STATE IMMUNITY AND DIPLOMATIC IMMUNITY

Intpro Properties (U.K.) v. *Sauvel and Others*

I. *Introduction to State Immunity in Singapore*

THE State Immunity Act 1978 (U.K.)[1] reaffirms in section 1(1) the international law principle of sovereign immunity but also, more significantly, provides for a number of exceptions whereby a foreign sovereign state or state agency can be impleaded directly or indirectly in the courts of the United Kingdom. This statute reverses the traditional common law position of adherence to the absolute view of sovereign immunity[2] in favour of the more restrictive view adopted by many civil law jurisdictions. Even prior to the passing of the Act there had been much academic criticism of total commitment to the absolute view of immunity which was thought no longer to conform with the realities of twentieth century commercial dealings and to cause injustice to those who dealt with state trade or business enterprises.[3] There had also been judicial retreat away from the long standing common law position[4] so that even without the legislation the restrictive view of sovereign immunity might in time have become the common law position in England. The Act provides the much needed comprehensive coverage, predictability and certainty in international trade that piecemeal common law reform could not have given and facilitated British ratification of the 1972 European Convention on State Immunity[5] and the 1926 Brussels Convention for the Unification of Certain Rules relating to the Immunity of State Owned Vessels.[6] Thus British conformity with the practice of her European trading partners was achieved.

Prior to 1979, Singapore too followed the absolute view of sovereign immunity,[7] but in that year it passed its own State Immunity Act[8] which is closely modelled upon the British legislation; the major differences being where specific provisions of the British statute were necessitated by the European conventions.[9] In introducing the Bill

1 C. 33, 1978. The Act came into force November 22nd 1978.

2 See, *e.g., The Parlement Beige* (1879) 4 P.D. 129, (1880) 5 P.D. 197 (on appeal); *The Porto Alexandra* [1920] P. 30 and *Compania Naviera Vascongada* v. 55. *Cristina (The Cristina)* [1938] A.C. 485. However see also footnote 4 below.

3 See, *e.g.,* Brownlie, Principles of Public International Law (2nd ed. 1973), 318-327 and notes there included.

4 See, *e.g., The Cristina* [1938] A.C. 485, 495-6, 498, 511-2, 520-3 where various members of the House of Lords expressed reservations about the accordance of absolute immunity to state-owned trading ships; *The Philippine Admiral* [1977] A.C. 373 where the Privy Council abandoned the absolute view in the context of actions *in rem; Trendtex Trading Corporation* v. *Central Bank of Nigeria* [1977] Q.B. 529; *I Congresso del Partido* [1981] 3 W.L.R. 328 (decided under common law as the transactions were prior to the Act).

5 E.T.S. No. 74. In force 1976. Ratified by the U.K. in 1979.

6 176 L.N.T.S. 199. Ratified by the U.K. in 1979.

7 See *Olofsen* v. *Government of Malaysia* [1966] 2 M.L.J. 300 where Ambrose J. said that it was "conceded that this Court has no jurisdiction to entertain an action or other proceeding against any foreign state or the head or government of any foreign state."

8 Cap. 19 of 1979.

9 For example s. 10(6) State Immunity Act (U.K.) refers to the Brussels Convention and has no counterpart in s. 12 State Immunity Act (Singapore), which is the equivalent section. Likewise ss. 13(4), 18 and 19 of the State Immunity Act (U.K.) have references to the European Convention.

to the Singapore Parliament for its 2nd reading[10] E.W. Barker stated its purpose to be to follow the lead of the British and American legislative bodies[11] and to ensure that the law would provide a framework for the promotion of the development of Singapore as a financial and commercial centre. The close correlation of the British and Singaporean legislation means that Singaporean law too is now largely in conformity with that of civil law Europe, although there is obviously no question of Singapore being able to join the Conventional regime.

