

Part I
NATIONAL LEGISLATION

Première partie
LÉGISLATION NATIONALE

A. ARGENTINA¹

THE ARGENTINE CONSTITUTION

Article 100. The Supreme Court of Justice and the lower courts of the Nation have jurisdiction over and decide all cases dealing with matters governed by the Constitution and the laws of the Nation, with the exception made in item 11, article 67; and by treaties with foreign nations; of cases within admiralty and maritime jurisdiction; of suits in which the Nation is a party; suits between two or more Provinces; between one Province and the residents of another; between the residents of different Provinces; and between one Province or its residents against a foreign State or citizen.

Article 101. In such cases the Supreme Court shall exercise appellate jurisdiction, according to rules and exceptions prescribed by the Congress; but in all matters concerning ambassadors, ministers and foreign consuls, and those in which any Province shall be a party, the Court shall exercise original and exclusive jurisdiction.

Act No. 48. Jurisdiction and competence of the National Courts.

Publication: *Registro Nacional* 1863/69, p. 49.

Article 1. The Supreme Court of National Justice shall try, in the first instance:

(3) Cases concerning ambassadors or other foreign diplomats, members of legations, the members of their families, or their domestic staff, in the manner in which a court of justice may proceed in accordance with international law.

(4) Cases dealing with the privileges and immunities of consuls and vice-consuls in their official capacity.

Act No. 2372. Approval of the Code of Criminal Procedure for the Federal Courts and Ordinary Courts of the Capital and National Territories.

Publication: *Registro Nacional* 1887/88, p. 772.

Article 21. The National Supreme Court shall have original jurisdiction in:

Criminal cases concerning ambassadors, ministers or foreign diplomatic agents; members of legations, the members of their families, or their domestic staff, in the manner and in the cases in which a court of justice may proceed in accordance with international law.

Act No. 21,708. Amendments to Act No. 17,454 (National Code of Civil and Commercial Procedure) and Decree Law No. 1,285/58.

¹ Transmitted to the Secretariat by that Government.

Publication: *Boletín Oficial* 28-12-77.

Article 2. Articles 16 and 24 of Decree Law No. 1,285/58 shall be replaced by the following articles:

. . .

Article 24. The Supreme Court of Justice shall have:

1. Original and exclusive jurisdiction in all matters concerning two (2) or more Provinces and private persons, between one (1) Province and a resident or residents of another Province, or foreign citizens or subjects; matters concerning one (1) Province and one (1) foreign State; cases concerning ambassadors or other foreign diplomatic ministers, members of legations and the members of their families, in the manner in which a court of justice may proceed in accordance with international law; and cases dealing with the privileges and immunities of foreign consuls in their official capacity.

No action shall be taken on a complaint against a foreign State without first seeking from its diplomatic representative, through the Ministry of Foreign Affairs and Worship, the consent of that country to submit to proceedings. However, the executive branch may declare, by means of a duly substantiated decree, with respect to a particular country, that there is no reciprocity for the purposes of this provision. In such cases, the foreign State with respect to which such a declaration has been made shall be subject to Argentine jurisdiction. If the declaration of the executive branch specifies that the absence of reciprocity applies only in certain respects, the foreign country shall be subject to Argentine jurisdiction only in those respects. The executive branch shall declare that reciprocity is established when the foreign country so amends its rules.

For the purposes of the first part of this paragraph, the following shall be deemed to be residents:

(a) Physical persons domiciled in the country for two (2) years or more prior to the lodging of the complaint, regardless of nationality;

(b) Juridical persons under Argentine public law;

(c) All other juridical persons incorporated and domiciled in Argentina;

(d) Firms and associations without juridical personality, if all their members have the status described in subparagraph (a). Cases concerning foreign ambassadors or ministers plenipotentiary are those which directly affect such persons by virtue of the fact that their rights are under discussion or because their liability is involved, as well as those which similarly affect the members of their families, or the staff of the embassy or legation having diplomatic status.

No action shall be taken on proceedings against the persons referred to in the foregoing paragraph, without first seeking from the ambassador or minister plenipotentiary concerned, the consent of his Government to their submission to proceedings. Cases concerning foreign consuls are those brought in respect of deeds or acts performed in the exercise of their specific functions, provided that their civil or criminal liability is at issue.

B. AUSTRIA²

1. AUSTRIAN DECLARATION IN ACCORDANCE WITH ARTICLE 28, PARAGRAPH 2, OF THE EUROPEAN CONVENTION ON STATE IMMUNITY

“The Republic of Austria declares according to article 28, paragraph 2, of the European Convention on State Immunity that its constituent States Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna may invoke the provisions of the European Convention on State Immunity applicable to Contracting States, and have the same obligations.”

The instrument of ratification, signed by the Federal President and countersigned by the Vice-Chancellor, was deposited on 10 July 1974; in accordance with article 36, paragraph 2, the Convention entered into force between Austria, Belgium and Cyprus on 11 June 1976. The entry into force of the Additional Protocol is to be announced separately.

2. FEDERAL ACT OF 3 MAY 1974 ON THE EXERCISE OF JURISDICTION IN ACCORDANCE WITH ARTICLE 21 OF THE EUROPEAN CONVENTION ON STATE IMMUNITY

The National Council has decided that:

1. (1) The Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen Wien*) shall be solely competent to determine whether the Republic of Austria shall give effect, in accordance with article 20 of the European Convention on State Immunity, to any judgement given by a court of another Contracting State. The same shall apply as regards giving effect to a settlement in accordance with article 22 of the Convention. Jurisdiction shall be exercised through chambers (*Senate*) without regard to the value of the object of dispute.

(2) The determination shall be made on the basis of a legal action brought in accordance with the provisions of the Code of Civil Procedure and subject to the special conditions laid down in article 21, paragraph 3, of the Convention.

(3) The action to obtain a determination may be brought either by the Party which directly derives rights from the foreign judgement (settlement) or by the Republic of Austria itself.

2. This Federal Act shall enter into force on the date on which the European Convention on State Immunity becomes applicable to Austria.

3. The Federal Minister of Justice shall be responsible for the execution of this Federal Act.

3. DECLARATION BY THE REPUBLIC OF AUSTRIA IN ACCORDANCE WITH ARTICLE 21, PARAGRAPH 4, OF THE EUROPEAN CONVENTION ON STATE IMMUNITY (BGBl. No. 432/1976)

“In compliance with paragraph 4 of article 21 of the European Convention on State Immunity, the Republic of Austria declares that it designates the Vienna Regional Civil Court (*Landesgericht für Zivilrechtssachen Wien*) as solely competent

² Transmitted to the Secretariat by that Government.

to determine whether the Republic of Austria shall give effect, in accordance with article 20 of the above-mentioned Convention, to any judgement given by a court of another Contracting State.”

Receipt of the declaration, which was signed by the Federal President and countersigned by the Federal Chancellor, was acknowledged by the Secretary-General of the Council of Europe in a written communication dated 23 February 1977.

4. REPERTORY OF PRECEDENTS, No. 28

1. *Under international law*, foreign States are exempt from the jurisdiction of the Austrian courts only in so far as relates to acts performed by them in the exercise of their sovereign powers.

2. Similarly, *under municipal law*, foreign States are subject to Austrian jurisdiction in all contentious matters arising out of legal relations within the sphere of private law.

3.³ No recognition of the expropriation of German trademark rights through war measures taken by Czechoslovakia.

C. BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

ARTICLE 395 OF THE CODE OF CIVIL PROCEDURE OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Prosecution of a foreign State and sequestration or attachment of the property of a foreign State located in the USSR are permissible only with the consent of the competent bodies of the State concerned.

Diplomatic representatives of foreign States accredited to the USSR and other persons mentioned in the relevant laws and international agreements shall be subject to the jurisdiction of Soviet civil courts only within the limits established by international legal norms or agreements with the States concerned.

In accordance with article 61 of the Principles of Civil Procedure of the Union of Soviet Socialist Republics and of the Union Republics, whenever, in a foreign State, the Soviet State, its property or the representatives of the Soviet State are not given the same jurisdictional immunity which, under that article, is accorded to foreign States, their property or representatives of foreign States in the USSR, the Council of Ministers of the USSR or another authorized body may prescribe retaliatory measures against that State, its property or a representative of that state.

³ Rule of law No. 3 was not included in the repertory of precedents, since it does not relate to any question which has not been repeatedly decided in a uniform manner in the practice of the Supreme Court.

D. CANADA

CANADIAN BILL ON "STATE IMMUNITY ACT" (1981)⁴

Short title

1. This Act may be cited as the *State Immunity Act*.

Interpretation

2. In this Act,

"agency of a foreign state" means any legal entity that is an organ of the foreign state but that is separate from the foreign state;

"commercial activity" means any particular transaction, act or conduct or any regular course of conduct that by reason of its nature is of a commercial character;

"foreign state" includes

(a) any sovereign or other head of the foreign state or of any political subdivision of the foreign state while acting as such in a public capacity,

(b) any government of the foreign state or of any political subdivision of the foreign state, including any of its departments, and any agency of the foreign state, and

(c) Any political subdivision of the foreign state;

"political subdivision" means a political subdivision of a foreign state that is a federal state.

State immunity

3. (1) Except as provided by this Act, a foreign state is immune from the jurisdiction of any court in Canada.

(2) In any proceedings before a court, the court shall give effect to the immunity conferred on a foreign state by subsection (1) notwithstanding that the state has failed to take any step in the proceedings.

4. (1) A foreign state is not immune from the jurisdiction of a court if the state waives the immunity conferred by subsection 3(1) by submitting to the jurisdiction of the court in accordance with subsection (2) or (4).

(2) In any proceedings before a court, a foreign state submits to the jurisdiction of the court where it

(a) explicitly submits to the jurisdiction of the court by written agreement or otherwise either before or after the proceedings commence;

(b) initiates the proceedings in the court; or

(c) intervenes or takes any step in the proceedings before the court.

(3) Paragraph (2)(c) does not apply to

(a) any intervention or step taken by a foreign state in proceedings before a court for the purpose of claiming immunity from the jurisdiction of the court; or

⁴ The Senate of Canada, Bill S-19. Not yet adopted by the Canadian Parliament.

(b) any step taken by a foreign state in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained before the step was taken and immunity is claimed as soon as reasonably practicable after they are ascertained.

(4) A foreign state that initiates proceedings in a court or that intervenes or takes any step in proceedings before a court, other than for the purpose of claiming immunity from the jurisdiction of the court, submits to the jurisdiction of the court in respect of any third party proceedings that arise, or counter-claim that arises, out of the subject-matter of the proceedings initiated by the state or in which the state has so intervened or taken a step.

(5) Where, in any proceedings before a court, a foreign state submits to the jurisdiction of the court in accordance with subsection (2) or (4), such submission is deemed to be a submission by the state to the jurisdiction of such one or more courts by which those proceedings may, in whole or in part, subsequently be considered on appeal or in the exercise of supervisory jurisdiction.

5. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state.

6. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

- (a) any death or personal injury, or
- (b) any damage to or loss of property that occurs in Canada.

7. (1) A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

- (a) an action *in rem* against a ship owned or operated by the state, or
- (b) an action *in personam* for enforcing a claim in connection with such a ship,

if, at the time the claim arose or the proceedings were commenced, the ship was being used or was intended for use in a commercial activity.

(2) A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to

- (a) an action *in rem* against any cargo owned by the state if, at the time the claim arose or the proceedings were commenced, the cargo and the ship carrying the cargo were being used or were intended for use in a commercial activity; or
- (b) an action *in personam* for enforcing a claim in connection with such cargo if, at the time the claim arose or the proceedings were commenced, the ship carrying the cargo was being used or was intended for use in a commercial activity.

(3) For the purposes of subsections (1) and (2), a ship or cargo owned by a foreign state includes any ship or cargo in the possession or control of the state and any ship or cargo in which the state claims an interest.

8. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to an interest of the state in property that arises by way of succession, gift or *bona vacantia*.

Procedure and relief

9. (1) Service of an originating document on a foreign state, other than on an agency of the foreign state, may be made

(a) in any manner agreed on by the state;

(b) in accordance with any international Convention to which the state is a party; or

(c) in the manner provided in subsection (2).

(2) For the purposes of paragraph (1)(c), anyone wishing to serve an originating document on a foreign state may deliver a copy of the document, in person or by registered mail, to the Under-Secretary of State for External Affairs or a person designated by him for the purpose, who shall transmit it to the foreign state.

(3) Service of an originating document on an agency of a foreign state may be made

(a) in any manner agreed on by the agency;

(b) in accordance with any international Convention applicable to the agency; or

(c) in accordance with any applicable rules of court.

(4) Where service on an agency of a foreign state cannot be made under subsection (3), a court may, by order, direct how service is to be made.

(5) Where service of an originating document is made in the manner provided in subsection (2), service of the document shall be deemed to have been made on the day that the Under-Secretary of State for External Affairs or a person designated by him pursuant to subsection (2) certifies to the relevant court that the copy of the document has been transmitted to the foreign state.

(6) Where, in any proceedings in a court, service of an originating document has been made on a foreign state in accordance with subsection (1), (3) or (4) and the state has failed to take, within the time limited therefor by the rules of the court or otherwise by law, the initial step required of a defendant or respondent in such proceedings in that court, no further step toward judgment may be taken in the proceedings except after the expiration of at least sixty days following the date of service of the originating document.

(7) Where judgment is signed against a foreign state in any proceedings in which the state has failed to take the initial step referred to in subsection (6), a certified copy of the judgment shall be served on the foreign state

(a) where service of the document that originated the proceedings was made on an agency of the foreign state, in such manner as is ordered by the court; or

(b) in any other case, in the manner specified in paragraph (1)(c) as though the judgment were an originating document.

(8) Where, by reason of subsection (7), a certified copy of a judgment is required to be served in the manner specified in paragraph (1)(c), subsections (2) and (5) apply with such modifications as the circumstances require.

(9) A foreign state may, within sixty days after service on it of a certified copy of a judgment pursuant to subsection (7), apply to have the judgment set aside.

10. (1) Subject to subsection (3), no relief by way of an injunction, specific performance or the recovery of land or other property may be granted against a foreign state unless the state consents in writing to such relief and, where the state so consents, the relief granted shall not be greater than that consented to by the state.

