

Conversations with Professor Sir Derek Bowett

by
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Third Interview: Sir Derek's published works, mainly his books (1963-97)

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Between December 2006 and April 2007, Sir Derek was interviewed several times at his home in Hills Road to record reminiscences of his career and nearly sixty years of his association with the Faculty of Law at the University of Cambridge. The interviews were taped and what is presented below is an edited transcript of our conversations arranged chronologically under headings that highlight Sir Derek's career. Lady Bowett participated in the interviews and her comments are included.

Interviewer: Lesley Dingle, **her questions and topics are in bold type**

Sir Derek's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

Law of International Institutions 1963 1st Ed

87. This was your first book, and the longest running (1963-1982, and 2001). The United Nations was founded in 1945, and you worked there in New York in 1957-59. You must have started your book soon after getting back to UK and about the time you began your lectureship at Cambridge?

No, before.

88. Was your time at the UN the stimulus to write the book?

Self Defence was my PhD in Manchester. That was the first book I wrote.

89. What was the stimulus for the International Institutions book?

I got bored with teaching the routine stuff. The worst part is the description of the organisations. They [students] had to have the background. And they have to know about the organisations first.

90. Although certain aspects have changed, I notice that the summary which you wrote in 1963 has been retained in the 5th Edition (2001) because it was a wonderfully succinct account of the transformation from an association of states into the League of Nations. This was picked up by one of the reviewers, Alvarez at Columbia, and it must have given you great satisfaction.

Moderately

91. Those were still early days for the UN - before the EEC had taken off. So the UN was a very important institution and the only large body of nations making "laws".

I did not foresee the potential importance of the EEC. But I did foresee the importance

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of the UN. When it [did come into being it] changed the UN.

92. What were some of the changes?

Some of the new member states voted in blocks and were not concerned with the merits

93. Your four editions were written to a format which you retained: I - Global Institutions., II- Regional Institutions., III- Judicial Institutions., IV- Common Problems. Clearly you saw no need to change this “formula”. Did you sense that your students and fellow academics liked it over the years?

Yes

94. You thanked Professor Georg Schwarzenberger at University College London for his help with the book. I notice he was a Vice President of the London Institute of World Affairs - which sponsored the book. What was your relationship with him?

It became very bad. He read my PhD on Self Defence and he encouraged me to publish Self Defence, which I did. Those were the early days when I came to Cambridge and we got on quite well. But in 1964 I wrote the book on UN forces [*United Nations Forces: A Legal Study of United Nations Practice*] and in a footnote I referred to a work by Schwarzenberger. I hadn't realised then, but it was his new book. And he wrote to me and said I had maligned him or misrepresented him, and he wanted me to publicly correct this and send an apology. So I took my book and his work to four people in Cambridge (McNair, Jennings, Lauterpacht, Parry). I said “ have I misrepresented Schwarzenberger?” and they said “No. We can't see it”. So I refused to publish an apology and we ceased to be friends. From that point I may have read him but I never again cited Schwarzenberger. He accused me of maligning him in something I'd said in the UN forces books. He was a fool.

95. The 5th Edition was written by Sands & Klein. Did you have much input?

No.

96. Your original Parts I-II have remained pretty much as you did them (only small changes), but Parts III (Judicial Institutions) and IV (Common problems), whilst remaining topics, have been completely re-written and expanded (~90 pages each). Does this reflect a different perspective, or just changes in the institutions themselves?

Changes in the institutions themselves. Not a different perspective.

97. In the 1st Edition you queried the role of the “Great Powers” to permanently sit on the Security Council, and implied that in the future these might no longer be “Great”, even though they were so enshrined in the Charter. Prophetically you foresaw the rise of China, and demise, for example of UK and France (or even the Soviet Union). Was it something you were aware of at the time or was it just a general principle that you were enunciating?

Great powers come and go and the UN was supposed to be forever. So I thought it would be daft. For example, India. It was not a generally held view. I'm sure the five powers wanted to be named. They wanted to be there in control, forever.



98. One of the reviewers of the 4th Edition, Chester Brown, drew attention to the question of “a common law of international organisations” He said this was a theme that had been raised by Elihu Lauterpacht in 1976.

