

# HERSCH LAUTERPACHT: SOME REMINISCENCES

*George Barton\**

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*We end this valedictory volume with some reminiscences by Dr George Barton QC himself. They were written at the request of Sir Elihu Lauterpacht at the time he was preparing the book *E Lauterpacht The Life of Hersch Lauterpacht (University of Cambridge, United Kingdom, 2010)*.*

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Shortly after the end of World War II, a fund was established for the endowment of a studentship, to be called the Humanitarian Trust Fund Studentship in Public International Law (the Studentship), at Cambridge University. The successful candidate was required to pursue a course of study in international law under the supervision of the Whewell Professor of Public International Law, who was then Professor Hersch Lauterpacht, and who had been one of the Electors of the Studentship. I was greatly privileged to be the first person elected to that Studentship. At the time I had completed BA and LLB degrees from the University of New Zealand, and was taking an LLM course at Victoria University of Wellington. One of my professors suggested that I should apply.

Ailsa and I travelled to England in order to enrol at Cambridge at the beginning of the Michaelmas Term, 1948. One of our first concerns was to find satisfactory accommodation. Being married, residence in College was out of the question. By a series of coincidences we were able to obtain excellent accommodation in the house of Mr and Mrs TR Henn at 32 Millington Road, Newnham. Mr Henn (Thomas Rice Henn) was a senior tutor at St Catharine's College, Cambridge, a lecturer in the English Department, and a world authority on the poet William Butler Yeats. Mrs Henn (who was herself a Cambridge graduate, Newnham College) was at the time an Alderman on the Cambridge City Council. We had answered an advertisement proclaiming: "Solution of housing problem for energetic couple". My wife supplied the energy (by becoming the cook of the household, with some other housework): my responsibility was to be the student in residence and, on Sunday afternoons, to milk Bambi the goat. We had two spacious rooms, one of which I used as a study. It overlooked the front door. The rent was minimal even in those days – only £1 a week.

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I had received a letter of congratulations from Professor Lauterpacht in which he referred to the difficulty of obtaining admission to a College. He said that he had made inquiries and told me that St John's College, the second largest in Cambridge, would be willing to have me. Professor Lauterpacht was the current editor of Oppenheim's *International Law* (6th ed, 1947), which was the textbook that I had been using in Wellington for the international law component of the LLM course. I thought of him as an Olympian.

In 1947, the year before, there was partition of the Indian subcontinent between India and Pakistan. The princely states were to opt for accession either to India or Pakistan. Hyderabad, which was surrounded by the territory of the new State of India and whose population was predominantly Hindu and therefore likely to wish to accede to India, was taking its time to make a decision. Its ruler, the Nizam, was Muslim. Relations between India and Hyderabad deteriorated. India forced the issue and sent in its armed forces to take control of Hyderabad, which sought protection from the Security Council of the United Nations from what it argued was aggression against a sovereign State. Obviously several international law issues arose and Professor Lauterpacht was retained on behalf of the Hyderabad Government to advise it on those issues. He had discussions with the former Foreign Minister of Hyderabad, who was in England for the purpose. The Foreign Minister had a daughter who was preparing for the entrance examinations at Newnham College. She needed accommodation and a suitable working environment. Professor Lauterpacht thought that Mrs Henn might be able to assist. And so it turned out. A little later, during the vacation, the Foreign Minister's son, who was at preparatory school in England, also joined the household.

At an arranged time I waited upon Professor Lauterpacht for our initial meeting and discussion. He asked me whether I had any particular topics into which I wished to pursue research. On receiving my predictable response that I did not, he suggested that I should spend several weeks in general reading, particularly the British Yearbook of International Law and the American Journal of International Law to see if there were any particular topics that attracted my interest. Then we would have another talk. That is what I did. I still have my handwritten notes of the articles that I read. At the appointed time I presented myself at Professor Lauterpacht's office. He asked me whether I now had a clear idea about what I wanted to study. When I told him that I had not, he said that he had a firm rule that he never recommended any particular topic to his research students, but he found by experience that it was a firm rule that he always broke. He then handed me a piece of paper on which he had written several topics he wanted me to consider. The last of those topics related to jurisdictional immunities of armed forces. In the course of my reading, particularly in the American Journal of International Law, I had noted a series of articles on that general subject by Colonel Archibald King attached to the office of the Judge Advocate General of the United States of America. My handwritten notes show that I had a degree of scepticism about some of the chosen topics. Although I did not appreciate it when I embarked upon my research, by the time that I finished, the subject of visiting forces had become an issue of current importance with respect to the negotiations leading to the NATO Status of Forces Agreement.

