

**A Conversation with Emeritus Professor Judge James Richard Crawford  
Part 1: Early Life and Career**

by  
Lesley Dingle<sup>1</sup> and Daniel Bates<sup>2</sup>  
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*This is an interview with the twenty-seventh personality for the Eminent Scholars Archive.*

*Judge James Richard Crawford is a judge of the International Court of Justice at the Peace Palace in The Hague, and is Emeritus Whewell Professor of International Law at the University of Cambridge. The interview was recorded in Judge Crawford's office at The Hague. The audio version is available on this website.*

*Questions in the interviews are sequentially numbered for use in a database of citations to personalities mentioned across the Eminent Scholars Archive.*

Interviewer: Lesley Dingle, her questions are in **bold type**.  
Judge Crawford's answers are in normal type.  
Comments added by LD [in italics]. Footnotes added by LD.

**1. Judge Crawford, it is a great privilege to interview you for the Eminent Scholars Archive here in the Peace Palace in The Hague after a remarkable career in international law.**

A great pleasure to have you here.

**2. Thank you so much.**

**During these interviews I hope that we will be able to throw light on some of your major achievements spanning nearly half a century of dedication to your chosen subject that began in Oxford in the early 70s. We might characterise your career as three intertwined trajectories: your United Nations work, which culminated as a Rapporteur for the International Law Commission and now as judge of the International Court of Justice; your professional practice, where you have been involved in at least 120 cases and arbitrations as counsel, judge and arbitrator; and finally, but not least, your outstanding academic achievements in which you held three professorships, most recently as the tenth incumbent of the Whewell Chair of International Law at Cambridge. Could we start this inspiring journey with your early life in the state of South Australia? You were born in Adelaide in 1948.**

Yes. I don't remember that, of course, but I very much grew up in Adelaide. The first time I travelled overseas was in 1971 when I was already 23 so although I travelled a bit in Australia, not very much, I was basically located in Adelaide. I had my entire school career and entire undergraduate career in Adelaide and was very much a person from that not very large capital city.

**3. Your parents, Judge Crawford?**

My father was a company director and salesman of motor vehicles and continued the family company established by my grandfather who had not been to university, in fact, left school because of family poverty at the age of 13 and built up a substantial business. He was

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<sup>1</sup> Foreign & International Law Librarian, Squire Law Library, Cambridge University

<sup>2</sup> Freshfields Legal IT Teaching and Development Officer, Faculty of Law, Cambridge University



a sort of intellectual *manqué*. He used to go to conferences and read a lot and had wide-ranging interests but no formal education at all. I think a story of that generation. He was born in the 1890s and a story which is not very unusual in Australia. Neither of my parents went to university and my father went straight into the business. During the Second World War he drove trucks, he was in the transport division of the army.

My mother was a nurse in rural, I think, Victoria or maybe in South Australia. Her father was an Anglican priest. Her mother was by education a lawyer. Well, she gave up her practice of law when she married, as was common, almost *de rigueur* in those days, and she was the second woman law graduate at Adelaide University in the early 1920s, and was a very intellectual woman. So there was education on my mother's side but my mother was a nurse and never went to university. My parents eventually had seven children, of which I was the oldest.

#### **4. Your schooldays, the schools you went to, any memories of that, your early schooldays?**

Well, obviously the memory was of the local primary school. I never went to a private school. However, my father gave me the option of going to a private school at secondary level but I chose the local high school. The primary school was a basic primary school. Of course, you remember it vividly, remember the teachers and so on. The high school was, I think, quite a good high school, Brighton High School, a 20-minute bike ride from home, and I had very, very good teachers there, many of whom I remember vividly. So it was a happy childhood and no particular special features, and nothing especially distinguishing.

I did well at school once it had been realised that I had short-sight and needed glasses at primary school. My grades improved dramatically when I could see the blackboard. At high school I was involved in quite a lot of extracurricular activities, not so much sport. I played cricket but more later on but then all the clubs and debating and things like that and I was head prefect of the school. So it was a happy school life and, broadly speaking, undistinguished.

#### **5. We will touch on that briefly when we talk about your festschrift where Professor Shearer<sup>3</sup> mentions some of your accomplishments at school but, for now, could you say what the dominant factors in your life in Australia were at that period, bearing in mind it was perhaps a time of post-war expansion, some prosperity, immigration and perhaps loosening of ties with the UK?**

Yes, I remember first looking at television, watching Sputnik go overhead, the first manned spaceflights in the 50s and I remember we were the first house in the street to get television, black and white. We used to sit and watch the test pattern in those innocent days. I was much affected by the Vietnam War. I'm really one of the Vietnam War generation. There was a form of conscription in Australia whereby your numbers were balloted, your birthdays were balloted and if your birthday came up you were conscripted into the army and could be sent to Vietnam. It was a question of conscience, in a way, whether to allow yourself to be drafted because you could opt out as a conscientious objector, in which case you would automatically be called up. But you could take the risk and I took the risk and was balloted out.

My best friend at the time took the risk and balloted in but he was a very active sportsman and the doctor said there were better things for him to do than to go to Vietnam

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<sup>3</sup> Professor Ivan Shearer, Challis Professor of International Law, University of Sydney, (1993-2003)



and he would count him as being unfit for service. So it was a different way of achieving the same result and not serving in the army. I remember I participated in a few anti-Vietnam demonstrations. I remember one Quaker demonstration standing in silence in front of Parliament House. In those days I was much concerned with church affairs. I ran the local boys club at our local parish church and was head sacristan and things like that; that disappeared later on. So I suppose the strongest influence, apart from my parents and school, was the development of Australia's international relations with some emphasis on Vietnam and the increasing influence of the United States as compared with the United Kingdom.

I vividly remember in the early 50s when the Queen visited Australia and the children at our school, I think of all the other schools in our area, were bussed to a local racecourse and spread out for the Queen to come and see us, no doubt with our sandwiches and so on. I remember the Queen being driven past at speed. We sat in the sun for five hours and saw the Queen for literally one minute. I wasn't terribly impressed. I have never been a strong royalist and I am very much in favour of an Australian republic, and that's, I think, an increasing view of my generation, although it would be true of my parents as well, I think. My father was on the Labour side of politics and supported Labour members of parliament and things like that, which was unusual for a businessman, but enlightened in terms of public affairs.

#### **6. Were you conscious growing up in South Australia of a sense of perhaps isolation?**

I wasn't conscious at the time, but I became conscious later on, when the question arose of going back to South Australia after the PhD work I had done in Oxford and I think it influenced my choice of going into an academic career. I worked for a couple of months over a summer with a local law firm. It felt very parochial and I couldn't think of myself as having a professional career in Adelaide, it was just not big enough.

Had I grown up in Sydney I might have gone to the bar at Sydney because I was interested in public speaking and always had in mind some part of a career as a barrister but not in Adelaide. In fact, Adelaide didn't have a separate bar at that stage. It had a small voluntary bar but it wasn't organised as the eastern states were organised as separate solicitors and barristers and it was just too small to generate large amounts of interesting legal practice and I think it still is in a way. That is still largely concentrated in the eastern states. There's never been a South Australian judge on the High Court of Australia in more than a hundred years and that's a manifestation of the eastern states bias of the legal profession.

#### **7. You attended Adelaide University. Was that round about 1965?**

No, '65 was my last year at school. I started a dual degree in 1966. The dual degree, law - arts, law - economics, law - science, has become the standard way of doing law in Australia although there have been some subsequent developments, more of the American style of doing first, an undergraduate degree in something else and then a law degree, sometimes in two years. But I was at the beginning of a phase in which the standard way of doing law was to do a combined degree. It hadn't been properly organised at that stage and it took me six years rather than five but I never regretted it. I studied History, English and International Relations as part of my arts degree and concurrently Law. So my first law subjects were in 1966 and I studied in Adelaide until 1971 when I graduated in the two degrees.

#### **8. Any friends or particular mentors from that period?**

Well, lots of friends. As was common, one didn't really keep friends from school, although one of my best friends I was at school with as well and subsequently went to



university who was a good cricketer, the person I referred to as having been balloted in for Vietnam and held to be unfit, and we used to play cricket a lot together and talk a lot and share notes and things like that.

In terms of mentors I was influenced a lot by teachers; a German scholar, Horst Lücke<sup>4</sup> was our Contract teacher who was probably the best teacher I had. John Keeler<sup>5</sup>, who was a young Englishman who is still a good friend, who taught Torts and Trusts. Dan O'Connell<sup>6</sup>, to an extent, although I was never close to O'Connell, he was very much in favour of the Vietnam War, I was very much against the Vietnam War and that was a point of disagreement and he was aware of that, and David Kelly<sup>7</sup>, who was subsequently professor, Conflicts of Laws.

