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# Max Huber – His Life

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## 1 Introduction

Max Huber contributed to international law in very different ways to the other eminent jurists presented to date in this Journal's series on the European tradition in international law.<sup>1</sup> While the enduring prominence of the other scholars in this series is largely due to their contributions to the theory of international law, Huber was not able to devote more than a small part of his life to theoretical study nor did he produce any major works on international law. From the age of 40, he was entrusted with important public functions, all of which were closely connected to international law but of a more practical nature. Four successive stages in Huber's professional life may be distinguished, each characterized by very different activities.

In a first stage, lasting from 1902 to 1914, Huber was professor of international, constitutional and canon law at the University of Zurich. This was the only period of his life in which he was able to devote his attention to academic work. A second stage began in 1914, following the outbreak of the First World War, when Huber's services were claimed by the Swiss Confederation. He became a leading consultant of the Military Department and later of the Department of Foreign Affairs. During this period, lasting until 1921, he formally kept his chair at the University but was unable to carry out his functions there. The third stage, from 1921 to 1930, marks the period in which Huber acted as judge and, from 1925 to 1927, as President of the Permanent Court of International Justice (PCIJ) at The Hague. The fourth and final stage, from 1928 to 1946, was the period of Huber's presidency of the International Committee of the Red Cross in Geneva. Initially, this function occupied only part of his time, but during the Second World War it claimed all his time and energy.

The notable diversity of activities in Huber's career and the fact that he did not publish a major work on international law may explain why his name and achievements are no longer well known. Lawyers may come across his name in connection with his arbitral award of 1928 in the *Island of Palmas* case, which is one of the most cited cases in international law books, or in the 1927 PCIJ judgment in the *Lotus* case where he

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<sup>1</sup> The European Tradition in International Law series: 'Georges Scelle', 1 *EJIL* (1990) 193; 'Dionisio Anzilotti', 3 *EJIL* (1992) 92; 'Alfred Verdross', 6 *EJIL* (1995) 32; 'Hersch Lauterpacht', 8 *EJIL* (1997) 215; 'Hans Kelsen', 9 *EJIL* (1998) 287; 'Charles de Vischer', 11 *EJIL* (2000) 871; 'Alf Ross', 14 *EJIL* (2003) 653.

gave the casting vote. But few people are familiar with Max Huber the person and his achievements in other fields. Similarly, his publications, largely articles, are rarely consulted any longer, even though they have been republished in four volumes.<sup>2</sup>

Two biographies of Max Huber, neither of which were written by lawyers, have been published. The first, published in 1957, was written by Fritz Wartenweiler, a historian specializing in biographies aiming to reach a broad public. Based on documents and conversations with Huber, it gives a remarkably complete overview of Huber's life in an easy narrative style.<sup>3</sup> The second book, published in 1967, written by a theologian, Peter Vogelsanger, who maintained close contact with Huber in his final years, concentrates more on specific aspects of Huber's life.<sup>4</sup>

In the years between 1924 and 1927, Huber himself wrote an autobiographical piece, covering the period from 1907 to 1924, with the aim of giving his descendants extensive information about his politically important activities during those years. It was published in 1974, the year of Huber's 100th birthday.<sup>5</sup> It describes in a lively and colourful way the events, activities and persons involved in his life during that period. In 1959, Huber added a short supplement to it.<sup>6</sup> Further, he produced two informative short autobiographies in 1943<sup>7</sup> and 1956.<sup>8</sup> There is thus no lack of information about his life.

It is a pleasure for me to write this account of Max Huber's life. He was my great-uncle, my grandmother's brother. My father, Dietrich Schindler senior (1890–1948), had a close relationship with Huber all his life, and it was Huber who motivated him to take up an academic career and become professor of international law, constitutional law and philosophy of law at the University of Zurich, just as Huber had been. His early death at the age of 57, 12 years before Huber died, led me to choose the same profession as my father, and Max Huber assisted me with his kind advice.

## 2 Family Background, Education, First Professional Activities<sup>9</sup>

Max Huber was born in Zurich on 28 December 1874. Almost all his ancestors were citizens of Zurich, many of them having played a prominent role in the city. His father, Peter Emil Huber (1836–1915), was a pioneer in the industrialization process in Switzerland as founder of two important enterprises: Maschinenfabrik

<sup>2</sup> M. Huber, *Vermischte Schriften* (1947–1957). The four volumes have the following titles: i, *Heimat und Tradition* (1947), ii, *Glaube und Kirche* (1948), iii, *Gesellschaft und Humanität* (1948), and iv, *Rückblick und Ausblick* (1957).

<sup>3</sup> F. Wartenweiler, *Max Huber* (1953).

<sup>4</sup> P. Vogelsanger, *Max Huber* (1967).

<sup>5</sup> M. Huber, *Denkwürdigkeiten 1907–1924* (1974).

<sup>6</sup> M. Huber, *Epilog zu den Denkwürdigkeiten aus meinem Leben* (1974).

<sup>7</sup> Huber, 'Ein Lebensabriss als Einleitung', in Huber, *supra* note 2, iii, at 11–22.

