PROLOGUE AND INTRODUCTION

This is the life of Sir Hersch Lauterpacht, who lived from 1897 to 1960. In his time, he was regarded, and still is, as a pre-eminent international lawyer devoted to the advancement of peace between States on the basis of law. To that end, he rejected the unbridled assertion of sovereignty by States and emphasised the fundamental rights of the individual. He was a prolific legal writer whose works carried great authority. His life fell into four parts: his early years in Eastern Europe from 1897 to 1923, followed by his marriage and emigration to England where he began a distinguished academic career. After the end of the Second World War, he became more involved in the profession of international law in which he used his great knowledge and literary capacity to powerful effect. Finally, he spent five years as a judge of the International Court of Justice, dying in office at the early age of 62.

His life was one of almost unremitting labour, on his own behalf, on behalf of his students and on behalf of governments or other clients. And coupled with this was an intense devotion to his wife, Rachel, and his only child, the author of this book.

The biography draws heavily on a major accumulation of family correspondence exchanged between Hersch, Rachel and myself over a period of nearly thirty years. It is supported by consideration of his writings which tell us much about his attitude towards life. To a limited extent this material is supplemented by my own personal knowledge, but it must be realised that there are many facets of his life of which I can have no direct knowledge, having been too young or away from home. Nonetheless, I venture to believe that there is much in these pages that will interest not only lawyers but also non-lawyers who will perceive in them many wise thoughts.

Let me elaborate now on some of the matters touched upon in the preceding paragraphs.

The distinctive smell of mothballs for long pervaded my study. It came from the large cabin trunk left behind by Hersch's widow, my mother, Rachel, when she passed away in 1989 and which, regrettably, was not seriously examined until 2003. In it she stored a huge accumulation of family correspondence – mainly letters passing between Hersch, herself and me. Some go back to the 1920s, and the collection continues even beyond Hersch's death in 1960. Rachel had thrown nothing away that came from him or me or from some other members of the family. When

I was away in the United States as a schoolboy during part of the Second World War, my mother told me to keep and bring home all the letters that I received from her or from my father. Most of them were in the trunk – well preserved.

Much use has been made of excerpts from these letters; the facts gleaned from them contribute substantially to this narrative. I have limited myself, so far as possible, to those written by Hersch, using those written by Rachel and myself only where they provide detail relevant to the life of Hersch. As it is, the reader may possibly feel that there is too much that is unimportant in the passages that are quoted. But I venture to justify them as showing how the man lived and thought, particularly during the difficult period of the Second World War when he was separated from Rachel and myself. Even so, my mother's letters must not be completely overlooked. She was the most active correspondent, writing to me almost every day; my father wrote frequently but not so often. My mother's letters shed much light on domestic matters and the conditions under which she and Hersch lived, especially after her return to England in March 1943. They speak incidentally about what Hersch was doing. The excerpts evidence his preoccupations, some of which may seem unimportant to us, but were not to him. However, what matters is that he overcame the complications of life that these fragments evidence and succeeded in continuing with creative work during a period of terrible outside upheaval. Also, the extracts from his letters to me not only tell us quite a bit about what he was doing but also, more importantly, about his own character and ambitions as reflected largely in his ambitions and concern for me. I have considered carefully the propriety of including so much that is really part of my life, but have concluded that his letters to me provide us with a significant insight into his personal qualities and therefore cannot be neglected. They may also be of interest to other parents and their children who may gain much from the guidance and wisdom they contain.

The extensive use of these letters has led to some unevenness in the length of the chapters and some unavoidable lack of uniformity in their approach. For example, those covering the early years are relatively short when compared with those devoted to the 'War Years'. This reflects the differing quantities of original material available for the particular years. There is little on which one can draw for Hersch's background and early years. On the other hand, during the War period, 1939–44, when the family was separated, there is a large and revealing body of intra-family correspondence. In the period between the end of that War and Hersch's

election to the International Court of Justice, there are a number of well-documented episodes, which are treated at length.

