



All Souls College

IAN BROWNLIE

Kt, CBE, QC, DPhil, DCL, FBA

19 September 1932–3 January 2010

Fellow and Tutor in Law, Wadham College 1963–1976
Professor of International Law, London School of
Economics 1976–1980; Chichele Professor of Public
International Law, University of Oxford 1980–1999;
Fellow of All Souls College, 1980–1999; Emeritus Fellow
1999–2004; Distinguished Fellow 2004–2010
Honorary Fellow, Hertford College, 1983–2010

Addresses by:

Professor Sir John Vickers, FBA

The Warden

H.E. Judge Hisashi Owada

President of the International Court of Justice

Professor Vaughan Lowe, QC

Chichele Professor of Public International Law

Saturday, 23 October 2010

We are gathered to remember and honour Ian Brownlie, whose life with that of his daughter, Rebecca, was so terribly cut short in Egypt in January.

Ian was for nearly twenty years the Chichele Professor of Public International Law at this University. Archbishop Chichele, founder of All Souls, with this Chapel at its heart, would surely have approved mightily of that subject, and especially how Ian forged it both in thought and deed.

The College is honoured that His Excellency Judge Owada, President of the International Court of Justice, has come to Oxford today to speak about Ian's work on the international stage. Professor Vaughan Lowe, Ian's successor in the chair, will then address the intellectual power of his work.

Let me say a few words about Ian the College Man, indeed the man of several colleges – Hertford as student, Wadham as tutor, and here as professor and, later, Distinguished Fellow. In All Souls Ian had a special bond with (and was very generous to) the young Fellows, with whom he had a running conspiracy against the trendy and the pompous. His tactic against pomposity was to outdo it, as when he confounded a name-dropping guest by casual reference to 'one of my clients, the United States of America...'

At the same time Ian admired and took huge pleasure in the old. Though hardly cut from the same cloth as, say, Lords Hailsham and Sheffield, he was as much, if not more, conservative as them about College matters, in that special way reserved for those who have been on the political Left.

It has been said that Ian believed that a decent lunch was always necessary. This proposition can be generalised. Indeed Ian's forte in College was breakfast – cooked, of course. His regular breakfast sparring partner in the 1980s was Rodney Needham (uncooked), Professor of Social Anthropology, who always came prepared with a sharp conversational gambit. 'A

most curious thing has happened,’ said Rodney one morning, ‘it normally takes 153 paces to go from my room to breakfast, but today it took 154.’ ‘So,’ said Ian, between mouthfuls of black pudding, ‘your legs must be getting shorter.’

Then there was Ian the lover of books and of maps, spread out in his fine room. His generosity to the Codrington Library was magnificent.

The loss of Ian is all the greater, and so shocking, because he was so splendidly in his prime. As we mourn him, we can give thanks for that.

John Vickers

There is an old oriental saying which goes ‘the real worth of a person can be determined after his coffin is sealed’. This is certainly true of Sir Ian Brownlie, who so suddenly left us under such tragic circumstances. His death, which stunned us all, has brought home to his colleagues and friends that with his passing we have lost one of the greatest international lawyers of our generation. Sir Ian was indeed a towering figure among the giants of eminent international lawyers from all corners of the world.

It was my great privilege to have known Sir Ian Brownlie for over fifty years. My first encounter with him came in 1955, when Ian and I shared our time together as graduate students of international law at Cambridge University. Fresh from far away Japan, I had just been accepted to join a group of young research students, whereas Ian had also moved from Oxford to spend a year at Cambridge, having been elected as Humanitarian Trust Student in Public International Law. In those days, Cambridge was a ‘Mecca’ for promising young international lawyers from all over the world. In the monthly evening seminar organized in his room at Jesus by Professor Robert Jennings, who had just succeeded Sir Hersch Lauterpacht as Whewell Professor of

