

**Conversation with Dame Rosalyn Higgins,
former President of the International Court of Justice**

by
Lesley Dingle¹ and Daniel Bates²

Part 1: Early Years and Academia

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On the afternoon of 14th March 2014, Dame Rosalyn Higgins was interviewed at her home in Piccadilly. The interview was in two parts. It covered her reminiscences from over fifty years of association with the Faculty of Law and Girton College Cambridge, Chatham House, the London School of Economics, the United Nations, and the International Court of Justice.

The interviews were recorded, and the audio version is available on this website with this transcript of those recordings. The questions and topics are sequentially numbered in the interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.

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

Dame Rosalyn's answers are in normal type.

Comments added by LD, [in italics].

All footnotes added by LD.

1. Dame Rosalyn, you have been associated with the faculty and some of its personalities for over 50 years and I hope you will be able to provide some reminiscences of your time in Cambridge in the 1950s. Away from Cambridge you have had a very illustrious career in international law, through your time at *inter alia* Chatham House, the London School of Economics and the International Court of Justice. A common thread is an enduring link with and a profound knowledge of the United Nations so I hope that we can explore all of these avenues and then come to some thoughts on your published work. So could we start by talking about your early years? You were born in 1937 in London.

Yes, I was, shortly before the war, yes.

2. In what part of London?

In north Kensington in an area which at that time my mother was dying to get out from, but which today is regarded again as very desirable, the way these things go round. So it was a road called Kelfield Gardens, just off Ladbrooke Grove, and it was a bit too near Wormwood Scrubs so it was an area of great interest to the Germans to try and knock out the ack-ack at Wormwood Scrubs³.

¹ Foreign & International Law Librarian, Squire Law Library, Cambridge University.

² Freshfields Legal IT Teaching and Development Officer, Faculty of Law, Cambridge University.

³ About 200 acres of common land.



3. Could you give me some background of your family or family details?

Yes. I don't have anyone in the family in law, absolutely no-one, and indeed, I was the first member of my family to go to university. And neither of my parents had the chance to stay at school beyond 13 so I am often struck when I hear of these great legal families from generation unto generation, how different my story has been. Both my parents were very intelligent, they just didn't have the chances I was to have and for which they encouraged me in every way. My mother did not have a job but all her life wished she had had the chance to be a doctor or a lawyer. She watched every programme on TV in these two areas. My father was a bookie, a bookmaker, initially starting very, very small but eventually becoming the partner with Joe Coral⁴ in Coral's bookmakers which are really one of the big three and of course a public company. So he helped build that up from nothing and they were absolutely splendid people. He was straight as a die, wonderfully honest man with a strongly developed sense of ethics and what was right and what was wrong. I remember my son, when little, said to him after some escapade or other, "But how do I know what's right or what's wrong?" and my father said to him, "If you don't want to tell me about it, it's wrong."

Which I thought was a great answer.

4. So when the war broke out you were only two years old. Where did your family live during this time?

Like a lot of Londoners, we had an evacuation during the phoney war and when it seemed it wasn't happening we came back in time to be hit with the real thing, went away again. So during the so-called "phoney war"⁵ I was evacuated with my mother and my sister – I put it that way because my father was on air raid duties and that sort of thing in London – to somewhere I now see in the context of the Somerset Levels, to Wiveliscombe⁶ near Bridgewater on a farm there and I remember that as a perfectly agreeable time. And then we went back to London, then of course the real bombing started and then I was sent off with my sister, just the two of us, my mother feeling at that juncture she was very torn between being with her little ones and with her husband. We were sent off on one of these trains where you stopped at a certain destination and people came and chose you as evacuees. So we went to Aberdare⁷ in Wales. Of course I was terribly nervous someone would want my sister and not me but apparently the policy was not to split siblings and we were taken up by Dai the grocer, so we were never hungry or wanting. I like to think my deficiency in maths is due to the fact that maths was being taught there to me at that young age, but I think it's probably due to other things.

5. So you didn't suffer any of the sort of privations or deprivations because of rationing and so on?

Well, we didn't at that juncture. Of course, we did come back before the end and were in the bombing and, being where we were, virtually houses all around us were being got. I am

⁴ 1904-1996. Born in Poland, Joseph Kagarlitsky,

http://www.thegoodgamblingguide.co.uk/spotlight/players/joe_coral.htm

⁵ Time of little activity by France and Britain against Germany: ~ October 1939-April 1940.

⁶ <http://www.wiveliscombe.info/wiveliscombe.htm>

⁷ <http://www.aberdareonline.co.uk/>



talking now about the buzz bomb⁸ era. So we did have a shelter at the bottom of the garden and we always started the night, not there, but when the air raid warden went we all took a dive for that. I remember we grew up the outside of it tomatoes. We were certainly for a long period without any windows and just had boarding up, there was no point putting windows in if they were going to get blown out again in a day or two. I had shrapnel in my neck – all the usual things that happened to kids in London in that age. But I can't say we were ever hungry, I don't remember that. Of course, when you have not had certain fruits or food, you don't miss it. I remember after the war my father coming back with a coconut. I had no idea what it was. So we were all given a slice of that and he and my mother went out somewhere and I being the really wicked young person I was, I then tucked into the coconut. I was so ill and I have hated coconut ever since.

6. Your first school was the Burlington Grammar School⁹?

Really my first and only. I was I think for about a year... my sister was already at Burlington and for about a year I was started at... this is terrible, I'm having a little blank. But it was the local convent school and, of course, we were a Jewish family and not a Catholic family but the nuns were very nice and said no, they understood. There were certain things I wouldn't join in, but one day when there was some religious activity going on I came back in tears on the doorstep and my mother said, "What is the matter?" and I said, "Why can't I be in whatever it was? I'm London like the rest of them." At that juncture she thought it was time to try and get me into Burlington. But they were jolly good teachers so I learned to read and write well, punctuate from a very, very early age, and I put that down to the nuns.

7. Any inspirational teachers that you remember from both the convent and Burlington?

Well, certainly not the convent. It was much... I was much, much too young. There are three teachers who stick in my mind at Burlington Grammar. They had never had anyone at university so it was an ordinary but lovely grammar school. Our English teacher, Mrs Halliday, really made you interested in the metaphysic poets or whatever we were reading and as we got older she used to invite us round on Sundays to her place for poetry readings and things. That was special. And then my history teacher to whom I think I owe a great deal, a woman called Miss Huston, I got a great interest in history and she was the one who said to me – because I had no idea what I should do – she said, "I think you could be good at law." Why she said that, I have no idea. I had never thought of law but I owe her that great debt. Then there must have been an infinitely patient physics teacher because I really am rather poor in the sciences. I say this with some shame but it's so and she endlessly went over and over and over things with me and never said, "You stupid dumb girl."

8. It was at this point that perhaps the seed was sown for studying law?

Well, it definitely was because she said this in the lower sixth, so absolutely.

9. And that was perhaps what made you decide to study law when you went up?

⁸ V1, Vergeltungswaffen 1, German flying bombs.

⁹ Founded 1699 as Burlington Girls Grammar. Currently Burlington Danes Academy, <http://burlingtondanes.org/welcome>



Yes. I mean, I am very struck today that youngsters usually know what subjects they want to study and they know what universities have exciting courses in them. I mean, I knew none of this, this was all a sort of unknown world to me. So she said, “I think you will be good at law” and I liked her enormously so I thought, right, law, whatever it is, we’ll have a go at that. The school more generally seemed to think it worthwhile for me to try for Cambridge. How that came about I really don’t know, but obviously I’m hugely indebted.

10. And that was why you chose Cambridge?

Yes, that was what they suggested, nowhere else. So I did the Cambridge exams. Entrance then was by exam and it was quite clear on the history paper that I hadn’t covered a great deal of the syllabus. It was clear that my Latin was somewhat shaky, which was why in the event I was advised to do economics in the first year to avoid Roman law. But there were papers that gave you scenarios and what would you do and who do you think was legally right, this sort of thing and apparently I was quite good at those and got the invitation.

11. When you arrived in Cambridge, what made you decide to go to Girton?

I have been trying to remember that and I cannot remember, I simply cannot remember. Oh, well, it will have been a tiny choice then because there was... I think I must have an answer. There was Girton, there was Newnham and there was Old Hall. Old Hall was sort of not quite established and I did have a look round Newnham and it all seemed a bit dreary to me, nothing more rational than that. But my law tutor there, the woman actually who had looked at my papers and seen a glimmer of hope in me, was Marjorie Hollond¹⁰. Do you remember her? Marvellous, eccentric person. And she was married [LD: *in 1929*] to the great Harry Hollond¹¹, the legal historian. They lived separate but I believe entirely friendly lives. She used to drive around in her old Daimler with the window wound down enough for her cigarette holder to come out a good foot on the side.

12. They both became quite legendary.

Yes.

13. I know the house that she used to live in, it’s a beautiful limestone building on Madingley Road.

Right, yes. He was quite a frightening figure but... I mean a daunting figure, but after exams her law people all used to be taken for a sort of afternoon tea and ice cream with him. I remember being almost as frightened of that as the exams. It was meant very kindly.

14. When you arrived in Cambridge, Dame Rosalyn, did you find this was quite an adjustment, a small town after London?

Well, not that because I led a fairly circumscribe life in London. I wasn’t yet at age 18 into all the joys of London. I had led, I suppose, a rather local life. I was, of course, very

¹⁰ Marjorie Tappan Hollond, 1895-1977, Lecturer in Economics, Bursar of Girton College. Born in New York, came to Britain at the end of the First World War.

¹¹ Professor Henry Arthur Hollond (1888-1974), Rouse Ball Professor of English Law (1943-50).



anxious that everyone else was going to be much, much cleverer than I and I remember having this same sort of sensation when I arrived at the Court and then you think after a week or two, “I am going to be able to swim. I’m okay here.”

And I loved it. I loved the whole... the whole four years I had there were wonderful.

15. Must have been such a different place to the Cambridge that it has become today?

I suppose so. But it opened all sorts of doors and wonders to me.

16. Would you cycle from Girton to the Faculty?

Yes, I had never been on a bike before so I was forever crashing and dislocating my shoulder and this, that and the other and although I did it for three years I have never felt very safe on a bike. So I haven’t biked in... Holland though, so many people do that.

17. Still your time at Cambridge. There were several very illustrious professors in place and one of them that I wanted to ask you about, Dame Rosalyn, was Professor Hamson¹². Did you ever come across him?

Of course, I knew of him but our paths didn’t really cross at all. I was looking through the list you sent on, of course. Clive Parry¹³ was one of the international law professors but never mine so we knew each other by sight. Several of the others you have mentioned, Armitage, and so on, I knew of them but I didn’t really know them. Robbie Jennings¹⁴ of course and Eli Lauterpacht¹⁵, I did, and Kurt Lipstein¹⁶. Bill Wedderburn¹⁷, though I got to know him much more when he came to LSE, when I was at LSE. Tony Jolowicz¹⁸. I have mentioned Eli, and Geoffrey Wilson¹⁹, I have no idea what became of him but we saw quite a bit of each other in the sense that he was kind to certain students.

18. Your fellow students included Professor Allott²⁰ as he is now, do you have any memories of him?

Oh yes, and we have remained in touch over the years. We were that year honestly... we were a fairly bright bunch doing the LLM, but of that bright bunch there were two I think who were exceptionally bright, Philip Allott and Andrew Jacovides²¹. Everyone finished up getting firsts but they were the people you thought of as the starred first, and Philip, as you know, was a real one-off from everyone else. But they have all become good friends and Owada²², who I was in touch with, my memory is as an undergraduate, and not in the LLM programme. We have

¹² Charles John Hamson (1905-87), Professor of Comparative Law University.

