Neutral Citation Number: [2026] EWCA Civ 797

Case No: CA-2025-001365

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
COMMERCIAL COURT (KBD)
Sir William Blair, sitting as a Judge of the High Court
[2025] EWHC 964 (Comm)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/06/2026

Before :

LORD JUSTICE LEWISON
LORD JUSTICE NEWEY
and
LORD JUSTICE PHILLIPS

- -

Between :

(1) CC/DEVAS (MAURITIUS) LIMITED **(2) DEVAS EMPLOYEES MAURITIUS PRIVATE LIMITED** **(3) TELCOM DEVAS MAURITIUS LIMITED**	**Claimants**
(4) CCDM HOLDINGS LLC **(5) DEVAS EMPLOYEES FUND US LLC** **(6) TELCOM DEVAS LLC**	**Claimants/ Appellants**
- and -	
THE REPUBLIC OF INDIA	**Defendant/ Respondent**

- -
- -

Tom Sprange KC, Ruth Byrne KC and Kabir Bhalla (instructed by **King & Spalding International LLP**) for the **Appellants**
Sudhanshu Swaroop KC (instructed by **White & Case LLP**) for the **Respondent**

Hearing date: 24 March 2026

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Approved Judgment

This judgment was handed down remotely at 2 pm on Wednesday, 24th June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Phillips :

1. The issue on this appeal is whether, by ratifying the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention" or "the Convention"), a foreign state has submitted to the adjudicative jurisdiction of the courts of the United Kingdom (itself a party to the Convention) in respect of proceedings to enforce international arbitration awards adverse to that state, thereby waiving the sovereign immunity the state would otherwise be entitled to assert against such jurisdiction. The central question is whether Article III of the Convention ("Art. III") has that effect by providing as follows:

> "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."

2. In these proceedings the claimants seek to enforce against the respondent ("India") two arbitral awards. The first is a final award on jurisdiction and merits dated 25 July 2016 and the second a final award on quantum for sums in excess of EUR 195m dated 13 October 2020 ("the Awards"). The Awards were made by a tribunal of the Permanent Court of Arbitration seated in the Hague ("the Tribunal") in arbitration proceedings under the UNCITRAL rules brought by the first to third claimants against India pursuant to Article 8 of a bilateral investment treaty between Mauritius and India which entered into force on 20 June 2000 ("the BIT"). The fourth to sixth claimants, the appellants in this appeal, claim to be assignees of the benefit of the Awards and were joined as claimants without prejudice to any argument as to the validity and effect of the assignments.

3. On 29 June 2021 Cockerill J made an order under s.101(2) and (3) of the Arbitration Act 1996, on the usual "without notice" basis, granting the first to third claimants leave to enforce the Awards in the same manner as a judgment or order of the Court and entering judgment in the terms of the Awards, further stating India's right to apply pursuant to CPR 62.18(9) to set aside the order within one month of its service.

4. On 5 May 2022 India made such an application, asserting sovereign immunity under s.1 of the State Immunity Act 1978 ("the SIA") and contending that the exception to such immunity provided by s.9 of the SIA did not apply because the dispute did not fall within the terms of its offer to arbitrate in the BIT and therefore India had not "agreed in writing to submit [the dispute] to arbitration" as required by that section. On 19 January 2023, following the joinder of the appellants as fourth to sixth claimants, India's application was amended to add a claim for declaratory relief against the appellants.

5. In addition to resisting India's contentions as regards the inapplicability of the s.9 exception to state immunity, by application dated 24 January 2024 the appellants raised the further and freestanding argument that, by reason of India's ratification of the New York Convention (and, in particular, its agreement to Art. III), the exception to state immunity in s.2 of the SIA is engaged. S.2 provides, in so far as relevant, as follows:

> **“Submission to jurisdiction.**
>
> (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.
>
> (2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; …”

6. S.17(2) of the SIA provides that the reference to an agreement in s.2(2) includes reference to a treaty, convention or other international agreement.

7. On 23 October 2024 Sir Nigel Teare directed that the question of whether India, by consenting to Art. III, had submitted to the adjudicative jurisdiction by prior written agreement within the meaning of s.2(2) of the SIA, be tried as a preliminary issue.

8. In a reserved judgment dated 17 April 2025 Sir William Blair (“the Judge”) answered that question in the negative. The Judge’s reasons, summarised at [107], included that, applying the established classification of state immunity in English and international law, the reference to “rules of procedure” in Art. III preserved state immunity in its own terms.

9. The appellants now challenge that decision, with permission granted by the Judge, contending that, by the opening clause of Art. III, India and the United Kingdom have agreed that the latter has adjudicative jurisdiction to recognise and enforce the Awards, amounting to an express and sufficiently clear submission to the jurisdiction for the purposes of s.2(2) of the SIA by India. The appellants further contend that the reference in Art. III to “in accordance with the rules of procedure” does not negate that agreement to submit to the jurisdiction, being a reference only to those rules applied for the purpose of giving effect to the obligation to recognise and enforce, and therefore not to the general rule that a state is immune from the jurisdiction of another state.

10. By its Respondent’s Notice, India sought to uphold the Judge’s decision on various additional grounds, including that India ratified the New York Convention subject to a reservation that, inter alia, it would apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the laws of India. India contends that the claimants have not met the burden of establishing that the relevant dispute is commercial and in any event submit that it is not. In the alternative to upholding the Judge’s order, India sought to vary it by way of cross-appeal.

11. At the hearing of the appeal we invited the parties to focus their submissions on the meaning and effect of the phrase “in accordance with the rules of procedure of the territory where the award is relied upon” in Art. III. In the light of the parties’ submissions on that aspect, both written and oral, I would dismiss the appeal for the reasons set out below. As I understand that Lewison LJ and Newey LJ agree with that disposal of the appeal, it is not necessary to consider the issues raised by the Respondent’s Notice.

The essential facts

12. The Judge set out the background facts at [12] to [23]. As the issue under consideration is a pure question of interpretation of the New York Convention, not dependent on any particular set of facts, the following summary, drawn from the Judge's fuller account, is sufficient for present purposes.

