

seven chapters. This review started by situating the book among works in general international law and international investment law. It concludes by saying that the book stands out due to its sharp and nuanced analysis of general international law and the evolving investment arbitration jurisprudence. The work makes a tangible contribution to the development of international law and merits particular praise for the conceptual clarification and delineation of investment law standards *vis-à-vis* breaches of investment contracts. From numerous sketches, taken at different times and in various contexts, state responsibility for breaches of investment contracts appears to have finally received a rather detailed portrait in Ho's work. It will inevitably have a lasting impact for all subsequent writings on the subject.

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doi:10.1093/ejil/chab043

Tom Ruys and Nicolas Angelet (eds), Luca Ferro (assistant ed.). **The Cambridge Handbook of Immunities and International Law**. Cambridge Cambridge University Press, 2019. Pp. 790. £150.00. ISBN: 9781108417884.

It is testament to the perennial newsworthiness of this canonical topic of international law that, despite the imprint on the collective consciousness of an epochal global pandemic, mention of 'immunities' to an international lawyer is still more likely to call to mind diplomats, dictators and the *jure imperii/jure gestionis* distinction than vaccines, variants and viral loads. In the past year alone, two international judgments,¹ one international arbitral award,² at least eight national judgments³ and two diplomatic *causes célèbres*⁴ implicating jurisdictional immunities have jostled with COVID-19 for the international legal and even mainstream press headlines. The myriad state and international organizational activities and property to which they can be relevant, the multiplicity of national courts worldwide in which they can be at issue, the minor and

¹ Case C-641/18, *Rina* (EU:C:2020:349); *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Merits, Judgment, 11 December 2020 (not yet published).

² PCA, *The 'Enrica Lexie' Incident (Italy v. India) – Award*, 21 May 2020, PCA Case no. 2015–28, available at <https://pca-cpa.org/en/cases/117/>.

³ Hague District Court, Case C-09-554385-HA ZA 18–647, Judgment of 29 January 2020; District Court for the District of Colombia, Civil Action no. 2015-0612, *Jam v. International Finance Corporation*, Opinion of 14 February 2020; *A Local Authority v. AG*, [2020] EWFC 18; Svea Court of Appeal, Decision 11729, *Republic of Kazakhstan and National Bank of Kazakhstan v. Ascom Group SA*, Judgment of 17 June 2020; *R (Dunne) v. Secretary of State for Foreign and Commonwealth Affairs*, [2020] EWHC 3185 (Admin); Seoul Central District Court, Case no. 2016 Ga-Hap 505092, Judgment of 8 January 2021; German Federal Supreme Court, Case 3 StR 564/19, Judgment of 28 January 2021; US Supreme Court, Case no. 19–351, *Federal Republic of Germany v. Philipp*, Opinion of 3 February 2021.

⁴ M. Gatti, 'Diplomats or Fonctionnaires? The Contested Status of the EU's "Embassy" in the UK', *EJIL:Talk!*, 1 March 2021; S. Top, 'The Waiver of Immunity of Catalan MEPs: Reintroducing Politics in EU Extradition Law', *EJIL:Talk!*, 11 March 2021.

sometimes major variations in national approaches to them and the many unknowns as to their precise customary international content on a host of contentious points all conspire to keep immunities current. Add equal doses of arcane detail, conceptual complexity and political and moral controversy and you have a subject for the ages. The challenge for scholars in all of this is that academic writings on the international law of jurisdictional immunities come as thick and fast as pertinent judicial decisions and other practice. Publishing something both original and significant calls for deep grounding, vision and touch.

