

## IN MEMORIAM: JUDGE MANFRED LACHS (1914–1993)

### THE UN YEARS: LACHS THE DIPLOMAT

Judge Manfred Lachs died on January 14, 1993, in his seventy-ninth year. He had an unparalleled career in international law for nearly fifty years. A judge of the International Court of Justice for twenty-six years—and a past President—he served longer than anyone else on the Court or its predecessor court. Before his election to the Court in 1966, he played a leading role in the major international legal organs of the United Nations. He was also a scholar and teacher, the author of numerous books and articles. Fluent in at least five languages, he moved easily in international circles, with grace and discretion, a natural conciliator. It is no wonder that he received numerous honors from all over the world, many in this country (including honorary membership in the American Society of International Law).

Manfred Lachs was also a very private person. In the forty-six years I knew him, he said little about his personal life. But it seems appropriate here to note how his own life was marked by the political turbulence of the twentieth century, and its human tragedies. He was born on the eve of World War I in a town (Stanislau) in eastern Galicia, then part of the Austro-Hungarian Empire, a few years later part of Poland, and in 1939 made part of the Soviet Union by the Nazi-Soviet pact; today it lies in the Republic of Ukraine. Out of this small, poor, polyglot region came a number of eminent international lawyers. I first learned this singular fact from Sir Hersch Lauterpacht, himself from that area, back in 1948. Today Judge Lachs (and, I should add, Professor Louis B. Sohn) would be included among the notable international lawyers who had their origins in Galicia.

Manfred Lachs's own formation was Polish in the interwar years. The son of a lawyer, he received his law degree from Kraków University. He took pride in Polish culture and intellectual history, and in the Jewish contributions to that history. He broadened his own legal education with studies in Vienna, in France at Nancy, then at the London School of Economics and in Cambridge. He often expressed his admiration and affection for English law. When World War II broke out, he was luckily in London, escaping the tragic fate of his family, which was completely wiped out by the Holocaust. War crimes were the subject of his first book (1945) and he began his international legal career as one of the Polish exile government's delegates to the United Nations War Crimes Commission that sat in London from 1944 to 1946. Later he took part in the Nuremberg prosecution regarding Nazi acts in Poland.

His association with the United Nations began in 1945 as a Polish representative to legal bodies and, for the next two decades, he was an influential and popular figure in the Organization and in the major international conferences of a legal character. He was elected three times (with general support) as Chairman of the Legal Committee of the General Assembly, a unique distinction. He was also elected to the International Law Commission and, for a number of years, he chaired the Legal Sub-Committee on Outer Space, where he was influential in building the consensus that resulted in the major features of outer space law. He retained his interest in that area—and was a leader in the international scholarly activities concerning space law.

A salient feature of Lachs's career which cannot be overlooked is his service as a Polish delegate in the decades of Soviet domination of Poland and in the Cold War period. As a Polish diplomat, Lachs adhered to the official line, whatever his personal views may have been. His diplomatic skill, urbanity and Western languages were assets to the Soviet bloc. Surely there were personal tensions for Lachs. He clearly welcomed the occasional opening for some agreement between the blocs—but as a bridge, he was more likely to be stepped on than to connect. Nevertheless, he did manage to maintain a broad range of Western friends and intellectual contacts. He developed a friendship with Richard Nixon and was his guest at the White House. His contacts with universities in the United States and other Western countries were extensive and probably viewed with some suspicion by the apparatchiks in the East.

Yet even in the Cold War some significant agreements were reached. Lachs had a role in nuclear disarmament; he was a Polish delegate in the negotiation of the Nuclear Non-Proliferation Treaty and a leading proponent and drafter of the Polish initiative for a nuclear-free zone in Europe (the Rapacki Plan). Together with his active role in the United Nations, Lachs carried on an academic career at Warsaw University and fostered the careers of many younger Polish international lawyers. His strong interest in teaching was manifested in his *The Teacher in International Law*, a learned and distinctively multicultural book that received the ASIL award for creative scholarship in 1982. He also had an influential role in the Hague Academy and the Institute of International Law.