13. The first to third claimants are Mauritian companies who invested in India through their shareholdings in an Indian company named Devas Multimedia Private limited ("Devas"). On 28 January 2005 Devas entered a contract with Antrix Corporation Limited ("Antrix"), an Indian registered entity wholly-owned by the Government of India, for the lease of a proportion of India's S-Band spectrum on two Indian satellites for the creation of a hybrid communications platform providing multimedia services across India ("the Devas Contract").

14. In 2011 India, through its Cabinet Committee on Security, decided to terminate the Devas project and to annul the Devas Contract on account of what it considered was the need to preserve the S-Band spectrum for national purposes rather than to lease it for commercial activities. That decision was relied upon by Antrix to terminate the Devas Contract on 25 February 2011.

15. In 2012 the first to third claimants commenced the arbitration proceedings referred to in paragraph 2 above, alleging that India's actions in relation to the Devas Contract had breached its obligations under the BIT as to the treatment of Mauritian investors in India. India's position was that the Tribunal lacked jurisdiction in that there was no qualifying "investment" within the meaning of the BIT, and that its decision to annul the Devas Contract was "directed to the protection of its essential security interests", a carve-out from the jurisdiction provisions in the BIT.

16. In the Award on jurisdiction and merits, the Tribunal rejected India's jurisdictional objection that the Devas Contract was not a qualifying "investment". However, it accepted that it lacked jurisdiction in so far as India's decision to annul the Devas Contract was directed to the protection of its essential security interests, deciding that this accounted for 60% of the annulment decision. On the merits, the Tribunal decided that India had breached its obligation under the BIT to accord fair and equitable treatment to the first to third claimants.

17. The claimants have sought to enforce the Awards in multiple jurisdictions, resisted in each case by India. India's claim to state immunity against adjudicative jurisdiction has been rejected in Canada. However, since the hearing of the appeal in this Court, India's claim to state immunity has been upheld by the High Court of Australia, referred to further below.

The applicable test for waiver of state immunity by treaty

18. In deciding whether Art. III amounted to a waiver of state immunity for the purposes of s.2(2) of the SIA, the Judge at [53] cited and applied the test set out in this Court in *Infrastructure Services Luxembourg SARL v The Kingdom of Spain* ("*Infrastructure*") [2024] EWCA Civ 1257, [2025] KB 611 at [92] in the context of considering whether

agreement to the terms of the ICSID Convention[1], and in particular Article 54(1) of that convention, constituted a submission to the jurisdiction by the contracting states to that convention (which include the United Kingdom):

> "If the express words used amount, on their proper construction, to an unequivocal agreement by the state to submit to the jurisdiction, that is sufficient to satisfy section 2(2) of the SIA, even if the words "submit" and "waiver" are not used."

19. That test was subsequently approved by the Supreme Court in *Infrastructure* [2026] UKSC 9, [2026] 2 WLR 581 at [68], which provided further clarification in the following terms at [69]:

> "We consider that a waiver of immunity by treaty requires a clear and unequivocal expression of the state's consent to the exercise of jurisdiction. Whether this exists depends upon an exercise of treaty interpretation in accordance with the treaty's governing law, public international law. For this purpose, the relevant rules of interpretation are to be found in articles 31 and 32 of the Vienna Convention on the Law of Treaties. Such an expression of consent does not require explicit words such as waiver or submission. Meaning is conveyed not only by the express words used but also by what is necessarily inherent in those words, and by what necessarily follows as a consequence of the use of those words. Accordingly, when considering the waiver of state immunity by treaty, the test is whether the words used necessarily lead to the conclusion that the state has submitted to the jurisdiction."

The interpretation of a treaty or convention

20. Having clarified the test to be applied in domestic law pursuant to s.2(2) of the SIA, the Supreme Court in *Infrastructure* turned, at [73], to the question of whether and to what extent states had waived immunity and submitted to the adjudicative jurisdiction of the courts of other contracting states by virtue of Article 54 of ICSID. This, the Supreme Court confirmed, depended on the proper interpretation of the relevant articles, interpreted in accordance with customary international law principles of treaty interpretation as codified in the Vienna Convention on the Law of Treaties. The material provisions of Articles 31 and 32 of that convention are as follows:

> "Article 31
>
> *General rule of interpretation*
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose . . .
>
> 3. There shall be taken into account, together with the context: (a) . . . (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

[1] Convention on the Settlement of Investment Disputes between States and nationals of Other States 1965.

> (c) any relevant rules of international law applicable in the relations between the parties . . .
>
> Article 32
>
> *Supplementary means of interpretation*
>
> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; (b) leads to a result which is manifestly absurd or unreasonable."

21. The Supreme Court then summarised the approach to interpretation required by those Articles as follows:

> "75. Article 31 thus requires the terms of a treaty to be interpreted in good faith in accordance with their ordinary meaning, in their context, and in the light of the treaty's object and purpose. A holistic approach is required. Context and object and purpose may be found in the treaty's text, in other words its surrounding provisions, and in the treaty as a whole, including its preamble. The clear focus of article 31 is, accordingly, on seeking to ascertain the ordinary meaning of the relevant terms of the treaty having regard to context, object and purpose of the treaty as a "single combined operation": see *JTI Polska sp. z o.o. v Jakubowski* [2024] AC 621 (para 26, per Lord Hamblen); and *Maritime Delimitation in the Indian Ocean (Somalia v Kenya)* [2017] ICJ Rep 3, para 64.
>
> 76. Article 32 allows for recourse to supplementary material for limited purposes only, emphasising that the court's task is to interpret the treaty rather than the supplementary material. Where the ordinary meaning of treaty terms can be ascertained by applying the primary rule in article 31 of the Vienna Convention on the Law of Treaties, recourse to supplementary means of interpretation under article 32 is permitted only "in order to confirm" that ordinary meaning. Such confirmation can be drawn from the travaux préparatoires. However, the supplementary means of interpretation in article 32 cannot be used to change or contradict the meaning resulting from the application of article 31.
>
> 77. Where, however, the application of the rule in article 31 produces a meaning that is ambiguous or obscure or leads to a manifestly absurd or unreasonable result, the rule in article 32 permits supplementary means to be used to determine the meaning of treaty terms. But such cases "should be rare, and only where two conditions are fulfilled, first, that the material involved is public and accessible, and secondly, that the travaux préparatoires clearly and indisputably point to a definite legislative intention" (*Fothergill v Monarch*

