

Conversations with Sir Christopher Greenwood
Part 2: LSE, ICJ and Master of Magdalene
by
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This is an interview with the thirty-fourth entrant in the Eminent Scholars Archive. Sir Christopher was Assistant/Lecturer at Magdalene College from 1981-96, Professor of Law LSE from 1996-2009, and a judge at the ICJ from 2009-18. He is currently Master at Magdalene College. The interview was recorded in person at the Master's Lodge, Magdalene College.

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**.
Sir Christopher's answers are in normal type.
Comments added by LD, [*in italics*]. Footnotes added by LD.

91. Sir Christopher, last week we spoke about your early life, your career at Cambridge and certain aspects of your time in the Chair at the London School of Economics. Today, I hope we can briefly talk about some of the cases in which you were involved at LSE and then discuss your contributions as a judge at the International Court of Justice. We can then just touch on your recent time at Magdalene with some general observations.

Before we do that, could we just backtrack to last week's conversation where you mentioned that while at Cambridge you took several sabbaticals? For completeness sake, could you mention when these were and perhaps where you went and what your activities were?

Yes, certainly. I was on sabbatical twice when I was here, in 1987-88 and then again in 1994-95. The 1987-88 sabbatical, I didn't go away for any large part of it but I did go to a lot of international conferences, which were very interesting, including one in Jerusalem at the height of the Intifada, which was, to put it mildly, quite an exhilarating experience. It was at about that time also that I started doing some work in practice, mainly as a result of being brought into some work by David Calcutt³, who was the head of the chambers I was then in, and Master of Magdalene College at the time.

92. Thank you. You also mentioned last week some teaching which you hadn't covered in the conversation with regard to international law and modern conflict. Do you care to elaborate on that?

Yes. One of the things that struck me when I was doing the LLB, as it then was, in international law is that there's a gap between what you may be aware of as history and what you can actually remember from your own experience. So in my case, as a student in the 1970s, I could remember quite a lot about the Vietnam War, but Korea, Suez, the Hungarian uprising and so on, hadn't made it into any of the history books that I'd used and happened

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³ Sir David Charles Calcutt, QC (1930-2004), barrister, Master of Magdalene College (1985-94), created Press Complaints Commission (1990).



either before I was born or when I was much too young to remember what was going on. It occurred to me that it would be worth introducing some lectures on how international law impacted on those events that, as it were, existed in that gap between history and memory and then through into the contemporary period. So I'm afraid I rather shamelessly used my position as Secretary of the Faculty Board to put myself down to do a once a week lecture course on this, which I offered to the LLM students and to students doing the MPhil in International Relations. I certainly thoroughly enjoyed it. I gave those lectures right the way through my time here at Cambridge and was rather sorry to lose them when I went to the LSE.

93. I imagine there was a very good take-up for them.

Yes, there was. Considering it wasn't examined, we used to get a good take-up from both groups. Occasionally, people would bring a guest which was always rather interesting. I remember one lecture when I made a passing reference to something called the Harib Fort Incident⁴ which is now buried in the mists of time, but it involved British planes based in Aden bombing some targets in Yemen. There's always been some argument about whether lots of people were killed or whether, as the RAF put it, the only casualty was a goat. At the end of the lecture an RAF officer, who was doing an MPhil, came up to me and introduced me to the person he'd brought with him and this man was an Air Vice-Marshal who just looked at me and said, "I'm the goat killer of Harib. I commanded that operation."

94. Well, back to the London School of Economics where you were involved in numerous cases, both the international and UK level. 13 cases I counted, three at the ICJ, three at the Human Rights Court, two at the Court of Justice, three ICSID cases, two UNCLOS cases and you were expert witness for one case. Also there were nine cases before UK courts. How did this affect your teaching and your administrative duties?

Well, I certainly hope it didn't detract from my teaching in any way. I think it was actually a great help to be able to bring some practical experience to that teaching. I'd benefitted from that at Cambridge, from the lectures of people like Derek Bowett⁵ and later, though I wasn't a student at the time, watching Eli Lauterpacht⁶ in action. I think the students found it helpful. It's also quite useful to get people to focus on the sort of decisions that have to be made in practice. The Pinochet case, for example, which we touched on last time, is a good example.

The issues in Pinochet appear in a very different way if you look at them from the standpoint of what was actually going on in court as opposed to taking a step back and say, "Well, of course, you know, this is how academically we would look at it." The two feed on one another. There was one case I was involved in, a case called *Jones v Saudi Arabia*⁷, where I appeared for the Secretary of State for Constitutional Affairs as he then was, and I can remember a colleague giving a paper about this case afterwards. It was a very interesting paper but he'd completely missed the point of how that case had come about and what issues the court could and couldn't decide. So I like to think that having a foothold in practice as

⁴ See Hansard report of 1964 Commons questions on the subject: <https://api.parliament.uk/historic-hansard/commons/1964/apr/13/fort-raf-attack>

⁵ Sir Derek William Bowett (1927-2009), Whewell Professor of International Law (1981-91).

⁶ Sir Elihu Lauterpacht (1928-2017), Hon. Professor of International Law (1994-2017), Director Research Centre for International Law (1983-95).