While the practical effect of these various statutes is to provide a basis for the resolution of claims of immunity within municipal courts, they also have a significant function in the constitutive process of international law. There is as yet no multilateral convention on sovereign immunity[12] that is not regional in basis, so that the international law on this subject has to be derived from customary international law which must be deduced from consistent and uniform state practice and *opinio juris*.[13] Domestic legislation provides good evidence of state practice and also serves as a model for other domestic legislation so that it may be instrumental in the evolution of a rule of customary international law.

The Singapore courts have not yet had occasion to interpret the State Immunity Act but there have now been two recent English cases on a number of provisions of the United Kingdom Act.[14] This note will discuss some of the sections of the Act analysed in the first of these cases to reach the Courts, *Intpro Properties* v. *Sauvel.* Given the similarity of the two statutes and the expressed purpose of the Singapore legislature to modify the common law in conformity with English statute law, these decisions are likely to be cited as highly persuasive authority to the Singapore judiciary in the event of similar issues arising before them. They, therefore, merit attention by Singapore lawyers who should consider both the interpretation that has been given to the particular sections of the Act and the various relevant policies to see if they coincide with Singaporean interests. This approach would be more conducive to fulfilling the aims expressed by E.W. Barker than uncritical adoption of the same interpretations. This note will attempt to evaluate some of these policies as well as to discuss the relevant provisions of the State Immunity Act. Throughout reference will be made first to the United Kingdom Act, with the equivalent section of the Singapore Act placed subsequently, in square brackets.

10 On the 7th September 1979, 39 Sing. Parl. Debates col. 408 E.W. Barker also suggested that the United Kingdom statute might already form part of Singapore law under s. 5 Civil Law Act, Cap. 30, 1970.

11 In 1976 the Foreign Sovereign Immunities Act (90 Stat. 2891 28 U.S.C.A.) was passed which also adopts the restrictive view of immunity. The United States courts had however followed the restrictive view since the issuing in 1952 of the so-called Tate Letter (26 Dep't State Bull. 984).

12 In 1932 the Harvard Law School presented a draft Convention, 26 A.J.I.L. (1932) Suppl., 19 The International Law Association is currently working on preparation of a draft Convention.

13 The requirements for customary international law are analysed by the International Court of Justice in the *North Sea Continental Shelf Cases,* paras. 70-85. *Fed. Republic of Germany* v. *Denmark; Federal Republic of Germany* v. *The Netherlands,* [1969] C.J. 3, I.41 *et seq.*

14 *Intpro Properties (U.K.) Ltd.* v. *Sauvel and Others* [1983] 2 W.L.R. 1 (High Court), [1983] 2 W.L.R. 908 (C.A.) and *Alcom Ltd.* v. *Republic of Colombia, First National Bank of Boston and another, Garnishees* [1983] 3 W.L.R. 906 (C.A), [1984] 2 All E.R. 6.

Intpro Properties arose out of the classic form of state activity in another state, that of the maintenance of a diplomatic mission and the performance of diplomatic functions. The courts had therefore to consider the State Immunity Act in this context and through this decision further cemented the essential cohesion between sovereign and diplomatic immunity. International legal theory has long regarded both as components of the sovereign equality and fundamental dignity of states while modern functionalist theory deems both necessary for the fulfilment of the proper and necessary communications network between states.[15] The impact of these views in modern business and commercial situations is the basis of this note.

II. *Diplomatic Immunity in Singapore*

The modern international law on diplomatic relations is governed by the 1961 Vienna Convention on Diplomatic Relations[16] and the 1963 Vienna Convention on Consular Relations.[17] The former (which will be the focus of this discussion) has a very high level of international adherence with over 140 states currently parties to it, including Malaysia (which ratified in 1965, shortly after Singapore's independence), the United Kingdom and the United States. The Convention is incorporated into British law by section 2 and Schedule I of the Diplomatic Privileges Act 1964.[18] The purpose of the Convention was to provide uniformity in the law relating to diplomatic privileges and to promote an equilibrium between the rights of the receiving state and those of the sending state.

