

A Conversation with Judge Stephen M. Schwebel

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

Judge Schwebel's answers are in normal type

Comments added by LD, *in italics*

All footnotes added by LD

1. Judge Schwebel it is a great pleasure to welcome you to the Squire Law Library today. As you may know I have recently interviewed several eminent legal academics associated with Cambridge University and tributes to their careers have been compiled to build up a recent oral history of the law faculty. We call this the “Eminent Scholars Archive”. Nearly 60 years ago at the beginning of an illustrious legal and academic career you first acquainted yourself with this Library when you arrived from the United States to study law at Trinity College under Professor Hersch Lauterpacht, then the Whewell Professor³. Of course in those days the Squire Library was in the Old Schools and in the centre of Cambridge, whereas today we sit in the Norman Foster Modern Creation on the West Road. In the intervening years you have moved on a world stage and associated with many famous legal and political personalities, some of whom I hope you will introduce to us today. Also over those years you have maintained strong links with Cambridge.

It has been my practice to begin these interviews with a brief introduction by the scholars of their family background in early life, just to set the scene. Judge Schwebel, you were born in 1929.

Yes, my brother used to say to me that I precipitated the Great Depression. At any rate I was born in that portentous year in Brooklyn, New York, in a middle class American family, which suffered the stresses of the Great Depression; though I never knew it as a child. My parents were very loving, my brother was an extraordinary supportive brother then and has been so to this day, and I had a very happy childhood.

I was an indifferent student in my younger years, which probably contributed to my popularity with my fellow students, but what did not, was that I was a hopeless athlete. Whenever I was put on a school team the other boys would groan “Oh no, we don't want him”. But I very was bookish and I spent my childhood reading through my parents' library and by the time I got to high school, secondary school, I had read a great deal and I think that's what propelled me from being a mediocre, elementary school student to the top of my class in the public school to which I went.

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³ Professor Sir Hersch Lauterpacht, 1897-1960. Whewell Professor of International Law, University of Cambridge 1938-55.



And as I neared graduation from that school, when I was about to turn 17, the United Nations was founded in its San Francisco Conference⁴ and I found that a very gripping development. I had followed the war closely, my brother was in the US army, but until then I had not had any exceptional interest in international affairs, but I became fascinated with the founding of the United Nations and I have remained very interested in, and broadly speaking a supporter of, the United Nations to this day.

2. I wondered about that? After leaving school you were a student at Harvard College⁵ from 1946 to 1950. How did you pursue your United Nations interest while you were at Harvard?

Well, I founded a student organisation called The United Nations Council of Harvard, and there were United Nations Councils in a great many American Universities then. There aren't now, they've died or they've merged with international relations clubs, but it's hard to imagine indeed today how prominent a place in American public perception and discourse the United Nations had. The *New York Times* our by far finest newspaper - some treated it as virtually a house organ of the UN, it ran so much everyday about the United Nations. Just by happenstance being active in the UN student movement I met the new UN Secretary General and his family almost immediately they arrived in the United States and became quite friendly with them, with Secretary General Trygve Lie⁶, with his daughters, with his lovely wife. And I was very active both before Harvard and during my years at Harvard, both in the UN student movement and the American Association for the United Nations. Today its called the United Nations Association, very much like the British United Nations Association, though I think the British Association has been a more powerful body over the years, and certainly was in the League of Nations days, than its American equivalent.

3. Judge Schwebel, how did you during this period become acquainted with the work of Mrs Roosevelt?

Well, Mrs Roosevelt⁷ was a member of the Board of Directors of the American Association for the United Nations and so I came to know her as a member of that Board. I was a member of the Board representing the students from roughly 1946 to the early 1950's. And after her husband's death Mrs Roosevelt particularly devoted herself to the United Nations and spent a lot of effort in assisting the American Association for the UN. She assisted in numerous causes; she was a woman of enormous good will and human empathy.

I went with her on a trip in 1957, I think it was, to Russia. She was the chairman of a delegation of the American Association for the United Nations visiting the Soviet equivalent and that was a very interesting experience. There were others on the delegation of some note

⁴ In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter. Those delegates deliberated on the basis of proposals worked out by the representatives of China, the Soviet Union, the United Kingdom and the United States at Dumbarton Oaks, United States, in August-October 1944. The Charter was signed on 26 June 1945 by the representatives of the 50 countries. Poland, which was not represented at the Conference, signed it later and became one of the original 51 member states. From UN website, <http://www.un.org/aboutun/unhistory/>.

⁵ <http://www.college.harvard.edu/>.

⁶ 1896-1968. Norwegian politician, Secretary-General of the UN 1946-52.

⁷ Anna Eleanor Roosevelt, 1884-1962. Advocate for civil rights. Wife of 32nd US President Franklin D Roosevelt (1882-1945).



like Paul Hoffman⁸ who'd been the former head of the Marshall Plan in Europe, and it was a very interesting experience. But Mrs Roosevelt was not one whom I came to know well. I met her on quite a number of occasions, but I was by no means an intimate of hers.

4. After Harvard you began your association with Cambridge in 1950 when you came to study under Professor Hersch Lauterpacht. What were the circumstances of your coming across?

Well Harvard was good enough to give me a Fellowship, the Frank Knox Memorial Fellowship, which the widow of Frank Knox⁹ had set up. Knox having been the Secretary of the Navy during the War; a leading Republican; a man of considerable means. And his wife set up these Fellowships, which are going to this day. Tenable at any University in the British Commonwealth; and I decided to apply for Cambridge because of the fame of the then Whewell Professor, Hersch Lauterpacht, which was imposing. He was widely regarded as the leading public international lawyer in the world at that time. And I applied for Trinity College simply because an Englishman that I knew in my Lowell House at Harvard said, "That's the one you should apply to". I knew nothing about the Colleges at Cambridge.

And I was accepted and arrived and when you were speaking of the Squire Law Library, I thought of the first time I entered it. Because that was on October 1 or 2 1950 and I went straight away to see Professor Lauterpacht, I think before I'd even been installed in my rooms, I can't think why, but I did. Because I remember going into his office, he had a tiny office in the Squire, I mean about a quarter of the size of this room, it hardly admitted more than a desk and his chair and a chair for his guests; that was it. He didn't do his work there, he did his scholarly work at home, but he received students there. And I turned up still encrusted with the salt of a channel crossing, this had been a very rough crossing, and as I was going in the door a tall spare man was coming out and Professor Lauterpacht introduced Captain Baxter, and as I sat down he said, "Such a nice man that", and I said "Of the British Army?" and he said, "No, no of the American Army". And that was Dick Baxter¹⁰ who later became a professor at Harvard Law School, and who later became a Judge of the International Court of Justice and would have had a very distinguished career there but for the tragedy of his dying after 19 months of office of a blood cancer. And he and I became great friends in the course of that year.

