



Strasbourg, 05/06/01

CAHDI (2001) 5

**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**22nd meeting
11 - 12 September 2001**

PROGRAMME OF ACTIVITIES OF THE CAHDI FOR 2001

STATE IMMUNITIES – PROPOSALS FOR THE IMPLEMENTATION OF THE ACTIVITY

Secretariat memorandum
Prepared by the Directorate General of Legal Affairs

1. Foreword

At its 21st meeting (Strasbourg, 6 and 7 March 2001) the Committee of Legal Advisers on Public International Law (CAHDI) decided to carry out an activity on State practice regarding State Immunities and asked the Secretariat to prepare a document including suggestions on how to implement this activity, including possibly a draft questionnaire.

At this meeting, the CAHDI also agreed that, at its next meeting, it would consider a paper to be prepared by the Swiss delegation on Immunities of Heads of State and Government, as well as other High Officials, including the Ministers for Foreign Affairs.

2. The work of the International Law Commission (ILC)

In the framework of the United Nations, the International Law Commission has been working on the topic of *Jurisdictional Immunities of States and their Properties* since the late 1970s. Appendix I contains an executive summary of this work.

The ILC began consideration of this issue at its 30th session in 1978. A special rapporteur was appointed who submitted a preliminary report in 1979, which was followed by eight further reports between 1980 and 1986. A second special rapporteur was then appointed who presented three reports between 1988 and 1990.

In 1991, at its 43rd session, the ILC adopted a set of 22 draft articles on the topic (see Appendix II) and recommended the convening of an international conference of plenipotentiaries.

Later in 1991, at its 47th session, the General Assembly decided to establish an open-ended working group of the Sixth Committee to examine, in the light of written comments from the Governments, as well as views expressed in debates at the 46th session of the Assembly: (a) issues of substance arising from the draft articles, in order to facilitate the successful conclusion of a convention through the promotion of general agreement; and (b) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.

The General Assembly pursued consideration of these issues from 1992 to 1994 and from 1997 to 1998.

In 1998, at its 54th session, the General Assembly decided to establish an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property, taking into account the recent developments in State practice and legislation and any other factors related to this issue since the adoption of the draft articles, as well as the comments subsequently submitted by States, and to consider whether there were any issues identified by the working group upon which it would be useful to seek further comments and recommendations of the ILC; and invited the ILC to present any preliminary comments it may have regarding outstanding substantive issues related to the draft articles by 31 August 1999 (resolution 53/98 of 8 December 1998)*.

As a result, in 1999, the ILC decided to establish a working group on this topic. The working group held 10 meetings between 1 June and 5 July 1999 and submitted a report to the ILC. The ILC took note of the report, made certain amendments to it, and decided to submit it to the General Assembly together with its report of the 51st session*.

Consideration of this item was pursued by the General Assembly at its at the fifty-fifth session*.

* See document CAHDI (2001) 5 addendum

The ILC's preliminary work was carried out on the basis of a questionnaire sent to member States of the UN (see Appendix III). This questionnaire covered inter alia:

- a) Domestic laws and regulations in force providing either specifically for jurisdictional immunities for foreign States and their property, or generally for non-exercise of jurisdiction over foreign States and their property without their consent;
- b) Whether courts accorded jurisdictional immunities to foreign States and their property and on what basis (provisions of internal law in force or any principle of international law);
- c) The main trends of judicial practice in regard to jurisdictional immunities of foreign States and their property (cf. the doctrine of State immunity as "absolute" or "restricted");
- d) Role of the executive branch of the Government in matters of recognition of jurisdictional immunities of foreign States and their property, especially in the definition or delimitation of the extent of the application of State immunity;
- e) Application of the principle of reciprocity in matters relating to jurisdictional immunities of States and their property;
- f) Distinction in legislation and/or case-law, as far as jurisdictional immunities of foreign States and their property are concerned, between "public acts" and "non-public acts" of foreign States and consequences arising therefrom;
- g) Rules in force governing waiver of jurisdictional immunities of foreign States, voluntary submission by foreign States, and counter-claims against foreign States;
- h) Exceptions or limitations provided by laws and regulations in force or recognized by judicial or governmental practice with respect to jurisdictional immunities of foreign States and their property;
- i) Procedural and substantial treatment of foreign States in respect of relations with the domestic administrative authorities;
- j) Position of foreign States in domestic civil law, in particular regarding property, inheritance, etc;
- k) Immunities of foreign States' property;
- l) Procedural privileges accorded a foreign State in the event of its involvement in a judicial process including possible exemption from costs or security for costs.

3. The Council of Europe

a. *The European Convention on State Immunity*

In the framework of the Council of Europe, a European Convention on State Immunity (European Treaty Series No. 074), together with an Additional Protocol thereto (ETS No. 074A), were prepared and opened to signature in Basle on 16 May 1972 (see Appendices IV and V).

To date (as of 05/06/01) the European Convention has been signed by 1 member State and ratified by 8 and the Addition Protocol has been signed by 2 member States and ratified by 6. The European Convention entered into force on 11 June 1976 and its Additional Protocol on 22 May 1985. The state of signatures and ratifications for the Convention and its Additional Protocol appear in Appendices VI and VII.

The CAHDI considered the relative importance of this Convention and its Additional Protocol at its 16th meeting (Paris, 17-18 September 1998) (Cf. introductory document CAHDI (98) 14) and concluded that the Convention and its Protocol have not been ratified by a sufficient

number of States to conclude that the Convention was widely applied in Council of Europe member States.

b. *An activity of the CAHDI – Pilot Project of the Council of Europe on State practice regarding State Immunities*

As indicated above, at its last (21st) meeting the CAHDI agreed on the implementation of an activity in this area. This activity would focus particularly, although not exclusively, on judicial practice in the member States of the Council of Europe and would aim at collecting the most relevant judicial decisions involving foreign States and their property. Possible follow-up to that would be decided on the basis of the information gathered.

This activity would be modelled on the Pilot Project of the Council of Europe on State Practice regarding State Succession and Issues of Recognition which the CAHDI implemented in the mid-1990s and which resulted in a publication including an analytical study.

The activity could be carried out on the basis of the following guidelines.

Guidelines for documentation on State practice regarding State Immunities

i. Objectives

The aim of the project is to ascertain whether it is possible to initiate the collection of data on State practice in the Council of Europe member States with regard to State Immunities and subsequently make it accessible to all member States of the Council of Europe. This will encourage those member States whose State practice is not at present documented, to start building a collection in this field. The final aim is to present, on behalf of the Council of Europe, a publication on State practice of the members of the Council of Europe, including possibly an analytical report prepared on the basis of the material gathered. This work would represent a practical contribution to the work in this field carried out at the UN level.

The target groups or users of documentation on State practice are primarily the executive, the legislature and the judiciary of the member States, international organisations, and law firms, industry and the academic world.

ii. Definition of State practice

Documentation on State practice should contain official documents and statements issued by public authorities which illustrate relevant State practice regarding State Immunities.

The term "State Immunity" covers both *jurisdictional immunities* and *immunity of execution*.

The term "public authorities" is intended to embrace all organs of the State and its component units, such as those forming part of the executive, legislative and, especially, judicial powers.

As far as the executive power is concerned, reference can be made to diplomatic notes, government press releases, reports, internal memoranda, explanatory memoranda, answers to parliamentary questions, statements before international organisations, statements presented before international judicial or arbitral authorities and instruments concerning the conclusion and/or ratification of treaties.

As far as the legislative power is concerned, the collection should include, *inter alia*, the texts of Acts of Parliament and statutory regulations, as well as resolutions and, where appropriate, the approval of treaties to the extent that they contain views of the legislature.

Lastly, and most importantly, documents originating from national courts and tribunals including decisions.

The examples given under the above paragraphs are of a non-exhaustive nature.

iii. Sources

State practice as defined above is documented in many diverse sources. Most of these are national publications, although publications of an international nature containing information on State practice must also be consulted. Moreover, in many cases the practice of the executive, as well known, is not published. Therefore the executive power will have to be consulted, in order to determine to what extent internal memoranda may be included in the collection, and also encouraged to publish such documents.

The most obvious sources are :

- as regards the executive: parliamentary reports, documents originating from international organisations which incorporate State practice, surveys of the practice of the ministry of foreign affairs, the official gazette, treaty series;
- as regards the legislature: treaty series, parliamentary reports, statute book, official gazette;
- as regards the national courts and tribunals: national court reports and legal journals.

iv. Collection

For obvious reasons, it would be advisable to collect documentation on a decentralised basis. The aim should be to appoint a national co-ordinator for each member State, i.e. a central authority, institution or person with ultimate responsibility for the collection of documentation on the national level. Where appropriate, the CAHDI delegate could fulfil this role.

In member States where collection is already under way, the best course of action would be to ask the individuals or institutes concerned to take part in the project. This would ensure that work is not duplicated and would make the best possible use of existing expertise. It is important to know who is doing this work in order to determine the individuals and institutes to be approached. It is up to each State to determine who is the appropriate person (a government official, an institute, a private person) to carry out this work. Nevertheless, it would be essential to guarantee continuity of participation in the project.

v. Selection

For the purpose of this exercise, it is suggested that this pilot project will cover State practice which is as representative as possible of developments at domestic level regarding State Immunities. Recent State practice is particularly important in this respect.