So there was a good teaching staff. It was a small law school, 150 students a year in the four-year LLB, three-and-a-half years because the fourth year was spent in beginning articles, something I never did. With about 30 members of staff it had grown rather rapidly from a much smaller law school ten years before and a law school then dominated by practitioner teachers. We still had numbers of practitioners and judges coming in to teach subjects, normally very badly though there were exceptions, but it was turning into a professional law school with full-time academics doing the teaching and I was one of the first cohorts to benefit from that situation.

### **9. One of the Cambridge academics who was there doing your undergraduate days was David Williams<sup>8</sup>, briefly. Do you remember him?**

I remember his lectures. He became a good friend. The academic who influenced me most, who was a visitor, was John Finnis<sup>9</sup>, subsequent professor of Jurisprudence at Oxford. He was an Adelaide graduate himself, wrote a doctorate in Jurisprudence at Oxford and stayed in Oxford, but he came to Adelaide in 1971 as a visitor for a year and supervised my honours dissertation in Jurisprudence and he was a significant influence at the time.

### **10. The next date that I have from your CV is your arrival in 1972 at Oxford and I wonder what prompted you to make this move?**

Well, I wasn't interested in local legal practice, as I have explained, and I very much wanted to travel and study abroad. The tradition in Adelaide was the best students went to Oxford. Not so much Cambridge but we had links with Oxford, and John Keeler and Arthur Rogerson<sup>10</sup> and other teachers at the law school were from Oxford. The Rhodes scholarship was specifically to study at Oxford. I didn't get that, I wasn't eligible for the Rhodes because I married in my final year of law and in those days if you were married you couldn't get the Rhodes scholarship. So I got a Shell scholarship which would have enabled me just to choose where I studied but I decided to go to Oxford. John Finnis was an influence there and Dan O'Connell also because Dan had just been elected to the Chichele chair, in 1971 and he went to Oxford at the same time as I did.

He suggested that I might write a doctorate with him on a subject of 18<sup>th</sup> century legal history to do with transfer of territory and early manifestations of ideas of self-determination

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<sup>4</sup> Horst Klaus Lücke, Professor of Law, Adelaide (1967–1984)

<sup>5</sup> John F Keeler, Reader in Law, Adelaide

<sup>6</sup> Daniel Patrick O'Connell (1924-1979), Chichele Professor of Public International Law, All Souls College, Oxford (1972-79), New Zealander.

<sup>7</sup> David St Ledger Kelly, Professor of Law at Adelaide University (1980-1983).

<sup>8</sup> Sir David Glyndwr Tudor Williams (1930-2009), Rouse Ball Professor of English Law (1983-92).

<sup>9</sup> John Mitchell Finnis (1940-), Professor of Law & Legal Philosophy, University College, Oxford (1989-2010), Biolchini Family Professor of Law, Notre Dame Law School (2010-).

<sup>10</sup> Arthur Rogerson, Professor of Law, Adelaide (1964-1978), Dean of Law (1964 -68).



and nationalism and so on. I wasn't interested in a purely historical thesis and I wasn't interested, despite the work with John Finnis, in being a theorist. I have always had an interest in legal theory but I never wanted to be a pure theorist. International law appealed to me as it was a legal reflection of the rest of the world and I hadn't seen very much the rest of the world and wanted to do so. So Oxford and International Law thesis were what I settled on.

The other significant international lawyer at Oxford at the time was Ian Brownlie<sup>11</sup>, whose book I used, the first edition of *Principles* came out in 1964 [1966 - LD]<sup>12</sup>. I studied International law in 1967 and used the first edition of "*Principles*". O'Connell was very unhappy to see me carrying it around. I didn't carry around O'Connell's two-volume work on national law<sup>13</sup>, largely because it was too heavy, I had it, but O'Connell would have preferred that I used his book rather than Brownlie's book. In fact, I used them both but Brownlie was much more in line with my general thinking about international relations at the time. O'Connell was rather conservative and pro-Liberal Party, which I was more Labour Party.

I never joined a political party but I came from a pro-Labour background and Brownlie, who had been a member of the Communist Party, was small L liberal/radical and I fortunately ended up as his student. I didn't exercise a conscious choice but I had, I think, expressed the view, which may have been taken into account, that I wanted to work with Brownlie and that was what was decided.

## 11. I wondered about that.

Yes. So I turned up at Wadham College, of which Ian Brownlie was a fellow. He had been passed over for O'Connell for the Chichele chair. He never held that against me. I made it clear from an early stage that I wasn't an O'Connell acolyte. He suggested I work in the Law of the Sea but I wasn't particularly interested in doing that. I was interested in the statehood at the political end of the spectrum of international law topics and I remember reading Robbie Jennings<sup>14</sup> on *Acquisition of Territory in International Law*<sup>15</sup> and also the first edition of Brownlie. Both of them said that the literature on statehood and international law was sparse and that gave me a clue of writing a book on statehood.

I said to Brownlie I wanted to write a book on creation of states, the acquisition of statehood and he rather bridled at that. He said, "That's a very big subject". I certainly wouldn't have allowed one of my later doctoral students to write on such a big subject, but I persuaded him that that's what I wanted to do and he went along after that after I had written an introductory paper on the subject. So I was in Oxford for about two-and-a-half years. I didn't finish the doctorate there, partly because my then wife and I had our first daughter, Rebecca, who was born actually before I started the doctorate in 1972.

We married in '71, and we were obviously a young married couple. I didn't make many new friends in Oxford. As a married couple with a child, they always tend to take over and be a priority, and eventually we decided to go back to Australia and to Adelaide where my wife's parents were and who were going to be very helpful looking after the child. We

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<sup>11</sup> Sir Ian Brownlie, CBE, QC, FBA (1932-2010), Chichele Professor of Public International Law Oxford (1980-99).

<sup>12</sup> *Principles of Public International Law*, 1st Edition, 1966. See 2000 assessment of 1st-5th editions by Colin Warbrick <http://www.ejil.org/pdfs/11/3/546.pdf>

<sup>13</sup> *International Law*. by D. P. O'Connell, 1965, Stevens & Sons Ltd, 2 vols, 1434pp.

<sup>14</sup> Professor Sir Robert Yewdall Jennings (1913-2004). Judge ICJ (1982-95), President ICJ (1991-94), Whewell Professor of International Law (1955-81).

<sup>15</sup> Manchester University Press, 1963, 130pp.



subsequently had our second daughter, Emily, who is now associate professor in international law at the University of Sydney. Rebecca is a journalist and commentator, an author, a diverse career, and I'm proud of them both. So we went back to Adelaide and I finished the doctorate in the first year, or so, of being in Adelaide in 1974/1975. I finished the doctorate at the beginning of 1976 and was examined on it later in 1976. There was a problem in that the thesis was too long. It has been said to have been about 1200 pages; that was a time when there were no length limits on PhDs. In fact, I believe it's true that Oxford introduced the length limit on PhDs after I submitted. 1200 is an exaggeration, it was about 800 pages, but it was 165,000 words. A 100,000 word limit which has become standard for UK doctorates was introduced at Oxford because I had grossly gone over the top. I remember the chair of the Oxford Faculty wrote to me and said the thesis was too long to examine and I suggested that they examine the first two parts of it which were 100,000 words taking into account the existence of the other two parts and they agreed to do that.

It was examined by Maurice Mendelson<sup>16</sup> and James Fawcett<sup>17</sup>. They gave me a very nice viva. Eventually, of course, it was published but it was written between the hours of five o'clock and seven o'clock in the morning in Adelaide because I had two children by that stage and the rest of the day was teaching and examining and researching, but the actual writing was done when everyone else was asleep. That gave me the habit of working early in the morning which I have only stopped doing recently.

**12. When you returned to Adelaide, having been part of the collegiate system in Oxford, although for a short period and, as you pointed out, having a family, so you could not have been thoroughly immersed in it, presumably, but nevertheless, did you slightly miss it?**

Not particularly. I did all my work from the Law Library, the Bodleian Law Library, and had a place on the ground floor of the Law Library where I worked and I didn't have much to do with the college. I became more acclimatised to the collegiate system when I went to Cambridge.

**13. While you were at Oxford was there any sense at all of the tremendous changes that were afoot with the entry into the Common Market?**

It was still very preliminary and British entry into the Common Market was in the early 70s, wasn't it [1973 - LD], so it hadn't happened at that stage. I followed British politics closely. I remember the elections in 1968 [1966 - Labour, 1970 - Conservative, 1974 - Labour: LD] and it took a long time for the Common Market waters to flow up the rivers, as Lord Denning<sup>18</sup> put it in one case, so it was a very gradual process. There's now a rather unhappy process of withdrawal which is a great pity.

