of a technical distinction between merger of judgments and estoppel *per rem judicatam*, the distinction exists as a matter of common law. Assimilation would necessarily involve the merger of foreign judgments with the cause of action and extinguish that cause of action, rather than simply barring the remedy. In such circumstances, it would be incumbent upon the successful plaintiff to enforce the foreign judgment in England.

In effect the House of Lords and Court of Appeal were confronted with a balancing act of considerable difficulty. Both courts were impressed with the consequences of treating the Cochin judgment as barring absolutely the English proceedings. Although generally it would only be in highly exceptional factual circumstances that the party would be deprived of a remedy, as Lord Reid observes in *Carl Zeiss* v. *Rayner*,[35] there may be circumstances in which the expense and practical difficulties of defending trivial proceedings in a foreign jurisdiction militate against resisting the proceedings. Since, however, Lord Goff's compromise fails fully to guarantee the public policy basis of the *res judicata* doctrine, exceptions based on waiver and estoppel should clearly be narrowly confined, and allowed only in clear cases.

SIMON BECKWITH*

A "COMMERCIAL TRANSACTION" UNDER THE STATE IMMUNITY ACT 1978

THE Sixth Legal Committee is currently debating whether to recommend to the UN General Assembly that it convene an international conference to enact into a multilateral convention the draft articles of the International Law Commission (ILC) on jurisdictional immunities of States and their property. The ILC has been working on the draft for ten years to achieve a statement of the law which, while adopting a restrictive approach to State immunity, will constitute a fair balance between the right of the private creditor to enforce in local courts commercial dealings of the State (*acta jure gestionis*) and the immunity from local jurisdiction of the State for acts performed in exercise of sovereign authority (*acta jure imperii*). The departure of the Soviet Union from the international scene has increased the chances for successful adoption of a treaty text; unlike the Soviet Union, members of the CIS and Central European States have indicated support for a restrictive rule, although the People's Republic of China and some Latin American States remain in favour of absolute immunity. Two aspects of the draft articles, however, remain hotly contested—the definition of the exemption from State immunity for commercial transactions (in particular whether the purpose as well as the nature of the commercial transaction should be taken into account) and the categories of State property subject to execution or attachment by local courts.

35. *Supra* n.3, at p.918.

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The adoption of a multilateral treaty endorsing a restrictive approach to State immunity is likely to have little impact on the law of countries, such as the United Kingdom and the United States, which already have in force national legislation incorporating such an approach. The enactment of the State Immunity Act 1978 gave legislative endorsement in the United Kingdom to a shift from an absolute to a restrictive rule of State immunity, which the decisions of the Court of Appeal in *Trendtex*[1] and the House of Lords in *I Congreso del Partido*[2] achieved for the common law.

However, recent case law in these two countries suggests that, even if the two controversial aspects are resolved, there will be no certainty or uniformity in the application of the rule of restrictive immunity. The debate has moved on. So much so that there is some support for questioning whether a middle position represented by the restrictive rule is any longer tenable; in practice, it may be argued, the choice increasingly lies between a rule of absolute immunity or one of the exercise of local jurisdiction over the foreign State in a manner in all respects equal to that over the private litigant.

Certainly, in three recent cases arising out of the Iraq/Kuwait conflict in the Gulf, the English court has exercised jurisdiction over the foreign State in such a way as, for all practical purposes, to remove immunity for acts performed in the exercise of sovereign authority. Thus, the English court has held that it has jurisdiction in proceedings brought against a department of the Republic of Iraq by the Commissioners for Customs and Excise for confiscation of components for the Supergun; for retention of the assets of the Iraqi diplomatic mission in London held in a bank in course of being wound up by the English court; in tort for seizure and wrongful detention of Kuwaiti aircraft seized by Iraqi armed forces following the invasion and occupation of Kuwait by Iraq.