Which was a very formative year of my life because first, I determined under the stimulus of Professor Lauterpacht to pursue international law as a career, and I learned a great deal from him and remained very close to him until his death, and he showered me with countless kindnesses. And second, he very shrewdly perceived that at the outset I needed close and good mentoring and he selected his son, Eli¹¹, to be my tutor, and I was Eli's first tutee. Eli was then in London, he'd just gone down from Cambridge the previous year and he was working at the Bar, but he was beginning to teach and he soon became a Fellow of Trinity College and when he would come up every week or two to Cambridge, he would tutor me. Those were very enjoyable sessions, I mean we mainly talked about girls and things like that, but occasionally some law crept in.

⁸ Paul Gray Hoffmann, 1891-1974. Industrialist.

⁹ William Franklin Knox, 1874-1944. Newspaper owner, Secretary of the Navy (1940-44), Vice-Presidential candidate 1936. Supporter of US aid to Britain in WWII.

¹⁰ Richard Reeve Baxter, 1921-1980. US Army 1942-54, President of ASIL 1974-6.

¹¹ Professor Sir Elihu Lauterpacht, b.1928-



5. And you've maintained a lifetime friendship with him?

A lifetime friendship. I've just had lunch with him today. He has been my closest friend for approaching 60 years now.

6. Judge Schwebel, you were at Trinity College, how did you find life there in post-war England compared to the United States?

Well, I was fascinated with Trinity College; it was very, very different from Harvard. If you sat at a table for a meal, the chap next to you would begin a conversation by saying, "What game do you play?" Not, "What are you reading?" Or, "What's brought you here?" But, "What game do you play?" And since I played no game I was a bit out of it, and apparently most of the students played a game and after they became good at the game switched to another game. This was quite surprising to me. Also the students didn't seem to study all that much, they spent an awful lot of time talking at coffee, at tea... drinks after dinner... it may be that many of them worked hard and were just quiet about it... because Englishmen don't toot their own horn, you see, they are very different from Americans in this. I mean, in England it's considered ill-mannered to tell people of your accomplishments, potential and all you are doing. Not so in America where people tend to be rather boastful and forward and selling themselves at every possible opportunity. They're very different mannerisms. And I found these English mannerisms very engaging, I liked England and I think England liked me. We got along very well. Of course I was cold and the food was miserable, but everybody was eating the same miserable food and it wasn't particularly unhealthy, it just was not very palatable. And the College itself maintained a certain magnificence. I mean the waiters were all dressed in tails and were very mannerly, and there was a wonderful wine list if you were interested in that. And at the end of the meal they would also say "Sweet or savory Sir?" And one was more repellent than the next. I mean the savory would be a sad sardine on a piece of damp toast, and the sweet would be some sort of slop on gruel, and the food was not much, but the University was bursting with vitality, intelligence, animation. There was an unending stream of interesting lectures, a great many interesting people. There was a very lively undergraduate theatre, and so on. So I thought Cambridge was marvelous and liked it hugely. And between my affection for Professor Lauterpacht and all I learned from him, and from Eli, and from other friends I made there, Cambridge was a very meaningful year for me.

One of my great friends from that time still is Professor Jolowicz¹²; he was a student in Trinity at that time. I remember Eli saying to me, "*Oh, there's only one fellow worthwhile at Cambridge, that's Tony Jolowicz there's nobody else*" that sort of thing. Talk you know, which one would not take very seriously, but he was right that Tony Jolowicz was very worthwhile and he's been a lifelong friend, as well as his wife [LD: Poppy].

7. Professor Jolowicz is one of our eminent scholars as well, as is Sir Derek Bowett¹³, who is a friend of yours. Do you remember him?

Yes, Derek, I have very warm memories of. Derek was a student together with Dick Baxter and myself of Professor Lauterpacht during that time. Bowett is a great fellow, was a great fellow, he was a self-made Englishman, totally unpretentious, very amusing, he had a

¹² John Antony Jolowicz, b. 1926-, Emeritus Professor of Comparative Law.

¹³ 1927-2009. Whewell Professor of International Law 1981-91. He died shortly after this interview was recorded.



delightful sense of humour, extremely able, industrious. He, too, was immensely influenced by Professor Lauterpacht. He never thought he told me, of an academic career until Hersch Lauterpacht suggested it and that moved him into an academic career. He went up to Manchester to teach and then he came down here to teach, and before we knew it he was the Master or President, I'm not sure what it's called of Queens' College at quite a young age, because he so impressed his fellow Fellows that he was elected to the Mastership of Queens', and he became the Whewell Professor and wrote a great deal of excellent stuff in the field. And was a very frequent advocate before the International Court of Justice, as Eli Lauterpacht was, and continues to be; and as the current Whewell Professor, James Crawford, is.

8. I visit Derek from time to time and I shall be seeing him in about a week or so's time...

Give him my warm regards, please.

9. I shall be very pleased to do that.

I've very fond feelings for Derek Bowett, he's a wonderful chap.

10. Judge Schwebel, do you remember from that time, Clive Parry¹⁴ at all?

Yes, I remember Clive very well. Clive was one of the three principal teachers of Public International Law, Professor Lauterpacht being the primary one. Professor Jennings¹⁵ being the next one, and Jennings taught the courses on the history of international law principally, and then Parry taught a seminar or two in various current aspects of international law. Parry was a very charming man, exceedingly good looking, many people would mistake him for the Prince of Wales, and he very much looked like him. He was quite a dashing man in his appearance. He was very English in his manner, quite amusing and drawling. He had a lot of imagination, a great deal of charm. I wouldn't say he was as gripping a lecturer as Eli Lauterpacht was for example. When Eli began to teach here he was an absolutely marvelous lecturer. But Parry was very devoted to his students; he was full of ideas, a man of very considerable attainments. Alas he died too young too. He died in 1983, I think it was [LD: 1982], so it's quite a while ago now.

11. After Cambridge you went on a lecturing tour to India. What made you go to India?

Well, before I launched on that I went to Yale Law School because Professor Lauterpacht impressed upon me that you couldn't be an international lawyer until you were a lawyer and I had to get a proper law degree. And I therefore went to Yale Law School. While I was at Yale, Yale gave me a term's credit, a half-year's credit for my year at Cambridge and so I had that sort of spare half-year available. I remained active all that time in the UN student movement and I had become at one stage the President of the World Federation of United Nations Student Associations and it was having its congress in India in the fall of '52. And I was no longer the President, but I was variously petitioned to try to get to that conference and I was interested in going, but I didn't have the financial means to go. And I put it up to the Executive Director of the American Association for the United Nations,

¹⁴ 1917-1982. Professor of International Law University of Cambridge 1969-1982.

