

## OCCASIONAL SERIES

# A Legal Journey Through the UN, Academia, and the ICJ: Conversations with Dame Rosalyn Higgins DBE, JSD, FBA, QC

**Abstract:** This article, written by Lesley Dingle, is based upon an in-depth interview with Dame Rosalyn Higgins in March 2014. It highlights particular elements that characterise her contribution to legal scholarship and international adjudication, and should be read in the context of the biography presented in the Eminent Scholars Archive: [http://www.squire.law.cam.ac.uk/eminent\\_scholars/dame\\_rosalyn\\_higgins.php](http://www.squire.law.cam.ac.uk/eminent_scholars/dame_rosalyn_higgins.php). Dame Rosalyn Higgins was born in Kensington in 1937. She grew up in London during the Blitz and her matter-of-fact account of these times epitomised her later career: application to the task in hand, and a lack of a sense of expectation. After the War, she passed successively through grammar school, Girton College, Yale and the Royal Institute of International affairs, steadily immersing herself over fifteen years in the work of the United Nations during its formative period. It was on the UN's role as the global peace-keeper and international law-maker that she became the acknowledged authority. There followed a long period of formal academia (1978–95: Kent and LSE), during which she rose to high office. This experience further honed her scholarly and administrative instincts, and she was honoured in 1995 with a DBE. Later that year Dame Rosalyn was appointed to the Bench of the International Court of Justice – the first woman to rise to this position, and in 2006 was elected its President. She retired in 2009.

**Keywords:** public international law; academic lawyers; judges; legal biography

## PREAMBLE

In 2006 Dame Rosalyn Higgins became the first woman to achieve the most prestigious legal position in the world, President of the International Court of Justice. She retired from the position in 2009, and I had the pleasure of interviewing her in her home in Piccadilly in March 2014. The transcript and audio record of that meeting form the basis for the Squire Law Library tribute to Dame Rosalyn in the Eminent Scholars Archive<sup>1</sup>. The tribute also contains a summary biography of Dame Rosalyn's career, presented in a chronological format. I prefaced this with the comment that her "remarkable trajectory [was] testament to a combination of dedicated effort, dogged adherence to espoused beliefs,... scholarly insights into the complex legal and political interactions that drove the UN's making of international law in its early decades ... and her mastery of constructive

engagement with a wide range of colleagues...." In this article, I would like to illustrate these aspects of Dame Rosalyn's career in more detail (an excellent source of additional information in understanding what motivated Dame Rosalyn Higgins is her own account of her life, into which she wove the narrative of "the great developments that have occurred in my subject area since 1946"<sup>2</sup>).

## AN ETHOS OF DEDICATED EFFORT

It is important to remember that most of Dame Rosalyn's early recollections are of life during the Second World War, during which she passed the ages of two to eight years in London. For her, deprivations and dangers, and hard work and self-help, were the norms. Since neither of her parents had had the opportunities of a tertiary education, and being the first pupil to have gone to

university from the Burlington Grammar school, she had no illusions of entitlement or high expectations. It was this background that instilled her ethos of dedicated effort to achieve her ambitions. She also acquired with it a sense of humility and gratitude to early mentors for both shepherding her through school, and giving sound advice on her future. *“Our English teacher, Mrs Halliday, really made you interested in the metaphysic poets or whatever we were reading and as we got older she used to invite us round on Sundays to her place for poetry readings and things. That was special. And then [from] my history teacher, to whom I think I owe a great deal, a woman called Miss Huston, I got a great interest in history.... she was the one who said to me....“I think you could be good at law.” Why she said that, I have no idea. I had never thought of law but I owe her that great debt.”*

These traits were evident when Dame Rosalyn spoke of entering Girton College in Cambridge in 1956. For her, there was the dual sense of anxiety, followed by relief at achievement, that never left her throughout her career. As she put it apropos arriving at Cambridge *“I was, of course, very anxious that everyone else was going to be much, much cleverer than I and I remember having this same sort of sensation when I arrived at the [International] Court. And then you think after a week or two, “I am going to be able to swim. I’m okay here.” And I loved it. The whole four years I had there were wonderful.”*<sup>3</sup>

Typically, Dame Rosalyn attributed much of her undergraduate success to the influence of her tutor *“Marjorie Hollond<sup>4</sup> ....marvellous, eccentric person....She used to drive around in her old Daimler with the window wound down enough for her cigarette holder to come out a good foot on the side.”*<sup>5</sup> During our interview she was also generous in acknowledging her debt to later mentors, especially Professors Myres McDougal, Oscar Schachter, and Robbie Jennings.