⁷ Session 2005–06 [2006] UKHL 26 on appeal from [2004] EWCA Civ 1394 <https://publications.parliament.uk/pa/ld200506/ldjudgmt/jd060614/jones.pdf>



well made me a better teacher; it certainly made for getting up early in the morning and working rather long hours.

95. Were these cases arranged by the chambers?

Yes and no. Some of them came to me purely through chambers; some of them were cases where I was contacted personally and then got in touch with chambers. A bit of both, I would say.

96. In this case work you didn't concentrate or specialise in law of war conflicts, this topic was more prominent in your academic interest, particularly your book chapters. You broadened your interest greatly to deal with, for example, human rights, boundary disputes, the Law of the Sea and in this respect you represented Honduras, along with Philippe Sands⁸, as an adviser in the 2007 *Nicaragua v Honduras*⁹ case in the Caribbean Sea. The ownership of the Bobel Cay Islands was one of the issues, as was the Coco River delta and the extension of the border boundary out to sea. It became an issue of both colonial legacy on the continental shelf as well as geological aspects, so you weren't only delving into historical records, but you were having to familiarise yourself with the pattern of the river mouth and the creation of deltas. I thought this must have been absolutely fascinating.

Yes, it was. I took that, that was very useful background for when I became a judge at the International Court because we did a lot of work on maritime boundaries. The thing about rivers is that they shift constantly. It's something that the British occasionally have difficulty grasping because our rivers are relatively stable compared with rivers in much of the world, but the boundary can shift massively over time as a result of a river silting up and the estuary changing shape. If the mouth of the river is the starting point for the maritime boundary it can make an enormous difference what period you look at and how you determine that starting point. I found it rather fascinating.

In terms of the continental shelf, there are also of course, there's the historical evidence about mining exploitation, fishing and the resources of the water column above it. We've rather moved away from, there was a period when there was a lot of very heavy science about tectonic plates but the International Court rather snuffed that out in the 1980s.

97. Very interesting. I remember when I spoke to Judge Crawford¹⁰ he mentioned how much pleasure he derived from mixing so many different areas of knowledge, from mining to geography to geology to the sea and so on. It gave him great pleasure as well.

In our previous conversation you mentioned the *Bankovic*¹¹ case. I know that you can't talk about the specifics, but I found an interesting comment in a paper by Judge Loucaides¹² a propos this case, in which he quotes Lord Justice Sedley¹³ who said

⁸ Philippe Sands (b. 1960) Professor of Laws and Director of the Centre on International Courts and Tribunals at UCL.

⁹ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (*Nicaragua v. Honduras*) <https://www.icj-cij.org/en/case/120>

¹⁰ James Richard Crawford (1948-2021) Whewell Professor of International Law (1992-2015), Judge ICJ (2015-2021).

¹¹ ECHR, *Bankovic and Others v. Belgium and 16 Other States*. European Court of Human Rights, Grand Chamber Decision as to the admissibility of Application no. 52207/99, 12 December 2001, available on <http://hudoc.echr.coe.int>

<https://casebook.icrc.org/case-study/echr-bankovic-and-others-v-belgium-and-16-other-states>

¹² Judge Loukis Loucaides (b.1937-) Cypriot judge, European Court of Human Rights (1998-2008).

¹³ Sir Stephen Sedley (b. 1939), judge Court of Appeal of England and Wales (1999-2011).



that you submitted that Bankovic was a watershed case in the court's jurisprudence. I wonder if you could say briefly what the nature of this watershed in international jurisprudence is or was?

Well, I think before Bankovic there had been a lot of speculation about the extent to which the European Convention on Human Rights applied to what different organs of state did in terms of their action outside the territory of the state concerned. Now, it's relatively easy to see how the Convention could be applied, for example, to the detention of a prisoner outside because the prisoner is still within the jurisdiction of the state that is detaining him or her. Remember, the European Convention lays down rights which a state has to respect as regards people within its jurisdiction. Now, a school of thought had grown up that said you can apply that also to huge areas of warfare. Bankovic, I think, excludes that possibility where you're talking about, for example, aerial bombardment, which was the issue there; long range bombardment; conflicts between two opposing armies. It doesn't cut it out in relation to other aspects such as the governance of occupied territory, which was the subject of a number of later cases, including the one in which Lord Justice Sedley was sitting.

98 Also you list arbitrations in which you were involved and these seem to have begun in 2008, i.e. just before you left the London School of Economics and without, obviously, commenting on the cases, was there a particular type of case in which you specialised?

No. I was quite happy to do any of these investor-state cases; they're all very exciting. I also did some inter-state arbitrations on maritime boundaries between Guyana and Suriname, Trinidad and Tobago and Barbados. The thing about the investor-state cases is there's a, sort of, basic corpus of law which is common to all of them, most favoured nation treatment, fair and equitable treatment, expropriation, but the underlying facts that give rise to the claim can vary enormously. The last case I did was a billion dollar claim against Pakistan where I was appearing for Pakistan, which was all about a motorway construction project. It was a very interesting case to do and I was glad to say that I was able to leave practice on a high note because we won and the claimants didn't get anything.

99. Well, I remember Dame Rosalyn Higgins¹⁴ saying that while she was at LSE she undertook a lot of pastoral work. Did you find the same situation?