<sup>8</sup> Huber, 'Koexistenz und Gemeinschaft. Völkerrechtliche Erinnerungen aus sechs Jahrzehnten', in Huber, *supra* note 2, iv, at 459–481.

<sup>9</sup> This part of Huber's life is described in greater detail by Wartenweiler, *supra* note 3, at 14–36.

Oerlikon, which specialized in the construction of electro-technical machines (now integrated into Asea Brown Boveri/ABB Ltd.), and the Swiss Aluminum Company which led the way in the industrial use of aluminium. Max, the youngest of the three children, was strongly influenced by his father's business activities and the general atmosphere in his parents' home where leading contemporary figures were frequent visitors. Despite his important position in society, Huber's father maintained a simple and open-minded life-style, devoted to his family and to local traditions. Huber often accompanied his father or both parents on trips to European and non-European countries, and after his father's death he became president of the board of directors of the two enterprises mentioned above.

As a child and schoolboy, Huber was very ambitious and full of ideas. In all kinds of situations, he wanted to be the leader of his comrades and he achieved this thanks to his natural authority and his alert spirit. He also succeeded in coming top of the class all throughout his school years. His ambition was combined with idealism. At the age of 16 he was so deeply moved by the novel *Die Waffen nieder* ('Lay Down Your Arms'), written by the Austrian author and pacifist Bertha von Suttner, that he vowed to dedicate his life to serving world peace: a decision that would greatly influence his later career development. However, not only was the young Huber an idealist, he was also a realist; he showed great interest in the legal order essential for establishing peace. He read Johann Caspar Bluntschli's book on international law when he was in secondary school and became an admirer of his work. Bluntschli, also a Zurich citizen, was engaged at that time as professor at the University of Heidelberg and Huber considered him a shining example for his own future career.

Huber began his law studies at the University of Lausanne in 1893, continued them at the University of Zurich and completed his studies in 1897 at the University of Berlin, which had attracted him as being the most prestigious university of the German-speaking countries. His ambition was to finish his doctorate with the mark 'summa cum laude', knowing that it was only very rarely conferred upon a candidate by the Berlin Faculty. He even managed to reach this goal. During two semesters he collected and organized all the material necessary for a doctoral thesis on state succession and then employed a secretary to whom he dictated his work for eight hours every day. The thesis meticulously analyses and systematizes state practice, treaties and doctrine on the subject.<sup>10</sup> Paul Guggenheim, who in 1925 also wrote a thesis in Berlin on state succession (on different aspects of the topic), was of the opinion that Huber's thesis did not yet reveal the merits of a future master of international law.<sup>11</sup> Nonetheless, the exceptional distinction awarded it by the Berlin Law Faculty became decisive for his appointment as a professor at the University of Zurich in 1902 as well as for his later functions.

After his doctorate, Huber decided to stop setting excessive goals for himself and indeed recommended that younger people not copy him in this regard. Despite this new attitude, he continued to play a dominant role in all the tasks he took on. His

<sup>10</sup> M. Huber, *Die Staatensuccession, völkerrechtliche und staatsrechtliche Praxis im XIX. Jahrhundert* (1898).

<sup>11</sup> Guggenheim, 'Nachruf auf Max Huber', *Juristenzeitung* (Germany, 1960) 187.

fine intelligence and his ability to quickly identify the decisive points of a problem enabled him to speedily find suitable solutions. He impressed everyone he encountered in his work with his cleverness and the openness with which he presented and discussed his views. We shall see later on examples of this ability in the initiatives he took at the Hague Peace Conference of 1907, the leading role he played in achieving Switzerland's accession to the League of Nations, his leading influence in the Permanent Court of International Justice and his leadership of the Red Cross.

At the time Huber finished his studies no decision had yet been taken as to his future career. He took several possibilities into consideration: a position in one of his father's enterprises, a diplomatic or political activity or an academic career. He finally decided to enter the secretariat of the Swiss Federation of Commerce and Industry, the largest umbrella organization representing the Swiss economy (today '*Economiesuisse*') as this in any event would provide useful experience.<sup>12</sup> He stayed there for two years concentrating on two kinds of problems: first, social policy, i.e., measures for the well-being of workers in the face of rapidly increasing industrial production; and secondly, the role played by international trade and exports in the development of the Swiss economy. In dealing with the second of these issues, Huber recognized that the Swiss economy needed new markets for its products. This brought him to the idea of personally exploring the countries not yet reached by Swiss exports. In 1900 and 1901 he undertook a world trip for this purpose lasting almost two years. He spent three months in Russia and Siberia, four months in Japan, three months in Indochina, Siam, Singapore, Java and Ceylon, three months in Australia, three months in China and Korea and finally two and a half months in the United States. In each country, he met representatives of authorities, enterprises and the diplomatic corps, paying particular attention to economic and social developments, political and constitutional structures and the possibilities for the export of Swiss goods. He sent several reports to the Federation of Commerce and Industry in Zurich and later published a diary which gives a lively description of the everyday details of the trip.<sup>13</sup> Huber later stated that these travels had been of great value for his future international functions.

