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JAMES CRAWFORD

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BY

JAMES CRAWFORD, SC, FBA

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BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW

AUTHOR BIOGRAPHIES

Ian Brownlie (1932–2010) was born on 19 September 1932 in Liverpool and was educated at Alsop High School, Liverpool and Hertford College Oxford, before undertaking a doctorate at Oxford under Humphrey Waldock. He spent a year (1955–56) at Kings College Cambridge as Humanitarian Trust Student in Public International Law. He taught at Nottingham Law School (1957–63) before becoming a tutorial fellow and university lecturer in law at Wadham College (1963–76). Following a period as Professor of International Law at the LSE, from 1980 to his retirement in 1998 he was Chichele Professor of Public International Law in the University of Oxford and a Fellow (later Distinguished Fellow) of All Souls College. He was a member of the International Law Commission from 1997–2008, and its Chairman in 2007. He was knighted in 2009 for services to international law. He was the author of numerous books on international law, including *International Law and the Use of Force by States* (1963), *African Boundaries* (1979), *State Responsibility (Part I)* (1983), and his 1995 Hague lectures, *The Rule of Law in International Affairs* (Martinus Nijhoff, 1998). A member of Blackstone Chambers, he was a leading advocate before the International Court of Justice, the European Court of Justice, the European Court of Human Rights, and other international tribunals, as well as before the English courts. He was an arbitrator in a number of important cases including *Barbados/Trinidad & Tobago* (2006).

James Crawford is Whewell Professor of International Law and a Fellow of Jesus College, Cambridge and concurrently Research Professor of Law at LaTrobe University. He is a Senior Counsel (NSW) and a member of the English bar, practising from Matrix Chambers. He was the first Australian member of the United Nations International Law Commission and was responsible for the ILC's work on the International Criminal Court (1992–94) and for the second reading of the ILC Articles on State Responsibility (1997–2001). A graduate student of Ian Brownlie's, he has appeared before the International Court of Justice and other international tribunals and was, for many years, Director of the Lauterpacht Centre for International Law in the University of Cambridge.

PREFACE

It is difficult to overestimate the importance of successive editions of Ian Brownlie's *Principles* for the teaching of international law over the last 45 years. It is not too much to say that several generations of Anglophone international lawyers have absorbed their sense of the structure of their subject from *Principles*.

That is certainly true in my case. I first used this work (in its first edition of 1966) when studying international law at the University of Adelaide in 1968. My undergraduate lecturer, DP O'Connell, was less than pleased to see me carrying the 'radical' Brownlie around in that year of student unrest. In fact I had also bought (but did not carry around) O'Connell's much heavier work.

In 1972, I began a doctorate at Oxford. My supervisor was Brownlie, as I had hoped. Despite expressing considerable reserve when I announced that my doctoral subject was statehood (not one aspect but all of it), he eventually warmed to the idea. I realize once again, in reviewing closely the relevant chapters of the 7th edition, how much I owe the 'insights' of that thesis to *Principles*.

It was thus both an honour and a responsibility to be asked to undertake the 8th edition of *Principles*, following Ian's tragic death in January 2010.[1]

It turned out to be a more difficult commission than I had thought. The text was in need of an overhaul, and there were many new developments to be taken into account. The Press stipulated that this all had to be done within the same length as the 7th edition, so that for every insertion there had to be an equal excision. While it has proved possible to preserve much of Brownlie's text and, I hope, the general spirit and tone of the work, it proved necessary to engage not only in updating, but also in some restructuring. A determined effort has been made to review the footnotes so as to include the best recent literature of the subject, while not losing sight of the literature of the period 1945–75 to which so much reference was made in successive editions.

I am only too aware of the warning against '"ancestor worship" in text-book literature ... the tyranny of mortmain'.[2] There has been a cottage industry of renovating texts,[3] prompting calls for 'another book, rather than a new edition of this one'.[4] Robert Jennings made the same complaint of the 6th edition of Oppenheim,[5] before going on to co-edit the 9th. Whether the present effort was worth it is for others to judge; but in my view Brownlie still speaks perceptively about international law as law, about its systematic character,

[1] A biographical memoir of Brownlie is in British Academy, XI *Biographical Memoirs* (in press). See also Owada (2010) 81 *BYIL* 1; Lowe, ibid, 9.

[2] J M[ervyn] J[ones] (1944) 21 *BY* 242, 243.

[3] On the British textbook tradition: Crawford, in Beatson & Zimmermann (eds), *Jurists Uprooted. German-speaking Emigré Lawyers in Twentieth Century Britain* (2004) 681.

[4] Warbrick (2000) 11 *EJIL* 621, 632. I am indebted to this best of Brownlie reviews, and have taken much of its advice.

[5] RY J[ennings] (1947) 24 *BYIL* 512, 513.

about sovereignty as a value, about the relations of nationality, and the implications of peremptory norms outside the field of treaties, among many other things.