Singapore however has not acceded to the Vienna Convention on Diplomatic Relations. There is also no modern domestic legislation on the subject despite legislation on immunity for officials of international organisations.[19] Prior to the passing of the 1964 Act, English law was governed by the Diplomatic Privileges Act 1708[20] which has been stated to be declaratory of the principles of international law and the common law.[21] This Act provided for full diplomatic privileges for "foreign ministers and their domestic servants" as well as for summary jurisdiction over violators of the privileges. Since this statute was English law at the time of the reception of English law into Singapore by the Second Charter of Justice 1826, it is possible to argue that at that date it became applicable to Singapore. The major exception to reception of statutes was where a statute related to the "matters and exigencies peculiar to the local conditions of England and which are

15 For the classic rationale for absolute sovereign immunity see *The Schooner Exchange* v. *McF addon* (1812) 7 Cranch. 116. In *Thai-Europe Tapioca Services Ltd.* v. *Government of Pakistan* [1975] 1 W.L.R. 1485, 1490 Lord Denning M.R. justified it on the more pragmatic ground of not wishing to offend a foreign government through execution of property after a judgment that might have foreign policy repercussions. See further Brownlie, Principles of Public International Law (3rd Ed. 1979) 325.

16 500 U.N.T.S. 95. In force 1964. As of 1984 there are over 140 states parties to the Convention. [Hereinafter cited as Vienna Convention].

17 596 U.N.T.S. 261. In force 1967.

18 Cap. 81 1964.

19 International Organisations (Immunities and Privileges) Act; c. 309 Singapore Statutes 1970. This statute was to give domestic effect to the Convention on the Privileges and Immunities of the United Nations 1946, succeeded to by Singapore in 1966.

20 7 Ann. c. 12.

21 *Triquet* v. *Bath* (1764) 3 Burr. 1478 Court of King's Bench, *per* Lord Mansfield.

not adapted to the circumstances of a particular colony."[22] A statute governing the treatment of "ambassadors and other public ministers of foreign powers and states", as they are termed in the Preamble to the Act of 1708, does not appear to fall within that category so that reception can be presumed. As there has been no repealing statute in Singapore it appears that this Act still represents Singapore law, although it is no longer English law.

It is somewhat surprising that Singapore has not updated its municipal law on diplomatic relations, especially as the Vienna Convention provides a viable framework for domestic legislation and as it has acted extremely fast to emulate legislation on sovereign immunity. The lack of any clear domestic law on this subject can only lead to uncertainty and unpredictability; given the large number of diplomatic missions in Singapore one can only assume that in practice there is a pattern of predictable behaviour by the law enforcement agencies giving effect to the legitimate expectations of immunity, that has proved acceptable to all parties, possibly working on the basis of reciprocity. Singapore does of course maintain many diplomatic missions whose personnel need to be protected by immunity and other privileges. However, if Singapore were to become involved in an international dispute relating to diplomatic privileges some specific statutory provisions and conventional obligations would provide a clearer and more stable starting point for its resolution. If dissatisfaction with certain Articles of the Vienna Convention has made Singapore unwilling to become a party to it, it could follow the course of accession with reservations. If current calls for review of the Vienna Convention do in fact lead to an international reappraisal of this law[23] then Singapore could use the opportunity to reassess its own position.

Singapore evidently does acknowledge being bound by *some* law on diplomatic relations for section 19(1) of its State Immunity Act [equivalent to U.K. section 16(1)] states that:

> Part II does not affect any immunity or privilege applicable in Singapore to diplomatic and consular agents, and subsection (1) of section 8 does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of a diplomatic mission.

However, a Singapore court could not expressly look to the Vienna Convention for assistance in applying this section, and in ascertaining the governing principles (as could the British courts as demonstrated in the *Intpro* case), unless it could be argued that provisions of the Vienna Convention represent customary international law incorporated into Singapore law without statutory adoption.[24] This would require

[22] *Ong Cheng Neo* v. *Yeap Cheah Neo* (1875) L.R. 6 P.C. 381, 393. On the Second Charter of Justice see Bartholomew, "The Singapore Legal System", in Singapore, Society in Transition (ed. Riaz Hassan).