> *Airlines* [1981] AC 251, 278B-C per Lord Wilberforce; and also *Effort Shipping Co Ltd v Linden Management S.A. and others* [1998] AC 605, 623E per Lord Steyn).
>
> 78. Article 17(1) of the Vienna Convention on the Law of Treaties provides that: "Without prejudice to articles 19 to 23 [the provisions on reservations], the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree". In the absence of a provision specifically authorising states to consent to a part or parts only of a treaty or to exclude certain parts, the established rule is that the consent must relate to the treaty as a whole, and a purported partial consent is regarded as no consent at all: see *Oppenheim's International Law*, pp 1232–1233; Corten and Klein (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2011), p 364. It also follows that, in general, a state's consent to be bound by a treaty reflects its acceptance of the other parties to that treaty being bound by the obligations contained therein in relation to the first state.
>
> 79. Finally, it is well-established that the text of an international treaty or convention is intended to be given the same uniform meaning by all the states which become parties to it. This means that so far as possible the text should be interpreted in a uniform manner and that regard should be had to how it has been interpreted by the courts of different countries, particularly where there is consensus among national courts in relation to the question of interpretation: see, for example, *Islam v Secretary of State for the Home Department* [1999] 2 AC 629, 657A–B, per Lord Hope of Craighead."

The decision in *Infrastructure*: the foundation of the appellants' contentions

22. Article 54(1) of the ICSID Convention provides as follows:

> "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State…."

23. Applying the principles summarised above, the Supreme Court confirmed that, on a proper interpretation of ICSID, and in particular of Article 54(1), the contracting states had waived state immunity and submitted to the adjudicative jurisdiction of the courts of the United Kingdom within s.2(2) of the SIA. The key reasoning was as follows:

> "82. Under article 54(1) each contracting state is obliged to recognise as binding and enforce the pecuniary obligations of an award rendered pursuant to the ICSID Convention as if it were a final judgment of its own courts. It follows that, upon becoming party to the ICSID Convention, a contracting state not only assumes that obligation to recognise and enforce ICSID awards but also consents to the fact that all other contracting states are undertaking the same

obligation. As a matter of ordinary language, each contracting state therefore agrees by article 54(1) not only that it will recognise and enforce awards, but also that awards to which it is a party will be recognised and enforced in other contracting states which have undertaken the same obligation. Thus, the United Kingdom has agreed with the other contracting states that it will recognise any ICSID award as if it were a final judgment of its own domestic courts, and the appellant states have agreed to the United Kingdom doing so, and agreed with all contracting states, including the United Kingdom, that this is the United Kingdom's obligation. On the face of it, this is inconsistent with the preservation of adjudicative immunity.

….

84. These articles draw no distinction between states parties and investor parties and plainly apply to both. On the face of it, the appellant states have agreed that the respondent investors are entitled to have their ICSID awards recognised in the United Kingdom and enforced under domestic law against them as if each were a judgment of the High Court. The High Court is obliged to recognise these awards and enforce them as if they were judgments. This does not affect the position as regards immunity from execution as discussed below.

….

89. The waiver follows from the fact that each contracting state has agreed that all other contracting states are obliged to ("Each Contracting State shall") recognise and enforce ICSID awards, including as against them in the territories of those other contracting states. These are obligations undertaken on a mutual and reciprocal basis. That necessarily involves an express acceptance by each contracting state that if an ICSID award is rendered against it, then every other contracting state must exercise jurisdiction, if requested, to recognise and enforce that award.

….

93. This conclusion does not involve reading in words or implying terms into article 54(1) of the ICSID Convention. The submission to jurisdiction on a reciprocal basis is deduced from the ordinary meaning of the express and unequivocal terms of article 54(1). On the face of the express words of article 54(1), consent to this provision could not be a clearer submission to the jurisdiction…."

24. The appellants' central contention on this appeal is that the express opening words of Art. III of the New York Convention ("Each Contracting State shall recognize arbitral awards as binding and enforce them..") are the same in all material respects as the operative wording of Article 54(1) of ICSID, which the Supreme Court stated "could not be a clearer submission to the jurisdiction", being an unequivocal submission by the contracting states on a reciprocal basis. The appellants submit that, in the context

of the pro-enforcement bias of the New York Convention, the same approach to Art. III conclusively determines the question of immunity from adjudicative jurisdiction against India, regardless of the further wording in the second clause of Art. III.

25. That is a reversal of an argument which was advanced before this Court in *Infrastructure*, where the states (in particular Zimbabwe) relied on the similarity of wording in Article 54(1) of ICSID and Art. III of the New York Convention, and the suggested "read-across" from one to the other, as a reason why Article 54(1) should *not* be interpreted as amounting to a waiver of immunity.

26. This Court considered that argument, even if correct, carried little force in interpreting Article 54(1), but in any event was unconvinced by its underlying merits. At [102] I stated as follows:

> "(i) [I]t is by no means clear that interpreting article 54 as a submission to the jurisdiction for the purposes of section 2(2) of the SIA would necessarily result in article III also being so interpreted. The two provisions are not worded identically, article III referring to the award being enforced "in accordance with the rules of procedure of the territory where the award is relied upon". As state immunity is regarded as a procedural bar as a matter of international law, it may be that article III preserves state immunity on its own terms. Further, whereas the [ICSID] Convention is necessarily dealing with awards to which a Contracting State is party, that is far from the case in relation to the New York Convention. The conclusion that article 54 contains an "unmistakeable" agreement by states that awards against them would be enforced may not be so obvious in respect of article III. We did not hear full argument on those issues and are certainly not in a position to decide them."

27. The second point made in that sub-paragraph, that ICSID is necessarily dealing with awards to which a contracting state is a party, was indeed a factor in the Supreme Court's interpretation of Article 54(1) in *Infrastructure*, as appears from [92]:

> "Furthermore, recognition and enforcement proceedings will in all, or almost all, cases involve the courts of one contracting state exercising adjudicative jurisdiction over another contracting state… Contracting states must use existing or newly established mechanisms to achieve the required result, namely, to recognise and enforce awards as if they are final judgments. They must achieve that result in all cases, not just in some cases. To do that there must be an exercise of adjudicative jurisdiction by the forum state. Put another way, a contracting state… cannot simultaneously agree that the United Kingdom "shall" recognise and enforce an ICSID award rendered against them, whilst also claiming immunity from recognition and enforcement that would prevent the United Kingdom from complying with its own ICSID obligations. The obligations to recognise and enforce consented to by the contracting states are therefore inconsistent with the maintenance of immunity."

