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Laudatio for Professor Thomas Buergenthal

Professor Buergenthal, Madame Buergenthal, Mr. Ombudsman - Dr. Bodnar, Excellences, Distinguished Guests, Ladies and Gentlemen

It is a great pleasure and a genuine honour for me to present this laudatio which should not only attempt to recall some highlights from the striking life of the today's awardee – Professor and Judge Thomas Buergenthal - but also pay tribute to his outstanding achievements as global human rights advocate.

Yet, taking into account the richness of his experience, an attempt to summarize it looks like a mission impossible. Luckily, Professor Buergenthal has a truly friendly attitude to others and decided to help those who are facing tasks similar to mine today. I am thinking here about his book “A Lucky Child. A Memoir of Surviving Auschwitz as a Young Boy”. Initially published in 2007, it has subsequently been translated into many languages, including Polish. To say that this book is highly interesting and very important would be still an understatement. Since, this is an exceptional publication - it puts forward, in a touchy epic way, fundamental questions about humanity and attempts to provide universal responses.

Elie Wiesel, himself a Holocaust survivor and an author of his own memoir “Night”, Nobel Peace Prize laureate, and also a friend of Thomas Buergenthal wrote in the preface to “A Lucky Child”: “How can those who have never been put to the test understand how human nature may bend under duress? Why does one man become a pitiless Kapo and victimize an old friend or even his own relative?”

What makes one man choose to exercise power through cruelty, while another – from exactly the same background – refuses to do so in the name of enfeebled and downtrodden humanity? Thomas watches, learns and remembers. [...] The prisoner who, not wishing to lose his dignity, kisses the hand of the unfortunate friend condemned to serve as his executioner.”

Thomas Buergenthal himself explains why he did not write this book when the described events were still fresh on his mind but only decades after Holocaust. While pointing to his busy life, he also says: “It may [...] be that, without realizing it, I needed the distance of more than half a century to record my earlier life, for it allowed me to look at my childhood experiences with greater detachment and without dwelling on many details that are not really central to the story I now consider important to tell. That story, after all, continue to have a lasting impact on the person I have become.”

Ladies and Gentlemen, in this context, let me also quote what Thomas Buergenthal said about the role that his wife, Peggy, played in the preparation of the book: “My wife [...] has lived through each page of this book and its many revisions. She has been my most severe editor and critic. As a result, she has enabled me to write a book that benefited immensely from her loving support, deep understanding, and creative editorial suggestions. In so many ways, this is therefore as much her book as it is mine.” We are, indeed, delighted to see you here today, Peggy.

Thomas was born in Lubochna in Slovakia on 11 May 1934 in a Jewish family. His father, Mundek Buergenthal, grew up here, in Poland. He studied law at the Jagiellonian University. His mother, Gerda, was from Göttingen in Germany. They ran a hotel in Lubochna which in 1938 was seized by the fascist Hlinka militia. The family was

eventually forced to escape to Poland. On 1 September 1939, the Buerghentals equipped with English visas were on their way to England via the Balkans since a sea travel was no more possible. However, their train was attacked by German aircrafts. After desperate attempts to find a refuge, the family managed to survive for several years in the Kielce ghetto from which it was sent to Auschwitz where Thomas boy was separated by Nazis from his heroic and beloved parents on 2 August, 1944. When in Auschwitz, he went through all the outrageous suffering in the camp, and was also ordered for a gas chamber but fortunately saved by a doctor who replaced his already marked registration card. His father was killed by the Nazis in Flossenburg in January 1945, three months before the liberation of the camp by American troops. His mother was eventually liberated from the Ravensbrück concentration camp by Soviet soldiers at the end of April 1945. In January of the same year, the eleven years old Thomas was sent from Auschwitz on the infamous Death March which he managed to survive, probably thanks to – what he describes as – “the instinctive belief of children in their immortality and their entitlement to live.” He also warmly recollect the brave people in Czechoslovakia who hiding under bridges were throwing bread into the prisoners wagons. For the starving prisoners they appeared to be true angels.

Eventually, Thomas, was liberated by Russian troops from the concentration camp in Sachsenhausen. He met a Polish army unit which adopted him as so called “son of the regiment”. His “fluent, unaccented” Polish, learned from his father and mastered during the time spent in Kielce ghetto and Auschwitz, helped him a lot. Professor Buerghenthal said in one of his interviews: “They made me a small uniform. And I had shoes. They even gave me a small [...] automatic pistol. [...] they had found a circus horse [---], a pony, [...]

since much of the army [supplies] was still horse-drawn. [...] And I had my horse, and I could keep up with the soldiers. And I had a wonderful time.”