**14. Did you fit in a visit to Cambridge during that time when Robbie Jennings would have been Whewell Professor?**

So I went to Cambridge once on the invitation of Robbie Jennings to give a talk to the International Law Club. I think it was on International Law and English law and I just had been asked by Ian Brownlie to take over from him writing the case notes on British cases of International Law for the *British Yearbook*, Ian being one of the editors of the Yearbook. I

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<sup>16</sup> Maurice Mendelson, QC, Professor of International Law, University College London (1987-2001), barrister at Blackstone Chambers, specialises in public international law.

<sup>17</sup> Sir James Edmund Sandford Fawcett DSC QC (1913-91), barrister. He was a member of the European Commission for Human Rights (1962-84), and its President (1972-81).

<sup>18</sup> Alfred Thompson Denning, Baron of Whitchurch (1899-1999), Master of the Rolls (1962-82).



met with Robbie and I remember taking the train to Cambridge and giving a, I think, not very good talk to the students. But I didn't have much to do with Cambridge except for a cricket match between Oxford and Cambridge Australians. I was a medium fast bowler, not a very good one, but I enjoyed cricket and I played cricket for my college. It was the one collegiate activity that I was engaged in.

**15. You returned to Adelaide to a lectureship from '74 to '76. This was presumably part of your overall plan, that you had intended returning?**

I thought very hard about returning to Adelaide. I felt like it was something of... defeat is putting it too strongly, but going back to where I had come from having wanted to get out into the world. In retrospect it was a good thing, it was a good decision because it enabled me to finish the thesis under good conditions. The library was well stocked as a result of O'Connell's work on it and the librarians were very sympathetic to my needs and it was a friendly place and it was a good law school. It subsequently went through a difficult period, although it has come out of that more recently, but at the time it was a good place to teach, a good place to be. But it was still Adelaide and it was still remote from other parts of Australia and so there were concerns that I might, as it were, get locked up in my home town.

That didn't happen because in 1982, late 1981, I was approached to become a member of the Australian Law Reform Commission which is based in Sydney. That was the first breakthrough into what I might describe as public affairs and Michael Kirby<sup>19</sup>, subsequently a High Court judge, was the President of the Australian Law Reform Commission, and was very active and dynamic. I was asked to go to work on the recognition of aboriginal customary laws - that was the main subject that was being handled by the Commission, but not well handled, and had taken a long time and no-one really knew where it was drifting as a topic. When in Adelaide I taught Constitutional Law as well as International Law. I was a general public lawyer; though International Law was my main interest it wasn't my only interest. I wrote about Constitutional Law and published a book on the Australian court system and things like that.

**16. That was when you were a Senior Lecturer ('77 - '81) - your two books, *Creation of States and Australian Courts of Law*. But just before we come to that it was about 1975/77 that Eli Lauterpacht<sup>20</sup> was in Australia advising the Foreign Affairs department and I wonder whether you at any point met him?**

Yes, I had met him in England briefly and one of the things he did was to inaugurate an annual meeting of people from the government ministries in Canberra and academic international lawyers. I attended those meetings in 1975 and 1977, paid for by the Commonwealth in the first instance because the Whitlam<sup>21</sup> government was more open to that sort of thing than Australian governments were subsequently. That created links with younger members of the Department of Foreign Affairs and the Attorney General's Department which have survived. That generation and I grew up together and had quite a lot to do with them later on. So that was one of Eli's initiatives. I didn't have anything to do with him professionally at that stage, but I did observe his performance as a legal adviser and I have written about that since in an article which is on the web and which is being published

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<sup>19</sup> Michael Donald Kirby AC CMG (b. 1939), Justice of the High Court of Australia (1996-2009), United Nations Human Rights Council inquiry on human rights abuses in North Korea (2013-14).

<sup>20</sup> Sir Elihu Lauterpacht, (1928-2017), Hon. Professor of International Law (1994-2017). Judge *ad hoc*, International Court of Justice (*Bosnia v Yugoslavia*) 1993-2002. Fellow of Trinity College.

<sup>21</sup> Edward Gough Whitlam, QC (1916-2014), 21st Prime Minister of Australia (1972-75), Leader of the Labor Party (1967-77).



in the *Australian Year Book of International Law* on the Lauterpacht tradition. It is really about Eli, but the first half was about his time in Australia.

**17. You were a Senior Lecturer from 1977 to 1981. What were the circumstances of the promotion?**

I was promoted because of the Oxford doctorate.

**18. As you mentioned, you spent the first part of that year formatting, reformatting it and....**

Yes, because OUP said it was too long, just like Oxford had said it was too long, and they wanted it cut down and I cut it down, to my regret. I subsequently put back a lot of that material in the second edition, that was one of the reasons for the second edition.

**19. Very interesting.**

For example, in an attempt to get it down to the limit set by the press I left out the discussion of Israel which was 20 or so pages of the original manuscript and that was a mistake. You couldn't really talk about the creation of states without talking about the creation of Israel and I put that back in a more elaborated form as well as a good deal of other material because of what had happened since. That was published in 2006 as an enlarged second edition.

**20. You gained the American Society of International Law Certificate of Merit for your book.**

Yes, I think, in 1981. It was very nice. It gave me a degree of faith in my capacity to do International Law even remotely, so to speak, from Adelaide.

**21. At that early stage.**

Yes.

**22. At the same time you passed your bar qualifications to the Australian High Court.**

Well, it was only the High Court, I never did articles. In those days if you wanted to be fully qualified as a barrister or solicitor you have to spend a year-and-a-half in a form of apprenticeship. I never made time for that and I only remedied that situation really by way of gaining exemptions from bar requirements when I went to England and joined Matrix Chambers and they arranged for me to qualify fully for the English bar, which was something I never managed to do in Australia. The High Court qualification is by examination and so a second class admission really.

**23. Your book *Australian Courts of Law* which was published during this period has gone to a fourth edition in 2003, so it was a very good seller, and it was published with and written with Brian Opeskin<sup>22</sup>.**

Opeskin, that was the fourth edition. The first three editions I did by myself.

**24. I see, right.**

I did the fourth edition with Brian Opeskin after I moved to England. He was a younger public lawyer colleague of mine and I needed some help with that. In a way it was

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<sup>22</sup> Brian Opeskin, Professor of Legal Governance, Macquarie University, Sydney, previously Associate Professor at Sydney University Law School.





an acknowledgment of my desire to be a practitioner and to write about courts if I couldn't practise in them and because in the first part of my legal career I wasn't doing much practise there wasn't really a call for academics to practise in those days unless you had already established yourself and I started to practise a bit when I moved to Sydney. It was very difficult to do it from Adelaide.

**25. You became a Reader at Adelaide in 1982 and I wonder to what you owed this promotion?**

Just publications, performance and so on. It was a fairly rapid promotion. I became a professor in the next year in 1983 so it took nine years from lecturer to professor.

**26. During your time as Reader you were appointed to the Australian Law Reform Commission.**

Yes, I was appointed as a Senior Lecturer and became a Reader concurrently with my move to Sydney. I worked at the Australian Law Reform Commission, as I said, on Aboriginal customary laws, which was still one of the biggest projects I have ever done. It was a two-volume report and I understand of all the reports, now, and the numbering must be a hundred or so, of the Australian Law Reform Commission, it's the one which has been most referred to by scholars and the most cited. It was a very difficult project and it was one of those projects, I really needed to do it twice, once to learn how to do it and the second time to do it properly, but that didn't happen.

I also worked on Foreign State Immunity, a reference given by the Attorney General's department, because I was there and had done work on Foreign State Immunity. That became the Foreign State Immunities Act of 1985. The Federal Act, of course, is still in force and is, I think, one of the better conceived of the common law state immunity Acts. I also worked on Admiralty Jurisdiction giving rise to the Admiralty Act of 1988 which is still the foundation for admiralty jurisdiction in the Federal Court in Australia.

**27. As well as Aboriginal customary law that you worked on during this period, these must have all contributed to your promotion to a chair?**

The reports came out after I had been promoted to a chair and I was offered a chair at Sydney in 1983 but at the same time Adelaide promoted me to a professor and I had promised my then wife that if I had the choice between Adelaide and Sydney we would go back to Adelaide, where her parents were. Subsequently she realised that she had got used to Sydney and was happy when I was offered the Challis chair in 1986 or 1987, I can't remember. So we went back to Adelaide for a couple of years but then we moved definitively to Sydney. She still lives in Sydney with our two children.

**28. Your promotion to the Challis chair in '86 occurred when you were only 38 years old and in circumstances you can tell us about with promotion?**

Well, the chair became vacant because D.H.N Johnson<sup>23</sup>, David Johnson, who had been professor at the London School of Economics, had gone to Australia to the Challis chair when Julius Stone<sup>24</sup>, who was Challis Professor of International Law and Jurisprudence, combining the two fields, retired. Julius Stone was a very significant international law figure of his generation. David Johnson held the chair for about ten years and then retired and it was offered to me and at that stage I was clear I wanted to be in Sydney so I was happy to

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<sup>23</sup> D. H. N. Johnson, Professor of International Law, University of Sydney (1976-85).

