

The 45th Annual MLAANZ Conference

Blue Mountains

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Frank Stuart Dethridge Memorial Address

THE PAST, PRESENT AND FUTURE

Stuart Hetherington*

1 Frank Dethridge

When, in 1977, the Maritime Law Association of Australia (MLAA) first called this presentation an Address, those who made that decision may not have been aware of the story of one of my heroes F E Smith, Lord Birkenhead (Barrister, Lord Chancellor, Member of Parliament, friend of Churchill). It was common at the end of the nineteenth and early twentieth centuries for politicians, pre television, to give speeches at very large Town Hall meetings. The story is told that on one occasion a self-important, pompous, local dignitary gave a long winded introduction to F E Smith and concluded 'Now Mr Smith please give us your address'. The great man went to the lectern and simply said '32 Grosvenor Gardens, London, SW 1'.

If you would like to know more about him there are some great biographies and you can see him depicted in the movie *Chariots of Fire* played by Nigel Davenport, with the King trying to find a way to assist Eric Liddell to run his race. And he gave one of the judgments in *Gaunt's* case (on 'All risks' in marine insurance).¹

As will become apparent, I did not meet Frank Stewart Dethridge. I am honoured to be asked to give this Address. This Association is blessed with having had such distinguished speakers to have given this Address since 1977, when the first one was given by Sir Ninian Stephen, then a Justice of the High Court and subsequently Governor-General of Australia. There are two publications covering the years 1977 to 1988 and 1989 to 1998 which contain the Addresses given by two Chief Justices of the Australian High Court,² a Minister of the Crown,³ Judges,⁴ a leading international academic,⁵ a former Chief Justice of NSW,⁶ practitioners,⁷ and Past Presidents,⁸ and others since those publications.⁹ It is indeed an honour to be amongst them all.

2 Sir Ninian Stephen

Sir Ninian Stephen, who had been a fellow Victorian practitioner made some wonderful comments about Frank Dethridge, which have been quoted by both Ron Salter and Tom Broadmore in their Addresses, but for those who have not heard them let me repeat the last sentence: 'He had developed to an exquisite degree that high art of the instructing solicitor, how to teach counsel what he does not know but needs to learn for the case in hand, while conveying the impression all the while that it is he, the instructing solicitor, who is collecting pearls of wisdom as they fall from counsel's lips.'

* President, Comité Maritime International (2012–18) and Former President, MLAANZ (1992–94).

¹ *British & Foreign Marine Insurance Co Ltd v Gaunt* [1921] 2 AC 41.

² Sir Harry Gibbs (1988) and Sir Anthony Mason (1998).

³ Sir James Killen (1980).

⁴ Sir Ronald Davison (1979), Sir GSM Green (1978), Howard Zelling (1981), David Yeldham (1983), Sir Robin Cooke (1984), Lord Mustill (1986), David Malcolm (1991), IL McKay (1995), Richard Cooper (1996), Sir Owen Woodhouse (1990), Peter Heerey (1993), Simon Sheller (1994).

⁵ Francis Reynolds (1985).

⁶ Sir Laurence Street (1989).

⁷ Michael Thomas (1992) and Gavan Griffith (1997).

⁸ Ron Salter (2012), Tom Broadmore (2009) and Sarah Derrington (2016).

⁹ Justices Keith (2000); Tamberlin (2001); Sir David Steel (2002); Nelson (2003); Waung (2004); Allsop (2006); Kirby (2007); Ryan (2008), Rares (2013) and Chong (2015).

3 Introduction

I have titled this Address ‘The Past, Present and Future’, mindful of the words attributed to Edmund Burke and Theodore Roosevelt.

Edmund Burke: ‘A nation that never looks back at its past can never understand its future’ or ‘People will not look forward to posterity who never look backwards to their ancestors.’

Theodore Roosevelt: ‘The more you know about the past the better you are prepared for the future’.

More recently I came across some pertinent lines from Clive James’s latest work, a 122 page poem, ‘The Rivers in the sky’, in which he says:

For ours is a land of legends
That seldom recognise each other’s names
It isn’t history that we lack
It is the habit
Of thinking in it.

4 The Past

Two hundred and fifty years ago on 25 August 1768 Lieutenant James Cook sailed *HMS Bark Endeavour* out of Plymouth Harbour. It was a 30 metre collier and he had 94 persons on board. As of a couple of weeks ago there is a link with MLAANZ! You may have seen the recent TV news at which Peter Dexter, Chairman of the Australian National Maritime Museum was present in Newport, USA where they think they have located her wreck. Peter was identified by my senior partner at Ebsworth and Ebsworth, John Bowen, as an up and coming ANL executive and I invited him to present a paper at the 1985 Conference in Melbourne. He subsequently ran Wilhelmsens and Wallenius Wilhelmsen for many years both locally and regionally. (John Bowen also picked Murray Gleeson as an up and coming junior barrister when he briefed him in the *Meyer Heine* litigation.) I cannot wait to get my hands on a well reviewed recent book by Peter Moore, *Endeavour: The Ship and the Attitude that Changed the World*.

One hundred and seventy five years ago, only 75 years after Cook started his voyage, on 19 July 1843 the *SS Great Britain* was launched. It was the world’s largest ship and the first to combine a steel hull with a screw propeller. (She was later converted back to use both sail and steam, as can be seen in the painting by John A Wilson of 1852, which is held by the *SS Great Britain* Trust). She was 98 metres long.

She made her maiden Australian voyage in 1852, carrying 630 migrants, and subsequently completed 32 voyages bringing 15,000 people to a new life in Australia. She was the creation of engineer Isambard Kingdom Brunel. Some of her passengers included the English cricket team which toured Australia in 1861 (including the brother of WG Grace) and the author, Anthony Trollope (another of my heroes) in 1871. The *SS Great Britain* made her last voyage to Australia in 1876, one hundred years before I joined Ebsworth and Ebsworth and was introduced to the maritime legal world in 1976.

That seems to me to be an appropriate way to start an Address, which will travel through the early years of the MLAA and the Maritime Law Association of Australia and New Zealand (MLAANZ) from its origins in 1974, to be given by someone who migrated to Australia that same year on the Chandris Line ship *RHMS Britanis*.

4.1 Comité Maritime International (CMI)

The first Maritime Law Association (MLA) to be founded was the Belgium MLA in 1896 and the CMI was formally founded the following year in Antwerp. Other MLAs started to be formed from that time.¹⁰ There are now 52 MLAs who are members of CMI.¹¹

¹⁰ France in 1897, the USA and Germany in 1898, Denmark, Norway and Italy in 1899, Japan in 1901 and the UK in 1908.

¹¹ In his President’s Report to the AGM in 1981 Peter noted that the first MLAANZ representation at a CMI Conference had taken place that year, at Montreal, which Paul Willee, Ian Mackay, Doug Jones and Alan McKenzie attended. I believe Peter Willis and Ken Carruthers attended the 1985 Lisbon Conference.

Mindful of Burke's aphorism and applying it to this Association, I want to set down some recollections of the early history of the Associations, at the same time identifying the main achievements, as I see it, of MLAA and MLAANZ in their first twenty or so of the forty four years and some of the people responsible for them.

4.2 Peter Willis

In a short article penned by Peter Willis at the commencement of the first volume of the FS Dethridge Memorial Addresses Peter provided some information as to how Frank Dethridge, at the suggestion of a well-known 'United States maritime lawyer' took steps to form the MLA of Australia on 1 April 1974, with himself as its first President. (I do not know who the American lawyer was.) Peter Willis was Secretary. Frank Dethridge died in June 1976, only a couple of years later. Peter Willis then took over as President.

Peter was in-house Counsel at BHP, Australia's largest ship owner at the time, and brought a lot of practical day to day knowledge of the issues that ship owners faced, to the Association. To both Frank Dethridge and Peter Willis we all owe a huge debt of gratitude. I am indebted to Peter Willis SC, his son, of the Victorian Bar, for sending me, not only, the picture of Peter — quite a bit younger than I recall him and without the moustache that he wore at times, but also his Presidential reports to 2 AGMs: 1978 and 1981, and his opening remarks at the 1979 Conference. (I have prepared a bundle of papers of such historic materials, which I will give to the President in the hope that they might find their way onto the MLAANZ website.) Peter always had a pertinent observation or question to make in the business sessions at Conferences, or meetings as they were initially called, with his familiar (nervous?) but diffident little throat clearance.

Peter Willis was assisted on the Executive Council of the then Association by Bob Desmond of Middletons as Treasurer, Paul Willee of the Victorian Bar, (who was at last year's meeting in Melbourne) as the Assistant Secretary from inception and then Secretary from 1976, and Ian Dixon, also of Middletons, as Assistant Secretary from 1976. Ken Carruthers of the NSW Bar became the first Vice President.

4.3 Ken Carruthers

Ken Carruthers, when I first briefed him in 1976, was a junior counsel in Sydney.¹² Ken had a great love of ships, shipping, the sea and maritime law. He used hyperbole, amusingly and to great effect. He subsequently took silk and went onto the NSW Supreme Court Bench where he had the role of Admiralty Judge, although that title was discontinued. He argued a number of maritime cases at the Bar (including the *Musgrave Range*)¹³ and delivered some significant judgments on the Bench, including the first instance decisions in cases such as the *Lermontov*, the *Antwerpen*, the *Bunga Seroja* which went on appeal and others such as the *Blooming Orchard* and *Randell v Atlantica* (dealing with the question of 'valued' or 'unvalued' marine insurance policies).¹⁴

Ken had a great sense of humour and always had the best interests of the MLAANZ at heart. As an example of the former I recall him drawing my attention to the wonderful opening section in a judgment of Lord Denning dealing with a dispute involving Aristotle Onassis, the Greek shipping magnate.¹⁵ Lord Denning MR started the Court of Appeal judgment in his distinctive way as follows:

This is a tale of three friends who fell out. Their quarrel has reached the Courts. It has found its vent in a dispute about shares. Each side says the other is lying. Charges of fraud are freely made. Goodness knows where the truth lies.