Dame Rosalyn’s propensity for dedicated effort can be illustrated by two projects about which she spoke during her interview with me: a pioneering compilation of certain UN activities; and her studying for a career at the Bar.

### UN Peacekeeping

The first of these projects flowed from her realisation that first-hand experience with the administrative machinery of the United Nations had given her an opportunity to present, in forensic detail, the full documentation and results of certain of the organisation’s activities. She had initially come into contact with the UN administrative machine when undertaking a UK-sponsored internship in New York in 1958, and she fell under the guidance of Oscar Schachter<sup>6</sup>. At this time, the UN organisation was barely 13 years old. Later, when the idea of a specific project, initially suggested by Eli Lauterpacht, took shape, she decided to focus on international peacekeeping. She judged that in the early

60s the paper-trail was still sufficiently small for the data on UN peacekeeping to be collatable by one person<sup>7</sup>. Nevertheless, the work turned into a monumental task. Fortunately, by then Rosalyn Higgins was employed as a Staff Specialist at the Royal Institute of International Affairs in London, aka Chatham House, and writing and researching UN issues was what she was *“....there for. [Also] to write, to answer members’ questions and to give occasional lectures.”*<sup>8</sup>

During her time at Chatham House, Dr Higgins produced the first two of her epic volumes on early UN peacekeeping operations - Vol. I, Middle East, 1969; Vol. II, Asia, 1971<sup>9</sup>. Reviewers of these early volumes commented on the immense amount of work they entailed, including analysing all relevant telexes and ancillary material. As she explained in her Balzan article, *“I used a template throughout the volumes, that I applied to each and every [peacekeeping] operation then existing: the background, the enabling resolutions, the functions assigned, relations with the host state, with the contributing states, with the UN member States, financial issues, and the implications of the mandate”* (2009, p. 7).

The thoroughness of these works earned Dr Higgins universal praise for her ground breaking endeavours. Even after 40 years, her comprehensive coverage and non-political presentation has stood the test of time. *“Yes, that’s what lawyers have to do, isn’t it? It’s very pleasing to hear that everyone working on peacekeeping in the UN Secretariat still has these, although the world of peacekeeping has changed so enormously. No-one’s interested in your views on a particular thing, just get all the data out there, make it available, explain what the quarrels were. ....There’s no interest in saying the rights and wrongs of [the situation] I would say - here were the issues, this is the way they were handled, here was the position of the parties.”*<sup>10</sup>

The project was completed in later years, when the formula was repeated in Vol. III, Africa, 1980; Vol. IV, Europe, 1981. Both were written when Dame Rosalyn was Professor of International Law at the University of Kent, but by that stage (the Balkans UN operations had taken place) she had realised that the volume of data had become daunting. When it was put to her that follow-up editions could be contemplated, she admitted that *“... those years were years that were nearer to the beginning of the UN than now. Now, you just couldn’t do that, not without ten researchers.... I did [my work] without any help at all.”*<sup>11</sup> She had identified a window of opportunity in which to produce, with concentrated effort, a unique compilation that a single researcher can now no longer replicate.

Dr Higgins stayed at Chatham House from 1963–74, in an environment in which, although she had no research assistance, she was free to pursue her UN researches. I asked her why in 1974 she left a setting so conducive to research, she said: *“It’s a very simple answer. When I went there the Director was Kenneth Younger<sup>12</sup>, who was a wonderful... he’d been a Labour Minister and he was a*

wonderful internationalist and I felt I flourished under him. Then came... my recollection is that he retired before he died, that's my recollection. Then came Andrew Shonfield<sup>13</sup> who was of course very well known as a newspaper economist for the Observer and a very interesting and warm and outgoing man. Really all his interests were at that time EEC interests and he wanted Chatham House to focus on all of that other thing etc and so I knew it was time to go."<sup>14</sup>

### The Bar

A second example of Dame Rosalyn's willingness to take on extra work when her life seemed already full, was her training for the Bar. After leaving Chatham House in 1974, she moved to the Department of International Relations at the London School of Economics (1974–78). Here she taught a compulsory course in international law for four years and also began consulting for Mobil Oil on the complex situation of the state's rights in the pioneering North Sea petroleum province. Despite her new work regime, and against her better judgment, she allowed her husband Terrence<sup>15</sup> to persuade her to study for the Bar exams. In retrospect, Dame Rosalyn is very conscious that it was he who urged her on and she made a special mention of her debt to him in the Preface to her book *Themes & Theories*. "I would not without his insistent urging have gone to the Bar in 1976" (p. vii 2009). During our interview she told me that he had said "Yes, you can do that. You can squeeze that in, why not do it?.....I remember saying to him, "I don't need to go to the Bar, I'm doing fine as I am"". She found the additional work a great burden, ".....it being so grim going back and doing subjects you had long since forgotten or had never done and had no natural attitude for. I remember tax law and things like that. So on top of teaching and all the consultancy work as it then was, I then had to do all of that. But anyway, eventually it was behind me, and I got called. That has obviously been very important in my life too."<sup>16</sup> The background in legal practice thus acquired, later proved a boon in her career as a jurist.