¹⁵ Sir Robert Yewdall Jennings, 1913-2004. Whewell Professor of International Law, University of Cambridge 1955-81.



who was by then a good friend, Clark Eichelberger¹⁶, his name was. And while I was sitting in his office he called up the Assistant Secretary of State for International Organisation Affairs and said this conference was going to take place and it was in the US interests that I be enabled to go and could the State Department figure out a way in which it could send me, since the American Association for the UN didn't have the money. "Who would pay the freight?" I remember was the phrase that Mr Eichelberger used and a short time later I got back word from the State Department saying, "We don't have funds that we can allot to send you to this meeting, but we do have a programme of presenting Americans as speakers at Indian Universities and civic groups and the people we send generally are people of a certain age and attainment, but we would like to try out the idea of sending a student who could travel to more remote parts of India and talk to students, and if you're willing to spend three months doing that then we will pay your way to India." So I said, "You've got a deal, I'd love to do that."

And I spent a bit over three months in India and that was a fascinating experience for me, because first it was my entry into the developing world, and second I saw a great deal of India. I did go to some very remote places off the beaten track, certainly far off the tourist track. I gave about a hundred speeches in India. I had three set speeches and I gave one or the other depending on who the audience was. Most of them were Indian University audiences, there were occasional other ones. I travelled by train, by car, by occasional air flights, I think I travelled some 11 or 12 thousand miles just in India in a period of three months and had a great time and made Indian friends, a few of whom I maintain to this day.

12. How lovely, it must have been fascinating in the aftermath of independence as well?

It was quite fascinating. In those days actually, English was still very wide spread in India. It maybe still, but in those days there was a great effort to foster Hindi as the national language. I don't think this ever really caught on as a national language, but, until the end of the Empire a great deal of teaching had been done in English, certainly in the Universities, but even in lesser levels of education. And in 1952 the effects of that still persisted so that I had the impression that on the whole I was pretty well understood by my audiences. There certainly was no lack of questions. I mean the Indians are very talkative. I would start receiving callers at something like 6 am in the morning; people would come knocking on my door. Not to ask about nuclear tests or allegations of germ warfare in Korea, but questions like "How can I get a scholarship to America?" "How much money does your father make?" And things like that. Rather folksy questions. The Indians aren't at all shy; they're very open about what they ask about. If they have a great interest in the spiritual side of life I never noticed it.

13. Did you meet, as he then was, Nagendra Singh¹⁷, during this period at all?

No... it's interesting you mention Nagendra Singh because Nagendra Singh was Eli's other initial tutee, perhaps his second. A charming man, who later became President of the International Court of Justice, as I did, and we both served on the Court together and we were good friends, and indeed he invited my wife and me out to India. He arranged for the bestowal of an honorary degree on me, that was the occasion for the visit and when he told me the Law School was to give me an honorary degree I said "That's very fitting." And he said. "Why is it fitting?" and I said, "Because Bhopal Law School has never heard of me and

¹⁶ Clark Mell Eichelberger, 1896-1980.

¹⁷ Maharaja Nagendra Singh of Dungarpur, 1914-88.



I've never heard of it." Bhopal later became famous alas because of that appalling accident in which so many people lost their lives or were injured, but it wasn't as well known to the outside world at the time, but I went there for the receipt of that honorary degree. At any rate I did go back to India then and I have on another occasion or two and much enjoyed it. Nagendra Singh was an exceptionally congenial and jovial man, a very warm hearted person who actually died during his service on the Court.

14. In 1954 Judge Schwebel you joined the firm of Attorneys, White & Case¹⁸. You stayed with them for about five years.

Yes, when I got out of Law School I went to look for a job and that was a period of downturn, I wouldn't say anything like as an acute recession as currently is gripping the United States, but it wasn't a boom time either. And a number of my classmates and I didn't find getting a job easy, and in particular I was confronted by the reaction, "Well you've been an active young fellow, we see you've written a book, which has been well reviewed and you know a lot about the UN and international law, but we don't do that, we're just private practitioners, we won't have anything here that will interest you, why don't you go work for the UN?" That was the reaction I got. I interviewed at about 15 law firms and none of them seemed interested. Finally I went to White & Case and one of the interviewing partners asked me did I know a certain hotel magnate. Well in point of fact I did know him because he was a member of the Board of the American Association for the United Nations, and quite immediately after that I got an offer from White & Case. Now I don't know this, I never asked the man in question, but my guess is that that partner of White & Case called up this gentleman whom he knew and asked him if he'd recommend me as an associate of White & Case and that man doubtless did, and I was hired by White & Case. I believe that's the origin of it but I'm not really sure, at any rate I was very lucky in that because, just about the time I began at White & Case there came to it one of the largest and most important and interesting international arbitrations of the 20th century. That between the Arabian-American oil company, Aramco and the Royal Government of Saudi Arabia. The actual protagonists were, on the one side Aramco, and on the other side Aristotle Socrates Onassis¹⁹ who had concluded a contract with the King of Saudi Arabia, which gave Onassis' shipping empire a monopoly over the shipment of all oil from Saudi Arabia. Aramco had a concession agreement entered into in 1933, which was to run out I believe in 1999, which gave it the exclusive right to ship its oil, or the oil it found in Saudi Arabia, abroad. And so it claimed that this contract of Onassis with the King was in breach of its rights. Saudi Arabia to its credit agreed to submit that issue to an Arbitration Tribunal. The contract, the concession contract itself provided for arbitration of disputes arising under it, very much in the model of the concession contract of the Anglo-Iranian Oil Company or its predecessor, and other British companies of that time.

And so that arbitration took place and I found myself the bottom man on a towering totem pole of international legal talent that Aramco assembled. At the very top was Lord McNair²⁰, formerly of this University, who had recently retired as President of the International Court of Justice. He had been the Whewell Professor here at Cambridge before

¹⁸ <http://www.whitecase.com/about/overview/>.

¹⁹ 1906-1975, Greek shipping magnate.

²⁰ Lord, Professor Sir Arnold Duncan McNair, 1885-1976. Whewell Professor of International Law, University of Cambridge 1935-37.



Lauterpacht, and was a very great figure in the world of international law. And there were several others who were almost equally eminent from various countries. But somebody had to dig through the files and prepare the basic briefs, and that fell to me, and I had an office at Aramco for years and learned a great deal about the international oil industry in general and Aramco in particular, and Saudi Arabia incidentally. And had a very interesting time in the course of working on that arbitration. And that triggered an interest, which has remained with me to this day in international arbitration, particularly in energy matters, but in other matters as well.

15. You mentioned that when you were taken on at White & Case you had already published a work and that was the memoirs of Trygve Halvdan Lie, his memoirs, “*In the Cause of Peace*”²¹.

