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UNIVERSITY OF SYDNEY  
GREAT HALL, MAY 2022

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JAMES CRAWFORD AC SC FBA  
LATE JUDGE OF THE INTERNATIONAL COURT  
OF JUSTICE

The Hon. Michael Kirby AC CMG

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*Do not go gentle into that good night;  
Old age should burn and rave at close of day;  
Rage, rage against the dying of the light.<sup>1</sup>*

James Crawford was not really ready to die. It was not his due time. All deaths are premature for loving families and friends. But James's death was specially so. He was in the midst of years of service as a Judge of the International Court of Justice (ICJ). His whole life had been a preparation for his time on that mountain top. He and his wife, Professor Freya Baetens, delighted in their infant children. James loved and admired the children of earlier marriages, including Emily and Rebecca who are with us today. The five siblings of his birth family rejoiced with pride in his accomplishments. His brother Michael is with us. His country boasted of him as a famous son. Yet those whom the Gods love most, they often bring down, and thereby remind us of our limited span of life.

James Crawford died at his post on 31 May 2021. A first-born son, he came into the world on 14 November 1948. He was only 72 at the time of his passing. He died of medical complications. These brought great pain and distress to him at the end. The time of pandemic towards his end reminded

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\* Justice of the High Court of Australia (1996-2009); Chairman of the Australian Law Reform Commission (1975-84). President of the International Commission of Jurists, Geneva (1995-8).

<sup>1</sup> Dylan Thomas (1914-1953), *Do not go gentle into that good night*, Poems of Dylan Thomas, New Directions, 1952.

us of the importance of international law and of human solidarity. Many of those who loved James dearly could not join him, on the other side of the world, to share the considerable burdens of his last days; or to see him before his departure. For his great efforts and many achievements, he deserved an easier and a much later passing. We, his family, friends, colleagues and fellow citizens join this day to express praise and thanks for his life. We will not allow his towering qualities and strengths to be overshadowed by the way he was snatched from us. Neither will we be silent about our anguish. The suffering continues in our minds and hearts. Even now, a year since his death.

James was the eldest son of his father (also James) and his mother Josephine. His school education was at Brighton High School in Adelaide. He was yet another product of the national system of secular public education that promises equality and opportunity to school children of every class and background in Australia. He took his BA degree and the LLB degree from the famous Law School in the University of Adelaide. That School was renowned for scholarship in international law. He then pursued a doctorate of philosophy at the University of Oxford. It addressed *The Creation of States in International Law*. It threw light upon the ways, through law, to find just solutions to bitter national conflicts. In 1979, he returned from Oxford to the University of Adelaide, becoming a lecturer in law, in 1979. His enormous gifts for teaching, supervising and writing were immediately recognised. He rose to be appointed a Reader in 1982 and to Professor the following year. It was at that time that I played a part in his career.

James was appointed as a Full Time Commissioner to the Australian Law Reform Commission in 1982, when I was serving as chairman. He took control of several projects, notably one on the recognition of Aboriginal customary law.<sup>2</sup> Although most of the recommendations in that report were not implemented by timorous governments, his labours undoubtedly helped to change the *Zeitgeist* of Australia. They helped to lay the ground for the *Mabo* decision of the High Court of Australia, six years later.<sup>3</sup> The report contributed to the righting of a great national wrong; though many further wrongs remain. Relocating James to Sydney had consequences for him and his small family. But his career then took off with dramatic speed. He became Challis Professor of International Law in the University of Sydney in 1986 and Dean of Law in 1990. Two years later he was called to the University of Cambridge and the famous Whewell Professorship in International Law. This led to his leadership at the Lauterpacht Centre in International Law and to his role as Chair of the Cambridge Faculty of Law in 1994.

Still, these laurels, already great, were not enough for James. His brilliant mind was always restless. He became a leading advocate at Matrix Chambers at the English Bar. He was the “go to” barrister for difficult cases before the International Court of Justice (ICJ) at the Peace Palace in The Hague. No fewer than 29 cases saw him in brilliant persuasion at the Bar table, often advancing arguments for small island states or disadvantaged peoples. He piled Pelion on Ossa. He wrote books and articles on the

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<sup>2</sup> Australian Law Reform Commission, *Aboriginal Customary Law*, ALRC 31, 1986. He also played a leading part in the ALRC reports on *Foreign State Immunity*, ALRC 24, 1984, *Criminal Admiralty Jurisdiction*, ALRC 33, 1986, and *Service and Execution of Process*, ALRC 40, 1987.