¹² The minutes of an Executive Council meeting referred to by Peter Willis in his 1981 Report to the AGM refer to Ken becoming a member of the MLAA on 2 May 1975. The same Report refers to the membership having risen in 1981 to 325.

¹³ *Baggermaatschappij Boz & Kalis BV v Australian Shipping Commission* (1980) 30 ALR 387.

¹⁴ *Great China Metal Industries Co Ltd v Malaysian International Shipping Corp Berhad* (1996) 39 NSWLR 683 ('*The Bunga Seroja*'); *P S Chellaram & Co Ltd v China Ocean Shipping Co* [1989] 1 Lloyd's Rep 413; *Caltex Refining Co Pty Ltd v BHP Transport Ltd* (1993) 34 NSWLR 29; *Dillon v Baltic Shipping Co* (1989) 21 NSWLR 614; *The Blooming Orchard* (1990) 22 NSWLR 273; *New Holland Australia Pty Ltd v TTA Australia Pty Ltd* (Supreme Court of New South Wales, Carruthers J, 6 December 1994); *Randell v Atlantica Insurance Co Ltd* (1985) 80 FLR 253; *The Tomoe 8* (1989) 17 NSWLR 635; *The Tomoe 8* (1990) 19 NSWLR 588; *Gardner Smith Pty Ltd v Tomoe Shipping Co Pte Ltd* (Supreme Court of New South Wales, Carruthers J, 10 July 1992); *Mutual Export Corp v Asia Australian Express Ltd* (1990) 19 NSWLR 285; *J Gadsden Pty Ltd v Strider 1 Ltd* (1990) 20 NSWLR 57; *Foster v Fairlop Pty Ltd* (Supreme Court of New South Wales, Carruthers J, 12 December 1990); *The Goldean Falcon* (1990) 24 NSWLR 611; *Marbig Rexel Pty Ltd v ABC Container Line NV* (Supreme Court of New South Wales, Carruthers J, 6 May 1992); *Harpers Trading (Singapore) Pty Ltd v RFL International Ltd* (Supreme Court of New South Wales, Carruthers J, 12 December 1994); *Continental Seagram Pty Ltd v ABC Containerline Ltd* (Supreme Court of New South Wales, Carruthers J, 8 February 1990); *Polytek Wearnes Pty Ltd v Shipping Corp of New Zealand Ltd* (Supreme Court of New South Wales, Carruthers J, 15 June 1990).

¹⁵ *Onassis v Vergottis* [1967] 1 Lloyd's Rep 607; *Onassis v Vergottis* [1968] 1 Lloyd's Rep 294; *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403.

The first of the three friends is Mr Aristotle Onassis. He is 61, a Greek shipowner, as rich as Croesus. He carries on business in Monte Carlo. He has a house in Paris. Another near Athens. He owns the island of Scorpios off Greece, and he has a splendid yacht *Christina*.

The second is Mr Panaghis Vergottis. He is 77, also a Greek shipowner, a close friend of Mr Onassis for over 30 years. He is rich but nowhere near so rich as Mr Onassis. He lives at the Ritz Hotel in London, which speaks for itself. Both men were devoted to the third, a lady, Mme Maria Calogeropoulos, better known as Maria Callas. She is 43, also a Greek. She is highly gifted as an opera singer and as an actress. She has a worldwide reputation.

The dispute concerned the ownership of 25 shares, which it was asserted the defendant had agreed to give to Callas, in the bulk carrier *Artemision II*. A new trial was ordered from the decision of Roskill J. The original trial had lasted 10 days. In the Court of Appeal it lasted 9 days and it then went to the House of Lords where there was a further hearing of 9 days and Roskill J's original decision was restored and Maria Callas got her shares, by a majority decision of 3-2, with Lords Wilberforce and Pearce dissenting. Jackie Kennedy, the widow of US President John Kennedy, married Onassis the same year the case was heard and determined in both the Court of Appeal and House of Lords in 1968. He died in 1975. Callas and Onassis had had an affair for many years. I wonder if Callas would rather have had Onassis than the shares in the ship? I can imagine Ken now saying that wonderful description 'as rich as Croesus'.

I met Lord Denning on 18 July 1966 when I went on a school excursion, with 10 or so others, to the Royal Courts of Justice in the Strand and watched Desmond Ackner QC (later Lord Ackner) argue a case in the morning before we were taken to have lunch in Lincoln's Inn where Lord Denning came and sat down with us for a few minutes at the end. Three years earlier Lord Denning had conducted the Judicial Inquiry into the Profumo Affair. Two years later Desmond Ackner QC appeared for the losing Respondent in the House of Lords in the *Onassis* case. As a law student in the UK of the late 1960s and early 1970s you could not avoid reading Lord Denning's judgments, whether they were on bailment and exclusion clauses,¹⁶ promissory estoppel¹⁷ or fundamental breach of contract and exclusion clauses.¹⁸ For an entertaining read about Judicial disagreements see Lord Phillips's Cedric Barclay Lecture of 2015 on the divergence of opinion between, particularly, Lords Denning and Diplock on the ability of the Courts to control arbitration proceedings. They were described by Lord Phillips as 'not the most glorious chapter in the history of our commercial law.'

Legal practice, when I arrived in Sydney in late 1974 was very different from today. Although the structure of law firms remains largely the same today, the firms tended to be very much smaller and the physical environment was very different. At Allen & Hemsley, where I spent 18 months, the internal solicitors' offices had no natural light and the quality of solicitors' offices generally was far inferior to the present time. The furnishings and fittings were greatly inferior. There were no conference rooms. You met clients in your own (or the partner's) office. Receptionists were operating those manual plug in switchboards to put calls through (that you see in wartime films). Whilst photocopiers had come to be used by then (and Allens had a large central photocopying space for all copying to be done) dictation was mostly direct to secretaries, who had to use short hand. Recording tapes for dictation were being and had been used by some and handheld dictaphones were starting to come onto the scene. There were no computers of course so if you wanted to remove or change more than a few words of an advice the whole letter or page had to be retyped. The golf ball typewriter also started to be used but 'white out' (as it was referred to) deletion which was then typed over was much in use for minor corrections. Urgent communication with foreign clients was by telex — those long strips of perforated paper which had to be threaded onto the machine to print them off. Facsimiles did not come in for quite a few years. Research in Sydney was done either in the firm library, the Supreme Court Library, the Law Society Library or the Attorney-General's library. There were not many women solicitors.

Trial by ambush was how litigation took place. There was no requirement to file or serve statements or outlines of evidence from witnesses, whether lay or expert. Discovery was not nearly as comprehensive as it is now. Interrogatories were reasonably common. By and large I think Judgments were shorter too.

However if you were lucky, a young solicitor could be exposed to a wide variety of work. Cargo claims provided the bread and butter work but also air or oil pollution claims, some charter party claims and a lot of personal injury claims, both on ships: to crew, passengers, stevedores or visitors, and on wharves or in sheds, both at common law and workers compensation also provided good experience and gave rise to visits to ships that were visiting Sydney Harbour, Port Kembla or Newcastle.

¹⁶ *Morris v CW Martin & Sons Ltd* (1966) 1 QB 716.

¹⁷ *Central London Property Trust Ltd v High Trees House Ltd* [1947] KB 130.

¹⁸ *Karsales (Harrow) Ltd v Wallis* [1956] 1 WLR 936; *Sze Hai Tong Bank Ltd v Rambler Cycle Co Ltd* [1959] AC 576; *UGS Finance Ltd v National Mortgage Bank of Greece* [1964] 1 Lloyd's Rep 446.

There were significant Australian players who owned or operated ships: ANL, Howard Smith, RW Miller, CSR, Karlander, Scottish Ship Management, Adsteam, BHP, TNT Bulkships, Ampol, far more ship agents than today; shipbrokers: Universal Charterers, Southern Chartering (Mike Byrne) etc, foreign shipowners had a much greater physical presence in Australia — Star Shipping, Wilhelmsens, Nedlloyd, Sanko, Jebsens, Furness Withy, Lauritzen, Lloyd Triestino, Mitsui OSK, NYK, Armada, the Russians and Americans (Farrell Lines) and the foreign tanker owners etc, either via an agency or joint venture arrangement. Patricks and Conaust dominated the stevedoring industry. And entrepreneurial start-ups in the 1970s and 1980s sought to get into the new container and bulk markets, especially on the south east Asian, Pacific and Trans-Tasman routes. They shone brightly but often burnt out causing claims by owners for a second freight payment and insolvency issues — all giving rise to much more legal work of both a transactional and litigation variety, including Royal Commissions (stevedoring industry) and Courts of Marine Inquiry (*TNT Alltrans* grounding on Great Barrier Reef, the *Cellana* fire at Gore Bay). There were more insurance companies such as Royal Insurance, Commercial Union, Sun Alliance, Lumleys, QBE and many others, including the Hull Pool managed by Australian Marine Underwriting agency (AMUA), which was run by the Gauci family; Godfrey, the father, Geoffrey and Patrick, who not only brought expertise to the market but were also colourful. The Mackinnon Booker (Lloyds' agency) operation shook up the local hull market and brought much needed discipline to the fishing fleet.

The heyday of admiralty work, at least in Sydney, had been in the 1950s and 1960s, before the observation tower came into existence. By the 1970s there was not nearly so much casualty work. The *Mareva* injunction did not arrive until the late 1970s,¹⁹ and was only approved in the High Court in 1987.²⁰ Surveyors such as the team of Captains Aiton and Kirkland at Gibson Minto and Aiton, and Mike Bozier at Avdall and Bozier were in great demand and supportive of MLAANZ. Marine engineers Ron Rannard²¹ and Bob Kinney were also kept busy. Mary Thomson was the leading practitioner in NSW doing cargo recovery claims and acting for the marine market.