28. A further aspect regarded as of importance by the Supreme Court in interpreting Article 54(1) of ICSID as amounting to a submission by contracting states to the jurisdiction (but which does not arise in relation to Art. III of the New York Convention), is that ICSID makes express provision for the preservation of state immunity against execution, whereas adjudicative immunity is not preserved:

> "88. It is significant that only immunity from execution is expressly preserved in this scheme. The absence of any preservation of adjudicative immunity in articles 53–55 accords entirely with the obligations in article 54(1) being fundamentally inconsistent with the maintenance of such immunity from adjudicative jurisdiction because the obligation to recognise and enforce an arbitral award as binding necessarily involves an exercise of adjudicative jurisdiction that must have overcome any jurisdictional bar to the exercise of that jurisdiction. Put another way, once there is a binding award, recognised and to be enforced like a final judgment, adjudication has already taken place and the scope for reliance on immunity from adjudicative jurisdiction has passed. It follows that the reciprocal obligations on each contracting state in article 54(1) are inconsistent with the maintenance by contracting states of any such immunity from adjudicative jurisdiction. On the face of it, the terms of article 54(1) mean that there is a waiver of reliance on state immunity."

29. The Supreme Court in *Infrastructure* did not refer to Art. III of the New York Convention and did not address any argument as to the potential of a "read across" from Article 54 of ICSID or its implications. However, reference was made at [98] to the fact that Article 54 is part of a self-contained or closed scheme for producing binding awards, which a domestic court may not refuse to enforce even on grounds of national or international public policy, "differ[ing] significantly in that regard from the New York Convention...".

30. It follows that, contrary to the appellants' primary contention, the reasoning of the Supreme Court in *Infrastructure* in relation to Article 54(1) of ICSID cannot simply be read across to Art. III of the New York Convention. Whilst opening with similar wording as Article 54(1), in Art. III that wording is qualified by the further words "in accordance with the rules of procedure of the territory where the award is relied upon". As summarised by the Supreme Court at [75] of *Infrastructure*, the focus is on seeking to ascertain the ordinary meaning of the whole of Art III. having regard to the context, object and purpose of the treaty as a "single combined operation". In that regard, it is to be noted that both the wording and context of Art. III differ in important respects from that of Article 54(1) of ICSID. Further, the object and purpose of the New York Convention is to facilitate and encourage international arbitration by promoting recognition and enforcement by Contracting States of any and all foreign arbitral awards, regardless of the parties. In contrast, the object and purpose of ICSID is to promote and encourage investment in contracting states to that convention by mutually recognising and enforcing awards to which a contracting state is necessarily a party.

31. The central task in the exercise of interpretation as explained above is to determine the meaning in Art. III of the term "rules of procedure".

The meaning of "rules of procedure" in the context of Art. III

32. The appellants did not dispute that, as a matter of both international law and English domestic law, state immunity is a rule of procedure.

33. The distinction between procedural rules and substantive rules, and the classification of state immunity as a rule of procedure for the purposes of the application of the European Convention on Human Rights and international law more generally, was explained by Lord Sumption in *Benkharbouche v Embassy of the Republic of Sudan* [2017] UKSC 62, [2019] AC 777, as follows:

> "16. The dichotomy between procedural and substantive rules is not always as straightforward as it sounds, partly because the categories are not wholly distinct and partly because they do not exhaust the field. There may be rules of law, such as limitation, which are procedural in the sense that they bar the remedy, not the right, but which operate as a defence. There may be rules of law which require proceedings to be dismissed without consideration of the merits. These may be substantive rules, such as the foreign act of state doctrine, or procedural rules such as state immunity. There may be rules, whether substantive or procedural, which limit the territorial or subject-matter jurisdiction of the domestic courts, and which they have no discretion to transgress. Or the claimant's right may be circumscribed by a substantive defence, such as privilege in the law of defamation. Or he may simply have no legal right to assert under the domestic law, for example because the law is that no relevant duty is owed by a particular class of defendants although it would be by defendants generally. But these are not refinements with which the Strasbourg court has traditionally been concerned. What the Strasbourg court means by a procedural rule is a rule which, whether technically procedural or substantive in character, has the effect of barring a claim for reasons which do not go to its legal merits; that is to say, rules which do not define the existence or extent of any legal obligation.
>
> ….
>
> 18. The International Court of Justice has characterised state immunity as procedural: *Democratic Republic of the Congo v Belgium (Arrest Warrant of 11 April 2000)* [2002] ICJ Rep 3, paras 59-61; *Germany v Italy: Greece Intervening (Jurisdictional Immunities of the State)* [2012] ICJ Rep 99, at paras 92-97. This is correct, but state immunity is not procedural in the sense that the organisation and practices of the courts are procedural. It is procedural in the same sense as that concept has been used in the case law of the European Court of Human Rights. In other words, it requires the court to dismiss the claim without determining its merits.

> But it leaves intact the claimant's legal rights and any relevant defences, which remain available, for example, to be adjudicated upon in the courts of the state itself."

34. As regards English law, in *Jones v Ministry of Interior for the Kingdom of Saudi Arabia* [2006] UKHL 26, [2007] 1 AC 270, both Lord Bingham of Cornhill (at [24]) and Lord Hoffmann (at [44]) adopted the statement of the law by Hazel Fox QC in *The Law of State Immunity* (2002) p. 525 that "State immunity is a procedural rule going to the jurisdiction of a national court. It does not go to substantive law…".

35. It follows that, applying international law principles, the expression "rules of procedure" would appear to encompass state immunity where that is a rule of procedure in the territory in question, as it is in this jurisdiction. That is the ordinary meaning of the words in that context, and (in contrast with ICSID) there is no other reference to state immunity in Art. III or elsewhere in the New York Convention which would justify a reading which excluded from the rules according to which awards are to be enforced those which conferred immunity on states.

