INTERNATIONAL LAW ASSOCIATION, VICTORIAN CHAPTER

News Bulletin

President's Report

by Trina Sophie Malone

Welcome to the July 2013 edition of the International Law Association, Victorian Chapter, newsletter.

This month we celebrate the success of the 2013 inaugural Public International Law Moot. The hard work by ILA committee members, moot judges and mooters paid off in the form of two stimulating preliminary rounds and a spirited Grand Final on 6 June 2013. Please see pages 2 to 4 of this newsletter for a report on the Grand Final, complete with photos. We are already planning for the 2014 Public International Law Moot. Please contact our Chapter Secretary if you are interested in taking part.

As increasing numbers of businesses around the world opt for arbitration as their preferred form of dispute resolution, it is topical for us to feature a complementary pair of articles on the subject. In this newsletter, Stephen Tully examines the landmark High Court case *TCL Air Conditioner v The Judges of the Federal Court of Australia* while Luke Nottage and Albert Monichino discuss TCL's battles against Castel Electronics in the lower courts.

Arbitration is a hybrid form of dispute resolution drawing on the rules and traditions of both common and civil law. As such, it links thematically to our interview with Bernard Bongiorno AO on pages 5 and 6. Having retired recently from the Court of Appeal of the Supreme Court of Victoria, Bernard Bongiorno is an occasional lecturer at the Université Paris Descartes. He offers us his thoughts on the contrasts between the traditions and practices of the common and civil law systems.

Finally, if you would like to assist us in the organisation of any event or you have ideas for other events or activities you think the ILA Vic should become involved in please contact our Chapter Secretary, Kelly Forbes: kellyaforbes@gmail.com

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Public International Law Moot Competition

By Kelly Forbes, Secretary of the Victorian Chapter of the ILA (Australian Branch)

The Victorian Chapter's 2013 Public International Law Moot Competition has now concluded. We had a fantastic first year running the competition with 18 teams enlisted, very generous sponsors, an impressive array of Judges, practitioners and academics acting as competition judges and a challenging hypothetical problem for participants to tackle.

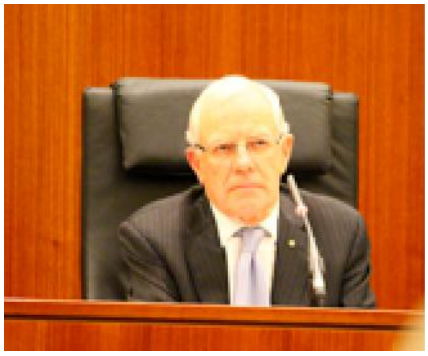
The main themes of this year's moot were Security Council sanctions, state responsibility and cyber-warfare. The problem concerned a series of anonymous cyber-attacks against the military, finance and energy sectors of an imaginary country called Timurid, allegedly by the Cyber Front for a Safe Atzmai, along with sanctions imposed by the Security Council on individuals alleged to be connected with the attacks. The problem was conceived and written by a team of the ILA's Victorian Chapter made up of Anna Hood, Trina Malone and Devon Whittle.

After two preliminary rounds, the 6 June Grand Final pitched Simon Frauenfelder from Corrs Chambers Westgarth against Anita Das, Frankie Barbour and Darren Hexter from Herbert Smith Freehills. (Fiona Lander, Simon's fellow counsel, was ill and unable to moot at the Grand Final.)

Donald Robertson,
Herbert Smith Freehills

Donald Robertson, partner at Herbert Smith Freehills, our principle sponsor, welcomed guests to the Grand Final. He noted the ever-growing importance of public international law to Australian practitioners, including in his own practice, which today includes such areas as international boundary disputes, human rights law and foreign investment protection.

The Grand Final was judged by Justice Harper AM of the Court of Appeal, Supreme Court of Victoria, Dr Helen Durham, Director of International Humanitarian Law, Strategy, Planning and Research at Australian Red Cross and Ms Anna Hood, PhD candidate and sessional lecturer at Melbourne Law School.



Justice Harper AM

After a spirited Grand Final moot, Herbert Smith Freehills were ultimately declared the winner of the Grand Final. The team's achievement was all the greater given the consistently high standard of mooting throughout the competition. In recognition of the outstanding skills demonstrated during both the preliminary rounds, five best speaker awards were also presented at the Grand Final celebrations, as follows:

- Simon Frauenfelder (first ranked)
- Frankie Barbour (second ranked)
- Sarah Zeleznikow (third ranked)
- Lucy Maxwell (fourth ranked)
- Julia Kretzenbacher; Anita Das; Shannon O'Neill; and Rowan Minson (equal fifth ranked)

Simon Frauenfelder

The Grand Final was a fitting climax to the Chapter's inaugural moot competition and helped to showcase the high level of international law talent in Melbourne. The Chapter hopes that next year and beyond the competition continues to grow in stature and participation. Planning will begin soon. If you are interested in being involved please contact our Chapter Secretary, Ms Kelly Forbes at kellyaforbes@gmail.com.

The ILA's Victorian Chapter would also like to thank the sponsors of the 2013 Public International Law Moot Competition:

- Herbert Smith Freehills, our principal sponsor, for hosting the training night and making a generous donation to the competition;
- Melbourne Law School for enabling use of its moot courtroom;
- Oxford University Press, for providing participants with free access to the Max Planck Encyclopedia of Public International Law and the Oxford English Dictionary;
- HeinOnline for providing contestants with access to its online resources;
- Cambridge University Press for donating six copies of the *Cambridge Companion to International Law* to the grand finalists; and
- The ILA (Australia) for giving members of the winning team a free one year ILA membership.

The Chapter also thanks:

- Trina Malone, President of the Victorian Chapter of the ILA, who was the catalyst for the moot competition and responsible for making the vision a reality; and
- the members of the moot committee who were involved in organising the Moot Competition:
- the ILA Victorian Chapter committee members, who all oversaw preliminary round moots, and particularly Anna Hood and Peter Willis, who each judged several preliminary moots;
- the Judges, academics and practitioners who very generously volunteered their time to judge our preliminary rounds.

