



IAN BROWNLIE

Ian Brownlie

1932–2010

I

IAN BROWNLIE, KT, CBE, QC, DCL, FBA, who died at the age of 77 on 3 January 2010, was born in Bootle, Liverpool on 19 September 1932. The son of an employee of the Liverpool and London and Globe Insurance Company, he first attended Alsop High School in Liverpool but, after the almost nightly bombing of the city by the Germans, was evacuated to the town of Heswall on the nearby Wirral peninsula. The situation there proved better, but not by much: the local school building was demolished by an air raid, and Brownlie was forced to go without schooling for a year. The time was evidently not wasted, and on his return to Alsop he quickly caught up with his contemporaries. When the headmaster asked the young man what he would like to do on leaving, he received the blunt rejoinder: ‘Not teaching.’

In 1950, Brownlie won a scholarship to read law at Hertford College, Oxford. This was to prove the beginning of a lifelong relationship with the university. He took a First and was awarded the Vinerian Scholarship. He was described by Professor C. H. S. Fifoot—whose metier was contract and conflict of laws, not international law—as his ablest student.¹ Brownlie’s studies were interrupted when his father died from tuberculosis. The son contracted the disease as well, but was able to return to health and Oxford in due course.

¹R. Y. Jennings, ‘Foreword’, in G. S. Goodwin-Gill and S. Talmon (eds.), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford, 1999), p. v.

In 1955, Brownlie moved to Cambridge for a year's postgraduate study as the Humanitarian Trust Student in Public International Law, entering King's College. He enjoyed the company of fellow postgraduates from abroad, and discussions of the political issues of that period—apartheid, the non-aligned movement and nuclear weapons. He joined the Communist Party (which he eventually left in 1968). But it is difficult to detect any strong influence of Marxist ideas, either in his writings, in conversation or in his professional work, and he was always critical of the operation—or lack of it—of the rule of law in Eastern Europe. He always thought of himself as a lawyer, not a political activist. But in a letter of 11 January 2009 to *The Sunday Times* he headed a list of distinguished scholars and practitioners who described Israel's actions in Gaza as an act of aggression and a war crime: this was a rare exception to his practice of avoiding taking public positions on political issues.

It was also during his year in Cambridge that Brownlie began to come into his own as an international lawyer. The university attracted aspirants from all over the world.² Robert Jennings had just succeeded Hersch Lauterpacht as the Whewell Professor: he held monthly evening seminars in his rooms at Jesus College, with Hersch often in attendance. Other attendees included Lord McNair, Kurt Lipstein, Clive Parry, and Hersch's son Elihu, then just starting out as an Assistant Lecturer. Among Brownlie's contemporaries were Hans Blix, Theodor Meron, Georges Abi-Saab, Stephen Schwebel, Rosalyn Higgins and Hisashi Owada, who remembers fondly their time together as students.³

Brownlie completed his D.Phil. in 1961. His supervisor was the Chichele Professor, Sir Humphrey Waldock,⁴ whom Brownlie held in high and affectionate regard. Brownlie's thesis formed the basis for *International Law and the Use of Force by States*, published in 1963. *Use of Force* was the first of several texts authored by Brownlie which could fairly claim the status of classics in their field. In the Preface, Brownlie described his decision to undertake the study as prompted 'partly by a feeling that it has not received that attention from public international lawyers which it is due

²H. Owada, 'Sir Ian Brownlie, Kt, CBE QC: the professor as counsel', *British Yearbook of International Law*, 81 (2010), p. 2.

³*Ibid.*

⁴Waldock was elected to the International Court in 1973, serving as President from 1979 to 1981 and dying in office. Brownlie wrote Waldock's entry for the *Oxford Dictionary of National Biography*: I. Brownlie, 'Waldock, Sir (Claud) Humphrey Meredith (1904–1981)', in *Oxford Dictionary of National Biography* (Oxford, 2004): <<http://www.oxforddnb.com/view/article/31793>>.

and partly by a conviction that recent changes in technology and strategy have given a new significance to the legal regulation of the use of force'.⁵ The book reversed this state of affairs. Its most significant contribution was its identification of the Charter of the United Nations as the decisive moment for the rules governing the use of force by the international community.

Meanwhile Brownlie had married Jocelyn Gale in 1957, with whom he was to have three children: two daughters, Hannah and Rebecca, and a son, James. They divorced in 1975, after which Brownlie met and in 1978 married Christine Apperley, a postgraduate law student from New Zealand. Christine provided unwavering and loving support for Brownlie, invariably travelling with him to The Hague and elsewhere on cases, consultations and conferences.⁶

Brownlie was called to the Bar by Gray's Inn in 1958, although he did not undertake a pupillage until some years later. After Cambridge he took a lectureship at the University of Leeds for 1956–7, before moving to the University of Nottingham. In those days, international law was seen as possessing little more practical relevance than jurisprudence and was treated by the mainstream accordingly. In any event, it was normal to teach three or four subjects and he acquired and maintained an abiding interest in public law and tort—both of which, and especially tort, were to influence his subsequent work on state responsibility.⁷

In 1963 Brownlie was elected a tutorial fellow of Wadham College, Oxford and University Lecturer in Law. In 1966 his *Principles of Public International Law* was published by Oxford University Press.⁸ This single-volume general treatment of most aspects of public international law was probably his greatest academic achievement. Its official title soon became redundant; it became known simply as *Brownlie* (though it will be referred to here as *Principles*). He took it through seven editions, seeing it translated into Russian (second edition), Japanese (third edition), Portuguese (fourth edition), Korean (fifth edition) and simplified and complex Chinese (fifth and sixth editions, respectively). Its second (and arguably best) edition

⁵I. Brownlie, *International Law and the Use of Force by States* (Oxford, 1963), p. i.

⁶Indeed they were co-authors on at least one occasion: I. Brownlie and C. J. Apperley, 'Kosovo Crisis Inquiry: memorandum on the international law aspects', *International and Comparative Law Quarterly*, 49 (2000), 878–905.

⁷See e.g. I. Brownlie, 'Causes of action in the Law of Nations', *British Yearbook of International Law*, 50 (1979), 13–41. This became Chapter V of his *System of the Law of Nations. State Responsibility Part I* (Oxford, 1983).

⁸I. Brownlie, *Principles of Public International Law* (Oxford, 1966).

was awarded the Certificate of Merit by the American Society for International Law in 1976, with the citation describing *Principles* as ‘a work of great distinction’. Now in its eighth edition (2012), it retains its place as one of the lapidary texts of public international law.⁹ Some of its key themes are discussed in section III below.

In 1972, Brownlie was a candidate for the Chichele Chair which became vacant on Waldock’s retirement: D. P. O’Connell was however preferred. Though in some sense rivals (their views on O’Connell’s subject of state succession were radically divergent; so also their attitude to international affairs in general) they maintained collegial personal relations.¹⁰ In 1976, Brownlie was offered and accepted the chair in public international law at the London School of Economics (LSE).