It wasn't Elihu's phrase. It was by Wilfred Jenks, the Legal Advisor of the ILO [International Labour Organisation]. He wrote a lot about the common law of the institutions.

99. Do you see any evidence of such a common law?

Oh yes, In the UN you often cite common practice by organisations.

100. The International Criminal Court has yet to get off the ground. What do you see its role and how would it operate?

Unless the Americans pursue it, it's dead. It's very difficult to see its role. The ICC draft is very much the work of the Law Commission and driving that was James Crawford. He was very influential.

101. Would you have written enthusiastically about it had it been around when you were revising for your 4th Edition?

Well in the 70s, yes, but as to its probable effects, one just didn't know.

United Nations Forces: A Legal Study of United Nations Practice.
1964, London, Stevens & Sons.

102. Lord McNair wrote the Forward for this book and was very supportive. You were a “new” lecturer at Cambridge by then and he was a professor in the Faculty. Did he influence you in any way to write it?

What happened was this. The idea for a book of that kind was an idea of Mary Sibthorp and David Davis at the Memorial Institute in London. They wanted to publish such a book. They were ready to finance it. It was entrusted to a man called Colonel Draper. He was a great windbag. Full of talk. Never stopped talking He'd been the head of the Army's legal section. He said he'd write the book. He made various trips to New York, and spent all the money which was available. So they kept on asking for a draft and he produced nothing, except bills for his trips to New York! In the end we had a meeting, a very acrimonious meeting, in London. McNair was very angry. He was normally a very mild gentleman, but he was very angry and he fired Draper. And so he asked me whether I would write it, and you don't say “No” to McNair. So I said I would, and I wrote it at the same time as I was doing the *Institutions* book. That is why he wrote the Forward.

103. You say (p. 266) that none of the assignments you discuss in Part I had actually been undertaken in terms of UN Article 42, under which they were supposed to have happened. What did you mean by this?

There had never been action taken against states - coercive action. Article 42 hadn't been used.

104. There are certainly plenty of places where such a force could be used: Darfur, Congo (again!), Afghanistan, Zimbabwe, Somalia. Do you think the ad hoc arrangements are adequate?

Well they're not because they're not what the Charter envisaged. The Charter envisaged that each Member provide so much manpower. And so one needed each Member



to provide troops. Within Article 42 - they could use the same mechanisms, if they were being used, but the will isn't there and you see what is happening in the Sudan. It's terrible. But they won't act.

105. Lord McNair in his Forward supported your vision of a UN force. In a speech to the House of Lords (1963) that you quote (p.265), he linked the formation of such a force to “disarmament”. Presumably this was primarily nuclear weapons?

Yes, it was.

106. Part II of “UN Forces” has echoes of some of the sentiments you express in “Search for Peace”. Was there a conscious effort to put the same views in both a legal book (UN Force) and a more “popular” book (Search for Peace)?

“Search for Peace” come out of an organization in the Parliament Group. A small group wanted to run summer courses, so I ran the summer courses for World Government.

107. The copy of this “UN Forces” book that we have in the Squire Law Library is very well-thumbed and annotated. Clearly it was a very popular book. You must have received many favourable comments from your colleagues and students for writing such a useful volume?

Yes.

The Law of the Sea 1967, Manchester University Press

108. This book was written mid-way through your time as a Lecturer at Cambridge. It was published by Manchester University Press and paid for by a grant from Olive Schill's will.

Yes it was. A nice man called Ben Wortley started these as public lectures and a lady called Melanie Schill gave some money. So Ben Wortley said would I write or give a lecture. It's a very general book.

109. Were the chapters transcripts of some of the lectures you gave?

Yes.

110. Clearly the basis was the 1958 Geneva Codification Conference of Law of the Sea - did you take part and contribute to this conference? If so, what was your contribution?

For the first conference I was in Geneva, and I was made secretary of the Fourth Committee.

111. I know from your book on International Institutions that you were not in favour of the “one state, one vote” mechanism to decide important matters - how was the Law of the Sea Codification done?

One state one vote.