No, not quite, what had been published by the Harvard University Press was my honors thesis that I’d written as a senior in Harvard College²². To get a degree at Harvard College with honors, not just the ordinary degree, but a degree... *magna cum laude* or *summa cum laude* one must do a thesis in the field of one’s concentration. My concentration field was government and I chose to write on the office of the Secretary General of the United Nations. Partially because I knew the first Secretary General and his family. I’d spent a summer working as an intern in the UN intern programme in the office of the Secretary General, and by that time I had decided to do my thesis on that topic and I was able to gather a lot of information. And no one had written on the subject before, there had been books, well not really books, but there had been some writing on the secretaries general the League of Nations, not much. There had been a quite solid book on the Secretariat of the League of Nations (*LD: e.g. E. F. Ranshofen-Wertheimer, ‘The International Secretariat’ 1945*), but so far virtually nothing had appeared on the Secretary General of the UN, the Organisation had only been in existence for three years by the time I undertook this. At any rate I wrote my honors thesis on that and it was well received.

Now Trygve Lie, the first Secretary General served from 1946 to 1953, when he resigned. He resigned because he had a great breach with the Soviet Union over his support of the UN reaction to the invasion of the Republic of Korea by North Korea. To this day North Korea remains a belligerent, very odd, government, and it was then. And he was extended in office over Soviet opposition and resigned after a few years, and when I was back at Yale I received a call one day from his secretary asking if I could come to have lunch with him at his home the following Sunday. And so I went down from New Haven out to his home in Forest Hills, New York, and he said that he had decided to write his memoirs. That he had had a flood of offers from various publishers and he’d like me to help him do it. So I said, “*Well I’d be glad to do that.*” And he said, “*Well can you do it in a year?*” And I said, “*I don’t know how long it will take, but I have to say Mr Secretary General I don’t have a year.*” He said, “*Well what do you mean?*” And I said, “*Well I’m in the midst of my studies, I’ve just returned from India where I took a term off, and I want to complete my law degree, I haven’t got a year to take off.*” Well he was rather disappointed in that and I thought he found that a quite inadequate response. He said, “*Well I’ll have to get somebody else then, but in the meantime would you please produce an outline of the book that I can send to the publisher because I’ve had these invitations.*” So I said, “*Certainly.*” So he sat me down at

²¹ *In The Cause of Peace: Seven Years with the United Nations*, 1954. New York, Macmillan, 473 pp.

²² *The Secretary-General of the United Nations: His Political Powers and Practice*, Cambridge, Harvard University Press, 1952.



his dining room table and passed me a typewriter and I produced an outline of what I thought the book should be composed of, which was obvious enough. You know, how he came to be Secretary General; the various crises he was confronted with over the years, and he was pleased with that. And he did enter into a contract, quite quickly, a very favourable contract with MacMillan.

And then after that a month or two went by, I heard nothing further from him, I really wasn't expecting to, and he called me up again and he said, "*Listen how much time can you give me?*" So I said, "*I can give you the summer.*" And he said, "*Okay, let's try it for the summer, we'll try to finish it in the summer.*" And so the day after my classes finished at Yale in that spring of '53 I flew over to Oslo, to which he had returned by that time, and he had rented an apartment, quite apart from his home, where he thought we could work and hire the secretary. And we thrashed round for two or three weeks, rather uselessly in Oslo when he'd go off to lunch with the King and so on. And it wasn't going very well, and he said, "*We'd better go up to my country place where we'll have no disturbance.*" And I said "*Fine.*" And so we went in a caravan of cars up to a magnificent house that he'd been presented with on his 50th birthday by his former colleagues in Norway, a lovely place in a very attractive part of Norway, and then I guess in a period of about two months I'd drafted what later appeared as his memoirs called "In the Cause of Peace".

And we worked this way. Following the outline that I'd done originally, I would read the files that he had brought, his personal files and official files, he'd quite a collection on say, Korea, the invasion of Korea, the UN reaction to it. I would make an outline of the chapter and of the points that weren't clear to me from the correspondence and the official files and I would ask him questions and he would respond; and then I'd prepare a draft and show him the draft and he would say, "*Well he likes this, likes that, that isn't quite right, I wouldn't put it that way, you don't quite understand that.*" That kind of thing and I would rewrite the chapter. And we boiled away on that for two months, I would say something like ten hours a day, seven days a week, and we got the whole book done in that period except for the introductory chapter, which he largely wrote working with another aide which was about his personal background and how he came to be asked to be Secretary General, and then the concluding chapter of future ideas, which was written later in New York. But in all he was quite happy with it. MacMillan sent over an editor who came at the end of August and was very pleased with what he read. And that was that, and I think the memoirs were well received and he was content with that. And it was an interesting experience.

16. It must have been very interesting coming so early in your career as well?

Yes, oh I was then 23 or 24 years old and he and I got on really quite well. We were rather friendly. He was then, I mean he seemed to me relatively old, but as I look back on it he was then 57, he was not an old man. I remember 57 because while we were there a huge box came from Heinz, the manufacturer of ketchup and so on, 57 Varieties, and they had a practice of sending famous people their 57 Varieties on their 57th birthday, and that much enlivened our diet in the course of that summer, which principally consisted of fish that we used to fish out of the pond, which was teeming with trout, except I was not a very successful fisherman. But he was excellent, and others that he had staying with us were very good.

17. Sounds wonderful. Judge Schwebel, you, from 1959 to 1961, were an Assistant Professor at Harvard Law School; this was after you left White & Case. What made you decide to leave the practice of law?

Well, I had never intended, I think when I was a student, to become a legal practitioner, but I found that when I did it, it interested me a lot. It interested me more than



law school did for that matter. Many things that I found quite dry in law school sprang to life when I actually dealt with them as an associate in the litigation wing of White & Case's New York office. In fact the New York office was the only office at that time that White & Case had, now it has offices all over the world, and if someone walked into White & Case today and said they were interested in international law they wouldn't be received as I was in those days when they said "What's that, we don't do it" because law firms do quite a lot now.

Well, I liked practice, but Harvard Law School then was in the process of building upon its eminent status in the field of international law, which it had for a long time. It had a Director of International Legal Studies, Milton Katz²³, a man of great dynamism, elegance and charm, who had taken leave from Harvard to become head of the Marshall Plan in Europe and after that was one of the founding members of the Ford Foundation. And when he went back to Harvard to teach he brought it a lot of money from the Ford Foundation with him in pursuance of an enhanced programme of international legal studies at Harvard Law School, but also in a number of other Law Schools in the United States. And as a matter of fact the Ford Foundation at that juncture, and I played a modest role in this, gave a grant to *International Law Reports*, which was produced here in Cambridge. Professor Lauterpacht had written me that they were in financial difficulties and could I see about trying to raise some money. He had approached the Ford Foundation, which had turned him down. Well, just by a stroke of luck a friend of mine, I happened to be working with then, was Henry Ford's personal assistant for non-automobile matters, and I got on to him about this and he was able to turn that around and get a grant from the Ford Foundation to *International Law Reports*, which was significant in its dimensions for the time... I mean nowadays it doesn't sound like much money but in those days it was a significant injection of funds.