<sup>24</sup> Julius Stone, (1907-85), Challis Professor of Jurisprudence and International Law, University of Sydney (1942-72).



accept it. My family wanted to be in Sydney as well so they were happy to come.

**29. It was during this time that you published another book, *The Rights of Peoples*<sup>25</sup>, and this has ever since fed into your interest in human rights, and you also worked on the Law Reform Commission under the Aboriginal customary law section.**

Yes, I've spoken about the Law Reform Commission and *Rights of Peoples* was some work I had done for the Australian National Commission for UNESCO which was then working on rights of peoples. It was an edited book, it wasn't a monograph. I found difficulty in that period, partly because of the work for the Law Reform Commission - I wrote four reports for the Law Reform Commission, which were, in effect, monographs but collective work. I found it difficult to produce a second monograph and, in fact, I had various plans to produce a book on State Immunity, for example, and never did so, partly because of the various demands. I was on the Australian Law Reform Commission throughout the 80s and then moved to Cambridge and the various demands of Cambridge took over and I wasn't able to get back to monograph writing for another 15 years.

**30. Right. A symposium was held where your erstwhile professor, Brownlie, gave a paper.**

Yes, that's chapter 1 of the book.

**31. You gathered up the threads in a final essay concluding that the “right to development is a right of peoples”. Do you still hold these views, Judge Crawford?**

I was very sceptical about the right to development, but what I insisted was that we get it clear if we are talking about there are rights of peoples in International Law, most obviously the right to self-determination, but a lot of the things were put forward as rights to peoples, were really individual rights exercised in conjunction with others. Minority rights are an example of that. At the time, and even, I think, now, we don't attribute rights to minorities as such, we attribute rights to members of minorities to do things in conjunction with other members of a minority. So a lot of the discussion about rights of peoples was very woolly, lacking in rigour, and I was really attempting to introduce some rigour to it.

**32. A significant aspect of your time at Sydney was that it was during this time that your association with the International Court of Justice began. Your first case, 1989 to '92, was the “Certain Phosphate Lands in Nauru” case which was settled in 1993. I noticed that Brownlie was also counsel for....**

Yes, he was counsel because I suggested that he be counsel. The Nauru government came to me in the late 80s and asked if I would advise them about their rehabilitation claim in relation to the phosphate lands that had been mined by the British Phosphate Commissioners under the trusteeship for Nauru which was a trusteeship between Australia and New Zealand and the United Kingdom exercised on their joint behalf, largely by Australia.

So I was counsel against Australia and I advised Nauru to accede to the optional clause with the sanction of the Court and eventually to bring proceedings having waited for the necessary year, against Australia alone, because there was probably no jurisdiction in relation to New Zealand and United Kingdom. Nauru did that, and that case was fought at the preliminary objection stage in late 1991. My first appearance before any court and the first time I stood up in a court was in this Court, and it decided in 1992 in favour of Nauru, and then, as you say, settled.

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<sup>25</sup> *The Rights of Peoples* . Edited by James Crawford. Oxford: Clarendon Press, 1988, 236 pp.



So at the same time Australia wasn't particularly enthusiastic about my being counsel for Nauru but they were reminded by, amongst others, the Chief Justice of Australia, Sir Anthony Mason<sup>26</sup>, that the cab rank rule in the Australian bar meant that I was entitled to take any brief that came to me and really probably obliged to take it. Subsequently, with the consent of the government of Nauru, I was counsel for Australia in the "East Timor" case which was being fought and has just started at that time. So of my first two cases, one was for Australia and one against Australia. That was the beginning of my international law practice.

**33. Two other cases during that period, the "Iran v USA", where you were counsel for Iran, and the "Libya v Chad" where you were counsel for Libya.**

They both started and, indeed, my third case before the court, which is still one of the formative cases, was *Gabčíkovo–Nagymaros* where I was counsel for Hungary. That's the first time I led a team in the international court. A very big case. A very important case in relation to the law of rivers and those briefs all came to me after I moved to Cambridge and my practice developed from there.

**34. You brought those three cases to Cambridge?**

No, I brought the two Australian cases, *East Timor* and *Nauru*, but *Nauru* was by then decided. *East Timor* was ongoing and then when I was in Cambridge I was retained by Hungary, Iran and other states in a range of cases, *Chad v Libya*, later on *Cameroon v Nigeria*.

**35. It was the *Nauru* case that really unlocked the beginning of your practising career?**

Yes. Young international lawyers often say to me, "How do you get to appear before the International Court of Justice?" and my answer is, "It's very simple. You just have to have done so before." So there is a logical problem there. People get chances. The chance is largely luck or if someone asks you to do something which you perhaps didn't expect, and then you have to take your chances when they come. I was basically 40 by that stage so my practising career was really the second part of my life.

**36. A major milestone at that point was your appointment to the Whewell chair at Cambridge and I wonder if you could tell us about the circumstances of that?**

Well, Derek Bowett<sup>27</sup>, after a ten-year tenure of the chair from '82 to '91, retired. I think he retired slightly early because he had some health problems with his back and so the chair became vacant and I simply applied for it and got it. It was an elective process, there was no interview. I don't know much about the circumstances of the election. I do know there was a controversy because Eli Lauterpacht applied at the same time. He was one of the other applicants for the chair and the committee was, I understand, divided as between supporters of Eli and supporters of me. I got it and I say this immediately. Eli was a real strong character and a very nice man and he never held it against me. He told me at the time that he had hoped to get the chair because it was his father's chair and one of the reasons for the fame of the chair is, of course, the tenure of Sir Hersch Lauterpacht<sup>28</sup>, and Eli said, "That's the past and we will relate to each other as individuals," and we always did. I appreciated that greatly.

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<sup>26</sup> Sir Anthony Frank Mason QC (1925-95), ninth Chief Justice of the High Court of Australia, on the bench of the High Court (1972-95).

<sup>27</sup> Sir Derek William Bowett (1927-2009), Whewell Professor of International Law (1981-91).

<sup>28</sup> Sir Hersch Lauterpacht (1897-1960), Judge ICJ (1954-60), Whewell Professor of International Law (1938-55)



**37. When I interviewed him in 2008 he said to me, “You really must interview” yourself, and I was of a mind to do so in any case, but I share with you.**

**Judge Crawford, the first two years of your time at Cambridge were ‘93/’94 when the Faculty was still based in the Old Schools?**

Yes.

**38. Any memories of that particular accommodation?**

“Accommodation” is putting it strongly. It was very cramped quarters and John Tiley, of blessed memory, was instrumental in the design of the new building and the move to the new building which occurred later in the 90s, in 1996. I remember teaching in the Old Schools. The teaching rooms were rather nice and old fashioned, but the Faculty accommodation had nothing to be said for it and the Squire Law Library was at least grandly squeezed into what is now the Caius library?

**39. Yes.**

I worked from college for the first few years and then when Eli Lauterpacht retired as Director of the Research Centre, I moved to the Research Centre and spent the rest of my Cambridge life working from Cranmer Road.

**40. At this point would you like to take a break?**

No, I’m fine.

**41. Kurt<sup>29</sup> described the old library, the Squire Library, as such a beautiful, wonderful building. Do you agree with the sentiments?**

It is a beautiful building and Kurt’s spirit still, I’m sure, inhabits it. I don’t believe in ghosts, but if one wants to believe in ghosts it would be Kurt in relation to that building. I understand during the war he was a fire warden on the roof of that building...

**42. That’s right.**

...and I’m sure he protects it in some sense even now.

**43. Yes. So on your arrival Eli was still Director of the Lauterpacht Centre, and he remained so until 1995 when he was followed by John Dugard<sup>30</sup> for two years.**

John and I were Co-Directors, and John had been elected as the visiting professor of...?.

**44. The Goodhart.....**

Goodhart, yes, he was the Goodhart Professor in 1995 and I arranged with John Tiley<sup>31</sup> for him to stay on for an extra year, in fact, John provided money so he had a two-year tenure and he and I were Co-Directors of the Research Centre during that period, and John is still one of my closest friends. When he works in the court as an *ad hoc* judge he works from a neighbouring office and lives quite close to where we live. So we’ve had a strong relationship ever since.

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<sup>29</sup> Kurt Lipstein (1909-2006), Professor of Comparative Law (1973-76).

<sup>30</sup> Christopher John Robert Dugard (b. 1936-), Professor of Public International Law, University of Leiden (1998-). Professor of Law, University of Witwatersrand (1975-1990), Goodhart Professor, Cambridge (1995-96). Professor of Law, Centre for Human Rights University of Pretoria (2006-).

<sup>31</sup> John Tiley (1941-2013), Professor of the Law of Taxation 1990-2008, Queens’ College Cambridge.