(2) Submission by a foreign state to the jurisdiction of a court is not consent for the purposes of subsection (1).

(3) This section does not apply to an agency of a foreign state.

11. (1) Subject to subsections (2) and (3), property of a foreign state that is located in Canada is immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture except where

(a) the state has, either explicitly or by implication, waived its immunity from attachment, execution, arrest, detention, seizure or forfeiture, unless the foreign state has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal;

(b) the property is used or is intended for a commercial activity; or

(c) the execution relates to a judgment establishing rights in property that has been acquired by succession or gift or in immovable property located in Canada.

(2) Subject to subsection (3), property of an agency of a foreign state is not immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture if the agency is not otherwise immune from the jurisdiction of a court by virtue of this Act.

(3) Property of a foreign state

(a) that is used or is intended to be used in connection with a military activity, and

(b) that is military in nature or is under the control of a military authority or defence agency

is immune from attachment and execution and, in the case of an action *in rem*, from arrest, detention, seizure and forfeiture.

(4) Subject to subsection (5), property of a foreign central bank or monetary authority that is held for its own account is immune from attachment and execution.

(5) The immunity conferred on property of a foreign central bank or monetary authority by subsection (4) does not apply where the bank, authority or its parent foreign government has explicitly waived the immunity, unless the bank, authority or government has withdrawn the waiver of immunity in accordance with any term thereof that permits such withdrawal.

12. (1) No penalty or fine may be imposed by a court against a foreign state for any failure or refusal by the state to produce any document or other information in the course of proceedings before the court.

(2) Subsection (1) does not apply to an agency of a foreign state.

General

13. (1) A certificate issued by the Secretary of State for External Affairs, or on his behalf by a person authorized by him, with respect to any of the following questions, namely,

- (a) whether a country is a foreign state for the purposes of this Act,
 - (b) whether a particular area or territory of a foreign state is a political subdivision of that state, or
 - (c) whether a person or persons are to be regarded as the head or government of a foreign state or of a political subdivision of the foreign state,
- is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to that question, without proof of the signature of the Secretary of State for External Affairs or other person or of that other person's authorization by the Secretary of State for External Affairs.

(2) A certificate issued by the Under-Secretary of State for External Affairs, or on his behalf by a person designated by him pursuant to subsection 9(2), with respect to service of an originating or other document on a foreign state in accordance with that subsection is admissible in evidence as conclusive proof of any matter stated in the certificate with respect to such service, without proof of the signature of the Under-Secretary of State for External Affairs or other person or of that other person's authorization by the Under-Secretary of State for External Affairs.

14. The Governor in Council may, on the recommendation of the Secretary of State for External Affairs, by order restrict or extend any immunity or privileges under this Act in relation to a foreign state as follows:

- (a) restrict the immunity or privileges where, in the opinion of the Governor in Council, the immunity or privileges exceed those accorded by the law of that state; and
- (b) extend the immunity or privileges where, in the opinion of the Governor in Council, the immunity or privileges are less than those required by any treaty, convention or other international agreement to which that state and Canada are parties.

15. Where, in any proceeding or other matter to which a provision of this Act and a provision of the *Visiting Forces Act* or the *Diplomatic and Consular Privileges and Immunities Act* apply, there is a conflict between such provisions, the provision of this Act ceases to apply in such proceeding or other matter to the extent of the conflict.

16. Except to the extent required to give effect to this Act, nothing in this Act shall be construed or applied so as to negate or affect any rules of a court, including rules of a court relating to service of a document out of the jurisdiction of the court.

17. This Act does not apply to criminal proceedings or proceedings in the nature of criminal proceedings.

Commencement

18. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

E. CHILE⁵

ANALYSIS OF LEGISLATIVE PRINCIPLES

The principle governing the normative practice of the Chilean State is based on broad and unrestricted recognition of the jurisdictional immunity of foreign States. Its legislative bodies emphasize the general precepts of international law on the subject.

a.1. The Government of Chile, in its capacity as a Member of the United Nations, has already recognized and respects the first principle set out in Article 2 of the Charter, paragraph 1 of which provides that: "The Organization is based on the principle of the sovereign equality of all its Members".

The same Article provides that the United Nations is not authorized "to intervene in matters which are essentially within the domestic jurisdiction of any state", and that the Members are not required "to submit such matters to settlement under the present Charter".

a.2. The Chilean State also observes the principles set out in the Charter of the Organization of American States, among which are the following: Article 3. "(b) International order consists essentially of respect for the personality, sovereignty, and independence of States, and the faithful fulfillment of obligations derived from treaties and other sources of international law".

In article 9, the same Charter adds that: "States are juridically equal, enjoy equal rights and equal capacity to exercise these rights, and have equal duties. . .".

a.3. A third instrument that may be mentioned is the Code of Private International Law, also known as the Bustamante Code, which was signed at Havana on 20 February 1928, ratified on 14 June 1933, promulgated as a law of the Republic by Decree No. 374 of the Ministry of Foreign Affairs on 10 April 1934, and published in the *Diario Oficial* on 25 April 1934.

Book IV, which relates to International Law of Procedure, provides, in article 314, that "The law of each contracting State determines the competence of courts, as well as their organization, the forms of procedure and of execution of judgments, and the appeals from their decisions".

In article 333, the same Code provides that "The judges and courts of each contracting State shall be incompetent to take cognizance of civil or commercial cases to which the other contracting States or their heads are defendant parties, if the action is a personal one, except in case of express submission or of counterclaims".

With respect to real actions which may be exercised, article 334 of the Code in question lays down that: "In the same case and with the same exception, they shall be incompetent when real actions are exercised, if the contracting State or its head has acted on the case as such and in its public character, when the provisions of the last paragraph of Article 318 shall be applied". Article 318 provides, in this respect, that: "The submission in real or mixed actions involving real property shall not be possible if the law where the property is situated forbids it".

⁵ Analysis of relevant legislative principles in Chile regarding the jurisdictional immunities of States and their property was transmitted by that Government to the Secretariat.

Article 335, on the other hand, stipulates that: "If the foreign contracting State or its head has acted as an individual or private person, the judges or courts shall be competent to take cognizance of the cases where real or mixed actions are brought, if such competence belongs to them in respect to foreign individuals in conformity with this Code".

Finally, article 336 of the Code states that: "The rule of the preceding articles shall be applicable to universal causes (*juicios universales*, e.g., distribution of a bankrupt's or decedent's effects), whatever the character in which the contracting foreign State or its head intervenes in them".

a.4. Another legislative instrument to which Chilean courts are subject in regard to the immunity from jurisdiction of foreign States is the Vienna Convention on Diplomatic Relations signed on 18 April 1961, which was promulgated as a law of the Republic by Supreme Decree No. 666 of 9 November 1967 and published in the *Diario Oficial* of 4 March 1968.

In article 22, the aforementioned Convention provides that:

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

"2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

"3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution".

a.5. Recently, the Government of Chile provided, in article 9 of Decree Law No. 2,349 of 13 October 1978, published in *Diario Oficial* of 28 October 1978, that "any foreign State and its organs, institutions and enterprises may apply in Chile for immunity from jurisdiction or execution, as the case may be, on the same terms, to the same extent and with the same exceptions as its own legislation grants to the State of Chile or to its organs, institutions and enterprises".

F. COLOMBIA⁶

CODE OF CIVIL PROCEDURE

Article 336. Execution against public entities. Execution shall not be levied against the nation. Where the penalties referred to in article 335 were imposed on a department, intendancy, commissariat or municipality, the entity in question shall be allowed six months for payment; in the meantime, execution shall not be levied against it and the period specified in the said article shall not apply.

The period of six months specified in the preceding paragraph shall be reckoned from the date of the final judgement or order for restitution *in genere*; where, however, an appeal was lodged against the judgement or order, it shall begin to run from

⁶ Transmitted to the Secretariat by that Government.

the date of the final judgement of the higher court ordering compliance with the said judgement or order.

Judgements and awards

Article 693. Effects of foreign judgements. Judgements rendered and other court orders of a similar nature made in a foreign country in adversary or non-contentious proceedings shall have in Colombia the force accorded to them under existing treaties with that country or, in the absence of such treaties, the force which judgements rendered in Colombia are recognized as having in that country.

The provisions of the preceding paragraph shall apply to arbitral awards made abroad.

Article 694. Requirements. In order for the foreign judgement or award to have effect in Colombia, it must meet the following requirements:

1. That it does not relate to real rights in property which was in Colombian territory at the time of institution of the proceedings in which the judgement was rendered;
2. That it does not conflict with Colombian laws or other provisions of public policy, other than procedural provisions;
3. That it is a final judgement in accordance with the law of the country of origin and is submitted in the form of a duly authenticated and legalized copy;
4. That the subject-matter of the judgement is not within the exclusive competence of the Colombian courts;
5. That there are in Colombia no pending proceedings or enforceable judgements of Colombian courts on the same subject-matter;
6. That, if the judgement was rendered in adversary proceedings, the requirement that the defendant shall be duly summoned and given a hearing was fulfilled in accordance with the law of the country of origin; the foregoing shall be presumed on the basis of the final judgement;
7. The requirement of an *exequatur* must be fulfilled.

G. CZECHOSLOVAKIA⁷

SECTION 47 OF THE ACT CONCERNING PRIVATE INTERNATIONAL LAW AND THE RULES OF PROCEDURE RELATING THERETO

Section 47. Exclusion from the jurisdiction of Czechoslovak courts and notarial offices

(1) Foreign States and persons who under international treaties or other rules of international law or special Czechoslovak legal regulations enjoy immunity in the Czechoslovak Socialist Republic shall not be subject to the jurisdiction of Czechoslovak courts and notarial offices.

⁷ Transmitted to the Secretariat by that Government.

(2) The provision of paragraph 1 shall also apply to the service of documents, summoning of the aforesaid persons as witnesses, execution of decisions or other procedural acts.

(3) However, Czechoslovak courts and notarial offices shall have jurisdiction, if:

(a) the subject of the proceedings is real property of the States and persons listed in paragraph 1, which is located in the Czechoslovak Socialist Republic, or their rights relating to such real property belonging to other persons, as well as their rights arising from their tenancy of such real property, unless the subject of the proceedings is the payment of rent,

(b) the subject of the proceedings is an inheritance in which the persons listed in paragraph 1 appear outside their official duties,

(c) the subject of the proceedings concerns the pursuit of a profession or commercial activity which the persons listed in paragraph 1 carry out outside their official duties,

(d) the foreign State or the persons listed in paragraph 1 voluntarily submit to their jurisdiction.

(4) Service in the cases listed in paragraph 3 shall be done through the Ministry of Foreign Affairs. If service cannot thus be realized, the court shall appoint a trustee for accepting documents or, if necessary, for protecting the absentee's rights.

H. GERMAN DEMOCRATIC REPUBLIC⁸

1. CIVIL CODE OF THE GERMAN DEMOCRATIC REPUBLIC OF 19 JUNE 1975

"Article 20

"Protection of the Socialist Property

"(1) Socialist property is inviolable. It enjoys the special protection of the socialist State.

"(2) It is the duty of all citizens and enterprises to protect the socialist property.

"(3) The acquisition of or transition from the sector of socialist property to personal property of objects which are the basis of the economic activities of the enterprises is inadmissible. Nationally-owned property may neither be mortgaged, attached nor charged. Exceptions must be regulated by law."

2. CIVIL PROCEDURE CODE OF 19 JUNE 1975

(a) *Recognition of Decisions*

Article 193

(1) Final decisions of courts of other States are recognized in the German Democratic Republic under the condition of reciprocity.

⁸ Transmitted to the Secretariat by that Government.

(2) Recognition is excluded if

1. the provisions on the exclusive jurisdiction of the courts of the German Democratic Republic have not been observed;
2. the jurisdiction of the court of another State has been established in contradiction to an agreement, valid under the law of the German Democratic Republic, conferring jurisdiction to a court or an arbitration;
3. the losing party has not been heard by the court because of lacking service or other breaches of procedural rules;
4. a final decision by a court of the German Democratic Republic exists on the same claim between the same parties;
5. the decision contradicts the basic principles of the political and legal system of the German Democratic Republic or might impair its sovereignty, security or other material interests.

(3) If the claim is litigant between the same parties before the courts of the German Democratic Republic, a decision on recognition cannot be taken before the conclusion of the litigation.

(b) *Declaration of Enforceability**Article 195*

(1) Enforcement of court decisions of other States in civil, family and labour matters takes place if they have been declared to be enforceable.

(2) The declaration of enforceability is issued on the creditor's motion.

(3) For the decision on the motion that county court is competent in the circuit of which the debtor has his domicile, abode or seat. Otherwise that county court is competent in the circuit of which the debtor owns assets.

(4) The district court is competent to issue the declaration of enforceability of decisions which are to be recognized and implemented in the German Democratic Republic on the basis of international binding agreements.

Article 196

(1) The motion for a declaration of enforceability has to comprise a copy of the decision to be enforced and its certified translation into German. The copy must contain a notice that the decision cannot be contested by way of an ordinary legal remedy.

(2) Within the proceedings on the motion the only issue is to ensure that the conditions of article 193 are fulfilled.

(3) A hearing can be dispensed with if neither the creditor nor the debtor apply for it. The motion shall be served on the debtor together with the invitation to comment. At the same time he shall be notified that a hearing may be dispensed with unless he expressly asks for it.

(4) The decision on the motion is taken in the form of an order.

Article 197

Decisions on costs and orders determining costs which have been issued on the basis of a decision to be recognized according to article 193, may be declared en-

forceable even if they have been issued outside the verdict. To proceedings on the motion for a declaration of enforceability apply articles 195 and 196.

Article 198

(1) Arbitration awards issued in other States and decisions on costs and on the determination of costs related to them, which have become final and enforceable in the other State, shall be treated, for the purpose of recognition and enforceability, like court decisions of other States.

(2) The provisions on the enforceability of domestic arbitration awards shall be applied analogously. The setting aside of the arbitration award is replaced by the statement that the award is denied enforcement in the German Democratic Republic.

I. HUNGARY⁹

1. LAW-DECREE NO. 13 OF 1979 ON PRIVATE INTERNATIONAL LAW

(a) *State as subject of Law* (Section 17)

Section 17. (1) The legal relations of the Hungarian State covered by this Law-Decree shall be subject to Hungarian Law, except where

- (a) the State has expressly consented to the application of foreign law; or
- (b) the legal relations concern real property located in a foreign country, owned or intended to be acquired by the State, or
- (c) the legal relations concern participation in an economic organization in which there is a foreign interest.

