British Contributions to Public International Law

Michael Wood

1 Introduction

At a memorial service for Professor Clive Parry, held in Cambridge on 16 October 1982, Sir Robert Jennings said:

> . . . Parry belonged to that essentially English, common-law trained school of international lawyers that has flourished at [Cambridge] University particularly: one thinks of John Westlake, Arnold McNair, Clive Parry. With a strong predilection for the development of the law through decided cases and specific instances; suspicious, if not impatient, of abstract theories and doctrines; but realising to the full the crucial importance of history and not just of 'legal' history – to the understanding, practice, and future development of international law; the English school has made a singular contribution to both the development and our understanding of international law.[1]

Some years later, in an interview with Antonio Cassese, Jennings was rather more cautious:

The present contribution is based on a talk given at the University of Innsbruck on 10 December 2019.

[1]Robert Y Jennings, 'Address at the Memorial Service to Professor Clive Parry on October 16th 1982 in Great St. Mary's Church, Cambridge' in Anthony Parry (ed), *Collected Papers of Professor Clive Parry* (Wildy, Simmonds & Hill Publishing 2012) vol. one, xxxvii.

M. Wood (✉)
UN International Law Commission, Geneva, Switzerland

Lauterpacht Centre for International Law, University of Cambridge, Cambridge, UK

Twenty Essex Chambers, London, UK
e-mail: mwood@twentyessex.com

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> There is, I think, or was, an English school of international law, and the great examples are, for me, Arnold McNair and James Brierly. Of course, McNair was a Scot, but he went to school and university in England, and be began by teaching the Common Law.[2]

The insertion of 'or was' is intriguing. Pressed later in the interview as to whether he was influenced by Hersch Lauterpacht, Jennings responded:

> Yes, inevitably, I was influenced by his ideas, always with a feeling, however, that he was not part of the English school of international law.[3]

Others in this book question how useful it is to discuss 'national approaches' to international law or, which is perhaps the same thing, 'national traditions'[4] or 'visions'.[5] I share this scepticism, though there is—or was—no doubt a certain reality behind Jennings' reference to 'the English school', at least in the minds of those who considered themselves part of it. And there is—still is—a rich and interesting literature on 'approaches', 'traditions' and 'schools', to which the present volume contributes.

The reasons for scepticism are twofold. First, it is hardly possible to make general statements about national 'approaches' or 'visions' (though 'schools' at particular institutions, such as Yale, are another matter). Second, assuming that '[i]nternational law is a legal system',[6] it is distinctly unhelpful to seek to compartmentalize its study and practice into 'national' approaches. In its fundamentals, international law must

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[2] Antonio Cassese, *Five Masters of International Law* (Hart 2011) 121.

[3] Ibid. 123.

[4] See the Introduction, and the chapter by Christian Tomuschat. DHN Johnson, 'The English Tradition in International Law' (1962) 11 *ICLQ* 416-445; Emmanuel Roucounas, *A Landscape of Contemporary Theories of International Law* (Brill/Nijhoff 2019) 100-132 (on regional and national traditions). See also Jean d'Aspremont, 'The European Tradition of the Sources of International Law' in Denis Alland and others (eds), *Unité et diversité du droit international/ Unity and Diversity of International Law: Ecrits en l'honneur du Professeur Pierre-Marie Dupuy/ Essays in Honour of Professor Pierre-Marie Dupuy* (Brill/Nijhoff 2014) 201-216.

[5] Michael Wood, 'A European Vision of International Law: For What Purpose?' in Hélène Ruiz-Fabri, Emmanuelle Jouannet and Vincent Tomkiewicz (eds), *Select Proceedings of the European Society of International Law, Volume 1, 2006* (Hart 2008) 151 ("The approach of an international lawyer surely depends more on what he or she does than on which state, or continent, he or she comes from.").

[6] International Law Commission, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, Conclusions of the Study Group* (Yearbook of the International Law Commission 2006 Vol II (Part Two)) 175, 177-178, Conclusion (1). The Conclusion actually makes a rather different point. It reads in full: "International law is a legal system. Its rules and principles (i.e. its norms) act in relation to and should be interpreted against the background of other rules and principles. As a legal system, international law is not a random collection of such norms. There are meaningful relationships between them. Norms may thus exist at higher and lower hierarchical levels, their formulation may involve greater or lesser generality and specificity and their validity may date back to earlier or later moments in time". See also Judge Greenwood's Declaration in *Diallo* ("International law is not a series of fragmented specialist and self-contained bodies of law, each of which functions in isolation from the others; it is a single, unified system of law and each international court can, and should, draw on the jurisprudence of other international courts and tribunals, even though it is not bound necessarily to come to the same

be the same for all members of the international community (though, of course, States may have varying conventional[7] and customary[8] rights and obligations). We should not seek to fragment it by imagining some 'divisible college of international lawyers'.

It was, of course, the case that in the past, and perhaps still is today, there were debates, largely among academics on each side of the Atlantic, about American versus European approaches to international law, especially on the use of force. The differences tended to be overstated (perhaps because that made the discussions more interesting). Probably in conversations among government legal advisers, there were not such major differences in approach, even where there were different views as to the precise rules and their application in particular cases. And among government lawyers, there were doubtless attempts to reach common ground.

Among practitioners at least, efforts were made, on a practical level, to narrow such differences as there might be. For example, during the second George W. Bush administration, the State Department Legal Adviser (John Bellinger) engaged in extensive 'legal diplomacy'. The idea was to seek to improve understanding between the US and European states. In this context, Bellinger regularly attended the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) and gave talks at universities throughout Europe (including in the United Kingdom). I believe this continues under his successors.

There was, perhaps, in earlier times a greater consciousness of a distinction between 'Anglo-Saxon' (common law) and 'Continental' (civil law) approaches.[9] For example, Sir Cecil Hurst wrote in 1946 that the term codification had come to embody 'two possible ideas, two possible methods'.[10] One of them, 'in the strict and proper sense and as the term has generally been understood by British writers', had to do with:

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conclusions"): *Amadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, p. 324, at p. 394, para. 8.

[7]Different conventional commitments arise because States are not necessarily party to the same treaties, or have varying reservations in place. This is particularly striking, even among allies, in the case of the law of armed conflict, where some key States are not parties to Additional Protocol II, and in international human rights law.

[8]As the International Law Commission has recently said, "Whereas rules of customary international law are binding on all States, . . . [there are] two exceptional cases: the persistent objector; and particular customary international law (rules of customary international law that apply only among a limited number of States)": International Law Commission, *Report of the International Law Commission on the work of its Seventieth session (30 April–1 June and 2 July–10 August 2018)* (A/73/10, 2018) 119, 123, para (5) of the general commentary to the conclusions on *Identification of customary international law*. The conclusions were endorsed by the UN General Assembly in its resolution 73/203 of 20 December 2018.

[9]See, among others, Hersch Lauterpacht, 'The So-Called Anglo-American and Continental Schools of Thought in International Law' (1931) 12 *BYIL* 31-62.

[10]Cecil Hurst, 'A Plea for the Codification of International Law on New Lines' (1946) 32 *Transactions of the Grotius Society* 135, 146.

