

*Jan Kolasa**

KAROL WOLFKE (1915-2015)

Professor Karol Wolfke was born on 4 June 1915 in Zürich, Switzerland. As a seven-year-old boy he came with his parents to Poland, settling in Warsaw. He began studying at a public school, then entered a secondary school with a mathematics and natural sciences profile, from which he graduated in 1933. After completing compulsory military service, he took up studies at the Warsaw University of Technology Faculty of Mechanical Engineering, which was established following World War I by his father and renowned physicist, prof. Mieczysław Wolfke. Karol soon discovered, however, that his interests were more focused on social and philosophical matters, and transferred to Vilnius University to study law. He returned to Warsaw after completing his first year of studies and continued his education at the Warsaw University Faculty of Law, also studying during the same period to improve his knowledge of foreign languages at the Academy of English.

His law studies were interrupted by the outbreak of World War II in September 1939. Professor Wolfke was called up to the army in August of that year, and by October had already landed in captivity. After a fictitious release he was arrested on 10 November and sent with his father to prison. He was then transported from Pawiak in Warsaw to the German prisoner of war camp in Murnau (Oflag VIIA), where he remained until the conclusion of the war. After locating his brother, who had also been imprisoned in a camp in Germany, he returned to Poland.

He completed his law studies in 1946 at Warsaw University, receiving his Master's degree in Law. Upon learning of an opportunity to pursue academic work in international law, a field of great interest to him, he moved to Wrocław in September 1946 and took over the post of senior assistant at the Department of the Law of Nations, which formed a part of the newly-organized Polish university. It should be kept in mind that the phrase "took over the post" at the University of Wrocław at that time is a very liberal description; together with a second assistant it was necessary to organize everything from the ground up, including clearing the rubble from classrooms and obtaining furniture, as well as seeking the necessary materials and tools for proper instruction and

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research. Hence Professor Wolfke was instrumental in the formation of the Department of the Law of Nations at the University of Wrocław. The department was headed by prof. Stanisław Hubert, who himself came from Lwów University.

It was there that Karol Wolfke obtained his next academic degrees and titles: in 1949 he received his Ph.D. and became an assistant professor; in 1963 he obtained his post-doctoral degree and the title of Docent; in 1973 he became an “extraordinary” professor, and in 1982 a full professor.

Professor Wolfke’s pursuit of his academic work and fulfilment of his teaching obligations during that time was not without significant difficulties. The communist government imposed on Poland by the Soviet Union interfered heavily in university matters, attempting to exert influence not only on scholarship and teaching, but even on the behaviour and political attitudes of university employees. Professor Karol Wolfke, fiercely loyal to the pre-war traditions of Polish universities, refused to submit to the political yoke the USSR attempted to strap upon the scholarly community and upon academic freedom in general. As a result, in 1951 he was forced to leave the Faculty and the University of Wrocław for several years. He went to the Academy of Economics, where he worked as a teacher of English. At the same time, he continued his pursuit of studies undertaken at the University of Wrocław’s Faculty of Philosophy and History. He completed those studies in 1952, obtaining a Master’s in Philosophy. His expanded philosophical and social knowledge was particularly valuable to him in his work on the creation of law and its role in the international community of nations.

During the first political “thaw” in Poland following Stalin’s death in 1953, Professor Wolfke returned to the Department of the Law of Nations, with which he remained formally linked until his retirement in 1985. Informally, he maintained his ties with the scholars of the Department until the end of his long, challenging and extremely productive life.

After resuming his work in the Department he quickly achieved recognition as an authority in the scholarship and teaching of international law. He continued his research on crucial issues in international law, which included extensive work on the process of the formation of the international community of nations and sources of international law, particularly the formation of international legal norms based on custom. In later years he expanded his research interests to include the processes of codification and development of international law within the framework of the United Nations, focusing on the role and binding force of the nascent environmental protection and conservation law.

The outstanding results of Professor Wolfke’s research occupy a prominent place in the development of international law. His achievements, which include four expansive monographs and numerous articles published in English, are widely available to internationalists across the globe and have earned the acknowledgement of the international academic community and permeate the science of international law around the world.

Every important publication by Professor Wolfke aroused significant interest among international law scholars, reflected in both the widespread references to his work as

well as the frequent reviews in both domestic and renowned foreign international law journals.

His first long publication in English, entitled *Great and Small Powers in International Law from 1814 to 1920* (Wrocław 1961), presented his outstanding and meticulous research methods. He perceived the foundations of the modern international community in the anti-Napoleon coalition of great powers, which continually strived to establish and reinforce its superiority over smaller states at successive international conferences. These powers formally cemented their status in the Pact of the League of Nations, and later reaffirmed it in the Charter of the United Nations. In Wolfke's view, these states received formal acceptance of their leading roles in the international community at the relatively low price of admission of smaller states' representatives to discussions in international fora. He added that, following this forced compromise between larger and smaller states, international law theorists would do well to stop writing about the absolute equality of all states. This formula was exchanged for the concept of "equity before the law", which was understood primarily as legal protection, equivalent to independence, arising from the binding force of international law on all state actors.

