

**Conversations with Professor Sir Elihu Lauterpacht
Fourth Interview: The Eighties**

Date: 20th March 2008

Between January and May 2008, Sir Elihu was interviewed seven times at his home in Herschel Road Cambridge to record his reminiscences of seventy years of his own, and his father's associations with the Faculty. 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 six interviews for use in a database of citations made across the Eminent Scholars Archive to personalities mentioned therein.

Interviewer: Lesley Dingle (**questions and topics are in bold type**)

Sir Elihu's answers are in normal type.

Comments added by LD, *in italics*.

All footnotes added by LD.

66. Sir Eli, this is our fourth interview and we've reached the 1980s, an important decade for you personally. You became a reader in 1981, in 1983 you established a research institute which has become a world famous Lauterpacht Centre for International Law and in 1989 you became a CBE. Could you elaborate on this decade?

Yes, well gladly because as you say it was quite a full decade. It was a decade following my return from Australia in 1978 and we dealt with that last time. At the end of the 70s I was elected an associate of the Institut de Droit International and I became a member of that body in the ordinary progression of advancement in 1983.

67. 1981. Malta & Tunisia/Libya continental shelf case.

In the 1980s the first case I was involved in was the case between Malta and Libya and Tunisia. Libya and Tunisia were in front of the International Court of Justice to get a determination of the correct maritime boundary between them and Malta thought that its interests might be affected by the judgment in that case, so it applied to the ICJ to intervene. The ICJ rejected the application saying that in any case the judgement of the Court as between Tunisia and Libya would not affect Malta and it was so worded in the end as to preserve Malta's position.

68. 1982-85. Libya/Malta.

Then Libya and Malta continued with a case of their own before the ICJ in the years 1982 to 1985¹. That was noteworthy, yes... that was noteworthy in one important respect, namely that

¹ 513 Continental Shelf (Libyan Arab Jamahiriya/Malta), Judg. 3 June 1985 (*ICJ Reports* 1985, p. 13) (ISBN 92-1-070518-1)



Malta was contending that the boundary should be determined by reference to the equidistance principle, should be equidistant from the coast of Libya and Malta. Malta wanted the boundary to be further to the north towards Malta. So Libya came up with an interesting argument that the boundary should reflect what they called an incipient plate boundary. That is to say, by reference to tectonic plate theory, they could see that there might be an opening up of the tectonic plates below the ocean and that the boundary should correspond with that.

The basis on which they advanced that claim was the evidence of two, I suppose geologists, from Amsterdam who were put in the witness box to support the Libyan position and it fell to me to cross-examine them. Now, quite by chance, the Libyans had actually submitted an article that these two professors had written in which they developed their theory about the incipient plate boundary and I misplaced that text amongst my papers. So I had to ask the editor of the journal in which the article had previously appeared if he could kindly send me another copy, which he did. And then by chance I found the original as submitted by Libya. I compared the two, and I found an interesting discrepancy between them. In the article submitted to the journal, there was a footnote saying that the authors acknowledged the assistance of the committee in preparing the article. In the copy presented to the court that footnote of acknowledgement was missing. I asked the professor who was on the witness stand: "... can you explain the difference between the two. Why was the acknowledgement in the article but not in the copy sent to the Court?"

He answered: "Well, the committee thought it would be better to omit it". I asked: "Well, of whom did the committee consist?" He replied "... it consisted of the lawyers acting for Libya". So at that point I said to him: "I have no further questions", because he had completely undone the authenticity or veracity of the submission. But before I came to that point in the examination I had asked him about this incipient plate boundary: "When was it likely to develop?" and he replied: "in about 25 million years". At which point the court found itself greatly amused. So that particular theory of Libya's did not go down well, the court rejected it.

In due course the Court found a line somewhere between the Libyan claim and the Maltese claim. It was an interesting case. In it I had with me as colleagues Ian Brownlie and Prosper Weil who were of course very good. So that was Libya-Malta. It took three years one way or another. We had to deal, for example, with an application by Italy to intervene in the case between Libya and Malta rather along the same grounds as Malta had applied to intervene in the Libya-Tunisia case, but again the Court didn't accept that.

69. 1983. Establishing the Research Centre for International Law (now Lauterpacht Centre for International Law)².

² Website:

http://www.lcil.cam.ac.uk/about_the_centre/establishment_and_development.php



Alongside of all that, we established in 1983 what was initially called the Research Centre for International Law here in the University and I have to acknowledge the major part that was played in the creation of that Centre by my three colleagues: Clive Parry, who died in 1982 but had been involved in the preliminary discussions, Robert Jennings³ and Derek Bowett⁴. They set it up simply I think largely because they felt it would be fair to me to create some sort of umbrella for the various activities that I was pursuing like the *International Law Reports* and so on.