Figure 1: Dame Rosalyn in Chambers when made QC (1986).

Both endeavours paid handsome dividends: her UN compilations set her apart as an expert *par excellence* on the manner of creation, and subsequent execution of UN international law, while her work as a barrister stood her in great stead when court procedures and attitudes became the focus of her life.

## THE VIRTUE OF REMAINING STEADFAST

Consistency in the application of two particular legal notions has been the hallmark of Dame Rosalyn's career: that international law is not predicated on the rigid application of rules; and the concept of the universality of human rights.

### Rules vs policy

A seminal event in Dame Rosalyn's career was the decision to study at Yale in 1959–61 for her doctoral thesis. Here she met a mentor who significantly influenced her career, while the institution itself provided an inspirational haven to which she gravitated on all her many later visits to the USA.

In the early part of her career, "...most people thought policy in law was daft - law was about rules, and all you had to do was know the rules and apply them and there was quite an impatience with it all."<sup>17</sup> But Dame Rosalyn had felt otherwise, and she worked to develop a new approach based on the notion that international law is a process of decision making for resolving problems in which policy factors play an important role, rather than a body of rules<sup>18</sup>. In helping her to formulate this viewpoint, she acknowledges a great debt to the legendary Professor Myres McDougal<sup>19</sup>, then head of the Law School at Yale.

On arrival at Yale she was "immediately brought under the spell of this extraordinary man, Myres McDougal, who anyone will tell you was just this astoundingly charismatic, argumentative, strong personality but if you were in his favour it was a very special bond and he was the one who taught me, which I still believe to this day, that international law is not about rules. Rules are things that can't be gainsaid."

McDougal's approach to international law came as an "astonishing fact which no-one had ever suggested [at] Cambridge. I had wonderful teaching in Cambridge but there had been nothing outside the black letter law - it was just what it was all about"<sup>20</sup> For Dame Rosalyn, this was a revelation, and a guiding star by which she plotted her course through the vagaries of the creation of international law by the UN body. She applied in her first book "*Development of International Law through the Political Organs of the United Nations*"<sup>21</sup>, which established her credentials as the authority on the UN as an international law maker, as well as its mechanisms of operation. The book was widely acclaimed, and as Derek Bowett<sup>22</sup> pointed out, gave "the clearest possible proof that international law is being developed in the most significant way by the political organs of the United Nations". Today,

such a statement would appear self-evident, but barely a decade after the UN's founding, the UN was considered a "tiresome newcomer to the scene whose activities are of little relevance to the substance of international law itself"<sup>23</sup>. Similarly, Oscar Schachter<sup>24</sup> commented that "this pioneering study...made a major contribution to understanding the elusive "lawmaking" rôle of the political processes in the United Nations."<sup>25</sup>

Dr Higgins had showed, for the first time, the power and central role of the UN in creating international law, and she firmly established her contention, learned under McDougal's tutelage, that "[International] law is not an abstract application of rules: it is a process directed towards the implementation of policy goals for the common good"<sup>26</sup>. As Schachter put it "she faced squarely the contention that the views of governments expressed in UN debates and resolutions can have little legal significance .....[because they are] adopted for political and self-serving interests...[RH concluded] that it matters not ...."it would be a curious form of puritanism which insisted that convenience and legality could never run side by side"<sup>27</sup>.

During the interview I asked her to summarise the notion. "There are rules .....in treaties, or .....in prior case law, or in custom..... but I think that there is a very, very limited number of rules. Rules are things that simply cannot be gain-said, and there's not much of that in international law.. .. The job of the international lawyer is to .....look at the facts of the present case and at the policy issues involved, and to find the preferred and better answer...That's it, in a nutshell."<sup>28</sup>

It was a theme she used as the basis for her three-week long general course in international law which she was invited by the Curatorium of the Hague Academy to give in 1993, and which she prefaced by saying "International Law is not rule. It is a normative system."<sup>29</sup> This was the prelude to her taking her place on the bench of the ICJ in 1995.

