

*James Crawford\**

A review of the career of Ivan Shearer reveals both a remarkable breadth and a fine consistency. He trained at Adelaide Law School (1955–9) in the last years of its operation as a predominantly local institution for training legal practitioners (who also undertook much of the teaching). He went through the various stages of professional qualification as barrister and solicitor, and acted as a judge’s associate in the Supreme Court of South Australia. He did not study international law as a subject — it was not yet offered, despite the presence of DP O’Connell as a member of the Faculty. But he opted for an academic career, moving to the Law School in 1961 first as a tutor, eventually rising to the level of reader, before being promoted to successive chairs at the Universities of New South Wales, Sydney and South Australia. His academic career was initially focused on public law — constitutional and administrative in particular. At Adelaide, he also taught *Elements of Law*, a basic introduction to legal studies with an emphasis on case reading, statutory interpretation and judicial process. The first lecture in law that I had at Adelaide was given by Ivan in *Elements of Law*.

Ivan became an international lawyer through a series of incidents, if not accidents. He undertook an LLM under O’Connell’s guidance on extradition, and it was also O’Connell who recruited him to do research on state succession in Heidelberg, Paris and London (his German was fluent). Later episodes included a doctorate, also on extradition, at Northwestern University, which eventually led to his first book, *Extradition in International Law*.<sup>1</sup> Despite the many changes in the law and practice of extradition since the 1960s, the book is still remembered, and gained him a reputation in this field.<sup>2</sup>

But those who thought of him as an extradition lawyer did not keep up with developments. He retained an interest in that and cognate subjects (such as refugees), but he was concurrently undertaking research on state succession. The latter was a result of O’Connell’s interest in that field and the work done for him by Shearer, especially in relation to the Commonwealth. He worked on law of the sea (including fisheries, navigation, enforcement, the new maritime zones), the relations between international law and the common law, international humanitarian law, jurisdiction, use of force, and so on. He became by degrees a general international lawyer, with few limitations of field.

He was a fine teacher, especially with students who had not necessarily done their best; he could encourage and move them beyond that, whereas the brightest could

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<sup>1</sup> Ivan Shearer, *Extradition in International Law* (Manchester University Press, 1971).

<sup>2</sup> In his foreword, Professor Jescheck describes it as follows: ‘for the first time in the twentieth century a scholar of international criminal law from a common law country reappraises all the basic problems of extradition in the light of the needs and difficulties of the modern world’: *ibid* xi.

sometimes look after themselves. He was enthusiastic about mooting, especially the Jessup competition, which he played an important role in introducing to Australia in 1979. That interest was integral, I think, in establishing the Jessup as an Australian international fixture, in which Australia's role since has been remarkably successful.

And his work was not limited to the library, the classroom or the study. His time abroad in Europe, in the United States, and in Africa (notably Lesotho, where he was legal adviser on treaties to the Government) gave him perspective and a clearer understanding of the world and how it worked. He might have stayed in Lesotho (where he was offered the position of Attorney-General) but he decided to return to Australia. In 1975 he accepted a chair at the University of New South Wales, where he subsequently served as Dean for two separate terms, with great success. He was then elected to the Challis Chair of International Law at Sydney in 1993, from which he retired in 2004, eventually moving home to Adelaide. Other episodes included his long part-time service in the Royal Australian Naval Reserve; he retired in 2000 with the rank of Captain. His nomination by Australia to the United Nations Human Rights Committee in 2001 was slightly more controversial — he was not a human rights lawyer and was accused of furthering the Australian Government's sceptical position on international human rights. In fact, he served with distinction and was re-elected in 2004.<sup>3</sup> In 1991 he served as academic-in-residence at the Department of Foreign Affairs and Trade. In 2000–01 he was Stockton Professor of International Law at the US Naval War College.

Notable among his scholarly works was his completion of O'Connell's *The International Law of the Sea*.<sup>4</sup> In his 'Editor's Preface' Shearer explains that O'Connell had written a draft of every chapter before his sudden death in 1979, but that more remained to be done to prepare the book for publication at the time of the conclusion of the *United Nations Convention on the Law of the Sea* ('UNCLOS') in 1982.<sup>5</sup> That may have been so, but Shearer's contribution in updating and referencing was very substantial, and the book is still in use today.

