

Conversations with Professor Sir Elihu Lauterpacht
Second Interview: USA (1940-44) and career to 1962

Date: 7th 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.

16. Sir Eli, in the first interview we covered your early life and your memories of your parents. This takes us up to the early years of the war, and we come now to your time in the United States from 1940 to 1944. Your father went there as a Carnegie Visiting Professor and took your mother and yourself with him. Do you recall the journey by sea?

Well, let me just go back a few months in that narrative and recall that, in fact, my father was invited by the Carnegie Endowment to go to the United States to give a number of lectures at a series of universities, mainly in the east and middle west of the United States. And this he did not wish to do without the approval and indeed the encouragement of the British Foreign Office. They were very keen that he should do it because they wanted some antidote to the isolationism that was prevailing in quite a number of universities in the United States. They encouraged him to go and at the same time, arrangements were made, with the help of a committee at Yale, for the reception of children of academics from England who were evacuated to the United States.

So, I went with my father, and my mother came with us. This was in October 1940. We left Cambridge in October 1940 and took a train to Liverpool. There we got on board a ship called the Scythia and we set sail to the United States, not in very enticing circumstances because the sister ship of the Scythia had been torpedoed the night before and we were not told about it, so that we couldn't get off even if we had wanted to.

We had an interesting journey across the ocean. My father, most unusually for him, kept a kind of diary, not really a proper narrative of the voyage but just a few jottings of things that struck him as memorable or amusing, and I have the text of that and will, in due course, be including it in the biography of my father that I am meant to be writing at the present time, but seem never to get round to, but it's all there.



We arrived in the United States after, I think, a ten-day voyage. We were met in New York by a friend of my father, Professor Phillips Bradley, who had been at the London School of Economics and knew my father from there, and we were given hospitality in Bradley's house. I was immediately placed in a school in New York called Horace Mann, a very well known and high quality private school in the northern part of the Bronx¹. Initially, I was a boarder until eventually, my mother found a flat not too far from the school, so I could walk to the school each day. In the meantime, my father, within days of our arrival in the United States, had started off on his remarkable tour that took him right down via various universities on the Eastern Seaboard as far as New Orleans and then up through the middle west, back to places like Ann Arbor and Chicago, and eventually back to New York.

Now, what he did was to produce a very interesting report to the Foreign Office on his journey and the lectures he gave, which is I think reproduced in Volume IV of the Collected Papers, which I edited some years ago and I will come back to again in the biography. But it was a very demanding task and he did a very good job of work. He was then asked to assist the Attorney General of the United States, who was then Robert H. Jackson, subsequently a Supreme Court Judge and also later to become the principal United States Prosecutor in the Nuremberg Trials². He was asked by Jackson to assist him in the preparation of arguments justifying the United States Lend Lease Program and all aid to the allies short of war. This he did and it is all documented; Jackson, in due course, gave a major speech to the American Bar Association incorporating much of the draft that my father had produced for him. This was obviously a source of satisfaction to the Foreign Office, who were obviously concerned about these matters.

My father then returned to England in, I think it must have been about, January or February 1941. He became very restive and discontented with sitting around doing nothing in the United States for lack of trans-Atlantic transport, so he came back, leaving my mother and myself in the United States. I remained at Horace Mann until December 1941, at which point I was then moved from New York up to Phillips Academy, Andover in Massachusetts³ and this was a great move for me. Andover was a particularly good school and is now still one of the leaders of the American private school system with considerable resources and buildings and all of the things that a good school likes to have; gyms and swimming pools and so on. There I had a very good, intense education in the years '42, '43 and the first half of '44, until I graduated in June '44. In the meantime, my mother had returned to England, which was quite a hazardous journey for her because the seas were by no means safe, but she got back to England safely and rejoined my father. I was in the States on my own, where I enjoyed and had the benefit of the

¹ School website: <http://www.horacemann.org/home/content.asp?id=299>

² 1892-1954.

³ School website: <http://www.andover.edu/>



quasi-guardianship of a lady professor at Wellesley College⁴, one of the principle women's colleges in the United States, called Louise Overacker.

She was a professor of political science and particularly to be remembered at the present moment, this being the 7th January 2008, because her principle work was on American presidential primary elections⁵, and she was very good to me. She used to invite me down to Boston to go to concerts of the Boston Symphony Orchestra and then she looked after me during vacations and so on. I was greatly indebted to her and I look back on my relationship with her with much affection. So, I stayed at Andover until June 1944, when I graduated and was fortunate enough to be able to get a crossing back to England very soon afterwards.

17. 1944. Back in England: Harrow.

So I arrived back in Cambridge in, it must have been, late June/early July 1944. Of course, the war was still on; the invasion of Europe had started only a week previously. When I got back to England my father was greatly disturbed by the awful American accent that I had acquired, which was not a genteel New England accent, but much of the worst of Brooklyn and the Bronx combined in it. So I was just shut up in my room each day and told to listen to the wireless, which I did and eventually was allowed to emerge and speak. So then, that being the summer of '44, it was arranged that I would go to Harrow for two years - that was the original intention - the assumption being that having been at school in America I was insufficiently educated to cope with the situation in England.

So, to Harrow I went in September 1944 and was put into what they call the History Fifth, this is the second class from the top. But fortunately, at just that time, arrived the new head of history at Harrow who was a friend of our neighbour in Cranmer Road, Cambridge, who was a professor here. This new history master at Harrow asked me to go and have a cup of tea with him and we had a good chat and he said "would you like to come up into the History Sixth?", which I said I certainly would. He took a great interest in me and helped me a lot and so encouraged me, instead of aiming to spend two years at Harrow, to spend only one, and the idea was that I would take a Trinity trial scholarship exam in March of '45. I was fortunate enough to be successful and I got a so-called minor scholarship at Trinity, which was quite good enough for my purposes. So I left Harrow at the end of the summer term of 1945 and came up to Trinity, as an entrance scholar in October 1945.

