

UNITED NATIONS CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY, 2004

At its [first session](#), in 1949, the International Law Commission selected the subject of jurisdictional immunities of States and their property as one of the topics for codification without, however, including it in the list of topics to which it gave priority. At its [twenty-ninth session](#), in 1977, the Commission recommended the topic “Jurisdictional immunities of States and their property” for selection in the near future for active consideration, bearing in mind its day-to-day practical importance as well as its suitability for codification and progressive development.

The General Assembly, in [resolution 32/151](#) of 19 December 1977, invited the Commission, at an appropriate time and in the light of progress made on other topics on its agenda, to commence work on the topic of jurisdictional immunities of States and their property.

At its [thirtieth session](#), in 1978, the Commission set up a Working Group to consider the question of the future work of the Commission on the topic and to report thereon to the Commission. The Working Group submitted to the Commission a report ([A/CN.4/L.279/Rev.1](#)) that dealt, *inter alia*, with general aspects of the topic and contained a number of recommendations. The Commission took note of the report of the Working Group and, on the basis of the recommendations contained therein, decided to begin its consideration of the topic “Jurisdictional immunities of States and their property”. It also appointed Mr. Sompong Sucharitkul as Special Rapporteur for the topic and invited him to prepare a preliminary report at an early juncture for consideration by the Commission. The Commission, further, requested the Secretary-General to invite Governments of Member States to submit relevant materials on the topic, including national legislation, decisions of national tribunals and diplomatic and official correspondence and requested the Secretariat to prepare working papers and materials on the topic as the need arose and as requested by the Commission or the Special Rapporteur ([A/CN.4/SER.A/1978/Add.1 \(Part 2\)](#), paras. 179, 180 and 188 to 190).

At its [thirty-first session](#), in 1979, the Commission had before it a preliminary report on the topic submitted by the Special Rapporteur, Mr. Sucharitkul ([A/CN.4/323](#)). During the discussion in the Commission, a consensus emerged to the effect that for the immediate future the Special Rapporteur should continue his study, concentrating on general principles and thus confining the areas of initial interest to the substantive contents and constitutive elements of the general rules of jurisdictional immunities of States. It was

furthermore agreed, in terms of priorities to be accorded in the treatment of the topic, that the Special Rapporteur should continue his work on the immunities of States from jurisdiction, leaving aside for the time being the question of immunity from execution of judgment.

The Commission began the first reading of the draft articles at its [thirty-second session](#), in 1980, which was concluded at its [thirty-eighth session](#), in 1986. At the [thirty-eighth session](#), the Commission transmitted the draft articles adopted on first reading through the Secretary-General to Governments for comments and observations in accordance with articles 16 and 21 of its Statute. The Sixth Committee discussed the draft articles during its thirty-sixth (1981), thirty-seventh (1982), thirty-eighth (1983), thirty-ninth (1984), fortieth (1985), forty-first (1986) sessions.

The General Assembly, in resolutions [41/81](#) of 3 December 1986 and [42/156](#) of 7 December 1987, *inter alia*, urged Governments to give full attention to the request of the Commission for comments and observations on the draft articles adopted on first reading by the Commission.

The Commission began the second reading of the draft articles based on the three reports of the new Special Rapporteur, Mr. Motoo Ogiso, at its [forty-first session](#), in 1989. In his preliminary report ([A/CN.4/415](#)), the Special Rapporteur analysed some of the comments and observations of Governments and proposed to revise or merge some of the draft articles based on those comments. In his second report ([A/CN.4/422](#)), the Special Rapporteur gave further consideration to some of the draft articles on the basis of the written comments and observations of Governments and his analysis of relevant treaties, laws and State practice, and proposed certain revisions, additions or deletions complementary to those contained in his preliminary report. Responding to a request from some members of the Commission, the Special Rapporteur also included a brief review of the recent development of general State practice concerning State immunity. In his third report ([A/CN.4/431](#)), the Special Rapporteur reviewed once again the entire set of draft articles and suggested certain reformulations, taking into account the views expressed by members of the Commission at its [forty-first session](#), in 1989, as well as by Governments in their written comments and in the Sixth Committee of the General Assembly at its forty-fourth session. In 1990, at its forty-fifth session, the Sixth Committee members commented further on the draft articles contained in the third report of the Special Rapporteur.