However, the CAHDI will be called upon to decide on the exact time span that the activity would cover.

vi. Processing

The material shall be collected and the relevant information shall be included in standard forms exclusively by the national co-ordinator (for an example of a standard form, see Appendix VIII).

The processing of the material selected involves the identification, drafting and recording of the various data pertaining to each document. The first step is to determine what data should be selected and how this should be done. The results may vary depending, for example, on whether the document originated from the executive, the legislature or the judiciary.

The national co-ordinator should be in possession of the full text of the original document or a copy of it. A copy of this document should, where appropriate, be sent to the Council of Europe Secretariat together with the standard form and attached documents.

Each document sent by the national co-ordinator to the Council of Europe Secretariat shall be accompanied by a standard form. The standard form completed in one of the official languages of the Council of Europe (English or French) will contain the following particulars, which are explained below:

- (a) registration number
- (b) date

- (c) author(ity)
 - (d) parties
 - (e) points of law
 - (f) classification number
 - (g) source
 - (h) additional information
 - (i) full text - extracts - translation - summaries.
- (a) Registration number

This number serves to distinguish the various documents being processed. There should be an indication of the country from which the document originates (the designation conforming to the codes in the following list), followed by a running number given by the national co-ordinator to each document processed throughout the whole period of the pilot project.

| Country | Code |
|--|-------------|
| Albania | AL |
| Andorra | AND |
| Armenia | ARM |
| Austria | A |
| Azerbaijan | AZ |
| Belgium | B |
| Bulgaria | BG |
| Croatia | HR |
| Cyprus | CY |
| Czech Republic | CZ |
| Denmark | DK |
| Estonia | EW |
| Finland | FIN |
| France | F |
| Georgia | GE |
| Germany | D |
| Greece | GR |
| Hungary | H |
| Iceland | IS |
| Ireland | IRL |
| Italy | I |
| Latvia | LV |
| Liechtenstein | FL |
| Lithuania | LT |
| Luxembourg | L |
| “the former Yugoslav republic of Macedonia” | MK |
| Malta | M |
| Moldova | MD |
| Netherlands | NL |
| Norway | N |
| Poland | PL |
| Portugal | P |
| Romania | RO |
| Russian Federation | RUS |

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|--------------------|------------|
| San Marino | RSM |
| Slovakia | SK |
| Slovenia | SLO |
| Spain | E |
| Sweden | S |
| Switzerland | CH |
| Turkey | TR |
| Ukraine | UA |
| United Kingdom | GB |
| Bosnia-Herzegovina | BIH |
| Canada | CA |
| Israel | IL |
| Japan | J |
| Mexico | MEX |
| New Zealand | NZ |
| United States | USA |

(b) Date

The relevant date for pronouncements or documents is the date indicated in the publication itself.

(c) Author(ity)

This heading refers to the organ of the executive which made the pronouncement, the court or tribunal which made the ruling or to the legislative bodies. The nature of the document will also be mentioned under this heading (e.g. a bilateral treaty, a judgment). Where appropriate, original names of the relevant organs may be translated into one of the official languages of the Council of Europe.

(d) Parties

This heading mentions the parties to the document: parties in a case before the courts or the parties to a bilateral treaty. In the case of a multilateral treaty, it suffices to refer to it as a multilateral treaty. Possibly, a description of the parties nature should be given where (e.g. whether they are States, State own companies, individuals, legal persons, etc.).

(e) Points of law

The contents of a document will be recorded by way of a list on the points of law contained in it. Particularly where court decisions are concerned, it is important to indicate the court's decision regarding the type of immunity recognised (cf. table below).

(f) Classification number

The national co-ordinator should include the category or categories in which the document is placed within the appended model plan for the classification of documentation on State practice relating to State Immunities (see table below).

| Description | Code |
|-------------------------------------|--------------|
| State acts in the context of | |
| - <i>Jus Imperii</i> | 0.a |
| - <i>Jus gestionis</i> | 0.b |
| - civil law (incl. property) | 0.b.1 |
| - labour law | 0.b.2 |
| - commercial law | 0.b.3 |
| - other | 0.b.4 |
| - Unknown - Not applicable | 0.c |
| State Immunity | |
| Jurisdictional Immunity | 1 |
| - Absolute | 1.a |
| - Limited | 1.b |
| - Unknown - Not applicable | 1.c |
| Immunity of execution | 2 |
| - Absolute | 2.a |
| - Limited | 2.b |
| - Unknown - Not applicable | 2.c |

(g) Source

This heading should refer to readily available publications in which the document is published in full. These are usually national publications, although reference may be made to additional sources, such as extracts or translations published in journals or reviews. If the original text has not been officially published in one of the official languages of the Council of Europe but has, to the knowledge of the national co-ordinator, been unofficially translated into one or more of these languages, these additional sources should also be indicated, as such, for easy reference.

(h) Additional information

Under this heading reference may be made, depending on the type of document, to similar or previous pronouncements made by the executive or to previous or subsequent judgments in the same case. Details on what the document has to say about, for example, the signature, ratification, entry into force, provisional application or denunciation of treaties, are also to be covered by this heading. Furthermore, names of treaties and articles applied in judicial rulings may be stated here.

(i) Full text - extracts - translation - summaries

Short texts or extracts shall be quoted. If the document is written in a language other than one of the official languages of the Council of Europe, a translation of the text or a summary of the substantive content should be given.

vii. Co-ordination

The national co-ordinator, responsible for the collection, selection and processing of the material, shall send all completed standard forms and attached documents to the Council of Europe Secretariat Department responsible for this activity:

Rafael A. Benitez
Secretary of the CAHDI
Department of Public Law
Directorate General of Legal Affairs
Council of Europe, F - 67075 Strasbourg Cedex, France
Tel. 33 3 88413479, Fax 33 3 88412764, e-mail: rafael.benitez@coe.int
Secretariat: Mrs Francine NAAS, Tel: 33 3 90214600, same fax, e-mail:
francine.naas@coe.int

Appendix I

**International Law Commission's work
on Jurisdictional Immunities of States and their Property**
(Information from the ILC Internet site)

| Activities: | Sources: |
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| A. Mandate | |
| <ul style="list-style-type: none"> - Topic recommended for selection by the Commission in 1977. - G.A. Res. 32/151 of 19 December 1977 - G.A.Res. <u>53/98</u> of 8 December 1998 | |
| B. Studies undertaken by the Secretariat and Reports of the Secretary-General | |
| None | |
| C. Reports of the Working Group or Sub-Committee | |
| 1. 30th session of the International Law Commission (1978) | |
| - Report of the Working Group on Jurisdictional Immunities of States and their Property | <ul style="list-style-type: none"> - U.N. Doc. A/CN.4/L.279/Rev.1 (ILC Report, A/33/10, 1978, chp. VIII(D), annex.) - ILC Report, A/33/10, 1978, paras.179-190 |
| 2. 51st session of the International Law Commission (1999) | |
| - Report of the Working Group on Jurisdictional Immunities of States and their Property | <ul style="list-style-type: none"> - U.N. Doc. A/CN.4/L.576 (ILC Report, A/54/10, 1999, <u>annex.</u>) - ILC Report, A/54/10, 1999, <u>chp. VII</u>, paras.481-484 |
| D. Reports of the Special Rapporteur | |
| <p>1. Preliminary consideration, introduction to topic, historical background, possible source materials, rough analytical outline, possibility of eventual preparation of draft articles.</p> <ul style="list-style-type: none"> - Preliminary Report of the Special Rapporteur, Mr. Sompong Sucharitkul (31st session of the ILC (1979)) | <ul style="list-style-type: none"> - U.N. Doc. A/CN.4/323 (in Ybk, 1979, VII(1)) - ILC Report, A/34/10, 1979, chp. VII, paras.176-178 |
| <p>2. Proposed draft articles with commentaries: scope (art.1), use of terms (art.2), interpretative provisions (art.3), jurisdictional immunities not within the scope of the articles (art.4), non-retroactivity (art.5), principle of state immunity (art.6).</p> <ul style="list-style-type: none"> - Second Report of the Special Rapporteur, Mr. Sompong Sucharitkul (32nd session of the ILC (1980)) | <ul style="list-style-type: none"> - U.N. Doc. A/CN.4/331 and Add.1 (in Ybk, 1980, VII(1)) - ILC Report, A/35/10, 1980, chp. VI(A)(1), paras.111-112 |