Section 3 of the 1978 Act was designed to avoid the well-known problem of deciding whether a contract to supply boots for the army was a commercial or public act of the purchasing State. It did so by making non-immune in section 3(1)(a) commercial transactions entered into by the foreign State and defining in section 3(3) the term "commercial transaction" very broadly. The first two limbs of the definition make, in section 3(3)(a) and (b), contracts for the supply of goods or services and loans or the provision of finance non-immune and exceptions to the plea of immunity, regardless of the public or private nature or purpose of the transaction. This sub-section enabled the court in *Commissioners of Customs and Excise* v. *Ministry of Industries and Military Manufacturing, Republic of Iraq*[3] to make the condemnation order sought by Customs against an Iraqi department as consignee of component parts of the Supergun exported in contravention of the terms of the relevant DTI licence. Presumably the Queen's Bench master satisfied himself (as required by section 1(2) of the Act) that the proceedings were not of a criminal character (section 16(4) preserves the immunity of the foreign State from criminal jurisdiction) and related to a contract for goods or services under section 3(3)(a): as such they would be non-immune and subject to the court's

1. *Trendtex Trading Corp. Ltd* v. *Central Bank of Nigeria* [1977] Q.B. 529.
2. [1983] 1 A.C. 244.
3. 13 Jan. 1992 QBD (Master Foster, unrep.).

jurisdiction, and the governmental nature of the activity, the construction of an outsize military weapon, would be irrelevant.

In *Re Rafidain Bank*[4] the Bank, incorporated under Iraqi law with a branch in the United Kingdom, was unable to honour its commitments and the Bank of England applied for a winding-up order. The Republic of Iraq, the Iraqi Reinsurance Company and Iraqi Airways Ltd all requested the appellants, the joint provisional liquidators, to make payments out of the Bank's assets to meet their operating costs and, when the provisional liquidators applied to the court for directions, submitted that the retention of moneys owed by the Rafidain Bank to the respondents conflicted with the right of the State of Iraq to immunity in the courts. The claims of the Iraqi Reinsurance Company and Iraqi Airways Ltd were quickly disposed of as both, though State-owned bodies, were separate entities under section 14(1) of the 1978 Act, and their claims related to commercial transactions rendered non-immune by section 3(1)(a). In any event, in the case of Iraqi Airways, no payment could be made as the account was subject to a garnishee order in favour of Kuwait Airlines (see the discussion of the next case).

The claim of the Iraqi Embassy in London in the name of the Republic of Iraq presented greater difficulty; the Embassy, which had some £13 million deposited with the Rafidain Bank, sought payment to meet its monthly costs in running the Embassy and to provide for a number of Iraqi students, studying in the United Kingdom, together with their families, whose maintenance was paid for by the Iraqi government through the Embassy. The provisional liquidators relied on section 6(3) of the 1978 Act to permit them to withhold these payments with a view to the eventual distribution of the assets of the insolvent bank equally among all creditors, including the Embassy, in accordance with the statutory scheme following a winding-up order. Section 6(3) provides: "The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of it any jurisdiction relating to . . . insolvency, the winding up of companies, or the administration of trusts." It was argued on behalf of the Embassy that this subsection merely removed the immunity of a foreign State in respect of any proprietary interest which it might hold as owner of the Rafidain Bank, but that it did not remove the immunity in respect of debts owed to it as a creditor of the Bank. Sir Nicholas Browne Wilkinson V.-C. (as he then was) held that the making of a winding-up order did not call in question the title of the State of Iraq to the debts owed it:

> All that has happened is that the right immediately to enforce the payment of such debt by action has been suspended . . . the title of the Iraqi State to its debt is not affected by the administration of the property of the company in the winding-up. The value of the debt is diminished by the insolvency, but the title to the debt is not affected.

Accordingly, the judge directed the provisional liquidators not to make the payments sought.

In the report of the decision, no reference is made to section 16(1) of the 1978 Act, which provides that the Act shall not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964; section 16(1)(b) refers expressly

4. [1992] B.C.L.C. 301.

to section 6(1) as having no application to "proceedings concerning a State's title to or its possession of property used for the purposes of a diplomatic mission". From this express reference to one subsection it might be argued that the other subsections—particularly section 6(3), which was relied on in *Rafidain Bank*—were left unaffected by diplomatic immunity. This, however, would be to give no effect to the introductory words of section 16. The purpose of diplomatic immunity and of its exclusion from the scope of the 1978 Act is to ensure in all circumstances the effective functioning of the diplomatic mission. In the words of Lord Diplock in *Alcom* v. *Republic of Colombia*, "neither the executive nor the legal branch of government in the receiving State . . . must act in such manner as to obstruct the mission in carrying out its functions".[5] To refuse immediate payment necessary to meet the costs of operating the diplomatic mission, to suspend such payments and to substitute a claim for reduced value in the winding up surely amounts to such obstruction.