International Law, such illustrious personages as Lord McNair, Sir Hersch Lauterpacht, Kurt Lipstein, Clive Parry, and Elihu Lauterpacht regularly gathered, at which a number of students, such as Hans Blix, Steve Schwebel, Ted Meron, Ian Brownlie, and later, Rosalyn Higgins and Georges Abi-Saab, flocked together. In this intellectually exciting environment, Ian Brownlie and I – both lonely newcomers exposed to this galaxy of scholars – soon became close. I immediately felt the warmth of his personality and he showed me great kindness. One factor which bound us together so quickly was the discovery that we in fact both shared almost the same birth date – he was born on 19 September 1932 and myself on 18 September 1932. Since that encounter fifty years ago our paths have crossed many times. Our meeting at Cambridge in fact signalled the start of this intertwining pattern of friendship premised on our shared passion for international law. Indeed, a few years later in 1958 I was to follow in Ian Brownlie's footsteps when I myself was elected the Humanitarian Trust Student of International Law.

Sir Ian pursued a brilliant academic career. During his impressive career he taught at a number of prestigious universities in the United Kingdom, culminating in his appointment as Chichele Professor of Public International Law, followed by Emeritus Chichele Professorship and Distinguished Fellow of All Souls College.

Despite his enormous academic success, however, Sir Ian was not content simply to be an academic confining himself in an Ivory Tower of pure theory. He always maintained his keen interest in international law as practised by States, so much so that when he was invited to Japan in 1991, he chose to speak on 'The Practitioner's View of International Law' as the subject of his lecture in Tokyo.

It is against this background of Sir Ian's orientation as an international lawyer that we should understand the enormous

interest he later developed in working as counsel and advocate to States who he represented before many international courts and tribunals, in particular before the International Court of Justice. Sir Ian served many times as counsel before the International Court of Justice.

His first case before the Court, which consolidated his reputation as formidable counsel and advocate, was the case brought by Nicaragua against the United States in the early 1980s. Nicaragua's pleadings were suffused with clarity of logic and unassailable argument buttressed by rich material from the case law, which characterized Ian's style of arguing a case. There followed a number of noteworthy cases in the 1990s in which Ian acted as counsel, such as the case between Denmark and Norway concerning the maritime delimitation in the area between Greenland and Jan Mayen, and the case concerning the land and maritime boundary between Cameroon and Nigeria.

Since I became a Judge at Court in 2003, I had the pleasure of hearing Sir Ian's eloquent presentations in 13 cases, some of them involving various phases. To offer a comprehensive overview of his legal contribution to these cases would require a seminar – so I shall limit myself to highlighting some of the salient characteristics of the most recent cases in which Sir Ian participated as counsel.

Sir Ian passed with ease between disparate and complex areas of the law, from the use of force to jurisdictional issues to methods of maritime delimitation. His sure-footed delivery was characterised by a lack of pomp, a great eye for detail, and an encyclopaedic knowledge of the law. More importantly, Sir Ian had an ability to identify the critical elements in a case, highlighting the strength of his arguments on those points, and leaving opposing counsel struggling to regroup. Not for nothing was Sir Ian such a popular choice of counsel for States appearing before the International Court of Justice. In terms of his vision of

international law, Sir Ian looked at the reality of States' behaviour and in that regard sought to avoid an over-theoretical approach; he believed in the utility and practical application of international norms to the everyday lives of people and his interventions reflected this. From this perspective Sir Ian shared in the tradition of such eminent, and sadly departed, international jurists as Sir Robert Jennings, Sir Derek Bowett, and Sir Arthur Watts – luminaries who combined academic prowess with a clear-sighted pragmatic focus.

In fact, his frequent appearances before the International Court of Justice as counsel and advocate to one or other of the parties, and especially his participation in certain cases which were sometimes regarded as politically controversial, attracted attention and even invited some critical comment from some of his colleagues in the academic world. He took a firm stand against such criticism in the belief that a barrister's duty was to take any case offered to him on the 'cab rank principle'.

