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978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

SOVEREIGNTY, STATEHOOD AND STATE RESPONSIBILITY

This collection of essays focuses on the following concepts: sovereignty (the unique, intangible and yet essential characteristic of States), statehood (what it means to be a State, and the process of acquiring or losing statehood) and State responsibility (the legal component of what being a State entails). The unifying theme is that they have always been and will in the future continue to form a crucial part of the foundations of public international law.

While many publications focus on new actors in international law such as international organisations, individuals, companies, NGOs and even humanity as a whole, this book offers a timely, thought-provoking and innovative reappraisal of the core actors on the international stage: States. It includes reflections on the interactions between States and non-State actors and on how increasing participation by and recognition of the latter within international law has impacted upon the role and attributes of statehood.

CHRISTINE CHINKIN is Professor of International Law at the London School of Economics and Political Science, a barrister, a member of Matrix Chambers and William Cook Global Law Professor at the University of Michigan.

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Frontmatter

[More information](#)

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Frontmatter

[More information](#)

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Frontmatter

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978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

CONTENTS

<i>List of contributors</i>	page viii
<i>Editors' preface</i>	xi
<i>James Crawford: the early years, by Ivan Shearer</i>	xiii
<i>An Australian in England, by Philippe Sands</i>	xx
<i>List of cases</i>	xxvi
<i>List of domestic legislation</i>	xxxviii
<i>List of treaties</i>	xli
<i>List of resolutions</i>	xliv
<i>List of other international instruments and reports</i>	xlvi

PART I Sovereignty

- 1 The war against cliché: dispatches from the international legal front 3
KAREN KNOP AND SUSAN MARKS
- 2 International law and the responsibility to protect 23
MICHAEL BYERS
- 3 Human rights beyond borders at the World Court 51
RALPH WILDE
- 4 Fragmentation, regime interaction and sovereignty 71
MARGARET A. YOUNG
- 5 The legitimacy of investment treaties: between Exit, Voice and James Crawford's quest for a more democratic international law 90
LLUÍS PARADELL TRIUS
- 6 Polar territorial and maritime sovereignty in the twenty-first century 110
DONALD R. ROTHWELL

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

vi

CONTENTS

- 7 An enquiry into the palimpsestic nature of territorial sovereignty in East Asia – with particular reference to the Senkaku/Diaoyudao question 126
KEUN-GWAN LEE
- 8 General legal characteristics of States: a view from the past of the Permanent Court of International Justice 144
OLE SPIERMANN
- PART II Statehood**
- 9 The Security Council and statehood 155
CHRISTINE CHINKIN
- 10 The dynamics of statehood in the practice of international and English courts 172
ALEXANDER ORAKHELASHVILI
- 11 How to recognise a State (and not): some practical considerations 192
TOM GRANT
- 12 An analysis of the 1969 Act of Free Choice in West Papua 209
THOMAS D. MUSGRAVE
- 13 Recognition of the State of Palestine: still too much too soon? 229
YAËL RONEN
- 14 The role of the *uti possidetis* principle in the resolution of maritime boundary disputes 248
SUZANNE LALONDE
- 15 Room for ‘State continuity’ in international law? A constitutionalist perspective 273
INETA ZIEMELE
- PART III State Responsibility**
- 16 Law-making in complex processes: the World Court and the modern law of State responsibility 287
CHRISTIAN J. TAMS

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

CONTENTS

vii

- 17 Defending individual ships from pirates: questions of State responsibility and immunity 307
DOUGLAS GUILFOYLE
- 18 Excessive collateral civilian casualties and military necessity: awkward crossroads in international humanitarian law between State responsibility and individual criminal liability 325
YUTAKA ARAI-TAKAHASHI
- 19 Third-party countermeasures: observations on a controversial concept 340
MARTIN DAWIDOWICZ
- 20 The Appellate Body's use of the Articles on State responsibility in *US – Anti-dumping and Countervailing Duties (China)* 363
ISABELLE VAN DAMME
- 21 The application of the rules on countermeasures in investment claims: visions and realities of international law as an open system 389
KATE PARLETT
- 22 The external relations of the European Union and its Member States: lessons from recent developments in the economic sphere 406
DAMIEN GERADIN
- 23 Invoking, establishing and remedying State responsibility in mixed multi-party disputes: lessons from Eurotunnel 421
FREYA BAETENS
- Index* 442

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

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Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

LIST OF CONTRIBUTORS

ix

DOUGLAS GUILFOYLE

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Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

X

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Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

EDITORS' PREFACE

James Crawford has been a towering figure in international law and practice over the past decades, in universities (primarily in his native Australia and the United Kingdom), in international, regional and national courts and tribunals and in governmental (national and international) bodies. He has performed multiple roles in each of these sites: scholar, teacher, supervisor, dean, college fellow and director of a research centre; advocate, expert witness and arbitrator; and law reform commissioner in Australia and on the International Law Commission. His energy and work rate are legendary. He has given his time and expertise to non-governmental organisations, for instance as Director of Studies of the International Law Association. He has also received multiple honours including honorary doctorates, being elected a Fellow of the British Academy and, most recently, Companion in the General Division of the Order of Australia.

