Sir Michael Wood

Diplomatic Law Today: Alberico Gentili Would not Have Felt out of Place*

It is a great pleasure to be here, for the first time, in San Ginesio. And it is an honour and a privilege to take part in this *Giornata Gentiliana* to celebrate Alberico Gentili, and his distinguished brother, Scipione. I am very grateful to the Centro Internazionale di Studi Gentiliani (CISG) and to Leide Polci, Director of the Centre. And above all I want to thank Pepe Ragoni for suggesting that I be invited, and for her wonderful hospitality.

Alberico Gentili's position as the first Regius Professor of Civil Law at Oxford University may be seen as one of many links, academic and other, between England and Italy in the sixteenth century. There seems to have been a united Europe in those days, at least among academics (albeit without the assistance of a Brussels bureaucracy). There are equally close links today, perhaps especially in the field of public international law. I trust this will not be badly affected by the 24 June 2016 referendum in the United Kingdom. It has become something of a cliché to say that the United Kingdom may be leaving the European Union, but will not be leaving Europe. We can find inspiration for continuing close relations in the past, including in the life and legal practice of Alberico Gentili, in times far more uncertain than those of 'Brexit'.

* This is an updated version of a talk given at the *Giornata Gentiliana* in September 2016.

Gentili was a professor of law, and also a practitioner. Most of his writings seem to have been directly linked to questions on which he had given advice. This is still often the case today among international lawyers, in Italy as well as in the United Kingdom[1].

As you know far better than I, Gentili's interests ranged over many fields of international law: the laws of war, the law of the sea, including shipping, the law of diplomatic relations, to give just some examples. These are all still very much on the international agenda today. That is one reason why Gentili seems relatively modern; we understand what he was dealing with; he would understand many of the issues we face today. He lived in dramatic times; he would not have felt out of place in the Cold War era, or its recent reincarnation. Nor would he have been surprised at armed conflict, terrorism (though he would not have used the term), conquest, and assassination.

During my time as a legal adviser to the UK Foreign and Commonwealth Office (FCO), between 1970 and 2006, I worked on many of the same issues as Gentili. First, the law relating to armed conflict, both the *jus ad bellum* and the *jus in bello*. I have described the use of force during the period when I was the principal Legal Adviser to the FCO as follows:

> Recourse to armed force by the United Kingdom over a four-year period between1999 and 2003 raised important issues. The Kosovo intervention in 1999 involved a major issue of principle: was there a right of unilateral 'humanitarian intervention'? The use of force against Al Qaida in Afghanistan in 2001 (following the attacks on the United States on 11 September 2001) also raised an important issue: the right of self-defence against attacks by non-State actors. The use of force against Iraq in March 2003, though politically and legally the most controversial, involved no

[1] There is a trend in England towards appointing to chairs of international law those who are not practitioners. This may be thought to have advantages in terms of the regular presence of the professor at the university, there for his or her students and for university administration. It has the disadvantage that students may no longer have contact with the real world of international law. International law can seem very theoretical, and more so than in other fields of law. Sir Christopher Greenwood made a similar point at a lecture in London on 15 March 2018, entitled *Is international law falling apart?*, in which he emphasised the damage that may be done to international law by an almost exclusive focus in teaching theory, hardly the way to ensure that practising lawyers of the future take international law seriously.

great issue of legal principle. As the Attorney General's now public advice of 7 March 2003 indicates, for the United Kingdom, the legality of the invasion turned solely on whether it had been authorised by the Security Council. It is clear that the Security Council may authorise the use of force. The only question was: had it done so? That turned on the interpretation of a series of Security Council resolutions. Whatever one's view on the merits, each of these cases illustrates that the United Kingdom Government gives careful consideration to the relevant questions of the international law on the use of force. This is confirmed by the careful legal advice given to the UK Government over possible strikes on Syria, at least judging by the published summary[2].

Were he with us today, which perhaps he is in spirit, Gentili would surely remind us of the English 'humanitarian intervention' in the Spanish Netherlands, on which he advised the English authorities[3]. And he would have appreciated the seriousness with which the British authorities still take international law.

The law of the sea was central to international law in Gentili's time, and it still is today. Then as now, many vital interests of the State depended on maritime rights. Then as now, there was great controversy among States over the applicable rules. In Gentili's time, there was no great treaty such as the 1982 United Nations Convention on the Law of the Sea to give at least the appearance of broad agreement among States. There were court cases, though in the domestic courts. Gentili would perhaps have been surprised (as perhaps we still are) to see so many cases before international courts and tribunals: mostly maritime delimitation, but also other matters, for example the current arbitration commenced by Italy against India over the two Marines[4].