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| <p>3. Five further draft articles: rules of competence and jurisdictional immunity (art.7); consent of state (art.8); voluntary submission (art.9); counter-claims (art.10); waiver (art.11). Together with art.6 provisionally adopted during the 32nd session, these were placed in Part II, viz. "General Principles".)</p> <p>- Third Report of the Special Rapporteur, Mr. Sompong Sucharitkul (33rd session of the ILC (1981))</p> | <p>- U.N. Doc. A/CN.4/340 and Corr.1 and Add.1 and Add.1/Corr.1 (in Ybk, 1981, vii(1)) - ILC Report, A/36/10, 1981, chp. VI(A)(2), paras.208-227</p> |
| <p>4. Part III of the draft articles concerning exceptions to State immunity. Two draft articles: scope of Part III (art.11), and trading or commercial activity (art.12)).</p> <p>- Fourth Report of the Special Rapporteur, Mr. Sompong Sucharitkul (34th session of the ILC (1982))</p> | <p>- U.N. Doc. A/CN.4/357 and Corr.1 (in Ybk, 1982, vii(1)) - ILC Report, A/37/10, 1982, chp. V(A)(2), paras.171-198</p> |
| <p>5. Part III of the draft Articles concerning exceptions to State immunity. Three further draft articles: contracts of employment (art.13), personal injuries and damage to property (art.14), and ownership, possession and use of property (art.15).</p> <p>- Fifth Report of the Special Rapporteur, Mr. Sompong Sucharitkul (35th session of the ILC (1983))</p> | <p>- U.N. Doc. A/CN.4/363 and Corr.1 and Add.1 and Add.1/Corr.1 (in Ybk, 1983, vii(1)) - ILC Report, A/38/10, 1983, chp. III(A)(2), paras.76-96</p> |
| <p>6. Part III, exceptions to state immunity. Five draft articles: patents, trade marks and intellectual properties (art.16), fiscal liabilities and customs duties (art.17), share-holdings and membership of bodies corporate (art.18), ships employed in commercial service (art. 19 alternative A and B), and arbitration (art.20). Revised version of art. 19 was subsequently prepared by the Special Rapporteur.</p> <p>- Sixth Report of the Special Rapporteur, Mr. Sompong Sucharitkul (36th session of the ILC (1984))</p> | <p>- U.N. Doc. A/CN.4/376 and Add. 1 and 2 (in Ybk, 1984, vii(1)) - ILC Report, A/39/10, 1984, chp. IV(A)(2), paras.202-214</p> |
| <p>7. Last two remaining parts: state immunity in respect of property from attachment and execution (Part IV), and miscellaneous provisions (Part V). Part IV comprised of: scope of the Part (art.21), State immunity from attachment and execution (art.22), modalities and effect of consent to attachment and execution (art.23), and types of State property permanently immune from attachment and execution (art.24). Part V: immunities of personal sovereigns and other heads of State (art.25), service of process and judgement in default of appearance (art.26), procedural privileges (art.27), and restriction and extension of immunities and privileges (art.28).</p> <p>- Seventh Report of the Special Rapporteur, Mr. Sompong Sucharitkul (37th session of the ILC (1985))</p> | <p>- U.N. Doc. A/CN.4/388 and Corr.1 (English only) and Corr.2 (French only) (in Ybk., 1985, vii(1)) - ILC Report, A/40/10, 1985, chp. V(A)(2), paras.213-223</p> |
| <p>8. Proposed changes to those draft articles still under consideration, and which had not yet been submitted to the drafting Committee, viz. Part I (Introduction): use of terms (art.2(2)), interpretative provisions (art.3(1)), jurisdictional immunities not within the scope of the present articles (art.4), non-retroactivity (art.5); and Part V (Miscellaneous provisions): immunities of personal sovereigns and other heads of State (art.25), service of process and judgment in default of appearance (art.26), procedural privileges (art.27), and restriction and extension of immunities and privileges (art.28). Proposals were also made in the report for a Part VI (settlement of disputes) and Part VII (final provisions) for future consideration by the Commission.</p> <p>- Eighth Report of the Special Rapporteur, Mr. Sompong Sucharitkul (38th session of the ILC (1986))</p> | <p>- U.N. Doc. A/CN.4/396 and Corr.1 (in Ybk, 1986, vii(1)) - ILC Report, A/41/10, 1986, chp. II(B), paras.15, 16</p> |

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| <p>9. Analysis of the comments of 23 Member States, as well as further replies later received from five member States. Proposed the combination of arts. 2 and 3, and proposed the inclusion of draft art.11(bis) dealing with the question of a State enterprise with segregated State property. Several editorial and other amendments to provisionally adopted draft articles were also recommended.</p> <p>- Preliminary Report of the Special Rapporteur, Mr. Motoo Ogiso (40th session of the ILC (1988))</p> | <p>- U.N. Doc. A/CN.4/415 and Corr.1 and 2 (in Ybk, 1988, vii(1)) - ILC Report, A/43/10, 1988, chp.VI(B), paras.500-520</p> |
| <p>10. Consideration of draft articles on the basis of the written comments and observations of Governments and the Special Rapporteur's analysis of relevant codification and State practice. Brief review of the recent developments of general State practice concerning State immunity.</p> <p>- Second Report of the Special Rapporteur, Mr. Motoo Ogiso (41st session of the ILC (1989))</p> | <p>- U.N. Doc. A/CN.4/422 and Corr.1 and Add.1 and Add.1/Corr.1 (in Ybk, 1989, vii(1)) - ILC Report, A/44/10, 1989, chp. VI(B), paras.403-612</p> |
| <p>11. Review of the entire set of draft articles with suggested reformulations, taking into account the views expressed by members of the Commission at its 41st session, as well as Governments in their written comments and in the 6th Committee.</p> <p>- Third Report of the Special Rapporteur, Mr. Motoo Ogiso (42nd session of the ILC (1990))</p> | <p>- U.N. Doc. A/CN.4/431 and Corr.1 (in Ybk, 1990, vii(1)) - ILC Report, A/45/10, 1990, chp. III(B), paras.165-166</p> |
| <p>E. Reports of the Drafting Committee</p> | |
| <p>1. 32nd session of the International Law Commission (1980)</p> | |
| <p>- Texts of articles 1-6 adopted by the Drafting Committee</p> | <p>- U.N. Doc. A/CN.4/L.317 (in Ybk, 1980, vi, 1634th mtg (16 July 1980))</p> |
| <p>2. 34th session of the International Law Commission (1982)</p> | |
| <p>- Texts adopted by the Drafting Committee: article 1, article 2, par. 1 (a), and articles 7 to 9</p> | <p>- U.N. Doc. A/CN.4/L.342 (in Ybk, 1982, vi, 1749th mtg (20 July 1982) and 1750th mtg (21 July 1982))</p> |
| <p>3. 35th session of the International Law Commission (1983)</p> | |
| <p>- Texts adopted by the Drafting Committee: arts. 10, 12, 2(1)(g), 3(2) and 15</p> | <p>- U.N. Doc. A/CN.4/L.364 (in Ybk, 1983, vi, 1805th mtg (15 July 1983))</p> |
| <p>4. 36th session of the International Law Commission (1984)</p> | |
| <p>- Texts adopted by the Drafting Committee: arts. 13,14, 16, 17 and 18</p> | <p>- U.N. Doc. A/CN.4/L.379 (in Ybk, 1984, vi, 1868th and 1869th mtgs (20 and 23 July 1984))</p> |
| <p>5. 37th session of the International Law Commission (1985)</p> | |
| <p>- Texts adopted by the Drafting Committee: arts. 19 and 20</p> | <p>- U.N. Doc. A/CN.4/L.397 (in Ybk, 1985, vi, 1931st mtg (19 July 1985))</p> |
| <p>6. 38th session of the International Law Commission (1986)</p> | |
| <p>- Titles and texts adopted by the Drafting Committee: titles of Parts II and III of the draft; articles 2 to 6 and 20 to 28</p> | <p>- U.N. Doc. A/CN.4/L.399 and Corr.1 (English only)</p> |
| <p>7. 42nd session of the International Law Commission (1990)</p> | |

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| - Titles and texts adopted by the Drafting Committee on second reading: arts. 1 to 10 and 12 to 16 | - U.N. Doc. A/CN.4/L.444 (in Ybk, 1990, vi, 2191st mtg (11 July 1990)) |
| 8. 43rd session of the International Law Commission (1991) | |
| - Titles and texts adopted by the Drafting Committee on second reading: arts. 1 to 23 | - U.N. Doc. A/CN.4/L.457 (in Ybk, 1991, vi, 2218th to 2221st mtgs (4 to 7 June 1991)) |
| F. Comments by Governments | |
| 1. 33rd session of the International Law Commission (1981) | |
| - Information and Materials submitted by Governments. Part 1: Government replies to the questionnaire | - U.N. Doc. A/CN.4/343 and Add. 3-4* (ILC Report, A/36/10, 1981, chp. VI(A)(2), par.209) |
| - Part II: Materials submitted by Governments together with their replies to the questionnaire | - U.N. Doc. A/CN.4/343/Add.1* |
| - Part III: Materials submitted by Governments who have not replied to the questionnaire | - U.N. Doc. A/CN.4/343/Add.3* |
| 2. 40th session of the International Law Commission (1988) | |
| - Comments and observations received from Governments | - U.N. Doc. A/CN.4/410 and Add.1 and Add.1/Corr.1, 2-5 (in Ybk, 1988, vii(1)) - ILC Report, A/43/10, 1988, chp. VI(B), par.498 |
| G. Other | |
| 1. 33rd session of the International Law Commission (1981) | |
| - Texts of articles 7 to 10, proposed by the Special Rapporteur on 9 June 1981 | - U.N. Doc. A/CN.4/L.337 (in ILC Report, A/36/10, 1981, chp. VI(A)(2), fts. 674-677) |
| 2. 34th session of the International Law Commission (1982) | |
| - Revised texts of articles 11 and 12 submitted by the Special Rapporteur, Mr. Sompong Sucharitkul | - U.N. Doc. A/CN.4/L.351 (mimeograph) |
| 3. 35th session of the International Law Commission (1983) | |
| - Memorandum presented by Mr. Nikolai A. Ushakov | - U.N. Doc. A/CN.4/371 (in Ybk, 1983, vii(1)) |
| 4. 36th session of the International Law Commission (1984) | |
| - Revised text of article 19 proposed by the Special Rapporteur | - U.N. Doc. A/CN.4/L.380 (mimeograph; see also in Ybk, 1984, vii (2), ft. 202) |
| - Text of paragraph 2 of article 11 proposed by the Special Rapporteur | - U.N. Doc. A/CN.4/L.381 (mimeograph; see also in Ybk, 1984, vii (2), ft. 200) |
| H. Reports of the International Law Commission | |