Fortunately the editors of and contributors to *The Cambridge Handbook of Immunities and International Law* are plentifully endowed with these qualities. To scholars and practitioners interested in the area, this collected volume of 34 chapters by 41 authors from batavophone, francophone, sinophone, germanophone, anglophone and allophone backgrounds – a successful experiment in herd immunity if ever there was one – will be of enjoyment and enduring value. The offerings encompass both tightly focused studies of specific issues and cross-cutting contributions. Most combine close, expertly informed and sophisticated attention to and analysis of international and comparative legal detail with nuanced awareness of conceptual and practical context and implications. The coverage, for its part, is of a breadth that distinguishes the book from existing edited works and monographs dedicated to immunities, which tend to focus on a single species of immunity or a single theme. The collection embraces not only a wealth of different aspects of state immunity, including in its application to individual state officials, and of the immunities of international organizations, including those from which their officials and agents benefit, but also diplomatic, consular and special mission immunities and the immunities of visiting forces. This breadth, however, in no way comes at the cost of depth.

The book opens with an elegant introductory chapter by the editors, followed by Part I, also entitled ‘Introduction’, containing three panoramic chapters. Part II deals avowedly with the immunity from judicial proceedings – referred to as the immunity from ‘jurisdiction’, following the terminology of the 2004 United Nations Convention on State Immunity (UNCSI)⁵ and the earlier 1972 European Convention on State Immunity⁶ – of states and international organizations, although the three excellent chapters on international organizations also touch on other aspects of immunity and on inviolability. Part III, which in many ways is the highlight of the book, contains a series of magisterial chapters on what it refers to as the immunity from ‘execution’ of states and international organizations but what, in the more inclusive generic terminology of the UNCSI, it might more accurately have called immunity from ‘measures of constraint’. The various immunities from which serving and former state and international organizational officials and, at least in the case of such organizations, agents may benefit under international law are the subject of Part IV. Part V, ‘Immunities and the International Legal Order’, rounds off the volume with a miscellany of

⁵ United Nations Convention on Jurisdictional Immunities of States and Their Property (UNCSI), GA Res. 59/38, Annex, 16 December 2004 (not in force).

⁶ 1495 UNTS 182.

contributions, only two of which have a genuine claim to the transversality implied by the part's title.

One of the strengths and pleasures of the book is the sustained and richly detailed attention it pays to matters more usually overlooked or undercooked in the existing literature. In their chapter 'Divergent Views on State Immunity in the International Community', Wenhua Shan and Peng Wang usefully highlight, although arguably overstate, the confounding implications for the ascertainment of the customary rules of restrictive state immunity of the persistence of absolute state immunity in China, including Hong Kong, and in certain other states; of national variation in the identification and formulation of exceptions to state immunity; and of the continuing roles in certain states of considerations of reciprocity and of intervention by the executive. Other welcome, well-executed and at times fascinating contributions zone in on the immunity from pre-judgment and post-judgment measures of constraint from which central bank assets (Ingrid Wuerth), diplomatic property (Cedric Ryngaert), the military and cultural property of states (Matthew Happold) and the property of international organizations (Eric De Brabandere) benefit; on waiver of immunity from execution (Frédéric Dopagne); on diplomatic and consular immunities (separate chapters by Sanderijn Duquet and Eileen Denza); and on the immunities from which members of special missions (Andrew Sanger and Sir Michael Wood), the officials and agents of international organizations (Christian Walter and Fabian Preger) and visiting forces (Aurel Sari) benefit. One rewarding study considers the interaction of the international rules on the immunity from execution of foreign state property, domestic procedural rules governing execution against foreign state property and international and domestic guarantees of access to a court, examining in particular preventive executive and judicial control of execution, questions of the burden of proof and orders for discovery (Mathias Audit, Nicolas Angelet and Maria-Clara Van den Bossche). The authors insightfully observe that '[t]he ambit of State immunity rules in practice – or the ambit of protection accorded to foreign State property – can equally be determined by rules of domestic law which do not as such transpose the international rules of State immunity, but which come in support thereof or as an obstacle thereto' (at 388). In this light, the international rules of immunity themselves are 'only the visible tip of the iceberg' (at 388). As for questions not covered in the book, in an ideal editorial world one might have hoped for a reflection on whether the territorial conditions found in the exceptions to state immunity generally recognized in national and international law are merely pragmatic, comity-inspired limitations on the forum state's exercise of jurisdiction over another state's non-sovereign acts or instead manifestations of a positive concern for the territorial sovereignty of the forum state that is perhaps as essential a justification for the restrictive doctrine of state immunity as the non-sovereign character of certain foreign-state activity and use of property.

