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Profile: Judge George H. Aldrich

Nancy Amoury Combs
William & Mary Law School, ncombs@wm.edu

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Profile / Profil

Judge George H. Aldrich

NANCY AMOURY COMBS*

When Judge George H. Aldrich of the Iran-United States Claims Tribunal invited me to interview for the position of his Legal Adviser, I was delighted. The Tribunal, established as part of the agreement resolving the 1979 Iranian hostage crisis, had by that time already adjudicated hundreds of cases brought by American companies and nationals for losses sustained following the Iranian Revolution, and these cases had made a significant contribution to various subjects of international law, including those concerning dual nationality, expropriation, commercial law, and arbitral procedure. For my interview, I traveled to St. Michaels, Maryland to meet Judge Aldrich in his comfortable home on the Eastern Shore. Surrounded by impressive pictures painted by Judge Aldrich’s wife, Rosemary, I asked various questions about the workings of the Tribunal and the unusual way in which law and diplomacy coalesce in the resolution of cases. Judge Aldrich answered all of my questions and described the Tribunal’s many contributions, particularly to the lex mercatoria. By the end of the interview, I was quite keen to obtain the position, yet I nonetheless felt obliged to admit, “I, uh, don’t really know very much about international law,” to which Judge Aldrich responded: “That’s okay. You don’t really need to.”

I have learned a great deal about international law in the years I have worked with Judge Aldrich, but he was right – I did not really need to – because Judge Aldrich himself knows so very much. Judge Aldrich arrived at the Tribunal at its inception in 1981. He is the only member of the Tribunal to have served in that capacity since the Tribunal’s outset, and, in his twenty-four years at the Tribunal, he has participated in the resolution of perhaps 500 cases. As a result of his awe-inspiring memory and his substantial involvement in every aspect of the Tribunal’s work – from the resolution of the cases to the drafting of the Tribunal’s procedural rules to his longstanding service on the Tribunal’s Committee on Administrative and Financial Questions – Judge Aldrich has become the well-established expert on everything related to the Tribunal. Judge Aldrich “wrote the book,” as it were,

* Legal Adviser, Iran-United States Claims Tribunal; Assistant Professor of Law, College of William and Mary School of Law; J.D., University of California at Berkeley School of Law, Ph.D., Leiden University (expected).

both figuratively and literally – his 1996 book, *The Jurisprudence of the Iran-United States Claims Tribunal*, has been described as "one of the truly essential books published in recent years" and is an essential reference for any serious student of the Tribunal.

Judge Aldrich's influence at the Tribunal results not only from his impressive command of international law and his willingness to immerse himself in the messy facts of many of the Tribunals large inter-governmental cases but, as importantly, from his utter impartiality. The Tribunal is comprised of nine judges - three appointed by Iran, three appointed by the United States, and three "third-country" judges, appointed jointly by Iran and the United States or, if the States cannot agree, by an appointing authority. The Tribunal's Iranian judges passionately advance Iran's positions in virtually every Tribunal case. American judges have shown more independence, regularly finding for Iran and against the American positions, yet even amongst his American colleagues, Judge Aldrich stands out. In a number of early Tribunal cases, Judge Aldrich declined to join his American colleagues in dissenting against awards in favor of Iran, and, to this day, refuses to engage in the gamesmanship that can characterize the deliberations of arbitral bodies. Because he calls them as he sees them in a fair and objective way, Judge Aldrich has maintained enormous credibility with his third-country colleagues, and his views are treated with great respect. That respect is enhanced, additionally, by Judge Aldrich's impressive ability to forge agreement amongst opposing parties. Many is the time I have watched him tweak the language of an award in a way that seems insignificant but that has the effect of bringing dissenting judges into the majority. Judge Aldrich honed these skills during the distinguished career he pursued before he joined the Tribunal. Indeed, as influential as Judge Aldrich has proven to be at the Tribunal, some of his most significant contributions to international law occurred before his move to The Hague.

Judge Aldrich was born in St. Louis, Missouri, and, after receiving his Bachelor of Arts degree from DePauw University in Indiana, he attended Harvard Law School, where he obtained his LL.B degree in 1957 and an LL.M degree in international law in 1958. His interest in international law stemmed, he believes, from his own experiences. "[G]rowing up during the Second World War and the years in which the post-war world was formed," Judge Aldrich has written, "it seemed natural that my

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goals looked toward the new world order of the United Nations and the promotion of international law as a means to make a Third World War less likely.”

