Remarks to the Opening Ceremony

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In the brief history of the Austrian Branch in the 150th ILA anniversary celebration volume *Au Service du droit international* or *In the Service of International Law*, edited by Catherine Kessedijian, the Austrian Branch President, Professor August Reinisch, related that the Branch celebrated its 100th anniversary a couple of years ago and that it hosted the 34th ILA Conference in August 1926 in the Imperial Palace and Chamber of Commerce.

The Conference report of 1926[1] does not mention a theme for the conference. The organising committee of the 2026 Conference have, in line with recent practice, selected a theme that I consider to be especially apposite: 'Contours of International Law: Encounters and Evolutions'. I applaud this theme for its contrast to so much of the current gloomy discourse around International Law that emphasises a moment of crisis, a 'war on law', the failure, even death – imminent or actual – of international law while this theme points to international law as a dynamic, evolving discipline. We see this in many ways: treaties such as human rights treaties are described as 'living instruments'; evolutive interpretation allows for treaties to be construed in line with developments in science, changes in societal understanding and to relate to present day conditions; and treaties

[1] International Law Association, *Report of the Thirty-Fourth Conference* (1926) available at https://access.heinonline.com/HOL/Page?collection=ilarc&handle=hein.ilarc/ilarc1926&id=2&men_tab=srchresults.

and soft law instruments are being conceived, generated and negotiated in response to new and evolving circumstances.

The language of encounters and evolutions invites us to celebrate this dynamism - the past, present and future of international law - not mourn its fading relevance. I am not going to dwell on why international law is currently decried, perceived as irrelevant, or dying. We all know that. What I am going to do is to look back very briefly, say a few words about today and about what we as international lawyers can do to ensure the continued evolution of international law, to counter the death talk of the discipline.

Looking back: where better than at 1926 when the ILA met in its 34th conference in Vienna? What would a snapshot of international law in 1926 look like? The concept of global international institutions was still in its infancy although the longevity of some functional organisations, for instance the International Telegraph Union (established in 1865) and Universal Postal Union (established in 1874) looked to the future in testifying to the necessity of international cooperation in emerging areas of activity, notably communications. The League of Nations was finding its feet although storm clouds already loomed as seen in the contestation over governance and representation; a special session of the Assembly was convened in March to admit Germany to the League. It was disbanded after a short time without achieving this objective. Germany was in fact admitted in September 1926 as a permanent member of the Council while Brazil announced its withdrawal in June after being denied a permanent seat on

the Council.[2] Costa Rica withdrew on 1 January 1927 after its announcement in 1924 that it was going to do so.

Bodies that subsequently evolved into UN specialised agencies were active. For instance, the precursor to the World Health Organisation hosted the significant International Sanitary Convention of 1926, which modernised cross-border disease quarantine and epidemic intelligence.

International adjudication through the Permanent Court of International Justice (PCIJ) was becoming part of the landscape. Perhaps the most significant event in terms of international legal doctrine was the 2nd of August collision on the high seas between two ships - the Turkish Boz-Kourt and the French Lotus. On 12 October 1926 the two governments agreed to submit their dispute as to the legality under international law of Turkey instituting criminal proceedings against Lieutenant Demons under Turkish law to the PCIJ, leading to the Court's famous pronouncement on state consent and sovereignty: 'The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed.'[3]

[2] Caleb Perry Patterson, 'The Admission of Germany to the League of Nations and its Probable Significance' (1926) VII *Southwestern Political and Social Science Quarterly*, 215.
[3] *S.S. Lotus* (France v. Turkey), 1927 PCIJ (ser. A) No. 10 (7 September 1927) paras 44, 45.

We can almost hear Presidents Trump and Putin cheering. But they clearly have not heard the next sentence: 'Now the first and foremost restriction imposed by international law upon a State is that - failing the existence of a permissive rule to the contrary - it may not exercise its power in any form in the territory of another State.'

There were also the embryonic facets of what evolves into international human rights law, both substantively and procedurally. An example of the former is the League of Nations Slavery Convention[4] that formally abolished all types of slavery. And procedurally, it was in 1926 that a Committee of Experts was set up in the International Labour Organisation (ILO) to supervise the application of ILO standards. The Committee, which still exists today, is composed of independent jurists responsible for examining government reports and making an annual report to the Conference on the implementation of ILO Conventions and Recommendations – a forerunner of the UN human rights treaty body system.

And what of the ILA? The 34th Conference in Vienna was held under the presidency of Dr. Gustav Walker, a legal scholar and a constitutional judge who eight years later was to be stripped of office by the Nazis and forced into retirement. The Conference report provides an insight in what engaged international lawyers of the time. 19 Committees held intensive discussions on such topics as Neutrality; CIF Contracts; International Bankruptcy; Social Insurance; Extradition; the Laws of War in Occupied Territory. The Conference adopted a Convention on Maritime Jurisdiction; a Statute of an International Penal Court; Rules of Procedure Relating to Rights of

[4] Convention to Suppress the Slave Trade and Slavery, Geneva, 25 September 1926.

Minorities; Rules for the Protection of Private Property; relating to Unfair Competition in International Commerce; and relating to Contracts of Sale and to the Rate of Exchange.