4.4 New South Wales Branch

I am going to talk about some of the early Conferences but before doing so I thought I should say something about the New South Wales Branch. On joining Ebsworth and Ebsworth on 19 July 1976 (a few weeks after Frank Dethridge died in June, and exactly 133 years after the launch of the *SS Great Britain*) I automatically became Honorary Secretary of the NSW Branch of MLAA, a position held by my Ebsworth and Ebsworth predecessor, Leigh Warnick (now at the Bar in WA) who took up a position at Hammersley Iron in Melbourne as in house counsel.²² Norman Lyall and Tony Scotford (of Ebsworth and Ebsworth) and Ken Carruthers had attended the 1975 meeting in Melbourne and set up the NSW Branch.

One of the first NSW branch meetings I recall being involved in organizing was a presentation by Alf Willings, (who passed away on 17 March this year) and who was the doyen of ship brokers in Sydney, if not Australia, for many years. We used the old Law School Building (recently demolished) in Phillip Street and the old University Club premises (later its replacement building the University and Schools Club) in Phillip Street for meetings. I noticed recently that the Ebsworth & Ebsworth office which was also the Allen, Allen & Hemsley office, where I commenced practice in 1974, in the old P&O Building, on the corner of Hunter and Castlereagh Streets is also now demolished. It had a famous sculpture in the wall on Hunter Street which was depicted in the infamous *Oz* magazine. Hopefully it has been preserved and will feature in the Metro Station fabric which is replacing that building. At that time the P&O Building housed the entire P&O team, merchant shipping, cruise shipping, shipbroking, ship agency, stevedoring etc.

We reckoned to have about 40 to 50 attendees at Branch meetings but I do remember being very pleased when we had an Oil Pollution seminar (I think the topic was the newly developed finger printing technology) which attracted over 60 delegates. They were invariably held in the late afternoon. Two memorable, for different reasons, dinners with guest speakers Sir Barry Sheen (Admiralty Judge in England) and Lord Brandon (Admiralty Judge and later House of Lords) were also extremely well attended.

¹⁹ *Mareva Navigation Co Ltd v Canaria Armadora SA* [1977] 1 Lloyd's Rep 368.

²⁰ *Jackson v Sterling Industries Ltd* (1987) 61 ALJR 332; applied in the NSW Court of Appeal in *Patterson v BTR Engineering (Aust) Ltd* (1989) 18 NSWLR 319.

²¹ See Obituary in volume 9, part 2 of the *Australian and New Zealand Maritime Law Journal* (1993) at page 42.

²² In his President's Report at the Hobart Conference in 1978 Peter Willis noted that a new Constitution had been adopted that year enabling a Branch to be formally set up in New Zealand as well as the establishment of a Council consisting of the Executive Committee and representatives from each of the Branches. The Council had met for the first time on 8 April 1978 and Ken Carruthers had been elected the first Vice President at that meeting. The membership numbered about 220 at that time.

4.5 MLAANZ Conferences

4.5.1 Sydney Conference 1976

A few months after I joined Ebsworth and Ebsworth the MLA of Australia held its first meeting in Sydney at the Hilton Hotel in October 1976. I recall Ian Sheppard, the New South Wales Admiralty Judge at the time, spoke. He subsequently moved to the Federal Court and continued to hear many admiralty cases there. I am sure many in this room would attest to him being a very modest, somewhat diffident, retiring type of man, but immensely well-liked and respected. He gave a number of important judgments in Admiralty cases both in the Supreme Court²³ and in the Federal Court including allowing the movement of a vessel under arrest in the *Martha II*²⁴ and the Russian ships *Skulptor Vuchetich* and *Skulptor Konenkov*²⁵ in the late 1990s and the *Iron Shortland*,²⁶ where he, importantly, expressed the view that ‘owner’ in s 19 of the *Admiralty Act 1988* (Cth) included a beneficial owner. He conducted the Court of Marine Inquiry into the grounding of the *TNT Alltrans* off Gladstone,²⁷ and tried the *Sanko Harvest*.²⁸

4.5.2 Richard Cooper

I met Richard Cooper for the first time at that 1976 meeting. He gave a paper on ‘A Combined Transport Bill of Lading’.²⁹ In the mid to late 1970s we were grappling with the whole new world: of containerisation and all its ramifications.

Richard Cooper (for whom many in this room would have fond memories and who was highly respected and passionate about maritime law) had by then recently moved to the Bar in Queensland from the Attorney-General’s office in Canberra, where he had worked during the exciting and turbulent times of the Labour governments between 1972 and 1975. He went on to take silk and become a judge of the Supreme Court of Queensland and then the Federal Court where he heard a number of shipping cases.³⁰ Richard served as Vice President of MLAANZ (1990–94). He had acted as Counsel in a number of shipping and marine cases,³¹ including fishing trawler cases in which he was, for the most part, instructed by Frank Turner of Thynne & Macartney, who acted as my agent in some of those cases, including two cases for hull insurers in which scuttling was found to have taken place, and they also involved questions of unseaworthiness and breach of warranty, and illegality under the *Marine Insurance Act 1909* (Cth).³² They were landmark cases at the time, not least because a submersible was used to take photographs of the trawlers on the sea bed which showed that someone had left open the seacocks! His Junior in at least one of the cases we ran at that time was a relative newcomer to the Queensland Bar called Patrick Keane. We used Bob Dummett, a naval architect based in Sydney from Burness Corlett as our expert naval architect.

²³ *The Patris* [1975] 1 NSWLR 704; *The Marheike* (Supreme Court of New South Wales, Sheppard J, 19 September 1979); *J Gadsden Pty Ltd v Australian Coastal Shipping Commission* [1977] 1 NSWLR 575; *Comalco Aluminium Ltd v Mogal Freight Services Pty Ltd* (Supreme Court of New South Wales, Sheppard J, 18 March 1993); *The Red Fin* [1979] 1 NSWLR 258.

²⁴ *Martha II* [1996] FCA 1289; *Bridgewater Marine Pty Ltd v Owners of the Bunkers Supplied to the Billy Fay* (Federal Court of Australia, Sheppard J, 15 May 1992); *The Longevity* (Federal Court of Australia, Sheppard J, 25 September 1995); *The Amanda N* (1989) 90 ALR 391; *Barde AS v ABB Power Systems* (1995) 132 ALR 358.

²⁵ *The Skulptor Konenkov* [1995] FCA 1607; *The Skulptor Konenkov* [1996] FCA 1257; *The Skulptor Vuchetich* (1996) 136 ALR 206; *The Skulptor Konenkov* [2000] FCA 507; *Patrick Stevedores (No 2) Pty Ltd v The Proceeds of Sale of Vessel MV Skulptor Konenkov* (1997) 144 ALR 394.

²⁶ *The Iron Shortland* (1995) 131 ALR 738.

²⁷ *Re Grounding of MV TNT Alltrans* (1986) 67 ALR 107.

²⁸ *Sanko Steamship Co Ltd v Sumitomo Australia Ltd (No 2)* (1996) 63 FCR 227.

²⁹ Other topics were: ‘Marine Underwriters’ Role in Multi-Modal Transport, Including Some Insurance Considerations of Multi-Modal Transport’; ‘Container Terminals and Depots, Functions, Operations and Documentation’ (I have a recollection of that being given by the Chief Executive Officer of Seatainer Terminals Limited (STL); (the Seatainer’s terminal had opened at White Bay in 1969. Glebe Island followed in 1973); and ‘The Freight Forwarder’s Role in International Transportation by Sea, Land and Air’.

³⁰ *MV ‘Fiji Gas’* (1992) Aust Torts Reports 81-168, affd (1993) Aust Torts Reports 81-202; and *The Cape Don* (Federal Court of Australia, Cooper J, 15 May 1997).

³¹ *Visscher Enterprises Pty Ltd v Southern Pacific Insurance Co Ltd* (1980) 1 ANZ Ins Cas 60-419; *Wood v Associated National Insurance Co Ltd* (1984) 3 ANZ Ins Cas 60-614.

³² *Iobar Pty Ltd v Mackinnon & Commercial Union Assurance Co plc* (1984) 3 ANZ Ins Cas 60-610; *Doak v Weekes* (1986) 4 ANZ Ins Cas 60-697.

Richard Cooper (and Penny) attended a number of CMI meetings and he gave a Dethridge Address on economic duress.³³ At a CMI Colloquium held in Bordeaux in 2003, in the midst of a classic French workers' transport strike, such was Richard's determination not to miss anything they travelled across France by cab to get there!³⁴

4.5.3 Melbourne Conference 1977

The Melbourne Conference in 1977 was highly significant. It was also held at a Hilton Hotel. It is now known as the Pullman Hotel adjacent to the Fitzroy Gardens and opposite the MCG. It was where the 2017 MLAANZ Conference was held 40 years almost to the day after the 1977 Conference and, I was told, a pure coincidence.

It was a historic meeting, not only because Sir Ninian Stephen gave the first Dethridge Address but also because two members of the then recently formed New Zealand MLA, Ian Mackay, (who has only recently passed away) and Judge Peter Graham of the New Zealand District Court attended it and suggested that the two Associations should amalgamate. Ian, who had retained his wonderful Scottish brogue, had set up P&I Services in New Zealand, was a retired master mariner and lawyer, was the founder of the New Zealand Association and led the New Zealand approach, which was accepted at the AGM at that meeting. It was a unique combination of Associations that was allowed to join CMI. (It was a different Ian McKay (a New Zealand Judge) who delivered the Dethridge Address in 1995.)

At that Conference nervous fledgling solicitors John Emmott, Ian James and I gave papers on the 'Impact of the Hague Visby Rules with Reference to the UNCITRAL Draft Convention on the Carriage of Goods by Sea'. It took another 14 years for Australia to do anything about the Visby amendments. Is history repeating itself with the Rotterdam Rules? (I shall say more on that topic later.)

4.5.4 MLAANZ Executive Committee Moves from Melbourne to Sydney

In 1981, the Executive Committee moved from Melbourne to Sydney. Ken Carruthers took over as President, I became Secretary, Stuart Westgarth became Assistant Secretary and Rod Withnell, Treasurer. In those early years the entire Executive comprised members from one State, plus the NZ Vice-President.