Then, Professor Buergenthal continues, saying: “a child takes a lot of these things for granted. This is life and this is what happened. One day you don't have anything to eat, and the next day there's suddenly food. What I remember though is that I for years afterwards would always think that you should eat before you did anything of importance because you never knew when you were going to eat again.”

After fighting in Berlin and capitulation of the III Reich, the regiment moved to Poland and one of the soldiers arranged for Thomas to be taken to a Jewish orphanage in Otwock. His mother on her part was tirelessly trying to find him and finally, in 1946, tracked him down. Then, with the help of American Joint Distribution Committee and a Jewish organization he was actually smuggled via Prag to Göttingen.

Truly moving is the passage from “A Lucky Child” describing Thomas’ feelings when he finally, still in the orphanage in Otwock, received the first letter written by his mother, whom he called “Mutti”, which was a proof that she had actually survived. He was crying and laughing at the same time. He finally could turn down his he-man mask. He had his mother back and could become a child again.

After finishing school in Germany, in 1951, Thomas and his mother went to New Jersey to visit his uncle’s family. The planed one year - so to say reconnaissance trip - turned out to be a journey to his destination.

Professor Buergenthal started his academic education at Bethany College and then was accepted by New York University Scholarship Program. In 1960, he earned the degree of Juris Doctor at the School

of Law and continued his academic education at the Harvard Law School from which he graduated with the degree of “Doctor of Juridical Science in international law” in 1968.

Tracy Thompson, a journalist, managed to get some testimonies about Professor Buergenthal from his fellow students. He is recalled as social but not a party animal. “He never went out with the boys drinking, but he always had time for an event.”

At that time, like today, he was also appreciated for his sense of humor which sometimes involved, not surprisingly, situations related to the dark part of his life. In the late fifties, when the draft was obligatory for university students, Thomas Burgenthal, a US citizen since 1957, was exempted from the conscription because he had lost some toes as a result of the frostbite during the Death March from Auschwitz. Nevertheless, according to one of his roommates at the NYU, the draft board, an exemplary piece of bureaucracy, made annual inquiries about the health of the conscript. He regularly and politely responded informing the authority: “My toes have not yet grown back.” Perhaps, he was inspired by the doctors in Sachsenhausen who wanted to console the desperate boy of eleven after the removal of his toes by telling him that like milk teeth the toes would have grown back by the age of 21.

Looking at Professor Buergenthal’s professional career one may ask which of its streams played a dominant role. He is one of those intellectuals who are able to combine the highest expert knowledge with practical skills. His interlinked professional achievements mainly lie in academia, international judiciary and human rights advocacy.

Professor Buergenthal started his academic career as Instructor in Legal Method at the University of Pennsylvania School of Law in 1961. Then, through the professorships of law and human rights at

the State University of New York (Buffalo), the University of Texas, Washington College of Law at the American University, Emory University School of Law, Georgetown University Law Center Professor Buergenthal eventually arrived at the George Washington University Law School. There, he was Professor of Comparative Law & Jurisprudence, as well as Director of the International Rule of Law Center. Meanwhile, Professor Buergenthal used to be Director of Human Rights Program in the Carter Human Rights Center at Emory University and Dean of the Faculty of Law at the American University.

Usually, there are various interpretations why somebody has stayed preoccupied with a certain idea or a certain topic for his or her entire life. Professor Buergenthal opted for international law in general, and human rights in particular. Once, talking to Tracy Thompson, he showed her an English translation of the diaries of Odd Nansen, a Norwegian architect and humanitarian, co-founder of UNICEF, whom he met as co-prisoner at Sachsenhausen and who helped him a lot, sharing with the young boy his confidence in mankind and the future. The diaries had a dedication to the millions of victims of the Holocaust —“and especially to, little Tommy.” “That’s me,” Thomas told Tracy smiling. “Now you know why I’m doing human rights law instead of international business law.”

But, it seems that it was only a symbolic expression of a quite profound reflection. In an interview given in the framework of a series of talks with Holocaust survivors “Life after the Holocaust”, Professor Burgenthal explained what had drawn him to international law and human rights, a rather exceptional field of interest for students in law in the fifties and sixties in the States. He said: “what I think is true [...] that I felt from my concentration camp experience [...]that in a situation where one was in trouble from a human rights point of view, one couldn't rely on the domestic scene, on the

domestic environment, and you had [...] to have some international mechanisms that could protect you. Really the Universal Declaration of Human Rights had been adopted in '48, but nothing much was happening. And then in the early '50s the European Convention on Human Rights came into being, and I was fascinated... wanted to see how did this work, really. Is there a chance that this might prevent what I went through? And that began to interest me.”

