

Sir Hersch Lauterpacht: 1897–1960

Elihu Lauterpacht

Hersch Lauterpacht was born on 16 August 1897 at Zolkiew in Galicia, then part of Austria-Hungary but later to revert to Poland. When he was still quite young his family moved to the nearby town of Lwow (Lemberg), where he pursued his secondary studies. From his earliest years he demonstrated that seriousness of mind, wide reading and the moral purpose which were to be the marks of his scholarship throughout his life. An exercise book survives containing detailed manuscript notes of some of his reading during a three-month period from September 1915 to February 1916. It comprises ten major works in German, English, French and Polish.¹ It shows his voracious appetite for books, his linguistic ability and his remarkable powers of concentration.

His university study was carried out in Vienna in the years immediately following the First World War. There he obtained two degrees, first Doctor of Laws and then Doctor of Political Science. His doctoral thesis, written in German, was on the then entirely new subject of *Das völkerrechtliche Mandat in der Satzung des Völkerbundes* ('The International Mandate in the Covenant of the League of Nations'). It was to form the basis of his first major work in English, *Private Law Sources and Analogies of International Law*, published in 1927, when he had been in England no more than four years.

During his time in Vienna he met Rachel Steinberg, who was studying the piano there. They married in 1923 and very soon afterwards came to England, there to make their permanent home.

Lauterpacht entered the London School of Economics as a research student. His teacher was Dr. Arnold McNair (later to become Lord McNair, the first British

1 The following are the titles, with the dates on which each was read in brackets: Landes, *Der Krieg und die Volkswirtschaft* (15/xi/1915); Federn, *Krieg und Währung* (20/xi/1915); Cook, *The Laws of Moses and the Code of Hammurabi* (20–25/xi/1915); Maxwell, *Psychologie sociale contemporaine* (15/xi–5/xii/1915); Adam Smith, *The Wealth of Nations* (4 vols.) (5–15/xii/1915); Hammacher, *Das Philosophisch – ökonomische System des Marxismus* (15–30/xii/1915); Pic, *Les assurances sociales en France et à l'étranger* (30/XII/1915–4/i/1916); Tanon, *L'évolution du droit et la conscience sociale* (5/i–10/i/1916); Czyhlarz, *Lehrbuch der Institutionen des römischen Rechtes* (10/I–15/II/1916); illegible – Polish (15/i–25/i/1916); Kaufman, *Theorie und Methoden der Statistik* (25/i–10/ii/1916).

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Judge of the International Court of Justice after 1945). On the occasion of their first meeting, Lauterpacht's spoken English was so poor that McNair advised him to take immediate steps to improve it. Three weeks later, so McNair recalled, Lauterpacht returned speaking tolerably fluent English, having devoted the intervening period to intently listening to the wireless and to every possible lecture at the LSE. However, notwithstanding the elegant mastery of the language that he acquired so rapidly, he was never entirely able to shed his foreign accent – not that that in any way diminished the wit or effectiveness of his lectures, testified to by many students over the ensuing thirty years.

He spent the years from 1923 to 1937 at the LSE in unremitting research and teaching. *Private Law Sources* was followed in 1933 by the immensely important *Function of Law in the International Community*. Lauterpacht always eschewed topical subjects in favour of those which he deemed to be of enduring value. Indeed, it is striking that these two books can still be read with profit, having scarcely dated with the passage of years. The same is true of the lectures he delivered in 1935 on the *Development of International Law by the Permanent Court*, which he subsequently expanded into *The Development of International Law by the International Court*, published in 1958.

In the meantime he had in 1945 published *An International Bill of Human Rights*, a pioneering work advocating the desirability and possibility of the protection by treaty of fundamental human rights. The influence of this work was real and virtually immediate, being directly reflected in the European Convention of Human Rights adopted in 1952.

Another major work which also appeared in the immediate post-war period was his pioneering study on *Recognition in International Law*, published in 1947. This was founded on in-depth research into state practice, particularly that of the United Kingdom as evidenced by the Opinion of the Law Officers of the Crown. Of all his writings this is the one that has given rise to most controversy since its basic doctrine of the legal character of recognition has been largely abandoned in state practice over the half-century that has followed.

These major contributions to the literature of international law formed only a part of a constant stream of writing. In 1935 he became the editor of Oppenheim's *International Law*, producing three editions of Volume I on Peace and two of Volume II on Disputes, War and Neutrality. Earlier yet, he had initiated the collection of international law decisions, of both international and national courts, that first bore the title *Annual Digest and Reports of Public International Law Cases* and later became the *International Law Reports*. For the first two volumes he co-edited the work with Sir John Fischer Williams and for the third with Dr. McNair. Thereafter, Lauterpacht was the sole editor. The series, which continued after his death, now extends to some 104 volumes. To all this he added the revision of Chapter XIV (the laws of war) of the *British Manual of Military Law* and, from 1944 onwards, the editorship of the *British Year Book of International Law*. He also wrote many articles, virtually

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all of which have been reprinted in his collected papers (extending so far to four volumes) under the title of *International Law*. From 1951 to 1954 he was a member of the International Law Commission. As its Special Rapporteur on the Law of Treaties he produced a number of learned and influential Reports.

His active academic career was crowned, and brought to an end, by his election in 1954 as a Judge of the International Court of Justice. Throwing his energies into this new task, he applied his deep understanding of international law and his great literary talent to the production of a number of separate and dissenting opinions which still stand as landmarks in international legal theory. Amongst these will be particularly remembered his separate opinion in the *Norwegian Loans Case*, which no doubt had a major influence in diminishing the insertion by states of so-called 'automatic' or self-judging reservations in their declarations made under the Optional Clause.

Lauterpacht's years on the International Court were cut short by his death on 8 May 1960, little more than five years after he assumed his seat there. His eminence in the field had been recognized by his membership of the *Institut de Droit International* as well as by his election as a Fellow of the British Academy and as a Bencher of Gray's Inn. He was also awarded honorary doctorates by the Universities of Geneva and Aberdeen.

A number of excellent accounts of his life and work have been written, particularly the collection of tributes in the *International and Comparative Law Quarterly*, two of which are republished in these pages. Of particular note are articles by C.W. Jenks, 'Hersch Lauterpacht – the Scholar as Prophet', 36 *British Year Book of International Law* (1960) 1–103; Sir Gerald Fitzmaurice, 'Hersch Lauterpacht – The Scholar as Judge', 37 *British Year Book of International Law* (1961) 1–71, *Idem*, 38 *British Year Book of International Law* (1962) 1–83 and *Idem*, 39 *British Year Book of International Law* (1963) 133–188; and Shabtai Rosenne, 'Lauterpacht's Concept of the Task of the International Judge', 55 *American Journal of International Law* (1961) 825–862. As yet, no full-scale biography has been written.

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- *The Function of Law in the International Community* (1933).
- *The Development of International Law by the Permanent Court of International Justice* (1934).
- *An International Bill of the Rights of Man* (1945).
- *Recognition in International Law* (1947).
- *Survey of International Law in Relation to the Work of Codification of the International Law Commission*, Memorandum submitted by the Secretary-General of the United Nations (1949).
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- *The Development of International Law by the International Court* (1958).

2. Courses of Lectures Delivered at the Hague Academy of International Law

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3. Editorial Works

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 - 1927–1928 (with Dr. Arnold D. McNair) (1931)
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| 1931–1932 | (1938) |
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- *Sovereignty over Certain Frontier Lands*, ICJ Reports (1959) 209: Declaration, 230–232.