I did more pastoral work here at Cambridge. I was a tutor for seven years before I went to LSE and I was Dean for five years before that. I always greatly enjoyed the pastoral side of things. Pastoral work at LSE was very different because you didn't have the same relationship with your tutees and you didn't see students in small supervision groups. But, yes, I did continue with my pastoral work and I considered it to be important.

100. The highlights of your time at LSE?

I think the highlights would definitely be, as far as I'm concerned, would be the teaching. I enjoyed very much being able to concentrate on international law. Whereas for a lot of people teaching Masters students and supervising PhDs became the focus, I enjoyed that, but I also enjoyed teaching the basic international law course to undergraduates. I've always found teaching undergraduates very stimulating and I think it's the place where you test out whether you can actually explain a complicated idea in terms that people can understand.

101. After 13 years at LSE you were elected to the Bench of the International Court of

¹⁴ Dame Rosalyn Higgins (b. 1937-), Professor of International Law LSE (1981-1995), President ICJ (2006-09).



Justice. What procedure did your appointment follow?

Well, it's Byzantine the process for appointment to the International Court of Justice. You first have to be nominated by the National Group of the Permanent Court of Arbitration which, in the case of the British has, by tradition, been vigorously independent of government. The group that nominated me was chaired by Sir Arthur Watts¹⁵, former Foreign Office Legal Adviser, but it included Lord Bingham¹⁶, the presiding Law Lord; Dame Rosalyn Higgins, who was then the British judge at the International Court; and Sir Eli Lauterpacht. If you knew any of those four you would know that nobody was going to give them instructions about anything at all. They nominated me as the candidate to replace Rosalyn when she was retiring from the Court. I had an interesting year of going round several rounds of meetings at the UN, but also trips to the Middle East and to Southern Africa and a number of other countries in Europe to lobby for support. It's alien to the British tradition, this idea of judges having election addresses and going around campaigning for votes but I'm afraid it's an integral part of the process for the International Court.

102. Interesting. She mentioned that when she was appointed it was Lord Goff¹⁷ who was at the Court of Arbitration.

The National Group, yes.

103. The National Group. She found it actually a very exciting process. Was it easy to make the decision to leave LSE?

Well, I wouldn't say it was easy. You know, I wanted to become a judge at the International Court so I'd made the decision that if it was offered to me I would take it or if the nomination was offered to me I'd take it. I was beginning to find the stress of trying to be a professor and a barrister at the same time was taking its toll. It's fine getting up at five in the morning when you're in your forties; by the time you're in your late fifties you're less enthusiastic about it and I'm very unenthusiastic about it now I'm in my late sixties.

104. Did you move to The Hague?

We kept our house here in Cambridge. My wife and I have lived in Cambridge ever since we met when we were students and we kept our house in Girton, but we bought a flat in The Hague, a very nice flat which I much regretted having to sell nine years later, but with some splendid views out over the part of The Hague around the International Court.

105. Did you enjoy living there?

Very much indeed. It's a lovely city. People mock it as being very quiet, 'Biggest little village in Europe,' is one of the descriptions I've heard but, in fact, it's very easy to get round, excellent public transport, good theatres, art galleries, some very nice restaurants. We found the life there very enjoyable indeed.

106. You joined the Haagsche de Witte Society. Are you still a member of this?

I am, yes. They very kindly give honorary membership to judges of the International Courts and I thoroughly enjoyed taking part there. They have a very nice pavilion up on the

¹⁵ Sir Arthur Watts (1931-2007), International lawyer, diplomat and arbitrator. Chief Legal Adviser FO (1987-91).

¹⁶ Thomas Henry Bingham, Baron Bingham of Cornhill (1933-2010), Master of the Rolls (1992-96), Lord Chief Justice of England and Wales (1996-2000).

¹⁷ Robert Lionel Archibald Goff, Baron Goff of Chieveley (1926-2016). Senior Law Lord (1996-98). Co-author of Goff & Jones, *The Law of Restitution*.



beach in Scheveningen which offers restaurant facilities during the summer and we've made ample use of that.

107. I visited that beach after I'd interviewed Judge Crawford and I thought it very beautiful. During this time you were involved in 38 cases and I wonder which was the most difficult to decide.

Well, I'd probably better not say which was the most difficult to decide at one level. It wouldn't be proper of me to say that I'd found the arguments in a case very finely balanced. There are a number of cases I found particularly interesting. The first one I did, which was a river boundary case between Nicaragua and Costa Rica, and about navigation rights on the river, I found rather fascinating because I'd never done a case about riverine rights before. River mouth as the start of a maritime boundary, yes, but I've never done cases about river navigation rights. Normally with a river the boundary, if it's an international boundary, the boundary either follows the middle of the river or the middle of the navigable channel in the river, if the river is navigable. This was an exception. The river here is entirely in Nicaraguan territory so the boundary is on the Costa Rican bank of the river, but Costa Rica has navigational rights. The question is what that included. Did it include, for example, the right to take tourist boats to take photographs of the wildlife there? It was not something they were thinking about in the 1850s. That case rather haunted me throughout my time there because it was also the last case I worked on. At the mouth of that river there is an area of swampland called the Isla Portillos and that was the subject of two more cases between Nicaragua and Costa Rica and one of those was the last one I sat on.