[2] Michael Wood, *The International Law on the Use of Force. What Happens in Practice?*, «Indian Journal of International Law», 53, 2013, pp. 353-354 (footnotes omitted), p. 345.

[3] It was during this military adventure that Sir Philipp Sidney, one of England's greatest poets, died at the Battle of Zutphen, at the age of 31.

[4] *The Enrica Lexie Incident (Italy v. India)*, before the International Tribunal for the Law of the Sea (ITLOS) in Hamburg: <https://www.itlos.org/cases/list-of-cases/case-no-24/> and then before an UNCLOS annex VII arbitral tribunal administered by the Permanent Court of Arbitration in The Hague: <https://pcacases.com/web/view/117>. Italy is so involved in another case before the ITLOS, Case No. 25, *The M/V "Norstar" Case (Panama v. Italy)*, <https://www.itlos.org/en/cases/list-of-cases/case-no-25/>.

Today I shall focus on international immunities and the law of diplomatic relations. This is one of the oldest branches of international law. It clearly raised difficult issues in Gentili's time; it continues to raise difficult issues today.

Gentili was deeply involved in advising on the status of Ambassadors. One of his earliest books is *De Legationibus*, was published in London in 1585. He was one of the first lawyers to write on the subject. He was active well before Grotius, who is sometimes (but perhaps not at Oxford, and most certainly not at San Ginesio) seen as the 'father' of international law.

Among the first great controversies on which Gentili advised was the status of Mary Queen of Scots' Ambassador to Elizabeth I, Queen of England[5]. Queen Mary's Ambassador was accused of plotting to kill Queen Elizabeth. Gentili seems to have advised Elizabeth that the Ambassador could be put on trial. In fact, that did not happen. Similarly, other Ambassadors in London, and notably the Spanish Ambassador, Mendoza, and the French Ambassador were accused of conspiracy against the Queen, but they too were not brought to trial. These must have been challenging issues on which to advise on diplomatic law, particularly when the advice was not been followed.

One notable case does not seem to have involved Gentili, and it would be interesting to know why. In 1586 the trial took place of Mary Queen of Scots, which raised the question of her immunity as the (former) Queen of Scotland. The lawyers for Queen Elizabeth denied that she was entitled to immunity from such grave offences as treason, citing the trial of Conrad of Hohenstaufen in Naples some hundreds of years earlier. Mary's trial was referred to (at least in the newspapers) hundreds of years later, in 1998/1999, when General Pinochet, a former head of State of Chile, was before the English courts facing an extradition request from Spain.

The law of international immunities and diplomatic relations is no less important today. There have been in recent years many fascinating cases before international and domestic court. I shall

[5] This was of course in the days when England and Scotland were separate States.

mention just one or two that have come before the International Court of Justice and the English courts in recent years.

Normally when we think of diplomats today, we think of Ambassadors and their staff based in Embassies established on a permanent basis (permanent diplomatic missions). Here the law is clear, being codified in the Vienna Convention on Diplomatic Relations of 1961, which currently has no less than 191 States Parties[6].

In Gentili's day, and before, Ambassadors were more often sent on a temporary *ad hoc* basis, to perform particular tasks. This is again increasingly the case today, with large numbers of bilateral visits at all levels, and conferences of all sorts a daily occurrence. Yet the status of such *ad hoc* official visitors, often referred to as persons on 'special missions', is still not regulated by any widely accepted treaty, and so depends most often on customary international law, which is less certain. Also, in the nature of special missions, which are often of very short duration, cases arise less frequently. But when they do they can give rise to serious tensions between States.

The most critical issue nowadays, as in Gentili's day, is the immunity of diplomats and others from foreign criminal jurisdiction and the inviolability of their persons, that is to say, whether they can be arrested and tried. In the sixteenth century the difficult cases seem to have mainly involved conspiracies against the sovereign to whom the diplomat was accredited. Nowadays, and leaving aside traffic offences (a matter of great public concern), *ad hoc* visitors also risk arrest on charges of involvement in torture or crimes against humanity against their own people, often at the instigation of non-governmental organizations or advocacy groups invoking some variant of 'universal criminal jurisdiction'.