Thomas Buergenthal has extensively published about these subjects. On the shelf with his publications are more than 20 books which he has written or contributed to and numerous articles, glosses, commentaries, reports and reviews. The dominating topic, presented from a variety of angles, is evidently: human rights. The first article concerning this area “The Domestic Status of the European Convention on Human Rights” was published in 1964 and the first book “International Protection of Human Rights” was published in 1973. He wrote it together with Louis Bruno Sohn, a Polish speaking American-Jewish international and human rights lawyer, born and educated in Lwów.

Let me make here a remark *pro domo sua* – I remember very well when in 1980, during the so called Solidarity Festival, with colleagues in the Polish Academy of Sciences, we decided to establish a Human Rights Information and Documentation Centre. Looking for support to collect legal sources and literature, I wrote to Professor Buergenthal whom I had never met before. He immediately responded and presented us with some important publications, including his “International Protection of Human Rights” and our collection started. Thank you, Tom, for that.

But, as Professor Buergenthal said, it wasn't only human rights in general which attracted him. [...] What also interested me, he said,

was international tribunals. I was interested in compliance mechanisms. How international institutions can have an impact on states and on individuals and [how they can] protect individuals.”

Professor Buergenthal has been able to develop his professional career along the lines of his interests. Luckily, because as we know it is not always given to people. In 1979, he became a Judge and later President of the Inter-American Court of Human Rights where he served for consecutive 12 years. He also contributed to the establishment of the Inter-American Institute of Human Rights in Costa Rica and became its President. During the nineties he acted as a Member of the United Nations Truth Commission for El Salvador, Member of the United Nations Human Rights Committee and the Vice-Chairman of the Claims Resolution Tribunal for Dormant Accounts in Switzerland. He also became a Judge and President of the Administrative Tribunal in the Inter-American Development Bank. In 2000, he started his ten-year service as the first judge from the United States on the United Nations International Court of Justice in the Hague.

The list of official and private positions occupied by Professor Buergenthal is impressively long, especially for somebody who is not inclined to collect functions. His official Resume lists 36 such items and one can be sure that many others are still unmentioned. They range from key positions in the United Nations and UNESCO to the governmental and non-governmental functions, including participation in advisory bodies to the Government and membership of governmental delegations to important international conferences, the Holocaust Memorial Museum in Washington D.C., the American Bar Association and its Centre for Human Rights, as well as the American Society of International Law of which he is the Honorary President. In his capacity of a public member of US Government

Delegation to CSCE conferences in the early nineties Professor Buergenthal also contributed to the democratic transition in Eastern and Central Europe. These meetings were devoted to the elaboration of common principles which were about to guide this fundamental process, including in the context of parliamentary elections and the protection of minorities.

I have to apologize but I cannot mention, even if only by name, all the institutional settings to which Professor Buergenthal has contributed through his input and leadership. However, it is remarkable that almost all these positions were directly or indirectly related to human rights and their protection mechanisms, in particular judiciary, as well as to the most horrendous denial of human rights - the Holocaust and genocide, in general.

One of Professor Buergenthal's major achievements as an architect of international human rights protection system was his contribution to the work of the Inter-American Court of Human Rights and to the protection of human rights in Latin America in a wider sense. "He's had a role in improving the well-being of an awful lot of people [in Latin America]" commented a colleague of Professor Buergenthal from George Washington University, Sean Murphy. Indeed, under his presidency, the Court laid groundwork for its authority as the regional human rights guardian. One of the landmark pieces of jurisprudence was granting compensation to the families of victims of "disappearance" in Honduras—people who were kidnapped by government forces, murdered, and their bodies hidden. "It was a terrible experience in one way – said Professor Buergenthal - and [in another way] a gratifying experience in the sense of laying the foundation for the law on that subject and also establishing the principle that the government has responsibilities and has to compensate the victims. You have a sense you've done something."

Later on, referring to his experiences in the region, Professor Buergenthal pointed to the fact that although fewer overt dictators were in place in comparison with the past, democratic models could be questionable in some cases. He noted that some governments were inclined to say: ‘We’re elected. We can do anything we want to.’ His comments on such reasoning and such authorities are clear: “There’s no reason today why, just because you’re democratically elected, you can’t be violating human rights, and they do.”

Drawing on his experience in the Inter-American Court, Professor Buergenthal has become a dedicated advocate of regional human rights courts. He pointed to the fact that they “create a local commitment to human rights,” [...] “and get people used to the idea that there are international tribunals that watch governments.”