108. I was going to ask you about how impressed I was by, first of all, the number of cases that dealt with boundary issues and then the fact that there are so many cases involving Nicaragua and its neighbours, mostly Costa Rica. I looked at a map and I flew there by Google Earth while I was preparing for this, but I saw that the borders were in the rain forest so maybe it's understandable up to a point, but I also could see that there was a very tortuous colonial history which even includes British protestant settlements. Nevertheless, why was, or is Nicaragua so litigious?

I think in Nicaragua's case they had a great success in the International Court, as they saw it, in the 1980s in their case against the United States. That helped create a mindset that the Court was a resource that Nicaragua should use, but the Central American and South American countries have always been very keen supporters of the Court. You get a very large number of cases between them in the International Court of Justice and generally a very high record of compliance as well, but I agree with you, Nicaragua was exceptional.

109. Mostly with Costa Rica. There was a whole list of cases on the ICJ site.

There were several, yes.

110. The first case that you were involved with in 2009 culminated in a judgment which James Crawford lauded and that was the obligation to prosecute or extradite in the *Belgian v Senegal*¹⁸ judgment of 2012. Were you conscious that this was a case close to his heart as he was Whewell Professor at the time?

I didn't know it was particularly close to James's heart, I must admit, and I didn't discuss it with him. One of the disadvantages of becoming a judge is that you're rather more

¹⁸ Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) <https://www.icj-cij.org/en/case/144>



restricted in what you can discuss with your circle of friends because James was counsel in so many cases before the ICJ that even in the cases that he wasn't counsel in I found it difficult to discuss them with him openly. I was conscious that it was a very important case. I think it was a case that was going to be a trailblazer and I'm glad that we decided the case the way we did, both at the provisional measure stage and then, more importantly, at the merits.

111. He claimed that this case followed his Article 48, the ILC¹⁹ recommendations which he claimed to have been his greatest achievement in international law.

I'm not sure I'd say it was his greatest achievement. It's hard to pick with James because he had so many, but it certainly was a major achievement and yes, I think it did have a significant influence on the Court.

112. Were there any colleagues with whom you had a particularly strong affinity on the Court?

Relations on the Court were very good across the board, especially considering what varied backgrounds we came from. For example, when I joined the Court the Chinese judge there, Shi Jiuyong²⁰, older than my father, he has outlived my father, and he'd had his university education before the revolution in China. So, obviously, you know, we came from very different backgrounds and I think I may have mentioned to you in the previous session that there five of us who were all about the same age; we all became judges in our early to mid-fifties and the different experiences we had had.

I had a thoroughly enjoyable time as a student at Cambridge, at the same time as Julia Sebutinde²¹, my Ugandan counterpart, was studying at Makerere University in the days when the Idi Amin²² terror was taking place. She once said to me, "We went in fear of our lives every time we went to a lecture." So it's interesting that you get those very different backgrounds. I did have certain very close friends on the Court, Judge Sepúlveda²³ from Mexico, whom I got to know when I went there; Judge Donoghue²⁴, who's now the President, the American Judge; Judge Keith²⁵ from New Zealand. You know, we perhaps were closer than I was with some of the others.

113. Were there any physical or administrative changes or improvements made to the Court during your time there?

The one that I think is most important is that we actually started to take IT a bit more seriously. The Court had been very slow in adopting computerisation and even slower still to use the facility to access documents from outside the building. I think we managed to make some considerable progress. That's one of the things I feel I managed to achieve when I was there because I chaired the IT Committee for quite a long time. The proof of that particular pudding is that they were able to cope with the pandemic much more easily because each judge could log in to all the documents they needed from home. Now, that may not seem very revolutionary because law firms have been doing this for years and so have national courts, but it certainly seemed like a revolution in the pencil and paper world of the

¹⁹ https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf p.126

²⁰ Shi Jiuyong (b. 1926-) Chinese ICJ judge (1994-2003) President (2003-2010).

²¹ Julia Sebutinde (b.1954-), Ugandan ICJ judge (2012-).

²² Idi Amin Dada Oumee (1925-2003), Ugandan military officer, 3rd President of Uganda (1971-79).

²³ Bernardo Sepúlveda Amor (b. 1941-). Mexican diplomat and jurist. Judge ICJ (2006-2015), Queens' College, Cambridge (1966), Mexican Ambassador to the UK 1989-93).

²⁴ Joan E. Donoghue (b. 1957-), American lawyer, Judge (2010-21) President (2021-) ICJ.

²⁵ Sir Kenneth James Keith (b. 1937-), New Zealander, ICJ judge (2006-2015). Member of the New Zealand legal team in Nuclear Tests cases before ICJ in 1973, 1974 and 1995.



International Court.

114. Apropos the Presidents that you served under, any comments you could share?

I served under three Presidents, Judge Owada²⁶, from Japan, who was President for my first three years; then Judge Tomka²⁷ from Slovakia; and finally Judge Abraham²⁸ from France. I thought they were all very good Presidents with strengths in different areas. It was a pleasure to work with them all.

