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Jurisdictional immunities of States and their property - Information and materials submitted by Governments

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Jurisdictional immunities of States and their property

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JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Information and materials submitted by Governments

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INTRODUCTION

1. Pursuant to the request of the International Law Commission, 1/ the Legal Counsel of the United Nations addressed a circular letter dated 18 January 1979 to the Governments of Member States inviting them to submit by 30 June 1979 relevant materials on the topic of jurisdictional immunities of States and their property, including national legislation, decisions of national tribunals and diplomatic and official correspondence.

2. The Commission, at its thirty-first session, had before it a preliminary report on the topic (A/CN.4/323) submitted by the Special Rapporteur, Mr. Sompong Sucharitkul who, when introducing his report to the Commission, noted that in response to the request for relevant materials mentioned above, Governments of eight Member States had, as of 23 July 1979, forwarded such information. It was pointed out during the Commission's discussion of the Special Rapporteur's report that relevant materials on State practice should be consulted as widely as possible, including the practice of socialist and developing countries. 2/ Finally the Commission decided: "to seek further information from Governments of Member States of the United Nations in the form of replies to a questionnaire to be circulated." 3/ In this connexion the Commission stated that

> "States knew best their own practice, wants and needs in the field of immunities in respect of their activities. The rules of State immunities should operate equally for States claiming or receiving immunities, and for States from which like immunities were sought from the jurisdiction of their judicial or administrative authorities. The views and comments of Governments could provide an appropriate indication of the direction in which the codification and progressive development of the international law of State immunities should proceed." 4/

3. Accordingly, pursuant to the decision of the Commission, the Legal Counsel of the United Nations circulated to the Governments of Member States a questionnaire dated 2 October 1979, inviting them to submit their replies, if possible, by 16 April 1980. The questionnaire on the topic had been drafted by the Special Rapporteur in co-operation with the Secretariat. The questionnaire appears in paragraph 9 below.

1/ Yearbook of the International Law Commission 1978, vol. II (Part Two), p. 153, para. 188.

2/ Ibid., 1979, vol. II (Part One), paras. 176-177, 179.

3/ Ibid., para. 183.

4/ Ibid.

4. The General Assembly, at its thirty-fourth session, recommended in paragraph 4 of its resolution 34/141 of 17 December 1979, that the International Law Commission should, inter alia:

> "(e) Continue its work on jurisdictional immunities of States and their property, taking into account information furnished by Governments and replies to the questionnaire addressed to them as well as views expressed on the topic in debates in the General Assembly;".

5. At its thirty-second session the International Law Commission, bearing in mind subparagraph 4 (e) of that resolution and the particular importance and relevance of having available materials on State practice on this topic, decided 5/ to renew, through the Secretary-General, the requests addressed to Governments to submit relevant materials on the topic, including national legislation, decisions of national tribunals and diplomatic and official correspondence; and to submit replies to the questionnaire formulated on the topic. It also requested the Secretariat to proceed with the publication of the materials and replies already received.

6. Accordingly, the Legal Counsel of the United Nations again circulated a letter dated 30 October 1980, addressed to the Governments of Member States, requesting them to submit, at their earliest convenience, relevant materials on the topic, as well as a reply to the questionnaire transmitted to them by the letter of 2 October 1979.

7. As of 15 April the following States had replied to the letters circulated by the Legal Counsel on jurisdictional immunities of States and their property: Argentina, Austria, Barbados, Brazil, Chile, Colombia, Czechoslovakia, Egypt, German Democratic Republic, Germany, Federal Republic of, Finland, Hungary, Jamaica, Kenya, Lebanon, Mauritius, Morocco, Netherlands, Norway, Philippines, Poland, Portugal, Qatar, Seychelles, Singapore, Sudan, Sweden, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia. Three of those States (Qatar, Seychelles, Singapore) indicated that they had no materials to submit nor did they reply to the questionnaire. From the remaining States, some 6/ have submitted a reply to the questionnaire only, some 7/ have submitted both materials and a reply to the questionnaire, and some 8/ have submitted materials only.

5/ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 10 (A/35/10), p. 320, para. 113.

6/ Those States are: Brazil, Egypt, Kenya, Lebanon, Portugal, Sudan, Sweden, Syrian Arab Republic, Togo and Trinidad and Tobago.

7/ Those States are: Germany, Federal Republic of, Hungary, Netherlands, Tunisia, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

8/ Those States are: Argentina, Austria, Barbados, Chile, Colombia, Czechoslovakia, Finland, German Democratic Republic, Jamaica, Mauritius, Morocco, Norway, Philippines and Poland. Jamaica, Mauritius and Morocco have submitted national legislation and judicial decisions related to diplomatic immunity.

Organization of materials

8. The replies and relevant materials submitted by Governments have been organized as follows: part I consists of Government replies to the questionnaire in a systematic order; each question is followed by the relevant replies to the question given by Governments. Part II contains relevant materials that Governments have submitted together with their replies to the questionnaire or have otherwise attached as supplementary to their replies to the questionnaire. Part III includes materials submitted by Governments without being specifically related to the questionnaire. The materials in all three parts have been organized in the alphabetical order of the name of Member States.

9. In addition to the materials reproduced in this document, the Secretariat has received some other materials forwarded by Member States mentioned in paragraph 7 above, with reference to the topic. Those materials include extensive provisions dealing, inter alia, with legislative history and decisions of national tribunals and totalling over 200 pages of printed texts. They have, of course, been forwarded to the International Law Commission's Special Rapporteur for the topic. Furthermore, the Secretariat is considering the idea of publishing a volume of the United Nations Legislative Series on the topic in question which will also include the materials mentioned above.

10. The questionnaire reads as follows:

"Jurisdictional immunities of States and their property*

"1. Are there laws and regulations in force in your State providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent? If so, please attach a copy of the basic provisions of those laws and regulations.

"2. Do courts of your State accord jurisdictional immunities to foreign States and their property? If so, please indicate whether they have based their decisions on any provisions of internal law in force or on any principle of international law.

"3. What are the main trends of the judicial practice of your State in regard to jurisdictional immunities of foreign States and their property? Do the courts regard the doctrine of State immunity as 'absolute', and if not, is its application subject to qualifications or limitations?

"4. What is the role of the executive branch of the Government of your State in matters of recognition of jurisdictional immunities of foreign States and their property, especially in the definition or delimitation of the extent of the application of State immunity?

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* This questionnaire is not concerned with diplomatic or consular immunities and privileges.

"5. Is the principle of reciprocity applicable in the matters relating to jurisdictional immunities of States and their property? Inter alia, would courts of your State be expected to apply the principle of reciprocity to a foreign State which would deny your State immunity in a dispute similar to the one pending before your courts, even if the courts would normally grant immunity to other foreign States in such disputes?

"6. Do the laws and regulations referred to under question 1 or the judicial practice referred to in question 3, make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between 'public acts' and 'non-public acts' of foreign States? If so, please outline the distinctions, and provide examples of their application.

"7. If the answer to question 6 is 'yes':

(a) Can jurisdictional immunities be successfully invoked before courts in your State in connexion with 'non-public acts' of foreign States?** If not, please indicate the types of 'non-public acts' of foreign States not covered by immunities.

(b) In a dispute relating to a contract of purchase of goods, would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract was for a public purpose or the contract was concluded in the exercise of a 'public' or 'sovereign' function?

(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?

(d) In any dispute concerning a commercial transaction, is the nature of the transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

"8. If 'non-public' activities of a foreign State in the territory of your State are such as to be normally susceptible to payment of taxes, duties or other levies, would the foreign State be required to pay them or would it be exempted in all cases or on the basis of reciprocity?

"9. Are courts of your State entitled to entertain jurisdiction over any public acts of foreign States? If so, please indicate the legal grounds on which competence is based, such as consent, or waiver of immunity, or voluntary submission, etc. If jurisdiction is exercised in such cases, does it mean that the doctrine of State immunity is still recognized by the courts?

** In this questionnaire, where the term "State" is used in connexion with "non-public" acts it also covers any agencies or instrumentalities of the foreign State.

"10. What rules are in force in your State, if any, governing:

(a) Waiver of jurisdictional immunities of foreign States;

(b) Voluntary submission by foreign States; and

(c) Counter-claims against foreign States?

"11. What are the exceptions or limitations, if any, provided by laws and regulations in force or recognized by judicial or governmental practice in your State with respect to jurisdictional immunities of foreign States and their property?

"12. What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?

"13. If a foreign State applies to administrative authorities of your State for a patent, a licence, a permit, an exemption or any other administrative action, would it be treated procedurally or substantively, like any other applicant or would it receive special treatment on the procedure or on the substance?

"14. If a foreign State owns or succeeds to an immovable or movable property situated in your State, how far is the foreign State subject to territorial jurisdiction in respect of title to that property or other property rights?

"15. Can a foreign State inherit or become a legatee or a beneficiary in a testate or intestate succession? If so, is voluntary submission essential to a meaningful involvement in the judicial process?

"16. Under laws and regulations in force in your State, does the property of a foreign State enjoy immunity from attachment and other provisional or interim measures prior to an executory judicial decision? Is there any distinction based on the nature or on the use of property involved?

"17. Similarly, does the property of a foreign State enjoy immunity from distraint and other forcible measures in aid of execution of a judicial decision? Is there any distinction based on the nature or on the use of the property involved?

"18. Are there procedural privileges accorded a foreign State in the event of its involvement in a judicial process? If so, please elaborate.

"19. Are foreign States exempt from costs or security for costs in the event of participation in a judicial process?

"20. Is your State inclined to invoke jurisdictional immunities before foreign courts, where, in like circumstances, none would be accorded to foreign States by the courts of your State? Or conversely, are courts in your State prepared to grant jurisdictional immunities to foreign States to the same extent as that to which your State is likely to claim immunities from foreign jurisdiction?"

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I. GOVERNMENT REPLIES TO THE QUESTIONNAIRE

Questionnaire on the topic

"Jurisdictional immunities of States and their property"*

Question 1

Are there laws and regulations in force in your State providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent? If so, please attach a copy of the basic provisions of those laws and regulations

BRAZIL

/Original: English/
/5 June 1980/

There is none.

EGYPT

/Original: Arabic/
/27 October 1980/

No.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

... They show that the legal system of the Federal Republic of Germany follows general rules of international law under which immunity is construed as restricted to "acta jure imperii" ("public acts").

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* This questionnaire is not concerned with diplomatic or consular immunities and privileges.

HUNGARY

[Original: English]
[25 August 1980]

The immunity of a foreign State from the jurisdiction of the Hungarian State is regulated by item (a) of section 56 of Law-Decree No. 13 of 1979 9/ hereinafter called Law-Decree/ and excludes the jurisdiction of a court and other public authority of the Hungarian State. The landed property of a foreign State in Hungary, however, belongs to the exclusive jurisdiction of a Hungarian court of law or other public authority, /Law-Decree, Section 55, item b/./ In respect of immunity Hungarian law does not make any distinction between state and its property, apart from the exception mentioned before.

KENYA

[Original: English]
[19 March 1980]

There are no laws or regulations in force in Kenya, either specifically or generally, regarding jurisdictional immunities for foreign States and their property.

LEBANON

[Original: French]
[30 June 1980]

No such texts exist.

9/ Section 56 (a) of the Law-Decree provides:

"Unless otherwise provided for in this Law-Decree, the jurisdiction of a Hungarian law-court or other public authority shall be precluded in the case of:

(a) An action against a foreign State, or a foreign executive or administrative body;".

NETHERLANDS

/Original: English/
/17 July 1980/

Section 13a of the Act of 15 May 1829 concerning general principles of legislation reads: "The jurisdiction of the courts and the enforcement of judicial decisions and authentic deeds are subject to restrictions recognized under international law".

Apart from this provision, there is no other law or regulation in the Netherlands relating either directly or indirectly to jurisdictional immunities for states in civil cases.

PORTUGAL

/Original: French/
/16 July 1980/

No law in Portugal provides for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over such States and their property.

SUDAN

/Original: English/
/29 May 1980/

Yes. The Immunities and Privileges Act 10/ specifically provides for jurisdictional immunities for foreign States and their property.

SWEDEN

/Original: English/
/4 March 1980/

Swedish laws and regulations do not expressly accord jurisdictional immunities of a general nature to foreign States.

With regard to foreign government ships, the Brussels Convention 1926, together with its additional Protocol 1934, was ratified by Sweden in 1938, and the basic rules of this Convention have, by legislation, been made generally applicable in Sweden regardless of whether the State operating or owning a ship is a party to the Convention or not (Act of 17 June 1938, No. 470).

10/ The Act is related to diplomatic immunities and privileges.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

It is established in international legislation and judicial practice that States are not subject to the jurisdiction of another State.

Accordingly, the Syrian judiciary does not hear cases brought against a foreign State without the consent of that State. The justification for the non-exercise of jurisdiction lies in the principle of State independence, which prevents the courts of any State having the right to investigate the commitments by which a foreign State is bound.

There are some exceptions to this rule, namely:

1. If the case is brought before the Syrian court by the foreign State, this is regarded as implying consent by the foreign State to be subject to Syrian law.

2. If the merits of the case are presented by the foreign State through one of its employees, for the administration of its own affairs or the achievement of a commercial purpose which is remote from its operations as a government.

In Syrian national legislation there are no laws regulating the jurisdictional immunities of foreign States and their property. This matter, as we have stated, is subject to the application of the provisions and principles of international law relating to sovereignty and to the application of the provisions of the Act promulgated by Legislative Decree No. 189 of 1952, which also lays down the conditions on which non-Syrians can own immovable property.

This Act covers non-Syrian persons, whether natural or juridical, and we include a foreign State in the concept of a foreign juridical person. We have enclosed a copy of the Act. 11/

TOGO

[Original: French]
[7 March 1980]

There are no laws or regulations in Togo providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent.

11/ Part II (A) (1).

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

The common law of the Republic of Trinidad and Tobago provides specifically for jurisdictional immunities for foreign States and their property and generally for non-exercise of jurisdiction over foreign States and their property without their consent. A Court seized of any action attempting to implead a foreign sovereign or State would apply the rules of customary international law dealing with the subject.

TUNISIA

/Original: French/
/3 February 1981/

The Code of Civil and Commercial Procedure (CPCC) of Tunisia does not provide for the jurisdictional immunity of foreign States. It contains no article dealing specifically with foreign States and their immunities.

However, article 2, paragraph 3, of the CPCC deals with the case of foreigners residing outside Tunisian territory against whom a suit is brought before a Tunisian court. That article stipulates that "they (Tunisian courts) may hear suits brought against a foreigner residing outside Tunisian territory only in the following cases:

> "If the foreigner agrees to adjudication by a Tunisian court and the suit does not involve immovable property situated abroad".

Can this article be applied to foreign States against which legal action is brought? The Tunisian courts have not yet had occasion to rule on this question.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

In the Union of Soviet Socialist Republics there are laws providing for non-exercise of jurisdiction over foreign States and their property.

The basic rule on this question is contained in article 61 of the Fundamentals of Civil Procedure of the Union of Soviet Socialist Republics and the Union Republics, approved by an Act of the USSR of 8 December 1961 (Vedomosti Verkhovnogo Soveta SSSR, 1961, No. 50, p. 526).

The first part of article 61 of the Fundamentals provides as follows: "Bringing an action against a foreign State, securing collection of a claim and attachment of or execution upon a foreign State's property in the USSR may be permitted only with the consent of the competent authorities of the State concerned".

A similar rule is contained in the Codes of Civil Procedure of all the Union Republics which form part of the Union of Soviet Socialist Republics.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

Please refer to paragraphs 3 and 4 of Sir Ian Sinclair's letter of 3 July 1979 and to the legislative materials 12/ transmitted under cover of that letter.

/Note by the Secretariat. Paragraphs 3 and 4 of Sir Ian Sinclair's letter are as follows/

"3. Special United Kingdom legislation was required to bring United Kingdom law into conformity with the obligations to be assumed under these two Conventions. This legislation, the State Immunity Act 1978, came into force for the United Kingdom on 22 November 1978, and as regards other territories to which the Conventions have been extended, on 2 May 1979. I enclose copies of the State Immunity Act 1978 (Commencement) Order 1978, and of the State Immunity (Overseas Territories) Order 1979. St. Helena, to which both the Conventions have been applied, enacted its own legislation and was therefore not covered by the State Immunity (Overseas Territories) Order 1979. Two other Orders in Council have been made under the State Immunity Act. The State Immunity (Merchant Shipping) (Union of Soviet Socialist Republics) Order 1978 was required to give effect to the provisions of the Protocol to the Treaty on Merchant Navigation between the United Kingdom and the Soviet Union, signed in Moscow on 1 March 1974. The State Immunity (Federal States) Order 1979 was required because Austria, which is a party to the European Convention on State Immunity has, in accordance, with Article 28 of that Convention, notified her constituent territories as being entitled to invoke the provisions of the Convention applicable to Contracting States.

"4. When the State Immunity Bill was before the United Kingdom Parliament copies of it were sent to all diplomatic missions in London on two occasions. The first version was a print of the State Immunity Bill as it was introduced in the House of Lords on 13 December 1977. This was accompanied by a circular

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12/ The legislative materials will appear in volume 20 of the Legislative Series.

letter of 9 January 1978 which explained the purpose of the legislation, made clear that the Bill would also place on a statutory basis the privileges and immunities enjoyed by heads of State in their personal capacity, and offered arrangements to Federal States under which their constituent territories might be accorded sovereign immunity in the United Kingdom. The note explained that the United Kingdom intended to apply the provisions of the Bill to all sovereign States in the belief that the provisions of the European Convention reflected with sufficient accuracy general State practice in the field of sovereign immunity. As a result of debates in the House of Lords, the Bill underwent considerable changes before being introduced into the House of Commons on 4 April 1978. The Bill as it was introduced into the House of Commons was circulated again to diplomatic missions on 12 May 1978. The most significant changes made to the Bill as a result of the debates in the House of Lords were the following:

(1) the provision dealing with commercial transactions and contractual obligations to be performed in the United Kingdom (now sect. 3 of the Act) was extended; and

(2) provision was made permitting, in certain cases and subject to certain qualifications, execution in respect of property for the time being in use or intended for use for commercial purposes.

No State which was sent the legislation in draft offered substantive criticism of its terms."

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Yes, see attached copy of the Foreign Sovereign Immunities Act of 1976 (the "FSI Act"), 13/ Public Law 94-583; 90 Stat. 2891; 28 U.S.C. 1330, 1332, 1602-1611, 1391, 1441) as well as implementing regulations, entitled "Service on Foreign State," part 93 of subpart J of title 22 of the Code of Federal Regulations.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The question of jurisdictional immunities for foreign States and their property is regulated, in principle, by article 26 of the Law on Litigious Procedure (Official Gazette of the SFRY, No. 4, of 14 January 1977). This article stipulates the right of jurisdictional immunities for foreign States and international organizations in such a way that applicable in this respect are "the

13/ Part II (A) (3) (a).

provisions of international law", however, in case of doubt as to the existence and the extent of immunity explanations are provided by the Federal Organ for the Administration of Justice.

For the immunity of the property of a foreign State, of importance is the provision of article 13 of the Law on Executive Procedure (Official Gazette of the SFRY, No. 20/78). This article contains a provision whereby the property of a foreign State is not subject to the execution nor attachment, without the prior consent of the Federal Organ for the Administration of Justice, except in case that a foreign State has explicitly agreed to the execution, that is, attachment. Note should be taken of the fact that this provision relating to the executive procedure has been taken over from the previous Decree on the Procedure Applicable to the Execution of the Property of a Foreign State in Yugoslavia (Official Gazette of the FPRY, No. 32/52).