[23] See, *e.g.,* statement by members of the British government in the wake of the shooting at the Libyan Peoples' Bureau in London on April 17th 1984. The Times, April 27th, April 28th, 1984. These centre on the inadequacy of provisions on the diplomatic bag (Article 27(3)) and on the inviolability of diplomatic premises (Article 22) to uphold the security interests of the receiving state.

[24] This would entail following the transformation or incorporation theory with respect to the status of international law in municipal law. See, especially, *Trendtex Trading Corporation* v. *Central Bank of Nigeria* [1977] 2 Q.B. 529, 553, *per* Lord Denning M.R. for an explanation of this theory.

sophisticated analysis of the individual Articles of the Convention,[25] the position at customary international law prior to the Convention[26] and subsequent state practice to determine the principles of customary international law. Of course, if the Diplomatic Privileges Act 1708 was received into Singapore law, any provision of customary international law inconsistent with the Act could not be deemed part of Singapore law. Thus, theoretically at least, the status of the provisions of the Vienna Convention in Singapore domestic law is problematic; those provisions that have crystallised into customary international law and are compatible with the Diplomatic Privileges Act 1708 could have been incorporated into Singapore law, those provisions that are not representative of customary international law clearly have no status at all in Singapore law. The advantages of the British Diplomatic Privileges Act are clear.

III. *Intpro Properties (U.K.) Ltd.* v. *Sauvel and Others*

A. *The Facts*

The facts in this case were extremely simple. The French government leased premises from Intpro Properties for a four year period for the specified use as the private residence of a named French diplomat, the Financial Counsellor at the French Embassy in London. The lease included a covenant to allow the lessor to enter the premises at reasonable times for inspection and to carry out any necessary repair work. In January 1982 dry rot made its appearance in the premises but the occupants denied access to the contractors when they went to do the required corrective work. The plaintiffs then applied for the issue of a writ against the occupants restraining them from refusing entry to the house. The diplomat and his wife applied to have this set aside on the grounds of diplomatic immunity and the plaintiffs, with the leave of the court, joined as co-defendants the French government, as lessees of the property.

B. *The Decision*

Bristow J., at the first instance, analysed the claim to diplomatic immunity in the light of Articles 31 and 37 of the Vienna Convention on Diplomatic Relations incorporated directly into English law by section 2 and schedule I of the Diplomatic Privileges Act 1964. He doubted whether the diplomat and his wife were proper parties to the action being mere licensees of the premises, but concluded that if so they would be immune from civil action as the facts did not fall within the exception contained in Article 31(l)(a)[27] of the Vienna Convention. With reference to the French government, the claim for sovereign

25 The International Court of Justice in the *Iranian Hostages Case* accepted that at least portions of the Vienna Convention represent customary international law; *U.S. Diplomatic and Consular Staff in Tehran Case. U.S.* v. *Iran* [1980] 31 I.C.J. 3, 31, para. 62. However to be strictly accurate the process of proof of customary international law should be applied to every relevant section, a task for which the Singapore courts may not be well equipped.

26 Useful evidence as to this is to be found in the commentaries of the International Law Commission to the draft of the Vienna Convention. See especially [19581 2 Y.B.I.L.C. 89 *et seq.*

27 31.1.... He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of: (a) a real action relating to private immovable property situated in the territory of the receiving state, unless he holds it on behalf of the sending state for the purpose of the mission.

immunity came under section 1 [3] and 16(l)(b) [19(1)] of the State Immunity Act. Since, in his opinion, the premises were "used for the purposes of a diplomatic mission" the government was also immune. The plaintiffs appealed to the Court of Appeal, which reversed Bristow J.'s judgment with reference to the immunity of the French government, whilst the claim against the diplomatic family was not pursued. Since the occupants had by this time quit the premises the action was now for damages for loss caused by the delay to the repair work and no longer for an injunction, a procedural change of some importance.