18. 1945. Trinity College.

That was, as you will realise, just after the end of the war in Europe. So the process of demobilisation had already begun and Trinity had a large proportion of its undergraduate intake

⁴ Women's liberal arts college in Wellesley, Massachusetts.
See: <http://www.wellesley.edu/>

⁵ 1926, *The Presidential Primary*, Macmillan, New York.



consisting of ex-servicemen, men who had fought (some of them several years) in the war and were battle scarred and were quite mature people. They were extraordinarily kind to me and instead of being impatient or short with a 17-year-old, which is what I was then, they helped me and sought from me help because they, themselves, had lost contact with academic exercise. So we became good friends, many of us.

I began, therefore, in October '45 to read History at Trinity and I read History for two years. I succeeded in getting a 1st in my first year but in my second year I did not get a 1st, I got a 2:1 and this was regarded by my father as an almost unforgivable lapse in standards. But I simply didn't take to some of the subjects I was meant to be learning. For example, one of my principal subjects was Mediaeval history and it meant nothing to me at all, I just wasn't interested and even today I couldn't tell you what was the period of the Dark Ages or quite who Charlemagne was or things like that. So, anyway, I read history for two years and at the end of my second year, on the advice of my director of studies, who was a great fellow called Kitson Clark⁶, I moved to law. He said I would be better off as a lawyer and, as it turns out, he was right.

So in 1946, October, I began reading law. I read what is called a Law Qualifying II exam and then I followed that with another year of Law Tripos Part II, consisting of so the ordinary English law subjects, including international and constitutional law. After I had finished Law Tripos, my father urged me to stay on and read for the LLB, now called the LLM, specialising in international law, so-called Section D of the LLB. Being a dutiful son and one who I think had enough sense to follow good parental advice, in that matter at any rate, I stayed for the extra year. But I began to chafe a little bit in the course of that year and I remember very well walking back with my father from a lecture one day because it was his practice to lecture on Tuesdays and Thursdays from 12 until 1, and it was my habit to accompany him on his walk home from the then Squire Law Library, to Cranmer Road to have lunch with my parents. I said to him I was getting fed up. I recalled the lines of Bernard Shaw who said that "those who can, do and those who can't, teach." And my father, and I have never forgotten this, said to me "Yes, maybe; but it's a good life." And now that I have spent more than 50 years in Cambridge, I realise what a good life it is and in my case, could have been, if I had stuck to teaching. But my interests ranged more widely than that, as I will tell you presently.

19. 1950. The Bar, in Chambers, the Foreign Office and the London School of Economics.

That took me through to 1950, 1949/1950 was the year of my LLB., So then in June 1950 I finished the LLB here and won a Whewell Scholarship was ready to step out into the wide world. In the meantime, I had also been taking the bar exams. I had become of member of Gray's Inn and I was taking the Bar exams with a view to doing my finals and being called to the Bar. Well I took my Bar exams. In those days nobody attached much importance to the result you got and I passed with a 3rd, except in one subject, which I failed, which I think was Equity and so I had to retake that. In due course I was called to the Bar. I became a pupil in Chambers in

⁶ 1900-75. George Sidney Roberts Kitson Clark.



London at 3 Essex Court, which was a leading set of Commercial Chambers and my pupil master was John Megaw, who was a brilliant lawyer. He had a first class mind, of Northern Ireland extraction and a rugged international, a very demanding and a very highly principled man, who eventually went on to the High Court Bench and then to the Court of Appeal. He should really have been promoted to the House of Lords but I think that his temper was a little bit short and irascible and that did not make him popular, so he didn't get to the House of Lords. But I always remember him as a great teacher to me and very exacting in his standards. He required good work and I tried to satisfy him.

So there I was in Chambers in October 1950. But I have to go back a few months, because in the course of that summer of 1950 I had become a joint secretary of a government committee established by the Cabinet Office and the Foreign Office for the purposes of looking into the law of State Immunity. This was the so-called Somervell Committee, which consisted of Lord Justice Somervell and a number of high civil servants plus some academics, which included Professor Hamson⁷, who was the then Professor of Comparative Law in this university and my father. So, I became joint secretary of that committee and the other secretary was a civil servant, a very nice chap called Geoffrey Penn and together, we administered and did whatever was necessary. I spent my summer in the Foreign Office doing research on diplomatic immunity. By the time I had finished, I had produced a quite substantial memorandum in which I had analysed and presented a lot of the material in the Foreign Office archives on various questions of diplomatic immunity.

So then in October 1950 I went into Chambers with John Megaw. I was living in a house in Albany Street with several ex-Cambridge people. We had a very agreeable bachelor existence there. I used to walk down from the top to Albany Street to the Temple most mornings and I would get into Chambers. In those days it was appropriate to wear striped trousers and black jacket and a bowler hat and carry a furled umbrella, all of which I dutifully did.