James's publications make clear that his academic research and writing interests are both prolific and range widely, especially across public international law, private international law and constitutional law. James is not associated with any 'school' of international law; rather, his commitment is to international law as an 'open system', a practical tool for the resolution of often apparently intractable international problems. But he is also 'open' to diverse theories and methodologies of international law, traditional positivist approaches as well as historical, interdisciplinary and critical work – as is evident from even a brief look at the contents of the co-edited (with Martti Koskenniemi) *Cambridge Companion to International Law*. In an era of international legal specialisation, James is a 'generalist' who has illuminated foundational concepts of international law: sovereignty, States, statehood, territory, self-determination, State responsibility. But he is also a specialist, for as is said by one of the contributors to this volume, no one can be a specialist without first being a generalist. Unsurprisingly, the range of topics chosen by contributors for their doctoral work under James's supervision is great. The constraints

Cambridge University Press

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Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

of commercial publication did not allow us to give a free hand to contributors, reflecting their past and current academic interests. Instead we sought to bring together a volume that reflects upon three concepts that have pervaded James's work over the past four decades and where he has made an outstanding intellectual contribution: sovereignty (the unique, intangible and yet essential characteristic of States), statehood (what it means to be(come) a State; the process of acquiring, or losing, statehood) and State responsibility (the legal component of what being a State entails). The unifying theme between these topics – apart from James's seminal work on each of them – is that they have always been, and will in the future continue to form, part of the foundation of public international law.

This volume is a tribute and token of gratitude to James Crawford on his retirement from academia in one of his many roles, that of doctoral supervisor and thus as scholar and mentor, rather than practitioner. All the contributors to the volume were former doctoral candidates under James's supervision at the law faculties at the University of Sydney and the University of Cambridge and are now themselves active in legal academia, in international legal practice, or both – hence its appellation as a *Liber Doctorandorum*.

We thank the authors for their contributions to the volume. We also give a special thank you to Elina Zlatanska and Sophie Starrenburg for their invaluable research and editing work which assisted us in finalising the volume. We also thank Cambridge University Press, and especially Finola O'Sullivan for her support and enthusiasm for this project.

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Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

JAMES CRAWFORD: THE EARLY YEARS*

James Richard Crawford was born in Adelaide, South Australia on 14 November 1948. He is the oldest of the seven children of James Allen Crawford and Josephine Margaret Crawford (née Bond). He was educated first at Brighton High School, Adelaide, whose motto is *fac omnia bene* ('do everything well'), an admonition that James has evidently ever since taken to heart. The school also has a special focus on music, which remains an important part of James's life.

James's school record was one of outstanding achievement. He ended his time at school as co-head prefect. Along the way he was president of the Public Speaking and Debating Club, co-edited the school magazine and the school newspaper, played in the soccer A team and the cricket B team, was on the committee of the Senior French Club and acted in the Revue. His valedictory editorial in the 1965 issue of the school magazine demonstrates an early maturity of vision. Taking issue with a narrow definition of what education is about, the seventeen-year-old James wrote:

[Then] what is education? Something like this: a leading out, through discipline and balance, of latent abilities in youth, and thus a preparation for life . . . For the purposes of the school, balance must mean intelligent participation in a wide range of activities; participation that is both giving and receiving. This year the school has had a wider range than ever before, with increased prefect and house activities, more clubs and sports teams. Intelligent participation in all facets of school life, or, if you like, the correct balance between 'work' and 'play' on a creative level; this is the way to a good education. And a good education is the way to a good life; the fulfilment of the aims of the individual, the society and therefore the school.

* I wish to acknowledge with thanks the assistance I have received from members of James's family, the Principal of Brighton High School (now named Brighton Secondary School), Ms Olivia O'Neill and the Dean of the Faculty of Law of the University of Adelaide, Professor John Williams.

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

James left school to enter the University of Adelaide in 1966, with the support of a government scholarship waiving fees, as a student in the faculties of arts and law. He collected a number of prizes and awards in both faculties, including the Angas Parsons Prize in Law in his final year, which was at that time the nearest equivalent to a university medal. In the faculty of arts he was awarded the Sir Archibald Strong Memorial Prize for Literature and the Bunday Prize for English verse (poetry remains important to him). The degrees of Bachelor of Arts and Bachelor of Laws (Honours) were conferred in 1972.

The University of Adelaide is one of Australia's oldest universities, established in 1874. Its first vice-chancellor, Dr Augustus Short, came to South Australia in 1847, eleven years after the foundation of the colony, as the first Anglican Bishop of Adelaide, after a notable career as a Fellow of Christ Church, Oxford. Among Dr Short's famous pupils at Oxford was the later prime minister W. E. Gladstone. Short's vision for the University of Adelaide was not tied to the model of the ancient universities of Great Britain. He foresaw the need for the developing colony to allow for an exploration of fields of scholarship beyond the classical mode of his own university. Before the end of the nineteenth century, faculties were established, as well as in arts, in science (in 1882, the first Australian university to establish such a faculty), law, medicine and music. Mathematics, philosophy, languages and mining engineering were also taught. The law faculty at Adelaide ranks as the second oldest in Australia (1883).

The University of Adelaide remains an institution with liberal traditions and a spirit of free inquiry. The vice-chancellor just before James's time was A. P. Rowe, whose habit of personally dropping in on rooms whose lights were burning late at night to find out what interesting developments were being hatched, in whatever field, led to his being humorously dubbed 'the Abominable Rowe Man'. His successor, Sir Henry Basten, had similarly wide interests and peripatetic habits, which led on one occasion to his arrest as a suspected intruder. An anguished late-night telephone call to the university's registrar was needed to confirm his identity.