> ascertaining and declaring the existing rules of international law, irrespective of any question as to whether the rule is satisfactory or unsatisfactory, obsolete or still adequate to modern conditions, just or unjust in the eyes of those who formulate it.[11]

The second idea, Hurst explained, was:

> looser and more prevalent on the Continent of Europe. It incorporates the idea of amending the law as well as defining it, so that the provisions in the code shall state the rules of international law as they ought to be, regardless of whether they are so. . . . Codification in this sense is legislative in character.[12]

A concern that civil lawyers might outnumber (and outvote) common lawyers on any international court to be established lay behind many of the difficulties that were seen in determining the composition of such a court in the early years of the twentieth century. Language was a distinct yet not unrelated concern. Even today, such concerns may not have entirely disappeared, including in other contexts, such as the International Law Commission.

I have chosen what I hope is an uncontentious title for this chapter: British 'Contributions' to International Law. It aims to offer a brief survey of what these contributions are and where to find them. It would have been somewhat presumptuous to offer an assessment rather than a survey by comparing British contributions with those of other countries, and this is not attempted—though a few general and tentative conclusions are offered in a final section.

The chapter does not claim to reflect a 'scientific' analysis. In so far as assessments may have crept in, they are personal views—or prejudices—perhaps shaped by studying international law at Cambridge from 1965 to 1969 with such 'British' teachers as Clive Parry, Robbie Jennings, Eli Lauterpacht, Derek Bowett and John Collier and by working for some 35 years as a lawyer with the British Foreign and Commonwealth Office (FCO) and thereafter practising as a barrister based in London.

My task of describing 'British contributions' is made immeasurably easier by two recent publications marking the British Institute of International and Comparative Law (BIICL)'s 100th anniversary: *British Influences on International Law, 1915–2015*[13] and *British Contributions on International Law, 1915–2015.*[14]

British Influences on International Law, 1915–2015, consists of some 22 chapters. It is not comprehensive but nevertheless gives useful insights into the various matters covered. After an introduction, it is divided into five parts: sources of international law; international legal responsibilities; international human rights law; war, armed conflict and international criminal law; and individuals. The part on individuals does not seek to give a rounded picture. It deals in four short chapters

[11] Ibid. 146.

[12] Ibid.

[13] Robert McCorquodale and Jean-Pierre Gauci (eds), *British Influences on International Law, 1915-2015* (Brill/Nijhoff 2016).

[14] Jill Barrett and Jean-Pierre Gauci (eds), *British Contributions to International Law, 1915-2015: An Anthology Set* (Brill/Nijhoff 2020).

with Brierly and Lauterpacht in the *interbellum* period, with Georg Schwarzenberger, with Martin Wight (a political theorist) and with certain members of the United Kingdom Bar.

British Contributions to International Law, 1915–2015, is an anthology set of four books. As the editors explain:

> Actions of the British State contribute directly and indirectly to the formation of treaties or to customary international law. Individuals play a decisive role in the events that make international law, while others shape awareness of those events and perceptions of the law worldwide by their perceptive writings. Accordingly, we have traced British contributions to a range of institutions and people – from British courts to individual judges and barristers in international courts, and from British academics and NGOs to governmental bodies. Contributions can be found in judgments, speeches, Acts of Parliament and newspaper articles as well as academic articles and books.[15]

There is great political interest in questions of international law in the United Kingdom, perhaps more so than in other countries. Over the years, Britain has been one of the most active participants in international affairs and, indeed, for long periods was a leading participant. It has strong interests in many fields of international endeavour, both in peace and in armed conflict, including as regards collective security; living and non-living resources; communications by land, sea and air; trade and investment; international organizations; and human rights (as far back as the abolition of the slave trade). It has sought to promote international co-operation and the international rule of law. It has long had more occasion than most (and also a willingness) to engage with international law, and this remains the case.

Over the last two centuries or more, Britain has stood out, among the leading states of the time, for its strong commitment to international law and to advancing a global order based on international law. That is arguably the United Kingdom's greatest contribution to international law, even if it remains not wholly clear why it has adopted—and maintained—such a position. It no doubt reflects Britain's long-standing commitment to the rule of law at home and abroad and the expectation of politicians and lawyers that the country will seek to act in accordance with its view of international law. While some governments seem able to avoid questions about the legality of their actions, no British Government could get away with seeking to do so. The British Government, therefore, needs to be able to say that there is at least a reasonable legal basis for its actions. This is particularly so at moments of great crisis, such as in relation to the use of force. Whatever one may think of the lawfulness of the invasion of Iraq in 2003, what stands out is that had the British Government been advised by the Attorney General that the military action was unlawful under international law, it would not have taken part.[16]

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[15] Jill Barrett and Jean-Pierre Gauci, 'General Introduction' in ibid. xxv.

[16] Michael Wood, 'The Iraq Inquiry: Some Personal Reflections' (2016) 87 *BYIL* 149, 151 (referring to a statement to the Chilcot Inquiry by former Prime Minister Blair).

2 What Are 'Contributions' and Who Contributes?

What is meant by 'contributions' to international law (and where are they to be found)? Whose contributions should be covered? It seems appropriate to answer these questions in an inclusive way, even if that means claiming as British those whose contributions might well also be claimed by others.[17]

After a brief consideration of the first of these questions, the remainder of the chapter is organized according to various classes of contributors. The forms that national contributions to international law may take, and the effects of such contributions, are extremely varied.[18] Some may amount to state practice or evidence of *opinio juris* for the purposes of the formation and identification of customary international law.[19] Others indicate the United Kingdom's interpretation of a treaty or its view on some other aspect of international law. Still others may be subsidiary means for the determination of rules of international law (national judicial decisions and the writings of publicists). The negotiation of treaties and the establishment of and support for international institutions, including dispute settlement mechanisms,[20] represent major contributions.

The United Nations Secretariat recently published a memorandum on *Ways and means for making the evidence of customary international law more readily available*.[21] The section dealing with United Kingdom materials is annexed to the present chapter. Making international legal materials more readily available is something to which, like their American and German colleagues among others, British international lawyers seem to have attached great importance, as have British publishers.

[17] *Barrett and Gauci* (n 15) xxvi-xxvii. One question that faces anyone seeking to describe 'British' contributions to international law is the meaning of 'British'. In its contemporary sense it refers to the United Kingdom of Great Britain and Northern Ireland (that is, England and Wales, Scotland and Northern Ireland), but the term 'British Islands', and thus 'British', refers to the Crown Dependencies (the Channel Islands and the Isle of Man) as well as the UK. Other territories for whose international relations the United Kingdom is responsible may also be included in 'British'. In the past, the term may have referred to what was known as the British Empire and British influence may to a greater or lesser extent have played—and may continue to play—a role in shaping the contributions to international law of States formerly within the Empire. The name and geographic scope of the State now officially known as the United Kingdom of Great Britain and Northern Ireland has changed over the centuries, and usage is inconsistent.

[18] Ibid. xxvii-xxx. For a description of various influences in one field (the international law of the sea), see David H Anderson, 'British Influence on the Law of the Sea 1915-2015' in *British Influences* (n 13) 167, 168-169.

[19] See the International Law Commission's 2018 Conclusions and commentaries on Identification of customary international law (n 8).

[20] Michael Wood, 'European perspectives on inter-state litigation' in Natalie Klein (ed), *Litigating International Law Disputes: Weighing the Options* (CUP 2014) 130-147.