So there I was in Chambers as a pupil, now we are at 1950. I spent my time in Chambers working on Commercial Law, Insurance, Shipping Law, Banking, Bankers' Commercial Credits, all of those kind of things. In order to eke out my existence, because funds were not very ample, I did two kinds of lecturing. I lectured in one of the City Colleges on exceptions, in Charter Parties and Bills of Lading, a subject of which I knew absolutely nothing before my lectures and little enough after, and I was only about five minutes ahead of my class. So I did that and also, more comfortably, I was lecturing in the evenings at the London School of Economics in International Law. At that time the Law Faculty at LSE was run by two very fine men; one was Sir David Hughes Parry and the other was Professor Jim Gower. They were very, very supportive and encouraging and I enjoyed my teaching there in the evenings. Ultimately, this led them in early 1953 to offer me a post, a full-time teaching post at LSE and indicated very strongly that if I took it, I would probably get a Chair within five years, which would have been a

⁷ 1905-1987



splendid thing to have happened.

20. 1953. Trinity College & a Lectureship.

At the same time, however, I received an offer from Trinity College, Cambridge because in addition to the teaching on Bills of Lading at the City College or whatever it was called and the evening teaching at LSE, I was coming up to Cambridge at weekends to supervise in Trinity. So I would leave London on a Friday afternoon, reach Cambridge in time to do two or three hours of supervision before 8 o'clock hall on Friday. Then I would go into hall and may be do another hour after and on Saturday morning, would do another two or three, so it was really quite a demanding schedule. To that was added the possibility, or the opportunity I should say, of giving some lectures in the Faculty because at that time the Faculty had as professor, my father, and there was Robbie Jennings⁸ and Clive Parry⁹, but there wasn't anybody younger than them doing any work. So I was given the opportunity of lecturing on the Law of International Organisations and the Law of War, and was doing that also.

Well, as I say, Trinity in, it must have been early 1953, offered me a Fellowship and a College Lectureship, which I have to distinguish from a University Lectureship. A College Lectureship involved my supervising in college ultimately twelve hours a week, and I was sorely torn. I did not know which to take, London or Cambridge. But eventually I chose Cambridge. As I look back, I think the factors that most influenced me were, that the Cambridge academic year was significantly shorter than the LSE year. The LSE had 30 teaching weeks and Cambridge had not even 24 - it had 24 weeks over three terms but effectively only 20 teaching weeks. So that was the most favourable aspect of Cambridge. Also the quality of life in Cambridge was more agreeable - I was given a nice set of rooms in college, and so I chose Cambridge. Often I have looked back and asked myself, did I make the right decision? Because in terms of the impact that I might have made on international law, I think that if I had been in London and had got a Chair at a relatively early age, I would have been able to influence developments in international law activity and teaching in England more than I was able to. Nevertheless, as I say, there is no good in going back over things like that.

So that brings us to 1953 and I came up to Trinity and had a very nice set of rooms in New Court of Trinity, looking out on that big chestnut tree in the middle of the court. Of course, at about that time, I was courting the lady who eventually became my wife¹⁰ and we got married

⁸ 1913-2004. Professor Sir Robert Yewdall Jennings. Whewell Professor 1955-81, Member Permanent Court of Arbitration, Judge (1982-95) & President 1991-94) of ICJ. See also item 146, interview 6.

⁹ 1917-82. Professor of International Law, Cambridge 1969-82. 1944-45 lectured in Public Law University of Ankara. German and Turkish speaker.

¹⁰ Judith (née Hettinger) (d. 1970)



in July 1955, two years after I came up to Trinity. She was in London studying law at the London School of Economics. But then I spent the second half of '53 at Trinity. Now, even before I had left London, left Chambers (and I have never actually left Chambers in the sense of ceasing to be a tenant there, because I had become one in the previous year), even before I had moved to Cambridge, I was already getting work of an international law nature - opinions and so on. Most of the work then came from a well known firm of solicitors, Linklaters & Paines, who were the solicitors of the Anglo-Iranian Oil Company (later to become BP). So I was doing opinions for them at the same time as I was teaching in Cambridge.

21. 1954. Anglo-Iranian Oil Co. nationalisation and the International Law Fund.

Then we move into 1954 and I am continuing the work in London and going up to London very often during the week and coming back within the day. In 1954 there began the intensive preparations that led up to the resolution of the Iranian oil nationalisation - this had happened in 1950 when Mussadegh had been Prime Minister¹¹. In the winter of 1953, BP or Anglo-Iranian as it then was, asked me to analyse and assess the possible Iranian counterclaims, which had been identified by the BBC World Service from Iranian radio broadcasts. I remember spending three very hardworking weeks in December 1953 analysing the situation and discovering that, even at that time, Iran could counterclaim against BP for a quite considerable sum, but nothing of course compared to what Iran owed BP arising out of the nationalisation.

So by the beginning of 1954 I was well in with Anglo-Iranian and I was constantly being asked for advice. Their principal outside lawyer was Sir Hartley Shawcross¹², who had been Attorney General in the Labour Government and by then had returned to private practice, so he and I worked together quite closely. Eventually, in the course of 1954, it must have been July/August 1954, I was included in the team of lawyers that were sent out to Iran to help in the negotiation of the so-called Consortium Agreement, which was the agreement that brought the nationalisation to an end. So I went out to Iran in the summer of 1954 as part of this team; we were 14 lawyers representing eight oil companies. There were the five American majors, the Standard of New Jersey, the Standard of New York (Socony) and Standard of California (Socal), plus Gulf and one other American major, Texas, the Texas Oil Company. There were five American companies, each of them had a lawyer there, and there were the three European Companies: Anglo-Iranian, CFP (Compagnie Française des Pétroles) and Shell, who were also involved. But, of course, Anglo-Iranian was, in a sense, the one that was most interested. But having regard to the circumstances which had given rise to the opening of negotiations, namely American influence in Iran, the lead lawyer in our team was a man called Tom Monaghan, who was the general Counsel of Standard of New Jersey. He was a very able and very nice man who most sadly died not very long afterwards. But it was he who prepared the basic outline of the

¹¹ Mohammed Mussadegh (1882-1967), Prime Minister of Iran 1951-53.