The aforementioned regulations do not, therefore, contain the rules and criteria when to recognize the "judicial" and "executive" immunity for a foreign State; instead, reference is made to provisions of international law. (Enclosed are copies of the mentioned legal provisions.)

As regards the immunity of foreign States from the administrative procedure, see the replies to /answer/ 13 and the annex. 14/

14/ Part (II) (A) (4).

Question 2

Do courts of your State accord jurisdictional immunities to foreign States and their property? If so, please indicate whether they have based their decisions on any provisions of internal law in force or on any principle of international law

BRAZIL

/Original: English/
/5 June 1980/

Yes, the Brazilian court's decisions being based upon what they consider to be a principle of international law.

EGYPT

/Original: English/
/27 October 1980/

Yes, Egyptian courts accord jurisdictional immunities to foreign States and their property in accordance with the principles of international law (see decision of the Cairo Court of Appeal in case No. 1230 of judicial year 81, issued on 4 May 1966).

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

... They show that the legal system of the Federal Republic of Germany follows general rules of international law under which immunity is construed as restricted to "acta jure imperii" ("public acts").

HUNGARY

/Original: English/
/25 August 1980/

From the coming into force on 1 July 1979 of the Law-Decree, the proceedings of the Hungarian court of law or other authority have been based on this Law-Decree, i.e. on internal law. Before coming into force of the Law-Decree, the basis of the proceedings of the Hungarian courts of law and other authorities was the customary law.

KENYA

[Original: English]
[19 March 1980]

The courts in Kenya have not had any occasion to extend or withhold such immunities from foreign States and their property. We therefore have no precedent on the matter.

LEBANON

[Original: French]
[30 June 1980]

Immunity is granted mainly under the rules of international law. However, with respect to execution measures, reference is made to article 594 of the Code of Civil Procedure; this article states that, inter alia, the property of foreign States is immune from seizure.

NETHERLANDS

[Original: English]
[17 July 1980]

Yes. When immunities are accorded, this is done on the basis of the "restrictions recognized under international law" which are referred to above in reply to question 1.

PORTUGAL

[Original: French]
[16 July 1980]

The jurisdictional immunities which Portuguese courts accord foreign States and their property in most cases in which such States can be defendants are based on a long-standing principle of international law. This is evident in numerous decisions of the Supreme Administrative Court and the Court of Cassation.

SUDAN

[Original: English]
[29 May 1980]

Yes. Our courts have based their decisions on the provisions of the Immunities and Privileges Act, and also by adopting provisions of the Vienna Convention in the absence of provisions in the national law as being international customary law.

SWEDEN

[Original: English]
[4 March 1980]

Yes. The basis of the courts' decisions has normally been general international la .

SYRIAN ARAB REPUBLIC

[Original: Arabic]

It is not within the competence of Syrian courts to accord jurisdictional immunities to foreign States and their property. The courts endeavour only to apply the legal provisions coming within their sphere of competence. Their decisions relating to such jurisdictional immunities are based, as we have said, on the principles of international law and the provisions of Act 189 of 1952, which we have mentioned above.

TOGO

[Original: French]
[7 March 1980]

There do not seem to have been any actions brought in the Togolese courts against foreign States and their property.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

In theory (since in the circumstances all the related matters have not been brought before the courts), courts in Trinidad and Tobago will accord jurisdictional immunities to foreign States and their property. In the event that a court is seized of a matter involving jurisdictional immunities, it is to be expected that it will base its decisions on international law, the applicable principle of international law being that no independent foreign sovereign State is answerable to another State's jurisdiction. Or, to put it another way, a State is immune from the exercise by another State of jurisdiction to enforce rules of law against it.

TUNISIA

/Original: French/
/3 February 1981/

There is as yet no case-law on the jurisdictional immunity of States and their property, since no suit involving a foreign State has been brought before Tunisian courts.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

On the basis of the provisions of the Act referred to in paragraph 1 15/ above, Soviet courts accord jurisdictional immunity to foreign States and their property in conformity with the principle of sovereignty and of sovereign equality of States which is universally recognized in international law and enshrined in the Charter of the United Nations.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The courts of the United Kingdom have traditionally accorded very wide jurisdictional immunities to foreign States and their property. The relevance of international law has been affirmed in many cases, from The Parlement Belge (1880) 5 P.D. 197 (per Brett, L.J., at p. 205), to The Cristina (1938) A.C. 485 (per Lord Wright at p. 502) and to the recent judgement of the Court of Appeal in 1° Congreso del Partido (1980) 1 Lloyds Rep. 23 (per Lord Denning at p. 29). As the rules enunciated in earlier United Kingdom cases had been stated to be in conformity with international law, it came in more recent cases to be regarded as proper to rely on these cases as precedents. The development of a growing international trend towards the application of the restrictive rule of immunity accordingly entailed for a period some divergence between United Kingdom case-law and that growing trend. In the Philippine Admiral, the Privy Council indicated that the rule of absolute immunity had been applied more widely in respect of actions in rem than it need have been, as a matter of English law; and in the case of Trendtex Trading Corporation Ltd v. Central Bank of Nigeria (following an earlier discussion of the general issue in the case of Thai-Europe Tapioca Service Ltd v. Government of Pakistan, Ministry of Food and Agriculture) the question arose as to whether the courts continued to be bound by earlier precedents which could be shown

15/ Para. 1 refers to the reply to question 1.

to be no longer in accord with international law. That this remains a controversial issue can be seen from studying the separate judgements in the Court of Appeal in the Trendtex case.

In seeking to identify contemporary international law on other aspects of the law relating to the jurisdictional immunities of States and their property, the United Kingdom courts have in recent years shown a willingness to pay close regard to the practice and decisions in other jurisdictions. In this context, it may be noted that, in the case of I^o Congreso del Partido, Mr. Justice Goff cited cases decided by the courts in Sweden, the Federal Republic of Germany, Italy and the United States of America; and, referring to affidavit evidence put before him by a number of distinguished foreign lawyers, stated:

> "Indeed, the evidence before me reveals only too clearly the isolated position which was until very recently occupied by this country in adhering to the absolute doctrine of sovereign immunity in the case of actions in personam": /1978/ Q.B. 500, at p. 529.

The State Immunity Act 1978 entered into force on 22 November 1978, but the statutory rules therein set out are only applied automatically by the courts in relation to matters that occurred subsequent to that date. Sections 23 (3) and (4) of the Act provide:

> "(3) Subject to subsection (4) below, Parts I and II of this Act do not apply to proceedings in respect of matters that occurred before the date of the coming into force of this Act and, in particular -
>
> "(a) sections 2 (2) and 13 (3) do not apply to any prior agreement, and
>
> "(b) sections 3, 4 and 9 do not apply to any transaction, contract or arbitration agreement,
>
> entered into before that date.
>
> "(4) Section 12 above applies to any proceedings instituted after the coming into force of this Act."

The United Kingdom Government made clear during the passage of the State Immunity Act that it was intended to reflect modern international law, and its provisions will therefore have a persuasive effect even in cases where it is not directly binding on the courts. Thus, Counsel for both parties relied heavily on its provisions during the conduct of the case of I Congreso del Partido. But the proceedings and judgement in the case of Uganda Holdings v. Government of Uganda show that individual courts may still, during an interim period where the facts ante-date the entry into force of the State Immunity Act, have regard to the previous rules applied in United Kingdom cases.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Yes, United States courts accord jurisdictional immunities to foreign States and their property based on the provisions of the enclosed FSI Act (Tab 1) 16/ which codified the so-called "restrictive" principle of sovereign immunity as recognized at present in international law. Section 1602 of the Act in part describes this principle of international law. Sections 1603-1607 and 1609-1611 define the general jurisdictional immunity of foreign States as well as exceptions and other qualifications with respect to attachment, execution, and other matters.

YUGOSLAVIA

/Original: English/
/12 August 1980/

Regulations mentioned in addendum 1 oblige the courts in the SFRY to, in principle, recognize the immunity for foreign States and their property in conformity with the provisions of international law. The lack of court practice, especially of the in-depth study and analysis of this practice makes impossible the reaching of meaningful conclusions of court practice.

There were only individual court cases, namely, those involving embassies in Belgrade in connexion with disputes about business and office premises, etc. Since court action was initiated by a foreign State, the respective foreign State thereby waived the jurisdictional immunity by bringing action in the court on a specific matter.

16/ Part II (A) (3) (a).

Question 3

What are the main trends of the judicial practice of your State in regard to jurisdictional immunities of foreign States and their property? Do the courts regard the doctrine of State immunity as "absolute", and if not, is its application subject to qualifications or limitations?

BRAZIL

[Original: English]
[5 June 1980]

Yes, the Brazilian courts consider the doctrine of immunity of States as absolute.

EGYPT

[Original: Arabic]
[27 October 1980]

The main judicial trend in Egypt in regard to the jurisdictional immunities of States and their property is that a plea challenging the jurisdiction of national courts to hear a case against a foreign State is a matter of public policy (ordre public) (see Cairo Court of First Instance, decision 1173 of 1963, issued on 8 June 1964).

The Egyptian courts do not regard the doctrine of immunity as absolute but rather limit it to acts of sovereign authority (decisions of the Commercial Court of Alexandria on 29 March 1943, Civil Court of Alexandria on 12 May 1951 and Giza Court of First Instance on 10 March 1960).

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

... They show that the legal system of the Federal Republic of Germany follows general rules of international law under which immunity is construed as restricted to "acta jure imperii" ("public acts").

HUNGARY

[Original: English]
[25 August 1980]

The conception of the Law-Decree relies on the principle of absolute immunity. The limitation of absolute immunity is signified by the waiving (Law-Decree sect. 57, para. 1) 17/ and reciprocity. In respect of the landed property of a foreign State in Hungary, see item 1. 18/

KENYA

[Original: English]
[19 March 1980]

Following from the above 1 and 2, Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

[Original: French]
[30 June 1980]

... There is a tendency to limit jurisdictional immunity to acts of a foreign State deriving from its attributes as public authority.

This may be illustrated by a judgement of the Beirut Court of Appeals of 28 March 1969 (Revue Al-Adl, 1969, p. 539) and another of 1 February 1967 (Revue judiciaire libanaise, 1969, p. 455), which will be referred to again below.

17/ Para. 1 of sect. 57 provides:

"Proceedings against a foreign State, executive or administrative body, or against a foreign citizen acting in Hungary as a diplomatic agent or entitled to immunity from jurisdiction for any other reason may be instituted before a Hungarian court of law or other public authority, provided that the foreign State concerned has expressly waived the right to immunity."

18/ "Item 1" refers to the reply to question 1.

NETHERLANDS

/Original: English/
/7 July 1980/

The doctrine of "absolute immunity" does not apply in Netherlands judicial practice. The law as it now stands was commented upon as follows in a judgement of the Supreme Court of the Netherlands on 26 October 1973 in the case of Société européenne d'études et d'entreprises en liq. v. Socialist Federal Republic of Yugoslavia (NJ 19/ 1974, 361; Netherlands International Law Review 1975, 73):

> "In many countries it is becoming increasingly common for the State to enter into commercial transactions governed by private law, thus entering into juridical relations with private individuals on a basis of equality; in such cases, it seems reasonable to extend the same legal protection to the individuals concerned as if they were dealing with a private person; on these grounds it must be assumed that the immunity from jurisdiction which is enjoyed by foreign States under present-day international law does not extend to cases in which a State may act as referred to above."

PORTUGAL

/Original: French/
/16 July 1980/

On the basis of what could be called a classic doctrine, Portuguese courts agree in the belief that such immunity exists except in the following cases:

- If the action relates to immovable property;
- If there is an explicit or tacit waiver;
- If the plea of forum heritatis is accepted.

SUDAN

/Original: English/
/29 May 1980/

The courts regard the doctrine of immunity as absolute but subject to waiver.

19/ NJ: Nederlandse Jurisprudentie = Netherlands Court Decisions.

SWEDEN

[Original: English]
[4 March 1980]

The Swedish Supreme Court has in several cases indicated that it does not regard the immunity of foreign States from jurisdiction as absolute, and in particular that such immunity cannot generally be invoked in private law disputes. On the other hand, in the actual practice of the Supreme Court there has so far not been any case where a foreign State has been denied immunity.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

The principle of the jurisdictional immunity of foreign States and their property is regarded as absolute in the Syrian Arab Republic and is based on principles of international law.

TOGO

[Original: French]
[7 March 1980]

If such a situation arose, it may be assumed that the court dealing with the case would follow French judicial practice, since the provisions relating to procedure and execution derive from French law. That judicial practice recognizes the immunity of foreign States as a matter of principle and does not allow the levying of distraint on their property forming part of the public domain or used for diplomatic purposes.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

In general, it can be stated that the courts of the Republic of Trinidad and Tobago can be expected to follow the common law pattern and adhere to a doctrine of absolute immunity, particularly in relation to *in personam* actions.

TUNISIA

[Original: French]
[3 February 1981]

There is as yet no case-law on the jurisdictional immunity of States and their property, since no suit involving a foreign State has been brought before Tunisian courts.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

In the Soviet Union, the principle of State immunity is regarded as absolute.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The main trend of the judicial practice of United Kingdom courts over the last 25 years has been a gradual shifting of the courts away from their previous attachment to the doctrine of absolute immunity, and a greater readiness to deny immunity to separate entities associated with or subservient to but not forming part of the State itself. This trend first became apparent in the case of Baccus S.R.L. v. Servicio Nacional del Trigo /1957/ I Q.B. 438; International Law Reports (1956), p. 160. In this case the Court of Appeal by a majority of two to one held that the defendants who had separate legal personality according to Spanish law but claimed to be a Department of the Spanish Ministry of Agriculture were entitled to State immunity because their functions were those of a government department. Singleton, L. J., however, would have denied the claim to immunity on account of the separate legal personality of the defendants. This continued emphasis on the status of the entity as being determinative of whether immunity should be granted was parallelled by a growing tendency to query whether it was correct to apply the rule of absolute immunity in respect of all transactions and disputes. Thus, Singleton, L. J., in the Baccus case, stated:

> "A State may create many such trading entities and if they act in the ordinary course it ought not to be open to the State to say they were not authorized so to do. Otherwise trading and business relationships would become impossible."

In the case of Rahimtoola v. Nizam of Hyderabad /1958/ A.C. 379; International Law Reports (1957), p. 157, Lord Denning challenged the basis upon which claims to immunity had hitherto been decided by the United Kingdom courts and called for a new test which would have greater regard to principles then being applied in either jurisdictions and would depend essentially on the nature of the dispute. He argued:

> "If the dispute brings into question, for instance, the legislation or international transactions of a foreign Government, or the policy of its executive, the court should grant immunity if asked to do so, because it does offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country; but if the dispute concerns, for instance, the commercial transactions of a foreign Government (whether carried on by its own departments or agencies or by setting up separate legal entities), and it arises properly within the territorial jurisdiction of our courts, there is no ground for granting immunity."

/...

The majority of the House of Lords, however, did not at the time endorse this approach. In Thai-Europe Tapioca Service Ltd. v. Government of Pakistan, Ministry of Food and Agriculture, in 1975, Lord Denning, again unsupported by his colleagues in the Court of Appeal, expressed readiness to accept into English law a number of exceptions to the rule of absolute immunity which were coming to be recognized in other jurisdictions. Lord Denning listed as exceptions to the rule of absolute immunity actions in respect of land in England, in respect of trust funds in England, in respect of debts incurred in England for services to property of the foreign State in England and in respect of commercial transactions where the dispute is properly within the territorial jurisdiction of English courts.

In the same year, in the case of the Philippine Admiral, the Privy Council conducted a radical examination of the doctrine of absolute immunity and the English case law on the matter over the previous century and refused to allow immunity in respect of actions in rem brought against State-owned vessels engaged in commercial activities. Lord Cross in his judgement pointed out that "the trend of opinion in the world outside the Commonwealth since the last war has been increasingly against the application of the doctrine of sovereign immunity to ordinary trading transactions". Soon afterwards in 1977, the Court of Appeal in the case of Trendtex Trading Corporation Limited v. The Central Bank of Nigeria held unanimously that the Central Bank was not identical with the Government of Nigeria, and by a majority of two to one that the doctrine of sovereign immunity no longer applied to ordinary trading transactions and that the restrictive doctrine of immunity should be applied to actions in personam (with which that case was concerned) as well as to actions in rem. This case was however not taken to the House of Lords. In the following year the State Immunity Act became law, but as is illustrated by the case of Uganda Company (Holdings) Ltd. v Government of Uganda, its rules, which incorporate the restrictive theory of sovereign immunity and are based on the European Convention on State Immunity, are not as such applicable to claims arising from facts prior to the entry into force of the Act. There have, as yet, been no reported judicial decisions on the State Immunity Act.

It will accordingly be seen that the trend of judicial decisions in the United Kingdom indicates a steady movement away from the old doctrine of absolute immunity.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

The main thrust of the FSI Act is to adopt the restrictive doctrine of sovereign immunity. Foreign States are not immune from the jurisdiction of United States courts with respect to defined types of commercial activity carried on in the United States, rights in certain types of commercial property located in the United States, certain suits in which money damages are sought for property losses or personal injury or death arising out of a tortious act or omission occurring in the United States, suits in admiralty based on the commercial activity of a foreign State, and in certain other instances (see sect. 1605 of the Act). Furthermore, the property of a foreign State is subject to attachment and execution in some instances in connexion with commercial activities (see sects. 1610 and 1611 of the Act).

YUGOSLAVIA

[Original: English]
[12 August 1980]

It is difficult to speak of the trends of the judicial practice on the basis of reasons enumerated under addendum 2. However, the theory indicates that it is necessary to proceed from the "functional" jurisdictional immunities, so that in each specific case it is necessary to establish in what capacity does a State as a legal person appear as a participant in legal relationships. Jurisdictional immunity would be recognized only then if it is possible to establish from the circumstances of a case that a foreign State acted as a bearer of the sovereignty and public authority (acta jure imperii).

Question 4

What is the role of the executive branch of the Government of your State in matters of recognition of jurisdictional immunities of foreign States and their property, especially in the definition or delimitation of the extent of the application of State immunity?

BRAZIL

[Original: English]
[5 June 1980]

None.

EGYPT

[Original: Arabic]
[27 October 1980]

The executive authority adheres to the doctrine. Its decisions in this respect are subject to the control of the judiciary in accordance with the general constitutional principle.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

With regard to questions 1, 2, 3 and 4 of the questionnaire, reference is made to those comments. They show that the legal system of the Federal Republic of Germany follows general rules of international law under which immunity is construed as restricted to "acta jure imperii" ("public acts").

HUNGARY

[Original: English]
[25 August 1980]

The administrative authorities, i.e. the executive power, have a role in the field of State immunity. The Minister of Justice gives information about the existence of reciprocity (Law-Decree, sect. 68, para. (2)).

KENYA

[Original: English]
[19 March 1980]

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

[Original: French]
[30 June 1980]

The executive branch plays no role because it is separate from the judiciary.