The 34th conference is recognised as a pivotal moment in interwar international jurisprudence: 'it marked a profound shift from abstract theoretical debates about global peace to concrete, foundational legal frameworks.' Just over 10 years later the Austrian Branch was dissolved, not to be re-established until 1947[5] by which time international law was emerging from the crisis of World War II. Evolution is about iterative change, not always sudden dramatic change. 1945/6 saw a dramatic transformation of the international legal order but nevertheless one that evolved from earlier innovation. Despite continued colonialism, institutionalised racism and misogyny the foundations for the evolution of political self-determination and for the international human rights system were put in place.

Turning to the other idea in the theme of the conference – encounters – this concept has not been a traditional part of international legal discourse[6] although work, notably that of Anthony Anghie, has shown how the colonial encounter has shaped international law.[7] Sundyha Pahuja has considered the concept of encounters, arguing for international law as a law of encounters, as clashes between rival jurisdictions such as those between domestic law and international law, or between internal social or political

[5] August Reinisch, '*The Austrian Branch',* in Catherine Kessedjian, Oliver Descamps and Teodolinda Fabrizi (eds) *Au Service du Droit International/To the Benefit of International Law* (Paris, 2023) 285, 289.
[6] Karen Knop, 'The Hidden City in International Legal Thought', in Helmut Philipp Aust and Janne E Nijman, *Research Handbook on International Law and Cities* (Edward Elgar, 2022) 442.
[7] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge UP, 2005).

conflict and state development projects.[8] Such encounters - between rival world views, differing authorities, between those with state power (and law) on their side and the 'others', those excluded by the state-based system of international law - allow us another way of seeing the making of international law as an ongoing activity, dependant on its own practices, language and devices for its continuation. This then reminds us that evolution must include discarding rules or practices where necessary in seeking transformation to a fairer, more equitable, system.

More pragmatically the institutionalisation of international law has created spaces for encounters beyond those traditional sites and languages of diplomacy, contributing to the sprawling mass of changed actors, topics and processes that comprise international law today: deliberate formal institutional encounters, treaty-based encounters such as COPs, an Assembly of State Parties and Review Conferences, encounters between states and treaty monitoring bodies and UN special procedures, between multiple actors in international litigation, informal interactive dialogues, even 'Informal informals', are just a few of numerous examples.

Worthy of special mention in this regard is article 71 of the UN Charter that through consultative status has legitimised NGO presence and participation in state institutional fora and contributing to further development: the Torture Convention (1984), the Women's Convention (CEDAW, 1979), the Arms Trade Treaty (2013), the Rome Statute (1998), the Prohibition of Nuclear Weapons Treaty (2017) are just some examples of treaties where a

[8] Sundyha Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law' (2013 1 *London Review of International Law* 63.

significant contribution was made by NGOs in the evolution of international law.

What is striking in this moment of backlash, apparent death of international law is the continued belief in international law by NGOs and many other nonstate actors, including I may surmise all of us gathered at the 82nd ILA biennial Conference. While recognising the critiques of international law and the need for its reimagining, we need to ask who is using the language of its failure and irrelevance and call out the authoritarian governments that in the name of sovereignty and national security are using *our* language as smoke screens to hide their own assertions and abusive exercise of power.

And then to ask who is defending IL? Not the powerful but smaller states, Canadian Prime Minister Mark Carney's middle powers,[9] those that are seizing the initiative and bringing the powerful to answer to international law through for instance commencing litigation, through seeking advisory opinions that provide the space for the language of advocacy and contemporary decision/opinion making that in turn is reinforced through 'citizen vigilance' - mass protest, calling out our governments and demanding their compliance with international law.

We should see this as a moment of opportunity – a moment where there are spaces for resistance to emerge and alternative ideas and agendas to be pursued. In another moment of opportunity – 1946 – at the first ILA conference post World War II the then President, Lord Porter, asked: 'What then is the international lawyer to do; what steps should he (sic) take for the avoidance of war, to promote obedience to international law amongst the

[9] Mark Carney, 'A Rupture in the World Order' (World Economic Forum, Davos, 20 January, 2026).

nations, to improve its rules and encourage their adoption?'[10] A question we are still asking today. One answer he provided was the necessity of conviction for 'without conviction no result can be obtained.'[11]

We in the ILA have the conviction of our founders in 'Peace and Justice through Law'. This is by no means the first time international law is said to have died. Our very longevity is testament to that and to the resilience and staying power of international law. A strength of the Association is the diversity among our Branches and members: alongside individual diversity we have regional diversity, professional diversity as academics, students, practitioners, trade lawyers, human rights lawyers, commercial lawyers, judges, government lawyers, those acting on behalf of civil society, teachers, interns – the list goes on.

We cannot – should not - all do the same thing but we can all think about what we each can do within our own sphere of competence to mobilise around international law, to see it as an ongoing open ended process and draw upon our professional commitment to criticise, to imagine different futures and to make room for that which is evolving grounded in a consensus as to what constitutes morality and fairness. It is the responsibility of all of us to uphold the language of law and construct contexts in which that law can work. And we need not do this alone; we are also a community. We can build networks, coalitions and seek alliances, using the spaces created by the biennial conferences, committees and study groups to do this. To return to the 34th ILA Conference in 1926, Gustav Walker asserted that 'More than any other body the International Law

[10] International Law Association, *Report of the 41st Conference, Cambridge, 19-24 August 1946, 9.*
[11] Ibid., 10.

Association has stood, and still stands, for international research and for the evolution of sound rules of International Law.'[12] 100 years later this still holds good and while it does so international law will not so easily die.

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[12] International Law Association, *Report of the Thirty-Fourth Conference*, 2.