

Hersch Lauterpacht: A Personal Recollection

Sir Robert Jennings

It is quite right to couple recollection of Hersch Lauterpacht with Arnold McNair. It was the McNairs who befriended the Lauterpachts when they arrived as immigrants in England, and generally looked after them and encouraged them in many ways in those early difficult years. They became very close friends and that friendship remained strong until Lauterpacht's premature death from cancer in 1960. In many ways, it must have been rather an attraction of opposites, for they were very different. For Lauterpacht, the subject of public international law (he hardly found occasion to mention private international law) was the thing. McNair, on the other hand, was convinced that a student must first thoroughly study a municipal system, including constitutional law, after which he might then turn to the study of public international law. It was McNair who insisted that Lauterpacht, even after he was already established in Cambridge as the Whewell Professor, should take the bar examinations and get himself called as a barrister, thus having a professional qualification in English law. I remember Hersch Lauterpacht telling me, in his study on the upper floor of his home (the house where the McNairs had formerly lived) how bored he was with the study of the English law of contract for the purposes of the written examination for the Bar. But of course he stuck to it, for he would never have failed to do anything that Arnold McNair thought it important for him to do. And he was called to the Bar of Gray's Inn in due course. For McNair, to have a professional qualification in English law, whether barrister or solicitor (he himself had begun as a solicitor), was much more desirable for one teaching law in an English University than to have a purely international law qualification, such as election to the *Institut de Droit International*. Besides, he would not have understood at all a sense of boredom with the elements of the English law of contract, which he himself had taught, and which he found a source of tireless fascination.

I myself knew McNair almost two decades before I came across Lauterpacht. I attended McNair's lectures in international law as an undergraduate in 1933, when I was reading for Part I of the Law Tripos. In those enlightened days, thanks very largely to the great influence of McNair and indeed also of Harold Gutteridge, public international law was a compulsory subject. It was admiration for McNair that decided me to read that subject in my fourth year reading for the LLB degree, then a

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postgraduate degree in the University of Cambridge, the first graduation degree being, as it still is, the BA whether for students of the arts, of law or of science. After a further year at the Harvard Law School, then in its golden age, I found myself in the role of Assistant Lecturer at the London School of Economics, whence Lauterpacht had just departed for the chair at Cambridge. So again I did not meet him, for when I myself returned to Cambridge it was to teach mainly English law, and even some Roman law. And in 1940 I found myself in the British Army for what we called 'the duration', which turned out to be until 1946.

So it was only when I returned to Cambridge from the Army, at the end of the war, that I got to know Lauterpacht. It was not at all easy to resume life as a don after six years of army life. Lauterpacht helped and encouraged me in every possible way and he became a very close friend; closer than McNair, for much as I admired McNair I was still very much in awe of him. I am sure neither Lauterpacht nor I would have taken any serious step in our careers without first consulting McNair – most likely over tea and dry biscuits in McNair's study. Lauterpacht was probably closer to McNair than I ever was. Although in my approach to international law, I was, and still am, much more a McNair man than a Lauterpacht man, Lauterpacht was a much closer friend. Indeed, I think he was probably the closest friend I ever had. I spent a lot of my time at Lauterpacht's house, and enjoyed many lunches there, always with very interesting company. It was thus that I first met Wilfred Jenks, and S.W.D. Rowson as Shabtai Rosenne then was, and Alona Evans. And it was in the Lauterpacht house that I got to know Fitzmaurice much better than I had previously known him, for of course Fitzmaurice was a great admirer of Lauterpacht, and indeed also of McNair.

Lauterpacht would sometimes summon me for an afternoon walk in the country round Cambridge. I knew very well that the walking would not be very serious, but the talking would be. Sometimes it would be about something that I had to do, such as to write another article for the *British Year Book of International Law*, of which he was then sole editor. At other times, he would suggest a subject I might write about. My article on codification was such a piece. It was entirely my article, but the subject had been his idea. At times he would want to talk about something that had upset him. One such occasion followed the publication of Charles de Visscher's *Theories et réalités en droit international public* in 1953. I had not read it at the time that we had this long 'walk' about it. It seemed to Lauterpacht to be a mischievous and subversive work, though I think most people would now agree that it was one of the most important international law works of the time. (It should be added, however, that Lauterpacht, as editor of the *BYBIL*, printed a superbly written, critical but highly appreciative review of de Visscher by the late Dr. Mervyn Jones, a pupil and disciple of McNair, whose early death from diabetes was a dire loss to international law and to Cambridge international law in particular.) There were also times when Lauterpacht would want to talk about quite different matters: faculty politics and its members, family, music, especially some new record he had bought, his plans for lectures or publications, and so on.