* * Reproduced in the United Nations Legislative Series, Materials on Jurisdictional Immunities of States and their Property (Sales No. E/F 81.V.10).

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| <p>1. Report of the International Law Commission on the work of its thirtieth session, 8 May to 28 July 1978</p> <ul style="list-style-type: none"> - The Commission included the topic in its programme of work, appointed Mr. Sompong Sucharitkul as Special Rapporteur and invited him to prepare a preliminary report. It also requested the Secretary-General to invite Governments of Member States to submit relevant materials on the topic and asked the Secretariat to prepare relevant working papers. - Discussion in Plenary: 1502nd mtg (16 June 1978), 1524th mtg (24 July 1978), 1525th mtg (25 July 1978) and 1527th mtg (27 July 1978) | <ul style="list-style-type: none"> - ILC Report, A/33/10, 1978, chp. VIII(D), paras.179-190 - Ybk, 1978, viI(2) - Ybk, 1978, vi |
| <p>2. Report of the International Law Commission on the work of its thirty-first session, 14 May to 3 August 1979</p> <ul style="list-style-type: none"> - The Commission considered the preliminary report of the Special Rapporteur and decided to request that he continue his study, concentrating on general principles. The Commission noted that in terms of priorities, work should proceed on immunities of States from jurisdiction. The issue of the widening functions of the State was also addressed. - Discussion in Plenary: 1574th and 1575th mtgs (23 and 24 July 1979) | <ul style="list-style-type: none"> - ILC Report, A/34/10, 1979, chp. VII, paras.166-183 - Ybk, 1979, viI(2) - Ybk, 1979, vi |
| <p>3. Report of the International Law Commission on the work of its thirty-second session, 5 May to 25 July 1980</p> <ul style="list-style-type: none"> - The Commission discussed the report of the Special Rapporteur and provisionally adopted the texts of articles 1 and 6 proposed by the Drafting Committee with commentaries. - Discussion in Plenary: 1622nd to 1626th mtgs (30 June to 4 July 1980), 1634th and 1637th mtgs (16 and 18 July 1980) | <ul style="list-style-type: none"> - ILC Report, A/35/10, 1980, chp. VI, paras. 99-122 - Ybk, 1980, viI(2) - Ybk, 1980, vi |
| <p>4. Report of the International Law Commission on the work of its thirty-third session, 4 May to 24 July 1981</p> <ul style="list-style-type: none"> - The Commission discussed the report of the Special Rapporteur, but was unable to consider the revised version of his original five draft articles. - Discussion in Plenary: 1653rd to 1657th mtgs (18 to 22 May 1981), 1663rd to 1665th mtgs (1 to 3 June 1981) | <ul style="list-style-type: none"> - ILC Report, A/36/10, 1981, chp. VI, paras. 200-227 - Ybk, 1981, viI(2) - Ybk, 1981, vi |

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| <p>5. Report of the International Law Commission on the work of its thirty-fourth session, 3 May to 23 July 1982</p> <ul style="list-style-type: none"> - The Commission considered the fourth report of the Special Rapporteur and confirmed its referral to the Drafting Committee of draft articles 7 to 10. It also referred to the Drafting Committee draft articles 11 and 12 and furthermore decided that draft article 6, already provisionally adopted at the thirty-second session, should be re-examined by the Drafting Committee in the light of the discussions of the rest of the articles constituting part II of the draft articles and that the Drafting Committee should examine the provisions of draft articles 2 and 3 relevant to the problems of definition of "jurisdiction" and "trading or commercial activities". The Commission also adopted draft articles 2, paragraph 1 (a), 7, 8 and 9, as well as a revised version of draft article 1, with commentaries. - Discussion in Plenary: 1708th to 1718th mtgs (17 May to 2 June 1982), 1728th to 1730th mtgs (16 to 18 June 1982), 1749th and 1750th mtgs (20 and 21 July 1982) | <ul style="list-style-type: none"> - ILC Report, A/37/10, 1982, chp. V, paras. 157-198 - Ybk, 1982, viI(2) - Ybk, 1982, vi |
| <p>6. Report of the International Law Commission on the work of its thirty-fifth session, 3 May to 22 July 1983</p> <ul style="list-style-type: none"> - Decision to refer articles 13, 14 and 15 to the Drafting Committee. Revised version of draft articles.13 (contracts of employment) and 14 (personal injuries and damage to property) submitted to the drafting Comm. Arts. 2(1)(g), 3(2), 10, 12 and 15 were provisionally adopted with commentaries. - Discussion in Plenary: 1762nd to 1770th mtgs (17 to 30 May 1983), and 1805th and 1806th mtgs (15 and 18 July 1983) | <ul style="list-style-type: none"> - ILC Report, A/38/10, 1983, chp. III, paras.70-96 - Ybk, 1983, viI(2) - Ybk, 1983, vi |
| <p>7. Report of the International Law Commission on the work of its thirty-sixth session, 7 May to 27 July 1984</p> <ul style="list-style-type: none"> - The Commission, after considering the Special Rapporteur's sixth report, decided to refer draft articles 16, 17 and 18 to the Drafting Committee. In the light of the discussions held in the Commission, the Special Rapporteur submitted to the Commission a revised version of draft article 19 (A/CN.4/L.380). Owing to lack of time, the Commission was not in a position to conclude its deliberations on article 19 or to take up article 20. It decided to consider those articles next year, at its thirty-seventh session. As recommended by the Drafting Committee, the Commission provisionally adopted draft articles 13, 14, 16, 17, and 18. With regard to the provisional adoption of draft article 16 by the Commission, the Special Rapporteur submitted the text of paragraph 2 of draft article 11 to the Commission (A/CN.4/L.381). The Commission decided to refer paragraph 2 of draft article 11 to the Drafting Committee for consideration. - Discussion in Plenary: 1833rd to 1841st mtgs (4 to 15 June 1984), 1869th mtg (23 July 1984) | <ul style="list-style-type: none"> - ILC Report, A/39/10, 1984, chp. IV, paras.195-214 - Ybk, 1984, viI(2) - Ybk, 1984, vi |

