

# Pirates, slavers and ship hijacking

*This article by Bill Stephens is reproduced from Australia's national business and trade newspaper — Daily Commercial News, 3 December 1990.*

UNIVERSITY OF N.S.W.

13 MAY 1991

LAW LIBRARY

Not being averse to a challenge, we took it upon ourselves last week to see if we could make any sense out of a Law Reform Commission (LRC) report entitled *Criminal Admiralty Jurisdiction and Prize*.

We chose to subject ourselves to this torture not least because a Commission spokeswoman assured us that the contents 'should be of interest to your readers although, they are a bit dry'.

The Commission's offering, as is often the case, defied the description 'dry' (one has to, for example, continue blinking hard whilst reading it).

After writing it up, (another story in the same issue of Daily Commercial News, setting out the details of the report) the lyrics of a favourite Robert Cray Band single came drifting up from the dredges of our subconscious — something to the effect that the company of a woman is the only thing that makes a day worthwhile, and that said company even outdoes the joyous news that '... a boatful of lawyers just sank'.

In truth, even after we had written it, we were still not sure whether we understood what the Commission was really on about.

## The good professor

So, we decided to ring an expert in the field and a contributor to the report, Professor James Crawford BA, LLB (Adel), DPhil (Oxon).

The good Professor immediately disarmed us by admitting right up front that our admission of ignorance was one of the time-honoured pre-requisites for admission to the bar although he left DCN wondering to which bar he referred.

## Sea-going riff-raff

For those of you who are not into legalese, the way we understand it, the report says it would be a fine idea if the Government repealed a veritable swathe of old-hat legislation inherited from the UK defining what can be done about sea-going riff-raff like pirates and slavers.

Those outdated 'Imperial laws' should then be replaced with simpler legislation extending Australia's power to do something about the rascals even if they committed their atrocities on the high seas.

Correct!, Professor Crawford said but, we had missed the real point, although not by much.

## Ship hijacking

It was also, he said, to give effect to the recently established Convention on a ship hijacking which resulted from the Achille Lauro incident in 1985.

'Ship hijacking was not considered to be much of a problem until it happened,' Professor Crawford said.

'These problems can occur more or less anywhere at any time and it is much better to pass legislation when there is no particular problem around'.

Whereas a hijacking of a ship in, say, Sydney Harbour, would fall under the laws covering such thing in internal waters, a hijacking of an Australian ship on the high seas came under the Australian Crimes at Sea Act 1979 which had gaping holes all the way through it.

## Crimes at Sea Act

'In that instance, the Australian Crimes at Sea legislation will sometimes apply, and at other times it won't,' Professor Crawford said.

'It does not apply to offences which are specifically ship hijacking offences and therefore we need to give effect to the Convention.'

Asked why the Crimes at Sea Act was regarded as something less than useful, he said it had always been regarded as an eccentricity of the times.

There was, for example the recent case of a foreign vessel, either Thai or Korean which suffered a killing on board about 12 hours out from Newcastle.

'The ship put back into port, the body was removed and the alleged offender was taken off but, it was discovered that Australia had no jurisdiction over that offence,' Professor Crawford said.

'Now if the offence had occurred in Australian waters there might have been some jurisdiction but, it happened outside territorial waters and there was no jurisdiction.

'Now, let's assume that the ship had been sailing to Australia in which case Australia would have had jurisdiction.'

### America's Cup

He said that the strangeness of the existing law had also been the subject of debate before and during the America's Cup regatta off Perth.

'At the time there were some real problems in working out what the law would have been if there had been any offences committed where the races were held 20 miles offshore,' Professor Crawford said.

The difficulty was that some of the flotilla of observation craft had come from overseas ports.

'The Commonwealth was actually asked to make some regulations which would have clarified the situation but, they refused to do so on the grounds that it was all being done too quickly and they could not really work out what they should do.

'It is fairly clear that the Crimes at Sea Act is problematic,' he said.

Hopefully, however, that situation will be addressed in

considerable detail in a report due out some time next year by the review Committee headed by the former Federal Court Judge, Sir Harry Gibbs.

### Prize law

In regard to 'prize' law, Professor Crawford said that the ALRC's aim was again to see the area 'tidied up'.

Thinking however that not only the title, but also the concept, of 'prize' had a catchy ring to it, DCN suggested that it could have some real-world application in the event that Iraq decided to push the world over the brink and into armed conflict next month.

