

Conversations with Professor Campbell McLachlan

by

John Magyar¹ and Daniel Bates²

Date: 19th June 2023

This is the fifteenth interview for the Eminent Scholars Archive with an Arthur Goodhart Visiting Professor of Legal Science.

This interview was held at the Lauterpacht Centre for International Law in Cambridge.

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

Interviewer: John Magyar. His questions are in **bold type**.

Professor McLachlan's answers are in normal type.

Comments added by JM, [*in italics*]. Footnotes added by JM.

1. We are here today with Professor Campbell McLachlan. I'll start by saying it's a great honour to be able to interview you and all of us at the Eminent Scholars Archive are grateful that you are taking the time to do this.

Well, it's a pleasure. I still struggle with the idea of being described as an eminent scholar but from my side it's, of course, been a delight to be here for a year in Cambridge amongst so many friends and with so much intellectual stimulation.

2. Wonderful. I'd like to start by just briefly running through some of the highlights of your rather remarkable career. So, you were born in 1960 in New Zealand. You served a brief two years in an undergraduate programme at the University of Canterbury before entering the LLB programme at the Victoria University of Wellington from 1981 to 1984. You graduated first in your class; received the Chapman Tripp Centenary Award and some scholarships and a Junior Lectureship, if I'm correct. From there, I believe you enrolled in the PhD programme at University College London and somewhere around that time earned a Diploma cum laude at The Hague Academy of International Law and spent some time at the Legal Division of the Commonwealth Secretariat.

Yes, that's all true. It sounds like that was all a carefully designed plan but, at least at the time, it wasn't, it was a series of decisions. I think when you're young you, sort of, follow your impulses to some extent. Certainly, at the time, as now, Victoria University of Wellington was very well known in international law terms, both in public international law and private international law, and that was really an important part of my inspiration in going there, which was well realised. I came initially to the UK following my then girlfriend, now wife, Rhona, and had a year working at the Commonwealth Secretariat informally, really. There was a remarkable New Zealander called Jeremy Pope³ who was then the Director of

¹ Barrister and solicitor, University of Cambridge.

² Legal Research Training and Communications Specialist, Faculty of Law, University of Cambridge.

³ (1938–2012). New Zealand barrister. Assistant Direct of the Commonwealth Secretariat 1976–80, Director 1980–93. Co-founder of Transparency International in 1993, co-founder of anti-corruption, pro-integrity organisation, Tiri, in 2003.



the Legal Division, and that was in the era of Sonny Ramphal⁴ which was a very vibrant time for the work of the Secretariat. It had been suggested to me by my Professional of Private International Law, Tony Angelo, that I should enrol for The Hague Academy. At the time, and in New Zealand, I had no idea really what was involved and in particular no idea what was involved in sitting for the diploma. I thought that everybody enrolled for the diploma and I arrived in The Hague to discover that of the 350 students about 330 of them were there, essentially, to attend the odd lecture and have a good time and 20 had the self-induced misery of trying to prepare for an exam that it was almost impossible to prepare for since the jury was entitled to ask you any question that they wished to ask before a public audience, in the civil law style, about any aspect of public or private international law. So, it has the reputation of being a rather flukey qualification but it's certainly the certificate on my wall which I feel the proudest of having achieved because it's still a rather unusual thing. Of course, it started a lifelong relationship with The Hague Academy as well, as a student initially and then subsequently as lecturer.

3. Excellent. Before we move forward, perhaps we could just go back. You were born in Christchurch.

Yes.

4. Okay. What do you remember of your family growing up?

Well, so, Christchurch, in my childhood had the reputation of being the most English of cities in New Zealand and perhaps the most English city outside of this country. In fact, that was more of a myth, perhaps, than a reality but it was certainly a very quiet and orderly existence, something which has sadly been shattered in more recent times as a result of the earthquakes and the like. My childhood was certainly a very peaceful childhood. My father was a solicitor in Christchurch so he was, obviously, keen that I should study the law and, I suppose, had personally imagined that I might join the family firm and the like. But once I got the bit between my teeth in studying the law and, in particular, got something of an idea of what it might be to engage in litigation as an advocate, I began to think about other possible ways of using my legal studies, and I guess I always gravitated towards the international aspect which, certainly in those days, was unusual, at least to New Zealand it was unusual, most people were very focused on commercial practice and focused domestically. That was never my main driving force, I gravitated naturally towards the international subjects in the degree and always was, kind of, looking a bit beyond the horizon, which isn't to say that... I mean, I still retain sole New Zealand nationality of which I'm, of course, greatly proud.

5. You attended Christchurch Boys' High School?

Yes.

6. Was that a private school?

No, absolutely not. It was absolutely not a private school. There is a school in Christchurch, which is very much modelled after the so-called public schools of this country, called Christ's College. Christchurch Boys' High School, on the contrary, was established as a state boys' school a little bit along the model of the, I suppose, of the grammar schools that

⁴ Sir Shridath 'Sonny' Ramphal, Guyana barrister. Assistant Attorney General, West Indies Federation 1958–62. Attorney General of British Guiana 1965–67. Minister of State for Foreign Affairs, Guyana 1967–72; Minister of Foreign Affairs 1972–75. Commonwealth Secretary General 1975–90. Chancellor of the University of Guyana, 1988–92.



used to exist in this country-

7. Right.

-but with the difference that it really did have to take every boy in the zone so it had a very strong academic reputation but also had to cater for all-comers. Personally, I am great admirer of, I think, what a school can achieve if it has to take every pupil and still manages to achieve very well academically. That's, in a way, more admirably than merely just selecting the brightest children first and then work with them. So, when we returned to New Zealand many decades later I was very keen to give my own boys a similar experience at Wellington College, which was the equivalent school in Wellington.