[21] United Nations Secretariat, *Identification of customary international law: Ways and means for making the evidence of customary international law more readily available, Memorandum by the Secretariat* (A/CN.4/710/Rev.1, 2019) <https://legal.un.org/docs/?symbol=A/CN.4/710/Rev.1> accessed 25 February 2020.

One thinks in particular of *International Law Reports* and *International Law in the Domestic Courts*, as well as the massive undertakings directed by Clive Parry: *British Digest of International Law*,[22] *British International Law Cases*,[23] *Commonwealth International Law Cases*,[24] *An Index of British Treaties*,[25] *Consolidated Treaty Series*[26] and *Law Officers' Reports.*[27]

Many UK official materials have been published, whether by the Government itself or otherwise.[28] Since 1978, each volume of the *British Yearbook of International Law* has a section entitled 'United Kingdom Materials on International Law' (UKMIL).[29] This section has expanded greatly over the years; the latest available section (in the 2016 *British Yearbook*) extends to no less than 385 pages. UKMIL is not an official government publication; the selection of materials is made by independent academic researchers. The role of the FCO Legal Advisers is merely to provide documents from which the editors make a selection.

3 British Contributors to International Law: Institutions

Those contributing to international law may be institutions, such as state organs, learned societies or NGOs, or they may be individuals.[30] The distinction is not always clear-cut since those working for institutions may speak or publish in a personal capacity. This includes those working in the Foreign Office—since merger with the Commonwealth Office in 1968, the Foreign and Commonwealth Office (FCO); those working for international organizations; members of the judiciary; lawyers working for non-governmental organizations (NGOs); and those in private practice (barristers and solicitors).

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[22]Clive Parry, *British Digest of International Law* (Stevens and Sons 1965–1967) (5 volumes).

[23]Clive Parry, *British International Law Cases* (Oceana 1964-1973) (9 volumes).

[24]Clive Parry, *Commonwealth International Law Cases* (Oceana 1974-1996) (19 volumes, of which volumes 11-19 were compiled by John Hopkins).

[25]Clive Parry, *Index of British Treaties* (HMSO) (4 volumes).

[26]Clive Parry, *Consolidated Treaty Series* (Oceana 1969-1986) (231 volumes).

[27]Clive Parry, *Law Officers' Opinions to the Foreign Office 1793–1860* (Gregg Publishing 1970) (97 volumes).

[28]Geoffrey Marston, 'The Evidences of British State Practice in the Field of International Law' in Anthony Carty and Gennady Danilenko (eds), *Perestroika and International Law: Current Anglo-Soviet Approaches to International Law* (Edinburgh University Press 1990) 27-47.

[29]The word 'materials' avoids the implication that all the content necessarily amounts to State practice. British practice prior to 1978 may be found in some of the works listed in the annex to this chapter.

[30]For an overview of British influences, see Robert McCorquodale and Jean-Pierre Gauci, 'Introduction – From Grotius to Higgins: British Influences on International Law 1915-2015' in *British Influences* (n 13) 1-7.

Individuals fall into two main classes: practitioners and academics. It is often difficult to classify particular individuals as practitioners or teachers; many academics (especially in the United Kingdom) are also practitioners, and many practitioners teach and write. The expansion of international law in recent decades has led to greater diversity among those who are regarded as public international lawyers. They are nevertheless still a rather close-knit group of people, in constant touch with each other. For example, the FCO Legal Advisers have over the years engaged closely with academic international lawyers by serving on the boards of the various learned institutions, by attending and organizing conferences[31] and in less formal ways.

In considering the British State (the Government and British Government lawyers, the Parliament and the courts), an important point to bear in mind is that, like all governments, the British Government may well have its own established view on certain questions of international law, ranging from the law on the use of force (*jus ad bellum*) and freedom of navigation to such technical matters as the law on reservations to treaties. Views may, of course, change over time, but any government should be conscious that what it says and does may bind it or at least contribute to the development of rules of international law.

Among the materials that may be relevant is legislation emanating from Parliament and other bodies. This covers a wide range of topics, such as the law of the sea (baselines; continental shelf; fishery limits, which had to be adjusted before the ratification of UNCLOS in 1997; the exclusive economic zone), international immunities, or treaty formalities and implementation.

Public inquiries may be established by Parliament or by the Government. A parliamentary inquiry that raised interesting questions was the Joint Committee on Human Rights' inquiry into the British Government's 'policy' of the use of drones for targeted killings.[32] A government inquiry that attracted a lot of attention, including from international lawyers, was the 2009–2016 Iraq (Chilcot) Inquiry, whose mandate was to consider the United Kingdom's involvement in Iraq between the summer of 2001 and July 2009.[33]

[31]The FCO legal advisers attach great importance to outreach. They have for many years organized an annual day at the Foreign Office for academic international lawyers; in 2019 they assisted BIICL in the organization of the London Conference on International Law, which brought together international law academics, judges, practitioners, representatives of civil society, business-leaders, and other stakeholders to see how States and all other actors engage with international law. There is also the much-followed UK International Law Twitter account @UKintlaw, initiated by Shehzad Charania when he was at the British Embassy in The Hague and still run by him. In addition, for a number of years, the Embassy in The Hague has organized an annual lecture on international law.

[32]House of Lords, House of Commons, *The Government's policy of the use of drones for targeted killings* (HL 141, HC 574, 2015/2016), discussed in Michael Wood, 'The use of force against Da'esh and the *jus ad bellum*' (2017) 1 *Asian Yearbook of Human Rights and Humanitarian Law* 9-34.

[33]The voluminous documentation of the Iraq Inquiry is available on the website of the National Archives, <https://webarchive.nationalarchives.gov.uk/20171123123237/http://www.iraqinquiry.

Government statements may make important contributions to international law. These include written and oral statements in Parliament,[34] written responses on ILC topics and in the UN General Assembly's Sixth (Legal) Committee and statements before international courts and tribunals.

While the most senior legal adviser to the Government, including on questions of international law, remains the Attorney General, the role of the FCO Legal Advisers is often a crucial one. Until well into the second half of the nineteenth century, the British Government, and the Foreign Office in particular, sought legal advice from the civil lawyers based at Doctors' Commons. The last holder of the office of Queen's Advocate, Travers Twiss, resigned in 1872. Thereafter the Foreign Office began to appoint its own in-house lawyers.[35] Today's FCO Legal Advisers are a group of lawyers mainly within the British Diplomatic Service specializing, among other things, in public international law.[36] In principle, those within the Diplomatic Service spend most of their career in the FCO in London, but they also serve on legal and other postings at the UK's overseas missions.[37] They have been encouraged to write. Many have had careers in international law after leaving the FCO, as practitioners and as judges on international courts.

It is not possible to describe the contributions of FCO Legal Advisers in any detail. Fortunately, much has been written on the subject.[38] In addition to their advisory role within the Government, they have contributed greatly to the negotiation of all major international treaties: the Hague Conventions of 1899/1907, the Covenant of the League of Nations, the United Nations Charter, the Vienna Conventions on Diplomatic and Consular Relations, the Vienna Convention on the Law of Treaties and the Law of the Sea Conventions of 1958 and 1982. And they act as

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org.uk/> accessed 25 February 2020. For a discussion of legal aspects, see 'Symposium on the Iraq Inquiry' (2016) 87 *BYIL* 98-230.

[34]See, for example, the Written Ministerial Statement on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* Advisory Opinion of the International Court of Justice (5 November 2019) <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-11-05/HCWS90/> accessed 25 February 2020.

