



**British Institute of
International and
Comparative Law**

The Revolution in Foreign Relations Law
in the UK and other Commonwealth Jurisdictions
Arthur Watts public international law
seminar series sponsored by Volterra Fietta

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On 7 October 2014, the British Institute of International and Comparative Law (BIICL) hosted the event **'The Revolution in Foreign Relations Law in the UK and other Commonwealth Jurisdictions'** as part of the Arthur Watts public international law seminar series, sponsored by Volterra Fietta. The panel was chaired by Lord Collins of Mapesbury, former justice UK Supreme Court, and was composed of three speakers, Professor Campbell McLachlan QC (Victoria University of Wellington), Richard Hermer QC (Matrix Chambers) and Iain Macleod (Foreign and Commonwealth Office).

Jill Barrett, the Institute's Arthur Watts Senior Research Fellow in Public International Law, introduced the event. She remarked that Sir Arthur Watts had an extraordinary gift for identifying little-known areas of law and realising they were going to become very important. In 1966, he co-authored *The Legal Effects of War* with Lord McNair, stating in the preface that 'we are primarily concerned with English law (including what is gradually gaining recognition as a distinct branch of English law, namely, our foreign relations law)'.¹ As such, he paved the way for the subject to be recognised as a component of English law, and it has now been comprehensively covered in Professor Campbell McLachlan's new book, *Foreign Relations Law*.² Jill Barrett introduced Lord Collins as chair, highlighting his ongoing work with the UK Supreme Court and Court of Final Appeal in Hong Kong, as well as in international arbitration.

Lord Collins began by reflecting on the teachers and colleagues who had stimulated his interest in the subject of foreign relations law, including Clive Parry, former Professor of International law at Cambridge University, and Louis Henkin, Reporter for the *Restatement Third of Foreign Relations Law of the United States*.³ He then shared some of his most vivid memories of the notorious *Buttes* case,⁴ which he described as 'our greatest defeat in this area'. Lord Collins went on to introduce the three speakers and congratulate Professor McLachlan on the publication of his new book on this topic.

Professor Campbell McLachlan QC

Foreign relations law is an area traditionally marred by problems of classification – is it international law or constitutional law or some kind of amalgam of the two? According to Professor McLachlan, foreign relations law is the law governing the external exercise of the public power of the state within the domestic polity. Professor McLachlan suggested that thinking in this area has been hindered by theories of what he calls 'exclusionary doctrines', such as the act of state doctrine. Foreign relations law is an issue of great contemporary salience that has attracted the attention of all three organs of government.⁵ While Professor McLachlan stopped short of calling these developments a 'revolution', he noted that the Anglo-Commonwealth countries covered in his study⁶ share a common set of problems that need to be dealt with by a new structure and language. His research has identified a substantial shift towards the distribution of the foreign relations power between the three organs of government and the recognition of the principle of legality in the external exercise of public power. His work advances the idea that foreign relations law performs an allocative function, serving to allocate competence and applicable law in cases involving the external exercise of the public power of states.

¹ Arnold D McNair and Arthur D Watts, *The Legal Effects of War* (4th ed, Cambridge University Press 1966) vii.

² Campbell McLachlan, *Foreign Relations Law* (Cambridge University Press 2014).

³ American Law Institute, *Restatement of the Law Third: The Foreign Relations Law of the United States* (American Law Institute Publishers 1987).

⁴ *Buttes Gas and Oil Co v Hammer* [1982] AC 888.

⁵ See, eg, *Smith v Ministry of Defence* [2013] UKSC 41, [2013] 3 WLR 69.

⁶ Campbell McLachlan, *Foreign Relations Law* (Cambridge UP, 2014); namely the United Kingdom, Australia, Canada and New Zealand.