The ILA's 2013 Public International Law Moot Committee

Member	Responsibilities
Trina Malone	**Chair** **Hypothetical Problem &** **Judges' Bench Brief** **Training Night**
Laura Bellamy	**Treasurer and Sponsorship** **Competition Rules** **Grand Final Event**
Sophie Rushton	**Liaison Officer & Preliminary Rounds Coordinator**
Bridget Little	**Marketing** **Grand Final Event**
Devon Whittle, Anna Hood	**Hypothetical Problem &** **Judges' Bench Brief**
Kelly Forbes	**Marketing**

Dr Helen Durham

Justice Harper

Anna Hood

Moot finalists with judges

Grand Final winning team with trophy

Laura Bellamy, Anna Hood, Trina Malone

Civilian, Common, Criminal – Comparisons and Reflections on Australian and European Legal Systems

The Hon. Justice Bernard Bongiorno AO was Judge in Residence at Melbourne Law School from January to May 2013, following his retirement from the Court of Appeal of the Supreme Court of Victoria, to which he was appointed in August 2009. As a justice of the Supreme Court, to which he was appointed in 2000, Bernard Bongiorno sat in both the civil and criminal jurisdictions. He spent almost two years presiding over one of the largest criminal trials ever conducted in Australia, namely *The Queen v Benbrika & Ors*. Justice Bongiorno travels regularly to France, where he is an occasional lecturer at the Université Paris Descartes. He spoke to newsletter editor Bronwen Ewens.

In keeping with its obligations as an EU state, Britain passed its 1998 Human rights Act to implement the European convention on Human rights (ECHR). This seems to be a good example of fruitful interaction between a common law jurisdiction and a collection of civil law countries.

Certainly, the UK's connection with Europe hasn't diminished people's rights. The courts in England have readily accommodated the European notion of fundamental human rights.

Australia may well end up being one of the few Western democratic countries without a constitutional or even a statutory Bill of Rights. Of course, a Bill of Rights does not, of itself, guarantee anything - witness the fact that the Soviet Union in its most repressive period had a constitution which purported to entrench certain human rights. Nor have we really suffered, to date, from the lack of a UK-style Human Rights Act, although the High Court has said (in *Al-Kateb v Godwin*) that detention by the Executive without charge and without trial is not illegal, as long as it is not punishment, which may suggest otherwise. Liberty is the most basic of human rights. The very notion that the Executive can deprive people of their liberty in the circumstances in *Al-Kateb* is profoundly shocking. Only time will tell whether this country will be moved to entrench fundamental human rights in its Constitution.

How do criminal trials in civil law jurisdictions differ from ours?

In a criminal trial in France the judge or judges (usually three in serious cases, sitting with a jury of nine) engage in an enquiry as to what occurred in relation to the crime - much as a coroner does in our system, when investigating a death. The lawyers, particularly the defence lawyer, play a lesser role than they do in a common law criminal trial where the only question to be determined is whether the prosecution has proved the accused's guilt of the crime with which he is charged.

This method does not seem to lead to a less just result. In fact, as far as comparisons are valid (and that is not very far), conviction rates appear comparable to ours.

While attitudes to crime might be similar around the world, sentences handed down in Europe, or at least France, are generally much shorter than those imposed in Victoria.

We incarcerate people who have demonstrated anti-social behaviour with others of similar disposition in gaols which, of their nature, are violent, hierarchical, closed societies, where force rules - the antithesis of what we expect, or at least hope, of our ordinary communities. And then we expect that, upon a prisoner's release, sometimes after many years living in such conditions, he will somehow become a responsible, non-violent, law-abiding contributor to a just society, and not re-offend. It is no surprise that rates of recidivism are so high and this is without taking into account the fact that many people in gaol, perhaps most, have mental and psychological problems which a custodial sentence

cannot in any way address. It's a fallacy of the system that the same mechanism, full-time incarceration in closed prisons, can be effective to change a diverse range of behaviours, from sexual violence to tax-fraud, without distinction.

Many Australians were shocked last year when Norwegian mass-murderer, Anders Breivik, received a sentence of 21 years in prison, the maximum penalty that can be given in Norway. It is impossible to imagine such a lenient sentence here for the perpetrator of 77 killings.

A lot depends on how the sentence of 21 years is viewed. Is it to be 21 years of punishment, 21 years of rehabilitation, or 21 years of separation from the rest of society? I suspect the Norwegians would have an answer to this. Here, maximum sentences are fixed by Parliament, responding to what is perceived to be public opinion - informed or otherwise - often on the simplistic principle that the longer the sentence the greater the deterrent effect. The construction of a new prison by a government, applauded by some, I would see more as an acknowledgement that society has, once again, failed to grapple with the underlying causes of crime, at vast expense to the public purse - an expense largely unexamined in terms of its usefulness.

The common law, unlike the civil law, is the product of evolution and experience. Generally, it works. However, criminal sentencing is one area in which delusion prevails - the delusion of deterrence. Visceral reactions and political expedience are often the over-riding drivers.

In European countries it is very rare for anyone to be appointed a judge after the age of 35. To us, this seems absurdly young.
Yes, our system places a premium on age and experience, including, generally, experience as a practising lawyer. By contrast, civil law judges don't see themselves in quite the same way. They are career judges, pursuing a specific vocation.

In France, judicial decisions tend to be succinct and free of detailed reasoning. This might be connected to the fact that in civil law systems decisions are made on a case by case basis; precedent not playing the role it does in our system. Case law is subordinate to the Code; judicial decisions are application of the law, not part and parcel of the law.

Courts in Europe also tend to lack the formality of Australian or English courts. It is not unusual, for example, to see barristers dressed in jeans and sneakers under their gowns. It appears not to be expected that those in court will stand when judges enter the courtroom, nor is there any tradition of bowing to the Court. The judge has no honorific title (such as ‘Your Honour’). She is referred to in France simply as ‘Madame le Juge’.

One common feature we share with Europe is that judges wear robes (without wigs) which, on close examination bear a striking similarity to ours - a vestige perhaps or our common origins a long time ago.

Bernard Bongiorno AO

INTERNATIONAL ARBITRATION IN AUSTRALIA – MAJOR DEVELOPMENTS WITH THE UNCITRAL MODEL LAW

By Peter Willis, Committee ILA (Victorian Chapter)

An otherwise prosaic cross-border distributorship arbitration, between a Chinese manufacturer and its Australian exclusive distributor, has set off an avalanche of legal proceedings that have explored a wide range of issues under the *International Arbitration Act 1974* (Cth) (IAA).

These proceedings have practical implications for Australian companies involved in international commerce, legal advisers and law reformers. In the first article, Albert Monichino SC and Professor Luke Nottage describe the enforcement proceedings in the Federal Court. In our second article, Dr Stephen Tully discusses a constitutional challenge to the IAA which was unanimously dismissed by the High Court of Australia on 13 March 2013.