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| <p>8. Report of the International Law Commission on the work of its thirty-seventh session, 6 May to 26 July 1985</p> <ul style="list-style-type: none"> - The Commission limited its consideration to arts. 19 and 20, left over from the previous session, and Part IV. Part V was left to the following year. On the recommendation of the Drafting Committee., draft articles 19 and 20 were provisionally adopted with commentaries. On the basis of discussion held in the Commission, the Special Rapporteur submitted to the Drafting Committee a new title for Part IV, as well as revised texts for draft arts. 21 to 24. It was decided that the Committee would take up these articles at the following session. - Discussion in Plenary: 1915th to 1924th mtgs (1 to 11 July 1985), 1931st to 1937th mtgs (19 to 25 July 1985) | <ul style="list-style-type: none"> - ILC Report, A/40/10, 1985, chp. V, paras.205-247 - Ybk, 1985, viI(2) - Ybk, 1985, vi |
| <p>9. Report of the International Law Commission on the work of its thirty-eighth session, 5 May to 11 July 1986</p> <ul style="list-style-type: none"> - On the basis of the Report of the Drafting Committee, the Commission provisionally adopted on first reading, articles 2(2), 3(1), 4 to 6, 20 to 28, with commentaries. After making several editorial changes to previously adopted draft articles, and renumbering arts. 12 to 20 as draft articles 11 to 19, the Commission adopted on first reading the draft articles on the topic as a whole. It requested that the Secretary-General transmit the draft articles to Governments for comments and observations by 1 Jan. 1988. - Discussion in Plenary: 1942nd to 1947th mtgs (7 to 16 May 1986), 1968th to 1972nd mtgs (17 to 20 June 1986), and 1981st mtg (4 July 1986) | <ul style="list-style-type: none"> - ILC Report, A/41/10, 1986, chp. II, paras.10-22 - Ybk, 1986, viI(2) - Ybk, 1986, vi |
| <p>10. Report of the International Law Commission on the work of its thirty-ninth session, 4 May to 27 July 1987</p> <ul style="list-style-type: none"> - The Commission appointed Mr. Motoo Ogiso as Special Rapporteur for the topic. - Discussion in Plenary: 2016th mtg (17 June 1987) | <ul style="list-style-type: none"> - ILC Report, A/42/10, 1987, chp. VI(B), paras.221-222 - Ybk, 1987, viI(2) - Ybk, 1987, vi |
| <p>11. Report of the International Law Commission on the work of its fortieth session, 9 May to 29 July 1988</p> <ul style="list-style-type: none"> - Although the Commission was unable to consider the topic at the session due to time constraints, it did allow the Special Rapporteur to introduce his preliminary report. - Discussion in plenary: 2081st mtg (19 July 1988) | <ul style="list-style-type: none"> - ILC Report, A/43/10, 1988, chp. VI, paras. 494-520 - Ybk, 1988, viI(2) - Ybk, 1988, vi |
| <p>12. Report of the International Law Commission on the work of its forty-first session, 2 May to 21 July 1989</p> <ul style="list-style-type: none"> - Each draft article was discussed by the Commission in the light of the Special Rapporteur's comments. The Commission decided to refer arts. 1 to 11 bis to the Drafting Committee. for their second reading, together with the proposals of the Special Rapporteur and other members made in plenary, and decided to continue consideration of arts. 12 to 28 at the next session. - Discussion in Plenary: 2114th to 2122th mtgs (7 to 21 June 1989) | <ul style="list-style-type: none"> - ILC Report, A/44/10, 1989, chp. VI, paras.398-613 - Ybk, 1989, viI(2) - Ybk, 1989, vi |

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| <p>13. Report of the International Law Commission on the work of its forty-second session, 1 May to 20 July 1990</p> <ul style="list-style-type: none"> - Commission resumed its consideration of draft arts. 12 to 28, and referred them to the drafting Committee. The Drafting Committee provisionally adopted on second reading arts. 1 to 10, 12 to 16. - Discussion in Plenary: 2158th to 2162nd mtgs (16 to 23 May 1990) | <ul style="list-style-type: none"> - ILC Report, A/45/10, 1990, chp. III, paras.159-243 - Ybk, 1990, VII(2) - Ybk, 1990, VI |
| <p>14. Report of the International Law Commission on the work of its forty-third session, 29 April to 19 July 1991</p> <ul style="list-style-type: none"> - On the basis of the reports of the Drafting Committee, the Commission adopted the final text of a set of 22 <u>draft articles on the jurisdictional immunities of States and their property</u>, with commentaries. It recommended the convening of an international conference of plenipotentiaries. - Discussion in Plenary:2218th to 2221st mtgs (4 June to 7 June 1991), and 2235th mtg (4 July 1991) | <ul style="list-style-type: none"> - ILC Report, A/46/10, 1991, chp. II, paras.17-28 - Ybk, 1991, VII(2) - Ybk, 1991, VI |
| <p>15. Report of the International Law Commission on the work of its fifty-first session, 3 May to 23 July 1999</p> <ul style="list-style-type: none"> - The General Assembly, in its resolution 54/98 of 8 December 1998, invited the International Law Commission to present any preliminary comments it may have regarding outstanding substantive issues related to the draft articles. The Commission decided to establish a Working Group on Jurisdictional Immunities of States and their property which would be entrusted with the task of preparing preliminary comments as requested by operative paragraph 2 of General Assembly resolution 53/98 of 8 December 1998. After an exchange of views, the Commission decided to take note of the report of the Working Group, which would be <u>annexed</u> to the Commission's report. It also decided to adopt the suggestions of the Working Group, as amended in the course of the discussion. These suggestions are contained in paragraphs 24-30; 56-60; 78-83; 103-107 and 125-129 of the Working Group's report. - Discussion in Plenary:2568th mtg (7 May 1999), 2601st and 2602nd mtgs (13 and 14 July 1999)¹ | <ul style="list-style-type: none"> - ILC Report, A/54/10, 1999, <u>chp. VII</u>, paras. 471-484 |
| <p>I. General Assembly Action</p> | |
| <p>Res. 33/139 of 19 December 1978</p> <ul style="list-style-type: none"> - Took note of the preliminary work done by the Commission | |
| <p>Res.41/81 of 3 December 1986</p> <ul style="list-style-type: none"> - Urging States to give full attention to the request of the Commission for comments and observations. | |
| <p>Res.42/156 of 7 December 1987</p> <ul style="list-style-type: none"> - Urging States to give full attention to the request of the Commission for comments and observations. | |
| <p>J. Final Outcome</p> | |
| <p>International Law Commission (43rd session, 1991)</p> | |

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| <p>- Recommended the convening of an international conference of plenipotentiaries.</p> | <p>- ILC Report, A/46/10, 1991, chp. II(B), paras.25, 26 - Ybk, 1991, VII(2)</p> |
| <p>General Assembly:</p> | |
| <p>Res. 46/55 of 9 December 1991</p> <p>- Invited States to submit their written comments and observations, and decided to establish at its 47th session an open-ended working group of the Sixth Committee to examine, in the light of the written comments of the Governments, as well as views expressed in debates at the forty-sixth session of the Assembly: a) issues of substance arising out of the <u>draft articles</u>, in order to facilitate a successful conclusion of a convention through the promotion of general agreement; and (b) the question of the convening of an international conference, to be held in 1994 or subsequently, to conclude a convention on jurisdictional immunities of States and their property.</p> | |
| <p>Decision 47/414 of 25 November 1992</p> <p>- Took note of the report of the Working Group. Decided to re-establish the Working Group to continue consideration in order to facilitate the successful conclusion of a convention through the promotion of general agreement.</p> | |
| <p>Decision 48/413 of 9 December 1993</p> <p>- Decided that consultations should be held in the framework of the Sixth Committee at its forty-ninth session, to continue consideration of the substantive issues regarding which the identification and attenuation of differences was desirable in order to facilitate the successful conclusion of a convention through general agreement.</p> | |
| <p>Res.49/61 of 9 December 1994</p> <p>- Accepted the recommendation of the Commission that an international conference of plenipotentiaries be convened to consider the articles on jurisdictional immunities of States and their property and to conclude a convention on the subject. Decided to resume consideration, at its fifty-second session, of the issues of substance and to determine, at its fifty-second or fifty-third session, the arrangements for the conference.</p> | |

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| <p>Res. 52/151 of 15 December 1997</p> <p>- Decided to consider this item again at its fifty-third session with a view to the establishment of a working group at its fifty-fourth session, taking into account the comments submitted by States in accordance with resolution 49/61. Urged States, if they have not yet done so, to submit to the Secretary-General their comments in accordance with paragraph 2 of resolution 49/61.</p> | |
| <p>Res. <u>53/98</u> of 8 December 1998</p> <p>- Decided to establish at its fifty-fourth session an open-ended working group of the Sixth Committee, open also to participation by States members of the specialized agencies, to consider outstanding substantive issues related to the draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission, taking into account the recent developments of State practice and legislation and any other factors related to this issue since the adoption of the draft articles, as well as the comments submitted by States in accordance with paragraph 2 of resolution 49/61 and paragraph 2 of resolution 52/151, and to consider whether there are any issues identified by the working group upon which it would be useful to seek further comments and recommendations of the Commission. Invited the International Law Commission to present any preliminary comments it may have regarding outstanding substantive issues related to the draft articles by 31 August 1999, in the light of the results of the informal consultations held pursuant to General Assembly decision 48/413 of 9 December 1993 and taking into account the recent developments of State practice and other factors related to this issue since the adoption of the draft articles, in order to facilitate the task of the working group.</p> | |
| <p>Res. 54/101 of 9 December 1999</p> <p>- Took note with appreciation of the report of the Working Group of the International Law Commission on jurisdictional immunities of States and their property. Urged States, if they had not yet done so, to submit their comments to the Secretary-General in accordance with General Assembly resolution 49/61 of 9 December 1994, and also invited States to submit in writing to the Secretary-General, by 1 August 2000, their comments on the report of the Working Group. Decided that the open-ended working-group of the Sixth Committee would continue its work at the fifty-fifth session to consider the future form of, and outstanding substantive issues related to, the draft articles.</p> | |

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| <p>Res. 54/111 of 9 December 1999</p> <ul style="list-style-type: none">- Expressed its appreciation to the International Law Commission for the work accomplished at its fifty-first session, in particular with respect to the topic "Jurisdictional immunities of States and their property". | |
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Further information is included in document CAHDI (2001) 5 Addendum.

Appendix II

Draft Articles prepared by the International Law Commission on Jurisdictional Immunities of States and Their Property**PART I
INTRODUCTION****Article 1
Scope of the present articles**

The present articles apply to the immunity of a State and its property from the jurisdiction of the courts of another State.

