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**Jurisdictional immunities of States and their property: texts of articles 7 to 10, proposed by the
Special Rapporteur on 9 June 1981**

Topic:
Jurisdictional immunities of States and their property

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(art. 7);⁶⁶⁸ "Consent of State" (art. 8);⁶⁶⁹ "Expression of consent" (art. 9);⁶⁷⁰ and "Counter-claims"

⁶⁶⁸ Draft article 7 as revised read:

"Article 7. Obligation to give effect to State immunity"

"Paragraph 1 — Alternative A"

"1. A state shall give effect to State immunity under [as stipulated in] article 6 by refraining from subjecting another State to the jurisdiction of its otherwise competent judicial and administrative authorities, [or] and by disallowing the [conduct] continuance of legal proceedings against another State.

"Paragraph 1 — Alternative B"

"1. A State shall give effect to State immunity under article 6 by refraining from subjecting another State to its jurisdiction [and] or from allowing legal proceedings to be conducted against another State, notwithstanding the existing competence of the authority before which the proceedings are pending.

"2. For the purpose of paragraph 1, a legal proceeding is considered [deemed] to be one against another State, whether or not named as a party, so long as the proceeding in effect seeks to compel that other State either to submit to local jurisdiction or else to bear the consequences of judicial determination by the competent authority which may [involve] affect the sovereign rights, interests, properties or activities of the State.

"3. In particular, a proceeding may be considered to be one against another State [when] if it is instituted against one of its organs, agencies or instrumentalities acting as a sovereign authority; or against one of its representatives in respect of acts performed by them as State representatives, or [if] it is designed to deprive another State of its public property or the use of such property in its possession or control.

NOTE: Paragraph 3 would constitute an alternative to the text of draft article 3, subpara. 1 (a) (see footnote 656 above).

⁶⁶⁹ Draft article 8 as revised read:

"Article 8. Consent of State"

"1. [Subject to Part III of the draft articles.] Unless otherwise provided in the present articles, a State shall not exercise jurisdiction in any legal proceeding against another State [as defined in article 7] without the consent of that other State.

"2. Jurisdiction may be exercised in a legal proceeding against a State which consents to its exercise."

⁶⁷⁰ Draft article 9 as revised read:

"Article 9. Expression of consent"

"1. A State may give its consent to the exercise of jurisdiction by the court of another State under article 8, paragraph 2, either expressly or by necessary implication from its own conduct in relation to the proceeding in progress.

"2. Such consent may be given in advance by an express provision in a treaty or an international agreement or a written contract, expressly undertaking to submit to the jurisdiction or to waive State immunity in respect of one or more types of activities.

"3. Such consent may also be given after a dispute has arisen by actual submission to the jurisdiction of the court or by an express waiver of immunity, [in writing or otherwise] for a specific case before the court.

"4. A State is deemed to have given consent to the exercise of jurisdiction by the court of another State by voluntary submission if it has instituted a legal proceeding or taken part or a step in the proceeding relating to the merit, without raising a plea of immunity.

"5. A State is not deemed to have given such consent by voluntary submission or waiver if it appears before the court of another State in order specifically to assert immunity or its rights to property and the circumstances are such that the State would have been entitled to immunity, had the proceeding been brought against it.

(art. 10).⁶⁷¹ Neither the Commission nor its Drafting Committee has considered these texts (see para. 12 above).

227. In its consideration of the rest of the draft articles in part II dealing with general principles of State immunity, the Drafting Committee will therefore also have before it these revised versions of the draft articles as submitted by the Special Rapporteur.

B. Draft articles on jurisdictional immunities of States and their property⁶⁷²

PART I

INTRODUCTION

Article 1. Scope of the present articles

The present articles apply to questions relating to the immunity of one State and its property from the jurisdiction of another State.

PART II

GENERAL PRINCIPLES

Article 6. State immunity

1. A State is immune from the jurisdiction of another State in accordance with the provisions of the present articles.

2. Effect shall be given to State immunity in accordance with the provisions of the present articles.

"6. Failure on the part of a State to enter appearance in a proceeding before the court of another State does not imply consent to the exercise of jurisdiction by that court. Nor is waiver of State immunity to be implied from such non-appearance or any conduct other than an express indication of consent as provided in paragraphs 2 and 3.

"7. A State may claim or waive immunity at any time before or during any stage of the proceedings. However, a State cannot claim immunity from the jurisdiction of the court of another State after it has taken steps in the proceedings relating to the merit, unless it can satisfy the court that it could not have acquired knowledge of the facts on which a claim of immunity can be based, in which event it can claim immunity based on those facts if it does so at the earliest possible moment."

⁶⁷¹ Draft article 10 as revised read:

"Article 10. Counter-claims"

"1. In any legal proceedings instituted by a State, or in which a State has taken part or a step relating to the merit, in a court of another State, jurisdiction may be exercised in respect of any counter-claim arising out of the same legal relationship or facts as the principal claim, or if, in accordance with the provisions of the present articles jurisdiction could be exercised, had separate proceedings been instituted before that court.

"2. A State which makes a counter-claim in proceedings before a court of another State is deemed to have given consent to the exercise of jurisdiction by that court with respect not only to the counter-claim but also to the principal claim, arising out of the same legal relationship or facts [as the counter-claim]."

⁶⁷² For the commentary to the articles, see *Yearbook ... 1980*, vol. II (Part Two), pp. 141 *et seq.*, chap. VI, sect. B.