¹² 1902-2003. Sir Hartley William Shawcross, leading British prosecutor at Nuremberg War Crimes Tribunal.



Consortium Agreement. And so each of us 14 lawyers round the table, worked in the garden of a lovely house in Tajrish in Tehran, and we drafted the Consortium Agreement.

Each of us was responsible for certain articles and I was given the articles which related to Proper Law, Non-interference by the host state and Dispute Settlement. These were very interesting articles and I am very glad to observe that over time those articles, particularly the one on Dispute Settlement, have been adopted very widely in the oil industry in its relations with host countries. So, the summer of 1954 was taken up largely with the Iranian settlement. There, I met a number of what we call principals, that is to say not lawyers but the directors and executives, of the companies and they were all very charming. The whole exercise was great fun and for me, I was then 26 years old, a great eye-opener - I learned a lot.

In the summer of 1954 I met these oil company executives and I then formed the idea that it would be very nice if we could establish an institution that could collect some money and distribute it in the development of and research in international law. And so I was able to set up the International Law Fund with contributions from Shell, Anglo-Iranian and a few other companies. It was very generous of them to help us out. Unfortunately, they couldn't keep up their contributions and I didn't have the standing or, indeed, the energy at the time, to go on pressing them and others for further funds. So, the International Law Fund, although it still exists and still has a certain amount of money, which we the trustees, the present trustees, would much like to see used for good causes, it hasn't actually grown very significantly. The initial trustees were Sir Hartley Shawcross, Lord McNair, and Sir Gerald Fitzmaurice¹³, who was then the legal adviser of the Foreign Office. So that was one of the side growths of the summer of 1954.

22. You mentioned in your list that you kindly gave me, that you encountered during this period Stephen Schwebel¹⁴ and Nagendra Singh¹⁵?

Now, I passed, perhaps too rapidly, over the academic side of things, and I told you earlier I had been supervising in College, which was quite demanding. In those first years, I had to supervise in something called English Legal System, which I found incredibly boring. It was mainly ancient legal history and didn't really suit me at all. But then I was left with Constitutional Law and International Law, two subjects which went very well together, and I enjoyed them. Of course, in those days Constitutional Law was very different from what it is

¹³ Judge of ICJ 1960-73, President 1967 & 1970. President of the Beagle Channel Arbitration tribunal 1971.

¹⁴ b. 1929-, New York. Cambridge (1951) & Yale (1954), US Supreme Court 1965, UN International Law Commission 1977-80, Judge (1981- 97) & President (1997-2000) of ICJ. See also item 176, interview 6.

¹⁵ 1914-1988. See also item 175, interview 6.

now. Then the remedies against the Crown were identified as being prohibition, *mandamus*, *certiorari*, *habeas corpus*. Today, you have Administrative Law, a whole new area of law judicially developed, which is most exciting, but then we had to work our way through the so-called prerogative writs. Then I had some associations outside my strict academic teaching. In 1950 there had arrived in Cambridge Stephen Schwebel, who was a graduate of Harvard University. He had not yet been to law school, but had an interest in International Law and had, indeed, already written a book on the Secretary General of the United Nations, which was quite a remarkable achievement for a man who was then only about 23 years old. So I began my friendship with him then, which I am glad to say, has subsisted to the present day and we have been very close friends ever since. He has, of course, progressed mightily, having eventually become President of the International Court of Justice.

Now, another person with whom I had some close connection at that time was an Indian gentleman called Nagendra Singh. He was the son of the Maharajah of a small princely state called Dungarpur¹⁶. But, unusually for younger sons, he had gone into the Indian civil service. He had been at Cambridge before the war and he had decided he wanted to learn International Law. He had come back to England for a year to the Imperial Defence College and got in touch with my father to ask whether he could recommend somebody who could help him find his way around International Law as he taught himself the subject. My father recommended me because I was in London, and Nagendra Singh and I began a very, very pleasant relationship. We met once a week for dinner and he would give me dinner and I would talk International Law with him. From that there sprouted a friendship that lasted until Nagendra Singh's untimely and premature death, when he was actually President of the International Court of Justice¹⁷. So, those were two associations that went back to the earliest days of my involvement in international law.

23. 1954. The *Rose Mary* Case¹⁸.

Now we can come back to 1954 and one thing that happened in 1954, which was very interesting, was the *Rose Mary* case. When Anglo-Iranian was nationalised in 1950, it began a series of measures aimed at inhibiting the sale of oil from the area of what had been the Anglo-Iranian concession. The company just obviously didn't want to let the Iranians get away with it. So they issued warning notices in the press of the world saying that if anybody buys oil from Iran, we will sue them because we consider that it is our oil, since it has been unlawfully taken

¹⁶ See official state website: <http://dungarpur.nic.in/>

¹⁷ Joined ICJ 1973, President 1985-88.

¹⁸ *Anglo-Iranian Oil Co. Ltd v Jaffrate and others*, Supreme Court of the Colony of Aden, Jan 6th 1953, (1953) 1 Weekly Law Reports 246 *The Times*, Jan 10th 1953. See. Braybrooke "The Persian Oil Dispute - the *Rose Mary* case", 29, *New Zealand Law Journal* (1953), 59, 78, 92. Digested in 47 *American Journal of International Law*, (1953), 325.

from us by an act of nationalisation without compensation.