I have hesitated to call this work a 'biography', as in some sections it is little more than a bare recitation of facts in the nature almost of a deposition. I claim neither the skills nor the experience, beyond a half-century of preparing legal arguments and opinions, to write a text that by its presentation, ideas, imagination, vocabulary and general style can be called 'literature' or, more precisely, 'biography'. Yet there is here a story that must be told – or at least material that must be presented to reveal the story – of the life of a man not significantly in the public eye, but nonetheless a leading figure in the world of international law for nearly forty years and whose influence has long survived his death. This is the life of a man who was entirely dedicated to the exposition and development of international law, not as an abstract academic subject but as one which, inspired by deep convictions of international morality, he saw as playing an essential role in international society, in the maintenance of peace, in the resolution of disputes and in the furtherance of human rights. It does not seem right to allow filial modesty to prevent me from openly acknowledging his greatness as a lawyer and a man.

In the years when Hersch researched, taught, wrote and adjudicated – from 1920 to 1960 – international lawyers were barely aware of some of the important topics that have become so familiar in the half-century since his passing. Although he was a pioneer in the development of the international protection of human rights, publishing in 1945 the first systematic set of proposals on that subject, it was not one that then attracted the intense attention that is now reflected in the adoption and constant application of international conventions and national legislation such as the European Convention on Human Rights and Fundamental Freedoms 1950 and the Human Rights Act 1998 in the United Kingdom. Nor was the need for international protection of the environment more than barely recognised then; and the numerous declarations and treaties on the climate were yet to come. The concept of international criminal law, though understood, rested on a limited foundation; and the emergence of permanent international criminal tribunals beyond those that operated in the aftermath of the Second World War lay in the future. The use of force in international relations, though formally prohibited in the United Nations Charter in 1945, had not by 1960 become the commonplace of everyday conversation that it has in the wake of events in the last decades of the twentieth century and the first decades of the twenty-first.

But all the advances and changes in the subject notwithstanding, the details of Hersch's life may well be of interest to many – not only to international lawyers but also to those who find meaning in the story of the absorption into British society of a person born and bred in an entirely different one. The lives of many biography-worthy lawyers are, for the most part, written round the famous trials or political events in which they were involved. Hersch's life, though largely affected by various public and academic developments from 1919 till his death, reflects activity with a lower profile. He did not court publicity. Only occasionally did he write letters to the newspapers – and then only in relation to some major international legal occurrence. And there were many events – of greater importance – that did not engage his attention in this way. But he did play a significant, if not loudly bruited, role in relation to quite a number of important international legal developments which will be mentioned later.

His story has not been told in detail before. I have allowed myself to embark on it because such evidence as there is of what he did can usefully be supplemented by the first-hand knowledge of one who, as his only child, had close contact with him between 1928 (the year of my birth) and 1960 (the year of his death) and who, by reason of my own continuous involvement in the same subject for over sixty years, is well placed to provide additional information.

When my father passed away in May 1960, I decided to produce a memorial to him in the form of a collection of his articles presented systematically, with a view to providing some kind of substitute for the comprehensive treatise on international law that he intended to write but, alas, never did. The outcome has been the five volumes of *International Law – The Collected Papers*, which, together with editorial notes, were published respectively in 1970, 1975, 1977, 1978 and 2004. The long delay in the completion of the series is to be explained by my own deep and competing immersion in academic and professional work in the field. My father had considered producing such a collection during his life, but had been put off both by the size of the project and by the apprehension that he might have to subsidise the publication. He was right about the size, but wrong about the need for a subsidy. The original printing of the collection has sold sufficiently well to justify a reprint.[1]

As I prepared the final volume of the series, and especially the chapters reflecting Hersch's work during the Second World War on neutrality and the law of war, I was led to look more closely into the details of his life

[1] Reprinted by Cambridge University Press in paperback, 2009.

during that period. In so doing, I concluded that, though there have been a number of substantial articles that have provided some outline of his life as part of a consideration of his academic work, a fuller account of what, by any standard, was a remarkable career entirely dedicated to international law should not be foregone.

A number of scholars have contemplated writing such a biographical study, and I sincerely wish that at least one of them might have been able to do so. But they, like me, have felt the compelling press of other obligations. In consequence, I have reached, not without much hesitation, the conclusion that I ought myself to attempt the task. There are, of course, many good reasons why a son should not write the life of his father. The principal difficulty lies, of course, in approaching the subject with a sufficient degree of detachment and objectivity. But there are certain countervailing considerations of which the most important is my first-hand recollection of much of Hersch's activity (but regrettably by no means all) and, no less, of the major role played in his life by his devoted wife, my mother Rachel.[2]

Also, as I read the letters contained in the cabin trunk, particularly those exchanged when we were separated from each other during the Second World War, many struck me as being too personally intimate to fall in their entirety under the scrutiny of even the most benevolent stranger to the family. And so I concluded that their perusal and use was a task that I alone should undertake.