Professor Karol Wolfke established his place in the international law community owing in particular to his next work, also published in English, entitled *Custom in Present International Law* (Wrocław 1964). He engaged in detailed research on the issue specified in the title in order to demonstrate that, contrary to the contemporary belief in the declining role of customary norms in the codified modern system of international law, law-making by custom remained in exuberant health. By focusing on the widespread reliance on the "practice of states", particularly those aspects which were most frequently cited by the PCIJ and the present ICJ, as well as taking heed of the views of scholars, particularly those presented at the forum of the International Law Commission, he demonstrated that customary norms in the modern international community retained both their vigour and their usefulness. In spite of what Wolfke demonstrated as the elusiveness of customary norms, with their binding force based merely on the presumed approval of states, he argued that they continue to serve as the most important resource in determining general principles of international law.

This publication met with significant interest in both the Polish and international academic communities. Professor M. Iwanejko wrote that this work by Professor Karol Wolfke was one of "the essential works in the theory of international law", one of lasting scientific significance (*Państwo i Prawo* [State and Law], 1965/5-6). Professor R. Falk, at the conclusion of his review published in *American Journal of International Law*, declared that Professor Wolfke's book "is an indispensable guide to anyone undertaking a study of the questions raised in it" or "more generally, to anyone concerned with the wider subject of the sources of international law (...)" (*American Journal of International Law*, 1966/1). A similar assessment of the scientific value of the publication came from Professor Ch. Rousseau (*Revue générale de droit international public*, 1965/2). The book's timeless value was attested to by the issuance of a second edition in 1992 by

Martinus Nijhoff Publishers, as well as the placement of an order for another edition, which Professor Karol Wolfke sadly failed to complete in its entirety.

Professor Wolfke's next monograph, entitled *Development and Codification of International Law: Selected Problems from the United Nations Practice* (Wrocław 1972), also met with significant praise. This study contains a very detailed legal analysis of the codification activity undertaken by the United Nations. The author's research focused primarily on the controversial issue of what determines the content of expanded and codified legal norms. This analysis led Wolfke to many interesting conclusions of a general nature, particularly with respect to the law-creating role of precedence and scholarship, referred to in the ICJ Statute as merely aids in determining international legal norms. These conclusions received very favourable reviews in both domestic and foreign publications (e.g. *Państwo i Prawo*, 1973/3, and the American Journal of International Law, 1973/67).

His final book, published in 1979 under the title *International Environmental Law: Creation and Enforcement*, was yet another landmark in the science of international law. Professor Wolfke conducted broad-based research on the issue during a year-long residence at the Woodrow Wilson International Center for Scholars in Washington. In this book, Wolfke presented a range of interesting perspectives and analyses concerning certain truths emerging out of the process of creating and developing international law in new areas, which had not previously been under the domain of international law. In Professor Bierzanek's opinion, when considering Prof. Wolfke's book against the backdrop of the many works focused on environmental law in the international plane, "it is distinguished by its comprehensive approach to the subject, as well as a theoretically in-depth portrayal of the key issues in this new area of international law" (*Państwo i Prawo*, 1979/10).

It is easy to note that while the above four essential publications by Professor Wolfke appear under different titles, taken together they constitute one unified strand of research on what can broadly be referred to as the sources, development and force of contemporary international law, with particular emphasis on customary law. Professor Wolfke's contributions in this respect are both revelatory and long-lasting.

Another expression of acknowledgement for Professor Wolfke's scientific contributions is reflected in the awards bestowed on him by the Minister of Science in 1976, 1980 and 1985, the *Państwo i Prawo* award in 1980, and multiple distinctions received from the Rector of the University of Wrocław.

Professor Wolfke was a member of many scientific societies and cooperated with various institutions both at home and abroad. He was, *inter alia*, a member of the Wrocław Scientific Society, served for many years as a member of the Commission of Legal Sciences at the Polish Academy of Sciences, and was also a member of the editorial staff of the Polish Yearbook of international Law. He was a member of the International Law Association (Polish Section) and the American Society of International Law. He cooperated with universities in Brno, Munich and Tübingen, and in 1983 served as the Director of Studies at The Hague Academy of International Law. He participated in

the preparatory work on the International Red Cross publication entitled *Customary International Humanitarian Law*, vols. I-III (Cambridge 2005).

Professor Karol Wolfke was valued in equal measure for his work as a teacher of international law. His lectures and seminars were the subject of intense audience interest and engagement. He served as supervisor to six Ph.D. candidates in international law. For his outstanding work in the service of international law scholarship and instruction, he was awarded a range of titles and distinctions from both universities and state institutions.

It is with great sadness that we bid farewell to Professor Wolfke, who left us on 8 March 2015. He was not only an outstanding scholar and teacher, but also, and perhaps most importantly, a good and honest man, as well as a loyal friend.