8. So, what was the programme you were enrolled in at Canterbury?

Well, at Canterbury, so, the way the New Zealand law degree works, all students start with, sort of, an intermediate year where they do a variety of usually art subjects and then just one introductory law subject, then you're admitted into law school proper depending upon that bit of your results in that first year programme. So that was what I did. It was my home town; I had no particular reason to go elsewhere, and then I had one year starting with the compulsory core subjects, also at Canterbury, until I decided that it was really time to spread my wings, and then, actually, as now, one of the advantages of the New Zealand system is that it is a nationally organised system and the consequence is that it's relatively easy, assuming you have the marks and the like, to transfer from one university to another if you wish to do so.

9. Right.

There was certainly, I mean, I have great memories of my time at Canterbury, and things have changed an awful lot since I was there but, certainly, when I was being educated there were some very famous names at Victoria: Professor Quentin-Baxter,⁵ who had been a member of the International Law Commission; Professor Ken Keith,⁶ of course, went on to be a judge at the International Court; Professor Tony Angelo,⁷ who's a great comparative and private international lawyer. So these were people who, because of my interests, were quite a draw.

10. So you won the Chapman Tripp Centenary Award. You won a Senior Scholarship, a Commonwealth Scholarship and a Junior Lectureship, which I'm guessing is quite unusual for someone with just an LLB.

Well, I don't want to overstate that. I mean, at that stage the faculty had a really very nice programme which was to try to keep a few of the best students within the academy with a view that they would then go on and do further study abroad, but would spend maybe a couple of years in a junior capacity in the faculty.

11. Right.

So I personally think that's a terrific way of introducing people to the possibility of academic life as opposed to going straight into practice and that's what I did. So far as the

⁵ (1922–1984). Professor, Victoria University of Wellington, 1968–84. Member, UN International Law Commission 1972–84.

⁶ Kenneth Keith KC, New Zealand barrister; Emeritus Professor, Victoria University of Wellington. Judge, New Zealand Court of Appeal 1996–2003; New Zealand Supreme Court 2004–2006; International Court of Justice 2006–15.

⁷ Tony Angelo KC, New Zealand barrister. Emeritus Professor, Victoria University of Wellington.



rest of the awards are concerned, it's very nice of you to mention them, John. The most significant thing, of course, was the award of a Commonwealth Scholarship. I mean, in the eighties that was the most fabulous programme. Of course, it was quite a comprehensive programme across the Commonwealth, which was a very well-funded programme which enabled able students to go and do postgraduate study in other Commonwealth countries, and that was what enabled me to come here. I mean, there are other such programmes but nothing quite as comprehensive as the Commonwealth still exists today. There is, of course, just continuing that thread, there is a bit of a Commonwealth twist to my initial engagement with the law, as I mentioned earlier, because I also ended up spending this year working for the Commonwealth Secretariat and doing quite a lot research for them on issues of, sort of, Commonwealth cooperation which gave me a rather particular window into international negotiations more generally.

12. Right.

I'm going to mention one other little bit in relation to that which is, somewhat unusually, maybe I'm running forward here a bit, but the topic that I then picked for my PhD, when I did take it up, was to do with the relationship between customary law of indigenous peoples in the Pacific and introduced state law. It was, if you like, the beginning of my ongoing fascination with how different normative systems interact, really, and one consequence of that and one consequence of also being at the Commonwealth Secretariat at the time was that I was briefly, at the time of the first Fiji coup – I think 1985 – pretty much the only person in London who had – apart from, perhaps, the High Commissioner – who'd ever even read the Fiji constitution let alone had a view. So, I had a very early and rare, for me, exposure of being at the centre of media interest, since I was the only person who was available to be interviewed on the significance of the coup and its relationship to the constitution and the like.

13. So you were interviewed, for example, by the BBC?

Yes, by the BBC, World Service, by Jon Snow on Channel 4. You know, that's the way the news media works. If there's a news story then for two days it's all on. It's not something I made a practice of in my life, really, but it was just another extension of the interest in, in particular, the newly independent Commonwealth states.

14. Right. You were just, kind of, in the right place at the right time-

I guess so.

15. -with a very obscure kind of knowledge.

That's right. But, you know, of large significance because, now that I look back on that period, I sort of realise that, you know, that was not so long after the whole period of decolonisation in which a whole bunch of countries had emerged into independence, including in the Pacific, which is a much less written about story than, say, in Africa, with conscious attempts to shape their own autochthonous constitutions and also in which the Commonwealth itself, who was then led by the very ebullient Sonny Ramphal, was quite a force to be reckoned with. It was the time of the Eminent Persons Group⁸ visit to South Africa; the stand against apartheid and also quite a lot of tangible Commonwealth cooperation on less, perhaps, attention-grabbing matters but very important practical matters

⁸ The Eminent Persons Group was formed in 1985 by Sir Sonny Ramphal to negotiate an end to apartheid in South Africa. See, for example, Stuart Mole 'Negotiating with Apartheid: The Mission of the Commonwealth Eminent Persons Group 1986' 101 *Commonwealth Journal of International Affairs* (2012) 253-60.



like mutual cooperation in criminal matters and that kind of thing, which I sat, not quite as a fly on the wall but certainly as a very, very junior assistant.