During the early years of his career, Judge Aldrich held various positions in the United States Department of Defense and Department of State, and by 1973, he served as Principal Deputy Legal Adviser of the Department of State. During the 1960s and early 1970s, much of Judge Aldrich’s work focused on the Far East and, in particular, he became an expert on the laws of war. In 1961, at the age of twenty-nine, Judge Aldrich was sent to Geneva to participate in the International Conference on Laos, and in 1965 and 1969, he attended the International Conferences of the Red Cross to promote resolutions calling on the North Vietnamese to treat American military personnel in accordance with the Fourth Geneva Convention of 1949 on Prisoners of War. He also made an inspection trip to South Vietnam in 1967 to determine whether the South Vietnamese prisoner-of-war camps complied with the Convention. From 1963 to 1965, Judge Aldrich resided in Paris, and, while serving as Legal Adviser to the United States Mission and Ambassador Thomas Finletter, he was involved in negotiations for the creation of a multilateral nuclear force.

In the Fall of 1972, Judge Aldrich began participating in what must be considered one of the most fascinating negotiations of his illustrious career when he was called upon to work with then-United States National Security Advisor Henry Kissinger in negotiating a peace agreement with North Vietnam. A draft of the Paris Peace Agreement that was ultimately signed in January 1973 was nearly complete in October 1972, when Judge Aldrich became involved in the negotiations, but, recognizing the severe defects and limitations of the Agreement, Judge Aldrich, along with Ambassador William Sullivan, set out to draft protocols to the Agreement that would supply necessary details. Consequently, during several tense weeks in December 1972 and January 1973, Judge Aldrich and Ambassador Sullivan negotiated three important Protocols – one concerning the return of prisoners of war, the second concerning the cease-fire in South Vietnam and the Two-Party and Four-Party Joint Military Commissions provided for in the Agreement, and the third concerning the International Commission of Control and Supervision. These Protocols greatly enhanced and enlarged the Agreement: two-thirds of the provisions ultimately agreed upon were contained in these Protocols.

After the signing of the Agreement and Protocols on 27 January 1973, Judge Aldrich continued to participate in arduous negotiations with the North Vietnamese, this time to encourage their compliance with Agreement. From April

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5 George H. Aldrich, Notes from the Vietnam Peace Negotiations (forthcoming).
through June 1973, Judge Aldrich and Ambassador Sullivan assisted Dr. Kissinger in negotiating a Joint Communiqué and several Understandings regarding the January 1973 Agreement. The negotiations were intense, difficult, and did not in the end produce the sought-after compliance. During dinners at the Aldrich residence, I have many times been treated to compelling stories about the Vietnam negotiations, so I was particularly pleased when, in the Fall of 2004, Judge Aldrich completed a book manuscript, entitled *Notes from the Vietnam Peace Negotiations*, which describes these negotiations and includes long passages from the detailed notes he took at the various negotiation sessions. As these notes have only recently been declassified, they provide new and welcome insights into that soul-wrenching period of American history.

Judge Aldrich's most enduring legacy may well be his contribution to the drafting and negotiating of Protocols I and II to the 1949 Geneva Conventions on the Laws of War. By the mid-1970s, it was well-recognized that the laws of war needed to reflect better the changing nature of conflicts and the conduct of hostilities. Consequently, in 1974, Switzerland convened a Conference to negotiate two Protocols to the 1949 Geneva Conventions, the first to address the laws applicable during international armed conflicts, and the second to address the laws applicable during non-international armed conflicts. Judge Aldrich served as Head of the United States Delegation to the Conference, and he was entrusted with unusual control over the American negotiating posture. He had gained the trust of the United States Defense Department during the time he was employed there in the early 1960s and, because he was viewed as Dr. Kissinger's lawyer, few were willing to challenge the position papers he drafted, figuring that he would prevail in any event. During the early days of the Conference in 1974 and 1975, Judge Aldrich spent most of his time concerned with political matters. The most important of these were the Communist effort to seat the Vietcong delegation, an effort that ultimately proved unsuccessful, and the efforts of a number of States to extend the scope of Protocol I to apply to armed conflicts between States and national liberation movements. The American delegation opposed the language extending the scope of Protocol I and, although it failed to exclude the language, it rendered it largely academic by requiring liberation movements to comply with the law (which the delegation rightly assumed would be nearly impossible) and by including language that virtually ensured that no State would acknowledge that its armed conflict was one covered by the provision.

Harvard law professor and later International Court of Justice Judge, Richard R. Baxter, initially served as Rapporteur to the Third Committee of the Conference, which addressed the rules governing combat and the protection of civilians and, when he returned to Harvard in 1975, Judge Aldrich was elected to succeed him as
Rapporteur. It was an almost inconceivable decision to select an American Ambassador for such a post at any international conference, and it reflected appreciation for Judge Aldrich’s significant contributions. As Rapporteurs, Professor Baxter and Judge Aldrich were primarily responsible for drafting and negotiating articles 35 through 60 of Protocol I and articles 13 through 17 of Protocol II, which address the methods and means of warfare and the treatment of civilians and prisoners of war. Protocol I in particular added much of value to the law and helped bring international humanitarian law up to date. Its significance is reflected in a recent decision of the Eritrea-Ethiopia Claims Commission, on which Judge Aldrich serves, which held that most of the provisions of Protocol I now constitute expressions of customary international law.