NETHERLANDS

[Original: English]
[7 July 1980]

In principle, the definition and delimitation of the extent of the application of State immunity are matters for the judiciary. When issuing a summons or enforcing a court judgement, however, the executive power, i.e. the Minister of Justice, may have to decide whether the State upon which judgement has been passed or which is to be summonsed should enjoy immunity from enforcement - see article 13 (4) of the Bailiffs' Rules, Decree of 27 December 1960, Bulletin of Acts, Orders and Decrees No. 562:

> "The bailiff shall refuse to serve a writ if he has been notified by Our Minister (of Justice) that serving the writ would be contrary to the international obligations of the State. He shall not be liable to the parties for such refusal."

PORTUGAL

[Original: French]
[16 July 1980]

In Portugal the executive branch is competent to legislate in respect of jurisdictional immunities of foreign States and their property, particularly with regard to the extent of the application of this principle.

SUDAN

[Original: English]
[29 May 1980]

May widen or restrict the scope of the immunities and privileges accorded for States and their property as circumstances may dictate.

SWEDEN

[Original: English]
[4 March 1980]

The extent of the jurisdictional immunity to be accorded to foreign States is regarded as a question to be decided exclusively by the courts and not by the executive branch of government.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

The principle of the jurisdictional immunity of foreign States and their property is regarded as absolute in the Syrian Arab Republic and is based on the principles of international law.

TOGO

[Original: French]
[7 March 1980]

Since the executive branch is responsible for negotiating international treaties and conventions, it can, under such treaties, define or delimitate the extend of the application of State immunity. However, such treaties and conventions are applicable only when ratified by a law enacted by the National Assembly (article 42 of the Constitution).

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

The role of the executive branch of the Government of Trinidad and Tobago in the matters raised at question 4 is essentially to advise the courts of all requests by foreign Governments for the grant of immunity from suit and of the executive's action thereon.

TUNISIA

[Original: French]
[3 February 1981]

As such a case has not yet arisen in practice, the Tunisian Government has not had to take a position on this matter or to define the scope of the principle of the immunity of States.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Section 3 of article 61 of the Fundamentals of Civil Procedure of the Union of Soviet Socialist Republics and of the Union Republics provides that:

> "Where the same jurisdictional immunity as that which, under the present article, is accorded to foreign States, their property or their representatives in the USSR is not accorded in a foreign State to the Soviet State, its property or its representatives, the Council of Ministers of the USSR or another competent authority may prescribe the application of retaliatory measures in respect of that State, its property or its representatives."

The civil procedure codes of the Union Republics contain a similar rule.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

The role of the executive branch of the United Kingdom Government in matters involving claims to jurisdictional immunities of foreign States and their property is confined to responding to requests from the courts for certificates by a Secretary of State (normally the Secretary of State for Foreign and Commonwealth Affairs). These certificates are, in accordance with the constitutional practice of the United Kingdom, limited to matters which are peculiarly within the knowledge of the Secretary of State. A certificate having this character has traditionally been regarded by the courts in the context of State immunities (as in other contexts) as binding on them, although it will still be for the courts to draw the appropriate legal consequences (the executive taking no part in the definition or delimitation of the scope of jurisdictional immunity in any particular case). The traditional practice is now codified in section 21 of the State Immunity Act 1978 which sets out the matters on which a certificate by or on behalf of the Secretary of State is to be treated as conclusive evidence, namely:

(a) Whether any country is a State for the purposes of Part 1 of this Act, whether any territory is a constituent territory of a federal State for those

purposes or as to the person or persons to be regarded for those purposes as the head or Government of a State;

(b) Whether a State is a party to the Brussels Convention mentioned in Part I of this Act;

(c) Whether a State is a party to the European Convention on State Immunity whether it has made a declaration under article 24 of that Convention or as to the territories in respect of which the United Kingdom or any other State is a party;

(d) Whether, and if so when, a document has been served or received as mentioned in section 12 (1) or (5) above.

It will be noted that the question whether a given entity is to be regarded as forming part of a sovereign State or as constituting a "separate entity" with much more limited immunity is not one covered by the terms of section 21. This would therefore normally be regarded as a question of foreign law in United Kingdom courts.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Since the passage of the FSI Act in 1976, the executive branch has only a limited role in sovereign immunity cases. The executive branch appears in those suits in which the constitutionality of the FSI Act or any part thereof is challenged. The executive branch may appear as amicus curiae in cases of significant interest to the Government. If a court should misconstrue the new statute, the executive branch may well have an interest in making its views on the legal issues known to an appellate court.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The answer to this question is contained in the text on legal regulations (see annex) 20/ which entrust the Federal Secretariat for the administration of justice and organization of Federal Administration, with specific authorizations regarding the establishment of the extent and limits of the application of the immunities of foreign States. Therefore, the role of the executive authority can be significant.

20/ Part II (A) (4).

Question 5

Is the principle of reciprocity applicable in the matters relating to jurisdictional immunities of States and their property? Inter alia, would courts of your State be expected to apply the principle of reciprocity to a foreign State which would deny your State immunity in a dispute similar to the one pending before your courts, even if the courts would normally grant immunity to other foreign States in such disputes?

BRAZIL

/Original: English/
/5 June 1980/

No.

EGYPT

/Original: Arabic/
/27 October 1980/

In general, the courts in Egypt adhere to the doctrine of immunity which they apply in all cases as a principle of international law (see the answer to questions 2 and 3), although no decisions applying the principle of reciprocity in matters relating to the jurisdictional immunities of States have yet been issued.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

German courts have not yet ruled, whether, in accordance with the general rules of international law, the granting of immunity should be denied on the grounds that the Federal Republic of Germany would in a similar case not be granted exemption from the jurisdiction of the State in question. The need for a ruling on this subject had not yet arisen.

HUNGARY

/Original: English/
/25 August 1980/

The Law-Decree, section 55, item (d), establishes exclusive jurisdiction for the Hungarian courts of law or other authorities in respect of the organs of the

State and administrative bodies as well as the Hungarian State. The Law-Decree, section 72, paragraph (1), nevertheless makes it possible to recognize the decision passed in an action instituted abroad against the Hungarian State, an organ of the State or a Hungarian administrative body, if, inter alia, reciprocity exists and thus the decision of a foreign court or other authority can be recognized. The reciprocity may be established if a Hungarian court of law or other authority institutes proceedings also in Hungary against a foreign State, an organ of the State or a foreign administrative body (Law-Decree, sect. 57, para. (1)). The Minister of Justice shall given information about the existence of such a reciprocity in conformity with Law-Decree, section 68, paragraph 2.

KENYA

/Original: English/
/19 March 1980/

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

/Original: French/
/30 June 1980/

As far as we are aware, this situation has never arisen. It is possible, however, that if the situation arose, the principle of reciprocity, in questions relating to jurisdictional immunity only might be applied. In matters relating to execution, it would be more difficult to apply that principle: the text of article 594 of the Code of Civil Procedure categorically states that all property of foreign States without distinction is immune from attachment.

NETHERLANDS

/Original: English/
/17 July 1980/

In principle, reciprocity does not apply to the granting of immunity.

PORTUGAL

/Original: French/
/16 July 1980/

Since Portuguese courts thus far have not discussed or applied the principle of reciprocity in matters concerning jurisdictional immunities of foreign States and their property, it is difficult to answer question 5 of the questionnaire.

SUDAN

/Original: English/
/29 May 1980/

No. The courts are bound by the provisions of the Immunities and Privileges Act which gives foreign States and diplomatic missions immunity from suit and legal process.

SWEDEN

/Original: English/
/4 March 1980/

No.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

Where the national legislation of a foreign State stipulates that it is not subject to the provisions of international law relating to the jurisdictional immunities of foreign States and their property, the Syrian judiciary does not apply the provisions of such immunity in respect of such a State.

TOGO

/Original: French/
/7 March 1980/

There being no national law concerning jurisdictional immunities of foreign States, such immunities can, under bilateral or multilateral conventions, be made subject to reciprocity.

Inasmuch as the principle of reciprocity is one of the foundations of international custom, it may be assumed that the Togolese courts would apply it to a foreign State which would deny Togo immunity in a similar dispute.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

The principle of reciprocity is applicable in matters relating to jurisdictional immunities of States and their property.

TUNISIA

/Original: French/
/3 February 1981/

It is difficult to say what the position of the courts with regard to reciprocity would be, since there are no precedents in this area. However, it may be assumed that our courts would apply to foreign States, by extension, the principle provided for in article 2 of the CPCC. That article stipulates that

> "they (Tunisian courts) may hear suits brought against a foreigner residing outside Tunisian territory only (...)
>
> "(7) - In those cases in which the courts of the foreigner's country rule that they have jurisdiction in suits brought against Tunisians, this provision being based on considerations of reciprocity."

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

The provisions of Soviet legislation in force concerning the immunity of foreign States and their property are formulated without reference to the principle of reciprocity.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

In general, the principle of reciprocity is not of much consequence in the application by United Kingdom courts of the rules of State immunity. United Kingdom courts do not appear to have attached any practical weight to the question of whether the State being sued in legal proceedings would itself give immunity to the United Kingdom if a similar action were to be brought in the courts of its country. In the Dollfus Mieg Case (/1950/ 1 All E.R. 747), however, Lord Justice Somervall suggested in the Court of Appeal that "where a foreign Government seeks to stay proceedings, the court should be satisfied by evidence that the law of that country grants immunity on the basis that is being sought here". But it is fair to say that, in the House of Lords, Lord Porter expressly dissociated from the suggestion that reciprocity might be a relevant factor:

"It was suggested that immunity would only be granted where the country claiming it, in itself, granted reciprocal immunity to other nations. I can find no authority for this proposition, and in any case it was not taken either before Jenkins J. or in the Court of Appeal, and no material of fact has therefore been presented to your Lordships to enable them to deal with the argument or to ascertain whether the two Governments concerned grant reciprocal immunity or not. In my view, the argument in any case is not established. The question is what is the law of nations by which civilized nations in general are bound, not how two individual nations may treat one another.": /1952/ A.C. 582, at p. 613.

While reciprocity has not generally been regarded as an appropriate criterion in international law, the State Immunity Act 1978 pays some regard to reciprocity in that section 15 enables Orders in Council to be made restricting immunities and privileges where a lower degree of immunity is accorded by the law of the relevant State, or increasing them if such action is required to give effect to a treaty or other international agreement to which that State and the United Kingdom are parties. The powers in section 15 have been used to give effect to provisions of the Protocol to the Treaty on Merchant Navigation between the United Kingdom and the Soviet Union, signed at London on 3 April 1968. A copy of the State Immunity (Merchant Shipping) (Union of Soviet Socialist Republics) Order 1978 was enclosed with my earlier letter. No Order in Council has yet been made with the purpose of restricting the immunities accorded to any foreign State.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

The FSI Act does not apply the principle of reciprocity to matters relating to the jurisdictional immunities of States and their property. The only United States statute that contains a provision applying the principle of reciprocity concerns application by foreign States for copyrights. See the answer to question 13 below.

YUGOSLAVIA

/Original: English/
/12 August 1980/

Even though the modest court practice does not offer possibility for an answer which would be based on judicature, it is believed that it does not constitute a presumption for the recognition of reciprocal jurisdictional immunity, in spite of the fact that literature defends this element as important for the existence of this right. Instead a retortion could be expected, in conformity with the principles of international law, in case that other States fail to respect the immunity of the SFR of Yugoslavia and of its property.

Question 6

Do the laws and regulations referred to under question 1 or the judicial practice referred to in question 3, make any distinction, as far as jurisdictional immunities of foreign States and their property are concerned, between "public acts" and "non-public acts" of foreign States? If so, please outline the distinctions, and provide examples of their application.

BRAZIL

/Original: English/
/5 June 1980/

No.

EGYPT

/Original: Arabic/
/27 October 1980/

In accordance with court decisions, immunity is not absolute but is limited to acts of sovereign authority (see the answer to question 3).

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

As stated in the note dated 7 August 1979, 21/ a foreign State and its property are subject to German jurisdiction only in the event of "non-public acts" (acta jure gestionis).

Accordingly, a company which has carried out repair work on the heating system of an embassy at the request of the ambassador was permitted to file a suit against the State for a claim resulting from the repairs. The Federal Constitutional Court ruled that such a repair contract does not fall within the sphere of public authority and is to be regarded as a non public act (Federal Constitutional Court Ruling 16, 27, Neue Juristische Wochenschrift 1963, 1732).

The limitation of immunity to acta jure imperii also extends to executory proceedings. Accordingly, the enforcement of claims from a foreign embassy's general current bank account, which exists in the country of jurisdiction and is intended for the defrayal of the embassy's general expenses and costs, is not considered permissible (Federal Constitutional Court Ruling 46, 342, Neue Juristische Wochenschrift 1976, 485).

21/ Part II (B) (1) (a).

Furthermore, a suit for the correction of the land register was permitted against a foreign State with respect to the site of its mission since the correction of the land register does not impair the diplomatic mission's performance of its task (Federal Constitutional Court Ruling 15, 25, Neue Juristische Wochenschrift 1963, 435 also Federal Court of Justice, Monatsschrift für Deutsches Recht 1970, 222).

The tourist office of the foreign State which shows publicity films for travel in that State and infringes copyright regulations in respect of the film music does not enjoy immunity since the showing of the film, at least indirectly, serves commercial purposes, of the State in question (Frankfurt Higher Regional Court, Ruling of 30 June 1977).

HUNGARY

/Original: English/
/25 August 1980/

The Law-Decree does not make any distinction between public acts and non-public acts of a foreign State. Nevertheless, this differentiation will probably develop in the judicial practice as a result of the fact that on the basis of reciprocity the Hungarian authorities will have an opportunity to do that.

KENYA

/Original: English/
/19 March 1980/

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

/Original: French/
/30 June 1980/

The laws and regulations make no reference to this question However, the judgement of the Beirut Court of Appeals of 28 March 1969 seems to make this distinction with regard to the right of action to take against a foreign State. Nevertheless, it makes no such distinction regarding immunity from attachment of the property of such States.

NETHERLANDS

/Original: English/
/17 July 1980/

See the judgement of the Supreme Court of the Netherlands cited in reply to question 3. 22/ For further examples, see C. C. A. Voskuil, Decisions of Netherlands Courts involving State Immunity Netherlands International Law Review 1973, 302. 23/

PORTUGAL

/Original: French/
/16 July 1980/

In accordance with a decision of the Court of Cassation, the principle of the jurisdictional immunities of foreign States and their property applies to most cases in which such States can appear as defendants; no distinction is to be made between "public" and "non-public" acts.

SUDAN

/Original: English/
/29 May 1980/

No.

SWEDEN

/Original: English/
/4 March 1980/

The relevance of the distinction between public acts and acts of a private law nature has been acknowledged in judicial practice, at least in general terms by way of a court's obiter dicta. However, immunity from jurisdiction has not in fact been denied on the basis of this distinction in any of the cases decided by the Supreme Court and other higher Swedish courts.

Two examples:

In a decision in 1949, the Svea Court of Appeal accorded immunity to Bulgaria in a case regarding payment for work done by a Swedish firm with which the Bulgarian legation had concluded a contract for the construction of Bulgaria's pavilion at a trade fair at Stockholm.

22/ Judgement of the Supreme Court of the Netherlands of 26 October 1973 in the case of Société européenne d'études et d'entreprises en liq. v. Socialist Federal Republic of Yugoslavia (Nederlandse Jurisprudentie 1974, 361: Netherlands).

23/ Part II (B) (2).

The Labour Court in 1958 accorded immunity to the Soviet Union in a case regarding damages claimed by a Swedish trade union on behalf of a Swedish translator who had been dismissed from his employment at the Soviet Information Office at Stockholm.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

Act No. 189 of 1952 does not make any distinction between natural and juridical non-Syrian persons with regard to their rights to own immovable property in Syria, within the limits of the conditions and provisions set forth in the Act, with the exception of the special right accorded to non-Syrian Arabs in article 3 of the Act.

TOGO

/Original: French/
/7 March 1980/

French judicial practice to which the Togolese courts might refer, distinguishes between property of the public domain, which is not liable to distraint, and property of the private domain, which is not entitled to any special privileges. It may be noted that this distinction applies in domestic law. Article 19 of Ordinance No. 12 of 6 February 1979 defines the public domain as inalienable, imprescriptible and not liable to distraint. There is no such provision in the sections dealing with the private domain and the national land reserve.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

Since it can be expected that the courts of Trinidad and Tobago with their essential common law heritage are adherents to the doctrine of absolute immunities in so far as jurisdictional immunities of foreign States and their property are concerned, it is evident that no distinction can be made between the public acts and non-public acts of foreign States. However, due regard may be given to recent decisions of other common law jurisdictions whereby the distinction has been made between actus jure imperii and actus jure gestionis.

TUNISIA

/Original: French/
/3 February 1981/

See the reply to question No. 2

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

Soviet legislation does not draw any distinction between "public acts" and "non-public acts" of foreign States.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The State Immunity Act does not distinguish between "public acts" and "non-public acts" in those terms. It does, however, distinguish between acts which are performed in the exercise of sovereign authority and other acts not so performed. Sections 3 to 8 set out detailed descriptions of categories of cases in which States will not be accorded immunity, and these cases may collectively be described as involving acts not performed in the exercise of sovereign authority (i.e. acts jure gestionis). Section 10 makes provision in regard to ships which is intended to give effect to the distinction between using a ship for purposes related to sovereign authority and for commercial purposes - a distinction set out in the Brussels Convention of 1926 to which this section gives effect. Section 3 of the State Immunity Act defines the term "commercial transaction" which has given difficulty to the courts in many jurisdictions who have attempted to draw a distinction between commercial activities and activities in the exercise of sovereign authority. In this definition, two categories of transaction - contracts for the supply of goods or services and loans or other transactions for the provision of finance (together with related guarantees and indemnities) are expressly characterized as being commercial transactions. As regards other transactions or activities - if these are of a commercial, industrial, financial, professional or other similar character - the courts are required to characterize them as commercial transactions not entitled to immunity unless the State is engaged in the activity "in the exercise of sovereign authority".

An account has already been given in the reply to question 3 of the two important recent cases - the Philippine Admiral and Trendtex Trading Corporation v. Central Bank of Nigeria - in which the Privy Council and Court of Appeal have incorporated into English case-law the broad distinction between acts jure imperii and jure gestionis, denying immunity as regards the latter both for actions in rem and actions in personam.

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UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

The FSI Act makes a distinction between "public" and "non-public" acts of foreign States. The Act "restricts" the immunity of a foreign State to suits involving its public acts (jure imperii). Such immunity does not extend to suits based on the commercial or private acts (jure gestionis) of a foreign State. See section 1605 for the general exceptions to the jurisdictional immunity of a foreign State. Among the activities of a foreign State which would be included within the definition of commercial activity and thus "non-public" acts would be a foreign Government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of labourers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation. Private acts of a foreign State which also would not be immune include inheriting or receiving as a gift property located in the United States as well as being liable for non-commercial torts.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The laws neither specifically, nor in principle, make any distinction between the jurisdictional immunity of foreign States and their property, whether these concern "public acts" or "non-public acts" of foreign States. This means that a public act of a foreign State could not in all instances imply also the recognition of the jurisdictional immunity in case of a legal act which, in its intent and character, constituted exclusively a property-legal relationship. However, if an inference could be drawn from a public act that a foreign State acted in the function of a bearer of public authority, that is, sovereignty, then this would in principle constitute a basis for the recognition of jurisdictional immunity, However, it can be deducted from the text of the former Decree on Procedure for the execution of property of foreign States in Yugoslavia, which was in force from 1952 to 1978, that the immunity from the execution would in no way apply to purely property relationship of State economic enterprises in case of claims, that is, disputes relating to the operation of such enterprises. This points to the conclusion that jurisdictional immunity would be limited only to those relationships concerning public acts and interests of foreign States which are linked to the attributes of that State as a bearer of sovereignty and public authority.