The idea that foreign relations law is set apart from the rest of the law can be traced back to the writings of John Locke⁷ in the seventeenth century and Dicey in the late nineteenth century.⁸ This idea has significant consequences as it limits Parliament's role to the municipal sphere, places foreign affairs (viewed as an exercise of prerogative power) beyond the reach of the law and excludes foreign relations from scrutiny by the judicial branch. Until recently, it also excluded the conduct of foreign states from the jurisdiction of domestic courts through the doctrines of sovereign immunity, foreign act of state and non-enforcement of foreign penal, revenue and public laws.

In recent years, these exclusionary doctrines have lost a lot of their explanatory power because they fail adequately to explain the work the law is expected to do in this area. Professor McLachlan proposed a number of factors which have prompted the reappraisal of these doctrines. The first is the growing domestic impact of international law generally, as it has been shifted centre stage in the consideration of courts and Parliament. Secondly, the external deployment of public officials has become much more routine. There has also been a recognition of the need for extended public law regulation as states have responded to globalisation by moving from a formal to a more substantive concept of territorial jurisdiction.⁹ A further factor is the emergence of the express protection of the individual vis-à-vis the state through the adoption of domestic human rights standards,¹⁰ the general principle of Crown civil liability¹¹ and the judicial function in the protection of the individual.¹² Finally, the position of the foreign state within the domestic polity has become "normalised" through the adoption of the restrictive doctrine of state immunity, much greater admissibility of foreign state claims¹³ and limitations on the extent of the foreign act of state doctrine.

Professor McLachlan argued that a better explanation of the work done by foreign relations law is that it performs an allocative function. This refers to the multidimensional allocation of competence and applicable law between the three organs of government; between sovereign states; and between the national and international systems. Essentially, the doctrines of state immunity and foreign act of state are best conceptualised as methods of allocating jurisdiction – a kind of sorting device. When looking at foreign relations law problems in these terms, it is necessary to disaggregate the issues rather than trying to apply some general exclusionary doctrine in all circumstances. Professor McLachlan submitted that this is the real lesson of both *Al-Skeini* and *Rahmatullah*, in that they look at state conduct in terms of actual conduct of the state and responsibility for that conduct without suggesting that there is some kind of blanket extension of responsibility beyond the borders.

The next question Professor McLachlan addressed is how thinking about foreign relations law problems in terms of allocation might be useful. He suggested that it helps in better understanding the relationship between public international law and national law, as it conceptualises the application of general international law by a national court as a question of choice of laws.¹⁴ Courts are essentially concerned with the question of which is the appropriate system to apply to particular issues depending on the nature of the subject

⁷ John Locke, *Two Treatises of Government* (1690) Book II [145] – [148].

⁸ A V Dicey, *The Law of the Constitution* (Macmillan and Co, 1886).

⁹ *Liangsiriprasert v United States* [1991] 1 AC 225.

¹⁰ *Al-Skeini v United Kingdom* (App No 55721/07, 7 July 2011) 147 ILR 181 (ECtHR GC).

¹¹ Crown Proceedings Act 1947.

¹² *Secretary of State for Foreign and Commonwealth Affairs v Rahmatullah* [2012] UKSC 48, [2013] 1 AC 614.

¹³ *SEC v Manterfield* [2009] EWCA Civ 27; *Iran v Barakat Galleries* [2007] EWCA Civ 1374; *Serious Organised Crime Agency v Perry* [2013] 1 AC 182.

¹⁴ James Crawford, *Brownlie's Principles of Public International Law* (8th ed, Oxford University Press, 2012) 68.

matter.¹⁵ The allocative function of foreign relations law also provides the rationale for, and limits of, the act of state doctrine. (In his opening remarks, Professor McLachlan left this topic to be addressed by Richard Hermer.) Finally, looking at foreign relations law in terms of allocation may help in the area of diplomatic protection as it envisions a common law duty within the national legal system which can work in harmony and not against the rights of the state at international law.