I was involved, when I was in Chambers with John Megaw, in quite a lot of that activity. And then lo and behold, sometime in 1953, I think it must have been, there was a little tanker called the *Rose Mary*, which left Iran with a cargo of oil and broke down not very far from Aden. It was taken into Aden with the aid of a tug and, because Aden was at that time a British Colony, proceedings were begun immediately by Anglo-Iranian against the vessel and its owners for recovery of the oil. John Megaw was flown out to Aden and conducted proceedings before the Judge there. The short argument being that this cargo of oil belongs to Anglo-Iranian because it has come from an area within the Anglo-Iranian concession and Anglo-Iranian owned that oil there and there has been no valid transfer of title because of the violation of international law.

This set of instructions from London solicitors came into Chambers and John Megaw said, “I don’t know anything about this sort of matter”, and I said “well I think I can help you here”. So I took the papers away that weekend and worked on it and produced a note for him by the following Monday. Then he went off to Aden and there he succeeded in getting a decision in favour of Anglo-Iranian.

Then there was an appeal lodged. In those days appeals were relayed from the Courts of Aden to the East African Court of Appeal in Nairobi. That appeal came on for hearing in Nairobi in December 1954, and I was part of a small team that went out to participate in it. The leader was Sir Hartley Shawcross, John Megaw was with him and I was the second junior. We were accompanied by the Instructing Solicitor, John Gauntlett from Linklaters & Paines, and the company secretary of Anglo-Iranian. All very agreeable people. We turned up in Nairobi before the hearing and the appellants, the owners and charters of the vessel, didn’t turn up at all. So the case was immediately dismissed for want of prosecution and we all had a great party in the New Stanley Hotel¹⁹ that night and then we came home. And one of our party, let him be nameless, but it wasn’t me, was taken off the plane in London suffering, as he claimed, from nervous exhaustion brought on no doubt by over consumption of alcohol. But we had a very happy party and the *Rose Mary* became a very famous case and was the subject of much academic and professional comment. It played a role in the development of a large case law in the United States and, to some extent in the United Kingdom, on the effect in domestic law of foreign actions violating International Law.

[LD: see also item 37, Interview 3, for further details].

24. 1954. Shell Oil stocks.

So that was the *Rose Mary* in 1954 and we move on then to the next significant matter in which I was involved. When I came back from Tehran in 1954, having concluded the Consortium Agreement, there were many meetings between the oil companies in London to

¹⁹ Website: http://www.e-gnu.com/stanley_hotel_kenya.html

work out exactly how their relationship was to be maintained and I would go to those meetings together with the Silk who was leading me, a very, very fine man called Milner Holland to represent Anglo-Iranian, which had by then changed its name to British Petroleum – BP. And there, at those meetings, on behalf of Shell, there was a very fine lawyer called Sir Valentine Holmes²⁰, an exceedingly able advocate, not a person of exactly charismatic character, but a man who made a great impression on the courts by his ability as a lawyer and his modesty in the way in which he presented things. Val Holmes was there for Shell and he seemed to like the way I was doing things, so Shell asked BP whether BP would have any objection to my assisting Shell on another matter.

So I was briefed to go out to Singapore in a case in which Shell was seeking to recover from the Crown quantities of oil and petroleum stocks that had been found by the Crown upon the liberation of Singapore; these being stocks that had been taken from the concession areas in the Dutch East Indies belonging to Shell and its Dutch associate, BPM. So I went out to Singapore to assist the local lawyer, who was an Englishman, a senior partner in a major firm in Singapore, called Drew & Napier. We fought the case in the first instance but unfortunately, we lost it and the decision was taken that we should appeal. The advice I had to give was that I thought that it would be necessary for Sir Hartley Shawcross to go out and do the appeal. This he did, we had a very enjoyable time out there together and he succeeded; and interestingly enough, the Crown did not prosecute an appeal from the Court of Appeal in Singapore to the Privy Council, as it was entitled to do. In other words, the Crown was indicating that it might not win in the Privy Council and it didn't want to fail on that issue, which was the issue of whether the Japanese had acquired a title to the oil stocks such as to classify them as booty of war, which the captor, i.e. the UK, could seize and hold. We established that it was not booty of war.

25. British Practice in International Law (BPIL).

That was the Singapore oil stocks case in 1954 and then at the same time, I have to recall, I was pursuing an academic career. And so about that time, I developed the idea that it would be useful to have a survey of contemporary British practice in the field of international law. I began a series, which was initially called the Contemporary Practice of the United Kingdom in the Field of International Law, which is a rather heavy title that was subsequently abbreviated to BPIL – British Practice in International Law. I started that. The first issue I think came out as a supplement to or as an article in the *International and Comparative Law Quarterly*.

26. Has it been continued, Sir Eli?

No. I am going to go on to tell you about that. So I began BPIL, which really involved me in surveying all official UK activity in the field of international law, namely, proceedings in parliament, judicial decisions, treaties and so on, and presenting them in classified form. And I did this for some years and eventually in the later years, as I got busier and busier, I had the

²⁰ 1888-1956. Famous for his libel cases in the 1940s & 50s

assistance of a Gillian White²¹, who had recently got a PhD at London for her book on nationalisation in international law. Gillian was an immense help and between us we continued it. Then we began to fall behind, or I began to fall behind, so much so that to my surprise the British Institute took it upon itself to take the matter out of my hands. And although they had the copy for the 1968 issue, they never published it. Eventually, the whole idea was transferred into the British Yearbook of International Law, where it currently appears as what we call UKMIL – United Kingdom Materials on International Law. But that very useful annual compilation in the British Yearbook has its roots in British Practice in International Law in the *International and Comparative Law Quarterly*.