In undertaking the second reading of the draft articles, at its [forty-first session](#), in 1989, the Commission agreed with the Special Rapporteur that it should avoid entering yet again into a doctrinal debate on the general principles of State immunity, which had been extensively debated in the Commission and on which the views of the Commission remained divided; the Commission should instead concentrate its discussion on individual articles, so as to arrive at a consensus as to what kind of activities of the State should, or should not, enjoy immunity from jurisdiction of another State. This, in the view of the Commission, was the only pragmatic way of preparing a convention which would command wide support of the international community. The Commission also noted that the law of State jurisdictional immunity was in a state of flux as some States were in the process of amending their basic laws or had done so recently, and thus it was essential that the draft articles be given the opportunity to reflect such Government practice, and, moreover, to leave room for further development of the law of jurisdictional immunity of States ([A/CN.4/SER.A/1989/Add.1 \(Part 2\)](#), paras. 406 and 407).

At its [forty-third session](#), in 1991, the Commission adopted the final text of twenty-two [draft articles on the jurisdictional immunities of States and their property, with commentaries](#) ([A/CN.4/SER.A/1991/Add.1 \(Part 2\)](#), paras. 23 and 28). At the forty-sixth session of the Sixth Committee (1991), States expressed their general support for the draft articles. In accordance with article 23 of its Statute, the Commission submitted the draft articles to the General Assembly, together with a recommendation that the Assembly convene an international conference of plenipotentiaries to examine the draft articles and to conclude a convention on the subject ([A/CN.4/SER.A/1991/Add.1 \(Part 2\)](#), para. 25).

As regards the question of the settlement of disputes, the Commission was of the view that this could be dealt with by the proposed international conference, if the conference considered that a legal mechanism on the settlement of disputes should be provided in connection with the draft articles ([A/CN.4/SER.A/1991/Add.1 \(Part 2\)](#), para. 26).

The General Assembly, by its [resolution 46/55](#) of 9 December 1991, invited States to submit their written comments and observations on the draft articles, and decided to establish at its forty-seventh session an open-ended working group of the Sixth Committee to examine, in the light of the written comments of Governments, as well as views expressed in debates at the forty-sixth session of the Assembly: (a) issues of substance arising out of the draft articles, in order to facilitate a successful conclusion of a convention through the promotion of general agreement; and (b) the question of the

convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.

The Working Group began its work at the forty-seventh session of the General Assembly ([A/C.6/47/L.10](#)) and resumed it, in accordance with General Assembly [decision 47/414](#) of 25 November 1992, at the forty-eighth session ([A/C.6/48/L.4](#)). The reports of the Working Group were discussed in the Sixth Committee at its forty-seventh and forty-eighth sessions. By its [decision 48/413](#) of 9 December 1993, the General Assembly decided that consultations should be held in the framework of the Sixth Committee at its forty-ninth session, to continue consideration of the substantive issues with respect to which the identification and attenuation of differences was desirable in order to facilitate the successful conclusion of a convention through general agreement. The General Assembly also decided that, at its forty-ninth session, in the light of the progress thus far achieved and of the expected results of the consultations, it would give full consideration to the recommendation of the International Law Commission that an international conference of plenipotentiaries be convened, to examine the draft articles on the jurisdictional immunities of States and their property and to conclude a convention on the subject.

At the forty-ninth session of the General Assembly, in 1994, the Sixth Committee, in accordance with General Assembly [decision 48/413](#), decided to convene informal consultations. The consultations were held at six meetings, from 27 September to 3 October 1994. At the same session, the Chair of the informal consultations introduced a document ([A/C.6/49/L.2](#)) containing conclusions he had drawn from such consultations (Report of the Sixth Committee on the Convention on Jurisdictional Immunities of States and their Property, [A/49/744](#), paras. 3 to 7).

By its [resolution 49/61](#) of 9 December 1994, the General Assembly accepted the above-cited recommendation of the International Law Commission, invited States to submit to the Secretary-General their comments on the conclusions of the Chair of the informal consultations held pursuant to General Assembly [decision 48/413](#), and on the reports of the Working Group established under General Assembly [resolution 46/55](#) and [decision 47/414](#), and decided to resume consideration, at its fifty-second session, in 1997, of the issues of substance, in the light of the reports mentioned above and the comments submitted by States thereon, and to determine, at its fifty-second or fifty-third session, the arrangements for the conference, including the date and place, due consideration being given to ensuring the widest possible agreement at the conference. It further decided to

include in the provisional agenda of its fifty-second session the item entitled “Convention on jurisdictional immunities of States and their property”.