4.5.5 Singapore Conference 1982

One of the first things we did was to start organising the first offshore Conference for MLAANZ in Singapore in 1982 at the Hilton Hotel, again. One of our aims was to seek to inspire the maritime legal profession in Singapore to form a Maritime Law Association. Whether we had the desired effect or not I do not know because it took some 10 years before the Singapore Association was formed. It was at that Conference when we were out on a harbour junk cruise and another boat of western tourists lashed up to our boat in order to disembark that a MLAANZ member Brian Makins welcomed them aboard as 'the boat people from Vietnam'. Brian was in-house counsel at ACTA Shipping (the principal consortium of shipowners who operated container ships, to rival the P&O (OCL) consortium), before it was taken over by OCL. Brian then moved down to the Maritime College at Launceston and was lost to MLAANZ where he had been a vocal critic of the Hamburg Rules for many years.³⁵ Brian commenced a commentary on a paper on Limitation of Liability as follows: 'I find myself in respectful but nonetheless strong disagreement with Martin Davies's conclusions'. Talking of Hamburg reminds me of Horst Rilk, the CEO of Columbus Line (Hamburg Sud) in Australia. He (and his wife) were regular attendees at MLAANZ Conferences. He earned notoriety for having cut the mooring lines on one of their ships when the Unions were imposing bans on its moving. For that his company was inflicted with the presence of MUA members picketing their offices for years to come.

Other MLAANZ members who worked in shipping companies who played significant roles in making MLAANZ relevant to industry over many years were John Lean (Botany Bay Shipping Company and the Board of Steamship Mutual) and Derek Hentze (Brambles and then Caltex as in house counsel and then the TT Club).

³³ See Justice Richard Cooper, 'FS Dethridge Memorial Address 1996: Between a Rock and a Hard Place: Illegitimate Pressure in Commercial Negotiations' (1997) 12(1) *Australian and New Zealand Maritime Law Journal* 1.

³⁴ John Farquharson, 'Tribute to the Late Justice Richard Ellard Cooper' (2005) 19 *Australian and New Zealand Maritime Law Journal* 7, 8. See also his articles: Cooper (n 33) and Justice Richard Cooper, 'Crewing Vessels while Under Arrest' (1999) 14(1) *Australian and New Zealand Maritime Law Journal* 22.

³⁵ See Brian Makins, 'Uniformity of the Law of the Carriage of Goods by Sea in the 1990s: The Hamburg Rules — a Casualty' (1991) 8(1) *Australian and New Zealand Maritime Law Journal* 34.

Ken Carruthers memorably in welcoming us to the Singapore Conference invited us to ‘luxuriate’ at a Conference which attracted many London and overseas based lawyers. (David Taylor of Hill Dickinson, Richard Church and Justin Moore of Richards Butler being some of them, the latter two later left Richards Butler and set up Moore Fisher Brown, now MFB.) The format for the MLAANZ Conference in those days was very similar to the current one. (In the very early days it took place on a Friday and Saturday morning). The Managing Director of Bilbroughs, the Managers of the London P&I Club, Brian Brooke-Smith gave a paper explaining the back ground to the voluntary agreement, known as the TOVALOP Agreement, entered into by the tanker owners, and the oil companies who owned them, which was the precursor to the CMI-drafted *CLC Convention*.³⁶ I had met Brian Brooke-Smith on 1 April 1974 (at a 5 year anniversary of TOVALOP) a few months before I emigrated from the UK in 1974, and he had given me an introduction to Norman Lyall and Tony Scotford. They did not have a place for me when I arrived in November 1974. Justice Michael Kirby reminded us in his Dethridge Address how he nearly became a maritime lawyer when he was offered an article clerkship at Ebsworth and Ebsworth but had to be turned away when one of the partners, Fred Osborne, lost his seat at a Federal election and wanted to return to the practice. I was in good company but was luckier in securing employment there 18 months later.

From the time of the Singapore Conference MLAANZ Conferences started to attract visiting maritime lawyers to attend from Canada, UK, Hong Kong, Singapore and the United States, (including author Alex Parks (‘The Law of Tug, Tow and Pilotage’) and a friend of Alex’s an ex-Marine ‘hell raiser’ called Paul Daigle who attended some meetings (Bloody Mary’s for breakfast I was told were the order of the day for those two lively characters).

4.5.6 Sydney Conference 1983

For a variety of reasons the 1983 Conference, which was again held in Sydney, was memorable. *Australia 2* won the deciding race in the America’s Cup battle which was taking place at Newport, Rhode Island in the United States whilst the Conference was taking place. (Remember the Cup had been held by the New York Yacht Club since 1857). We had all been up half the night watching this last race and, having seen Prime Minister Bob Hawke tell the television audience that ‘any employer who sacks an employee for not turning up to work today is a bum’, we rushed to the Sebel Townhouse for the start of the day’s Conference at 9am to find that the hotel was serving champagne to anyone who wanted it! It was a wonderful coincidence that the first paper that was given that morning was by Frank Wiswall of the United States MLA and Executive Councillor of the CMI, former Chair of the IMO Legal Committee, practising attorney and author. (I was later honoured to replace Frank as a Vice President of the CMI when he retired from that role. I also had had the pleasure of sitting on the CMI Executive Council with him for a few years beforehand). Frank had been invited to attend the Conference by MLAANZ member Morella Calder who had got to know him when she worked on UNCLOS in New York. Sadly Morella, who married Tim Hancock of the NSW Bar, died of cancer far too young but was a major contributor to MLAANZ, and was on the board of ANL as well as being in private practice in South Australia and then Sydney.³⁷

Another speaker at that Conference was Murray Gleeson. Bill Birch Reynardson, the senior partner of Thomas R Miller, the Managers of the UK P&I Club, also gave a paper on CMI. It explained how CMI came into being and how it works. I think his visit to the MLAANZ Conference in 1983 played a significant role when Ron Salter and a few of us (including David Roylance of Middletons) attended the CMI Conference in Paris in 1990 and offered to host the next CMI Conference in 1994 in Sydney. That offer was accepted, and Bill, as Vice President of the CMI, went in to bat for us at the Assembly meeting where the proposal was made by Ron and accepted. (Bill also passed away in the last year.)

4.5.7 Graeme Thompson

One of the early stalwarts of MLAANZ in the early days was Graeme Thompson, father of Michael of the Victorian Bar. Graeme singlehandedly hosted the MLAANZ Conference in 1978 in Hobart and met most of the delegates personally at the airport and conveyed us to the Conference venue and hotel.³⁸ (I recall Colin Carruthers of New Zealand gave a paper on the Himalaya clause at that meeting.) At the Sydney Conference I recall Graeme asking of the speaker an extremely longwinded and convoluted question and, thankfully, Paul Willee was chairing the session. As Graeme came towards what was thought to be the end of his intervention, Paul said ‘Could you repeat the question?’ Graeme collapsed in laughter, as did the audience.

³⁶ *International Convention on Civil Liability for Oil Pollution Damage*, opened for signature 26 November 1969, 973 UNTS 3 (entered into force 19 June 1975) (‘*CLC Convention*’).

³⁷ Justice K J Carruthers et al, ‘Morella Calder Eulogies’ (1995) 11(1) *Australian and New Zealand Maritime Law Journal* 1. An essay prize was given in her honour pursuant to a prize set up in her name for many years.

³⁸ Also referred to by Ron Salter in his Dethridge Address.

4.5.8 China Visit

In the early 1980s, when China started to open up, MLAANZ sent a delegation (of which I was not one) of New Zealanders and Australians to talk to the Chinese about maritime law. The story is told of one of the formal functions where an Australian and New Zealand delegate were deputed to speak about their respective countries with the aid of an interpreter and a diplomatic incident seemed to be threatened. This was somewhat strange as the New Zealand delegate (Roy van Panhuys) had only mentioned, proudly, how many millions of sheep there are in New Zealand. It transpired, after a while, that the translator had used the Chinese word for ships instead of sheep. No wonder the Chinese were concerned!

4.5.9 Christchurch Conference 1984

There had been an earlier Conference in New Zealand before the Christchurch Conference in 1984 (it was in Wellington in 1979,³⁹ the city lived up to its reputation, it was wet and windy and I recall Alf Willings gave a paper), but Christchurch was memorable for the wonderful ‘story’ told subsequently by Herry Lawford in a letter to Tony Scotford, which should form part of MLAANZ history. The activities that night on the River Avon are probably best forgotten (like the Pooh-sticks organised by Charles Baker, (a visiting UK solicitor and a fellow old Wellingtonian and Pom) in the ‘faux’ fountain at the Conference hotel in Adelaide). The Rt Hon Sir David Beattie, who wrote the Foreword to the first edition of the Dethridge Addresses (and I think was given the style of patron of MLAANZ), also of *Eurymedon* fame⁴⁰ where, as Beattie J, his first instance decision was restored by the Privy Council, and a Governor General of NZ, addressed us at dinner at the Christchurch meeting on a Shakespearian theme.

That Conference was also memorable for the return flight from Queenstown to Christchurch (after the post Conference add on) when Brad Giles (NZ Vice President and subsequently Justice Giles, who sadly died far too early and after only a couple of years on the Bench) took over the airline’s tannoy system and welcomed us all to the ‘MLAANZ mile high club’. Brad,⁴¹ Tom Broadmore, Alan McKenzie and Colin Carruthers were all leading players from New Zealand, with Ian Mackay, in the early days of the Association.⁴²

4.5.10 First Joint Conference with MLAUS Maui 1986

The Executive passed to New Zealand for the first time in 1985 and Ian Mackay became the first NZ President. They were responsible for organising the first joint Conference which was held with the MLAUS which was held in 1986 in Maui, which nearly broke the Association. The then Treasurer, later Judge Mark Perkins, still has nightmares about the occasion (I might exaggerate slightly) but he still wanted to recall what a difficult time it was when I went to New Zealand a couple of years ago to celebrate their 40th Anniversary! Notwithstanding that it was a huge success. It took place in two separate Hotels, a short walk away from each other, and we shared social functions — MLAANZ delegates attending one of their evening functions and the MLAUS delegates one of ours. Securing the presence of the late Michael Mustill, for the MLAANZ Conference, who had been promoted to the Court of Appeal in England in 1985 and went on to become a member of the House of Lords in 1992, was a huge coup. (The fact that his luggage had been lost on the way was only a minor embarrassment). He was a delightful man and exceedingly approachable. In the golf event John Lean scored a hole in one. This joint Conference was repeated in 2011. Who will forget the excellent Dethridge Address which Pat Bonner, the President of the MLAUS, gave? I hope the next time the MLAUS goes to Hawaii MLAANZ joins forces with them again.

