

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.

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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

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was a proponent of *jus cogens*, and on state succession, where he mapped the Commission's subsequent extended labors in that sphere.

In 1962 Lachs was elected Chairman of the United Nations Legal Sub-Committee on the Peaceful Uses of Outer Space. Under his energetic and emollient leadership, a Declaration on Legal Principles concerning the Peaceful Uses of Outer Space was adopted by the General Assembly in 1962, and the committee drafted the Outer Space Treaty and other pioneering instruments in the field. Lachs was imaginative and widely read in a half-dozen languages; he had a special interest in the impact of science and technology on the frontiers of law; and outer space remained one of his lifelong concerns. The last of his many journeys to the United States was to Washington in September 1992, to preside over a moot court at the World Space Congress. That journey illustrated as well his warm interest in students, which for years was to find buoyant expression in his presiding annually over the Telders International Law Moot Court Competition in the Peace Palace.

In the years in which he was so prominent a figure on the United Nations scene, Lachs served in Poland as the Director of the Legal and Treaties Department of the Ministry of Foreign Affairs (1947–1960) and as Legal Adviser to the Minister for Foreign Affairs (1960–1966). He was one of the architects of the Rapacki Plan for a nuclear-free zone in Central Europe and its principal international proponent. He represented Poland on the UN Disarmament Committee with the rank of ambassador, and played a part in the preparation of the Treaty on the Non-Proliferation of Nuclear Weapons. He concurrently served as a professor of international law at the University of Warsaw, where his lectures were lively, topical and heavily attended. During these years, Lachs published articles, particularly in Polish, some of which reflected the Party line on international legal problems.¹

Lachs was elected a judge of the International Court of Justice in the autumn of 1966 and took his oath of office on February 6, 1967. The timing was extraordinarily fortunate. Shortly thereafter, Poland experienced a resurgence of anti-Semitism which was to wreck the careers and lives of a number of his colleagues, some of whom took refuge abroad.

As a judge of the Court, Lachs was in a singularly delicate position, in which he acted so skillfully that he was twice reelected with near-universal support. Lachs was a conscientious judge of exceptional ability and influence. In the first case on which he sat, the *North Sea Continental Shelf*, he dissented, writing one of the best of his opinions. He argued that the equidistance rule was a rule of law and, moreover, one which had acquired the status of a general rule of international law. Legal history was not to move in his direction, but some would say that the law of the sea would now have firmer and sounder contours if it had.

Lachs was to dissent only once again in more than a score of judgments, orders and advisory opinions, in the *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal* (the "Mortished case"). His opinion opposing the according of repatriation grants to members of the United Nations Secretariat who never repatriated themselves remains persuasive. Otherwise, he found himself with the majority, often as a member of the drafting committee. His influence may be thought to be seen in several important decisions, among them *Barcelona Traction*, *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, and the *Nuclear Tests* cases.

¹ E.g., *The Imperialist Tendencies of the Bourgeois Science of International Law*, PANSTWO I PRAWO [State and Law], Mar. 1951, at 421 (English summary).

Lachs joined the majority in *Military and Paramilitary Activities in and against Nicaragua*. Despite his earlier reiterated support of judicial caution in the assertion of jurisdiction, he supported the exceptionally controversial jurisdictional holdings of the Court in that case. He also voted with the majority in rejecting El Salvador's application to intervene and in denying El Salvador a hearing on the question, the latter in clear contravention of the Rules of Court. At the subsequent stage of the merits, he minimized the importance of that departure from due process (despite the fact that it had had significant impact on whether the United States would continue to participate in the case), but he had the unprecedented courage to admit error in that regard. In voting for the Judgment on the merits, Lachs indicated unease with the Court's treatment of the question of assistance from Nicaragua to opposition forces in El Salvador, an unease which was magnified when information subsequently came to public light demonstrating incontrovertibly how vitally the Court had been misled on the facts by the then Nicaraguan Government.

The official statement of the United States issued when it withdrew from participation in the Nicaraguan proceedings cited what the United States saw as judicial error, departure from due process, politicization and prejudice. The statement also referred to the risk to U.S. national security of submitting highly sensitive intelligence evidence to a Court which included "two judges from Warsaw Pact nations." That maladroitness offended the Court and wounded Lachs. He made his feelings clear in two separate opinions, in a communication to the *New York Times* and in learned commentary. Lachs remained exceedingly sensitive to any question about his judicial independence.