At any rate I'm digressing. Harvard Law School gave me an invitation which I thought was directed towards my teaching in the international area because that was really the only reason for them to invite me up there. If I had any attainments they were generally speaking in the field of teaching international law, but when I got there I found that, indeed I did teach the basic course of international law with Dick Baxter, my old pal from Cambridge and that was great, we had a lot of fun with that. I also taught a seminar in international investment problems, legal problems of international investment on which I had worked with the *Onassis* case and others. But the principal duty with which I was charged was teaching a course in commercial law, which was a required course in the law school. I had one third of the second year class, so I had several hundred students, teaching sales, secured transactions, bankruptcy, negotiable instruments and other complexities, most of which I had never studied at the Yale Law School, and none of which I dealt with in practice. And I was by then five years out of law school. I would say there was a very substantial percentage of the class that was natively smarter than I was, and an even higher percentage that was more interested in the subject than I was. So I found this a very daunting chore, and it was hard on the students, because the other two sections of this fundamental course were taught by towering experts in the field. One of them had been a principal author of the *Uniform Commercial Code*²⁴, which was the primary code dealing with the subjects, which had recently replaced various uniform Sales Acts of the then 48 or 50 states. So I found this a very trying experience really.

I think Harvard made a mistake in asking me to teach that rather than teach from my strengths. And I think that was what in fact led me away from pursuing an academic career,

²³ 1908-1995, Professor of Law, Harvard 1939-78, Administer of Marshall Plan 1950-51.

²⁴ Current on-line version: <http://www.law.cornell.edu/ucc/ucc.table.html>.



because just at that time Kennedy²⁵ was elected as President [*LD: i.e. 1960/61*] and there was an exodus of the Harvard Faculty to Washington in support of his administration because he was a Massachusetts Senator, he was a Harvard graduate, as was his father and his brothers. He had a lot of friends in the Harvard Faculty and a lot of supporters and I wasn't one of them. First of all I was much too junior, and second I was not a supporter of Kennedy, I was a supporter of Adlai Stevenson²⁶ and I didn't think Kennedy was all that well suited to displace Stevenson as the presidential candidate. But one of my friends on the Faculty, Abe Chayes²⁷ was very close to Kennedy and when Kennedy was elected he was offered more or less whatever he wanted in the administration and he said, "I'd like to be Legal Adviser of the State Department." That greatly surprised people because he had had nothing to do with international law before. But he got the job and then he said to be before going down to Washington, "By the way would you like to come with me?" And I said "To do what?" And he said "Well I'll look into that, tell me what you're interested in." And I said, "Well, UN affairs." So he offered me the post of Assistant Legal Adviser for United Nations Affairs and I resigned from Harvard and took it. And I never regretted that actually, because that was an era when the United Nations still was central to American foreign policy and Governor Stevenson was appointed the American Ambassador to the UN. And in the position to which I was appointed I was his Legal Adviser, both to the Secretary of State on UN Affairs, but also to Ambassador Stevenson and I spent months a year in New York with him.

So I found that a very challenging, interesting time and enjoyed it hugely and that was my first entry into the International Court of Justice because the UN General Assembly sought an advisory opinion of the World Court in 1962 I think it was on certain expenses of the United Nations. The Soviet bloc and France weren't paying their assessments for peace keeping. In those days the United States, it's changed since, was the great advocate of the United Nations and for all states paying their assessments when due in full. And I was the sort of point man on that policy, certainly the legal aspects and wrote the briefs on it, and Chayes and I took that case to the Court²⁸, and that was a very interesting experience. It came out as we wished and the Court upheld the validity of these UN assessments, which were challenged. It was the first time that Russia had ever spoken in the Court and sent its Legal Adviser to challenge the assessments, as did France, but the majority held, as we thought they should hold. And then there was a great battle in the General Assembly as to whether to enforce that Judgment and that battle was lost. The General Assembly lost its nerve, it was frightened by threats of the Soviet Union and of France, that if they lost their vote at the General Assembly they would walk out. And so the whole effort collapsed and the UN, I think, has never recovered financially from that, and I think that led very much to the policy of default on the part of the United States in later years. The attitude of Congress was "Well, if the others don't pay then why should we pay?" You see. This has bedeviled the UN ever since.

²⁵ John Fitzgerald Kennedy, 1917-63, 35th US President (1961-63).

²⁶ Adlai Ewing Stevenson, 1900-55. Democrat politician whom J F Kennedy beat for the nomination in 1960.

²⁷ Abram "Abe" Chayes, 1922-2000, International Law Professor, Harvard University, Legal Adviser for the US Department of State in Kennedy's administration 1961-63.

²⁸ 27 Dec. 1961. ICJ, Request for Advisory Opinion: *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*.



18. Very interesting Judge Schwebel. So that was your involvement with Article 19?

Exactly, exactly, that was Article 19. In my collection of articles *Justice in International Law*²⁹, the Memorandum that I wrote as Assistant Legal Advisor on Article 19 is published. That's the only thing in that volume that was an official paper at one time. And I think legally it was cogent, whether it made as much political sense as we thought at the time is open to question, I guess. Certainly in the light of events as they've developed.

19. That was also related to your... the topic of the Permanent Sovereignty...over Natural Resources?

Yes, that went, at that stage, rather more happily. In '62 or '63 the British Assistant Legal Adviser of the day and I negotiated a Resolution with the developing countries led by a newly elected UN member, Algeria, on the question of permanent sovereignty over natural resources. Chile had proposed that that topic be considered by the UN Economic & Social Council. It set up a committee, which considered for some years, it came up with a draft Resolution, which attempted to codify the international law governing foreign investment of a long-term kind in natural resources. And that Resolution was of intense interest and concern to capital exporting states like the United Kingdom and the United States, and the great companies that made these investments. And the negotiation was a very intense one, and in the end the General Assembly adopted a Resolution³⁰ which was, considering what had gone before, and even more considering what came after, remarkably balanced because one had recognized on the one hand that every state has permanent sovereignty over its own natural resources, it also recognized that it must exercise that sovereignty in accordance with any pertinent international legal obligations, either resulting from customary international law, or from the particularities of treaties or contracts to which it might have entered. And it provided, for example, quite remarkably for that day, that states are bound to respect agreements between them, and by them. By them meaning between them and other non-state entities such as companies. The Soviet bloc bitterly opposed this Resolution and described it as a sell out to capitalism; and a few other countries abstained, but the vast majority was brought along to support this.