[35]For a lively account see Brian Simpson, 'The Rule of Law in International Affairs' (2004) 125 *Proceedings of the British Academy* 211-263.

[36]For the early history of the FO Legal Advisers, see Kate Jones, 'Making Foreign Policy by Justice: The Legal Advisers to the Foreign Office, 1876-1953' in *British Influences* (n 13) 28-55.

[37]For the contemporary organization and role of the FCO Legal Directorate, see the Council of Europe database on *The organisation and functions of the Office of the Legal Adviser of the Ministry of Foreign Affair*s, Contribution of the United Kingdom (September 2014) <http://www.cahdidatabases.coe.int/Contribution/Details/12> accessed 25 February 2020.

[38]See, for example, various chapters in Andraž Zidar and Jean-Pierre Gauci (eds), *The Role of Legal Advisers in International Law* (BIICL and Brill/Nijhoff 2017). Among works dealing with specific periods or events, see Geoffrey Marston, 'Armed Intervention in the 1956 Suez Canal Crisis: The Legal Advice Tendered to the British Government' (1988) 37 *ICLQ* 773-817; Lorna Lloyd, *Peace through Law: Britain and the International Court in the 1920s* (Royal Historical Society 1997); Isabel V. Hull, *A Scrap of Paper: Breaking and Making International Law during the Great War* (Cornell University Press 2014).

agent for the United Kingdom before international courts and tribunals, including the International Court of Justice and the European Court of Human Rights. They are likewise involved in the drafting of other important international instruments, such as Security Council resolutions. Kate Jones, in her recent piece on FO Legal Advisers between 1876 and 1953, notes 'certain pervasive themes: a strong commitment to international law and the international legal system; an enormous breadth of work; and the pivotal role of Foreign Ministry Legal Advisers in the conceptualization and realization of the international institutional architecture of the twentieth Century, not least on dispute resolution'.[39] She notes, for example, how the first FO Legal Adviser, Lord Pauncefote, at times 'dominated' the 1899 Hague Peace Conference;[40] his name became 'inseparably connected with the establishment of the Permanent Court [of Arbitration]'.[41] The following list of later FO/FCO Legal Advisers, all of whom made significant contributions to international law, is confined to those deceased: Cecil Hurst,[42] William Malkin,[43] Eric Beckett,[44] Gerald Fitzmaurice,[45] Francis Vallat,[46] Vincent Evans,[47] Ian Sinclair,[48] John Freeland[49] and Arthur Watts.[50]

Some distinguished British international lawyers have made their mark primarily within international organizations. Mention must be made, first and foremost, of Wilfred Jenks. In addition to being a prolific writer on international law, Jenks was for many years a legal adviser to the International Labour Organization and became its Director-General from 1970 until his untimely death in 1973.[51]

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[39] *Jones* (n 36) 29.

[40] On that conference, see James Brown Scott, *The Hague Peace Conferences of 1989 and 1907* (John Hopkins University Press 1909) 148.

[41] Ibid. 69.

[42] Eric Beckett, 'Sir Cecil Hurst's Services to International Law' (1949) 26 *BYIL* 1-5; *Jones* (n 36) 34-43.

[43] For a detailed account of Sir William Malkin's work, see *Jones* (n 36) 43-49. Malkin was lost at sea when a plane carrying a section of the British delegation returning from the San Francisco Conference crashed in the night of 3/4 July 1945.

[44] Gerald G Fitzmaurice and Francis A Vallat, 'Sir (William) Eric Beckett, K.C.M.G, QC (1896-1966): An Appreciation' (1968) 17 *ICLQ* 267-326; Ian Brownlie, 'Beckett, Sir (William) Eric (1896-1968)' in *Oxford Dictionary of National Biography* (Oxford University Press 2004).

[45] Robert Jennings, 'Gerald Gray Fitzmaurice' (1984) 55 *BYIL* 1-64.

[46] Maurice Mendelson, 'Sir Francis Vallat GBE, KCMG, QC (1912-2008)' (2008) 79 *BYIL* 3-6.

[47] Franklin Berman, 'Sir Vincent Evans (1915-2008)' (2007) 78 *BYIL* 1-7.

[48] Franklin Berman and Michael Wood, 'Sir Ian Sinclair, KCMG, QC (1926-2013)' (2013) 83 *BYIL* 1-12.

[49] Franklin Berman and Michael Wood, 'Sir John Freeland, KCMG, QC (1927-2014)' (2015) 85 *BYIL* 1-9.

[50] Elihu Lauterpacht, 'Sir Arthur Watts (1931-2007)' (2007) 78 *BYIL* 7-16.

[51] Elihu Lauterpacht, 'Jenks, Clarence Wilfred (1909–1973)', *Oxford Dictionary of National Biography* (Oxford University Press 2004); Jaci Leigh Eisenberg, 'Jenks, Clarence Wilfred' in Bob Reinalda, Kent J Kille and Jaci Eisenberg (eds), *IO BIO, Biographical Dictionary of Secretaries-General of International Organizations* <www.ru.nl/fm/iobio> accessed 25 February 2020.

British lawyers have had important positions within the Office of Legal Affairs of the United Nations. For example, Ralph Zacklin worked in the Office from 1973, holding the position of Assistant Secretary-General for Legal Affairs from 1998 until 2005.[52] Huw Llewellyn (formerly Legal Counsellor in the FCO) is currently Director of the Codification Division. British international lawyers have also worked in the Registry of the International Court of Justice. Preeminent among them was Hugh Thirlway, who passed away in 2019.[53]

Until February 2018, there had always been a British member of the International Court of Justice (and of its predecessor, the Permanent Court of International Justice): Finlay (1922–1930), Hurst (1931–1946), McNair (1946–1955), H. Lauterpacht (1955–1960), Fitzmaurice (1960–1973), Waldock (1973–1981), Jennings (1982–1995), Higgins (1995–2009), Greenwood (2009–2018). It is believed that they were influential, often serving as President of the Court: Hurst (1934–1936, then Vice-President from 1937, extended to 1946), McNair (1952–1955), Waldock (1979–1981), Jennings (1991–1994), Higgins (2006–2009).

This has not been the case with the International Tribunal for the Law of the Sea. David Anderson (a former FCO Legal Adviser) was a member of the Tribunal for a 9-year term from its inception in 1996 until 2005. There has not been a British member since then.

British lawyers contributed much to the early development of international criminal courts and tribunals. This began with the trial before the International Military Tribunal at Nuremberg of the Major German War Criminals.[54] Much later, Richard May and Iain Bonomy played leading roles on the International Criminal Tribunal for the former Yugoslavia, established by the UN Security Council in 1993. (Richard May—until his untimely death—presided over the trial of Slobodan Milošević.) Adrian Fulford was highly influential among those first elected as judges of the International Criminal Court (ICC). The current ICC Registrar, Peter Lewis, is a former Chief Executive of the Crown Prosecution Service (CPS) in England and Wales.

With the exception of one quinquennium,[55] the UN International Law Commission has always included a British member.[56] It is believed that successive British members have contributed much to the Commission's work.[57] British members

[52]Ralph Zacklin, *The United Nations Secretariat and the Use of Force in a Unipolar World: Power v. Principle* (Cambridge University Press, 2010).