C. *Discussion*

Although Bristow J. was reversed by the Court of Appeal his judgment remains interesting as a number of issues to which he gave detailed attention were no longer the subject of appeal in the Court of Appeal. He addressed more fully the claim of diplomatic immunity, while the Court of Appeal considered the impact of the Diplomatic Privileges Act 1964 on the State Immunity Act.

Section 16(1) of the Immunity Act U.K. specifically retains any immunity bestowed by the earlier Diplomatic Privileges Act, while section 16(l)(b) limits the exception to immunity contained in section 6, so that there is still immunity from proceedings "concerning a state's title to or its possession of property used for the purposes of a diplomatic mission," which are identical words to those used in the Singapore statute.[28] The Court of Appeal emphasised that these sections should be read in conformity with the Diplomatic Privileges Act 1964 so as to reach compatible results, especially as similar wording in the two statutes is utilised and the drafters of the later Act must have had the earlier one in mind. Thus to ascertain whether the premises in the present case were "used for the purposes of a diplomatic mission" reference was made to the interpretation section of the Vienna Convention on Diplomatic Relations. Article I of the Convention defines "premises of the mission"[29] in terms of being used "for the purposes of the mission," in this case setting up a circular definition.

In the present case no evidence was presented to the Court as to the exact use to which the leased property was put, except that the tenancy agreement stated that it would be used only as a "private

[28] The equivalent sections of the State Immunity Act Singapore are sections 3 and 19(1). (Words in square brackets are the Singapore sections). Section 1(1) [3] reads: A state is immune from the jurisdiction of the courts of the United Kingdom [Singapore] except as provided in the following provisions of this Part of this Act.
Section 16(1) [19(1)] reads: This Part of this Act [Part II] does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964. . . ; [applicable in Singapore to diplomatic and consular agents...] and … (b) section 6(1) [8(1)] above does not apply to proceedings concerning a state's title to or its possession of property used for the purposes of a diplomatic mission.
Section 6(1) [8(1)] creates an exception to section (1) for proceedings relating to (a) any interest of the state in, or its possession or use of, immovable property in the United Kingdom; [Singapore] or (b) any obligation of the state arising out of its interest in, or its possession or use of, any such property.

[29] Article I of the Vienna Convention on Diplomatic Relations which is incorporated into English law by s. 2(1) and Schedule I of the Diplomatic Privileges Act 1964 states:

> l(i) the 'premises of the mission' are the buildings or parts of building and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

dwelling house" and an affidavit sworn by the First Counsellor at the French Embassy stated that the premises were "for use in carrying out M. Sauvel's social obligations as a senior diplomatic agent." The lack of evidence was a handicap throughout the entire judicial proceedings since none of the defendants appeared before the court.[30] The diplomatic defendants but not the French government had legal representation; the court had therefore under the statute to consider the jurisdictional issue for itself.[31]

Bristow J. concluded that the fact that the premises would inevitably have been used for the holding of various official social functions sufficed to bring them within the ambit of "used for diplomatic purposes." The Court of Appeal however disagreed. Under Article I(1) of the Vienna Convention the residence of the Head of the Mission is specifically included as "premises of the mission"; May L.J. decided that this impliedly excluded residences of lesser diplomats and, in the absence of conclusive evidence that official work was performed at such premises, they could not be classified as "used for the purposes of the mission."

This determination sufficed to dismiss the claims of both diplomatic and sovereign immunity since it meant that the diplomat did not hold the premises for the purposes of the mission within section 31(l)(a) of the Vienna Convention and the state could not benefit from the exception to section 6(1) [8(1)] of the State Immunity Act created by section 16(l)(b) [19(1)] to reintroduce immunity. This again demonstrates the linkage and conformity between the statutes.