A major contribution of the 1970s was his work, under the auspices of the Royal Institute for International Affairs, of a complete catalogue of African boundaries, settled and unsettled. *African Boundaries: a Legal and Diplomatic Encyclopaedia*,¹¹ produced with the aid of Ian Burns, was a labour of love—and was occasionally cited against him in subsequent boundary disputes.¹² Brownlie was fascinated by geography, and whatever room he occupied for an extended period of time was guaranteed to boast a collection of esoteric maps. As for *African Boundaries*, it remains the starting point for modern investigations of that continent’s land borders.

During his time at LSE, Brownlie and Christine moved to London, where they continued to live following his academic return to the Chichele Chair and accompanying fellowship at All Souls College in 1980. As Chichele Professor, Brownlie assumed Senior Editorship of the *British Yearbook of International Law* (he had been an Editor since 1974) alongside the Whewell Professor at Cambridge¹³—that far from titular burden of the two titular chairs. He also served as a Delegate to Oxford University

⁹ Edited by the present writer (Oxford, 2012).

¹⁰ For O’Connell’s work see J. R. Crawford, ‘The contribution of Professor D. P. O’Connell to the discipline of International Law’, *British Yearbook of International Law*, 51 (1980), 1–87. Brownlie’s attitude to state succession was exemplified by his remark that ‘it is perfectly possible to take the view that not many settled legal rules [of state succession] have emerged as yet’: *Principles*, 7th edn. (Oxford, 2008), p. 650.

¹¹ I. Brownlie, *African Boundaries: a Legal and Diplomatic Encyclopaedia* (London, 1979). A new edition by Dr C. Beyani is in preparation.

¹² Thus he argued most of the land boundary issues in *Cameroon v Nigeria*—yet on key points *African Boundaries* supports the Cameroon position—as also did the Court: *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria; Equatorial Guinea intervening)*, ICJ Reports 2002 p. 303.

¹³ Successively Sir Robert Jennings, Sir Derek Bowett and the present writer.

Press (1984–94) and was General Editor of the successful series ‘Oxford Monographs in International Law’.

Brownlie remained Chichele Professor until his (statutorily mandated) retirement in 1999—in the latter years of his tenure on a partial salary arrangement, though he maintained a normal professorial teaching load. He was awarded a DCL (1976), in 1999 elected Emeritus Chichele Professor and Emeritus Fellow of All Souls College, and in 2004 made a Distinguished Fellow of the college. The latter honours reflect his status as a stalwart of college life, tending towards conservatism on college matters. But Sir John Vickers, Warden at the time of his death, recalls that Brownlie shared a special bond with the college’s younger Fellows, with whom he shared a dislike of the trendy and the pompous. He had been known to puncture name-dropping guests through comprehensive one-upmanship, usually by way of a casual reference to ‘one of my clients, the United States of America’.¹⁴

Especially during his later years he was fond of denying that he was an academic, a term he rarely used without a note of scepticism.¹⁵ Sir Robert Jennings referred to him as ‘first and foremost a teacher’;¹⁶ I doubt Brownlie would have agreed. But he was in fact a fine teacher: he took care to get to know his students, and maintained contact with them over decades. His teaching focused not only on ensuring his students mastered the detail of international law, but also the wider perspective. Concerned about international law becoming an isolated speciality, he organised for many years a joint seminar with scholars of international relations at Oxford, notably Sir Adam Roberts. He could be tough, but he was capable of considerable sensitivity, as an anecdote by Sir Robert Jennings shows:

I myself once had an able graduate student whose Ph.D. thesis involved some discussion of the notorious decision by the International Court of Justice in 1966 in the *South-West Africa* case; and of the point of view expressed by Sir Gerald Fitzmaurice and Sir Stephen Spender in their joint dissent in the earlier phase of the case when the Court seemed to have decided the other way ... In what I still think of as an inspired move ... I persuaded Ian to come over from Oxford to be the ‘outside’ examiner of the able but in places too angry thesis.

¹⁴J. Vickers, ‘Sir Ian Brownlie’, Address given at All Souls College, Oxford, 23 Oct. 2010. Brownlie first advised the United States in 1979, when counselling President Carter as to the capacity of the US to freeze Iranian assets during the Tehran hostage crisis.

¹⁵This was no reflection upon his attitude towards educators overall: indeed, he made a point of visiting his high school history teacher in Liverpool every year. Brownlie did, however, feel that standards had dropped within law schools over the course of his career, with far too many concessions to the latest fads and trends.

¹⁶Jennings, *The Reality of International Law*, p. vi.

There was never any doubt that the candidate must get his doctorate. But in the oral examination, Ian taught him a lesson which I suspect only he could have got across to this candidate at that time. I remember Ian explaining that he felt sympathetic towards the candidate's feelings on the matter; nevertheless, he insisted, there were certain legal problems that had to be dealt with. And he took a passage from the dissenting opinion in the earlier decision and challenged the candidate to find not only a legal answer but also one as carefully and cogently argued. In this way the candidate was forced to admit to himself that the passage indeed had a point ...¹⁷

It was especially as a supervisor of graduate students—doctoral and otherwise—that Brownlie shone, both as teacher and as mentor. He was no soft touch—as one distinguished former student remarked, ‘he was ... formidable ... even when he was trying to be helpful’.¹⁸ But he struck the right balance between attentiveness and allowing students to develop their own ideas at their own pace. A measure of this ability is the Festschrift on the occasion of his retirement from the Chichele Chair in 1999. Entitled *The Reality of International Law*—a title chosen expressly to reflect Brownlie's unapologetic pragmatism¹⁹—each of the twenty-five chapters was written by one of his graduate students.

II

As mentioned, Brownlie's first substantial contribution to international law was *Use of Force*. It was to establish him as an expert on the delicate relationship between the various provisions of the Charter of the United Nations and other sources of international law. In *Use of Force*, Brownlie posited that the Charter and the strictures that it placed on the use of force represented a new beginning to the oldest problem of international relations.²⁰ He was particularly emphatic as to the Charter's treatment of self-defence in Article 51, which provides that:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security

¹⁷ Jennings, *The Reality of International Law*, p. vi.

¹⁸ Sands, *The Guardian*, 11 Jan. 2010.

¹⁹ Goodwin-Gill and Talmon, ‘Introduction’, in *The Reality of International Law*, p. ix.

²⁰ Brownlie, *Use of Force*, pp. 107–23.

Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Article 51 operates alongside Article 2(4) within the machinery of the Charter to limit substantially the capacity of states to employ force against other states. Article 2(4) provides that Members of the United Nations 'shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'. Brownlie argued that these provisions, first, forbade the use of force generally, then created a discrete exception for cases of self-defence that subsumed completely the earlier customary law.²¹

A contrary view was taken by a young lecturer at the University of Manchester, Derek Bowett,²² whose own contribution on the subject, *Self-Defence in International Law*, had been published in 1958. The two were to have a long working relationship: Bowett and Brownlie, having started by sharing opposed theses, would come to work opposite each other as international law professors at the Universities of Cambridge and Oxford respectively, as representing opposing parties before the International Court, and harmoniously as co-editors of the *British Yearbook of International Law*.

For his part, Bowett saw the Charter as having a strong continuity with pre-existing customary international law, which considered self-defence to be a broad and inherent right of states.²³ It also arguably conceived of a right of states to resort to self-defence pre-emptively. The pre-Charter customary law developed principally in the mid-nineteenth century. A key episode was an exchange of letters between US Secretary of State Daniel Webster and the British Special Envoy to the United States, Lord Ashburton, over the destruction of the steamship *Caroline* by British forces in 1837. At the time of its seizure, the *Caroline* was tied up at the US military outpost of Fort Schlosser,²⁴ but it was alleged to be involved in a rebellion against British rule in Canada. Webster, in a letter of 24 April 1841, stated that in order for the British action to be justified

²¹ *Ibid.*, p. 265.

²² See J. R. Crawford, 'In Memoriam: Sir Derek Bowett CBE, QC, FBA (1927–2009)', *British Yearbook of International Law*, 80 (2009), 1–9.

²³ D. Bowett, *Self-Defence in International Law* (Manchester, 1958), pp. 184–99.

²⁴ Further: R. Y. Jennings, 'The *Caroline* and McLeod cases', *American Journal of International Law*, 32 (1938), 82–99; A. D. (Lord) McNair, *International Law Opinions*, 2 (Cambridge, 1956), pp. 221–30; C. Greenwood, 'Caroline, The', in R. Wolfrum (general ed.), *Max Planck Encyclopedia of International Law* (Oxford, 2009).

under international law, Her Majesty's Government would need to demonstrate 'a necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberation'. That strict formulation, redolent of the common law doctrine of individual self-defence, was apparently accepted by Ashburton.

The opening gambit in what would become a significant debate between the two was actually launched a good deal earlier than the publication of *Use of Force* in 1963. In 1959 Brownlie published a substantial review of *Self-Defence in International Law*.²⁵ He took issue with Bowett's assertion that Articles 2(4) and 51 of the Charter did not impair the customary right of states to defend themselves. In Brownlie's view, this was 'open to serious criticism':

It is submitted that no evidence exists to support this conclusion. There is no indication . . . that the right of self-defence in Article 51 [is] in contrast with any other right of self-defence permitted by the Charter . . . The very terms of Article 51 preclude a view that its content is special and not general; it refers to the 'inherent right' and it is not incongruous to regard the Article as containing the only right of self-defence permitted in the Charter. . . . [W]here the Charter has a specific provision relating to a particular legal category, to assert that this does not restrict the wider ambit of the customary law relating to that category or problem, is to go beyond the bounds of logic. Why have such treaty provisions at all? Such an approach to the Charter ignores both the principle of effectiveness in the interpretation of treaties and the generality of Article 51 in its reference to the 'inherent right'.²⁶

Brownlie repeated these criticisms almost verbatim in *Use of Force*.²⁷ Bowett's response, in a nice piece of symmetry, came in the form of a 1963 review of *Use of Force* in the same journal as Brownlie's earlier review.²⁸ He remarked:

It will surprise no one, least of all the author, if, in this highly controversial field the present reviewer fails to share all the author's views. Perhaps the most serious issue between the author and this reviewer is whether there remains a right of 'anticipatory' self-defence or not: in other words, whether a State may react in self-defence against an attack which is imminent or only, as the author con-

²⁵I. Brownlie, 'Recent appraisals of legal regulation of the use of force', *International and Comparative Law Quarterly*, 8 (1959), 707–21.

²⁶*Ibid.*, pp. 718–20.

²⁷Brownlie, *Use of Force*, pp. 274–5. See also I. Brownlie, 'The use of force in self-defence', *British Yearbook of International Law*, 37 (1960), 183–68.

²⁸D. Bowett, 'Review of *International Law and the Use of Force by States*', *International and Comparative Law Quarterly*, 18 (1964), 1107–8.

tends, against one which has occurred. The author concedes that up to 1939 self-defence was conceived as being ‘anticipatory’ ... but he regards the Charter as having modified this position not only in the comprehensive formula of Article 2(4) but also by the phrase ‘if an armed attack occurs’ in Article 51. The reviewer’s contention, in brief, would be that Article 2(4) was never conceived as prohibiting self-defence, and by self-defence was meant the traditional, accepted right of self-defence, including ‘anticipatory’ self-defence, and that nowhere in the *travaux préparatoires* is there evidence that Article 51 was a new restriction ... The author’s reaction is to say ‘Why have treaty provisions at all?’ ... The answer is surely that many treaty provisions are declaratory of existing rights and it is often thought useful to insert such provisions to avoid any uncertainty which might be caused by their omission.²⁹

Bowett closed this particular point by noting—correctly—that a textual interpretation of the words of Article 51 would not yield a complete answer, and that state practice would be necessary to illuminate the words of the provision. He was confident that he would be vindicated, citing the early episodes of UN operations in Katanga from 1962 to 1963 and the US blockade of Cuba.³⁰

Brownlie was not to be dissuaded, reasserting, most recently in the sixth and seventh editions of *Principles*,³¹ the view that Article 51 displaced the customary right of self-defence. Simultaneously, he developed the fall-back position first hinted at in *Use of Force*,³² that, even if he was incorrect as to the displacing effect of the Charter, custom—under the influence of Article 51—had moved on since the *Caroline*. Indeed, he considered it absurd that customary international law allegedly owed less to a comparatively recent treaty of near-universal acceptance than a single instance of bilateral correspondence over a century earlier.³³ Indeed state practice since 1945 has generally opposed the exercise of a pre-emptive right of self-defence, whether as a matter of customary international law or under Article 51.³⁴ To take but one example, the Israeli attack on an Iraqi nuclear reactor in 1981 was strongly condemned as a ‘clear violation of the Charter of the United Nations’ in UN Security Council Resolution

²⁹ *Ibid.*, p. 1107.

³⁰ *Ibid.*

³¹ Brownlie, *Principles*, 6th edn. (Oxford, 2003), pp. 701–2; Brownlie, *Principles*, 7th edn., pp. 733–4. See also I. Brownlie, ‘International Law at the fiftieth anniversary of the United Nations’, *Recueil des Cours*, 255 (1995), 9–228 at 202–6.

³² Brownlie, *Use of Force*, pp. 279–80.

³³ Brownlie, *Principles*, 7th edn., p. 734.