We had no institutional protection for these initiatives so when the Research Centre was set up in 1983 initially it was nothing more than a name on a piece of notepaper. We had no premises and we had no money. A friend of mine, Edward St George⁵, said to me, “well I’ll give you a building”, so I said, “well that’s very nice”. It happened that in 1985 a house came up for sale in Cranmer Road in Cambridge, which suited our needs perfectly since we obviously didn’t have the money to start on a greenfield site and build our own building. So this house, number 5 Cranmer Road came on the market and we bought it. Edward honoured his commitment in large part, he didn’t provide all the money. We got money from other sources including my own college, Trinity College and we bought number 5 Cranmer Road for a price that was then the highest price ever been paid for a residential property in Cambridge. Today that price would be about a fraction of what the house would fetch on the open market, but we don’t propose to sell it.

So from 1985 onwards we had our own building and we could progress from there. We encouraged scholars from abroad and that’s one of the major aspects of the activity of the Centre today, to encourage people to come from abroad to pursue their own research in this ambience where they can mix with other international scholars, and it’s been very popular. And we also instituted the Friday lunchtime talks. Each Friday in term we have a speaker from outside who speaks for about 40 or 50 minutes and then there’s a period of questions and the whole thing is brought to an end quite promptly at 2 o’clock to enable people to get on with their other activities.

70. They’re very popular, these lectures.

They are, yes they are. Not least I think because we give those who come a free sandwich lunch! The idea of the Friday lunches was largely the product of Maureen

³ Later Sir Robbie Jennings and President of the ICJ.

⁴ Whewell Professor of International Law 1981-91. See his entry in the Eminent Scholars Archive.

⁵ 1928-2004. Edward Gerald Patrick St George.
See <http://www.edwardstgeorge.com/biography/>



MacGlashen. Maureen had been a pupil of mine some years previously and she came on secondment from the Foreign Office as our deputy director for a while. She was a very capable lady. I had asked Geoffrey Howe⁶, who was then the Foreign Secretary and who was an old friend of mine, if I might have her for a while, and he said “Yes, you can have her for three years”. As we approached the end of the three years I was obliged to say to Maureen: “Look, I think you’ll have to go back to the Foreign Office because there’s really no advancement here, we can’t do anything more for you than what we’re doing now either in salary or status.” And so she went back to the Foreign Office and very shortly afterwards was appointed as the British Ambassador to the Holy See in Rome⁷ where she had a seemingly very cordial relationship with the then Pope, Pope John, I think it was. She was a great help to the Centre whilst with us and we had these Friday lunches, we had these researchers.

We took various initiatives to procure some money for people do to research, not necessarily within the Centre but under the auspices of the Centre. One such work of great importance is the commentary prepared by Christoph Schreuer⁸ on the ICSID Convention. So as I say, the Centre started in 1983, got its own building in 1985 and one of its early activities which has persisted ever since was the promotion of what were called the Hersch Lauterpacht Memorial Lectures and we had some very distinguished lecturers

71. Including Hans Blix?

Hersch Lauterpacht Memorial Lectures.

Oh yes, Hans Blix⁹ in more recent times. Earlier on we had Judge Stephen Schwebel and Krzysztof Skubiszewski¹⁰. We also had Abba Eban¹¹ and so on. Eventually I myself gave a series of lectures in 1992 which were subsequently published by the Cambridge University Press under the title of *Aspects of the Administration of International Justice* and the series continues

⁶ Richard Edward Geoffrey Howe, Sir Geoffrey. b. 1926. Minister in Margaret Thatcher’s administrations: Chancellor of Exchequer (1979-83), Foreign Secretary (83-89), Leader of House of Commons (89-90), Deputy Prime Minister (89-90).

⁷ 1995-98

⁸ b. 1944, Vienna. University of Salzburg, John Hopkins, and Vienna (<http://www.univie.ac.at/intlaw/main01.html>), http://www.mefacts.com/cached.asp?x_id=11028

⁹ See item 29, interview 2.

¹⁰ See item 29, interview 2.

¹¹ 1915-2002. Born Aubrey Solomon Meir, Cape Town. Israeli diplomat and politician. Queens’ College Cambridge.



to the present time. We have had some very interesting lectures from Ralph Zacklin¹² who was until recently the Assistant Secretary-General for Legal Affairs in the United Nations who talked about the work of the Security Council and we've also had lectures from Sir Michael Wood¹³, former Legal Advisor of the Foreign Office [LD: 1996-2006]. They make a very interesting series, as I say, all published by Grotius and CUP.