Question 7

If the answer to question 6 is "yes":

(a) Can jurisdictional immunities be successfully invoked before courts in your State in connexion with "non-public acts" of foreign States?* If not, please indicate the types of "non-public acts' of foreign States not covered by immunities.

(b) In a dispute relating to a contract of purchase of goods, would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of the contract was for a public purpose or the contract was concluded in the exercise of a "public" or "sovereign" function?

(c) In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?

(d) In any dispute concerning a commercial transaction, is the nature of the transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

EGYPT

[Original: Arabic]
[27 October 1980]

(a) Ordinary acts which are not related to the exercise of sovereignty and commercial acts (see the answer to question 3).

(b) See the reply to question 3.

(c) See the reply to question 3.

(d) See the reply to question 3.

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* In this questionnaire, where the term "State" is used in connexion with "non-public" acts it also covers any agencies or instrumentalities of the foreign State.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

Please refer to the comments contained in the note of 7 August 1979 24/ and the above-mentioned court rulings. 25/

HUNGARY

[Original: English]
[25 August 1980]

The new judicial practice, since the Law-Decree came into force only last year, has not yet been developed. It is likely that the judicial practice will develop towards the distinction between the public acts and non-public acts in accordance with the demands of life.

KENYA

[Original: English]
[19 March 1980]

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

[Original: French]
[30 June 1980]

There is not sufficient judicial practice on which to base a reply concerning all aspects of this question. It may, however, be noted that, in the context of the question as a whole, the above-mentioned judgement of the Beirut Court of Appeals of 1 February 1967 allowed the objection of a foreign State, on grounds of immunity, to a claim for payment of fees filed against it by a Lebanese lawyer.

24/ Part II (A) (1) (a).

25/ For the general principles of the above-mentioned court rulings, see part (II) (A) (1) (b). The complete court rulings will appear in volume 20 of the Legislative Series.

The grounds for so doing were that the dispute between the State and the lawyer had arisen from a consultation provided by the lawyer to the defendant State concerning a pleasure yacht belonging to that State; it was not found that the yacht was used exclusively for its private or commercial interests since it was established that the lawyer, in his consultation, had taken the view that the foreign State, which owned the yacht, was justified in claiming an exception to immunity in consideration of the public interests for which the vessel was used.

NETHERLANDS

[Original: English]
[17 July 1980]

(a) No. For example, immunity will in principle be refused in cases concerning trade contracts and torts under civil law committed by a State against a private person and which could have been committed by a private person.

(b) In principle, no.

(c) In principle, no.

(d) See reply to question 3; in principle the decisive factor is the nature of the transaction governed by private law and not the motive for the transaction.

PORTUGAL

[Original: French]
[16 July 1980]

Not applicable.

SWEDEN

[Original: English]
[4 March 1980]

See reply to question 6.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

We have answered this question in our preceding reply.

TOGO

[Original: French]
[7 March 1980]

(a) It may be assumed that if a foreign State entered into a contract under private law - loan, sale, guarantee, lease, etc. - for the management of its private domain, it could be treated like any other party by the competent Togolese court by virtue of a clause in the contract or by application of the normal rules concerning competence.

On the other hand, commitments assumed in its capacity as a public authority, such as the guaranteeing of government loans and the provision of State technical assistance, would be outside the area of competence of the ordinary Togolese courts. In such cases, the agreement usually specifies how disputes are to be settled, by conciliation and arbitration.

(b) In a dispute relating to a contract of purchase of goods, it may be expected that the Togolese courts would recognize the immunity of a foreign State, which proved that it had concluded the contract in the exercise of a public or sovereign function.

(c) In a dispute relating to a foreign State's breach of a contract of sale, it may be assumed that, in the absence of a clause assigning jurisdiction, the Togolese courts would grant immunity to a State, being the seller, which established that its conduct was for public interests in exercise of its sovereignty. For example, an embargo on sales imposed for political reasons would be a recognized ground for the granting of immunity.

(d) A commercial transaction to which a foreign State is a party is governed by commercial law. The agreement normally specifies the procedure to be followed in case of dispute, namely, arbitration or recourse to the ordinary courts. In the absence of a specific clause, the dispute must be submitted to the competent court in accordance with the normal procedural rules. The difficulty would remain, however, with regard to execution of the decision, which could be levied only on property of the private domain and, if the property is situated outside Togo, by exequatur of the judge of the place where it is situated.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

Question 7 of the questionnaire in the light of the answer given on question 6 does not apply.

TUNISIA

[Original: French]
[3 February 1981]

See the reply to question 2.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Soviet legislation does not draw any distinction between "public acts" and "non-public acts" of foreign States.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

(a) The types of acts of foreign States not covered by immunities are set out in sections 3 to 11 of the State Immunity Act.

Some of these exceptions to immunity could be regarded as having been already accepted in earlier judicial decisions - in particular, section 3 reflects the decision of the Court of Appeal in the case of Trendtex Trading Corporation v. Central Bank of Nigeria, section 6 reflects the earlier decision in the case of Larivière v. Morgan ((1849) 2 House of Lords cases 1) and section 10 reflects the decision of the Privy Council in the case of the Philippine Admiral.

(b) There is no recent decided case in United Kingdom courts turning precisely on this point. But where the case comes within the State Immunity Act, the courts would not grant immunity to a foreign State in a dispute relating to a contract for the purchase of goods, whether or not the ultimate object of the contract was for a public purpose or the contract was concluded in the exercise of a "public" or "sovereign" function. The commercial transactions in respect of which immunity will no longer be granted under the Act include "any contract for the supply of goods or services" (sect. 3 (3) (a)).

(c) The answer to this question cannot be now regarded as clear, since the recent case in which this question was a crucial issue, I Congreso del Partido, is expected to be heard on appeal by the House of Lords. It will be seen from a study of the two judgements delivered in the Court of Appeal by Lord Denning and by Waller, L. J., that although both judges agreed that regard must be paid to the nature of the act or dispute in question, they differed in applying this approach

to a case in which a breach of a commercial contract occurred for political reasons. On the one hand Waller, L. J., said:

> "In my opinion in this case it was the act of the Government of the Republic of Cuba which prevented these cargoes from being delivered. I do not think it is possible to say that the act was clearly commercial in its nature. It was not like the Empire of Iran a mere refusal to foot the bill for the work done. It was not like the case of Trendtex Trading Corporation v. Central Bank of Nigeria (1977) 1 Queen's Bench 529, where there was a cancellation of contracts because too much had been ordered. No suggestion has been made that it was in the commercial interests of the Republic of Cuba to cease trading with Chile. On the contrary, it was a political decision, a foreign policy decision which bore no relation to commercial interests. The dispute would bring into question 'Legislative or international transactions of a foreign Government, or the policy of its executive' (see per Lord Denning in Rahimtoola (1958) Appeal Cases 422). I am of opinion therefore that subject to certain subsidiary points with which I must deal the Republic of Cuba is entitled to claim sovereign immunity in these two cases."

On the other hand, Lord Denning said:

> "Such an act - a plain repudiation of a contract - cannot be regarded as an act of such a nature as to give rise to sovereign immunity. It matters not what was the purpose of the repudiation ... It was in fact done out of anger at the coup d'état in Chile and out of hostility to the new régime. That motive cannot alter the nature of the act. Nor can it give sovereign immunity where otherwise there would be none. It is the nature of the act that matters, not the motive behind it."

Lord Denning thought that there could be no immunity for acts of a Government motivated by public interest when those acts came not "out of the blue" but in the context of an existing contract of sale.

(d) The State Immunity Act does not in terms direct the courts to have regard to the nature of a transaction rather than to the ulterior motive underlying it; but the exceptions to immunity which are set out in sections 3 to 11 of the Act are so formulated as to require that attention be directed to the objective nature of particular transactions and not to their purpose. This is particularly true of the definition of "commercial transaction" in section 3 (3) of the Act.

The Act does not deal expressly with the question of the nature or motive of a breach of contract, an issue which has been examined in the 1 Congreso del Partido case, and which is expected to be determined by the House of Lords on appeal.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

(a) No, jurisdictional immunities cannot be successfully invoked before United States courts in connexion with "non-public" acts of foreign States unless a foreign State could claim such an immunity by virtue of a stipulation in an international agreement. See sections 1604 and 1605 of the FSI Act.

The types of "non-public" acts of foreign States not covered by immunities as specified in section 1605 include commercial activity with certain types of contacts with the United States; rights in property taken in violation of international law; rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States; non-commercial torts; and suits in admiralty based on a commercial activity.

(b) No. Section 1603 (d) of the FSI Act provides that the commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose. In United Euram v. Union of Soviet Socialist Republics, 461 F. Supp. 609 at 611 (1978), a United States district court, after quoting section 1603 (d), emphasized that the "purpose of an activity - here, allegedly, to promote the goals of the cultural exchange agreement - is irrelevant in determining its commercial character".

(c) No. In some circumstances, the foreign Government might plead as a defence the United States act of state doctrine, which "precludes the courts of this country (the United States) from inquiring into the validity of the public acts of a recognized foreign sovereign Power committed within its own territory". Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 401 (1964). The doctrine applies to "acts done within their own States, in the exercise of governmental authority..." Underhill v. Hernandez, 168 U.S. 250, 252 (1897). However, the act of state doctrine does not extend "to acts committed by foreign sovereigns in the course of their purely commercial operations". Dunhill of London, Inc. v. The Republic of Cuba, 425 U.S. 682, 706 (1976) (plurality opinion; emphasis added).

(d) The nature of the transaction is decisive of the question of State immunity. See section 1603 (d) of the FSI Act. However, in addition to acts falling within the act of state doctrine described in the answer to question 7 (c) above, certain types of regulation by foreign States of commercial activity will be considered under section 1604 as public in character and a dispute concerning a commercial transaction may be dismissed by a United States court on the basis of the general sovereign immunity provided for governmental activity in section 1604. For example, in International Association of Machinists v. Organization of Petroleum Exporting Countries, (OPEC), 477 F. Supp. 553, 565-69 (C.D. Cal. 1979), a United States federal court held that the regulation of oil pricing by OPEC members was a

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public, not commercial, activity; the court dismissed the plaintiff's complaint alleging price setting in viclation of United States antitrust laws.

YUGOSLAVIA

[Original: English]
[12 August 1980]

The answer to this question is partially contained in the reply to the preceding question.

Under subparagraph (a), it is not possible to provide an explicit answer to this question in view of the absence of the practice and elaborate theoretical analysis of this subject-matter.

Under subparagraph (b), an answer could be given to the effect that if the analysis of a factual state of each concrete case, above all the content and the purpose of a contract of purchase of goods, could prove that the contract was concluded for the purpose of exercising a public function, in that case a foreign State would be accorded jurisdictional immunity.

Under subparagraph (c), although there is no court practice, a foreign State would be granted immunity in case of a breach of contract of sale if it was established that the State was motivated by justified public interests.

Under subparagraph (d), it can be said that the nature of commercial transaction, as well as of other contracts of purchase of goods, would not in itself be decisive of the question of State immunity. In this case also the actual motives of a commercial transaction, that is, reasons, the nature and objectives of that legal transaction would be decisive for the decision whether there exists jurisdictional immunity or not.

Question 8

If "non-public" activities of a foreign State in the territory of your State are such as to be normally susceptible to payment of taxes, duties or other levies, would the foreign State be required to pay them or would it be exempted in all cases or on the basis of reciprocity?

BRAZIL

[Original: English]
[5 June 1980]

The foreign State would have to pay the taxes, duties or other levies in connexion with "non-public" activities.

EGYPT

[Original: Arabic]
[27 October 1980]

The activities of foreign States in Egypt are subject to tax on commercial and industrial profits even if such activities are conducted through a public company belonging to the foreign Government, provided that it is a commercial or industrial establishment operating in Egypt, and even if its economic activity is limited to one transaction. This is in accordance with the provisions of paragraph 2 of article 30, article 30 bis and article 33 of Act No. 14 of 1939. The dividends of these companies are subject to tax on income earned in Egypt in any manner whatsoever, even indirectly, under the terms of article 1 (a) of Act No. 14 of 1939.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

If the non-public activities of a foreign State meet the substantive requirements of a tax law governing the conditions of tax liability, the levying of the tax is not excluded either on the grounds that the activities are those of a foreign State or because that State does not levy a tax or would not levy a tax for reasons of reciprocity in similar conditions involving the Federal Republic of Germany. Waiver of the levying of taxes on the basis of reciprocity is not provided for either in general rules or in international agreements. There is, in the view of the Federal Government, no general rule of international law requiring the non-public acts of foreign States to be exempted from taxes and levies.

HUNGARY

[Original: English]
[25 August 1980]

If a foreign State displays "non-public activities" it shall pay the taxes, duties or other levies which relate to legal entities under the personal effect of the law. According to paragraph 13 of Decree No. 11/1966 of the Minister of Finance on duties, a foreign State is exempted from duties on the basis of relevant convention, reciprocity of international practice.

KENYA

[Original: English]
[19 March 1980]

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

[Original: French]
[30 June 1980]

The law on income from commercial and non-commercial occupations of 12 June 1959, in the context of the questionnaire, establishes two categories of exemption subject to reciprocity:

(a) For salaries of diplomatic or consular personnel (art. 7, para. 7).

(b) For income or earnings from accounts belonging to diplomatic or consular missions (art. 71, para. 5).

However, the law makes no mention of income from commercial operations carried out by foreign States or their agencies. There is no fiscal jurisprudence on the question.

NETHERLANDS

[Original: English]
[17 July 1980]

In principle a foreign State is required to pay such taxes, duties and levies (e. g. VAT in connexion with a commercial sales contract between a foreign State and a Dutch vendor).

PORTUGAL

[Original: French]
[16 July 1980]

There is no provision in Portuguese domestic law that exempts a foreign State from taxes, duties or other levies which it must pay for engaging in "non-public" acts; furthermore, no principle of international law recognized in Portugal provide for such an exemption. However, some international agreements to which Portugal is party deal with exemptions of this type.

SWEDEN

[Original: English]
[4 March 1980]

The foreign State would be required to pay the taxes.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

The non-public acts of a foreign State in Syrian territory are always subject to an agreement concluded between the two States on the matter. The agreement usually states whether the foreign State is exempted from taxes and levies on its non-public activities in Syrian territory.

TOGO

[Original: French]
[7 March 1980]

Non-public activities of a foreign State in Togolese territory are normally subject to regular taxes and to the payment of social insurance contributions unless there is a convention providing exemption, which may be granted subject to the principle of reciprocity.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

It can be stated that while exempt from taxation in Trinidad and Tobago per se, a foreign State would be required to pay for services rendered to it by agencies of the host State.

TUNISIA

/Original: French/
/3 February 1981/

As regards taxation, the main criterion is the nature of the activity carried on. If a profit-making activity is involved, whether it is carried on by a foreign State or a foreign private entity, it is subject to all the taxes levied under Tunisian law on the activity in question.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

If activities of a legal person belonging wholly or partly to a foreign State are conducted in the territory of the USSR, the rules of the Decree on income tax payable by foreign legal and natural persons dated 12 May 1978 (Vedomosti Verkhovnogo Soveta SSSR, 1978, No. 20, p. 313) are extended to that person.

In such cases the claim for the payment of taxes is not presented to the foreign State but to the legal persons concerned, including the representatives of those legal persons in the territory of the USSR.

A foreign legal person is a company, firm, corporation or any other organization established according to the laws and regulations of a foreign State.

Under article 7 of the Decree of 12 May 1978, with a view to the elimination of double taxation or to mutual exemption from taxes and levies, their collection from foreign legal and natural persons may be discontinued or limited in accordance with agreements concluded by the USSR with foreign States. The collection of taxes and levies may also be discontinued or limited on a reciprocal basis in cases where similar measures are applied in respect of Soviet legal and natural persons in the foreign State concerned.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The question of proceedings to enforce liability for some forms of taxation is dealt with in section 11 of the State Immunity Act, which provides that a State is not immune as respects proceedings relating to its liability for value added tax, any duty of customs or excise, or any agricultural levy or rates in respect of premises occupied by it for commercial purposes. Proceedings regarding possible

liability for any other form of tax are expressly excluded by section 16 (5) of the Act from its provisions dealing with immunity from jurisdiction, but a State would generally be regarded at present as immune from such proceedings under United Kingdom common law. Proceedings in regard to taxation claims are excluded from the European Convention on State Immunity.

For the most part liability for the taxes listed in section 11 would be incurred by a State only in the course of commercial activities. Taxation in connexion with the diplomatic or consular activities is, of course, dealt with separately under the legislation giving effect to the Vienna Convention on Diplomatic and Consular Relations.

The State Immunity Act does not deal with the question of substantive liability to taxation, and there has been no recent legislation on this question. The United Kingdom has found it difficult to deduce from detailed examination of the practice of other States in the field of taxation of foreign sovereigns any very clear rules or principles in this area. The practical position in the United Kingdom in regard to taxation of commercial activities of foreign States in the United Kingdom is as follows: foreign States enjoy at present complete immunity from UK taxation on income and capital although companies (even if wholly owned by foreign States) whose shares they own would still be liable in principle to normal corporation tax. If, however, the assets of the company wholly owned by a foreign State were to be transferred to the direct beneficial ownership of that Government, the income arising from the assets would be free both of corporation tax and income tax. Specific legislation (Finance Act, 1972 section 98 (4)) gives foreign States a dividend tax credit on equity shares in United Kingdom companies. On the other hand, foreign States are treated as liable to VAT and customs duties (apart from diplomatic or consular purchases or imports). With the exception of diplomatic or consular property, for which special arrangements are made, property occupied by foreign States for commercial purposes is treated as liable for rates and only in a few cases where there was some claim to diplomatic or consular privilege has there been any question of non-payment of rates or claims for exemption.

UNITED STATES OF AMERICA

[Original: English]
[29 April 1980]

Section 892 of title 26 of the United States Code (the Internal Revenue Code) provides in general that income from sources within the United States received by a foreign Government is not included in gross income for the purposes of the Internal Revenue Code and is exempt from taxation. This section reads as follows:

> "The income of foreign Governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign Governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign Governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle."

On 15 August 1978, the Commissioner of Internal Revenue proposed regulations relating to the taxation of income of foreign Governments. These regulations, which have not yet been adopted, would not exempt a foreign Government from taxation for the following types of income: (1) income derived by a foreign sovereign from commercial activities in the United States; (2) income derived by an organization created by a foreign sovereign that does not qualify as a controlled entity (an organization wholly owned by a foreign sovereign which, inter alia, does not engage in the United States in commercial activities on more than a de minimis basis); (3) income derived by a controlled entity from commercial activities in the United States even though on a de minimis basis.

A copy of the proposed regulations, which appeared in 43 Federal Register 36111-36114. 26/

YUGOSLAVIA

/Original: English/
/12 August 1980/

Foreign legal persons, including foreign States, are not exempt from the payment of taxes, duties or other levies, unless an international agreement stipulates otherwise.

26/ Part II (A) (3) (b).

Question 9

Are courts of your State entitled to entertain jurisdiction over any public acts of foreign States? If so, please indicate the legal grounds on which competence is based, such as consent, or waiver of immunity, or voluntary submission, etc. If jurisdiction is exercised in such cases, does it mean that the doctrine of State immunity is still recognized by the courts?