While his adherence to this principle no doubt reflected his approach to the profession, I personally feel that there was something more intrinsic in his approach to cases than a simple application of the 'cab rank principle'. When we were at Cambridge together, we had occasions to talk about our experiences respectively in England and Japan as a child during the wartime days. While our two countries were in opposite camps during the war, both of us had seen enough of the tragedy and havoc that the hostilities had brought to our civilian populations. Ian had had the experience of growing up in a city – Liverpool – that was bombed almost nightly, while I had witnessed the calamities of the 'scorched earth' operation caused by incendiary bombs dropped on Tokyo and elsewhere in Japan. These common experiences convinced us strongly of the importance of international law as genuinely the 'law of civilised nations'. Ian was a man of integrity and of independent mind. It

is my view that when he was approached by States for his counsel, he acted on his own convictions and did not care much about what people in the mundane world might think.

Sir Ian was one of the most sought-after advocates in cases brought before the International Court of Justice – though he never represented his own country before this Court. It is thus all the more significant tribute to him that he was knighted for services to public international law both as scholar and as practitioner. He was, in fact, very pleased with this recognition of his contribution. Moreover, this distinction was widely welcomed around the world as fitting recognition of his standing and achievement.

Sir Ian was essentially a very proud man and justifiably so. He was indeed very happy with his reputation of being a ‘formidable advocate’ before the Court, and enjoyed advancing an argument faced with 15 eminent Judges on the Bench as intellectual equals and trying to persuade them so eloquently. Coming from a typically ‘non-U’ background (to use the jargon fashionable in my day), it was his sheer personal gift of extraordinary intelligence, coupled with enormous determination and hard work, that brought him to the position of pre-eminence that he was to occupy in the glittering constellation of international lawyers of world renown.

Against this background of his upbringing, it is easy to understand the complex dichotomy in the personality he presented to the world: on the one hand he was legendary in his reputation of demanding as a supervisor ‘rigorous standards and hard work’ from his disciples; on the other, he was at the same time known to be an extremely caring tutor in relation to his students. A number of my former students from Japan studied under Sir Ian and they all, in one voice, told me how kind their Professor was on a personal level, confirming what I had felt about him fifty years ago when he took me under his wing at Cambridge,

showing kindness to a naïve young student from a far away Asian country which at that time he had never visited.

Since those long ago days, Ian did have opportunities to visit Japan. Especially memorable was the occasion in 1991 when Ian and Christine visited Japan as guests of the Government. At that time I was Deputy Foreign Minister and was to be the host during their visit. Ian thoroughly enjoyed his stay in Japan and he was fascinated by diverse cultural aspects of this country in the old tradition, visiting a number of places – Tokyo, Kyoto and Hiroshima among them. Of the many places he visited and liked, he was particularly impressed by what he saw in Hiroshima.

It is a great honour for me to have been able to share with you my deep appreciation for the great contribution that Sir Ian made to the work of the Court. I join with you to celebrate the memory of a man who lived his life with verve and enthusiasm. Let me close my tribute to Sir Ian with an ancient epitaph from my part of the world:

A tiger will remain in the memory of many people by the
beauty of the fur he leaves behind;

A great man will remain in the memory of many people
by the fame of his achievement he bequeaths.

Ian's death, under tragic circumstances, is a true loss to international justice but he will remain in the memory of all of us as a guiding star in the quest for the development of international law.

Hisashi Owada

We have come together, from all over the world and from many different walks of life, to celebrate the life of Ian Brownlie and to express something of our gratitude for what he gave to each of us, whether as husband or father, as colleague, as scholar, or one of the most formidable legal practitioners in the world of interna-

tional law that he did so much to shape.

Ian was the epitome of the legal scholar-practitioner. Some would say that he moved effortlessly between the ivory towers of academia and the rough playing-fields of legal practice. But I think that would misunderstand the man. Ian did not *move* between those worlds. Perhaps he did not even see them as two separate worlds. Ian the scholar and Ian the practitioner were one and the same, indivisible.