Background[1]

A Chinese company, TCL Air Conditioner (Zhongshan) Co Ltd (TCL), concluded an exclusive distribution agreement with an Australian one, Castel Electronics Pty Ltd (Castel). Disputes were to be submitted to arbitration. Castel claimed that TCL sold products in Australia in breach of Castel's right to sell air conditioners manufactured by TCL. Castel submitted claims totalling over $30 million. A ten-day hearing was conducted in Melbourne before Dr Gavan Griffith AO QC, Alan Goldberg AO and Peter Riordan SC (the tribunal).

Two awards required TCL to pay Castel some $3 million plus $732,500 costs. TCL refused to pay. Our first article describes what happened next, when Castel sought enforcement of the arbitral awards before the Federal Court of Australia. The Federal Court found it had jurisdiction under the IA Act to do so.[2] TCL unsuccessfully sought to set the awards aside as contrary to Australian public policy because the Tribunal, when assessing Castel's losses, allegedly breached the rules of natural justice.[3] Again, orders were made against TCL.[4] TCL appealled and was ordered to pay security for costs.[5] TCL has belatedly provided security for costs, and the appeal has now been set down to hearing in November 2013.

Meanwhile, as our second article discusses, TCL brought an application in the original jurisdiction of the High Court under s 75(v) of the Constitution for writs of prohibition and certiorari directed to the judges of the Federal Court to prevent the enforcement proceeding, arguing that the jurisdiction conferred on the Federal Court in an application under Art 35 of the Model Law is incompatible with Ch III of the Constitution.[6]

[1] Adapted from Dr Tully.

[2] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd* (2012) 201 FCR 209; [2012] FCA 21.

[3] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd (No 2)* [2012] FCA 1214.

[4] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd (No 3)* [2012] FCA 1282.

[5] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd* [2013] FCA 131.

[6] *TCL Air Conditioner (ZhongShan) Co Ltd v The Judges of the Federal Court of Australia & Anor* [2013] HCA 5. See also James Renwick, 'International Arbitration in Australia Saved' (2013) 51(5) *Law Society Journal*; James Renwick and Scott Robertson 'UNCITRAL Model Law Confirmed to be Compatible with Australia's Constitution' (2013) 79 *Arbitration* (forthcoming).

Blowing Hot and Cold on the *International Arbitration Act*: Three Waves of Litigation in the *Castel v TCL Air Conditioner* Dispute

By Albert Monichino SC and Dr Luke Nottage[7]

Two recent judgments by Murphy J in the Federal Court of Australia (currently on appeal to the Full Court)[8], related to a cross-border distributorship arbitration, have practical implications for Australian companies involved in international commerce, legal advisers and law reformers. The dispute has also generated other litigation, including a constitutional challenge to the *International Arbitration Act 1974* (Cth) (IAA) which was unanimously dismissed by the High Court of Australia on 13 March 2013.[9]

[7] Albert Monichino SC is a Member of the Victorian Bar and New South Wales Bar Association. Dr Luke Nottage is Professor of Comparative and Transnational Business Law, Associate Dean (International), Sydney Law School.This commentary is based on their article, with the same title, published in the (NSW) *Law Society Journal* (May 2013) 56-9.

[8] On 12 July 2013 the appeal from Murphy J's judgments was set down for hearing before the Full Court of the Federal Court on 4 November 2013, after TCL belatedly provided security for costs of the appeal ordered on 26 February 2013.

[9] *TCL Air Conditioner (ZhongShan) Co Ltd v The Judges of the Federal Court of Australia & Anor* [2013] HCA 5. See James Renwick "International Arbitration in Australia Saved" (June 2013) 51(5) *Law Society Journal* forthcoming; James Renwick and Scott Robertson "UNCITRAL Model Law Confirmed to be Compatible with Australia's Constitution" (2013) 79 *Arbitration* forthcoming.

Background

On 6 July 2010, the *International Arbitration Amendment Act 2010* (Cth) introduced the first major amendments to the since 1989, when the IAA adopted the UNCITRAL Model Law on International Commercial Arbitration (ML) as the core arbitral law for international arbitrations seated in Australia.[10] A major aim of the amending Act was to promote Australia as a hub for cross-border dispute resolution in the Asia-Pacific region, given the burgeoning international arbitration caseloads in Singapore and Hong Kong.[11]

In 2010, Justice Keane (the then Chief Justice of the Federal Court) commented extra-curially that there was a shift in Australian courts, in conjunction with reforms underway to arbitration legislation at both federal and state or territory levels, towards greater judicial support and less judicial intervention in the arbitral process.[12] The awaited decisions in the cross-border contractual dispute will help establish whether or not this observation is maintainable. They will also provide an important signal to arbitration users in the Asia-Pacific region as to whether Australia is an 'arbitration-friendly' jurisdiction.

[10] See generally Albert Monichino, Luke Nottage and Diana Hu, 'International Arbitration in Australia: Selected Case Notes and Trends" (2012) 19 *Australian Journal of International Law* 181, longer version also at http://ssrn.com/abstract=2133763.

[11] Luke Nottage and Richard Garnett, 'Introduction' in Luke Nottage and Richard Garnett (eds), *International Arbitration in Australia* (Federation Press, 2010) 1.

[12] PA Keane, 'Judicial Support for Arbitration in Australia' (2010) 34 *Australian Bar Review* 1, 2.

The dispute involved an Australian distributor (Castel) and a Chinese manufacturer (TCL), which had entered into an exclusive distribution agreement for TCL's air conditioners, governed by Victorian law and providing for arbitration in Victoria. Castel alleged a breach due to TCL selling them in Australia other than under the TCL brand name (OEM products). It commenced arbitration in July 2008. On 23 December 2010 a distinguished arbitral tribunal issued a detailed award for A$2.8m in damages plus costs (assessed at $732,500 in a further award of 27 January 2011) in favour of Castel. It then sought to enforce these awards in the Federal Court of Australia under Chapter VIII of the ML, given the force of law by s 16 of the IAA.