[53]Franklin Berman and Michael Wood, 'Hugh Thirlway (1926-2019)' (forthcoming 88 *BYIL*).

[54]Shavana Musa, 'The British and the Nuremberg Trial' in *British Influences* (n 13) 367-386.

[55]There was no British member between 1987 and 1992. This came about when Sir Ian Sinclair was not re-elected at the elections held in November 1986. For possible explanations, see *Berman and Wood* (n 48) 8.

[56]James Brierly (1949-1951); Hersch Lauterpacht (1952-1954); Gerald Fitzmaurice (1955-1960); Humphrey Waldock (1961-1972); Francis Vallat (1973-1981); Ian Sinclair (1982-1986); Ian Brownlie (1997-2008); Michael Wood (2008-).

[57]The editors of a volume prepared in connection with the ILC's fiftieth anniversary referred to "the high regard and importance with which international lawyers from the United Kingdom have

served as chair of the Commission in 1951 (Brierly), 1959 (Fitzmaurice), 1967 (Waldock), 1977 (Vallat) and 2007 (Brownlie). And they have served as Special Rapporteurs in respect of various topics: law of treaties (Brierly, Lauterpacht, Fitzmaurice, Waldock),[58] state succession in respect of treaties (Waldock, Vallat), effects of armed conflicts on treaties (Brownlie), identification of customary international law (Wood).

British lawyers have sat on various international human rights bodies and have undoubtedly played an influential role. There has, of course, always been a British judge on the European Court of Human Rights, sometimes as President of the Court (McNair, Waldock, Bratza). United Kingdom lawyers have made vital contributions to the Human Rights Committee under the International Covenant on Civil and Political Rights; one thinks in particular of Vincent Evans, Rosalyn Higgins and Nigel Rodley.

There are many British lawyers practising in the field of public international law, as barristers,[59] solicitors[60] or in-house lawyers with large firms or NGOs. One great

consistently viewed the ILC. The great contribution to the ILC by British lawyers has been evident from its inception. It was Sir Hersch Lauterpacht's *Survey of International Law* in 1948 which first shaped the ILC agenda and has influenced it ever since. The work of the successive British members of the ILC displays a strength of commitment to the Commission, as demonstrated, for example, by the work of various special rapporteurs in the Commission's study of the law of treaties, culminating in the 1969 Vienna Convention on the Law of Treaties. The list of British members also raises the second general point in that each of them is renowned as both scholar and practitioner. The challenge of the International Law Commission is that it seeks to combine the highest academic standards with outcomes of greatest practical utility, and its most significant work has been notable for succeeding on both fronts.": MR Anderson and others, *The International Law Commission and the Future of International Law* (BIICL 1998) xii.

[58]Kasey McCall-Smith, 'British Influence on the Law of Treaties' in *British Influences* (n 13) 93-109.

[59]Philippe Sands and Arman Sarvarian, 'The Contribution of the UK Bar to International Law' in *British Influences* (n 13) 497-519. See also Ian Brownlie, 'The Perspective of International Law from the Bar' <https://fdslive.oup.com/www.oup.com/orc/resources/law/intl/evans4e/resources/insights/evans4e_insights_14piece3.pdf> accessed 25 February 2020. This short piece, written for the first edition of Evans's *International Law* (2003), contains many words of wisdom, some of which may indicate important differences between the approach of the English Bar and lawyers from other legal traditions. It ends as follows: "... it is worth emphasizing that, at least in the tradition of the English Bar, the legal adviser or advocate represents the client, but retains a significant degree of independence and aloofness. If the barrister simply identifies with the client in all respects, his value will diminish. The purpose of advocacy is to establish a link with the court and, if a client ignorant of or indifferent to the judicial context imposes inappropriate instructions the desired link with the court will be weakened or broken. Pleasing the client is one thing, winning a case is another, although if one is fortunate, both outcomes may be achieved." See also J. Crawford and Alain Pellet, 'Anglo Saxon and Continental Approaches to Pleading Before the ICJ/Aspects des modes continentaux et Anglo-Saxons de plaidoiries' in Isabelle Buffard and others (eds), *International Law Between Universalism and Fragmentation: Festschrift in Honour of Gerhard Hafner* (Brill/Nijhoff 2008) 831-867.

[60]For a lively account by a solicitor, see Tim Daniel, 'The Thread of Public International Law In the Life of a Solicitor In Private Practice' (2014) <https://fdslive.oup.com/www.oup.com/orc/

example of a solicitor international lawyer was F.A Mann,[61] a German jurist who came to Britain in 1933.[62] He worked for many years with the firm of solicitors now named Herbert, Smith and Freehills, taking part in some of the great international law cases in the English courts and writing extensively in the field of public international law.[63] NGO lawyers contribute much to international law,[64] and some of the most influential have been from the United Kingdom; for example, Sir Nigel Rodley was for many years (1973–1990) a legal adviser to the International Secretariat of Amnesty International. Other UK-based NGOs that play an active role in matters of international law include JUSTICE, Liberty and Redress.

The decisions of domestic courts may serve at least three functions: a subsidiary means for the determination of rules of international law, within the meaning of Article 38, paragraph 1(*d*), of the ICJ Statute;[65] state practice as an element in customary international law and for other purposes; and a form of evidence from which a state's *opinio juris* or other legally relevant view of the law may be ascertained, for example as to the content of *jus cogens*. The decisions of domestic courts thus have a potentially important role to play in public international law; how much they actually play that role depends in large part on the place of international law in the national legal system,[66] and how well they play it depends on the quality of their reasoning.

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resources/law/intl/evans4e/resources/insights/evans4e_insights_15piece4.pdf> accessed 25 February 2020.

[61]Geoffrey Lewis, 'Mann, Frederick Alexander [Francis] (1907–1991)' in *Oxford Dictionary of National Biography* (Oxford University Press 2004).

[62]See also Jack Beatson and Reinhard Zimmermann (eds), *Jurists Uprooted: German Speaking Emigré Lawyers in Twentieth Century Britain* (Oxford University Press 2004), including chapters by James Crawford (on public international law in twentieth century England); Lawrence Collins (on FA Mann); Mathias Schmoekel (on Lassa Oppenheim); John Bell (on Wolfgang Friedman); Martti Koskenniemi (on Hersch Lauterpacht); and Stephanie Steinie (on Georg Schwarzenberger).

[63]FA Mann's main writings can be found in *The Legal Aspects of Money* (Charles Proctor, *Mann's Legal Aspects of Money* (7th edn, Oxford University Press 2012)); *Studies in International Law* (Oxford University Press 1972); *Foreign Affairs in English Courts* (Oxford University Press 1986); *Further Studies in International Law* (Oxford University Press 1990).

[64]Nigel S Rodley, 'The Contribution of British Human Rights NGOs to the Development of International Law' in *British Influences* (n 13) 236-263.

[65]As regards the determination of rules of customary international law, see the International Law Commission's Conclusions on Identification of customary international law (n 8) 149-150, conclusion 13(2): "Regard may be had, as appropriate, to decisions of national courts concerning the existence and content of rules of customary international law".

[66]See United Nations Secretariat, *The role of decisions of national courts in the case law of international courts and tribunals of a universal character for the purpose of the determination of customary international law* (A/CN.4/691, 2016); André Nollkaemper and others (eds), *International Law in Domestic Courts: A Casebook* (Oxford University Press 2018).