72. 1986-89. Sir Eli, could I just show you at this point, as we approach the Taba Case, a photograph which Sir Derek gave me for our Eminent Scholars website. Here he is with Counsel for Egypt at the arbitration in Geneva and I find it very interesting that two senior academics from Cambridge were involved in the same case.

Oh well, that case is but one of several in which Derek Bowett and I found ourselves pitted against each other. In that arbitration he was Counsel for Egypt, and I was Counsel for Israel. It was a very demanding case. I did really most of the case on my own, whereas Derek had some quite significant and competent support. Eventually Egypt won the arbitration, but it was an important arbitration because it was the first, and so far the only, international adjudication in which Israel has been involved¹⁴. It took place in Geneva¹⁵, it was fully argued both in writing and orally and I did have some useful and interesting help on the Israeli side, not least from Ambassador Rosenne¹⁶, the author of the major study on the International Court of Justice.

**73. 1986-92. El Salvador/Honduras Case.
1989 - CBE and Bencher.**

¹² b. 1937, Leeds. UN Assistant Secretary General for Legal Affairs 1998-2005
See: http://www.lcil.cam.ac.uk/lectures/2007-08_ralph_zacklin.php

¹³ See: http://www.20essexst.com/bar/%20j_wood_m/wood_m.htm

¹⁴ Taba Tribunal (Egypt/Israel, 1986-1989):
G. Lagergren, The Taba Tribunal, 1986-1989, 1 *African Journal of International and Comparative Law* 525 (1989).
The Award is set out in 80 *International Law Reports* 226, (1988), and 27 *International Legal Materials* 1421, (1988)

¹⁵ See photograph the Bowett section of the Eminent Scholars Archive taken in Geneva of Sir Derek Bowett and the Egyptian team -
http://images.law.cam.ac.uk/gallery_viewer.php?gallery=2ef653d5dd02413cf39a4f0a3ba53224&image=b6a1085a27ab7bff7550f8a3bd017df8&process=pop

¹⁶ See item 96, this interview



At about... even before, well, I think just about the time that Taba finished I became involved in the case between El Salvador and Honduras regarding their maritime boundary - Derek on the Honduras side and myself on the El Salvador side... Again, this was in the International Court of Justice and it extended over several years; again a very interesting case¹⁷. Then, round about that time I was made a CBE, which was very gratifying and I became a Bencher of my Inn, Gray's Inn in London. I am sure you'll appreciate that all these things were not consecutive but were going on in parallel. They overlapped. I mean Taba overlapped with El Salvador and that overlapped with all my work at the Research Centre to administer it and to raise funds for it.

74. 1989. Israel-Jordan Peace negotiations.

Also towards the end of that decade I became involved in the peace negotiations between Israel and Jordan and ultimately when the issues were resolved, they involved some interesting innovations in terms of the protection of vested interests of nationals of one state across the border in the other state. Eventually when the Agreement was signed and the boundary was opened up. I remember sitting in a row at the Jordan Bridge, with the leading Jordanian negotiator on one side and the leading Israeli negotiator on the other side.

75. ADBAT.

At the same time all this was going on I became chairman of the newly established Asian Development Bank Administrative Tribunal¹⁸ which sat in Manila a couple of times a year. I couldn't keep this up for more than about two years because it was very, very time consuming. By the time one had flown out and recovered in Manila and had the hearings in Manila and then flown back and recovered in England, the best part of three or four weeks was gone and I didn't have enough time to provide that twice a year so I resigned after a couple of years. But I had very, very fine colleagues there including from the Philippines Judge Feliciano and a colleague from Sri Lanka.

76. Iran-US Claims Tribunal.

So that then overlapped with another very demanding forensic activity, namely proceedings in the recently established Iran-US Claims Tribunal¹⁹. That was the outcome of the

¹⁷ *Case Concerning Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening)* Judgment of 1992: <http://www.icj-cij.org/docket/index.php?sum=390&code=sh&p1=3&p2=3&case=75&k=0e&p3=5> 626, Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judg. 11 Sep. 1992 (*ICJ Reports* 1992, p. 351) (ISBN 92-1-070686-2)

¹⁸ Bank's website: <http://www.adb.org/>

¹⁹ 1981. See: <http://www.iusct.org/index-english.html>



negotiations between the US and Iran to resolve the outstanding issues arising from the change of government in Iran and the seizure of US assets. This Tribunal, the Iran-US Claims Tribunal, was set up in The Hague, initially with Judge Lagergren as its President. I was asked by three American oil companies to present their cases in that Tribunal and I was happy to do so, but I said to them “There’s no way in which I can do this on my own - I think it’s right that I should have associated with me some American lawyers.” They said: “Well whom would you suggest?” I suggested the name of a firm in Washington called Pierson Semmes Crolius & Finley. Finley had been a pupil of mine back in the 60s in Cambridge. He was an American, a very, very capable lawyer indeed and he had gone back and participated in the establishment of this firm.