(2) Paragraph (1) shall apply to foreign States only in case of reciprocity.

(b) *Exclusive jurisdiction*

Section 55. A Hungarian court of law or other public authority shall have exclusive jurisdiction in the case of . . . d/ an action against the Hungarian State, an organ of the State or an administrative body.

(c) *Precluded jurisdiction*

Section 56. 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;
- (b) an action against a foreign citizen acting in Hungary as a diplomatic agent or enjoying immunity from jurisdiction for any other reason where, by virtue of an international agreement or of reciprocity, no proceedings can be instituted against such person in Hungary;
- (c) an action relating to the granting, extending and termination of protection to industrial property in a foreign country;
- (d) matters in which the jurisdiction of a Hungarian court of law or other public authority is precluded by a separate provision of law.

⁹ Transmitted to the Secretariat by that Government.

Section 57. (1) 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.

(2) In case of a waiver of immunity the jurisdiction of the Hungarian court of law or other authority shall also extend to a counter-claim arising out of the same legal relation.

(3) A judgement given against a foreign party in such proceedings shall be enforceable only if the foreign State has also expressly waived the right to immunity from enforcement.

2. LAW-DECREE NO. 7 OF 1973 OF THE PRESIDENTIAL COUNCIL OF THE HUNGARIAN PEOPLE'S REPUBLIC ON PROCEDURE IN MATTERS OF DIPLOMATIC IMMUNITIES AND OTHER EXEMPTIONS

The Hungarian People's Republic accords immunities to foreign States and grants privileges and immunities to their diplomatic and other representatives in accordance with international law. International organizations and certain categories of their personnel likewise enjoy privileges and immunities. The purpose of privileges and immunities granted to individuals is not to accord them personal advantages but to provide for them as representatives of States or as persons otherwise acting on behalf of States facilities in the successful accomplishment of their mission and for international organizations in the smooth performance of their activities. The grant of privileges and immunities to persons entitled thereto shall not affect their obligation to observe the laws and regulations of the Hungarian People's Republic, and such persons shall be subject to the jurisdiction of their own State in respect of responsibility for violations of Hungarian legislation.

With a view to the uniform regulation of proceedings before the court or other authority in matters affecting foreign States, their diplomatic or other representatives, as well as international organizations and their personnel, the Presidential Council of the Hungarian People's Republic hereby issues the following Law-Decree:

Article 1. (1) Proceedings before the court or other authority shall be governed by this Law-Decree where:

- (a) a foreign State is involved in a civil or administrative action;
- (b) there is evidence that the person who is a party to a civil or administrative proceeding or is involved as defendant or a private prosecutor in a criminal case is entitled to diplomatic immunities or other exemptions under international law.

(2) This Law-Decree shall also be applicable to proceedings in labour disputes.

Article 2. (1) The court or other authority acting in cases referred to in Article 1 shall *ex officio* suspend the proceedings at any stage.

(2) The proceedings shall also be suspended by the court on the action of the Minister of Justice and by another authority on the action of its supervising body (hereinafter referred to jointly as the supervising body).

(3) The court or other authority shall notify the suspension of proceedings to the supervising body.

Article 3. (1) Without suspending the proceedings, the court or other authority shall notify the supervising body of its intention to take, during the proceedings, any measure or decision affecting a person referred to in Article 1 and involved in the case in a capacity other than that specified therein (e.g., witness).

(2) The court or other authority shall not take the measure or decision mentioned in para. (1) until the supervising body has communicated its views on the matter.

Article 4. If the person referred to in Article 1 is a private party to a criminal proceeding, the enforcement of civil-law claims shall be governed by Article 2.

Article 5. (1) On the basis of notification by the court or other authority the question of immunity shall be decided by the supervising body in concurrence with the Minister for Foreign Affairs, such decision to be binding on the court or other authority.

(2) If the supervising body has stated the existence of immunity, the court or other authority shall apply the provisions relating to the absence of jurisdiction in the case of Articles 1 and 4 and shall take no measure or decision in respect of the person mentioned in Article 3.

Article 6. (1) This Law-Decree shall enter into force on the day of its promulgation and its provisions shall also be applicable to pending cases.

(2) Act XVIII of 1937 on the Rules of Procedure concerning Extraterritoriality and Personal Immunity shall be superseded by this Law-Decree.

J. NORWAY

NATIONAL LEGISLATION OF 17 MARCH 1939¹⁰

§ 1. The fact that a vessel is owned or used by a foreign government, or that a vessel's cargo belongs to a foreign government, shall not—with the exemption of the cases mentioned in §§ 2 and 3—prevent proceedings being taken in this realm for claims arising out of the use of the vessel or the transport of the cargo—or the enforcement of such a claim in this realm or interim orders against the vessel or the cargo.

§ 2. Proceedings to collect claims as mentioned in § 1 may not be instituted in this realm when they relate to:

- (1) Men of war and other vessels which a foreign government owns or uses when at the time the claim arose they were used exclusively for government purposes of a public nature.
- (2) Cargo which belongs to a foreign government and is carried by a vessel as mentioned under 1.

¹⁰ The Royal Ministry of Foreign Affairs, *Compilation of Norwegian Laws, Etc.*, 1814-1953.

- (3) Cargo which belongs to a foreign government, and is carried in a merchantman for government purposes of a public nature, unless the claim relates to salvage general average or agreements regarding the cargo.

§ 3. Enforcements and interim orders relating to claims as mentioned in § 1 may not be executed within this realm when relating to:

- (1) Men of war and other vessels which are owned by or used by a foreign government or chartered by them exclusively on time or for a voyage, when the vessel is used exclusively for government purposes of a public nature.
- (2) Cargo which belongs to a foreign government and is carried in vessels as mentioned under 1 or by merchantmen for government purposes of a public nature.

In conjunction with an agreement with a foreign government, the King may decide that this procedure shall also apply to other vessels which are owned by or used by a foreign government, and to other cargo which belongs to the foreign government, when in time of war this government so demands.

§ 4. By agreement with a foreign government it may be decided that a certificate from the diplomatic representative of the foreign government shall be considered proof for treating vessels and cargo under the stipulations of § 3, 1st paragraph, 1 and 2, when a requisition is made for the annulment of enforcements or interim orders.

§ 5. This law will come into force on the day determined by the King.

K. PAKISTAN

STATE IMMUNITY ORDINANCE, 1981

Whereas it is expedient to amend and consolidate the law relating to the immunity of States from the jurisdiction of courts;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

1. *Short title, extend and commencement.* (1) This Ordinance may be called the State Immunity Ordinance, 1981.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. *Interpretation.* In this Ordinance, "court" includes any tribunal or body exercising judicial functions.

Immunity from jurisdiction

3. *General immunity from jurisdiction.* (1) A State is immune from the jurisdiction of the courts of Pakistan except as hereinafter provided.

(2) A court shall give effect to the immunity conferred by subsection (1) even if the State does not appear in the proceedings in question.

Exceptions from immunity

4. *Submission to jurisdiction.* (1) A State is not immune as respects proceedings in respect of which it has submitted to jurisdiction.

(2) A State may submit to jurisdiction after the dispute giving rise to the proceedings has arisen or by a prior agreement; but a provision in any agreement that it is to be governed by the law of Pakistan shall not be deemed to be a submission.

Explanation. In this subsection and in subsection (3) of section 14, "agreement" includes a treaty, convention or other international agreement.

(3) A State shall be deemed to have submitted:

(a) if it has instituted the proceedings; or

(b) subject to subsection (4) it has intervened or taken any step in the proceedings.

(4) Clause (b) of subsection (3) does not apply:

(a) to intervention or any step taken for the purpose only of:

(i) claiming immunity; or

(ii) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it; or

(b) to any step taken by the State in ignorance of the facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(5) A submission in respect of any proceedings extends to any appeal but not to any counter claim unless it arises out of the same legal relationship or facts as the claim.

(6) The head of a State's diplomatic mission in Pakistan, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

5. *Commercial transactions and contracts to be performed in Pakistan.*

(1) A State is not immune as respects proceedings relating to:

(a) a commercial transaction entered into by the State; or

(b) an obligation of the State which by virtue of a contract, which may or may not be a commercial transaction, falls to be performed wholly or partly in Pakistan.

(2) Subsection (1) does not apply to a contract of employment between a State and an individual or if the parties to the dispute are States or have otherwise agreed in writing; and clause (b) of that subsection does not apply if the contract, not being a commercial transaction, was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section "commercial transaction" means:

- (a) any contract for the supply of goods or services;
- (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and
- (c) any other transaction or activity, whether of a commercial, industrial, financial, professional or other similar character, into which a State enters or in which it engages otherwise than in the exercise of its sovereign authority.

6. *Contracts of employment.* (1) A State is not immune as respects proceedings relating to a contract of employment between a State and an individual where the contract was made, or the work is to be wholly or partly performed, in Pakistan.

Explanation. In this subsection, "proceedings relating to a contract of employment" includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

(2) Subject to subsections (3) and (4), subsection (1) does not apply if:

- (a) at the time when the proceedings are brought the individual is a national of the State concerned; or
- (b) at the time when the contract was made the individual was neither a citizen of Pakistan nor habitually resident in Pakistan; or
- (c) the parties to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in Pakistan for commercial purposes, clauses (a) and (b) of subsection (2) do not exclude the application of subsection (1) unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Clause (c) of subsection (2) does not exclude the application of subsection (1) where the law of Pakistan requires the proceedings to be brought before a court in Pakistan.

7. *Ownership, possession and use of property.* (1) A State is not immune as respects proceedings relating to:

- (a) any interest of the State in, or its possession or use of, immovable property in Pakistan; or
- (b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects 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*.

(3) The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of such property any jurisdiction relating to the estates of deceased persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property:

- (a) which is in the possession of a State; or
- (b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it or, in a case referred to in clause (b), if the claim is neither admitted nor supported by *prima facie* evidence.

8. *Patents, trade marks, etc.* A State is not immune as respects proceedings relating to:

- (a) any patent, trade mark, design or plant breeders' rights belonging to the State which are registered or protected in Pakistan or for which the State has applied in Pakistan;
- (b) an alleged infringement by the State in Pakistan of any patent, trade mark, design, plant breeders' rights or copyright; or
- (c) the right to use a trade or business name in Pakistan.

9. *Membership of bodies corporate, etc.* (1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which:

- (a) has members other than States; and
- (b) is incorporated or constituted under the law of Pakistan or is controlled from, or has its principal place of business in, Pakistan,

being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) Subsection (1) does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

10. *Arbitrations.* (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of Pakistan which relate to the arbitration.

(2) Subsection (1) has effect subject to the provisions of the arbitration agreement and does not apply to an arbitration agreement between States.

11. *Ships used for commercial purposes.* (1) The succeeding provisions of this section apply to:

- (a) Admiralty proceedings; and
- (b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects:

- (a) an action in rem against a ship belonging to it; or
- (b) an action in personam for enforcing a claim in connection with such a ship;

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action in rem is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State clause (a)

of subsection (2) does not apply as respects the first-mentioned ship unless, at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects:

(a) an action in rem against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or

(b) an action in personam for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use as aforesaid.

(5) In the foregoing provisions references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4), subsection (2) applies to property other than a ship as it applies to a ship.

(6) Section 5 and 6 do not apply to proceedings of the nature mentioned in subsection (1) if the State in question is a party to the Brussels Convention and the claim relates to the operation of a ship owned or operated by that State, the carriage of cargo or passengers on any such ship or the carriage of cargo owned by that State on any other ship.

Explanation. In this section, "Brussels Convention" means the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships signed in Brussels on the tenth day of April, 1926, and "ship" includes hovercraft.

12. *Value added tax, customs-duties, etc.* A State is not immune as respects proceedings relating to its liability for:

(a) value added tax, any duty of customs or excise or any agricultural levy; or

(b) rates in respect of premises occupied by it for commercial purposes.

Procedure

13. *Service of process and judgment in default of appearance.* (1) Any notice or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Ministry of Foreign Affairs of Pakistan to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the notice or document is received at the latter Ministry.

(2) Any proceedings in court shall not commence earlier than two months after the date on which the notice or document is received as aforesaid.

(3) A State which appears in proceedings cannot thereafter object that subsection (1) has not been complied with as respects those proceedings.

(4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) has been complied with and that the time for the commencement of proceedings specified in subsection (2) has elapsed.

(5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Ministry of Foreign Affairs of Pakistan to the Ministry of Foreign Affairs of the State and the time for applying to have the judgment set aside shall begin to run two months after the date on which the copy of the judgment is received at the latter Ministry.

(6) Subsection (1) does not prevent the service of a notice or other document in any manner to which the State has agreed and subsections (2) and (4) do not apply where service is effected in any manner.

(7) The preceding provisions of this section shall not be construed as applying to proceedings against a State by way of a counter-claim or to an action in rem.

14. *Other procedural privileges.* (1) No penalty by way of committal to prison or fine shall be imposed in respect of any failure or refusal by or on behalf of a State to disclose or produce any document or information for the purposes of proceedings to which it is a party.

(2) Subject to subsections (3) and (4),

(a) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and

(b) the property of a State, not being property which is for the time being in use or intended for use for commercial purposes, shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale.

(3) Subsection (2) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent, which may be contained in a prior agreement, may be expressed so as to apply to a limited extent or generally:

Provided that a provision merely submitting to the jurisdiction of the courts shall not be deemed to be a consent for the purposes of this subsection.

(4) The head of a State's diplomatic mission in Pakistan; or the person for the time being performing his functions, shall be deemed to have authority to give on behalf of the State any such consent as is mentioned in subsection (3) and, for the purposes of clause (b) of subsection (2), his certificate that any property is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved.

Supplementary provisions

15. *States entitled to immunities and privileges.* (1) The immunities and privileges conferred by this Act apply to any foreign State; and references to State include references to:

- (a) the sovereign or other head of that State in his public capacity;
- (b) the government of that State; and
- (c) any department of that government,

but not to any entity, hereinafter referred to as a "separate entity", which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of Pakistan if, and only if:

- (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
- (b) the circumstances are such that a State would have been so immune.