The position of international law within the British legal system is a strong one.[67] The courts in the United Kingdom, particularly those in London, are increasingly called upon to deal with a wide range of public international law questions, including those concerning immunities, United Nations law, refugee law, international human rights law and the law of armed conflict.[68] In doing so, they often have to determine the existence (or not) of rules of customary international law. The highest United Kingdom court (until 30 September 2009, the Appellate Committee of the House of Lords; since 1 October 2009, the United Kingdom Supreme Court) frequently faces such questions.[69] It has been suggested that their influence may often be 'catalytic' rather than direct.[70]

Members of the British judiciary have long included persons expert in international law. The international law of the sea owes much to the great Admiralty judges from the eighteenth and nineteenth centuries. The current President of the United Kingdom Supreme Court is Robert Reed, who has served as an ad hoc judge on the European Court of Human Rights, and current members include David Lloyd Jones (a former university lecturer in international law) and Mary Arden (member of the Permanent Court of Arbitration). British judges, including the most senior among them, have long played an active role within the international legal community, both in the United Kingdom (where they sometimes deliver important lectures) and internationally, such as through the International Law Association (ILA), the headquarters of which is in London.[71]

On the whole, the contribution of the English courts has not been a radical one but has rather been based on a careful assessment of state practice: 'One swallow does

[67]Lord Collins of Mapesbury and Tom Cross, 'The Law of International Custom in the case law of the House of Lords and the United Kingdom Supreme Court' in Liesbeth Lijnzaad and Council of Europe (eds), *The Judge and International Custom* (Brill/Nijhoff 2016) 160-179.

[68]Case-notes on a selection of decisions of British courts involving questions of public international law appear in each volume of the *British Yearbook of International Law*. The most recent volume (2016) covers eight cases, dealing with United Nations sanctions and evidence obtained under torture; a series of questions concerning an investment arbitration award; questions of State and diplomatic immunity; whether a functional test could be applied to diplomatic status; the application of the Refugees Convention to the Sovereign Base Areas in Cyprus; the attributability of acts of British forces to the UK or the UN; the customary international law status of the immunity of persons on special missions; and questions arising under the European Convention on Human Rights and the UN Convention against Torture.

[69]Rosalyn Higgins, 'International Law' in Louis Blom-Cooper, Brice Dickson and Gavin Drewry (eds), *The Judicial House of Lords 1876-2009* (Oxford University Press 2009) 457. In 2019, on the occasion of the London Conference on International Law (whose participants were invited to join a session at the Supreme Court), the UK Supreme Court published a collection of cases entitled *Public International Law in the Supreme Court of the United Kingdom. A selection of cases from the Court's first ten years.*

[70]Antonios Tzanakopoulos, 'The Influence of English Courts on the Development of International Law' in *British Influences* (n 13) 11-27.

[71]For example, Lord Mance (a member of the House of Lords/Supreme Court between 2005 and 2018) has been Chair of the Executive Council of the International Law Association for a number of years.

not make a rule of international law.'[72] UK judges have not generally seen their role as developing international law.[73]

By way of example, mention may be made of the contribution of English courts to the international law on immunities,[74] both before and after the codification of the law in the Vienna Conventions on Diplomatic and Consular Relations of 1961 and 1963 respectively, in the 1969 Convention on Special Missions and in the 2004 UN Convention on Jurisdictional Immunities of States and Their Property. A recent example is the litigation concerning the immunity under customary international law of persons on special missions from criminal jurisdiction, and in particular the *Freedom and Justice Party* case:[75] the closely reasoned decisions of the English courts may be influential in other jurisdictions in this rather unexplored area of the law. They are of interest both for the customary international law on the immunity of persons on special missions and on how to identify rules of international law more generally.

The leading learned societies based in the United Kingdom are the British Institute of International and Comparative Law (BIICL) and the International Law Association (ILA), including its British and international branches. When it was founded in 1958, BIICL incorporated the Grotius Society, itself founded in 1915,

[72]"The *Ferrini* decision cannot in my opinion be treated as an accurate statement of international law as generally understood; and one swallow does not make a rule of international law.": *Jones v. Ministry of Interior Al-Mamlaka Al-Arabiya AS Saudiya (the Kingdom of Saudi Arabia) and others* [2006] UKHL 26, [22] (Lord Bingham).

[73]Ibid. [63] (Lord Hoffman, referring to academic opinion that "the *Ferrini* case should be seen rather as giving priority to the values embodied in the prohibition of torture over the values and policies of the rules of state immunity", said: "I think that this is a fair interpretation of what the court was doing and, if the case had been concerned with domestic law, might have been regarded by some as "activist" but would have been well within the judicial function. As Professor Dworkin demonstrated in *Law's Empire* (1986), the ordering of competing principles according to the importance of the values which they embody is a basic technique of adjudication. But the same approach cannot be adopted in international law, which is based upon the common consent of nations. It is not for a national court to "develop" international law by unilaterally adopting a version of that law which, however desirable, forward-looking and reflective of values it may be, is simply not accepted by other states (See *Al-Adsani* 34 EHRR 273, 297, para O-II9 in the concurring opinion of Judges Pellonpää and Bratza).)".

[74]Philippa Webb, 'British Contribution to the Law on Immunity' in *British Influences* (n 13) 145-166.

[75]*Freedom and Justice Party and others v Secretary of State for Foreign and Commonwealth Affairs and others* [2016] EWHC 2010 (Admin) (Divisional Court); *R (on the application of The Freedom and Justice Party and others) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719 (Court of Appeal). See Michael Wood, Andrew Sanger and the Council of Europe, *Immunities of Special Missions* (Brill/Nijhoff, 2019); Andrew Sanger and Michael Wood, 'The Immunities of Members of Special Missions' in Tom Ruys, Nicolas Angelet and Luca Ferro (eds), *The Cambridge Handbook of Immunities and International Law* (Cambridge University Press 2019) 452-480.

and the Society of Comparative Legislation, founded in 1895.[76] The Grotius Society had been an active (if rather exclusive) institution, bringing together leading British international lawyers, whose interventions at its meetings appeared in the *Transactions of the Grotius Society* (44 volumes reproducing the lectures given between 1918 and 1959).

4 The Contributions of Teachers and Writers at British Universities

Teachers and writers make perhaps the most obvious contribution to international law. Those who teach and those who write transmit their knowledge and wisdom to future generations. I suppose that most of us are the product of our teachers. Notwithstanding the understandable frustration at the ways in which the universities are expected to operate these days, the study of international law at British universities seems to go from strength to strength. It would have been unthinkable, just a few decades ago, that international law would be taught, and taught so well, at so many British universities.

The teachers are not necessarily themselves British, at least not in origin. Nowadays academics at British universities come from all over the world: Australia, Germany, Greece, Israel, Italy, New Zealand, to name but a few countries of origin. But as will be seen, that is nothing new. Likewise, there were always a lot of foreign students studying international law in the United Kingdom, and this is even more so nowadays.

The list of those concerned is very extensive, and what follows is highly selective. Those mentioned by name are chiefly limited to persons no longer alive. It seems right to start with Alberico Gentili,[77] Regius Professor of Civil Laws at Oxford from 1587 until his death in 1608. Gentili, one of the 'fathers' of international law, came from the small town of San Ginesio in the *Marche* (then within the Papal States). Fleeing persecution in his own land (he was a Protestant), he came to England in 1580. In England, he was a practitioner and a professor (thus following or inaugurating a tradition that persists to this day). His writings are often based on his professional advice, which gives them an important quality of reality.[78]

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[76]See Norman Marsh, *British Institute of International and Comparative Law. A brief history: 1895–1958* (November 1998) <https://www.biicl.org/documents/14_12_a_brief_history_of_biicl.pdf> accessed 25 February 2020.

