HOT TOPICS IN PUBLIC INTERNATIONAL LAW

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Seminar outline

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Part (A) – Introduction

- The English courts have re-emphasised the limited but necessary scope of state immunity and the rationale of diplomatic immunity.
- The manner in which treaty obligations are given effect to and taken account of has been reviewed by the Supreme Court.
- The courts have underlined the specific role of the executive in determining issues of national security and the recognition of foreign governments.

Part (B) – State immunity

Argentum Exploration Ltd v The Silver and All Persons Claiming to be Interested in and/or Have Rights in Respect of the Silver (The SS Tilawa) [2020] EWHC 3434 (Admlty) (16 December 2020)

- In 1942, the Government of the Union of South Africa purchased from the Government of India bars of silver for use in the South African Mint. 2364 bars of silver were arranged to be carried from Bombay to Durban on board SS Tilawa, a merchant ship owned by the British India Steam Navigation Company. On 23 November 1942, SS Tilawa was torpedoed by a Japanese submarine and sunk near the Maldives.
- In 2017, salvors recovered the silver and brought it to Southampton, where they claimed salvage after delivering it to the Receiver of Wreck. South Africa claimed that both it and the silver were entitled to immunity under Section 10(4)(a) SIA 1978 and Article 25 of the Salvage Convention 1989.
- The Admiralty Court was asked to determine whether SS Tilawa and the silver were "*in use or intended for use for commercial purposes*" when the cause of action in the salvage accrued.
- The Admiralty Court (Sir Nigel Teare) rejected South Africa's state immunity argument:
  - At the time of the sinking, both SS Tilawa and the silver were in use for "*commercial purposes*". South Africa had chosen to have its cargo carried by sea under a commercial contract of carriage akin to any private cargo owner.
  - A cargo purchased under an FOB contract and shipped under a commercial contract of carriage contained in or evidenced in a bill of lading is in use for commercial purposes.
  - Nothing was done between 1942 and 2017 to change the status of the ship and the cargo.

Part (B) – State immunity

Fenniche v Kuwait Health Office (Case No.2204871/2019) (22 January 2021)

- Following dismissal from his position as an in-house doctor in Kuwait's London Embassy in July 2019, C brought, *inter alia*, unfair dismissal, harassment and race discrimination claims.
- Kuwait asserted state immunity on the basis that C's access to medical records of senior Kuwaiti government officials placed him in a privileged position such that his job functions were exercises of sovereign authority. C contended his job functions were purely private with no governmental or official functions attached.
- The Employment Tribunal (Employment Judge Brown) largely upheld the state immunity claim:
  - C was someone responsible for protecting the interests of senior Kuwaiti officials referred to the Kuwait Health Office for medical treatment as expressly authorised by governmental instructions emanating from either the Under-Secretary of the Ministry of Health in Kuwait and/or the Emir of Kuwait. Accordingly, C's job functions, as a member of Kuwait's administrative staff, were "*sufficiently close to the governmental functions of the mission to attract state immunity*".
  - However, insofar as C's claims asserted he had suffered injury to his health, the personal injury exception to state immunity applied to those parts of the claim.
  - As C's claim had been presented before 31 December 2020, he could rely on transitional provisions in the European Union (Withdrawal) Act 2018 that preserved the effect of, *inter alia*, rights in the Charter of Fundamental Rights.

Part (B) – State immunity

Dynasty Company for Oil and Gas Trading Ltd v Kurdistan Regional Government of Iraq & anor [2021] EWHC 952 (Comm) (23 April 2021)

- C was an Iraqi oil and gas company which brought proceedings against D1 (the Kurdistan Regional Government) and D2 (D1's former Natural Resources Minister) alleging that D1 had wrongfully failed to consent to a change of control under production sharing contracts. D2 was served personally in Heathrow Airport.
- The Commercial Court (Butcher J) granted D2's CPR Part 11 application and upheld his immunity:
  - The relevant acts of D1 (and D2 on its behalf) were acts done in exercise of the sovereign authority of Iraq in that they were exercising an authority conferred on D1 by the Constitution of Iraq.
  - The relevant acts were acts *jure imperii*. They concerned exploitation of natural resources which were publicly owned and in respect of which only a government acting on the public's behalf could enter into contracts. Further, the contracts contained provisions that could not be made by a private person (e.g. promises concerning compulsory purchases, planning consents, tax exemptions and customs).
  - Although SIA 1978 did not expressly provide for cases where legal process was taken against servants of a foreign State, common law authority held that the immunity enjoyed by States extended to its servants where they were sued in respect of acts done in discharge of their official duties.
  - Had D2 not been entitled to immunity, it would have been appropriate to stay the proceedings not (as D2 argued) because of Regulation 1215/2012 (which did not apply) but on *forum non conveniens* grounds. The case had its closest and most real connection with the KRI, not England.
  - D2's argument that he was required to be served through Section 12 SIA 1978 was rejected. The servants of a State did not benefit from the privileges as to service by the diplomatic route.