¹³ Clive Parry (1917-82), Professor of International Law.

¹⁴ Sir Robert Yewdall Jennings (1913-2004), President International Court of Justice 1991-94. Whewell Professor of International Law.

¹⁵ Sir Elihu Lauterpacht (1928-), Professor of International Law.

¹⁶ Kurt Lipstein (1909-2006), Professor of Comparative Law.

¹⁷ Lord Kenneth William Wedderburn (1927-2012), Cassell Professor of Commercial Law, London School of Economics.

¹⁸ J. Anthony Jolowicz (1926- 2011), Professor of Comparative Law.

¹⁹ Geoffrey Wilson, Emeritus Professor of Law, University of Warwick. Fellow of Queens’ College.

²⁰ Philip J. Allott (1937-), Emeritus Professor of International Public Law.

²¹ Andreas Jacovides, Cypriot Diplomat & Former Member of International Law Commission, Geneva.

²² Hisashi Owada (1932-), Former Japanese diplomat, President of ICJ.



been friends all those years, but life took him different ways, but then when I was increasingly doing UN work whenever I was at the UN, he would invite me to whatever was going on, yes.

19. You kept in touch with them?

We kept in touch and I think of Owada as a long, long friend. Philip, I am intermittently in touch with but we are still in touch. Andrew Jacovides is a very attentive friend. He went off at an extremely early age to be Cyprus Ambassador to the UN and Ambassador in Washington and all sorts of grand things. He still is very good about sending emails saying they are coming through London and can the four of us get together, so I see him maybe in London once or twice a year and in New York whenever I go. And the person of course... well, Steve Schwebel²³, you asked when did I meet him, he was a very close friend of Eli's and I met him actually in that capacity. Eli was very kind to the LLM students and we would go over there once in a while to his place and he introduced me to Steve Schwebel. I somehow remember that Steve gave me a call in London in the year he was over there and we went out once or twice to concerts – it was before either of us was married – and we have been firm friends ever since. So the four of us, that's my husband who you have briefly met and of course Steve's wife Louise, we are all in close contact I would say. I see them several times a year because they travel a lot. I think I can fairly describe myself as Steve's campaign manager when he was President.

So Steve Schwebel, who is still astonishingly active in arbitrating, engaging in all sorts of things, he is over in Europe frequently and we are in very close touch. But the person we have not mentioned who was very important to me in those years was John McMahon²⁴. John McMahon, who was among the earliest of us to have articles published in places like the British Yearbook. He died... he got a job at the UN in the Legal Office and he died, so that was truly awful. But we were very, very close during that graduate time.

20. I think that you were one of the editors on a book - a dedication to him?

That's right, yes. He was certainly one of this group.

21. Dame Rosalyn, I noticed in your *Who's Who* that you were in 1958 a UK intern at the UN Office of Legal Affairs. This was during your time at Cambridge?

Yes. It was at the end of the first degree and before coming back for the second degree which was then the LLB and it was a BA in Law and all very confusing for other people. I think it must have been a three or four-month appointment. I cannot remember who told me to have a go for it I am afraid, but I did and I remember there were all sorts of letters and forms and this and that, and the two finalists were then a young chap called John Birch²⁵, who later... I was lucky enough to get it and John later went into the Diplomatic Service. I remember he was Ambassador in Hungary and I'm sure he has done all sorts of other wonderful things, yes. So I didn't, happily, feel I blighted his life which I wouldn't have liked to have done.

²³ Stephen, M. Schwebel (1929-) President of ICJ (1997-2000).

²⁴ John McMahon (1937–1969) Fellow and Dean Hertford College Oxford; Lecturer in Law Lincoln College Oxford; Legal Officer, UN Office of Legal Affairs. International lawyer specializing in outer space law, law of international organisations, law of sea-bed.

²⁵ Sir John Birch, (b. 1935), Ambassador to Hungary (1989-95), Corpus Christi College, Cambridge.



22. Following your graduation, you undertook a PhD in United States, your JSD.

Well, if I can just jump back and say that internship was really important in my life because I really started to learn and understand about the UN. I started to see very clearly there are often several points of view on a given subject and that scheme worked, that there was one person from each of the applying countries and you were put into the department applicable to your studies so I went into the Law Department [*LD: Department of Legal Affairs*] and I met Oscar Schachter²⁶ who was to become a lifelong friend, yes.

23. We will come back to him when we talk about your published work because he has featured as a reviewer of some of your work. When you were registered at Yale you were funded by a Commonwealth Fellowship and I wondered how this came about?

I know I went through university, the first year on whatever they called it, a state scholarship or something, and after that I was lucky enough to get some college scholarships, so all of that was paid for. [*LD: For Yale*] it was this wonderful [*LD: Commonwealth*] scholarship.

But I didn't know how I was going to get there and back [*LD: to Yale, 1959-61*]. I remember writing to Eli - he was running the International Law Fund (of which I am now co-trustee with him and James Crawford), and he said, "I think I can find you a bit of money for your fare."

So I was very indebted to him for that. I was then able to take it on.

24. Did you fly?

No, I went by sea. That was the way it went in those days.

25. That must have been a lovely journey?

Oh no, the North Atlantic is never a lovely journey, horrible.

26. Oh I see, right. While you were doing your PhD you fell under Professor Myres McDougal²⁷, with whom you formed a very close relationship.

Yes. He and... later on you ask about mentors and really Eli has been... I'll answer that question when we get to it, but those two have been really, really important in my life. I remember I had a Commonwealth Fund Fellowship. I think at that time they were called Harkness Fellowships and then changed their name. But it was up to me as I remember it to identify where I wished to go, so I started at Yale and at the other place and of course it was lovely going to Boston and meeting everyone there but I didn't come away feeling "this is it". But then I went on to Yale and I was immediately brought under the spell of this extraordinary man, Myres McDougal, who anyone will tell you was just sort of astoundingly charismatic, argumentative, strong personality but if you were in his favour it was a very special bond and he was the one who taught me, which I still believe to this day, that international law is not about rules, rules are things that can't be gainsaid, like there are 50 members of the Security Council, that's a rule, but most of the norms we talk about, self-defence or aggression, in norms that can be invoked but whether they apply or not depends upon a whole swathe of things. It was he

²⁶ Who was head of this department, Oscar Schachter (1915–2003). US international lawyer and diplomat at United Nations. Hamilton Fish Professor of International Affairs, Columbia University (1980-2003).

²⁷ Professor Myres S. McDougal (1906-98). Yale Law School (1934-84).



taught me that astonishing fact which no-one had ever suggested it, Cambridge, I mean. I had wonderful teaching in Cambridge but there had been nothing outside the black letter law, it was just what it was all about, you know. And Mac is someone that if he takes a shine to you he does his best for you all your life and his.

27. And this position that you adopted there, you have remained true to throughout your career?

Yes. And a lot of people said, “You can't understand him, he has his own special language” and I remember a bizarre article in the British Yearbook by Philip Allott who is great, but not the easiest person to read, and Philip wrote an article saying, “Myres McDougal, you can't understand anything”, and I thought, “Talk about the pot calling the kettle black.” But I always felt this was an excuse. If you put your mind to it you could understand it. I thought it was people didn't want to.

28. Very interesting. So, Dame Rosalyn, what would you say were the highlights of your time while you were at Yale, looking back? I should maybe just ask you first, it must have been a very different world to Cambridge - still suffering perhaps to some extent from the privations of war and so on?

I remember being astonished at the fullness of the shops. I had never noticed the shops weren't properly full but when you went to the States and saw the supermarkets, that was astonishing, so I do remember that. I find it hard to put a highlight on it. I lived in a little dorm there, except when I came back from my internship at that stage you were all meant to live out so I did that and that was fun too and I made some good friends. The Harkness, the Commonwealth Fund, part of that was to provide you with a car to travel in the summer, so that was quite extraordinary. They provided me with this enormous Chevrolet, bigger than any car you ever see in England and off I set with three of those chums to go all around the States and that was with their blessings, what they wanted you to do... So that was really special, to travel all around the States that way round.

29. Eastern Seaboard?

Eastern Seaboard going north. And then across and then... yes.

30. Right across to the west?

All the west.

31. Dame Rosalyn, your future husband, now Lord Higgins, was a lecturer in the Economics Department at Yale in I think 1958 to '59. Did your time there overlap with his?

No. We met each other in Cambridge. He is actually ten years older than I am and he had been running when a young man, I mean running at a very senior level. He was in two Olympics²⁸ and he was in the next race after the four minute Bannister mile. He says no-one was interested in the next race after the four minute Bannister mile, but I mean he was running at a

²⁸ Terence Langley Higgins, Baron Higgins (1928-), British Conservative politician, Commonwealth Games silver medalist for England, British Olympic teams 1948, 52.



very senior level so he came up to college late. But we were part of a circle of friends there and then he was going across to take up his... Willie Fellner, the economist, had seen good things in him and asked him to come and lecture there and he was going across to take up that and I was going across to take up my Commonwealth Fund Fellowship and we were both on, as I recall, the Queen Mary and that's when we got to know each other rather better. But then I came back to do my Masters in the year he was teaching so it took us rather a long while to finish up together, yes.

31. And when you were married in 1961, was that in the States or.....?

No, that was here.

32. Do you have any reminiscences or memories of your time at the Brooking Institute?

Not a great deal. I think it was a fairly short stay and it was how to go on working over the summer. I don't believe I made any special friendships. It was a sort of office and a place to work, yes.

33. Did it give you some further insight into the workings of the United Nations at all?

Not honestly the United Nations, but a bit of Washington because now for the first time I was living for a few months in Washington.

34. Someone whom I wondered whether you met during that time was Professor Bowett²⁹ because he at that time.....

No. I can't remember when we first knew each other but I think he published, wasn't it in '64, his book on peacekeeping and we must already have known each other or he must have seen my early writings because he asked would I do a couple of chapters for it.

So I would say, yes, the earlier 60s probably. That was here, yes.

35. Did he just happen to be in the UN Legal Office from '57 to....?

Yes. I didn't come across him there. I did, of course, come across Oscar Schachter and others, but don't remember him from there.

36. Mr Stephen Schwebel was a lecturer during your visit to the States - he was at Harvard from '59.

But my contacts with him were not at Harvard. No, they were, as I said, through Eli and we were friends, yes.

37. Dame Rosalyn, you returned to the UK. In 1961 to '63 you held a London School of Economics Fellowship, and I wondered whether you used this time to write up your PhD?

Exactly, you've got it in one, yes. Yes, I did.

38. Which brings us then to your first position which was a very important time in your professional life, your job as a Staff Specialist at Chatham House³⁰ from 1963 to '74. I

²⁹ Sir Derek William Bowett (1927-2009), Whewell Professor of International Law 1981-1991.

³⁰ <http://www.chathamhouse.org/about-us/about-chatham-house>



wonder if you could tell us something about Chatham House as an institute?