4.5.11 Ron Salter

One person I have not referred to yet who was a constant throughout the early years of MLAA and MLAANZ, and since then, has been Ron Salter. I regarded him as one of the leaders in the profession when I attended my first meeting in 1976 and have held him in high esteem ever since. We know from his Dethridge Address that he

³⁹ Peter Willis noted in his Opening Remarks at the Wellington Conference in 1979 that there were 80 Registrants, equally split between New Zealanders and Australians.

⁴⁰ *New Zealand Shipping Co Ltd v AM Satterthwaite & Co Ltd* [1974] 1 Lloyd’s Rep 534 (*‘The Eurymedon’*).

⁴¹ See ‘Memorial Sitting for the Hon Justice Bradley Harle Giles’ (1999) 14(2) *Australian and New Zealand Maritime Law Journal* 1 for the Memorial Tribute in the Auckland High Court for Brad and the Cedric Barclay Memorial Address he gave shortly before his death: Justice B H Giles, ‘The Cedric Barclay Memorial Lecture 1999: Some Concerns Arising from the Enforcement of Arbitration Clauses in Bills of Lading’ (1999) 14(2) *Australian and New Zealand Maritime Law Journal* 5.

⁴² In his 1981 President’s Report Peter Willis said ‘Ian’s dynamic personality has been the focal point around which a strong and vigorous membership has grown up in New Zealand’.

attended the 1975 MLA meeting at the Palm Lake Motor Inn in Melbourne, presided over by Frank Dethridge, overlooking Albert Park Lake. ('Not the sea, but water', as Ron pointed out in his Dethridge Address!) He will also have vivid memories of that Maui Conference. He was an excellent President of MLAANZ and became MLAANZ's first CMI Executive Councillor. I hope there will be many more. I am eternally grateful to him and have cherished his friendship and support from the earliest days of MLAANZ.

4.5.12 Hong Kong Conference 1992

In 1992 a very successful MLAANZ Conference was also held offshore in Hong Kong, despite the fact that we had to part company with the Conference organiser shortly before we were due to attend it. Cindy Last stepped into the breach and continued to organise MLAANZ Conferences for many years thereafter. (My report to the 1993 AGM noted that there had been 101 delegates and 30 accompanying persons at the Hong Kong Conference.) Charles Debattista's paper on the recent changes which had been made to the bills of lading legislation in the UK inspired MLAANZ to do something here. I will return to that later in this Address.

4.5.13 CMI Conferences in Paris, 1990 and 1994

For those who attended the CMI Conference in Sydney in 1994 (almost 24 years ago to the day) at the old Wentworth Hotel it still remains 'one of the best ever'. Allan Phillip, the then President of CMI had been the first CMI President to visit Australia in 1993 and spoke to the NSW Branch.⁴³ The local Organising Committee for the Conference was Rod Withnell, Chris Quennell and me (and our wives for the Accompanying Persons programme). It comprised an opening in the Concert Hall of the Opera House, addressed by Murray Gleeson, then Chief Justice of New South Wales, followed by dinner on the harbour on various cruise vessels that were lashed up together whilst dinner was taken, functions in the National Maritime Museum, the New South Wales Art Gallery (addressed by the Premier of NSW, the Hon John Fahey MP) and the Gala dinner at the Sydney Town Hall with James Morrison entertaining, and on the day off a full day visit to Katoomba and Leura on a glorious spring day — what was not to like? CMI was impressed.

4.5.14 Simon Sheller AO QC

Mention of 1994 and Leura causes me to pause and remember Simon Sheller, one of the best New South Wales advocates and NSW Court of Appeal Judges during my 40 years of practice, who died in April this year. Simon was one of the most able and delightful men you could ever hope to meet. He was instructed in a number of significant shipping cases, including the *Mineral Transporter* collision with the *Ibaraki Maru*⁴⁴ off Port Kembla to which I will return, the salvage case of *The Texaco Southampton*,⁴⁵ and the *Gabriella* capsized at Port Kembla,⁴⁶ involving the capsizing and loss of the heavy lift ship, loss of life (two surveyors, one of whom was Brian Brooke-Smith's brother), damage to a low loader on the wharf and the cargo; and on the Court of Appeal he delivered some important judgments.⁴⁷ Simon gave the Dethridge Address at the 1994 MLAANZ Conference at Leura,⁴⁸ which was held mid-year as a precursor to the CMI Conference in October. (There were 80 delegates in attendance.) His paper dealt with economic loss, a topic he was well familiar with, as I had briefed him against Murray Gleeson in the *Mineral Transporter* and *Ibaraki Maru* collision, which went straight to the Privy Council from Yeldham J's first instance decision.

4.5.15 The Mineral Transporter

The appeal only went on two issues. Although our client's vessel had dragged its anchor and the other vessel was stationary we, boldly, had tried to persuade Yeldham J that they should have taken evasive action. Thanks to Gleeson's cross examination of our expert we failed, although Yeldham J found there was negligence in the watch

⁴³ His comments are reproduced in volume 9, part 2 of the *Australian and New Zealand Maritime Law Journal* (1993).

⁴⁴ *The Mineral Transporter* [1983] 2 NSWLR 564; *Candlewood Navigation Corp Ltd v Mitsui OSK Lines Ltd* (1985) 3 NSWLR 159; *Candlewood Navigation Corp Ltd v Mitsui OSK Lines Ltd* [1986] AC 1.

⁴⁵ *The Texaco Southampton* [1981] 2 NSWLR 238.

⁴⁶ *Australian Iron & Steel Pty Ltd v Jumbo Scheepvaart Maatschappij (Curacao)* (1988) 14 NSWLR 507.

⁴⁷ *Glebe Island Terminals Pty Ltd v Continental Seagram Pty Ltd* (1993) 40 NSWLR 206; *HIH Casualty & General Insurance Ltd v Waterwell Shipping Inc* (1998) 43 NSWLR 601; *Nikolay Malakhov Shipping Co Ltd v SEAS Sapfor Ltd* (1998) 44 NSWLR 371; *Bulk Chartering & Consultants Australia Pty Ltd v T & T Metal Trading Pty Ltd* (1993) 31 NSWLR 18; *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2003) 56 NSWLR 662; *Australian Tallow & Agri-Commodities Pty Ltd v Malaysian International Shipping Corp* (2001) 50 NSWLR 576; *The Bunga Seroja* (1996) 39 NSWLR 683; *Franke v CIC General Insurance Ltd* (1994) 33 NSWLR 373.

⁴⁸ See Justice K Carruthers, 'Opening Address: MLAANZ Conference 1994, Leura NSW' (1994) 10(2) *Australian and New Zealand Maritime Law Journal* 1 and Justice C S C Sheller, 'Frank Stewart Dethridge Memorial Address 1994: Pride and Precedent: Economic Loss — The Search for a New Bright Line' (1994) 10(2) *Australian and New Zealand Maritime Law Journal* 17.

keeping on board the stationary vessel, but it was not causative. We appealed on two damages issues and were successful on the principal one of those. I commend Simon Sheller's Dethridge Address to you. He introduced the topic entertainingly by telling the story of Uncle Remus, Brer Rabbit and Brer Fox. The explanation for which was the description: 'The Tarbaby of tort law with a briar patch far away' given in 1985 in the United States *Testbank* case⁴⁹ for the 'bright line rule' for excluding recovery of damages in negligence for economic loss in the absence of injury to the plaintiff, which had been treated as having been affirmed by Justice Oliver Wendell Holmes in the *Robins Dry Dock* case.⁵⁰

In his Address Simon also pointed out the co-incidence of the three major international oil spills up to that time, all occurring 11 years apart: *Torrey Canyon*, 18 March 1967; *Amoco Cadiz*, 16 March 1978 and *Exxon Valdez*, 24 March 1989. The *Prestige* missed its date with destiny in March 2000, when its casualty occurred on 13 November 2002.

I think *The Mineral Transporter* case was significant for two reasons. Firstly, it emphasised the need for restraint in not permitting the right to claim damages for pure economic loss in the absence of damage to person or property in tort cases. It held the line which had extended from 1875 in *Cattle v Stockton Waterworks Co*⁵¹ as far as the UK was concerned, although the High Court had moved the line in the *Dredge Willemstad* case⁵² and since the Privy Council's decision has moved it to an even more 'wiggly' one. It was certainly a great experience to run an appeal in the Privy Council and to brief Simon Sheller against Murray Gleeson. On the first day of the hearing I recall arriving in Downing Street and watching an older person walk up the steps inside ahead of me wearing an old Macintosh. I heard the attendant at the desk say 'Oh! My Lord there is another entrance for you' and ushered him away. It was Lord Griffiths (later President of the MCC (1990)) arriving for his first duty as a Privy Council Judge. (He had granted bail to the editors of *Oz Magazine* in 1971, pending their appeals from obscenity convictions).