Part (B) – State immunity

Houghton v United States of America (Case No.3321306/19) (14 June 2021)

- C brought unfair dismissal and disability discrimination proceedings against the USA. The claim form was served on the US Air Force Base at RAF Mildenhall on 29 August 2019, which was returned under cover of a diplomatic note. The claim was transferred to the Central London Employment Tribunal to effect service through the diplomatic channel (which was done on 11 February 2020 by the UK Embassy in Washington DC on the US State Department).
- The USA served a response, which C suggested was out of time on the basis that the earlier service at RAF Mildenhall had been valid. The USA contended that Section 12 SIA 1978 provided for a mandatory process governing service of process upon States, which had to be complied with by all courts and tribunals.
- The Employment Tribunal (Employment Judge Brown) upheld the USA's contention:
  - Section 16(2) SIA 1978 disapplies Part 1 SIA 1978 to *"proceedings relating to…the armed forces of a state*". However, that only relates to proceedings actually commenced, and thus does not disapply Section 12 SIA 1978, which concerns service (a pre-commencement issue).
  - Section 12 SIA 1978 applied to service of documents for instituting proceedings, even where those proceedings related to the armed forces of a foreign State inside the UK.
  - There was no distinction to be drawn between the service of tribunal proceedings and the service of court proceedings insofar as service on foreign States was concerned.

Part (B) – State immunity

General Dynamics United Kingdom Ltd v Libya [2021] UKSC 22 (25 June 2021)

- Teare J granted C permission to enforce against Libya under Section 101 AA 1996 and dispensed with service of the arbitration claim form and the enforcement order under CPR 6.16 and 6.28 (due to significant civil unrest and instability in Libya). Males LJ granted a variation, holding that Section 12(1) SIA 1978 (requiring any *"writ or other document required to be served for instituting proceedings against a state*" to be served through the diplomatic route) was mandatory (unless a State agreed an alternative service method) and there was no power to dispense with service in those circumstances.
- The CoA set aside Males LJ's variation, holding that Section 12(1) SIA 1978 applied neither to the arbitration claim form (since no order had been made requiring its service) nor the enforcement order (since it was not the document which instituted the proceedings for enforcement of the award).
- The Supreme Court (majority: Lord Lloyd-Jones, Lady Arden and Lord Burrows; minority: Lord Briggs and Lord Stephens) allowed Libya's appeal:
  - Sovereign equality of States was a fundamental international law principle best served by clear procedures whereby States were given proper notice (in a manner consistent with their sovereign status) of any proceedings brought against it.
  - Section 12 SIA 1978 established special procedural privileges in all cases where proceedings were commenced against a State, including a mandatory requirement for service by the diplomatic route, save where alternative service methods were agreed under Section 12(6) SIA 1978.
  - The need for proper notice required that State be served with either the arbitration claim form (if the court required it to be served) or the enforcement order (if the court did not require the arbitration claim form to be served). In both situations, those documents were the *"document required to be served for instituting proceedings against a state*" and must be served under Section 12(1) SIA 1978.
  - If Section 12(1) SIA 1978 applied, the court had no power to dispense with service under CPR 6.16 or 6.28.