BRAZIL

[Original: English]
[5 June 1980]

There is no precedent on the subject. However, in Brazilian law there is no rule that prevent Brazilian courts from suing and trying foreign States for their public acts, provided the foreign States concerned agree to such an exercise of jurisdiction.

EGYPT

[Original: Arabic]
[27 October 1980]

The State may waive jurisdictional immunity and, in such an event, the case would be heard by the Egyptian court (mixed appeal, 29 May 1901).

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

According to the general rules of international law which are binding on German courts pursuant to article 25 of the Basic Law, foreign States in principle enjoy immunity for public activities (Federal Constitutional Court Rulings 16, 27, 61).

However, if the State in question waives immunity, German jurisdiction may be applied. Such renunciation in an individual case does not, however, preclude recognition by the courts of the principle of State immunity.

HUNGARY

[Original: English]
[25 August 1980]

The jurisdiction of a Hungarian court of law or other authority is excluded (Law-Decree, sect. 56, item a); if, however, a foreign State, or an organ of the State or a foreign administrative body have expressly waived the right to immunity, then the Hungarian jurisdiction exists (Law-Decree, sect. 57, para. (1)).

KENYA

[Original: English]
[19 March 1980]

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

[Original: French]
[30 June 1980]

As the laws and judicial practice stand at present, the reply is in the negative.

NETHERLANDS

[Original: English]
[17 July 1980]

In a decision of 17 October 1969, NJ 1970, 428, Netherlands Yearbook of International Law 1970, 232, Attorney General of the USA v. N. V. Bank voor Handel en Scheepvaart, the Supreme Court held that "there exists no rule of international law which forbids Dutch courts to examine whether confiscatory acts of another State are contrary to international law". If an opinion on the legality of an action by a foreign State comes up in a case to which the foreign State is not a party (e.g., a dispute over the ownership of confiscated property), the question of the State's immunity does not arise. In such cases, the competence of the court is governed by the provisions of the Code of Civil Procedure which state the legal grounds on which the competence of the courts to deal with civil cases is based.

However, State immunity can be successfully invoked if a foreign State is called as defendant in a case concerning a public act, unless the foreign State expressly waives its right of immunity, in which case the foreign State is not being subjected against its will to the jurisdiction of the Dutch courts.

PORTUGAL

[Original: French]
[6 July 1980]

Nothing to add to replies 2, 3 and 6.

SUDAN

[Original: English]
[29 May 1980]

Yes. Competence is based on waiver of immunity and voluntary submission. Yes. The doctrine is recognized and the courts may not order execution unless the foreign State voluntarily waives its immunity in respect thereof (applying Vienna Convention).

SWEDEN

[Original: English]
[4 March 1980]

The doctrine that the validity of the public acts of a foreign State must not be questioned finds little support in Swedish judicial practice, which does not a priori exclude an examination of the validity of such acts under international law if the question arises in litigation between private parties. It is clear, on the other hand, that Swedish courts would not consider themselves entitled to entertain proceeding against the foreign State itself in respect of its public acts.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

The principles of international law relating to the jurisdictional immunities of foreign States and their property are recognized by Syrian courts.

TOGO

[Original: French]
[7 March 1980]

Togolese courts are not entitled - in the absence of a special convention - to entertain jurisdiction over any public acts of foreign States.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

Courts of Trinidad and Tobago are entitled to entertain jurisdiction over any public acts of foreign States on the legal ground of consent of the foreign sovereign. When jurisdiction is exercised in such cases, it is in effect an application of the doctrine of state immunity, albeit an exception, and is regarded as such by the courts. The courts of Trinidad and Tobago will not implead a foreign sovereign, that is, they will not make him a party to the action against his will. They will neither seek to recover specific property or damages or seize or detain property over which he exercises control or which he specifically claims. But before that stage is reached the courts have the inherent power to entertain jurisdiction over a suit involving the foreign State. In practice, advice from the executive would suffice to invoke jurisdictional immunity.

TUNISIA

[Original: French]
[3 February 1981]

See the reply to question 5.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

By virtue of the legislation referred to in paragraph 1, 27/ Soviet courts are empowered, with the consent of the competent authorities of the foreign State, to examine an action brought against that State; this exception however, does not mean that the principle of State immunity has been repudiated.

27/ Paragraph 1 refers to the reply to question 1.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

As has been explained, the distinction in United Kingdom law between acts where immunity will be granted and acts where it will not does not turn precisely on whether the acts are public or non-public. To the extent that the term "public acts" may be identified with acts jure imperii, United Kingdom courts are entitled to exercise jurisdiction where a dispute involves such acts only on the basis of a waiver of immunity or a voluntary submission to the jurisdiction. It is not thought that there is any substantive difference so far as consequences for immunity are concerned between the terms "waiver" and "submission to the jurisdiction". The rules in regard to submission to the jurisdiction are set out in detail in section 2 of the State Immunity Act. With one exception, these rules reflect the previous law as it emerges from decided cases. The exception concerns the rule in section 2 (2) that a State may submit to the jurisdiction by a prior written agreement. It was clear from earlier decided cases: Mighell v. Sultan of Johore [1894] 1 Q.B. 149, Duff Development Co. v. Kelantan Government [1924] A.C. 797 and Kahan v. Pakistan Federation [1951] 2 K.B. 1003, that waiver to be effective had to take place "before the court", that is in respect of proceedings actually begun. Section 2 (2) has altered this rule but, by virtue of section 23 (3), section 2 (2) will not apply to any agreement concluded before 22 November 1978 (the date of entry into force of the State Immunity Act).

The exercise of jurisdiction on the basis of a waiver or submission by a foreign State is not regarded by United Kingdom courts as in any way inconsistent with the doctrine of State immunity.

UNITED STATES OF AMERICA

[Original: English]
[9 April 1980]

Except as otherwise provided in an international agreement, a foreign State is immune from the jurisdiction of United States courts except as provided in sections 1605, 1606 and 1607. The exceptions contained in sections 1605 through 1607 deal also with waivers of immunity (sect. 1605 (a) (1)) and counterclaims in any action brought by a foreign State or in which a foreign State intervenes (sect. 1607). Thus, a United States court has jurisdiction over the public acts of foreign States in instances in which they have waived their immunity or they have brought or intervened in an action.

YUGOSLAVIA

[Original: English]
[12 August 1980]

Court practice entertains the possibility whereby a foreign State can waive jurisdictional immunity. Thereby, and only in a concrete case, would such an immunity be voluntarily suspended. Since it is believed that jurisdictional immunity constitutes a specific privilege of a foreign State, it can, therefore, proceeding from its own interests, waive such a privilege. In literature quoted is a decision of the Supreme Court of Serbia (GŽ-3643/66) in which a position was taken to the effect that in a dispute, arising in connexion with the execution requested by a foreign State, from a court of general competence, such a State could no longer in the same dispute raise the question of jurisdictional immunity, since, in the specific case, it has waived jurisdictional immunity. However, courts, in principle, do not have the right to exercise court competences in connexion with the examining of public acts of a foreign State.

Question 10

What rules are in force in your State, if any, governing:

(a) Waiver of jurisdictional immunities of foreign States

(b) Voluntary submission by foreign States; and

(c) Counter-claim against foreign States?

BRAZIL

/Original: English/
/5 June 1980/

There is no precedent on the subject. But probably Brazilian courts would apply to this question the procedural rules which regulate the prorogation of their jurisdiction in general.

EGYPT

/Original: Arabic/
/27 October 1980/

There are no legal provisions governing the waiver of jurisdictional immunities of foreign States.

Although States are entitled to jurisdictional immunity, they may decide to submit voluntarily (see the answer to question 9).

Counter-claims are subject to the same regulations as those governing original claims.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

If a State waives immunity, the exemption from jurisdiction afforded under the general rules of international law may be lifted so that the country in which the court is situated may exercise jurisdiction. Such a renunciation takes the form of a statement in international law which, if made before a government body, cannot be revoked.

According to German legal literature, a counter-claim against a State is possible if it has waived immunity in order to institute proceedings itself. However, the counter-claim is considered permissible only if the subject-matter is directly connected with the claim involved in the proceedings. A number of authors make the further restriction that the counter-claim may only be used as a defence against the claim and not for an independent action against the foreign State.

HUNGARY

/Original: English/
/25 August 1980/

In virtue of the Law-Decree, section 57, paragraph (1), proceedings against a foreign State may be instituted before a Hungarian court of law or other public authority if the foreign State has expressly waived the immunity. According to this Law-Decree, paragraph (2), in case of a waiver of immunity the Hungarian jurisdiction shall also extend to a counter-claim arising out of the same legal relation.

KENYA

/Original: English/
/19 March 1980/

Kenya has no laws, regulations or precedents regulating the subject-matter contained in questions 3 to 11 of the questionnaire.

LEBANON

/Original: French/
/30 June 1980/

(1) There can be no waiver of jurisdictional immunities of foreign States except, it seems in the case of commercial activities.

(2) Voluntary submission is allowed.

(3) Counter-claims presuppose a waiver of immunity (which is not allowed in the circumstances indicated in para. (1) above).

NETHERLANDS

[Original: English]
[17 July 1980]

(a) A foreign State can explicitly waive its jurisdictional immunities. Such waivers are accepted by the Dutch courts.

(b) A foreign State can submit voluntarily to the jurisdiction of the Dutch courts, for example by adopting a jurisdiction clause in a trade contract or by appearing in court and making a defence against a claim.

(c) When a foreign State is the plaintiff and the defendant lodges a counter-claim, immunity cannot be invoked so long as the counter-claim remains materially connected to the case brought by the foreign State: Supreme Court, 17 November 1969, NJ 1970, 428 (see reply to question 9 above).

PORTUGAL

[Original: French]
[16 July 1980]

Nothing to add to replies 2 and 3.

SUDAN

[Original: English]
[29 May 1980]

Our courts apply English common law rules and the Vienna Convention in respect of (a), (b) and (c).

SWEDEN

[Original: English]
[4 March 1980]

No particular rules have been formulated concerning these matters.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

We have explained in our reply to question 1 all the circumstances relating to this question.

TOGO

/Original: French/
/7 March 1980/

In the absence of laws or judicial practice, it is not possible to say how the jurisdictional immunity of a foreign State could be waived, except in case of voluntary submission. By application of the principle of reciprocity, it may be assumed that, if Togo was sued by a foreign State, it would consider itself entitled to bring a counter-claim against that State.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

A Trinidad and Tobago court can only exercise jurisdiction over a foreign sovereign if he waives the immunity from suit to which he is entitled. The basic principle is clear enough: if a foreign sovereign comes to the court as plaintiff, or appears without protest as defendant, in an action, he has submitted to the jurisdiction with respect to those proceedings and to all matters incidental to them. However, the immunities must first be claimed by the sovereign or drawn to the Court's attention by advice of the executive. It is clear, however, that the submission must be a genuine act of submission. If the foreign sovereign or his agent raises no objection at the outset of a suit commenced against him, it is still open to the sovereign to plead his immunity at a later stage, provided he can show that he had not been aware of the right of immunity he was foregoing by entering a defence to the claim, or by giving security for costs, or other similar act, or that his agent had acted without his knowledge.

On the other hand, once an action has become res judicata, it is not open to the unsuccessful party to obtain an injunction to prevent the foreign sovereign enforcing the court's decision, even if the issues concern the subject matter of the previous litigation: this is a new action, and the proceedings must be stayed if the sovereign pleads his immunity. Similarly, even if a foreign sovereign has waived his immunity and a decision has been given against him, it is not possible for the successful plaintiff to proceed to execute the judgement against the sovereign without his consent.

TUNISIA

/Original: French/
/3 February 1981/

As indicated above, there is at present no specific legislation in Tunisia relating to the jurisdictional immunity of States, as the CPCC does not provide specifically for the case of a suit brought against a foreign State. Article 227 of the CPCC presumably applies to counter-claims against foreign States that are parties to litigation brought before Tunisian courts.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

There are no special rules in Soviet jurisdiction governing the matters listed in paragraph 10. 28/

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

(a,b) The rules in force have been set out in the answer to question 9.

(c) The rules in the United Kingdom in regard to counter-claims are set out in section 2 (6) of the State Immunity Act. The question of counter-claims has been examined by United Kingdom courts chiefly in the context of diplomatic rather than sovereign immunity, but it is thought that the approach in section 2 (6) would, even in the absence of the Act, have been followed by the courts.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

(a) Section 1605 (a) (1) of the FSI Act provides that a foreign State shall not be immune from the jurisdiction of United States courts in any case in which the foreign State has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign State may purport to effect except in accordance with the terms of the waiver. Though the FSI Act does not define the phrase "implicit waiver", examples of an implicit waiver would include cases in which the foreign State has agreed to arbitration with respect to the matter in question, where a foreign State has agreed that the law of a particular country should govern a contract, or where a foreign State has filed a pleading on the merits. The notwithstanding clause is designed to exclude a withdrawal of the waiver both after and before a dispute arises except in accordance with the terms of the original waiver.

Section 1604 of the FSI Act makes clear that international agreements regulating the subject of sovereign immunity take precedence over the general rules of sovereign immunity provided for in the FSI Act. For example, there are 11 such treaties of friendship, commerce, and navigation concluded by the United States waiving the immunity of publicly-owned and controlled enterprises of the contracting

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28/ Paragraph 10 refers to the reply to question 10.

parties and subjecting such enterprises to suit, taxation and execution of judgement. These treaties are entered into with Nicaragua, article XVIII, 9 U.S.T. 449 (1956); Korea, article XVIII, 8 U.S.T. 2217 (1956); the Netherlands, article XVIII, 8 U.S.T. 2043 (1956); the Federal Republic of Germany, article XVIII, 7 U.S.T. 1839 (1954); Japan, article XVIII, 4 U.S.T. 2063 (1953); Denmark, article XVIII, 12 U.S.T. 908 (1951); Greece, article XIV, 5 U.S.T. 1829 (1951); Israel, article XVIII, 5 U.S.T. 550 (1951); Ireland, article XV, 1 U.S.T. 785 (1950); Italy, article XXV, 63 Stat. 2255, T.I.A.S. 1965 (1948).

(b) A foreign State may voluntarily submit to the jurisdiction of a United States court through a waiver pursuant to section 1605 (a) (1) of the FSI Act or by initiating or intervening in an action in a United States court.

(c) With respect to any counter-claim, section 1607 of the FSI Act denies immunity to a foreign State which brings or intervenes in an action in three situations. First, immunity would be denied as to any counter-claim for which the foreign State would not be entitled to immunity under the general exceptions to immunity set forth in section 1605 (e.g., waiver, commercial activity), if the counter-claim had been brought as a direct claim in a separate action against the foreign State. This provision is based upon article I of the European Convention on State Immunity. Secondly, even if a foreign State would otherwise be entitled to immunity under sections 1604 to 1606, it would not be immune from a counter-claim "arising out of the transaction or occurrence that is the subject matter of the claim of the foreign State". Thirdly, notwithstanding that the foreign State may be immune in these first two situations, the foreign State nevertheless would not be immune from a set off.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The regulations of the SFR of Yugoslavia do not contain explicit provisions on the waiver of jurisdictional immunities of foreign States, nor on a voluntary submission by foreign States. However, the answer given under addendum 9 would be applicable in principle.

Question 11

What are the exceptions or limitations, if any, provided by laws and regulations in force or recognized by judicial or governmental practice in your State with respect to jurisdictional immunities of foreign States and their property?

BRAZIL

/Original: English/
/5 June 1980/

The only exception recognized by judicial practice is based on the voluntary acceptance of jurisdiction.

EGYPT

/Original: Arabic/
/27 October 1980/

There are no laws or regulations relating to jurisdictional immunities of States and no judicial provisions for exceptions to the principle of immunity.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

As repeatedly stated, exemption from German jurisdiction results, pursuant to article 25 of the Basic Law, from the application by German courts of the general rules of international law.

HUNGARY

/Original: English/
/25 August 1980/

The limitation is indicated by a waiver of immunity. The reciprocity discussed under item 5 29/ may be evaluated as an exception on the basis of judicial practice. In respect of the landed property of a foreign State in Hungary see item 1. 30/

29/ Item 5 refers to the reply to question 5.

30/ Item 1 refers to the reply to question 1.

KENYA

/Original: English/
/19 March 1980/

Kenya has no laws, regulations or precedents regulating the subject matter contained in questions 3 to 11 of the questionnaire.

LEBANON

/Original: French/
/30 June 1980/

There are no limitations other than that indicated in paragraph 1 of the reply to question 10.

NETHERLANDS

/Original: English/
/17 July 1980/

See reply to question 3.

PORTUGAL

/Original: French/
/16 July 1980/

Nothing to add to reply 3.

SUDAN

/Original: English/
/29 May 1980/

None. Immunity is absolute unless waived.

SWEDEN

/Original: English/
/4 March 1980/

No particular rules have been formulated concerning these matters.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

We have given the answer to this question in the reply to question 6.

TOGO

/Original: French/
/7 March 1980/

There are no provisions specifying exceptions or limitations with respect to the jurisdictional immunity of foreign States or their property. If administrative measures were taken against the property of a foreign State by the Togolese Government, the Togolese administrative courts would regard such measures as governmental actions totally exempt from judicial review and therefore not subject to any appeal seeking annulment or compensation.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

The exception or limitations provided by the common law of Trinidad and Tobago and those recognized by governmental practice in Trinidad and Tobago with respect to jurisdictional immunities of foreign States and their peoperty relate to:

(i) Actions relating to land within the jurisdiction (e.g., actions to recover rent from mortgage interest).

(ii) Actions by a local beneficiary relating to a trust fund within the jurisdiction.

These recognized exceptions derive support from the special treatment accorded to land by international law as being governed by the lex situs. Under Trinidad and Tobago law, as a result of the theory of the independence of sovereign States and the comity of nations, one State should decline to exercise jurisdiction over another State. As the immunity is an immunity from process, it matters not whether sovereign's property is a warship or a ship employed in commercial service, as the proceedings in rem, if allowed to continue will oblige the sovereign to appear to protect his property. In other words, it should not matter for what purpose the property was employed or even if the foreign sovereign owned the property, as long as he had some interest in it which required protection. However, due cognizance by the Trinidad and Tobago courts may be made of decisions from common law jurisdictions where it has been decided that the commercial activities of a State are subject to the jurisdiction of another State.

/...

TUNISIA

/Original: French/
/3 February 1981/

See the replies to questions Nos. 1 and 2.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

Neither Soviet legislation in force nor judicial practice provide for exceptions or limitations with respect to jurisdictional immunities of foreign States and their property.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

It is thought that sufficient material on exceptions or limitations to jurisdictional immunities of foreign States and their peoperty in the United Kingdom has already been set out, particularly in the answers to questions 3 and 6.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Section 1604 of the FSI Act subjects the immunity of foreign States to "existing" treaties to which the United States was a party at the time of the enactment of the FSI Act and any future treaties. The FSI Act would thus not alter the rights or duties of the United States under the NATO Status of Forces agreement or similar agreements with other countries; nor would it alter the provisions of commercial agreements to which the United States is a party, e.g., treaties of friendship, commerce, and navigation and bilateral air transport agreements calling for exclusive non-judicial remedies through arbitration or other procedures for the settlement of disputes. Section 1605 (a) of the FSI Act sets forth the general circumstances in which a claim of sovereign immunity by a foreign State, political subdivision, agency or instrumentality of a foreign State would not be recognized in a United States court. These exceptions include any case where (1) the foreign State has waived its immunity, (2) the foreign State has commercial activities with a nexus with the United States, (3) rights in property taken in violation of international law are in issue in certain instances involving a foreign State or agency or instrumentality of a foreign State, (4) rights in immovable, inherited, and gift property are concerned, (5) non-commercial torts occurring in the United States might give rise to money damages. Section 1605 (b) provides further limitations on the jurisdictional immunities of foreign States with respect to maritime liens.