The case has, I think, another significance. Although I have never seen this suggested in writing anywhere else I have always had a sneaking suspicion that the Appeal to the Privy Council in that case influenced the move to bring to an end such Appeals shortly thereafter. In its advice to Her Majesty their Lordships commented on the High Court's decision in the *Dredge Willemstad* upon which Yeldham J had relied at first instance and said: 'The judgments in the High Court contain an extensive review of the relevant law and of the problems to which it gives rise but their Lordships have not been able to extract from them any single ratio decidendi'. Their Lordships preferred the orthodoxy of the bright line rule. An interesting footnote to that case was that at first instance Yeldham J had managed to turn the tables on Simon Sheller who had beaten him when they were opposing counsel in the *French Knit Sales* case⁵³ by successfully arguing the bright line principle so that Yeldham's client could not recover damages for pure economic loss.

4.5.16 Murray Gleeson AC QC

It would be remiss of me not to mention the other great advocate and judge I was privileged and fortunate enough to brief on many occasions, Murray Gleeson. His Court presence, his ability to focus unrelentingly on the heart of the case, his demeanour in court, his unsurpassed cross examination which on so many occasions was destructive, his ability to explain a legal argument with great simplicity and call on analogies to support it made him, in my view, the leader of the Australian Bar over many years. He appeared in many shipping cases, thrice in the Privy Council (the *Cobargo* and *New York Star*⁵⁴ being the other two), as well as other important cases.⁵⁵

The *New York Star* (Himalaya clause case) was probably one of the most significant cases as far as the practices of maritime lawyers have been concerned in the last 40 years. Murray Gleeson only became involved after the High Court's decision. He was on retainer to many shipping companies and advised the stevedoring and the shipping industry generally as to the prospects of leave being granted by the Privy Council to take an appeal from

⁴⁹ *Louisiana v M/V Testbank*, 752 F 2d 1019 (5th Cir, 1985).

⁵⁰ *Robins Dry Dock & Repair Co v Flint*, 275 US 303 (1927).

⁵¹ (1875) LR 10 QB 453.

⁵² *Caltex Oil (Australia) Pty Ltd v Dredge Willemstad* (1976) 136 CLR 529 ('*Dredge Willemstad*').

⁵³ *French Knit Sales Pty Ltd v N Gold & Sons Pty Ltd* [1972] 2 NSWLR 132.

⁵⁴ *South Coast Basalt Pty Ltd v RW Miller & Co Pty Ltd* [1981] 1 NSWLR 356 ('*The Cobargo*'); *Port Jackson Stevedoring Pty Ltd v Salmond & Spraggon (Australia) Pty Ltd* (1980) 144 CLR 300 ('*The New York Star*').

⁵⁵ *Meyer Heine Pty Ltd v China Navigation Co Ltd* (1966) 115 CLR 10; *Namchow Chemical Industrial Co Ltd v Botany Bay Shipping Co (Aust) Pty Ltd* [1982] 2 NSWLR 523; *Karlender (Australia) Pty Ltd v Chrome Chemicals (Australia) Pty Ltd* (Supreme Court of New South Wales, Yeldham J, 9 September 1985); *Norwest Beef Industries Ltd v Peninsular & Oriental Steam Navigation Co* (1987) 8 NSWLR 568; *Caltex Oil (Australia) Pty Ltd v Howard Smith Industries Pty Ltd* [1973] 2 NSWLR 89; *Pitt Son & Badgery Ltd v Proulefco SA* (1984) 153 CLR 644.

the High Court, and then obtained the leave and successfully argued the appeal before the Privy Council. He was also involved in one of the trio of cases that extended the Himalaya clause, shortly thereafter, to combined transport operations before the NSW Supreme Court.⁵⁶ (Simon Sheller had run the first two of those cases). Those four cases would merit a paper on their own, particularly the different results obtained at first instance, the Court of Appeal and the High Court before culminating in the Privy Council in *The New York Star* case. As Chief Justice of New South Wales and the High Court, Murray Gleeson also delivered a number of judgments in the shipping and marine insurance area.⁵⁷

Let me share with you a Gleeson anecdote (which did not make it into his biography). Its title, 'The Smiler', perhaps fails to convey how amusing he can be. It involved a dinner which my wife and I attended at Worcester College, Oxford, with about twenty to thirty other people after a Contract Law Symposium at All Souls that Professor Francis Reynolds QC⁵⁸ had organised, and at which Murray had spoken. The dinner took place in one of the oldest and loveliest rooms in that College and I was seated one place removed from Murray. Between us was a rather earnest young Oxford graduate lady who was debating the rights of women in India with the Chief Justice towards the end of the meal, when there was a lot of activity around the table, with platters of grapes, dates, cheese and port moving around and a small canister with what I assumed was snuff, as I saw people doing strange things with it. I made my own futile attempt to sniff it and passed the canister to the young lady sitting next to me and she immediately passed it on to Murray, who also passed it on without partaking. I saw an opportunity to seek to provide him with some respite from what appeared to be a lacklustre debate and said to him 'Aren't you going to try the snuff Murray?' He looked at me, as he often did when I had been trying to persuade him of a point of law that we should be arguing in a particular case and which he regarded as hopeless (I can assure you it was a withering look), and he replied 'No I'm waiting for the coke'! He has a mischievous sense of humour, of which I was the butt on many occasions.

4.6 MLAANZ Achievements

The continuing success of these Conferences (and Branch meetings, especially the New Zealand Branch's annual meetings), and the publications, the Journal and Newsletters are some of the great achievements of which we should all be proud. The Conferences succeed on multiple levels, including the quality of the scholarship in the papers, the commentaries, and discussion afterwards which has always been the format of the Annual Conference sessions; the quality of those who attend (including the Judiciary, practitioners, academics, employees from government, the shipping and insurance industries and marine surveyors); and the camaraderie which they engender.

Many people have been responsible for the News Letters and Journal over the years. Pat O'Keefe⁵⁹ and Barbara Filipowski started a News Letter in Sydney; they were succeeded, I think, by Colin Carruthers and Victoria University in NZ. It then passed to Martin Davies and Monash University in Melbourne. Subsequently Paul Myburgh in New Zealand, Michael White in Queensland, Kate Lewins in WA and now Craig Forrest in Queensland have had turns. I have probably missed some people for which I apologise. A recent review of some of the Journals reminded me of what a wonderful resource they are. I have only recently discovered that Kate arranged for all the Journals which had been published between 1983 and 2013 to be placed on Austlii.⁶⁰ Hopefully, they and all the Conference papers can be put on the MLAANZ website.

4.6.1 Admiralty Act 1988

There have also been some special achievements of MLAANZ in the area of law reform. In my view, 'The Admiralty Jurisdiction in Australia: Report of the Joint Committee of the Law Council of Australia and the Maritime Law Association of Australia and New Zealand on Admiralty Jurisdiction in Australia, 1982' has made

⁵⁶ *Broken Hill Proprietary Co Ltd v Hapag-Lloyd Aktiengesellschaft* [1980] 2 NSWLR 572; *Sidney Cooke Ltd v Hapag-Lloyd Aktiengesellschaft* [1980] 2 NSWLR 587; *Mercedes Benz Australia Pty Ltd v Scancarriers AS* (Supreme Court of New South Wales, Rogers J, 25 November 1981).

⁵⁷ *China Ocean Shipping Co Ltd v P S Chellaram & Co Ltd* (1990) 28 NSWLR 354; *Quadro Shipping NV v Bizley* [1992] NSWCA 193; *The Bunga Seroja* (1996) 39 NSWLR 683; *Tasman Express Line Ltd v J I Case (Australia) Pty Ltd* (1992) 111 FLR 108; *Gibbs v Mercantile Mutual Insurance (Australia) Ltd* (2003) 214 CLR 604; *Owners of the Motor Vessel 'Iran Amanat' v KMP Coastal Oil Pte Ltd* (1999) 196 CLR 130; *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 219 CLR 165; *Pacific Carriers Ltd v BNP Paribas* (2004) 218 CLR 451; *Franke v CIC General Insurance Ltd* (1994) 33 NSWLR 373; *Patterson v BTR Engineering (Aust) Ltd* (1989) 18 NSWLR 319.

⁵⁸ See his paper given at NZ Branch Conference at Tokaanu, Francis Reynolds, 'The Hague Rules, the Hague-Visby Rules, and the Hamburg Rules' (1990) 7 *Australian and New Zealand Maritime Law Journal* 16 and Francis Reynolds, 'Bills of Lading: Do They Have a Future?' (1994) 10(2) *Australian and New Zealand Maritime Law Journal* 35.

⁵⁹ Peter Willis in his President's Report to the AGM in 1981 singled out Pat O'Keefe and the Newsletter as 'gaining international recognition and acclaim' under his 'tireless efforts as Editor'.

⁶⁰ <http://classic.austlii.edu.au/au/journals/ANZMarLaw/JL/>.

the single greatest contribution to maritime law reform in Australia in the last 44 years. That report was sent to the Attorney-General and resulted in the referral to the Australian Law Reform Commission, which produced the Admiralty Act. James Crawford's role as the Commissioner in charge of that reference is something for which we should all be exceedingly grateful. The resulting ALRC Report 33 (1986) provides an enduring reference point for admiralty lawyers.⁶¹

Dr Howard Zelling was the Chair of the Joint Committee.⁶² Ron Salter, who should know, ascribed the majority of the work done by the Joint Committee, in his Dethridge Address, to Bill Paterson.⁶³ Howard Zelling was a judge of the Supreme Court of South Australia and George Fryberg became a judge of the Supreme Court of Queensland. All were very much involved with MLAANZ from its earliest days. Many MLAANZ members were Consultants to the ALRC.

MLAANZ also played a significant role in providing seminars for James Crawford to discuss the Research papers and draft report before finalising its content. I recall one Sydney occasion when he asked the audience whether we were in favour of the draft legislation specifying the maritime liens (or it may have been in relation to priorities that he was asking) and I suggested that it would benefit practitioners who were not regulars in this area if they were specified. He then referred to my suggestion as coming from the 'solicitor from Brewarrina'!