³⁴ e.g. Brownlie, *Principles*, 7th edn., p. 734. This statement remains correct as a matter of international law, and was included in the eighth edition: Brownlie, *Principles*, 8th edn. (Oxford, 2012), pp. 750–2.

487, adopted unanimously.³⁵ In addition, although it has never specifically ruled on the subject, the International Court may have impliedly excluded anticipatory self-defence from the scope of Article 51.³⁶ Not even the United States—in recent years the most vociferous supporter of not only pre-emptive but also *preventive* self-defence³⁷—has actually taken action on the kind of basis alluded to by Bowett. It may be noted that when the US Expeditionary Force began military operations against Iraq, the letter to the Security Council of 20 March 2003 relied upon Security Council resolutions as the primary putative legal basis of the action, not on any right to pre-emptive or preventive self-defence under general international law.³⁸ But to focus too much on this scholarly disagreement is, as Bowett himself conceded in the final paragraph of his review of *Use of Force*, to '[give] the wrong impression'.³⁹ Brownlie and Bowett valued highly each other's opinion and friendship. Indeed, they found themselves fundamentally in agreement on most issues, having emerged from the same pragmatic and workmanlike tradition of international law.⁴⁰

Bowett was not the only colleague with whom Brownlie jostled on questions relating to the use of force. Another high profile engagement occurred with Richard Lillich,⁴¹ for many years the Charles H. Stockton Professor of International Law at the University of Virginia. This time the participants skirmished over whether the terms of the Article 2(4) of the Charter permitted the unilateral use of force by states in order to redress a dire humanitarian situation. Brownlie's position on the position was simple: by its terms, Article 2(4) (as bolstered by Article 2(7), prevent-

³⁵Security Council Resolution 487 (1981), para. 1. But no such response occurred in relation to the Israeli bombing of the Deir ez-Zor reactor in Syria in 2007: C. Gray, *International Law and the Use of Force*, 3rd edn. (Cambridge, 2008), p. 237.

³⁶See *Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, ICJ Reports 2005 p. 168 at 223–4.

³⁷*The National Security Strategy of the United States of America* (Washington, US Government, 2002), p. 15. Also: Gray, *Use of Force*, 3rd edn., pp. 209–16.

³⁸United Nations Document S/2003/351, 21 March 2003 (passing reference to self-defence is made in the final substantive paragraph). The UK and Australian letters rely exclusively upon Security Council resolutions: United Nations Document S/2003/350, 21 March 2003; United Nations Document S/2003/352, 21 March 2003. On the UK position: Lord Goldsmith, Attorney-General, 'The use of force against Iraq', *International and Comparative Law Quarterly*, 52 (2003), 811–14; Lord Goldsmith, Attorney General, 'Attorney-General's advice on the Iraq War', *International and Comparative Law Quarterly*, 54 (2005), 767–78 at 768.

³⁹Bowett, 'Review of *Use of Force*', 1108.

⁴⁰H. Owada, 'The professor as counsel', 4.

⁴¹See B. H. Weston, 'Richard B. Lillich (1933–1996)', *American Journal of International Law*, 91 (1997), 85–8.

ing the UN from intervening in the strictly internal matters of states) permitted no such thing and thus any act of humanitarian intervention so-called—even if for the noblest of reasons—was *prima facie* illegal as a matter of international law. As with his conclusions on self-defence, Brownlie took this position early and stuck to it, writing in *Use of Force*:

It must be admitted that humanitarian intervention has not been *expressly* condemned by either the League Covenant, the Kellogg–Briand Pact, or the United Nations Charter. Indeed, such intervention would not constitute resort to force as an instrument of national policy. It is necessary nevertheless to have regard to the general effect and underlying assumptions of the juridical developments of the period since 1920. In particular it is extremely doubtful if the form of intervention has survived the express condemnations of intervention which had occurred in recent times or the general prohibition of resort to force to be found in the United Nations Charter.⁴²

Lillich's counter-argument appeared in two articles⁴³ on which was later based an Interim Report of the Sub-Committee of the Committee on Human Rights of the International Law Association.⁴⁴ Textually, it was predicated on the fact that the prohibition on the use of force expressed in Article 2(4) is phrased in terms of measures 'against the territorial integrity or political independence of any state': if the force used was such as to avoid compromising either of these, the argument ran, no breach of Article 2(4) would have occurred.⁴⁵ This was apparently inconsistent with the International Court's decision in *Corfu Channel*,⁴⁶ which gave a broad reading to the qualification in Article 2(4) and reduced to vanishing point the purported exception. But Lillich and other scholars—notably American—pressed on. Lillich for his part buttressed his argument with teleological assumptions as to the need for humanitarian intervention in the international community and several incidents that Lillich believed

⁴² Brownlie, *Use of Force*, 342.

⁴³ R. B. Lillich, 'Forcible self-help by states to protect human rights', *Iowa Law Review*, 53 (1967), 325–51; R. B. Lillich, 'Intervention to protect human rights', *McGill Law Journal*, 15 (1969), 205–19.

⁴⁴ International Law Association, *Report of the Committee on Human Rights*, The Hague Conference (1970), p. 8.

⁴⁵ Lillich, 'Forcible self-help by states', 336; Lillich, 'Intervention to protect human rights', 211–12.

⁴⁶ ICJ Reports 1949 p. 4, 35. The Court's famous rejection of the UK argument has been interpreted variously as a complete rejection of narrow interpretation or as a more limited repudiation of the particular UK claim on the facts: Gray, *Use of Force*, 3rd edn., p. 32. The Court itself subsequently interpreted the position as a blanket rejection: *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Reports 1986 p. 14 at 106–8.

reflected the ‘essence’ of state practice—i.e. what events such as the 1964 Stanleyville operation in the Congo and the landing of US troops in the Dominican Republic in 1965 were ‘really’ about.⁴⁷ Thus Brownlie’s more cautious approach to the subject was criticised as follows:

Balancing the need to protect human rights against the realization that non-humanitarian motives [of the intervening state] may often be at work, [Brownlie] apparently believes that world community policy requires an across-the-board prohibition of forcible self-help measures. This recommendation to forego the use of coercion, in the opinion of the writer, constitutes a classic example of throwing the baby out with the bath water. Granted the dangers inherent in accepting a decentralized determination of when it is appropriate to embark upon a humanitarian mission, the fact that a state’s action in such a situation remains subject to review and revision by the world community offers some safeguard against the use of force for non-humanitarian purposes.⁴⁸

When both he and Lillich were asked to contribute their opposing views to a volume of essays produced by the American Society of International Law,⁴⁹ Brownlie did not hold back:

It is clear to the present writer that a jurist asserting a right of forcible humanitarian intervention has a very heavy burden of proof. Few writers familiar with the modern materials of state practice and legal opinion on the use of force would support such a view . . . In the lengthy discussions over the years in United Nations bodies of the definition of aggression and principles of international law concerning international relations and cooperation among states, the variety of opinions canvassed has not revealed even a substantial minority in favour of the legality of humanitarian intervention . . . When Lillich quotes my conclusion . . . as a mere opinion, he does not make it clear that this view accords with that of numerous distinguished authorities. Moreover, my view is not an opinion casually thrown out, but is the outcome of a very extensive examination of state practice, especially in the period 1880–1945. Lillich’s handling of the literature seems little short of arbitrary . . .⁵⁰

In his reply,⁵¹ Lillich defended his preference for unilateral intervention over Brownlie’s favoured solution of UN-backed humanitarian opera-

⁴⁷ Lillich, ‘Forcible self-help by states’, pp. 338–44; Lillich, ‘Intervention to protect human rights’, pp. 213–16.