In addition to his teaching and research and his involvement in university and professional administration, Ivan contributed to the subject in other ways. In particular, he had an active role as ad hoc judge or arbitrator. He was ad hoc judge nominated

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<sup>3</sup> He was elected on 14 September 2000 and re-elected on 9 September 2004. He served on the Committee from 1 January 2001 to 31 December 2008: see Office of the United Nations High Commissioner for Human Rights, 'Membership of the Human Rights Committee 1977 to 2014' (PDF File) <[https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/Membership1977\\_2014.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/Membership/Membership1977_2014.pdf)>.

<sup>4</sup> DP O'Connell, *The International Law of the Sea*, ed Ivan Shearer (Clarendon Press, 1982–84) vol 1; DP O'Connell, *The International Law of the Sea*, ed Ivan Shearer (Clarendon Press, 1982–84) vol 2.

<sup>5</sup> DP O'Connell, *The International Law of the Sea*, ed Ivan Shearer (Clarendon Press, 1982–84) vol 1, vii.

by Australia in several cases under UNCLOS,<sup>6</sup> served as a member of an Annex VII arbitration panel in one case,<sup>7</sup> and chaired another.<sup>8</sup>

This is not the occasion for a fuller analysis of Shearer's work.<sup>9</sup> Instead, I should like to focus, as many of the other contributors to this section, on Ivan himself. He was, of course, highly educated and had strong likes and dislikes — many more of the former. He loved music (classical, especially Wagner), good cars, wine (not at all confined to Australian wines, though definitely including them), friendships (the longer the better and irrespective of the location of the friends), good food preferably in good places, and books of all kinds. But he was also open, helpful, available to students and (subject to his workload) generally relaxed. If he could help anyone, especially students, he would go to great lengths to do so. With a rural Australian background,<sup>10</sup> and an Adelaide private school education, he was not easy to place socially, but he did not care one way or the other about that. Having adopted Catholicism at university, he was intensely but unobtrusively religious. He had a wicked sense of humour. He loved cats and dogs, and kept both kinds until their extreme old age.

He was also deceptively hard-working, meticulous in preparing for and chairing meetings or hearings, but capable of a light touch and tolerance when called for. He cared about process, but was capable of adapting the agenda to meet sudden needs, if reasons could be given. He was gentle and generous, but nonetheless with a clear sense of regular process and procedure. He was naturally good natured and equable with young and old — though about the very youngest he had some reservations: his good nature competed slightly with his apprehension as to controlling the intruder.

He also cared greatly about international law, but was concerned at the unreasonable demands sometimes made in its name. Some things could be thought but not codified, he would suggest.

The fact that he was in the world, though distant, I think made the world a better, certainly a happier, place.

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<sup>6</sup> See *Southern Bluefin Tuna Cases (New Zealand v Japan; Australia v Japan) (Provisional Measures)* (UNCLOS Arbitral Tribunal, 27 August 1999) 320–9 (Judge ad hoc Shearer), in which he wrote a separate opinion; *The 'Volga' Case (Russia v Australia) (Judgment)* (UNCLOS Arbitral Tribunal, 23 December 2002) 66–72 (Judge ad hoc Shearer), in which he wrote a dissenting opinion.

<sup>7</sup> *Land Reclamation by Singapore in and Around the Straits of Johor (Malaysia v Singapore) (Award on Agreed Terms)* (Permanent Court of Arbitration, 1 September 2005); see also *Arbitration Under the Timor Sea Treaty (Timor-Leste v Australia)* (Permanent Court of Arbitration, Case No 2015-42, 15 September 2015).

<sup>8</sup> *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom) (Award)* (Permanent Court of Arbitration, 18 March 2015).

<sup>9</sup> See, for a brief account, James Crawford, 'Ivan Shearer: International Lawyer and Teacher' (2005) 24 *Australian Year Book of International Law* 1. The volume includes 13 essays on different aspects of Ivan's work. A select list of his publications is at: 10–12.

<sup>10</sup> Ivan's family has been engaged in the design and manufacture of agricultural machinery since 1877. The Shearer company has its headquarters in Adelaide but has many affiliates in rural areas. Its vehicles bear the name 'Shearer'.