So Eli expressed the view that he wanted the Whewell Professor to be associated with the Lauterpacht Centre, which hadn't been the case particularly with Derek [*Bowett - LD*]. Derek was on the Lauterpacht Committee but didn't have any other particular link...

#### **45. I see.**

The Lauterpacht Centre was very much a Lauterpacht initiative, with other Cambridge International Law teachers, not really involved. There was an exception in that Vaughan Lowe<sup>32</sup>, who was at the time a lecturer at Cambridge, did have a brief involvement with the Centre. Chris Greenwood<sup>33</sup> had an involvement with Eli and *International Law Reports*, but didn't work from the Centre, even though the people who worked on the *International Law Reports* did work from the Centre.

So I think it was fair to say that the Lauterpacht Centre in those days was semi-detached from the Faculty and one of my mandates was to incorporate it in the Faculty. Not physically, because it has separate premises, one of its great assets, and that's entirely due to Eli Lauterpacht, but from a scholastic point of view. From a point of view of the perception of members of the Faculty and students, especially graduate students, I wanted to integrate the Research Centre and the Faculty and I'm pleased to say that my successor, who is Professor Eyal Benvenisti<sup>34</sup>, has continued that process, taking it further.

#### **46. That was one of your achievements. Can you say anything else about your role during that time?**

Well, I didn't run research projects through the centre to any great degree and that's perhaps a defect. Marc Weller<sup>35</sup>, who was one of my successors as Director, did much more in that regard than I did. One of the reasons was I was on the International Law Commission and that was taking me to Geneva for three months of the year and as a member of the International Law Commission I was involved successively in the work on the International Criminal Court and on state responsibility. So I had two major projects from the ILC and they tended to get in the way of what might have been described as Lauterpacht Centre research projects.

I was also very busy in practice and with graduate students and so on. At one stage I had 17 PhD students and other teaching commitments so my research was very much focussed on the ILC work during those years.

#### **47. The Research Centre was renamed the Lauterpacht Centre in '95. What was the thinking behind this?**

Well, it was obviously the Lauterpacht Centre because it was associated with Eli and with Hersch. Not that Hersch had anything to do with the Lauterpacht Centre because it was created well after his death, long after his death, but the Lauterpacht tradition was identified with Cambridge and was a very distinguished tradition. Eli wasn't very much in favour of calling the Centre... he called it the Research Centre for International Law, though most of the projects run from the Research Centre were Eli's publishing projects associated with

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<sup>32</sup> Alan Vaughan Lowe (b. 1952-) Chichele Professor of International Law and Fellow of All Souls College, Oxford (1999-2012). Barrister Essex Court Chambers, London, QC 2008.

<sup>33</sup> Christopher Greenwood (b. 1955-), Professor of International Law, London School of Economics (1996-2009), Judge of the International Court of Justice (2009-2018).

<sup>34</sup> Eyal Benvenisti (b. 1959) Whewell Professor of International Law (2016-), Professor of Human Rights, Tel Aviv University (2002-16).

<sup>35</sup> Marc Weller, Professor of International Law and International Constitutional Studies, Cambridge (2010-), Director & Fellow, Lauterpacht Centre for International Law (2010-2015).



things like the *Iran-US Claims Tribunal Reports*, *International Law Reports*, later on the *ICSID Reports*.

I remember Ian Brownlie used to say that there was the Research Centre for International Law and there were individuals like Vaughan Lowe and Derek Bowett engaged in research in International Law. It was a slightly unkind remark, but there was some truth to it. It seemed to me that it was accurate and an appropriate recognition to call it the Lauterpacht Centre and the Faculty agreed with me and that's how it is now identified and I spent some time on the article I wrote on Eli justifying that decision. I'm sure it was right. Eli wanted to sell the name to make money for the centre. The Faculty provided very little money for the centre. All the money had come from private sources including Eli himself.

**48. You were Director of the centre for two periods, '97 to 2003, and then from 2006 to 2009. There was a break.**

That was because I was the chair of the Faculty Board. Daniel Bethlehem<sup>36</sup> took over as Director until he was appointed Legal Adviser for the British Government.

**49. Yes.**

So I was Director of the Centre from '96, in fact, until 2009 with that three-year gap and I worked from the Centre as an individual throughout that time.

**50. I remember when you were Chairman of the Faculty. Is there any outstanding memory that springs to mind during your tenure as Chairman?**

There seemed to be a lot to do at the time. I don't really remember.

**51. I think you instigated an assistant?**

Or Deputy Director. The tradition at Cambridge, which is still the tradition, and I think has worked well because the Cambridge Faculty is a very good one, is that the professors collectively took responsibility for the running of the Faculty and the principal manifestation of that was the tenure as chair of the Faculty Board and I was always a believer in taking a collective responsibility for these things. So when Jack Beatson<sup>37</sup>, who was my predecessor as chair of the Faculty Board, was appointed to the High Court he asked if I would take over and I agreed to do it and it brought me into the affairs of the Faculty to a greater extent than before.

**52. Which was tied to your ultimate vision for the Lauterpacht Centre to be brought closer...**

Yes, that's right.

**53. Also during your time as Whewell Professor you arranged annual FCO courses in the Faculty.**

That was something which already existed, and I simply continued.

**54. Right.**

It was something Eli had arranged.

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<sup>36</sup> Sir Daniel Bethlehem, KCMG QC (b. 1960-) barrister, Legal Advisor to the Foreign and Commonwealth Office UK (2006-11).

<sup>37</sup> Sir Jack Beatson, FBA (1948-), Rouse Ball Professor of English Law (1993 - 2003), Judge, High Court (2003-2013), Lord Justice of Appeal (2013-).



**55. You were called to the English Bar in '99 at Gray's Inn. Did you have any time to attend the functions?**

I was originally a door tenant at 3 Verulam Buildings, but then, I can't remember the exact year, it may have been the early 2000s, Matrix Chambers<sup>38</sup> was founded. My work at the bar was very much associated with Philippe Sands<sup>39</sup>....we worked together. He worked as my junior in a number of cases and he was deeply involved in the establishment of Matrix Chambers. Matrix Chambers was unusual in trying to bring together academic and practitioners, academics were not door tenants, they were full members of chambers paying half rates and obviously working less than full-time but still greatly involved in chambers and that was a very good system which has continued. So I became a founding member of Matrix Chambers and a full member of the English Bar.

I didn't do many English cases, nor I think did Derek Bowett. The tradition was that the international cases were largely done by professors in Oxford and Cambridge, and domestic cases were done by professors in London. Ros Higgins<sup>40</sup> did some international cases but quite a lot more domestic cases. Derek Bowett didn't do very many domestic cases. Eli did quite a lot of both.

**56. In 2003 you became a member of the Curatorium of the Hague Academy of International Law. Can you outline what this entailed?**

Well, basically selecting lecturers and helping run the programmes. I was a member of the Curatorium for quite some time, as long as it was possible for individuals to be a member. I think it was fifteen years or something like that. During that time the Academy went from strength to strength. It's now got very fine premises just within eyesight of where we're sitting. A very good lecture theatre and programmes both in The Hague and elsewhere run by a succession of very able Secretary Generals.

**57. While you were in your chair, did you have any have overseas sabbaticals?**

I never had an overseas sabbatical. I had one actually in Cambridge when I was still at Adelaide. I did have a non-study period, a non-teaching period, I should say, but it was interrupted by a need... it was after I had been chair of the Faculty Board. I was granted a year's leave but during that period Daniel Bethlehem went to the Foreign Office so I had to come back to... I had to cut my leave short and come back to the Lauterpacht Centre, but I didn't really have any study leave during the whole of my period in Cambridge.

**58. Did you know Daniel Bethlehem?**

I was responsible for his appointment as a lecturer. I thought he was very good and we got on extremely well. I still remember the moment he was told that he had been appointed as Legal Adviser and how pleased he was, as I was.

**59. You've had a long association, as we know, with the United Nations. You were a Member of the International Law Commission from '92 to 2001, and a Special Rapporteur on State Responsibility from '97 to 2001. Could you tell us how these came about?**

A lot of things happen in international law by accident. This was an accident, for the first reading and the first draft articles on State Responsibility had been worked out by a series of Italian special rapporteurs. Well, I said "a series" of Italian special rapporteurs, it's

<sup>38</sup> Matrix is a barristers' chambers located in London, Geneva and Brussels. <https://www.matrixlaw.co.uk/>

<sup>39</sup> Philippe Sands (b. 1960) Professor of Laws, Director Centre on International Courts and Tribunals UCL.

<sup>40</sup> Dame Rosalyn Higgins, DBE, QC (1937-), President ICJ (2006-09).



not quite accurate. Roberto Ago<sup>41</sup> was Special Rapporteur on State Responsibility from the 60s until the late 80s when he was elected to the court. He was replaced by Riphagen<sup>42</sup>, a Dutch lawyer, for a short period of time and then by Gaetano Arangio-Ruiz<sup>43</sup>, an Italian professor, whose period on the Commission came to an end in 1996 against his wishes.