The law school in James's time included some notable scholars, although some subjects were still being taught by local barristers and solicitors. The days of major expansion in all Australian law schools were still to come. His teachers included Arthur Rogerson and John Keeler (recent arrivals from Oxford), Alex Castles, Horst Luecke, David Kelly and Michael Detmold. Some notable visiting teachers during James's time were David Williams of Cambridge and Rupert Cross of Oxford. Among

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

the part-time teachers were John Bray QC, a leading advocate and a classics scholar, who later became Chief Justice of South Australia, and Roma Mitchell QC, successively Australia's first female Queen's Counsel, first female Supreme Court judge and first female state governor.

James's teacher of international law was D. P. O'Connell, who in the year of James's graduation (1972) was elected to the Chichele Chair of International Law at Oxford. The teaching of international law at Adelaide had had an interrupted history. It was taught, both as public and private international law, from the early twentieth century by Sir John Salmond, better known for his treatise on torts, and later a judge of the Supreme Court of New Zealand, then by Professor Jethro Brown and, in the early 1920s, by Professor Coleman Phillipson, author of a magisterial work on international law in ancient Greece and Rome. A break of some thirty years in the teaching of public international law followed, although not of private international law. The subject was not revived until some years after the arrival of O'Connell in 1951.

O'Connell was a New Zealander who won a postgraduate scholarship to Cambridge where he read for a doctorate under Professor Sir Hersch Lauterpacht. His subject was State succession, and his thesis first appeared in print in 1956. It was later expanded into a two-volume work. He later became known for his work on the law of the sea, and for his general treatise on international law (second edition, 1970). O'Connell's teaching was clearly influential in James's intellectual development even while James was somewhat reserved as to its theoretical underpinnings in natural law. O'Connell's mastery of detail and the telling anecdote, based on his wide practice as counsel (he appeared for Australia before the International Court in the Nuclear Tests case), could not have failed to impress and inspire a young student.

James won a postgraduate Shell Scholarship to pursue his interest in international law at Oxford, where he became a member of University College. Although he and O'Connell arrived in Oxford at much the same time, James chose to be supervised by Professor Ian Brownlie (later to be O'Connell's successor in the Chichele Chair, after O'Connell's untimely death in 1979). Brownlie provided a contrast in style and substance to O'Connell; his influence is evident in James's work in a similar economy of style and rigorous method of doctrinal inquiry. However, it cannot be said that James was an avid disciple of either of his teachers: he soon developed a distinctive approach and voice of his own.

James's thesis at Oxford was on the subject of statehood. His choice was an early indication of his willingness, indeed eagerness, to tackle

Cambridge University Press

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Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

large topics. He graduated as doctor of philosophy (DPhil) in 1977. An adaptation of his thesis was published in 1979 by Oxford University Press under the title *The Creation of States in International Law*. The work was greeted with wide acclaim and was awarded the Certificate of Merit by the American Society of International Law in 1981. A revised second edition was published in 2006.

James returned to Adelaide immediately after Oxford and taught international law and constitutional law. His rise through the academic ranks was rapid: he was awarded a personal chair in 1983. His students were understandably in awe of him; they dubbed him 'JC'. But like that other renowned teacher he combined authoritative and stimulating teaching with a kind nature.

Marriage followed, and the birth of two daughters, both of whom have followed him in outstanding scholarly careers.

James's second major publication appeared in 1982. *Australian Courts of Law* purported to be a student textbook but in reality it served a far wider audience. It was a comprehensive survey of the entire court system of Australia with all its many problems of federal, state and territory jurisdictions. Far from being a student text it came to be an essential library acquisition for judges and the practising legal profession. Its success can be measured by the fact that it is now its fourth edition (co-authored by Brian Opeskin, Oxford University Press, 2004).

In early 1982 James took leave from the University to accept a three-year appointment as a full-time commissioner of the Australian Law Reform Commission. This body had been established in 1974 by the Whitlam government to examine all matters referred to it that were appropriate to the exercise of Commonwealth (federal) powers and to make recommendations for reform. It conducted wide community consultation through the production of discussion papers and was supported by highly qualified research teams. The chairman during James's first appointment was Michael Kirby, later to become a Justice of the High Court of Australia. James was assigned as Commissioner-in-Charge of three major references: Foreign State Immunity, Civil Admiralty Jurisdiction, and the Recognition of Aboriginal Customary Laws.

Foreign State Immunity was clearly a subject for an international lawyer. At the time of the reference there was doubt in Australia whether the traditional common law approach of absolute immunity should give way to developing judicial trends elsewhere towards restrictive or qualified immunity. There was as yet no decision of the higher Australian courts on the question; the decision of the Judicial Committee of the Privy Council

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

in *The Philippine Admiral* case (1977) was considered persuasive but not binding since it did not come on appeal from Australia. James had the benefit of the experience of many other common law jurisdictions which had pronounced on the matter, some legislatively, in preparing his report and draft legislation. In recommending that Australia adopt the approach of absolute immunity subject to exceptions (especially with respect to commercial transactions) the report considered that such an approach would accord with practice elsewhere, including the likely approach of the International Law Commission. In unaltered form it was passed into law as the Foreign States Immunities Act 1985.