112. Do you approve of the Exclusive Economic Zone concept?

Yes, it's inevitable.



113. Does it not seriously disadvantage countries that have no coastlines, or even major ones that have only small coastlines (e.g. Germany)?

Too bad, but it's a fact of geography.

The Legal Regime of Islands in International Law,
1978, Dobbs Ferry, Oceana Publications, 337pp.

114. This book deals with the same legal territory as the “Law of the Sea”. It was written 11 years later, after you had been appointed Reader. What prompted you to write on this specialised topic?

Well you see I found out in practise that most of the disputes were about the location of islands, because the islands distort the effect of the median line. I realised that no-one knew that much about islands. There were no books on islands. There were books on straits and canals, but not islands. I had lots of material for this.

115. Was it the implications of the 1977 Court of Arbitration decision on the continental boundary dispute between France and UK over the Channel Islands that influenced you?

That was a typical example. If they used the median line it would totally distort the fishing grounds of Europe.

116. Apropos the EEZ. Have you followed how important it has become for fisheries and oil/gas?

I think the coastal states have the right to use the resources offshore. Maybe 200 miles is a bit much.

117. On your observation in this book that the EEZ (i.e. 200 miles) and the continental shelf limits will not necessarily coincide - has this resulted in any major legal wrangles do you know?

Well, yes. Boundaries with Norway and Denmark. Also the UK

118. How do you think nations should handle the exploitation of deep-sea resources which are well beyond 200 nautical mile limits?

Well, it's a matter of technology. At the moment the technology isn't there. They can't really exploit. These big firms will only do it if they need to. And so resources are unmined.

The Search for Peace
1972, London, Routledge & Kegan Paul, 236pp.

119. This book was written while you were still a lecturer. It is an intriguing work because it is not a law book.

I've told you about that. It was a book for young people as part of a summer course.

120. At the very beginning, it said that it was attempting “a quite impossible task”. Do you think your book was prophetic in any way - did it influence thinking on the subject?

No



The International Court of Justice: Process, Practice and Procedure.
1997, London, The British Institute of International and Comparative Law.

121. This resulted from a Study Group of the BIoF&CL, led by you yourself, which was to make a contribution to the UN Decade of International Law.

The book was my idea. We had a group of people. The Court wasn't working well. They were doing 2 or 3 cases a year. That was all. The whole procedure was cumbersome. The book was partly a criticism of the court, and partly the procedures.

122. Your chapter was on International Litigation. It contains fascinating insights into the pitfalls and practical arrangements parties have to negotiate and might experience (through bad luck or lack of good advice – e.g. the Taba pillars case where the options had been miscalculated by the Israelis). It is an intriguing “blow-by-blow” account of how these things proceed. I suspect you enjoyed writing it?

On Taba yes. The case was won by the Egyptians (who said that we would get an award from Egypt), myself and Sinclair (who was a British legal advisor in the Foreign Office). The case was handled by Europeans, but we were told we had to somehow use three Egyptian lawyers. The Egyptian agent asked me to pick out bits which they could do – what bits it didn't matter. We won the case. The Egyptians became national heroes and we, the Europeans, were forgotten!

123. Several times in the book various authors allude to the ICJ being overloaded, partly because cases take so long. In one Chapter (p. 76) there is an interesting statistic: the Permanent Court of International Justice (before WWII) made 37 decisions in a decade (1925-35). The ICJ made 18 (1980-90). Pre-war decisions were ~32 pages long, ICJ's are ~54. I know your Group was critical of this. Why do you think proceedings have become longer and bigger?

Many of the judges were of poor quality. Political. Many of them didn't live in The Hague. They lived at home. Even judges living in Paris would come up by train. Many of them didn't want to live in The Hague.

Robbie Jennings was a worker. He wasn't a “great ideas” man. He was my predecessor in the Chair [Whewell]. He was a good lecturer.

124. Someone else who became a judge was Schwebel.

He was backed by the United States, so Schwebel was appointed quickly into his [Jennings's] place [as a judge]. But he was a good judge.

125. In his contribution, Professor Boyle says perhaps the International Tribunal of Law of the Sea could take up some of the slack – has this occurred?

Not really.