16. Right.

Yes.

17. So, you know, having completed the PhD, you then moved to the City of London and became a solicitor.

Yes, I did. Now, that was also an unusual sideways move for me in a way. Maybe my whole career is an example of the Shakespearean aphorism, “By indirections, find directions out.” So I thought that, at the time I finished my PhD I could and indeed was offered an academic position but I thought that if I didn’t try my hand at practice at that point, I probably never would and I’d always wonder what it would have been like. I felt that at that stage I had an opportunity and I went about that in a very idiosyncratic way as well, which would probably these days never be possible, which was that I simply went and saw Lawrence Collins,⁹ as he then was, who was then a partner in Herbert Smith, and asked him for a job, and he said, “Well, I’d better get you interviewed by some of my fellow partners,” etc, etc, so I went through that whole process but in the end they took a chance on me, for which I was, of course, very grateful.

So, I plunged from the relative isolation of writing a PhD which, as you know, can be a very solo process and perhaps particularly was in those days when far fewer people in Commonwealth countries tended to write PhDs in law, into the intense cauldron of the City’s greatest litigation department, which had a fierce reputation for fighting its clients’ corners, but into a group which had a very particular reputation. It was a reputation built upon the lineal inheritance of Dr F A Mann, the great mid-century international lawyer, who had had the good sense to emigrate from Germany in the early thirties and had built a formidable reputation in this country, both as a practitioner, as a solicitor and also academically because, by that stage, you know, even from a very early stage he’d written ‘The Legal Aspect of Money’ and then his famous articles on the ‘The Act of State Doctrine’ and so forth.¹⁰ So, F A Mann had merged his firm with Herbert Smith and the group that I joined turned out to be, essentially, that group. F A Mann was still coming into the office every day until he passed away about three years after I joined the firm. Lawrence had come to Herbert Smith to work for F A Mann and then with him.

The consequence of all of that was really twofold, firstly, that there was a strong appreciation of the value of academic thought in the law so long as one also delivered the goods in practice, but that was very much encouraged. It was very much encouraged to write and participate. But secondly, the focus of that group’s work was very much on international work. Now, what does that mean in practice? Well, in the case of Herbert Smith it meant a combination of both large scale private international litigation, that is to say cross-border cases involving mainly corporations but also individuals, but also quite a lot of work involving sovereign states or state-owned enterprises, and arbitrations. So the combination of the fascinating nature of the work and the fact that it was encouraged to stay involved at an intellectual level as well, made it really a very fascinating place to be, and I was very, very happy there.

⁹ Lord Lawrence Collins, Baron Collins of Mapesbury. Partner, Herbert Smith 1971–2000. Judge, High Court 2000–07; Appeal Court 2007–09; Supreme Court 2009–11. Chair of Laws, UCL 2011– present.

¹⁰ Frederick A Mann, *The Legal Aspect of Money: with Special Reference to Comparative Private and Public International Law* (4th ed, Clarendon, 1982), first published in 1938; FA Mann, ‘The Sacrosanctity of the Foreign Act of State’ 59 L Q Rev (1943) 155.



18. You stayed there from 1988. So, in 1992, I'm assuming, did you do a standard five year qualification or did you get an abridgement, or is three years? How did you actually get licensed as a solicitor? Do you remember that?

Yes. In my day the cross-qualification requirements from New Zealand were really very modest; you just had to practice as a clerk, so-called, in other words under supervision, for three years and sit a paper in accounts. Fortunately my double-entry bookkeeping, never my strong suit but it did crucially balance on the day of the examination, so I requalified as an English solicitor and then was made a partner the following year.

19. It was unusual to make partner that quickly, wasn't it?

Yes. I mean, it was a time of great expansion in City practice, of course, the late eighties, post-big bang and all the rest of it. Things also were less regimented than perhaps they are today in terms of career progression, but I think it's fair to say it was still relatively unusual.

20. As a solicitor you were Chair of the International Bar Association's Committee on—

International Litigation. Yes.

21. Yes.

Yes. So that was fun. That was another thing which, to its credit, the firm very much encouraged. So, they sort of threw me into both the work with the International Law Association International Litigation Committee which, actually, Lawrence originally proposed me, to be rapporteur of that committee. Then, the then Head of Department, wonderful man called Charles Plant,¹¹ decided that the firm should get much more actively involved in the International Litigation Committee of the IBA which, of course, is much more of a practitioner body. But there again, too, I think there was a sort of recognition, firstly, that the practice of litigation had internationalised or was in the process of internationalising and therefore the connections with lawyers practising in other parts of the world and exchange of information about how it was done was going to be important and a recognition that pursuing that through the IBA could be in the firm's interests as well as interesting. So, I started by doing the hard yards, as it were, with a colleague, Julian Wilson,¹² lovely chap who then subsequently went to the Bar here, creating a newsletter for them and the like and then just worked my way up. But that was a lot of fun and we did always make sure that that committee did quite a bit of what I would call substantive work on the practice of international litigation and wasn't just a talking shop and an opportunity to have a nice glass of wine in various nice locations around the world.