The volume is equally impressive, engaging and uncommon in the weight it gives to fundamental questions of definition and scope, questions formal and conceptual but at the same time practical and technical. Nicolas Angelet teases out the

notion of an exercise by a court of one state of ‘jurisdiction’ over another state, focusing on the indirect impleading of the other state and on proceedings for the recognition and enforcement of a foreign judgment rendered against the other state. Jean-Marc Thouvenin and Victor Grandaubert explore, *inter alia*, what sorts of measures of constraint are prohibited by a state’s immunity from measures of constraint against its property. Tom Ruys analyses the same, in his masterly treatment of the implications, or lack thereof, for immunity from measures of constraint of non-European Union targeted sanctions. The respective contributions lock horns. Thouvenin and Grandaubert claim that a state’s immunity from measures of constraint against its property extends to executive measures unconnected with judicial proceedings, such as freezing and blocking of assets, and to legislative measures (at 247, 250–252). Ruys argues to the contrary, submitting, with regard to measures by executive authorities, that executive measures unconnected with judicial proceedings implicate not the immunity from measures of constraint from which the entirety of a foreign state’s property *prima facie* benefits but rather the inviolability from which only certain property of a foreign state is protected. It is easier to agree with Ruys. As he ably shows, there is little persuasive practice to counter and a lot to support the view that what state immunity prohibits is strictly, in the language of Part IV of the UNCSI, ‘measures of constraint in connection with proceedings before a court’⁷ – that is, ‘pre-judgment measures of constraint, such as attachment or arrest, against property of a State’,⁸ and ‘post-judgment measures of constraint, such as attachment, arrest or execution’,⁹ in both cases ‘in connection with a proceeding before a court of another State’.¹⁰ Moreover, although Ruys rightly notes that the order on provisional measures in *Seizure and Detention of Certain Documents and Data*¹¹ ‘does not pronounce on the scope of relevant immunity and inviolability rules’ (at 679, n. 67; see similarly at 683), it is arguable, for what it is worth, that the International Court of Justice by implication dismisses as implausible the argument of Timor-Leste, advanced in the oral pleadings and recalled by the Court,¹² that state immunity served to render internationally wrongful the seizure and retention of documents and data belonging to Timor-Leste by Australia’s executive authorities.¹³ As for the undeveloped suggestion by Thouvenin and Grandaubert that immunity from execution renders unlawful legislative measures against a foreign state’s property, this flies in the face of the consistently emphasized procedural character of

⁷ UNCSI, *supra* note 5, Part IV (heading).

⁸ *Ibid.*, Art. 18.

⁹ *Ibid.*, Art. 19.

¹⁰ *Ibid.*, Arts 18, 19.

¹¹ *Questions Relating to the Seizure and Retention of Certain Documents and Data (Timor-Leste v. Australia)*, Provisional Measures, 3 March 2014, ICJ Reports (2014) 147.

¹² *Ibid.*, at 152, para. 24.

¹³ See *ibid.*, at 153, para. 28, although query the precise import of the words ‘at least’. It is additionally arguable that the International Court of Justice by implication accepts Australia’s argument (recalled at 152, para. 25) that no general inviolability of state property from executive measures by another state can plausibly be said to exist under customary international law.

jurisdictional immunities.¹⁴ Immunity, whether from judicial proceedings or measures of constraint in connection with such proceedings, is not to be equated with exemption from the applicability of the law.