The second of the two references dealt with a relic of Australia's colonial history. Admiralty jurisdiction, both civil and criminal, was tied to English law and was unsuited to the needs of an independent nation. Already before James was appointed to the commission, admiralty criminal jurisdiction had been supplanted in Australia by the passage of the Crimes at Sea Act 1979 (now replaced by the Crimes at Sea Act 2000). That Act cured the anomaly of having to lay charges of crimes committed at sea under English law and not the criminal law of the adjacent Australian state. The civil admiralty jurisdiction, exercisable by state courts, was stuck in the mould of the Colonial Courts of Admiralty Act 1890 (Imp). It was necessary, on a national basis, to resolve uncertainties about, and unjustified limitations on, the scope of that jurisdiction. The Report, under James's direction, succeeded in forming the basis of the Admiralty Act 1988.

The third reference took James into relatively uncharted and potentially controversial areas, far removed from international law. At a time when it was increasingly being questioned whether Australia should be regarded as having been unoccupied, and thus as *terra nullius*, upon British settlement in 1788, or whether the Aboriginal population should be regarded as having retained root title to their lands (matters that were to be decided by the High Court of Australia later in the *Mabo* case in 1992), there were many other matters of a more immediately pressing nature to be examined. These included whether Aboriginal customary law could be invoked before Australian courts, or should be considered in administrative decisions, regarding such matters as the criminal law and sentencing, traditional marriage and family status, child custody, traditional hunting and fishing and many others. Consultations provided a rich source of experience as the Commission took soundings all around the country, including in aboriginal areas. The final report did not recommend comprehensive legislation (although, piecemeal at various levels, some state

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

and federal laws resulted) but rather proposed a set of recommendations to be implemented or considered at appropriate levels of government.

James returned to Adelaide at the conclusion of his full-time term on the commission at the end of 1984, but continued to be a part-time member until 1990. In 1985 he was elected an Associate Member of the Institut de Droit International, the youngest member to have been appointed in recent times. He was promoted into full membership in 1991. After the death of Julius Stone he was the only Australian member of the Institut until the recent election of Hilary Charlesworth.

It soon became clear that James would have greater opportunities on the eastern seaboard of Australia. Adelaide is hardly a backwater, but Australian public life tends to be dominated by the 'Sydney–Melbourne–Canberra triangle'. In 1986 he was appointed Challis Professor of International Law at the University of Sydney. That endowed chair has had an uninterrupted history from its first incumbent, Pitt Cobbett, in 1890. James succeeded D. H. N. Johnson, formerly of London (LSE), who in turn had succeeded Julius Stone. Johnson's appointment had seen the separation of the once unitary Chair of International Law and Jurisprudence into two separate Challis Chairs.

The departure of James, Marisa and their two daughters from Adelaide to settle permanently in Sydney was marked by an unfortunate event. All their possessions went into storage during the Christmas and New Year break. The storage facility caught fire and everything within it was destroyed. Their possessions included irreplaceable personal records, papers and photographs. The effects of that experience were highly unsettling to them all.

James was appointed dean of the faculty of law at the University of Sydney in 1990. During the three years that followed he instituted international law as a compulsory subject in the LLB curriculum, in place of the elective status enjoyed by that subject previously. An innovation was to view international law widely, embracing both public and private international law. As an introductory course it thus ensured that all students would have at least a nodding acquaintance with the basic sources and principles considered by James to be essential to the education of lawyers in a globalised world. Students inspired by this immersion were able to follow as separate elective subjects advanced courses in both branches of international law. Sydney's example has since been followed by many other Australian law schools, including Adelaide.

James always saw it as desirable that academic lawyers in Australia should have strong links with the practising legal profession. He was thus

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

JAMES CRAWFORD: THE EARLY YEARS

xix

called to the Bar of New South Wales in 1987. He was later appointed Senior Counsel (a rank that replaced, but is of equal status to, Queen's Counsel) in 1997. This distinction, unlike in Canada, is rarely conferred on Australian academic lawyers.

With James's election to the Whewell Chair of International Law at Cambridge in 1992, and his election in the same year to the International Law Commission of the United Nations, this account of the earlier years comes to an end.

Ivan Shearer

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

AN AUSTRALIAN IN ENGLAND

James Crawford arrived in Cambridge in the autumn of 1992, with the internet and globalisation, to take up the position of Whewell Chair of International Law and a Fellowship at Jesus College. I had come to know him five years earlier, at the 1987 meeting of the Institut de Droit International in Cairo, when he engaged actively with the secretariat on which I served. He was a razor-sharp and open Australian, direct, engaged and humorous.

For twenty-one years James's academic work has centred on the law faculty in Cambridge. This second life has included three years as Chair and two stints as Director of the Lauterpacht Research Centre for International Law (characterised by long hours spent in an office that is now on the first floor, regular visits to the kitchen and library on the ground floor and a work ethic so 'punishing' that the word does not begin to do justice to his personal style).