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Hersch Lauterpacht's scholarly work, whether in books, articles or judicial opinions, is renowned, and certainly needs no comment from me. But there was another side to his work in international law about which I do want to say a word. He was a remarkable teacher, something that great scholars and thinkers by no means always achieve or even wish to achieve. Lauterpacht was a firm believer in the virtue and efficacy of taking trouble over things. This certainly applied to his teaching. The lectures I think he most enjoyed were the twice-weekly ones of the general course in public international law. There was always a large audience, mostly the undergraduates just beginning on international law, for whom the lectures were primarily intended, but there would also be a sprinkling of graduates and dons who found that Lauterpacht's treatment of the elements gave them plenty of new ideas to think about. He liked to lecture late in the morning, not earlier than 11 o'clock. The reason for this was that he would set aside the earlier part of the morning to look over his already carefully prepared lecture notes once more, immerse himself again in thinking about the morning's topic, and make sure that the organization and structure of the lecture were right. These lectures always had some fresh ideas or illuminating ways of explaining things, and they were models of style and presentation.

Great and learned scholar that he was, he still had complete sympathy with beginners and their difficulties. He *liked* young people. He demanded complete attention in his lectures, for international law was for him a very serious matter indeed. One did not expect any of the sly, pawky jokes that lightened McNair's also distinguished, but very different, lectures. It was Lauterpacht himself who once told me of an occasion in one of his lectures when he felt he had been a little hard on two undergraduates in his audience. These two, a young man and a young woman, annoyed him by whispering together and smiling at each other, generally seeming to be more interested in each other than in international law. So Lauterpacht stopped his discourse and gently but firmly rebuked them, after which they gave themselves soberly to their note-taking. At the end of the lecture they both came up to him to apologize, and explained that they were very sorry but that it so happened that they had become engaged to each other that morning before they came to the lecture. Lauterpacht told me he was then so sorry to think that he might have cast even just a light shadow over their very special morning that he went straight out and bought them a small piece of silver as an engagement present. It was typical of his very warm heart, his kindness and generosity.

Lauterpacht also ran a famous weekly seminar for graduate students of international law. He would usually come along to these meetings with some problem – possibly some legal conundrum arising from a case he was involved in – and this would provide the stimulus for a general discussion. He did not necessarily expect to reach firm conclusions. He would be happy if he had demonstrated to us that there was a lot more to this particular question than we had previously suspected. I remember he once began a seminar by asking a simple question. I forget what the question was, but it was one to which the usual answer could easily be found in almost any text book. Some member of the seminar then confidently provided the

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stock answer. There followed quite a longish pause – Lauterpacht was a master of the pause, both in lectures and seminars. Then, with a puzzled frown, he said in his strong accent (which he never lost) ‘Is that so?’ Another pause and another ‘Is that so?’ Then it gradually dawned on the members of the seminar that perhaps the stock answer to this question did not go to the root of the matter, and that there was something here that called for much more careful thought than had usually been given to it. This encouragement to re-examine some of the stock elementary propositions was a very effective, as well as a very healthy, teaching tool.

On the question of accent, Lauterpacht had apparently been quite unconscious that he still had an accent in his spoken English until he was persuaded to give a legal talk about some problem of international law on the ‘Third Programme’ of the BBC – that former glory of English civilization, alas no more. He told me that, on the day it was broadcast, he settled down at home to listen to his own talk. He was apparently astonished to hear what seemed to him an altogether strange voice with a strong continental accent. He acted quickly. He turned off the wireless, got himself a whisky and decided then and there never to broadcast again. And indeed he never did.