27. 1958. British Institute of International and Comparative Law.

Now, one thing I haven't mentioned is that, of course, in about 1959 (I am afraid I am dealing with it a little bit out of order chronologically) - still, in about 1958, steps were being taken to establish the British Institute of International and Comparative Law²². The prime movers were Lord Denning²³ and Lord Diplock²⁴ and I think, Lord Wilberforce²⁵. They were generous enough to ask me if I might be interested in becoming Director and we had a meeting in which I suggested that if the British Institute was to carry academic weight, it really needed to be associated with a university; the director should be a professor in the university; and that way it would have some academic standing.

Now, this approach did not commend itself to them and they eventually chose a very fine man, Norman Marsh²⁶ to be the first director of the Institute. His inclinations were more attuned to their ideas of the Institute being a place where all sorts of people could meet and that it was aimed less at academic production in those days than at conveying to the profession developments in international and comparative law and giving professionals an opportunity to

²¹ See item 65, third interview

²² Website: <http://www.biiicl.org/about/>

²³ 1899-1999. Alfred Thompson Denning, Master of the Rolls (1962-82), judge (1944-82).

²⁴ 1907-1985. William John Kenneth Diplock. Chaired commission to consider legal measures against terrorism in Northern Ireland, leading to juryless Diplock courts.

²⁵ 1907-2003. Richard Orme Willberforce. Grew up in India.

²⁶ Norman Marsh CBE QC, Member of the Law Commission for England and Wales, 1965-78; formerly Director of the British Institute of International and Comparative Law, Secretary-General of the International Commission of Jurists, Fellow of the University College, Oxford.

discuss them. So the British Institute came into existence and with it the *International and Comparative Law Quarterly*, the publication within which I initially produced BPIL.

28. 1951-55. The Nottebohm Case.

Now, I have also got myself quite of order chronologically because by emphasising the Anglo-Iranian oil negotiations with Iran, which began, as I say, in '53 and went on in '54, I have omitted to mention the *Nottebohm* case in the International Court of Justice.

This was a case between Liechtenstein and Guatemala arising out of the seizure of the assets of Mr Nottebohm, a Liechtenstein national. The solicitor who was running the case was a very capable man called Lowenfeld. Lowenfeld was a solicitor in Cambridge, who had come from Germany before the war. He was close to the Liechtenstein Government and so was able to develop the case for them. Initially, they had used my father for advice and guidance, but my father was elected to the International Court of Justice in November of 1954 and therefore he could not continue with the case. In any event they needed a junior to do the drafting and so I was instructed to prepare the memorial, which was the first pleading in the case before the ICJ. There was an objection to the jurisdiction of the Court raised by Guatemala and the Counsel for Liechtenstein was Guggenheim²⁷, a professor from Geneva. Again, a very able man, and I wasn't actually formally instructed to participate in that hearing, though I was there. We won on jurisdiction and then we went on to the merits. The difficulty there was that this coincided with the very heavy workload that I was doing, a) in teaching in Cambridge; and b) in working on the Anglo-Iranian matters. So I wasn't able to meet the deadlines and Lowenfeld transferred the work to Dr Lipstein²⁸ and that is how he came into the matter. So that was Nottebohm back in 1953 or '54.

29. Lectureship at Cambridge and Hague Academy (Law of Treaties, Law of the Sea).

On the academic side at about that time, I had been made an assistant lecturer in Cambridge²⁹ and so I had a post in the University. There, I was lecturing on law of international institutions and the law of war and dispute settlement. I gave two lectures in each course every week during the academic year, which was quite demanding because I had to prepare them from scratch. My normal practice at that time was to get up at 5 o'clock every morning and work without interruption until 9 o'clock, preparing the lecture. Then I was able to give it at 10 o'clock before I had forgotten everything I had learned in the previous four hours. I was also asked in 1959 to become Director of Studies of the Research Centre of The Hague Academy of International Law.

²⁷ See item 156, interview 6.

²⁸ 1909-2007. Professor of Comparative Law at Cambridge. See his entry in the Eminent Scholars Archive on this site.

²⁹ In 1953, Lecturer in 1958.

As you know, The Hague Academy runs courses of lectures each year, but in addition, it began, at that time, to have a supplementary activity in the form of a research center where there was a director of studies and a group of qualified, mostly post-graduate, or indeed all post-graduate, students working together on a subject nominated by the Academy. It was in two divisions, an English-speaking and a French-speaking division. I was asked to direct the English-speaking division in the year 1959, when we dealt with the Law of Treaties. Then that was continued in the year 1960 for the Law of the Sea. That was a time when I began my friendship with a number of people with whom I have maintained contact ever since, particularly Krzysztof Skubiszewski³⁰, from Poland, who subsequently became Foreign Minister of Poland and has for last number of years been the President of the Iran-US Claims Tribunal.

What I did that in those two years was the most satisfying teaching I was then doing, because one of the interesting aspects of it was that people who had never really been involved or immersed in the jurisprudence of the International Court for the first time became closely acquainted with it and it achieved quite a conversion in their thinking. This was particularly true of the people who came from the communist countries. There were several Poles for whom it was an eye-opener and very satisfying for me to see how their attitudes developed. Not only did I have Skubiszewski there, I had my old friend Hans Blix³¹ and others too.

30. You mentioned, Sir Eli, the name of Collier?

Yes, and John Collier was also one of the participants in, I think, the 1960 session.

31. 1959-60. International Maritime Consultative Organisation (IMCO) & Flags of Convenience.

