

REMEMBERING JAMES CRAWFORD

I INTRODUCTION

This issue of the *Adelaide Law Review* is dedicated to the memory of Judge James Richard Crawford AC SC FBA (1948–2021). James was a brilliant jurist, an extraordinary legal scholar, a prescient law reformer, and — for generations of law students — the doyen of international law, a generous and wise mentor.

This issue features a fitting tribute to James' influence on international legal education in Australia in the article by Irene Baghoomians, Emily Crawford (one of James' daughters) and Jacqueline Mowbray. Their article 'The Teaching of Public International Law in Australian Law Schools: 2021 and Beyond' makes fascinating reading for all who are interested in the learning of international law in Australia, and provides a contemporary perspective on earlier works by two great international lawyers of the Adelaide Law School — James Crawford and Ivan Shearer.¹ This piece speaks in a powerful way to James' intellectual legacy in the education of the next generations of Australian international lawyers.

James' association with Adelaide Law School was lifelong — he was one of its most distinguished graduates, one of its most brilliant academics,² one of its most generous supporters, and a former student editor, then academic editor and finally member of the Advisory Board of the *Adelaide Law Review*. There will be many well-deserved academic tributes to James, touching on the great breadth and influence of his scholarship. Our aim here is not to duplicate those important endeavours. In dedicating this issue to him, we recall some brief personal remembrances of the ways in which James touched our professional lives and the wider intellectual life of his alma mater. This is a record of matters we spoke of in the Sir John Salmond Law Library at the University of Adelaide in the presence of James' family at an event to commemorate James' extraordinary life on 25 June 2021.

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¹ Ivan A Shearer, 'The Teaching of International Law in Australian Law Schools' (1983) 9(1) *Adelaide Law Review* 61; JR Crawford, 'Teaching and Research in International Law in Australia' (1983) 10(1) *Australian Year Book of International Law* 176.

² See, eg: Ivan Shearer, 'James Crawford: The Early Years' in Christine Chinkin and Freya Baetens (eds), *Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford* (Cambridge University Press, 2015) xiii; Lesley Dingle, 'Biography: Judge James Crawford', *Squire Law Library* (Web Page) <<https://www.squire.law.cam.ac.uk/eminent-scholars-archivejudge-james-crawford/biography-judge-james-crawford>>.

II ACHIEVEMENTS

This is not the place for a full recounting of James' extraordinary achievements and honours. However, it would be remiss not to refer to some of what we believe to be James' most enduring contributions.

As a young scholar, James was interested in Australian constitutional law, and while on the academic staff of Adelaide Law School in 1982, he was appointed as the Commissioner in Charge of the Australian Law Reform Commission's ongoing inquiry into the *Recognition of Aboriginal Customary Laws*.³ The Commission's main recommendation, that

the recognition of Aboriginal customary laws as recommended in this Report should be carried through by means of a federal Act applicable in all States and Territories and relying on the full range of the Commonwealth's constitutional powers⁴

has not come to pass. However its nuanced consideration of the proper place of Aboriginal customary law in a wide range of legal contexts has offered valuable guidance for reform in the intervening decades, and the Report continues to offer powerful insights to inform future steps in 'the legal system's search for justice in dealing with the Aboriginal people of Australia'.⁵ Four decades later, in important respects this Report's time has yet to come. The other two inquiries led by James during his full-time service at the Australian Law Reform Commission led to the enactment of the *Foreign States Immunities Act 1985* (Cth)⁶ and *Admiralty Act 1988* (Cth).⁷

In international law, James is justly famous for *The Creation of States in International Law*.⁸ His magisterial doctoral work, later published in two editions,⁹ is the first and last word of significance in an area of law that James created as a serious topic of scholarship.

The International Law Commission commenced work on state responsibility in 1956. In 1996, James was appointed Special Rapporteur of this troubled project,

³ Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws* (Report No 31, 11 June 1986).

⁴ *Ibid* [1028].

⁵ *Ibid* [1037].

⁶ Australian Law Reform Commission, *Foreign State Immunity* (Report No 24, 10 October 1984).

⁷ Australian Law Reform Commission, *Civil Admiralty Jurisdiction* (Report No 33, 14 December 1986).