The pages that follow will, therefore, be more personal in form and content than would be those of a memoir written by another hand. Though not neglecting Hersch's substantive work, they will be less concerned with its content than would be an account penned by someone writing principally on the basis of his academic writings and judicial opinions. Such work has already been done on a significant scale in articles written by Lord McNair, Dr C. W. (Wilfred) Jenks, Sir Gerald Fitzmaurice, Ambassador Shabtai Rosenne and, more recently, in a detailed and illuminating manner by Professor Martti Koskenniemi.[3]

In approaching my task, I have thought it appropriate to include some detail about Hersch's family, friends, activities and condition of life – certain aspects of which may in places appear to be excessively detailed or to border on the trivial. However, I believe this exposition to

[2] One may be reminded of a line in a review of Edmund Gosse's *Father and Son*: 'Let no one suppose that the spirit of this book is unfilial. It could not have been written except by one to whom the filial relation was most dear and sacred.' Quoted by James Hepburn at p. xii of his Introduction to the edition of *Father and Son* published by Oxford University Press in 1974.

[3] See the list of works about Hersch in Appendix 2, p. 443, below.

be justified by the consideration that others may find value in anything that sheds light on the character, thought and activity of one who, being Jewish, came, with commendable prescience – these being pre-Nazi days – from Eastern Europe to settle in England in 1923; whose mother tongue was not English; who within fourteen years of his arrival here was elected to one of the two principal chairs of international law in the United Kingdom; who within a further seventeen years was selected as the British judge on the world's principal tribunal – the International Court of Justice; who throughout this period continuously produced international legal writing of the highest scholarly originality and calibre which has led to the widely held view that he was one of the most significant international lawyers of the twentieth century; who did all this while adhering openly, though not assertively, to his Jewish faith and Zionist convictions; and who during the Holocaust lost virtually the whole of the family that remained behind in Poland and whom he could not persuade to follow him to England.

A word may be said here about Hersch's Zionism. In his early years in Lwów, Vienna and London, the Zionism that meant so much to him was a reflection of the political Zionist movement in the late nineteenth century following the publication of Herzl's seminal work, *Der Judenstaat*.[4] The Zionism of the first decades of the twentieth century was rather different from the Zionism that describes the political ideals and activities of many Israeli 'Zionists' of today. Hersch supported the establishment in Palestine of a secular, liberal-democratic Jewish state. He spent many of his early years with fellow students who taught themselves without the aid of teachers, studying the history of Zionism, the geography of Israel and the Hebrew language. His application to the Zionist Executive Committee in London and the letter of support written by the Executive Committee of the Zionist Organization in Eastern Galicia both attest to the fact that Hersch was preparing himself for 'activity in Eretz Israel in the future by learning the work of the Zionist Organization and its practical administration. In addition, he would like to enrich his knowledge by studying the subjects of administration and sociology.'[5] The supporting letter also notes that 'ideological motives alone bring our comrade to seek a position in the central office in London'.

There is nothing to suggest that Hersch would have weakened in his support of Zionism once the State of Israel was established. Indeed, the contrary is manifested in the first of the two lectures that he gave

[4] See generally *Encyclopaedia Judaica*, *sub. tit. 'Zionism'*, vol. 16, pp. 1031–182 (Jerusalem, 1978).
[5] Letter to the Central Zionist Executive Committee in London, 23 June 1920.

in Jerusalem in 1950 at the twenty-fifth anniversary celebration of the founding of the university there.[6] But it must be a matter of speculation as to whether he would have remained uncritical of the State in the events that have followed during the ensuing half-century. It must not be assumed that he would have felt comfortable with the recent changes, or accepted them without question. It can perhaps be said that Hersch's support of Zionism was driven by the need to protect the Jewish minority against anti-Semitism and individual discrimination. One of his earlier contemporaries recalls that Hersch 'was angered by the social inequality, opposed to chauvinism and dreamed of a Jewish Renaissance based on the spirit of social justice'.[7] This desire to 'protect minorities' and work towards social justice no doubt underpins Hersch's future work on human rights, where he maintained that it was the role of international law to protect individuals if the State fails. A Jewish State would protect the Jewish minorities; international human rights would protect all minorities from across the world.