This lively inter-author debate may in turn serve to remind us that – as used in international legal instruments, in the judgments of international and national courts and in the practice of states – the terms ‘immunity’ and even ‘sovereign immunity’ do not always refer to immunity properly so called, which is to say immunity from judicial proceedings and from measures of constraint in connection with such proceedings. For example, although Article 22(3) of the 1961 Vienna Convention on Diplomatic Relations¹⁵ provides that the premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be ‘immune from search, requisition, attachment or execution’, only attachment and execution relate to jurisdictional immunity. Search and requisition are independent executive acts that implicate only inviolability. Not dissimilarly, the ‘immunity’ of foreign warships and of other ships used by a foreign state exclusively for government non-commercial purposes, although encompassing immunity from pre-judgment and post-judgment measures of constraint, extends beyond such measures to inviolability from all forms of physical interference by another state’s executive organs.¹⁶ As for the ‘sovereign immunity’ referred to in the respective headings of Article 236 of the United Nations Convention on the Law of the Sea and Article 13 of the Convention on the Protection of the Underwater Cultural Heritage,¹⁷ this relates to neither jurisdictional immunity nor inviolability but rather to the substantive inapplicability, even to a state party’s own warships and other ships used by it exclusively for government non-commercial purposes, of the conventional obligations in question. In a like vein, so-called ‘sovereign immunity from taxation’, as accorded by some states but not required by customary international law, is a substantive exemption from the obligation to pay certain taxes.¹⁸ Perhaps most famously, in the dictum of the International Military Tribunal

¹⁴ See, e.g., *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 February 2002, ICJ Reports (2002) 3, at 25, para. 60; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 3 February 2012, ICJ Reports (2012) 99, at 124, paras 58, 93, 140; ECtHR, *Al-Adsani v. United Kingdom*, Appl. no. 35763/97, Judgment of 21 November 2001, para. 48.

¹⁵ 500 UNTS 95.

¹⁶ See, e.g., United Nations Convention on the Law of the Sea (UNCLOS), 1833 UNTS 3, Arts 32, 95, 96; ITLOS, *ARA Libertad’ (Argentina v. Ghana) – Provisional Measures*, 15 December 2012, ITLOS Case no. 20, at 348–349, paras 93–100.

¹⁷ UNCLOS, *supra* note 16; Convention on the Protection of the Underwater Cultural Heritage 2001, 2562 UNTS 3.

¹⁸ See, e.g., Her Majesty’s Revenue and Customs, *International Manual*, 9 April 2016, updated 26 March 2021, at INTM860180 (‘Sovereign Immunity’): ‘Income and gains arising to, and in the sole direct beneficial ownership of ... the Head (for example a reigning Monarch or a President) of a foreign independent State [or] the Spouse of such a Head of State [or] a foreign independent Government are ... normally immune from taxation. This immunity, which is known as Sovereign Immunity from taxation, has its origins in a general principle of international law that one Sovereign should not subject another to its municipal laws’; Subdivision 880-C (‘Sovereign immunity’), Income Tax Assessment Act 1997 (Australia); Canada Revenue Agency, *Information Circular 77-16R4*, 11 May 1992, para. 50 (‘Sovereign Immunity’) and *Information Circular 76-12R6*, 2 November 2007, para. 11. See generally D. Gaukrodger, ‘Foreign State Immunity and Foreign Government Controlled Investors’, OECD Working Paper on International Investment 2010/02 (2010), at 32–37.

at Nuremberg that '[h]e who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state if the state in authorizing action moves outside its competence under international law',¹⁹ the reference to 'immunity' is not to unamenability to the tribunal's jurisdiction but rather to an absence of substantive criminal responsibility.

In contrast to the tenor of the rest of the collection, at least one chapter, as expertly knowledgeable and rhetorically bracing as it is, might have found a more natural home in the proceedings of the Flat Earth Society. Peremptory statements of legal positions plainly contrary to the great preponderance of state practice and *opinio juris* and to consistent international jurisprudence are supported by dogmatic argumentation founded on tendentious premises, overdetermined logic and questionable characterization of the evidence. The culmination is the following stark pronouncement:

Despite repeated endorsements in practice, the general rule of State immunity does not form part of customary international law. ... It ... appears that after the absolute understanding of immunity has been replaced by restrictive immunity, international law has 'not prescribed an alternative rule' and, as a consequence, States are no longer under a legal duty under general international law to accord immunity to each other. (at 122, citation omitted; see similarly at 124)

It seems that all those states and international courts and tribunals that would beg to differ are labouring under false legal consciousness. The chapter concludes with a sort of academic gaslighting, asserting that 'the current debate on State immunity would benefit from embracing the conclusion that more obviously follows from the coherent use of required positivist methodology, namely that general international law contains no legal requirement for States to accord immunity to foreign States in their courts' (at 124). The *nihil obstat* granted to the publication of these perversely enjoyable heretical provocations speaks to the editors' admirable latitudinarianism.