Lachs's twenty-six years as a judge merit more extended analysis than is possible here. We have reason to infer that he was a particularly influential judge in building majorities in the Court. In his long period on the Court, he rarely dissented—in fact, only twice. One such dissent, in the *North Sea Continental Shelf* cases, contains a penetrating discussion of the creation of customary law, which should be required reading for students. The record also shows that he differed with his Soviet colleague on several occasions, a fact worth noting in view of the pointed aspersions on his independence made by the U.S. Department of State after the *Nicaragua* case and similar criticism made in ASIL meetings. Lachs was deeply wounded by these attacks and made his feelings clear in separate opinions and legal journals, including this one.<sup>1</sup>

Lachs's positive contribution to the Court was noteworthy in the *Barcelona Traction* case for reference to the *ergo omnes* principle as applied to human rights and in the advisory opinion on Namibia for reference to human rights and self-determination. In his last separate opinion, in the case concerning the *Aerial Incident at Lockerbie*, he returned to a problem that had long concerned him regarding the blurring of political and legal disputes and the necessity for the Court and the Security Council each to perform its functions without prejudicing the other's powers. While he once again recognized that the Court is the designated "guardian of legality," he also stressed the binding powers of the Security Council and its broad mandate.<sup>2</sup> With his usual optimism, he passed over the conflict raised, apparently content to leave the solution to particular decisions taken in specific circumstances.

<sup>1</sup> See his letter to the editor, 84 AJIL 231 (1990).

<sup>2</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. U.S.), Provisional Measures, 1992 ICJ REP. 114, 139 (Order of Apr. 14).

In his study of the teachers of international law, Lachs found value in all of them—naturalists, positivists, Marxists, pragmatists, apologists and utopians. In contrast, he said little about the much harsher world which he well knew—the world of tyranny, racism, anti-Semitism, violence and chicanery. It is probably no exaggeration to suggest that his personal life was sustained by his dedication to the ideal of international law. It is entirely fitting that readers of this *Journal*, along with others in all parts of our profession, should now honor his memory, for his achievement and its hopes for international law.

OSCAR SCHACHTER\*

### ON THE BENCH: LACHS THE JUDGE

Manfred Lachs died in The Hague on January 14, 1993, at the age of 78. He was the longest-serving judge in the history of the International Court of Justice and the Permanent Court of International Justice, and one of the most distinguished.

Lachs was born in Stanisławów (Stanislaw) in what became Poland, in 1914. He received the LL.M. and LL.D. degrees from the University of Kraków in 1937. He studied at the University of Vienna, received a doctorate from the University of Nancy in 1939, and was fortunate enough to be abroad when Poland was engulfed by the Nazi invasion and occupation, in the course of which every other member of his family was murdered. In England, Lachs pursued studies at the London School of Economics and joined the Polish government-in-exile, initially as secretary of a member of the Polish National Council. While on military service, he wrote his first book, a slender volume entitled *War Crimes* (1945). Not long after, he was attached to the prosecution at the Nuremberg Trials, where he played a major role in drafting the indictment for Nazi criminal acts in Poland.

Lachs was one of the small number of "London Poles" to return to Poland after the war. He was one of a still-smaller number to remain, adapt and prosper. Indeed, he became the only one of the London Poles to achieve and then maintain high position in Communist Poland. At the same time, throughout his long professional and personal life, Lachs was to nurture his many ties in the West. His years in England had particular influence upon him: on his legal thought and expression (he was fond of quoting English Law Lords and of brightening his speeches with English anecdotes), and on his dress. His courtly manners remained Polish.

Lachs attended the Preparatory Commission of the United Nations in London in 1945 and, until his election to the Court twenty years thereafter, was a leading and popular figure on the United Nations scene. While rigorously maintaining the exceptional discretion which was a hallmark of his career, he was far more open than Eastern European representatives habitually were. He took part in twenty sessions of the General Assembly, and uniquely served as Chairman of the Sixth (Legal) Committee at three, in 1949, 1951 and 1955. In the Sixth Committee, he was one of those who worked on the Genocide Convention. In 1961 he was elected a member of the International Law Commission, on which he took an active part, particularly in the Commission's work on the law of treaties, where he

\* Of the Board of Editors.