I note that we have a session on Friday devoted to 'Issues in Admiralty', which is timely given the passage of 30 years since the Act was passed. Australia has truly developed a wonderful body of law which is not out of kilter with our trading partners and I look forward to hearing in particular what Justice Derrington has to say about possible further reform. Some of us prepared a short commentary on the Arrest Convention 1999 and posed the question whether MLAANZ should suggest that any reforms be made to our Act. It is a matter of regret to me that MLAANZ did not explore further whether there were aspects of the Arrest Convention 1999 which might be grafted onto our Act. Maybe Friday's session will encourage further work to be done.

4.6.2 Sea Carriage Documents Act 1997

The MLAANZ report ('Title to Sue') which was also sent to the Attorney-General, which led to the reform of the Imperial *Bills of Lading Act 1855* and passage of the *Sea Carriage Documents Act 1997* (NSW) was another major step in the reformation of Australia's maritime law. According to my President's report to the AGM of 29 October 1992 the Report was 'largely drafted by' David Roylance, a partner at Middletons. Title to sue issues arose quite frequently in the 1980s, arising from the words in the 1855 Act which enabled consignees and indorsees to sue carriers on the contract of carriage only if property passes 'upon or by reason of' such consignment or endorsement. One problem was that the effect of the *Sale of Goods Act* was that property could not pass in part of a bulk. As the English Law Commission noted in its Working Paper No 112:

A further consequence of the non-transfer of property in bulk goods is illustrated by the decision of the House of Lords in the *Aliakmon*⁶⁴ the effect of which is that a buyer of part of a bulk whose goods are lost or damaged while still unascertained, and hence when he has neither property nor a right to possession, is unable to sue the carrier in tort.

4.6.3 Hague Rules Reform 1998

I think the role played by MLAANZ in reforming our Hague Rules regime in the 1990s was also transformative. In this we were greatly assisted by the Commonwealth bureaucracy and in particular Danny Scorpecci of the Department of Transport in leading and coordinating the panel that he arranged to represent all interests in cargo claims. He provides a shining example of how a bureaucrat can develop policy with industry (and MLAANZ) and see it through to a happy conclusion. Australia's Hague Rules regime had been amended in 1991 which, you may remember, gave effect to the Visby Rules but also in Schedule 2 contained the Hamburg Rules to be proclaimed at some later time. Schedule 2 was eventually repealed in 2001. The Working Group that was put together by Danny Scorpecci as chairman included representatives from national and international carriers,⁶⁵ the leading

⁶¹ Prior to the ALRC's report the source of a solicitor or barrister's research into Admiralty jurisdiction in NSW was a much photocopied, dog eared version of Sir Frederick Jordan's notes to students at Sydney University on the topic dated 1937. (My copy has my former senior partner, John Bowen's name written on it).

⁶² The other members were WE Paterson, KJ Carruthers, RD Desmond, PG Foss, HG Fryberg, ND Lyall, RD Lumb and RJ Salter.

⁶³ This would seem to be entirely justified when Peter Willis's Report to the AGM in 1981 is also taken into consideration where he referred to the work done by the Melbourne Working Group 'so ably led by Bill Paterson'.

⁶⁴ *Leigh & Sullivan Ltd v Aliakmon Shipping Co Ltd* [1986] AC 785.

⁶⁵ George Gibney of ANL and Ross McAlpine of MSC.

marine cargo insurer in Australia,⁶⁶ shippers,⁶⁷ and myself. The Working Group met during 1995 and produced a Package of Reforms, which were contained in the Report dated September 1995. The *Carriage of Goods by Sea Regulations 1998* (Cth) came into force on 1 July 1998, giving effect to that Package of Reforms and amending the *Carriage of Goods by Sea Act 1991* (Cth).

4.6.4 Marine Insurance Act Reform 2001 and 2017

The Advisory Committee to the ALRC, which was appointed in January 2000 to look into possible reform of the *Marine Insurance Act 1909* (Cth), consisted almost entirely of members of MLAANZ. As it did not result in any reform I will not say anything further about it. I trust the submission to the Attorney-General in 2017, which relied heavily on the work that had been done by the ALRC and which is contained in its Report 91 of April 2001, will be more successful.

5 The Present

In discussing the present I simply want to rate the past at this moment in time and then pass to the Future. I think there are four KPIs which can be resorted to if we want to seek to measure the success of MLAANZ; they are: Uniformity, Reform, Education and Sociability. One and two are related. All Maritime Law Associations who join CMI take their lead from the aims and objects of the CMI which has as its object: 'to contribute by all appropriate means and activities to the unification of maritime law in all its aspects. To this end it shall promote the establishment of National Associations of Maritime Law and shall co-operate with other international organizations'.⁶⁸

MLAs become involved with CMI in a variety of ways: by responding to Questionnaires, which MLAANZ does well, serving on the Executive Council, or International Working Groups or Standing Committees, or attending CMI meetings. These are all ways to contribute in seeking to achieve greater uniformity. In relation to local, or domestic reform, whilst focussing on Australian and New Zealand maritime law MLAANZ, inevitably, has to look towards the rest of the world in order not to become out of step. The achievements I have referred to earlier provide ample evidence of success by MLAANZ in this area.

I would regard the Education box to have been well and truly ticked by MLAANZ. The quality of the Dethridge Addresses (until now) has been outstanding. In addition the papers and commentary given on papers at Conferences is never not of a high standard, and the same goes for Branch meetings. In addition MLAANZ supported visits by Southampton University lecturers who gave intensive training sessions around Australia and New Zealand for many years. (Nick Gaskell was one of them and visited in the lead up to the Privy Council hearing in *The Mineral Transporter* and had written a very helpful article in the *LMCLQ* on the topic of economic loss, so he was entertained to dinner at what was then Cables Restaurant in the Regent Hotel with Simon Sheller QC and his junior, now, Justice Macfarlan of the NSW Court of Appeal. We referred their Lordships to his article.) There was also a Fellowship given by MLAANZ to attend the short course at Southampton University in the UK.⁶⁹

The Sociability aspect, which I venture to suggest, the founders would have had in mind, that is to bring together maritime lawyers and others involved in our industry, who would frequently be opposed to each other in commercial negotiations or court cases, so as to provide a forum where convivial opportunities might be presented at which we could get to know each other better, to the benefit of our various clients, has also been achieved in my view.

6 The Future

6.1 Unmanned Ships

So, what does the future hold? No crystal ball is required to foresee that unmanned ships will play some role in domestic and international shipping in the not too distant future. Indeed, in a paper given to MLAANZ in 2015,

⁶⁶ Michael Hill, the managing director of Associated Marine Insurance.

⁶⁷ John Levingstone, who acted for cargo owners and their marine insurers as a solicitor before going to the Bar, and Greg Walters.

⁶⁸ See announcement in August 1974 in Law Institute of Victoria Journal of MLAA's objects included 'to act with foreign and other associations in efforts to bring about the unification of maritime and commercial law, maritime customs, usage and practices and a greater harmony in the shipping laws, regulations and practices of different nations'.

⁶⁹ See Frances Hannah's letter in volume 9, part 2 of the *Australian and New Zealand Maritime Law Journal* (1993). Sarah Derrington was also a beneficiary of this prize.

Martin Davies identified autonomous ships, 3D printing and the opening up of trade through the northern passages of the Arctic as three changes that would take place in the future. He might today have added China's Belt and Road initiative. The CMI is playing a leading role in assisting the Maritime Safety Committee and the Legal Committee of the IMO in grappling with the enormity of the task which they have to perform in reviewing all their instruments to see how they can be made to work with such vessels. I have been impressed by the MLAANZ response to CMI's Questionnaire on Unmanned Ships. It is a great starting point from which MLAANZ can assist our governments in meeting the challenges that these vessels are going to pose.

There is to be a joint meeting in London after the CMI Assembly meeting on 9 November of the CMI's International Working Groups on Unmanned Ships and Cybercrime as well as the Standing Committee on Marine Insurance to discuss the convergence of all 3 areas in the context of a devilish hypothetical which Professor John Hare has devised!

I understand that Sir Bernard Eder, who will be giving the inaugural Memorial lecture to honour Francesco Berlingieri on that day, will be discussing the issue of due diligence in the context of Unmanned ships. (I have shamelessly introduced CMI to the Dethridge concept in inaugurating an occasional CMI lecture.)

The minds of the next generation of maritime lawyers will be exercised for years to come by those three topics, whether it be at the regulatory, advisory or litigation level. In discussing Unmanned ships and the regulatory task that the IMO is only just starting to consider with a Californian Justice Department attorney at the MLAUS Spring meeting in May this year, he used the expression: 'Innovation, Litigation, Legislation' to explain how the regulator usually responds to inventions. That bodes well for the litigation lawyer! There is much that MLAANZ can do to assist the Australian and New Zealand governments, as well as insurers to grapple with these issues.

6.2 Rotterdam Rules

In his Dethridge Address in 1983 David Yeldham said: 'Unless and until all major maritime nations adopt either the 1968 Brussels Protocol or the Hamburg Rules or some other Rules, shipowners and shippers will have the prospect of operating and trading under perhaps three concurrent and alternative international conventions governing their rights and liabilities inter se'. We did give effect to the Visby Protocol but since then (10 years ago) the international legal community, through UNCITRAL, has given us a further regime. Clause Paramounts still insist on referring to the 'Hague Convention' so now we have the Hague Convention, its Visby amendments, the Hamburg Convention, the Rotterdam Rules and hybrids like our own to choose from. That is not uniformity. That is chaos.⁷⁰ MLAANZ must do all it can to have Australia ratify the Rotterdam Rules. It is the only regime which was drafted with paperless transactions, E-Commerce, in mind, it eliminates the anachronistic nautical fault, raises package limitation amounts, and makes shippers more responsible for providing carriers with information about their cargoes. Its time has come.

6.3 Transboundary Oil Pollution

It is disappointing that notwithstanding the *Deepwater Horizon* and *Montara* blow outs CMI's attempts to interest the international community in producing an international Convention for the offshore industry's transboundary pollution risks, along the lines of the CLC for tankers, have not been successful at this stage. Eventually something will have to be done in this area. The support of Justice Rares in this area has been much appreciated, as have the Federal Court Judges (Allsop CJ, Rares and McKerracher JJ) who have supported the work of the CMI in relation to Judicial sales.