<sup>3</sup> *Mabo v Queensland [No.2]* 1992 HCA 23, (1992) 175 CLR 1.

*People's Right to Self-Determination*.<sup>4</sup> He steered the International Law Commission to adopt the articles he had drafted on the *Responsibility of States for Internationally Wrongful Acts*.<sup>5</sup> In the public domain, he joined letters of protest about the military intervention in Iraq. He became a renowned arbitrator. Through this work, he remained ever himself: a brilliant, witty, accomplished man of high intelligence, who yearned for love and rationality but constantly pushed his talents into ever greater tests of severity. His family was, like us all, dazzled by his seemingly endless triumphs. Still, for the family, James was husband, father, brother, friend, teacher and inspiration.

James Crawford never forgot his origins or his old colleagues. He encouraged my interest in the relationship of Australian municipal law with international law, including the law of universal human rights.<sup>6</sup> He delivered a lecture in my name in Canberra in which he castigated some Australian judges for their disinterest in international law. This was especially so when he contrasted them to the judges of just about everywhere else.<sup>7</sup> Big encounters with the United Nations came for us, separately but coincidentally, in 2013-4. I was in the UN building in New York, for meetings of the

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<sup>4</sup> *The Right of Self-Determination in International Law: Its Development and Future* by J. Crawford in P. Alston (ed.) *People's Rights* 2001 ix/2, Cadmus, EUL, EU.

<sup>5</sup> United Nations, International Law Commission, 2001, Vol II (Part 2). The annex to the resolution of the UN General Assembly: resolution 56.83; A/56/49 (Vol.1). Corr 4.

<sup>6</sup> See e.g. *Al-Kateb v Godwin* (2004) 219 CLR 562 at 617 [152] (construing Australian law to accord with international law) (per Kirby J diss.). Contrast at 585 [46], per McHugh J.

<sup>7</sup> James Crawford, "International Law in the House of Lords and the High Court of Australia 1996-2008: A Comparison" (2009) 28 *Australian New Book of International Law*, 1 at 5 ['With the notable exception of Kirby J., the judges of the High Court have been more reluctant than their contemporaries in the House of Lords to deal with international law issues. In a few cases their reluctance looks like recalcitrance']. See also K.J. Keith, "New Zealand, Australia and International Human Rights 1919-2019" [2020] *Australian Year Book of International Law*, forthcoming. See also M.D. Kirby, "Municipal Courts and the International Interpretive Principle: *Al Kateb v Godwin* (2020) 43 *UNSW Law Journal* 930 at 948.

Commission of Inquiry on Human Rights Violations in North Korea,<sup>8</sup> I saw James being shepherded there to key United Nations delegations that were shortly to vote to fill a vacant seat on the ICJ. We passed each other on escalators and in long corridors. We called out messages to each other of encouragement for success. He was elected to the vacant seat on the World Court. It was a great achievement for Australia; and a mighty opportunity for him. My success on North Korea was rather more limited.

James Crawford welcomed me several times to events in which I participated at the Peace Palace in The Hague. Always we shared a keen interest in our current tasks. Washed down by a glass of Champagne; a luncheon with his colleagues; and reflections on how our lives had intersected briefly; we then sped off in our different directions. How long will it be before Australia produces another Judge of the World Court?

James Crawford was, as Philippe Sands has said, “the outstanding international lawyer of our age”.<sup>9</sup> He was direct and subtle, fearless and proudly Australian. He was also a true internationalist. In this age, being a nationalist in the law is not enough. As his life taught, before it was so untimely ended, the future is international law, or it is catastrophe. The loss of James Crawford is not just a blow for his family and nation. It is a loss for the international legal order that is the alternative to global chaos. We lament his death. We rejoice proudly in his life.

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<sup>8</sup> See United Nations, Human Rights Council, *Report of the detailed findings of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea* (A/HRC/25/CRP.1 (7 February 2014). The story of the COI on North Korea is told in M.D. Kirby, “The United Nations Report on North Korea and the Security Council: Interface of Security and Human Rights” (2015) 89 ALJ 714.

<sup>9</sup> Philippe Sands, “James Crawford Obituary, *The Guardian* (Aust ed) 14 June 2021.

*And you my [father] there on the sad height;  
Curse, bless, me now with your fierce tears I pray;  
Do not go gentle into that good night;  
Rage, rage against the dying of the light.*