The Cambridge years have spanned both undergraduate and LL.M. teaching, across a range of international law subjects, and also embracing a remarkable *fifty-seven* doctoral students (not a typographical error). The engagement with the classroom reflects an undying commitment to the power of nurture and encouragement, irrespective of creed or culture or politics. The body of protégés crosses all these barriers, although it must be said that young Australians interested in international law are attracted to him like bees to honey (does any country today have more international lawyers per capita, or a greater proportion of its GNP devoted to international legal scholarship and other services?). Many of James's pupils have entered academic life across the UK and Australia and beyond, allowing the Crawford effect – international law as an 'open system', as he likes to put it, that is real and modern – to spread well beyond the Fens. His impact at Cambridge is hard to overstate: international law was already a central part of the life of the law faculty, but somehow it has expanded even further, a thriving part of the life of the faculty. The

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978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

classroom credo is not revolutionary transformation, but incremental change over time and subject area. The teaching style – understated and humorous, with a touch of irreverence and a recognition of the limits of the subject in the real world of power and politics – has been widely attractive. I am yet to meet a single person anywhere in the world who has complained about James as a teacher.

Over these two decades James has also managed to complete the odd book or ten, along with innumerable articles and publications the citation of which would exhaust my permitted word limit. The standouts surely include the second edition of *The Creation of States in International Law* (which appeared in 2006), and the eighth edition of *Brownlie's Principles of International Law* (in 2012), a minor miracle produced with a small orchestra of willing and able assistants, to whom credit is offered in full. The book offers longevity to the work's originator (and James's teacher), whilst maintaining its characteristic ethos.

Elsewhere, the Crawford world of international law has expanded to encompass water, people, rights, courts, investments and responsibility (a recurring theme), amongst many other subjects. It has also touched, on occasion, the realm of theory, although James will be the first to recognise that the world of practice and process offers particular attractions. This is reflected in the general course on international law offered at The Hague Academy in the summer of 2013, *The Course of International Law*. It was a characteristic feature of his industry that he was able to hand over the entire manuscript at the end of his final lecture, notwithstanding his concurrent role as senior counsel for Australia, arguing against Japan's 'scientific whaling' in the Antarctic.

James's arrival in Cambridge coincided with his election to the International Law Commission, and summers in Geneva. This was no sinecure. The Commission had spent five decades working on two subjects of keen importance and growing interest – the idea of a statute for an international criminal court, and a set of articles on State responsibility – and there was little prospect of an end in sight when James arrived. He brought his special forensic and diplomatic skills to bear on what might have seemed a fruitless task, and a unique ability to create a sense of collegiality and common purpose. He served as Rapporteur on these efforts, bringing both to completion to a standard and quality that ensured the product would find traction in the practical world. The draft articles on an international criminal court paved the way for the creation of the International Criminal Court, just four years later; the draft articles on State responsibility are probably amongst the most cited texts in modern international law

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

(assisted by a commentary of crisp and concise prose that is characteristic of James's style).

Such contributions as those already touched upon might be thought to be sufficient for most living souls, but not for James. The Cambridge years have somehow allowed time to engage in the odd case, prepare an occasional advice or opinion, and sit as arbitrator and judge. In 2000 he was a founder member of Matrix Chambers, and has contributed to the life of the international and English bar as international law increasingly permeates domestic and European law.

There have been cases in Hamburg, Washington, Paris and Istanbul, not to mention the second home that is The Hague. There have been more than two score cases at the International Court of Justice alone (James is not a 'numbers' person and would object strongly to the totting up), and dozens in other places. It might be said that James has been midwife for the transformation of the international justice system. His unique ability to get to the nub of the central legal issue in any case, and to roll up his sleeves and immerse himself in the muck of facts, makes him the principal public international lawyer of our age. To international litigation he has brought a distinct style of advocacy – referred to by some as 'the Australian way' – that is direct, subtle and fearsome. In one hand a surgeon's knife, in the other a sledgehammer. The arguments are relevant, efficient and humorous.

This was encapsulated for many in an early effort, made on behalf of a group of four Pacific island countries, when he sought to persuade a somewhat sceptical bench that the use of nuclear weapons was unlawful in all circumstances. There's a difference between deterrence and the actual threat to use weapons to achieve one's ends, he told the Court, adopting an approach that surprised some. 'Mr President', he said boldly, looking straight in the eye at the diminutive, older gentleman who sat before him, 'I may be big enough and strong enough to hurt you, if you punch me in the nose . . . but I am not threatening you, not in the event that you do not punch me on the nose – it is simply a fact.' The look on the judge's face – was it awe, or incomprehension? – remains embedded in the memory of many who were present.

He has served as arbitrator and judge, displaying fearsome independence and collegiality in the struggle for consensus. Occasionally this might generate a sense of frustration on the part of the party that appointed him, yet it will be overcome by the knowledge that his presence on the tribunal invariably leads to a judgment or award that ticks the quality boxes. It might be said that he is generous in the extreme as to

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

the assumptions about the uses (and abuses) to which a decision might be put (yes, dear James, many *still* find it hard to swallow aspects of the decision of the annulment committee in *CMS Gas Transmission Company v. Argentine Republic!*).

James likes litigation, and litigation likes him. He's a natural and highly effective, even after a twenty-four-hour flight (who else would take in trips to Europe, South America and Australia in *a single week*, and then be willing and able to appear in an international court?). To be gently savaged by him in the course of a hearing is a badge of honour, a pleasurable rite of passage. As many have learnt, to seek to savage in return, and to do it well (or even not), invariably catalyses a generous and warm word of appreciation after the hearing, a pat on the shoulder and perhaps an invitation for a beer.