Yet this tolerance of heterodoxy and the volume's more basic conception pose the question of 'what is meant these days in English-language academic publishing by a 'handbook', a designation traditionally indicative, at least in the continental tradition, of an orthodox, authoritative, synthetic, comprehensive, systematic, accessible and comparatively concise, if not necessarily short, vademecum devoted to the essentials of a field of learning and written and organized, usually by a single author, with an eye to utility. As the editors explain in their introduction, *The Cambridge Handbook of Immunities and International Law* 'is a spin-off of an international conference', with around half of the chapters based on papers presented in that context and the rest written at the invitation of the editors on 'additional topics ... identified for inclusion' in order 'to fill remaining gaps and ensure the desired comprehensiveness' (at 7). The result, as is not uncommon with many contemporary 'handbooks', is a coverage that, while extensive, does not capture all the essentials of the field and that, although as well organized as it could be under the circumstances, lacks rigorous systematicity.

¹⁹ Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30 September and 1 October 1946, Misc. no. 12 (1946), Cmd. 6964, reprinted in (1947) 41 *American Journal of International Law* 172, at 221.

None of this is to criticize the editors of the work, which succeeds in its aims with aplomb and would otherwise have been unmanageable and unmarketable. It is merely to ponder its labelling and that of many 'handbooks' like it. As it is, at least the great majority of the chapters of this outstanding book combine the authority, accessibility and utility that one would expect of something billed as a handbook, albeit a handbook that, at 790 typeset and 10 blank pages, is liable to cause repetitive strain injury in said hand.

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doi:10.1093/ejil/chab044

Giulio Bartolini (ed.). ***A History of International Law in Italy***. Oxford: Oxford University Press, 2020. Pp 482. £95. ISBN: 9780198842934.

The historical turn in international law that characterizes our time involves a critical reflection on the study of international law in the past, new attention to the development of international legal thought in specific contexts and an opportunity to present some old ideas and notions under a new light. In a discipline dominated by the English language, historical reflection on a scholarly tradition largely based on another language may contribute to reintroducing into the wider debate some perspectives that are popular in other jurisdictions but less so in English/American scholarship. *A History of International Law in Italy*, edited by Giulio Bartolini, serves all these purposes in relation to the Italian tradition of international law. Its 19 chapters are waypoints in a fascinating voyage that will surely attract attention both from Italian and non-Italian scholars. The book offers a composite tapestry of theories, personalities and works that fully reflects the layered and complex intricacies of the studies of international law in Italy.

An overview of the structure of the book is necessary to understand the challenges that the editor and the authors faced. The collection is divided into four sections: an introduction by the editor, a very long section on the development of international law scholarship in Italy (10 chapters), a substantial section on key historical and political events and their impact on the Italian scholarship (six chapters) and a conclusion (two chapters). The overall structure appears coherent and reaches a fair balance between chronological, thematic and ideological approaches.

The book is the product of an Italian reflection on Italian scholarship: to the best of these reviewers' knowledge, the only author who is not an Italian citizen – Robert Kolb – was nonetheless born in Rome. Three authors (Eloisa Mura, Walter Rech and Claudia Storti) have a clear background in legal history, whereas 14 are international lawyers (and, with the exception of Pietro Franzina, generalist international lawyers). Regrettably, only two authors (both legal historians) are women. Since describing all the interesting aspects of this book is impossible in the limited space of the present review, it is helpful to highlight some main themes that are explored across the chapters.