36. Indeed, as Lewison LJ pointed out in the course of argument, if state immunity were excluded from "rules of procedure", there would seem to be no reason why that exclusion should not include immunity against execution against the property of the state in the jurisdiction, so that the reciprocal agreement in Art. III could be said to be written consent of a Contracting State to such execution for the purposes of s. 13(3) of the SIA, a proposition from which Mr Sprange KC, for the appellants, did not dissent. The result would be that, by ratifying the New York Convention, a state would have waived its immunity against both the adjudicative jurisdiction and execution powers of the United Kingdom, a waiver far wider than that effected by Articles 54 and 55 of ICSID, which expressly preserve immunity from execution. That would have been achieved without a single mention of state immunity in the New York Convention and despite Art. III making express reference to preserving rules universally recognised as encompassing state immunity.

37. A further point, made in Crawford, *A Foreign State Immunities Act for Australia* (1980) 8 AYBIL 71 pp. 101-102, fn 42, is that Art. III applies to enforcement of awards against non-party states just as it applies to enforcement of awards against other Contracting States. As a treaty cannot affect the rights of non-parties, it cannot be interpreted as depriving them of sovereign immunity. Professor Crawford concluded that therefore, if the New York Convention applies to arbitral awards to which a state is party (which is the basis on which this appeal proceeded), sovereign immunity must be one of the "rules of procedure" under Art. III.

38. The appellants, nonetheless, contended that "rules of procedure" should be interpreted as excluding state immunity. Mr Sprange pointed to Lord Sumption's recognition in *Benkharbouche* at [16] that "[t]he dichotomy between procedural and substantive rules is not always as straightforward as it sounds" and at [18] that "state immunity is not procedural in the sense that the organisation and practices of the courts are procedural". His overarching contention was that, properly interpreted, the reference to "rules of procedure" in Art. III was to rules "that are functionally necessary to facilitate and address the process of recognition and enforcement". In this jurisdiction, that was primarily a reference to Part III of CPR 62.

39. Mr Sprange recognised, however, that "rules of procedure" did include, for example, the law of limitation and rules as to insolvency, neither of which fall within the rubric of organisation and practices of the courts. Having done so, it was impossible for him to identify a sensible meaning of "rules of procedure" that included those defences but excluded state immunity. The only workable definition of a rule of procedure in this context is the one given by Lord Sumption at [16], namely "a rule which, whether technically procedural or substantive in character, has the effect of barring a claim for reasons which do not go to its legal merits; that is to say, rules which do not define the existence or extent of any legal obligation." Such a rule is recognised as including state immunity.

40. Mr Sprange nevertheless argued for a narrower reading of the phrase, excluding state immunity, by asserting that the opening clause of Art. III was so clearly a submission to the jurisdiction of the enforcing Contracting State that a reference to "rules of procedure" was insufficient to counteract its force, such that the term should be read as excluding state immunity. In his submission, wording such as "all rules of procedure" would have been necessary to have made it sufficiently clear that state immunity was not being waived. However, it is settled that interpretation of a treaty is a holistic exercise. There is no justification for treating the opening clause of Art. III as predominant and reading down the subsequent reference to "in accordance with the rules of procedure" to fit in with what would otherwise be the interpretation of the opening clause. The proper task is to read the two clauses together, recognising that the second clause qualifies how and according to what rules the recognition and enforcement providing for in the opening clause is to be implemented. If "rules of procedure" includes state immunity, that rule may be raised by a state in opposition to the court's jurisdiction, just as a state could raise the defence of limitation or any party could plead its insolvency.

41. Mr Sprange further relied on the recognition by Lord Briggs and Lord Leggatt JJSC (with whom Lord Stephen JSC agreed) in the Supreme Court in *Basfar v Wong* [2022] UKSC 20, [2023] AC 33 that, where a treaty is likely to remain in force for a long period of time, it is generally reasonable to presume that the parties intended its language to be interpreted and applied in the light of the circumstances which exist at the time when it is being applied. Mr Sprange submitted that the term "rules of procedure" in Art. III, and its weight in "derogating" from what would otherwise be a submission to the jurisdiction by the opening clause, should be assessed in the light of two evolutionary developments since 1958: first, the move in this jurisdiction from an absolute rule of state immunity to a restrictive model, codified in the SIA; and second, the increasing preponderance of arbitral awards to which a state is party. However, as Newey LJ pointed out in argument, it cannot sensibly be suggested that "rules of procedure" included state immunity in 1958, but somehow ceased to include state immunity at some unidentified date, and Mr Sprange agreed. But, in my judgment, he was not able to articulate any other sense in which the term "rules of procedure" can have "evolved" so as to change the effect of Art. III in a relevant way.

42. The appellants' contentions in relation to the meaning and effect of the words "rules of procedure" in Art. III have now been rejected by the High Court of Australia, in *CCDM Holdings LLC & Ors v The Republic of India* [2026] HCA 9. In a judgment delivered after the hearing before this Court had concluded, the High Court

determining the same issue between the same parties in the context of India's claim to state immunity in relation to enforcement of the Awards in Australia, stated:

> "38. As for the text of the New York Convention, the apparent breadth and generality of Arts I(1) and II(1) are to be considered in the context of Art III. Article III, the provision principally relied upon by the appellants as establishing a waiver of foreign State immunity by State parties to the New York Convention, implies the preservation of foreign State immunity. In Art III, the obligation of contracting States to enforce arbitral awards is expressed to be "in accordance with the rules of procedure of the territory where the award is relied upon". Contrary to the conclusion of the primary judge and the submissions for the appellants, that recognition and enforcement of an arbitral award is to be "in accordance with the rules of procedure of the territory" where the recognition and enforcement that is sought is relevant to the question whether a State's ratification of the New York Convention involved a waiver of foreign State immunity by that State… [T]here is no suggestion in the travaux préparatoires that some narrower, confined approach, such as rules concerning the presentation of documents and translations, was intended by the reference to rules of procedure in Art III. Rather, it is widely accepted that the rules of procedure also include defences to a claim such as limitation periods. So too, the rules of foreign State immunity, although jurisdictional, are treated at international law as rules of procedure.
>
> 39. Article III thus qualifies the obligation of contracting States to enforce arbitral awards by reference to whatever rules of foreign State immunity are adopted by the territory where the award is relied upon. That qualification is inconsistent with a waiver of foreign State immunity having occurred merely by ratification of the New York Convention, which would have left no role for the rules of foreign State immunity in the territory where the award is relied upon…."