Now, the oil companies had not heard of this firm and they said, “Well, tell us about it.” I said: “If firms like Covington & Burling, or Steptoe & Johnson, two of the leading firms of Washington, whose names will come back to me I’m sure in a moment, are to be regarded as the Cadillacs of the law industry in Washington, this firm is a Porsche. So my clients were persuaded that they should be brought in. The firm did do a first class job in very complex and detailed proceedings which involved, amongst other things, the valuation of the entitlement of the companies to produce oil in Iran for the next 20 or 30 years. But when one considers the price of oil calculated then and compares it with the price that oil has now reached, which is over \$100 a barrel, one realises how, in a way, unreal was the estimate that we were then making of oil maybe reaching \$21 a barrel!

That was a very interesting set of cases. Unfortunately this particular set never reached a conclusion because the oil companies concerned decided to settle with Iran on terms that were agreeable to both sides and this meant that the oil companies could continue to operate in Iran under the resumed agreements.

77. 1990-94. International Argentine-Chilean Arbitration Tribunal of the Laguna del Desierto Case.

At about the same time as these, there was going on another case between Chile and Argentina. I have already mentioned to you the case called the Palena Case²⁰ back in the 60s which was a very interesting case where the tribunal had reached a result which was satisfying to both sides. The larger area was given to Argentina. It was mainly mountainous and a smaller area was given to Chile, but was the inhabited part of the disputed zone. Now the Laguna del Desierto was somewhat to the south of Palena and the issue there related to the title to this lake and the immediate surrounding district. Well, it wasn’t a very salubrious place. I remember visiting it and I got out of the helicopter that had taken me to see the Laguna and was immediately attacked by a ferocious swarm of mosquitoes. So much so that I could hardly get

²⁰ Item 40, second interview



back into the helicopter fast enough and close the door and swat those that had stuck to me! Though it was not a very agreeable place, it was a place to which both sides attached importance; the Chileans largely because in an unfortunate encounter between Chile and Argentinean frontier police, a Chilean police officer had been killed.

78. I couldn't locate this place on any of the maps, including a very detailed Times map in the Squire library.

Well, it lies south of Lago San Martin, between San Martin and Mount Fitzroy but it probably wouldn't appear on a map²¹. Eventually we had hearings in Rio de Janeiro and Argentina won that²². That was some disappointment to the Chileans and to me and subsequently there were further proceedings in which I was not involved in which the Chileans sought a decision regarding the extension of that boundary in the glacier area round there. I've not seen a copy of that decision [LD: 1995].

79. 1983. *Coastal States Marketing v Hunt*.

We then went on from Laguna del Desierto to a very interesting experience which was my giving expert evidence in a case in the Federal District Court in the United States in a case called *Valero Energy Corporation and Coastal States Marketing* as plaintiffs against *Nelson Bunker Hunt*²³. This was in the United States District Court for the Southern District of Texas, Houston Division and was in about 1983.

This was a case not dissimilar to the *Rose Mary* case which I mentioned earlier. In this case proceedings had been started by Nelson Bunker Hunt who had an oil concession in Libya which had been expropriated by the Libyans, against Coastal States Marketing which had bought oil from that concession, getting their title from the Libyans. Nelson Bunker Hunt challenged their title. The two defendants in those proceedings then in a sense counterattacked by bringing anti-trust proceedings against Hunt saying that his action was an unacceptable or impermissible restraint of trade. This was the issue in the Texas court. The defence that Hunt put up was that it was a reasonable action on his part and that was denied by the other side. I was asked to give evidence about this concept of pursuit litigation which had been introduced by *Rose Mary* nearly 30 years previously. My evidence was subsequently published in full in a United States publication called the *International Lawyer*, which I think was the periodic publication of the

²¹ See interactive map at:

http://www.emol.com/especiales/infografias/20051005_lagunadeldesierto.htm

²² President - Rafael Navia; Arbitrators - Reynoldo Pohl, Santiago Benadava, Julio Barberis & Pedro Nikken. See Argentine version of original tribunal ruling:

<http://www.mrecic.gov.ar/portal/seree/dilyf/chile/1994sent.swf>

²³ *Coastal States Marketing, Inc. v. Hunt*, 694 F.2d 1358, 1366-67 (5th Cir. 1983)



International Law branch of the American Bar Association and it's published there, some 50 pages of that evidence which is really quite interesting as to the origin of the pursuit concept and so on. And after I'd given my evidence the case was discontinued. The evidence seems to have been persuasive and the case was not, so far as I am aware, pursued further.