That meant that in 1997 there was a vacancy in the special rapporteurship. Arangio-Ruiz finished the first reading on state responsibility in 1996 and it was a major part of the work of the Commission during my first term. So the question was who was going to take over in 1997 and I put in a bid for it because State Responsibility was one of the classic topics of international law and one of the great unfulfilled tasks of the Commission and they accepted that idea. I was appointed in 1997 as Special Rapporteur and the ILC gave me four years to complete the second reading, which we did.

#### **60. Remarkable, and we will touch on ....**

I still think it's my greatest single achievement as international lawyer - to finish the articles on responsibility and the associated work, commentaries, the books and so on.

#### **61. I hope that we can return to that when we speak about your scholarly work tomorrow.**

Yes, of course.

#### **62. Before we close the section on your Whewell tenure, David Wills<sup>44</sup> has always said that you were very supportive of the Squire Library and I wonder if you could just comment upon that? Any particular contributions to the development of the library collection, anything that you recall?**

When I came to Cambridge the library was in a fairly bad way. It had a very low budget, and John Tiley was very concerned about that, as he was concerned about many things associated with the Faculty. In the early 90s I became Chair of the Library Syndicate and pushed for an increase in budget, which happened, but still not munificent. It doesn't compare with most North American libraries, but it's better than it was.

Of course, the Library moved to its current premises where it has at least a modicum of space. I was very supportive of the Library and still am. It's obviously essential to research and scholarship in law, including international law; and I was never in favour of the Lauterpacht Centre having its own library. For resource reasons it was much more sensible to have an integrated collection with professional librarians and that's what we've got, with yourself as a very important part of that.

#### **63. Thank you. Well, a propos the Lauterpacht Centre, which we are very pleased to support as a library service, how would you summarise the current influence of the Centre on a global scale?**

Well, when I was there it had two main strands, its publication programme, which I supported, but didn't really extend and the only extension into publication was the

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<sup>41</sup> Roberto Ago (1907-95), Italian jurist, Professor of International Law, universities of Catania (1934-1935), Genoa (1935-1938), and Rome (1956-1982). Judge of ICJ (1979-95), served on ILC (1957-1978).

<sup>42</sup> Willem Riphagen, Dutch jurist, *ad hoc* judge of ICJ in *Belgium v. Spain* (1962-70), served on ILC (1977-86).

<sup>43</sup> Gaetano Arangio-Ruiz, Italian lawyer, Professor of International Law at universities of Camerino, Padova, Bologna, and Rome (emeritus at "La Sapienza"). Hague Academy courses in 1962, 1972, 1975 and 1990. Served on ILC (1985-1996).

<sup>44</sup> Squire Law Librarian, Cambridge (1995-present)





development of the international publishing at Cambridge University Press and, in particular, the series “Cambridge Studies in International and Comparative Law” which I restarted. It had declined. It was a series started by Lord McNair<sup>45</sup>, who was the sixth Whewell Professor, and taken over by Hersch Lauterpacht. Robbie Jennings became editor of the series, but didn't really do anything very much to it so it was more or less in desuetude when I came.

I remember on arrival at Cambridge I rang Cambridge University Press and said, “I want to speak to the person responsible for law,” and the receptionist who answered the phone said, “Oh we don't do law,” and that was a fairly remarkable proposition for a University Press. Again, with John Tiley's help, I contacted senior people at the University Press and coincidentally Eli was at the time selling Grotius Publishing to Cambridge University Press. Cambridge University Press took over international law publishing in a serious way and as part of that we revived the series “Cambridge Studies in International and Comparative Law”, which has now had more than a hundred volumes and is probably the most significant monograph series in International Law of any publisher. That wasn't a Lauterpacht Centre venture although I did all the work from the Lauterpacht Centre.

The second aspect of the Lauterpacht Centre was the visiting programme and over the years the Centre has had many hundreds of visitors. I think Anita [*Rutherford-LD*], who was recruited as administrative officer in the centre, puts it about 700. So a huge number of people have come to the Centre and worked there and had it as their home and it's a very pleasant and collegiate environment from that point of view.

What I didn't do and what I perhaps regret is run independent research programmes from the Centre. I think that's now happening and Eyal Benvenisti is continuing that. So I think that's a third strand which was missing in my time.

#### **64. So how would you sum up your illustrious academic career at Cambridge in the Whewell chair?**

I think I'm proud of some of the doctoral students. I've had about 60 doctoral students at Cambridge, many of whom published their theses either through Cambridge or Oxford or other publishers. They included Christine Chinkin<sup>46</sup>, who was a doctoral student of mine in Sydney where she was then teaching, but they also included Susan Marks<sup>47</sup>, Michael Byers<sup>48</sup> and many subsequent figures, Karen Knop<sup>49</sup> (as a visitor) and very many others and many of those books have been published and they have made a contribution to international legal studies. So that is, I think, the most important thing I did, the thing which has probably got the longest shelf life.

I think others will have to say what other contributions I made to the Centre. I think the Centre became a bigger outfit with more people around and a place where people could talk and discuss and have seminars and so on. We ran conferences on various subjects as part of the spectrum of international law places. In Europe the only place that might have a greater fame would be the Max Planck Institute in Heidelberg, but when you consider the resources of the Max Planck centre in Heidelberg, probably 30 or 40 times the resources, the

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<sup>45</sup> Lord, Sir Arnold Duncan McNair (1885-1976), Whewell Professor (1935-37), Professor of Comparative Law (1945-46), British Member Permanent Court of Arbitration at the Hague (1945-65), ICJ Judge (1946-55), President (1952-55), President ECHR (1959-65).

<sup>46</sup> Christine Mary Chinkin, CMG FBA (b. 1949-), Emeritus Professor of International Law LSE.

<sup>47</sup> Susan Marks, Professor of International Law LSE (2010-)

<sup>48</sup> Michael Byers, Canada Research Chair in Global Politics and International Law, University British Columbia, Dept Political Sciences (2004-)

<sup>49</sup> Karen Knop, Professor of Law, University of Toronto



annual income of the Lauterpacht Centre. It has achieved a lot with very little, a very Cambridge way of doing things.

**65. Well, we've previously touched on the beginning of your ICJ casework while you were at Sydney, but as a major factor in your career, international litigation really took off during your time at Cambridge and in his assessment in your festschrift, Philippe Sands sums up your activities as ranging from Hamburg, Washington, Paris, Istanbul and your second home here, The Hague. I realise you can't speak about specific cases but perhaps we can just ask you about some generalities and I have totted up some statistics from your CV on the ICJ website and come up with the following numbers.**

**You were counsel in ICJ cases 29 times, counsel in international arbitration in 23, counsel in other arbitration in approximately 40, judge or arbitrator in the OECD Administrative Tribunal and other tribunals 30 times, expert witness and published opinions on 12 occasions. Much of this was undertaken while you were at Cambridge, while at the same time you had your normal academic and administrative duties as well as writing your books and your papers and this is nothing short of an heroic workload. Can you tell us how you managed your time?**

Well, I used to work really hard. Harder than I work now because I'm nearly 70 and the Court has its own pace of work – we can talk about that probably later on – but I still write quite a lot. It is what I was born to do, all I wanted to do and having the opportunity to represent governments was incredibly exciting so I just worked very hard at doing it, probably to the detriment of other activities and social life, but that's the way it is. I was a typical middle class workaholic.

**66. As for the cases and the arbitrations themselves, I wonder if you could mention any highlights in this really remarkable professional career?**

The *Gabčíkovo-Nagymaros* case<sup>50</sup> for Hungary was my first lead in the court and it was very important in my formation as an international lawyer. It gave rise to the experience of working with technical experts on environmental and scientific matters which is something I love doing and continued to do in the *Whaling* case, for example, for Australia against Japan, in the two Indus waters arbitrations for Pakistan against India and in a number of other cases, and in several of the Costa Rican cases against Nicaragua, and one of the Colombian cases against Ecuador.

That's something I greatly enjoyed – working with experts in other fields, geomorphology, water, sediment transport, things like that. Generally environmental sciences, fishery science, that was a great experience. The cases don't fall into any particular category, they are across the field of international law: boundary cases, some advisory opinions, cases to do with international organisations. I was expert in the Canadian Supreme Court in the *Quebec* reference and that was a significant influence and has given rise to a very important judgment of the Canadian Supreme Court, fundamental in its significance, which then fed back into the Kosovo advisory opinion where I was counsel for the United Kingdom with Daniel Bethlehem, and also the work I did in relation to the Scottish Independence referendum.