But that triumph was not sustained because as the years passed successive Resolutions under the same title of Permanent Sovereignty over Natural Resources became more and more one-sided, and asserted the total dominance of national law and the exclusion of international law in the treatment and taking of foreign investment. And that culminated in the adoption in 1974 of the so-called Charter of Economic Rights and Duties of States³¹, which is the UN Resolution proposed by Mexico and other developing states, which is in the same, I would judge, extremist trend of claiming that a state can treat foreign investment as it likes and certainly no better than it treats its own national investors, however badly it treats them.

And by that time I had returned to the State Department, I was the Chairman of the US Delegation trying to negotiate that Charter, the Economic Rights and Duties of States. I led the Delegation in a succession of conferences, which culminated in Mexico City in a very contentious meeting. So contentious that the Foreign Minister of Mexico called the then

²⁹ *Justice in International Law: Selected Writings of Judge Stephen M. Schwebel*, Cambridge University Press, 1994.

³⁰ Resolution 1803 (XVII), 14 Dec. 1962. Permanent Sovereignty over Natural Resources.

³¹ December 1974.



Secretary of State, Henry Kissinger³², to demand that I be recalled, which was rather presumptuous, I'm not aware that the United States calls the Foreign Minister of foreign states to demand the recall of their representatives because they follow a policy that's not congenial. But at any rate that's what the Mexican Foreign Minister did. And the then Under-Secretary of State³³ came down to Mexico City to see what the problem was and the Mexican Foreign Minister, in my presence and his, said to him three times that I should be recalled and replaced by someone that would take a more open minded attitude towards Mexico's proposals, and each time the Under-Secretary proceeded to discuss the substance of the matter as if he hadn't heard what the Mexican Foreign Minister said. And finally, the Under-Secretary very sharply engaged the Mexican Foreign Minister on the substance of it, more sharply than I had, in public, whereupon I think the Mexican Foreign Minister concluded that he had better keep quiet and that he might even get someone worse than I was, if I were replaced. I heard no more of that.

At any rate, the United States and most of the industrialized democracies voted against that Charter. And that was, in a sense, the end of efforts in the UN to write a worldwide code that would govern these matters. There have been some efforts since but they've never gotten very far. And things have veered off in another and much healthier direction in which states conclude so-called Bilateral Investment Treaties, which govern these matters and there are now some 2800 of these Treaties, two-thirds of which are in force by states of every continent, political outlook or economic disposition. And these I think are very progressive Treaties, which promote the flow of foreign investment and afford the investor the right to direct arbitral recourse against the state if needs be.

20. Fascinating Judge Schwebel. Before your involvement with the Charter of Economic Rights and Duties of States, in your capacity as Counselor to the State Department, you went back to academia for a time...

That's right...

21. You were the Burling Professor of International Law at Johns Hopkins School of Advanced International Studies in Washington³⁴. Why did you go back to teaching?

Why did I go back to teaching? Well, again it was one of these happenstances of life... I'd had a very happy time as the Assistant Legal Adviser for UN Affairs, but I'd done that for a while. The Legal Adviser of the State Department left after President Kennedy's assassination. I no longer found the leadership of the Office of the Legal Advisers congenial as I had before, so I accepted an invitation to join the Bureau of International Organization Affairs³⁵, which I did for a year, and did work of considerable interest, particularly in negotiating a Treaty with Japan over Micronesian war claims. And while I was doing that I received an invitation from Johns Hopkins University to teach there and at the same time an invitation by the American Society of International Law to serve as its Executive Director,

³² Henry Alfred Wolfgang Kissinger, b. 1923. German-born American political scientist, diplomat, and winner of the Nobel Peace Prize. National Security Advisor and later concurrently Secretary of State in the Nixon Administration (1973-77).

³³ Carlyle Maw, Legal Adviser, and then Under Secretary of State, 1973-76.

³⁴ <http://www.sais-jhu.edu/about/index.htm>.

³⁵ <http://www.state.gov/p/io/>.



and that was a joint appointment between the two. And that was attractive to me at the time, and so I accepted that offer and did that for 6 or 7 years.

But then I went back to government because I found that I missed the excitement of government work. I think that for a public international lawyer there is really nothing to match being in the Legal Office of a government that is active in these matters, because you get a constant stream of fascinating problems to deal with and you have a sense of being a participant in moulding the law.

So I went back first as Counselor of International Law, which was the position that turns over in the State Department Legal Office, normally a different academic occupies the place for a year or two. And then I was appointed Deputy Legal Adviser and I found myself then back on problems that I had dealt with in my days of White & Case and Aramco and the international oil crisis. That was in '73 when OPEC repudiated the oil concessions and imposed a vast increase in the price of oil, the Yom Kippur war and all of that. And so I had a very interesting time dealing with those problems.

22. During the turbulence of Jimmy Carter's years?

Yes, in the years of President Carter³⁶, and I enjoyed that, very much, and stayed there until I was nominated for election to the Court. Now if things had gone as they should have gone, Dick Baxter would have occupied that seat on the Court for almost another eight years, but the tragedy was that within a year of his election he, who had always seemed to be a man of eminent good health, of abstemious habits and so forth, was stricken with a dreadful blood cancer and died within four months, I guess, of his illness.

Now the Statute of the International Court prescribes, that in making nominations for the Court, that the national groups that make the nomination; these groups are proposed of nominees of the Secretary of Foreign Affairs of the various parties to the Statute of the Court, shall consult with the Legal Faculties, their highest Courts, and so on. In most countries this isn't done, it's recommended, but it isn't required and it's simply not done, but in the United States it is done and has been done for at any rate for the last 50 or 60 years. And so that process was launched again, it had been launched when Baxter had been nominated a few years before, and in contests before that, and it was when he died, and in the end I was then nominated, having more support I gather than other candidates. And I had a long and very interesting tenure on the Court; I was there 19 years. When I arrived the Court had a few cases; by the time I left it had over 20. And so I was lucky to be there at a period when on the whole the Court was involved in many cases, and in many significant cases.

23. Judge Schwebel, I notice that over 19 years you were involved with 29 cases in all, in fact 38, if you count the separate cases of Yugoslavia and NATO. This is a remarkable number, is this a record do you know³⁷?

I don't know really. The Court has had its ups and downs. It was reasonably busy from '46 to roughly '66, then it had a great lull following its Judgment rejecting jurisdiction in the South West Africa cases, which was extremely surprising and unpopular, and it began to revive in the early 1980's but when I arrived at the Court in January '81 there was the Tunisia-Libya case on the docket. There were the remnants of the United States case against Iran for the hostages, of which I was one of the Counsel. I think that was it. Yes that was all

³⁶ James Earl "Jimmy" Carter, Jr. b. 1924. 39th US President (1977-81).