A better ground for disregarding section 16 and the diplomatic immunity thereby protected might be to read a waiver of immunity at the time of the opening of the account (presumably in writing and by the Iraqi Ambassador). Such a solution to the problem is dependent on the facts; if the terms of the deposit account expressly stated that it was made in accordance with English law and that the Ambassador accepted the English courts' jurisdiction—as to both adjudication and enforcement—there would be effective waiver of immunity under sections 2(2) and 13(3) of the 1978 Act.

As it stands, however, *Rafidain Bank* offers one further example of exercise of jurisdiction by an English court over a foreign State in respect of an area of activity—the control of the funds of a diplomatic mission—which has traditionally been regarded as sovereign and *de jure imperii*.

Of even greater concern is the decision in *Kuwait Airways Corp.* v. *Iraqi Airways and the Republic of Iraq*.[6] In this case the plaintiff (KAC), as registered owner of ten aircraft (two Boeing 767s and eight Airbuses), claimed delivery up of the aircraft and damages for unlawful interference, in the amount of the value of the aircraft, estimated at US$489 million with interest, pursuant to section 3 of the Torts (Interference with Goods) Act 1977, and at common law. On the invasion of Kuwait by Iraq on 2 August 1990 the airport was occupied and the ten aircraft seized and flown out to Iraq and transferred into the ownership of the first defendant airline (IAC), pursuant to Iraqi Decree No.369, with the intention of incorporating the aircraft within IAC's fleet to use them for commercial purposes. Due to cessation of international flights, IAC made little use of the aircraft. Two of the aircraft were overpainted in IAC livery, and one used for certain internal flights. In January 1991, with the prospect of a military offensive against Iraq pursuant to Security Council resolutions, six of the aircraft were flown to Iran and there interned by the Iranian authorities; the remaining four were destroyed in air raids upon Iraq.

The plaintiff entered judgment against both defendants in default of appearance and steps were taken to enforce the judgment. The defendants' solicitors,

5. [1984] A.C. 580, at 599.
6. 16 Apr. 1992 (Evans J, transcript; *Financial Times*, 17 July, 13.

due to the Gulf conflict, had difficulty in obtaining instructions. Legal representation of Iraq or Iraqi companies fell within UN sanctions which prohibited the provision of services with the effect or object of promoting the economy of Iraq; and it was necessary for individual solicitors to obtain clearance from the DTI and the Bank of England before representing Iraq or Iraqi interests. But in June, notice was given of the defendants' intention to challenge the jurisdiction of the court and on 26 July Webster J ordered a stay of execution on condition of disclosure of certain assets by affidavit.

Subsequently, in proceedings before Evans J, IAC challenged the jurisdiction of the court on four grounds: invalidity of service of the writ, State immunity under section 14 of the 1978 Act, non-justiciability and *forum non conveniens* by reference to certain compensation procedures instituted under the auspices of the United Nations. The Republic of Iraq's challenge was limited to invalidity of service of the writ. Evans J found for the plaintiff on all four grounds as regards IAC, but held that the writ had not been validly served on Iraq. The decision is likely to go to appeal.

The case is highly complex and illustrates a growing tendency, as in the *Laker* and *International Tin Council* litigation,[7] for national courts to adjudicate matters of international law. In its recent resolutions requiring States to take national measures to implement economic sanctions, the UN Security Council appears to lend its approval to this tendency. The case, nonetheless, presents some startling features in that the plaintiff was seeking a civil remedy in a third-State court for an act of international aggression, and in doing so challenging a well-established rule that the governing law to determine title to movables, even where there has been expropriatory legislation, is the law of the country where the movables are situated. These aspects, however, along with the double actionability requirement for a remedy to be given in an English court for a foreign tort, are matters for determination at the merits stage of the action.

At the preliminary stage before Evans J the central question was the court's jurisdiction, its competence to hear the case at all. The defendants sought to mount a challenge to every aspect of jurisdiction.

First they alleged procedural defect: failure to commence the proceedings by proper service. Evans J disposed of this allegation on orthodox lines; so far as service on the Republic of Iraq was concerned he held that delivery to the London Embassy of Iraq did not comply with section 12(1) of the 1978 Act, which requires transmission to and receipt by the Ministry of Foreign Affairs in Baghdad. (This ruling that section 12(1) provides, subject to agreement of the parties, the exclusive method of service on a foreign State accords with Peter Gibson J's decision in *Westminster City Council* v. *Iran*,[8] and in practice means that, where diplomatic relations between the foreign State and the United Kingdom are broken and any protecting power is unwilling to deliver the proceedings, there is no effective method for the commencement of proceedings under the Act.)