(3) If a separate entity, not being a State's central bank or other monetary authority, submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2) of this section, the provisions of subsections (1) to (3) of section 14 shall apply to it in respect of those proceedings as if references to a State were references to that entity.

(4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of subsection (3) of section 14 as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity subsections (1) and (2) of that section shall apply to it as if references to a State were references to the bank or authority.

(5) Section 13 applies to proceedings against the constituent territories of a federal State; and the Federal Government may, by notification in the official Gazette, provide for the other provisions of this Ordinance to apply to any such constituent territory specified in the notification as they apply to a State.

(6) Where the provisions of this Ordinance do not apply to a constituent territory by virtue of a notification under subsection (5), the provisions of subsections (2) and (3) shall apply to it as if it were a separate entity.

16. *Restriction and extension of immunities and privileges.* (1) If it appears to the Federal Government that the immunities and privileges conferred by this Ordinance in relation to any State:

(a) exceed those accorded by the law of that State in relation to Pakistan; or

(b) are less than those required by an treaty, conventional or other international agreement to which that State and Pakistan are parties,

the Federal Government may, by notification in the official Gazette, provide for restricting or, as the case may be, extending those immunities and privileges to such extent as it may deem fit.

17. *Savings, etc.* (1) This Ordinance does not affect any immunity or privilege conferred by the Diplomatic and Consular Privileges Act, 1972 (IX of 1972); and

(a) section 6 does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention set out in the First Schedule to the said Act of 1972 or of the members of a consular post within the meaning of the Convention set out in the Second Schedule to that Act;

(b) subsection (1) of section 7 does not apply to proceedings concerning a State's title to, or its possession of, property used for the purposes of a diplomatic mission.

(2) This Ordinance does not apply to:

(a) proceedings relating to anything done by or in relation to the armed forces of a State while present in Pakistan;

(b) criminal proceedings; or

(c) proceedings relating to taxation other than those mentioned in section 12.

18. *Proof as to certain matters.* A certificate under the hand of a Secretary to the Government of Pakistan shall be conclusive evidence on any question:

(a) whether any country is a State for the purposes of this Ordinance, 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; or

(b) whether, and if so when, a document has been served or received as mentioned in subsection (1) or subsection (5) of section 13.

19. *Repeal.* Sections 86 and 87 of the Code of Civil Procedure, 1908 (Act V of 1908), are hereby repealed.

L. ROMANIA

DÉCRET N° 443 DU 20 NOVEMBRE 1972 CONCERNANT LA NAVIGATION CIVILE
(PUBLIÉ AU "BULLETIN OFFICIEL" DE LA REPUBLIQUE SOCIALISTE DE
ROUMANIE N° 132 DU 23 NOVEMBRE 1972)

...

Article 97. Pour exercer la surveillance et le contrôle de l'ordre de la navigation, les capitaineries des ports ont droit à la visite, à toute heure du jour et de la nuit, à bord de tout navire battant n'importe quel pavillon et se trouvant dans les ports ou en dehors des ports, dans les limites des eaux nationales.

...

Article 100. La capitainerie du port ne délivrera pas les documents de bord ni le permis de départ aux navires qui n'ont pas versé les droits, les éventuelles pénalités ou réparations dont ils sont tenus, conformément aux dispositions légales, à l'égard de la capitainerie du port ou d'autres organes portuaires.

Les navires pourront également être arrêtés dans les ports ou dans les rades, au cas où la capitainerie est saisie de réclamations en forme écrite contre lesdits navires provenant des organes de la municipalité, des organes judiciaires ou du parquet.

Article 101. Le départ des navires du port ou de la rade peut être aussi interdit au cas où la capitainerie du port reçoit des réclamations en forme écrite demandant la rétention du navire pour le non-paiement de la marchandise chargée, pour des prétentions dérivant des avaries communes, avaries, abordages, opérations d'assistance ou de sauvetage, non-paiement des dédommagements ou droits dus, et pour d'autres raisons similaires.

Aux cas prévus au présent article, la rétention du navire prend fin si le propriétaire verse une garantie suffisante par rapport au montant réclamé ou si, dans un délai de 24 heures à partir de la rétention du navire, celle-ci n'est pas confirmée par décision judiciaire instituant la saisie du navire.

...

Article 103. Les dispositions des articles 97, 100 et 101 ne s'appliquent pas à l'égard des navires militaires, ni aux navires battant pavillon étranger utilisés pour des services gouvernementaux.

M. SINGAPORE

STATE IMMUNITY ACT 1979

An Act to make provision with respect to proceedings in Singapore by or against other States, and for purposes connected therewith.

[26 October 1979]

PART I

PRELIMINARY

1. (1) This Act may be cited as the State Immunity Act, 1979.

(2) Subject to subsection (3), Part II does not apply to proceedings in respect of matters that occurred before the commencement of this Act and, in particular:

(a) subsection (2) of section 4 and subsection (3) of section 15 do not apply to any prior agreement; and

(b) sections 5, 6 and 11 do not apply to any transaction, contract or arbitration agreement, entered into before that date.

(3) Section 14 applies to any proceedings instituted after the commencement of this Act.

2. (1) In this Act:

“commercial purposes” means purposes of such transactions or activities as are mentioned in subsection (3) of section 5;

“court” includes any tribunal or body exercising judicial functions;

“ship” includes hovercraft.

(2) In this Act:

(a) references to an agreement in subsection (2) of section 4 and subsection (3) of section 15 include references to a treaty, convention or other international agreement;

(b) references to entry of appearance and judgments in default of appearance include references to any corresponding procedures.

PART II

PROCEEDINGS IN SINGAPORE BY OR AGAINST OTHER STATES

Immunity from jurisdiction

3. (1) A State is immune from the jurisdiction of the courts of Singapore except as provided in the following provisions of this Part.

(2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

Exceptions from immunity

4. (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of Singapore.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of Singapore is not to be regarded as a submission.

(3) A State is deemed to have submitted:

(a) if it has instituted the proceedings; or

(b) subject to subsections (4) and (5), if it has intervened or taken any step in the proceedings.

(4) Paragraph (b) of subsection (3) does not apply to intervention or any step taken for the purpose only of:

(a) claiming immunity; or

(b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) Paragraph (b) of subsection (3) does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(6) A submission in respect of any proceedings extends to any appeal but not to any counter-claim unless it arises out of the same legal relationship or facts as the claim.

(7) The head of a State's diplomatic mission in Singapore, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

5. (1) A State is not immune as respects proceedings relating to:

(a) a commercial transaction entered into by the State;

or

(b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in Singapore,

but this subsection does not apply to a contract of employment between a State and an individual.

(2) This section does not apply if the parties to the dispute are States or have otherwise agreed in writing; and paragraph (b) of subsection (1) does not apply if the contract (not being a commercial transaction) was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section "commercial transaction" means:

(a) any contract for the supply of goods or services;

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

(c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority.

6. (1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in Singapore or the work is to be wholly or partly performed in Singapore.

(2) Subject to subsections (3) and (4), this section does not apply if:

(a) at the time when the proceedings are brought the individual is a national of the State concerned;

(b) at the time when the contract was made the individual was neither a citizen of Singapore nor habitually resident in Singapore; or

(c) the parties to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in Singapore for commercial purposes, paragraphs (a) and (b) of subsection (2) do not exclude the application of this section unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Paragraph (c) of subsection (2) does not exclude the application of this section where the law of Singapore requires the proceedings to be brought before a court in Singapore.

(5) In this section "proceedings relating to a contract of employment" includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

7. A State is not immune as respects proceedings in respect of:

(a) death or personal injury; or

(b) damage to or loss of tangible property,

caused by an act or omission in Singapore.

8. (1) A State is not immune as respects proceedings relating to:

(a) any interest of the State in, or its possession or use of, immovable property in Singapore; or

(b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects 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*.

(3) The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of it any jurisdiction relating to the estates of deceased persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property:

(a) which is in the possession or control of a State; or

(b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it or, in a case within paragraph (b), if the claim is neither admitted nor supported by *prima facie* evidence.

9. A State is not immune as respects proceedings relating to:

(a) any patent, trade-mark or design belonging to the State and registered or protected in Singapore or for which the State has applied in Singapore;

(b) an alleged infringement by the State in Singapore of any patent, trade-mark, design or copyright; or

(c) the right to use a trade or business name in Singapore.

10. (1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which:

(a) has members other than States; and

(b) is incorporated or constituted under the law of Singapore or is controlled from or has its principal place of business in Singapore,

being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) This Section does not apply, if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

11. (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts in Singapore which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

12. (1) This section applies to:

(a) Admiralty proceedings; and

(b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects:

(a) an action *in rem* against a ship belonging to that State; or

(b) an action *in personam* for enforcing a claim in connection with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action *in rem* is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State, paragraph (a) of subsection (2) does not apply as respects the first-mentioned ship unless, at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects:

(a) an action *in rem* against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or

(b) an action *in personam* for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use as aforesaid.

(5) In the foregoing provisions references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4), subsection (2) applies to property other than a ship as it applies to a ship.

13. A State is not immune as respects proceedings relating to its liability for:

- (a) any customs duty or excise duty; or
- (b) any tax in respect of premises occupied by it for commercial purposes.

Procedure

14. (1) Any writ or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Ministry of Foreign Affairs, Singapore, to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the writ or document is received at the Ministry.

(2) Any time for entering an appearance (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the writ or document is received as aforesaid.

(3) A State which appears in proceedings cannot thereafter object that subsection (1) has not been complied with in the case of those proceedings.

(4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) has been complied with and that the time for entering an appearance as extended by subsection (2) has expired.

(5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Ministry of Foreign Affairs, Singapore, to the Ministry of Foreign Affairs of that State and any time for applying to have the judgment set aside (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the copy of the judgment is received at the Ministry.

(6) Subsection (1) does not prevent the service of a writ or other document in any manner to which the State has agreed and subsections (2) and (4) do not apply where service is effected in any such manner.

(7) This section shall not be construed as applying to proceedings against a State by way of counter-claim or to an action *in rem*; and subsection (1) shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction.

15. (1) No penalty by way of committal or fine shall be imposed in respect of any failure or refusal by or on behalf of a State to disclose or produce any document or other information for the purposes of proceedings to which it is a party.

(2) Subject to subsections (3) and (4):

(a) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and

(b) the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action *in rem*, for its arrest, detention or sale.

(3) Subsection (2) does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which

may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

(4) Paragraph (b) of subsection (2) does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes.

(5) The head of a State's diplomatic mission in Singapore, or the person for the time being performing his functions, shall be deemed to have authority to give on behalf of the State any such consent as is mentioned in subsection (3) and, for the purposes of subsection (4), his certificate to the effect that any property is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved.

PART III

SUPPLEMENTARY PROVISIONS

16. (1) The immunities and privileges conferred by Part II apply to any foreign or commonwealth State other than Singapore; and references to a State include references to:

- (a) the sovereign or other head of that State in his public capacity;
- (b) the government of that State; and
- (c) any department of that government,

but not to any entity (hereinafter referred to as a separate entity) which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts in Singapore if, and only if:

- (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
- (b) the circumstances are such that a State would have been so immune.

(3) If a separate entity (not being a State's central bank or other monetary authority) submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2), subsections (1) to (4) of section 15 shall apply to it in respect of those proceedings as if references to a State were references to that entity.

(4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of subsection (4) of section 15 as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity subsections (1) to (3) of that section shall apply to it as if references to a State were references to the bank or authority.

(5) Section 14 applies to proceedings against the constituent territories of a federal State; and the President may by order provide for the other provisions of this Part to apply to any such constituent territory specified in the order as they apply to a State.

(6) Where the provisions of Part II do not apply to a constituent territory by virtue of any such order subsections (2) and (3) shall apply to it as if it were a separate entity.

17. If it appears to the President that the immunities and privileges conferred by Part II in relation to any State:

- (a) exceed those accorded by the law of that State in relation to Singapore; or
- (b) are less than those required by any treaty, convention or other international agreement to which that State and Singapore are parties.

the President may, by order, provide for restricting or, as the case may be, extending those immunities and privileges to such extent as appears to the President to be appropriate.

18. A certificate by or on behalf of the Minister for Foreign Affairs shall be conclusive evidence on any question:

(a) whether any country is a State for the purposes of Part II, 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, and if so when, a document has been served or received as mentioned in subsection (1) or (5) of section 14.

19. (1) Part II does not affect any immunity or privilege applicable in Singapore to diplomatic and consular agents, and subsection (1) of section 8 does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of a diplomatic mission.

(2) Part II does not apply to:

(a) proceedings relating to anything done by or in relation to the armed forces of a State while present in Singapore and, in particular, has effect subject to the Visiting Forces Act;

(b) criminal proceedings; and

(c) proceedings relating to taxation other than those mentioned in section 13.

N. SOUTH AFRICA

FOREIGN SOVEREIGN IMMUNITY ACT (1981)¹¹

Be it enacted by the State President and the House of Assembly of the Republic of South Africa, as follows:

1. (1) In this Act, unless the context otherwise indicates:

(i) "commercial purposes" means purposes of any commercial transaction as defined in section 4 (3);

¹¹ Transmitted to the Secretariat by that Government. The Act came into force on 6 October 1981.

- (ii) “consular post” means a consulate-general, consulate, consular agency, trade office or labour office;
- (iii) “Republic” includes the territorial waters of the Republic, as defined in section 2 of the Territorial Waters Act, 1963 (Act No. 87 of 1963);
- (iv) “separate entity” means an entity referred to in subsection (2) (i).

(2) Any reference in this Act to a foreign state shall in relation to any particular foreign state be construed as including a reference to:

- (a) the head of state of that foreign state, in his capacity as such head of state;
- (b) the government of that foreign state; and
- (c) any department of that government,

but not including a reference to:

- (i) any entity which is distinct from the executive organs of the government of that foreign state and capable of suing or being sued; or
- (ii) any territory forming a constituent part of a federal foreign state.

2. (1) A foreign state shall be immune from the jurisdiction of the courts of the Republic except as provided in this Act or in any proclamation issued thereunder.

(2) A court shall give effect to the immunity conferred by this section even though the foreign state does not appear in the proceedings in question.