As for the applicability of the notion in courts, I asked if the policy vs rule dilemma did not introduce elements of uncertainty into the decision making process. Dame Rosalyn was adamant that this was not the case: "..... because conservative people will say that once you move away from the rules towards policy relevance, you are introducing uncertainty. [B]ut the fact that a case ever gets to the court means that isn't the case. ....It's only the arguable points of law, both as to content and as to their applicability in the particular circumstances, that leads to litigation. So I believe those who say, "And the clear rule is" are simply kidding themselves. They are choosing one possible norm over another...I think it is much better to articulate openly what the possible choices are, the policy factors, and why international law should go one way, rather than another in the particular case."<sup>30</sup>

She gave an example from her time at the ICJ to illustrate her view that international law can be applied to fit the circumstances, and that situations cannot arise where there is no rule to apply. It was apropos the case where the court was asked for an opinion on the legality of the use of nuclear arms<sup>31</sup>. "Judge Vereshchetin<sup>32</sup>, in his

opinion....writes that there is a *lex lata*... a gap in the law there and that we just haven't yet reached the time to have laws on such things. I felt, and I think I may have said there, but have certainly said subsequently, I think "No". Because international law [is a way] of making decisions, you have always got the tools to answer a particular problem even if you can't pull out of the drawer a prior decision on that problem..."<sup>33</sup>

### Human rights

A second notion that Dame Rosalyn acquired early in her career was that human rights are universal. She held, and still holds, strongly that they are not relative to the cultural, religious or political milieu in which they have to be practiced. Her interest in human rights blossomed during her second stay at the London School of Economics (1974–78). Although this stint at LSE had started as merely an interim appointment, after she felt it was time to move on from Chatham House, her involvement in courses in the Department of International Relations brought Dame Rosalyn's into close collaboration with one of her talismanic figures – the late Dr Peter Duffy<sup>34</sup>. Duffy taught courses at Queen Mary College, and he teamed up with Dame Rosalyn for a fruitful, seminal period of collaboration in presenting a course on human rights at LSE. She remembers him with great fondness: "Dear Peter. I brought him to my chambers and he was so outstandingly good. He was a wonderful academic too. He was then at Queen Mary but we did a joint course because, as you know, at that time before LSE declared UDI, all the Masters courses were university-wide."<sup>35</sup>

Spurred on by Duffy's enthusiastic treatment of the, then, relatively new body of case law at the ECHR, Professor Higgins decided to devise a course on the European Convention of Human Rights when she was invited to Yale to teach there in 1977: "[I said to myself, you]....should use this opportunity in going to Yale to start being pretty knowledgeable about the European Convention on Human Rights. You have to remember we are talking about a time where that had only been going for 15 to 17 years, so you really could be on top of it."<sup>36</sup> It was an analogue of the philosophy she had applied to her work on UN peacekeeping, a decade earlier. The notion of universality of these rights, which she had developed with Duffy, remained with her, and when she wrote her book "Problems and Process: International Law and how we use it,"<sup>37</sup> it was a theme to which she remained true.

When I asked her about her general views, Dame Rosalyn said "Well, I still think that human rights are human rights. In all of my teaching, with Peter Duffy and otherwise, and my writings on human rights, you have to keep the focus on the idea of rights. Students at the beginning of the year in a human rights class I could see came from all over the world. I would say, "You can tell me what you like in class but I don't want to hear you just mouthing your government's point of view, I want you to be thinking." Then on your broader point, the day that a student says to me, "No, in prison without trial is fine, I don't mind that at all because I come from such and

such country.” *That’s rubbish, isn’t it? If you look at it from the point of view of the person concerned, the rights are universal. Talking about cultural relativism is thinking about governments.*”<sup>38</sup> I followed with “And this is a position that you have maintained throughout? “Yes, very firmly.”

There was, however, during our interview, one concession to be made to cultural attitudes in the matter of human rights, if not in the belief, certainly in the application. Apropos her participation in a discussion<sup>39</sup> with the onetime US Secretary of State Condoleezza Rice<sup>40</sup>, the question had been raised why the US Supreme Court was usually late and qualified in accepting international norms relating to human rights. Rice had replied “because the culture is profoundly different”<sup>41</sup>. In our interview I asked Dame Rosalyn to comment on this and she said “Well, I think there is in that culture a great distrust of foreigners and foreign thinking, of arrangements where others may decide the law over your heads, even if the contents of that law is something you fully agree with. So you take something like the Genocide Convention<sup>42</sup>, there has never been a moment in history where the US thought genocide was lawful, but they came extremely late to accepting the Convention.”<sup>43</sup> Similarly, there are wider limits. For instance, the extent of the right to self-determination of peoples has to be set against any move towards the creation of “uninational and unicultural states”. This is a theme Dame Rosalyn explores in chapter two of her book “*Problems and Process*”,<sup>44</sup> having already defined the limits against a “postmodern tribalism [that] is profoundly illiberal” in her essay “Postmodern Tribalism and the Right to Secession, Comments.”<sup>45</sup>