During his world trip, when Huber was in Shanghai in the summer of 1901, he received a telegram inviting him to become professor of international and constitutional law at the University of Zurich. Unable to take such a decision so far away from his hometown, he postponed it until his return to Zurich.

### 3 Professor at the University of Zurich (1902–1914, formally until 1921)

Huber had serious doubts about accepting the professorship in Zurich. It embraced disciplines for which he was not prepared. It also meant regretfully that he would have to give up the idea of a political or diplomatic career, which had become his

<sup>12</sup> Wartenweiler, *supra*, note 3, at 36–50.

<sup>13</sup> M. Huber, *Tagebuchblätter aus Sibirien, Japan, Hinter-Indien, Australien, China, Korea* (1906).

preferred choice during his world travels. Finally, however, he accepted the offer. Apart from international law he was required to teach Swiss constitutional law, comparative constitutional law, political philosophy, administrative law and both catholic and protestant canon law. He also gave lectures on colonial law. He was not a brilliant speaker, but impressed his listeners with the breadth and depth of his visions, the frequent cross-references to political and social conditions of the law, and the fervour with which he expressed his views.

Once settled in Zurich, Huber married Emma Escher, who also belonged to an old Zurich family. Her sensitive nature and natural modesty counterbalanced Huber's dynamic character and restrained his ambitions. In 1903, he bought an old castle, Wyden, 30 kilometres north of Zurich. It had fallen into decay during the 19th century when it had changed hands 26 times, but it was wonderfully situated in an unspoiled landscape. He renovated it and installed his study on the top floor of the tower from where he had a splendid view over the forest and fields in the vicinity as well as the snow-covered mountains of the Alps. He went horseback riding daily from there. Two days a week he was in Zurich to give his lectures. It should be mentioned here that in July 1944, when the Allied forces were advancing in Germany, an American Liberator bomber, hit by German air defence and abandoned by its crew by parachute, continued its flight without a pilot, crossed the border of Switzerland and crashed precisely into the tower of Wyden. The castle immediately caught fire. Huber's vast law library and his archives were destroyed. Members of his family, spending their summer vacation there with their children, remained miraculously unharmed.

During his professorial years, Huber had little time to prepare weighty publications. However, his list of publications shows that he wrote a considerable number of shorter papers, especially contributions to commemorative volumes and expert opinions on questions of constitutional or international law.<sup>14</sup> Those of a more theoretical character reveal that Huber's interest was mainly focused on the political and social background of law and the dynamics shaping the law.

Most important was Huber's article on the *sociological foundations of international law* of 1910. Its full title was '*Beiträge zur Kenntnis der soziologischen Grundlagen des Völkerrechts und der Staatengemeinschaft*'<sup>15</sup> (Contributions to Knowledge about the Sociological Foundations of International Law and the Community of States). In later phases of his life, Huber considered this article to be the most important of his few academic writings. It did not, however, find the attention it deserved. As it was published in a German yearbook specializing in comparative constitutional law, it did not reach many international lawyers and hardly any outside the German-speaking countries. No translation has ever been published. It was reprinted in book format in 1928<sup>16</sup> and later also appeared in Huber's Collected Papers,<sup>17</sup> but not even these initiatives greatly

<sup>14</sup> A list of Huber's publications is contained in *Vermischte Schriften*, *supra* note 2, iii, at 383–398, continued at iv, at 483–486. It contains 241 entries.

<sup>15</sup> *IV Jahrbuch des öffentlichen Rechts* (1910) 56.

<sup>16</sup> M. Huber, *Die soziologischen Grundlagen des Völkerrechts* (1928).

<sup>17</sup> Huber, *supra* note 2, iii, at 49.

assisted in broadening access to and knowledge of the work. In more recent years, however, two authors have shown an increased interest in Huber's study.<sup>18</sup> Its main ideas will be outlined in the following paragraphs.

Huber begins the study by stating that international law so far had been dealt with either from the point of view of natural law or from that of positivism, but that no attention had been paid to its sociological foundations, even though international law depends much more on changing political and social conditions than does national law. In an initial section on 'The Sociological and the Juridical Perception of International Law', Huber states that all legal norms are connected with certain social phenomena and that there is constant interaction between legal and social elements. Legal norms have the tendency to become independent of their social origin. This becomes particularly evident if rules are laid down in legislative acts. Private law shows the highest degree of independence, whereas international law is more closely dependent on changing interests and the power positioning of the participating states. Nonetheless, Huber argues that international law has its own standing, independent of politics. He refers to the permanent collective interests of states, which form an undisputed basis of their relationship. He also reminds us that the natural law of the Age of Enlightenment as an abstract system of law had strongly influenced international law in its formative stage and had partly become customary international law.

A later section deals with 'The Community of States and Common International Law'. The community of states which came into being after the dissolution of the medieval empire is described as a system in which states, even without an organization, are held together by a collective interest aimed at the maintenance of the community and by common legal rules. None of its members can freely leave the community. The original community, which was composed of European states only, later expanded to include the entire world and became the first universal legal community. The two Hague Peace Conferences, especially the second one, gave clear expression to the universality of the international community. Huber also points to the consequences of the enlargement of the international community and mentions especially the democratization of international law. International law lost its monarchical character and became strongly influenced by parliaments and public opinion.