43. As the Supreme Court in *Infrastructure* confirmed at [79], so far as possible the text of a treaty should be interpreted in a uniform manner and regard should be had to how it has been interpreted by the courts of different countries. The reasoning of the High Court of Australia, on precisely the same point as under consideration on this appeal, is therefore highly persuasive. It is also noteworthy in that regard that the German Federal Court of Justice in *SchiedsVZ* 2006 44 at [21]-[28] stated that the New York Convention "does not contain any waiver of immunity" because immunity is included with the Art. III reference "to the domestic procedural law".

44. The parties referred to a number of commentaries on that question (in addition to Professor Crawford's article referred to above). Such materials are not recognised as tools of interpretation under the Vienna Convention, and Mr Sprange rightly placed little weight on them. None of them directly supported his proposed interpretation of "rules of procedure", at best suggesting that the phrase should be read narrowly, but without suggesting that state immunity is excluded. Other commentaries express the opinion that Art. III does not prevent a state asserting state immunity. In view of the subsequent highly persuasive decision of the High Court of Australia, arriving at what

I consider to be the obviously correct interpretation of "rules of procedure" in Art. III, it is not necessary to refer to those commentaries in detail.

45. In the light of the above I have no hesitation in concluding that "rules of procedure" in Art. III encompasses state immunity where that is a rule of procedure in the territory in question, as it is in this jurisdiction.

Conclusion as to waiver of immunity/submission to the jurisdiction

46. As will be apparent from the above analysis, having determined that the expression "rules of procedure" encompasses state immunity, I readily reach the conclusion that Art. III of the New York Convention preserves state immunity by its own terms, being the same conclusion as reached by the Judge at [80] and now by the High Court of Australia.

47. In my judgment that interpretation, applying the principles in Article 31 of the Vienna Convention, does not leave the meaning of Art. III ambiguous or obscure and does not lead to a result which is manifestly absurd or unreasonable. Indeed, it entirely accords with common sense that states would not have agreed to waive immunity from the enforcement of awards against them where they have not agreed to arbitrate (such agreement engaging the exception in s.9 of the SIA or its equivalent in other jurisdictions), particularly without making any reference to state immunity. It also accords with the position taken in the United States District Court for the District of Columbia in *Global Voice Group SA v Republic of Guinea* 2025 U.S. Dist LEXIS 28564 (D.D.C. 2025) p.19: "To put it …simply: no arbitration agreement, no waiver."

48. It follows that, under Article 32 of the Vienna Convention, reference may be made to supplementary means of interpretation, such as the *travaux préparatoires* for the Convention, only for the purpose of confirming the interpretation pursuant to Article 31. That confirmation is to be found in:

    i) the 1955 Report, by a Committee established by the UN Economic and Social Council, on the Enforcement of International Arbitral Awards (UN Doc E/2704; E/AC.42/4/Rev 1) which stated at p.5 that:

    > "…the Committee concluded that it would be desirable to establish a new convention which while going further than the Geneva Convention in facilitating the enforcement of foreign arbitral awards, would at the same time maintain generally recognized principles of justice and respect the sovereign rights of States."

    ii) a summary of the *travaux* by Professor Bjorklund, quoted by the Judge at [77]:

    > "It is clear…based on the negotiating history of the Convention, that the delegates did not intend to preclude an immunity-based argument in enforcement actions against states."

Lord Justice Newey :

49. I agree.

Lord Justice Lewison :

50. I agree with the judgment of Phillips LJ; but in view of the importance of the issue I add a short judgment of my own.

The issue

51. Sir Nigel Teare ordered a trial of the following preliminary issue:

> "Whether, for the purposes of enforcement of (i) the award on jurisdiction and merits dated 25 July 2016, and (ii) the award on quantum dated 13 October 2020 ('the Awards'), India has submitted to the adjudicative jurisdiction of the English courts by prior written agreement within the meaning of section 2(2) of the State Immunity Act 1978, by its ratification of the New York Convention 1958 and thereby (on the fourth to sixth claimants' case) its consent under article III to the English court recognising and enforcing the Awards."

52. It is important to stress that the underlying premise is that whether simply by ratifying the New York Convention ("the Convention") India has consented to the adjudicative jurisdiction of the English court. Sir William Blair answered the question "no". As Sir William pointed out, this question will normally not arise because where an arbitration award is sought to be enforced against a state that state will have been a party to the arbitration agreement which will, itself, amount to a submission to the adjudicative jurisdiction of the English court. Sir William's judgment is at [2025] EWHC 964 (Comm), [2025] 1 WLR 4287.

53. It is not disputed that a state may submit to the jurisdiction of the court by agreement. Nor is it in dispute that, subject to one point, an agreement includes a treaty.

The New York Convention

54. The answer to the question therefore turns on the effect of Article III of the Convention which provides:

> "Each contracting state shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."

55. The main focus of the debate is whether the principle of state (or sovereign) immunity is encompassed in the phrase "the rules of procedure of the territory where the award is relied upon".

56. The main instruction about the interpretation of a treaty is contained in article 31 of the Vienna Convention on the Law of Treaties:

> "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose . . .

> 3. There shall be taken into account, together with the context: (a) . . . (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties."

57. There is no doubt, in my judgment, that as a matter of English law state immunity is a procedural rule. It was so described in *Jones v Ministry of Interior of Saudi Arabia* [2006] UKHL 26, [2007] 1 AC 270; *Benkharbouche v Embassy of the Republic of Sudan* [2017] UKSC 62, [2019] AC 777 and, most recently in *Infrastructure Services Luxembourg SARL v Kingdom of Spain* [2026] UKSC 9, [2026] 2 WLR 581 at [26].

58. At the international level, in *Jurisdictional Immunities of the State (Germany v Italy, Greece intervening)* [2012] ICJ Rep 99, para [57], the International Court of Justice said that the rule:

> "occupies an important place in international law and international relations. It derives from the principle of sovereign equality of states, which, as article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order."