115. Would you say that it's inevitable that countries with a long history of international law, such as the UK, will become progressively less influential in the field?

In one respect, yes, because that expertise is now present in many more countries than was once the case. That can only be a good thing. You know, obviously, I would regret any diminution of influence of the United Kingdom and I regretted losing my seat at the Court as part of that process, but I think it's wonderful that you now have so many countries where there are really first rate international lawyers and where governments are taking international law very seriously. I think roughly half the states in the world have now appeared in proceedings in the ICJ, either as parties or as states taking part in advisory proceedings and that's a dramatic change from when I was a student.

116. While you were at the ICJ you were a member of various committees. You've mentioned that you chaired the Information and Technology Committee. You were also on the Budgetary and Administrative Committee.

Yes. The Budgetary and Administrative Committee is a sort of cross that judges have to bear, I think. What I enjoyed about that is it gave me a chance to do what I could to improve the conditions of the staff in the Court which I thought was a very important priority.

117. The Rules Committee.

I was only on that for three years and didn't have anything like the same impact. We weren't doing very much in the Rules Committee at the time. I had hoped that if Judge Crawford had lived he would have presided over a major revision of the rules which I think is frankly overdue. Not just the rules, the working methods that go with them. But it was interesting to serve on.

118. Could you say something of the honours that were awarded to you during this period? You became an Honorary Fellow of the Lauterpacht Centre.

Well, that was a particular pleasure, I have to say, because I'd been involved in the Lauterpacht Centre from the start and although it had never been the base from which I worked I was very supportive of it and very keen on what Eli had achieved with it, so I was delighted to accept that.

119. An Honorary Fellow of Magdalene in 2009.

Well, again, you know, that was a terrific pleasure. I've been connected with Magdalene ever since 1972 when I came here for interviews so it was an accolade that meant a great deal to me.

120. In 2012 you became Vice President of the British Institute of International

²⁶ Hisashi Owada (b. 1932-), Former Japanese diplomat, Judge (2003-2018), President (2009-12) ICJ.

²⁷ Peter Tomka (b. 1956-), Slovak diplomat & jurist. Judge (2003-12) & President (2012-2015) of ICJ.

²⁸ Ronny Abraham (b.1951-), French jurist, judge (2009-2015), President (2015-18) ICJ.



Comparative Law.

Yes. That's something I enjoy. I think the British Institute is a very important organisation. It doesn't have the impact in Britain yet that the American Society has in the United States but I think it's building up that reputation and it's a wonderful focus for bringing together practitioners, public sector lawyers and academics. There isn't as much of that in Britain as I would like.

121. Interesting. You initially became, in 2015, a member of the Institut de Droit International.

An Associate at that stage, yes. I was elected in 2015 as an Associate. Became a member in 2019. You have to go to three sessions of the Institut before you can progress from Associate to full Member, so I only became a full Member in 2019.

122. In 2018 you were awarded the Knight Grand Cross, Order of the British Empire, for services to international justice. Presumably that was for your work on the ICJ. Could you say something about this and perhaps the ceremony at which it was bestowed?

Yes. I'm not in a position to say why I was appointed a Knight Grand Cross. It was certainly something which I felt very honoured to be given. The ceremony was the third time I'd been to Buckingham Palace and was something I shall always remember is that I've had all three generations of the royal family because the Queen gave me my CMG; Prince Charles knighted me in 2009 and Prince William conferred the GBE on me in 2018.

123. That's very nice.

Yes, they were very nice occasions indeed.

124. When you left the ICJ in 2018 you became President Judge of the Iran-United States Claims Tribunal. What were the circumstances?

I became a judge, not president. The Iran-US Claims Tribunal was set up as part of the deal under which the US diplomatic staff were released by Iran in 1981 and various assets of Iran in the US were unfrozen. It consists of nine judges, three appointed by America; three by Iran; and three neutrals. I'm an American for these purposes. The way that came about was a few weeks after I'd left the International Court my friend, one of the American judges, David Caron²⁹, very sadly died, completely unexpectedly. On the death of a member the rules require that the state nominating that person nominate a replacement within 30 days, which is quite a short time span for a government. I think for various reasons, people being conflicted out and so on, and suddenly this Englishman being available, they were prepared to nominate me, which I thought was a great honour. I've very much enjoyed working there.

125. In 2020, two years after leaving the ICJ, you were appointed as Master here at Magdalene. What were the circumstances of that?

Well, the Mastership of Magdalene was historically in the gift of the Visitor of the College, Lord Braybrooke³⁰, and it was only some ten years ago that the college statutes were changed to provide that the Master would be elected by the governing body, which is the

²⁹ David D Caron (1952-2018), Dean King's College London School of Law (2013-16), Professor UC Berkeley School of Law (1987-2013). Member of the Iran-United States Claims Tribunal (2015-18), Judge ad hoc ICJ.

³⁰ Baron Braybrooke, of Braybrooke in the County of Northampton, is a title in the Peerage of Great Britain. It was created in 1788 for John Griffin, 4th Baron Howard de Walden. Lord Braybrooke was the Hereditary Visitor of Magdalene College, Cambridge.



much more normal practice in Cambridge. I'm only the second Master to have been elected. To be honest, it came as a considerable surprise because I thought I was too old and I hadn't realised the college was in the process of changing its statutes so as to remove the compulsory retirement age for the Master. Obviously, it was a tremendous delight to come back to my old college as Master and I accepted the offer with enthusiasm and I've never regretted it since.