**Article 2
Use of terms**

1. For the purposes of the present articles:
 - (a) "court" means any organ of a State, however named, entitled to exercise judicial functions;
 - (b) "State" means:
 - (i) the State and its various organs of government;
 - (ii) constituent units of a federal State;
 - (iii) political subdivisions of the State which are entitled to perform acts in the exercise of the sovereign authority of the State;
 - (iv) agencies or instrumentalities of the State and other entities, to the extent that they are entitled to perform acts in the exercise of the sovereign authority of the State;
 - (v) representatives of the State acting in that capacity;
 - (c) "commercial transaction" means:
 - (i) any commercial contract or transaction for the sale of goods or supply of services;
 - (ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;
 - (iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.
2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract or

transaction, but its purpose should also be taken into account if, in the practice of the State which is a party to it, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

Article 3

Privileges and immunities not affected by the present articles

1. The present articles are without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(a) its diplomatic missions, consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences; and

(b) persons connected with them.

2. The present articles are likewise without prejudice to privileges and immunities accorded under international law to Heads of State *ratione personae*.

Article 4

Non-retroactivity of the present articles

Without prejudice to the application of any rules set forth in the present articles to which jurisdictional immunities of States and their property are subject under international law independently of the present articles, the articles shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present articles for the States concerned.

PART II

GENERAL PRINCIPLES

Article 5

State immunity

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present articles.

Article 6

Modalities for giving effect to State immunity

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

- (a) is named as a party to that proceeding; or
- (b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

Article 7
Express consent to exercise of jurisdiction

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

- (a) by international agreement;
- (b) in a written contract; or
- (c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

Article 8
Effect of participation in a proceeding before a court

1. State cannot invoke immunity From jurisdiction in a proceeding before a court of another State if it has:

- (a) itself instituted the proceeding; or
- (b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

- (a) invoking immunity; or
- (b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

Article 9 Counter-claims

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the principal claim.
2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the claim presented by the State.
3. A State making a counter-claim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

PART III PROCEEDINGS IN WHICH STATE IMMUNITY CANNOT BE INVOKED

Article 10 Commercial transactions

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.
2. Paragraph 1 does not apply:
 - (a) in the case of a commercial transaction between States; or
 - (b) if the parties to the commercial transaction have expressly agreed otherwise.
3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by the State which has an independent legal personality and is capable of:
 - (a) suing or being sued; and
 - (b) acquiring, owning or possessing and disposing of property, including property which the State has authorized it to operate or manage.

Article 11 Contracts of employment

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.
2. Paragraph 1 does not apply if:

- (a) the employee has been recruited to perform functions closely related to the exercise of governmental authority;
- (b) the subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;
- (c) the employee was neither a national nor a habitual resident of the State of the forum at the time when the contract of employment was concluded;
- (d) the employee is a national of the employer State at the time when the proceeding is instituted; or
- (e) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 12 **Personal injuries and damage to property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

Article 13 **Ownership, possession and use of property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

- (a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;
- (b) any right or interest of the State in movable or immovable property arising by way of succession, gift or *bona vacantia*; or
- (c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding-up.

Article 14 **Intellectual and industrial property**

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the determination of any right of the State in a patent, industrial design, trade name or business name, trade mark, copyright or any other form of intellectual or industrial property, which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

Article 15

Participation in companies or other collective bodies

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) has participants other than States or international organizations; and

(b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

Article 16

Ships owned or operated by a State

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship, if at the time the cause of action arose, the ship was used for other than government noncommercial purposes.

2. Paragraph 1 does not apply to warships and naval auxiliaries nor does it apply to other ships owned or operated by a State and used exclusively on government non-commercial service.

3. For the purposes of this article, "proceeding which relates to the operation of that Ship" means, *inter alia*, any proceeding involving the determination of a claim in respect of:

(a) collision or other accidents of navigation;

(b) assistance, salvage and general average;

(c) repairs, supplies or other contracts relating to the ship;

(d) consequences of pollution of the marine environment.

4. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a

proceeding which relates to the carnage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

5. Paragraph 4 does not apply to any cargo carried on board the ships referred to in paragraph 2 nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

6. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

7. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

Article 17 **Effect of an arbitration agreement**

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

- (a) the validity or interpretation of the arbitration agreement;
- (b) the arbitration procedure; or
- (c) the setting aside of the award;

unless the arbitration agreement otherwise provides.

PART IV **STATE IMMUNITY FROM MEASURES OF CONSTRAINT IN** **CONNECTION WITH PROCEEDINGS BEFORE A COURT**

Article 18 **State immunity from measures of constraint**

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

- (a) the State has expressly consented to the taking of such measures as indicated:
 - (i) by international agreement;
 - (ii) by an arbitration agreement or in a written contract; or
 - (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen;

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum and has a connection with the claim which is the object of the proceeding or with the agency or instrumentality against which the proceeding was directed.

2. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Article 19 **Specific categories of property**

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under paragraph 1 (c) of article 18:

(a) property, including any bank account, which is used or intended for use for the purposes of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use for military purposes;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to paragraph 1 (a) and (b) of article 18.

PART V **MISCELLANEOUS PROVISIONS**

Article 20 **Service of process**

1. Service of process by writ or other document instituting a proceeding against a state shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in the absence of such a convention:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (b) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

Article 21

Default judgement

1. A default judgement shall not be rendered against a State unless the court has found that:

(a) the requirements laid down in paragraphs 1 and 3 of article 20 have been complied with;

(b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with paragraphs 1 and 2 of article 20; and

(c) the present articles do not preclude it from exercising jurisdiction.

2. A copy of any default judgement rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in paragraph 1 of article 20 and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgement set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgement is received or is deemed to have been received by the State concerned.

Article 22

Privileges and immunities during court proceedings

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a party before a court of another State.

Appendix III

Questionnaire of the International Law Commission to States on Jurisdictional Immunities of States and their Property*Question 1*

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

Question 2

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

Question 3

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

Question 4

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

Question 5

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

Question 6

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

Question 7

If the answer to Question 6 is "yes":

- a. Can jurisdictional immunities be successfully invoked before courts in your State in connexion with "non-public acts" of foreign States? If not, please indicate the types of "non-public acts" of foreign States not covered by immunities.
- b. In a dispute relating to a contract of purchase of goods, would courts of your State be expected to grant immunity to a foreign State which establishes that the ultimate object of

the contract was for a public purpose or the contract was concluded in the exercise of a "public" or "sovereign" function?

- c. In a dispute relating to a foreign State's breach of a contract of sale, would courts of your State be expected to grant immunity to a foreign State which establishes that its conduct was motivated by public interests?
- d. In any dispute concerning a commercial transaction, is the nature of the transaction decisive of the question of State immunity, if not, how far is ulterior motive relevant to the question?

Question 8

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

Question 9

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

Question 10

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

- a. waiver of jurisdictional immunities of foreign States;
- b. voluntary submission by foreign States, and
- c. counter-claims against foreign States?

Question 11

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

Question 12

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

Question 13

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

Question 14

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

Question 15

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

Question 16

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

Question 17

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

Question 18

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

Question 19

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

Question 20

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

Appendix IV

**European Convention on State Immunity
(Basle, 16.V.1972)****Preamble**

The member States of the Council of Europe, signatory hereto,
Considering that the aim of the Council of Europe is to achieve a greater unity
between its members;
Taking into account the fact that there is in international law a tendency to restrict the
cases in which a State may claim immunity before foreign courts;
Desiring to establish in their mutual relations common rules relating to the scope of
the immunity of one State from the jurisdiction of the courts of another State, and
designed to ensure compliance with judgments given against another State;
Considering that the adoption of such rules will tend to advance the work of
harmonisation undertaken by the member States of the Council of Europe in the legal
field,
Have agreed as follows:

Chapter I – Immunity from jurisdiction**Article 1**

1. A Contracting State which institutes or intervenes in proceedings before a court of another Contracting State submits, for the purpose of those proceedings, to the jurisdiction of the courts of that State.
2. Such a Contracting State cannot claim immunity from the jurisdiction of the courts of the other Contracting State in respect of any counterclaim:
 - a. arising out of the legal relationship or the facts on which the principal claim is based;
 - b. if, according to the provisions of this Convention, it would not have been entitled to invoke immunity in respect of that counterclaim had separate proceedings been brought against it in those courts.
3. A Contracting State which makes a counterclaim in proceedings before a court of another Contracting State submits to the jurisdiction of the courts of that State with respect not only to the counterclaim but also to the principal claim.

Article 2

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has undertaken to submit to the jurisdiction of that court either:

- a. by international agreement;
- b. by an express term contained in a contract in writing; or
- c. by an express consent given after a dispute between the parties has arisen.

Article 3

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if, before claiming immunity, it takes any step in the proceedings relating to the merits. However, if the State satisfies the Court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it

has taken such a step, it can claim immunity based on these facts if it does so at the earliest possible moment.

2. A Contracting State is not deemed to have waived immunity if it appears before a court of another Contracting State in order to assert immunity.