Her expertise and deep thinking on matters relating to human rights were recognised in 1984 with her appointment to the United Nations Committee on Human Rights under the International Covenant on Civil and Political Rights? “...yes, my background in Convention law, which I knew a bit from what I had worked up for Yale, and what I had written and to listening to the wonderful Peter Duffy and preparing [lectures] with him. And knowing a great deal about the UN side of it all. When Sir Vincent Evans<sup>46</sup>, who was my predecessor...must have made HMG think maybe I could take this on. This is the Committee, not the awful Commission, but the Committee under the Covenant and Sir Vincent, who was on it from the outset had with a group of other starters, made sure the atmosphere was right. It was nothing to do with politics, cold war issues, absolutely nothing. So that was the first time the Government asked me to do anything and I was very thrilled.”<sup>47</sup>

It was during this eleven years of hard, but rewarding work that Dame Rosalyn was re-united with a former colleague from the University of Kent, Professor Claire Palley.<sup>48</sup> Her work there took her down many byways, but answering a question I put to her on states’ reservations, she described one area where contingency gave her the chance to strike a blow for human rights in a rapidly changing political landscape. “On a Human Rights Committee you must try and build up the corpus of law on human rights. So I

think we did a lot of interesting things those years including general observations which were seven or eight page commentaries we drew up on particular articles under the Covenant and matters of that sort.....It was an exciting time to be part of that committee.....during the latter part, the world began to change with Gorbachev<sup>49</sup> and Perestroika and all of that.....on reservations, of which I think it’s generally known that I was the author, although [it] was apparently regarded as very controversial, I still think that was a good human rights move forward and pretty sound in law.....David Owen<sup>50</sup> phoned me one day and ....said, “Yugoslavia is disintegrating. What are we going to do about each of the units and your committee and human rights?” I talked with Fausto Pocar<sup>51</sup>, the Italian who was then Chairman. I readily say we came up with a theory of international law that along with the things that devolve when the status of a country changes....we started telling the various component parts, “This is the law and you have now succeeded to Yugoslavia’s rights and obligations under the Covenant and you are expected for a discussion meeting with us in three months.” They would say, “Oh yes, right” And that way if we got them all in and continued... None of them said, “No, it’s nothing to do with me.” So that’s what I mean about trying to build and do things.”<sup>52</sup>

## CONSTRUCTIVE ENGAGEMENT

A further vital factor in Dame Rosalyn’s recipe for success has been her ability to engage constructively with colleagues with whom she may have differing points of view. In her early career, for example during her time at Chatham House, she was able to pursue her work in relative freedom, but later, on her return to LSE as Professor of International Law (1981–95), and during her time at the ICJ (1995–2009), working with colleagues with differing view points was essential to success. In both cases, one can see how her overriding devotion to particular aspects of her work provided the platform for her success.

### LSE

At the LSE, Dame Rosalyn was conscious that the boisterous reputation of the institution gained in the 70s had come to epitomise it as a somewhat anarchistic centre<sup>53</sup>. In her interview, she put the record straight that this was not the case, and that she had found it a conducive environment because she was able to work constructively with people of widely differing political and social views.

“People have said, “Oh, isn’t it all very Marxist.” It isn’t at all, there is every point of view and everyone very tolerant of everyone else. They used to have these wonderful fortnightly meetings. Lord Desai<sup>54</sup>, who is now in the House of Lords – he was the Professor of Economics there. You will know him from TV... And Ken Minogue<sup>55</sup>, who sadly died last year, was a very right-wing Thatcherite Professor of Philosophy I think. They were great chums and they put on a weekly debate to which all the students could come. It was wonderful.”<sup>56</sup>

Here, her devotion to teaching and the well-being of students was the cause in which she was able to work so harmoniously with a wide cross-section of colleagues. During her previous stay at LSE, she had established a series of well-received courses with Peter Duffy, and now, as a professor in the Law Department, she was in a position to restructure the courses as she saw fit and to establish a rigorous but inclusive teaching regime for her students. Her devotion to her students was evident from the interview: “I have always prided myself on trying to look after the students and even later when practice started to build up I have had a contempt for those who do their practice and fit the students in. It absolutely has to be the way around. So I loved my teaching and as I also had....I was a moral tutor.... the kids were in and out of the room with their problems.... that was where I learned you can't learn things from what they look like.”<sup>57</sup>