126. Did you find that it had altered in any meaningful way since you were here, what, 24 years ago, you left in 1996?

Yes, it has. Well, you know, the whole academic world has changed. The biggest change in Magdalene, of course, was the admission of women, but that happened when I was here and by the time I left it was already so well established that there was no need to talk about it.

Academic standards have improved quite dramatically since I left here and, you know, we now get something like 100 Firsts a year whereas 20 or 30 was considered good going in the past. I think there's been a greater professionalisation of academic life; you have fewer of the people who are basically just college folk who sit around and maybe aren't always as constructive as they could be. At the same time the demands on Fellows are now huge because most Fellows are pursuing a very active career in their faculty or department and doing their teaching and pastoral work here in college. It's a very considerable and time-consuming task.

127. You followed in the footsteps of Rowan Williams³¹, were there any features that he introduced while Master or could you, as the new incumbent, start with a clean slate, so to speak?

Well, the trouble is I started without a slate at all because I started on 1st October 2020 and the pandemic was in full swing. We had about three, four weeks of very limited contact here in college before the second lockdown was imposed and then, essentially, that prevented any kind of ordinary in-person contact from the beginning of November through to the end of the following April. So in some respects I'm treating this year as my first year in office and trying to find my way.

128. Very interesting. With the shadow of the pandemic it must have affected your role hugely at first.

Yes. It's meant that my wife and I weren't able to get to know the students and the Fellows in the way in which I had hoped and we're still trying to edge our way through that. The best we could manage with the students last year was to, once the lockdown was relaxed at the end of April, to have people round for drinks in the Master's garden. It's a lovely sunny day today but if you remember what the weather was like in May 2021, it was absolutely terrible. One student said it gives chilling out a whole new meaning.

129. Have there thus far been any notable events?

Yes. We're getting back to doing things the way we wanted to. We had a very good round of results in the Tripos and the examined Masters courses last summer. We're beginning to get back to having guest lecturers in college and formal dinners and so on. We haven't yet had any one particularly striking event.

³¹ Rowan Douglas Williams, Baron Williams of Oystermouth (b. 1950-), 104th Archbishop of Canterbury (2002-2012), Master of Magdalene College (2013-2020).



130. Does this position give you any time to engage in your musings on international law?

Musings? No, not really. I've got a couple of festschrift articles which are long overdue which I shall try and work on over the vacation; that would enable me to muse but I have my work at the Tribunal and I'm sitting as an arbitrator in a number of cases. The Mastership here is part-time but the combination of that and my other work doesn't leave a lot of time free.

131. In 2020 you were Reader Lent Term, Middle Temple. What does this entail?

Historically the Reader was responsible for the education of barristers, in the days before – going back hundreds of years – before there were organised Bar courses. A student reading for the Bar would go and watch cases in court and then go and dine with the barristers they'd been watching in the hall afterwards and the Reader was responsible for such lectures as there were. That role is much diminished by the professional Bar Finals Course that now exists and it does still involve some work on advocacy training and other such sessions in the Inn, much curtailed, I'm afraid, because the lockdown started halfway through my term as Reader. The Reader gives a reading, not technically a lecture, at the end of the Reader's Feast. I was fortunate enough to get my Reader's Feast in in February so I was able to give the lecture in person.

132. In London?

In London, in the Middle Temple Hall.

133. That sounds a wonderful occasion.

It was great. I was able to get my family, including one of my sisters came all the way from Australia for it, which was very nice. We had a very large turn-out of students and Benchers for it which was very flattering.

134. This brings us to your membership of learned societies and boards of editors. We've mentioned that you were, first of all, a member of the Institute. You are also a member of the American Society of International Law. Could you explain that?

Yes. I've always liked the American Society; I joined it as soon as I qualified and became a Fellow here in 1978. I go to the conferences, the annual meeting, as often as I can, usually about every other year. I was the keynote speaker there in 2018 which was very interesting. Good chance to muse a bit about international law, as you said. I've enjoyed the way it brings together students, practitioners, academics, people from government. You get a very large group, often as many as 1,000 people, and a very interesting variety of people to meet and talk to.

135. The Asian Society of International Law.

Yes. I'm afraid I haven't been active in that. I am a member but I've never managed to get to any of their meetings.

136. The European Society of International Law.

Again, I haven't been to any meetings. I read the journal when it comes out.

137. You're a joint editor of International Humanitarian Law Series.

I've just stepped down from that. I've become honorary editor. I have to say that I



feel a bit guilty about that series. It's a very good series of monographs but the hard work has all been done by my colleague, Tim McCormack³², and I've largely been a sleeping partner.

138. I didn't ask you about your membership of the International Law Association.

Yes. I haven't been very active in the ILA for quite some years now. The British branch holds its meetings in London and a combination of living and working in The Hague for many years and then being based here in Cambridge, I haven't been able to get to as many meetings as I would have liked.