It is almost forty years since the first time I heard Ian lecture. I have heard him often; and on many of those occasions he would say, early in his talk, like the announcement of a Wagnerian theme, 'I am not an academic; I am a practitioner'. Coming from the holder first, of the chair in international law at the LSE, and then for two decades, of the Chichele chair in public international law in Oxford and a fellowship at All Souls, the declaration could sometimes raise an eyebrow or two.

His comment may have been more accurate as a credo than as a self-description. Sir Robert Jennings observed in his preface to the Festschrift prepared on Ian's retirement by some of the many distinguished international lawyers whom he had taught, that Ian always regarded himself as first and foremost a teacher, and took great trouble to get to know his pupils personally. But the comment certainly pinpoints his greatest strength and the core of his contribution to international law.

Ian was, above all, a lawyers' lawyer. Not a pundit; not a weaver of dreams and theories; not a radical critic of outmoded intellectual fashions. He saw with clarity and perceptiveness what the law could and should do, and what it cannot and should not try to do. And he saw with the eye of a craftsman; as a cabinet-maker might eye a fine piece of oak and see in it both its potential and its limitations.

One of my first encounters with Ian was at a conference sponsored by the Ford Foundation in a series known as the Ford

Legal Workshops. Walking behind him out of the room after a rather theoretical discussion of his paper by the audience, I overheard him say, ‘The trouble with workshops is that they are full of semi-skilled operatives’: a neat reflection of his insistence on the need for lawyers to understand properly how law works before they start to deconstruct it.

Ian was not all a narrow legalist. One of his great legacies at Oxford is the continuing collaboration between international lawyers and international relations scholars, borne out by a series of seminars which he and Sir Adam Roberts, among others, used to lead jointly. But Ian had cut his teeth as a lawyer first, on the teaching of English law and second, on his appearances in cases in the English courts; and the rigour and discipline of that grounding in English law remained with him throughout his career.

After his studies in Oxford, under Cecil Fifoot and Peter Carter, and then in Cambridge, Ian became an academic, specialising in public international law – a subject then widely regarded by lawyers as little more respectable than legal philosophy and of no greater practical value – but maintaining a very active interest in public law and in tort. international lawyers in those days were not able to confine themselves to their specialist subject: they also had to teach and practice in the mainstream.

In 1956, Ian began his academic career, teaching at Leeds and then Nottingham University, and later for thirteen years at Wadham, before taking the chair in international law at the LSE in 1976. Four years later he was elected to the Chichele chair in Oxford and the Fellowship in this College, where he held a Distinguished Fellowship at the time of his death.

During his long and remarkable career he wrote a great deal. His name is synonymous with what may prove to be the last great single-author monograph on public international law. For a generation, his *Principles of Public International Law* – ‘Brownlie’, as it

was universally known – has had an almost canonical authority in the English courts and in international tribunals, and stood as a standard exposition of the subject.

The reputation of his text in the courts is exceptional. Legal academics have always been looked upon, rightly with suspicion by practitioners; and there was long a tradition in the English courts that no living legal writer should be cited. A similar restraint is practised in international tribunals, as was emphasised in the instructions given to student lawyers some years ago by the organisers of an international law moot competition. ‘Legal writers are not themselves sources of law and should be sparingly and cautiously cited’, they were told. ‘And only the most distinguished among them should be quoted, such as Grotius, Vattel, and Brownlie.’

The peculiar status accorded to *Brownlie* no doubt owes something to its lapidary style – a daunting obstacle to anyone who has the unenviable task of arguing in court that *Brownlie* might be wrong. But for those who knew him, or his early monograph on the *Use of Force in International Law*, or his encyclopaedic work on *African Boundaries*, it is evident that the confidence and clarity with which the *Principles* stated the law is the result of immense learning and a profound feeling for the fabric and structure of international law.