Yes. I think it has changed obviously, inevitably, over the years. At that time it took pride in hardly accepting any government funds. Now I imagine it somewhat depends on them. It was a very happy time there. They had a Director of Studies whose name I wish I could remember. If it pops into my head I will tell you. I have a feeling it begins with an E. He was extremely encouraging in everything I did. He would pop into my room and say, “Well, good things in the future.” All of that was very encouraging. Everyone went down to the canteen at the same time for morning coffee and you met other people there. The way it worked then was if you were a Staff Fellow you were meant to assist in digging out answers for the corporate and individual members who would write in or phone, they wanted to understand something about the UN expenses stuff and something like that, and then I’d be the one who would do the paper for the answer to be given and other people would be doing the same in their areas. You were meant to give occasional lectures, two or three times a year, in your area to all of those who chose to come in the wide membership. Then you were meant to be writing something important. So that was when I was able to get my head down and do at least the first two, maybe three of my peacekeeping books.

39. I noticed that it seems that you wrote five books during your time there.

Oh I wrote the little Bodley Head one. It’s very interesting because I have just been asked by Nijhoff, in the light of the Ukraine and all of this, can they republish it and I firmly said, “No.” It’s so superficial to think those things had anything to do with what I was writing about. But you are right, I did that. That was a sort of moonlighting venture. It wasn’t on the Chatham House programme, but I did do it.

40. So it seems to me that you were encouraged to write, you were given the...

Oh that was what you were there for. To write, to answer members’ questions and to give occasional lectures.

41. Did your role change [*over the years*]? Were you given more responsibility?

No. That was what a Fellowship was, yes. So it meant that during that period I just had my salary. The work I was doing then didn’t require research assistants or enormous sums of money, they were all produced within the confines of my salary.

42. Right.

Yes. Well, it’s changed there too, hasn’t it?

43. It was during this time that your husband became an MP³¹. That was in 1964. I wonder whether you helped in his election campaign?

Well, I have always supported him, as he has always supported me, and I would take an unpaid three weeks off from whatever I was doing to go and assist in elections down in the constituency and that must have been true of the first one. They did understand, Worthing, that he had a working wife and so I wasn’t there every week at tea parties and things of that sort, but I was there for the big functions, the hospital fete and things of that sort. Of course, because I

³¹ For Worthing.



knew a bit about the UN, the UNA there used to ask me down. So it was that sort of thing.

44. He retained his seat for 30 years. And did this mean that you still lived in London?

We did, mercifully. Luckily we were living on the south of London at Blackheath and of course, now it's so much easier to get there but you then had to come up to London and get a train down or if you drove there weren't yet motorways, so every 200 yards there were roundabouts so it took about three and a half hours to get there. But compared with other members it was near London so to Terence that was the relevant thing. Terence was able to be a good parliamentarian and look after the constituency very well. So he was there a few times a week, yes.

45. During this time, Dame Rosalyn, you became Vice President of the American Society of International Law so this would have strengthened your existing links with....

Well, I must say it was I imagine Oscar Schachter who told me, "While you are over here get involved", because he jointly supervised my PhD on the development of international law through the political organs of the UN which came out as an OUP book soon after I came back. So he was obviously the Director of the UN Legal Office. I'm sure it wasn't Myres McDougal who said, but I can't remember, I'm sure it was Oscar who said "Get involved, become a member" and I did. I have always felt very close to the American Society. Even when I was a young person they treated me as if it was a pleasure for them to have me there, not the way around it should have been. Everyone was always so kind and over the years I have held various posts and love going.

46. And you had chances to attend the annual meetings?

Absolutely, and to be invited to do panels, because once my book on, "*The Development of International Law through the Political Organs*" came out that became a hot topic, law making by political bodies, and so I was invited to do papers on that for example, yes.

47. During this time Professor Allott was the British Second Visiting Legal Adviser in New York. I wonder whether in your first years at Chatham House you came across him?

I must say, I don't remember that. The Foreign Office at that time had one or two international lawyers days in which all the academics would be invited to go along and talk with the FCO legal staff about the big legal issues of the day and the positions the FCO was taking. I know I ran into Philip there – and we loved those days – but I don't remember otherwise. Philip may have told you a different story but I can only tell you what I remember.

48. After eleven very productive years in which you produced five books, you decided to leave Chatham House, and I wondered what made you....?

It's a very simple answer. When I went there the Director was Kenneth Younger³², who was a wonderful... he'd been a Labour Minister and he was a wonderful internationalist and I felt I flourished under him. Then came... my recollection is that he retired before he died, that's my

³² Sir Kenneth Gilmour Younger (1908-76), Labour politician and barrister in the Attlee government. Opposition spokesman under Hugh Gaitskell. Director of Chatham House.



recollection. Then came Andrew Shonfield³³ who was of course very well known as a newspaper economist for the Observer and a very interesting and warm and outgoing man. Really all his interests were at that time EEC interests and he wanted Chatham House to focus on all of that etc and so I knew it was time to go.

49. So you went back to the London School of Economics where you were a Fellow for...

This was really treading water while I tried to see what next, yes.

50. So your role during that period at LSE was...?

That was in the International Relations Department and I was... international relations at LSE has always had international law as a compulsory course and at that time they had special course for non-lawyers. The first thing I did when I got to LSE as the Professor of International Law was to stop that and say the international relations people have to do a proper course on international law, a “Noddy” course is no good.

But then I was teaching what I later pejoratively refer to as the “Noddy course”. I think I probably felt that at the time, yes. Then I was beginning to think about the Bar, if I have got the sequence of events right, I think so.

I had started doing a lot for Mobil on North Sea matters which you mention here. Petroleum law was being made as it went along really.

51. It must have been a thrilling time in North Sea [exploration]?

It was. It really, really was. You had to have some skills in taking what you knew in law but seeing how it could apply to something quite new, what could be built, what could be done, so it was exciting. Fortunately Mobil North Sea offices were literally at the back of LSE. It was so easy to pop out for an hour and when you weren't teaching, pop back. So all of that worked very well and I became very friendly with Mobil's North Sea Oil Legal Adviser, a man named Daniel Vock³⁴ and he and I have been lifelong friends, personal and in the law ever since. He then went back to the States to do other things so we have gone on seeing each other over the years.

52. During this time you also taught a course, an LLM course, on International Law of Natural Resources.

No, that was later. When I went back as the International Law Chair holder.

And then, as I have said, I got rid of the special human rights course so I taught the human rights course.

53. This was with Peter Duffy³⁵?

Yes, dear Peter. Yes, we were very, very close and I gave a memorial address, and it was a really terrible time. He was so knowledgeable, so capable. I brought him to my chambers and

³³ Sir Andrew Shonfield (1917-81). Economist. Chairman Royal Institute of International Affairs (Chatham House). Foreign editor *The Financial Times* (1950-8).

³⁴ R. Dan Vock.

³⁵ Peter Duffy, QC (1954 - 99). Human rights lawyer at Queen Mary College, London. Chairman, Amnesty International executive committee (1989-91).



he was outstandingly good. He was a wonderful academic too. He was then at Queen Mary but we did a joint course because, as you know, at that time before LSE declared UDI, all the Masters courses were university-wide.

54. You taught with Peter Duffy using the Socratic method?

All my courses I have done that and that course was about me doing... we did in the first term all the sort of theory about human rights: what is it, is it state-given, is it natural, is it western, is it suitable for east... we did all of that in the first term. Then I did a term on all the UN aspects and Peter... we were both there throughout the year and Peter then led in the third term on the Council of Europe, the Strasbourg stuff, yes.

55. And this technique, did you acquire it while you were at Yale?

Oh absolutely.

56. Is this one of the legacies of Myres McDougal?

Yes, definitely. Yes, when you were over there you had been given things to read for the upcoming class and then McDougal was absolutely ferocious in class. He didn't mind humiliating and so we all sat there with our heads down so as not to be caught. But I think I more kindly did the... I have always taught by the Socratic method. There is no point having passengers and you may... as I did the undergraduate general course in international law, the one I changed from the Noddy course. That was open to all undergraduates, international relations, they could do it in years two or three and it was... I can't remember which year of the law course, that I did by lectures but I would pause and say, "Let me pause there for a moment. Does anyone need to ask anything?" But for seminars, absolutely Socratic method. I hate teaching where people constantly invite other people along to teach a lecture, that is just lazy teaching.

57. Dame Rosalyn, before we leave the topic of your time as a consultant for Mobil, I just wonder did you ever visit any of the rigs at all?

That's an interesting question. I will tell you that I am one of those who has a flying problem which in our profession is a fearful handicap, isn't it, when we move around so much. The thought of going on a helicopter, that was just more than I could cope with. So I knew Dan Vock, the legal counsel, well enough to say to him, "Dan, I just cannot do this. You have to understand."

Then in later years, I am trying to think when – well, it must have been just before I went to the Court in one of the things you do as a barrister – I was asked by a person I still refer to as the King of Greece, King Constantine³⁶, to do together Antony Lester a case for him at the Strasbourg court which were about his properties in Greece which the new government was taking over, properties that had the family graves. So it's wonderful he is now back there as a resident.

58. It is.

So that case has led to things being much better and all the old sores going away. But why am I telling you? Oh yes, something was happening, some drama involving Greek citizens somewhere and I was told by the solicitor, "So you're going on the helicopter" and I had to say,

³⁶ Constantine II (b. 1940), King of Greece 1964-1973.



“I am terribly but I am not going to.” Just I had to say the truth. “I’m afraid the King is going to think I am idiotic, his brave soldier, but I am not.”

59. Still during your time at LSE. You visited Yale in, I think it was 1977?

I can say I have never been in the States without going to Yale. I can say that with certainty. I still feel very close to Yale. Obviously when Myres McDougal was alive I went always to see him. In later years as he was starting to decline in health he used to be essentially looked after by Michael Reisman³⁷ who is an outstanding international lawyer. But Michael Reisman was like a son to him and he would take Mac, fetch Mac and arrange for people like me to come and visit the Lawn Club³⁸, I remember when I was over, yes. But I did go then to teach at Yale. And that was lovely, to be invited back to teach.

60. International Law?

International law but also I was told, “What course would you like to bring with,” and although I have fallen into a lot of things in my life, like fallen into the law, had fallen into going to Cambridge – whereas some kids today know exactly what’s what, I fell into my life – there were other things – just thinking about this morning – that I now see I have done rather deliberately, and one of those was saying to myself, “I should use this opportunity in going to Yale to start being pretty knowledgeable about the European Convention on Human Rights.” You have to remember we are talking about a time where that had only been going for 15 to 17 years so you really could be on top of it.

Of course, I think I was... I really think I was the first in the UK to be so interested in the UN. Well, perhaps Derek Bowett was as well, but he had many other interests at that time in the Law of the Sea or whatever. So again, the UN had only started in '45 and 1959 and '60 you could still really immerse yourself in the law of the UN. But I deliberately got that course up, going to Yale. I had already written an article in the British Yearbook, I can't imagine why, before I went to Yale on the margin of appreciation in European Convention law and then I thought I would build on that.

61. Very interesting, that early stage?

Yes. And that was sort of a deliberate career move, yes.

62. Which I hope we can follow through when we talk about your time when you came back to LSE as a professor. Dame Rosalyn, I just wonder whether during this time at LSE [i.e. 1974-78] you encountered Professor Toby Milsom, who was Professor in History?

No. I knew of him, of course, but I don't really think we ever knew each other.