⁸ James Crawford, 'The Creation of States in International Law' (DPhil Thesis, University of Oxford, 1977).

⁹ James Crawford, *The Creation of States in International Law* (Clarendon Press, 1979); James Crawford, *The Creation of States in International Law* (Oxford University Press, 2nd ed, 2007).

and he guided the work — almost miraculously — to its conclusion in 2001 with the adoption of the *Articles on the Responsibility of States for Internationally Wrongful Acts*.¹⁰ This was a transformative work for the discipline of international law, which has changed the way we think about the application of international law — it has made international law ‘real’ in a very tangible way.

In his previous term on the International Law Commission, James had chaired the working group which in 1994 finalised a draft statute for an international criminal court,¹¹ a matter which had been before the International Law Commission since 1948, and which paved the way for the adoption of the *Rome Statute of the International Criminal Court* in 1998.¹²

These are but a few of the extraordinary intellectual contributions James made to the law. In this list, we have not even touched on his election as only the second ever Australian judge of the International Court of Justice (2015–21),¹³ his extraordinarily influential tenure as the Whewell Professor of International Law at the University of Cambridge (1992–2015), or his work as one of the most outstanding international legal advocates of our age. We turn now, however, to some more personal reminiscences of James.

III REBECCA’S PERSONAL REFLECTIONS

In the coming weeks, months, and years, I am sure that there will be, quite rightly, much written about Judge James Crawford. He was simply a giant in the area of international law. There is much evidence for this, not least Judge Crawford’s appointment to the International Court of Justice.

In a panel discussion at the European Society of International Law conference in 2016, James spoke about the thread of his past connection to Adelaide, and the link to the discipline of which he would contribute so much:

¹⁰ *Responsibility of States for Internationally Wrongful Acts*, GA Res 56/83, UN Doc A/RES/56/83 (28 January 2002, adopted 12 December 2001) annex (‘*Responsibility of States for Internationally Wrongful Acts*’). James’ own reflections on this process can be found in James Crawford, ‘The ILC’s Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect’ (2002) 96(4) *American Journal of International Law* 874.

¹¹ International Law Commission, *Report of the International Law Commission on the Work of Its Forty-Sixth Session (2 May–22 July 1994)*, UN GAOR, 49th sess, Supp No 10, UN Doc A/49/10 (1994).

¹² *Rome Statute of the International Criminal Court*, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002).

¹³ We do not count here judges ad hoc chosen to sit on individual cases in accordance with *Statute of the International Court of Justice* art 31.

I would not be an international lawyer, but for an international crisis. But the crisis was a long time ago in 1962, the Cuban missile crisis. At that point in time, I was 14 and walking around a school playground, but it occurred to me the world really was in a mess. And I had a premonition at the full age of 14, which turns out to be an absolutely true that there was a prospect of thermonuclear conflict, if not an outright thermonuclear war, at least the first use of nuclear weapons since the end of the Second World War. And it occurred to me that though I wasn't yet a lawyer, *there needed to be something that people could do, and could do from a place as remote as Adelaide, to influence events of that sort, which could affect so many people.*¹⁴

James would go from this playground to influence so many people through his teaching, advocacy and also interpreting and moulding legal structures and concepts. James was one of my first teachers at Adelaide Law School. He was generous, poised, encouraging, and brilliant in the classroom. As I noted, there will be much written about Judge James Crawford and his contribution to international law, but I want to share something of a montage of memories: a type of series of visual impressions.

Judge James Crawford was Whewell Professor of International Law at the University of Cambridge where I would have the great fortune of being taught by him again. He was also a Fellow of Jesus College Cambridge. I recall that he had an office on the grounds of Jesus College, and there would be a cat that would sometimes visit his office. When we would visit as students, he would stroke the cat while engaging, reflecting, and speaking with us about ideas such as Baxter's paradox in international law. At Jesus College he would play cricket on the oval. Again, the students would gather, and during the breaks in the game, James would come over and we would discuss international law. Then, he would, with a spring, run back to play more cricket.