Latin-American region saw also another important engagement of Professor Buergenthal. Together with two other international personalities, he was appointed by the UN Secretary General Javier Pérez de Cuéllar to lead the Commission on the Truth for El Salvador. The task of this body was to address the violent past in the country which had brought approximately 75 thousands deadly victims. It seems that this experience reaffirmed Thomas Buergenthal in the recognition of the potential offered by the establishment of truth related to the past in a formalized process. While staying dedicated to the role of judiciary, Professor Buergenthal said: “Courts cannot really tell the history of a terrible conflict. [...] Truth commissions can describe the history of what went on and the causes—if it is a good truth commission—in a way that courts cannot do.... Truth commissions don’t take the place of courts, but I don’t think courts take the place of truth commissions, either.”

But, it has not been an easy job for Professor Buergenthal to always stay calm as a judge or a member of human rights monitoring bodies, since sometimes cases under consideration brought up the memories of his own suffering which were still vivid in the back of his mind. He is aware of it and it is fascinating to listen to him explaining how he has coped with this challenge.

In a case before the Human Rights Committee, Robert Faurisson, a notorious Holocaust denier, claimed that France had violated his freedom of expression by prosecuting him for denying the use of gas chambers to exterminate Jews in the Nazi concentration camps and criticizing the findings and verdicts of the International Military Tribunal at Nuremberg in this respect. By the way, Faurisson was trying to support his complaint by indicating that some Russian experts who had testified that the Germans had used gas chambers at Auschwitz also argued that Germans were responsible for the Katyn massacre despite the evidence that it was committed by the Soviets.

Professor Buergenthal was a member of the Committee at that time. He decided to excuse himself from the participation in the consideration of this case and issued the following statement: "As a survivor of the concentration camps of Auschwitz and Sachsenhausen whose father, maternal grandparents and many other family members were killed in the Nazi Holocaust, I have no choice but to recuse myself from participating in the decision of this case." The message of this brief and simple statement was probably more powerful than any legal argument. The statement has been attached to the decision of the Committee which found the Faurisson complaint groundless.

Talking about the El Salvador Truth Commission Professor

Buergenthal said: "There were times when victims were speaking to the commission and I realised that I could finish their testimonies for them. I felt I couldn't let that experience affect my work. I had to be impartial but I struggled with it sometimes because I knew what it felt like to be a victim."

Independence and impartiality of individuals sitting on the bench of judges or on independent bodies set up to protect law and human rights definitely constitute a central virtue for Professor Buergenthal.

The Holocaust posed a number of general questions related to the essence of human conscience. For some it has undermined their faith. Some, who just watched or learned what happened during Holocaust, have lost their confidence in humanity. All the more, those survivors who found in their terrible experience source of moral strength and motivation for action deserve our particular respect. Professor Buergenthal is definitely one of them. He knew how to come to terms with the worst possible experience.

Nevertheless, he has been confronted again and again with the question "Why, with your Holocaust background, are you working in the human rights field? Why are you exposing yourself to hearing the stories of today's victims of human rights violations when you have seen and experienced so much in the past?" And, he responded "I have to admit that it was not always easy for me to investigate or to judge serious human rights violations because they brought back memories of my own past. But this has been a small price to pay, considering that my commitment to working in the human rights field is my way of honoring the memory of my parents and the other victims of the Holocaust. Moreover, I believe that those of us who have survived the Holocaust have an obligation not to close our eyes

to human rights violations wherever they might occur and to try to help as best we can. If not we, then who?”

Similarly, to a question whether it is possible that humankind involved in so many mass-scale atrocities is capable of creating a coherent and enforceable human rights system, Professor Buergenthal’s clear and prompt reply is “I don’t have any doubt.”

Consequently, Professor Buergenthal is a dedicated advocate of a preventive approach. As the first permanent chairman of the Committee on Conscience of the US Holocaust Memorial Museum, he managed to convince this institution to establish a Center for the Prevention of Genocide with *inter alia* the task to research on the causes of genocides in order to find ways to predict and to prevent them. It was the Centre that recently convinced the US government to characterize Syria as a country guilty of committing genocide.