States themselves are entitled to immunity, but this does not relate directly to immunity from criminal proceedings; States as such are not regarded as being criminally responsible. The importance of State immunity for international relations was once

[6] As of September 2018. As of that time, only 70 States are Parties to the Optional Protocol to the Vienna Convention concerning the Compulsory Settlement of Disputes.

again emphasised by the International Court of Justice in its 2012 judgment in the *Germany* v *Italy* case:

> The Court considers that the rule of State immunity 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[7].

I shall refrain from describing the extraordinary developments following the 2012 judgment, since you are all familiar with them and I have dealt with these matters elsewhere[8].

The next question is the immunity *ratione personae* (full immunity) of Heads of State, Heads of Government and Foreign Ministers (often referred to as the *troika*), as well as other high-ranking officials within the State (a 'small circle' of high-ranking officials of the State). The scope of this immunity, and indeed whether it reaches beyond the *troika*, could have arisen in the *Equatorial Guinea v France* case, another case at the International Court of Justice which raised the question whether the Vice-President of Equatorial Guinea, in charge of National Defence and State Security, was so entitled. But the Court found that it did not have jurisdiction to decide this matter[9].

As I have said, the law relating to diplomats posted to regular (permanent) embassies is clear, at least in its broad outlines. But problems still arise. One sees different attitudes by the domestic courts to the international law on immunities. The English courts recently had to deal with an allegedly 'false' diplomat.

[7] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 99 at p. 123, para. 57. See also Tehran.

[8] Omri Sender, Michael Wood, *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (2012), in *Landmark Cases in Public International Law*, eds. Eiric Bjorge, Cameron Miles, Oxford, Hart, 2017, pp. 563-583.

[9] Memorial of Equatorial Guinea dated 3 January 2017, available at <http://www.icj-cij.org/files/case-related/163/163-20170103-WRI-01-00-FR.pdf>. For details of the case, see *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, p. 1148; and *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment*, 7 June 2018.

The first-instance judge engaged in what was termed 'a functional review' of the diplomat's activities, and found that

> H has sought and obtained a diplomatic appointment with the sole intention of defeating W's claims consequent on the breakdown of their marriage. H has not, in any real sense, taken up his appointment, nor has he discharged any responsibilities in connection with it. It is an entirely artificial construct. I draw back from describing it as a 'sham', mindful of the forensic precision required to support such a conclusion[10].

The Court of Appeal, on the other hand, held that «There is no support in the relevant international instruments or the case law for a functional review by a court where there is a challenge to a claim to immunity by a diplomat or Permanent Representative». The Court of Appeal found that is it was

> envisaged that circumstances might arise in which a claim of immunity might be unjustified on the facts of a particular case. In fact, Article VII, Sections 24-25 [of the Specialized Agencies Convention] provides for specific (and exclusive) mechanisms for dealing with abuses of privilege and immunities. Moreover, Article V, Section 16 provides that the sending State has a duty to waive the immunity in certain circumstances. However, it is not envisaged that the correct response to such a situation is for the domestic courts to look behind the status of the representative. The decision whether or not to waive the immunity is a matter which is solely within the executive discretion of the sending State or the courts of the sending State. I accept the submission of the Secretary of State that, if the sending State does not waive immunity, the courts of the receiving State are required to grant immunity[11].

I now turn to the immunities of persons on 'special missions' (not a wider range of 'official visitors)[12], which has been the subject of some very interesting recent case-law in the English courts.

For the purposes of this discussion, a 'special mission' is a temporary mission, representing a State, which is sent by one

10 *Estrada v Al-Juffali*, High Court judgment, 8 February 2016 (Hayden J).

11 *Al-Juffali v Estrada*, Court of Appeal judgment, 22 March 2016. See Philippa Webb, in *Cambridge Handbook on Immunities and International Law*, ed. Tom Ruys *et al.*, Cambridge, Carmbridge University Press, 2018.

12 Michael Wood, *The Immunity of Official Visitors*, «Max Planck Yearbook of United Nations Law», 16, 2012, pp. 35-98, p. 35.

State to another with the consent of the latter, in order to carry out official engagements on behalf of the sending State[13]. In other words, it is not a permanent diplomatic mission.