The item was considered at the fifty-second and fifty-third sessions of the General Assembly, in 1997 and 1998, respectively. At the fifty-second session of the Sixth Committee (1997), States commented on the suitability of convening a diplomatic conference. By its [resolution 52/151](#) of 15 December 1997, the General Assembly, *inter alia*, decided to consider the item again at its fifty-third session with a view to establishing a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with [resolution 49/61](#). At the fifty-third session of the Sixth Committee, in 1998, States expressed their views on the elaboration of an international convention on the topic and recommended the establishment of a working group ([A/53/629](#)). By its [resolution 53/98](#) of 8 December 1998, acting on the recommendation of the Sixth Committee, the General Assembly decided to establish at its fifty-fourth session, in 1999, an open-ended working group of the Sixth Committee to consider outstanding substantive issues related to the draft articles taking into account, *inter alia*, recent developments in State practice and legislation as well as the comments submitted by States on the topic. It also invited the International Law Commission to present any preliminary comments that it might have regarding outstanding substantive issues related to the draft articles in the light of the results of the informal consultations held in the Sixth Committee, in 1994, pursuant to General Assembly [decision 48/413](#).

At its fifty-first session, in 1999, the Commission established a Working Group on Jurisdictional Immunities of States and Their Property in accordance with General Assembly [resolution 53/98](#). The Working Group concentrated its work on the five main issues identified in the conclusions of the Chair of the informal consultations held in the Sixth Committee, in 1994, namely: (1) the concept of a State for purposes of immunity, (2) the criteria for determining the commercial character of a contract or transaction; (3) the concept of a State enterprise or other State entity in relation to commercial transactions; (4) contracts of employment; and (5) measures of constraint against State property. The Working Group also considered the question of the existence or non-existence of immunity in the case of violation by a State of *jus cogens* norms of international law, which was identified as an issue that might be considered in the light of recent State practice. In its report to the Commission ([A/CN.4/SER.A/1999/Add.1 \(Part 2\)](#), Annex), the Working Group made a number of suggestions regarding possible ways of solving the five issues. The Commission took note of the report of the Working Group and adopted the suggestions contained therein.

At the fifty-fourth session of the General Assembly, in 1999, the open-ended Working Group of the Sixth Committee established under General Assembly [resolution 53/98](#) considered the same five outstanding substantive issues as well as the possible form of the outcome of the work on the topic. It also considered the question identified by the Working Group of the Commission on the existence or non-existence of immunity in the case of violation by a State of *jus cogens* norms ([A/C.6/54/L.12](#)). Pursuant to General Assembly [resolution 54/101](#) of 9 December 1999 ([A/C.6/55/L.12](#)), the Working Group of the Sixth Committee continued its consideration of the future form of, and outstanding substantive issues related to, the draft articles, at the fifty-fifth session of the General Assembly. As a result of these discussions, the Chair prepared a number of texts on the five outstanding issues as a possible basis for further discussions on the topic ([A/C.6/55/L.12](#)).

By its [resolution 55/150](#) of 12 December 2000, the General Assembly, having considered the reports of the Working Group of the Sixth Committee, decided to establish an [Ad Hoc Committee on Jurisdictional Immunities of States and Their Property](#), open to all States Members of the United Nations and to States members of the specialized agencies, with the mandate to further the work done, consolidate areas of agreement and resolve outstanding issues with a view to elaborating a generally acceptable instrument based on the draft articles, and also on the discussions of the Working Group of the Sixth Committee and their results. By its [resolution 56/78](#) of 12 December 2001, the General Assembly decided that the Ad Hoc Committee should meet in February 2002, and that it should report to the General Assembly at its fifty-seventh session on the outcome of its work.