⁴⁸ Lillich, ‘Forcible self-help by states’, pp. 217–18. See also Lillich, ‘Intervention to protect human rights’, p. 347.

⁴⁹ J. N. Moore (ed.), *Law and Civil War in the Modern World* (Baltimore, MD, and London, 1974).

⁵⁰ I. Brownlie, ‘Humanitarian intervention’, in *Law and Civil War in the Modern World*, p. 217 and pp. 218–20. Brownlie also contributed another essay to a book on the subject edited by Lillich: see I. Brownlie, ‘Thoughts on kind-hearted gunmen’, in R. B. Lillich (ed.), *Humanitarian Intervention and the United Nations* (Charlottesville, VA, 1973), pp. 139–48.

⁵¹ R. B. Lillich, ‘Humanitarian intervention: a reply to Ian Brownlie and a plea for constructive alternatives’, in *Law and Civil War in the Modern World*, pp. 229–51.

tions. His ultimate conclusion, however, was that the two scholars were in reality not so far apart: at the end of the day, both agreed that suffering engendered through widespread human rights abuses and breaches of the laws of war demanded immediate and vigorous redress.⁵²

As with so many of Brownlie's sparring partners, his relationship with Lillich was a cordial one. Indeed, Lillich was to spend a year at All Souls as a Visiting Fellow in 1987. As to the interaction of humanitarian intervention and the UN Charter, it appears that Brownlie again carried the day. State practice has since the 1970s steadily eroded the concept: the majority of operations in respect of which humanitarian intervention may have been invoked have instead opted for other justifications. This is reflected in, for example, the UK's shifting justification of the Air Exclusion Zones created in Iraq. The first such zone was established in northern Iraq in 1991. This involved using force with the object of excluding Iraqi air power in order to protect the Kurds of northern Iraq and was, in the view of the British government, justified by 'the customary international law principle of humanitarian intervention'.⁵³ The Air Exclusion Zone in southern Iraq, created in 1992, was also controversial but was, unlike its predecessor, purportedly based upon Security Council Resolution 668 of 1990.⁵⁴ The UK position over the life of the no-fly zones was, however, inconstant; on occasion, it claimed that both zones were supported by the resolution; in other instances, it claimed that even without the resolution, both zones could be justified under the supposed principle of humanitarian intervention.⁵⁵

III

A great strength of *Principles* as a treatment of public international law is its capacity to convey international law as a *system*, based on and helping to structure a system of relations among states and other entities. Brownlie's understanding of the common themes within the system seems to have informed his choice of the term 'principles' in the title. Yet he was disdainful of 'grand theories' and similar unifying structures. Although

⁵²Ibid., pp. 244–51.

⁵³Brownlie and Apperley, 'Kosovo Crisis Inquiry', pp. 882–3.

⁵⁴Ibid., pp. 906–7.

⁵⁵e.g., G. Marston, 'United Kingdom materials on International Law 2001', *British Yearbook of International Law*, 72 (2001), 551–725 at 692–5.

certain broad trends may be observable at a distance, he thought, close inspection led only to pixilation.

Some examples are necessary to establish the point, the more so as the book's title has tended to establish in the profession's collective consciousness the idea that Brownlie's work is a sort of perennial Bin Cheng,⁵⁶ a search for and articulation of valid general principles, to be found in the materials of the subject, capable of providing an *erga omnes* justification underpinning that area of law. Nothing could be further from the truth, as the following passages show:

Sir Gerald Fitzmaurice has attributed treaty-making capacity to 'para-Statal entities recognized as possessing a definite if limited form of international personality, for example, insurgent communities recognized as having belligerent status—*de facto* authorities in control of specific territory'. This statement is correct as a matter of principle, although its application to particular facts will require caution.⁵⁷

It is sometimes said that international responsibility is a necessary correlative or criterion of independence. Broadly this is true, but the principle must be qualified when a case of international representation arises and the 'protecting' state is the only available defendant.⁵⁸

The functional approach has been prominent in a group of cases arising from the unlawful use of force. Ethiopia was conquered and annexed by Italy in 1936. Many states gave *de jure* or *de facto* recognition to Italian control, but Ethiopia remained formally a member of the League of Nations. However, neither this principle nor that of continuity can provide an omnibus solution to the legal problems arising for solution after 1945. In all these cases, for slightly differing reasons, the occupation in fact and form went beyond belligerent occupation, since there was either absorption outright or the setting up of puppet regimes.⁵⁹

The position, supported by principle and state practice, would seem to be as follows. Admission to membership [of the United Nations] is *prima facie* evidence of statehood, and non-recognizing members are at risk if they ignore the basic rights of existence of another state the object of their non-recognition ... However, there is probably nothing in the Charter, or customary law apart from the Charter, which requires a non-recognizing state to give 'political' recognition and to enter into optional bilateral relations with a fellow member.⁶⁰

⁵⁶ See B. Cheng, *General Principles of International Law as Applied by International Courts and Tribunals* (Cambridge, 1987). Cheng's work was an attempt to identify and elaborate upon the 'general principles of law recognized by civilized nations'; it remains the standard treatise on the subject.

⁵⁷ Brownlie, *Principles*, 7th edn., p. 63 (citations omitted).

⁵⁸ *Ibid.*, p. 74 (citations omitted).

⁵⁹ *Ibid.*, p. 81 (citations omitted).

⁶⁰ *Ibid.*, p. 94.

Unilateral declarations involve, in principle at least, concessions which are intentional, public, coherent, and conclusive of the issues. However, acts of acquiescence and official statements may have probative value as admissions of rights inconsistent with the claims of the declarant in a situation of competing interests, such acts individually not being conclusive of the issues.⁶¹

Many other examples could be given.⁶²

From a certain point of view, *Principles* is a conceptualisation of international law that contains no principles; only broad brushstrokes which may be displaced by particular contexts and requirements—perhaps like any body of law in its practical application. The result is a subtle, occasionally elusive and elliptical, text which rewards (and often requires) rereading.