³⁷ See separate list of cases with which Judge Schwebel was involved.



that was on the docket at the moment. There had been an Advisory Opinion the year before about the removal of the Regional Headquarters of the World Health Organization from Cairo, and there I was the agent of the United States and argued that case before the Court. But at any rate from the time I arrived there were those two cases, then the United States and Canada agreed to bring before a Chamber of the Court a very important dispute between them, the Gulf of Maine case, which was extraordinarily well-argued, interesting case.

And then in the midst of that Nicaragua brought its famous case against the United States for mining Nicaraguan waters and supporting the Contras, and that was an event and a very interesting matter. I guess the most challenging case that I dealt with when I was on the Court, at least the most challenging for me; though there were others that were extremely interesting as well, and in most of these I ended up dissenting, not all but in most and I voted against the United States' position in various aspects of the Nicaragua case, maybe 6, 7, 8 different aspects. But I supported its basic position, which was that it was responding to Nicaraguan/Cuban subversion of the government of El Salvador and was in response to that entitled to exert pressures on the Nicaraguan government to stop that support of armed subversion of a neighboring government.

Another case that I found particularly interesting and which I spent a lot of time on my dissenting opinion was the case on whether states may legally use or threaten to use nuclear weapons. And there were others of high interest too. One was the question of jurisdiction as between Bahrain and Qatar in a boundary case, whether the Court had jurisdiction and that turned on whether the parties had really submitted to jurisdiction or not because they had no general obligation to do so. The question was had they concluded an agreement which provided they go the Court and the Court sharply split on that. That was an opinion that I particularly enjoyed.

In many others I was with the majority. I played a very active role in the administration of the Court from the beginning until I resigned from it.

24. You were President of the Court...

Yes, I was elected Vice-President in '94 and President in '97, and I enjoyed that experience and I think it went on the whole quite well. The Court was extremely busy in that period. I negotiated with the Dutch government a very marked expansion of the physical plant of the Court. The Court was in the Peace Palace, which I think has materially advanced the capacity of the Court to function, and I was the advocate of giving the Court a dining room. When I arrived at the Court I was surprised to find, that first the judges operated in such isolation, not only from the world at large but from one another. They didn't gather for meals, they didn't gather for tea. If one Judge took a social initiative vis-à-vis another occasionally, that was it. So I tried first of all to set up a facility by which the judges would not have tea just served in their offices daily, but could meet to have tea, and that attracted maybe a third of the judges for some time, it wasn't a roaring success. There were no dining facility in the Peace Palace except a very modest cafeteria, known as the Refectorium and nick-named the Defectorium, or the Infectorium, but it wasn't highly regarded and wasn't very congenial and certainly didn't attract the judges for lunch. At any rate when I advocated and negotiated expansion of the offices of the Court, because by then we had so many cases that we had lots of Judges *ad hoc*, appointed by litigants just for the case, and we had to have the place to house them, and that was the impulse for adding offices. I advocated as well having a dining room for the Court. To my surprise at least half the Court was indifferent to the idea, didn't see why, said it would never be used. But we managed to get it established and it is now a very well regarded, used and I think useful aspect of the life of the Court; because it's a very pleasant facility in the Peace Palace, not only open to the judges but to



others who wish to go as well. But there is a judges table, a big table, at which the judges, if they are alone, can sit with their colleagues and that results, I think, in a lot of useful exchange, sometimes social but sometimes substantive.

So in all I think my years on the Court were productive and pleasant ones, but they had their ups and downs. I had marked differences with some of my colleagues. I think their quality inevitably was variable. But when you consider that the Court is an elected body, elected by the UN General Assembly and Security Council. When you consider that it's a highly politicized election, and when you consider the quality of many UN organs I think the Court comes off pretty well. On the whole it has persons of capacity and integrity and has turned out a very credible body of work.

25. Indeed. Judge Schwebel, more than fifty percent of your cases were when you were President or Vice-President, what were the main responsibilities of your role as President?

The President is a busy man because first he is a Judge of the Court and must participate in the work of the Court and if there is plenty to do he is busy on that count alone. Second, every Judgment of the Court is drafted by a three-member Drafting Committee of which the President is a member by reason of his office. At any rate if he is in agreement with the majority who's drafting the Committee expresses. A Drafting Committee typically is the President and a Francophone and an Anglophone Judge for the majority view. And being in the Drafting Committee is demanding work. And third, before whatever reaches that stage one has to participate as a Judge does, as I indicated at the outset, not only in reading the pleadings and hearing the case, but in writing a sort of advance opinion, so-called note, which sets out your views of the issues. And that's a good deal of work.

But then in addition to that the President presides over all the meetings of the Court, both public (and that is the Hearings) and the deliberations of the Court. And that's demanding because you've got to be alert during all of that, you can't wool gather, doze or do other things, you've got to concentrate on what is going on, and the President has to extract from the debate of the Judges a course forward that will allow it to accomplish what it's there to accomplish. He tries to draw out a consensus when he can, and all of that requires the application of intellect and energy. The President oversees the work of the Registrar who directs the Registry, the staff, and there can be not inconsiderable staff problems from time to time. He represents the Court publicly, he goes to the General Assembly and addresses the General Assembly of the UN annually. He negotiates the budget of the Court each year with the UN and that can be a demanding, sometimes even demeaning process. And he's the public face of the Court in terms of receiving visitors to the Court, various Chiefs of State and Royalty and so on who come through and visit the Court. He's invited by the Queen to all the State Dinners and in terms of protocol outranks all Ambassadors in the Hague, except I think the Dean of the Corps. And I think in terms of precedence may be accorded precedence over the Dean of the Corps, I don't quite remember that, but at any rate I found myself many a time seated next to the Queen at these dinners and at others given by the Prime Minister. And so, that's a very full plate.

And when I was President of the Court I had an excellent secretary, but that was the total of my assistance, I had no Law Clerk, no Executive Assistant, no other particular assistants of any kind. Now happily that has changed somewhat and in that I played a secondary but supportive role. While I was President the then Dean of New York University



Law School, now President of New York University³⁸, and a Professor at the Law School named Brilmayer³⁹, who is now a Professor at Yale, proposed that the Court have clerks that would be financed by New York University because the UN gave the Court very little money. I mean our budget in my time there was about 10 million dollars a year for everything, less than one percent of the UN's budget that we're a principal organ of, and far less than the other Tribunals like the Yugoslav Tribunal and so. And the staff was very restricted and while the UN paid for clerks for the Yugoslav Tribunal, there was never any question that they pay for clerks at the International Court of Justice.