(3) The provisions of this Act shall not be construed as subjecting any foreign state to the criminal jurisdiction of the courts of the Republic.

3. (1) A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings in respect of which the foreign state has expressly waived its immunity or is in terms of subsection (3) deemed to have waived its immunity.

(2) Waiver of immunity may be effected after the dispute which gave rise to the proceedings has arisen or by prior written agreement, but a provision in an agreement that it is to be governed by the law of the Republic shall not be regarded as a waiver.

(3) A foreign state shall be deemed to have waived its immunity:

(a) if it has instituted the proceedings; or

(b) subject to the provisions of subsection (4), if it has intervened or taken any step in the proceedings.

(4) Subsection (3) (b) shall not apply to intervention or any step taken for the purpose only of:

(a) claiming immunity; or

(b) asserting an interest in property in circumstances such that the foreign state would have been entitled to immunity if the proceedings had been brought against it.

(5) A waiver in respect of any proceedings shall apply to any appeal and to any counter-claim arising out of the same legal relationship or facts as the claim.

(6) The head of a foreign state’s diplomatic mission in the Republic, or the person for the time being performing his functions, shall be deemed to have author-

ity to waive on behalf of the foreign state its immunity in respect of any proceedings, and any person who has entered into a contract on behalf of and with the authority of a foreign state shall be deemed to have authority to waive on behalf of the foreign state its immunity in respect of proceedings arising out of the contract.

4. (1) A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to:

- (a) a commercial transaction entered into by the foreign state; or
- (b) an obligation of the foreign state which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the Republic.

(2) Subsection (1) shall not apply if the parties to the dispute are foreign states or have agreed in writing that the dispute shall be justiciable by the courts of a foreign state.

(3) In subsection (1) "commercial transaction" means:

- (a) any contract for the supply of services or goods;
- (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such loan or other transaction or of any other financial obligation; and

(c) any other transaction or activity of a commercial, industrial, financial, professional or other similar character into which a foreign state enters or in which it engages otherwise than in the exercise of sovereign authority,

but does not include a contract of employment between a foreign state and an individual.

5. (1) A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to a contract of employment between the foreign state and an individual if:

- (a) the contract was entered into in the Republic or the work is to be performed wholly or partly in the Republic; and
- (b) at the time when the contract was entered into the individual was a South African citizen or was ordinarily resident in the Republic; and
- (c) at the time when the proceedings are brought the individual is not a citizen of the foreign state.

(2) Subsection (1) shall not apply if:

- (a) the parties to the contract have agreed in writing that the dispute or any dispute relating to the contract shall be justiciable by the courts of a foreign state; or
- (b) the proceedings relate to the employment of the head of a diplomatic mission or any member of the diplomatic, administrative, technical or service staff of the mission or to the employment of the head of a consular post or any member of the consular, labour, trade, administrative, technical or service staff of the post.

6. A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to:

- (a) the death or injury of any person; or

(b) damage to or loss of tangible property, caused by an act or omission in the Republic.

7. (1) A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to:

(a) any interest of the foreign state in, or its possession or use of, immovable property in the Republic;

(b) any obligation of the foreign state arising out of its interest in, or its possession or use of, such property; or

(c) any interest of the foreign state in movable or immovable property, being an interest arising by way of succession, gift or *bona vacantia*.

(2) Subsection (1) shall not apply to proceedings relating to a foreign state's title to, or its use or possession of, property used for a diplomatic mission or a consular post.

8. A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to:

(a) any patent, trade-mark, design or plant breeder's right belonging to the foreign state and registered or protected in the Republic or for which the foreign state has applied in the Republic; or

(b) an alleged infringement by the foreign state in the Republic of any patent, trade-mark, design, plant breeder's right or copyright; or

(c) the right to use a trade or business name in the Republic.

9. (1) A foreign state which is a member of an association or other body (whether a juristic person or not), or a partnership, which:

(a) has members that are not foreign states; and

(b) is incorporated or constituted under the law of the Republic or is controlled from the Republic or has its principal place of business in the Republic,

shall not be immune from the jurisdiction of the courts of the Republic in proceedings which:

(i) relate to the foreign state's membership of the association, other body or partnership; and

(ii) arise between the foreign state and the association or other body or its other members or, as the case may be, between the foreign state and the other partners.

(2) Subsection (1) shall not apply if:

(a) in terms of an agreement in writing between the parties to the dispute; or

(b) in terms of the constitution or other instrument establishing or governing the association, other body or partnership in question,

the dispute is justiciable by the courts of a foreign state.

10. (1) A foreign state which has agreed in writing to submit a dispute which has arisen, or may rise, to arbitration, shall not be immune from the jurisdiction of the courts of the Republic in any proceedings which relate to the arbitration.

(2) Subsection (1) shall not apply if:

(a) the arbitration agreement provides that the proceedings shall be brought in the courts of a foreign state; or

(b) the parties to the arbitration agreement are foreign states.

11. (1) A foreign state shall not be immune from the admiralty jurisdiction of any court of the Republic in:

(a) an action *in rem* against a ship belonging to the foreign state; or

(b) an action *in personam* for enforcing a claim in connection with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(2) A foreign state shall not be immune from the admiralty jurisdiction of any court of the Republic in:

(a) an action *in rem* against any cargo belonging to the foreign state if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or

(b) an action *in personam* for enforcing a claim in connection with any such cargo if the ship carrying it was, at the time when the cause of action arose, in use or intended for use for commercial purposes.

(3) Any reference in this section to a ship or cargo belonging to a foreign state shall be construed as including a reference to a ship or cargo in the possession or control of a foreign state or in which a foreign state claims an interest, and, subject to the provisions of subsection (2), subsection (1) shall apply to property other than a ship as it applies to a ship.

12. A foreign state shall not be immune from the jurisdiction of the courts of the Republic in proceedings relating to the foreign state's liability for:

(a) sales tax or any customs or excise duty; or

(b) rates in respect of premises used by it for commercial purposes.

13. (1) Any process or other document required to be served for instituting proceedings against a foreign state shall be served by being transmitted through the Department of Foreign Affairs and Information of the Republic to the ministry of foreign affairs of the foreign state, and service shall be deemed to have been effected when the process or other document is received at that ministry.

(2) Any time prescribed by rules of court or otherwise for notice of intention to defend or oppose or entering an appearance shall begin to run two months after the date on which the process or document is received as aforesaid.

(3) A foreign state which appears in proceedings cannot thereafter object that subsection (1) has not been complied with in the case of those proceedings.

(4) No judgment in default of appearance shall be given against a foreign state except on proof that subsection (1) has been complied with and that the time for notice of intention to defend or oppose or entering an appearance as extended by subsection (2) has expired.

(5) A copy of any default judgment against a foreign state shall be transmitted through the Department of Foreign Affairs and Information of the Republic to the

ministry of foreign affairs of the foreign state, and any time prescribed by rules of court or otherwise for applying to have the judgment set aside shall begin to run two months after the date on which the copy of the judgment is received at that ministry.

(6) Subsection (1) shall not prevent the service of any process or other document in any manner to which the foreign state has agreed, and subsections (2) and (4) shall not apply where service is effected in any such manner.

(7) The preceding provisions of this section shall not be construed as applying to proceedings against a foreign state by way of counter-claim or to an action *in rem*, and subsection (1) shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction of the court.

14. (1) Subject to the provisions of subsections (2) and (3):

(a) relief shall not be given against a foreign state by way of interdict or order for specific performance or for the recovery of any movable or immovable property; and

(b) the property of a foreign state shall not be subject to any process for the enforcement of a judgment or an arbitration award or, in an action *in rem*, for its attachment or sale.

(2) Subsection (1) shall not prevent the giving of any relief or the issue of any process with the written consent of the foreign state concerned, and any such consent, which may be contained in a prior agreement, may be expressed so as to apply to a limited extent or generally, but a mere waiver of a foreign state's immunity from the jurisdiction of the courts of the Republic shall not be regarded as a consent for the purposes of this subsection.

(3) Subsection (1) (b) shall not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes.

15. (1) A separate entity shall be immune from the jurisdiction of the courts of the Republic only if:

(a) the proceedings relate to anything done by the separate entity in the exercise of sovereign authority; and

(b) the circumstances are such that a foreign state would have been so immune.

(2) If a separate entity, not being the central bank or other monetary authority of a foreign state, waives the immunity to which it is entitled by virtue of subsection (1) in respect of any proceedings, the provisions of section 14 shall apply to those proceedings as if references in those provisions to a foreign state were references to that separate entity.

(3) Property of the central bank or other monetary authority of a foreign state shall not be regarded for the purposes of subsection (3) of section 14 as in use or intended for use for commercial purposes, and where any such bank or authority is a separate entity the provisions of subsections (1) and (2) of that section shall apply to it as if references in those provisions to a foreign state were references to that bank or authority.

16. If it appears to the State President that the immunities and privileges conferred by this Act in relation to a particular foreign state:

(a) exceed or are less than those accorded by the law of that foreign state in relation to the Republic; or

(b) are less than those required by any treaty, convention or other international agreement to which that foreign state and the Republic are parties,

he may by proclamation in the *Gazette* restrict or, as the case may be, extend those immunities and privileges to such extent as appears to him to be appropriate.

17. A certificate by or on behalf of the Minister of Foreign Affairs and Information shall be conclusive evidence on any question:

(a) whether any foreign country is a state for the purposes of this Act;

(b) whether any territory is a constituent part of a federal foreign state for the said purposes;

(c) as to the person or persons to be regarded for the said purposes as the head of state or government of a foreign state;

(d) whether, and if so when, any document has been served or received as contemplated in section 13 (1) or (5).

18. This Act shall be called the Foreign States Immunities Act, 1981, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

O. UNION OF SOVIET SOCIALIST REPUBLICS¹²

ARTICLE 61 OF THE FUNDAMENTALS OF CIVIL PROCEDURE OF THE USSR AND THE UNION REPUBLICS

Fundamentals of Civil Procedure of the USSR and the Union Republics (Approved in the Law of the Union of Soviet Socialist Republics dated 8 December 1961, "Proceedings of the Supreme Soviet of the USSR", 1961, No. 50, p. 526)

"Article 61. Suits against foreign States. Diplomatic immunity.

"The filing of a suit against a foreign State, the collection of a claim against it and the attachment of the property located in the USSR may be permitted only with the consent of the competent organs of the State concerned.

"Diplomatic representatives of foreign States accredited in the USSR and other persons specified in relevant laws and international agreements shall be subject to the jurisdiction of the Soviet court in civil cases only within the limits determined by the rules of international law or in agreements with the States concerned.

"Where a foreign State does not accord to the Soviet State, its representatives or its property the same judicial immunity which, in accordance with the present Article, is accorded to foreign States, their representatives or their property in the USSR, the Council of Ministers of the USSR or other authorized organ may impose retaliatory measures in respect of that State, its representatives or that property of that State".

¹² Transmitted to the Secretariat by that Government.

P. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

1. STATE IMMUNITY ACT 1978

CHAPTER 33

An Act to make new provision with respect to proceedings in the United Kingdom by or against other States; to provide for the effect of judgments given against the United Kingdom in the courts of States parties to the European Convention on State Immunity; to make new provision with respect to the immunities and privileges of heads of State; and for connected purposes.

[20th July 1978]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

PROCEEDINGS IN UNITED KINGDOM BY OR AGAINST OTHER STATES

Immunity from jurisdiction

1. (1) A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.

(2) A court shall give effect to the immunity conferred by this section even though the State does not appear in the proceedings in question.

Exceptions from immunity

2. (1) A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.

(2) A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of the United Kingdom is not to be regarded as a submission.

(3) A State is deemed to have submitted:

(a) if it has instituted the proceedings; or

(b) subject to subsections (4) and (5) below, if it has intervened or taken any step in the proceedings.

(4) Subsection (3)(b) above does not apply to intervention or any step taken for the purpose only of:

(a) claiming immunity; or

(b) asserting an interest in property in circumstances such that the State would have been entitled to immunity if the proceedings had been brought against it.

(5) Subsection (3)(b) above does not apply to any step taken by the State in ignorance of facts entitling it to immunity if those facts could not reasonably have been ascertained and immunity is claimed as soon as reasonably practicable.

(6) A submission in respect of any proceedings extends to any appeal but not

to any counter-claim unless it arises out of the same legal relationship or facts as the claim.

(7) The head of a State's diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to submit on behalf of the State in respect of any proceedings; and any person who has entered into a contract on behalf of and with the authority of a State shall be deemed to have authority to submit on its behalf in respect of proceedings arising out of the contract.

3. (1) A State is not immune as respects proceedings relating to:

(a) a commercial transaction entered into by the State; or

(b) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom.

(2) This section does not apply if the parties to the dispute are States or have otherwise agreed in writing; and subsection (1)(b) above does not apply if the contract (not being a commercial transaction) was made in the territory of the State concerned and the obligation in question is governed by its administrative law.

(3) In this section "commercial transaction" means:

(a) any contract for the supply of goods or services;

(b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and

(c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority;

but neither paragraph of subsection (1) above applies to a contract of employment between a State and an individual.

4. (1) A State is not immune as respects proceedings relating to a contract of employment between the State and an individual where the contract was made in the United Kingdom or the work is to be wholly or partly performed there.

(2) Subject to subsections (3) and (4) below, this section does not apply if:

(a) at the time when the proceedings are brought the individual is a national of the State concerned; or

(b) at the time when the contract was made the individual was neither a national of the United Kingdom nor habitually resident there; or

(c) the parties to the contract have otherwise agreed in writing.

(3) Where the work is for an office, agency or establishment maintained by the State in the United Kingdom for commercial purposes, subsection (2)(a) and (b) above do not exclude the application of this section unless the individual was, at the time when the contract was made, habitually resident in that State.

(4) Subsection (2)(c) above does not exclude the application of this section where the law of the United Kingdom requires the proceedings to be brought before a court of the United Kingdom.

(5) In subsection (2)(b) above "national of the United Kingdom" means a cit-

izen of the United Kingdom and Colonies, a person who is a British subject by virtue of section 2, 13 or 16 of the British Nationality Act 1948 or by virtue of the British Nationality Act 1965, a British protected person within the meaning of the said Act of 1948 or a citizen of Southern Rhodesia.