Under prize law, according to Professor Crawford, if a ship carrying goods for one of two warring states was captured, that ship and its cargo could, in effect, be legally forfeited.

What the Commission had suggested was that all the Imperial laws dealing with that situation should be rescinded and in their place Australian legislation should be enacted, without being given effect, in case a situation arose where prize would be a useful power to hold.

### Iraq

'But the Iraq situation is different in that it does not involve war between Australia and Iraq, notwithstanding that Australian forces may be involved,' Professor Crawford said.

'It is (potentially) a conflict between the UN and Iraq with Australia lending its forces and that is a situation which is not covered by prize at all.'

However, he did suggest that under the Australian legislation, provision could be made for providing prize powers to Australian vessels involved in a conflict initiated by the UN Security Council. But that was a long-shot.

Be that as it may, and obscure as the areas covered in the ALRC's report may be, we thought, after having them explained to us, that the Commission's recommendations deserved some official consideration and perhaps even acting in the not too distant future.

### No action yet

The Attorney-General's Office, was not, however, even aware that the report had been released.

A spokesman for Mr Duffy said that the report would be considered by the Department, which would then advise Mr Duffy about what to do about it.

He also mentioned that there was a huge stack of reports from the ALRC which had yet to be considered.

Perhaps that lack of urgency matters or perhaps it does not but, given the number of loonies running around out there with guns right now — and as the law on international thuggery at sea stands — DCN will certainly not be taking any overseas cruises in the near future.

---

*The ALRC report 'Criminal Admiralty Jurisdiction and Prize' (ALRC 48) was tabled in federal Parliament on 27 November 1990. The report recommends that Imperial laws of general application dealing with jurisdiction over offences at sea should all be repealed and, where necessary, replaced by alternative provisions adapted to Australian needs.*

*It deals with the jurisdiction of Australian courts over offences committed beyond the territory with the jurisdiction of Australian courts over offences committed beyond the territory of the States and Territories as defined by British legislation — from the 17th to 19th centuries — extending jurisdiction over specific*

offences committed within the jurisdiction of 'The Admiral' to colonial courts.

The report says Imperial laws relating to piracy should be repealed and, should be replaced by a single federal offence of piracy, drafted in accordance with the relevant provisions of the 1958 Geneva Convention on the High Seas (to which Australia is a party), and with the provision of seizure and forfeiture of pirate ships or property,' the Commission said.

Jurisdiction of those matter should be conferred on State and Territory Supreme Courts and the new offence should apply to acts in the Australian territorial sea, or on the high seas.

It should also be made clear that the internal seizure of a ship (by passengers or crew) did not constitute piracy.

The ALRC said that in order to ensure that the internal seizure of a ship remained an offence when piracy was redefined in accordance with the above recommendation, and to ensure, generally, that an effective regime of offences was in place to deal with acts at sea that endangered safe navigation, the federal Parliament should legislate to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation of 1988 and its associated Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

It said that those provisions should be implemented with respect to ships (other than government ships) on international journeys, as required by the Convention, and with respect to fixed platforms on the Australian

continental shelf or (where a suspected offender was found in Australia) on the continental shelf or State party to the Protocol as required by the Convention and the Protocol respectively. Jurisdiction should also extend over all matters referred to in Article 6 of the Convention and Article 3 of the Protocol, and a general provision should be inserted in the Extradition Act 1988 (Cth) to enable provisions such as Article 11 of the Convention to be implemented by regulation.

Concerning slavery, the ALRC said that, as in the case of piracy, the Imperial laws should be replaced with a single federal offence of slavery drafted in accordance with the relevant provisions of the 1926 Slavery Convention and the Supplementary Slavery Convention of 1956. □

---

## Multiculturalism: family law

*The ALRC has published an issues paper and a discussion paper on Multiculturalism and is conducting seminars and public hearings around Australia to obtain comments and submissions on its proposals.*

---

### **A difficult area**

Family Law can be a difficult and controversial and the diversity of cultures in Australia adds an extra dimension to the issues. It also makes it essential to ensure that the values underlying the law are clearly expressed and clearly understood, and to base the law

on a proper weighing up of individual rights and community values.

### **Discussion paper**

In January 1991, the ALRC published a Discussion Paper, *Multiculturalism: Family law* (ALRC DP 46), as part of its inquiry into Multiculturalism and the Law.

The paper examines the law about families, marriage and children and outlines proposals for reform. The ALRC is asking for comments on the proposals.

### **General approach**

The approach the ALRC has adopted is that, unless there is good reason to do otherwise, the law