Certainly, the ILA Committee was a highly substantive enterprise. I mean, those ILA Committees, very valuable, I think, as a way of harnessing or creating new ideas through communities of scholars in particular areas, but there was some special chemistry there in the ILA Committee that enabled us to make really quite a lot of progress. I'd give credit to Peter Nygh,¹³ the late Peter Nye who was a great Australian private international lawyer, who was

¹¹ Partner, Herbert Smith 1976–2005. Member, Lord Chancellor's advisory committee on legal education and conduct 1994–1999. Chair, Solicitors Regulation Authority Board, 2010.

¹² Partner, Herbert Smith 1990–1997. Became a barrister specialising in business dispute resolution in 1997.

¹³ Peter Nygh 1933–2002. Professor of Law and founding head of Macquarie University Law School, 1973–1979. Judge of the Family Court of Australia as of 1979, then the Appeal Division in 1983. Rapporteur to the Convention on Recognition and Enforcement of Foreign Judgments.



the chair, but also the collection of people that we had on that committee was truly remarkable. If I try and recall all of them I'm going to miss some of them out but many of them I now know either were at the time or have gone on to really make very significant contributions, particularly in private international law, so, Peter Trooboff¹⁴ in Washington; Peter Schlosser¹⁵ in Munich; my friend, Patrick Kinsch¹⁶ in Luxembourg; Catherine Kassedjian¹⁷ in Paris. I mean, this was a wonderful group of people but you can bring a wonderful group of scholars together and it doesn't necessarily mean that they'll be able to agree on anything, in fact, it might increase the possibility that they won't agree on anything. But I think partly under the genial chairmanship of Peter Nye and partly because we did establish – and I suppose I can take some of the credit here – a reasonably effective *modus operandi* early on with that committee, we managed to do quite a lot of useful work, some of which had direct application, some of which... and this is the curious thing about academic life, you know, you put stuff out there and you don't know what impact it's going to have and then years, even decades later, it'll be picked up. So, for example, the work that we did on *lis pendens*, on parallel proceedings in international litigation, at the time it was picked up and put in a draft Hague Convention which went nowhere because the states couldn't agree on many of the other principles of international jurisdiction. They did, however, agree on what should be done about parallel proceedings, based on the work that we'd done, and now, I guess, two decades later or more than two decades later, that bit of the project has again reignited and is being pursued in The Hague Conference.

So, of the two committees that I was involved in during that period, in practice, I think from an academic point of view, the ILA Committee was possibly the more significant but saying that the IBA Committee gave me many friends in the field and gave me, which more generally practice gave me, which is just an insight into the way things actually work. I've tried constantly, through my scholarship and teaching, to plough those insights back in because I think, in the end, the law is not a mere abstraction, it is the way we organise human life and, in this context, having an insight into how the process of international litigation actually works is, I think, a useful thing.

22. So, you were with Herbert Smith and engaging with these international law committees until 2003.

Yes.

23. Then you abruptly turned tail, went back to New Zealand and became an academic.

Yes.

24. Was that another, kind of-

Yes. That was another surprising move. It was very surprising, I think, to my partners and my team at Herbert Smith. It was probably just at the point where, had I stayed a partner, I could have made serious money, and in terms of the practice, things were really going very well; lots of work and lots of very, very interesting work. So, the move back to New Zealand was... When we announced it, I think most of our friends and colleagues had long ago

¹⁴ Senior Counsel, Covington & Burling LLP.

¹⁵ Holder (emeritus), Chair of German, International and Foreign Civil Procedure and of General Civil Law at the Law School of the University of Munich.

¹⁶ Professor, University of Luxembourg.

¹⁷ Professor ("agrégé" of Law Faculties), University of Panthéon-Assas, Paris II. Attorney in Paris, 1982–98. Director of the European Law Center of the Université de Bourgogne, 1982–98.



dismissed our occasional references to, “When we go back to New Zealand,” as being in the category of ‘next year in Jerusalem’, which is to say, well, something which the expat likes to say but is never actually going to happen. But at the time we moved back my eldest daughter was 12 and we had four kids, now five, and so I think at some rather deep level we thought we’ve really got to give them the experience that we had of a New Zealand upbringing. Whether they’d thank us for that subsequently, I don’t know, you’d have to ask them, but that was what we felt was the right thing to do. We thought, well, if we don’t do it now it’ll be too late because my daughter would be starting high school and we’d cross a Rubicon, essentially. So it was a family decision that was the primary motivator, certainly not any dissatisfaction with the London practice, but when I started to think about it more deeply, think about the decision, I realised that if I tried hard enough, I suppose, I had the opportunity in my early forties to have a whole second career as an academic which could be very rewarding and which, if I left it to the next decade, probably wouldn’t be possible or almost certainly wouldn’t be possible. Conversely, being an academic was something which I could do in New Zealand and still maintain all my international ties in a way that would be more difficult if I had stayed in practice in New Zealand, just because it’s a small country, it’s a wonderful country but it’s a small country somewhat far from major centres of commerce and the like. So there was a very positive reason then, and I think, also, that I’d always maintained this academic engagement; I’d carried on writing articles; I’d published one small book but nothing really significant, I mean nothing significant book-wise, and I thought, well, this is an opportunity to, sort of, take that knowledge and experience and try and actually make something of it academically. So there was a very positive reason for choosing the academic route and I was very fortunate that at the time we were deciding to go back there was a vacant chair at Victoria and they were prepared to take a chance on me and so that was the opportunity that we took up.