Views may differ as to whether it is really necessary or desirable to present all the detail that appears in the pages that follow. But many of the letters reproduced will shed valuable light on the substantive topics covered that would not otherwise be available. I cannot assume that the present volume will be the last word about Hersch's life and that the material here presented will not be of value to others.[8]

These details will, I hope, prove interesting to readers who are not international lawyers. As will be seen from the extensive quotations from his letters, Hersch was a man of remarkable insight, balance, sensitivity and foresight, capable of great understanding and affection and of expressing himself delicately, directly and clearly. Moreover, his letters of advice to me, particularly about preparation for examinations and the technique of writing, may be studied with benefit by other young persons.

A number of examples of these qualities will be found in one particular source. This is the correspondence between Hersch and C. W. Jenks. They met in about 1934 when both were preparing for their Bar exams.

[6] *Collected Papers*, Vol. 2, p. 159.

[7] Dr Joseph Roth, in a letter sent to Rachel after Hersch's death.

[8] This approach coincides with the opinion expressed by Professor D. H. N. Johnson in a review of McNair's British Academy obituary of Hersch (*Proceedings of the British Academy*, vol. 47, pp. 371–85): 'Even if to the present generation the contributions of Hersch Lauterpacht to international law are so well known as scarcely to need recording, it should be remembered that to future generations it will be of interest to discover not merely what a man wrote – which may be easy enough – but also what were his origins, the various experiences that he underwent, and last but not least his influence upon, and standing with, his contemporaries.' (1964) 12 *ICLQ* 1063.

There then followed a friendship and correspondence extending over twenty-six years until Hersch's death. At the beginning, Jenks was a legal adviser in the ILO in Geneva. In due course he was promoted to become the principal Legal Adviser of the Organization and eventually was elected as its Director-General. Jenks was reputed never to throw anything away and he left behind him the originals or copies of most of the letters exchanged between him and Hersch. It is the correspondence of two giants of legal literature for Jenks, though heavily engaged in official duties, was consumed by an irresistible urge to write academic works on international law, something that he did with imagination and brilliance. The correspondence is preserved in the archives of the ILO and runs to over 300 pages. So far as Hersch's life is concerned, the letters reflect, amongst other matters, the vast amount of work on which he was engaged at any one time and his capacity for constructive friendship which took the form, amongst other things, of providing Jenks with constant and detailed criticism of his emergent writings and of telling him of the possibility of academic preferment, first in London and later in Cambridge – opportunities which Jenks felt unable to take because of his commitment to the work of the ILO.

One important issue has required a decision from the beginning: whether to present matters on a subject-by-subject basis or to do so in approximately chronological order. With the exception of Chapter 8 towards the end of the volume, devoted to Hersch's extensive work on human rights, the latter approach has seemed preferable, principally because it can convey more cogently the number of matters with which he was dealing at any one time. He was able to move from item to item with seeming ease, but worked on each with impressive concentration.

Time has proved to be both an encouragement and an impediment to the completion of this work. 2010 is the fiftieth year following Hersch's death and I felt it important that the volume should appear not later than this year. But, as one writes, additional material keeps coming to hand and, although it does not change the story materially, it requires mention for the assistance of others who may wish to go over parts of the same ground. There will, therefore, be many sections of the work that could have been improved and enlarged if this time constraint had not been so pressing. But I have felt that, even marked by imperfection, it would be better that the work should appear sooner rather than later.