The practice of sending and receiving special missions has become increasingly widespread, not least given intensified relations between States and greatly improved transportation links. Yet the immunities of the members of special missions are not governed by any widely ratified treaty and thus continue to be found essentially in customary international law, which is not clear on all points. Yet clarity in the field of international immunities is highly desirable, not least to assist the orderly conduct of diplomacy. The International Court of Justice has emphasised the 'extreme importance' of the law of diplomatic relations, referring to «the edifice of law carefully constructed by mankind over a period of centuries, the maintenance of which is vital for the security and well-being of the complex international community of the present day, to which it is more essential than ever that the rules developed to ensure the ordered progress of relations between its members should be constantly and scrupulously respected»[14]. For this reason, recent decisions of the English courts, which I shall now describe, are particularly welcome. In summary, it can now be said with a degree of confidence that States are under an obligation to grant the 'core immunities' to members of special missions for the duration of the mission (namely, inviolability of the person and immunity from criminal jurisdiction). The rules of customary international law on special missions, like all such rules, derive from the general practice and *opinio juris* of States. and reflect the functional principle that underlies diplomatic law[15].

[13] Convention on Special Missions, 8 December 1969, in force 21 June 1985, 1400 UNTS 231, art. 2.

[14] *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)* (Merits) [1980] ICJ Rep 3, para. 92. This applies as much to *ad hoc* diplomacy as it does to permanent diplomatic missions.

[15] See, e.g., *R (on the application of Freedom and Justice Party) v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 1719, para. 79 («Special missions have performed the role of *ad hoc* diplomats across the world for generations. They are an essential part of the conduct of international relations: there can be few who have not heard, for instance, of special envoys and shuttle diploma-

The preamble to the 1969 UN Convention on Special Missions recalls «that special treatment has always been accorded to special missions». Diplomacy has indeed long been conducted through both permanent and temporary missions, often referred to as permanent diplomatic missions on the one hand and special, temporary or *ad hoc* missions, or even itinerant envoys (which sound like something out of a Russian opera) on the other[16]. In the 1420s, Venice regarded its procurator in Rome, Bembo,

> as dispensing them from the necessity of sending special missions, […] it would be bold to assert that Bembo was the first resident ambassador at the Papal See, and thus the founder of the first lasting resident embassy in history. But he certainly had no immediate predecessor, and the language of the Senate indicates that they regarded his appointment as an innovation[17].

Various developments over the last 100 years or so, leading to the adoption of the New York Convention on Special Missions in 1969, have been described elsewhere[18]. The International Law Commission's work on the topic *Special Missions*, under the guidance of Special Rapporteur Milan Bartoš, gives invaluable insight into both the eventual Convention on Special Missions, and into the rules of customary international law then applicable on the matter. In addition to the Secretariat's 1963 working paper, to which reference has already been made, and

cy. Special missions cannot be expected to perform their role without the functional protection afforded by the core immunities»).

16 See Mr José Maria Ruda, Chairman of the ILC in UNGA Sixth Committee, 'Summary Record of 1039th Meeting', UN Doc. A/C.6/SR.1039, 15 October 1968, paras. 31-32: «the use of special missions having been, in fact, the earliest form of diplomacy. State practice on the subject went back to the very beginning of formal relations between nations. The historical works on India established that constant contacts and relations were maintained between some of the States of ancient India and certain Asia, European and African States through special missions. Similarly, the Greek city states and Rome had developed in accident times an elaborate system of *ad hoc* diplomacy»; UN Secretariat, (1963) II *Yearbook of the International Law Commission*, 151, para. 3; Special Rapporteur Milan Bartoš's first report on special missions (A/CN.4/166), paras. 11-19 ([1964] II *Yearbook of the International Law Commission*, 70-73).

17 Garrett Mattingly, *Renaissance Diplomacy*, London, Penguin Books, 1954, p. 74.

18 Andrew Sanger, Michael Wood, *The Immunities of Members of Special Missions*, in *Cambridge Handbook on Immunities and International Law*, cit.

Bartoš' four reports[19], the Commission's initial 16 draft articles of 1964[20], and full set of 50 draft articles in 1967[21], each with commentaries, remain important for an understanding of the law on special missions. The Special Rapporteur's Fourth Report contains a valuable summary.

There have been significant developments since the adoption of the Convention on Special Missions in 1969, in part stimulated by the Convention and reflecting the increasing importance of special missions in diplomatic practice. In addition to the State practice and case-law to be discussed shortly, these include further activity within the International Law Commission and the Council of Europe.

For its part, the International Law Commission has touched on special missions in its ongoing work on the topic *Immunity of State officials from foreign criminal jurisdiction*. In 2008, in footnote to a *Preliminary Report*, Special Rapporteur Roman Anatolevich Kolodkin noted that '[f]urther study is required to determine whether there exist customary rules of international law governing the status of members of special missions'[22].