May L.J. favoured a restrictive interpretation for the expression "for the purposes of the mission" and was clearly unwilling to extend the category of premises to which this definition could apply. This judgment therefore limits the ambit of immunity, consistent with the overall restriction of immunity in the State Immunity Act. A couple of points must however be added. First this whole discussion relates to immunity of diplomatic staff and the government from suit and *not* to inviolability of premises. In an international environment where there is widespread suspicion of abuse of diplomatic premises[32] it is important to note that this limited interpretation does *not* extend the type of premises that may be entered by the legitimate authorities of a receiving state. Article 30(1) of the Vienna Convention uncompromisingly states that:

> The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

[30] Article 31(2) Vienna Convention states: A diplomatic agent is not obliged to give evidence as a witness.
It has been suggested that this undermines the effect of allowing certain civil actions against diplomats.

[31] Section 1(2) [3(2)] of the State Immunity Act states: A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

[32] A number of incidents recently have involved alleged abuse of diplomatic premises, among the most notorious being the allegations by the Ayatollah of the U.S. Embassy in Tehran being "a centre of espionage and conspiracy" cited in *US. Diplomatic and Consular Staff in Tehran Case, U.S.* v. *Iran* [1980] I.C.J. 3, 34 para. 73 and the shooting of a British policewoman from the premises of the Libyan Peoples' Bureau in London, April 1984.

This Article also supports May L.J.'s interpretation of Article 1(1) as here it is explicit that it is not only the premises of the head of mission that are inviolable but also those of other diplomats. Inviolability of the premises means the court could not have awarded an injunction restraining the diplomats from prohibiting entry into the premises, although on the decision damages could be awarded for loss caused. In the circumstances it makes a covenant for entry to inspect and repair meaningless; a factor that might lead to reluctance to lease property for use as the residence of diplomats.

This again illustrates the central dilemma of diplomatic privileges; while privacy and freedom from entry by the local authorities might be deemed essential for the proper performance of the diplomatic function and unimpeded communications with the sending state regarded as essential to the maintenance of world public order, there is no reason why valuable property should be allowed to deteoriate for refusal to allow repairers in to carry out necessary work, in accordance with the terms of a private business agreement freely entered into. The exceptions to *immunity* from jurisdiction in civil actions relating to ownership, possession and use of property by the state, and real actions relating to private immovable property held by a diplomat allow for some recourse but it may not be totally satisfactory. In a business situation of lessor-lessee where covenants for entry are undertaken by a government on behalf of its diplomats it seems both contrary to business demands and inequitable that they should be unenforceable. The state has entered into an ordinary lease so as to provide accommodation for its diplomats; on signing that lease and thus apparently formalising the legal relation of lessor/lessee the premises become converted into property protected by international norms whereby the lessor loses the rights contained within the lease. The reply in favour of accepting this situation would be that any exception to absolute inviolability can be abused by a host state or its agents and that lessors should (if possible) be aware of this danger when leasing premises to diplomats. Market forces may however make other suitable tenants hard to locate.

In the context of *immunity,* however, Bristow J.'s wider interpretation of "used for diplomatic purposes" deprived the plaintiffs of any judicial forum and meant that they were dependent on executive assistance for any relief. Executive action of course is always highly uncertain as the executive has to include this incident in its entire ambit of international relations, not only with the state concerned but also with other interested private and public parties. Ultimately, in any event, the executive can only attempt to persuade the sending government to provide redress, it cannot coerce it to do so. May L.J.'s interpretation at least provided for the availability of a judicial award of damages from the sending government although it still may not be easy to obtain them. Singapore courts faced with the need to interpret "used for the purposes of a diplomatic mission" will have to decide whether the restrictive approach of May L.J. or the more favourable attitude (towards diplomats) of Bristow J. is preferred, and whether reference can be made to Article I of the Vienna Convention.

