was enacted, the provision was deleted. However that legislation dealt with criminal offences where strict construction is the rule. Time will tell whether the present clause survives in a rather more congenial climate.

- Secondly, one of the latest references to the ALRC on admiralty law (see next item) contains a novel instruction requiring the Commission 'to formulate a draft Explanatory Memorandum that could be used as an aid to the interpretation of any Bill for an Act to give effect to the Commission's recommendations'.
- Thirdly, on 1 December 1982, the Victorian Premier and Attorney-General, Mr John Cain introduced into the Victorian Parliament an Interpretation Bill 1982. Its purpose is to repeat the Victorian Interpretation Act 1958 to allow shorter, simpler language in Acts of Parliament. Many provisions of the 1958 Act are restated -- some with amendments designed to improve their efficacy. The major reform is the extension of most of the provisions to subordinate legislation.

Steady progress through a thorny thicket.

admiralty afloat

If blood be the price of admiralty
Lord God we ha' paid in full!

Rudyard Kipling,
The Song of the Dead, 1896

of bottomry bonds. Admiralty jurisdiction has a long, troubled and interesting history in the law of English speaking people. Its origins are obscure. But admiralty courts were well established by the reign of King Edward III. The Court of Admiralty asserted a general jurisdiction over things done upon the sea and concerning maritime matters. It developed its own special rules and procedures to deal with such matters as wrecks, droits of admiralty, bottomry bonds (now, perhaps unfortunately, obsolete) maritime liens and actions in *rem.* This admiralty jurisdiction was progressively whittled away by the Westminster Parliament and by the rival common law courts. It reached its nadir in the 18th and early 19th century but with the expansion of Britain's maritime trade and power it began to be revived and even extended by Acts passed in 1840 and 1861. These statutes were part of the process of court reform and rationalisation which led ultimately to the Judicature Acts in England.

In Australia, admiralty jurisdiction was at first not entrusted to the colonial supreme courts. It was given instead to designated colonial judges sitting as judges in Vice Admiralty. This approach by the colonial authorities was replaced by the passage in 1890 of a general Imperial Act, the Colonial Courts of Admiralty Act. It is under that Act that the Supreme Courts of the States of Australia, the High Court of Australia, and possibly, by inadvertence, the Federal Court of Australia exercise admiralty jurisdiction in this country. Interestingly enough, the only inferior court in Australia to have a limited admiralty jurisdiction is the Broome Local Court. Any reader anxious to lose no time exploring further how this exotic development came about is referred to the treatment of admiralty in Dr James Crawford's recent book *Australian Courts of Law*, Chapter 7. In that book, Dr Crawford illustrates a number of problems with the continuing applications to Australia of the colonial courts legislation. He concludes:

> Repeal of the 1890 Act and its replacement by more adequate provision for civil jurisdictions in admiralty, such as exists in New Zealand and the United Kingdom, is long overdue.

Dr Crawford points out that the criminal jurisdiction of admiralty courts was almost as troublesome, a fact illustrated by *R*. v. *Robinson* [1976] WAR 155 and *Oteri* v. *The Queen* [1976] 1 WLR 1272. However these problems have now been largely been overcome by the

Crimes at Sea Act 1979 (Cwlth) and associated State legislation. Problems in civil and traditionally admiralty areas remain unreformed.

new reference. The Australian Law Reform Commission has now received a new reference to inquire into and report upon 'all aspects of Admiralty jurisdiction in Australia'. The reference follows upon a 1982 report of a Joint Committee of the Law Council of Australia and the Maritime Law Association of Australia chaired by Mr Justice H.E. Zelling, Chairman of the SALRC. The Australian Law Reform Commission is directed to have regard to the report of this Joint Committee and is specifically requested to:

- make recommendations on the provisions to be included in an Australian Admiralty Act;
- consider whether any, and if so what, consequential amendments should be made to other Federal legislation including the Navigation Act 1912;
- formulate draft Rules of Court for possible application by courts upon which admiralty jurisdiction may be conferred; and
- consider whether Australia should enact its own law of Prize and, if so, formulate recommendations for such a law. The last time Prize was seriously studied by Federal authorities in Australia was in 1939, on the outbreak of World War II -- a piece of Federal legal history from Mr John Q Ewens -- past ALRC commissioner and one time First Parliamentary Counsel.