The most interesting section of the study is undoubtedly the last one on 'Integration of the International Community'. Here, Huber examines the attempts to limit the exclusive autonomy of states in favour of larger entities. Integration in this sense can be attained either by imperialism or on the basis of solidarity. Imperialistic powers, like the five great powers which had directed European affairs from 1815 onwards, aim at institutionalizing their hegemony and suppressing traditional international law. However, due to the diversity of their interests, the five European powers did not achieve this aim. On the American continent, the United States established an

<sup>18</sup> Klabbers, 'The Sociological Jurisprudence of Max Huber. An Introduction', 43 *Austrian J Public and Int'l L* (1992) 197; O. Diggelmann, *Anfänge der Völkerrechtssoziologie. Die Völkerrechtskonzeptionen von Max Huber und Georges Scelle im Vergleich* (2000).

imperialistic position which, nonetheless, did not prevent the other American states from developing their own international community and adopting specific legal rules. Pan-Americanism is presented as an example of integration on the basis of solidarity.

Huber then makes far-sighted remarks about the integration of European states. He believes that in some later period the European states will feel compelled to create a common organization or confederation. He assumes that the developments brought about by Russian, British and American imperialism and by future evolutions in the Far East will weaken the power and influence of the European states and instigate them to join forces. Such a development, as Huber remarks, could be beneficial for world peace, the conflicts between European states still being the greatest obstacle to universal peace. Huber did not expect this result to happen soon, but cautiously speaks of 'in later times'.

Huber is pessimistic, though, as to the question of whether mankind could be united in a universal organization not restricted to purely technical matters. He argues that the division between the great powers and weaker states will prevent this happening. Powerful states aim at a position of superiority, while weaker states seek guarantees for their existence as states. Huber in this regard was strongly influenced by his experiences at the Second Hague Peace Conference where a deep division between the two groups of states had become apparent.

Huber finally takes up the question of the consequences of economic developments on the international community and international law. He points to the fact that increasing international mobility had mixed up the populations of states and changed the attitudes of people towards states. National particularities, patriotism and state authority had weakened, while individualism had become stronger. For Huber, citizens had lost their willingness to make sacrifices for their states and had become more sensitive to economic irregularities. As a consequence, they had developed a marked interest in maintaining peaceful relations among states. Huber concludes that these changes had created a permanent collective interest among all states in maintaining peaceful relations and thereby favoured pacifism which developed as a strong movement at the turn of the 19th to the 20th century. One of the aims of pacifism was to transfer parts of state sovereignty to the community of states in order to guarantee the maintenance of peaceful relations. Pacifism, Huber states, strongly influenced international law by leading to the two Hague Peace Conferences and the conventions adopted by them.

It was Huber's intention to write a book that would broaden and deepen the ideas presented in his article. He wanted to give it the title '*Der Geist des Völkerrechts*' (The Spirit of International Law), as an analogy to Rudolf von Jhering's book '*Der Geist des römischen Rechts auf den Stufen der Entwicklung*' (The Spirit of Roman Law at all Stages of its Development). However, the time-consuming and difficult tasks he later assumed prevented him from completing this project. If Huber had found the time to write the book it would probably have given him a higher profile in the doctrine of international law and could have influenced the European doctrine of international law more in the direction of political science, as occurred in Anglo-Saxon countries.

## 4 Delegate at the Second Hague Peace Conference 1907<sup>19</sup>

In the spring of 1907 Huber's university career was unexpectedly interrupted when he was requested by the Swiss Federal Department of Foreign Affairs to represent Switzerland at the Second Peace Conference at The Hague which was to start a few weeks later. This came as a great surprise to Huber, as he had never had any contact with this Department. Later, the Department's head, Federal Councillor Forrer, told him that his son who had attended Huber's lectures on international law had drawn his attention to the impressive young professor. In a retrospect of his life, Huber called this mandate 'the decisive turning point' of his professional development.<sup>20</sup> It opened Huber's way to professional activities for which he had a greater inclination than those arising within a university career.

At the age of 32, Huber was the youngest of all delegates at the Conference. The two other Swiss delegates were Eugène Borel, professor of international law at the Universities of Neuchâtel and Geneva, and Minister Carlin, a diplomat. After having accepted the mandate, Huber asked for instructions, but was told that there was no need for them. Swiss diplomacy at that time maintained a very reserved attitude towards its role in international conferences: it preferred to remain a silent observer. This, however, was not Huber's conception: he was extremely active at the Conference and introduced some remarkable initiatives, two of which merit particular attention. The first one aimed at overcoming a deadlock in the negotiations regarding the creation of an international judicial organ for the settlement of international disputes. The majority of states, mainly smaller ones, favoured a court having compulsory jurisdiction over all legal disputes between states, while a minority, composed mainly of great powers, fiercely rejected compulsory jurisdiction. Huber tried to find a solution acceptable to both sides. He proposed what later became known as the 'optional clause' (Article 36 of the Statute of the International Court of Justice (ICJ)). His idea was that states should have the possibility to recognize the jurisdiction of the Court as compulsory in relation to any other state having accepted the same obligation. Each state thereby remained free to decide if and to what extent it would accept compulsory jurisdiction. Huber's two Swiss colleagues agreed with this proposal, but in order to submit it to the Conference they had to get their government's agreement. Huber went to Bern where the Federal Council held a special meeting for that purpose. In spite of its negative attitude towards compulsory jurisdiction of international organs, it accepted the proposal on the argument that it did not impose any obligations on Switzerland. At The Hague, however, the commission looking into this question rejected it by 10 to 7 votes. Many of the states favourable to the introduction of compulsory jurisdiction were simply not ready to make any concessions to the rejecting minority. Huber's proposal therefore could not be realized, but in 1920, at the first session of the Assembly of the League