25. Excellent. That put you on a pathway to come here, didn’t it? So, you were Associate Dean very early on in your tenure there.

Yes.

26. You became a member of the International Chamber of Commerce Court of Arbitration while you were there.

Yes.

27. Then you were elected to the American Law Institute as an International Advisor to the Fourth Restatement of Foreign Relations Law.

Yes. So, all those things, so firstly, I want to pay tribute to... So, all my life I have benefited from some wonderful encouragement from mentors. I think when you look at many people who have had some success in their chosen field, encouragement from mentors is a very important thing. In turn, I’ve tried to play that same role myself both when I was formerly in practice, with my assistants and then with graduating students and the like, as a university teacher. I certainly received a lot of encouragement when I came back to New Zealand, for which I’m very grateful. So, for example, the election to the American Law Institute was on the proposal of Lord Cooke of Thorndon¹⁸ who had been the President of the New Zealand Court of Appeal and, of course, also has very close ties with this city and university, in fact his full title was Lord Cooke of Thorndon and Cambridge in the House of

¹⁸ Robin Cooke, KC; Lord Cooke of Thorndon (1926–2006). Judge, New Zealand Supreme Court 1972–76, New Zealand Court of Appeal, 1976–96, Judicial Committee of the Privy Council, 1996–2001.



Lords. So he proposed me for that. It was a small but really very high quality community of people interested in international law in Wellington which very much supported me as I was making the move into academic life.

28. Right. Yet you kept a foot firmly in practice.

Well, yes, sort of. I mean, practice sort of followed me around, I think.

29. So it's another accident, it just kind of worked out that way.

Not quite. So, another person who encouraged me when I came back was Sir David Williams,¹⁹ as he now is, who was – and he's only just retired now – but he was, throughout his later career, plainly the leading international arbitrator in New Zealand, by some margin but also one of the world's top arbitrators. So David also saw the opportunity of me coming back. He proposed me to the New Zealand National Group to be on the ICC Court of Arbitration; invited me to an Associate Member of the set of chambers in Auckland that he was then setting up, Bankside, but the reality, John, is that in the early years going back I really had my hands full getting my arms around the teaching job actually. Also, you know, we had a still very young family, we were building a house, you know, all those things, plus I needed to build my academic reputation. Now, I did that partly using, again, by happenstance, with my existing connections. So, firstly, Lawrence Collins asked me to be a specialist editor of Dicey, Dicey and Morris on the 'Conflict of Laws', Dicey, Morris and Collins, as it now is.²⁰ Then one of my former assistants, who had then become a partner at Herbert Smith, who is now at Linklaters, Matthew Weiniger,²¹ proposed to me that we should jointly, with another former assistant, now partner in an Italian law firm, Larry Shore, write a book about investment arbitration. Now, incredible as it may seem today, the idea of writing a whole book about the substantive principles of international investment arbitration in 2005 was regarded as a rather exotic idea; there wasn't one.

30. Wow!

There was almost no secondary literature. There was one book which had been written by Margrete Stevens,²² a colleague at the World Bank in the mid nineties but they had almost no case law to go on. So, that was a challenging assignment to write a book on, essentially, a greenfield site with only the, sort of, daunting éminence grise, as it were, of the, sort of, relatively short sections in Oppenheim²³ and the like on the general principles but very little on how they should actually be applied. Of course, the result of that was that we had the advantage of being the first mover advantage. That book was the first modern book on the subject. Fortunately it was kindly received and then relied upon. But even on its own that wouldn't have amounted to much on the practice side had it not been that, again, the happenstance of the passing, sad passing of Lord Cooke left a vacancy on the list of New Zealand nominations for the ICSID, for the International Centre for the Settlement of Investment Disputes and so I plucked up my courage and asked the then Chief Justice of New Zealand, Dame Sian Elias,²⁴ who is also a wonderful person, whether she would consider nominating me, and she kindly supported the candidacy. That, in turn, coincided with an

¹⁹ Sir David Williams (1930–2009). Rouse Ball Professor of English Law 1983–92. Vice-Chancellor 1989–96

²⁰ AV Dicey and JHC Morris, *Dicey, Morris and Collins on the Conflict of Laws* (Lawrence Collins and Jonathan Harris eds, 16th edition, Sweet & Maxwell 2022).

²¹ KC, Global Chair of International Arbitration, London, Linklaters.

²² Rudolf Dolzer and Margrete Stevens, *Bilateral Investment Treaties* (Martinus Nijhoff 1995).

²³ Rosalyn Higgins and others, *Oppenheim's International Law* (Oxford University Press 2017).