6.4 Maritime Arbitration

I do not see a greater interest in international maritime arbitration taking place in Australia. It is a horse we have flogged endlessly for many years. Peter McQueen's efforts are to be commended but as the late Michael Marks-Cohen of the MLAUS said to me many years ago 'It will only happen when those who pay the bills, carriers, traders etc, want it to take place locally. It will be grown from the ground up and not dictated from the top down'. It behoves all of us who draft charter parties, COAs etc, to seek to persuade our clients of the benefits of local litigation or arbitration.

⁷⁰ See, eg, *Yemgas FZCO v Superior Pescadores SA Panama* [2016]1 Lloyds Rep 561.

6.5 Coastal Shipping

Neither do I see Australians investing in ships to operate either locally or internationally. We are simply not competitive enough. Our wage scales do not allow us to compete. Anyone who thinks otherwise is deluded and/or driven by ideology. Meanwhile our roads become more and more dangerous and congested.

6.6 Marine Insurance

Marine insurers have seemingly lost interest in chasing recoveries and their teams are either disappearing or slimming down. They lose expertise when their business model does not encourage, let alone support financially, attendance at meetings such as this. For a small investment they could be buying loyalty and gaining more knowledgeable employees.

6.7 Ship Operation

There is no doubt also that a tsunami of change is going to take place in the operation of ships, and lawyers will have to come to grips with them. They will be arising from artificial intelligence, big data, smart contracts, digitization (and the cybercrime issues that will become ever more prevalent with that), block chain (I see the Ports of Melbourne and Brisbane are doing some interesting things) and note that Richard Arrage will be speaking later about Blockchain, Fintech, 3D printing, (I saw recently that a large offshore crane hook is being produced by 3D printing) and the fuel that ships will use (whether nuclear, gas, solar and/or sails), especially in the light of the IMO's 0.5% sulphur cap mandated for 2020 will change over time. What will Amazon's incursion into the logistics space mean? I commend to you an article in the Economist of 25 April 2018 entitled 'Thinking Outside the Box', which raises a number of interesting matters that are taking place in the industry, especially in the digital and technological areas. I thought a comment by Christopher Allen, writing in the Weekend Australian Review section on 15/16 September 2018 on the power of the new computer algorithms in the analysis of data might be particularly prescient when he said: 'The dream of technological progress offers us ostensible convenience and even more safety but at the cost of control and surveillance'. His article called in aid George Orwell and 1984.

Many Australian companies are at the forefront of developments which are and will continue to change the way shipping operates. (OMC with its under keel clearance technology, and Rightship, for example.) If you want to look deeper into some of these developments I can do no better than refer you to 'Shipping and the 800-LB Gorilla' by KD Adamson, published in 2017 and also an article by Sarah Green in the *LMCLQ* about 'Smart Contracts, Interpretation and Rectification' which give an interesting insight into some of the challenges that lawyers and judges will be facing.⁷¹ Document review technology will clearly impact the legal profession too for standard commercial documents. The continuing downward pressure by clients on costs will force the greater use of creative measures to keep litigation costs down, such as that ordered by Allsop CJ in *Sheehan v Lloyds Names Munich Re Syndicate Ltd* when he referred questions to a marine surveyor.⁷²

Sadly, the young solicitors coming through today will not have the opportunities to practice maritime law and obtain the experiences I did in my twenties or thirties, unless they work in London, Singapore, Hong Kong or China. In Australia they will have to be commercial lawyers or insurance lawyers who know something about maritime law. Hopefully they will be members of MLAANZ and can learn from Conferences such as this.

6.8 A Wish List for the Future Activities of MLAANZ

If you will forgive me I have prepared a wish list of things which MLAANZ could give some thought to doing in the future, in no particular order:

- Produce new volumes of the Dethridge Addresses. At the very least fill up the gaps on the current website with the Addresses that have been given in the past and keep them up to date so that they are always available.⁷³
- Try and locate all the past Conference papers and digitise them for the MLAANZ website, and have all the Journals available on the website.

⁷¹ Sarah Green, 'Smart Contracts, Interpretation and Rectification' [2018] *Lloyd's Maritime and Commercial Law Quarterly* 234.

⁷² [2017] FCA 1340.

⁷³ They are available on Austlii (see Footnote 59).

- Seek to meet at least once a year with officers of the Attorney-General's and Transport Departments to discuss Conventions and other shipping industry issues in so far as the law is concerned, particularly with respect to uniformity and reform in the international legal area and to enable them to report to you on their activities at IMO, UNCITRAL, UNCTAD, UNIDROIT, the Hague Conference in so far as they involve the maritime world. (On the agenda I would suggest might be the Athens Convention, which is seemingly moving in the right direction as well as the Rotterdam Rules, Wreck Removal and HNS Conventions). Governments have spent hundreds and thousands of dollars sending bureaucrats to meetings all around the world negotiating these Conventions. It is a scandal that they allow them to languish and forget about them. Where is the latter day Danny Scorpecci, I ask rhetorically. My colleagues Richard Arrage, will be discussing 'Blockchain' and Michelle Taylor, the Wreck Removal Convention later in this Conference, so I will not venture into their turf except to repeat what I have said above that the only liability regime drafted with E-Commerce in mind is the Rotterdam Rules.
- Consider holding a Conference in Darwin or jointly in Darwin or some other location such as Singapore, or Malaysia with other MLAs to be publicised as a Southeast Asian Conference of Maritime Law Associations. The Singaporean MLA holds a regular conference like MLAANZ and seeks to attract registrants from India and other Asian countries. (In a couple of weeks they are partnering IMC). The Malaysian MLA has recently been reformed and has re-joined the CMI. Indonesia was a place that Ken Carruthers wanted MLAANZ to become closer to. It has a small MLA and needs to be encouraged to broaden its membership.
- Encourage South Pacific Island countries to attend MLAANZ functions. I note that Craig Forrest attended a Pacific Islands Maritime Conference in Vila and reported on it in the February 2017 News Letter. I do hope MLAANZ will build on that contact and send representatives to any future meetings they have and perhaps MLAANZ could sponsor someone attending one of its Conferences to give a paper on South Pacific maritime legal issues. I assume the New Zealand branch would have good contacts in Tonga, Fiji and other South Pacific countries.
- Invite other organisations to be Consultative members of MLAANZ at reduced or nil subscriptions, such as Shipping Australia, MIAL, Shipbrokers Associations, Freight Forwarders, Logistics and Customs Associations and the like and invite them to provide speakers.
- Galvanise the Insurance industry to be more proactive and send representatives to MLAANZ meetings. Encourage employees of leading insurance companies to give papers. How about offering discounted registrations to the insurance industry?
- Involve government Ministers and High Court judges (Pat Keane?) to become involved and either open your Conference or give a keynote address.
- On re-reading my President's Reports to AGMs in the period 1992–94 I was reminded that we had appointed a few Committees (along the lines of the CMI and MLA US) to work on specific topics. We had for example one dealing with EDI. Others had been set up to mirror some of the topics CMI was working on, such as off-shore mobile craft, Salvage and HNS Conventions.⁷⁴ Why not set up a Committee on Unmanned ships for example today?
- When Questionnaires are sent to MLAANZ I think it would be greatly to the benefit of MLAANZ members that they were forwarded to all members of the Association so that they are given an opportunity to participate in the responses which are prepared to be sent back to CMI.
- Put the funds you hold to good use, either by financing some of the matters I have referred to or lowering subscriptions with a view to adding to the membership.

7 Conclusion

I would like to take this opportunity of thanking MLAANZ for the opportunity that it has provided to me to,

⁷⁴ I am of course aware that ad hoc Committees have been set up from time to time eg in 2008 a committee was set up to respond to the Proposals of the Joint Cargo Committee in the London market for revision of the ICC Cargo Clauses, comprising Frazer Hunt, Ron Johnston, Les Rout, Jemma Stabler, Derek Luxford and myself; and in 2015 another was set up to consider the reforms being made in the UK to the *Marine Insurance Act 1906* comprising Derek Luxford, Neil Hiller, Sarah Derrington, Paul Baxter and me.

firstly, be appointed to the CMI Executive Council and then to serve two terms, each of three years, as the President of CMI. When I first joined Ebsworths in 1976 I knew nothing about MLAs or CMI and could have had no ambition to have become a member of the Executive Committee of MLAA or MLAANZ or the Executive Council of CMI, let alone their Presidents. I have been exceedingly fortunate.

David Yeldham concluded his 1983 Dethridge Address (thirty five years ago) by saying:

Thus it will be plain that there is much to occupy the time and the energies and enthusiasm of organisations such as the Maritime Law Association of Australia and New Zealand, of persons engaged in maritime and commercial pursuits, of politicians, of lawyers and of many other members of the community in this changing maritime and commercial world ... Bodies such as yours, with their ability to present reasoned, informed arguments and, hopefully, to occasionally apply a little pressure where it is required, play a most important part in solving them ... It is plain that if the changing law is to respond to the changing seas of our changing world, it will be essential to harness the vision, the abilities and the enthusiasm of the Frank Dethridges of this world. If that is done then the outlook is bright indeed.

The same applies, probably even more so today. I could not express it better.

Let me finish as I began: The *SS Great Britain* can now be viewed as a tourist attraction in Bristol, UK and I intend to visit and pay my respects after the CMI Assembly meeting in London, when I become a free man from CMI on the 9th November.

And some last words from F E Smith, Lord Birkenhead, in court room exchanges: Smith to witness: 'So you were as drunk as a Judge?' Judge (interjecting): 'You mean as drunk as a Lord'. Smith: 'Yes, my Lord'.

Or in another case: Master of the Rolls: 'Really Mr Smith do give this court credit for some little intelligence'. Smith: 'That is the mistake I made in the Court below'.

I wish MLAANZ every success in its endeavours in the future.