

## Tributes to Sir Hersch Lauterpacht\*

*From Professor Hans Kelsen:*

Hersch Lauterpacht was one of my best students when I was teaching General Theory of State and Austrian Constitutional Law at the Law School of the University of Vienna, immediately after the First World War. I still remember how much I was impressed by the extraordinary intellectual capacity and the truly scientific mind of this young man. He came to Vienna from Galicia, the Polish province of the former Austrian monarchy. He spoke German fluently, but with the unmistakable accent of his origin. This was, under the circumstances which actually existed in Vienna at that time, a serious handicap and may explain the fact that he, in spite of his profound knowledge in all the subject-matters taught at the Law School, received the degree of a Doctor of Law by no more than a passing mark from the majority of the examining professors. This was in June 1921.

There was, at that time, within the Law School a department of political science in which international law was taught by Professor Leo Strisower and Professor Alexander von Hold-Ferneck. After obtaining his law degree Lauterpacht became a student of this department and specialised in international law. He presented a doctoral thesis, "*Das voelkerrechtliche Mandat in der Satzung des Voelkerbundes*" (the international Mandate in the Covenant of the League of Nations), which was qualified by the two professors as "excellent." The degree of Doctor of Political Science was conferred upon him on July 15, 1922. That not only Professor Strisower but also Professor Hold-Ferneck, whose political attitude was not very favourable to men of Lauterpacht's origin, so highly appreciated his monograph is the best proof of its remarkable scientific standard. Unfortunately, the thesis was not printed and the archives of the Law School where the mimeographed copies of the doctoral theses were stored were destroyed by the bombardment of Vienna in the Second World War. It seems that Professor Lauterpacht himself has not kept a copy of his thesis; and my attempts to get one from other sources were in vain.

After he finished his studies at the University of Vienna, Lauterpacht went to England where he found a new home and most favourable conditions for his work in

\* These tributes were originally published in 10 *ICLQ* (1961). The *EJIL* Editors are indebted to the publishers, The British Institute of International and Comparative Law, 17 Russell Square, London WC1B 5DR, for their kind permission to reprint the extracts.

Hans Kelsen

the field of international law. He told me occasionally that when he first arrived in London he had the greatest difficulty to make himself understood by a policeman on the street whom he asked for information. A short time later, he wrote perfect English.

The splendid career he achieved in England and the great honours this country conferred upon him were indeed well deserved; but they honour also the country whose spirit of unprejudiced justice makes such a career possible.

*From Lord McNair:*

I have been asked to contribute some information upon Hersch Lauterpacht's early years before his arrival in this country in 1923. A number of letters describing his life as a boy and as a university student have been placed at my disposal and I have done my best to compose from them a true picture, though, having regard to the lapse of time, I cannot guarantee complete accuracy.

As I shall show, these early years formed an important element in fixing some of the main intellectual and emotional interests of his life. He was born on August 16, 1897, into a comfortable middle-class Jewish family in a village called Zolkiew in the Austrian part of what was formerly Poland, fifteen miles distant from Lemberg (Lwow). His father was a timber merchant, his brother became an advocate, and there is no evidence of any lack of financial security at home. In 1910, the family moved into Lemberg for the purpose of giving Hersch better educational opportunities than were available in the village. The main features of his home background were a deep Jewish nationalism and the love of literature of the more serious kinds. Like his father, he had a thirst for knowledge, and at the age of fifteen he became a member of an organised group of young Jews whose object was self-education without the aid of teachers and included Zionist history and the geography of Israel. It was probably as a member of this group that he laid the basis of his extensive knowledge of languages to which I shall refer later.

After the outbreak of war in August 1914, the tide of battle flowed across Galicia, which became occupied by Russian troops; at some date in 1915, the Austrian army reconquered eastern Galicia, including Lemberg. Being an Austrian subject, Lauterpacht was mobilised in the Austrian army and was directed to serve in his father's timber factory, which was requisitioned by the Austrian army. In 1916, he revived in Lemberg the Zeire Zion movement and in 1917 he arranged a demonstration in celebration of the issue of the Balfour Declaration on Palestine; for this activity he was tried by a military court (presumably Austrian) and acquitted. In 1918, he and a friend led a movement which succeeded in bringing about, I think, in Lwow, as Lemberg became, the formation of a Jewish Gymnasium where Hebrew and Jewish history were taught and a Jewish atmosphere prevailed.

### Tributes to Sir Hersch Lauterpacht

When the war came to an end late in 1918, a local conflict arose between Poles and Ukrainians, from which the Jewish population seem to have held themselves aloof, with the result that the University of Lwow either declined to admit Jewish students or did not welcome them. Lauterpacht then became a student in the University of Vienna, at a time when Austria was prostrate, and human suffering from lack of food and fuel and other necessities of life was acute and almost universal, not least in Vienna, and not least among students.