The point of departure that Professor McLachlan takes is that foreign relations are properly a subject of law at the municipal and international level, but this does not mean that they all fall within the jurisdiction of a municipal court, such that it becomes a 'global policeman'. Foreign relations issues may be allocated to the Executive (for example, foreign policy and the negotiation of treaties), to Parliament, to a foreign state in the context of immunity, or to the international legal system itself (for example, the legality of a decision to engage in armed conflict).¹⁶ He affirmed that accepting the idea of foreign relations law as involving allocation and therefore distribution of powers must be motivated by serving the purpose of establishing responsibility and accountability – the central tenets of the principle of legality – not impunity. With the alleged distinction between political and legal disputes in international affairs exposed as false in Hersch Lauterpacht's *The Function of Law in the International Community*, Professor McLachlan concluded by reasserting that the state strengthens, rather than weakens, its essential functions in the field of foreign relations by subjecting them to law.¹⁷

Richard Hermer QC

Mr Hermer's presentation was a reflection on the Foreign Act of State doctrine and the way in which its application forces us to confront awkward yet fundamental questions about the limits of law, the role of courts and the relationship between the courts and the Executive. Historically, cases which have followed the House of Lords' decision in *Buttes Gas*¹⁸ have – Mr Hermer argued – failed to properly grapple with what justiciability really means in the realm of foreign relations.

By way of example, Mr Hermer referred to the recent case of *Belhaj v Jack Straw & Others*, which is currently awaiting judgment from the Court of Appeal.¹⁹ This is a tort claim against the UK Government by two leading opponents of the Gaddafi regime – Mr Belhaj and his wife Ms Boudchar – for its alleged role in a common design to effect the rendition of Mr Belhaj and his wife and obtain intelligence from them via torture. At first instance, Simon J dismissed the claim because of the application of the Foreign Act of State doctrine. He followed the decision of the House of Lords in *Buttes Gas* to conclude that the claim was non-justiciable because it would require assessment of the actions of foreign officials and thereby cause damage to foreign relations.

This judgment has a number of significant implications. It would seem to mean that whenever UK officials are engaged in unlawful activities they enjoy immunity from civil suit where they act in concert with agents of another state, at least where the foreign state would object to their activities being examined by UK courts. It would logically apply not just to acts committed overseas but also in the UK, as it is the damage to foreign relations that is key, not where the events take place. Furthermore, the immunity would apply to virtually any type of subject matter, given that this decision deals with a civil suit for torture. Another implication of Simon J's judgment is that it places the UK in clear breach of its obligations under international law,

¹⁵ *Australian Competition and Consumer Commission v PT Garuda Indonesia (No 9)* [2013] 212 FCR 406.

¹⁶ *R (Gentle) v Prime Minister* [2008] 1 AC 1356.

¹⁷ Hersch Lauterpacht, *The Function of Law in the International Community* (Cambridge University Press, 1933).

¹⁸ *Buttes Gas & Oil v Hammer* [1982] AC 888.

¹⁹ *Belhaj v Jack Straw & Ors* [2013] EWHC 4111 (QB).

such as the right of a victim of torture to a remedy²⁰ and the right to a fair trial,²¹ because it acts as a procedural bar to a fair determination of a victim's civil rights. Moreover, the fact that this is a common law immunity means that the court is in an odd position whereby it could refuse a common law claim because to hear it would damage foreign relations but would be obliged to hear the claim if brought under the *Human Rights Act*.²² The result of this judgment also sits strangely with the actual practice of courts, which routinely examine the acts of foreign states and their officials. For example, in deportation cases findings are made about the use of torture in foreign countries and in criminal cases courts are obliged to consider whether evidence has been tainted by torture.²³ It seems unclear why courts may consider foreign policies and practices in these contexts but may not examine whether UK officials conspired with other states to render and torture. Finally, this judgment places de facto control over access to the court in the hands of the Executive and its assessment of national interest.