80. How interesting that issues that arose over 30 years ago should be revisited.

Well, it was interesting because, as I say, the issue had first been raised in the *Rose Mary* and then it was repeated, as I have mentioned to you, in the Suez Canal situation, and in the Manganese Sinai Mining Company case, and so on.

And it had many ramifications in US courts, where the position which I adopted was not always shared by the US courts. There was a very famous case called *Sabatino*²⁴ which was contrary to the *Rose Mary* approach, but then there was US legislation which seemed to accept it. There was a thing called the Federal Tort Claims Act which also embodied the possibility of suing in respect of foreign wrongs.

81. 1989. *California v United States*, US Supreme Court: expert evidence.

Yes, I've just got one item still under the 1980s and that was my giving of evidence in a very interesting extension of the litigation between the US Federal Government and the governments of the coastal states in the United States²⁵. This one was US against California relating to the determination of their respective interests in the offshore oil deposits and a particular issue was this. The state government of California was entitled to the deposits within the territorial sea of California and the United States Federal Government was entitled to the deposits lying seaward of the territorial sea. Now, in determining the line between the two claims, the question was whether account should be taken of various piers that had been built on the California coast. The Californians said that the piers should be taken into account, thus projecting their territorial sea further out, and the United States government understandably took the opposite view and expert evidence was called in connection in support of both sides.

The California introduced as their expert witness, Judge Philip C Jessup²⁶ who had been the US judge on the International Court and was an outstanding lawyer, a man of great eminence, a very fine person. He'd been amongst other things the US Permanent Representative on the

²⁴ *Banco Nacional de Cuba v. Sabatino*, 376 U.S. 398, 411 (1964).
See item IIB, fnote 37 in -
<http://www.law.duke.edu/shell/cite.pl?11+Duke+J.+Comp.+&+Int'l+L.+427>

²⁵ *California v United States* 490 U.S. 920 (1989): <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=490&invol=920&friend=nytimes>

²⁶ 1897-1986.



Security Council and so on. He was a very outstanding man and he gave his evidence in support of California. I'm very glad he gave his evidence first because I learned a great deal from his technique, which was both exceedingly courteous and very clear. I then gave my evidence.

The evidence was given before a so-called Special Master appointed by the Supreme Court, a former US appellate judge himself, and then he had to reach a decision in his report. He had a marvellous footnote when he adopted my evidence saying that he had had the benefit of hearing the evidence of Judge Jessup before myself. If he accepted the evidence of one in preference to the other he meant no offence or disrespect to the other. So that was an interesting venture into giving expert evidence in the United States.

82. Which brings us to the 1990s, Sir Eli, which was another very important period in your career. In 1995 you retired, Sir Eli, from your directorship of the Lauterpacht Centre. In 1998 you were knighted and you continued your very extensive international commitments. The first item on the list is AOI and I wonder what this acronym stands for?

Well, the acronym AOI stands for the Arab Organisation for Industrialisation. The issue there was a really... well, I was instructed by a very fine Egyptian lawyer, who had in fact been the lawyer who had advised Colonel Nasser at the time of the nationalisation of the Suez Canal.

The question there was a very technical one about the international standing of the AOI²⁷ and there were arbitrations which I was quite actively involved in, on which I was giving advice.

83. US/Canada (Agricultural Tariffs).

I went on from AOI, and in another case I was the presiding arbitrator in a NAFTA case, a case under the North American Free Trading Agreement which is the agreement concluded between the US and Canada²⁸. This was a case about agricultural tariffs in which eventually the tribunal decided in favour of Canada. It was a complex technical case; I won't bother you with the details.

84. 1997. US/Mexico (Metalclad) case.

Then there was another case, also under the same agreement [*LD: NAFTA*] which had been extended to Mexico as well. About the treatment by Mexico of a US enterprise in Mexico – Metalclad – where we gave a decision in favour of the United States on the question of the legality of the treatment by the Mexican State Authorities of this US investment²⁹. That took

²⁷ Related to: High Court 3 August 1994, *Westland Helicopters Ltd. v. Arab Organization for Industrialization*, See - *International Law Reports*, vol. 108, p. 567.

