Ten years ago, a polemic article in an Austrian daily newspaper stirred up a lively debate on the stance of international lawyers in Austria towards the use of force in international law and on the way how they justified – or, more precisely, how they attempted to justify – the military intervention in Kosovo by several NATO member states.\(^1\) The article accused – much in the style of a ‘Chuck Norris roundhouse kick’ – Austrian international lawyers of warping international justice by advancing various justifications for the breach of the prohibition to use force in the context of the armed intervention in Kosovo.\(^2\) This sweeping blow, which was full of ridiculous assertions and pseudo-legal arguments, eventually turned out to be a hoax by a hitherto unidentified author. But given its extremely polemic undertone it prompted Professor Zemanek, as its main target, to step into the breach for international lawyers, even for those with whose views he would never agree. And by this article and the outcry it had caused – particularly on the part of domestic lawyers who are notoriously critical towards international law and who doubt its nature as a ‘real’ legal order – Professor Zemanek was once more driven to justify the genuine and distinct character of international law that essentially differs in its structure from any other kind of legal order.\(^3\)

Apart from this act of legitimate self-defence of international lawyers against an ongoing armed attack from other disciplines of law, and hence from outside, there was another aspect to Professor Zemanek’s reaction.\(^4\)

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\(^4\) Editor-in-chief; Associate Professor of International Law, Department of International Law, University of Vienna.
And I think this aspect epitomizes an inextricable part of his personality and long-time experience as an international lawyer deeply rooted in theory and practice alike, and it has, I may say, strongly influenced my own thinking and understanding of international law. It is Professor Zemanek’s pragmatic attitude towards the possibilities and realities of the international legal system and his awareness of the limits of international law. He has always called for a healthy dose of pragmatic realism in assessing issues of international law, especially in those areas where international law is not equipped with the necessary structural conditions. In the Kosovo discussion, for instance, Professor Zemanek – whilst defending the essence of international law with all its deficiencies and shortcomings – has conceded that the concept of armed humanitarian intervention as an exception to the prohibition to use force, wishful as it may be in the given case, simply did not form part of the existing law of nations as it stood at the time – and, in all likelihood, as it still stands today.\(^4\) In another context he has also vigorously rejected the concept of a purported ‘constitutionalisation’ of international law,\(^5\) a proposition that is nowadays so attractive to writers and scholars of international law. In particular, the idea of the Charter of the United Nations as a kind of ‘world constitution’ raises expectations for international law which it ultimately cannot live up to. To borrow concepts from municipal law, which often have only a small common denominator on a comparative basis, and transfer and apply them to international law without adequately reflecting on the totally different structural realities of the latter, is a delusion dangerous to the credibility of the discipline of international law and probably even of the international legal order as such.

But the call for a realistic appraisal of what international law can achieve and what it cannot is, to be sure, not limited to the theory and doctrine of international law. Often it is also the practice of international law that acts in a manner lacking an adequate sense of reality. A good example of a concept that is in need of a realistic approach is that concerning the prohibition to use force in international relations and the handling of the concept of self-defence; and since Professor Zemanek has had a say on this fundamental

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