In Mr Hermer's view, Simon J's analysis was incorrect for three main reasons. Firstly, it misapplied *Buttes Gas*, developing a wide principle around non-justiciability for the acts of foreign state actors when the real issue in that case, Mr Hermer argued, was that the particular dispute was not one that could be answered by law. *Belhaj*, on the other hand, is about the prohibition on torture and the right to a remedy – both well-established concepts in international and domestic law. The second reason Mr Hermer disagreed with Simon J's decision is because it extended the doctrine to apply to acts of a foreign power outside its own jurisdiction (e.g. a CIA black site in Bangkok) and failed to acknowledge a well-established exception for cases involving human rights.²⁴ Furthermore – and most significantly – it fundamentally misunderstood what notions of non-justiciability mean in the twenty-first century.

Mr Hermer argued that where a claim is properly based upon a violation of a law and there is a right to a remedy established in law, then it is the obligation of the Court to hear that claim irrespective of whether it might be damaging to the national interest or foreign relations. This view is based on two key elements of the rule of law – the idea that everyone (including governments, ministers and secret agents) is governed by law in everything that they do, and that it is the duty of courts to determine properly formulated legal disputes and provide remedies. These principles both come into potential conflict with the application of the Foreign Act of State doctrine as applied in *Belhaj*. He proposed that the concept of non-justiciability has been applied too liberally in the past and is best understood as simply shorthand for the principle that courts will only determine properly formulated claims grounded in domestic law. This explains why a court will generally decline to hear claims by individuals for breach of an unincorporated treaty, or a discretionary claim about drones – these issues do not engage the claimant's domestic law rights. Thus, in a case such as *Belhaj*, it makes little sense to talk of it being non-justiciable given that the claim is properly grounded in law. Furthermore, evidence from the Executive that the claim would be damaging should be deemed legally irrelevant.

This analysis is supported to some degree by the approach of the Supreme Court in the case of *Shergill v Khaira* – a dispute in a Sikh sect which was deemed non-justiciable by the Court of Appeal.²⁵ This decision was overturned by the Supreme Court,²⁶ which took the opportunity

²⁰ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 14.

²¹ *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) art 6.

²² *Human Rights Act 1998* (UK) c 42.

²³ *A v Secretary of State for the Home Department (No 2)* [2005] UKHL 71.

²⁴ *Yukos Capital SARL v OJSC Rosneft Oil Company* [2012] EWCA Civ 855; *Kuwait Airlines v Iraqi Airways Co* [2002] UKHL 19.

²⁵ *Shergill v Khaira & Ors* [2012] EWCA Civ 983.

²⁶ *Shergill v Khaira & Ors* [2014] UKSC 33.

to set out its thinking on what non-justiciability really means. The Supreme Court in *Shergill* recognised two classes of claim that are non-justiciable. The first is a rare category of claims which fall outside the constitutional competence of the court, including certain transactions of states and impeachment of proceedings in Parliament. Mr Hermer suggested that this category would likely be limited to certain state-to-state transactions, not transactions between states and individuals or those impacting upon human rights. The second category of non-justiciable claims is those which are not based upon private legal rights or reviewable principles of public law. This would include, for example, domestic disputes and controversies in international law that involve no private right of an individual. The Court made it clear, however, that where the resolution of a non-justiciable issue is necessary in order to decide some other issue which is itself justiciable, the court must adjudicate on the matter.²⁷ This analysis of non-justiciability provides the only consistent argument that explains why the Foreign Act of State doctrine does not preclude asylum claims or other cases that require consideration of the acts of foreign officials to vindicate domestic law rights. It is therefore, Mr Hermer claims, far more satisfactory than any other explanation for non-justiciability in the realm of foreign affairs.