Part (B) – State immunity

Surkis & ors v Poroshenko & anor [2021] EWHC 2512 (Comm) (22 September 2021)

- C alleged that the fifth President of Ukraine (D1) and a former head of the National Bank of Ukraine (D2) had conspired to unlawfully cause money that C had deposited with Privatbank to be used to help recapitalise Privatbank during its nationalisation and bail-in (after it was discovered that its owners had apparently misappropriated several billion dollars).
- D1/D2 challenged jurisdiction on various bases, including state immunity and foreign act of state.
- The Commercial Court (Calver J) upheld the jurisdiction challenges:
  - C had attempted to substantially amend their pleadings so as to "divorce" what they contended was the private act of making and maintaining the "Designation" (which designated persons as Privatbank's *"related parties*" with the consequence that a Ukrainian public body exercising public powers granted to it under Ukrainian law could enter into bail-in SPAs with them) from the context in which the Designation was made (the nationalisation).
  - However, the making and maintaining of the Designation were acts done in the exercise of public authority and which *"squarely engaged sovereign immunity*". Both D1 and D2 were acting or purporting to act in discharge of their duties as Ukrainian state agents. Thus, Ukraine's state immunity was engaged.
  - Ukraine had not submitted to English jurisdiction through various steps already taken in the English proceedings. No waiver of immunity had been given; such a waiver could only validly be given by the head of Ukraine's UK mission, which had not happened.
  - Further, the claim was advanced on the basis that the Designation (an integral part of the nationalisation and therefore a sovereign act) was unlawful under Ukrainian law. The English court was barred by the foreign act of state doctrine from adjudicating on the lawfulness or validity of the sovereign acts of a foreign State.

Part (C) – Diplomatic immunity

R (Charles & Dunn) v Foreign Secretary [2020] EWHC 3185 (Admin) (24 November 2020)

- C's son died when his motorcycle collided with a car being driven on the wrong side of the road by the wife (AS) of a staff member of the US embassy based at RAF Croughton. The arrangements by which embassy staff were based there had been agreed by several Exchanges of Notes between the UK and US Governments which referred to diplomatic immunities granted by VCDR 1961.
- In a previous decision ([2020] EWHC 3010 (Admin)), the Divisional Court upheld the Foreign Secretary's PII application in respect of certain passages of ministerial submissions concerning the Exchange of Notes and a US request to increase the number of US staff at RAF Croughton.
- The US embassy stated that AS enjoyed diplomatic immunity under Articles 29, 31 and 37(2) VCDR 1961 because the Exchanges of Notes contained no express waiver of immunity of a family member of administrative or technical staff. The FCO agreed but asked the USA to waive immunity for AS (which the USA refused). C's challenged various aspects of the conclusion that AS had had diplomatic immunity at the time of the incident.
- The Divisional Court (Flaux LJ; Saini J) rejected C's JR claim:
  - AS had had immunity from UK criminal jurisdiction at the time of the collision by the operation of VCDR 1961. AS's husband's diplomatic appointment having been validly notified by the USA to the FCO (together with details of his family members), AS enjoyed immunities under Articles 29-35 VCDR 1961 upon arrival in the UK. The immunities were enjoyed subject only to any valid waiver consistent with Article 32 VCDR 1961. The only such waiver was in the Exchange of Notes was a limited waiver of the husband's immunity.
  - A complaint that the VCDR 1961 obstructed an effective investigation (for the purposes of Article 2 ECHR) was not tenable as a matter of either domestic English law or ECtHR jurisprudence. The immunity was enjoyed by operation of VCDR 1961 and it was no function of any state (or indeed its courts) to go behind the fact that it was enjoyed and then to somehow deprive it of application or force. That would be to subvert the operation of VCDR 1961.

Part (C) – Diplomatic immunity

Fernando v Sathananthan [2021] EWHC 652 (Admin) (19 March 2021)

- In February 2018, the appellant (a serving Sri Lankan diplomatic agent), whilst dressed in full military uniform, made 'cut-throat' gestures towards protesters outside the Sri Lankan High Commission. The appellant returned to Sri Lanka in April 2018. In January 2019, he was convicted in his absence of, *inter alia*, threatening unlawful violence and making threats to kill.
- After the conviction was set aside, the Chief Magistrate (on a rehearing) held the relevant acts were not part of the appellant's job description and thus he was not entitled to diplomatic immunity because those acts were outside the mission's function and there was no entitlement to residual immunity under Article 39(2) VCDR 1961. The appellant appealed by way of case stated.
- The Divisional Court (Sir Julian Flaux C; McGowan J) allowed the appeal:
  - Asking whether unlawful acts were in a diplomat's job description was not the right question. It would be rare for criminal acts to be expressly included in a diplomat's job description.
  - If the relevant acts were within the appellant's official functions then immunity from suit (under Articles 31 and 39(1) VCDR 1961) existing at the time of the acts continued and the appellant had residual immunity, notwithstanding his having left the UK. It was common ground that the appellant's monitoring of the protest was part of his official functions.
  - The commission of an additional unlawful act did not stop the underlying activity from being that of a member of the mission performing his official function. The appellant's acts were performed *qua* diplomat and did not become personal acts merely because they were criminal.