Lachs was elected President of the Court exceptionally early in his career (1973–1976). He served with a flair and panache that was unusual. He set about improving frayed relations with other United Nations organs. To that end he took the lead in initiating the practice of the Court's transmitting an annual report to the General Assembly, at which he, unlike his predecessors, frequently appeared. He also set about integrating the Court more fully into the legal, intellectual and social life of Holland and established close relations with the Queen and Prince of the Netherlands. In his capacity as President in the case concerning *Trial of Pakistani Prisoners of War*, a presidential telegram to the parties when the case was filed expressing the hope that they would take into account the fact that the matter was *sub judice* was subsequently described by Pakistan as instrumental in staying the imminent handover by India to Bangladesh of Pakistani prisoners accused of genocide. That stay bought time for the parties to negotiate a settlement. His handling of the disposition of the *Nuclear Tests* cases was regarded as an example of his diplomatic skill.

Lachs played a leading role in the preparation of the revised Rules of Court, which currently are in force, and for more than two decades served as Chairman of the Court's Rules Committee. When a principal innovation of those revised Rules—the provision for consultation by the President with the parties on the composition of an *ad hoc* chamber—was tested in 1982 in respect of constitution of the Chamber in the *Gulf of Maine* case, Lachs voted with the majority while only two judges, Judges Morosov and El-Khani, dissented.

In the course of his twenty-six years of service on the Court, Lachs suffered slings and arrows from left and right with unflinching dignity and restraint. Though a very private person, he exuded warmth and wit. If in his political footwork he seemed possessed of powers of levitation, his philosophy of life was remarkably

optimistic for a man who had sustained much personal tragedy. Adlai Stevenson at the Hyde Park funeral of Eleanor Roosevelt said that she was a person who would rather light a candle than curse the darkness. That may also be said of Manfred Lachs.

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THE PRIVATE LACHS: LIFE AS ART

An artist creates by dint of imaginative power, transforming the banal, inventing the unimagined, ennobling the observer. By this definition, Judge Manfred Lachs was an artist whose life was his art form.

For almost forty years, I was privileged to witness his artistry. It began when, as a graduate student writing a thesis on the racial laws of Rhodesia, I made my way to Africa via Eastern Europe. Presumptuously, I had written letters to the legal advisers of the various foreign ministries, asking to meet "persons engaged in the practice of international law."

Awaiting me in Warsaw was a note from Professor Lachs inviting me to the Ministry. There followed an invitation to his home, a remarkable act in the political circumstances of the midfifties. I remember much of the conversation. For Poland, an occupied country, the question was a narrow one: what could be done in mitigation? An uprising like that in Hungary was futile; the West had already demonstrated its incapacity to intervene. Hope lay in promoting a space for Poland, perhaps through a legal and institutional framework for the demilitarization of Central Europe. Gomulka was pursuing the same end by courting China, trying to promote a balance within the Communist bloc that would allow Poland to experiment with gradual liberalization.

The conversation went far into the evening. Creating space—for a nation, an individual, a professional ideal—was the leitmotif. We might have been two students, or two professors, in Cambridge, Mass., or Paris, or New Delhi.

Thereafter, scarcely a year passed that Professor—then Ambassador, then Judge—Lachs did not initiate a long, intimate tour d'horizon. The dietary stringencies of his later years in no way diminished his zest for the best fish restaurant in Scheveningen, lower Manhattan or Uppsala. These conversations, betimes intense, then languid, scholarly and witty, had a thematic unity: the search for space. Lachs vastly admired the deftness shown by Chief Justice Marshall in *Marbury v. Madison* and strove to emulate it, for example in the *Nuclear Tests* cases.

As a pragmatist, he panned for nuggets of utility in raging torrents of ideology. But his pragmatism was not passionless or detached. He became a missionary for the law and, specifically, for adjudication. He convinced the Afro-Asians, alienated by the inconclusive *South-West Africa* litigation, to return to the Court for the *Namibia* advisory opinion. He was instrumental in changing the Court's rules to make chambers user-friendly. He advocated authorizing the UN Secretary-General to request advisory opinions, and was ruefully amused by the latter-day opposition of Britain, France and the United States. To Lachs, law was the civilized religion and courts were its churches: he did not think it inappropriate to propagate his faith.

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