Well, the proposal of NYU was that it would provide five clerks, pay their salaries, transport, health benefits etc, etc and send us five of different nationalities. Well I put that to the Court and it turned it down. There were various suspicions about a proposal from an American law school etc. And then the Dean of NYU Law School, not easily daunted, sent over his right-hand man and said, "We'd like to know what we should propose that the Court would accept?" So I said, "Well why don't you send us a list of fifteen names, each of a different nationality of your best students that you think would like a clerkship trip for a year and let the Court choose those five, not NYU, and we'll see if that is accepted." And that's what they proposed and the Court, not by unanimity or with great enthusiasm, the Court accepted that. And the year after I left, the academic year after I left, that came into force. It had a somewhat rocky start but after about six months it took hold and now the Court, or most of the Judges of the Court, are quite attached to the system of clerks, and the UN has also come in with it, so now a variety of law schools, not only NYU, but a number of law schools from different countries of the world provide clerks and the UN provide some clerks. And so the Judges of the Court are supported in that way and certainly the President is, who has a full-time highly qualified legal assistant, which ideally I'd have liked to have had.

26. During this time, Judge Schwebel, you produced two important books, between 1981 and 2000, and the first one in 1987, your *International Arbitration – Three Salient Problems*⁴⁰, has been very well reviewed. Wetter⁴¹ calls it "A precious and beautifully written book by a distinguished and renowned Judge of the International Court of Justice". Wetter singles your analysis of the doctrine of severability as, "The most eloquent, well documented and persuasive exposition yet published of a seemingly simple, but in reality truly complex problem area."

Well that's a very gracious review. It's a book that I could never have written in my later years on the Court, when the Court was busy. But as I indicated earlier when I arrived it had really one substantial active case on its docket, and it wasn't until 1984 that it became very busy. Well, it happened that in that period Eli Lauterpacht decided to begin the Hersch Lauterpacht Memorial Lectures Series and he was good enough to invite me to present the first lectures, and I decided to present those three lectures on three topics that had long interested me.

One was, "What happens to an Arbitral Tribunal if one of its members walks out before the Judgment is rendered?" That had happened actually in a way at a very early stage

³⁸ John Sexton, b. 1942, President of New York University, Benjamin Butler Professor of Law and NYU Law School's Dean Emeritus.

³⁹ Lea Brilmayer, b. 1950. Howard M. Holtzmann Professor of International Law, Yale.

⁴⁰ *International Arbitration: Three Salient Problems*, Cambridge: Grotius Publications Limited, 1987.

⁴¹ J. Gillis Wetter, 1931-1995, Swedish advocate.



of the *Onassis* case, that I had worked on in the 1950's. There wasn't a walk out there but the arbitrator appointed by Saudi Arabia died and there was some question for a time of whether he would be replaced, and whether the Tribunal could act in his absence. And so, I had been interested in that subject for decades and collected some material on it, but I'd never really written on it.

And then another question which I'd run across in practice was this, "What if a State had agreed in a contract or otherwise with an alien to arbitrate disputes arising between them and then when a dispute arose repudiated that agreement, was that a violation of international law?"

And the third topic I chose to take up is the one that this review has so graciously evaluated and that is the so-called "severability" matter. Where you have a contract which provides for arbitration of disputes under the contract, and the contract itself is alleged to be invalid, or found to be invalid, does that sink the obligation to arbitrate or not, or does that arbitration survive as a severable obligation, and thus enable the arbitral tribunal itself to decide whether the repudiation of the contract was lawful or not, and so forth.

And I gave my three lectures on those topics and then I set about amplifying them into what was published, I think by 1986, but I believe I gave the lectures in '84. It wasn't published as the first in the series because by that time there had been lectures and lecturers who were prompter in turning in their manuscript, but eventually it was published.

27. Your other important book in this period was your *Justice in International Law*⁴² and this too has received very favourable reviews. Professor James Crawford describes some of your pieces as "classics" especially in Part 2 on arbitration.

Well, that's very kind of Professor Crawford. He is the current Whewell Professor and a very distinguished holder of the Chair. That book is simply a collection of some of the essays and other pieces that I've written over the years, some of which were quite obscurely published and it may be useful to pull together. And actually it's possible that both the Second Edition of "Justice in International Law" and of "International Arbitration – Three Salient Problems" may see the light of day, I've been discussing those possibilities with the Cambridge University Press lately and I think there's certainly a prospect of that happening.

28. What comes through from the reviews of your books is that what you said sometimes decades ago remains so relevant today. Another reviewer has said what an important collection this is. Dixon⁴³ calls it "sparkling" and says it's, "packed with hidden gems." Why is it, Judge Schwebel, that what you wrote has remained so relevant?

Well, those reviews are very gracious, and I guess much of this is in the eye of the beholder and of course some of what I have written would today seem quite dated. But some of the subjects that have particularly attracted my interest have remained vital, such as, the unending disputes about the treatment of foreign investment, or about the powers of the United Nations organs, and so writing about those subjects may seem to be of continuing interest. But I wouldn't say for a minute, frankly, that I've been a major academic contributor, I've not been. If I had pursued an academic career for 50 or 60 years, rather than essentially for relatively few years, perhaps, perhaps I might have been able to make a more

⁴² See footnote 29.

⁴³ Martin Dixon, Reader in the Law of Real Property (Department of Land Economy), Cambridge University, Fellow of Queens' College.



substantial academic contribution. But I have spent most of my years as an international lawyer, as a practitioner in one way or the other, either in private practice or in government, or as a Judge or Arbitrator. And Judges and Arbitrators are not academics, they don't, or shouldn't at any rate, deal with problems in the abstract; they deal with the particular dispute. They only deal with what comes to them, and they should only write about what the dispute is about and not what they feel like writing about.

29. After your time at the International Court of Justice, since 2001, you've been involved in various arbitrational roles. Can you say something about some of these?

Yes, I've been lucky to be able to continue working since I retired from the Court about the age of 70. One of the attractions of being a lawyer is that one can continue working if one wants to continue working, and is not required absolutely to retire. As for example so many businessmen, or doctors, or others are. And typically, retired Judges become Arbitrators, at least in the United States. That's what great numbers of retired Judges do, and I think, of course that there are many fewer retired international Judges, but I think that's what they do there too, and indeed in England one now sees that retired Judges, including retired members of the House of Lords, act as Arbitrators. And that's a very attractive thing to do because one can be engaged in cases of high interest. They may not, for the most part, be as important as the work one may do as a sitting Judge, but they are important to the parties and maybe quite important in the contributions they make to the development of law in the area. I wouldn't say as important typically as Judgments of Courts, but still they have a certain importance. And many of these cases are extremely well argued and there's a great pleasure in listening to the quality of these arguments and in trying to work out what the law requires in the circumstances.

30. Well thank you very much Judge Schwebel. All that remains for me to do is to thank you again for very kindly agreeing to come and be interviewed for our Archive. I'm extremely grateful to you for such a fascinating account of your career in international law. Thank you.

Well, thank you so much, it's been a great pleasure.

Thank you.