Then we move on to the problem of flags of convenience. I am not sure about the dates exactly but while I was working on British Practice International Law, of course I was familiar with the emergence of the new international organisation IMCO – International Maritime Consultative Organisation.

One day I got a telephone call from solicitors in London, Coward Chance, as they then were³², asking whether I could assist them. It appeared that Mr Niarchos, who was a major owner of ships under the Greek flag and other flags of convenience, was very much concerned about the way in which the IMCO Assembly was approaching the problem of the composition of the Maritime Safety Committee. The inclination of a number of the traditional ship owning states, for example the United Kingdom, Norway, France and so on, was to exclude Liberia and

³⁰ b. 1926. Krzysztof Jan Skubiszewski is a Polish politician and former Minister of Foreign Affairs (1989-1993).

³¹ b. 1928, Uppsala.

³² Merged with Clifford-Turner in 1987.

Panama from membership of the Maritime Safety Committee, because in the view of these traditional states, those other states did not truly own the shipping that flew their flag. The composition of the Maritime Safety Committee was prescribed by the constitution of IMCO as being composed of “the largest ship owning nations”. So this was a move to exclude Liberia and Panama; Mr Niarchos and others wanted to oppose that.

I went down to assist them and went to the IMCO conference. We eventually prevailed, with the assistance of the United States, which favoured the existence of these flags of convenience. We prevailed upon the IMCO Assembly to seek an advisory opinion from the International Court on the composition of the Maritime Safety Committee³³. In that, I played a substantial role in drafting the pleadings of the Liberian Government. I didn’t actually appear on their behalf because the people who represented them in the case in the hearings were two Liberian officials, but I had written all of the memoranda and indeed, drafted the speeches for them beforehand. We succeeded in the International Court in establishing, or maintaining, the right of Liberia and Panama to be members of the Maritime Safety Committee. It was an occasion on which I had an unexpected opportunity to deploy some of the knowledge I had acquired in teaching constitutional law in Cambridge because one of the members of the Court asked a question, namely, whether when Great Britain had voted against Liberia and Panama, it had been aware of the true details of the ownership of Liberian and Panamanian flag ships.

Counsel for Britain got up and answered, no, they didn’t know the exact numbers. My Liberian colleagues were all for jumping up and commenting straightaway. I said, no, just wait, we will deal with it later. And we came back to it later and we were able to point out that in a British constitutional case called *AP Picture Houses v Wednesbury Corporation*³⁴, an administrative action was deemed to be invalid if taken on the basis of unsound knowledge of the facts. So we were able to get up and point out that here was the British Government saying that they didn’t really know the facts before they exercised their vote and the Court seemed to have seen that point and eventually gave a decision in favour of Liberia and Panama. The Maritime Safety Committee was reconstituted at the next conference of IMCO.

32. 1960. Death of Sir Hersch Lauterpacht.

That brings us to the end of 1959/beginning of 1960 and the next major event in my life, and it was really a major and traumatic event - the death of my father, Sir Hersch Lauterpacht in May 1960. This had not been expected. He had had a heart attack in October 1959 in The Hague and he had gone off for six months to recuperate. Then he returned to The Hague in, I think it was April 1960, and then had shown some unsatisfactory signs. The doctors in The Hague

³³ 1960. Advisory Opinion of the ICJ. Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, 8th June 1960.

³⁴ [1948] 1 KB 223.

recommended that he should go back to England to consult doctors here. He saw Lord Moran³⁵, who was one of the principal physicians in London at that time, who immediately said that my father should see a specialist. The specialist said, I must operate on you without any further delay. This was in the first week of May 1960 and he went into the London Clinic for an operation that took place on 8th May and he didn't come out of the operation. He had a further heart attack during the operation. That was the strange thing, that there was no cardiologist or cardiac surgeon available at that time. It was a Sunday. Not that it would necessarily have saved him, nor, indeed, that it would necessarily have been to his advantage because in the course of the operation they had identified the fact that he had a cancer on the bowel which had spread into the liver and was inoperable. He would have had a very unhappy remaining few months of life. So he was taken very suddenly and very unexpectedly from my mother and myself on Sunday 8th May 1960. His passing obviously was emotionally devastating, but it also impacted on my life because there were all sorts of things that had to be done following his death.

33. International Law Reports (*ILR*) and collected papers of Sir Hersch Lauterpacht.

One of them was that arrangements needed to be made regarding the editing of the *International Law Reports*, which were a series that he had begun with Arnold McNair way back in 1929. So I took on the editing of that with the approval of Lord McNair, who was then Chairman of the Advisory Committee. I was immensely helped, in fact I couldn't have done it without her, by Gillian White, who had been helping me on the BPIL. She worked for some years until she got her own Chair at Manchester and her involvement in the *ILR* dropped off. I managed to keep the thing going. Then when I came back from Australia, a matter to which I will come in due course, I was able to recruit a young Cambridge graduate called Christopher Greenwood to assist me.

That was back in 1978 and here we are 30 years later and Christopher Greenwood³⁶ is professor at the London School of Economics and the British nominated candidate for election to the International Court in this coming November; and we hope, of course, that that election will be successful. He has, for 30 years, really maintained the *ILR* and I hope he will go on doing so for a long time yet. It has become a very significant series, it now runs to 132 volumes, having been left by my father back at volume, I think the volume for 1957 which was provided by him was somewhere about number 20. So it has gone on. It has problems, financial problems, because it is expensive to produce and it has only a limited circulation and the material that needs to be covered by a series of International Law Reports has expanded incredibly. There are so many new international tribunals and so much more international law litigation in national courts that even now that it has expanded to four volumes a year, it is still very difficult to cope

³⁵ Lord Moran of Manton (1882-1977), Dean of St Mary's Hospital Medical School (1920-1945), Winston Churchill's doctor.