Mr Hermer concluded by proposing several potential explanations for this change in approach demonstrated in the cases of *Gentle*²⁸ and *Shergill*. He suggested that, firstly, the advent of modern judicial review has produced a very different perception of the relationship between the judiciary and the executive. In addition, the rise in prominence of human rights has changed perceptions of the purposes of international law, including the notion that states owe obligations to all humanity and not just other states. Moreover, events of the past few years – such as secret prisons, officially-sanctioned torture and Guantanamo Bay – were perhaps inevitably going to challenge courts to address the nature of their relationship with the Executive. In essence, this shift simply reflects the notion that the primary obligation of a court is to determine properly founded legal disputes brought in accordance with its own procedural rules. This is consistent with the refusal to hear claims in cases such as *Noor Khan*,²⁹ *CND v Prime Minister*³⁰ and *Al-Haq*³¹ because those claims were found not to have any domestic law foothold.

Iain Macleod

Iain Macleod defined foreign relations law as a set of legal issues straddling international and domestic law and focusing on the regulation of governmental powers in the area of foreign policy. He noted that foreign relations law is increasing in prominence as a distinct area of professional legal practice, particularly in the work of lawyers in the Foreign & Commonwealth Office (FCO). Contrary to the common misconception that FCO lawyers are solely international lawyers, Mr Macleod pointed out that much of the legal advice they provide to the Foreign Office is focussed on the domestic law of the UK and underpinned by international law. Thus, he believes that 'foreign relations law' is the most complete description of the type of work done by the Foreign Office Legal Advisers.

It is worth noting that government lawyers outside of the FCO also apply international law in the framework of domestic rules when engaging foreign policy interests, for example in the areas of environment, transport and criminal justice. Therefore, the day-to-day work of government increasingly requires facility in both international law and domestic law, and it is no longer possible or wise to separate the two. Mr Macleod hypothesised that this development was likely to extend beyond the work of government lawyers to many areas of

²⁷ *R (Abbasi) v UK Secretary of State for Foreign and Commonwealth Affairs* [2003] UKHRR 76.

²⁸ *R (on the application of Gentle) v Prime Minister* [2008] UKHL 20.

²⁹ *R (Noor Khan) v UK Secretary of State for Foreign and Commonwealth Affairs* [2014] EWCA Civ 24.

³⁰ *R (CND) v Prime Minister* [2002] EWHC 2777.

³¹ *R (Al-Haq) v UK Secretary of State for Foreign and Commonwealth Affairs* [2009] EWHC 1910.

domestic legal practice, as growing numbers of barristers and legal firms are now working in foreign relations law. Lord Bingham implicitly made this point in his book on the Rule of Law when he stated that 'the interrelationship of national law and international law, substantively and procedurally, is such that the rule of law cannot plausibly be regarded as applicable on one plane but not on the other'.³² There is therefore a considerable need, as Professor McLachlan argues in his book, for a new legal framework within which the many pressing problems that straddle the divide between the municipal and the international may be analysed.

Prior to the publication of Professor McLachlan's book, foreign relations law was already being practised to a certain extent by FCO lawyers and had been recognised in the writings of FA Mann and Sir Arthur Watts.³³ However, Mr Macleod observed that there has been rapid growth and development in the legal regulation of foreign policy in recent years. The significant changes in this area of law can be demonstrated anecdotally by glancing at the contents of Sir Francis Vallat's book *International Law and the Practitioner*, which was published in 1966.³⁴ The topics Vallat considered to be 'problems of special interest to the practitioner' included Claims and Reciprocal Enforcement of Judgments, neither of which would feature in such a book today. Using the work of the FCO legal team as a guide, the modern emphasis would most likely be on sanctions; the impact of EU legal rules; the enforcement of human rights; and the challenge of international criminal law. According to Mr Macleod, it can therefore be seen that the UK is in a new era of interaction between domestic law and foreign affairs.

Mr Macleod concluded by describing four distinctive features of foreign relations law in practice. Firstly, foreign relations law requires knowledge of and facility in both international and domestic legal principles and techniques as it operates at the boundary between the two. Secondly, comparative law techniques will be essential for wrestling with issues which are in principle common to domestic legal systems but which may be dealt with in different ways by different systems. Thirdly, points of difference may be able to be resolved by mechanisms beyond the courts, such as inquiries and parliamentary processes. Finally, the nature of foreign relations is such that academic experts will have a key role to play alongside professionally qualified lawyers in providing advice on the law.