Her teaching style, reflecting further evidence Myres McDougal's legacy, was designed to bring out the best in her students, and to be as interactive as possible: “I have always taught by the Socratic method. There is no point having passengers... I did the undergraduate general course in international law....That was open to all undergraduates....I hate teaching where people constantly invite other people along to teach a lecture, that is just lazy teaching.”<sup>58</sup>

### International Court of Justice

Once Dame Rosalyn arrived at the ICJ, she had to adapt her approach to entirely different circumstances, but essentially relied upon sensitive pragmatism and an innate understanding of what it was she was trying to achieve. Immediately prior to her elevation to the ICJ bench (in 1995), she had been awarded her DBE, but in a conscious effort to foster a sense of non-exclusiveness, she “decided to break with precedent and just be Judge Higgins....everyone makes their own choices....I just wanted to be Judge Higgins. I was very thrilled to have the DBE, but I just wanted to line myself up with the rest of the bench. We do have these strange things in England that no-one abroad understands...”<sup>59</sup>



Figure 2: Queen Elizabeth II visiting the International Court of Justice during Dame Rosalyn's Presidency. Lord Higgins on the right hand side.

Dame Rosalyn's approach to her role on the bench was “always to have in mind the people we are trying to benefit with what you are doing” and for one whose “inclinations are to find things [that] are possible if one can, rather than impossible”, her approach was to “intellectualise within the framework of the law” rather than follow one's natural instincts.<sup>60</sup> This approach during her time at the ICJ led the court to become “a more liberal and less pompous place over the years,”<sup>61</sup> primarily by taking more cognisance of the rulings of other judicial bodies.

A further crucial factor in establishing a culture of constructive engagement at the ICJ, which she enacted when she became President, was to reach out to other courts and also to the local (i.e. Dutch) community.

“For years the International Court had been the only international body but now, not only did we have other courts such as Strasbourg and Luxembourg, but right there in the Hague we had the Yugoslav Tribunal and the Rwanda Tribunal and very recently the International Criminal Court. We had to learn to have an efficient, friendly relationship with them.”<sup>62</sup> To this end “[on] my first official assignment, I took myself off to ITLOS<sup>63</sup> in Hamburg to pay them a visit, I think they were totally stunned. I tried always to do that sort of thing after to build good relations between the courts... I deliberately set out to do that and I think we did finish up with good relations all round.”



Figure 3: Dame Rosalyn with UN Secretary-General Kofi Annan during a visit to the International Court of Justice.

Similarly, “we had been through a period....of standing on our high horse with the Dutch authorities and I wanted to rebuild good relations with the Netherlands...[By the end of my Presidency]....we certainly finished up well again with the Dutch authorities.”<sup>64</sup>

On a personal level, Dame Rosalyn found dealing with a panel of very talented, opinionated jurists to be “undoubtedly very, very challenging.... they are people with

strong views and very clever and a lot of politics does flow through these cases, and everyone comes with their own background and way of seeing things.”<sup>65</sup>

She explained that it was essential “to guide the discussions after the oral hearings. You draw up a list of what the key points are, people are invited to add to them and then the Court members go away and study their notes and the scripts and then write what is called a judge’s note...essentially a draft judgment, but without full notes, ...on these various points. Then you have to in a very fair way preside over the discussions on these and at the end you have to be able to say, “Well, I think on this point we have got a majority, haven’t we, and on that point, let’s face it, we are so divided that if we don’t need that point in the judgment let’s try and go another way.”<sup>66</sup> To achieve a strict sense of direction, a golden rule that she applied was that “I believe you, as a judge, should not opine on anything except when Counsel have had a chance to argue in front of you, and the other side come back on it. Otherwise you should keep your thoughts to yourself.”<sup>67</sup>

Despite, or perhaps because of, these vicissitudes, Dame Rosalyn felt that during her time at the ICJ she achieved the objectives that she had set herself, and that on her departure “we had really good relations [both within and outwith the court]. [Overall, It] was a very happy and fulfilling time for me. I love The Hague, which is why I still live there for a considerable part of each year. There were some very good friends among my colleagues, each of whom was interesting. The issues that come up are always so fascinating. You do feel working on that incredible site, just so privileged each day to be coming to work at the Peace Palace in the gardens with the pond and all the creatures on the pond....really they were blessed years.”<sup>68</sup>

Dame Rosalyn Higgins retired from the International Court of Justice in 2009, having brought together the

fruits of a lifetime to the apex of a glittering career: scholarly insights, unwavering adherence to her main legal notions, and an ability to work with and bring together colleagues of widely different dispositions. Readers can gauge the depth and extent of her contributions across the spectrum of her interests in the massive two volume memoir compiled during her retirement.<sup>69</sup>



Figure 4: Queen Beatrix of the Netherlands with Dame Rosalyn when she was awarded the Hague Prize in International Law (2011).