(6) In this section "proceedings relating to a contract of employment" includes proceedings between the parties to such a contract in respect of any statutory rights or duties to which they are entitled or subject as employer or employee.

5. A State is not immune as respects proceedings in respect of:

- (a) death or personal injury; or
- (b) damage to or loss of tangible property,

caused by an act or omission in the United Kingdom.

6. (1) A State is not immune as respects proceedings relating to:

- (a) any interest of the State in, or its possession or use of, immovable property in the United Kingdom; or
- (b) any obligation of the State arising out of its interest in, or its possession or use of, any such property.

(2) A State is not immune as respects 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.

(3) The fact that a State has or claims an interest in any property shall not preclude any court from exercising in respect of it any jurisdiction relating to the estates of deceased persons or persons of unsound mind or to insolvency, the winding up of companies or the administration of trusts.

(4) A court may entertain proceedings against a person other than a State notwithstanding that the proceedings relate to property:

- (a) which is in the possession or control of a State; or
- (b) in which a State claims an interest,

if the State would not have been immune had the proceedings been brought against it or, in a case within paragraph (b) above, if the claim is neither admitted nor supported by prima facie evidence.

7. A State is not immune as respects proceedings relating to:

- (a) any patent, trade-mark, design or plant breeders' rights belonging to the State and registered or protected in the United Kingdom or for which the State has applied in the United Kingdom;
- (b) an alleged infringement by the State in the United Kingdom of any patent, trade-mark, design, plant breeders' rights or copyright; or
- (c) the right to use a trade or business name in the United Kingdom.

8. (1) A State is not immune as respects proceedings relating to its membership of a body corporate, an unincorporated body or a partnership which:

- (a) has members other than States; and
- (b) is incorporated or constituted under the law of the United Kingdom or is controlled from or has its principal place of business in the United Kingdom,

being proceedings arising between the State and the body or its other members or, as the case may be, between the State and the other partners.

(2) This section does not apply if provision to the contrary has been made by an agreement in writing between the parties to the dispute or by the constitution or other instrument establishing or regulating the body or partnership in question.

9. (1) Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration.

(2) This section has effect subject to any contrary provision in the arbitration agreement and does not apply to any arbitration agreement between States.

10. (1) This section applies to:

(a) Admiralty proceedings; and

(b) proceedings on any claim which could be made the subject of Admiralty proceedings.

(2) A State is not immune as respects:

(a) an action in rem against a ship belonging to that State; or

(b) an action in personam for enforcing a claim in connection with such a ship,

if, at the time when the cause of action arose, the ship was in use or intended for use for commercial purposes.

(3) Where an action in rem is brought against a ship belonging to a State for enforcing a claim in connection with another ship belonging to that State, subsection (2)(a) above does not apply as respects the first-mentioned ship unless, at the time when the cause of action relating to the other ship arose, both ships were in use or intended for use for commercial purposes.

(4) A State is not immune as respects:

(a) an action in rem against a cargo belonging to that State if both the cargo and the ship carrying it were, at the time when the cause of action arose, in use or intended for use for commercial purposes; or

(b) an action in personam for enforcing a claim in connection with such a cargo if the ship carrying it was then in use or intended for use as aforesaid.

(5) In the foregoing provisions references to a ship or cargo belonging to a State include references to a ship or cargo in its possession or control or in which it claims an interest; and, subject to subsection (4) above, subsection (2) above applies to property other than a ship as it applies to a ship.

(6) Sections 3 to 5 above do not apply to proceedings of the kind described in subsection (1) above if the State in question is a party to the Brussels Convention and the claim relates to the operation of a ship owned or operated by that State, the carriage of cargo or passengers on any such ship or the carriage of cargo owned by that State on any other ship.

11. A State is not immune as respects proceedings relating to its liability for:

(a) value added tax, any duty of customs or excise or any agricultural levy; or

(b) rates in respect of premises occupied by it for commercial purposes.

Procedure

12. (1) Any writ or other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State and service shall be deemed to have been effected when the writ or document is received at the Ministry.

(2) Any time for entering an appearance (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the writ or document is received as aforesaid.

(3) A State which appears in proceedings cannot thereafter object that subsection (1) above has not been complied with in the case of those proceedings.

(4) No judgment in default of appearance shall be given against a State except on proof that subsection (1) above has been complied with and that the time for entering an appearance as extended by subsection (2) above has expired.

(5) A copy of any judgment given against a State in default of appearance shall be transmitted through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of that State and any time for applying to have the judgment set aside (whether prescribed by rules of court or otherwise) shall begin to run two months after the date on which the copy of the judgment is received at the Ministry.

(6) Subsection (1) above does not prevent the service of a writ or other document in any manner to which the State has agreed and subsections (2) and (4) above do not apply where service is effected in any such manner.

(7) This section shall not be construed as applying to proceedings against a State by way of counter-claim or to an action in rem; and subsection (1) above shall not be construed as affecting any rules of court whereby leave is required for the service of process outside the jurisdiction.

13. (1) No penalty by way of committal or fine shall be imposed in respect of any failure or refusal by or on behalf of a State to disclose or produce any document or other information for the purposes of proceedings to which it is a party.

(2) Subject to subsections (3) and (4) below:

(a) relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property; and

(b) the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale.

(3) Subsection (2) above does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.

(4) Subsection (2)(b) above does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes; but, in a case not falling within section 10 above, this subsection applies to property of a State party to the European Convention on State Immunity only if

(a) the process is for enforcing a judgment which is final within the meaning of section 18(1)(b) below and the State has made a declaration under Article 24 of the Convention; or

(b) the process is for enforcing an arbitration award.

(5) The head of a State's diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to give on behalf of the State any such consent as is mentioned in subsection (3) above and, for the purposes of subsection (4) above, his certificate to the effect that any property is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved.

(6) In the application of this section to Scotland:

(a) the reference to "injunction" shall be construed as a reference to "interdict";

(b) for paragraph (b) of subsection (2) above there shall be substituted the following paragraph:

"(b) the property of a State shall not be subject to any diligence for enforcing a judgment or order of a court or a decree arbitral or, in an action in rem, to arrestment or sale"; and

(c) any reference to "process" shall be construed as a reference to "diligence", any reference to "the issue of any process" as a reference to "the doing of diligence" and the reference in subsection (4)(b) above to "an arbitration award" as a reference to "a decree arbitral".

Supplementary provisions

14. (1) The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to:

- (a) the sovereign or other head of that State in his public capacity;
- (b) the government of that State; and
- (c) any department of that government,

but not to any entity (hereafter referred to as a "separate entity") which is distinct from the executive organs of the government of the State and capable of suing or being sued.

(2) A separate entity is immune from the jurisdiction of the courts of the United Kingdom if, and only if:

(a) the proceedings relate to anything done by it in the exercise of sovereign authority; and

(b) the circumstances are such that a State (or, in the case of proceedings to which section 10 above applies, a State which is not a party to the Brussels Convention) would have been so immune.

(3) If a separate entity (not being a State's central bank or other monetary authority) submits to the jurisdiction in respect of proceedings in the case of which it is entitled to immunity by virtue of subsection (2) above, subsections (1) to (4) of sec-

tion 13 above shall apply to it in respect of those procedures as if references to a State were references to that entity.

(4) Property of a State's central bank or other monetary authority shall not be regarded for the purposes of subsection (4) of section 13 above as in use or intended for use for commercial purposes; and where any such bank or authority is a separate entity subsections (1) to (3) of that section shall apply to it as if references to a State were references to the bank or authority.

(5) Section 12 above applies to proceedings against the constituent territories of a federal State; and Her Majesty may by Order in Council provide for the other provisions of this Part of this Act to apply to any such constituent territory specified in the Order as they apply to a State.

(6) Where the provisions of this Part of this Act do not apply to a constituent territory by virtue of any such Order subsections (2) and (3) above shall apply to it as if it were a separate entity.

15. (1) If it appears to Her Majesty that the immunities and privileges conferred by this Part of this Act in relation to any State:

(a) exceed those accorded by the law of that State in relation to the United Kingdom; or

(b) are less than those required by any treaty, convention or other international agreement to which that State and the United Kingdom are parties,

Her Majesty may by Order in Council provide for restricting or, as the case may be, extending those immunities and privileges to such extent as appears to Her Majesty to be appropriate.

(2) Any statutory instrument containing an Order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

16. (1) This Part of this Act does not affect any immunity or privilege conferred by the Diplomatic Privileges Act 1964 or the Consular Relations Act 1968; and:

(a) section 4 above does not apply to proceedings concerning the employment of the members of a mission within the meaning of the Convention scheduled to the said Act of 1964 or of the members of a consular post within the meaning of the Convention scheduled to the said Act of 1968;

(b) section 6(1) above does not apply to proceedings concerning a State's title to or its possession of property used for the purposes of a diplomatic mission.

(2) This Part of this Act does not apply to proceedings relating to anything done by or in relation to the armed forces of a State while present in the United Kingdom and, in particular, has effect subject to the Visiting Forces Act 1952.

(3) This Part of this Act does not apply to proceedings to which section 17(6) of the Nuclear Installations Act 1965 applies.

(4) This Part of this Act does not apply to criminal proceedings.

(5) This Part of this Act does not apply to any proceedings relating to taxation other than those mentioned in section 11 above.

17. (1) In this Part of this Act:

“the Brussels Convention” means the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships, signed in Brussels on 10th April 1926;

“commercial purposes” means purposes of such transactions or activities as are mentioned in section 3(3) above;

“ship” includes hovercraft.

(2) In sections 2(2) and 13(3) above references to an agreement include references to a treaty, convention or other international agreement.

(3) For the purposes of sections 3 to 8 above the territory of the United Kingdom shall be deemed to include any dependent territory in respect of which the United Kingdom is a party to the European Convention on State Immunity.

(4) In sections 3(1), 4(1), 5 and 16(2) above references to the United Kingdom include references to its territorial waters and any area designated under section 1(7) of the Continental Shelf Act 1964.

(5) In relation to Scotland in this Part of this Act “action in rem” means such an action only in relation to Admiralty proceedings.

PART II

JUDGMENTS AGAINST UNITED KINGDOM IN CONVENTION STATES

18. (1) This section applies to any judgment given against the United Kingdom by a court in another State party to the European Convention on State Immunity, being a judgment:

(a) given in proceedings in which the United Kingdom was not entitled to immunity by virtue of provisions corresponding to those of sections 2 to 11 above; and

(b) which is final, that is to say, which is not or is no longer subject to appeal or, if given in default of appearance, liable to be set aside.

(2) Subject to section 19 below, a judgment to which this section applies shall be recognised in any court in the United Kingdom as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in such proceedings.

(3) Subsection (2) above (but not section 19 below) shall have effect also in relation to any settlement entered into by the United Kingdom before a court in another State party to the Convention which under the law of that State is treated as equivalent to a judgment.

(4) In this section references to a court in a State party to the Convention include references to a court in any territory in respect of which it is a party.

19. (1) A court need not give effect to section 18 above in the case of a judgment:

(a) if to do so would be manifestly contrary to public policy or if any party to the proceedings in which the judgment was given had no adequate opportunity to present his case; or

(b) if the judgment was given without provisions corresponding to those of section 12 above having been complied with and the United Kingdom has not entered an appearance or applied to have the judgment set aside.

- (2) A court need not give effect to section 18 above in the case of a judgment:
- (a) if proceedings between the same parties, based on the same facts and having the same purpose:
- (i) are pending before a court in the United Kingdom and were the first to be instituted; or
 - (ii) are pending before a court in another State party to the Convention, were the first to be instituted and may result in a judgment to which that section will apply; or
- (b) if the result of the judgment is inconsistent with the result of another judgment given in proceedings between the same parties and:
- (i) the other judgment is by a court in the United Kingdom and either those proceedings were the first to be instituted or the judgment of that court was given before the first-mentioned judgment became final within the meaning of subsection (1)(b) of section 18 above; or
 - (ii) the other judgment is by a court in another State party to the Convention and that section has already become applicable to it.
- (3) Where the judgment was given against the United Kingdom in proceedings in respect of which the United Kingdom was not entitled to immunity by virtue of a provision corresponding to section 6(2) above, a court need not give effect to section 18 above in respect of the judgment if the court that gave the judgment:
- (a) would not have had jurisdiction in the matter if it had applied rules of jurisdiction corresponding to those applicable to such matters in the United Kingdom; or
- (b) applied a law other than that indicated by the United Kingdom rules of private international law and would have reached a different conclusion if it had applied the law so indicated.
- (4) In subsection (2) above references to a court in the United Kingdom include references to a court in any dependent territory in respect of which the United Kingdom is a party to the Convention, and references to a court in another State party to the Convention include references to a court in any territory in respect of which it is a party.

PART III

MISCELLANEOUS AND SUPPLEMENTARY

20. (1) Subject to the provisions of this section and to any necessary modifications, the Diplomatic Privileges Act 1964 shall apply to:
- (a) a sovereign or other head of State;
 - (b) members of his family forming part of his household; and
 - (c) his private servants,
- as it applies to the head of a diplomatic mission, to members of his family forming part of his household and to his private servants.
- (2) The immunities and privileges conferred by virtue of subsection (1)(a) and (b) above shall not be subject to the restrictions by reference to nationality or residence mentioned in Article 37(1) or 38 in Schedule 1 to the said Act of 1964.

(3) Subject to any direction to the contrary by the Secretary of State, a person on whom immunities and privileges are conferred by virtue of subsection (1) above shall be entitled to the exemption conferred by section 8(3) of the Immigration Act 1971.

(4) Except as respects value added tax and duties of customs or excise, this section does not affect any question whether a person is exempt from, or immune as respects proceedings relating to, taxation.

(5) This section applies to the sovereign or other head of any State on which immunities and privileges are conferred by Part I of this Act and is without prejudice to the application of that Part to any such sovereign or head of State in his public capacity.

21. A certificate by or on behalf of the Secretary of State shall be conclusive evidence on any question:

(a) whether any country is a State for the purposes of Part I 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 had 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.

22. (1) In this Act "court" includes any tribunal or body exercising judicial functions; and references to the courts or law of the United Kingdom include references to the courts or law of any part of the United Kingdom.

(2) In this Act references to entry of appearance and judgments in default of appearance include references to any corresponding procedures.

(3) In this Act "the European Convention on State Immunity" means the Convention of that name signed in Basle on 16th May 1972.