²⁴ Rt Hon Dame Sian Elias GNZM KC. Chief Justice of New Zealand, 1999–2019.



increasing view then held by the Acting Secretary General of the ICSID Secretariat, Nassib Ziadé,²⁵ that the pool of available arbitrators should be expanded, that it had all become a bit incestuous; the same people were being appointed and, in particular, the same people were being appointed to review arbitral decisions under the ad hoc procedure for review as were deciding the underlying cases. So he gave me an opportunity to do that which, of course, was very interesting. Also, I learnt a lot because the first people I ended up sitting with in those early cases were themselves extraordinarily experienced international lawyers such as Steve Schwebel,²⁶ Judge Schwebel, formerly a judge of the International Court and Judge Peter Tomka,²⁷ who was then President of the International Court. So I learnt from some real masters as to how to run those cases and developed an appreciation of what was involved. I had the combination, I guess, of the academic overview of the field as a result of writing the book and then the practical experience, and fortunately, that sort of practical experience proved to be reasonably compatible with the day job because, as counsel, you have to appear when you're told to appear but at least as arbitrator you have more control over your diary and can fit in hearings during university vacations and the like and can also moderate the appointments that one takes on, because I've never seen this as a volume business; it's about trying to make a really well-considered contribution where one can.

31. Right. Excellent. I mean, how did you get appointed Queen's Counsel? That was in 2007 and that was, incidentally, the same year you were a Visiting Fellow here at the Lauterpacht Centre.

Yes. I don't think those two things were related.

32. They're unrelated, I assume, although it does speak to the whole two halves, the professional and the academic-

That's right.

33. -they're, kind of, working both sides to that.

That's right. So, again, one doesn't know in the New Zealand system, you don't apply, you are simply... or maybe you do now, but at least in those days you were simply nominated. I think I owe that appointment, however, principally to Dame Sian as Chief Justice in a very nice recognition of the fact that or appreciation of the value of the scholar practitioner which is a model which, in many ways, just making the link for a moment with the Lauterpacht Centre, is embodied in the Centre and which I think has been an extraordinarily important model also in the Cambridge approach to international law. People keep saying that its, you know, days are over but I beg to differ; I think it's still very, very important and valuable for students as well as for the insights that the practice of international law can bring to scholarship. So there was a recognition of that in New Zealand, which is significant, and there again I realise I'm mentioning lots of other people's names who have influenced my life but the precedent in New Zealand was a wonderful man called George

²⁵ Chief Executive Officer, Bahrain Chamber for Dispute Resolution; President, International Monetary Fund Administrative Tribunal; judge, United Nations Appeals Tribunal.

²⁶ American lawyer. Professor of Law at Harvard Law School 1959–61, then John Hopkins University 1967–81. Deputy legal advisor to the US Department of State 1974–81. Judge of the International Court of Justice 1981–2000, serving as President of the Court 1997–2000. President of the International Monetary Fund Administrative Tribunal 1993–2010. Judge of the World Bank Administrative Tribunal 2010–17. For a bio, see the entry in the Eminent Scholars Archive: <https://www.squire.law.cam.ac.uk/eminent-scholars-archive/judge-stephen-m-schwebel>

²⁷ Czechoslovakian-born lawyer. Slovakia' Ambassador to the United Nations 1994–97, 1998–2003. Judge of the International Court of Justice 1993–present, serving as President of the Court 2012–15.



Barton, Dr George Barton QC,²⁸ who was the first barrister I ever worked for and he had been Dean of the Law Faculty and then gone into private practice. So there was a New Zealand precedent there but, of course, here in Cambridge both Eli Lauterpacht²⁹ and my dear friend, James Crawford,³⁰ pretty much embodied that at a level much superior to that to which I could ever aspire.

34. Right. You worked for the New Zealand Law Foundation, you were an International Research Fellow.

Well, that was an award. Actually, I relatively rarely applied in the modern fashion for, you know, research grants, partly because philosophically I think the best work that one can do as a legal scholar is mainly about sitting locked away in your room, doing your own work and I'm not sure that the scientific model, which is really posited on the need to have a lab with dozens of assistants and all the rest of it, actually transfers that well. But, at that point, what was that, 2011, having written the investment book I really want to turn my attention to a completely different topic which I had often spoken about wanting to write on, which I called foreign relations law, which is all concerned, essentially, with the relationship between constitutional law and international law in the exercise of the foreign relations power. Now, that's a topic that I was always going to want to write about. It was developed in this country par excellence by F A Mann himself and I'd always been interested in it. In fact, when I decided to become an academic I remember sitting on that circular window bench right there with the wonderful Finola O'Sullivan, then Law Editor of Cambridge University Press, and she said to me, "Well, what do you really want to write about?" I said, "All of this stuff." At that point I couldn't even really give a name to it. Undeterred by that, she came forward with a draft contract anyway, so I'd been sitting on this draft contract by that point for an embarrassingly long time and not delivered on it.