The FSI Act further provides in section 1606 that a foreign State shall be liable in the same manner and to the same extent, i.e. actual or compensatory damages, as a private individual under like circumstances; but a foreign State, except for an agency or instrumentality thereof, shall not be liable for punitive damages.

For additional information concerning the exceptions and limitations to immunity of foreign States with respect to counter-claims, see the answer to question 10 (c).

YUGOSLAVIA

/Original: English/
/12 August 1980/

In the SFR of Yugoslavia there do not exist provisions excluding or restricting the immunity of foreign States, but - as already stated - they invoke "the provisions of international law", while the execution or attachment of property of a foreign State cannot be effected without the consent of a competent federal organ of the executive authority. Here, understandably, account should be taken of provisions of a number of international conventions which prohibit the execution of a specific type of property of a foreign State or property serving for specific purposes. 31/

31/ See: The Vienna Convention on Diplomatic Relations, article 22, para. 3, article 24 and article 27, para. 3.

The Vienna Convention on Consular Relations, article 33, article 35, paras. 2 and 3, article 61.

The Vienna Convention on Special Missions, article 25, para. 3, article 26, article 28, paras. 2 and 4.

The Vienna Convention on the representation of States in their relations with international organizations of a universal character, article 23, para. 3, article 25, article 27, paras. 2 and 3, article 55, article 57, paras. 2 and 4.

The latter Convention does not contain a provision - analogous to other three mentioned Conventions - whereby the premises of delegations, furnishings and other property of a delegation, including means of transport of a delegation, enjoy immunity from search, requisition, confiscation and measures of execution which, it seems, is accidental. For example, the draft of the United Nations International Law Commission contained these immunities for the delegations participating in conferences and in international organizations (art. 54 of the draft), however, during the Diplomatic Conference in Vienna in 1975, this provision did not receive the two-thirds majority in the plenary. Consequently, it was dropped from the text although none of the delegations wished this to happen. In view of all these circumstances, it is to be assumed that the inviolability of the premises of the delegations and of the property therein falls under the rule of a customary international law.

Question 12

What is the status, under laws and regulations in force or in practice in your State, of ships owned or operated by a foreign State and employed in commercial service?

BRAZIL

[Original: English]
[5 June 1980]

From the point of view of navigation law, ships owned or operated by a foreign State are granted the same status as that of merchant ships; as to the arrest of or bond posting on such ships as a result of judicial orders there are no precedents in jurisprudence or legal texts covering the question but probably Brazilian courts would consider such ships as not subject to arrest.

EGYPT

[Original: Arabic]
[27 October 1980]

The basic legislation governing the commercial activity of foreign ships in Egypt is contained in the Commercial Maritime Code promulgated in 1883.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

The question as to the status of ships owned or operated by a foreign State and employed in commercial service cannot be answered with a single reply:

(a) The Federal Republic of Germany is a contracting State of the following conventions:

(1) Internationales Abkommen vom 10. April 1926 zur einheitlichen Feststellung von Regeln über die Immunität der Staatsschiffe (International Convention of 10 April 1926 for the Unification of Rules Governing the Immunity of State Vessels) (Reich Law Gazette 1927 II, p. 483), with Supplementary Protocol of 24 May 1934 (Reich Law Gazette 1936 II, p. 303): according to this convention, the vessels belonging to or used by a State, the commercial cargoes, as well as the States to whom these vessels belong or who are using them or to whom the cargoes belong, are subject, with respect to claims concerning the use of the vessels or the transportation of the cargo, to the same rules governing responsibility and the same liabilities as private vessels, cargoes and shipping companies.

(2) International Convention of 29 November 1969 on Civil Liability for Oil Pollution Damage (Federal Law Gazette 1975 II, p. 301). article XI (2) of this convention states that "with respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article IX and shall waive all defences based on its status as a sovereign State".

In reply to reservations made by several States with regard to this provision, the Federal Republic of Germany has, like numerous other States, made counter-declarations.

(b) Where there are no specific international arrangements on this matter, the principles on State immunity have to be applied in this area as well.

The question whether a ship directly operated by a State is subject to territorial jurisdiction depends again on whether the operation of the ship is a public act. This is not the case where State ships are used for commercial purposes.

HUNGARY

/Original: English/
/25 August 1980/

Since the Hungarian People's Republic has no seashores, there are no special regulations in this regard.

KENYA

/Original: English/
/19 March 1980/

As regards question 12, the Kenyan relevant statute, which is the Merchant Shipping Act (chap. 389 of the Laws of Kenya) makes no distinction between commercial ships owned by individuals and those owned by foreign States. Therefore no special privileges are extended to the latter category.

LEBANON

/Original: French/
/30 June 1980/

Article 5 of the above-mentioned Act of 12 June 1959 (see reply to question 8) provides, in paragraph 5, for exemption from taxes on commercial profits, subject to reciprocity, however, for foreign shipping enterprises whether State-owned or private.

NETHERLANDS

/Original: English/
/17 July 1980/

Since 1937, the Netherlands has been a party to the Convention establishing certain uniform rules on the immunity of State ships concluded at Brussels on 10 April 1926. There are also bilateral international agreements which contain provisions on the immunity of State ships; see for example article 16 of the Agreement between the Kingdom of the Netherlands and the USSR concerning merchant shipping, concluded on 28 May 1969 (Netherlands Treaty Series 1969, 115).

PORTUGAL

/Original: French/
/16 July 1980/

Not applicable in view of the preceding replies.

SUDAN

/Original: English/
/29 May 1980/

No legislation yet exists covering such matters.

SWEDEN

/Original: English/
/4 March 1980/

Ships owned or operated by a foreign State and employed in commercial service have the same status as foreign private ships in cases where such a status follows from the rules of the Brussels Convention 1926 and its additional Protocol 1934 (cf. paragraph 1 above) 32/ in other cases, however the immunity of such ships has been upheld. A claim made against a Soviet-owned formerly Estonian merchant ship by its discharged captain for the payment of wages due to him at the time of his dismissal was considered non-justiciable by Swedish courts (Supreme Court decision 1944, No. 76). Merchant ships requisitioned by the Norwegian Government and chartered by the British Government were considered immune against arrest for the purpose of recovery actions by the Norwegian owners (Supreme Court decision 1942, No. 24).

32/ Para. 1 refers to the reply to question 1.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

The Syrian Act on Maritime Trade promulgated by Legislative Decree 86 of 1954 regulates questions relating to ships, whether Syrian or foreign, employed in commercial service, with regard to ownership, registration, papers, licences, seizure, vessel and owner insurance, etc.

TOGO

[Original: French]
[7 March 1980]

There has never been a case of angary in Togo. Pursuant to agreements with liner conferences, Togolese maritime traffic is shared in fixed proportions among the Togolese fleet, fleets governed by conference agreements and other fleets.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

Under the application of the theory of absolute immunity, State-owned commercial vessels are generally accorded the same status as other State-owned property.

TUNISIA

[Original: French]
[3 February 1981]

The Code of Maritime Trade refers to "foreign vessels" without making a distinction between foreign vessels which are owned by a foreign State and those which are not. It may, therefore, be assumed that, for the purposes of trade, ships owned by foreign States are subject to the same legal rules as are any other foreign vessels.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/
/28 April 1980/

Ships owned by a foreign State and employed in commercial service fall under the legislative provisions referred to in paragraph 1, 33/ and consequently enjoy immunity. The Mercantile Shipping Code of the USSR (article 77) explicitly provides as follows: "Ships owned by a foreign State are not subject to distraint in connexion with property claims, except in cases covered by article 61 of the Fundamentals of Civil Procedure of the USSR and the Union Republics" (Vedomosti Verkhovnogo Soveta SSSR, 1968, No. 39, p. 351).

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The rules applied by United Kingdom courts to ships owned or operated by a foreign State and employed in commercial service have been developed in a series of cases to which reference has already been made. Most significant of the recent decisions which have examined the status of State-owned or operated ships in commercial service are the Philippine Admiral and I Congresso del Partido. Section 10 of the State Immunity Act now embodies statutory rules in relation to ships, these rules denying immunity to a State, as regards both actions in rem and actions in personam, if at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes. The primary objective of the rules set out in section 10 was to enable the United Kingdom to ratify the Brussels Convention of 1926 for the Unification of Certain Rules concerning the Immunity of State-owned Ships. The United Kingdom ratification of the Convention however, as the enclosure to Sir Ian Sinclair's letter of 3 July 1979 makes clear, was accompanied by certain minor reservations, whose essential purpose was either to simplify the structure of section 10 of the State Immunity Act or to take into account its rather complicated inter-relation with the European Convention on State Immunity.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

See section 1605 (b) of the Act, which denies immunity to a foreign State in cases where (i) a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of that foreign State, (ii) the maritime lien is based upon a commercial activity of the foreign State, and (iii) the specified notice of service of process provisions concerning a suit in admiralty have been observed.

33/ Para. 1 refers to the reply to question 1.

The purpose of this section is to permit a plaintiff to bring suit in a United States district court with respect to a cause of action arising out of a maritime lien involving a vessel or cargo of a foreign sovereign without arresting the vessel by instituting an in personam action against the foreign State in a manner analogous to bringing such a suit against the United States. The special admiralty service of notice provisions are designed to avoid arrests of vessels or cargo of the foreign State.

Section 1605 (b) would not preclude a suit in accordance with other provisions of the Act such as pursuant to the commercial activity exception to immunity in section 1605 (a) (2).

YUGOSLAVIA

/Original: English/
/12 August 1980/

Vessels used for commercial purposes which are the property of a foreign State, or a State acting as the operator of the vessel, enjoy the same status as private commercial vessels. Special status is accorded to vessels used for public purposes - vessels of customs, sanitary (health) and similar control and, of course, war vessels. In accordance with article 869 of the Law on Maritime and Inland Navigation of 1977, foreign and Yugoslav war vessels as well as public and sanitary vessels of identical status cannot be the subject of execution or attachment.

Question 13

If a foreign State applies to administrative authorities of your State for a patent, a licence, a permit, an exemption or any other administrative action, would it be treated procedurally or substantively, like any other applicant or would it receive special treatment on the procedure or on the substance?

BRAZIL

/Original: English/
/5 June 1980/

Yes. They will be treated as any other applicant.

EGYPT

/Original: Arabic/
/27 October 1980/

The foreign State submits its applications in this connexion to the authority designated in the laws and decrees governing the subject referred to.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

The patent granting procedure or other procedures laid down in the Patents Law (or Registered Designs Law) as well as fiscal practice do not provide for special treatment to be accorded to foreign States, either in the positive or the negative sense. Nor are there other special statutory provisions.

HUNGARY

/Original: English/
/25 August 1980/

Item 8 34/ gives reply to the treatment on the merits of the question and there are no special laws and regulations in respect of the procedure.

34/ Item 8 refers to the reply to question 8.

KENYA

/Original: English/
/19 March 1980/

As regards question 13, there is no provision in Kenyan laws for giving such applications any special treatment.

LEBANON

/Original: French/
/30 June 1980/

In such a situation, the foreign State is considered an administrative subject with respect to the law which is to be applied, and is treated as such.

NETHERLANDS

/Original: English/
/17 July 1980/

In principle a foreign State is treated like any other applicant.

PORTUGAL

/Original: French/
/19 July 1980/

Any preferential treatment accorded to a foreign State submitting an application to Portuguese administrative authorities would be due to the observance of a tradition rather than the implement of any legal provision.

SUDAN

/Original: English/
/27 May 1980/

Yes. Special treatment in procedure or substance could be conferred on foreign States and their property.

SWEDEN

/Original: English/
/4 March 1980/

Such applications by a foreign State would be treated like those of any other foreign applicant.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

Upon application to the Syrian administrative authorities, a foreign State is treated like any other applicant, unless special treatment is provided for in a special agreement.

TOGO

/Original: French/
/7 March 1980/

In Togo, industrial property is recognized within the framework of the African Intellectual Property Organization, which was established by the Lomé Agreement of 24 February 1978.

The Agreement does not provide for any special treatment on the procedure or on the substance in the event of a foreign State's applying for a patent.

Where licences, permits or exemptions issued by the administrative authorities are concerned, a distinction is often made between individuals and bodies corporate in respect of the procedure to be followed, but there are no special provisions for foreign States.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

If a foreign State applies to an administrative authority of Trinidad and Tobago for a patent, a licence, a permit, an exemption, or any other administrative action, it would most likely be treated procedurally or substantially like any other application. It is only in the event that diplomatic overtures are made on behalf of the foreign State that it would receive special treatment on the procedure as distinct from on the substance.

TUNISIA

[Original: French]
[3 February 1981]

After consulting on this point with the competent departments of the Ministry of Economic Affairs, it appears that foreign States or their agencies which submit an application for a patent or any other application are treated procedurally and substantively like any other applicant. Procedurally, however, applications from foreign States are processed more speedily and with the consideration such States deserve by virtue of their status.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Soviet legislation does not provide for any special treatment, procedurally or substantively, of a foreign State's application for a patent, licence, permit, etc.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

If a foreign State applied to the appropriate authorities in the United Kingdom for a patent, licence, permit, or exemption or any other administrative action (for example, planning permission in respect of alterations to buildings) it would normally be treated, as regards procedure or substance, like any other applicant. But the nature of the permission being sought would clearly be relevant. Special regard might have to be paid to the status of the applicant as a foreign State or to particular treaty obligations owed to it - for example, a foreign embassy would be given assistance in finding diplomatic accommodation because of Article 21 of the Vienna Convention on Diplomatic Relations. Such assistance would not be given to other private persons.

UNITED STATES OF AMERICA

[Original: English]
[29 April 1980]

A foreign State would be treated substantially in the same fashion as any other applicant, but it would receive special procedural treatment in some instances.

With respect to patents, the United States requires that the person responsible for an invention submit an application to receive a patent. If a United States government officer makes an invention while working in a United States government office, the officer must submit an application for a patent and then assign any rights deriving therefrom to the United States Government. In like fashion, if a foreign Government wishes to patent an invention, the person responsible for the patent must apply for the patent and then assign any rights deriving therefrom to the foreign Government pursuant to section 261 of title 35 of the United States Code, which reads in part as follows:

> "A certificate of acknowledgement under the hand and official seal, ... in a foreign country, of a diplomatic or consular officer of the United States, or an officer authorized to administer oaths whose authority is proved by a certificate of a diplomatic or consular officer of the United States, shall be prima facie evidence of the execution of an assignment, grant or conveyance of a patent or application for patent."

With regard to copyrights, the United States protects literary, musical, dramatic, and other works published by a "sovereign authority of a foreign nation that is a party to a copyright treaty to which the United States is also a party" (sect. 104 (b) (1) of title 17, appendix, of the United States Code). In the absence of a treaty, the United States provides protection on the basis of reciprocity pursuant to this section 104 (b) (4) of the United States Code, which reads as follows:

> "The works specified ... are subject to protection if -
>
> "(4) the work comes within the scope of a presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation."

In other respects, applications by foreign States for copyrights are treated in the same manner as an application by an individual.

There is no other United States federal legislation dealing with how United States Government administrative authorities should treat an application by a foreign State or a licence, permit, exemption or other administrative action.

The United States Department of State is unaware of any legislation by states of the United States which would cause foreign States to be treated in a different fashion than other applicants who seek licences, permits or similar administrative action.

YUGOSLAVIA

[Original: English]
[12 August 1980]

A State's request addressed to administrative organs for patent, licence, permit or any other administrative measure would be considered, procedurally or substantively, as if it were the request of some other applicant. If such request had specific attributes of public interest, a foreign State would communicate with the Federal Secretariat for Foreign Affairs, whereby the procedure would be much shorter.

According to article 26 of the Law on General Administrative Procedure (Official Gazette of the SFRY, No. 32/78) regarding the competence of national organs in matters in which a foreign State is a party "provisions of international law, recognized by the Socialist Federal Republic of Yugoslavia will apply". In case of any doubt arising with regard to the existence and extent of the right to immunity, explanation will be provided by the Federal Secretariat for Foreign Affairs (not the Federal Secretariat for the Administration of Justice and Organization of Federal Administration which provides an "explanation" in cases of court proceedings). 35/

35/ Part (II) (A) (4).

Question 14

If a foreign State owns or succeeds to an immovable or movable property situated in your State, how far is the foreign State subject to territorial jurisdiction in respect of title to that property or other property rights?

BRAZIL

[Original: English]
[5 June 1980]

Totally subject.

EGYPT

[Original: Arabic]
[27 October 1980]

Possession, title and other property rights in respect of immovable property are governed by the legal provisions applicable in the location of such property. Movable property is governed by the legal provisions applicable in the location of such property at the time of the event resulting in the acquisition or loss of possession, title or other property rights (art. 18 of the Civil Code).

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

With regard to ownership or other rights relating to immovable property, foreign States are, in the absence of a general rule of international law to the contrary, subject in principle to territorial jurisdiction. The only exemptions from such jurisdiction are embassy sites and real estate used by diplomatic missions.

HUNGARY

[Original: English]
[25 August 1980]

The Law-Decree, section 55, item (b), establishes exclusive Hungarian jurisdiction over any landed property in Hungary irrespective of the fact whether it is owned or not by a foreign State.

KENYA

/Original: English/
/19 March 1980/

On question 14 all titles to property movable or immovable are in Kenya subject to the Kenyan territorial jurisdiction excepting those falling within the expressly excepted domain of diplomatic and consular relations.

LEBANON

/Original: French/
/30 June 1980/

Yes.

NETHERLANDS

/Original: English/
/1" July 1980/

In principle a foreign State is subject to territorial jurisdiction in the same way as any other owner of property under private law.

PORTUGAL

/Original: French/
/16 July 1980/

If a foreign State owns property situated in Portugal, the general rule contained in the Civil Code providing that the applicable law concerning property rights is the law of the State in whose terriroty the property is situated should be applied. The practice described in replies 2 and 3 will, of course, be taken into consideration.

SWEDEN

/Original: English/
/4 March 1980/

In a decision in 1957, No. 22, the Supreme Court held that it had no jurisdiction over a dispute concerning title to real property bought in Stockholm by a foreign State. The Court, however, expressly based its decision on the fact that the property in question was used by the foreign State as embassy premises.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

A foreign State can own immovable property in the Syrian Arab Republic, subject to the provisions and conditions laid down in Act No. 189 of 1952 and, consequently, has the right to dispose of it, within the provisions of the general legislation on this subject. Article 3 of Act No. 189 places a restriction on the right to dispose of such property and states that when immovable property, not being a built-on area in the centre of a governorate, passes to a foreign State by way of inheritance, transfer, testament or liquidation of a religious endowment, that State's right to inherit, transfer, bequeath by testament and endow shall lapse and the immovable property in question shall revert to the Administration of State Property in return for payment of the price under the Expropriation Act.

Of course, this provision applies only to non-built-on immovable property outside the centres of the governorates.