Part (C) – Diplomatic immunity

London Borough of Barnet v AG & ors [2021] EWHC 1253 (Fam) (13 May 2021)

- In March 2020, the appellant local authority sought an interim care order (ICO) in respect of a foreign diplomat's children who it considered were suffering abuse at the hands of their parents. Mostyn J considered that the parents' treatment of the children amounted to a breach of the children's Article 3 ECHR rights, but refused an ICO on the basis of the parents' diplomatic immunity.
- The appellant sought a declaration that, to the extent that Section 2 DPA 1964 prevented a court from hearing an application for protective measures and/or prevented public bodies from taking steps to safeguard children, it was incompatible with Articles 1, 3 and 6 ECHR.
- The Family Division (Sir Andrew McFarlane P; Sir Duncan Ouseley) refused the appellant's application:
  - The parents were within the jurisdiction (in the sense of Article 1 ECHR), but were immune from it. Having a procedural immunity did not relieve diplomats of a need to comply with the domestic laws and regulations of the receiving State (as per Article 41 VCDR 1961), including the Children Act 1989.
  - There was Strasbourg jurisprudence that required legal systems to protect children through legislation, investigation and the taking of measures. But that jurisprudence could not be interpreted as also requiring the States who were parties to the VCDR 1961 to adopt a system which would require them to breach the VCDR 1961 towards other states. The ECHR did not require that in its text, and there is no jurisprudence which required the Contracting Parties to breach the VCDR 1961 in order to avoid a breach of the ECHR.

Part (D) – Treaties

R (Friends of the Earth) v Heathrow Airport Ltd [2020] UKSC 52 (16 December 2020)

- The Paris Agreement enshrines an aspiration to achieve a net zero greenhouse gas emissions level during the latter half of the 21st century. The UK ratified the Paris Agreement on 17 November 2016.
- In June 2018, the Transport Secretary designated the Airports National Policy Statement (ANPS) under Section 5(1) PA 2008. The ANPS supported the development of a third runway at Heathrow Airport to deliver additional hub airport capacity. The respondents sought JR of the ANPS on the basis of its failure to take account of the Paris Agreement.
- The Divisional Court dismissed the JR application, but the Court of Appeal reversed that decision and held that the ANPS was unlawful.
- The Supreme Court (Lord Reed; Lord Hodge; Lady Black; Lord Sales; Lord Leggatt) allowed Heathrow Airport Ltd's appeal:
  - The reasons in the ANPS, required by Section 5(7) PA 2008, did not need to refer to the Paris Agreement targets in order to comply with Section 5(8) PA 2008.
  - The allegation that the Transport Secretary breached his duty under Sections 10(2)-(3) PA 2008 to have proper regard to the Paris Agreement when designating the ANPS was rejected. The evidence demonstrated the Transport Secretary did take the Paris Agreement into account (by deciding that full consideration would be given to all climate change impacts by reference to the latest requirements as part of the Development Control application process). The Paris Agreement's obligations were already covered by the Climate Change Act 2008, and were incorporated into the ANPS framework.
  - The allegation that the Transport Secretary breached his Section 10 PA 2008 duty by failing to have regard to the effect of greenhouse gas emissions created by the third runway scheme after 2050 and the effect of non-CO_2 emissions was rejected.

Part (D) – Treaties

Western Sahara Campaign UK v International Trade Secretary [2021] EWHC 1756 (Admin) (28 June 2021)

- C sought JR of various UK regulations which purported to give effect to the UK-Morocco Association Agreement (UKMAA) which provided for preferential tariff treatment for certain products originating in Morocco, which was an occupying power in Western Sahara.
- There were two grounds in respect of which permission for JR was sought: (1) The UKMAA had to be read in accordance with established treaty interpretation principles, including Article 53 VCLT 1969 which provided that a treaty is void if it conflicted with a peremptory norm of PIL (such as the principle of self-determination) at the time it was concluded. This required the UKMAA to be read as not applying to products originating in Western Sahara; (2) The decision to make the relevant instruments involved a justiciable misdirection as to the proper scope of the UKMAA.
- The Divisional Court (Chamberlain J) granted permission on ground 1 but refused permission on ground 2:
  - It was true that the courts were reluctant to opine on issues of pure international law (which it left to the executive under the UK's constitutional arrangements). However, this was a case with a domestic foothold by virtue of Section 9 of the Taxation (Cross-border) Trade Act 2018, pursuant to which the Regulations were made, which conferred power to *"give effect*" to international arrangements between the UK and another country.
  - It was at least arguable (contrary to HMG's arguments) that the foreign act of state doctrine did not bar the challenge.