I thought the only way I'm going to be able to do this is if I take some significant time out of teaching and, in that case, get some real research assistants because my idea was to try to draw together the practice from not only the UK but also Canada, Australia and New Zealand. That was really quite a large scale amount of material to collect and systematise before trying to think about it. Then I thought I really need some time away because the big problem with that area had always been that it apparently lacked any kind of, sort of, logical coherence or structure. There were a bunch of rather obscurantist doctrines, you know, the act of state doctrine, the one voice principle, etc, etc, but nobody really knew how it all fitted together. Part of the reason for that, which is why I was naturally drawn to it, is because it fell between not two but three stools, constitutional public law on the one hand; public international law on the other and then the third stool being private international law, because a lot of these cases arose in the context of foreign states, the foreign act of state doctrine, doctrine of state immunity, recognition of states. All law works through large scale categorisation. We couldn't do our job without it, but the risk of that is that we miss seeing the really important stuff that's going on in between and that was absolutely the case with foreign relations law. For international lawyers this was regarded as a bit of an inconvenient

²⁸ (1925–2011). New Zealand barrister, professor, Victoria University of Wellington 1968–76.

²⁹ Prof Sir Elihu Lauterpacht (1928–2017). Lecturer, Cambridge University 1958–81, Reader in International Law 1981–88, Founder & Director, Research Centre for International Law 1983–95, President, World Bank Administrative Tribunal 1996–98. See the Eminent Scholars Archives:

<https://www.squire.law.cam.ac.uk/eminant-scholars-archive/professor-sir-elihu-lauterpacht>

³⁰ (1948–2021). Whewell Professor of International Law, University of Cambridge, 1992–2014. Judge, International Court of Justice, 2015–2021. See the Eminent Scholars Archive:

<https://www.squire.law.cam.ac.uk/eminant-scholars-archive/judge-james-crawford>



footnote because, really, public international lawyers, understandably enough, are concerned with the international claim and not its domestic application, to the same extent, and anyway, once one starts looking at domestic application it looks very messy, you know, it's not international law in its pure form. For constitutional lawyers this was all a somewhat uncertain domain outside their main preoccupations and, of course, for the private international lawyers this was sitting at that very uncomfortable interface with public law which, again, from Dicey onwards, they'd erected some very severe barriers. The rule against the enforcement of foreign public law and the like.

So, trying to conceptualise what that might involve was, in itself, a very challenging exercise and so I was very, very grateful for the support of the New Zealand Law Foundation which enabled me to do two things, one, take up a Visiting Fellowship at All Souls at Oxford, which is a remarkable place but it was certainly a remarkable place to start this project where I had many very valuable discussions; secondly, to hire a full-time junior research fellow who, herself a remarkable scholar who wrote her own PhD on a completely different subject at the same time and went on to become a full-time academic herself, Maria Hook. So those two things finally enabled me to write that book which is still, from my perspective, that's still my most significant piece of work. At the time I wrote it though I couldn't have really appreciated, couldn't have known just how important that whole area would become, but certainly in this country the result of the, sort of, fallout from Iraq and Afghanistan followed by Brexit, just has produced a welter of cases in this country and also directed political attention to the significance of the field in a way that one couldn't have previously anticipated. So that's proved to be a really fascinating second area of focus of my work.

35. I mean, when I looked back over some of your publications, rather strategically, it seems to me that this notion that you can't really make these nice, hard compartmentalised lines between international and national jurisdiction, it seems to be like a running theme, you know, that you've addressed this much earlier with, particularly you were doing interlocutory international, well, the transnational effective interlocutory motions earlier in your career. It seems to be the part of the same problem, you know-

Yes.

36. -that you can't draw hard lines; you have to parse lines in ways that lead to a reasonable settlement for the disputants regardless of, you know, these silly doctrines that, you know, were... Let's face it, in the 1900s they articulated some very strong jurisdictional lines that really have, in so many different ways, proved to be unworkable.

Yes. I think you're right, John. So, firstly, one thing is that I became aware when I did the historical research for foreign relations law that there really was a very significant hardening of doctrinal lines in the common law, in particular in the last quarter of the 19th century and that prior to that and in particular in the 18th century, when Britain was opening up to the world, not always so benignly but nevertheless engaging, in the time of Lord Mansfield and the like there was much more flexibility. The Victorians hardened those lines and we are still, by and large, working with their thought processes; they rule us from the grave whether we like it or now. Now, that's not to say that I think that all of these distinctions can be just, kind of, swept away in some kind of general blancmange of transnational law. I've been thinking about this quite a lot recently because, as you know, my next challenge after I complete the manuscript of the book I'm working on at the moment which we can perhaps talk about shortly, my next challenge is the general course at The



Hague Academy in January of next year and that will be on the interface, it's called, "On the interface between public and private international law." So that will be an attempt to bring together a lot of my thinking across all of these issues, but my point there is not so much that you can just mix all this up in some kind of bouillabaisse of doctrines, but that, because I do think, you know, disaggregation is good; working out really precisely what the specific problems in particular areas are and what the solutions that are needed for those problems is what the law is about. But it is very, very important not to get blinded by the big silos into realising that a lot of the most interesting stuff is actually what's going on at the edge, between those, and that's what tends not to be investigated but that's the world we're living in, actually. I mean, lawyers' categories are lawyers' categories, they're not necessarily the categories of the rest of the world and it's up to us to make sure that what we do, kind of, coheres with what's going on out there.

37. Just so we don't drag this on forever, let's bring us to the present here. You've spent the last year here at Cambridge. I wondered if you have any fond memories of being at the Squire, being at your college which... Refresh my memory, which college are you tied to?