59. It added at [58]:

> "Moreover, as the Court has stated … the law of immunity is essentially procedural in nature… It regulates the exercise of jurisdiction in respect of particular conduct and is thus entirely distinct from the substantive law which determines whether that conduct is lawful or unlawful."

60. The court repeated the same point at [93]:

> "The rules of State immunity are procedural in character and are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State."

61. As the International Court had pithily put it in the earlier case of *Arrest Warrant of 11 April 2000 (Congo v Belgium)* [2002] ICJ Rep 3 *immunity* does not confer *impunity*.

62. In my opinion the European Court of Human Rights takes a similar view. In *Al-Adsani v United Kingdom* (2001) 34 EHRR 273 the court said at [48]:

> "The proceedings which the applicant intended to pursue were for damages for personal injury, a cause of action well known to English law. The Court does not accept the Government's submission that the applicant's claim had no legal basis in domestic law since any substantive right which might have existed was extinguished by operation of the doctrine of State immunity. It notes that an action against a State is not barred *in limine*: if the defendant State waives immunity, the action will proceed to a hearing and judgment. The grant of immunity is to

be seen not as qualifying a substantive right but as a procedural bar on the national courts' power to determine the right."

63. Given this consensus at international level, and particularly since the principle of state immunity derives from the principle of sovereign equality of states, which is confirmed by the Charter of the United Nations, one would expect a convention drafted under the auspices of the United Nations to respect that principle and not to derogate from it except by clear words. In my judgment, therefore, the ordinary meaning of the words "the rules of procedure of the territory where the award is relied upon" encompass the law of state immunity in the territory concerned. The appellants seek to adopt a very narrow meaning of "the rules of procedure" but could not coherently explain what fell within them. They accepted, for example, that an award debtor could raise a defence of limitation, and that enforcement could be limited by the laws of insolvency, (neither of which is a ground of challenge mentioned in the New York Convention).

64. The appellants emphasise the fact that the Convention is both pro-arbitration and pro-enforcement; and that its provisions are a complete code. I do not doubt that the Convention is both pro-arbitration and pro-enforcement, once the English court's jurisdiction is engaged. But this argument does not deal with the prior question: is the English court's jurisdiction engaged? Moreover, in view of the appellants' acceptance that an award debtor may raise a limitation defence, it is by no means obvious that the New York Convention is a complete code.

65. The appellants also rely on the recent decision of the Supreme Court in *Infrastructure Services Luxembourg SARL v Kingdom of Spain* in which the court held that ratification by a state of the ICSID Convention amounted to a submission by agreement to the adjudicative jurisdiction of the English court. In my judgment the context of the ICSID Convention is very different:

i) The preamble makes it clear that it is dealing with disputes between contracting states and nationals of other states.

ii) Article 25 of the ICSID Convention made it clear that the dispute resolution procedure which it set up extended to any legal dispute arising out of an investment between a contracting State and a national of another contracting state. Thus while the effect of the ICSID Convention expressly extended to disputes to which a contracting State was a party, the subject-matter of such a dispute was limited to an investment by a national of one contracting State in the territory of another.

iii) Article 53 of the ICSID Convention expressly provided that "each party shall abide by and comply with the terms of the award".

iv) Article 54 provided that "each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State". There is no reference to the rules of procedure of any contracting State.

v) Article 55 made it clear that it did not derogate from the immunity of a state as regards the enforcement jurisdiction of a different state. That article only makes sense if a contracting state is subject to the adjudicative jurisdiction of a different state. The New York Convention is, by contrast, silent on the topic of state immunity.

66. The fundamental point of difference between the ICSID Convention and the New York Convention is that the whole purpose of the former was to establish a system for the international arbitration of investment disputes between states and foreign investors, that would produce binding awards supported by a fully reciprocal regime to ensure compliance and increase mutual trust and confidence: see *Infrastructure* at [107]. Its economic purpose was to encourage the free flow of private investment in sovereign states by mitigating risk due to sovereign action. It was a scheme in which a contracting state would necessarily be a party to the dispute. I do not consider that the decision of the Supreme Court in *Infrastructure* can simply be read across to the New York Convention.

67. In addition, in my view the appellants' argument contains a fundamental self-contradiction. On the one hand it proceeds on the basis that India agreed to the enforcement of arbitration awards, subject to the UK's law of state immunity, but on the other hand by making that agreement it gave up any claim to state immunity.

Other jurisdictions

68. It is pertinent to have regard to the position taken in other countries which are party to the New York Convention. In *India v CCDM Holdings LLC* 2024 QCCA 1620 the Court of Appeal in Quebec held that India had waived the right to claim state immunity. But the reason for that conclusion was not merely that India had ratified the New York Convention. Rather it was based on two further facts: first that India had entered into an investment treaty with Mauritius and second that India had agreed to submit to arbitration and had actually participated in the arbitration: see [80]:

> "By ratifying the New York Convention and entering into the Treaty, which includes a dispute settlement clause referring the parties to arbitration, and by participating in such arbitration provisions without reserving its right to claim immunity India must be considered to have accepted that any resulting award would be subject to recognition and enforcement proceedings."

69. In the United States the most detailed consideration is that in *Global Voice Group SA v Republic of Guinea* 2025 US Dist LEXIS 28564. Judge Cobb considered a number of previous cases, which he correctly distinguished, and rejected the argument that merely by ratifying the New York Convention a state had waived its right to state immunity. As he said:

> "To put it even more simply: no arbitration agreement, no waiver."

70. We were shown an extract from a decision of the German Federal Court of Justice concerning the enforcement of an arbitration award against the Russian Federation.

Although the court was concerned with enforcement (rather than its adjudicative jurisdiction), it stated at [24]:

> "The UN Enforcement Convention [i.e. the New York Convention] stipulates that, if certain conditions are met, arbitral awards must be permitted to be enforced in accordance with domestic procedural rules and that enforcement must not be subject to significantly stricter procedural rules or significantly higher costs than domestic arbitral awards (Article 3 of the UN Enforcement Convention). The reference to domestic procedural law includes, as part of federal law, the general rules of international law, which include the observance of diplomatic protective rights."