Part (E) – "Revenue Rule"

Skatteforvaltningen v Solo Capital Partners LLP (in special administration) & ors [2021] EWHC 974 (Comm) (27 April 2021)

- In very substantial litigation, the Danish tax authority (SKAT) alleged it had been induced by misrepresentations into paying out £1.5 billion in refunds of dividend withholding tax over 3 years. A preliminary issue arose as to the application of the "Revenue Rule" – that the English courts had no jurisdiction to directly or indirectly enforce a foreign State's revenue law. Many of the defendants were domiciled in Brussels-Lugano Member States when the proceedings were served.
- The Commercial Court (Andrew Baker J) determined the preliminary issues in favour of the defendants and dismissed all SKAT's claims:
  - The Revenue Rule was a substantive English law rule which required the courts to analyse the substance (rather than form) of the claim to see whether it directly or indirectly was a claim for the extraterritorial enforcement of sovereign power. That analysis was not with reference to the causes of action pleaded, but to whether the "central interest" in bringing the claim was a sovereign (rather than private law) interest.
  - On the facts, all SKAT's claims were claims seeking to enforce Denmark's sovereign right to tax dividends declared by Danish companies. The central interest of SKAT (and Denmark) in bringing the claims was to vindicate that sovereign right and have it enforced indirectly in the UK.
  - SKAT's assertion of private law causes of action in civil proceedings (rather than tax claims) meant the matter was a "*civil and commercial*" matter than a "*revenue*" matter for the purposes of Regulation 1215/2012. However, SKAT's entitlement to rely on Regulation 1215/2012 to found jurisdiction over defendants in Brussels-Lugano Member States did not have the effect of disapplying the Revenue Rule.
- At a consequential hearing, permission to appeal was granted on the Brussels-Lugano issue, but refused on the Revenue Rule issue.

Part (F) – Recognition / “one voice” doctrine

Maduro Board of the Central Bank of Venezuela v Guaido Board of the Central Bank of Venezuela [2020] EWCA Civ 1249 (5 October 2020)

- Issues arose concerning who was entitled to give instructions to financial institutions on behalf of the Central Bank of Venezuela (CBV) with regard to foreign currency reserves. The Bank of England held gold reserves of c.US$1 billion for the CBV. Deutsche Bank was obliged to pay the proceeds of a gold swap contract to the CBV in the sum of c.US$120 million presently held by court-appointed receivers.
- Mr. Maduro claimed to be president of Venezuela because he won the 2018 presidential election. Mr. Guaidó claimed to be interim president by operation of the Venezuelan Constitution because the 2018 presidential election was flawed. On 04/02/2019, HMG issued a statement recognising Mr. Guaidó as the constitutional interim president until credible presidential elections could be held.
- Mr. Maduro appealed against a first instance decision (Teare J) concerning who HMG recognised as head of state of Venezuela.
- The Court of Appeal (Lewison LJ; Males LJ; Phillips LJ) allowed the appeal and remitted the recognition issue to the Commercial Court:
  - It was not possible to give a definitive answer to the question of the extent to which HMG recognised Mr. Guaido as constitutional interim president. Whilst it was possible to say that since 04/02/2019 HMG had formally recognised Mr. Guaido as *de jure* president and as interim president, such recognition was of Mr. Guaido qua Head of State, not Head of Government.
  - Accordingly, that recognition was not conclusive for the purposes of the “one voice” doctrine as it left open the possibility that HMG might impliedly recognise Mr. Maduro as *de facto* president.