James's arrival in Britain coincided with a transformation in the international law scene in his adoptive country. International law came into the mainstream of legal life in the United Kingdom (a country the future make-up of which he may have contributed to by the opinion he prepared on Scottish independence, following on from his work in relation to Quebec and Canada), and to a significant extent its political life too. Cause or effect? It will always be difficult to know, and James would never seek to overstate (or even state) his influence. But many others have recognised his impact. That he put his name and weight to a March 2003 letter to the then British prime minister, warning him of the illegality of using force in Iraq without an explicit Security Council Resolution, undoubtedly added to its authority and effect. It reflected a characteristic willingness to do the right thing, to jump out of the ivory tower and get his hands dirty with the great issues of the day. As so often, his leadership made it easier for others to join. The same may be said of his efforts in challenging the Bush administration on its legal policies in the aftermath of 9/11. 'The American Society of International What?', he asked, sitting on a panel in Washington, with a great grin on his face, when it was put to him that the Society should avoid becoming embroiled in such delicate matters. Less than a decade later the society honoured him with the prestigious Manley Hudson Medal, one of the growing number of prizes and honours that reflect the reach of his ideas and imprint.

What are the qualities that have informed this global recognition? They have rightly catalysed the respect of legal rags, for which he would have little regard, which refer (no doubt to his considerable embarrassment) to his 'profound influence on the development of international law' and to the observable facts that public international law 'forms part of his

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978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

DNA' and that he is 'the most brilliant performer of his generation'. The intellectual qualities are widely noted, but there is something else. It's a personal style and human qualities that are brought to bear across the range of his activities, both academic and professional. There is, for a start, a generosity of spirit and humility that stands out in a world often marked by self-importance. There is the openness to ideas, even if they are not ones to which he is himself attached, and irrespective of their individual provenance. It is the substance that matters, not the messenger. These are disarming qualities that allow the force of the intellectual arguments to extend their reach, cutting through political and cultural opposition. There is, too, a driving belief in the rule of law and its reach, a commitment to the system of international law *for all*, individuals, associations, corporations and States.

'Why does he take on so much?' is a frequent question. Because he loves it and because he cares, is the only possible answer. The personal characteristics inspire a sense of affection and collegiality that allows things to get done, results to be achieved, sacred cows to be destroyed. It is true too that beyond the love of international law – and the encyclopaedic store of information – there is an understanding that there is more to life (a point more often appreciated perhaps in the lives of others), that the law has its limits and that one should be sanguine about the prospects and possibilities of one's own actions or impact.

There is too a particular sense of humour, invariably attached to words and language. The emails are short and to the point, and often generate a laugh. A personal favourite amongst the numerous 4.00 a.m. emails relates to proceedings that Bangladesh brought against India and Myanmar, on the delimitation of the Bay of Bengal. Bangladesh opted for two separate cases: one, against Myanmar, went to the International Tribunal for the Law of the Sea (and on which sat the Indian judge P. C. Rao) and the other, against India, went to an Annex VII arbitration tribunal. The day after India appointed as arbitrator its former legal adviser P. S. Rao, James sent a short email, the subject header of which said: *Two Raos, One Dispute*.

Nothing really goes to the head. A tad more stretched, he is as generous and open as the day he arrived in Cambridge, as committed to making things right, as kindly irreverent and unwilling as ever to defer to sacred cows. There is, finally and forever, that commitment to his Australian roots (and passport). This has not been without its cost, namely hundreds of additional hours forced to stand in line waiting to get through the non-EU immigration lines at European airports. This price he has willingly paid to open the door to (an even fuller) life in The Hague (Tom Bingham once

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978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

told me that he saw no reason why an Australian – well, this Australian – might not succeed the former British judge at the court). It is fitting that he reaches the likely end of this stage of his career – a second grown-up life – in the year that Australia retained the cricket Ashes with a crushing – nay, humiliating – victory against England, and in which he was made Companion of the Order of Australia in the Australian Queen’s Birthday Honours List.

James’s arrival in England made life different for a great many people, myself included. He was, I believe, the first non-UK national to take up the Whewell Chair, a sign of changing times, encouraging new areas to explore and a new style to apply. In the first case on which we worked together, two decades ago, as team leader he encouraged all in the room to express their views, on facts and law, even to challenge his views, dispensing with any vestige of formal hierarchy in the team. Of course, he told us, at the end of the day it would be for him to decide what advice to give the government client, but to be able to do so he wanted to hear from all what their ideas were. It was not a style I was used to, as a junior academic, or at the English bar. James has brought to us the qualities of openness and listening. Deference to the existing order, to following patterns of behaviour simply because that is how things have always been done, was to be cast aside unless justifiable on their merits. For that, for the humour, for the generosity and for the sheer power of the intellect we have reason to be very grateful that this Australian came to England.