[77]Merio Scattola, 'Alberico Gentili (1552-1608)' in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press 2012) 1092-1097; Gesina Hermina Johanna van der Molen, *Alberico Gentili and the Development of International Law: his Life, Work and Times* (2nd edn, Sijthoff, 1968).

[78]Carlo Focarelli deals at some length with Gentili's legal thinking in his chapter in this volume on 'the Italian perspective'. There can no objection to that since Gentili was born in the Papal States, though he spent the whole of his professional and academic career in England. See also Michael

I shall fast forward to the nineteenth century, and the establishment in 1868 of the Whewell Professorship of International Law at the University of Cambridge.[79] John Westlake was Whewell Professor for 20 years between 1888 and 1908. He was succeeded by another of the great names of international law, Lassa Oppenheim,[80] a German academic specializing in criminal law, who came to England in 1895. Oppenheim first became professor at the London School of Economics and was then Whewell Professor from 1908 until his death in 1919. He was much appreciated by practitioners as a 'positivist'; his great work on international law, first published in 1905 and now known as *Oppenheim's International Law*, continues to be among the most influential and most cited works on the subject.[81] Both the form and content of his work have had a considerable impact on international legal writing.

The period between the twentieth century's two World Wars saw a flowering of influential international law academics in Britain, whose activity extended well beyond 1945: James Brierly, Arnold McNair, Robbie Jennings,[82] Hersch Lauterpacht[83] and Georg Schwarzenberger, among others. Also active at this period was Sir John Fischer Williams.[84] Some of the most significant of these came from abroad, a remarkable example being Bin Cheng (who died in 2019 aged 98).

This wealth of names continued in the second half of the twentieth century, with many academics then also acting as practitioners: Humphrey Waldock, Derek Bowett, Ian Brownlie, Clive Parry.[85] Elihu Lauterpacht, for example, is often thought of more as practitioner than teacher. Yet his teaching undoubtedly left a deep impression on his students, and his doctrinal contribution to international law

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Wood, 'Diplomatic Law Today: Alberico Gentili Would Not Have Felt out of Place' in Vincenzo Lavenia (ed), *Alberico e Scipione Gentili nell'Europa di ieri e di oggi* (eum editioni università di macerata 2018) 191-204.

[79]The professorship was established by the will of William Whewell, a scientist and moral philosopher. According to the second Whewell Professor of International Law, in his will Whewell "laid an earnest and express injunction on the occupant of this chair that he should make it his aim, in all parts of his treatment of the subject, to lay down such rules and suggest such measures as might tend to diminish the evils of war and finally to extinguish war among nations": Henry Sumner Maine, *International Law: A Series of Lectures Delivered before the University of Cambridge, 1887* (John Murray 1888) 1.

[80]Mathias Schmoeckel, 'Lassa Oppenheim (1858-1919)' in *Oxford Handbook* (n 77) 1152-1155.

[81]A new edition of *Oppenheim's International Law* is in preparation. It is to consist of three parts, covering (i) the law of peace; (ii) dispute settlement, the use of force, and the law of armed conflict; and – a new part – (iii) United Nations (comprising two volumes, published by Oxford University Press in 2017).

[82]Antonio Cassese, 'Sir Robert Jennings' in *Five Masters of International Law* (n 2) 115-182; Christine Jennings, *Robbie: The Life of Sir Robert Jennings* (Matador 2019) (with a list of published writings).

[83]Elihu Lauterpacht, *The Life of Sir Hersch Lauterpacht QC, LLD, FBA* (Cambridge University Press 2010).

[84]C Wilfred Jenks, 'Fischer Williams—The Practitioner as Reformer' (1964) 40 *BYIL* 233-285.

[85]*Parry (ed)* (n 2).

was considerable.[86] This trend continues to the present; it is invidious to mention names of the living, but no listing could be complete without two distinguished former members of the International Court of Justice: Rosalyn Higgins and Christopher Greenwood.

Many of the English-language[87] textbooks, produced in successive editions and used for teaching around the world, are from the United Kingdom:[88] *Brierly*,[89] *Brownlie*,[90] *Shaw*,[91] *Evans*.[92] The last mentioned has an international authorship; it is in effect an international (collective) work like the Sørensen *Manual*.[93] There are fewer casebooks or books of materials, though notable exceptions are *Harris/Sivakumaran*[94] and *Evans*.[95]

It is not possible even to sketch the range and quality of British monographs or articles, and increasingly blogs, produced in the United Kingdom. The old-established journals, *International and Comparative Law Quarterly* (formerly *Transactions of the Grotius Society*) and the *British Yearbook of International Law*, have long published important pieces by British and British-based international lawyers. They have now been joined by a host of other British publications.

One cannot overstate the contribution that publishers make to international law. Their devoted staff deserves much thanks. Textbooks, casebooks, monographs,

[86]Ian Scobbie, 'Out of the Shadows: An Appreciation of Sir Elihu Lauterpacht's Contribution to the Doctrine of International Law' (2017) 87 *BYIL* 1-17.

[87]This qualification is important, as many excellent textbooks are available in other languages. One of the best is Patrick Daillier, Mathias Forteau and Alain Pellet, *Droit international public* (8th edn, L.G.D.J. 2009).

[88]Americans generally do not seem to write textbooks, preferring for obvious reasons to produce case-books (some of which are excellent, as in my days as a student was Herbert W. Briggs's *The Law of Nations: Cases, Documents, and Notes* (2nd edn, Appleton-Century-Crofts 1952). There are some notable exceptions (for example, Sean D Murphy, *Principles of International Law* (2nd edn, West 2019), though even these tend to have a heavy focus on peculiarly American aspects of the subject.

[89]Andrew Clapham (ed), *Brierly's Law of Nations* (7th edn, Oxford University Press 2012).

[90]James Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2019).

[91]Malcolm Shaw, International Law (8th edn, Cambridge University Press 2017).

[92]M. Evans (ed.), *International Law* (Oxford University Press 5th edn, 2018).

[93]"The idea underlying the Sørensen Manual was to capitalize on this perceived new era *[the early 1960s]* by preparing and publishing a treatise on public international law written from an international rather than a national perspective. The authors were to be from different regions and different legal systems, representative of the new dispensation of the community of nations: East–West, North–South. While each contributor would be assigned individual topics, the final edited text would represent the collective views of the group as a whole.": Ralph Zacklin, 'A Personal Perspective on International Law' (2014) <https://fdslive.oup.com/www.oup.com/orc/resources/law/intl/evans4e/resources/insights/evans4e_insights_16piece5.pdf)> accessed 25 February 2020.

[94]David Harris and Sandesh Sivakumaran, *Cases and Materials on International Law* (8th edn, Sweet & Maxwell 2015).