Four weeks ago, in a Speech at the University of Wisconsin entitled “From Auschwitz to International Law and International Human Rights” Professor Buergenthal stressed: “Mankind must not allow itself to be misled or intoxicated by ideologies that advocate war, racial or religious hatred, ethnic cleansing and many other excuses and ideologies we humans invent to murder other human beings. [...] I believe that our schools, our religious institutions and our governments all have an obligation to instill in future generations the will and ability to resist aligning themselves with political movements and ideologies that advocate hatred between different peoples and groups. Tolerance and respect for other human beings regardless of their race, religion, sexual orientation, national or ethnic origin must be taught in our schools, in our military academies and in our religious institutions. [...] intolerance has a tendency to rear its ugly head again and again, if not in one country then in another. It is a

cancer that lurks under the surface of all our societies. [...] Every generation must be reminded over and over again of the danger and the causes of intolerance and the catastrophes they produce.”

Indeed, rejection and determined countering of among others hate speech is not a matter of political correctness and is not a contravention of freedom of speech. It is a question of basic human moral. Dictatorships, violence, the replacement of the rule of law by legal arbitrariness and usurpation motivated by political interests, always start with a propaganda of hatred, discrimination of minorities, with rejection of values and principles which guide the democratic world.

It is not surprising that the call for prevention was also motivating the author of the Genocide Convention, Rafal Lemkin, who lived before the II World War not far from here, in Warsaw, and since 1941 was campaigning in the United States for a speedy adoption of this Convention. Samantha Power, the current US Ambassador to the United Nations in New York quotes his reflection after a meeting with high officials in Washington where he was advised to show some patience: “‘Patience’ is a good word to be used when one expects an appointment, a budgetary allocation or the building of a road. But when the rope is already around the neck of the victim and strangulation is imminent, isn’t the word ‘patience’ an insult to reason and nature?”

Deeply moving and actually offering a necessary human rights perspective of mass atrocities is Professor Buergenthal’s focus on an individual human being who must not get lost in statistics. In the Wisconsin speech he returns to his earlier observations that the perception of the Holocaust exclusively “in terms of a number – six million – the way it tends to be [presented], may unintentionally

dehumanize the profoundly human tragedy it was. It glosses over the fact that each victim was an individual human being – a mother, a father, a child, a grandparent, an artist, a scholar, a physician, a lawyer, a teacher, human beings all – with their individual dreams and hopes. Ask yourself what the world would have looked like had these individuals been permitted to live. Think of the potential Nobel Prize winners, scientists, scholars, writers, teachers, physicians, artists who died in the Holocaust. Think of the reservoir of artistic, scientific, and intellectual creativity that the world lost when they were murdered, and what they might have contributed to the common good. And what about the million and a half children who died in the Holocaust and what the world lost with their murder? Let us therefore never forget that the Holocaust was not just a Jewish tragedy; it was a tragedy for mankind as a whole.”

In recognition of his achievements, Professor Buergenthal has been awarded several honorary doctor titles by a number of American and foreign universities, including: University of Heidelberg, Free University of Brussels; State Universities of New York and Minnesota, American University (Washington, D.C.), George Washington University, University of Göttingen, New York University, St. Edward’s University in Texas, Barndeis University and so on.

I remember very well the ceremony at the University of Heidelberg in 1986, a remarkable one. This had been the first time after 53 years, that the Faculty of Law decided to return to the old academic tradition of honorary doctorates, abandoned in 1933, and give this title to Professor Buergenthal. After the ceremony, I approached the Laureate with congratulations and introduced myself. He reacted with some words in Polish. This created a lot of anxiety among our German colleagues who wondered how it happened that Professor

Buergenthal spoke Polish. Today, after having read “A Lucky Child” it would be easier for them and for us to understand.

PROFESSOR BUERGENTHAL,

all of us gathered here have enormous respect for your professional achievements, which today are being awarded by the Polish Ombudsman with Pawel Wlodkowic prize. We hope that the Polish component in your curriculum vitae is highlighted in a symbolic way by the venue of today’s ceremony – the Museum of the History of Polish Jews “POLIN”.

But, please be sure that we have not forgotten the ironic words of your neighbor in Ferney, next door to Geneva. I have in mind here Voltaire who said that expressing “Appreciation is a wonderful thing: It makes what is excellent in others belong to us as well.”

This laudatio reflects your accomplishments but – using the word from the title of one of your books - only in a nutshell. However, it is not only our deep respect and admiration for an outstanding lawyer, an international judge and chief-justice, a globally appreciated professor, and a dean of distinguished schools of law that dominate our attitude to you. Only exceptional personalities are capable of making a truly universal message out of their lives. You are one of the few. Your entire life is a testimony of the fundamental values that make a humanity out of the crowd. Professor Buergenthal, let me assure you that our feelings are also those of sincere gratitude to you, one of the leading global humanists and human rights advocates, for your guidance.

Live long and healthy, Dear Thomas or – as some probably called you in an early period of your life – Drogi Tomku. It is great to be with you here today.