<sup>19</sup> Huber himself reports on his activities at the Conference in *Denkwürdigkeiten*, *supra* note 5, at 31. See also Wartenweiler, *supra* note 3, at 65–82, and Vogelsanger, *supra* note 4, at 57–62.

<sup>20</sup> Huber, *supra* note 2, iv, at 462.

of Nations, the Brazilian delegate Raoul Fernandez proposed and received approval of a similar provision in the Statute of the Permanent Court of International Justice (PCIJ).

Huber's second proposal was made during the negotiations on the Convention Relative to the Creation of an International Prize Court. No satisfactory solution had been found for the composition of the Court. There was general agreement that the Court should be composed of 15 judges and that the judges of eight great powers were to sit at all proceedings, but there was no agreement as to the distribution of the seven remaining seats among the rest of the states. Without revealing his authorship, Huber introduced a proposal providing that each state should nominate a judge and that these judges should sit by rota for a fixed period as prescribed in an annex to the Convention. This proposal was finally adopted and became part of the Convention (Articles 14 and 15). However, the Convention could not enter into force due to the British House of Lords' rejection of the Declaration of London of 1909, which defined the rules to be applied by the Court.

By the end of the Conference, Huber expressed satisfaction at having seen the problems of international law outside a purely academic perspective, at having acquired experience in diplomacy and having gained a certain reputation. On the other hand, he was disappointed by the failure of any progress in the field of the pacific settlement of international disputes, by the arrogance of the great powers and the modest role that small states could play. He was furthermore disturbed by the negative and rigid attitude of the Swiss authorities in relation to international cooperation.

In the years following the Conference, Huber continued his teaching activities but was increasingly asked by the Federal authorities to assume new tasks in the field of foreign policy.<sup>21</sup> He was requested to make preparations for the planned Third Hague Peace Conference. He drew up a detailed report on the questions involved and, in preparation for the Conference, was designated as the Swiss representative at an international conference of experts. This Conference, planned for 1915, could not, however, take place due to the outbreak of the First World War. Another task entrusted to Huber was the drafting of Swiss legislation that would become applicable in the event of war in Europe. Huber realized that such legislation was almost entirely lacking and envisaged the preparation of a number of essential legislative acts. But the government, all too aware of the international tensions at the time (1911), feared that such legislation would cause anxiety among the public and asked Huber to postpone this work. Three years later, when war was declared, he had to return to this task under great time pressure.

In 1914 Huber initiated the Swiss Society of International Law, of which he became the first president. As the central association of Swiss specialists of public and private international law, it first published a series of individual publications; later, from 1944 to 1990, the *Annuaire Suisse de droit international* and since 1991 the *Revue suisse de droit international et de droit européen*.

<sup>21</sup> Huber, *supra* note 5, at 51–57.

## 5 Legal Consultant of the Swiss Army and of the Department of Foreign Affairs (1914–1921)

In August 1914, when the Swiss Army was mobilized, Huber was assigned a highly demanding position in the Swiss Army.<sup>22</sup> He had the rank of major of military justice and was appointed deputy advocate general (deputy to the ‘*Armeeauditor*’), a post which he held for three years. Huber practically acted as the chief of military justice and at the same time as legal adviser of the Army command. He was in daily contact with the commander in chief, General Wille, and the head of the Military Department. He had to solve masses of new problems and to draft many legislative acts but, although extremely challenged, he found great satisfaction in this activity. Thanks to his efficiency, independence of judgment and the frankness with which he presented his views to much higher-ranking officials, he earned the deep respect of both military and civilian authorities.

In 1917, when the first plans for an international organization for the maintenance of peace became known, Huber was increasingly consulted by the Department of Foreign Affairs.<sup>23</sup> In January 1918, he was asked to become permanent adviser to the chief of this Department, Federal Councillor Calonder, with respect to all questions regarding the future League of Nations.<sup>24</sup> Huber accepted this task but, at his request, was not integrated into the administrative hierarchy, but rather remained an independent consultant to Calonder. This allowed him to exert a greater influence on foreign policy, unimpeded by administrative formalities. A trusting cooperation developed between the two men, which, after Calonder’s resignation in 1920, continued with his successor, Motta. Like Huber, both chiefs aimed at a more active foreign policy and the accession of Switzerland to the League of Nations. They were impressed by Huber’s great abilities and accepted practically all his ideas and proposals. It was Huber’s luck that no administrative unit existed yet to dispute his independence and influence.