139. You were on the Editorial Board of the British Year Book of International Law.

Yes. That's not a particularly demanding job, I have to say. The hard work is done by the two editors.

140. As well as the Cambridge Studies in International and Comparative Law.

Yes. Again, that doesn't require a very great deal of work on my part, but it does mean I see some of the interesting monographs that come out.

141. Sir Christopher, just a general question on your view of international law. In March 2014, as you know, I had the privilege of interviewing your predecessor, United Kingdom judge on the International Court of Justice, Dame Rosalyn, and I learned that her formative training had taken place at Yale under Myres McDougal³³ and it was he who taught her that international law was not about rules, this is a quote from her, which is a claim which she "still believes to this day".

She expounded her views in her pioneering book, "Development of International Law through the Political Organs of the United Nations," which Derek Bowett reviewed and said that she gave the clearest possible proof that international law is being developed in a most significant way by political organs of the United Nations. During our interview she explained what her friend, Oscar Schachter³⁴ had said of her book, that she faced squarely the contention that the views of governments expressed in UN debates and resolutions can have little legal significance because they are adopted for political and self serving interests. In her own words on international law, she said, and I quote, "The job of the international lawyer is to look at the facts of the present case and at the policy issues involved and to find the preferred and better answer."

I wonder, Sir Christopher, whether you agree that international law, as developed by the UN today, is not about developing rules, more about political processes and policy and the job of judges thereof is to find the preferred and better answer?

I don't think I'd go as far as that. In fact I definitely wouldn't go as far as that. I'm perhaps more conservative, more of a rules-based view of law. I entirely agree with Rosalyn that international law is developed by political processes. Now, ironically, much of English law was developed by political processes as well; it's called parliament; it legislates. Judges are, I think, in a different position. As a judge you have to make decisions based on the law as it is at moment, not on what you might like it to be in the future. However, much of the law is not clear and, indeed, with the International Court of Justice it's unlikely that many of

³² Timothy Lloyd Hearnden McCormack, (b. 1960?-) Professor of Law at the University of Tasmania, Special Adviser on War Crimes to the Prosecutor of the International Criminal Court in The Hague, Hon. Professorial Fellow at Melbourne Law School

³³ Myres S. McDougal (1906-98). Professor of Law, Yale Law School (1934-84).

³⁴ Oscar Schachter (1915-2003). US international lawyer and diplomat at United Nations. Hamilton Fish Professor of International Affairs, Columbia University (1980-2003).



the cases that get there will be about the law that is clear. Litigation is expensive, it's time-consuming and states tend to rely on it when they're not sure what the answer is. So I think yes, it is a matter of going to the underlying values, to the broad principles but there are a lot of rules as well; some of them are very clear; some of them less so, but I don't think you can ignore them. I don't think Rosalyn Higgins is suggesting that you ignore them either and I don't agree with Oscar Schachter that the positions taken by states and the UN are of little or no significance in terms of law because I don't think that they are quite as politically expedient as he makes out. States have long term ideas about how things should be and those are reflected in what they do. After all, customary international law is based on state practice supported by *opinio juris* and I think that has to include the practice of states in international organisations.

142. Very interesting. You say in 'Who's Who' that your interests are political biography and the novels of Anthony Trollope³⁵. Could you elaborate?

Yes. I used to include walking, but I'm afraid since I started having trouble after I injured my foot in an accident about ten years ago, walking has become aspirational rather than recreational. I've always been fascinated by politics and by history and I find the political biographies perhaps one of the most interesting ways of getting under the skin of what happens in politics. I'm more interested in the biographies of people from the last couple of hundred years than I am in the often hagiographical works that get written about existing politicians. I'm more interested in digging behind the skin, for example, of Churchill³⁶ or Attlee³⁷ than I am of looking at Boris Johnson³⁸ and Jeremy Corbyn³⁹. I don't think that biographies of either of them at the moment would be particularly interesting. As for Anthony Trollope, I think he was by far the best observer of the politics of his day and, of course, of the ecclesiastical politics of his day. I think the best novels of the lot are the ones about Barchester. His ecclesiastical reveries were wonderful.

143. Looking back, what would you assess your main contributions to international law have been so far, as teacher, researcher, jurist?

Well, I think that's more for others to say. I think the part that is most difficult to assess is teaching. I thoroughly enjoyed the 30 years I taught international law. I like to think that I made a difference to some of the students; I'm still in touch with quite a lot of my former students and I hope that I had some influence there. As a jurist, as a practitioner and a judge, again, I hope that I was able to make a positive contribution to the development of international law. I was lucky enough to be in practice at a time when attitudes to international law in the English courts were undergoing a very considerable change. Before I really got into practice one judge had quipped in a case, "Yes, international law, I know about that. English law is law; foreign law is fact; international law is fiction." There was a lot of that around in the seventies and eighties. Moreover, if you had an international law point arise in court it tended to be argued by counsel who specialised in commercial law or crime, as the case may be, sometimes with a professor of international law sitting behind them.

³⁵ Anthony Trollope (1815-82), English novelist and civil servant. Known for his series of novels collectively called the Chronicles of Barsetshire, which revolve around the imaginary county of Barsetshire.

³⁶ Sir Winston Leonard Spencer Churchill (1874-1965), UK Prime Minister (1940-45, 1951-55), Best known for his wartime leadership as Prime Minister.