Discussion

Lord Collins then opened the floor for questions and hypothesised that developments in this area may have been in part a result of an erosion of a culture of deference and an erosion of trust in the integrity of government. He suggested that the problem with *Buttes Gas* was that Lord Wilberforce mistakenly applied the American political question doctrine, which has never been part of English law, instead of the act of state doctrine. Mr Jeremy Carver spoke in defence of the *Buttes* decision, noting that in his opinion it is entirely consistent with Professor McLachlan's allocation theory. Although it has acquired many different layers of confusion, the act of state doctrine came directly from English law in a decision that confirmed that certain things are beyond the competence of English courts.

Dame Rosalyn Higgins pointed out that none of the speakers had addressed the case of *Kuwait v Iraqi Airways*³⁵ and its effect on the *Buttes* principle. Professor McLachlan welcomed the opportunity to explain his views on the act of state doctrine. According to Professor McLachlan, it is clear such a doctrine exists – the important thing is to work out what function

³² Tom Bingham, *The Rule of Law* (Allen Lane (Penguin Group) 2010) 119.

³³ See, eg, Arnold D McNair and Arthur D Watts, *The Legal Effects of War* (4th ed, Cambridge University Press 1966).

³⁴ Francis Vallat, *International Law and the Practitioner* (Manchester University Press 1966) vii.

³⁵ *Kuwait Airlines v Iraqi Airways Co* [2002] UKHL 19.

it actually performs within the legal system and what function it ought to perform. The British act of state doctrine carried a hard-edged allocative function, which was to translate what would otherwise be a domestic claim onto the international plane. By ratifying the acts of the official, the state assumed international responsibility for those acts vis-à-vis other states. With regard to the foreign act of state doctrine, Professor McLachlan agreed with Dame Rosalyn that the whole thrust of judicial decisions since *Buttes* has been to limit its scope. The critical point that has been recognised is that once one determines that the actions under consideration are those of officials of the forum state, the principle of legality mandates that those actions be determined according to municipal law. Mr Hermer added that the *Kuwait* case did figure very large in *Belhaj* due to the human rights exception for the foreign act of state doctrine. However, he viewed *Kuwait* as a choice of law case more than a foreign act of state case.

Professor Robert McCorquodale, Director of BIICL, questioned whether there was a danger in appropriating the American term 'foreign relations law' for the very different political context of the Commonwealth. Professor McLachlan explained that it was a deliberate decision on his behalf to reclaim a term that describes an important area of law and practice and has done so for decades. Mr Macleod added that the use of a new term may be valuable in making people pause and think about what is going on in that area and about the complexity of some of the interrelationships between the international legal framework and the domestic.

In a follow up question, Professor McCorquodale asked whether non-justiciability and act of state are essentially the same thing, given the comments of Lord Justice Rix in the *Yukos* decision.³⁶ Mr Hermer remarked that a trend can be seen in US jurisprudence towards distinguishing the act of state doctrine from ideas around justiciability,³⁷ in a similar vein to the *Shergill* case. What has previously been conceived as non-justiciability in relation to foreign acts of state is, properly understood, simply a shorthand for describing types of cases that do not have a claim with a domestic law right.

Professor Dan Sarooshi enquired whether the approach of the Hong Kong Court of Final Appeal in *FG Hemisphere*³⁸ was consistent with the approach being proposed. Professor McLachlan said that, in his view, the error of the majority in that case had been to accept an executive certificate as binding on it on a question of law (the doctrine of state immunity). The proper scope of such certificates is limited to issues of fact, in particular recognition.

The final question focused on how foreign relations law applies, if at all, to relationships between states and non-state actors, such as corporations and armed groups. Professor McLachlan responded by noting that states continue to be relevant and are important to focus on because they are the means by which we choose to organise ourselves into politically meaningful communities in which the relationship between the local and the international is articulated.