A 'legislative black hole'

In a first judgment,[13] Murphy J ruled against TCL's argument that the Federal Court lacked jurisdiction to enforce an international arbitration award made in Australia (labelled a 'non-foreign award').[14] The IAA had not expressly listed the Federal Court as having jurisdiction to enforce such an award under ML Chapter VIII (Arts 35–36). Nevertheless, Murphy J interpreted the *Judiciary Act 1903* (Cth) to be applicable in this situation, thus conferring jurisdiction on the Federal Court.[15]

His Honour, in obiter dicta, suggested that the new s21 of the IAA, introduced as part of the amendments in 2010, was designed to ensure that all international arbitrations with their seat in Australia would be exclusively governed by the ML and, further, was intended to have retrospective effect – thereby applying to international arbitration agreements concluded before 6 July 2010 where the parties had (expressly or impliedly) excluded the ML, as permitted by the old s 21 in force prior to the 2010 amendments. However, the Court of Appeal of Western Australia did not approve this dicta.[16] To the contrary, it opined, also in obiter, that the new s 21 was intended to have prospective effect. That view accords with earlier arguments by one of the present authors.[17]

If the new s 21 does not have retrospective effect, however, practitioners should be aware that a 'legislative black hole' results. That is, no comprehensive statutory support[18] exists for:

(a) an international arbitration agreement (say, between Australian and Chinese parties);
(b) concluded before 6 July 2010;
(c) where the parties have excluded the operation of the ML (most usually by selecting a state or territory Commercial Arbitration Act (CAA) as the arbitral law); and
(d) they have agreed that the seat of the arbitration is an Australian state or territory that has repealed its old CAA (which would have otherwise extended to such an international arbitration agreement) and replaced it with a new CAA (expressed only

[13] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Company Ltd* [2012] FCA 21 (23 January 2012).

[14] This is to be contrasted with a 'foreign award' (an award made outside of Australia in an international arbitration) and a 'domestic award' (an award made in Australia in a domestic arbitration).

[15] For a further summary of the judgment and reasoning, see Albert Monichino and Alex Fawke, 'International Arbitration in Australia: 2011/2012 in Review' (2012) 23 *Australian Dispute Resolution Journal* 234.

[16] *Rizhao Steel Holding Group Co Ltd v Koolan Iron Ore Pty Ltd* (2012) 262 FLR 1.

[17] Nottage and Garnett, above n 3, 27–8; Richard Garnett and Luke Nottage, 'The 2010 Amendments to the International Arbitration Act: A New Dawn for Australia?' (2011) 7 *Asian International Arbitration Journal* 29.

[18] For example, for a court to issue a subpoena (to give evidence or to produce documents in aid of an arbitration), to hear challenges to arbitrators, or to set aside or enforce an arbitral award.

> to apply to domestic arbitration agreements).[19]

There is a risk that some parties facing claims under contracts containing such international arbitration agreements may seek to take advantage of this black hole to avoid arbitration in favour of litigation or a favourable negotiated settlement.

Legislative reform to fix this problem is clearly desirable. One proposal is to:

> (a) amend the IAA to clarify that the new s 21 is not intended to have retrospective effect (so the parties' agreement, if any, to exclude the ML remains effective): and
>
> (b) amend the new CAA legislation by (i) reinstating the old CAA provisions for the above category of international arbitration agreements, or (ii) adding that the new CAA provisions (based on the Model Law provisions) cover such agreements.[20]

An alternative reform option is to amend the *IAA* to clarify that the new s 21 is instead intended to have retrospective effect.[21] This is simpler to implement because the new CAA statutes then do not require further amendment. On the other hand, this pragmatic option is less attractive to those who generally dislike legislation having retrospective effect.

Contesting awards as contrary to 'natural justice'

Having found that the Federal Court had jurisdiction, Murphy J entertained TCL's application to set aside the Awards due to violation of 'public policy' under ML Art 34, and Castel's separate application to enforce the Awards. In a second judgment,[22] Murphy J dismissed TCL's application to set aside the Awards and granted Castel's enforcement application.

TCL's key contention concerned the Tribunal's assessment of Castel's loss arising from TCL's sale of OEM products in Australia. Castel's expert witness (A) adopted a substitution ratio of 1:1 (or 100%) between TCL branded products and OEM products. The Tribunal found that A lacked sufficient expertise and therefore rejected his opinion as to substitutability. TCL relied on an expert witness (B) who opined that Castel could have expected to pick up a maximum of about 7.4% of the sales of OEM products as extra sales of TCL branded products. However, B conceded that he relied on incomplete data. The Tribunal found (and the Court accepted) that B's estimate as to the degree of substitutability was not reliable. Having regard to other lay evidence (not considered by B,

[19] The old uniform CAA legislation is being repealed and replaced with new Commercial Arbitration Acts, based on the Model Law, since October 2010. See for example *Commercial Arbitration Act 2010* (NSW); *Commercial Arbitration (National Uniform Legislation) Act 2011* (NT); *Commercial Arbitration Act 2011* (SA); *Commercial Arbitration Act 2011* (Vic); *Commercial Arbitration Act 2011* (Tas); *Commercial Arbitration Act 2012* (WA); *Commercial Arbitration Act 2013* (Qld). The new CAA legislation is not yet fully in force in some jurisdictions (eg WA) and has not yet been introduced into the ACT Parliament.

[20] Richard Garnett and Luke Nottage, 'What Law (If Any) Applies to International Arbitration in Australia?' (2012) 35(3) *UNSW Law Journal* 955, also at http://ssrn.com/abstract=2063271.

[21] Albert Monichino, 'The Temporal Operation of the New Section 21 – Beware of the Black Hole' (December 2012) *ACICA News* 25-32, via http://acica.org.au/assets/media/news/ACICA-News-Dec12.pdf.

[22] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd (No 2)* [2012] FCA 1214 (2 November 2012).

and which contradicted some of the assumptions made by him), the Tribunal concluded that Castel's lost sales were 22.5% of sales of the OEM products in Australia, and assessed damages accordingly.

While it appeared to be common ground between the parties before the Tribunal that the assessment of Castel's lost sales was not amenable to precise calculation, TCL contended that upon rejecting A's expert evidence, the Tribunal was bound to accept B's evidence. TCL objected that the Tribunal instead plucked the 22.5% figure 'from the air' (at [135]). TCL contended that two rules of natural justice (and public policy) were thereby violated when making the Award:

> (1) a breach of the 'no evidence' rule, at [103]ff – that is, no evidence supported the factual findings made by the Arbitral Tribunal in connection with the assessment of Castel's loss; and
>
> (2) a breach of the 'hearing' rule, at [157]ff – that is, TCL was not afforded a reasonable opportunity to address the relevant findings made by the Tribunal, allegedly not based directly on evidence or arguments put before it.

