



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



James Crawford AC, SC, FBA (1948-2021)

His Excellency James Crawford died on May 31, 2021 in the Hague, where he was serving as a Judge on the International Court of Justice, to which he had been appointed in 2014 for a nine-year term.

Only the second Australian to be appointed to such a position, following Sir Percy Spender, he was made a Companion (AC) in the General Division of the Order of Australia on June 10, 2013, and is arguably the best-credentialed lawyer in Australia that was not appointed to the High Court. The British barrister Philippe Sands QC, a member of the chambers in London which James co-founded, has described James as “probably Australia’s greatest international lawyer of all time”.

I have described elsewhere in my Frank Stewart Dethridge Memorial Address of October 11, 2018 how MLAANZ had been instrumental in obtaining the referral of admiralty jurisdiction to the Australian Law Reform Commission (ALRC) when it, together with the Law Council of Australia, submitted their report to the Attorney General on Admiralty Jurisdiction in Australia, 1982. That referral was then made in November 1982 and required the ALRC to report generally on “all aspects of the admiralty jurisdiction in Australia”. The report of the ALRC No 33 Civil Admiralty Jurisdiction was published in 1986.

In 1996, James presented the fifth Ebsworth & Ebsworth Maritime Law Lecture on the topic “The Australian Admiralty Act: Project and Practice”. In that he referred, in his self-deprecatory and amusing way, to his own role in that project as being “wholly accidental”.

The circumstances he described being that:

“I chanced to meet Michael Kirby at a conference – not itself very unusual – and was thereby appointed to the Australian Law Reform Commission, of which he was the foundation president. But I was appointed to work on Aboriginal customary laws (of which I knew nothing). It turned out there was enough time to devote to admiralty – of which I knew, if possible, even less – but which was as it were alphabetically next in order after Aborigines in the commission’s agenda.”

He concluded those introductory remarks by saying:

“Perhaps my principal element of use was in bringing together a group of consultants with real experience of the subject – among whom I might mention Justices Sheppard, Carruthers and Cooper and Tony Scotford of Ebsworths. Among this distinguished company of consultants, I hope I may single out one, Morella Calder – my classmate at Adelaide Law School – whose combination of vivacity, dedication to the subject and good sense stays in the memory.”

In my Dethridge address I suggested that: “James Crawford’s role as the commissioner in charge of that reference is something for which we should all be exceedingly grateful. The resulting ALRC Report provides an enduring reference point for admiralty lawyers.” In fact I would regard it, together with his contribution to the admiralty section of Law Book Company’s *Laws of Australia* as essential reading for any student or practitioner who wants to understand admiralty law.

The reason why James’s passing should be a matter of such regret for maritime lawyers in Australia can best be understood in the words of BJ Davenport QC, writing in the *Lloyds Maritime and Commercial Law Quarterly* in 1987 about Australia’s “proposed reforms of admiralty jurisdiction in Australia” when he said as follows:

“The commissioner in charge of the reference was Professor JR Crawford, who is now the Challis Professor of International Law at the University of Sydney and a member of the Australian Judicial System Committee of the Australian Constitutional Commission. The report is not only a model of what such a report should be, but ought to be compulsory reading for anyone concerned with the jurisdiction of a court dealing in maritime claims. It is based upon immaculate scholarship and sound common sense. There would seem to be every good reason why Australia should give effect to the draft Bill and Admiralty Rules annexed to the report.”

The author concluded his article by saying:

“What is generally so refreshing about the report is that it reaches parts that other considerations of the subject have not reached. It also reaches some parts that, at least in England, seem never to have been considered at all. There is no area of the law which cannot be improved by being rethought from its first principles. Admiralty jurisdiction and procedure are no exceptions to this general rule; the antiquity of parts of English admiralty jurisdiction and procedure are such that rethinking both by admiralty and non-admiralty lawyers (to say nothing of non-lawyers) might produce some particularly beneficial results. And even if no results follow in England, the results of the report which should follow in Australia will be not merely refreshing but also rejuvenating and reinvigorating.”

I also referred in my Dethridge Address to the significant role which MLAANZ played in organising seminars for the ALRC to discuss the research papers and draft report before finalising its contents. I recalled one Sydney occasion when James asked the audience whether we were in favour of the draft legislation specifying more detail in the legislation in relation to maritime liens (or it may have been in relation to priorities that he was asking) and I suggested that it would be of benefit to practitioners, who were not experienced in this area of the law, if they were specified. To much amusement in the audience he responded to my suggestion as coming from the “solicitor from Brewarrina!”

I was a beneficiary of the work which the ALRC did as a practitioner but also I prepared my book on “Annotated Admiralty Legislation” soon after the ALRC Report’s publication and awaited the enactment of the draft Bill before its publication. At the book launch in early 1989 the publisher organised to have a photograph taken of myself with Ken Carruthers (NSW Admiralty Judge and a former president of MLAANZ), David Yeldham (former NSW Admiralty Judge), Ian Sheppard (Federal Court Judge and former NSW Admiralty Judge) and Gordon Samuels (NSW Court of Appeal Judge and former NSW Admiralty Judge), together with James, which I understand will be used for the purposes of this memorial. It is a photograph I treasure.

Whilst Australian maritime lawyers have much to be thankful for from the work which James did at the ALRC, when he decided to move to the United Kingdom and become a Fellow of Jesus College (Cambridge) he was a great loss to the legal profession in Australia – although he did continue to give advices on matters involving Australian shipping law. I was aware, for example, that for many years after he had moved to Cambridge he continued to provide advice to the shipping conferences in Australia and was retained by Ebsworth & Ebsworth to do so.