In 2013, the Commission made more substantive comments on special mission immunity. Draft article 1, as adopted on first reading, states that the draft articles on *Immunity of State Officials* are «without prejudice to the immunity from criminal jurisdiction enjoyed under special rules of international law, in

19 Milan Bartoš, 'First Report on Special Missions by Mr. Milan Bartoš, Special Rapporteur', UN Doc. A/CN.4/166, 1 April 1964; Id., 'Second Report on Special Missions by Mr. Milan Bartoš, Special Rapporteur', UN Doc. A/CN.4/179, 21 April 1965; Id., 'Third Report on Special Missions by Mr. Milan Bartoš, Special Rapporteur', UN Doc. A/CN.4/189 and Add.1 & 2, 13 June, 17 June and 11 July 1966; Id. 'Fourth Report on Special Missions by Mr. Milan Bartoš, Special Rapporteur', UN Doc. A/CN.4/194 and Add.1-5, 5 April, 18 April, 21 April, 9 May, 10 May and 17 May 1967.

20 (1964) II *Yearbook of the International Law Commission*, pp. 210-226.

21 (1967) II *Yearbook of the International Law Commission*, pp. 347-368.

22 Roman A. Kolodkin, 'Preliminary report on immunity of State officials from foreign criminal jurisdiction by Roman Anatolevich Kolodkin, Special Rapporteur', (2008) II *Yearbook of the International Law Commission 2008*, vol. 2/1, p. 183, footnote 189. The Court of Appeal of England and Wales opined that this did «not accurately reflect the current state of the relevant customary international law» (*Freedom and Justice Party* (CA), note 16, para. 86).

particular by persons connected with […] special missions»[23]. In the commentary to draft article 1, the Commission noted that «the rules contained in […] the Convention on Special Missions, as well as the relevant rules of customary law» constitute «special rules relating to the immunity from foreign criminal jurisdiction of persons connected with carrying out the functions of representation, or protection of the interests of the State in another State, whether on a permanent basis or otherwise, while connected with a […] special mission». The commentary to draft article 3 – on persons enjoying immunity *ratione personae* – then explains that «the Commission considers that other "high-ranking officials" [i.e. those other than the Head of State, Head of Government and Minister for Foreign Affairs] do not enjoy immunity *ratione personae* for purposes of the present draft articles, but that this is […] on the understanding that when they are on official visits, they enjoy immunity from foreign criminal jurisdiction based on the rules of international law relating to special missions».

In 2013, the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI) prepared a questionnaire for States on special mission immunity which included the question whether there were rules of customary international law on special missions. The replies by States to this Questionnaire contains much interesting material[24].

Almost 50 years after its adoption, the Convention on Special Missions has only 39 States Parties (as of July 2018). Accordingly, and in the absence of some other treaty governing the matter, such as the 1928 Havana Convention on Diplomatic Officers, in most situations the applicable international law will be customary international law. Although the Convention itself has attracted limited participation, developments since 1969 – and particularly those in the last few years – show considerable support for its core elements. It is widely accepted that, like other international immunities, special mission immunity forms

[23] (2013) II *Yearbook of the International Law Commission 2013*, p. 39, para. 48.

[24] Council of Europe, Committee of Legal Advisers on Public International Law (CAHDI), Replies by States to the Questionnaire on "Immunities of Special Missions" (2018).

part of customary international law[25], as opposed to deriving merely from comity, political expediency or reciprocity[26].

The immunity of both permanent and temporary diplomatic missions derives from the age-old principle of customary international law that envoys sent by one sovereign to another are entitled to immunity, regardless of the duration of their visit.

There are a considerable number of examples of State practice and there is considerable evidence of *opinio juris* supporting the existence of a customary law of special mission immunity from at least criminal jurisdiction, as is apparent from the replies to the CAHDI questionnaire.

In England, for example, in 2011, the Divisional Court gave judgment in *Khurts Bat v The Investigating Judge of the German Federal Court*[27]. Germany had sought the extradition from the United Kingdom of a Mongolian official who was alleged to have kidnapped and seriously mistreated a Mongolian national in Germany (and France). Mr Bat claimed immunity on various grounds, including that he was visiting the UK on a special mission. Both the Foreign and Commonwealth Office (FCO) and Mr Bat argued that under customary international law, persons on special missions were entitled to inviolability of the person and immunity from criminal proceedings, and the Court agreed (while holding that Mr Bat had not established that he was on a

[25] See, e.g., the *Freedom and Justice Party* (Div Ct), paras. 74-165 and *Freedom and Justice Party* (CA), note 16, para. 135 («a rule of customary international law has been identified which now obliges a state to grant to the members of a special mission, which the state accepts and recognises as such, immunity from arrest or detention [i.e. personal inviolability] and immunity from criminal proceedings for the duration of the special mission's visit»).