Article 4

1. Subject to the provisions of Article 5, a Contracting State cannot claim immunity from the jurisdiction of the courts of another Contracting State if the proceedings relate to an obligation of the State, which, by virtue of a contract, falls to be discharged in the territory of the State of the forum.
2. Paragraph 1 shall not apply:
 - a. in the case of a contract concluded between States;
 - b. if the parties to the contract have otherwise agreed in writing;
 - c. if the State is party to a contract concluded on its territory and the obligation of the State is governed by its administrative law.

Article 5

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a contract of employment between the State and an individual where the work has to be performed on the territory of the State of the forum.
2. Paragraph 1 shall not apply where:
 - a. the individual is a national of the employing State at the time when the proceedings are brought;
 - b. at the time when the contract was entered into the individual was neither a national of the State of the forum nor habitually resident in that State; or
 - c. the parties to the contract have otherwise agreed in writing, unless, in accordance with the law of the State of the forum, the courts of that State have exclusive jurisdiction by reason of the subject-matter.
3. Where the work is done for an office, agency or other establishment referred to in Article 7, paragraphs 2.a and b of the present article apply only if, at the time the contract was entered into, the individual had his habitual residence in the Contracting State which employs him.

Article 6

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it participates with one or more private persons in a company, association or other legal entity having its seat, registered office or principal place of business on the territory of the State of the forum, and the proceedings concern the relationship, in matters arising out of that participation, between the State on the one hand and the entity or any other participant on the other hand.
2. Paragraph 1 shall not apply if it is otherwise agreed in writing.

Article 7

1. A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if it has on the territory of the State of the forum an office, agency or other establishment through which it engages, in the same manner as a private person, in an industrial, commercial or financial activity, and the proceedings relate to that activity of the office, agency or establishment.

2. Paragraph 1 shall not apply if all the parties to the dispute are States, or if the parties have otherwise agreed in writing.

Article 8

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate:

- a. to a patent, industrial design, trade-mark, service mark or other similar right which, in the State of the forum, has been applied for, registered or deposited or is otherwise protected, and in respect of which the State is the applicant or owner;
- b. to an alleged infringement by it, in the territory of the State of the forum, of such a right belonging to a third person and protected in that State;
- c. to an alleged infringement by it, in the territory of the State of the forum, of copyright belonging to a third person and protected in that State;
- d. to the right to use a trade name in the State of the forum.

Article 9

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to:

- a. its rights or interests in, or its use or possession of, immovable property; or
- b. its obligations arising out of its rights or interests in, or use or possession of, immovable property

and the property is situated in the territory of the State of the forum.

Article 10

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State if the proceedings relate to a right in movable or immovable property arising by way of succession, gift or *bona vacantia*.

Article 11

A Contracting State cannot claim immunity from the jurisdiction of a court of another Contracting State in proceedings which relate to redress for injury to the person or damage to tangible property, if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred.

Article 12

1. Where a Contracting State has agreed in writing to submit to arbitration a dispute which has arisen or may arise out of a civil or commercial matter, that State may not claim immunity from the jurisdiction of a court of another Contracting State on the territory or according to the law of which the arbitration has taken or will take place in respect of any proceedings relating to:
 - a. the validity or interpretation of the arbitration agreement;
 - b. the arbitration procedure;
 - c. the setting aside of the award,

unless the arbitration agreement otherwise provides.

2. Paragraph 1 shall not apply to an arbitration agreement between States.

Article 13

Paragraph 1 of Article 1 shall not apply where a Contracting State asserts, in proceedings pending before a court of another Contracting State to which it is not a party, that it has a right or interest in property which is the subject-matter of the proceedings, and the circumstances are such that it would have been entitled to immunity if the proceedings had been brought against it.

Article 14

Nothing in this Convention shall be interpreted as preventing a court of a Contracting State from administering or supervising or arranging for the administration of property, such as trust property or the estate of a bankrupt, solely on account of the fact that another Contracting State has a right or interest in the property.

Article 15

A Contracting State shall be entitled to immunity from the jurisdiction of the courts of another Contracting State if the proceedings do not fall within Articles 1 to 14; the court shall decline to entertain such proceedings even if the State does not appear.

Chapter II – Procedural rules

Article 16

1. In proceedings against a Contracting State in a court of another Contracting State, the following rules shall apply.
2. The competent authorities of the State of the forum shall transmit
 - the original or a copy of the document by which the proceedings are instituted;
 - a copy of any judgment given by default against a State which was defendant in the proceedings,

through the diplomatic channel to the Ministry of Foreign Affairs of the defendant State, for onward transmission, where appropriate, to the competent authority. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the defendant State.

3. Service of the documents referred to in paragraph 2 is deemed to have been effected by their receipt by the Ministry of Foreign Affairs.
4. The time-limits within which the State must enter an appearance or appeal against any judgment given by default shall begin to run two months after the date on which the document by which the proceedings were instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.
5. If it rests with the court to prescribe the time-limits for entering an appearance or for appealing against a judgment given by default, the court shall allow the State not less than two months after the date on which the document by which the proceedings are instituted or the copy of the judgment is received by the Ministry of Foreign Affairs.

6. A Contracting State which appears in the proceedings is deemed to have waived any objection to the method of service.
7. If the Contracting State has not appeared, judgment by default may be given against it only if it is established that the document by which the proceedings were instituted has been transmitted in conformity with paragraph 2, and that the time-limits for entering an appearance provided for in paragraphs 4 and 5 have been observed.

Article 17

No security, bond or deposit, however described, which could not have been required in the State of the forum of a national of that State or a person domiciled or resident there, shall be required of a Contracting State to guarantee the payment of judicial costs or expenses. A State which is a claimant in the courts of another Contracting State shall pay any judicial costs or expenses for which it may become liable.

Article 18

A Contracting State party to proceedings before a court of another Contracting State may not be subjected to any measure of coercion, or any penalty, by reason of its failure or refusal to disclose any documents or other evidence. However the court may draw any conclusion it thinks fit from such failure or refusal.

Article 19

1. A court before which proceedings to which a Contracting State is a party are instituted shall, at the request of one of the parties or, if its national law so permits, of its own motion, decline to proceed with the case or shall stay the proceedings if other proceedings between the same parties, based on the same facts and having the same purpose:
 - a. are pending before a court of that Contracting State, and were the first to be instituted; or
 - b. are pending before a court of any other Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect by virtue of Article 20 or Article 25.
2. Any Contracting State whose law gives the courts a discretion to decline to proceed with a case or to stay the the proceedings in cases where proceedings between the same parties, based on the same facts and having the same purpose, are pending before a court of another Contracting State, may, by notification addressed to the Secretary General of the Council of Europe, declare that its courts shall not be bound by the provisions of paragraph 1.

Chapter III – Effect of Judgment

Article 20

1. A Contracting State shall give effect to a judgment given against it by a court of another Contracting State:
 - a. if, in accordance with the provisions of Articles 1 to 13, the State could not claim immunity from jurisdiction; and
 - b. if the judgment cannot or can no longer be set aside if obtained by default, or if it is not or is no longer subject to appeal or any other form of ordinary review or to annulment.
2. Nevertheless, a Contracting State is not obliged to give effect to such a judgment in any case:

- a. where it would be manifestly contrary to public policy in that State to do so, or where, in the circumstances, either party had no adequate opportunity fairly to present his case;
 - b. where proceedings between the same parties, based on the same facts and having the same purpose:
 - i. are pending before a court of that State and were the first to be instituted;
 - ii. are pending before a court of another Contracting State, were the first to be instituted and may result in a judgment to which the State party to the proceedings must give effect under the terms of this Convention;
 - c. where the result of the judgment is inconsistent with the result of another judgment given between the same parties:
 - i. by a court of the Contracting State, if the proceedings before that court were the first to be instituted or if the other judgment has been given before the judgment satisfied the conditions specified in paragraph 1.b; or
 - ii. by a court of another Contracting State where the other judgment is the first to satisfy the requirements laid down in the present Convention;
 - d. where the provisions of Article 16 have not been observed and the State has not entered an appearance or has not appealed against a judgment by default.
3. In addition, in the cases provided for in Article 10, a Contracting State is not obliged to give effect to the judgment:
- a. if the courts of the State of the forum would not have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which judgment is given; or
 - b. if the court, by applying a law other than that which would have been applied in accordance with the rules of private international law of that State, has reached a result different from that which would have been reached by applying the law determined by those rules.

However, a Contracting State may not rely upon the grounds of refusal specified in sub-paragraphs a and b above if it is bound by an agreement with the State of the forum on the recognition and enforcement of judgments and the judgment fulfils the requirement of that agreement as regards jurisdiction and, where appropriate, the law applied.

Article 21

1. Where a judgment has been given against a Contracting State and that State does not give effect thereto, the party which seeks to invoke the judgment shall be entitled to have determined by the competent court of that State the question whether effect should be given to the judgment in accordance with Article 20. Proceedings may also be brought before this court by the State against which judgment has been given, if its law so permits.
2. Save in so far as may be necessary for the application of Article 20, the competent court of the State in question may not review the merits of the judgment.
3. Where proceedings are instituted before a court of a State in accordance with paragraph 1:
 - a. the parties shall be given an opportunity to be heard in the proceedings;

- b. documents produced by the party seeking to invoke the judgment shall not be subject to legalisation or any other like formality;
 - c. no security, bond or deposit, however described, shall be required of the party invoking the judgment by reason of his nationality, domicile or residence;
 - d. the party invoking the judgment shall be entitled to legal aid under conditions no less favourable than those applicable to nationals of the State who are domiciled and resident therein.
4. Each Contracting State shall, when depositing its instrument of ratification, acceptance or accession, designate the court or courts referred to in paragraph 1, and inform the Secretary General of the Council of Europe thereof.