I was very grateful to have been able to interview Dame Rosalyn in her elegant London home, and to hear first-hand of her achievements, all recounted in a modest, but confident tone. The experience further strengthened my belief that capturing such oral history adds greatly to any analysis of how eminent legal personalities develop ideas and opinions that set them apart from their peers.<sup>70</sup>

## Footnotes

- <sup>1</sup> [http://www.squire.law.cam.ac.uk/eminent\\_scholars/](http://www.squire.law.cam.ac.uk/eminent_scholars/) All quotes are referred to question numbers in the original transcript: Qx.
- <sup>2</sup> “International Law since 1945: A Personal Journey” which Dame Rosalyn gave as the Balzan Lecture at the University of Zurich, 22 November 2007. Reprinted in *Themes and Theories: Selected Essays, Speeches, and Writings in International Law*. 2009, Vols 1 & 2. 1421pp, OUP, pages 1–13.
- <sup>3</sup> Q.14.
- <sup>4</sup> Marjorie Tappan Hollond, 1895–1977, Lecturer in Economics, Bursar of Girton College. Born in New York, came to Britain at the end of the First World War. Married to equally eccentric Professor Henry Arthur Hollond (1888–1974), Rouse Ball Professor of English Law (1943–50).
- <sup>5</sup> Q.11.
- <sup>6</sup> Who was then head of the UN Law Department. Oscar Schachter (1915–2003). US international lawyer and diplomat at United Nations. Hamilton Fish Professor of International Affairs, Columbia University (1980–2003).
- <sup>7</sup> The UN was still only thirteen years old in 1958, and the UN had embarked on its first peacekeeping mission (to Egypt) only in 1956.
- <sup>8</sup> Q.40.
- <sup>9</sup> 1969–81. *UN Peacekeeping: documents and commentary*, : Royal Inst. Int. Affairs, London.
- <sup>10</sup> Q.130.
- <sup>11</sup> Q.135.
- <sup>12</sup> Sir Kenneth Gilmour Younger (1908–76), Labour politician and barrister in the Attlee government. Opposition spokesman under Hugh Gaitskell. Director of Chatham House.

