purported termination had occurred before Slovakia's own breach: the relevant date being when Variant C became operational, not when preparatory works commenced.

It is obvious from this skirmish with the Court's judgment that the legacy of the *Gabčíkovo-Nagymaros Case* is a large one. Other issues not considered above include: the Court's views on the succession of States to pre-existing treaty obligations; the Court's cavalier approach to the identification of norms of customary law wherein it seems to regard "State practice" as synonymous with "the work of the ILC"; the effect of changed norms of international law on prior treaty commitments (inter-temporal law); the role of estoppel in defeating claims of breach of treaty, especially those based on material breach; and, of course, how far the Court has recognised the existence of principles of international environmental law such as sustainable development, equitable utilisation and the precautionary principle.

MARTIN DIXON

IMMUNITY—HEAD OF FOREIGN STATE

WHEN is the head of a foreign State immune from the jurisdiction of the English courts? In *B.C.C.I. (in liquidation)* v. *Price Waterhouse et al.* [1997] 4 All E.R. 108 in which the liquidators of the bank were proceeding against its former auditors, the defendants issued a third party notice against, *inter alios,* Z, Ruler of Abu Dhabi, a constituent territory of the United Arab Emirates (UAE) of which Z was also President. On the application of Z, Laddie J. set the third party notice aside on a ground of immunity.

Two principal grounds of immunity were adduced.

1. State Immunity Act 1978. Section 1(1) provides that "A State is immune from the jurisdiction of the courts of the United Kingdom" subject to extensive exceptions contained in Part I of the Act; by section 14(1) "State" includes "the sovereign or other head of the State in his public capacity" and by section 21 "a certificate by or on behalf of the Secretary of State shall be conclusive", for the purposes of Part I of the Act, "whether any country is a State", as to the identity of the person "to be regarded as the head or government of a State", and whether "any territory is a constituent territory of a federal State". The Secretary of State had certified (see (1986) 67 B.Y.B.I.L. 711) for the purposes of Part I of the Act that the UAE is a State, that "Abu Dhabi is a constituent territory of the UAE, a federal State" and that Z is "to be regarded ... as head of State of UAE".

That, however, did not settle the matter. It had not been argued

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that Z had acted on behalf of the UAE at any stage. Accepting then as Laddie J. did that Z was indeed Ruler of Abu Dhabi (a matter upon which the Secretary of State can issue no certificate under the Act: the meaning and legal status of an opaque communication from an official of the Foreign and Commonwealth Office which accompanied the Secretary of State's certificate are not immediately apparent), as such he would be immune as the equivalent of "a separate entity" (s. 14(6)) "if and only if" he had been acting "in exercise of sovereign authority" (s. 14(2)(*a*)) on behalf of the UAE and it itself "would have been so immune" (s. 14(2)(*b*)). Since there was no evidence that Z had been acting "in exercise of sovereign authority" on behalf of the UAE, he was not immune on this ground even though he might have been acting on behalf of Abu Dhabi. (Applications to set aside third party notices issued against Abu Dhabi, the Emirate of Abu Dhabi and the government of Abu Dhabi were withrawn.)

2. Diplomatic Privileges Act 1964. By the State Immunity Act 1964 s. 20(1), "the Diplomatic Privileges Act 1964 shall apply to (*a*) a sovereign or other head of State ... as it applies to the head of a diplomatic mission". And by the Diplomatic Privileges Act s. 2(1) and 1st Sch. art. 31 such head shall "enjoy immunity from [the] civil jurisdiction" of the receiving State, subject to certain exceptions immaterial for present purposes. Upon that basis, as President of the UAE, Z was immune from the jurisdiction and the third party notice was duly set aside.

The relationship between the two grounds of immunity is by no means clear. The matter was put for Z in two ways. First, that when acting in his "public capacity" as President of the UAE, he would have immunity under section 14 but would also have immunity under section 20 whether acting in that capacity or not; the immunities therefore are "cumulative". Upon that argument Laddie J. expressed no opinion. The second argument he accepted (p. 114):

> even if the immunities enjoyed by a sovereign or other head of State when acting in a public capacity on behalf of the State are exclusively those provided under s. 14(1) of the 1978 Act, in all other circumstances the immunities are those prescribed under the 1964 Act ... This construction appears to me consistent with the underlying purpose of this legislation. In so far as the sovereign or other head of State is acting in a public capacity on behalf of that State, he is clothed with the immunity that the State has. When acting in this capacity, the head of State and the State are, to some extent, indistinguishable. On the other hand, when acting in any other capacity, it is sensible that he should have immunity equivalent to that enjoyed by the State's diplomatic agent.

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The relationship is still not wholly clear. Part of the problem may well be that the Acts of 1964 and 1978 are based upon different conceptions. The immunities of the former Act are enjoyed, essentially, *ratione personae,* those of the later Act *ratione materiae.* If Z had been acting "in his public capacity" as President of the UAE, what would the position have been then? Presumably, under Part I of the Act of 1978, he would have been immune unless he was engaged in "a commercial transaction" (ss. 3(1), (3)) (whatever that may mean): *I Congreso del Partido* [1983] 1 A.C. 244 *per* Lord Wilberforce, *Kuwait Airlines Corporation* v. *Iraqi Airlines Co.* [1995] 1 W.L.R. 1147, 1157 *per* Lord Goff. But would he, then, in any event, have been immune under the 1964 Act? According to Laddie J. he clearly would.

What would the position have been if Z had been Ruler of Abu Dhabi but not also President of the UAE? He would not have been entitled to immunity under section 14 unless, possibly, he had shown that Abu Dhabi as a constituent member of the Federation had had capacity to act on behalf of the UAE in exercise of sovereign authority and that he had acted on behalf of Abu Dhabi. No doubt that would then have raised the sort of issue as to his own status and authority and those of Abu Dhabi which arose in *Krajina* v. *The Tass Agency* [1949] 2 All E.R. 274 and in *Mellinger* v. *New Brunswick Development Agency* [1971] 1 W.L.R. 603. And would he in any event have been entitled to immunity under the 1964 Act as Ruler of Abu Dhabi? Section 4 of that Act provides that if "any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact". Presumably, therefore, the Secretary of State would be required to certify as to matters under the Act of 1964 which he is not under that of 1978. The apparently simple application of provisions of the Diplomatic Privileges Act to the head of a foreign State by the State Immunity Act gives rise to problems which are not immediately apparent.

JOHN HOPKINS

JUDICIAL REVIEW, PARLIAMENTARY PRIVILEGE, AND THE PARLIAMENTARY COMMISSIONER FOR STANDARDS

ONE of the principal recommendations of the *First Report of the Committee on Standards in Public Life,* Cm. 2850-I (the "Nolan Committee Report") was that the House of Commons should appoint a Parliamentary Commissioner for Standards. According to

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