²⁸ NAFTA website: <http://www.nafta-sec-alena.org/DefaultSite/index.html>

²⁹ See: http://www.forumdemocracy.net/disputes/nafta_cases/metalclad_v_mexico.html



quite a bit of time.

85. University work.

We move on from there. I must remind you of course, all along in parallel with all this, I was continuing with my university teaching and with the running of the Research Centre and helping Christopher Greenwood in his mammoth task of editing the *International Law Reports* and so on.

86. I wonder how you managed to fit it all in, Sir Eli?

Well, yes, the answer to that is very simple - I don't think I did anything else. I think I'm a dull boy, the product of all work. I mean International Law was both work and a hobby and also on the side there was Grotius Publications which I mentioned last time. You know, one just kept on at them. I had very good secretarial help and that's how one did it

87. 1995. Nuclear tests revisited: New Zealand v France, ICJ.

About that time we began to consider the question of whether the *Nuclear Tests* case that had been decided between Australia and New Zealand on the one side and France on the other back in the 70s should be reopened. The basis on which that consideration could proceed was an observation by the Court back in 1974 that if there was any change in the circumstances which might lead to atmospheric fallout on the territory of New Zealand or Australia, then the parties might go back to it.

Now throughout that period, although France had ceased atmospheric nuclear testing back in 1974, it had continued with underground nuclear testing at Muruoa Island. There was some concern lest Muruoa Island, subjected as it was to these continuing tests, might disintegrate on the next series of tests and nuclear fallout be projected atmospherically onto the territory of New Zealand and Australia. So New Zealand decided, and Australia came alongside, that it would seek the reopening on the proceedings in the court. This was both legally feasible and politically desirable because both in New Zealand and Australia and elsewhere in the world there was a feeling that the French testing should stop.

So the proceedings were started by New Zealand and I was assisting New Zealand in this³⁰. They were unsuccessful and we couldn't persuade the Court that this risk was sufficiently

and <http://www.abanet.org/environ/committees/intenviron/newsletter/april00/palafox.html> for the details and ramifications.

³⁰ *Request for an Examination of the Situation with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case*

Judgment summary:

<http://www.icj->

[cij.org/docket/index.php?sum=502&code=nzfr&p1=3&p2=3&case=97&k=cd&p3=5](http://www.icj-cij.org/docket/index.php?sum=502&code=nzfr&p1=3&p2=3&case=97&k=cd&p3=5)



real to justify the Court finding against France. Nonetheless, it was politically very advantageous to both New Zealand and Australia as demonstrating their commitment to environmental protection. You have to appreciate that in those days, the 70s and 80s, there was not the same understanding of, or knowledge about, or information to protect the environment that there is today. Of course it's a continuing major issue, so that these episodes at that time were part of the evolving history of international environmental protection.

88. Yes, I was interested to see your involvement in what has become such an important area of International Law today: environmental protection.

Well, yes, and I have had some other involvement in it. Just jumping forward, at one point I appeared for the Irish Government in making submissions to an English local government enquiry regarding developments at the Sellafield nuclear plant up in Cumbria. We put some consideration very strongly to stop the Sellafield people developing underground nuclear storage facilities.

Much later on I was involved in the proceedings that Malaysia brought against Singapore in the International Tribunal on the Law of the Sea regarding measures that Singapore was taking for land reclamation in the absence of any attempt at environmental impact assessment. There Malaysia obtained a measure of success. Not that the land reclamation was stopped, but that it was to be controlled and developed in discussion with Malaysia. So I have had a continuing interest in environmental protection.

89. 1991-2001. Qatar/Bahrain: ICJ.

At about this time too the extended proceedings between Qatar and Bahrain regarding the maritime boundary between them, and whether Bahrain was entitled to certain islands of which the most important was Hawar in the Gulf, were subject to proceedings in the ICJ³¹.

The Qatar-Bahrain case went through various stages which I won't weary you with. It took a long time to procure an agreement between the two sides on the basis of which question could be put to the Court, but this was eventually done and the case proceeded and Bahrain successfully maintained its title to the island of Hawar. The Court, as that was an important element in the construction of the maritime delimitation, then produced a result which was acceptable to Bahrain and to Qatar. The two states which were for so long locked in international litigation now have very friendly fraternal relations.

666, Order 22 Sep. 1995 (*ICJ Reports* 1995, p. 288) (ISBN 92-1-070730-3)

³¹ 820 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judg. 16 Mar. 2001 (*ICJ Reports* 2001, p. 40) (ISBN 92-1-070919-5). Judgment summary: <http://www.icj-cij.org/docket/index.php?sum=443&code=qb&p1=3&p2=3&case=87&k=61&p3=5>



90. I think I remember reading that the decision came under some criticism because it was said to have been steeped in colonialism.