I don't think I did and the person... there were two professors there immediately ahead of me, each of whom I did know. This is terrible, I'm having a blank. But a tall, thin, lovely gentle man who went off so uncharacteristically to Australia. Who am I talking about? But this is terrible. But he was really... this was a period in which I was feeling somewhat insecure in the UK. Most people thought policy in law was daft – law was about rules, and all you had to do was know the rules and apply them and there was quite an impatience with it all. His first name

³⁷ W. Michael Reisman (1939-), Myres S. McDougal Professor of International Law, Yale (1998-).

³⁸ <http://www.nhlawnclub.com/about-nhlc/>



was David. And he was at LSE and he was really, really kind to me and encouraging. And then when he left the person who got the Chair, at that stage it was done just by invitation. It was Ian Brownlie³⁹ and, of course I knew Ian, yes. I am afraid I didn't really know Professor Toby Milsom, no.

63. In a way that doesn't surprise me because I think that he was somewhat reclusive.

Okay.

64. Dame Rosalyn, you then moved to Kent where you had a Chair. You were a Professor of International Law.

Yes, that was my chance for... I remember writing to Robbie Jennings who took a kindly interest. Yes, Robbie sort of took a fatherly interest in me and then Eli early was a friend, that's the difference. So I don't remember ever writing to Eli for advice, but we have been and still are great friends. But Robbie at that stage I would say, "What do you think?"

65. I can understand that because from what I have had in conversations with Lady Jennings, she told me that he was always in favour of going away and let them call you back. So the circumstances of your taking this position were that you had good advice and there was an opening at Kent.

So I remember saying to him, "What do you think?" It wasn't in my mind's eye stellar, though I am now a quite active patron of their law clinic. I think they have done very well in recent years and their law clinic gets award after award after award. So Robbie said, "Yes, but a chair is a chair. You go for it" so I did. And again, it was a commutable distance. We were there in Blackheath—

66. I wondered about that.

And I drove there each day.

67. One of the scholars in the archive is Professor Hepple, and he too was at Kent for two or three years.

He was, and I met him first there I think.

68. I think he was just about to leave as you arrived.

Yes. But I remember him as an amiable person I met there. Kent at that time, the law was quite in a sort of leftwing fervour, but Bob was one of the saner people. I really do think Kent's pretty good now, they have come on a ton over the years. Of course, the other two people who were great chums were Brian Simpson⁴⁰, who alas a year or two ago died, having gone

³⁹ Sir Ian Brownlie CBE, QC, FBA (1932-2010), Professor of International Law LSE (1976-80), Chichele Professor of Public International Law Oxford (1980-99).

⁴⁰ Alfred, William Brian Simpson (1932-2011), Professor of Law, Kent (1973-83), Charles F. and Edith J. Clyne Professor of Law University of Michigan (1987-2009), Fellow Lincoln College Oxford (1955-73). Wrote *Cannibalism and the Common Law* (1984).



since to Michigan and to Oxford, and Claire Palley⁴¹.

69. Yes, she was a friend of Professor Hepple's.

Yes, probably. And she was a good friend of mine and in later years when I was out on the... well, we haven't got this mentioned at all I think on the Human Rights Committee which I did for nearly three months a year for a period of ten years, so I guess that should get a mention.

Claire was out doing her shorter period on the Sub-Commission on Discrimination so we used to have good times together in Geneva and, of course, she was an outstanding scholar with her books on Northern Ireland and on Rhodesia.

70. Right. And this gave you an opportunity, Dame Rosalyn, to complete your last two peacekeeping volumes - volume 3 on Africa and volume 4 on Europe while you were at Kent.

Did I complete them then? I have no recollection when I completed them.

71. I believe that you published the volume 3 on Africa in 1980 and Europe in 1981.

It sounds as if you are right. I cannot remember a thing about those, which is terrible but....

72. It struck me that this might have given you an opportunity to work at these, which have been described by at least one reviewer as a huge undertaking.

They were a huge undertaking and, of course, today you would have research assistants and all the rest. And so much of it would be found online. Of course then there was less stuff but still an awful lot of stuff.

73. Well, I'm greatly looking forward to covering that in your scholarly work. You left Kent for a more senior post and that was your Chair.

When the Chair came up, yes. It came up when Ian Brownlie moved to the Chichele Chair.

74. You then were in a way able to take up from where you had left off because you had already broken the ground at LSE?

Yes. So my second short slot there of course was in the International Relations Department. I was now back in the Law Department.

75. LSE is a very vibrant place.

That's absolutely right. People have said, "Oh, isn't it all very Marxist." It isn't at all, there is every point of view and everyone very tolerant and everyone else. They used to have

⁴¹ Claire Palley, OBE (1931-), Lecturer, UCT, Advocate in South Africa and Rhodesia & Nyasaland, Dean of Law, Queen's University Belfast, Professor of Law Kent (1973-84), Principal St Anne's College Oxford (1984-91).



these wonderful fortnightly meetings. Lord Desai⁴², who is now in the House of Lords, and he was the Professor of Economics there. You will know him from TV. He looks as if he has never had a haircut. It's white and it's out there. And Ken Minogue⁴³, who sadly died last year, was a very rightwing Thatcherite Professor of Philosophy I think. They were great chums and they put on a weekly debate to which all the students could come. It was wonderful.

76. Your role was essentially teaching, research. Did you have quite a bit of administration to do?

Yes, inevitably and pastoral duties. I have always prided myself on trying to look after the students and even later when practice started to build up I have had a contempt for those who do their practice and fit the students in. It absolutely has to be the way around. So I loved my teaching and as I also had, I can't remember what the name of these things was, but I think I was... could it have been a moral tutor, I don't know. But the kids were in and out of the room with their problems and that was where I learned you can't learn things from what they look like. There was this absolutely thuggish young man sitting out in the lectures taking no interest at all, maybe it was a tee shirt but I remember it as a vest, and with a boot up and tattoos and God, how awful. And then he came in one day wanting to see me and his eyes welled up and he said he was homesick. So you just can't tell, can you?

77. No.

And then I had another homesick chap, an Indian, who came in one day to say he was really having trouble settling down, he was homesick. So I said, wondering what part of India he came from, "Where do you come from?" and he said, "From Southall." So he'd been in an Indian community by London airport.

So I remember I was doing those pastoral duties and the administration of that inevitably comes with a Chair. Then I suppose it has to happen that when the school sees someone appropriate they will then ask them to be on the big school committees. I wish I could tell you what committee [*LD: I was on*] with Mervyn King⁴⁴ who went on to become the Governor of the Bank. When we reached economic problems I was always so glad Professor King was around. But I enjoyed those committees and I was on various search committees. I was deeply involved in LSE administration. So I was doing the undergraduate course, then four Masters courses – the human rights one, which I was still modest enough to think was a super course with Peter Duffy, natural resources which was international natural resources which was built up from scratch and in the first part I did all the classical international law stuff. In the second part I talked about North Sea oil as a resource in the international law issues that arose. Then I completed the set with a UN law course and for years the UN had been in the doldrums and it was really only after Perestroika that it started to be interesting again and active again. So suddenly the numbers went

⁴² Meghnad Jagdishchandra Desai, Baron Desai (1940-). Economist and UK Labour politician. Wrote *Marxian Economic Theory* (1973), *Applied Econometrics* (1976). Lecturer & Professor at LSE (1965-), <http://www.parliament.uk/biographies/lords/lord-desai/2699>

⁴³ Kenneth Robert Minogue (1930-2013). Australian political theorist. Professor of Economics LSE (from 1959).

⁴⁴ Mervyn Allister King, Baron King of Lothbury, (1948-), Professor of Economics LSE (1984-91). Governor of the Bank of England (2003-2013).



from a handful to a really large group. I had to get up all the materials on those.

78. At this stage you were also invited to deliver one of the Hague Lectures, the first one that you did, and that was on natural resources including property in natural resources including oil.

That's right, yes.

79. I wonder what the circumstances were of this?

Well, those lectures you are invited to by a body called the Curatorial who are senior international lawyers around the world who look around and see academics who might have something to say in all this and all that, and they usually invite you to suggest a topic. So I suggested international law and property issues including the law of natural resources. Again, that was something fairly new at the Hague and interesting for me and I hope interesting for them.

80. This [1984] was the start of your membership of the UK Committee to the United Nations Committee on Human Rights under the International Covenant on Civil and Political Rights?

Yes, that was what I mentioned a moment ago. So yes, my background in Convention law, which I knew a bit from what I had worked up for Yale and what I had written and listening to the wonderful Peter Duffy and preparing with him. And knowing a great deal about the UN side of it all. When Sir Vincent Evans⁴⁵, who was my predecessor, died [*LD: left*]. Must have made HMG think maybe I could take this on. This is the Committee, not the awful Commission, but the Committee under the Covenant and Sir Vincent, who was on it from the outset had with a group of other starters, made sure the atmosphere was right, it was nothing to do with politics, cold war issues, absolutely nothing. So that was the first time the Government asked me to do anything and I was very thrilled.

81. And you were on this Committee for 11 years.

I thought ten, but you may be right, you may be right. Yes, it was when I sort of got the nod for the Court I came off, yes.

82. One of the major undertakings that preoccupied you was to try and work on this whole question of states' reservations?

That was one of the things. There was a great deal going on there and if you are a human rights body... You see, I am a great believer in Myres McDougal, think of the hat you are wearing, so if you are a Foreign Office legal adviser it's perfectly appropriate you think conservatively and look after your client, but on a Human Rights Committee you must try and build up the corpus of law on human rights. So I think we did a lot of interesting things those years including general observations which were seven or eight page commentaries we drew up on particular articles under the Covenant and matters of that sort. We also had a person each couple of years who would look after new cases and get them up and running and go with them.

⁴⁵ Sir Vincent Evans, (1915-2007). Member & Vice-Chairman UN Human Rights Committee (1977-84), Judge, European Court of Human Rights (1980-91).



We had all sorts of innovative things going on. It was an exciting time to be part of that committee. Of course, during the latter part the world began to change with Gorbachev⁴⁶ and Perestroika and all of that. So there had been a very typical Russian USSR man and then he disappeared and one day Rein Mullerson⁴⁷ who is a wonderful man and a close friend who is now running the University at Tallinn, he came along and he was, I was to learn, Gorbachev's Legal Adviser.

Gorbachev has never joined the party and Gorbachev plucked him out of the university and said, "Now, your job is to make sure that whatever we are signed up to is for real" and so he had these heady few years. So he was around then. There were lots of good things going on there. I didn't answer your question. What was it? Oh reservations. So one of the things indeed, one of the general comments was on reservations and that created a bit of a furore, yes.

83. Dame Rosalyn, looking back, what do you see as the highlights of that time?

Well, as I say, building the law. I still think what we did on reservations, of which I think it's generally known that I was the author, although was apparently regarded as very controversial, I still think that was a good human rights move forward and pretty sound in law. You have to be slightly, as I have said, on the margin of things in human rights law. For example, David Owen⁴⁸ phoned me one day and he was, you know, Minister at the time and so... I'll try and get this story right. We knew each other a bit and he said, "Yugoslavia is disintegrating. What are going to do about each of the units and your committee and human rights?" and I talked with Fausto Pocar⁴⁹, the Italian who was then Chairman. I readily say we came up with a theory of international law that along with the things that devolve with the status of a country changes, such as rivers and law relating to those, that human rights would devolve. So we started telling the various component parts, "This is the law and you have now succeeded to Yugoslavia's rights and obligations under the Covenant and so you are expected for a discussion meeting with us in three months." They would say, "Oh yes, right" And that way if we got them all in and continued... None of them said, "No, it's nothing to do with me." So that's what I mean about trying to build and do things.