This Report was prepared by Louise McNeil, JD student at Melbourne Law School, during her Research Internship with the Arthur Watts Public International Law programme at the British Institute of International and Comparative Law

³⁶ *Yukos Capital SARL v OJSC Rosneft Oil Company* [2012] EWCA Civ 855.

³⁷ *W S Kirkpatrick v Environmental Tectonics Corp* (1990) 493 US 400.

³⁸ *Democratic Republic of the Congo v F G Hemisphere Associates LLC (No 1)* (2011) 14 HKCFAR 95

Biographies

Chair

Lord Collins of Mapesbury, LLD, FBA, former Justice, UK Supreme Court

Lord Collins was a Justice of the Supreme Court of the United Kingdom from 2009 to 2011, and continues to serve as an Acting Justice of the Court, as well as a non-permanent judge of the Hong Kong Court of Final Appeal. As a judge, he has written several leading opinions in the fields of international litigation and arbitration. He currently practices as an international arbitrator.

He was a partner in Herbert Smith for 30 years, specialising in international law, and in 2000 was the first solicitor to be appointed directly from practice to the High Court bench (Chancery Division). While in practice, he handled many important international cases, including the Laker Airways civil conspiracy case against transatlantic airlines, the Iranian and Libyan bank cases arising out of the US assets freeze and the Pinochet extradition case for the government of Chile. He has been the general editor of Dicey & Morris on *The Conflict of Laws* since its eleventh edition in 1987. Lord Collins is a professor at University College London and Vice-President of the British Institute of International and Comparative Law.

Speakers

Richard Hermer QC

Richard Hermer QC is a barrister at Matrix Chambers with a practice that spans public and private law litigation within both the domestic and international spheres. He was called to the Bar in 1993 and took silk in 2009 after 16 years in practice.

Richard's public international law cases have included some of the most high-profile claims of recent years. He has been involved in many of the major claims emanating from the Iraq conflict, Guantanamo Bay, extraordinary renditions and the United Nations anti-terrorism measures. His cases include many touching on the interface between foreign relations and human rights including *Belhaj v Security Services and Jack Straw* concerning the rendition of individuals to Libya, *Serdar Mohammed v Ministry of Defence*, *Al Jedda v Secretary of State for Defence*, *Jones v United Kingdom* and the Mau Mau litigation. He has also been instructed in cases concerning the application of sovereign immunity and the liabilities of foreign states.

Iain Macleod, the Legal Adviser, Foreign and Commonwealth Office

Iain Macleod was admitted as a solicitor in 1987 and since then has held positions in a number of Government departments. At the Foreign and Commonwealth Office, he worked at the UK Representation to the EC and at the UK Mission to the UN, and was seconded to the Attorney General's Office. Subsequently, he was Deputy Legal Adviser at the Home Office and then Legal Adviser, Central Advisory Division, Treasury Solicitor's Department, before taking up his present post in 2011.

Professor Campbell McLachlan QC

Campbell McLachlan QC is Professor of International Law at Victoria University of Wellington, as well as a New Zealand Law Foundation International Research Fellow and sometime Visiting Fellow at All Souls College, Oxford. He was called to the Bar in 1984 and appointed a QC in 2007.

Campbell is internationally-known for his work on systemic integration in treaty interpretation for the International Law Commission and for his treatise on investment treaty law *International Investment Arbitration: Substantive Principles*. He has published widely on international law and dispute resolution,

giving a special course at The Hague Academy of International Law on Lis Pendens in International Litigation. He has served as President of the Australian and New Zealand Society of International Law and Rapporteur of the ILA Committee on International Civil and Commercial Litigation.

His latest book, *Foreign Relations Law*, was published by Cambridge University Press in August 2014. It is the first modern study of the treatment of the foreign state (and the external powers of the home state) in Anglo-Commonwealth law.

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