Murphy J first considered the general principles relating to the concept of 'public policy' in the IAA, holding:

> 1. Where enforcement of an award is sought before a Court at the arbitral seat, 'public policy' has a similar meaning in relation to both an application to set aside the award and one to enforce the award (at [123]).
>
> 2. The plain words of IAA s 19(b)[23] are that 'any' breach of natural justice[24] will render an award in conflict with, or contrary to, the 'public policy' of Australia for the purposes of ML Arts 34 and 36 (at [29]). However, Murphy J at [30] noted that:
>
> - it is difficult to see how a minor breach of the rules of natural justice should operate so as to render an award in breach of 'public policy';
> - such an approach is arguably not consistent with the interpretative requirements laid down in IAA s 39(2); and
> - such an approach is not consistent with the IAA's pro-enforcement bias.
>
> 3. The Court will only exercise its discretion sparingly to set aside, or refuse enforcement of, an award, and only where it is satisfied that fundamental notions of fairness or justice have been offended (at [34]).
>
> 4. The Court should adopt a (detailed) review sufficient to determine whether there had been a relevant breach of the rules of natural justice (at [60]). Murphy J rejected TCL's argument for a broad review, examining the facts afresh and revisiting in full the questions before the Tribunal. Castel had advocated only a limited review. Murphy J at [53] accepted that a balance needed to be struck.

The Court proceeded on the basis that breach of the 'no evidence' rule violates the rules of natural justice, but it acknowledged at [104] that TCL faced a significant hurdle in proving such a breach. Murphy J rejected its contention and concluded that the Tribunal had acted on rationally probative evidence in arriving at the figure of 22.5%. He held that the Tribunal was entitled to have regard to the fact that TCL's expert based his opinion on incomplete data, and had not taken into account

[23] Similar to s 8(7)(a) of the IAA, which applies to the enforcement of foreign awards in Australia

[24] IAA s 19(b) defines 'public policy' under ML Arts 34 and 36 to include a breach of the rules of natural justice occurring in connection with the making of an award.

certain lay evidence which pointed to a figure higher than 7.4%.[25]

Regarding the 'hearing' rule, Murphy J noted at [159] that numerous judgments have applied it in the context of arbitral hearings. He accepted that the overriding objective was to avoid surprise. Thus, an arbitrator is not entitled to decide a matter by taking into account evidence or arguments extraneous to the hearing without giving the parties notice and an opportunity to respond. This includes basing a decision on the arbitrator's own opinions and ideas, if they are not reasonably foreseeable as potential corollaries of the opinions and ideas traversed during the hearing. Murphy J concluded at [175]-[6] that a reasonable litigant in TCL's shoes would have understood the possibility of the reasoning of the type that led to the Tribunal's findings – in particular, rejecting TCL's substitution rate of 7.4% and adopting a higher substitution rate.

Accordingly, the Court rejected TCL's contention that there had been a breach of the rules of natural justice in connection of the making of the Award. In any event, Murphy J noted that any breach of the rules of natural justice that might be found was minor, and certainly not one that could be described as offending fundamental notions of fairness or justice. He therefore was not persuaded that a case had been made out for the exercise of his discretion to set aside the Award, even if a breach of the rules of natural justice had been established (at [178]).

Turning to Castel's application for enforcement, the Court noted that under ML Art 35, Castel needed only to produce the original (or copy) of the Award to a competent court, and that it had done so. As the Court had rejected TCL's arguments that there had been a breach of the 'no evidence' rule or the 'hearing rule', it held at [185]-[6] that there was no compelling reason why the Award should not be enforced.[26]

In our view, this second judgment in the Castel dispute is generally positive. However, it is regrettable that the Court did not display a more 'hands off' approach and was drawn into a detailed review of the Arbitral Tribunal's findings of fact. Murphy J himself expressed some concerns at [61] that his review may have been over-extensive, paying 'insufficient respect to the Tribunal's findings and too little regard to the principles of certainty and finality of awards'.

Further, it is questionable whether a 'no evidence' rule forms part of the rules of natural justice as recognised by Australian law.[27] Certainly, the supposed rule should not be used as a platform for a backdoor attempt to review arbitrators' factual findings.

There is also serious doubt about the suggestion that IAA s 19(b) might be interpreted as allowing 'any' breach of the rules of natural justice to violate 'public policy'. In contrast, it has been held in New Zealand that only a serious breach of the rules of

[25] In particular, there was evidence that the Castel dealership network was being directly targeted by those for whom TCL had manufactured OEM products, such that the impact of the sale of OEM products in Australia fell disproportionately on Castel (as opposed to other sellers).

[26] Murphy J reiterated at [187] that any breach of the rules of natural justice was a minor one that did not justify the exercise of his discretion to resist enforcement.

[27] Cf eg *Gas & Fuel Corporation of Victoria v Wood Hall Ltd & Leonard Pipeline Contractors Ltd* [1978] VR 385, where Marks J said (at 399) that a finding of fact in the absence of logically probative evidence does not of itself amount to a breach of the rules of natural justice, unless *in addition* it can be said that the error of fact was capable of arousing a reasonable suspicion in the mind of a fair-minded observer that the arbitrator did not proceed with the task with a fair and unprejudiced mind. This is a higher hurdle than insisting that an arbitrator's decision is supported by logically probative evidence.

natural justice may render an award contrary to the 'public policy' of New Zealand for the purposes of the similarly-worded *Arbitration Act 1996* (NZ).[28]

Despite such concerns, Murphy J's conclusion is undoubtedly correct and does not undermine Australia's attractiveness as a credible seat for international arbitration. More worrying in practice is that other Australian courts may embark on an expansive interpretation of the public policy exception to enforcing foreign arbitral awards, under s 8 of the IAA.[29] This possibility is enhanced if other courts follow Murphy J's view (at [123]) that public policy has similar contours whether enforcing awards from international arbitrations with their seat in Australia or abroad. However, that view may be contestable,[30] and other recent court judgments in Australia have tended to take a narrow interpretation of public policy when enforcing foreign awards.[31]

Unfortunately, there is very little that Australian lawyers can do to minimise risks from expansive court interpretations of the public policy exception to the enforcement of international arbitration awards. Perhaps it is time for the legislator to consider further amendment to the IAA, by reformulating the s 19(b) 'natural justice' gloss on the public policy exception. It might even be removed, given that the concept of 'natural justice' derives from the English common law tradition, and its addition has not been found necessary in many other ML jurisdictions that instead follow the civil law or other major legal traditions.

Conclusion

The two judgments outlined above reach results that might be seen to support international arbitration in Australia. The reasoning is not always convincing, however, and both remain subject to appeal. The constitutional challenge has further added to the delays and costs already incurred in resolving the underlying contractual dispute,[32] and the challenge

[28] *Amaltal Corporation Ltd v Maruha (NZ) Corporation Ltd* [2004] NZLR 614 at [47]. Articles 34(6)(b) and 36(3)(b) of Schedule 1 to the New Zealand statute declare that an award is contrary to public policy if a breach of the rules of natural justice occurred (i) during the arbitral proceedings, or (ii) in connection with the making of the award. See generally David Kawharu and Amokura Williams (eds) *Williams & Kawharu on Arbitration* (LexisNexis, Wellington, 2011) 468, 487-93, 497-502.

