

Hazel Fox QC. ***The Law of State Immunity***. Oxford: Oxford University Press, 2nd edition. 2008. Pp. 600. \$275.00. ISBN: 9780199211104.

Over a distinguished career, Lady Hazel Fox CMG QC has come to be recognized as one of the leading publicists in the law of state immunity. In the introductory chapter to the second edition of her monograph, Lady Fox recognizes that the law in this area is simply not static. Since the initial publication of the monograph in 2002, two significant developments have taken place and the revised second edition provides an excellent up-to-date and authoritative account of both.

The UN Convention on Jurisdictional Immunities of States and their Property was adopted by the General Assembly in 2004. The Convention is yet to enter into force and, according to Lady Fox, the principal aim of the new edition is to enable an evaluation and understanding of the Convention to be made by those who advise and represent governments on their decisions as to ratification and implementation of the Convention into national law. The Convention plays a central role in the discussion of the entire book. In particular, the chapters in Part III on the current law of state immunity have been updated to cover in detail the text of each provision. Although Lady Fox recognizes that the starting point for the law relating to state immunity will now be the Convention, she emphasizes that reference must be made to state practice in the form of international and domestic legislation as well as judicial decisions since the Convention

has not entered into force. Accordingly, she meticulously examines the Convention Articles against this international practice. The discussion in Part II on the sources of the law of state immunity has been augmented, and the analysis of English and US law is now extended into separate chapters.

The second significant development to have taken place since the book's first publication is a series of decisions which consider whether immunity may be granted by a national court in proceedings where a foreign state and/or its public officials are alleged to have committed an act in violation of international law. It seems curious why Lady Fox now chooses to discuss this in Part I of the second edition of her book alongside the chapters relating to the structure and general concepts of the law of state immunity. While on the one hand there appears to be practice which suggests that a state continues to enjoy immunity from the adjudicative jurisdiction of a national court in such proceedings, there is, on the other hand, however, practice going the other way. The law seems far from settled, and this is reinforced further by the International Law Commission currently considering the immunity from criminal jurisdiction of state officials. With this in mind, it might have perhaps been better for this part of the discussion to have remained in Part V under the heading of current and future problems, where it was situated in the first edition.

A particular feature of the excellent discussion on whether states enjoy immunity for violations of international law found in the first edition was Lady Fox's consideration of this issue from the perspective of other international doctrines such as the law of jurisdiction and state responsibility. Considering state immunity within the broader context of the international legal system in which it operates is something which has evaded much of the jurisprudence and academic literature to date on the subject. The second edition draws upon this strength and widens the analysis further. Lady Fox thus considers the preliminary questions of the limits which international law places on

the civil jurisdiction of national courts to adjudicate disputes involving foreign states (at 78–84), as well as how a violation of international law may become a cause of action in domestic law (at 165–166). The discussion on the capacity of states to commit crimes under international law has been revised to take into account the ICJ's recent decision in *The Application of the Genocide Convention* case (at 89–91), and the material on whether the peremptory status of a *jus cogens* norm overrides the rules on state immunity has been updated in light of several recent developments (at 150–156). Similarly, the section on immunity from criminal jurisdiction of state officials alleged to have committed international crimes has been rewritten (at 695–700).

The theoretical and insightful nature of this part of the discussion is likely to be of great interest to both academics and students undertaking advanced studies in public international law and international criminal law. However, this is not to say that practitioners will not find the discussion useful; the authoritativeness of Lady Fox's work on peremptory norms in the first edition was cited with approval by both the Court of Appeal in *Jones v. Saudi Arabia*,¹ and the House of Lords.²

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¹ [2004] EWCA Civ 1394, at para. 17.

² [2006] UKHL 26, at paras 24 and 44.