Philippe Sands, QC

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

CASES

International Tribunals

Arbitration Awards

General international arbitration

- Air Services Agreement of 27 March 1946 (United States *v.* France), Reports of International Arbitral Awards, vol. XVIII, 416 (1979) 357
- Arbitration between Barbados and the Republic of Trinidad and Tobago, Relating to the Delimitation of the Exclusive Economic Zone and the Continental Shelf between them, Decision of 11 April 2006, Reports of International Arbitral Awards, vol. XXVII, 147 (2008) 264
- Case concerning a dispute between Argentina and Chile concerning the Beagle Channel, Award, 18 February 1977, Reports of International Arbitral Awards, vol. XXI, 53 (1977) 259
- Case concerning the audit of accounts between the Netherlands and France in application of the Protocol of 25 September 1991 Additional to the Convention for the Protection of the Rhine from Pollution by Chlorides of 3 December 1976 (Netherlands *v.* France) Award, 12 March 2004, Reports of International Arbitral Awards, vol. XXV, 267 (2004) 440
- Case concerning the delimitation of maritime boundary between Guinea-Bissau and Senegal, Decision of 31 July 1989, Reports of International Arbitral Awards, vol. XX, 119 (2006) 249, 257
- Cyne (Responsibility of Germany for acts committed subsequent to 31 July 1914 and before Portugal entered the war) (Portugal *v.* Germany) Reports of International Arbitral Awards, vol. II, 1035 (1930) 396
- Island of Palmas case (or Miangas) (United States *v.* Netherlands), Reports of International Arbitral Awards, vol. II, 829 (1928) 112, 141
- Lighthouses Arbitration (France *v.* Greece), (18 April 1956), Reports of International Arbitral Awards, vol. XII, 155 (1956) 298
- Rainbow Warrior Arbitration (New Zealand *v.* France), (30 April 1990), Reports of International Arbitration Awards, vol. XX, 215 (1990) 299
- Responsabilité de L'Allemagne a Raison des Dommages Cause's dans les Colonies Portugaises du Sud de L'Afrique, (Portugal *v.* Germany), (Naulilaa case), Reports of International Arbitral Awards, vol. II, 1027 (1928) 356

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

LIST OF CASES

xxvii

- The Channel Tunnel Group Limited and France-Manche S.A. v. The Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland and Le Ministre de l'Équipement des Transports, de l'Aménagement du Territoire, du Tourisme et de la Mer du Gouvernement de la République Française, ILR, vol. 132, 1 (2007) 422
- The Netherlands v. United States of America (4 April 1928), Reports of International Arbitral Awards, vol. II, 829 (1928) 112

Investment arbitration

- Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States, ICSID Case No. ARB(AF)/04/05, Award, 21 November 2007 398
- Asian Agricultural Products Ltd v. Sri Lanka, ICSID Case No. ARB 87/3, Award, 27 June 1990 316
- Camuzzi International SA v. Argentine Republic, ICSID Case No. ARB/03/2, Decision on Objections to Jurisdiction, 11 May 2005 392
- Cargill, Inc. v. United Mexican States, ICSID Case No. ARB(AF)05/2, Award, 18 September 2009 398, 401
- Corn Products International, Inc. v. United Mexican States ICSID Case No. ARB(AF)/04/01, Decision on Responsibility, 15 January 2008 397, 399
- Iberdrola Energía S.A. v. Republic of Guatemala ICSID Case No. ARB/09/5, Award, 17 August 2012 109
- Jan de Nul NV and Dredging International NV v. Arab Republic of Egypt, ICSID Case No. ARB/04/13, Decision on Jurisdiction, 16 June 2006 387
- Noble Ventures, Inc. v. Romania, ICSID Case No. ARB/01/11, Award, 12 October 2005 387
- Robert Azinian, Kenneth Davitian, & Ellen Baca v. The United Mexican States, ICSID Case No. ARB (AF)/97/2, Award, 1 November 1999 109
- Saar Papier Vertriebs GmbH v. Republic of Poland (UNCITRAL), Final Award, 16 October 1995 106
- Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States ICSID Case No. ARB (AF)/00/2, Award, 29 May 2003 107
- Total S.A. v. The Argentine Republic, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010 107
- Toto Costruzioni Generali S.p.A. v. The Republic of Lebanon, ICSID Case No. ARB/07/12, Award, 7 June 2012 108
- United Postal Service of America, Inc. v. Government of Canada, ICSID Arbitration, Award on the Merits, 24 May 2007 181

Central American Court of Justice

- El Salvador v. Nicaragua, Central American Court of Justice, Judgment, 9 March 1917, 11 American Journal of International Law 674 (1917) 258

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

xxviii

LIST OF CASES

Court of Justice of the European Union (CJEU)

- Joined cases C-176/97 and C-177/97, *Commission v. Belgium and Luxembourg* [1998] ECR I-3557 415
- Case 22/70, *Commission v. Council – AETR* [1971] ECR 263 407
- Case C-45/07, *Commission v. Greece* [2009] ECR I-00701 409, 414
- Case C-459/03, *Commission v. Ireland* [2006] ECR I-4635 408
- Case C-266/03, *Commission v. Luxembourg* [2005] ECR I-4805 408, 414
- Case C-55/00, *Elide Gottardo v. Istituto nazionale della previdenza sociale (INPS)* [2002] ECR I-413 414
- C-379/87, *Groener v. Minister for Education and the City of Dublin* [1989] ECR I-3967 104
- Case C-308/06, *The Queen, on the application of International Association of Independent Tanker Owner (Intertanko) and others v. Secretary of State for Transport* [2008] ECR I-4057 410
- Case C-432/92, *R v. Minister of Agriculture, Fisheries and Food, ex parte S. P. Anastasiou (Pissouri) Ltd and others (Anastasiou I)* [1994] ECR I-3116 178
- Case C-159/90, *Society for the Protection of the Unborn Children Ireland v. Grogan*, [1991] ECR I-4685 104

European Court of Human Rights (ECtHR)