TOGO

[Original: French]
[7 March 1980]

If a foreign State owns or succeeds to an immovable or movable property in Togo, that State must prove its title to the property by producing the evidence required under Togolese law. However, if the property, immovable or movable, is used or deemed to be used for diplomatic purposes, it has extraterritorial status and is not liable to distraint.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

With respect to immovable property, it is generally admitted that actions relating to land within the jurisdiction of Trinidad and Tobago are subject to Trinidad and Tobago's territorial jurisdiction in respect of title to that property or other property rights. This recognized exception from the doctrine of absolute sovereign immunity as applies in Trinidad and Tobago derives support from the special treatment accorded land by international law as being governed by the lex situa.

With respect to movable property situated in Trinidad and Tobago and owned or succeeded to by the foreign State, the following principles apply: first, where the foreign State is the admitted owner of the movable property which is the subject

matter of the suit, his immunity from jurisdiction is unlimited. Secondly, where the foreign State, though not owner, is in de facto possession of the subject matter through its own servants, the immunity is unlimited. Thirdly, the absolute immunity of a foreign State from the jurisdiction of Trinidad and Tobago courts applies without restriction where the sovereign, though neither owner nor in de facto possession, is in control authoritatively. Fourthly, the immunity is not restricted in respect of chattels to which a foreign State has an immediate right of possession, as, for example, where goods are in de facto possession of its bailee. Finally, the doctrine of immunity may equally well be invoked where the subject matter of the suit is a chose in action. To hold otherwise would produce the anomalous result that if a bank chattels as bailee for a foreign State and is also indebted to the same State on current action, the doctrine will apply in the former but not in the latter case.

TUNISIA

[Original: French]
[3 February 1981]

The reply to this question is to be found in article 2 of the CPCC, which stipulates that "they (Tunisian courts) may hear suits brought against a foreigner residing outside Tunisian territory only (...)

"(1) - If the foreigner agrees to adjudication by a Tunisian court and the suit does not involve immovable property situated abroad.

"(2) - (...)

"(3) - If the suit involves immovable or movable property situated in Tunisia".

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[8 April 1980]

If a foreign State acquires or succeeds to property, the general legal rules referred to in paragraph 1 36/ apply with regard to territorial jurisdiction in respect of title to that property or other property rights.

36/ Paragraph 1 refers to the reply to question 1.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

Section 6 of the State Immunity Act provides that a State is not immune as respects proceedings relating to title to immovable property in the United Kingdom, as well as other proceedings relating to immovable property; but, by virtue of section 16 (1) of the Act, a State would still be entitled to assert immunity in proceedings concerning its title to or its possession of property used for the purposes of a diplomatic mission. There are in addition in section 6 exceptions to immunity in respect of proceedings relating to any interest of the State in movable or immovable property, being an interest arising by way of succession, gift or bona vacantia. The fact that a State has or claims an interest in any property moreover does not preclude a court from exercising its ordinary jurisdiction on a succession matter. Foreign States could also be subject to the jurisdiction of United Kingdom courts in regard to other rights or claims to movable property if the action fell within other exceptions to immunity set out in the Act (for example, sect. 3, sect. 7, sect. 8 or sect. 10).

The principles set out in section 6 of the Act reflect to some extent principles which may be derived from earlier English cases (for example, Larivière v. Morgan, and Lord Denning's judgement in Thai-Europe Tapioca Service Ltd v. Government of Pakistan).

UNITED STATES OF AMERICA

[Original: English]
[29 April 1980]

Section 1605 (a) (4) of the FSI Act provides that a foreign State shall not be immune from the jurisdiction of United States courts in any case in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue. Under this section, a foreign State would not be immune from an action in a United States court to adjudicate questions of ownership, rent servitudes, and similar matters, though a foreign State's possession of diplomatic and consular premises would not be disturbed.

YUGOSLAVIA

[Original: English]
[12 August 1980]

A foreign State is bound to respect the territorial juridical competence with regard to title to that property, particularly in cases of immovable property or ownership rights pertaining to such property.

Question 15

Can a foreign State inherit or become a legatee or a beneficiary in a testate or intestate succession? If so, is voluntary submission essential to a meaningful involvement in the judicial process?

BRAZIL

[Original: English]
[5 June 1980]

The answer is yes to both questions.

EGYPT

[Original: Arabic]
[27 October 1980]

States are regarded as bodies corporate which enjoy all rights except those pertaining exclusively to individuals as defined by law (arts. 52 and 53 of the Civil Code). States can inherit under the terms of Act No. 81 of 1976 which governs the possession of land and immovable property by non-Egyptians.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

Any juridical person is legally capable of inheriting (cf. article 2101 (2) of the Civil Code). Consequently, a foreign State can also become an heir, legatee or beneficiary in a testate succession (articles 1937, 1939 and 2301 of the Civil Code).

Owing to long-standing legal provisions of certain Federal Länder which are valid alongside the Civil Code pursuant to article 2 (1) of the Law to Restore Uniformity in Civil Law (Gesetz zur Wiederherstellung der Gesetzeseinheit auf dem Gebiete des bürgerlichen Rechts) of 5 March 1953 (Federal Law Gazette I, p. 33), donations and gifts mortis causa to foreign juridical persons and thus to foreign States are subject to government approval if their value exceeds DM 5,000. In some Federal Länder the value of the real estate being acquired is immaterial.

KENYA

[Original: English]
[19 March 1980]

On question 15, there is nothing to prevent a foreign State from inheriting or becoming a legatee or a beneficiary under testate succession in Kenya.

However, in the case of intestate succession, the position is that immovable property devolves according to the Kenyan law while movable property devolves according to the law of the country of the intestate's domicile. In cases where there is no heir the law is that such property movable or immovable escheats to the State.

LEBANON

[Original: French]
[30 June 1980]

By the mere fact of laying claim to the right of succession, the foreign State is considered to have voluntarily renounced jurisdictional immunity. There is no known jurisprudence on the question.

NETHERLANDS

[Original: English]
[17 July 1980]

The reply to the first question is in the affirmative, and to the second in the negative.

PORTUGAL

[Original: French]
[16 July 1980]

Nothing in Portuguese law prevents a foreign State from inheriting or becoming a legatee or a beneficiary. However, the replies to the preceding questions show that voluntary submission is essential to a meaningful involvement in the judicial process.

SUDAN

/Original: English/
/29 May 1980/

There is nothing in our law to prevent such succession. Our courts will look to the Vienna Convention for guidance and also, if necessary, common law. Voluntary submission, in our view, would be essential to a meaningful involvement in the judicial process.

SWEDEN

/Original: English/
/4 March 1980/

A foreign State can acquire property as a legatee or other beneficiary in a testate succession. The procedure to be followed would be the same as in the case of any other beneficiary.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

This question was answered in the previous reply. 37/

TOGO

/Original: French/
/7 March 1980/

In matters of succession, Togolese law governs the form of wills and the procedures for probate. However, the standing of the heirs derives from the personal status of the deceased, which depends on his nationality. The only restriction imposed by Togolese law on the right of a testator to dispose of his property is that the immediate survivors are entitled to a share of the estate.

A foreign State can therefore become a beneficiary in a succession in Togo either as a legatee or by operation of the law of succession to which the deceased was subject.

37/ See reply to question 14.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

A foreign State can inherit or become a legatee or a beneficiary in a testate or non-testate succession. In such a case voluntary submission by the foreign State to the jurisdiction of Trinidad and Tobago courts is not essential to a meaningful involvement in the judicial process. For, in such a case, the competent court in Trinidad and Tobago would regard the administration of the estate as its domestic responsibility and would be prepared to determine the right of the beneficiaries even though these may possibly or certainly include a foreign sovereign.

TUNISIA

[Original: French]
[3 February 1981]

In the event of a testate succession, article 175 of the Code on Personal Status (CSP) can be applied, since it stipulates that "a will naming a foreigner as beneficiary is valid, subject to reciprocity". It can therefore be assumed that a foreign State can inherit in a testate succession in Tunisian territory provided that it allows the Tunisian State to inherit in a testate succession in its own territory.

As far as an intestate succession is concerned, if a foreigner residing in Tunisia dies without leaving any heirs, the law applicable to the succession is, in principle, the national law of the deceased person's country. If the national law of his country provides that, in the absence of heirs, the State shall inherit, it can be assumed that in such circumstances the foreign State can inherit. In such a case, however, a distinction should be made between successions involving immovable and those involving movable property. In the former case, the inheriting State must follow the procedure prescribed by Law No. 59-31 of 23 February 1959 relating to immovable property transactions, article 1 of which stipulates that "in order to be valid, any acquisition by a foreign Power of immovable property or interests in immovable property situated in Tunisia, whether for valuable consideration or free of charge, must be authorized by the Minister of State or the Office of the President, after consulting with the Minister for Foreign Affairs".

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

A foreign State can inherit or become a legatee or a beneficiary in a testate

or intestate succession (according to the law); these actions of the State do not affect its immunity status, in accordance with the legislative provisions indicated in paragraph 1. 38/

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

A foreign State may inherit or become a legatee or a beneficiary in a testate or intestate succession. Because of the provisions explained in the answer to question (14) a voluntary submission is not, in fact, essential to enable the courts to settle legal questions which may arise in such a case.

UNITED STATES OF AMERICA

[Original: English]
[29 April 1980]

Yes, a foreign State can inherit or become a legatee or a beneficiary in a testate succession. In an intestate succession, the State of the United States not a foreign State, would take any property in question. No. A voluntary submission is not essential to a meaningful involvement in the judicial process.

The pertinent portions of section 1605 (a) (4), which govern litigation concerning such transactions of foreign States, provide that a foreign State shall not be immune from the jurisdiction of United States courts in any case in which rights in property in the United States acquired by succession or gift are in issue. The reason that immunity is not granted with respect to the disposition of the property of a deceased person even though a foreign sovereign is the beneficiary is that the foreign State, in claiming rights in a decedent's estate, claims the same right which is enjoyed by private persons.

YUGOSLAVIA

[Original: English]
[12 August 1980]

According to the legal system of the SFRY, a foreign State may inherit and become a legatee and a beneficiary of the property on the basis of a testate inheritance. In this regard the principle of reciprocity is applied.

38/ Paragraph 1 refers to the reply to question 1.

Question 16

Under laws and regulations in force in your State, does the property of a foreign State enjoy immunity from attachment and other provisional or interim measures prior to an executory judicial decision? Is there any distinction based on the nature or on the use of property involved?

BRAZIL

[Original: English]
[5 June 1980]

There are no precedents on this question. But it is probable that all property of a foreign State in Brazil would enjoy immunity from attachment.

EGYPT

[Original: Arabic]
[27 October 1980]

There are no legal provisions in force under which jurisdictional immunity is granted in this respect.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

Provisional precautionary measures of the judiciary (especially attachment and temporary injunctions) as well as measures prior to executory judicial decisions are dependent on the applicability of territorial jurisdiction. Whether such jurisdiction can be applied in turn depends on the principles governing the main judicial proceedings (judgement). These principles are set out in the note of 7 August 1979 and in the above replies. 39/ If, accordingly the foreign State does not enjoy immunity for the main proceedings, it is also in principle subject to enforcement measures under territorial jurisdiction. However, in accordance with the above distinction between public and non-public activities by foreign States, the enforcement procedures are subject to a substantive restriction. Execution is not possible in respect of objects serving public functions (Federal Constitutional Court Ruling 46, 342; cf. also the example cited in the reply to question 6 above where execution was held inadmissible with respect to an embassy's bank account).

39/ Part II (B) (1) (a).

HUNGARY

[Original: English]
[25 August 1980]

Law-Decree, section 56, item (a) 40/ gives replies to these questions as well.

KENYA

[Original: English]
[19 March 1980]

The Kenyan laws do not make any distinction between the property of foreign States and other categories of property. All are fully subject to the Kenyan laws and judicial process.

LEBANON

[Original: French]
[30 June 1980]

Article 594 of the Code of Civil Procedure states (art. 2) that all property of foreign States without distinction is immune from attachment, whether for conservation or execution purposes.

NETHERLANDS

[Original: English]
[17 July 1980]

In principle, property of foreign States which is for public use (e.g. embassy buildings) is immune from attachment. Cp C.C.A. Voskuil, 41/ State Immunity from Execution, the international law of state immunity as reflected in the Dutch civil law of execution. Netherlands Yearbook of International Law 10/1979.

40/ Section 56 (a) provides:

"Unless otherwise provided for in this Law-Decree, the jurisdiction of a Hungarian law-court or other public authority shall be precluded in the case of:

"(a) an action against a foreign State, or a foreign executive or administrative body;".

41/ Part II (B) (2).

PORTUGAL

/Original: French/
/16 July 1980/

Not applicable, in view of replies 1, 2 and 3.

SWEDEN

/Original: English/
/4 March 1980/

No general laws or regulations have been adopted with regard to these matters. As to ships, see above paragraph 1. 42/

SYRIAN ARAB REPUBLIC

/Original: Arabic/

In accordance with the principles of international law on the jurisdictional immunities of States and their property and the non-competence of the Syrian judiciary to hear cases brought against a foreign State, the Syrian judiciary cannot hand down preventive or interim rulings on such cases.

TOGO

/Original: French/
/7 March 1980/

Property of a State which is used for the exercise of its sovereignty enjoys immunity. Attachment would be possible only in respect of property of the private domain of the foreign State situated in Togo, or of property situated abroad by exequatur of the judge of the place where it is situated.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

Under the common law of Trinidad and Tobago, the property of a foreign sovereign enjoys immunity from attachment and other provisional or interim measures prior to an executory judicial decision. No distinction is made on the nature or the use of property involved.

42/ The reply to question 1 provides:

"... The Immunities and Privileges Act, specifically provides for judicial immunities for foreign States and their property."

TUNISIA

[Original: French]
[3 February 1981]

Our laws do not provide for any immunities apart from those granted under conventions which Tunisia has signed or may sign in the future.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Under the laws indicated in paragraph 1, 43/ a foreign State enjoys immunity from attachment or distraint in respect of property in the USSR. No distinction based on the nature or on the use of the property involved is provided for by law.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

In the case of Trendtex Trading Corporation v. Central Bank of Nigeria, the court permitted the property of the Nigerian State to be made the subject of a "Mareva" injunction. Under the Mareva injunction procedure a defendant ordinarily resident and domiciled outside the jurisdiction may be enjoined from moving assets out of the jurisdiction of English courts where there is a good arguable case against him and some possibility that because he does not have a permanent business presence in this country, funds might not be available to meet any ultimate judgement. It is possible that in a case where the facts preceded the entry into force of the State Immunity Act, the courts might follow this precedent (as has already occurred) and grant such an injunction. But future practice must be regarded as uncertain.

The position was altered in section 13 of the State Immunity Act as regards cases not excluded from the operation of the Act by section 23 (3). Section 13 (2) (a) provides that, subject to the possibility of the court awarding interim attachment by consent, "relief shall not be given against a State by way of injunction". The generality of this provision would exclude the possibility of a court attaching assets of a foreign State defendant pending proceedings.

43/ Paragraph 1 refers to the reply to question 1.

The Mareva injunction is a relatively recent remedy and, except in the case of ships, attachment of property has been relatively rare in English courts. There has not therefore been consideration in earlier case-law of whether the nature or use of property should be relevant in considering whether to allow attachment. The State Immunity Act does not distinguish in this context in regard to the nature or use of property involved.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Prior to an executory judicial decision, the property of a foreign State enjoys immunity from attachment and like measures unless there has been a waiver.

Section 1610 (d) of the FSI Act provides that a foreign State, including a political subdivision of a foreign State or an agency, or an instrumentality of a foreign State, shall not be immune from attachment prior to the entry of judgement in any action brought in a United States court or prior to the elapse of a reasonable period of time following the entry of judgement if the foreign State has explicitly waived its immunity from attachment prior to judgement and if the purpose of the attachment is to secure satisfaction of a judgement that has been or may ultimately be entered against the foreign State.

The FSI Act makes no distinction based on the nature or on the use of property involved with respect to attachment and other provisional or interim measures prior to an executory judicial decision.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The property of a foreign State enjoys immunity of judicial procedure and other temporary measures unless special and prior consent of a federal administrative organ competent for judicial affairs is obtained. An exception is a situation when a foreign State has explicitly agreed to the execution or attachment in a specific case or has explicitly waived immunity. Of particular importance is that aforementioned measures, prior to passing an executive judicial decision, can be effected only on the basis of a decision of national court, and not during the procedure of recognizing the validity of the decision of a foreign organ.

Question 17

Similarly, does the property of a foreign State enjoy immunity from distraint and other forcible measures in aid of execution of a judicial decision? Is there any distinction based on the nature or on the use of the property involved?

BRAZIL

/Original: English/
/5 June 1980/

There are no precedents on this question. But it is probable that all property of a foreign State in Brazil would enjoy immunity from distraint.

EGYPT

/Original: Arabic/
/27 October 1980/

There are no legal provisions in force under which jurisdictional immunity is granted in this respect.

FEDERAL REPUBLIC OF GERMANY

/Original: German/
/23 October 1980/

Provisional precautionary measures of the judiciary (especially attachment and temporary injunctions) as well as measures prior to executory judicial decisions are dependent on the applicability of territorial jurisdiction. Whether such jurisdiction can be applied in turn depends on the principles governing the main judicial proceedings (judgement). These principles are set out in the note of 7 August 1979 and in the above replies. If, accordingly, the foreign State does not enjoy immunity for the main proceedings, it is also in principle subject to enforcement measures under territorial jurisdiction. However, in accordance with the above distinction between public and non-public activities by foreign States, the enforcement procedures are subject to a substantive restriction. Execution is not possible in respect of objects serving public functions (Federal Constitutional Court Ruling 46, 342; cf. also the example cited in the reply to question 6 above where execution was held inadmissible with respect to an embassy's bank account).

HUNGARY

[Original: English]
[25 August 1980]

Law-Decree, section 56, item (a) 44/ gives replies to these questions as well.

KENYA

[Original: English]
[19 March 1980]

... The Kenyan laws do not make any distinction between the property of foreign States and other categories of property. All are fully subject to the Kenyan laws and judicial process.

LEBANON

[Original: French]
[30 June 1980]

Such property enjoys immunity from distraint as provided in article 594 of the Code of Civil Procedure.

NETHERLANDS

[Original: English]
[17 July 1980]

The property referred to in the reply to question 16 is in principle likewise immune from distraint. See also the reply to question 4.

44/ Section 56 (a) provides:

"Unless otherwise provided for in this Law-Decree, the jurisdiction of a Hungarian law-court or other public authority shall be precluded in the case of:

"(a) an action against a foreign State, or a foreign executive or administrative body;".

PORTUGAL

/Original: French/
/16 July 1980/

Nothing to add to replies 2 and 3.

SWEDEN

/Original: English/
/4 March 1980/

No general laws or regulations have been adopted with regard to these matters. As to ships, see above paragraph 1. 45/

SYRIAN ARAB REPUBLIC

/Original: Arabic/

In accordance with the principles of international law on the jurisdictional immunities of States and their property and the non-competence of the Syrian judiciary to hear cases brought against a foreign State, the Syrian judiciary cannot hand down preventive or interim rulings on such cases.

TOGO

/Original: French/
/7 March 1980/

The same distinction between property of the public domain and property of the private domain applies to the process of distraint.

TRINIDAD AND TOBAGO

/Original: English/
/24 June 1980/

Similarly, the property of a foreign State enjoys immunity from distraint and other forcible measures in aid of execution of a judicial decision. Again, no distinction is made based on the nature or on the use of the property involved.