Service on IAC was, however, held to be valid as the Iraqi airline had continued, throughout the Gulf crisis, to maintain office premises with a member of

7. *British Airways Board* v. *Laker Airways Ltd* [1985] 1 A.C. 58; *J. H. Rayner* v. *Department of Trade and Industry* [1990] 2 A.C. 418.

8. [1986] 3 All E.R. 284.

staff in London and considerable assets in bank accounts. (It was the presence of these assets which encouraged the plaintiff to commence an action in England; they are currently subject to an injunction in the plaintiff's favour, but their disposal is frozen under UN sanctions legislation implementing Security Council mandatory Resolutions 661/90 and 778/92.) The London office constituted the place of business of an "oversea company", as Evans J held IAC to be, within the meaning of section 695 of the Companies Act 1985, so as to permit valid service of the writ, on the "acting manager" of IAC, on 11 January 1991.

The remaining challenges to jurisdiction were, therefore, asserted by IAC, not the Republic of Iraq (though if it proves possible to comply with service under section 12(1), the foreign State may be rejoined as a defendant). On the issue of immunity, the judge's decision provokes surprise and must, if correct, reduce to a minimum the chance in future of a foreign State succeeding in a plea of immunity under the 1978 Act. Accepting that IAC was a separate State entity within the meaning of section 14(1), the judge ruled that IAC's removal of the Kuwaiti planes qualified as a commercial, and hence non-immune, act within the meaning of the residuary subsection (c) of section 3(3). This subsection includes, within the definition of "commercial transaction", "any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or engages otherwise than in the exercise of sovereign authority". It is generally accepted that the use of the words "activity" and "engages" enables the subsection to be extended to tortious, as well as contractual, conduct, but, in the only previous decision on the point (also of Evans J),[9] the tortious conduct held non-immune arose out of a commercial transaction, being an allegedly fraudulent or negligent misrepresentation relating to a commercial contract.

In the present case, Evans J went further; the tortious activity was in no way dependent on or ancillary to any concurrent commercial transaction of IAC. The removal and keeping of the aircraft and recruiting of ex-KAC personnel to maintain them were found to derive their commerciality from the future intention to operate the aircraft as part of IAC's civil airfleet. Now, it is a cardinal feature of the restrictive approach of the State Immunity Act, as with the US legislation, that in determining the commerciality or otherwise of an act, regard be had to the nature, not the purpose, of the act—"one should rather refer to the nature of the State transaction or the resulting legal relationships, and not to the motive or purpose of the State activity".[10]

Consequently, holding the detention of the aircraft to be a commercial act of IAC may be faulted on two grounds: first, that it was a tortious act not arising out of a commercial contract and not, therefore, rendered non-immune by section 3(3)(c) (but coming indeed, as discussed below, more properly within section 5, the statutory exception to immunity expressly dealing with torts causing loss to tangible property); and, second, that the intended future purpose—to use the

9. *Australia and New Zealand Banking Group Ltd* v. *Commonwealth of Australia* 21 Jan. 1989 (Evans J, transcript).

10. *Claim against the Empire of Iran Case* (1963) 45 I.L.R. 57, 80, cited in *I Congreso del Partido* [1983] 1 A.C. 244, 263 (*per* Lord Wilberforce) and 276 (*per* Lord Edmund Davies).

aircraft in IAC's airfleet—cannot be used as an indicator of the present nature of the act.

But the judge's ruling also appears to be out of line with previous case law. Evans J selected, as the relevant sequence of time, the period August to December 1990 during which the aircraft were flown to Iraq and maintained there by IAC's mechanics. By so doing, he demonstrated the unsatisfactory nature of a criterion of commerciality which produces a different categorisation according to the moment in time and aspect of activity selected.[11] Had the judge treated the removal of the planes as an aspect of the initial invasion and occupation of Kuwait he would have held it an act *de jure imperii*. He in fact did so categorise the initial invasion, including the flying out of five planes by the Iraqi Air Force, but influenced by the way in which (similar to peacetime flight) pilots trained on civil aircraft flew the planes, he held this stage of the acquisition of Kuwait property to be commercial.