³⁷ Clement Richard Attlee, 1st Earl Attlee (1883-1967), UK Prime Minister (1945-51).

³⁸ Alexander Boris de Pfeffel Johnson (b. 1964-), UK Prime Minister (2019-).

³⁹ Jeremy Bernard Corbyn (b. 1949-), British politician, Leader of the Labour Party, Leader of the Opposition (2015-20).



Then, in the early nineties the ground shifted and those of us, people like Vaughan Lowe⁴⁰, Eli Lauterpacht, myself, who were international law specialists based in universities, started arguing the cases ourselves. I wouldn't say that it was because of that but it went hand in hand with the judges taking international law much more seriously. I've never forgotten doing one sovereign immunity plea in front of a Supreme Court Master, most of whose work would have been day-to-day procedural applications, and at the end of the case he said, "Well, that was most interesting, gentlemen," said to Lord Lloyd Jones⁴¹ and myself, who were the opposing counsel, "Very different from what I normally do. If you have any more work like this do keep me in mind, won't you?" I think that epitomises that sea change. Then I tried to carry that on as a judge at the International Court.

I wrote very few separate and dissenting opinions so I'm not going to be remembered for those and, of course, the work you put into the elected judgments remains confidential so I can't tell you which judgments I was most involved with but I hope that the work I did there was good, sound work and will continue to be influential.

144. Thank you. So how, if at all, has international law changed in over 40 years that you've been involved? Were there, for instance, any major shifts in focus with world events: the fall of the Berlin wall, 9/11...?

Yes. I think that, well, obviously, the political foundations have changed dramatically and may be in the process of changing again. I think, in a way, international law, it's more important now in international affairs than it was when I started. The Cold War and the shadow that that cast, the immediate aftermath of colonialism, both tended to rub against the trend of international law. What I think changed everything, though I didn't realise it was going to have such a dramatic effect at the start, was the Law of the Sea Conference culminating in the 1982 Convention on the Law of the Sea. There, I think, for the first time you had a really major change where the dominant influence came from the Third World countries, only a handful of whom had been heavily involved in international law before that. That, I think, played an important part in the revival of the ICJ, which had been largely moribund in the mid-1970s. I think I may have mentioned to you before that there was only one case pending in the International Court when I was a Masters student. At any given time today you get between 15 and 20. I think international law has taken more of a centre stage.

Now, plenty of people will say that's nonsense, you know, what has international law done about climate change, for example? To which the short answer is international law is not there to solve the problem of climate change; it's there to provide one of the means by which states, if they wish to, can address particular climate change problems. It's not a lawyer's problem to solve; it's not something which we have the machinery, the strength or, indeed, the right to take on of ourselves. It hasn't stopped warfare. Well, maybe it hasn't, but it has made it a lot more difficult for states to just tear up the rules and behave as they wish. I think the idea of humanitarian law constraining what soldiers can do in wartime is taken far more seriously today than it was when I started. So, you know, the picture is far from rosy but it's an awful lot more interesting than it was 40 years ago.

145. How, if at all, has Brexit affected the UK's interest or standing in international law?

⁴⁰ Alan Vaughan Lowe (b. 1952-), Chichele Professor of International Law and Fellow of All Souls College, Oxford (1999-2012).

⁴¹ David Lloyd Jones, Lord Lloyd-Jones (b.1952-), Justice of the Supreme Court of the United Kingdom (2017-), member of the Court of Appeal of England and Wales (2012-17).



I think the jury's still out on that one. I won't conceal the fact that I think Brexit was a disaster. Wrong decision by Britain, but it's done and there's no point in revisiting that debate now. It does, however, leave us with a very difficult relationship between Britain and its European neighbours and, I think, a big question mark about exactly what Britain's role in the wider world is going to be, you know, to what extent can Britain be influential as a medium-sized state, but still a nuclear power and a Permanent Member of the Security Council now it is outside the framework of now 27 EU states?

I don't think in itself it's damaged Britain's reputation as a respecter of international law; I think that it could do if we start tearing up agreements we've concluded. That I think would be very damaging. You know, a state is entitled to leave a treaty body if it wishes to do so and that was the decision of a clear majority of the people and I think it has to be respected and has been respected.

146. Thank you. I can't leave without asking your general thoughts on international law as it applies or not to the new regime in Afghanistan.

I have some difficulty with the whole question of Afghanistan because my daughter served in the army there and I still find I can't, with real equanimity, discuss what has happened. I think it's a catastrophe that the West has effectively left the women army officers, police officers, judges that we helped to train to the mercies of a government that has no sympathy for them. I very much hope it will be possible to avoid a humanitarian disaster there this winter, although I'm doubtful about that, and I hope that the new government means what it says about behaving differently from the way it behaved when it was last in power, but the jury's out on that one too.

147. Well, Sir Christopher, thank you very much indeed for another truly fascinating account. Thank you too for your kind hospitality last week at your home and today, here at Magdalene. I'm very grateful to you. Pandemic willing I hope that we can reconvene in the New Year to talk about your scholarly work. Thank you so much.

No, thank you very much, Lesley. Very nice to see you again.