45/ Paragraph 1 refers to the reply to question 1.

TUNISIA

[Original: French]
[3 February 1981]

Our laws do not provide for any immunities apart from those granted under conventions which Tunisia has signed or may sign in the future.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Under the laws indicated in paragraph 1, 46/ a foreign State enjoys immunity from attachment or distraint in respect of property in the USSR. No distinction based on the nature or on the use of the property involved is provided for by law.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

Prior to the State Immunity Act, there was no case in which the United Kingdom courts permitted forcible execution of a judicial decision against a foreign State. The cases clearly established that immunity from execution must be regarded as distinct from immunity from jurisdiction, so that even where a waiver was granted in respect of proceedings, a separate waiver would be required before execution could take place.

Section 13 of the State Immunity Act has, however, altered the previous position so that in cases within the Act execution against property in use or intended for use for commercial purposes is permitted with certain safeguards, exception being made for the property of States parties to the European Convention on State Immunity. The detailed rules are set out in section 13 (2), (3) and (4). A distinction is drawn in regard to the nature of the property in that only property which is for the time being in use or intended for use for commercial purposes may be subjected to any process for the enforcement of a judgement or arbitration award.

It should also be noted that section 14 (4) provides that property of a State's central bank or other monetary authority shall not for the purposes of section 13 (4) be regarded as in use or intended for use for commercial purposes.

46/ Paragraph 1 refers to the reply to question 1.

The effect of section 14 (4) is that assets of a foreign State central bank or other monetary authority, whether or not the bank or authority is a separate entity from the State, are absolutely protected from any form of attachment or execution.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Section 1609 of the FSI Act provides a foreign State with immunity from attachment, arrest, and execution subject to the exceptions created in certain treaties or the exceptions provided in section 1610. The exceptions created by treaty are found in the Geneva Convention on the Territorial Sea and the Contiguous Zone, 29 April 1958 (15 UST 1606), which recognizes the liability to execution under appropriate circumstances of State-owned vessels used in commercial service as well as in the treaties described in the answer to question 10 (a). Section 1610 provides that the property of a foreign State, political subdivision, agency or instrumentality of a foreign State used for commercial activity in the United States shall not be immune from attachment in aid of execution or from execution upon a judgement entered by a United States court in any of the following circumstances: (1) explicit and implicit waivers; (2) property used by a foreign State for a commercial activity in the United States, provided that the commercial activity gave rise to the claim upon which the judgement is based; (3) property of a foreign State which is used for a commercial activity in the United States and which has been taken in violation of international law or has been exchanged for property taken in violation of international law; (4) property of a foreign State which is used for a commercial activity in the United States and is either acquired by succession or gift or is immovable, except diplomatic and consular missions and the residences of the chiefs of such missions; (5) obligations owed to a foreign State under a policy of liability insurance.

Section 1610 (b) provides for execution against the property of agencies or instrumentalities of a foreign State in additional circumstances to those provided in section 1610 (a). If an agency or instrumentality is engaged in a commercial activity in the United States, the plaintiff may obtain an attachment in aid of execution or execution against <u>any</u> property, commercial or non-commercial, of the agency or instrumentality, but only in the following two circumstances: (1) where the agency or instrumentality has waived its immunity from execution against its property; (2) property of an agency or instrumentality engaged in a commercial activity in the United States in order to satisfy a judgement relating to a claim for which the agency or instrumentality is not immune by virtue of section 1605 (a) (2), (3), or (b), or 1605 (b).

Section 1611 (a) provides that, notwithstanding the exceptions to the immunity from attachment or execution contained in section 1610, the property held by designated international organizations shall not be subject to attachment or any other judicial process impeding the disbursement of funds to a foreign State.

Section 1611 (b) provides that, notwithstanding the exceptions in section 1610, the property of a foreign State shall be immune from attachment and execution if the property is that of a foreign central bank held for its own account (unless the bank or parent foreign Government has waived immunity) or if the property is or is intended to be used in connexion with a military activity and is either of a military character or is under the control of a military authority or defence agency.

YUGOSLAVIA

/Original: English/
/12 August 1980/

The execution of property of a foreign State can be effected only on the basis of a consent of the organs of executive authority, i.e. the Federal Secretariat for Administration of Justice and Organization of Federal Administration, except when a foreign State has agreed to the execution (see annex, 47/ the text of art. 13 of the Law on Executive Procedure).

47/ Part II (A) (4).

Question 18

Are there procedural privileges accorded a foreign State in the event of its involvement in a judicial process? If so, please elaborate

BRAZIL

[Original: English]
[5 June 1980]

There is none.

EGYPT

[Original: Arabic]
[27 October 1980]

Egyptian law does not grant privileges to foreign States in this respect.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

There are no specific privileges accorded to a foreign State involved in a judicial process. Although the legal representation is determined by the foreign State's laws, pleading the absence of legal represenation is adjudicated according to German law. Apart from this, certain peculiarities result from limited jurisdiction and from the inviolability of objects used for public acts, especially:

- Counter-claims and offsetting of claims against a foreign State instituting an action are only permissible if the counter-claim is subject to German jurisdiction; furthermore, the counter-claim should bear a legal relationship to the claim made by the foreign State (cf. also the reply to question 10).

- In the event of a genuine change in a suit brough against a foreign State, the changed matter in dispute must also be subject to German jurisdiction.

- Documents may not be served on the premises of a foreign mission but only through diplomatic channels, or, if necessary, publicly.

- A court is not permitted to inspect a foreign mission or request the submission of documents by the mission; the foreign State, however, must not suffer disadvantages from the exclusion of such evidence.

KENYA

[Original: English]
[19 March 1980]

... The Kenyan laws do not make any distinction between the property of foreign States and other categories of property. All are fully subject to the Kenyan laws and judicial process.

LEBANON

[Original: French]
[30 June 1980]

No.

NETHERLANDS

[Original: English]
[17 July 1980]

No.

PORTUGAL

[Original: French]
[16 July 1980]

Neither Portuguese law nor any principle of international law recognized in Portugal accords procedural privileges to foreign States which are involved in a judicial process in Portugal.

SWEDEN

[Original: English]
[4 March 1980]

No.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

In accordance with the principles of international law on the jurisdictional immunities of States and their property and the non-competence of the Syrian judiciary to hear cases brought against a foreign State, the Syrian judiciary cannot hand down preventive or interim rulings on such cases.

TOGO

[Original: French]
[7 March 1980]

There is no provision according procedural privileges in Togo to a foreign State in the event of its involvement in a judicial process.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

There are no procedural privileges accorded the foreign State in the event of its involvement in a judicial process.

TUNISIA

[Original: French]
[3 February 1981]

As the rules of procedure are statutory provisions, privileges can be granted only by specific enactment or under a bilateral or multilateral international convention that has been concluded and ratified by law.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Soviet law does not accord a foreign State any procedural privileges in the event of its voluntarily consenting to involvement in a judicial process.

...

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

The procedural privileges accorded to a foreign State against which proceedings are instituted in the United Kingdom are set out in section 12 of the State Immunity Act. This section applies to any proceedings instituted after the coming into force of the Act (section 23 (4)).

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

Section 1330 of the FSI Act provides that United States federal district courts shall have original jurisdiction "of any non-jury civil action against a foreign State". This provision, which does not permit a jury trial in any case involving a foreign State, creates a privilege for foreign States not available to other private party defendants in the United States.

Section 1608 (a) (4) of the FSI Act provides that a foreign State shall receive through diplomatic channels notice of service of process from a United States court if notice cannot be accomplished by special arrangement, international convention, or by mail with a signed receipt.

Section 1608 (d) provides that in any action brought in a United States court, a foreign State, political subdivision thereof or any agency or instrumentality of a foreign State serve an answer or other responsive pleading within 60 days, not 30 days as is provided for other defendants.

Section 1608 (e) provides that "No judgement by default shall be entered" by a United States court against a foreign State, a political subdivision thereof, or an agency or instrumentality of a foreign State, "unless the claimant establishes his claim or right of relief by evidence satisfactory to the court". Judgements may be entered against other defendants in United States courts without the plaintiff satisfying the judge that there is a valid cause of action.

Subsection 1610 (c) requires the intervention of courts before an attachment in aid of execution or execution can be had. These provisions accord a foreign State a procedural privilege in those jurisdictions of the United States where attachment and execution to satisfy a judgement may be had without a court order simply by making application to a clerk or a local sheriff.

Subsection 1610 (d) permits attachment prior to judgement only if the foreign State has waived its immunity from such attachment and if the purpose of the attachment is to secure satisfaction of a judgement, not to secure jurisdiction.

The property of other parties is generally subject to the possibility of pre-judgement attachment and attachment to secure jurisdiction.

Section 1441 (d) of the FSI Act permits a foreign State to remove any civil action brought in a State court "to the district court of the United States for the district and division embracing the place where such action is pending". This section also provides that "upon removal the action shall be tried by the court without a jury". A private party has a more circumscribed right of removal.

YUGOSLAVIA

/Original: English/
/12 August 1980/

There are no regulations according to which a foreign State would in case that it is on any grounds involved in a procedure before a Yugoslav court, enjoy procedural privileges, but in practice, attention would be paid to the fact that a foreign State is a litigant sui generis (for example, the serving of judicial writs through diplomatic channels and the like).

Question 19

Are foreign States exempt from costs or security for costs in the event of participation in a judicial process?

BRAZIL

/Original: English/
/5 June 1980/

No.

EGYPT

/Original: Arabic/
/27 October 1980/

Egyptian law does not grant any privileges to foreign States in this respect.

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

(a) Costs

(1) Federal law:

Neither article 2 of the Legal Costs Law (Gerichtskostengesetz) nor article 11 of the Costs Schedule (Kostenordnung) provide for foreign States to be exempt from legal costs.

(2) Land law:

According to article 8 (2) (1) of the Bremen Legal Costs Law, foreign States are exempt from the payment of fees if they guarantee reciprocity. According to article 2 (2) (1) of the North-Rhine/Westphalian Law on Exemption from Legal Costs, legal costs may be waived if this is deemed to be in the public interest. Applying this provision, the Minister of Justice of North-Rhine/Westphalia waives any legal fees arising under non-contentious jurisdiction when real estate is purchased, for example, to build an embassy. This, however, is conditional on reciprocity being guaranteed.

(b) Security

According to article 17 of the Hague Convention of 1 March 1954 (Federal Law Gazette 1958 II, p. 576), the contracting States themselves, when acting as plaintiff or intervener, are exempt from the obligation to deposit security for legal costs, in so far as such security is demanded in principle under national law in cases where the plaintiff or intervener is a "foreigner", i.e. in this case a foreign State (e.g. article 110 of the Code of Civil Procedure). This also applies to any advances to defray legal costs (such advances no longer being required in the Federal Republic of Germany anyway).

It follows that foreign States are not exempt prima facie on the grounds of exterritoriality from depositing security. Rather, outside the scope of the 1954 Hague Convention, the provisions of article 110 (2) (1) to (5) of the Code of Civil Procedure apply; i.e. the security deposit by foreigners is waived, for example, if reciprocity is guaranteed.

KENYA

[Original: English]
[19 March 1980]

The Kenyan laws do not make any distinction between the property of foreign States and other categories of property. All are fully subject to the Kenyan laws and judicial process.

LEBANON

/Original: French/
/30 July 1980/

No.

NETHERLANDS

/Original: English/
/17 July 1980/

No.

PORTUGAL

/Original: French/
/16 July 1980/

In such cases, the States concerned would not be exempt from costs or security for costs which would normally be required.

SUDAN

/Original: English/
/29 May 1980/

No, but in order that a court order may be executed, a further waiver may be required therefore (as provided in the Vienna Convention).

SWEDEN

/Original: English/
/4 March 1980/

With regard to costs and security for costs in the event of participation in a judicial process, the same rules apply to foreign States as to other foreign subjects of law.

SYRIAN ARAB REPUBLIC

[Original: Arabic]

Exemption of a foreign State from the costs or security for costs of a legal suit which it wishes to bring in the Syrian Arab Republic is in accordance with a judicial agreement concluded between the two countries. Where there is no such agreement, a State is not exempt.

TOGO

[Original: French]
[7 March 1980]

Security for costs is required of any foreigner who brings an action in the Togolese courts, subject to the exemptions and facilities provided for in international conventions or bilateral treaties. There are no special rules for foreign States instituting a private-law proceeding.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

Foreign States are not exempted from costs or security for costs in the event of participation in a judicial process.

TUNISIA

[Original: French]
[3 February 1981]

As the rules of procedure are statutory provisions, privileges can be granted only by specific enactment or under a bilateral or multilateral international convention that has been concluded and ratified by law.

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

Soviet legislation does not contain any special rules concerning the exemption of foreign States from judicial costs. As far as security for costs is concerned, foreigners are not required under Soviet law to deposit security for judicial costs.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/17 September 1980/

There are no special provisions in United Kingdom law in regard to costs or security for costs for a foreign State in the event of its participation in a judicial process.

UNITED STATES OF AMERICA

/Original: English/
/29 April 1980/

No.

YUGOSLAVIA

/Original: English/
/12 August 1980/

A foreign State is exempt from costs or security for costs in the event of participation in a judicial process, only on the basis of an international agreement or law.

Question 20

Is your State inclined to invoke jurisdictional immunities before foreign courts, where, in like circumstances, none would be accorded to foreign States by the courts of your State? Or conversely, are courts in your State prepared to grant jurisdictional immunities to foreign States to the same extent as that to which your State is likely to claim immunities from foreign jurisdiction?

BRAZIL

/Original: English/
/5 June 1980/

Brazil invokes abroad absolute jurisdictional immunities, such as those Brazilian courts grant to foreign States. The courts referred to, however, do not take into account, in their decisions, the attitudes of the Brazilian State before foreign courts, but merely invoke what they consider a general principle of international law.

EGYPT

[Original: Arabic]
[27 October 1980]

Jurisdictional immunity is a principle of international law which a State is entitled to invoke on the basis of the sovereign independence and equality of all States in the international community. This principle is applied by the Egyptian courts (see the reply to questions 2 and 3).

FEDERAL REPUBLIC OF GERMANY

[Original: German]
[23 October 1980]

General information cannot be provided because there are no known cases in which this problem has arisen.

KENYA

[Original: English]
[19 March 1980]

On question 20, the answer to the first part is "no".

As regards the second part, the Kenyan courts have not had the opportunity to evolve any precedent on the matter.

LEBANON

[Original: French]
[30 June 1980]

There are no known precedents connected with this question.

NETHERLANDS

[Original: English]
[17 July 1980]

In practice there have been so few cases that it is not possible to give a reply, either affirmative or negative, to the first question.

As regards the second question, State immunity in the Netherlands is not extended on grounds of reciprocity.

PORTUGAL

/Original: French/
/16 July 1980/

Lack of precedents makes a reply to this question difficult, or in fact, impossible.

SUDAN

/Original: English/
/29 May 1980/

The matter does not arise here - as all States enjoy immunity in our courts.

SWEDEN

/Original: English/
/4 March 1980/

The decisions of Swedish courts on State immunity having been relatively few and dispersed in time, the doctrine of State immunity has not yet been fully developed in Swedish judicial practice. When Sweden itself has invoked immunity before foreign courts, the decision to do so has generally been based on the circumstances in the particular case rather than on any of the sparse precedents in Sweden's own judicial practice. Conversely, Swedish courts do not grant immunity on the basis of whether Sweden would be likely to claim immunity from foreign jurisdiction in similar circumstances.

SYRIAN ARAB REPUBLIC

/Original: Arabic/

This question was answered in the reply to question 5.

The Syrian Arab Republic has ratified the Vienna Convention on Diplomatic and Consular Relations and is bound by their provisions and the statements contained in the instruments of accession to these two Conventions.

TOGO

[Original: French]
[7 March 1980]

The Togolese Republic has never yet had occasion to invoke jurisdictional immunity before foreign courts. However, if such a situation arose, it may be expected that it would invoke this principle, since it recognizes it in its own legal system.

In this respect, it may be noted that the Togolese Republic has recently declared that it recognizes the general jurisdiction of the International Court of Justice in any dispute between Togo and another State which itself recognizes the jurisdiction of the Court either generally or for the settlement of the particular dispute in question.

However, the International Court of Justice has no jurisdiction in disputes between a State and a private party. That being the case, the Government may use its good offices with a foreign State to promote the settlement of a dispute between that State and a Togolese national.

Failing conciliation, the Togolese courts will have jurisdiction in all cases where the State in question has not acted in exercise of its sovereignty, according to the various distinctions spelt out in this reply to the questionnarire from the Secretary-General of the United Nations.

The replies received will make it possible, if there is sufficient common ground, to draw up an international convention defining the limits of the jurisdictional immunity of States and giving the International Court of Justice jurisdiction in disputes between private parties and States acting in exercise of their sovereignty. The precedent of the Court of Justice of the European Communities could serve as a point of reference for this study.

TRINIDAD AND TOBAGO

[Original: English]
[24 June 1980]

Courts in Trinidad and Tobago might be prepared to grant jurisdictional immunities to foreign States to the same extent to which Trinidad and Tobago is likely to claim immunities from foreign jurisdictions.

TUNISIA

[Original: French]
[3 February 1981]

Although no such case has arisen so far, it is fair to assume that our country would apply the rule of reciprocity in its relations with other countries in accordance with the principle set forth in article 2 of the CPC, which provides that "they (Tunisian courts) may hear suits brought against a foreigner residing outside Tunisian territory only (...)

"(7) - In those cases in which the courts of the foreigner's country rule that they have jurisdiction in suits brought against Tunisians, this provision being based on considerations of reciprocity".

UNION OF SOVIET SOCIALIST REPUBLICS

[Original: Russian]
[28 April 1980]

The replies are in paragraphs 3 and 5. 48/

The above replies do not relate to any provisions of international agreements concluded by the USSR which may establish special rules.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]
[17 September 1980]

In deciding whether to invoke jurisdictional immunities before foreign courts, the United Kingdom, at least in recent years, has tended to have regard to the domestic law of the State concerned in the matter of State immunity (unless this was thought to be inconsistent with general international law) rather than to the position as it would be if proceedings against that State were instituted in the United Kingdom.

United Kingdom courts will not, in giving effect to the rules of State immunity, pay any regard to the extent to which the United Kingdom claims immunity from the jurisdiction of foreign courts.

48/ Paragraphs 3 and 5 refer to the replies to questions 3 and 5.

UNITED STATES OF AMERICA

[Original: English]
[29 April 1980]

No, the United States is not inclined to invoke jurisdictional immunities before foreign courts, where, in like circumstances, none would be accorded to foreign States by United States courts. This policy dates from the early 1970s when the United States Government adopted the policy of not pleading sovereign immunity abroad in instances where, under the restrictive principle of sovereign immunity, the United States Government would not recognize a foreign State's immunity in the United States.

United States courts, in applying the Foreign Sovereign Immunity Act of 1976, do not grant jurisdictional immunities to foreign States on the basis of the extent to which the United States is likely to claim immunities from foreign jurisdiction.

YUGOSLAVIA

[Original: English]
[12 August 1980]

It is normal to expect that Yugoslavia would invoke jurisdictional immunities, in principle, to the same extent to which the Yugoslav courts recognize jurisdictional immunities of foreign States. However, in this case, the principle of non-discrimination is more important than the principle of reciprocity. In other words, in principle, all States would enjoy the same treatment before the Yugoslav courts.