The limiting of immunity from civil jurisdiction for both diplomats and governments in specified situations is a departure from the traditional approach. Section 6 [8] of the State Immunity Act conforms with the adoption of a restrictive view of immunity in the context of

property arrangements while Article 31 of the Vienna Convention altered both customary international law[33] and the statutory law[34] of the United Kingdom, both of which allowed for absolute immunity from civil jurisdiction for diplomats. It would therefore be especially difficult to argue that Singapore recognises any exceptions to the immunity from jurisdiction in civil actions enjoyed by diplomats. However the policies behind allowing for an exception to immunity in actions relating to privately held immovable property are evident; immunity would leave a plaintiff without judicial redress in a situation that has no bearing on the proper performance of diplomatic functions and actions relating to land are always considered to be within the exclusive jurisdiction of the state in which it is situated[35] and so such actions could not be conveniently heard in a sending state, a solution that is sometimes put forward as a corrective mechanism for the disadvantages of immunity and which is supported by Article 31(4)[36] of the Vienna Convention.

The terminology of Article 31(l)(a) caused some consternation to the English courts. Bristow J. pointed out that "real action" is conceptually meaningless in English property law. These words are a direct translation of "*Une action reelle*" from the French master text of the Convention. They of course refer in civil law to the action deriving from the Roman law *actio in rem,* an action brought by a person who has a right good against the whole world, as opposed to an *actio in personam* which is brought only against a particular individual against whom one can demand performance. The differentiation depends upon the classic civil law concept of absolute and indivisible ownership of property which the real action protects. The common law concept of the doctrine of estates[37] leaves no place for such a notion as a "real action" so that the fundamental concepts of English property law flowing from this unique starting point are quite different from those of the civil law. Yet the provision, incorporated into British law gives no explanation of the meaning to be given to this expression by a common lawyer. This is the problem created by literal translation of the words of a treaty from the language of one legal family into that of another, unaccompanied by any conceptual comparative legal theory. Article 33 of the Vienna Convention on the law of Treaties[38] deals with the problem of differing meanings

33 See *e.g.,* Oppenheim, International Law (8th ed. 1955, ed. Lauterpacht) at vol. I, 798; "No civil action of any kind as regards debts and the like can be brought against them in the civil courts of the receiving state." The author then notes that there might be an exception at common law for immovable property held within the boundaries of a receiving state by an envoy in his private capacity and refers to *Magdalena Steam Navigation Co. v. Martin* (1859) 2 E & E 94, III and *In Re Suarez* [1917] 2 Ch. 138.

34 7 Ann. c. 12.

35 The British Courts accept they have no jurisdiction over land situated outside England: see *British South Africa Co.* v. *Companhia de Mocambique* [1893] A.C. 602.

36 Article 31.4. states The immunity of a diplomatic agent from the jurisdiction of the receiving state does not exempt him from the jurisdiction of the sending state.

37 The doctrine of estates is based on the notion that ownership of land is divided temporally and into interests of varying lengths, the complete opposite to absolute and undivided ownership. For the historical development of the doctrine of estates see J.H. Baker, An Introduction to English Legal History (2nd ed. 1979) 193-262.