Underlying this key aspect of *Principles* is Brownlie's attitude towards international law as a whole. To an extent this was not based on any *a priori* theory: in his mind the system was self-evident, necessary and in no special need of justification. International law was the product of ordinary legal technique (a technique assumed to be generally valid) applied to the materials of international relations considered in detail and in all their particularity. What was presupposed was not any overarching principle or value, but an evident need for order and an assumption that the meaning of commitments, formal or customary, will yield to standard methods of textual analysis—hermeneutics without the grandeur or pomposity of the phrase.

Indeed, as Warbrick notes,⁶³ Brownlie's world-view was not just atheoretical: it was *anti*-theoretical. In his General Course to the Hague Academy of International Law, he went so far as to remark:

In spite of considerable exposure to theory, and some experience in teaching jurisprudence, my ultimate position has been that, with one exception, theory produces no real benefits and frequently obscures the more interesting questions.⁶⁴

The exception identified was the point made by Hans Kelsen that the binding nature of international law derives from a source outside international law. Kelsen identified this as the *Grundnorm*, the basal notion that states should behave as they have customarily behaved.⁶⁵

⁶¹ *Ibid.*, p. 642.

⁶² See, e.g., *ibid.*, pp. 185, 300–1, 323–4, 477–8.

⁶³ C. Warbrick, 'Brownlie's *Principles of Public International Law*: an assessment', *European Journal of International Law*, 11 (2000), p. 634.

⁶⁴ Brownlie, 'International Law at the fiftieth anniversary of the United Nations', p. 30. When pushed, however, Brownlie admitted to a mild form of objective positivism: *ibid.*, p. 21.

⁶⁵ H. Kelsen (tr. A. Wedberg), *General Theory of Law and State* (Cambridge, MA, 1945), pp. 115–19.

Brownlie was particularly critical of those theoreticians—notably H. L. A. Hart—who debated whether international law could be considered law ‘properly so called’ without displaying any real understanding of the subject itself.⁶⁶ Brownlie tackled Hart’s assertion that international law’s purported inability to effect adjudication, enforcement and change—due principally to its lack of courts of compulsory jurisdiction—robbed it of the status of law. In Brownlie’s view:

The lack of compulsory jurisdiction and a legislature is regarded by Hart not as the special feature of a system which operates in conditions of a certain kind, but as the marks of an outcast, of a butterfly which is not wanted for a pre-determined collection. Yet . . . the stability of international relations compares quite well with internal law, given the grand total of municipal systems ruptured by civil strife since 1945. And whilst it may be said that international law lacks secondary rules, this matters less if one accepts the view that secondary rules do not play such a decisive role in maintaining the more basic forms of legality in municipal systems.⁶⁷

Thus *Principles* is a work of almost pure exposition, one which does not shy away from presenting what Brownlie considered to be the complex (and occasionally unwelcome) reality of international law: a series of discrete rules grouped under the rubric of certain general, often imperfect, principles of international law. The strength of the work is its sustained technical analysis, characterised by desire to reflect the contours of international problems and to emphasise the dispositive effect that facts may have on legal outcomes. In this vein, all seven editions of *Principles* that Brownlie oversaw lacked a general introduction that might have framed the reader’s consideration of the subject as a whole: the book began, logically, with a discussion of the sources of international law and ended with a consideration of the settlement of international disputes.⁶⁸ Throughout it was characterised by a sort of normative *pointillisme*, one that made considerable demands on the reader but whose subtlety was disguised by a rather bluff style.

In his later years Brownlie was somewhat neglectful of his *magnum opus*—perhaps understandably given the demands of his practice and the sheer difficulty of updating his review single-handedly in an age where

⁶⁶ See, e.g., H. L. A. Hart, *The Concept of Law*, 2nd edn. (Oxford, 1994), chap. 10.

⁶⁷ I. Brownlie, ‘The reality and efficacy of International Law’, *British Yearbook of International Law*, 51 (1981), 1–8 at 8. For criticism, see Warbrick, ‘Brownlie’s *Principles of Public International Law*: an assessment’, pp. 633–6.

⁶⁸ Though this was only the case up to the 6th edition, after which time Brownlie added his signature thoughts on the use of force: Brownlie, *Principles*, 6th edn., chap. 33; Brownlie, *Principles*, 7th edn., chap. 33.

international law is increasingly dense and specialised (and in which he disdained the computer). Lowe, in a prescient review of the fourth edition (1990), spoke of ‘a faint feeling of trepidation, a slight but nagging doubt as to the comprehensiveness with which [the work] has been updated’.⁶⁹ This feeling would grow with successive editions. But the cracks—though more than merely cosmetic—were far from fatal, and the bedrock on which *Principles* was built remains a firm foundation for the eighth edition.

IV

It was undoubtedly as a barrister, a practitioner of the law, that Brownlie obtained his greatest professional satisfaction. He did not begin practice until 1967, joining chambers at 2 Crown Office Row. In 1983 he moved to Hare Court, forerunner of Blackstone Chambers, where he remained until his death. He scored some early successes in public order cases, which led to the publication of another book, *The Law Relating to Public Order*, in 1968.⁷⁰ His first contribution to the law as a practitioner was by his later standards somewhat parochial but it did, in the words of Vaughan Lowe, ‘bring peace of mind [to] the parents of an entire generation’.⁷¹ In the case of *Sweet v Parsley*, Brownlie—led by Rose Heilbron, QC—convinced the House of Lords that Miss Stephanie Sweet could not be convicted of ‘being concerned in the management of premises for purpose of smoking cannabis’ under the Dangerous Drugs Act as she was unaware that her lodgers were minded so to indulge.⁷²

Brownlie’s practice expanded rapidly into the international sphere and his eminence there was soon recognised; he took silk in 1979 and was made a Bencher of Gray’s Inn in 1986. He appeared as counsel in international law matters before national courts⁷³ and also before a wide range of

⁶⁹ V. Lowe, ‘Review of *Principles of Public International Law*, Fourth Edition’, *Law Quarterly Review*, 107 (1991), 513–15 at 514. Lowe’s review was still largely laudatory. A more critical and expansive review of *Principles* was undertaken by Colin Warbrick: Warbrick, ‘Brownlie’s *Principles of Public International Law*: an assessment’, pp. 621–7. The whole of Warbrick’s review should, however, be read.

⁷⁰ I. Brownlie, *The Law Relating to Public Order* (London, 1968). A second edition of the work was published in 1981, though not edited by Brownlie: M. Supperstone (ed.), *Brownlie’s Law of Public Order and National Security* (London, 1981).

⁷¹ V. Lowe, ‘Sir Ian Brownlie, Kt, CBE, QC (1932–2010)’, *British Yearbook of International Law*, 81 (2010), 9–12 at 11.

⁷² *Sweet v Parsley* [1970] AC 132.