71. There was a temporary outlier in the Australian case of *CCDM Holdings LLC v Republic of India (No 3)* [2023] FCA 1266 on which the appellants relied heavily. Jackman J held at first instance at [43] that by ratifying the New York Convention:

> "India is agreeing by the terms of the New York Convention that relevantly Australia will recognise and enforce arbitral awards which fall within the scope of the Convention. If India is a party to such an arbitral award, it is an obvious and necessary implication that India is requiring Australia to recognise and enforce that award. As Australia would be unable to do so if India were at liberty to oppose the recognition and enforcement of such an award on the ground of foreign State immunity, the terms of Art III are inconsistent with India being able to deploy such a defence."

72. Later in the judgment Jackman J considered the scope of "rules of procedure" referred to in Article III. He pointed out at [94] that in Australian law sovereign immunity is regarded as substantive rather than procedural. But he considered the argument that "rules of procedure" had a broader meaning in the Convention as being an "arid point of taxonomy". Ultimately, at [96] he declined to answer the question.

73. When that case went to appeal, ([2025] FCAFC 2 the Full Court reversed the decision on a different point, namely that India had ratified the Convention subject to a reservation, which limited its application. But in the course of the judgment the court said at [72] that there was "much to be said" for Jackman J's view that by ratifying the New York Convention India had waived immunity for awards that fell within the scope of its reservation. But, like Jackman J, the Full Court did not deal with the significance of the reference in Article III to "rules of procedure". In my judgment the fact that the Australian courts did not consider the scope of "rules of procedure" referred to in Article III seriously undermines their value as persuasive authority.

74. However since the conclusion of the hearing of this appeal, the High Court of Australia has ruled on the appeal from the Full Court. The High Court's judgment is at [2026] HCA 9. Their Honours unanimously held that mere ratification of the New York Convention did not amount to a waiver of sovereign immunity which was a "rule of procedure". As they put it at [39]:

> "Article III thus qualifies the obligation of contracting States to enforce arbitral awards by reference to whatever rules of foreign State immunity are adopted by the territory where the award is relied upon. That qualification is inconsistent with a waiver of foreign State immunity having occurred merely by ratification of the New York Convention, which would have left no role for the rules of foreign State immunity in the territory where the award is relied upon."

75. They also held that no analogy could be drawn with the ICSID Convention. In the course of their judgment, their Honours expressly approved Sir William's decision.

76. I respectfully agree.

Infrastructure

77. Although the preliminary issue raised by Sir Nigel Teare's order has not been the subject of a considered judgment of the English court before the order of the judge in this case, Phillips LJ did touch on the point in *Infrastructure* ([2024] EWCA Civ 1257, [2025] KB 611). One of the points urged on the court was that if the court held (as it did) that by ratifying the ICSID Convention a state waived sovereign immunity there would be undesirable knock-on effects on the New York Convention. Phillips LJ said at [102]:

> "In my judgment the argument carries little force, and certainly cannot outweigh the reasons for interpreting article 54 as a submission to the jurisdiction for the purposes of section 2(2) of the SIA set out above, reasons which have found favour in numerous states which are also party to the New York Convention. As the Border claimants submitted, there is no requirement in the VCLT that, in interpreting one treaty, regard must be had to the effect of a potential read-across to a second treaty dealing with a different though related subject-matter. Further:
>
> (i) It is by no means clear that interpreting article 54 as a submission to the jurisdiction for the purposes of section 2(2) of the SIA would necessarily result in article III also being so interpreted. The two provisions are not worded identically, article III referring to the award being enforced "in accordance with the rules of procedure of the territory where the award is relied upon". As state immunity is regarded as a procedural bar as a matter of international law, it may be that article III preserves state immunity on its own terms. Further, whereas the Convention is necessarily dealing with awards to which a contracting state is party, that is far from the case in relation to the New York Convention. The conclusion that article 54 contains an "unmistakeable" agreement by states that awards against them would be enforced may not be so obvious in respect of article III. We did not hear full argument on those issues and are certainly not in a position to decide them.

> (ii) Although Zimbabwe asserts that it is "well-established" that article III does not amount to a submission to the jurisdiction for the purpose of section 2(2) of the SIA, the point does not appear to have been argued before, let alone decided by the English courts. It was common ground that article III has been held to contain a submission to the jurisdiction by a state in Australia in *CCDM Holdings LLC v Republic of India (No 3)* [2023] FCA 1266.
>
> (iii) It is unclear why the consequences would be dramatic if article III is also held to be a submission to the jurisdiction. Such submission would arise by virtue of section 9 of the SIA in any event if the award resulted from a valid agreement to arbitrate. Even if the state is deemed to have submitted to the jurisdiction by reason of article III, it may still contest the validity of the arbitration agreement (and hence the enforcement of the award) under section 103(2) of the 1996 Act."

78. In my judgment, the point made by Phillips LJ at [102] (i) is sound; and provides the answer to the preliminary issue, as Sir William held. He also marshalled the views of a number of distinguished jurists at [70] and concluded, correctly in my opinion, that they gave substantial support to the view that the mere ratification of the New York Convention does not amount to a waiver of state immunity.

Result

79. In my judgment, Sir William came to the right conclusion for the right reasons. I, too, would dismiss the appeal.

Postscript: bundles of authorities

80. The only other point I wish to make concerns the bundles of authorities. PD 52C para 29 deals with the subject. Para 29 (4) states that the bundle should not (a) include authorities for propositions not in dispute or (b) contain more than 10 authorities unless the issues in the appeal justify more extensive citation.

81. The bundles with which we were supplied ran to no fewer than 184 authorities, many of which were first instance cases simply applying established principles to particular facts. Many others were entirely unrelated to the only preliminary issue that Sir Nigel Teare ordered to be tried. We were also given transcripts of unreported cases none of which established any point of principle, contrary to paragraph 10 of the Practice Direction (Citation of Authorities) [2012] 1 WLR 780 which states:

> "An unreported case should not usually be cited unless it contains a relevant statement of legal principle not found in reported authority."

82. It should not need saying (although it clearly does) that bundles of authorities should be limited to those which are *necessary* for the court to decide the issues raised in the

appeal. Counsel certifying that the bundle is compliant with PD 52C para 29 need to take that responsibility far more seriously than appears to have been done in this case.