It seems that it was under pressure of these circumstances that he emerged as a leader of Jewish youth. There was, I believe, no *numerus clausus* in the University of Vienna, and no doubt the vast majority of the students of all kinds passed through a period of great difficulty and, in many cases, of abject misery. He was very prominent in the student life of the University, became president of the Hochschule Ausschuss which was concerned with the material and other welfare of some eight to ten thousand Jewish school-children and students, and was their representative in dealing with the educational authorities. (This organisation established a *menza* (kitchen or dining hall) the housekeeper of which was a sister of Adolf Hitler!) He also participated in the foundation of a World Federation of Jewish Students, of which Professor Einstein was the honorary President and Lauterpacht the President. In 1919 he acted as one of the interpreters of the Curzon Boundary Commission, and it is believed that at that time he spoke Polish, Ukrainian, German and, of course, Hebrew, and also had some knowledge of French and Italian. It is said that after a pogrom in the revived State of Poland in 1919 he gave evidence to a fact-finding commission presided over by Ambassador Morgenthau.

It is difficult for Lauterpacht's British or other West-European friends to recognise him as an active champion of Jewish students and a considerable personality in the Zionist movement. There was not a trace of the political agitator in his temperament, and one is driven to suppose that his prominence and success at this time were due to his passion for justice, his devotion to the relief of suffering, his transparent sincerity and his gifts of persuasion, both in writing and in speech. At any rate, we may be sure that we can trace to the period, say, from 1914 to 1922, one of his main characteristics as a lawyer, namely, his insistence on the vital necessity of the legal definition and protection of human rights and his appeal to international law as a means of reinforcing the provisions of national laws passed for that purpose. In Great Britain our human rights have been secured by the judicial interpretation and application of the common law, and may be said to be almost imperceptible, except when a manifest case of abuse arises and the law is involved, often by one of the prerogative writs. Compared with most other countries we are fortunate in this respect. Lauterpacht played a prominent part in the movement which culminated in the Universal Declaration of Human Rights of 1948. His contribution to this movement is well illustrated by the International Bill of the Rights of Man, which he drafted in 1944. One of his dearest hopes was to see that Declaration converted into a Convention under the auspices of the United States. That has not yet happened, but the movement has inspired the European Convention of 1950 for the Protection of Hu-

### Lord McNair

man Rights and Fundamental Freedoms and the creation of a Commission and a Court for the purpose of enforcing it, and many States (notably Nigeria) have incorporated into their constitutions a large number of the human rights enumerated in these instruments.

To the same source we can trace his insistence on the opinion – not universally accepted – that individuals can be said directly to possess international rights and be subject to international duties and thus enjoy personality in international law.

In 1923 he married Rachel, daughter of Michael Steinberg, resident in Palestine. Their son is known to many or most of the readers of this journal. It suffices to say that the marriage was ideal and that no man ever had a more inspiring and devoted partner in the battle of life – a fact which he readily recognised.

In so far as the lapse of time makes it possible to write with reasonable accuracy, I have indicated a few of the many humanitarian activities which occupied his time in his early years. It is abundantly clear that in spite of these activities he made time for serious study. He took the degrees of DR.JUR. and DR.SC.POL. in the University of Vienna, and his dissertation for one of these was written on the Mandate for Palestine. In the autumn of 1923 he became a research student in the London School of Economics and Political Science and a candidate for the LL.D. in the University of London. One of his early friends says that even at the age of eighteen he was determined to spend some time at a western European university, and that this was one cause of his close application to the learning of foreign languages. The first thing that impressed me about him when he became my pupil in 1923 was his amazing gift of learning English. At our first meeting we could hardly communicate. His spoken English was barely intelligible and my German was worse. I gathered, however, that he wanted to examine the private law sources of international law. I gave him a list of books, such as Geldart's *Elements of English Law*, Anson's *Law of Contract* and Salmond's *Law of Torts* and asked him to see me again two weeks later. When he came to see me again, I was staggered by his fluency in English. He had read a good deal in English before he came to England, but he had never heard it spoken. He employed his first fortnight as a student by attending eight hours of lectures every day, on all sorts of subjects, and thus rapidly acquired a good working vocabulary. From that time his English, both spoken and written, advanced rapidly and before long he was quite at home in both. I need hardly say that his great intellectual quality soon became apparent, both in oral discussion and in writing. Although amongst his friends he was a most enjoyable and profitable companion, he rarely exerted himself conversationally amongst strangers, and I know that some persons, meeting him casually, failed to appreciate his real quality. In 1926 he obtained the London University LL.D. upon a dissertation entitled "Private Law Sources and Analogies of International Law," which I shall leave it to others to assess. In 1927 he was appointed an assistant lecturer in international law at the London School of Economics and Political Science, and thereupon decided, happily for us, that his future life lay in this country.