I'm not aware of that criticism. I'm trying to think, as you say, of where there might be an element of colonialism. Of course, to establish the title of the two territories to anything involved going back into the history of the Gulf area, but that involved going back in part into the Ottoman archives. There was a very interesting question which did not have to be decided by the Court as to whether certain documents involved in the case as produced by Qatar had been falsified, but the Court didn't find it necessary to treat that subject. Colonialism no, but colonial history, yes.

91. Rather that it upheld an earlier decision when Bahrain had been a British colony.

Oh yes, that was an element... there was a time, as you say, when Bahrain had not been a British colony but had been a British protected state and an issue had to be decided by Britain as between Bahrain and Qatar regarding certain parts. That issue had been decided in favour of Bahrain and one element in the case was whether that decision should be maintained, and it was.

92. I notice that Sir Derek was involved in this case as well.

That's right. He and I were in this one together.

93. I have a lovely photograph of you, Sir Eli, with Sir Derek with the ruler of Bahrain.

That's right, yes, shaking hands with Sheikh Isa³². The relationship with Bahrain was always very cordial and agreeable and continued for me right through to the end of the proceedings. I got a very nice decoration from Bahrain...

**94. Do you have a photograph of that?
Benefactors for the Lauterpacht Centre.**

I think I probably have somewhere; I'll try and find it for you. But the Bahrainis indicated their appreciation of the ultimate success of the case by making a very significant financial contribution to the acquisition by the Research Centre of the house next door to the one that I spoke of earlier. Our first premises were at number 5 Cranmer Road. Number 7 Cranmer Road, the house next to it, at that time belonged to my own college, Trinity which was using it as a research students hostel. I discussed with the bursars of the College at that time the possibility of the College selling it to the Centre. The College agreed to do this, but the money had to be found and Bahrain produced a very handsome contribution without which we couldn't have

³² 1933-1999. Obituary: <http://www.mideastnews.com/isa.htm>. See photograph of Sheikh Isa with Sir Elihu and Sir Derek Bowett in 1994:
http://images.law.cam.ac.uk/gallery_viewer.php?gallery=2ef653d5dd02413cf39a4f0a3ba53224&image=7634ea65a4e6d9041cfd3f7de18e334a&process=pop



proceeded . Some contributions were found elsewhere.

We got the house, but we then had to put it into habitable shape because various changes needed to be made to satisfy local safety requirements and so on. That couldn't have been done without the benefit of another very substantial grant from the Malaysian Government who appreciated what had been done for them in the case between Malaysia and Singapore.

So we really owe the physical premises of the Research Centre to Bahrain, to Malaysia, to my own college, Trinity, which made substantial contributions, and to a number of private subscribers including myself. So now we have two fine buildings and grounds I think which are the envy of many. The only trouble is that they require maintenance and maintenance costs money and that's the difficult thing to come by these days.

95. Sir Hersch Lauterpacht Memorial Lectures.

I've already mentioned to you the Hersch Lauterpacht Memorial Lectures which was an ongoing series and unfortunately I can't lay my hands at this instant on who all the lecturers were, but they were good people and much appreciated.

96. I think the first one was Shabtai Rosenne?

Yes, Rosenne and Schwebel. Judge Schwebel gave a very interesting series of lectures on aspects of international arbitration, some disputed points and... yes, the first one was Shabtai Rosenne³³ on Breach of Treaty. Then we had lectures from Felice Morgenstern³⁴, who had been a Cambridge scholar and had gone to the ILO³⁵ and spent her whole life in the legal side of the ILO on legal problems of international limitations. This was followed by John Dugard³⁶ on Recognition and the United Nations. Then came Judge Schwebel on International Arbitration: Three Salient Problems. Then came Professor Meron³⁷, now the President of the ICTY³⁸ (the

³³ b. 1917. Former Ambassador for Israel at UN, Member UN International Law Commission (1962-71), UN Commission for Human Rights (1968-70), Hague Prize for International Law 2004.

³⁴ 1926-2000. Newnham College, Assistant Legal Adviser ILO

³⁵ <http://www.ilo.org/global/lang--en/index.htm>

³⁶ Born Fort Beaufort 1936, Prof. Law at University of Witwatersrand 1978-90, Director of Lauterpacht Centre 1995-97, Prof. Public International Law University of Leiden 1998-, ad hoc judge ICJ 1999, Democratic Republic of Congo v Burundi, v Uganda, v Rwanda.

