

Progress Renegotiated – Closing Remarks on a Remarkable Conference

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‘Progress and International Law’ might seem a rather straightforward title for a conference of young lawyers. However, there is an expressive subtitle: ‘A Cursed Relationship’. This makes it clear from the outset that ‘progress’ is not seen as a one-way street to legal paradise. At the same time, without the hope of doing ‘something good’ and contributing to a greater goal, there will be no inspiration to devote energy to international law. The answers to the questions posed by the Conference are therefore relevant in a double sense: personally, as a confirmation of the path chosen by young international lawyers, and fundamentally, as an understanding of the journey of international law through history and politics.

During the conference, the question of what ‘progress’ means was approached under many different angles. 19th century debates about visions of progress in Mexico would fit under this heading, as would the agonising question of the consequences of alleged European superiority, the scrutiny of new border control regimes, or the vision of what ‘youth’ is and whether it is necessarily linked to progress. The discussion included reflections on the differences between whataboutism, cynicism, and hypocrisy, the wonder that rituals of coming of age might in certain cultures occur only every 25 years, and the meaning of a fish asking its fellow fish how the water is.

What became clear in all the zigzags of the discussions was that there are basically three different understandings of progress: a linear one, a cyclical (and romantic) one, and a multi-perspective one. At the same time, there is a vision of progress that would prefer the state of things to change as little as possible, and a contrary vision that relies on constant and dynamic change.

If progress is understood as a linear movement, there must be a goal towards which the momentum is directed. This can be defined in material terms, such as the preservation of nature, equality or peace or, more remotely, the survival of mankind. The more abstract it is, the more likely it is to gain support. More concrete goals such as protection of or even promoting migration or balancing the interests of the global North and South will be more controversial.

As is often the case, solutions are sought in a procedural turn. In this context, conflict adjudication or access to justice could also be seen as goals. Of course, this second approach is more modest. Progress could be made in two stages, first in law and then in reality. However, there is no guarantee that the latter will come only with the former, nor that the former will necessarily reinforce the latter.

The most modest vision of progress in international law would be limited to a (better) understanding of the law, i. e. the further development of the systematicity of the law, or the ‘unseeing’ – the abandonment of doctrinal perceptions that are no longer up to date, or the discovery of hidden power constellations.

What is seen as progress can often turn out to be nothing more than an as-if formula. For example, the judgment of the European Court of Human Rights in the case of *Hirsi Jamaa v. Italy*¹ was seen as an extension of state responsibility for violations of migrants’ rights. However, the effect may have been to reduce the willingness of states to organise rescue operations on the High Sea. Security Council Resolution 1325,² the first landmark Security Council resolution on women, peace, and security, could be seen as entrenching the idea of women as vulnerable groups unable to stand up for themselves and trapping them in a perpetual role of victim.

History has shown that the zeitgeist not only shapes the understanding of progress, but also turns it on its head. While the International Convention Respecting the Prohibition of Night Work for Women in Industrial Employment³ was hailed as a great success at the beginning of the 20th century, a few decades later it was rejected as an expression of male paternalism and inequality.

Progress never comes without a price. The living instrument doctrine of the European Court of Human Rights may reflect the idea of permanent progress in human rights protection. However, the more rights are labelled ‘human rights’ and the more detailed and differentiated they are, the less likely they will be universally recognised. The question remains whether a good compromise that all can accept is better or worse than a potentially ideal solution that many reject.

With a view to all the uncertainties that characterise progress in and through international law the obvious lesson learnt during the conference was that progress must be constantly renegotiated.

¹ ECtHR (Grand Chamber), *Hirsi Jamaa and Others v. Italy*, judgment of 23 February 2012, no. 27765/09.

² UNSC Res 1325 of 31 October 2000, S/RES/1325.

³ International Convention respecting the Prohibition of Night Work for Women in Industrial Employment of 26 September 1906, Berne.