Huber collected and examined all the projects which had thus far been developed for post-war organizations. He then drew up his own project for a covenant in which permanent neutral states were to play a certain role in maintaining international peace. Calonder gave his approval and submitted it to a commission of experts which also approved it, with certain modifications.<sup>25</sup> On 11 February 1920, the Swiss project was sent to the participants of the Peace Conference in session in Paris. This was a remarkable step, showing a new trend in Swiss foreign policy as initiated by Huber. Three days later, on 14 February, when President Wilson’s draft Covenant was

<sup>22</sup> *Ibid.* at 61–84.

<sup>23</sup> *Ibid.* at 85–99.

<sup>24</sup> *Ibid.* at 101–137; Wartenweiler, *supra* note 3, at 93–126; Vogelsanger, *supra* note 4, at 80–111.

<sup>25</sup> Huber’s project of a covenant in the version of the commission of experts is reproduced in Annex I, 6 to the Report of the Federal Council on the question of accession of Switzerland to the League of Nations of 4 Aug. 1919, *Bundesblatt* 1919 IV 541 (at 228 of the separate edition in German, 247 of the French edition).

published, Huber realized that in these circumstances his project had no chance of being discussed at the Peace Conference. He examined Wilson's draft carefully and prepared a note of the Swiss Government to be sent to the Peace Conference proposing certain modifications.<sup>26</sup>

Huber was aware that the Swiss voters who would have to decide on the question of joining the League of Nations would not give approval unless Switzerland was exempted from the duty of instituting sanctions against states resorting to war. The German-speaking majority of the population insisted on maintaining neutrality, while the French-speaking minority, favourable to joining the League, paid little attention to the question of neutrality. Huber feared that a rejection of membership would lead to a dangerous isolation for Switzerland within the community of nations and a deep internal rift between the two parts of the population. He therefore used all his persuasive abilities to enable Switzerland to join the League with an exemption from any duties contradicting its neutrality.<sup>27</sup> This was a particularly difficult task as Swiss neutrality had a bad reputation with the Allied states at the end of the war. To Huber's great irritation Calonder, without having consulted him, made a declaration at an international conference that Switzerland was willing to take part in economic sanctions but wished to be freed from military sanctions. Huber was of the opinion that exemption from economic sanctions was equally important.

An unexpected event seemed to provide the solution for Swiss neutrality. At the Peace Conference, France proposed to insert into the Treaty of Versailles an Article 435 abolishing the neutralization of Upper Savoy. This had been established at the Congress of Vienna in 1815 in favour of Switzerland and gave Switzerland the right to occupy this territory by its forces in order to protect its neutrality.<sup>28</sup> The Swiss Government agreed with this proposal, on condition that the article be supplemented by a provision stating that the Declaration of 1815, by which the European powers recognized Swiss neutrality, be reaffirmed as an obligation for the maintenance of peace. France accepted this supplement, whereupon the Swiss Government assumed that Article 435 of the Treaty of Versailles exempted Switzerland from taking part in sanctions incompatible with neutrality. However, following a hint from France, the Supreme Council of the Peace Conference expressed doubts that this was the case. This led Max Huber to initiate an action which he later considered his greatest success in reaching his goal. The Swiss Government sent Gustave Ador, former President of the Confederation, and Huber to Paris to take part in the last meeting of the Supreme Council of the Peace Conference, and then to London to a meeting of the newly established Council of the League of Nations. The League Council showed some understanding towards the Swiss request and prepared the text of a declaration exempting Switzerland from

<sup>26</sup> Reproduced in Annex II, 9 of the Report, *supra* note 24 (at 267 of the German edition, 269 of the French edition).

<sup>27</sup> On these efforts see Huber, *supra* note 5, at 118–160; Wartenweiler, *supra* note 3, at 116–123; Vogelsanger, *supra* note 4, at 93–102; E. Bonjour, *Geschichte der schweizerischen Neutralität* (1965), ii, at 741–769; P. Widmer, *Schweizer Aussenpolitik* (2003), at 196–239.

<sup>28</sup> These provisions are reproduced in Annex III, 12 c of the Report, *supra* note 24, at 321 and 327 of the German edition, 346 and 351 of the French edition.

the duty to take part in military actions, but not from economic sanctions. Huber was given the opportunity to improve this text, whereupon the Council adopted the Declaration of 13 February 1920 on Swiss neutrality.<sup>29</sup> Huber was greatly applauded in Switzerland for this success and, on 16 May 1920, the Swiss voters approved Switzerland's accession to the League of Nations facilitated by the London Declaration. A great part of this success was also due to Professor William Rappard from Geneva, who represented Switzerland at the Paris Peace Conference. As a former Harvard professor he had easy access to President Wilson, whom he had known in the United States, and was able to convince him to take a positive attitude towards Swiss neutrality and to choose Geneva as the seat of the League.

Fifteen years later, in 1935, the solution to the neutrality problem turned out to be less successful than had been assumed in 1920. The economic sanctions taken against Italy in that year were violently criticized in Switzerland as being in violation of its neutrality, and some great powers protested against Swiss deviations from its duties under the Covenant. This motivated the Swiss Government to ask the League Council to exempt it also from economic sanctions. The Council, in May 1938, complied with this request and freed Switzerland from the duty to participate in economic sanctions. This was the solution Huber had envisaged in 1919 but had been set aside by his superior.