(4) In this Act "dependent territory" means:

(a) any of the Channel Islands;

(b) the Isle of Man;

(c) any colony other than one for whose external relations a country other than the United Kingdom is responsible; or

(d) any country or territory outside Her Majesty's dominions in which Her Majesty has jurisdiction in right of the government of the United Kingdom.

(5) Any power conferred by this Act to make an Order in Council includes power to vary or revoke a previous Order.

23. (1) This Act may be cited as the State Immunity Act 1978.

(2) Section 13 of the Administration of Justice (Miscellaneous Provisions) Act 1938 and section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act

1940 (which become unnecessary in consequence of Part I of this Act) are hereby repealed.

(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.

(5) This Act shall come into force on such date as may be specified by an order made by the Lord Chancellor by statutory instrument.

(6) This Act extends to Northern Ireland.

(7) Her Majesty may by Order in Council extend any of the provisions of this Act, with or without modification, to any dependent territory.

2. THE STATE IMMUNITY (MERCHANT SHIPPING) (UNION OF SOVIET SOCIALIST REPUBLICS) ORDER 1978

<i>Made</i>	24th October 1978
<i>Laid before Parliament</i>	1st November 1978
<i>Coming into Operation</i>	22nd November 1978

At the Court at Buckingham Palace, the 24th day of October 1978

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 15(1) of the State Immunity Act 1978, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the State Immunity (Merchant Shipping) (Union of Soviet Socialist Republics) Order 1978 and shall come into operation on 22nd November 1978.

2. The Interpretation Act 1889(b) shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

3. Notwithstanding section 13(4) of the State Immunity Act of 1978, no application shall be made for the issue of a warrant of arrest in an action *in rem* against a ship owned by the Union of Soviet Socialist Republics or cargo aboard it until notice has been served on a consular officer of that State in London or in the port at which it is intended to cause the ship to be arrested.

4. Notwithstanding section 13(4) of the State Immunity Act 1978, no ship or cargo owned by the Union of Soviet Socialist Republics shall be subject to any

process for the enforcement of a judgment or for the enforcement of terms of settlement filed with and taking effect as a court order.

N. E. LEIGH
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order preserves the immunity from execution of ships and cargoes of the Union of Soviet Socialist Republics which would otherwise have been lost by virtue of section 13(4) of the State Immunity Act 1978, and requires notice to be given to a Soviet consul before a warrant of arrest is issued in an action *in rem* against a ship of that State or cargo on it. It gives effect to Articles 2 and 3 of the Protocol to the Treaty on Merchant Navigation between the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics which was signed at London on 3rd April 1968.

3. INTERNATIONAL IMMUNITIES AND PRIVILEGES. THE STATE
IMMUNITY ACT 1978 (COMMENCEMENT) ORDER 1978

Made

26th October 1978

The Lord Chancellor, in exercise of the powers conferred on him by section 23(5) of the State Immunity Act 1978, hereby makes the following Order:

1. This Order may be cited as the State Immunity Act 1978 (Commencement) Order 1978.

2. The State Immunity Act 1978 shall come into operation on 22nd November 1978.

Dated 26th October 1978.

ELWYN-JONES, C.

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order brings into operation the State Immunity Act 1978 which restricts the immunity which Sovereign States can claim from the jurisdiction of civil courts and tribunals in the United Kingdom and regulates the personal immunities of Heads of State by equating them to those conferred on an Ambassador.

4. INTERNATIONAL IMMUNITIES AND PRIVILEGES. THE STATE IMMUNITY
(FEDERAL STATES) ORDER 1979

Made

11th April 1979

Coming into Operation

2nd May 1979

At the Court at Windsor Castle, the 11th day of April 1979

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 14(5) of the

State Immunity Act 1978, or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the State Immunity (Federal States) Order 1979 and shall come into operation on 2nd May 1979.
2. The provisions of Part I of the State Immunity Act 1978 shall apply to the following constituent territories of the Republic of Austria as they apply to a State: Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna.

N. E. LEIGH
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order applies the provisions of Part I of the State Immunity Act 1978 to the constituent territories of the Republic of Austria, in accordance with paragraph 2 of Article 28 of the European Convention on State Immunity (Cmd. 5081).

5. INTERNATIONAL IMMUNITIES AND PRIVILEGES. THE STATE IMMUNITY
(OVERSEAS TERRITORIES) ORDER 1979

<i>Made</i>	11th April 1979
<i>Coming into Operation</i>	2nd May 1979

At the Court at Windsor Castle, the 11th day of April 1979

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 23(7) of the State Immunity Act 1978 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the State Immunity (Overseas Territories) Order 1979 and shall come into operation on 2nd May 1979.
2. The provisions of the State Immunity Act 1978 shall extend to each of the territories specified in Schedule 1 to this Order with the adaptations and modifications specified in Schedule 2 to this Order.
3. For the purpose of construing the said Act as so extended as part of the law of a territory to which it extends "the Territory" means that territory and "any Territory" means any of the Territories to which it extends.

N. E. LEIGH
Clerk of the Privy Council

SCHEDULE 1

Belize	Montserrat
British Antarctic Territory	Pitcairn, Henderson, Ducie and Oeno Islands
British Virgin Islands	Sovereign Base Areas of Akrotiri and Dhekelia
Cayman Islands	Turks and Caicos Islands
Falkland Islands and Dependencies	
Gilbert Islands	
Hong Kong	

SCHEDULE 2

1. (a) For the references to the United Kingdom in sections 1(1), 2(1), 9(1), 14(2), 16(2), 18(1) and (3) and 19(1) and (3) there shall be substituted a reference to the Territory.

(b) To the reference to the United Kingdom in section 2(2) there shall be added a reference to any Territory.

2. Save as is provided otherwise, any reference to any enactment of the United Kingdom shall be construed as a reference to that enactment as applying or extended to the Territory.

3. In section 12(1) any writ or document required to be served and in section 12(5) a copy of any judgment given against a State in default of appearance shall be transmitted to the Governor of the territory (or in the case of Hong Kong to the Chief Secretary and in the case of the Sovereign Base areas of Akrotiri and Dhekelia to the Administrator) and by him to the Foreign and Commonwealth Office for onward transmission to the State concerned.

4. (a) In the application of section 16(1) to Belize, British Antarctic Territory, Cayman Islands, Falkland Islands and Dependencies and Hong Kong:

(i) for the words and numerals "Diplomatic Privileges Act 1964 or the Consular Relations Act 1968" there shall be substituted the words and numerals:

"Diplomatic Privileges and Consular Conventions Ordinance (Chapter 176) or the Consular Relations Ordinance 1972" in the case of Belize;

"Diplomatic Privileges (Extension) Ordinance (Chapter 20)" in the case of British Antarctic Territory and Falkland Islands;

"Consular Relations and Diplomatic Immunities and Privileges Law (Revised)" in the case of the Cayman Islands;

"International Organisations and Diplomatic Privileges Ordinance (Chapter 190) or the Consular Relations Ordinance (Chapter 259)" in the case of Hong Kong; and

(ii) for the words and numerals "said Act of 1964" and "said Act of 1968" there shall be substituted respectively the words and numerals "Diplomatic Privileges Act 1964" and "Consular Relations Act 1968";

(b) In the application of section 20 to Belize, British Antarctic Territory, Cayman Islands, Falkland Islands and Dependencies and Hong Kong:

- (i) in subsection (1) for the words and numerals "Diplomatic Privileges Act 1964" there shall be substituted the words and numerals:
- "Diplomatic Privileges and Consular Conventions Ordinance (Chapter 176)" in the case of Belize;
- "Diplomatic Privileges (Extension) Ordinance (Chapter 20)" in the case of British Antarctic Territory and Falkland Islands;
- "Consular Relations and Diplomatic Immunities and Privileges Law (Revised)" in the case of the Cayman Islands;
- "International Organisations and Diplomatic Privileges Ordinance (Chapter 190)" in the case of Hong Kong; and
- (ii) in subsection (2) for the words and numerals "said Act of 1964" there shall be substituted the words and numerals "Diplomatic Privileges Act 1964 and to any corresponding restrictions in the law of the Territory".
5. For the reference in section 20(3) to "the exemption conferred by section 8(3) of the Immigration Act 1971" there shall be substituted a reference to "exemption from immigration restrictions and regulations".
6. For section 23(5) there shall be substituted the following subsection:
- "(5) This Act shall come into force on the coming into operation of the Order in Council extending it to the Territory."

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order extends to the dependent territories specified in Schedule 1 the provisions of the State Immunity Act 1978, with minor adaptations set out in Schedule 2. This will enable effect to be given to the provisions of the European Convention on State Immunity (Cmd. 5081), the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships (Cmd. 5672) and the Supplementary Protocol thereto (Cmd. 5673).

Q. UNITED STATES OF AMERICA

1. THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976, PUBLIC LAW 94-583, 90 STAT. 2891

AN ACT

To define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Sovereign Immunities Act of 1976".

Sec. 2. (a) That chapter 85 of title 28, United States Code, is amended by inserting immediately before section 1331 the following new section:

“§ 1330. *Actions against foreign states*

“(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief *in personam* with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

“(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

“(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title.”.

(b) By inserting in the chapter analysis of that chapter before:

“1331. Federal question; amount in controversy; costs.”

the following new item:

“1330. Action against foreign states”.

Sec. 3. That section 1332 of title 28, United States Code, is amended by striking subsections (a) (2) and (3) and substituting in their place the following:

“(2) citizens of a State and citizens or subjects of a foreign state;

“(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

“(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.”.

Sec. 4. (a) That title 28, United States Code, is amended by inserting after chapter 95 the following new chapter:

“CHAPTER 97. JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

“Sec.

“1602. Findings and declaration of purpose.

“1603. Definitions.

“1604. Immunity of a foreign state from jurisdiction.

“1605. General exceptions to the jurisdictional immunity of a foreign state.

“1606. Extent of liability.

“1607. Counterclaims.

“1608. Service; time to answer default.

“1609. Immunity from attachment and execution of property of a foreign state.

“1610. Exceptions to the immunity from attachment or execution.

“1611. Certain types of property immune from execution.

“§ 1602. *Findings and declaration of purpose*

“The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would

serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

“§ 1603. *Definitions*

“For purposes of this chapter:

“(a) A ‘foreign state’, except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

“(b) An ‘agency or instrumentality of a foreign state’ means any entity:

“(1) which is a separate legal person, corporate or otherwise, and

“(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

“(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (d) of this title, nor created under the laws of any third country.

“(c) The ‘United States’ includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

“(d) A ‘commercial activity’ means either a regular course of commercial conduct or a particular commercial transaction or act. 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.

“(e) A ‘commercial activity carried on in the United States by a foreign state’ means commercial activity carried on by such state and having substantial contact with the United States.

“§ 1604. *Immunity of a foreign state from jurisdiction*

“Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

“§ 1605. *General exceptions to the jurisdictional immunity of a foreign state*

“(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case:

“(1) 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;

“(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United

States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

“(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

“(4) 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; or

“(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to:

“(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

“(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

“(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That:

“(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit—unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

“(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b) (1) of this section or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state’s interest.

Whenever notice is delivered under subsection (b) (1) of this section, the maritime lien shall thereafter be deemed to be an *in personam* claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the

vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

“§ 1606. *Extent of liability*

“As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent 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; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

“§ 1607. *Counterclaims*

“In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim:

“(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

“(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

“(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

“§ 1608. *Service; time to answer; default*

“(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

“(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

“(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

“(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

“(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary

shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a 'notice of suit' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

“(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

“(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

“(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

“(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state:

“(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

“(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

“(C) as directed by order of the court consistent with the law of the place where service is to be made.

“(c) Service shall be deemed to have been made:

“(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

“(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

“(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

“(e) No judgment by default shall be entered by a court of the United States or of a State 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 to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

“§ 1609. *Immunity from attachment and execution of property of a foreign state*

“Subject to existing international agreements to which the United States is a

party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

“§ 1610. *Exceptions to the immunity from attachment or execution*

“(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if:

“(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

“(2) the property is or was used for the commercial activity upon which the claim is based, or

“(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

“(4) the execution relates to a judgment establishing rights in property:

“(A) which is acquired by succession or gift, or

“(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

“(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

“(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if:

“(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

“(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a) (2), (3), or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

“(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

“(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if:

“(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

“(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

“§ 1611. *Certain types of property immune from execution*

“(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

“(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if:

“(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

“(2) the property is, or is intended to be, used in connection with a military activity and

“(A) is of a military character, or

“(B) is under the control of a military authority or defense agency.”

(b) That the analysis of “Part IV. Jurisdiction and Venue” of title 28, United States Code, is amended by inserting after:

“95. Customs Court.”,

the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

Sec. 5. That section 1391 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

“(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought:

“(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

“(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

“(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

“(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.”

Sec. 6. That section 1441 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

“(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.”

Sec. 7. If any provision of this Act or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Sec. 8. This Act shall take effect ninety days after the date of its enactment.

Approved October 21, 1976.

2. INCOME OF FOREIGN GOVERNMENTS (DEPARTMENT OF THE TREASURY)¹³

NOTICE OF PROPOSED RULEMAKING

Agency: Internal Revenue Service, Treasury.

Action: Notice of proposed rulemaking.

Summary: This document contains proposed regulations relating to the taxation of income of foreign governments. The regulations would provide guidance for taxing foreign sovereigns on their income from commercial activities within the United States.

Dates: Written comments and requests for a public hearing must be delivered or mailed on or before October 16, 1978. The amendments relating to the taxation of income earned by integral parts of a foreign sovereign are proposed to be effective for all taxable years. The amendments relating to the taxation of income earned by controlled entities are proposed to be effective with respect to income earned after [the date these regulations are filed at the *Federal Register* as a Treasury decision].

Address: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-1060-75), Washington, D.C. 20224.

For further information contact:

Anthony Bonanno of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3829, not a toll-free call.

¹³ Federal Register, vol. 43, No. 156, August 11, 1978, pp. 36111-36114.