As was mentioned in the preceding item, the terms of reference to the ALRC contain for the first time a novel instruction requiring the ALRC to formulate a draft Explanatory Memorandum that could be used as an aid to the interpretation of any Bill designed to give effect to the ALRC recommendation. It will come as no surprise that Dr James Crawford, now a full-time member of the ALRC, has been appointed to be the Commissioner in charge of the admiralty reference. Already, Dr Crawford has made contact with a number of lawyers engaged in admiralty and maritime law work throughout Australia. He has also sought to make contact with shipping companies and organisations and industrial organisations, including unions, operating in the maritime area.

In s. 76 and s. 77 of the Australian Constitution, power is conferred on the Australian Parliament to make laws concerning admiralty and maritime jurisdiction and to specify the exercise of that jurisdiction by the High Court, other Federal courts and State courts. With the ALRC reference, the time is now at hand when the given powers will be fully explored for the first time. It seems generally acknowledged that the 1890 Imperial Act is an anachronism in modern day Australia. It has frozen admiralty jurisdiction largely as it existed in 1890. Accordingly, the jurisdiction of Australian courts in admiralty now depends upon a complicated historical investigation to the extent of the English High Court's admiralty jurisdiction -- whether inherent or statutory -- as it was 92 years ago. In the result, Australian admiralty law has not kept up with the many developments that have occured in other countries with comparable jurisdictions. These developments have included:

- the extension of admiralty jurisdiction to hovercraft (and in certain cases to aircraft);
- its extension to include subjects of jurisdiction allowed by relevant international conventions (especially the 1952 Brussels Convention on the Arrest of Seagoing Ships); and
- its extension to certain cases of injury or loss of life at sea.

A number of supreme courts have not adopted their own Admiralty Rules and still

rely on the English rules of 1883. The terms of reference suggest that there should be uniform rules of court concerning admiralty jurisdiction throughout Australia. Clearly, an important and sensitive question will be the extent to which, if at all, the Federal Court of Australia should be charged with admiralty jurisdiction either concurrently with or exclusive of the jurisdiction presently exercised by the State supreme courts. A reformed admiralty jurisdiction is an essential attribute of a maritime trading nation such as Australia. One consideration will clearly be the extent to which maritime claims can be readily enforced through arrest of ships (including 'sister' ships) wherever they may be found within Australian jurisdiction. Factors such as this provide an urgent need for a comprehensive and accessible statement of admiralty jurisdiction and a substitution of local for outdated Imperial legislation. It is interesting to reflect upon the reasons for the delay in the repeal of the 1890 Act in Australia. The Act has been repealed in Canada and in New Zealand was repealed and replaced by the Admiralty Act 1973 (N.Z.).

sea law. Meanwhile, another development of note in relation to sea law was the signature at Montego Bay, Jamaica in December 1982 of the Law of the Sea Convention. After 13 years of negotiations, the Convention was signed into law. It deals with 70% of the world's surface. Some 61 countries, including Australia, signed the treaty which adopts a concept originally put forward by Malta that resources of copper, nickel, cobalt and manganese in the sea are a 'heritage for humanity'. To administer this 'heritage', an International Seabed Authority is to be set up. Other important provisions:

- the maritime territorial limit is set at 12 nautical miles;
- a continental shelf is defined;
- an exclusive economic zone of 200 miles is established but subject to transit zones in straits;
- traditional freedoms of navigation, overflight, scientific research and fishing on the high sea are confirmed and defined.

Australia's chief delegate to the Law of the Sea Conference, Mr Keith Brennan pointed in the *Sydney Morning Herald*, 9 December 1982, to the serious political and legal consequences that would arise from attempts to exploit the resources of the seabed beyond national jurisdiction. Disappointing to the signatories was the United States rejection of the treaty and the decision of some other major maritime powers, particularly the United Kingdom, the Federal Republic of Germany and Japan, not to sign the treaty for the time being. President Reagan repudiated the United States involvement on ideological grounds that no nation 'should be asked to restrict private enterprise' in the exploration of the resources of the sea.

Another illustration of the difficulty of securing international agreement on sea law is the flagging interest in an international convention on liability for goods lost, damaged or delayed at sea. Known as the Hamburg Rules, because designed by a United Nations sponsored conference on martime trade law convened in Hamburg in March 1978, five years have passed since 78 participating countries resolved without dissent to replace the Hague Rules of 1924 with an up-to-date treaty. So far only 7 countries have signed and none of them is a major force in world shipping and trade. See *Australian Financial Review*, 2 December 1982, 22.

Law reform nationally and internationally has set sail. Dangers lie in doldrums as well as storms.

work laws in recession

The first decision I was ever a party to was attacked, officially, by Sir Robert Menzies. It was the end of the arbitration system. And that's 23 years ago!

Sir John Moore, President, Australian Conciliation