In addition to Huber's efforts towards the accession of Switzerland to the League, he initiated an active policy for Switzerland in the field of international arbitration and conciliation which, since then, has remained a permanent feature of Swiss foreign policy.<sup>30</sup> He wanted to fill the gaps left by the Covenant and emphasize the active side of Swiss foreign policy in order to compensate for the negative impression created by the neutrality issue. Huber elaborated a model type of treaty on arbitration and conciliation, which in 1921 was sent to a number of states with the proposal that they should conclude such a treaty with Switzerland and other states. Initially, Germany was the only state which, still not admitted to the League, was eager to conclude a treaty. In the following years, however, a great number of bilateral treaties were concluded between many states in line with Huber's model treaty. In 1956, looking back on this development, Huber expressed regret that most of these treaties had never actually been applied in practice.<sup>31</sup>

On 14 September 1921, Huber was elected judge of the newly established Permanent Court of International Justice, so that he left the Department of Foreign Affairs at the end of 1921. In his memoirs of 1927 he looked back with great satisfaction at his time as consultant to Calonder and Motta, for both of whom he had the highest esteem. He considered this time as the happiest period in his professional career.<sup>32</sup> It also secured him a highly prestigious position in Switzerland as well as in other states, a fact that probably contributed to his election as judge by the League Assembly.

<sup>29</sup> Text of the Declaration in C. Gorgé, *La neutralité helvétique* (1947), at 421–422.

<sup>30</sup> Huber, *supra* note 5, at 215–235; Wartenweiler, *supra* note 3, at 129–132; Vogelsanger, *supra* note 4, at 115–117.

<sup>31</sup> Huber, *supra* note 2, iv, at 472.

<sup>32</sup> Huber, *supra* note 5, at 262–263.

## 6 Judge at the Permanent Court of International Justice (PCIJ, 1922–1930, President 1925–1927). President of the International Committee of the Red Cross (ICRC, 1928–1946)

As Huber's activities in the above two functions are considered by other authors in this symposium, I shall restrict my remarks to the question of how Huber evaluated these two periods of his life.

When Huber was elected judge of the Court at the age of 47, he was not really happy about his election, as he had only reluctantly agreed to apply as candidate.<sup>33</sup> He saw the difficulties with which the new Court would be confronted and the problems it would cause for his wife who shied away from all public honours and appearances. In fact, when he was president of the Court a few years later, she began to suffer from emotional disturbances which compelled her to spend long periods of the following decades in nursing homes in Switzerland where Huber sent her daily letters. At the end of the nine years for which Huber had been elected, he declined to be a candidate for re-election. He had several reasons for this decision.<sup>34</sup> One was his wife's health. Another was his dissatisfaction with the Court's functioning and his discontent with the Court's role in international politics which had proved to be of minor importance. He also criticized the Court for avoiding all discussions on fundamental questions of international law, with the result that its deliberations generally were not very interesting, a rare exception being the *Lotus* case.<sup>35</sup> He also was unhappy about the fact that several judges had been elected to the Court without having any experience in international law, but he admitted that during those nine years the Court had on the whole functioned reasonably well. He also deplored that the relations among the judges were very impersonal and there was a lack of collegiality. Generally, he was much happier in the cases where he acted as a sole arbitrator and could freely deal with all sides of a problem and raise questions of principle.<sup>36</sup> Yet, in spite of his criticism, it must be recognized that his membership in the Court and especially his presidency secured him an esteemed recognition at the international level – this was to be very helpful to him in his further activities.

The most important reason for leaving the Court was, however, that Huber considered it more important to devote his time and energy to the International Committee of the Red Cross, of which he had become president in 1928. He realized that he was the only person at that time able to fill this post, for which only Swiss nationals

<sup>33</sup> *Ibid.*, at 262–267. Likewise, Huber only reluctantly accepted his election as president of the Court in 1924: *ibid.*, at 299–307.

<sup>34</sup> Huber, *supra* note 6, at 8–14; Huber, *supra* note 5, at 284–292.

<sup>35</sup> Huber's opinions generally were in harmony with those of judges Anzilotti, Beichmann, and Moore, and he had a very high regard for the registrar, Ake Hammarskjöld: Huber, *supra* note 5, at 286–287.