At Cambridge as students, we would all walk to the early morning lecture to be held on the history and theory of international law. As we walked to the seminar room located in town, we would see James having an early morning hot beverage before class at the nearby coffee shop. He would then gather his papers and come to the seminar room. As I said, it was on the history and theory of international law, but perhaps that was not the correct title. It was really the history of everything. It seemed that there was nothing that international law had not touched, and James could both see and explain the connection between international law and any historical event. He was doing all of this while also counsel in the *East Timor* case.¹⁵

Yet it seemed like all the teaching, reflections, engagements, and acting as counsel were no burden at all. James carried international law in all its manifestations with

¹⁴ Riga Graduate School of Law, 'ESIL 2016: How International Law Works in Times of Crisis: 08.09.2016' (YouTube, 29 September 2016) 00:09:06–00:10:10 <https://www.youtube.com/watch?v=DGH_TSxVXXA> (emphasis added).

¹⁵ *East Timor (Portugal v Australia) (Judgment)* [1995] ICJ Rep 90.

that element of grace that would perhaps be an intangible causal reason that his contribution to the discipline has been so profound.

IV MATTHEW'S PERSONAL REFLECTIONS

James was a major player on the world stage, but he never forgot his connection to Adelaide Law School. As James himself said 'Adelaide is still home despite years of wandering, and this Law School is and always will be my home Law School'.¹⁶

I first met James when he was back in Adelaide one Christmas, and he made time to come and meet and speak with our team that was taking part in the Philip C Jessup International Law Moot Court Competition. There was no reason for James to interrupt his visit to Adelaide to do this — but he cared about the next generation of international lawyers, and wanted to encourage them, engage with their ideas and help them to succeed. Needless to say, it was a wonderful experience for our students on that moot team. This was one of many ways in which James continued to support the teaching of international law at Adelaide Law School — it was also because of James' support that the Jessup Moot teams were able to travel to Canberra each year for the competition.

James had an extraordinary intellectual breadth. In the past decade, Adelaide Law School has grown to be one of the world's leading centres for the scholarship and teaching of the international law of outer space. James was not a space lawyer, but he was a consummate international lawyer, and he took to space law with characteristic intellectual vigour and considerable aplomb. In 2017, the city of Adelaide hosted the International Astronautical Congress, and alongside that Adelaide Law School hosted the world finals of the Manfred Lachs Space Law Moot. The panel of judges of the International Court of Justice presiding over the grand final comprised James, Kirill Gevorgian and Sir Kenneth Keith. James' questions on space law were no less perceptive than in any other area of international law, and his intellectual engagement was no less fulsome in dealing with law students than in dealing with the leading international advocates at the International Court of Justice.

It was a great joy to have an excuse to write to James. As a relatively junior scholar, sometimes when you write to a 'big name' you find that they are too busy to write back. It was never like that with James — you could count on a reply. This was true even if you were a journal editor asking a very busy judge to write a contribution to the special issue of the *Adelaide Law Review* marking its 40th volume.¹⁷

The last occasion on which I had the privilege of speaking with James was at the Peace Palace in The Hague. A contingent of staff from Adelaide Law School were joining colleagues from around the world in The Hague as part of the drafting process

¹⁶ James Crawford, 'International Law and the Rule of Law' (2003) 24(1) *Adelaide Law Review* 3, 3.

¹⁷ James Crawford and Rose Cameron, 'International Law in Australia Revisited' (2019) 40(1) *Adelaide Law Review* 199.

for the *Woomera Manual on the International Law of Military Space Activities and Operations*.¹⁸ James graciously hosted the entire delegation on a visit to the Court, engaging us all in interesting discussions about the work we were undertaking.

V REMEMBERING JAMES

The James Crawford Oration at the University of Adelaide, a biennial distinguished lecture series established by James, continues as an intellectual tribute to him. The magnificent portrait of James by Tsering Hannaford, a gift of the Crawford family to the University, maintains watch over the next generation of law students as they commence their journeys in legal scholarship at the Sir John Salmond Law Library at Adelaide Law School.



Judge James Richard Crawford AC SC FBA

¹⁸ ‘The Woomera Manual’, *The University of Adelaide* (Web Page, 11 July 2022) <<https://law.adelaide.edu.au/woomera/>>, archived at <<https://perma.cc/Z93WHJQD>>.