Shortly after I indicated to Professor Lauterpacht that I had chosen that particular topic, I asked him when I should come back for further discussion about it. He seemed surprisingly disinterested. I said that I thought it would be a good idea, perhaps as a discipline for myself, if we could arrange some programmed appointments – perhaps every month. He was cool to the idea, saying (to my total disbelief) that within a few months I would know much more about the topic than he would ever know. But indirectly, he set in place a regime which would ensure that I would keep him informed about progress. What he did was to ask me to write an article for publication in the *British Yearbook of International Law* (of which he was the editor) on some aspect of my research. I still have a handwritten note made at the time that I was trying to write 40 pages "by the end of February" 1949, ready to submit to the *British Yearbook of International Law*. That is what I did. I do not recall his making any changes to my draft article at all. I believe that it was probably on the basis of that article that my tenure of the Studentship was prolonged for a year and my registration as a candidate for the PhD degree was confirmed. The following year I submitted the text of another article, and that was also published in the *British Yearbook of International Law*.

There were other discussions, and even closer collaboration, on an entirely different front altogether. He was at the time the editor of the *Annual Digest and Reports of Public International Law Cases* and, in that capacity, was assisted by a team of contributors who accepted responsibility for supplying reports of international law cases decided in various jurisdictions throughout the world. Professor Lauterpacht asked me to undertake responsibility for supplying reports of international law cases decided by courts in jurisdictions throughout the British Commonwealth other than in the United Kingdom. I continued that responsibility for several years until after my return to New Zealand, when (because of difficulties of obtaining access to the reports) it was no longer feasible for me to undertake the work. It was enriching experience. Not only was I engaged in preparing international law material but, like mining for diamonds, I had to survey and sometimes to read in depth, judgments on an extensive range of topics to be found in reports of decisions throughout the Commonwealth. Of course, during the period of collaboration over five years or so, there was continuing dialogue and correspondence with Professor Lauterpacht. I also took the opportunity to attend Professor Lauterpacht's superb lectures in international law.

In 1949, without any action on my part, he suggested – and I think organised – the grant of a British Council Award to enable me and two other research students (Norman Dunbar and Felice Morgenstern) to attend the Hague Academy of International Law for its annual summer course. Then, as if that were not enough, he organised transport for us all (including my wife) from Cambridge to Harwich (to catch the ferry to the Hook of Holland) – in a Rolls Royce!

After I had completed two years at Cambridge, I had a totally unexpected offer to join the Secretariat of the United Nations in the Division of Human Rights. When I consulted Professor Lauterpacht about the offer, he could not have been warmer in his support. I remember that he commented that in his opinion the salary offered was rather on the low side, and that I should hold

out for a higher initial figure. I ought to have accepted his advice, but I was rather naive and felt that it was better to work on the principle that a bird in the hand is worth two in the bush.

The international protection of human rights was a great issue that lay very close to Professor Lauterpacht's heart. I think that he was very glad to know that I was working in the Division, as was another former research student of his, Dr Kamal Das, who became a close friend. In the two years or so that I remained on the staff of the Secretariat, I continued my collaboration as a contributor to the Annual Digest and Reports of Public International Law Cases.

Late in 1952 I returned to Cambridge to present my dissertation for the PhD degree. I visited Professor Lauterpacht to discuss the timetable. I recall that in my presence he telephoned one of the two examiners, Professor Humphrey Waldock of All Souls College, Oxford, and arranged a time that would suit him and Robbie Jennings of Jesus College (the other examiner) for the oral examination. I recall that his remarks over the phone to Professor Waldock were most supportive. And so it turned out. The oral examination was relatively brief, more in the nature of a general conversation than anything else. It was during the few days that I was in Cambridge for that purpose that Professor Lauterpacht invited me to dinner at Trinity College as his guest. He then knew that I was returning to New Zealand, and expressed the strong hope that I would continue my interest in international law. It was to be my last meeting with him.