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

Topic:
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JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Information and materials submitted by Governments

Addendum

I. GOVERNMENT REPLIES TO THE QUESTIONNAIRE

Norway

/Original: English/

/29 April 1981/

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

As has been mentioned, there is no general legislation on this question. Where State-owned ships are concerned, there are regulations laid down by law

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

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regarding limited immunity in the Act No. 1 of 17 March 1939 1/ concerning the position of foreign State-owned ships, etc. The provisions of the Act are based on the rules in an international convention for the unification of certain rules relating to the immunity of State-owned vessels of 10 April 1926. The Convention entered into force for Norway on 25 October 1939.

1/ Act of 17th March, 1939, relating to foreign State-owned ships, etc.

§ 1. The fact that a ship is owned or is used by a foreign state or that a ship's cargo belongs to a foreign state shall not, apart from the cases mentioned in §§ 2 and 3, be any hindrance to a suit being instituted in this Kingdom in respect of a claim which is a consequence of the use of the ship or the conveyance of the cargo, or to the carrying out in this Kingdom, in respect of such claim, of enforcement action or the taking of temporary measures against the ship or its cargo.

§ 2. Suit relating to claims such as mentioned in § 1 cannot be instituted in this Kingdom if it relates to:

- (1) naval ships and other ships which a foreign state owns or uses, if at the time when the claim arose they were being used exclusively for State purposes of a public legal character;
- (2) cargo which belongs to a foreign state and is being carried on a ship such as mentioned in item (1);
- (3) cargo which belongs to a foreign state and is carried on a merchant ship for State purposes of a public legal character, unless the claim is based on salvage, general average, or agreements concerning the cargo.

§ 3. Enforcement action cannot be carried out and temporary measures cannot be taken in this Kingdom, in respect of claims such as mentioned in § 1, against:

- (1) naval ships and other ships which a foreign state owns, uses or has in its entirety time-chartered or voyage-chartered, if the ship is used exclusively for State purposes of a public legal character;
- (2) cargo which belongs to a foreign state, and is carried on ship such as mentioned in item (1), or on a merchant ship for State purposes of a public legal character.

In pursuance of agreement with a foreign state, the King may decide that the same shall apply to other ships which a foreign state owns or uses; and to other cargo which belongs to such state if the foreign state in time of war puts forward a demand for this.

§ 4. By agreement with a foreign state it may be decided that a certificate from the diplomatic representative of the foreign state concerned shall serve as proof that ship and cargo come within the provisions in § 3, first paragraph, items (1) and (2), if demand is made for annulment of enforcement action or temporary measures.

§ 5. This Act enters into force on the date the King decides.

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The principles on which the Act is based regarding foreign State-owned ships are assumed also to be applicable regarding the question of the immunity of foreign States in other sectors. This means that the principle of a limited immunity is applied in Norway, which means that no immunity is granted for any business activity for gain in which a foreign State is engaged in Norway.

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 any other principle of international law

In accordance with the answer to question 1 above, it is assumed that the courts will grant limited immunity. Regarding State-owned ships, this will be based on the Act of 1939, in other cases on the principles of international law which are presumed to be in agreement with Norwegian law. In case law, one case is known. In a decision of 6 July 1938, handed down by the Appeals Selection Committee of Norway's Supreme Court, an appeal against the Spanish State was refused a hearing by Norwegian courts. In the grounds given, reference was made to "the generally recognized rules of international law".

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?

Since case law is very sparse in this field, it is difficult to indicate any main guidelines. As mentioned above, it is assumed that in theoretical doctrine a principle of limited immunity will be applied. This is actually reflected in two judgements rendered by the Supreme Court of Norway on 27 February and 21 November 1936, respectively, in cases brought against the Trade Mission of the Soviet Union in Norway, on behalf of the Union of Soviet Socialist Republics. Both cases concerned the question of whether the Soviet Trade Mission and the Soviet State were responsible for breach of contract of a charter party, which the Trade Mission had signed for "as agents only". Both cases were tried by Norwegian courts. In the first decision it is expressly stated that the Soviet Trade Mission had not challenged the jurisdiction of the Norwegian courts.

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?

To what extent the courts have competence is a question determined by the courts themselves on the basis of written and unwritten rules. The executive branch does not have the competence to interfere in the activities of the courts in this sector.

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

As mentioned above, the Act of 1939 is based on the principle of limited immunity. §§ 2 and 3 of the Act mention those cases where a State-owned ship has immunity, and in other cases it is stated in § 1 that a suit may be brought.

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?

(a) Yes, cf. the initial premise of limited immunity. However, it appears difficult to offer any specific number of cases beyond what has been listed under question 6 above.

(b) (c) and (d) are difficult to answer on the basis of Norwegian practice.

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?

It must be assumed that Norwegian courts will not consider themselves competent to try directly the validity, for example, of the public acts of foreign States. Another matter, however, is that questions of this kind may arise pre-judicially and that the courts in this conjunction must adopt a standpoint on these questions, such as the question of the validity of a marriage or a divorce.

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- 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-claims against foreign States?

There are no clear rules of case law in this field either. Presuming that the other conditions for the court's competence are fulfilled, however, it must be assumed that the court will try a case against a foreign State if the State in question has waived its immunity or has, itself, brought the case before the court. On these same conditions it must also be assumed that the court will consider itself competent to try any counter-claims.

- 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?

Cf. question 3, above.

- 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?

Cf. questions 1 and 6, above.

- 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?

Basically it must be assumed that the foreign State, as owner of real estate in Norway, will be considered as being completely subject to the jurisdiction of the Norwegian courts, unless there are special dispensations such as embassy buildings, etc.

- 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?

It can hardly be assumed that there is any hindrance to a foreign State's becoming a legatee, but in such case this State will be placed on an equal footing with any other legatee according to Norwegian law.

- Question 16. Under the 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?

There are no specific rules in this sector in Norway.

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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?

Ditto.

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

No.

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

No.