⁷³ Notably in the *Pinochet* cases, where he acted for Amnesty International: *Re Pinochet (No 1)* [2000] 1 AC 61; *Re Pinochet (No 3)* [2000] 1 AC 147.

international courts and tribunals, including the European Court of Human Rights,⁷⁴ the European Court of Justice, arbitral tribunals⁷⁵ and, of course, the International Court of Justice. He eschewed, in the words of a younger colleague, ‘hand-waving or flamboyance’.⁷⁶ Instead, his advocacy was, according to President Owada, ‘characterized by ... a great eye for and an encyclopaedic knowledge of the law’ coupled with ‘an ability to identify the critical elements of a case, highlighting the strongest arguments on those points’.⁷⁷ To this may be added Sir Robert Jennings’s observation that one of Brownlie’s greatest advantages was the gift of foresight: ‘his ability to see and appreciate the strengths of his opponents’ probable arguments’.⁷⁸

One of Brownlie’s earliest appearances before the International Court was also arguably his most famous, and established his reputation as an advocate of skill and fortitude. In 1986, he scored a signal victory for Nicaragua against the United States of America in the case concerning *Military and Paramilitary Activities in and against Nicaragua*.⁷⁹ The case arose from the activities of the *contras*, opponents of the Nicaraguan (Sandinista) government who in 1981 commenced a guerrilla insurgency movement, operating from bases in neighbouring states and funded and assisted, covertly and overtly, by the United States. The Court found the acts of the *contras* were not generally attributable to the United States, but that, based upon actual participation of and directions given by the US, certain individual instances of paramilitary activity were attributable to it. Specifically the United States was responsible for the mine-laying and for certain other operations in which it had direct involvement. Conversely, the Court found that purported acts of self-defence undertaken by Nicaragua were not unlawful under international law.

⁷⁴Notably in *Loizidou v Turkey* (1996) 108 ILR 443; and *Cyprus v Turkey* (2003) 120 ILR 10.

⁷⁵Notably, Brownlie appeared as counsel for Chile in the *Beagle Channel Arbitration (Chile v Argentina)* (1977) 52 ILR 93; for Greenpeace in *Rainbow Warrior (Compensation) (Greenpeace v France)* (unreported); for Yemen in *Eritrea v Yemen (Phase One: Territorial Sovereignty and Scope of the Dispute)* (1998) 114 ILR 1; (*Phase Two: Maritime Delimitation*) (1999) 119 ILR 417; for Ethiopia in *Eritrea/Ethiopia (Boundary)* (2002) 130 ILR 1, and for Iran in various cases before the US–Iran Claims Tribunal.

⁷⁶Sands, *The Guardian*, 11 Jan. 2010.

⁷⁷Owada, ‘The professor as counsel’, 4.

⁷⁸Jennings, *The Reality of International Law*, p. vii.

⁷⁹ICJ Reports 1986 p. 14. Brownlie also convinced the Court in 1984 that it had jurisdiction to hear the dispute and that the claims brought by Nicaragua were admissible: ICJ Reports 1984 p. 392. Irritated by the Court’s decisions on jurisdiction and admissibility, the United States refused to appear for the proceedings on the merits and subsequently withdrew from the Optional Clause entirely.

A milestone in the development of international law substantively, the *Nicaragua* case also served as an indicator of significance for the developing institution of international justice, especially for Third World states. In contrast with the endemic inequality of arms that characterises international relations at the political level, *Nicaragua* demonstrated that litigation or arbitration before international courts and tribunals could provide a relatively level playing field.

In Brownlie's own words:

Working in a milieu in which the clients are States presents problems of a special sort, relatively unknown in a single jurisdiction practice. Within the United Kingdom the Bar would consider appearance against the government and its agencies as perfectly normal and a necessary concomitant of the Rule of Law. But should this principle apply to disputes between States, in which Counsel will appear against his own government? The principle must surely remain applicable, if the Rule of Law is to be maintained [...] In some circles the claim is made by certain lawyers that they will only work for good causes. Apparently, such good causes do not include the giving of practical reality to the Rule of Law. It is surely of the essence of the principle of legality that the law should be available to all.⁸⁰

Brownlie was to cite this precept throughout his career, and to act on it. He appeared for Libya in the action brought against the United Kingdom and United States following the Lockerbie bombing.⁸¹ In the *Legality of Use of Force* cases he acted for Yugoslavia against NATO,⁸² after the bombing of Kosovo. In the late 1990s and until 2007, he was part of a team acting for Serbia in the series of cases concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*,⁸³ in which the Court ultimately held that Serbia was not internationally responsible for committing genocide in Bosnia-Herzegovina. In *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)*, he acted for Uganda.⁸⁴ He also made a substantial contribution to the development of the Court's expertise in maritime delimitation

⁸⁰ I. Brownlie, 'The perspective of International Law from the Bar', in M. Evans (ed.), *International Law*, 2nd edn. (Oxford, 2006), p. 14.

⁸¹ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United Kingdom; Libyan Arab Jamahiriya v United States)*, Preliminary Objections, ICJ Reports 1998 pp. 9 and 115, respectively.

⁸² e.g., *Legality of Use of Force (Serbia and Montenegro v Canada)*, ICJ Reports 2004 p. 429; *Legality of Use of Force (Serbia and Montenegro v France)*, ICJ Reports 2004 p. 575; *Legality of Use of Force (Serbia and Montenegro v United Kingdom)*, ICJ Reports 2004 p. 1307.

⁸³ Culminating in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, ICJ Reports 2007 p. 43.

⁸⁴ ICJ Reports 2005 p. 168.

matters, appearing for Canada in *Delimitation of the Maritime Boundary in the Gulf of Maine Area*,⁸⁵ for Norway in *Maritime Delimitation in the Area between Greenland and Jan Mayen*,⁸⁶ for Nigeria in *Land and Maritime Boundary between Cameroon and Nigeria*⁸⁷ and for Nicaragua in *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea*.⁸⁸ He was involved in more cases (over 40) before the Court than any other Anglophone counsel, a record that is likely to stand for a long time.

Although some were minded to criticise his ‘choice’ of client (he would insist, correctly, that he never made any choice, but simply fulfilled his obligations under the ‘cab rank’ rule of the English Bar⁸⁹), Brownlie’s independence and integrity ensured that his sense of duty was never confused with sympathy. He was made CBE in 1993, and in 2009 (following his retirement from the International Law Commission) was knighted for his services to public international law. This was despite never having represented the United Kingdom in any international capacity.⁹⁰ Indeed on at least one occasion he proved a considerable irritant to Her Majesty’s Government by joining the Mauritian delegation contesting ownership of the Chagos Islands. As another member of the Mauritian delegation relates, at one particularly heated negotiating session in early 2009 Brownlie gave the Foreign and Commonwealth Office the full weight of what he believed to be the correct position in international law, afterwards remarking that ‘by the look on the face of the chaps at the FCO, the knighthood is gone forever’.⁹¹ Happily he was incorrect.

