addressing our own imperfections.

There is also a double standard in the rejection of international concerns in relation to mandatory sentencing. It is surely inconsistent to say that we live in a globalised world economy and that our financial market places must be open and transparent, and at the same time to reject the inevitable consequences of internationalisation in relation to matters such of human rights.

These altercations with the UN's human rights bodies not only diminish Australia and our capacity to offer credible commentary on matters of international concern, they also threaten the principle of universality of human rights and the integrity of the UN human rights system. It must be in Australia's best interests to assist the United Nations and its bodies in establishing an international rule of law which applies to the powerful, as well as the weak. Whatever the imperfections of the international legal order, we do not advance the international rule of law by heaping scorn on the instruments and bodies of international order.

RECENT DEVELOPMENTS

Appeals from the Court of Arbitration for Sport

Angela Raguz v Rebecca Sullivan & Ors [2000] NSWCA 240

By Robert Glasson

Ms Rebecca Sullivan competed in the women's under 52kg judo category at the Sydney Olympics after the Court of Appeal (Spigelman CJ and Mason P, Priestley JA agreeing) declined to adjudicate in a dispute concerning her selection in the Australian Olympic team. In doing so, the Court considered:

- the law as to multipartite agreements;
- the arbitral role of Court of Arbitration for Sport ('CAS');
- the concept of the juridical 'seat' or 'place' of arbitration as distinct from the place of hearing of an arbitration; and
- the changing attitudes of judges and the common law towards arbitration generally and in particular to arbitration agreements that attempted to oust the jurisdiction of the courts.

In May 2000 the Judo Federation of Australia Inc ('JFA') nominated Ms Angela Raguz for selection as a member of the Australian Olympic team in the women's under 52kg judo category. Ms Raguz's nomination was challenged by Ms Sullivan, who appealed to the JFA Appeal Tribunal claiming that, applying the selection criteria, she ranked higher than Ms Raguz. That appeal was dismissed, but Ms Sullivan succeeded in her subsequent appeal to the CAS (Oceanic Registry), which was heard in Sydney pursuant to the *Code of Sports-Related Arbitration*. The CAS made an award in her favour, on the ground that the nomination criteria had not been properly followed and implemented and that, if properly followed, Ms Sullivan would have been the nominated athlete. Ms Raguz then sought leave to appeal on a question of law arising out of the decision of the CAS, which application was removed to the Court of Appeal.

Ultimately, the Court did not consider the merits of the dispute. It decided that the jurisdiction of the Supreme Court had been excluded by the combined effect of various interlocking agreements signed by Ms Raguz, Ms Sullivan and the JFA with the Australian Olympic Committee Inc ('AOC'), including athlete's nomination forms, concerning participation of athletes in the Sydney Olympics. Together, those agreements submitted all disputes concerning team selection exclusively to arbitration, including appellate arbitration, before the CAS in

accordance with the *Code of Sports-Related Arbitration*.

Before the jurisdiction of the Supreme Court to review questions of law arising from arbitrations is ousted by s40 of the *Commercial Arbitration Act 1984* (NSW) ('Act'), it must be shown:

- that there was an agreement 'between the parties to the arbitration agreement' which excluded the right of appeal under s38 of the Act, or the right to seek a preliminary determination under s39 of the Act; and
- that the arbitration did not take place under a 'domestic arbitration agreement'.

The Court concluded that the various agreements signed by the parties constituted a single, multipartite arbitration agreement between the JFA and the AOC, on the one hand, and all the relevant athletes, on the other. The athletes became parties to this agreement by signing their nomination forms and the mutual promises to submit to arbitration in those forms were considered to be the consideration passing from each athlete to the other.

The single arbitration agreement also constituted, in the view of the Court, an 'exclusion agreement' within s40 of the Act, which had the effect of ousting the jurisdiction of the Supreme Court. The agreements signed by the athletes included an express surrender of the right to commence proceedings or to seek to appeal, including relevantly that neither party would have any rights to appeal or apply for determinations of questions of law under s38 and s39 of the Act. Further, the arbitration had also not taken place under a 'domestic arbitration agreement' as Lausanne, Switzerland had been specified as the 'seat' or 'place' of the arbitration before the CAS and accordingly the arbitration did 'provide' for arbitration 'in a country other than Australia', despite the fact of the hearing taking place in Sydney and the merits were governed by the law of NSW.

The Court noted that the seat of arbitration is not necessarily where it is held, although where the parties have failed to choose the law governing the conduct of the arbitration, it will prima facie be the law of the country in which the arbitration is held because that is the country most closely connected with the proceeding. Nonetheless, the express choice of a seat in a place other than the place of hearing meant that the arbitration agreement in fact 'provided for' arbitration in a country other than Australia within s40(7) of the Act. In doing so, the Court rejected Ms Raguz's submissions to the effect that the words 'arbitration in a country other than Australia' within s40(7) of the Act should be construed to refer to the stipulated place of hearing of the particular arbitration. The Court concluded that the legislature was concerned with the legal and not physical place of the arbitration. This construction was said to better advance the purpose of the Act which, amongst other things, was to encourage arbitration to resolve disputes thereby reducing the demand on courts to do so.

It is not uncommon, for example, for the parties to a contract expressly to choose, for whatever reason, a system of law to govern the substantive rights and obligations under that contract which has no connection with the contract other than the parties' express choice of that system. Nonetheless, it may appear to be an artificial result that the express choice of Lausanne, Switzerland as the 'seat' of the arbitration had the effect of excluding a party's right of review to the Supreme Court from an arbitration conducted in NSW, the merits of which were governed by the law of NSW, by reason of that choice meaning that the arbitration could have been heard in Lausanne as opposed to Sydney. It is doubted whether Ms Raguz, when signing her nomination form, was aware of the subsequent effect of that express choice on her ability to seek review in NSW Courts of the decision of CAS against her.