There were strands following through in the various cases I did but it's largely happenstance – whatever happens next, whatever comes in the door. I did a lot of work in investment arbitration, both as counsel and as arbitrator and I'm continuing to work as arbitrator in a number of investment cases. I contributed to the modern formation of the field

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<sup>50</sup> See Press Release 2017 <http://www.icj-cij.org/files/case-related/92/092-20170721-PRE-01-00-EN.pdf>



of investment arbitration which is a contentious area but, nonetheless, I think was important and still is important.

**67. That's fascinating, thank you.**

**This brings us to your awards and honours. Are there any that you regard as particularly significant?**

Well, I had a series of honorary doctorates from various universities. So Paris, Amsterdam, Neuchâtel, Péter Pázmány University in Budapest, Adelaide, I'm pleased to say, and those are awards are recognition for work done. But the Hudson Medal was probably a highlight in the American Society for International Law, which is awarded to a non-American for contributions to international law. I think Eli Lauterpacht got it. So there have been a series of honours like that, but overall the highlight was the Companion of the Order of Australia in 2013, which is the highest Australian honour and partly awarded as part of the Australian campaign to run me for the Court, but partly awarded for work I had done up to then.

**68. Was there an occasion that you attended for that?**

We met at Government House where the Governor General made the award<sup>51</sup>.

**69. It must have been a wonderful occasion?**

My family were there, which was nice, and my natal family, my brothers and sisters.

**70. That brings us to your United Nations roles, and to quote from your original Cambridge Faculty website entry you were, "The first Australian member of the United Nations International Law Commission, '92 to 2001, and in that capacity responsible for the ILC's work on the International Criminal Court and for the Second Reading of the Articles on State Responsibility." We have touched on this in this interview but is there anything more you could perhaps add to it?**

I very much enjoyed the time on the Commission. It was collective work and a number of the judges on the court now, Judge Gaja<sup>52</sup>, Judge Bennouna<sup>53</sup>, and others, were members of the Commission in my time, Judge Robinson<sup>54</sup>. I worked with them on these projects and you had to exercise quite a lot of individual initiative. The Commission provided general background support but didn't provide research support on particular projects, at least not in that time, so I had to use my own researchers and one of the answers to your previous questions, "How did I do all of this?" I did it with a great deal of help, of research support. I've had about 30 researchers over this time, mostly very high quality; former students of mine at the LLM or PhD level, and I had various levels of support in the ILC as well. So it wasn't all individual effort.

**71. That brings us to your retirement from academia and your entry to the International Court of Justice. On your retirement, Professors Christine Chinkin and**

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<sup>51</sup> 2013- Dame Quentin Alice Louise Bryce

<sup>52</sup> Giorgio Gaja, (b. 1939-). Professor of International Law, University of Florence (1974-2010), Italian jurist, Member ILC (1999-2011), Judge at ICJ (2012-)

<sup>53</sup> Mohamed Bennouna, (b. 1943), Professor at Mohammed V University, Permanent Representative of Morocco at the United Nations (1998-2001), Judge at ICJ (2006-).

<sup>54</sup> Patrick Lipton Robinson, (b. 1944-), Jamaican jurist, Member ILC (1992-1996), judge at ICJ (2015-), President ICT for the Former Yugoslavia (2008-2011)



**Freya Baetens<sup>55</sup> organised a commemorative volume of essays to honour your 41 years of service to academic scholarship in international law. All 23 essays were written by 26 essayists who were the doctoral students.**

Yes, I made it clear I didn't want a normal festschrift. It's not a festschrift, it's a book produced by my doctoral students.

With the exception of Philippe Sands and Ivan Shearer, who were colleagues of mine who wrote biographical elements to which you have referred, but the rest were all doctoral students, including Christine Chinkin, who was the first, and Freya Baetens, who was later a doctoral student and who, much later still, I married. She is now a professor at Oslo. We just had our second child, a daughter.

**72. How wonderful. Well, the volume was published by CUP, *Sovereignty, Statehood and State Responsibility*<sup>56</sup>. These are the areas that have been at the very heart of your international law career. Could you say anything more about the circumstances of the publication?**

Well, it was something that the editors offered which I was very grateful to receive. As I say, I didn't want a normal festschrift. The *liber amicorum*, as they call them, the "book of friends", is a good way of making enemies out of your friends because it's a terrible chore to write these things and in the ordinary course of events a lot of festschriften never get read by anyone and they are poorly indexed. I suppose they are in the various legal digests but it's difficult to find them and they seem to get lost, but this was a proper book put together on a theme by Cambridge University Press and therefore it's had a decent circulation and it was a very nice gesture as well.

**73. Two contributions were tributes to your early life by Professor Ivan Shearer, currently Emeritus Professor, Sydney, and then to your time in England by Professor Sands. I wonder if you could just go back to these because they raise some very interesting details. Professor Shearer says that a propos your time at Brighton High School, this is coming back to your schooldays, you were very fond of music and also public speaking and debating. Were these former interests of yours what persuaded you to enter law?**

Debating and public speaking, yes. Music is something I really caught onto only later in my school career. My parents weren't musical. I never had training in a musical instrument, to my regret, but I became interested in music when I was at university and got to know the classics and I still love music but very much as a passive listener, not as a performer, I regret to say.

**74. Professor Shearer also says that in addition to picking up the Angus Parsons Prize in law in your final year, you were also a prizewinner in literature, the Sir Archibald Strong Memorial Prize, and for English Verse, the Bunday Prize. Are both these areas interests that you retained?**

I'm still interested in poetry. I don't write poetry except under intense emotional pressure which tends to happen less often these days, but I used to write poetry to some extent, like thousands of people who lack the ability to be... I mean, in my view there is no

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<sup>55</sup> Freya Baetens, Professor of Public International Law Oslo University, Associate Professor at Europa Institute (Faculty of Law, Leiden University).

<sup>56</sup> *Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford* Edit Christine Chinkin, and Freya Baetens, 2015, CUP, pp 528.



such thing as moderately good poetry. There's either poetry or non-poetry and my work was very much in the non-poetry field, but it's something I did and gained emotional satisfaction from doing.

**75. Do you think you could have become an English academic?**

No. I never did an honours degree in the arts side. Had I done so, it would have been more History than English in any event, though I still read a great deal of English literature, but I was interested in public affairs from an early stage and that's why amongst the legal sub-disciplines I chose international law.

So if I had had a career as a pure academic it would have been as a historian rather than in literature. I am still very much interested in the history of international law, for example.

**76. There's also mention made by Ivan Shearer of the fact that you were the youngest member in modern times to be elected to the Institute. Any circumstances of this event?**

It was probably an accident. They'd heard about me and didn't know who I was so they elected me. There were no Australians in those days and there are only two Australians now. Hilary Charlesworth<sup>57</sup> is the second. I think Ian Brownlie had something to do with the circumstances of the election. The Institute is a very peculiar body which consists of ageing academics and some ageing judges who meet every two years in pleasant circumstances and pass resolutions which they alone read. I'm being slightly sardonic but only slightly.

**77. I think it was a source of great disappointment to Kurt Lipstein that it took him so long to be elected.**

Yes, he was someone who would have contributed more and the Institute would have gained more had he been elected earlier.

It's difficult if you come from countries like the UK with a lot of potential candidates and even now, very significant English academics have not been elected to the Institute. Vaughan Lowe, Christopher Greenwood (Christopher Greenwood has now, but only after he became a judge), Philippe Sands, so its membership is very patchy.

**78. Interesting. Something else that's mentioned by Ivan Shearer is that while you were in transit between Adelaide and taking up the Challis chair in Sydney, the bulk of the family possessions was destroyed by fire while they were in store and obviously this must have been terribly traumatic. I wondered whether you lost any professional materials, 20 years of notes and papers and your legal library?**

Yes, I lost my legal library. I had to reconstitute it. That was in 1982 when I was moving from Adelaide to the Law Reform Commission [*in Sydney - LD*]. It wasn't later on in the 80s. It was devastating but mostly it was devastating because you build up an archive of objects which you acquire in flea markets and junk stalls and in the course of one's young life and that was photograph albums and things like that and they were all in it and I think that had an emotional impact which my then wife and I didn't fully assimilate, so it was a terrible thing.

That was in 1982, but we survived.

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<sup>57</sup> Hilary Christiane Mary Charlesworth (b. 1955-), Australian lawyer, Melbourne Laureate Professor at Melbourne Law School (2016-), Australian Research Council Federation Fellowship (2005-2010), ARC Laureate Fellowship (2010-2015), Distinguished Professor & Director Centre for International Governance and Justice at ANU, *ad hoc* judge at ICJ 2011 (Whaling in the Antarctic Case, *Australia v. Japan*).



**79. Finally, he notes that while you were Dean at Sydney in 1992 you made international law a compulsory course. Would you say this has had a long-term effect on teaching International Law at Sydney?**

I think it's had an effect on teaching International Law in Australia, in that most Australian law schools now have International Law or at least a short course in International Law as a compulsory course and that would have been regarded 20 or 30 years ago as unusual. In fact, I think Sydney was the first place to have it. We gave people an introduction both to public and private International Law which is a somewhat unorthodox thing to do in itself, because they are only distantly related to each other, but it gave students some access to what's going on elsewhere, which as part of a modern legal education is absolutely indispensable. I only didn't do it in Cambridge because most students did International Law in any event so the need for it was less.