[26] The International Court has reaffirmed the important and fundamental point «that immunity is governed by international law, and is not a matter of mere comity»: *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)* (Merits) [2012] ICJ Rep 99, para. 55. This is equally the case with the immunity of members of special missions: (1967) II *Yearbook of the International Law Commission*, 358, para. (1) of the «General considerations» at the beginning of Part II of the draft articles; the *Freedom and Justice Party* case (Div Ct), paras. 74 and 99.

[27] *Khurts Bat v. Investigating Judge of the German Federal Court and others (n 113), 633. For discussion, see Roger O'Keefe, Decisions of British Courts during 2011 involving Questions of Public or Private International Law: A. Public International Law*, «British Yearbook of International Law», 82, 2012, pp. 564-649, 613-628, and Sanger (n 4), pp. 193-224.

special mission, because the British Government (the FCO) had not consented to such special mission).

The view that the immunity from criminal jurisdiction of persons on special mission formed part of customary international law was put to the test in a further case before the English Divisional Court (2016) and the Court of Appeal (2018). The Freedom and Justice Party, which had formed the elected Government of Egypt under President Morsi between June 2012 and July 2013[28], sought judicial review of the decision not to arrest Lt General Mahmoud Hegazy, director of the Egyptian Military Intelligence Service in July and August 2013[29]. Hegazy was alleged to have been involved in torture in connection with the events in Raba'a Square in Cairo in July 2013, contrary to section 134 of the Criminal Justice Act 1988[30]. The Metropolitan Police Service (MPS) declined to arrest him when he was visiting the UK on the ground that he was a member of a special mission and therefore entitled to immunity from criminal jurisdiction[31]. Based on a very thorough judgment, the Divisional Court granted declarations in the following terms:

(1) Customary international law requires a receiving State to secure, for the duration of a special mission, personal inviolability and immunity from criminal jurisdiction for the members of the mission accepted as such by the receiving State;

(2) This rule of customary international law is given effect by the common law[32].

[28] The other claimants were the Minister of Investment in the Government of Egypt in May 2013 (ceasing to hold office in July 2013), the 'Foreign Relations Secretary of the Freedom and Justice Party of Alexandria' from June 2012 to July 2013 and a British citizen and surgeon who went to Egypt in July and August 2013 to assist in emergency field hospitals.

[29] The *Freedom and Justice Party* case (Div Ct), para. 2.

[30] This section criminalises torture committed by «in the United Kingdom or elsewhere» and regardless of the nationality of the perpetrator.

[31] The Head of Diplomatic Missions and International Organizations United of the Protocol Directorate of the FCO issued a certificate on 14 September 2015 confirming that the FCO «has consented to the visit to the United Kingdom of Egyptian Chief of Defence Staff, Lt General Mahmoud Hegezazy […] from 15-19 September as a special mission», *Freedom and Justice Party* case (Div Ct) (n 14), para. 15.

[32] Ivi, para. 180. The claimants have been given leave to appeal to the Court of Appeal.

In July 2018, the Court of Appeal, in a unanimous judgment (Arden, Sales and Unwin LJJ), dismissed an appeal against the Divisional Court's decision, concluding that it had been «correct to hold that a rule of customary international law has been identified which now obliges a state to grant to the members of a special mission, which the state accepts and recognizes as such, immunity from arrest or detention [i.e. personal inviolability] and immunity from criminal proceedings for the duration of the special mission's visit»[33]. Like the Divisional Court, the Court of Appeal examined in depth the relevant treaties, the work of the International Law Commission, examples of State practice, responses to the CAHDI Questionnaire (which by then had been expanded and officially published), and the writings of academics. It observed that «[s]pecial missions cannot be expected to perform their role without the functional protection afforded by the core immunities. No state has taken action or adopted a practice inconsistent with the recognition of such immunities. No state has asserted that they do not exist»[34].

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I have tried to show that the international law on immunities is still very active, in Italy and in England. If the English courts seem to respect international law more than the Italian courts, perhaps that is in some measure at least the legacy of the international law tradition established in England in the days of Gentili. The English tradition of international law has always, and still does, owe a great deal to lawyers from outside England joining our legal profession and settling at our universities.

[33] *Freedom and Justice Party* (CA) (n 5), para. 135.
[34] Ivi, para. 79.