At the launch of Annotated Admiralty Legislation early 1989, Carruthers J (NSW Supreme Court and Admiralty Judge, former president of MLAANZ), Yeldham J (NSW Supreme Court and Admiralty Judge), His Excellency James Crawford (Dean of Sydney University Law School, later Justice of the International Court of Justice), Sheppard J (Judge of the Federal Court and former NSW Supreme Court and Admiralty Judge), Colin Biggers & Paisley partner Stuart Hetherington, Samuels JA (NSW Court of Appeal Judge and former NSW Admiralty Judge, and later Governor of NSW)

The legal career of James can be described in four stages:

He had been born in Adelaide (South Australia) and attended the University of Adelaide as an undergraduate where he came under the influence of DP O’Connell, a New Zealand barrister and academic who specialised in international law and who then moved to Oxford where he was, from 1972 to 1979, the Chichele Professor of Public International Law at the University of Oxford. After graduating from Adelaide University, with a Bachelor of Laws Degree with Honours and a Bachelor of Arts (majoring in English history and politics) in 1971 James followed O’Connell to Oxford and graduated with a DPhil in international law; his thesis being on the Creation of States in International Law. He was called to the Bar in 1977. On his return to Adelaide he lectured in international and constitutional law and was made a Professor in Law in 1983.

The second stage of his career was his move to Sydney in 1986 when he was appointed to the Challis Professorship of International Law at the University of Sydney and served as the Dean of the Faculty of Law from 1990 to 1992.

The third stage was his move to Cambridge in 1992 when he was elected to the Whewell Professorship of International Law and a fellow of Jesus College. In 1992 he was also elected to the United Nations International Commission (ILC) where he played a significant role in drafting the laws for the establishment of the International Criminal Court in the Hague. In 1997 he was also appointed director of the Lauterpacht Centre for International Law Research in Cambridge. Its website, in reporting his death, described him thus:

“A legend of international law, James was also a towering figure on the Cambridge landscape. He was doctoral supervisor to more than 70 students, a mentor and friend to hundreds of students, Fellows, and Visiting Fellows, and an inspiration to countless others. At the centre, we knew him also as an avid reader of history, connoisseur of music, art, food and wine, an excellent host, a great cricket fan, a writer of poetry on international law and a man of great wit, a sharp sense of humour and a love for the well-turned phrase.”

He was admitted to the Bar of England and Wales at Gray’s Inn in 1999. He was made a Doctor of Laws at Cambridge in 2003. He held honorary doctorates from the University of Paris, Pazmany Catholic University (Budapest), the University of Amsterdam and Adelaide University. In addition, he was awarded the Nessim Habif World Prize by the University of Geneva in 2010, the Hudson Medal by the American Society for International Law and the Adelaide University Distinguished Alumni Award. Adelaide University Law School holds an oration in his name.

He was the author of numerous texts, lectures, articles and the editor of a number of publications relating to international law, including the *British Yearbook of International Law* since 1994. He built a substantial international practice and appeared in 23 cases before the International Court of Justice (including the contested case of East Timor) and many other international courts and tribunals. He was counsel for Australia before the International Tribunal for the Law of the Sea and the ad hoc tribunal convened under the UN Convention on the Law of the Seas in the *Southern Bluefin Tuna* cases. He was counsel for Eritrea before the Eritrea/Ethiopia Boundary Commission and for the Sudan in the *Abyei Dispute*. He was counsel for China in the WTO United States-Definitive *Anti-Dumping* case. He also sat as an international arbitrator in investor state disputes and wrote a paper on that topic at the then recently opened University Law School on campus in 2009 – a project he had championed when Dean of the Faculty of Law. He also gave evidence as an expert witness in, and provided opinions to, many states on international law issues.

The fourth stage and pinnacle in his legal career, which has been so sadly cut short, was his appointment to the Bench of the International Court of Justice in the Hague, to which he was elected in 2014.

The esteem in which James is held by maritime lawyers around the world can be seen in two E-mails I have received in the last week. Two friends of MLAANZ in the United States and England respectively sent E-mails to the following effect: Frank Wiswall (former vice-president of the Comité Maritime International and author of *The Development of Admiralty Jurisdiction and Practice Since 1800*) described James Crawford as “a very formidable intellect” and Stuart Beare (former senior partner of Richards Butler – now Reed Smith) recalled a seminar organised by Australian practitioners at Richards Butler’s office at which James spoke on the topic of admiralty law, which he described as “a remarkable tour de l’horizon”. Stuart tells me that he used to recommend that trainees at Richards Butler read the section on English admiralty jurisdiction in the ALRC Report.

Perhaps the last word should be left to a former pupil of James’s, a young relative of Tim Hancock (a Sydney barrister who was married to Morella Calder, to whom James referred at the Ebsworth and Ebsworth lecture mentioned earlier) who described him as “a great scholar and truly engaging lecturer”.

I hope that MLAANZ will find a suitable way to honour the memory of this outstanding lawyer and the person responsible for giving us an admiralty jurisdiction which we can be proud of, which was fit for purpose when it was drafted and has survived without any need for substantive amendment for the last 33 years.

As Australian maritime lawyers we have a great deal to be thankful for in the life of His Excellency James Crawford.

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