A more fundamental question is whether *any* single volume can account in a meaningful way for the scope and content of modern international law, or even cope with its general principles. The subject is now too large, too diverse, too ramified to permit such treatment. We do not produce—except for foreign audiences—single volume works on English law (still less British) law. Why should international law be any different?

There are a number of answers. First of all, international law is still normally studied as such, especially at first degree level. In studying it students approach it as a foreign law, foreign at least to their experience of law; many doubt that it *could* be law—though with every second problem in our world an international one, they have no difficulty seeing that it *should* be. It is a function of a single volume handbook, among other things, to address both this 'should' and this 'could'.

Secondly, international law has been and remains a *system*, based on and helping to structure a system of relations among states and other entities. Yet this systemic aspect is lost or obscured if one studies only the law of the sea, the law of the environment, the law of human rights. For these presume, and are configured by, the law of the land, the anthropocene environment, the powers of states. The sea, the environment would not be problems if not for ourselves and our associations.

Thirdly, we need international law as a whole, not a set of parts attracting differential affiliation or disrespect. Trade notoriously suffers in wars; children suffer from misrule; the environment suffers from misguided production because of subsidies. Things are *connected*. This is not to suggest that international law is a universal solvent or solution. But it is an indispensable method—the world being as it is—for exploring and implementing solutions.

Note on the text

The first edition of *Principles* (1966) contained 26 chapters in 11 parts, some parts consisting only of one or two chapters. Some new chapters were later added, as follows: immunities (2nd edition), environmental law (5th edition), international criminal law (6th edition), and the use or threat of force by states (6th edition). In this edition I have restructured the parts and chapters to some extent, while trying not to alter the overall conception of the book as, first, an advanced text for students, undergraduate and graduate, treating core issues from a lawyer's perspective, and secondly, a useful guide to the components of the subject for scholars and practitioners. I have added an introduction and rewritten certain chapters. Internal numbering of sections and sub-sections has been introduced. Cross-referencing is to chapters only and each chapter is as far as possible self-contained (at the expense of a limited amount of duplication between chapters). Instead of cross-referencing, there is a very full index.

Despite these changes, the text of the 8th edition is still essentially Brownlie's. But I have not hesitated to modify it where this seemed to be appropriate in the interests of clarity, concision, current priorities, or the need to reflect developments. The danger of editions of

classic texts (both Brierly and Oppenheim are examples) is that they atrophy by interpolation, become encrusted. The other strategy—the assumption of ownership of the text—seems to me the only course, while preserving a decent respect for the original author's known views. Otherwise one ends up with a text which no-one—author or editor—can be held to accept or believe. In our online days—the days of the splendidly recursive *Max Planck Encyclopedia*—we need not more detail, more fragments, but a coherent account of the core. That is what *Principles* always promised. For this attempt at fulfilling the promise I take full responsibility.

* * *

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The text is, as far as possible, current as at 1 January 2012. All websites cited were current on that day. Opportunity was taken to add references to a few major developments between January and June 2012.

JRC
Lauterpacht Centre for International Law
University of Cambridge
1 June 2012

PREFACE TO THE SEVENTH EDITION

Changes have occurred in many areas of the law since the last edition of this book. Care has been taken to renovate the treatment of a number of topics, including jurisdictional immunities, the responsibility of states, indirect expropriation, international criminal justice and informal extradition.

At the same time, the procedure of renovation has been accompanied by certain inhibitions stemming from the inherent nature of a single volume treatment of the principles of public international law. The temptation to include a detailed treatment of recent complex events (the invasion and occupation of Iraq, for example) has been resisted. To deal adequately with such events would involve excursions well beyond the ambit of a legal handbook. If the situation of Iraq be taken as an example, the limitations can be seen immediately. In the first place, the determination of the material facts would involve considerable difficulty. Secondly, there is the central problem which is the tendency of the State actors to adopt convenient suppositions of fact, this tendency leading to the risk of positing a State practice based upon fiction.

The recent episodes of unilateralism have usually involved law-breaking rather than the development of the law, and it is inappropriate to appear to characterise law- breaking actions as 'precedents' or 'practice'. The book continues to present an analysis of the principles of public international law when the law is being applied in a framework of normality.

The new text reflects the substantial case law of the International Court of Justice and the recent work of the International Law Commission.

I would thank the Hague Academy of International Law and Mr Steven van Hoogstraten for his permission to make use of some passages of my General Course delivered in 1995 and published by the Academy under the title *The Rule of Law in International Affairs* (pp. 65–74) in 1998. I would also like to thank the staff of Oxford University Press, and in particular Rebecca Gleave and Rekha Summan, for their care and consideration. I am grateful for assistance received from Lavonne Pierre and Adam Sloane of Blackstone Chambers.

Finally, my thanks go to my wife for her assistance.

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2008

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