Trinity Hall. Yes. It's been a terrific experience. Of course, I had to wait very patiently. In fact, the offer came some years ago and then, just when I was about to accept it, to take it up, rather, the pandemic struck so I should have been here in 2020 but, very kindly, the faculty kept the place open for me. So, much better to have waited, in hindsight, because this year has been the first year of normal transmission, really, in the sense of the faculty and students and everybody being here in person and all activities on the go. So that's been fantastic. I've tried to make a reasonably broadly based contribution; probably did more teaching than would normally be expected but that was self-induced. I taught a whole course on international law as a legal system which is really based on the manuscript of my current book, nearly completed, on the principle of systemic integration which itself is derived from, well, the idea was to look again at work that I did at the request of the International Law Commission Study Group on Fragmentation back in 2005 and see what happened to that idea, and the answer to that, of course, is rather a lot. That turned into a bigger project, but I still think an important one, because in an era in which public international law is so much attacked and seemingly in retrenchment, understanding the glue that makes it stick together is actually rather important, both from a practical point of view of solving real life international law problems but, on a larger level, for understanding what it is that international law actually contributes to creating a peaceful international society or at least a less fragmented international society than the newspapers would have us believe. So, I did the course; I taught and gave some lectures to the undergraduates; I've given a seminar for the PhD students and then I've given a series of public lectures including reviving the Cambridge tradition of the Goodhart Professor giving a public lecture, which was a lot of fun to do.

So, in terms of personal pleasures of being here, they've been manifold. Firstly, I want to pay tribute, in particular, to the wonderful support at the Squire from the librarians and the IT team; between them they've just given me incredible assistance; no research query was too obscure for them to be prepared to take it up and, of course, the pleasure of being back in a library with physical books, including really anything or almost anything that one could possibly want to look at in the international law field has been very great. But also, I've loved being able to be back here in the Lauterpacht Centre with its wonderful series of Friday seminars, one of which I gave, but I've been greatly enriched by listening to everybody else's. This in itself is a very precious institution, and globally unique, I think. But the association with Trinity Hall has been a particular pleasure and an almost unexpected one in the sense that



I had no prior association myself with Trinity Hall. My friend, Professor Lorand Bartels,³¹ trade lawyer, was kind enough to propose me as a Visiting Fellow there. When I looked at the list of previous Goodhart Fellows I saw that there hadn't been, that it's not tied to a college, the Goodhart Professorship and Goodhart Professors had been attached to every which college but there hadn't been a Trinity Hall Goodhart Professor since Otto Kahn-Freund in 1975, just two years after the professorship was established.

39. That's a very prominent name, yes.

Yes. So, Otto Kahn-Freund, nice name for me because he too was another one of those amazing Jewish émigrés that did so much to enliven English legal academic life in the mid-century period. He was a great friend, actually, of F A Mann's even though they disagreed on many social issues; they respected each other greatly and were close personal friends. Yet Goodhart himself had been an Honorary Fellow of Trinity Hall and, of course, it is known as a college that was founded by Bishop Bateman in 1350 of, for and by lawyers. It's really been the most welcoming community of scholars and I've participated very actively in the life of the college. I guess, as a visitor, you get all the fun stuff with none of the burdens so, you know, I've enjoyed many very fine dinners and good company and also enjoyed Chapel and the college choir. I've spoken to the students through the college Law Students' Society and just done my best to get to know other Fellows. I think that the advantage that Trinity Hall has is that, although it's a very old college, it's a bit smaller and therefore, as a visitor, it's easier to get to know most of the Fellowship during the course of your time, so that's been a pleasure.

40. It's more of a community, it's smaller.

It does, yes, absolutely.

41. So, before we get on to closing matters, is there anything else that's important to you which you might want to discuss?

So, the year has had a particularly wonderful close for me in an unexpected way, in that during the course of the year one of the Faculty's small number of statutory Chairs was advertised, the 1973 Chair in Law, and the Faculty had taken the strategic decision that the new holder of that Chair should specialise, in particular, in either private international law and/or international commercial arbitration. So I received some encouragement from a number of colleagues to consider applying and eventually did so and I'm very pleased to be able to report that the Board of Electors decided to appoint me, so I will be back with the specific remit to offer a wholly new course on the Masters degree on the process of international dispute resolution, broadly conceived to include both private international litigation, arbitration and public international litigation; the blood line or the red line, the red thread that will link the course being a focus on the procedure of the way in which international disputes are handled and resolved. There's some real precedent for this in this university, a remarkable book written back in 1999 by the late John Collier, who was a great private international lawyer, and Vaughan Lowe, a public international lawyer, which there hasn't been a subsequent edition, sadly.³² So I hope to take that and work with it in my own way, so very excited to have the opportunity to return here in the autumn of 2024 and to make a more permanent contribution to this, the greatest of the great world universities.

³¹ Australian lawyer. Lecturer at the University of Edinburgh School of Law 2003–07. Professor of International Law at University of Cambridge 2007–present. Chair of the UK Trade and Agricultural Commission.

³² John G Collier and Alan V Lowe, *The Settlement of Disputes in International Law: Institutions and Procedures* (Oxford University Press, 1999).



42. That is amazing, congratulations.
Thank you.

43. I'd like to thank you, Professor, for taking the time to share all this information about yourself with us and this concludes the interview. Thank you very kindly.
Thank you.

