Book Review: Andrew Dickinson and Alexander Thompson, The State Immunity Act 1978 (OUP, 2025)

This review concentrates principally on the private international law dimensions of Andrew Dickinson and Alexander Thompson's *The State Immunity Act 1978*. Although state immunity is fundamentally a subject of public international law, the legislation operates at the point where public and private international law intersect. It determines whether the English courts may adjudicate disputes involving foreign states, how proceedings may be served, and whether judgments or arbitral awards may be recognised and enforced against state property. These questions are of direct importance to private international lawyers, particularly in transnational commercial, employment, property and arbitration disputes.

The authors bring considerable practical expertise to the subject. As the preface indicates, their analysis is informed not only by academic study but also by professional experience of state-immunity litigation. The result is a specialist and authoritative treatment of a technically demanding statute. The chapters generally combine legislative history, an overview of the relevant statutory provisions, and a detailed examination of their judicial application.

Chapter 1 explains the historical development of the State Immunity Act 1978 and the United Kingdom's movement from absolute to restrictive immunity. Under restrictive immunity, a foreign state remains immune in respect of sovereign acts but may be subject to jurisdiction in relation to commercial and other non-sovereign activities. This distinction provides the organising principle for much of the Act and gives the subject its particular importance for private international law.

Chapter 2 is especially significant because it situates the 1978 Act within the wider legal framework. The Act is mandatory and generally supersedes the pre-existing common-law rules governing state immunity. Although it was influenced by the European Convention on State Immunity 1972, the United Kingdom courts

are not required to interpret it as if it faithfully reproduced every aspect of that Convention. At the same time, the Act should, so far as its language permits, be interpreted consistently with customary international law, on the presumption that Parliament did not intend to place the United Kingdom in breach of its international obligations.

The United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 may also inform the interpretation of the Act. It is not, however, binding for this purpose, nor can all its provisions automatically be treated as definitive statements of customary international law. The authors therefore demonstrate that statutory interpretation in this field requires careful engagement with legislation, treaties, customary international law and judicial authority.

The chapter also distinguishes state immunity from related regimes. The State Immunity Act primarily concerns the immunity of foreign states and incorporates exceptions associated with restrictive immunity. The Diplomatic Privileges Act 1964 and Consular Relations Act 1968, by contrast, protects particular persons in the performance of their official functions and is governed by separate legislations. Special missions and international organisations are similarly subject to distinct statutory regimes.

The discussion of human rights identifies a persistent tension between access to justice and respect for sovereign immunity. The United Kingdom courts have generally placed substantial weight on the latter. Provisions of the Act have nevertheless been challenged under Article 6 of the European Convention on Human Rights 1998. Declarations of incompatibility have been made in the employment context, most notably in *Benkharbouche v Embassy of Sudan* and *Secretary of State for Foreign and Commonwealth Affairs v Benkharbouche*, while in *Kingdom of Spain v Lydia Lorenzo* [2024] EWCA Civ 1602, the UK Court of Appeal ruled that a foreign state cannot claim state immunity in an employment discrimination and unfair dismissal case brought by an administrative embassy worker. These cases show that state immunity is not merely a procedural technicality: it may determine whether an individual has any effective opportunity to vindicate substantive rights.

The book also explains the post-Brexit relationship between state immunity and European Union law. EU law no longer has the supremacy it previously enjoyed

within the United Kingdom, although retained or assimilated EU law and the European Union (Withdrawal) Act 2018 remain relevant to the historical development and present operation of some rules.

Equally important is the distinction between state immunity and the foreign act-of-state doctrine. Both rest, in part, on ideas of sovereign equality and the independence of states, but foreign act of state is a common-law doctrine rather than a product of the 1978 Act. The doctrines should therefore not be treated as interchangeable.

For private international lawyers, the book's most important conceptual point is that the 1978 Act limits the adjudicatory jurisdiction that a United Kingdom court would otherwise possess. It does not itself confer jurisdiction. A claimant must first establish jurisdiction under the ordinary rules of civil procedure and private international law. Only then does the separate question arise whether the foreign state is immune from the exercise of that jurisdiction. This distinction between the existence of jurisdiction and immunity from its exercise is fundamental.

Chapter 4 examines the general immunity from adjudicatory jurisdiction. The statutory scheme leans strongly towards protecting foreign states: the claimant bears the burden of establishing an applicable exception to immunity, even where the foreign state declines to appear. This may present a considerable practical obstacle because the facts necessary to establish an exception may be difficult for a private claimant to obtain without the state's participation.

Chapter 5 considers submission to jurisdiction. A choice-of-court agreement in favour of the courts of any part of the United Kingdom may constitute a waiver of immunity, whereas a choice-of-law clause does not. This distinction is particularly important in drafting international contracts. Selecting English law does not, without more, amount to consent by a foreign state to the jurisdiction of the English courts.

Submission may also occur through a treaty, convention or other international agreement, but it must be express. A state may submit after the dispute has arisen, and although such submission must be express, it need not necessarily be in writing. Submission may additionally result from instituting proceedings, advancing a counterclaim or participating in proceedings beyond what is necessary to assert immunity. The act of submission must be duly authorised by

the state. Once valid submission occurs, the state is generally placed in the position of an ordinary litigant for the relevant proceedings. Importantly, however, submission to adjudication does not necessarily amount to consent to enforcement against state property.