³⁷ Theodor Meron, New York University Law School. See: <http://www.nyu.edu/nyutoday/archives/16/07/Stories/Meron.html>



International Criminal Tribunal for Yugoslavia), who spoke about Human Rights in Internal Strife. Then came Professor Seidl-Hohenveldern from Vienna³⁹ on Corporations In and Under International Law, then Sir Ian Sinclair⁴⁰ on the International Law Commission and then Professor Schreuer⁴¹ on State Immunity and then myself on Aspects of the Administration of International Justice . This is only listing the first nine lectures, and the series has continued with other eminent contributors.

97. 1993. Bosnia v Yugoslavia. Ad hoc judge on ICJ

That was all going on on the side and at about that time, roughly 1993, I was selected to be the ad hoc judge in the case brought by Bosnia against Yugoslavia arising out of the break-up of Yugoslavia and the consequent troubles and allegations of genocide in Bosnia. This was a very enlightening experience for me.

Of course an ad hoc judge is always assumed to support the side which appoints him. I found that a very difficult concept to accept. So in the course of the judgment by the Court on the first stage of that case, I produced a separate opinion in which I expounded what I understood to be the role of the ad hoc judge. This was not that of simply supporting the case of the side that appointed him, but was rather to approach the case just like any other judge⁴², but nonetheless to

³⁸ See:

<http://query.nytimes.com/gst/fullpage.html?res=9A00E3D61E38F93BA25752C1A9659C8B63>

³⁹ 1918-2001, Ignaz Seidl- Hohenveldern, Dept of European International and Comparative Law, Vienna

⁴⁰ b. 1927, Blackstone Chambers,
http://www.blackstonechambers.com/PDFCVs%5CBlackstone_SIS.pdf

⁴¹ See item 70, this interview

⁴² *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*

1993 April, Order Indicating Provisional Measure

1993 September, Order on Provisional Measures* 640 Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Provisional Measures, Order 13 Sep. 1993 (*ICJ Reports* 1993, p. 325, p. 416-442) (ISBN 92-1-070699-4)

1996 July, Judgment on Preliminary Objections* 680 Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judg. 11 July 1996 (*ICJ Reports* 1996, p. 595) (ISBN 92-1-070744-3)

681 Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Order 23 July 1996 (*ICJ Reports* 1996, p. 797)(ISBN 92-1-070745-1)



ensure that the case of the side that appointed him was properly considered in all its detail by the court and was not just glossed over.

This approach has been supported by a number of ad hoc judges in subsequent cases. I continued as the ad hoc judge in that case for about three or four years until by reason of the changes in the structure of Yugoslavia, the original case came to an end and the new case was started. Bosnia then appointed another ad hoc judge, a Bosnian Professor of International Law.

98. So you had been appointed by Bosnia initially?

Yes at the very beginning in 1990... well, the first decision was in 1993 and I must have been appointed a year or two before that. Oh dear, it goes on and on.

99. 1996. Hague Academy Lectures.

At about this time in the story, the period prior to and during 1996, I was preparing lectures for The Hague Academy of International Law which I delivered in 1996 on Principles of International Litigation. I have been rather naughty because I haven't actually submitted to The Hague Academy of International Law the text of those lectures yet, and so much has happened in the international litigation field in the ensuing decade that I have virtually to start from scratch. A task not easily undertaken, but made the easier because I have the admirable assistance of Dr Chester Brown⁴³, now of the Foreign and Commonwealth Office, who is helping me a great deal in the revision of those lectures. It is our hope to submit something to The Hague Academy before too long. Now do you want me to go on now...?

If you would... if you feel...

I would quite like to break off...

Next time we can look at...

We're going to start at the memory of Botswana.

Interesting and we can talk about your knighthood. I'd very much like to know the circumstances and any anecdotes you have of the occasion next time.

If you're asking why did I get my knighthood, I can't answer that. I don't know why,

2007 February, Summary of the Judgment: <http://www.icj-cij.org/docket/index.php?sum=667&code=bhy&p1=3&p2=3&case=91&k=f4&p3=5>

* = Sir Elihu was *ad hoc* judge.

Dissenting judgment: 1996 <http://www.icj-cij.org/docket/files/91/7357.pdf>

⁴³ Assistant Legal Adviser (Transnational Dispute Management) at the Foreign and Commonwealth Office, formerly a Senior Associate in the International Law and International Arbitration Group at Clifford Chance LLP, London. University of Melbourne, University of Oxford and PhD University of Cambridge: "A Common Law of International Adjudication".



except that the official statement was for services to public international law.

Right, Sir Eli, let us just break for now and all that remains is to thank you very much for yet another absolutely fascinating account and...

And I'm very happy to go on when... on our next appointment.

Thank you.