[29] A significant number of judgments deal with such applications for enforcement: see Monichino, Nottage and Hu, above n 2 (Figure 1).

[30] For example, it could be argued that an Australian court considering an application to set aside a 'non-foreign award' for public policy, for an arbitration with the seat in Australia, should be *more* cautious given the difficulties that the award creditor will face when seeking to enforce such an annulled award world-wide. By contrast, an Australian court considering not enforcing a foreign award need only consider the impact of non-enforcement in its own jurisdiction.

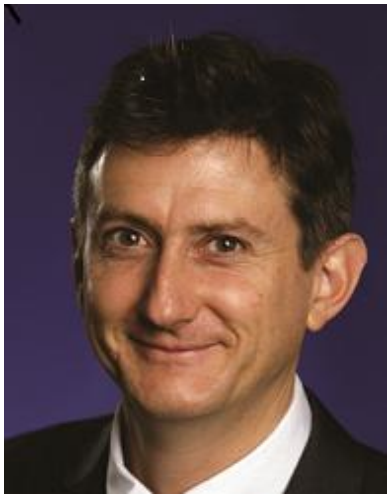
[31] See eg *Uganda Telecom Pty Ltd v Hi-Tech Telecom* (2011) 277 ALR 415; *Traxys Europe SA v Balaji Coke Industry Pvt Ltd (No 2)* (2012) 201 FCR 535. An exception seems to be *Dampskibsselskabet Norden A/S v Beach Building & Civil Group Pty Ltd* (2012) 292 ALR 161, if Foster J's ground for refusing enforcement was indeed public policy. However, the impediment to non-enforcement derived from separate legislation: s 11 of the *Carriage of Goods by Sea Act 1991* (Cth). See further Monichino, Nottage and Hu, above n 2.

[32] The arbitration was commenced over four and a half years ago and the Award as to the merits was rendered over two years ago. The dispute has also given rise to other proceedings. For example, *TCL Airconditioner (Zhongshan) Co Ltd v Castel Electronics Pty Ltd* [2009] VSC 553 (8 December 2009) related to the arbitrators' scope of

itself is not helpful in promoting Australia as an arbitration-friendly jurisdiction.[33]

A common global standard for the enforcement of international arbitration awards is an essential feature of an effective international arbitration system. As Justice Keane has recently noted, international traders (and their advisers) have great freedom to choose their dispute resolution arrangements.[34] They expect high-quality, but minimal, judicial intervention in arbitration. If a jurisdiction does not offer this, they vote with their feet.

Albert Monichino SC



Dr Luke Nottage

jurisdiction. *Castel Electronics Pty Ltd v TCL Airconditioner (Zhongshan) Co Ltd* [2013] VSC 92 (7 March 2013) dealt with service out of Australia of court proceedings relating to a separate claim which, according to the earlier judgment, was beyond the scope of the arbitration agreement. For a full account of these and further proceedings, see Luke Nottage, "International Commercial Arbitration in Australia: What's New and What's Next?", Paper for the Federal Court of Australia / Law Society of Australia "International Commercial Law and Arbitration Conference", Sydney, 22-23 August 2013, with a shorter version forthcoming in 30 (5) *Journal of International Arbitration*, October 2013.

[33] 'High Court Stoush Puts Arbitration Standing at Risk', *The Australian Financial Review*, 16 November 2012, 31.

[34] PA Keane, *The Prospects for International Arbitration in Australia: Meeting the Challenge of Regional Forum Competition or Our House Our Rules.* Paper presented at AMTAC Annual Address (Brisbane, 25 September 2012), http://fedcourt.gov.au/aboutct/judges_papers/Keane-CJ-20120925.rtf viewed 1 March 2013, at pp 16 – 17; now published in (2013) 79(2) *Arbitration* 195.

Is s 16(1) of the *International Arbitration Act* Constitutionally Valid? The High Court Rules

By Stephen Tully[35]

Introduction

The arbitration industry held its breath. Yes, whispered the High Court of Australia. Why?

The background is set out above. In addition to the main battle over enforcement in the Federal Court, separate proceedings were commenced before the High Court.[36] TCL sought constitutional writs to restrain the Federal Court from enforcing the awards and to quash its judgments.

TCL argued that Federal Courts must be able to determine whether arbitrators apply the law correctly. Article 28(1) of the Model Law provides that '[t]he arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties'.[37] An arbitrator's authority under an arbitration agreement is limited to deciding a dispute correctly. Such a term can be implied into every arbitration agreement.

Furthermore, TCL argued, the Model Law contemplates the exercise of Commonwealth judicial power in a manner contrary to Chapter III of the *Australian Constitution*. The Federal Court cannot refuse to enforce arbitral awards where errors of law are apparent on their face.[38] 'Foreign awards' are enforced in Australia 'as if the award were a judgment or order' of the Federal Court with only limited grounds upon which a Court may refuse to do so.[39] A Court would simply 'rubber stamp' the award.[40] This circumstance substantially impaired the Court's institutional integrity.[41]

Lastly, TCL submitted that the Model Law also impermissibly vested the Commonwealth's judicial power in arbitral tribunals by giving them the last word on the law to be applied. Arbitral tribunals exercise both private and public powers.[42] This was again contrary to Chapter III of the *Constitution*.[43]

The Attorneys-General for the Commonwealth, Queensland, South Australia, Victoria, Western Australia and NSW intervened. Submissions were also received from the Australian Centre for International Commercial Arbitration Limited, the Institute of Arbitrators and Mediators Australia Limited and the Chartered Institute of Arbitrators

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[35] All views expressed in this piece are personally attributable to Dr Stephen Tully. The author thanks Bronwen Ewens and Peter Willis for editorial improvements.

[36] The transcript of oral argument is found at *TCL Air Conditioner (Zhongshan) Co Ltd v. The Judges of the Federal Court of Australia and Anor* [2012] HCA Trans 277.

[37] *UNCITRAL Model Law on International Commercial Arbitration*, UN Doc A/40/17 (21 June 1985) art 28(1).

[38] *UNCITRAL Model Law on International Commercial Arbitration*, UN Doc A/40/17 (21 June 1985) arts 35, 36.

[39] *International Arbitration Act*, *1974* (Cth) S 8.

[40] *Brandy v Human Rights and Equal Opportunity Commission* (1995) 127 ALR 1.

[41] *Kable v Director of Public Prosecutions (NSW)* (1996) 138 ALR 577, 631.