During 1977 through 1981, Judge Aldrich served as Ambassador and Deputy Special Representative to the President for the United Nations Law of the Sea Conference. Virtually all of his work during that Conference concerned issues involving the exploitation of deep sea beds, issues which proved very difficult to negotiate. At the time, experts in the United States Government and elsewhere were convinced that vast wealth in the form of manganese nodules was to be found on the deep ocean floor, particularly in the Pacific. A few years later, it became clear that recovery of those nodules is not likely to be economically feasible for some time, but, unaware of the impracticability of the endeavor at the time, the United States pressed for provisions in the treaty that would ensure that American companies would be able to secure exclusive rights to mine sites on financially beneficial terms and conditions. These positions were not well-received, so Judge Aldrich sought to simplify the American negotiating posture by eliminating many of the specific guarantees that American companies and the American government desired, in favor of deferring them to a preparatory commission that would function after the Convention was concluded and before it had the requisite ratifications to bring it into force. In advancing this position, Judge Aldrich hoped to prevent a failure to reach an agreement while leaving the difficult commercial and mining battles to another day and to another, more technical, less prominent body.

President Reagan’s election put an end to Judge Aldrich’s efforts. The new Administration decided to take the position at the Conference that the deep sea beds would have to be freely available to all who could exploit them. Knowing that Judge Aldrich would not and could not credibly press such a position, Judge Aldrich was told – less than forty-eight hours before the resumption of the Conference – that he and a large proportion of his delegation would be replaced. After his removal, Judge Aldrich was moved to a bleak “transition office” where he waited for several anxious months for his next assignment. That assignment turned out to be a welcome but short-lived appointment to the International Law Commission.
Soon after, he was appointed to be an American judge on the Iran-United States Claims Tribunal, an affiliation that necessitated his withdrawal from the ILC but that, as noted above, has lasted twenty-four years and counting.

Although Judge Aldrich did serve between 1989 and 1997 as Professor of International Humanitarian Law at Leiden University, for most of his years on the Iran-United States Claims Tribunal, he has not been actively involved in his legal specialty – international humanitarian law. The peace treaty that ended the brutal two-year war between Eritrea and Ethiopia, however, provided him the opportunity once again to contribute to the development of the laws of war. In 2001, Judge Aldrich was appointed by Ethiopia to be a Commissioner on the Eritrea-Ethiopia Claims Commission, a judicial body established to decide claims for losses related to the war that resulted from violations of international humanitarian law. Judge Aldrich is joined by four other Commissioners, one of whom serves as the Commission’s President. To date, the Commission has issued six awards addressing questions of liability relating to prisoners of war, to the treatment of civilians in the territory of the other Party, and to the conduct of hostilities on the war’s central front. April 2005 will see the Commission convene a lengthy hearing to address various diplomatic and economic claims, claims arising from actions on the Eastern and Western Fronts, as well as claims based on the *jus ad bellum*, that is, claims alleging unlawful resort to the use of force.

In the awards issued thus far, the Commission has contributed to the development of international humanitarian law by holding, among other things, that most of the provisions of the 1949 Geneva Conventions and Protocol I therto have become expressions of customary international law, but that the same cannot be said of the Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction. The Commission held that, because these latter three treaties have been only recently concluded and the practice of States has been so varied and episodic, the Commission could not conclude that any of the treaties constituted an expression of customary international law applicable during the armed conflict between the Parties. This most recent opportunity to develop international humanitarian law has been rewarding for Judge Aldrich, but it comes at a time of great uncertainty regarding the role and influence of international humanitarian law. Although the abuses that took place – often against American soldiers – during the Vietnam War, amongst other conflicts, only underscore the compelling need for commitment to the kind of measured, carefully drafted rules
of warfare that Judge Aldrich has spent a career developing, these historical lessons
appear lost on the current American administration, a fact that is deeply troubling
to Judge Aldrich.

After I was asked to profile Judge Aldrich, I read several Profiles appearing in
past volumes of Forum. These Profiles concern eminent personages in international
law whose contributions to the field have been significant and many. Judge Aldrich
is quite at home in this distinguished group, and I have followed the formula of
Profiles, as it were, by focusing on his many accomplishments and contributions
to international law. Were it not for space constraints, much more could be said,
in addition, about his more personal qualities and in particular the warmth and
generosity he shows to all who have had the good fortune to know him. When I
leave The Hague in June 2005 to begin teaching law in the United States, I will
take with me fond memories of my association with a kind and caring man, as well
as tremendous respect for the work he has done to imbue the most brutal of legal
fields with the dictates of humanity.