84. Very interesting, particularly in light of one of the comments you made in your "Themes and Theories" 2009. You said that when you first joined this Committee you became depressed.

I did at the beginning. I still think that the real heroes are people who work in the field. When you turn on the television and you see the ghastly things going on and those good souls who are there on the ground trying to help with feeding, operations, whatever they are doing, they are the heroes of our times. One of the things we used to do as well as the case law which

⁴⁶ Mikhail Sergeevich Gorbachev (1931-) President of the USSR (1990 to 1991).

⁴⁷ Rein Müllerson, (1944-), President of the Academy of Law, Tallinn University, Estonia. Professor of International Law, King's College, London (1994-2009), Member UN Human Rights Committee (1988-92), Visiting Centennial Professor, LSE (1992-94), Deputy Foreign Minister of Estonia (1991-92).

⁴⁸ David Anthony Llewellyn Owen, Baron Owen, (1938-), Labour Foreign Secretary (1977-79), one of the "Gang of Four" who founded the Social Democratic Party (SDP) in 1981.

⁴⁹ Judge Fausto Pocar (1939-) Italian jurist. Professor of International Law, University of Milan. Member Human Rights Committee of the UN (1984- 2000), Chairman (1991-2).



was very interesting, we used to do these state reports and that required states to come along for these discussions with us. But Amnesty International, for example, would ask me to call in, if it was states A, B and C, they would like to brief me before I went and then I used to go back to Chatham House and get out all the newspapers over the past five years on that country. Their Press Library was terrific. Then everything seemed so unutterably awful, these terrible things going on. It just seemed terrible. So I'm full of admiration for the people who are in that full-time on the ground and I gradually learned to live with it and to find intellectual interests in the other things in that job.

85. It was also round about this time in 1985 that you became involved with the International Tin Council⁵⁰ cases. I wonder if you could say something about that?

Yes. I remember that when I came back from teaching at Stanford, I taught at Yale and then I taught, what, two years later at Stanford, was that the sequence? We've got it here. Yes, Stanford came first and then came Yale. '75 Stanford, '77 Yale. The first thing was that the children were at that time young enough that you could take them off somewhere else for three or six months if you were invited as a visiting professor. Later obviously you couldn't so those were opportunities to seize and Stanford was absolutely great because the constant sun and you did your teaching and then you all went out in the faculty swimming pool and had your barbecue there.

I think this was just a totally different life and the kids loved it as well. So that was all wonderful. And I know that because during that period, as you have already mentioned, during the early to mid-70s I was doing a lot for Mobil on North Sea oil. Every time the possibility of going to court came into view I had to step back because I wasn't yet called. I decided this was the time to get called. So while I was Fellow at LSE in '74 to '78 period, I decided that was the time to get called for the Bar. I remember it being so grim going back and doing subjects you had long since forgotten or had never done and had no natural attitude for. I remember tax law and things like that. So on top of teaching and all the consultancy work as it then was, I then had to do all of that. But anyway, eventually it was behind me and I got called and that has obviously been very important in my life too.

86. I think I remember reading that it was your husband who encouraged you to do this?

It was, it was. Terence, who you have met briefly, has always... As I say, these last couple of years he has agreed with me, "No, I don't want to be doing that" but until the time of my retirement he has always been, "Yes, you can do that. You can squeeze that in, why not do it?" Which I don't think a lot of husbands are like. I remember saying to him, "I don't need to go to the Bar, I'm doing fine as I am", but it was really thanks to him that I did.

87. In 1991 you were invited to give another of the Hague Academy courses and this was the general course on international law.

Yes. It is a pinnacle for any lecturer to be invited to give the general course, yes, ne plus ultra.

⁵⁰ The International Tin Council acted on behalf of the principal tin producers in Cornwall and Malaysia. It bought surplus stocks to maintain the price. Established 1956. By 1985 it could no longer maintain the price, and ran out of money.



88. This must have been a lovely occasion, Dame Rosalyn.

It was both wonderful and awful. They give you a good period of time, they give you two or three years' notice, but it is, the general course, and you wonder what on earth can you say that all of these fantastic, distinguished people haven't already said. So you read and read and read what everyone else has said and then you read around every topic. It's a prodigious amount of work, a really prodigious amount of work.

89. I look forward to talking about some of your chapters which received extremely good reviews, when we come to your scholarly work. I'm pleased that I have been able to go through some of it myself because it is a fascinating perspective that you take.

No, I really wanted to make it not quite the same thing, but I also don't think it's quite right for a general course, which one or two people have done, just to focus on one tiny area of the law. I don't think that's what the general course is meant to be.

90. In 1993 your husband was knighted and he became Sir Terence. This also must have been a lovely occasion? Do you have any memories of it?

I just remember it was all beautiful and so well deserved and he has always been so well regarded in politics by people on all sides really, yes.

91. You were awarded a Dame Commander of the British Empire in '95.

That was when I went to the Court.

92. I wondered about that. Before you went to The Court?

Well, it was just as I went... it was before.

I had been nominated by a national committee, I remember that very clearly. I remember receiving a letter from Robert Goff⁵¹, Lord Goff, who was at that time Chairman of the Committee, saying the committee had been meeting and considering everything, wondered if I could agree to being nominated. We knew what an upheaval it would be in going to a different country and, of course, I took half a second to say, "Yes." So I remember that very clearly. What were we on before that?

93. Well, I was just asking you whether you received your DBE before or after going to The Court.

Oh the Damehood, that's right. So after that had happened, Frank Berman⁵², who was the Legal Adviser of the day, and who is also a good friend over the years. I remember him saying I need to come and talk to you about something. I say, "Do you want to just clear it by phone?" I remember him saying, "No, I want to come" and that was very nice of him. Then he

⁵¹ Robert Lionel Archibald Goff, Baron Goff of Chieveley, (1926-). Senior Law Lord. Co-author of Goff & Jones, *The Law of Restitution*.

<http://www.parliament.uk/biographies/lords/lord-goff-of-chieveley/2600>

⁵² Sir Frank Berman, (1939-). Former Legal Adviser to the Foreign and Commonwealth Office, Visiting Professor of International Law at Oxford, King's College London and University of Cape Town. Member of the Permanent Court of Arbitration (2010-).



came to tell me this nice news, that I was to be made a DBE. Then when I went to the Court I decided to break with precedent and just be Judge Higgins. So Robbie had chosen... fair enough, everyone makes their own choices, so it was Judge Schwebel, Judge Bedjaoui⁵³ and then it was Judge Sir Robert Jennings, right? But I said I just wanted to be Judge Higgins. I was very thrilled to have the DBE, but I just wanted to line myself up with the rest of the bench. We do have these strange things in England that no-one abroad understands and I would say 95 percent of the British public doesn't understand.

94. Very interesting. Well, Dame Rosalyn, I'm wondering whether we should break at this point?

Would you like a cuppa now? My husband even brought in some biscuits.

I think he brought in bourbons. When I used to walk home from Burlington Grammar School....and mother would always be there with a cup of tea and a bourbon biscuit.

95. Oh, lovely.

Even somehow during the war years, I don't know where she got bourbons from but she did.

I learned to speak French, I have very good French and I learned to speak French from an early age because my grandparents were Belgian and we didn't know what had happened to them in the war in Belgium, being Jewish, and we just didn't know so it must have been an awful time for my mother.

Just not knowing if they were alive or dead or anything. We'll go and sit at the other end with our tea in a minute. And so she said, "Well, if they are alive and if we all meet up after the war I want you to be able to talk French with them", and she had in a French professor called Monsieur... no, he was actually Belgian, Monsieur? Langbelle. Where she discovered him, I don't know. He would come and I can see the book, a sort of thick grammar book. He was obviously a very good teacher and it was wartime and these things were hard to come by and he was in my mind's eye then an old gent, whether that meant he was 40 or what, I don't know, but in my mind's eye he was 70-ish or something like that. And now I don't think that's an old gent and she would put out on the plate two bourbons and when she left the room he took both.

96 Dame Rosalyn, your books speak for themselves, but it will be nice to hear about some of the background to their writing, and information that might not have been caught previously. So starting, or shall we say continuing with your time at the ICJ.

This is from 1995 when you were appointed to the Court and you retained this position for 11 years when you then became the President. I wonder if you can describe the circumstances of your appointment?

Well, I think it's invidious to talk about other possible people, isn't it? I don't especially want to do that. Is that alright?

97. I understand.

⁵³ Mohammed Bedjaoui (1929-), Algerian diplomat and jurist, *inter alia* Algeria's ambassador to France (1970-79) and the United Nations (1982-2001). ICJ judge & President (1994-97).



But the way these things work is there are what are called “national groups”. Those are the groups who nominate candidates and those persons get registered at the Permanent Court of Arbitration on the International Court site. That group can be made up any which way, according to how the country wishes. In our country we don't have a Foreign Office representation on – in the States the Legal Adviser is on – but we have a Senior Presiding Judge – who at that time was Lord Goff⁵⁴, Senior Law Lord – traditionally the last Legal Advisor but one, not the current one, but the previous one, and the sitting National Judge – so in my case that was Robbie – and a leading academic. Wondering who that was, maybe it was Eli. I am trying to remember who that might have been at the time. So they all meet and their task is not only to nominate when there is a vacancy, their proposal for the new British judge, but also as to whether they will add their voice to other nominations around the world. So you have to know all the personalities and how they have been doing. So I had obviously known I was in the frame but there were a couple of us, two or three other people, to whom it could very reasonably have gone. So I was very thrilled when I got Robert Goff's letter, but that doesn't get you to the court, that gets you nominated. Then the General Assembly of the UN and the Security Council vote on nominations. There are 15 seats at the Court and one third of them come up at any given time so you are talking about a very small number of seats being available and sometimes, of course, a judge will be standing again as sitting judge. They really have a head-start in staying put. So I remember being out there for the election, that was very exciting, and it came through, the very good result, people were very kind.

98. In an interview with Otto Spijkers in 2011 you said, and I quote, “I think of myself as a liberal judge”. I wonder if you could explain how you see that - what that means?

Well, I think people generally are very conservative or very liberal by instinct. I think it has to be more than instinctively one way or the other, it has to be intellectualised within the framework of the law. I think my inclinations are to find things are possible if one can, rather than impossible and always to have in mind the people we are trying to benefit with what you are doing. I suppose that's the best way I could answer.

99. Coming back to the interview that you had....

I don't remember this interview at all, but if you found it I guess I did it.

100. This was a question about the court citing scholarly work and you said that the Court traditionally cited its own jurisprudence, but that you thought in recent years it had become more outward looking.

I gather that's even more so now. I still think it's nervous about citing scholars overly. There are so many wonderful scholars around the world, all said and done, but the Court does now much more look at judgments of other courts, both national and international. That was never done when I arrived at the court. The Court has become a more liberal and less pompous place over the years. We regarded ourselves as “it”, but now we realise there a lot of judicial bodies doing very useful and good work.

101. In your 2009 book you pose the concept that there is an essential and unavoidable

⁵⁴ See Q 92.



choice to be made between the rules and the policy notions of international law. Did you feel, Dame Rosalyn, that this ever introduced perhaps an element of uncertainty into the judicial process?