He found support in the decision of the House of Lords in *I Congreso del Partido* where, in the words of the headnote, "in taking her [the vessel, the *Playa Larga*] out of Chilean waters for her own safety no governmental authority was invoked, even though the instruction might not have been given had the owners not been the Republic of Cuba". Surely, however, he misapplied this decision? Unlike the case of the *Playa Larga* where the initial stage, a commercial transaction for the carriage of goods by sea, was held to colour and determine the nature of the subsequent diversion of the ship, in the present case the initial stage was the exercise of sovereign authority by military aggression; yet Evans J's ruling confines this act *de jure imperii* to the first 48 hours of the invasion. This is the more surprising in that the appropriation was clearly an exercise of sovereign dominium, rather than of proprietary claim under national law; both Iraq, by Decree No.369 of 9 September 1990 transferring all KAC's assets to IAC and Decree No.55 of 5 March 1991 repealing previous decrees, and Kuwait, by Decree Law No.3(A) of 1990 of 18 October 1990 making the State trustee of all property of Kuwaiti nationals and residents, gave effect in their national legal systems in different ways to this exercise of dominium. There seems no compelling reason why the sovereign nature of the Iraqi legislative decree expropriating KAC's title to the planes and the subsequent government decision to evacuate six of them to Iran should not be treated as relevant factors in the determination of the nature of IAC's act during the autumn of 1990. A similar distinction between a matter of public international law under a treaty which gave rise to a fiduciary relationship between States, but did not create private law rights or obligations was drawn by Saville J in *A. Co. Ltd.* v. *Republic of X and the European Commission intervening*.[12]

One further point can be made. Where State property is intended for future use, but is not currently in use, for commercial purposes, the restrictive rule (as

11. As illustrative of this problem, see the recent decision of *Nelson* v. *Saudi Arabia* (1993) 61 U.S.L.W. 4253 where five of the US Supreme Court justices held the retaliatory detention in prison of a systems engineer who whistle-blew on defects in Riyadh hospital to be *de jure imperii*, whilst the minority held it to be a commercial act arising out of the operation of a public hospital.

12. 5 Apr. 1993, transcript.

supported by case law) treats it as immune; this rule was applied to ships constructed for commercial use held idle in dock[13] and to a bank account for future payments of commercial debts.[14] The Australian legislation on State immunity expressly reversed this general rule.[15]

Confronted, then, with such a difficult question of construction of section 3(3)(c), one wonders why the judge did not have regard to the whole Act. Had he done so, section 1(1) would have reminded him that "a State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions". Among those provisions is section 5, which removes immunity for damage or loss to tangible property caused by an act or omission *only where the act or omission occurs in the United Kingdom*; section 6, which preserves a foreign State's immunity in respect of movable property except as qualified by subsections (2), (3) and (4) (interestingly there appears to have been no discussion in the present case of the relevance of the *Juan Ysmael* rule); and section 16(2), which excludes from the operation of the Act anything done by or in relation to armed forces of a foreign State *while present in the United Kingdom*. Both section 5 and section 16(2) highlight the requirement of a territorial connection with the UK court before it may exercise jurisdiction. By pleading the proceedings as non-immune under section 3(3), the more generous jurisdictional requirements of RSC Order 11, rule 1 are brought into play (section 12(7)). Here the finding of the judge that IAC was an "oversea company" with business premises in London provided a sufficient nexus with the UK jurisdiction. No such nexus, however, would have been sufficient on which to base jurisdiction against a foreign State; Order 11, rule 1(1)(f) requires the proceedings to be founded upon a tort committed within the jurisdiction; the alleged tort was committed outside the United Kingdom. Accordingly, as section 14(2)(b) affords immunity to IAC "if the circumstances are such that a State ... would have been so immune", there being no jurisdictional link between the alleged act and the forum so far as the Republic of Iraq is concerned on which to base an exception to State immunity, the English court should have refused to exercise jurisdiction over IAC, as well as the Republic of Iraq.

This note is directed to an examination of State immunity. The court's treatment of the plea of Act of State and *forum non conveniens* by reason of UN procedures will not, therefore, be discussed. Save only to note that section 3(2) of the 1978 Act excludes its application "if the parties to the dispute are States or have otherwise agreed in writing". Any difficulty in its interpretation arises by reason of the legislative history of section 3, which was initially drafted to duplicate the more restricted exception found in Article 4 of the European Convention on State Immunity relating to contractual obligations of a State performable in the forum territory, but was expanded in the course of its enactment in the House of Lords to cover commercial transactions. Article 4 of the European Convention contained three exclusions to the contractual exception to immunity, i.e. for contracts between States; where otherwise agreed in writing;