Chapter 6 addresses commercial transactions and associated obligations, including contracts to be performed in the United Kingdom. The commercial-transactions exception lies at the heart of restrictive immunity and is shaped by both the earlier common law and the European Convention. It is particularly relevant to private international law because disputes concerning the character of a transaction, contractual performance and the territorial connection with the United Kingdom may determine whether immunity is available.

Chapter 7 concerns employment contracts. As the authors observe, section 4 may justifiably claim to be among the most controversial provisions of the Act. The central authority is *Benkharbouche*, in which statutory restrictions on claims by state employees were held incompatible with Article 6 of the European Convention on Human Rights and, at the relevant time, Article 47 of the EU Charter of Fundamental Rights. The resulting changes strengthened employees' access to justice. The chapter is particularly valuable because cross-border employment disputes frequently bring together jurisdiction, applicable law, mandatory employment protection, human rights and the public international law of immunity.

Chapters 8 to 14 examine the statutory exceptions relating to personal injury and damage to property; ownership, possession and use of property; intellectual and industrial property; companies and other collective bodies; arbitration; admiralty proceedings; and taxation. The property provisions remove immunity in defined proceedings concerning property, subject to protections for premises used for diplomatic purposes. The intellectual-property exception reflects restrictive immunity but has generated comparatively little reported litigation.

The arbitration chapter is of special interest to commercial lawyers. Where a state has agreed in writing to submit a dispute to arbitration, immunity from the supervisory or supporting jurisdiction of the courts is generally removed in relation to the arbitration. This provision has been frequently litigated. Nevertheless, the existence of an arbitration agreement and the removal of adjudicatory immunity do not automatically permit execution against state assets.

Parties dealing with states must therefore distinguish carefully between consent to arbitration, consent to court proceedings connected with arbitration and waiver of immunity from enforcement.

Chapter 15 examines service of process and default judgments. These procedural matters have substantial private international law significance because the validity of service and the protection afforded to an absent foreign state may determine whether proceedings can advance and whether a judgment will ultimately be effective.

Chapter 16 addresses enforcement jurisdiction, perhaps the area in which the special position of a sovereign state is most pronounced. Coercive measures—including injunctions, contempt proceedings, orders compelling employee reinstatement and execution against state property—are generally considered inappropriate without a sufficient statutory basis. Even where a claimant has successfully established jurisdiction and obtained judgment, enforcement may therefore remain impossible.

The principal exceptions arise where the state has expressly and unequivocally waived immunity from enforcement or where the relevant property is in use, or intended for use, for commercial purposes. A waiver of immunity from adjudication should not lightly be treated as a waiver of immunity from execution. This separation has major practical consequences: a claimant may win the legal dispute yet be unable to obtain the benefit of the judgment. The chapter reinforces the need for contracts involving states to contain carefully drafted and distinct waivers addressing jurisdiction, interim relief and enforcement.

Chapter 17 discusses the meaning of “the State” and the treatment of separate entities, central banks and constituent territories. Whether a body forms part of the state or is a separate entity may determine both the applicable test for immunity and the availability of assets for enforcement. Central-bank property receives particularly strong protection. These classification questions are often decisive in cross-border litigation, especially where commercial activity is conducted through state-owned corporations or other legally distinct bodies.

The remaining chapters address the power to amend Part I, savings and excluded matters, statutory interpretation, foreign judgments, heads of state and related persons, and certificates concerning facts of state. Chapter 21’s treatment of

foreign judgments is particularly relevant to private international law, although the statutory mechanism considered there appears never to have been used against the United Kingdom. More generally, the relationship between foreign judgments and state immunity raises difficult questions: recognition of a judgment, adjudicatory jurisdiction over the state and execution against state property are separate stages and may be governed by different requirements.

Overall, this is a highly specialised work. A sound knowledge of public international law—and, to a lesser extent, private international law—is helpful if the reader is to appreciate its analysis fully. Yet the book is also valuable precisely because it demonstrates that the boundary between the two disciplines is permeable. State immunity is founded in public international law, but it operates through the machinery of private litigation. It affects jurisdiction, choice-of-court agreements, employment disputes, arbitration, service, foreign judgments and enforcement.

Before reading the book, I was sceptical about the practical force of public international law, particularly because powerful states sometimes appear able to disregard its principles without meaningful consequences. This book has caused me to reconsider that view. Public international law is not confined to prominent disputes about war or territorial sovereignty. In the field of jurisdictional immunities, it performs an important stabilising function by mediating between access to national courts and the sovereign equality of states. It thereby contributes to international comity and the orderly conduct of relations among states.

For a private international lawyer, the book's lasting lesson is that ordinary rules of transnational litigation cannot be applied to foreign states without accounting for their sovereign character. Conversely, public international law principles of immunity acquire practical effect through domestic rules governing civil proceedings. Dickinson and Thompson's work illuminates that relationship with considerable depth. It merits close attention from practitioners and scholars working on cross-border litigation, international commercial arbitration, employment disputes involving states, and the recognition and enforcement of judgments and awards. It is also a book to which I expect to return as my understanding of the relationship between public and private international law continues to develop.