CHAPTER 1

BACKGROUND AND EARLY YEARS, 1897–1919

Hersch Lauterpacht was born on 16 August 1897 in the small town of Żółkiew in Eastern Galicia. At that time, Galicia was the easternmost province of the Austro-Hungarian Empire, having been acquired by Austria as a result of the Partitions of Poland in 1772–96. In 1919, it reverted to its previous status as Polish territory, only to pass to the Ukraine in the aftermath of the Second World War.[1]

Hersch's parents were Aron Lauterpacht and Deborah Turkenkopf. Although they had been married in a synagogue, this had not been accompanied by a civil process. As a result, Deborah was not officially 'Lauterpacht' and retained her maiden name. It is not known when she came to be known as 'Lauterpacht'. For the first few years of his life, therefore, Hersch's surname was that of his mother – 'Turkenkopf'. His given name at birth was 'Hersz', which was transliterated into 'Hersch'. This was the name by which he was known to all except his childhood family and friends and his wife, who called him 'Zvi'.[2]

Hersch's father, Aron, was in the timber trade. Much of his business was conducted in the northern Polish ports of Gdynia and Danzig. In the latter he managed a factory making plywood boxes. During the years of the First World War, he also managed a large sawmill in what was then known as Lemberg (later Lwów and now Lviv), the capital of the province of Galicia.[3] Though he was far from being a wealthy man, he was able to meet the costs not only of Hersch's primary and secondary education but also of his time at university, first in Lemberg and then in Vienna. Indeed, even after Hersch's marriage in 1923, some support was provided until the drastic economic crisis that hit Poland in 1929.

The family lived modestly, first in a small house in Żółkiew, and later initially in a six-room flat in Lemberg. Aron was a devout Jew,

[1] See p. 17 below.

[2] In fact, both names mean the same thing, 'deer' or 'gazelle', with 'Hersch' being the Yiddish and 'Zvi' the Hebrew word.

[3] References to the capacity in which he was involved in the trade vary. Some say he was a manager, others that he owned the factory, but it seems unlikely that he would have been affluent enough to have owned it.

performing his ritual prayers each morning and going to synagogue on Saturdays. Hersch's mother, Deborah, was likewise very observant of the Jewish faith and requirements. As can be seen in photographs, she was a fine-looking woman, reflecting a strong character. She dressed modestly and had her hair cut short and covered by a wig. She kept a strictly Kosher home, separating milk and meat products and excluding forbidden foods such as pork and shellfish. Yiddish was the language spoken in the home. She devoted herself entirely to her family, to their care, upbringing and education. But her house was not a dull place. There was a piano, in the playing of which Hersch was able to develop some skill. There were books and a general atmosphere conducive to reading and serious discussion, engendered also by reason of the family commitment to, and belief in, the Jewish faith and dominating respect for study and learning. The distractions of television and perhaps even of a wireless did not then exist. There was no encouragement to waste time and, as can be seen from the many activities in which Hersch engaged, he wasted none. There was a secure home atmosphere, even though there might be uncertainty and danger in the streets outside.

Not only were Aron and Deborah devoutly Jewish, they were also inspired by an intense Jewish nationalism, with which in due course Hersch was imbued. Though he did not follow his father in formal religious observance, he was throughout his student days active in defence of Jewish interests and in the promotion of the Zionist cause. In 1916, he revived the Zeirei Zion[4] movement in Lemberg and formed the Herzliah Society of Zionist Youth. Later, he became leader of the Zionist undergraduate association, HAZ. In November 1917, he was arrested for arranging a demonstration to celebrate the publication of the Balfour Declaration. As this demonstration was seen as a pro-British move at a time when Austria was at war with Britain, he was tried by a military court, but was acquitted. (The judge was Dr Israel Waldmann, a well-known Zionist.) His later attraction to Rachel, his future wife, was also, no doubt, influenced by the fact that she came from Palestine

[4] Meaning 'Young Men of Zion', Zeirei Zion was a Zionist and modern socialist labour movement dating from 1903. It supported practical, constructive Zionism based on personal fulfilment through *aliyah* (a Hebrew word meaning 'a Jew who returns to their homeland, Israel'), pioneering the use of Hebrew, supporting the interests of the working masses and engaging in practical activities (such as collecting funds for the Jewish National Fund). Although the movement was particularly active in Russia (supporting the struggle to liberate Russia from the czarist autocracy), it also had a presence in Poland and Lithuania, where it sought equal rights and national autonomy for the Jewish people. Zeirei Zion also played an important role in the organisation of Jewish self-defence units (especially in response to the increase in pogroms) and in other cooperative measures. See *Encyclopaedia Judaica, sub. tit. 'Zionism'*, vol. 16, pp. 1031–182 (Jerusalem, 1978).