Part (G) – Extraterritorial effect / MLA

R (KBR Inc) v Director of the Serious Fraud Office [2021] UKSC 2 (5 February 2021)

- The SFO was carrying out a bribery/corruption investigation into a UK company and issued a notice under Section 2(3) CJA 1987 requiring C (the company's US-incorporated parent company) to produce documents it held in the USA. C had no registered office or fixed place of business, and had never carried on business, in the UK. C sought JR on the basis, *inter alia*, that Section 2(3) CJA 1987 did not operate extraterritorially. The Divisional Court dismissed the JR claim.
- The Supreme Court (Lord Lloyd-Jones; Lord Briggs; Lady Arden; Lord Hamblen; Lord Stephens) allowed C's appeal:
  - There was nothing in Section 2(3) CJA 1987 (or the statute's other provisions) to rebut the presumption against extraterritorial effect. The legislative history of CJA 1987 (and subsequent Acts) showed Parliament's intention was that, in a criminal investigation, evidence should be obtained from abroad by international MLA, a system which contained fundamental safeguards/protections to uphold comity.
  - A parallel system for obtaining evidence from abroad under Section 2 CJA 1987 operating on a unilateral SFO demand (with none of the MLA safeguards) would be inconsistent with Parliament's intention.
  - Section 2(3) CJA 1987 did not have extraterritorial effect and could not be used to require a foreign company with no presence in the UK to produce documents held outside the jurisdiction.

Part (H) – National security

R (Begum) v Special Immigration Appeals Commission [2021] UKSC 7 (26 February 2021)

- C was a British-Bangladeshi citizenship who, when she was 15 years old, travelled to Syria and married an ISIL fighter. C was subsequently detained and held in a camp run by the Syrian Democratic Forces. In February 2019, SSHD deprived C of her British citizenship on the grounds that her return would pose a national security risk. In May 2019, SSHD refused C's leave to enter (LTE) application which had been filed so she could pursue an appeal against the deprivation decision. C challenged both decisions.
- SIAC held that C could not give effective instructions or take any meaningful part in her appeal, meaning her appeal could not be fair and effective, but also that it did not follow that that meant her appeal should succeed. The CoA held that C should be granted LTE to pursue her appeal.
- The Supreme Court (main judgment: Lord Reed) allowed SSHD's appeal and dismissed a cross-appeal by C against the decision that her appeal should not be automatically allowed if she was not given LTE:
  - The CoA had misunderstood the scope of an appeal against a decision to refuse LTE.
  - The CoA had erred in its approach to the appeal against the dismissal of C's JR application against the refusal of LTE.
  - The CoA had mistakenly believed the right to a fair hearing must prevail when it apparently conflict with national security requirements. An individual's right to a fair hearing did not always trump public safety.
  - The CoA had mistakenly treated SSHD's extraterritorial human rights policy as a rule of law that he had to obey, rather than something intended to guide the exercise of statutory discretion.
  - On a deprivation appeal, SIAC is not entitled to re-exercise SSHD's discretion. SIAC's role is limited to reviewing SSHD's decision by reference to administrative law principles, unless there is an issue as to whether obligations under the HRA 1998 were breached. SSHD had considered detailed assessments by the Home Office and the Security Service and was not satisfied that depriving C of British citizenship would expose her to a real risk of mistreatment. SIAC's decision that that conclusion was not unreasonable and there was no defect in SIAC's reasoning in that respect.

Part (I) – Crime of aggression

Menjou v Justice Secretary [2021] EWHC 1231 (QB) (25 February 2021)

- C contended he had been the victim of crime during the UK's invasion and occupation of Iraq. For the purposes of a private prosecution for the international crime of aggression, C sought the issue of summonses against a former Prime Minister and others. The magistrates' court refused. Permission for JR was refused because the crime of aggression was not an English law offence, following *Jones* [2006] UKHL 16.
- C commenced Part 8 proceedings requiring D to pay expenses incurred in the private prosecution as well as declarations, *inter alia*, that D had failed to transpose Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crime and that *Jones* was incompatible with Directive 2012/29.
- The Queen's Bench Division (Eady J) granted D's strike out/summary judgment applications:
  - The court would not strike out a claim unless it was certain that it was bound to fail. If the legal position was clear and there was no real prospect of success the claim should be dismissed.
  - English law did not recognise the crime of aggression as an offence and Directive 2012/29 did not create such a crime. Accordingly, C was unable to establish he had been the victim of a crime and had not been able to identify any violation of his rights in not being able to bring a private prosecution for the crime of aggression.

Part (J) – Concluding Remarks

- The need for an increasing awareness on the part of practitioners that Public International Law issues may be engaged in the civil, commercial, employment and criminal contexts is illustrated by the case referred to.
- The scope of state immunity and diplomatic immunity in specific cases where hardship has been perceived continues to generate concern and public criticism.