Brownlie’s career was enriched by his membership of the key professional organisations. In 1977 he was elected an Associate, and in 1985 became a Member (and eventually Rapporteur and Vice-President) of the *Institut de Droit International*, an institution devoted to lunch and therefore congenial to him.⁹² In 1979 he was made a Fellow of the British

⁸⁵ ICJ Reports 1984 p. 246.

⁸⁶ ICJ Reports 1993 p. 38.

⁸⁷ ICJ Reports 2002 p. 303.

⁸⁸ ICJ Reports 2007 p. 659. This case was another significant victory for Brownlie. He convinced the Court of the merits of the bisector approach to maritime delimitation as opposed to the simple drawing of an equidistance line: see Owada, ‘The professor as counsel’, pp. 4–5.

⁸⁹ See Brownlie, ‘International Law at the fiftieth anniversary of the United Nations’, p. 22: ‘In this context I act in accordance with the ethics of the English Bar, the rules of which oblige members to accept clients requiring assistance within the lawyer’s area of expertise.’

⁹⁰ Brownlie had earlier received the Chilean Order of Bernardo O’Higgins (1993) and was appointed a Commander of the Norwegian Order of Merit (1993). He was made an Honorary Member of the Indian Society of International Law in 2009.

⁹¹ Boolell, *The Mauritius Times*, 15 Jan. 2010.

⁹² Brownlie was punctilious as to meals but impervious as to any soporific effect they might have—he was as sharp at the end of the day as at the beginning.

Academy. From 1982 to 1991 he was Director of Studies of the International Law Association, and for many years served as a member of its Executive Council and its institutional memory. Most significantly, he was elected to membership of the United Nations International Law Commission in 1997 (replacing Bowett),⁹³ and served as its President in 2007 before stepping down the following year. He was Special Rapporteur for the Commission's work on the effect of armed conflict on treaties from 2004 to 2008, in which capacity he produced several reports.⁹⁴ He was honoured by the invitation of the Hague Academy of International Law to give the General Course on public international law on the fiftieth anniversary of the United Nations.⁹⁵

Brownlie also accepted a variety of judicial and arbitral appointments. In 1995 he was made a Judge and in 1996 President of the European Nuclear Energy Tribunal. He was nominated to the Panel of Arbitrators and the Panel of Conciliators for the International Centre for the Settlement of Investment Disputes, and sat on several arbitral tribunals in this capacity from 1988 to 1998.⁹⁶ His only inter-state role came as Trinidad and Tobago's party-appointed arbitrator in its boundary dispute with Barbados; the Tribunal unanimously determined a single maritime boundary between the exclusive economic zone and continental shelf of the two states out to 200 nautical miles.⁹⁷

In January 2010, having just been consulted by the Indian government about a dispute with Bangladesh in the Bay of Bengal, he went to Egypt to visit his daughter and it was there that he died, tragically and suddenly, when the hotel car in which he, Christine and his daughter, Rebecca, were travelling overturned. Christine was injured but made a rapid recovery. Rebecca died in the crash. His daughter Hannah and his son James survive him.

⁹³ Brownlie was nominated by the UK government three times for the ILC; in his last election he topped the voting in the Sixth Committee.

⁹⁴ ILC Report 2005, chap. V; ILC Report 2006, chap. X; ILC Report 2007, chap. VII; ILC Report 2008, chap. V. On his retirement, Brownlie was succeeded as Special Rapporteur by Lucius Caflisch (Switzerland).

⁹⁵ Brownlie, 'International Law at the Fiftieth Anniversary of the United Nations', reprinted in I. Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations* (The Hague, 1998).

⁹⁶ See, e.g., *Scimitar Exploration Ltd v Bangladesh & Bangladesh Oil, Gas and Mineral Co* (1994) 5 ICSID Reports 4; *CME Czech Republic BV v The Czech Republic* (2001, 2003) 9 ICSID Reports 113. At the time of his death, Brownlie was also a party-appointed arbitrator in *Conoco-Phillips v Venezuela*, ICSID Case No ARB/07/30 (ongoing).

⁹⁷ *Barbados/Trinidad and Tobago Arbitration* (2006) 139 ILR 449.

V

As Vaughan Lowe notes:

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.⁹⁸

His scholarly work was subtle and demanding, not an easy read but influential and long-lived. Key articles—especially those published in the *British Yearbook of International Law*—continue to be read and cited.⁹⁹ Of his books, *Use of Force* is timeless for as long as the Charter of the United Nations stands; *African Boundaries* and *Principles*, it is to be hoped, will live on in their new rescensions.

As a practitioner of the law of nations—which is how in the end he saw himself—Brownlie was determined, professional, courteous and insightful. He had a fine strategic vision, as witness his outstanding victories—*Nicaragua*,¹⁰⁰ *Phosphate Lands*,¹⁰¹ the *Montreal Convention* cases,¹⁰² *Loizidou v Turkey*,¹⁰³ *Cyprus v Turkey*,¹⁰⁴ and latterly *Serbian Genocide*,¹⁰⁵ *Kadi*¹⁰⁶ and *FG Hemisphere Associates LLC v Democratic Republic of the Congo*.¹⁰⁷ He was not a flamboyant advocate but he was nonetheless a formidable opponent. As a general international lawyer in his generation

⁹⁸ Lowe, 'Sir Ian Brownlie', 9.

⁹⁹ Especially I. Brownlie, 'The relations of nationality in Public International Law', *British Yearbook of International Law*, 39 (1963), 284–364; I. Brownlie, 'The justiciability of disputes and issues in international relations', *British Yearbook of International Law*, 42 (1967), 123–44; I. Brownlie, 'Recognition in theory and practice', *British Yearbook of International Law*, 53 (1982), 197–212; Unjustly neglected is I. Brownlie, 'The United Nations as a form of government', *Harvard International Law Journal*, 13 (1972), 421–80. For a fairly full bibliography of his work up to 1999 see *The Reality of International Law*, pp. xvii–xxi.

¹⁰⁰ ICJ Reports 1986 p. 14.

¹⁰¹ *Certain Phosphate Lands in Nauru (Nauru v Australia)*, *Preliminary Objections*, ICJ Reports 1992 p. 240.

¹⁰² ICJ Reports 1998 pp. 9 and 15.

¹⁰³ (1996) 108 ILR 443.

¹⁰⁴ (2003) 120 ILR 10.

¹⁰⁵ ICJ Reports 2007 p. 43.

¹⁰⁶ Joined Cases C-402/05 P and C-415/05 P, *Kadi & Al Barakaat International Foundation v Council & Commission* [2008] ECR I-06351.

¹⁰⁷ [2010] HKCA 19.

he had few equals, no superiors. He left his subject richer, more complex, more diverse and more resilient for his work and service.

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