law. In its *Opinion 2/13* the CJEU interpreted mutual trust in the context of the EU's long-standing desire to accede to the ECHR.[2] Mutual trust – in the context of this topic – requires Member States to presume that other Member States respect fundamental rights. The ECHR however would allow EU Member States to question the respect for fundamental rights in other Member States and to take this matter before the ECtHR. In the CJEU's view, this obligation would jeopardize the autonomy of the EU legal order, which is partly based on mutual trust. The speaker stressed that *Opinion 2/13* was strongly echoed in *Achmea* as well.[3] He further pointed out that mutual trust was by all means a presumption which could be rebutted, and that the CJEU voiced rather different views on mutual trust when it came to EU Member States' relations in *Aranyosi and Caldararu*.[4]

The presentation then focused on the fact that the CJEU had ruled quite differently as regards the CETA forums to be set up under the EU-Canada Economic and Trade Agreement. The forums will be set up to resolve investment disputes between the investor and the state. As the competence of the CETA

2 Opinion of 18 December 2014, *Opinion 2/13 pursuant to Article 218(11) TFEU,* ECLI:EU:C:2014:2454.

3 Judgment of 6 March 2018, *Case C-284/16, Achmea,* ECLI:EU:C:2018:158.

4 Judgment of 5 April 2016, *Joined Cases C-404/15 and C-659/15.PPU, Aranyosi and Căldăraru,* ECLI:EU:C:2016:198.

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forums will be limited to the CETA in terms of interpretation and application, the CJEU found the agreement to be compatible with the autonomy of EU law. The CJEU stressed that the CETA forums will only have jurisdiction to settle disputes concerning the agreement with Canada and will not interpret EU law, taking it into account as fact. The speaker however pointed out that it seemed quite difficult to delimit the CETA from EU law, bearing in mind the CJEU's consistent case-law (*inter alia* its *Haegeman* judgment[5]), proclaiming that international agreements concluded by the EU form an integral part of EU law. Thus, it can be inferred from these cases that the Court does not, in principle, take up a position of rejection *vis-à-vis* international law, but emphasizes the distinction between the two legal orders when the autonomy of Union law seems to be at stake. Therefore, it is not inconceivable for an external forum to interpret and apply EU law, but such external forums must meet stringent requirements examined on a case-by-case basis in order to be able to do so.

5. Concluding Remarks

International law is a system which is constantly changing and evolving, but is at the same time rooted in tradition and custom; the dynamic expansion of the regulatory fields of international law is crucial but so is the wariness and even reluctance of states to accept new legally binding and enforceable rules. According to the well-known judgment of the PCIJ in *Lotus*,[6] the dual functions of international law are to enable coexistence and cooperation between states. The works of János Bruhács and the anniversary conference dedicated to his *oeuvre* addressed both of these functions against the backdrop of the vibrant international relations of the 21st century. As Professor Bruhács notes, the development of international law is never a linear process.[7] The conference presentations provided ample proof of the travails that often characterize the creation, application and enforcement of international norms.

The papers based on the presentations delivered at the conference were published by University of Pécs in an edited volume.[8]

5 Judgment of 30 April 1974, *Case C-181/73, Haegerman,* ECLI:EU:C:1974:41.

6 *S.S. Lotus (France v. Turkey),* Judgment, 7 September 1927, PCIJ Series A, No. 10.

7 János Bruhács, 'A nemzetközi jog tegnap és ma', *Állam- és Jogtudomány,* Vol. 54, Issue 3-4, 2013, p. 23.

8 Bence Kis Kelemen *et al.* (eds.), *Ünnepi tanulmánykötet Bruhács János 80. születésnapja tiszteletére*, PTE ÁJK, Pécs, 2019. The volume is available online at https://pea.lib.pte.hu/handle/pea/23421.