I don't, because people, conservative people, will say that once you move away from the rules towards policy relevance, you are introducing uncertainty, but the fact that a case ever gets to the court means that isn't the case. You don't litigate about are there 50 members of the Security Council? It's only the arguable points of law, both as to content and as to their applicability in the particular circumstances that leads to litigation. So I believe those who say, "And the clear rule is" are simply kidding themselves. They are choosing one possible norm over another and I think it is much better to articulate openly what the possible choices are, the policy factors and why international law should go one way rather than another in the particular case.

102. Your time on the court would have overlapped with Judge Schwebel⁵⁵ when he was President? Do you have any memories of his.....

Oh very, very much so. He had been preceded by President Bedjaoui⁵⁶ and there were undeniable tensions there. I thought Steve Schwebel would make an admirable President and he did and he was open-minded and so fair and courteous to everyone, yes.

103. I gathered from his interview that it's clear he enabled lots of physical improvements at the Court with regard to, for example, facilities for secretarial support, canteen and so on.

He did. It seems funny to say it of him but he was really our terrific trade union representative. He was always badgering the UN for better facilities for this, that and the other and he got the money for the extension of the court building at the back so there was proper judges' quarters, and what was a canteen but is now a rather smart restaurant to which anyone of any of the courts may come, it's lovely. So judges from another court can pop in for lunch and use it; secretaries, that had happened when I arrived. Every judge had a secretary, but before then I believe there was a pool. He did a great deal of that sort of thing.

104. Did you feel that when you became the President you were able to build upon his legacy?

In a different way, when I became President and there were things about which I had already been speaking on those occasions. I was still occasionally writing articles. I knew the Court needed to be modernised in terms of its work and to be able to do more than it did. It was a sort of rather leisurely body when I arrived there but, of course, as the Cold War ended the Court became used more and more and more and we had to keep up with the pace and deliver to the client. So that was one thing. The second thing was that other courts and tribunals had arrived on the scene. For years the International Court had been the only international body but now, not only did we have other courts such as Strasbourg and Luxembourg, but right there in the Hague we had the Yugoslav Tribunal and the Rwanda Tribunal and very recently the International Criminal Court and we had to learn to have an efficient, friendly relationship with

⁵⁵ See Q19.

⁵⁶ See Q93.



them. Then – and this is sort of rather internal – I think we had been through a period, I think, of standing on our high horse with the Dutch authorities and I wanted to rebuild good relations with the Netherlands. I do think I was able to do all three of those during my three years.

So they are very different from what Steve did, but they were what I felt was needed at my time.

105. So your main responsibilities as President of the International Court - could you comment on what the main responsibilities are for the President?

Yes. You obviously have to maintain the high calibre of the court judgments. I don't think there has ever been a period where people have said, "Oh, this is sloppy stuff, isn't it?" They have always been well regarded and it's really important they should remain that way. You have to make sure that good drafting teams are chosen. You have to guide the discussions after the oral hearings. You draw up a list of what the key points are, people are invited to add to them and then the Court members go away and study their notes and the scripts and then write what is called a judge's note but it is essentially a draft judgment but without full notes and all of that on these various points. Then you have to in a very fair way preside over the discussions on these and at the end you have to be able to say, "Well, I think on this point we have got a majority, haven't we, and on that point, let's face it, we are so divided that if we don't need that point in the judgment let's try and go another way." You have to be able to do that sort of thing.

106. Fascinating. You were involved in 60 cases overall. I wonder what you recalled as your most taxing and difficult case ?

I am asked that a great deal. Generally or as President, or both?

107. Shall we say as both?

Yes. As President there's no doubt it was the series of Yugoslav cases. There were inherently fearfully difficult problems on the breakup of Yugoslavia and all the legal questions we were being asked by various of the new component states of what had been the former Yugoslavia. I have to be a little discreet here. There was a judgment in 2004 under the presidency of Judge Shi⁵⁷ on which the court split 8:7 and I was in the minority and very active in writing the minority opinion and that had an impact on the cases that were to follow because you can't say, "Well, there's a new person in now, none of that matters" and yet I didn't want to follow the conclusion that would have I think flowed from that which was saying, "Sorry, we can't help you." So finding the way through on that was really, really difficult. Leading horses to the water, I didn't care what they said, but I did want them to drink and they did eventually.

Then generally of course I arrived – it was literally my second case – during the advisory opinion on the new use or threat of nuclear weapons and that of course was a real hot potato. The trouble is when you arrive somewhere the junior judge starts off in the discussions, so that's fearfully daunting. So yes, that stays very much in my mind.

108. Very interesting. What were the highlights of your Presidency, Dame Rosalyn?

Well, achieving those objectives. I think when I left we had really good relations with...

⁵⁷ Shi Jiuyong (1926-), Chinese jurist & academic. Judge (1994-2003) & President (2003-10) at ICJ.



My first official assignment, I took myself off to ITLOS⁵⁸ in Hamburg to pay them a visit, I think they were totally stunned. I tried always to do that sort of thing after to build good relations between the courts because some judges previously had said, “Why is this new court coming? We can deal with all the issues they are dealing with.” So I deliberately set out to do that and I think we did finish up with good relations all round and we found a way to use... It’s hard to explain shortly but we didn’t want to do everything again that the Yugoslav Tribunal had done but you couldn’t just agree with everything they had done, so one had to find complicated ways of deciding what you could pick up and what you would leave alone to start over with. I think we found our way through that. We certainly finished up well again with the Dutch authorities. Instead of having been told by my predecessor not to accept the invitation of the mayor. I said, “If there’s an invitation in for me I expect every member of the court to be there.” So there were these turnarounds.

109. You retired from the Presidency after three years.

Yes, that’s normal, the normal period.

110. Right. During the time that you were in the Presidency, your book “*Themes and Theories*”⁵⁹ was published. I wonder how did you manage that?

The honest answer is I had one of the best decisions I made. Now, let me start this sentence at the beginning. Normally everything in the house works according to a certain way but the one thing in which the newly elected President has a freedom is to choose his or her personal assistant, judicial personal assistant. I had had a very good intern – now the court has clerks but when I was there they were interns – called Philippa Webb⁶⁰ and I sent her out a message saying, “I don’t know where you are, Philippa” – she was Australian and I thought, “Probably in Australia” – “Is there any chance you can come and talk to me about some possible work to help me?” It turned out she was the Special Adviser to the prosecutor in the new International Criminal Court so she was just up the road. I don’t know how I would have managed without her. She was so helpful administratively and in terms of legal research, everything, and she really made that book possible. Yes, she was absolutely terrific. I wrote, I have always done my own writing, but in terms of getting the permission from journals for re-publications and all of those things she was super, super.

111. Still on the ICJ in general, in your “*Themes and Theories*” book, in section 9, writing on judicial matters, it’s called “The Judicial Years”, you say that when writing on judicial matters – and this is page 1037....

Now you sound like the President Peter Tomka⁶¹ who remembers every page and every paragraph of everything ever written, yes.

⁵⁸ International Tribunal for the Law of the Sea, <https://www.itlos.org/>

⁵⁹ 2009. *Themes and Theories: Selected Essays, Speeches, and Writings in International Law*. Vols 1 & 2. 1421pp, OUP.

⁶⁰ Philippa Webb, (?1979-) The Dickson Poon School of Law, Kings College London. Special Assistant & Legal Officer to Judge Rosalyn Higgins during her Presidency of ICJ (2006-2009), Judicial Clerk to Judges Higgins and Owada (2004-2005).

⁶¹ Peter Tomka, (1956-), Slovak diplomat & jurist. Judge (2003-9) & President (2009-) of ICJ.



112. You said that you had to keep views of world affairs to a minimum and also avoid writing on difficult points of law, you could only write reflective pieces. I wonder whether since you have retired from the Court this constraint has been relaxed, or whether you still feel these parameters when you are writing?

I'm not quite sure what I meant by... "difficult points of law". I meant going off-beam from a case and opining on this and that which we had one or two judges who were wont to do. I believe you, as a judge, should not opine on anything except when Counsel have had a chance to argue in front of you and the other side come back on it. Otherwise you should keep your thoughts to yourself. That was that point. What was the other point in it?

113. I wondered whether you felt that since retiring from the court you feel that these constraints have become relaxed or whether you still feel that you need to operate in that way?

Well, firstly I am trying to be retired, not wholly successfully, but I am trying. I'm really trying not to give lectures. The writing I do is what I would call... this is meant to be an Oppenheim on United Nations law. That's going to take many, many years, a real practitioners' book on the UN which Robbie [*LD: Jennings*] and Arthur Watts⁶² asked me if I would do. Generally these days I say no to arbitrations, no to advice to government, no to lectures if I can, no to conferences. But I have retained three institutional linkages, the American Society [*LD: of International Law*]⁶³, of which I have just finished a couple of years as Honorary President, the British Institute of International Comparative Law⁶⁴ of which I am the President, so that's an ongoing rather more active thing, and the Institut de Droit International⁶⁵ on which, again, I have just finished up two years as Vice President. When I have a post I like to do something with it and I have tried to use those two years to have a modern, instead of an antiquated voting system within the Institut and I think we have achieved that.

So the writing thing doesn't really come up for me as an issue. The sorts of writing I do now is the American Journal asked me would I do a long review on Eli's book on his father so of course I said yes. Or I was asked to do the memorial at Peter Kooijmans'⁶⁶ funeral, the Dutch Judge, a great friend of mine. So it's that sort of writing now and this.

114. This monumental task, yes. I'd like to take a photograph of this [*LD: see gallery*].

Dame Rosalyn, still coming back to your 2009 book, and I give the page number so that listeners to the interview can locate it [p. 1037]. In your Blackstone Lecture, soon after joining the Court, you write of its efficiency being hampered by what you call "excessive deference to the entitlements of sovereign states".

Yes. That I think is one of the more important lectures, pieces of writing I did. It was before I became President, but it was already apparent to me that the Court was not working at full capacity and could do better and that part of the problem, part of it, was this excessive

⁶² Sir Arthur Watts, (1931-2007), International lawyer, diplomat and arbitrator. Chief Legal Adviser FCO (1987-91). Whewell scholar.

⁶³ <http://www.asil.org/>

⁶⁴ <http://www.biicl.org/>

⁶⁵ <http://www.idi-iil.org/>

⁶⁶ Pieter Hendrik "Peter" Kooijmans, (1933-2013), Dutch jurist, ICJ Judge (1997-2006).



deference to the fact that the parties before you were states. So there was the feeling among most at the time, “No, we can't ask them to make their pleadings shorter. They are states, they can say what they want to say.” Or constantly rules of procedure were being broken, but you didn't say anything because they were states, and I was already by the time of the Blackstone Lecture [*LD: Pembroke College, Cambridge*] longing to be able to change that.

Now, I think there is a very hardworking Court, very hardworking, and that's continued under subsequent Presidents and they have a heavy caseload. They know now that states have to accept they can't do everything they want because there are other states waiting on the list for their case to come on and they are sovereign too.

115. Yes. Apropos the issue of dissenting or separate opinions in the ICJ judgments, again this is page number 1038....

What was it that I said.....?

116.are you implying that this concept is as a result of a Common Law influence on the Court's methods?

Well, apparently it is. It's just not known to the Civil Law system, but it has been there forever and it mostly works okay. But, inevitably in any period of time there are one or two judges who think a separate or dissenting opinion is... a dissenting opinion should in my view not be what you would have done. You should merely, I think, say why you can't agree with what has been done and a separate opinion should not be a long academic article.