The [Ad Hoc Committee on Jurisdictional Immunities of States and Their Property](#) proceeded with its work in a Working Group of the Whole in two stages by discussing first, the five outstanding substantive issues and, second, the remainder of the draft articles with a view to identifying and resolving any further issues arising from the text ([A/57/22](#)). The Working Group of the Whole made significant progress on the five substantive issues by reducing the number of outstanding matters and narrowing the divergent views with respect to the remaining matters. The Working Group of the Whole decided to reflect the remaining divergent views on certain draft articles in the revised text of the draft articles contained in its report. The Ad Hoc Committee emphasized the importance of elaborating in a timely manner a generally acceptable instrument and urged States to make every effort to resolve the remaining outstanding issues in the interest of arriving at an agreement ([A/57/22](#), paras. 8 to 13).

After considering the report of the Ad Hoc Committee at its fifty-seventh session, in 2002, the General Assembly adopted [resolution 57/16](#) of 19 November 2002 in which, noting that few issues remained outstanding and stressing the importance of uniformity and clarity in the law applicable to jurisdictional immunities of States and their property, decided that the Ad Hoc Committee should be reconvened in February 2003 and requested the Ad Hoc Committee to report to the General Assembly at its fifty-eighth session on the outcome of its work.

In 2003, the Ad Hoc Committee proceeded with the substantive discussion of the outstanding issues in a Working Group of the Whole. The Working Group of the Whole established two informal consultative groups. It discussed and resolved all of the outstanding issues. The Ad Hoc Committee adopted its report ([A/58/22](#)) containing the text of draft articles ([A/58/22](#), Annex I), together with understandings with respect to draft articles 10 (Commercial transactions), 11 (Contracts of employment), 13 (Ownership, possession and use of property), 14 (Intellectual and industrial property), 17 (Effect of an arbitration agreement) and 19 (as renumbered, previously article 18) (State immunity from post-judgement measures of constraint) as well as a general understanding that the draft articles did not cover criminal proceedings ([A/58/22](#), Annex II). The Ad Hoc Committee recommended that the General Assembly take a decision on the form of the draft articles and noted that, if the General Assembly decided to adopt the draft articles as a convention, the draft articles would need a preamble and final clauses, including a general saving provision concerning the relationship between the articles and other international agreements relating to the same subject ([A/58/22](#), para.12). At the fifty-eighth session of the Sixth Committee (2003), noting the broad support for the conclusion of a convention on jurisdictional immunities of States and their property, the Sixth Committee recommended that the Ad Hoc Committee be reconvened with a view to completing such a convention ([A/58/512](#)).

The General Assembly, in [resolution 58/74](#) of 9 December 2003, decided to reconvene the [Ad Hoc Committee on Jurisdictional Immunities of States and Their Property](#) with the mandate to formulate a preamble and final clauses, with a view to completing a convention on jurisdictional immunities of States and their property. The Ad Hoc Committee held its third session from 1 to 5 March 2004 and agreed on a preamble and final clauses for a draft Convention on jurisdictional immunities and their property, as well as the chapeau for the understandings with respect to certain provisions of the draft Convention. The Ad Hoc Committee further endorsed the recommendation of the Working Group of the Whole that the general understanding that the draft convention did

not apply to criminal proceedings should be reflected in an appropriate place, such as in a General Assembly resolution. The Ad Hoc Committee accordingly adopted its report containing the text of a draft United Nations Convention on Jurisdictional Immunities of States and Their Property and recommended its adoption by the General Assembly ([A/59/22](#), paras. 13 to 14). At its fifty-ninth session (2004), the Sixth Committee recommended the adoption of the Convention ([A/59/508](#)), with minor drafting corrections proposed by the Chair at the Ad Hoc Committee ([A/C.6/59/SR.13](#), para 34).

The General Assembly, in [resolution 59/38](#) of 2 December 2004, agreed with the general understanding reached in the Ad Hoc Committee that the Convention did not cover criminal proceedings and adopted the United Nations Convention on Jurisdictional Immunities of States and Their Property.

The Convention consists of a preamble together with 33 articles divided into six parts (Introduction; General principles; Proceedings in which State immunity cannot be invoked; State immunity from measures of constraint in connection with proceedings before a court; Miscellaneous provisions; and Final clauses). A number of understandings relating to specific provisions of the Convention are laid down in an annex which forms an integral part thereof. Such understandings exist in addition to the general understanding, reflected in the operative part of General Assembly [resolution 59/38](#), that the Convention does not cover criminal proceedings.