³⁶ Expertise in Armed Conflict, Human Rights, International Law, United Nations & War.

with the material.

We are in the process now of trying to resolve those difficulties. One way in which we are approaching it is to put it all online, and that will be done by the Cambridge University Press in due course. But, as I say, after my father's death I took on the *ILR*. I had foolishly, whilst he was still alive and had made a suggestion to me that I should take over the editing of *Oppenheim's International Law*, I foolishly had been childishly arrogant and I said, no. No, I am going to write my own book. I never have and I didn't take on the editing of *Oppenheim*, which may actually have been to the ultimate benefit of the international community because it was edited in due course, though after a lapse of some 30 years, by Sir Robert Jennings and Sir Arthur Watts³⁷. Their ninth edition of the first volume of *Oppenheim* is a major contribution to the subject, and they have done it very much better than I ever could have. But I regretted over the years that I didn't approach it more constructively.

In order to provide a suitable memorial for my father, I decided I would try and re-publish in systematic form the many articles that he had written on International Law. He had intended to write his own textbook but never got round to it but he left some outlines and so I followed those outlines and it took a long time to do the job. Eventually we produced the five volumes of the Collected papers with their publication dates ranging from the late '60s until the early 2000s. In the completion of that task I was greatly aided by one of my assistants, Penelope Neville, who is now a Fellow of Downing College.

34. 1962. Uganda: Lost Counties Dispute.

So we then go on to other events in the 1960s. One of the earlier events in the 1960s was the so-called Lost Counties Dispute in Uganda. Uganda had become a British protectorate in the early part of the 20th Century. It had been Britain's practice when occupying territories in Africa to use one tribe to help subdue the next, So when it came to Uganda, Britain had used the Baganda³⁸ to help subdue the Banyoro³⁹ and had rewarded the Baganda with land belonging to the Banyoro, the so-called "Six Lost Counties". As the date for the termination of British rule in Uganda approached in 1962, the Banyoro became very restive; they were prepared to live with this deprivation of territory so long as Britain was in control but the thought that Britain was going meant that they didn't feel comfortable with it. So, they sought help in the UK and the

³⁷ See Item 118 Interview 5

³⁸ Buganda - the most populous, central kingdom in Uganda, with the capital Kampala. Allied with British to subdue the Banyoro in 1899.

³⁹ Bunyoro-Kitara, constituent kingdom of Uganda. Independent kingdom from 16-19th centuries.

Omakama of Bunyoro⁴⁰, who was a very nice man, didn't quite know what to do. Well there was a British journalist working there and he asked him to find some help. The journalist came to a solicitor friend of his in Leeds and one day I got this telephone call from this solicitor in Leeds saying, "You don't know me, I'm not sure whether you can help me but this is my problem", and he then expounded the problem and said, "what can we do?" I gave him certain advice and he came down, a very nice chap called Gerry Pearlman, and we worked out a course of action, which included the recruitment of Sir John Foster QC⁴¹ to lead me, because John Foster was a parliamentarian with excellent connections and he would know better than I did, what to do. In the meantime, the British Government had appointed a commission of Privy Councillors to go out to Uganda to look into the situation. So John Foster and I went out to appear before the Commission at its hearings in Hoima in Uganda. There we were confronted by the lawyers for the Baganda and they were led by Sir Dingle Foot a very able English Silk. We did in the end get a recommendation from the Commission that two of the counties should be returned to the Banyoro and that was done. It wasn't exactly a case of public international law, although there were certain international law elements in it. It was a case that involved consideration of the history of Uganda and of the sociology of the people there, very interesting nonetheless. So that was the Uganda episode.

35. 1962-70. Barcelona Traction⁴².

That brought me into closer contact with John Foster. John Foster was at that time, engaged as one of the Counsel in what was, and still is in a way, one of the most important cases dealt with by the International Court, the *Barcelona Traction* case. But John was contemplating retirement from the Bar at that time, so he recommended to the people concerned that I should be taken in to assist them. The people concerned were the Société Générale, a major Belgian company, who were themselves shareholders in the Barcelona Traction Company. The Barcelona Traction Company had, as its name suggests, major interests in the electricity industry in Barcelona and thereabouts. They had lost their assets to the machinations of quite a distinguished Spanish entrepreneur called Juan Marc, and so Belgium had taken up their case in the International Court. In that way I began my association with *Barcelona Traction*, which endured until the case was finished in 1970, unfortunately without success, but it is a source of much material for international lawyers. I became quite busy with that.

⁴⁰ Titular ruler of Bunyoro-Kitara region. Probably Winyi IV (ruled 1925-67).

⁴¹ *Inter alia*: defended John Amery who was executed for treason in 1945; also led the 1965 "Foster Enquiry" for the British Bridge League into accusations of cheating by Boris Shapiro and his partner Reese at the Bermuda Bowl in Buenos Aires. They were found not guilty.

⁴² Summary of 1970 judgment: <http://www.icj-cij.org/docket/index.php?sum=292&code=bt2&p1=3&p2=3&case=50&k=1a&p3=5>

36. British South Africa Company.

And also at about that time, the British South Africa Company ran into problems in Northern Rhodesia. As Northern Rhodesia approached independence, the question was: what was to happen to their royalty rights? Various steps had to be taken to protect them. I think I will stop there for now.

Thank you so much, Sir Eli.

We will just draw a line across that point, shall we?

Excellent, thank you.