**80. In this work Philippe Sands mentions that he first met you in 1987 in Cairo at a meeting of the Institute. You were at Sydney and he was a student at St Catz at the time and he was working at the Research Centre with Eli, and I wondered if you recall that occasion?**

Of course. He was young and full of life. He is still full of life even though he is not so young. One of my closest friends in the field of International Law and he says that I was open to contact with younger people, although I was young myself at the time, and I suppose that was true and we have maintained that link ever since.

**81. He mentioned the remarkable number of 57 PhD research students while at Cambridge.**

Yes, more than that, 63.

**82. Thank you, and I how you managed to actually keep tabs on them?**

Well, PhD students mostly keep tabs on themselves. You've got to write to them every so often and say, "How is it coming?" but I gave the PhD students as much attention as they needed and more attention when crucial events were coming up, like the first year qualification or putting a thesis together, but I didn't insist on regular chapters. I didn't when I was doing my own PhD, you don't study and then write, you write in order to study and study in order to write. The two activities happen together. So I was always saying to people, "What are you going to write next? Let me see it and let's talk about it," and if you set a programme of study of that sort, PhDs in effect, supervise themselves because they don't come along to talk generally about what they've been reading, they come along with a text which you can analyse and discuss and that was always the way I supervised and, as I said, I think that's the most significant thing in my academic career.

**83. *Inter alia*, Philippe Sands mentions that you gave an opinion on Scottish independence.**

With Alan Boyle<sup>58</sup>.

**84. That's right, and seeing the topicality of referenda these days I wonder whether you could give us a little background to this opinion?**

Well, the question was whether Scotland, if it became independent, would be a new

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<sup>58</sup> Alan Boyle, Emeritus Professor of International Law, University of Edinburgh (1995-2017), Practices at Essex Court Chambers.



state or in some way continue the affiliations of the United Kingdom. The answer to that was clear, it would be a new state, and that had the implication, *inter alia*, that it would have to reapply to membership of the European Union, it wouldn't inherit that automatically. That view was criticised by some European lawyers but I think it was the position taken by the European Commission itself and is the position taken by the European Commission in relation to other secession attempts within Europe. So there was that aspect of it. It was written for the British government and published as a Command Paper<sup>59</sup> and it says what it says. I can't comment on the content.

**85. While on the subject of referenda, do you think that the Brexit result will have any effect on the UK's influence in the realm of International Law and any reduction of its role on the Security Council?**

Well, it won't produce a reduction of its role on the Security Council because the United Kingdom has a veto, I mean, under the Charter, but it's one thing to have a veto, it's another thing to exercise it and exercising it requires political will and to some extent that depends on the legitimacy of what the position is you are taking. The United Kingdom rarely exercises a sole veto in the Security Council.

On the broader question of whether Brexit impacts on the United Kingdom's standing in International Law, the answer is obviously it does. That may be temporary. It may be the vision of the Brexiteers and I'm not a Brexiteer. I obviously was not an elector in the United Kingdom and I don't express views on the United Kingdom's domestic politics but I think in retrospect it's a great pity that Brexit is happening. It's clear that it is happening. The vision of those who supported it is that the United Kingdom will find its own way in international relations and resume its former status and I hope that's true, but the jury is still out. In the meantime it's had a very significant adverse effect on the United Kingdom's standing in international law and that's clear.

**86. Finally, we come to your election as a judge in 2015. Could you describe the circumstances of this event?**

Well, Australia's last judge on the court and the only other Australian who was elected to the court was Sir Percy Spender<sup>60</sup>, who was elected in 1957, served to 1966, and he was President in his last three years, and cast the notorious casting vote in the second *South-West Africa*<sup>61</sup> cases which it has been part of my academic endeavour to criticise. It was a disastrous decision, but he was in some other respects quite a good judge. His dissenting opinion in the *Temple* case<sup>62</sup> is a very fine one, for example. He was Minister for External Affairs before being elected to the court. The Australian government in the 1980s decided that it ought in principle to develop a candidate for election to the court in the longer term. They approached me in the mid-80s to see whether I would be interested, so it was really

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<sup>59</sup> Annex A, Opinion: Referendum on the Independence of Scotland – International Law Aspects. Professor James Crawford SC & Professor Alan Boyle Feb. 2013

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/79408/Annex\\_A.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/79408/Annex_A.pdf).

<sup>60</sup> Sir Percy Claude Spender, QC (1897-1985), Australian diplomat and judge. House of Representatives (1937-51), cabinet minister under Robert Menzies and Arthur Fadden, Ambassador to USA (1951-58), judge at ICJ (1958-67), President ICJ (1964-67).

<sup>61</sup> <http://www.icj-cij.org/en/case/46>, Judgment of 18 July 1966, Declaration of President Sir Percy Spender (as appended immediately after judgment). <http://www.icj-cij.org/files/case-related/46/046-19660718-JUD-01-01-EN.pdf>.

<sup>62</sup> <http://www.icj-cij.org/en/case/45>, Judgment of 26 May 1961 Temple of Preah Vihear (Cambodia v. Thailand), <http://www.icj-cij.org/files/case-related/45/045-19610526-JUD-01-04-EN.pdf>.



farsighted; one of the reasons they nominated me to the International Law Commission was as preparatory to a possible Court candidature. That took quite a long time to happen but it shows the need for planning for what are... Australia is not a small country but it's a small country in the Western European group in terms of its influence. It's not Germany or France or the United Kingdom and it required preparation to run the campaign for the Court. I was very strongly supported by the Australian government over those years.

**87. On a general level, what is the overall impression of the role played by the ICJ in world political events?**

Well, it's very variable and it's less than it was, partly because the diversity of courts and tribunals is much greater than it used to be: Law of the Sea Tribunal, WTO, the European Court of Human Rights, the Court of Justice of the European Union. There's much more adjudication going on but a much smaller proportion of it is with the Court. On the other hand, the Court has always had a relatively restricted case law and the important thing that it does is to deal with the cases it gets in a considered and careful way. I think it still does.

One of the things which impressed me in my period on the Court, now over three years, is the care which goes into the preparation of judgments and although the Court has been criticised for being slow, to some extent the speed at which things are done depends on the parties rather than the Court. The Court only has limited control over that. What it can control is the quality of the output and the quality of the output is high.

**88. You have been on the court for three years. Can you pick out any highlights so far?**

One of my problems on the Court, and I'm afraid it's public knowledge, is that I've been conflicted in about 40 percent of the cases because I was counsel in those cases before being elected. We knew that was going to happen. It's been worse than I thought it would be because a number of cases have come back to the Court with which I had an earlier involvement. For example, the Chagos advisory opinion where I was counsel for Mauritius in the arbitration against the United Kingdom<sup>63</sup>. So my role on the Court has been more limited than it should have been, or might have been. With that it's passing, and the new cases we are getting, for example we are deliberating at present on *Equatorial Guinea v France*<sup>64</sup> and I've been heavily involved in that process. It's a collegiate court, it has good personal relations. There are disagreements sometimes, strong disagreements, but they're not personalised, which has not always been the case, so it's a good place to work.

**89. Would you say that the ICJ looks upon the Security Council as the analogue to a sovereign?**

No. There isn't a sovereign, there isn't a single sovereign in the international system; that's what defines the international system. The Security Council is not a substitute for a sovereign, not even a surrogate. The Security Council has vital roles in the peace and security field and the court is very careful to align itself with the Security Council on matters which the Security Council has spoken under Chapter 7<sup>65</sup>.

**90. You spoke very interestingly about your own appointment to the Court re the**

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<sup>63</sup> Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion), 2017. <http://www.icj-cij.org/en/case/169>

<sup>64</sup> Case 163, Immunities and Criminal Proceedings (Equatorial Guinea v. France), <http://www.icj-cij.org/en/case/163>

<sup>65</sup> UN Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Articles 39-51. <http://www.un.org/en/sections/un-charter/chapter-vii/>





**unsuccessful attempt by the UK to have Judge Greenwood re-elected. In this regard it has been mooted that this election shows the UK's weakening influence in international affairs. Do you think there is an element of truth in this?**

I think I shouldn't comment on that.

**91. I understand. Was there any element of Brexit influence therein?**

Same answer.

**92. Well, Judge Crawford, all I can do at this point is to thank you very much indeed for an immensely valuable and interesting account. I am extremely grateful to you for making the time in your very busy schedule. I hope that tomorrow we can cover your scholarly work and I thank you again. Thank you very much.**

Great pleasure. Thank you very much for the care you have taken.