117. Which brings us to your dissenting opinion, which you have mentioned, on nuclear weapons. The text of this is reproduced in the 2009 book (pages 1029 to 1138). I just wonder whether your judgment, your dissenting opinion, does not point to a tacit agreement with Professor Allott's views that you cannot have laws for this kind of thing, for what he calls “mass murder and indiscriminate destruction of property.”

No, not at all. No. Judge Vereshchetin⁶⁷, in his opinion there, he writes that there is a *lex lata*... sorry, there is a gap in the law there and that we just haven't yet reached the time to have laws on such things. I felt, and I think I may have said there, but have certainly said subsequently I think, that “No”. Because the law is a way...international law [*LD: is a way*] of making decisions. You have always got the tools to answer a particular problem even if you can't pull out of the drawer a prior decision on that problem. So I don't agree with Philip's views that there are topics on which you can't answer. I would certainly agree that the fact there can be, in my view, a legal answer to every legal problem does not necessarily mean you are on your own way to better international relations or better compliance, that I don't think.

118. Finally, before we leave your time at the ICJ, what are your overall memories of your time there, Dame Rosalyn?

Well, it was a very happy and fulfilling time for me. I love The Hague, which is why I still live there for a considerable part of each year. There were some very good friends among my colleagues, each of whom was interesting. The issues that come up are always so

⁶⁷ Judge Vladlen S. Vereshchetin. Russian Former Member of the ICJ, Honorary Director of the International Institute of Space Law.



fascinating. You do feel working on that incredible site, just so privileged each day to be coming to work at the Peace Palace in the gardens with the pond and all the creatures on the pond. Just really they were blessed years. The time as President was undoubtedly very, very challenging, yes. In my more frivolous moments I used to tell the students getting fourteen *prima donnas* to agree was quite difficult, implicating that I am not one. But they are people with strong views and very clever and a lot of politics does flow through these cases and everyone comes with their own background and way of seeing things.

119. This brings us to your published work. Will it be fine to continue with this?

Yes, if you are game I'm game.

120. Thank you. I have had to be selective because of your great output and my very limited knowledge. So I have chosen five books and the first one was your 1963 "*Development of International Law through the Political Organs.*"⁶⁸ This was very well reviewed. Derek Bowett⁶⁹ was very complimentary. He said that it was "the best treatment of self-determination" that he had read and I wonder on this issue whether your views on the subject have altered at all since then?

On self-determination?

121. Yes.

That's quite interesting because I have just been having an exchange with the Director of the British Institute of International Comparative Law. Of course, I don't remember so clearly what I said then, but I think they probably have not. I think what the Human Rights Committee did on self-determination I think was always in line with the correct thinking on it. So I think there is still a lot of people who have misconceptions about self-determination.

122. Otto Schachter⁷⁰ also praises very highly your book and he highlights what he says are your views that "the test of legality is not so much the semantic links to the Charter as the actual practice and behaviour of states. Hence a single interpretative resolution in the UN even if widely supported is not necessarily the law and what future behaviour may have to demonstrate whether or not it expresses an accepted norm." Was this a fair interpretation of your views then and if so do you still hold them?

Yes. I think that is right. The written texts are absolutely an important starting point, but you have to look and see whether it was just, "Oh, let's get something out of this meeting or go home", or whether the evidences are there that states believe that to be the correct statement of the law.

123. Mr Schachter also mentions that Professor Jennings said that, "Perhaps there should be a new category of source where there is no need for custom or time-honoured practice. So if a single case embodied a legal position so strongly and obviously". I wonder if this new category has ever developed.

⁶⁸ 1963 *Development of International Law Through the Political Organs of the United Nations*, Royal Inst. of International Affairs, OUP, 402pp.

⁶⁹ See Q 34.

⁷⁰ See Q 22.



I don't think so. Specific cases are not precedents in the normal term in the Court. It's not like in the Court of Appeal you must follow what the Supreme Court said and we don't feel obliged to follow what we said unless it's absolutely on point - the same points you have got in front of you. Then as we have had occasion to say in the Yugoslav cases then if you are departing you have really got to show why you are departing. But I don't see the need for any new categories or anything like that, no.

124. Finally, Otto Schachter says that you use an abridged form of the McDougal technique to present your issues. I know that you acquired this at Yale and that it is something that has persisted throughout the years. Would you say that it has evolved into your own technique?

I think it's easier for others to see if that's so. I think it may be largely a linguistic and presentational thing. As I have said to you before, it really was possible for everyone to understand Mac, but to go through the pages and pages of things you had to tick off and check against is really tiresome, honestly. But what I have done is to try and keep really in focus the key elements of the policy science approach to international law and to bring them to bear. So I think Oscar was right in saying from the start I didn't say "and then there are the ten points to be addressed and then there are the 15", I never did that.

125. Dame Rosalyn, if you wrote that book today...

What an appalling thought.

126.has the UN altered so much that you would need to alter any significant conclusions?

Well, it's changed so much and I would need ten assistants now. It's hard to think in advance. I suspect the treaty section has probably changed a lot of what goes on in the legal office, it's simply not up to date on that. There's a lot of borderline practice now on issues of statehood, that's changed somewhat. The use of force, that is now the authorised uses of force by states or not, all the disputes and that. It would have to be quite... not different, but an awful lot would need checking out, yes.

127. That brings us to the second book that I have had a chance to look at, published in 1965, your "*Conflicts of Interest: International Law in a Divided World*."⁷¹ This is very readable and I wonder for whom it was written?

I think I was just approached by Bodley Head with the topic and to say, "Would I do it?" and at that time, of course, the socialist world took the view, really the Soviet Union took the view, that there was one body of law that governed all the socialist states and then you'd better have a method for coexisting peacefully with all the other states whose superstructure would crumble and who would in the fullness of time become Marxist. So I think that was a snapshot in history. I don't think it has anything to do with... just because some of the same players were in it I don't think it tells you anything about today's problems of the Ukraine and Russia and so on, the Crimea. But it was done at the request of Bodley Head.

⁷¹ 1965 *Conflict of Interests: international law in a divided world*. The Bodley Head, London, 170pp.



128. Right. Written while you were at Chatham House. Was it for you something of a sort of light relief as you were ploughing through all the UN documentation?

No, it was an additional chore. I was just entering a period of my life when you are apt to take things on, and we were just getting to the period of life that you have got to learn to start saying no.

129. Two weeks after handing in your manuscript Khrushchev⁷² was ousted and to some extent your assumptions were perhaps thrown up into the air?

Maybe.

130. This brings us to your *UN Peacekeeping Documents and Commentary*⁷³. There were four volumes and these have been extremely well received. Apropos style, Nelson⁷⁴ in his review praised very highly your systematic coverage. You had twelve categories for each UN operation and also your technical dependability and he says you did not indulge in any revisionist history, just the facts. Also, Professor Bowett said it was an excellent commentary. Presumably this was your deliberate policy so that the volumes would stand the test of time and never become politically dated, forever relevant?

Yes, that's what lawyers have to do, isn't it? It's very pleasing to hear that everyone working on peacekeeping in the UN Secretariat still has these, although the world of peacekeeping has changed so enormously. But no-one's interested in your views on a particular thing, just get all the data out there, make it available, explain what the quarrels were. But for example, if I take the *Expenses Case* or if I take the question of the call from Egypt for the UN force to withdraw. There's not interest in saying the rights and wrongs of that I would say. Here were the issues, this is the way they were handled, here was the position of the parties.

131. You mention the *Certain Expenses Case*, Volume 3, chapter 11, with Russia and France's refusal to pay. This matter, of course, had great importance outside considerations of peacekeeping and resolution to the impasse was achieved only by as one reviewer puts it, Cherry Hopkins⁷⁵, "great act of appeasement by the United States." Now, in retrospect, do you think that this act of appeasement was worthwhile?

That's a difficult one. I think it may have been inevitable because there are always going to be more members who don't want to pay than do, so I don't think you would ever have got the desired result, but I can understand why Cherry says what she does.

132. David Wainhouse⁷⁶ called your writing of volume 1 "The Middle East" "a labour of

⁷² Nikita Sergeevich Khrushchev (1894-1971). First Secretary of the Communist Party of the Soviet Union (1953-64).

⁷³ 1969-81 *UN Peacekeeping: documents and commentary*: Vol. I, Middle East, 1969; Vol. II, Asia, 1971; Vol. III, Africa, 1980; Vol. IV, Europe, 1981.

⁷⁴ Richard W Nelson, Washington & Lee University, School of Law, Lexington.

⁷⁵ Cherry Hopkins, Lecturer in Law, Girton College.

⁷⁶ David Walter Wainhouse (1900-?) Washington Center of Foreign Policy Research, United States Arms Control and Disarmament Agency. Author of: *International Peace Observation* (Baltimore: Johns Hopkins University Press, 1966), *International peace observation; a history and forecast* in association with Bernhard G. Bechhoefer [et al.], Baltimore: Johns Hopkins Press, 1969.



love.” Was it?

Yes, a very burdensome labour of love.

133. Looking back over the decades of UN peacekeeping, for example the Balkans and the continued Turkish occupation of Cyprus, do you think that UN peacekeeping activities have had a lasting and real and beneficial effect?

I think they have definitely had a second wind. I was writing at the time of the Balkans saying the UN has really lost its way and things that should be Chapter 7 action⁷⁷, states really didn't have the guts for that and were talking about robust peacekeeping to do some of the same things. There was a terrible, terrible price in the Balkans, but now, of course, although peacekeeping can't solve problems it can certainly ameliorate and in the many, many, many instances it's used now, there is a respectful and appreciative talk of the value of getting UN peacekeepers in.

134. In the introduction to Volume 3, “Africa”, which contained just the one case history, the Congo, you said it was by far the hardest to prepare and you cite the complex politics and the events as well as the vast ONUC documentation. It's just very hard to imagine how without this documentation anyone, any student, could have worked their way through these materials without your volume.

Well, I really hope that's been the case and you throw in, of course, a lot of things changed or developed with ONUC, including the use of force by the UN in certain circumstances and so on. But, of course, there has been an enormous amount of peacekeeping since. I hope my books are still of some use, but in another way they are very dated, there has been so much else. But there are good authors out there offering information on these other subsequent peacekeeping activities.

135. The unearthing of this documentation, did you have to go to the United Nations?

I certainly did some by going to the United Nations and talking to those with whom I had made good contact when I was an intern and others I just ploughed through it. But those years were years that nearer to the beginning of the UN than now. Now, you just couldn't do that, not without ten researchers. I did that without any help at all.

136. It is unbelievable. Bearing in mind the large number of more recent UN operations, were you ever tempted to cover later years?

Absolutely not.

137. This brings us to your “*Problems and Process: International Law and How We Use It*” published in 1994⁷⁸. Again the reviews were very praising. Kinsella⁷⁹, who was one of your students says that, “The book is a series of interrelated perspectives on difficult areas of

⁷⁷ *Inter alia*, allows the UN to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to take military and nonmilitary action to "restore international peace and security".

⁷⁸ 1994 *Problems and Process: International Law and how we use it*. Clarendon Press. 274pp.

⁷⁹ Norman Stephan Kinsella (1965-). American intellectual property lawyer. *Reason Papers*, 147-153.



international law” and Pratter⁸⁰ wonders how the key problems were chosen. Were these issues, in fact, based on the important lecture topics that you gave and the problems that these threw up?

Yes, is the short answer. Yes, that’s certainly so and then I built on it and thought more about it, yes.

138. All the reviewers comment on the fact that your approach to international law is through a policy science view, rather than rule-based. Is it possible to summarise your views?