Ian’s contributions to scholarship were manifold and incisive. His stature was recognised in his election to the British Academy, and reflected in his election to the United Nations International Law Commission, which at one time he chaired. His writings alone would mark him out as one of the handful of dominant figures in international law of the last half-century: but his influence on the development of the subject has been of a more subtle and persuasive nature.

Ian is not associated with any grand or novel theory of the nature of international law, or with any particular doctrine or

approach to the subject. It is rather the close attention to detail, to precise language and rigorous analysis, and to procedure, that Ian took with him from his practice in English courts into the world of international courts and tribunals. It was his unassailable craftsmanship that enabled him to carve out some of the most remarkable legal developments in recent decades.

Ian had been called to the Bar in 1958, when he was 26; and he practiced in the courts and tribunals of England. His first major contribution to the Law, and to the peace of mind of the parents of an entire generation that reached the age of independence in the 1960s, was his appearance in the case of *Sweet v Parsley*, where he and Rose Heilbron QC persuaded the House of Lords that Miss Stephanie Sweet could not be convicted of being 'concerned in the management of premises for the purpose of smoking cannabis' contrary to the Dangerous Drugs Act because Miss Sweet was entirely unaware that the tenants she had allowed to use her kitchen were indulging themselves in that way.

Ian was a firm believer in the great tradition of the cab-rank rule, and did not shrink from appearing for the unpopular or against the mighty. He was counsel for Libya in the Lockerbie cases brought in the International Court by Libya against the United Kingdom and the United States. He was counsel for Nicaragua in its International Court case against the United States, which laid open to the public scrutiny of the Court the record of US intervention in Nicaragua, and resulted in a significant victory for Nicaragua and had a profound effect upon US foreign policy. He was counsel for Serbia in the *Genocide* case in the International Court of Justice.

He believed in the principle that everyone had the right to have their case put forward as well as it could be, no matter how unpopular or how thoroughly prejudged that case might have been by the media.

He never flinched from that responsibility; and the rigour

with which his pleading compelled courts to analyse the issue before them has made a major contribution to the development of international law, and to its increasing sophistication and robustness.

Opinions differ on which is the most significant of his cases. Some would say it is his victory in 1995 in the European Court of Human Rights in the case of *Loizidou v Turkey*, which established the principle that a State's obligations under the European Convention on Human Rights extend to areas in which the State exercises effective control, even if that area lies outside its national territory. Delivered in the context of Turkey's responsibility for events in occupied northern Cyprus, the decision has had – and continues to have – an enormous impact on the conduct of military operations where British (and other European) troops are deployed abroad, particularly in Iraq and Afghanistan.

Others would say that *Nicaragua* was his greatest succession, giving real and rare credibility to the principle that no nation is so mighty that it is above the law, none so small that its rights can be ignored. Few cases can have done so much to bolster the credibility of the idea that the Rule of Law in international affairs is not a mere metaphor or aspiration, but a reality that can, at least on occasion, be brought forcibly to the attention even of those who might prefer to forget it.

It is here that I think Ian's greatest contribution to international law lies. He brought to it the same standards of thorough and precise analysis, the same concern to see it develop as a coherent, practical, working system, that we take for granted in municipal legal systems. He brought it professional credibility, ballast, keeping eyes focussed on that middle ground where real life is carried on, the often-neglected area between the navel-gazing and blue-sky thinking to which academic international lawyers are prone to fall prey.

Ian was still working at full force at the time of his death in a

car crash in Cairo earlier this year. That brought a shocking and tragic end to a distinguished career.

While Ian's publications will stand as his most tangible monument, it is as a colleague, mentor and friend that he is most keenly missed. Those who barely knew him might sometimes have thought him a forbidding figure, as awesome as his reputation. Those who knew him better and had the privilege of working with him, recall a man of measured judgement, immense learning, and a quiet but profound commitment to the values of justice and humanity. We have lost a remarkable man.

Vaughan Lowe