[42] *Castel Electronics Pty Ltd v TCL Air Conditioner (Zhongshan) Co Ltd* [2012] FCA 1214.

[43] Citing *R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, 270.

(Australia) Limited as *amici curiae*. All rejected the plaintiff's arguments. And so did the High Court.[44]

The High Court's Judgment

In summary, the High Court held that contemporary Australian policy encourages arbitration and enforces the bilateral bargain struck between private parties as a valuable method for resolving commercial disputes. The recognition and enforcement of arbitral awards could only be denied under the Model Law in limited circumstances. Legal error is not one. Art 28 does not require arbitral tribunals to apply the rules chosen by the parties in a manner that a competent court would determine to be correct. Nor is it an implied term of every arbitration agreement that a tribunal's authority is limited to correctly applying the law.

The Court also concluded, consistent with authority,[45] that an arbitral tribunal's authority to determine a dispute did not involve exercising Commonwealth judicial power. Judicial power involves the exercise upon application of governmental power independently of the consent of those whose legal rights or obligations are determined. The existence and scope of the authority to make an arbitral award, by contrast, is founded upon the voluntary agreement of the parties to an arbitration agreement. True, the subsequent enforcement of an arbitral award by a competent court involves exercising judicial power because it involves determining legal rights or obligations. But the inability of the Federal Court to refuse to enforce an arbitral award does not undermine its institutional integrity. Enforcement is limited to enforcing the binding result of a consensual agreement between the parties to submit their dispute to arbitration rather than any disputed right and does not imply a court's endorsement of an award's legal content. A court can always refuse to enforce an award in a multiplicity of circumstances, including where it conflicts with Australian public policy. Therefore, s 16(1) of the *International Arbitration Act 1974* (Cth) is not constitutionally invalid.

Finally, the common law jurisdiction to set aside an award for error of law apparent on its face is an exception to the general rule that parties must abide by their agreement to accept an arbitrator's determination as final and conclusive.[46] This exception operated in haphazard and anomalous ways, however, and no longer applied.

Conclusion

This was the first case in Australia in which enforcement was sought to enforce an arbitral award under the Model Law. Unsurprisingly, the High Court held that arbitral awards can be enforced, even if there is an error on the face of the record. This circumstance is not repugnant to the Federal Court's integrity because an arbitral award, made in the exercise of a power of private arbitration, does not impermissibly delegate federal judicial power. The consensual nature of private arbitration and the finality of arbitral awards have been affirmed.

[44] *TCL Air Conditioner (Zhongshan) Co Ltd v The Judges of the Federal Court of Australia* (2013) 295 ALR 596. The joint judgment by French CJ and Gageler J is noteworthy for tracing the development of the Model Law by reference to UNCITRAL documents, as permitted by s 17 of the IA Act.

[45] *Construction, Forestry, Mining and Energy Union v Australian Industrial Relations Commission* (2001) 203 CLR 645, 658.

[46] See, eg, *Goode v Bechtel* (1904) 2 CLR 121, 126.

International Economic Law Update

By Kyle Dickson-Smith[47]

The Plain Packaging Dispute

There have been some interesting developments in the ongoing tobacco plain packaging legislation dispute, in various forums. The first is the recent Australian constitutional challenge in the High Court on plain packaging laws. What is the impact on the investor-state and WTO proceedings? The article 'Even Plane for Plain Packaging: Does the High Court Decision Change the Landscape of the International Disputes',[48] highlights how the protections of the investor-state provisions interact with the WTO proceedings and examines the interaction between Australia's domestic jurisdiction and the jurisdiction of international tribunals.

The Renewable Energy Dispute

The vexing issue over how governments can support their renewable energy industry while meeting their international trade obligations was determined in the recent WTO dispute of *Canada Renewable Energy*. [49]

In May, the Appellate Body released its decision, which made the final determination that Ontario's feed-in tariff (FIT) program for renewable energy was inconsistent with the WTO rules.[50] The European Union and Japan argued that Ontario's incentives for green energy discriminated against foreign firms.

In particular, both the EU and Japan argued that the FIT system violated the national treatment obligations under the GATT and the Trade-Related Investment Measures (TRIMs) Agreement by requiring electricity generators to source a quota of goods and services from Ontario**.** The Appellate Body concluded that these local content requirements accorded preferential treatment to products originating in Ontario, in breach of Canada's national treatment obligations under the GATT and the TRIMs Agreement**.**

In making its ruling, the AB rejected Canada's main argument that the local content requirements of the renewable energy generation equipment should be considered as government procurement, which can be exempted from the national treatment obligation. Indeed, this was the first WTO case brought to interpret GATT Article III:8(a) in relation to that exemption.

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[47] Kyle Dickson-Smith *FCIArb.*, is an international lawyer and arbitration counsel at Appleton & Associates International Lawyers, who specialises in trade law and investment treaty disputes, such as the NAFTA. The views expressed in this article are those of Kyle Dickson-Smith and are not attributable to Appleton & Associates. See www.kyledickson-smith.com.

[48] Kyle Dickson-Smith, 'Even Plane for Plain Packaging: Does the High Court Decision Change the Landscape of the International Disputes', (2013) The ACICA News http://acica.uberflip.com/i/119113/35.

[49] Appellate Body Report, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* and *Canada – Measures Relating to the Feed-In Tariff Program*, WTO Docs WT/DS412/AB/R and WT/DS426/AB/R (6 May 2013).

[50] Ibid.

Meanwhile, India's national solar program is also in the WTO spotlight. In February, the US filed a complaint over India's local content requirement, claiming that the program discriminates against foreign equipment manufacturers.[51] That case is currently in the consultations phase. India itself has raised concerns before the Subsidies and Countervailing Measures (SCM) Committee as to the US government's support to US renewable energy producers and its consistency with the GATT, TRIMs, and SCM Agreements. China, too, is challenging the domestic content requirements under the renewable energy programs of Greece and Italy. The AB's interpretation of GATT Article III:8(a) in *Canada Renewable Energy* will assist with any determinations to be made in these disputes.

Emphasising the crucial role of renewable energy, the outgoing WTO Director-General recently called for further dialogue on how the current international trade rules should adapt to the increase in global demand for energy.[52]

Kyle Dickson-Smith

[51] Office of the United States Trade Representative, 'United States Challenges India's Restrictions on U.S. Solar Exports' (Press Release, 6 February 2013).

[52] Pascal Lamy, 'Lamy calls for dialogue on trade and energy in the WTO'(Speech delivered at the Workshop on the Role of Intergovernmental Agreements in Energy Policy, Geneva, 29 April 2013).

On Twitter?