38 U.K.T.S. No. 58 (1980). Reprinted in 8 I.L.M. 679 (1969). The treaty entered into force in 1980.

between different language texts of the same treaty and states that normal principles of treaty interpretation should be utilised to resolve the conflict. The basic principle is that "the ordinary meaning" should be given to the terms of the treaty,[39] a principle of no use whatsoever here where there is *no* meaning to the words in English law. Secondly, the terms should be interpreted "in the light of [the Treaty's] object and purpose", a phrase repeated in Article 33(4) in the context of reconciliation of two different language texts. Of course Article 33 is not strictly relevant here as there is no *conflict* between the English text and the French text, rather the reverse. It is just that the text is sensible in the French version and meaningless in the English. Even recourse to the *travaux preparatoires* of the Vienna Convention on Diplomatic Relations (as authorised by Article 32 of the Vienna Convention on the Law of Treaties for the interpretation of a treaty provision, although strictly it is the statute that is being interpreted here) would be of no assistance as these words received no analysis by the International Law Commission. During the 3rd reading of the Diplomatic Privileges Bill before the House of Commons there was a move to define the words "real action" as meaning "an action relating to land or any right or title to land", but this was dropped when the Under Secretary of State for Foreign Affairs explained that this would result in a widening of the exceptions to immunity contained in the Convention[40] so that more exceptions would be created in English law than in the civil law. "An action relating to land" goes beyond the very specific confines of "*une action reelle*", so that this would involve extending the ambit of the Convention in English municipal law. Apparently it was preferred to retain an absurdity! Bristow J. gave a number of different versions of what could amount to a real action, taken from various commentaries, but did not indicate which one he preferred. The question was left open as he concluded that an action to enforce a covenant in a lease is a normal action *in personam* not relating in any way to title or possession and so definitely not a "real action", however interpreted. As the question of personal diplomatic immunity was no longer an issue on appeal, the Court of Appeal was able to deal very perfunctorily with the meaning of "real action." May L.J. thought that the sum of the commentators' opinions amounted to the exception in Article 31(l)(a) relating to actions where ownership or possession of the property is in issue and not merely use, and accepted this as accurate. If one looks to the object and purpose of the provision this appears to be supportable. The policy reasons for the exception relate to the administration by the receiving state of *the land itsetf,* that would not be relevant if ownership or possession were not at stake. Further, given the civil law's clear differentiation between ownership and use of land (through *e.g.* a usufruct) this appears to conform with the intention of limiting the exception to "real actions" protecting the former and not the latter. This approach of May L.J. is sensible and apparently in line with allowing for certain civil actions to be brought against diplomats where not to do so could cause confusion as to where the title to land lay, or as to who was entitled to possession, an undesirable situation with adverse consequences for certainty as to title, but not allowing for widespread inroads into that

[39] Rules for the interpretation of treaties are contained in Articles 31-33 of the Vienna Convention on the Law of Treaties.

[40] Cited in E. Denza, Diplomatic Law (1976 British Institute of International and Comparative Law) p. 161. This commentary contains a wealth of information on the various Articles of the Vienna Convention and their interpretation.

immunity. It also conforms with the language of 16(l)(b) [19(1)] of the State Immunity Act which refers to "a state's title to or its possession of property;" again pursuing the line of limiting deviations between the two statutes. If Singapore were at some future date to legislate on diplomatic immunity it should ensure that a full study of this problem is carried out and that any exception to immunity from civil jurisdiction in actions relating to immovable property is precisely defined in concepts familiar to Singapore law. To copy the British statute here would be manifestly absurd.

There is one final textual problem raised by the case. Section 6(1) [8(1)] restricts state immunity in actions relating to a "state's interest in or its possession *or use of* immovable property …"; a phrase clearly denying immunity in actions relating *to use* as well as to title or interest in land. The restoration of immunity by section 16(l)(b) [19(1)] does not refer to actions for use of land; thus there is no sovereign immunity for an action relating to the use of land, even if it is used "for the purposes of a diplomatic mission," although on May L.J.'s interpretation of Article 31(l)(a) of the Vienna Convention a diplomat could claim immunity from an action relating to use of land, but not from one relating to title.

IV. *Conclusion*

Intpro Properties demonstrates well the inherent problems of drafting a statute based directly on the text of an international convention where totally different techniques are appropriate. Specific provisions of a Convention (indeed an entire Convention) often represent a compromise between various stances adopted at the negotiating stages. It is not normally anticipated that a Convention will be the subject of litigation where phrases and words are given microscopic attention and use of a number of languages may aggravate the search for clarity. Further diverse styles of drafting are associated with the civil law and common law[41] that must be reconciled in a conventional text. The case also shows that the new legislation on state immunity might revitalise the closely related concept of diplomatic immunity and that the two should be treated so as to provide maximum compatibility. Having provided legislation on the former so as to attain a predictable framework for the private activities of sovereign states, perhaps Singapore should now consider providing similar certainty through legislation for diplomatic relations.

C.M. CHINKIN

[41] See *H.P. Bulmer Ltd.* v.*J . Bollinger S.A.* [1974] 1 Ch. 401, 425 *per* Lord Denning M.R. for a discussion of different drafting techniques.