<sup>36</sup> Huber acted as sole arbitrator in the dispute between Britain and Spain on the British claims in the Spanish zone of Morocco in 1923–1924, 2 RIAA 625, 2 ILR 157, and in the *Island of Palmas (or Miangas) Case* between the US and the Netherlands in 1925–1928, 2 RIAA 829, 4 ILR 3. Cf. Huber, *supra* note 5, at 294–296.

were eligible. He felt it necessary to overcome the dangerous cleavage between the ICRC and the newly-founded League of Red Cross Societies and to prepare the Red Cross organization for the approaching war. Huber knew that by resigning from the Court he was giving up one of the most prestigious and best-paid posts in the world in favour of strenuous work for which he would never receive any remuneration. A few years after Huber had left the Court, Ake Hammarskjöld, registrar of the Court during Huber's time and later elected judge, wrote that Huber's refusal to accept re-election was a 'real tragedy' for the Court.<sup>37</sup>

Huber's tasks as president of the ICRC differed from his earlier work insofar as they were no longer functions where individual expertise was decisive (professor, legal consultant, judge); rather, he was involved in the direction and supervision of an organization which was to grow to vast dimensions during the Second World War. When his presidency ended in 1946, he did not record his personal impressions – the organization itself issued a report on its activities in the Second World War<sup>38</sup> – but in his 'Epilog' of 1959 he gave a short survey of his activities in the ICRC and expressed his gratitude to his colleagues and collaborators for their efforts to overcome the difficulties in protecting and assisting the victims of war all over the world.<sup>39</sup> Although his personal ambitions had disappeared, he was happy about the positive results achieved and he appreciated the many honours conferred upon him or the ICRC, such as 11 honorary doctorates awarded to him, and the Peace Nobel Prize of 1944 conferred upon the ICRC.<sup>40</sup>

## 7 Final Years in Zurich (1947–1960)

Huber spent his final years in Zurich living in the house built by his parents, where he had spent his youth. In the summer months he generally moved to Wyden, which had been rebuilt after the fire of 1944. The United States had paid damages for the destruction caused by its aircraft. He was happy to have the members of his family around him and his wife was able to join him more often. In Zurich Huber took on a remarkable number of activities: he took part in the meetings of all the associations in which he had been a member since earlier times, he visited the University and other institutions to attend conferences and to give speeches. Whenever a general discussion took place following a lecture or at a meeting of an association he generally took the floor and impressed the participants with his broad knowledge both of historical and of current events.

He also wrote many articles on legal, political and historical subjects, which are reproduced in the fourth volume of his Collected Papers. Among the articles on

<sup>37</sup> Hammarskjöld, 'Max Huber zum sechzigsten Geburtstag', *Neue Zürcher Zeitung*, 28 Dec. 1934, No. 2359.

<sup>38</sup> *Rapport du Comité international de la Croix-Rouge sur son activité pendant la seconde guerre mondiale (1 septembre 1939–30 juin 1947)* (1948), 3 vols. Huber himself wrote the first chapter on 'Principes d'action et fondements de l'oeuvre du CICR', i, 7.

<sup>39</sup> *Supra* note 6, at 18–28.

<sup>40</sup> *Ibid.*, at 46–48.

international law, we find for instance the essays ‘*Das Völkerrecht und der Mensch*’ (International Law and the Human Being), 1952, ‘*Wandlungen des Völkerrechts und Probleme der Erforschung seiner Geschichte*’ (Changes in International Law and Problems of Researching its History), 1956, and ‘*Prolegomena und Probleme eines internationalen Ethos*’, 1956. Huber also wrote a report for the *Institut de Droit international*, of which he had been a member since 1921, entitled ‘Study of Amendments to be Made in the Statute of the International Court of Justice’, which was presented at the Session of the *Institut* in Aix-en-Provence in 1954.<sup>41</sup>

An important aspect of Huber’s thought which became more visible in the final part of his life was his religious belief. He had always been a faithful member of the Protestant Church of Zurich, but the decisive event leading to his new insight into the basis of life was a double pneumonia which, in the spring of 1922, left him hovering for 10 days between life and death. His mind was clear during the illness and as he pondered the futility of all the aims and endeavours that had guided him up to this moment, he felt the need to place his life under the guidance of God.<sup>42</sup> He kept to this decision, though he hardly ever spoke of it in his contacts with other people. He became more involved with church affairs, became an active participant of the ecumenical movement and increasingly turned to theological questions. He wrote several studies on questions of this kind, such as ‘*Mensch und Tier. Biblische Betrachtungen*’ (Mankind and Animals: Biblical Observations) in which, based on his lifelong affection for animals, he examined all the references in the Bible to animals. Another book, entitled ‘*Laientheologie. Gedanken eines alten Mannes über Probleme des Glaubens*’ (Layman’s Theology. Thoughts of an Old Man on the Problems of Belief) expresses his beliefs based on his life experiences.

Max Huber died on 1 January 1960, at the age of 85. In the days and weeks that followed his death, most Swiss and many foreign newspapers and periodicals published articles in his commemoration showing that he was indeed one of the most eminent and revered Swiss personalities of the century. But somewhat sadly, once this last veneration died down, his name quickly lost its broad resonance. His life work had been too diverse, lacking one particular focal point, so that no clear distinctive image of him was left behind. Moreover, he had been awarded so many distinctions and other marks of esteem during his lifetime that no further efforts in this direction were undertaken posthumously. But even though his name has largely disappeared, his impact on Switzerland’s role in the international community, on the functioning of the International Court of Justice and on the guiding principles of the Red Cross lives on.

<sup>41</sup> 45 *Annuaire de l’Institut de Droit international* (1954), i, 407 (Rapport et observations des membres), ii, 60 (délibérations), 296 (résolution).

<sup>42</sup> Huber, *supra* note 5, at 274–276.