Stay up to date with international law news through the Australian Chapter's new International Law Association Twitter Account.

Go to https://twitter.com/ILA_AB

Want to contribute?

To contribute articles, opinion pieces, interesting cases or events and opportunities please contact the editor, Bronwen Ewens, at bcewens@gmail.com

International Law Blogs and Websites

The editor's blog roll of recent commentary on topical international legal issues

UKSC Blog
http://ukscblog.com

This blog was conceived by solicitors and barristers specialising in litigation and having an interest of the work of the UK Supreme Court, which succeeded the House of Lords as the country's highest appellate court in 2009. It includes features (example: profiles of UK Supreme Court justices, updates from supreme courts around the world), news, case comments and summaries of recent judgments.

UK Human Rights Blog
http://ukhumanrightsblog.com

The UK Human Rights Blog aims to provide a comprehensive and balanced human rights legal update service. It aims to present both sides of the argument on issues which are often highly controversial. The blog was launched in 2010 and has had close to two million hits. In its first year, the blog was shortlisted for the Justice Human Rights Awards. It features regular human rights roundups, the **'**Royal Variety Show of human rights news' as well as case commentaries.

International Commercial Law Blog
http://www.internationalcommerciallawblog.com

This blog aims to foster discussion about international commercial law. Focusing on the new challenges and opportunities presented by European Union actions, it also examines practical aspects of cross border transactions and day-to-day operations of business and industries in the global context. The focus is on the International Sale of Goods, Competition, Conflict of Laws and IP.

Legal Frontiers: McGill's Blog on International Law
http://www.legalfrontiers.ca

Recent articles have included: 'Is the Australian Model the Future for Investor-State Arbitration?', a critique of the EU-India Free Trade Agreement and The International Court of Justice's recent decision on the *Jurisdictional Immunities of the State Case (Germany v. Italy)*,which reaffirmed traditional concepts of sovereign immunity in public international law.

International Law Observer
http://www.internationallawobserver.eu/

This blog is the brainchild and work of a group of international law researchers. It features reports and commentary of topical issues of public international law and EU law.

Message from the President of the ILA (Australia)

The President of the ILA (Australian Branch), Dr Christopher Ward, congratulates the Victorian Chapter for its recent initiatives and continued activities.

Dr Ward recently returned from the May meeting of the Executive Council of the ILA in London. He reports that the ILA continues to thrive under the Chairmanship of the Honourable Lord Mance and the Director of Studies Professor Marcel Brus. Of note was the lengthy discussion of the 2014 ILA Biennial Conference which is to be held in Washington, USA in April 2014. The Washington Conference is unusual since it is being held as a joint function with the American Society of International Law annual conference. Very large numbers of the world's leading practitioners and scholars are expected to what is certainly going to be an extraordinary week of international law.

The Australian Branch continues to have very significant involvement in the work of the ILA and in particular is well represented on the international committees of the Association, with members serving actively and also holding roles of Chair and Rapporteur on several committees. Domestically, State Chapters, including the Victorian Chapter, are continuing to advance the objectives of the ILA and represent a dynamic future for the Association.

ILA Global HQ Newsletter

Members can access past issues of Newsletters from ILA headquarters in the United Kingdom. Covering news relating to international law, cases in the area, events and opinion, up to 28 past editions of this highly readable publication are available. Click on this link for instant access.

Interested in getting involved in the ILA?

1. Become a member of the ILA – information is available on our website at http://www.ila.org.au/index.htm
2. Attend our meetings – email kellyaforbes@gmail.com to find out about the next ILA Victorian Chapter meeting.
3. Contribute to the newsletter – contact bcewens@gmail.com
4. Contribute to the Australian Journal of International Law http://www.ila.org.au/publications_journal.htm
5. Attend our events – over the next 12 months we will be hosting a number of events on topical areas of international law.
6. Contact us - email kellyaforbes@gmail.com to let us know you are interested in getting involved.

International Law Events

'Challenging Life Sentences for Children – American and International Perspectives'

Last year, the United States became the last country to end the practice of sentencing children to mandatory life imprisonment, when, in *Jackson v. Alabama*, the US Supreme Court held that these sentences were cruel and unusual punishment, providing thousands of children with their first opportunity of parole.

Sophie Walker is Research Fellow in defamation and privacy law at the Centre for Media and Communications Law at Melbourne Law School. Prior to moving to Melbourne, Sophie worked at Reprieve UK, and for the Equal Justice Initiative of Alabama with Melbourne Law School Senior Fellow, Bryan Stevenson, representing children sentenced to life without parole and preparing appellate briefs for indigent prisoners on Alabama's death row.

Drawing on her experiences working as a junior lawyer on this case, Sophie Walker will examine the litigation strategy that led to *Jackson*, the developing Supreme Court jurisprudence on juvenile justice and the impact the decision has had on children serving these sentences in adult prisons.

Date: Friday, 23 August 2013
Time: 1.00 - 2.00pm (lunch provided from 12.45pm)
Venue: Room 609, Level 6, Melbourne Law School, 185 Pelham Street Carlton
Registrations Essential

Enquiries: Vesna Stefanovski law-iilah@unimelb.edu.au or (03) 8344 6589

'The Law of the Sea and South China Sea Disputes' by Donald R. Rothwell

Donald R. Rothwell is Professor of International Law and Head of School at the ANU College of Law, Australian National University, where he has taught since July 2006. His research has a specific focus on the law of the sea, the law of the polar regions, and the implementation of international law within Australia as reflected in over 160 articles, book chapters and notes in international and Australian publications.

Date: Monday, 2 September 2013
Time: 5.45pm (for a 6.00pm start) to 7.00pm
Host: Herbert Smith Freehills - Level 42, 101 Collins Street, Melbourne
Audience: Open to the public
RSVP: by 28 August 2013 to rsvp.ila.vic.chapter@gmail.com (Please note that an RSVP is necessary for this event)

IILAH Public Seminar with Dr Devika Hovell

Dr Devika Hovell of the London School of Economics (LSE) will speak about the Security Council.

Devika Hovell joined LSE in 2012 as a Lecturer in Public International Law. She holds a doctorate from the University of Oxford and a Master of Laws from New York University, where she was awarded the George Colin Award. Devika graduated from the University of Western Australia with a Bachelor of Arts and a Bachelor of Laws with First Class Honours.

Date: Wednesday, 11 September 2013
Time: 1.00 - 2.00pm
(Light lunch provided from 12.45pm)
Venue: Melbourne Law School, 185 Pelham Street Carlton
Enquiries: Vesna Stefanovski, (03) 8344 6589 or via email vesnas@unimelb.edu.au