13. *Flota maritima Browning de Cuba S.A.V.S.S. Canadian Conqueror et al and the Republic of Cuba* (1962) 34 D.L.R. 2d (1962) 628; 42 ILR 125.
14. *Alcom* v. *Republic of Colombia* [1984] A.C. 580.
15. Australian Foreign States Immunities Act 1985, s.32(3)(b).

and for contracts governed by administrative law of the foreign State. The commentary to the Convention explains that whilst the Convention is intended to improve the legal position of individuals in their relations with States, it is not concerned with the protection of one State against another. It accordingly excludes contracts concluded between States or in the exercise of its sovereign powers, for example contracts relating to scholarships or subsidies.[16] In effect, whilst most contracts performable in the forum State and governed by private law were made non-immune, international agreements between States governed by international law and some "public law"-type contracts were to continue immune.

Section 3(2) of the 1978 Act duplicates the exclusion for administrative law arrangements in the second part of the paragraph. It also repeats the facility for parties to contract out of the exception by so agreeing in writing; here, however, the effect of section 17(2) of the Act is to extend such contracting out to provisions in treaties, conventions or other international agreements. The phrase "if the parties to the dispute are States"is left as purporting to duplicate the third exclusion in Article 4(2) of the European Convention: "in case of a contract concluded between States". On one interpretation it should, therefore, apply only to the removal of immunity in section 3(1)(b) and thereby retain immunity for obligations by virtue of contracts concluded between States. Such a construction, however, requires an implied limitation of the exclusion's effect to section 3(1)(b) to be read into subsection (2). An alternative construction is, therefore, to apply it to both parts of section 3(1): here, the use of the term "commercial transaction", particularly in section 3(3)(c), goes beyond contractual obligations; hence to preserve the exclusion that transactions between States are not covered by the exception, the draftsman has broadened the phrase to "parties to the dispute". Unfortunately, this introduces an ambiguity since States may be parties to proceedings, to the contract out of which they arise or, in the broadest sense, participants in the dispute underlying the transaction. It is suggested that the overall objective of subsection (2) is the same as that expressed in the commentary to the European Convention, namely "to improve the legal position of individuals in their relations with States ..., not the protection of one State against another". It is not the purpose of the 1978 Act to enable one State to pursue its dispute against another State by proceedings brought in a third State, and consequently where the underlying transaction relates to a dispute between States, subsection (2) should preserve immunity.

Evans J, however, construed the opening words of subsection (2) more narrowly to refer to the named plaintiff and defendant and, as State agencies not States, held it to have no application to them. He also concluded that "the area of judicial restraint (represented by the plea of act of State) has the same limits as the scope of sovereign immunity when the doctrine of restrictive immunity applies".

In doing so he failed to give effect to the exclusionary subsection or to address the question whether the appropriation of Kuwaiti property was a dispute between States governed by international law. His decision thereby involves an enormous extension of local jurisdiction. International commerce may be a seamless web, but is it really wise at one blow to remove both immunity and a plea

16. Para.29.

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of non-justiciability in respect of the international regulation of acts of war by a foreign State? A State may use commercial procedures as well as its army to further its political sovereign ends. Slowly, precariously, the United Nations, through the medium of international law, is endeavouring to regulate acts of economic aggression but its transactions, to adapt the words of Lord Wilberforce in *Buttes Gas & Oil Co.* v. *Hammer*, remain "transactions in which four sovereign States were involved, which they had brought to a precarious settlement after diplomacy and the use of force".[17] It may be an ultimate goal for national courts to exercise jurisdiction and apply judicial standards to the determination of such international disputes but, in the present divided state of the world, to do so is idealistic, premature, inevitably partisan, and runs the risk of the generation of more, rather than less, abuse of legal process.

HAZEL FOX*

Addendum

On appeal by Iraqi Airways Company (IAC) the Court of Appeal (Nourse, Leggatt and Simon Brown LJJ) reversed the ruling of Evans J and held that in removing and "keeping safe" the Kuwaiti aircraft IAC was acting in the exercise of sovereign authority, and accordingly, by virtue of section 14(2) of the State Immunity Act 1978, was immune from the proceedings brought by Kuwait Airlines. The Court of Appeal also held that, by applying for a stay of the default judgment and performance of the conditions subject to which a stay was ordered, IAC had not submitted to the jurisdiction of the English court within the meaning of section 2(3)(6) of the Act (Transcript, 23 October 1993).

17. [1982] A.C. 888, at 938.

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