[95]Malcolm Evans, *Blackstone's International Law Documents* (14th edn, Oxford University Press 2019).

commentaries, yearbooks, journals and collections of documents and of the case law of international and domestic courts and tribunals are the lifeblood of the subject. Particular mention may be made of encyclopaedias and the commentaries on important treaties, which would not be possible without the enthusiastic support of publishers. Many of the leading publishers, past and present, were or are based in the United Kingdom: Cambridge University Press (which incorporated Grotius Publications), Oxford University Press, Manchester University Press, Hart, Edward Elgar.

5 Conclusions

The differences between national approaches to international law should not be overstated: international law is, after all, international.

To affirm this central truth is not inconsistent with noting that British contributions to public international law have been impressive for their quality and quantity. In terms of both intellectual clarity and sheer volume, Britain has contributed a good deal to the discipline. There is a strong belief in international law, though with a healthy dose of realism, even at times scepticism. Why this is so is a matter for speculation, though Britain's long-standing commitment to the rule of law at home and abroad doubtlessly plays a role. Common law training presumably has much to do with it as well: 'a strong predilection for the development of the law through decided cases and specific instances'.[96]

Perhaps it has also to do with the high quality of British judges and practitioners, and leading teachers at British universities. They form a British 'invisible college' and have been in close touch with each other and with others, both formally and informally, including through institutions such as the Grotius Society, BIICL and the British ILA Branch, as well as at the many conferences organized by the FCO, law firms and institutions in London and around the country. For much of the twentieth century, they were a relatively small and reasonably tight-knit group (though that did not prevent strongly held differences of view), limited to a small number of academics, a smaller number of Foreign Office lawyers, and some practising lawyers and members of the judiciary. Numbers have expanded greatly with the expansion in the scope and teaching of international law and its ever-increasing presence in international, regional and domestic courts and tribunals.

The position of international law within the English legal system,[97] which seems in some ways more direct than in many other legal systems, may be relevant. One particularly British feature may lie in the fact that many of the leading British

[96] *Jennings* (n 1).

[97] See *Halsbury's Laws of England* (5th edn, LexisNexis 2018) vol 61 (on 'International Law and Foreign Relations'). Volume 61 replaced the title 'International Relations Law' in the 2010 edition, which itself replaced the title 'Foreign Relations Law' in volume 18 of the 4th edition (1977), edited by Clive Parry and John Collier.

academics have also been practitioners before English and international courts. This perhaps accounts for their practical approach to the subject and may partly explain why positivism and pragmatism prevail. The increasing predominance of the English language, too, has doubtlessly been a considerable advantage to British international lawyers.

If one were to venture into generalization as regards British contributions to public international law, questions of style come to mind.[98] British international lawyers tend to be relatively modest, practical and good-humoured. They do not, for the most part, delve deep into theory—'suspicious, if not impatient, of abstract theories and doctrines'.[99] They do not use long and obscure words. They are aware of the limitations of their profession.[100]

Another striking aspect of the culture of international law in Britain is that it has never been parochial, not even when there was thought to be an 'English school', and certainly not nowadays. The number and quality of foreign lawyers who, over the centuries and especially at the present day, have moved to Britain to teach, and practice, international law is remarkable. This has surely contributed greatly to the international outlook of international law in Britain. Likewise, many British international lawyers have studied and taught abroad.

The seriousness with which international law is taken in the United Kingdom, more so perhaps than in other states with comparable roles in the international scene, is impressive. It is apparent from the importance attached to compliance with international law by the Government, the Parliament, the courts and public opinion, even—perhaps especially—on matters as central to the national interest as the use of force (the *jus ad bellum*). This is perhaps Britain's greatest contribution to international law.

[98]See also Philip Allott, 'Language, Method and the Nature of International Law' (1971) 45 *BYIL* 79, 97 (observing that the "British tradition has contributed much by its calm speculation", including in writings on international law, by employing a generally inductive method "inviting the reader to think slowly and quietly and to form a view, preferably in the same sense as the author's view, but in any case after the application of common sense and good faith").

[99]*Jennings* (n 1).

[100]Ralph Zacklin captured this well in his short piece written in connection with Malcolm Evans's *International Law*: "I have been privileged to work for almost thirty years as an international lawyer in the United Nations and from this vantage point international law is neither the omnipotent solution to the world's problems nor is it an illusion that only die-hard pacifists cling to. It is, in fact, for the practitioner a very real and pragmatic discipline. That it may be uncertain, incomplete, and difficult to enforce does not lessen the need for the rule of law on the international plane nor does it mean that the efforts to codify the law and develop its institutions should cease or be diminished.": *Zacklin* (n 93).

Annex

Identification of Customary International Law, Ways and Means for Making the Evidence of Customary International Law More Readily Available, Memorandum by the Secretariat (UN Doc A/CN.4/710/Rev.1, 14 February 2019 (Extract)

United Kingdom of Great Britain and Northern Ireland

Resources Relating Specifically to International Law

- Parry, Clive, A British Digest of International Law (8 vols.), Stevens and Sons, 1965–1967.
- British and Foreign State Papers, Foreign Office, 1812–1968, printed and online, https://home.heinonline.org/titles/World-Treaty-Library/British-and-ForeignState-Papers/.
- British Practice in International Law, British Institute of International and Comparative Law, 1964–1967.
- British Yearbook of International Law, 1920–, printed and online, https://academic.oup.com/bybil.
- Lauterpacht, Elihu, Contemporary Practice of the United Kingdom in the Field of International Law, British Institute of International and Comparative Law, 1962–1963.
- Smith, Herbert A., Great Britain and the Law of Nations, P. S. King and Son, 1932–1935.
- International and Comparative Law Quarterly, 1952–, printed and online, www.biicl.org/iclq.
- McNair, Arnold, International Law Opinions (3 vols.), Cambridge University Press, 1956.
- Parry, Clive, Law Officers' Opinions to the Foreign Office 1793–1860 (97 vols.), Gregg Publishing, 1970.
- United Kingdom Treaties Online, http://treaties.fco.gov.uk/treaties/treaty.htm.

General Resources

- BAILII: British and Irish Legal Information Institute, www.bailii.org.
- Courts and Tribunals Judiciary, www.judiciary.gov.uk.
- Foreign and Commonwealth Office, www.gov.uk/government/organisations/foreign-commonwealth-office.
- GOV.UK, www.gov.uk.
- Hansard: the Official Report of all Parliamentary Debates, 1909–, printed and online, http://hansard.parliament.uk.

- House of Commons Library, printed and online, www.parliament.uk/commonslibrary.
- Judicial Committee of the Privy Council, www.jcpc.uk.
- Legislation.gov.uk, www.legislation.gov.uk.
- LexisNexis, www.lexisnexis.co.uk, available by subscription.
- Northern Ireland Courts and Tribunals Service, www.courtsni.gov.uk.
- Scottish Courts and Tribunals, www.scotcourts.gov.uk.
- The Gazette: Official Public Record, printed and online, www.thegazette.co.uk.
- The National Archives, printed and online, http://nationalarchives.gov.uk.
- The Supreme Court, www.supremecourt.uk.
- The UK Supreme Court Yearbook, Appellate Press Ltd, 2010–, printed and online, www.ukscy.org.uk.
- United Kingdom Parliament Foreign Affairs Committee, www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/.
- Westlaw International, http://westlawinternational.com, available by subscription.
- Westlaw UK, http://legalresearch.westlaw.co.uk.

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Barrett J and Gauci J-P (eds), *British Contributions to International Law, 1915-2015: An Anthology Set* (Brill/Nijhoff 2020).

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