SUPPLEMENTARY INFORMATION

Background

This document contains proposed amendments to the income tax regulations (26 CFR Part 1) under section 892 of the Internal Revenue Code of 1954. These amendments are proposed to clarify the regulations and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Section 892 provides in general that income from sources within the United States received by a foreign government is not to be included in gross income and is to be exempt from taxation. Neither section 892 nor the current regulations defines the term "foreign government." For purposes of section 892, a foreign government consists only of integral parts or controlled entities of a foreign sovereign. The proposed regulations generally provide that income derived by a foreign sovereign from commercial activities in the United States is not income of a foreign government for purposes of the exemption provided in section 892.

The proposed regulations provide definitions for the terms "integral part" of a foreign sovereign and "controlled entity" of a foreign sovereign. The proposed regulations further provide guidelines for the determination of what constitutes commercial activities within the United States.

In most respects, the requirements relating to controlled entities parallel the requirements of Rev. Rul. 75-298, relating to certain organizations created by foreign governments that are eligible for the section 892 exemption. The regulations generally required that a controlled entity must be organized under the laws of the foreign sovereign by which it is owned.

The proposed regulations also provide that the income from the *de minimis* commercial activities of a controlled entity is subject to tax.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the *Federal Register*.

DRAFTING INFORMATION

The principal author of these proposed regulations was Anthony Bonanno of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.892 [Removed]

Paragraph 1. Section 1.892 is deleted.

Paragraph 2. Section 1.892-1 is amended as follows:

1. The title to § 1.892-1 is revised.
2. Paragraph (a) is deleted and in lieu thereof new paragraphs (a) through (l) are added.
3. Paragraphs (b) (1) and (2) are redesignated as paragraphs (a) and (b) respectively of a new § 1.892-2. The amended § 1.892-1 and new § 1.892-2 read as follows:

§ 1.892-1 Income of foreign governments.

(a) *Manner of taxing.* (1) *In general.* Section 892 provides, in general, that the income of a foreign government from sources within the United States is excluded from gross income and exempt from taxation. Paragraph (b) of this section describes the extent to which either an entity constituting the governing authority of a foreign sovereign or an organization created by a foreign sovereign will be treated as a foreign government for purposes of section 892. To the extent that income is derived by such an entity or organization of a foreign sovereign which does not qualify as a foreign government as defined in paragraph (b) of this section, a foreign sovereign shall be subject to tax on the income in accordance with the rules of this section.

(2) *Foreign government exemption.* The income derived by an integral part or controlled entity of a foreign sovereign from investments in the United States in stocks, bonds, or other domestic securities, owned by such integral part or controlled entity, or from interests on deposits in banks in the United States of moneys belonging to such integral part or controlled entity, or from any other source within the United States, shall generally be treated as income of a foreign government, shall not be included in gross income, and shall be exempt from taxation.

(3) *Foreign government exemption not available.* (1) Amounts derived by a foreign sovereign from commercial activities in the United States is not income of a foreign government for purposes of the exemption from taxation provided in section 892. Such amounts shall be included in the income of the foreign sovereign and taxed under section 881 or 882 (whichever is applicable).

(ii) Income derived by an organization created by a foreign sovereign that does not qualify as a controlled entity of the foreign sovereign under paragraph (b)(3) of this section shall be included in the gross income of the organization and taxed under the provisions of section 11, 1201, 881, or 882 (whichever is applicable).

(iii) Income derived by a controlled entity from commercial activities in the United States even though on a *de minimis* basis does not qualify as income of the foreign government and shall be included in gross income of the foreign sovereign and taxed under the provisions of section 11, 1201, 881, or 882 (whichever is applicable).

(b) *Foreign government defined.* (1) *Classes of a foreign government.* For purposes of this section, a foreign government consists only of integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* An "integral part" of a foreign sovereign is any person, body of persons, organization, agency, bureau, instrumentality, or body, however designated, that constitutes the governing authority of a foreign country that is not engaged in commercial activities in the United States. The net earnings of the governing authority must be credited to its own account or to other accounts of the for-

eign sovereign, with no portion inuring to the benefit of any private person. It does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

(3) *Controlled entity.* A “controlled entity” of a foreign sovereign is any organization (including a foreign central bank of issue qualifying under section 895) created by a foreign sovereign that is not an integral part and that meets the following requirements:

- (i) It is wholly owned and controlled by a foreign sovereign;
- (ii) It is organized under the laws of the foreign sovereign by which it is owned or, if the law of a State of the United States requires, organized under the law of that State;
- (iii) Its net earnings are credited either to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person;
- (iv) Its assets must vest in the foreign sovereign upon dissolution; and
- (v) It does not engage in the United States in commercial activities on more than a *de minimis* basis.

The term “controlled entity” does not include any entity wholly owned and controlled by more than one foreign sovereign. Thus, a foreign financial organization organized and wholly owned and controlled by several foreign sovereigns to foster economic, financial and technical cooperation between various foreign nations is not a controlled entity for purposes of this section.

(4) *Political subdivision and transnational entity.* The rules that apply to a foreign sovereign apply to political subdivisions of a foreign country and to transnational entities. A transnational entity is an organization created by several foreign sovereigns that has broad powers over external and domestic affairs of all participating foreign countries stretching beyond economic subjects to those concerning legal relations and transcending state or political boundaries.

(c) *Characterization of activities.* (1) *Commercial activities.* For purposes of this section, “commercial activities” generally include activities that constitute a “trade or business within the United States” within the meaning of section 864(b). “Commercial activities” also include activities customarily attributable to and carried on by private enterprise for profit in the United States. The commercial character of an activity is determined by reference to a course of conduct or particular transaction rather than by reference to its purpose. The fact that in some instances Federal, State, or local governments of the United States also are engaged in the same or similar activity does not mean that the activity will not be considered commercial. For example, even though the U.S. Government is engaged in the activity of operating a railroad, operating a railroad is a commercial activity.

(2) *Net lease.* Obtaining and holding “net leases” on property is considered to be a commercial activity.

(3) *Certain activities that are not commercial.* The following activities, among others, are not commercial activities:

- (i) Investments in the United States in stocks, bonds, or other domestic securities, or the holding of deposits in banks in the United States which produce interest

or dividends not effectively connected with the conduct of a trade or business within the United States;

(ii) Performances and exhibitions within the United States devoted to the promotion of the arts by cultural organizations; and

(iii) The mere purchase of goods in the United States for use of the foreign sovereign.

(d) *Other operative sections.* In determining whether income is from sources within or without the United States, see sections 861 through 863 and the regulations thereunder. For purposes of determining whether income is effectively connected with a trade or business, see section 864(c) and the regulations thereunder. For rules with respect to withholding of tax at source under section 1442 in the case of foreign corporations, see § 1.1441-1.

(e) *Accounting rules.* (1) *Choice of method of accounting.* A foreign sovereign may choose any method of accounting permissible under section 446(c) and the regulations thereunder. Changes in the method of accounting are subject to the requirements of section 446(e) and the regulations thereunder.

(2) *Choice of annual accounting period.* A foreign sovereign may choose its annual accounting period in accordance with section 441 and the regulations thereunder. Changes in the annual accounting period are subject to the requirements of section 442 and the regulations thereunder.

(f) *Filing of returns.* A return with respect to income taxes under subtitle A shall be made by a foreign sovereign, political subdivision, or a transnational entity with respect to all amounts included in gross income under paragraph (a)(3)(i) of this section, and by every controlled entity subject to tax under paragraph (a)(3)(iii) of this section. See section 6012 for other persons required to make returns of income.

(g) *Relationship of section 892 to certain code sections.* (1) *Section 893.* The term "foreign government" referred to in section 893 (relating to the exemption of compensation of employees of foreign governments) shall have the same meaning as given such term in paragraph (b) of this section.

(2) *Section 895.* A foreign central bank of issue (as defined in § 1.895-1(b)) that fails to qualify for the exemption from tax provided by this section may nevertheless be exempt from tax on the items of income described in section 895. Thus, a foreign central bank of issue that is not wholly owned and controlled by a foreign sovereign, although not qualifying for exemption under this section, may be exempt under section 895 on the items of income enumerated in such section.

(3) *Section 1442.* No withholding is required under section 1442 and § 1.1442-1 in the case of income exempt from taxation and not included in gross income under paragraph (a)(2) of this section.

(h) *Illustrations.* This section may be illustrated by the following examples:

Example (1). For 1979, the Office of the President of a foreign country invests funds from the foreign sovereign's treasury in publicly traded stocks, bonds, and other domestic securities, and interest bearing bank deposits, the income from which is not effectively connected with the conduct of a trade or business within the United States. The Office of the President has also purchased in 1979 a hotel in the United States which is operated by a U.S. agent. Income from its investments that do not constitute commercial activities under paragraph (c)(3)(i) of this section is ex-

empt from taxation pursuant to paragraph (a)(2) of this section. Income derived from the operation of the hotel is subject to tax pursuant to paragraph (a)(3)(i) of this section since the Office of the President is engaged in commercial activities in the United States by reason of its hotel operations. By reason of section 864(c)(3) and § 1.864-4(b), this income is effectively connected for 1979 with the conduct of a trade or business within the United States by the Office of the President and is taxed under section 882.

Example (2). Pursuant to a general agreement on contracts, exchanges, and cooperation between the United States and a foreign country, the State Concert Bureau, a bureau of a foreign sovereign, entered into four separate contracts to be performed in 1979 with a U.S. corporation engaged in the business of promoting international cultural programs. Under the first contract, the State Concert Bureau agreed to send a singer and accompanists on tour for 3 weeks in the United States. Under the second contract, the Bureau agreed to send a conductor on tour for 4 weeks in the United States. Under the third contract, the Bureau agreed to send the State ensemble of folk dance on tour for 5 weeks in the United States. Under the fourth contract, the Bureau agreed to send the State ballet and opera troupe on tour for 6 weeks in the United States. The State Concert Bureau received approximately \$80,000 from the performances and from the sale of programs from the tours. During 1979, the income received by the State Concert Bureau is exempt from taxation under paragraph (a)(2) of this section since the activities of the Bureau are not commercial activities under paragraph (c)(3)(ii) of this section. Depending on the facts and circumstances, the State Concert Bureau may be engaged in commercial activities where it receives income from sources within the United States derived from the tour groups' radio or television appearances, motion picture productions, or record and tape recordings.

Example (3). (a) In 1979 a foreign sovereign organizes under its law M Corp. as a wholly owned government corporation under the auspices of the Ministry of Industry and Tourism. M Corp. engages in the purchasing in the United States of grain and other agricultural goods for free distribution to the poor in its foreign country. In addition, when purchases of grain exceed demand in its foreign country (which rarely occurs), M Corp. engages in the sale of the grain in the United States on a *de minimis* basis. M Corp. also engages in the trading of commodities futures through a resident broker. It does not have an office or other fixed place of business in the United States through which or by the direction of which the transactions in commodities futures are effected. The purchasing and trading activities of M Corp. are not commercial activities under paragraph (c) of this section. M Corp. is a controlled entity under paragraph (b)(3) of this section. Accordingly, the income from these activities derived by M Corp. from sources within the United States is exempt from tax under paragraph (a)(2) of this section. Any income derived by M Corp. from its sale of grain in the United States on a *de minimis* basis is not considered to be income of a foreign government and is subject to tax pursuant to paragraph (a)(3)(iii) of this section.

(b) The facts are the same as in example (3)(a), except that in 1979, M Corp. opens an office in Washington, D.C., through which transactions of selling commodities futures in the United States are effected. Since M is now considered to be engaged in a trade or business in the United States under section 864, these activities are commercial activities under paragraph (c) of this section. Since M engages in commercial activities on more than a *de minimis* basis, it is not a controlled entity. M is not entitled to the exemption from tax provided by section 892. Accordingly, M

Corp. is taxed under the applicable provisions of sections 881 and 882. In addition, under paragraph (g)(1) of this section, M Corp. is not a foreign government for purposes of section 893.

(i) *Effective date.* The provisions of this section relating to controlled entities are effective with respect to income derived after [the date these regulations are filed at the *Federal Register* as a Treasury decision].

§ 1.892-2 Income of international organizations.

- (a) Exempt from tax.
- (b) Income received prior to Presidential designation.

JEROME KURTZ
Commissioner of
Internal Revenue

R. YUGOSLAVIA¹⁴

1. EXCERPT FROM THE LAW ON LITIGIOUS PROCEDURE

Article 26

With reference to the competences of Yugoslav courts for instituting court proceedings against foreign nationals enjoying immunities in the Socialist Federal Republic of Yugoslavia and for instituting court proceedings against foreign States and international organizations, the provisions of international law are applicable.

In case of doubt as to the existence and the extent of the right of immunity, the explanation is rendered by the Federal Organ for Administration of Justice.

2. EXCERPT FROM THE LAW ON EXECUTIVE PROCEDURE

Article 13

The property of a foreign State in the Socialist Federal Republic of Yugoslavia is not subject to execution nor attachment, without the prior consent of the Federal Organ for Administration of Justice, except in case that a foreign State explicitly agreed to the execution, that is, attachment.

3. EXCERPT FROM THE LAW ON THE GENERAL ADMINISTRATIVE PROCEDURE

Article 26

(1) With reference to the competences of the Yugoslav organs in matters when a party is a foreign national enjoying the right to immunity in Yugoslavia, a foreign State or an international organization, the provisions of international law, recognized by the Socialist Federal Republic of Yugoslavia, are applicable.

(2) In case of doubt as to the existence or the extent of the right to immunity, the explanation is rendered by the Federal Organ for Administration of Justice.

¹⁴ Transmitted to the Secretariat by that Government

(3) Official actions relating to persons enjoying the right to immunity are carried out through a federal organ competent for foreign affairs.

4. EXCERPT FROM THE LAW ON MARITIME AND INLAND NAVIGATION

Article 869

The following cannot be subject to execution or attachment:

(1) Foreign and Yugoslav war vessels and vessels enjoying equal status, public and sanitary vessels;

(2) Foreign vessels on innocent passage through the territorial sea or inland waters of the SFR of Yugoslavia and which comply with the international or inter-State navigation regime;

(3) Foreign vessels, stopping at inland maritime waters, ports and harbours of the SFR of Yugoslavia either due to *vis majeure* or navigational needs, for the duration of the *vis majeure* or the navigational needs. Vessels referred to in items 2 and 3 of paragraph 1 of this Article can be subject to execution or insurance if the procedure is undertaken in connection with execution or security of costs incurred during the passage or delay of the vessel in the territory of the SFR of Yugoslavia.