- <sup>13</sup> Sir Andrew Shonfield (1917–81). Economist. Chairman Royal Institute of International Affairs (Chatham House). Foreign editor *The Financial Times* (1950–8).
- <sup>14</sup> Q.48.
- <sup>15</sup> Terence Langley Higgins, Baron Higgins (1928 - ), British Conservative politician (MP for Worthing, 1964–97), Commonwealth Games silver medalist for England, British Olympic teams 1948, 52. Knighted 1993, ennobled 1997.
- <sup>16</sup> Q.85–86.
- <sup>17</sup> Q. 62.
- <sup>18</sup> Paraphrasing from Christopher Greenwood, 1996, ICLQ 45(3) 750-51, in a review of Higgins's book *Problems and Process: International Law and how we use it*.
- <sup>19</sup> Professor Myres S. McDougal (1906–98). Yale Law School (1934–84).
- <sup>20</sup> Q.26.
- <sup>21</sup> 1963. Royal Institute of International Affairs, Oxford University Press, 402pp.
- <sup>22</sup> Later Whewell Professor of International Law. In CLJ [1964] p. 307.
- <sup>23</sup> Ibid.
- <sup>24</sup> Oscar Schachter (1915–2003). US international lawyer and diplomat at United Nations. Hamilton Fish Professor of International Affairs, Columbia University (1980–2003).
- <sup>25</sup> AJIL [1965] 59 p. 168.
- <sup>26</sup> 2009, p.3.
- <sup>27</sup> Ibid.
- <sup>28</sup> Q.138.
- <sup>29</sup> See 2009 *Themes & Theories*, p.10, Introductory Chapter.
- <sup>30</sup> Q.101.
- <sup>31</sup> 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. <http://www.icj-cij.org/docket/index.php?pl=3&p2=4&k=e1&p3=4&case=95>
- <sup>32</sup> Judge Vladlen S. Vereshchetin. Russian Former Member of the ICJ, Honorary Director of the International Institute of Space Law.
- <sup>33</sup> Q.117.
- <sup>34</sup> Peter Duffy, QC (1954–99). Human rights lawyer at Queen Mary College, London. Chairman, Amnesty International executive committee (1989–91).
- <sup>35</sup> Q.53.
- <sup>36</sup> Q.60.
- <sup>37</sup> 1994 Clarendon Press. 274 pp.
- <sup>38</sup> Q.140.
- <sup>39</sup> 2006. See “A conversation with Secretary of State Condoleezza Rice”, 1269–1285 in 2009 *Themes & Theories*.
- <sup>40</sup> Condoleezza Rice, (1954–), Political scientist and diplomat, 66th US Secretary of State. President Bush's National Security Advisor during his first term.
- <sup>41</sup> 2009 *Themes & Theories*, p.1284.
- <sup>42</sup> <http://legal.un.org/avl/ha/cppcg/cppcg.html>
- <sup>43</sup> Q.149.
- <sup>44</sup> 1994. *Problems and Process: International Law and how we use it*. Clarendon Press. 274 pp.
- <sup>45</sup> 1993. Postmodern Tribalism and the Right to Secession, Comments. In: C. Brölmann, R. Lefeber & M. Zieck, Eds., *Peoples and Minorities in International Law*, 29–35, The Hague, Martinus Nijhoff.
- <sup>46</sup> Sir Vincent Evans, (1915–2007). Member & Vice-Chairman UN Human Rights Committee (1977–84), Judge, European Court of Human Rights (1980–91).
- <sup>47</sup> Q.80.
- <sup>48</sup> Claire Palley, OBE (1931–), Rhodesian (now Zimbabwean). Lecturer, University of Cape Town, Advocate in South Africa and Rhodesia & Nyasaland, Dean of Law, Queen's University Belfast, Professor of Law Kent (1973–84), Principal St Anne's College Oxford (1984–91). Member of UN Sub-Committee on Discrimination.
- <sup>49</sup> Mikhail Sergeyevich Gorbachev (1931–) President of the USSR (1990 to 1991).
- <sup>50</sup> David Anthony Llewellyn Owen, Baron Owen, (1938–), Labour Foreign Secretary (1977–79), one of the “Gang of Four” who founded the Social Democratic Party (SDP) in 1981.
- <sup>51</sup> Judge Fausto Pocar, (1939–) Italian jurist. Professor of International Law, University of Milan. Member Human Rights Committee of the UN (1984–2000) , Chairman (1991–2).
- <sup>52</sup> Q82–83. See also 2009 *Themes & Theories* p. 4 (Balzan lecture).
- <sup>53</sup> For example, the clashes in 1969: [http://news.bbc.co.uk/onthisday/hi/dates/stories/january/24/newsid\\_2506000/2506485.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/january/24/newsid_2506000/2506485.stm)



<sup>54</sup> Meghnad Jagdishchandra Desai, Baron Desai (1940–). Economist and UK Labour politician. Wrote *Marxian Economic Theory* (1973), *Applied Econometrics* (1976). Lecturer & Professor at LSE (1965–) <http://www.parliament.uk/biographies/lords/lord-desai/2699>

<sup>55</sup> Kenneth Robert Minogue (1930–2013). Australian political theorist. Professor of Economics LSE (from 1959).

<sup>56</sup> Q.75.

<sup>57</sup> Q.76.

<sup>58</sup> Q.56.

<sup>59</sup> Q.93.

<sup>60</sup> Q.9.

<sup>61</sup> Q.100.

<sup>62</sup> Q.104.

<sup>63</sup> International Tribunal for the Law of the Sea.

<sup>64</sup> Q.104 & 108.

<sup>65</sup> Q.118.

<sup>66</sup> Q.105.

<sup>67</sup> Q.112

<sup>68</sup> Q.118

<sup>69</sup> 2009. *Themes & Theories: Selected Essays, Speeches and Writings in International Law 2009*, Vols I & 2. 1421pp, OUP, pages 1–13.

<sup>70</sup> See L. Dingle, “Legal Biography, Oral History and the Cambridge Eminent Scholars Archive (ESA)” [2014] 14 LIM 58 – 68

## Biography

Lesley Dingle is the Foreign & International Law Librarian and Founder of the Eminent Scholars Archive at the Squire Law Library University of Cambridge. She is responsible inter alia for electronic resource management of FCIL subscriptions, as well as selection of print materials. She teaches legal research skills to undergraduate and postgraduate students in the Faculty of Law. Lesley currently serves on the Advisory Panels of two international publishers, and she is a Senior Member of Wolfson College.