I have slightly alluded to it before in the view of some black letter lawyers. There are rules that you find in treaties, or qualified extent in prior case law, or in custom when you identified it and the job of the international lawyer is to locate that and apply it. Well, firstly, as I have said, I think it’s perfectly understandable for a state department or Foreign Office lawyer to remember who their client is and to put up the best arguments for applying it in a certain way. For the academic the duty is different, but I think that there is a very, very limited number of rules. Rules are things that simply cannot be gainsaid, and there’s not much of that in international law. So even the use of force is prohibited. Well, there’s self defence. So almost everything you could say to me bears another thing. The job of the international lawyer is to be aware of that, to look at the facts of the present case and at the policy issues involved, and to find the preferred and better answer in that case. That’s it, in a nutshell. The best I can do.

139. Interestingly, Sohn⁸¹, whom I believe was at the LSE with you at the time that he wrote the review, says that he detected a shift in your attitude between the 1963 and the 1994 books. Specifically on what for you were the criteria for determining when UN actions or resolutions became law. In 1963 he said you were “very clear that resolutions and how states had responded to them were focal points of a state’s views and hence custom.” But he says that by 1994 your “criteria were broader, emphasising the whole process: views, positions, treaties and declarations as well as resolutions.” Is this true, Dame Rosalyn, and if so, was it because of how the UN operates rather than a change in your ideas?

Well, of course one’s ideas do develop, but I have never noticed or perceived that. There are two different issues aren’t there? One is “are UN resolutions binding...” by the way there is a paragraph in the 1996 Advisory Opinion on Nuclear Weapons that sets out beautifully the Court’s view, the correct view, on the circumstances in which Assembly resolutions may be said to be binding because of the background to them. But in his second observation Louis Sohn seems to be talking about what makes up law and those broader things come into the question of what makes up law, whereas I think earlier I was talking about were resolutions of the Assembly binding, which was a much narrower question.

⁸⁰ Jonathan Pratter, American, Lecturer, Foreign & International Law Librarian - Tarlton Law Library, University of Texas, Austin. *Texas International Law Journal*, 1995, 427-8.

⁸¹ Louis Bruno Sohn, (1914-2006). Austro-Hungarian-born international lawyer, Bemis Professor, Harvard (1961-81); Woodruff Professor, Georgia Law School (1981-91). *Michigan Law Review*, 1995, 93, 1828-34.



140. Yes. Louis Sohn, as well as Bilder and Wolfram⁸², comment on your approach to human rights in international law. In particular, a universality, and this is supposed to set them apart from culture, religion or politics. And you talk of rights which involve state abstinence, for example, torture, and state obligation, but you draw the line at third generation and fourth generation rights. You say that there should be no political and cultural relativism and this is backed perhaps by the East-West capital-socialist clashes in the 1990s.

Well, I still think that human rights are human rights. In all of my teaching, with Peter Duffy⁸³ and otherwise, and my writings on human rights you have to keep the focus on the idea of rights. Students at the beginning of the year in a human rights class I could see came from all over the world. I would say, “You can tell me what you like in class but I don't want to hear you just mouthing your government's point of view, I want you to be thinking.” Then on your broader point, the day that a student says to me, “No, in prison without trial is fine, I don't mind that at all because I come from such and such country.” That's rubbish, isn't it?

If you look at it from the point of view of the person concerned the rights are universal. Talking about cultural relativism is thinking about governments.

141. And this is a position that you have maintained throughout?

Yes, very firmly.

142. We come now to the last book which is your “*Themes and Theories*”⁸⁴, published in 2009. A huge number of fascinating issues, so obviously again I have had to be selective.

It's really a gathering together of memories.

143. Wonderful volumes.

Thank you.

144. You open the book with an instructive narrative of your CV, which formed the text of your address on the acceptance of the Balzan Prize⁸⁵. I wonder if you could just recount what this award was for and the circumstances of that lecture?

Well, the Balzan Prize really is a marvellous thing to be lucky enough to get. It is a Swiss-Italian foundation and Balzan himself was an Italian newspaper publisher who did very important and brave things in the war and then he set up this prize and the prize sums are really, one has to say, remarkable. It's also a family. I have found out since that once you have had the prize you get all sorts of correspondence, “Please come and be with us” on this and that. Last

⁸² R B Bilder (Max Planck) & Professor Rüdiger Wolfrum, Professor, Managing Director, Max Planck Foundation International Peace and the Rule of Law (1993-2012). *Am JI Int Law* 1996, 90, 153-5.

⁸³ See Q 53.

⁸⁴ 2009. *Themes and Theories: Selected Essays, Speeches, and Writings in International Law*. Vols 1 & 2. 1421pp, OUP.

⁸⁵ 2007. International Balzan Prize Foundation awards four annual monetary prizes to people or organisations who have made outstanding achievements in the fields of humanities, natural sciences, culture, as well as for endeavours for peace and the brotherhood of man. The foundation was established with funds from Eugenio Balzan (1874–1953), a part-owner of *Corriere della Sera*, who had invested his assets in Switzerland and in 1933 left Italy in protest against fascism.



year they invited me to a seminar to be given by another prize winner on town planning issues. I learned a great deal. There is a continuing family embrace there, which is very special I think. The prize itself which, as I said, is very, very generous, half of it you are committed to use for a research project in which you are leading young people in your field and bringing them on in that area. I am able, thanks to Balzan, to have four young people helping with this [*LD: her Oppenheim book*]. I do not know how I could have begun to think about this volume otherwise, so it's been a blessing to me and I think very exciting for them.

145. Thank you. Apropos international petroleum law, page 694, you talk, and I quote, of the “heady days and the excitement.” What were these?

They were of course in the early to mid-70s when North Sea oil was just about coming onstream and there were all the huge legal problems that hadn't been thought of before. Then the bombshell where, at that period, the Labour Government⁸⁶ of the day decided that it wanted a majority share in everything. But of course all the investment had come from the private parties till that moment, and I used to give that as an example in my natural resources course. We look all these third world countries, but we are doing that as well when we have the resource. Everyone who has the resource does these things and finding solutions to that and the famous no-win no-loss formula. It was exciting, yes.

146. Must have been. Sir Eli Lauterpacht⁸⁷ told me that his first big case was the 1954 Consortium negotiations involving nationalisation of Anglo-Iranian oil, BP. I wonder if he ever spoke to you about this?

Well, yes, and there is of course a lot about it in his book on his father, it comes up on the side. But, yes. Eli and I have talked about a lot of things over the years and I have always benefited from that.

147. Still on your 2009 book, you were part of an interview with the US Secretary of State, Condoleezza Rice⁸⁸.

Oh yes, that was fun.

148. It's a fascinating account. The discussion about the US Supreme Court citing international law and what the Congress calls “foreign law” and the anger that was generated in Congress. I wonder whether you found this somewhat disturbing? Justice O'Connor⁸⁹ said that even from the early days, the Supreme Court acknowledged the Law of the Sea and so on.

This has been a longstanding American perspective. In recent years, obviously underscored with the composition of the court, the more conservative composition in recent years. Then there has been the additional complication that even when the Supreme Court would be minded to put in place a judgment of the International Court of Justice, they can't, they have

⁸⁶ Under Harold Wilson.

⁸⁷ See Q 17.

⁸⁸ Condoleezza Rice, (1954-), Political scientist and diplomat, 66th US Secretary of State. President Bush's National Security Advisor during his first term.

⁸⁹ Sandra Day O'Connor (1930-), US Supreme Court judge (1981-2006).



said, override the views of the states on an issue. Then the Congress would have to overturn the law, the law that has traditionally been in the hands of the states. It is all tremendously complex.

For us in the UK it's rather simple.

149. Still on the same interview. You said that the United States' commitment to human rights treaties was usually late and qualified, which made natural allies a little hesitant in perceiving the United States' clear leadership. The Secretary of State, Condoleezza Rice, said that it was because their culture is profoundly different. Why do you think this is?

Well, I think there is in that culture a great distrust of foreigners and foreign thinking, of arrangements where others may decide the law over your heads, even if the contents of that law is something you fully agree with. So you take something like the Genocide Convention⁹⁰, there has never been a moment in history where the US thought genocide was lawful, but they came extremely late to accepting the Convention.

I think those are the sorts of factors.

150. In your piece, "The Rule of Law" lecture of 2007⁹¹, and I just give the page number for readers, 1330, you compare with Dicey's⁹² domestic criteria that there is no world parliament, equality before law and so on, no hierarchy of courts, so fragmentation and no coordination, domestic rule of law has no international analogue. You say that the subject of international rule of law is important at the UN, but that it means all things to all people when longstanding projects of national interest are being repackaged as rules of law issues.

I still think that's right. Everyone is made to be extremely pro "rule of law", yes, but one has to be hard-headed and realise that in the UN those words do mean different things to different people and often relate to particular things going on in their mind in relation to other states.

151. Just a few general international law topics.

The first one, concerns fragmentation, and this is an issue which you address in your 2009 book. I had the privilege of interviewing Martti Koskenniemi⁹³ in 2009. You say, Dame Rosalyn, that apropos teaching international law at the LSE on general versus specialist subjects, that in every area of international law there is simply too many of them to be covered. Did you see this splintering of the subject as something for concern as did Martti Koskenniemi? He spoke of his "grave concern for the fragmentation and the managerialism" of international law.

Well, I wonder if we are talking about the same thing. I believe that it's up to each university to decide if its chair holders will be just specialists in a particular area or must be

⁹⁰ <http://legal.un.org/avl/ha/cppcg/cppcg.html>

⁹¹ "The Rule of Law: Some Sceptical Thoughts". Given at the British Institute for International and Comparative Law, 16th October 2007. <http://www.biiicl.org/news/view/-/id/82/>

⁹² Albert Venn Dicey (1835-1922), Vinerian Professor of English Law at Oxford (1882-1909), also Professor of Law, London School of Economics (1896-1899), constitutional lawyer.

⁹³ Martti Antero Koskenniemi (1953-). Professor of International Law and Director of the Erik Castrén Institute of International Law and Human Rights at the University of Helsinki. Visiting Goodhart Professor of Legal Science (2008-09).

http://www.squire.law.cam.ac.uk/eminentscholars/professor_martti_koskenniemi.php



generalists but with exceptional knowledge in particular areas. I think the Oxford, Cambridge, the LSE have always taken the latter view. That being said, we can't all know absolutely everything. I don't pretend today to know much about space law. I'm sure if a case had come in while I was at the Court knowing how to apply principles to particular problems, I'd have managed to get on top of it. But it's no good asking me today, "Oh, will you come to a student moot on space law?" I don't know enough about it. That's not to me a fragmentation, it's a reality. You can't cover everything. Sometimes a GP has to send for a specialist.

But fragmentation, I had understood, was about different courts and tribunals, of which there are now so many, taking an understood theme of international law and giving divergent answers. As you have probably understood, I have written and spoken at the UN in my presidential addresses to the theme that this isn't really much of a problem, but there is a big understanding that we all need to run along parallel lines. So there is an understanding that so far as general international law is concerned the international court, if it's pronounced, should really be followed unless there are absolutely exceptional reasons and I think it's turned out to be largely a non-issue.

152. Thank you very much. Well, Dame Rosalyn, all that remains is for me to thank you very sincerely for a fascinating account, which I know will be of enormous interest to our readers. I am extremely grateful to you and I thank you again.

Thank you very much and for all your hard work in what you have had to read.