- Al-Adsani v. the United Kingdom*, Application No. 35763/97, ECtHR, Judgment, 21 November 2001, 34 EHRR 11 (2002) 187
- Al-Jedda v. United Kingdom*, Application No. 27021/08, ECtHR (GC), Judgment (Merits and Just Satisfaction), 7 July 2011 421
- Bankovic and others v. Belgium and others*, Application No. 52207/99, ECtHR (GC), Judgment, 12 December 2001 66
- Behrami and Behrami v. France*, Application No. 71412/01, ECtHR (GC), 2 May 2007 421
- Cyprus v. Turkey*, Application No. 25781/94, ECtHR (GC), 10 May 2001 199
- Demopoulos and others v. Turkey*, Application No. 46113/99, ECtHR, Admissibility Decision, 1 March 2010 178
- Fogarty v. the United Kingdom*, Application No. 37112/97, ECtHR, 21 November 2001 185
- Ilascu and others v. Moldova and Russia*, Application No. 48787/99, ECtHR (GC), 8 July 2004 323
- Loizidou v. Turkey*, Application No. 40/1993/435/514, ECtHR, 23 February 1995 323
- Öcalan v. Turkey*, Application No. 46221/99, ECtHR (GC), 12 May 2005 56
- Saramati v. France, Germany and Norway*, Application No. 78166/01, ECtHR (GC), 2 May 2007 421

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

LIST OF CASES

xxix

Kosovo Human Rights Advisory Panel

S.C. v. UNMIK, Case No. 02/09, 6 December 2012 162

Human Rights Committee

Lilian Celiberti de Casariego v. Uruguay, Communication No. 56/1979, UN Doc. CCPR/C/13/D/56/1979 (29 July 1981) 56, 61

Sergio Euben Lopez Burgos v. Uruguay, Communication No. R.12/52, UN Doc. Supp. No. 40 (A/36/40) (6 June 1979) 56, 61

International Court of Justice (ICJ)

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 22 July 2010, ICJ Reports 403 (2010) 163, 193, 199, 207, 236, 275

Antarctica cases (UK v. Argentina; UK v. Chile), ICJ Pleadings (1956) 110

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Order of 13 September 1993, ICJ Reports 325 (1993) 33

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia and Montenegro), Judgment, 26 February 2007, ICJ Reports 43 (2007) 300, 323, 326, 377, 380

Armed Activities on the Territory of the Congo (Congo v. Uganda), Judgment, 19 December 2005, ICJ Reports 168 (2005) 52, 324

Barcelona Traction, Light and Power Company Limited (Belgium v. Spain), Judgment, 5 February 1970, ICJ Reports 3 (1970) 298, 304, 341

Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) (Preliminary Objections), 24 May 2007, ICJ Reports 582 (2007) 392

Case concerning Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction of the Court and Admissibility of the Application, Judgment, 3 February 2006, ICJ Reports 6 (2006) 205

Certain Phosphate Lands in Nauru (Nauru v. Australia), Judgment on Preliminary Objections, 26 June 1992, ICJ Reports 240 (1992) 438

Corfu Channel case (UK v. Albania) (Merits), Judgment, 9 April 1949, ICJ Reports 4 (1949) 47, 302, 315

Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, 29 April 1999, ICJ Reports 62 (1999) 380

East Timor case (Portugal v. Australia), Judgment, 30 June 1995, ICJ Reports 90 (1995) 227

Cambridge University Press

978-1-107-04425-8 - Sovereignty, Statehood and State Responsibility: Essays in Honour of James Crawford

Edited by Christine Chinkin and Freya Baetens

Frontmatter

[More information](#)

xxx

LIST OF CASES

- Frontier Dispute (Burkina Faso/Republic of Mali), Judgment, 22 December 1986, ICJ Reports 554 (1986) 199, 256
- Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, 3 February 2012, ICJ Reports 99 (2012) 187
- LaGrand case (Germany v. United States of America), Judgment, 27 June 2001, ICJ Reports 466 (2001) 152
- Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Judgment, 10 October 2002, ICJ Reports 303 (2002) 262
- Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment, 11 September 1992, ICJ Reports 3 (1992) 260, 269, 270
- Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 9 July 2004, ICJ Reports 136 (2004) 51, 56, 63, 69, 108, 348, 385
- Legal Consequences of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276, Advisory Opinion, 21 June 1971, ICJ Reports 16 (1971) 58, 177, 195
- Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, ICJ Reports 226 (1996) 82, 148
- Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, 3 February 2009, ICJ Reports 61 (2009) 270
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA), Judgment, 27 June 1986, ICJ Reports 14 (1986) 40, 301, 323
- Nuclear Test cases (Australia v. France; New Zealand v. France), Judgment, 20 December 1974, ICJ Reports 253, 457 (1974) 199
- Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, 6 November 2003, ICJ Reports 161 (2003) 173
- Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, 20 April 2010, ICJ Reports 14 (2010) 316, 321
- Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 11 April 1949, ICJ Reports 174 (1949) 82, 297
- South West Africa cases (Ethiopia v. South Africa; Liberia v. South Africa) (Preliminary Objections), 21 December 1962, ICJ Reports 624 (1962) 295
- Territorial and Maritime Dispute (Nicaragua v. Colombia), Merits, Judgment, 19 November 2012, ICJ Reports 624 (2012) 267
- Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, 13 December 2007, ICJ Reports 832 (2007) 267
- Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, 8 October 2007, ICJ Reports 659 (2007) 265
- United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, 24 May 1980, ICJ Reports 3 (1980) 298