Article 22

- 1. A Contracting State shall give effect to a settlement to which it is a party and which has been made before a court of another Contracting State in the course of the proceedings; the provisions of Article 20 do not apply to such a settlement.
- 2. If the State does not give effect to the settlement, the procedure provided for in Article 21 may be used.

Article 23

No measures of execution or preventive measures against the property of a Contracting State may be taken in the territory of another Contracting State except where and to the extent that the State has expressly consented thereto in writing in any particular case.

Chapter IV – Optional provisions

Article 24

- 1. Notwithstanding the provisions of Article 15, any State may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, or at any later date, by notification addressed to the Secretary General of the Council of Europe, declare that, in cases not falling within Articles 1 to 13, its courts shall be entitled to entertain proceedings against another Contracting State to the extent that its courts are entitled to entertain proceedings against States not party to the present Convention. Such a declaration shall be without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority (*acta jure imperii*).
- 2. The courts of a State which has made the declaration provided for in paragraph 1 shall not however be entitled to entertain such proceedings against another Contracting State if their jurisdiction could have been based solely on one or more of the grounds mentioned in the annex to the present Convention, unless that other Contracting State has taken a step in the proceedings relating to the merits without first challenging the jurisdiction of the court.
- 3. The provisions of Chapter II apply to proceedings instituted against a Contracting State in accordance with the present article.
- 4. The declaration made under paragraph 1 may be withdrawn by notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect three months after the date of its receipt, but this shall not affect proceedings instituted before the date on which the withdrawal becomes effective.

Article 25

1. Any Contracting State which has made a declaration under Article 24 shall, in cases not falling within Articles 1 to 13, give effect to a judgment given by a court of another Contracting State which has made a like declaration:
 - a. if the conditions prescribed in paragraph 1.b of Article 20 have been fulfilled; and
 - b. if the court is considered to have jurisdiction in accordance with the following paragraphs.
2. However, the Contracting State is not obliged to give effect to such a judgment:
 - a. if there is a ground for refusal as provided for in paragraph 2 of Article 20; or
 - b. if the provisions of paragraph 2 of Article 24 have not been observed.
3. Subject to the provisions of paragraph 4, a court of a Contracting State shall be considered to have jurisdiction for the purpose of paragraph 1.b:
 - a. if its jurisdiction is recognised in accordance with the provisions of an agreement to which the State of the forum and the other Contracting State are Parties;
 - b. where there is no agreement between the two States concerning the recognition and enforcement of judgments in civil matters, if the courts of the State of the forum would have been entitled to assume jurisdiction had they applied, *mutatis mutandis*, the rules of jurisdiction (other than those mentioned in the annex to the present Convention) which operate in the State against which the judgment was given. This provision does not apply to questions arising out of contracts.
4. The Contracting States having made the declaration provided for in Article 24 may, by means of a supplementary agreement to this Convention, determine the circumstances in which their courts shall be considered to have jurisdiction for the purposes of paragraph 1.b of this article.
5. If the Contracting State does not give effect to the judgment, the procedure provided for in Article 21 may be used.

Article 26

Notwithstanding the provisions of Article 23, a judgment rendered against a Contracting State in proceedings relating to an industrial or commercial activity, in which the State is engaged in the same manner as a private person, may be enforced in the State of the forum against property of the State against which judgment has been given, used exclusively in connection with such an activity, if:

- a. both the State of the forum and the State against which the judgment has been given have made declarations under Article 24;
- b. the proceedings which resulted in the judgment fell within Articles 1 to 13 or were instituted in accordance with paragraphs 1 and 2 of Article 24; and
- c. the judgment satisfies the requirements laid down in paragraph 1.b of Article 20.

Chapter V – General provisions

Article 27

1. For the purposes of the present Convention, the expression "Contracting State" shall not include any legal entity of a Contracting State which is distinct therefrom and is capable of suing or being sued, even if that entity has been entrusted with public functions.

2. Proceedings may be instituted against any entity referred to in paragraph 1 before the courts of another Contracting State in the same manner as against a private person; however, the courts may not entertain proceedings in respect of acts performed by the entity in the exercise of sovereign authority (*acta jure imperii*).
3. Proceedings may in any event be instituted against any such entity before those courts if, in corresponding circumstances, the courts would have had jurisdiction if the proceedings had been instituted against a Contracting State.

Article 28

1. Without prejudice to the provisions of Article 27, the constituent States of a Federal State do not enjoy immunity.
2. However, a Federal State Party to the present Convention, may, by notification addressed to the Secretary General of the Council of Europe, declare that its constituent States may invoke the provisions of the Convention applicable to Contracting States, and have the same obligations.
3. Where a Federal State has made a declaration in accordance with paragraph 2, service of documents on a constituent State of a Federation shall be made on the Ministry of Foreign Affairs of the Federal State, in conformity with Article 16.
4. The Federal State alone is competent to make the declarations, notifications and communications provided for in the present Convention, and the Federal State alone may be party to proceedings pursuant to Article 34.

Article 29

The present Convention shall not apply to proceedings concerning:

- a. social security;
- b. damage or injury in nuclear matters;
- c. customs duties, taxes or penalties.

Article 30

The present Convention shall not apply to proceedings in respect of claims relating to the operation of seagoing vessels owned or operated by a Contracting State or to the carriage of cargoes and of passengers by such vessels or to the carriage of cargoes owned by a Contracting State and carried on board merchant vessels.

Article 31

Nothing in this Convention shall affect any immunities or privileges enjoyed by a Contracting State in respect of anything done or omitted to be done by, or in relation to, its armed forces when on the territory of another Contracting State.

Article 32

Nothing in the present Convention shall affect privileges and immunities relating to the exercise of the functions of diplomatic missions and consular posts and of persons connected with them.

Article 33

Nothing in the present Convention shall affect existing or future international agreements in special fields which relate to matters dealt with in the present Convention.

Article 34

1. Any dispute which might arise between two or more Contracting States concerning the interpretation or application of the present Convention shall be submitted to the International Court of Justice on the application of one of the parties to the dispute or by special agreement unless the parties agree on a different method of peaceful settlement of the dispute.
2. However, proceedings may not be instituted before the International Court of Justice which relate to:
 - a. a dispute concerning a question arising in proceedings instituted against a Contracting State before a court of another Contracting State, before the court has given a judgment which fulfils the condition provided for in paragraph 1.b of Article 20;
 - b. a dispute concerning a question arising in proceedings instituted before a court of a Contracting State in accordance with paragraph 1 of Article 21, before the court has rendered a final decision in such proceedings.

Article 35

1. The present Convention shall apply only to proceedings introduced after its entry into force.
2. When a State has become Party to this Convention after it has entered into force, the Convention shall apply only to proceedings introduced after it has entered into force with respect to that State.
3. Nothing in this Convention shall apply to proceedings arising out of, or judgments based on, acts, omissions or facts prior to the date on which the present Convention is opened for signature.

Chapter VI – Final provisions**Article 36**

1. The present Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 37

1. After the entry into force of the present Convention, the Committee of Ministers of the Council of Europe may, by a decision taken by a unanimous vote of the members casting a vote, invite any non-member State to accede thereto.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.
3. However, if a State having already acceded to the Convention notifies the Secretary General of the Council of Europe of its objection to the accession of another non-member State, before the entry into force of this accession, the Convention shall not apply to the relations between these two States.

Article 38

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 40 of this Convention.

Article 39

No reservation is permitted to the present Convention.

Article 40

1. Any Contracting State may, in so far as it is concerned, denounce this Convention by means of notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. This Convention shall, however, continue to apply to proceedings introduced before the date on which the denunciation takes effect, and to judgments given in such proceedings.

Article 41

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Convention of:

- a. any signature;
- b. any deposit of an instrument of ratification, acceptance or accession;
- c. any date of entry into force of this Convention in accordance with Articles 36 and 37 thereof;
- d. any notification received in pursuance of the provisions of paragraph 2 of Article 19;
- e. any communication received in pursuance of the provisions of paragraph 4 of Article 21;
- f. any notification received in pursuance of the provisions of paragraph 1 of Article 24;
- g. the withdrawal of any notification made in pursuance of the provisions of paragraph 4 of Article 24;
- h. any notification received in pursuance of the provisions of paragraph 2 of Article 28;

- i. any notification received in pursuance of the provisions of paragraph 3 or Article 37;
- j. any declaration received in pursuance of the provisions of Article 38;
- k. any notification received in pursuance of the provisions of Article 40 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Basle, this 16th day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

Annex

The grounds of jurisdiction referred to in paragraph 3, sub-paragraph a, of Article 20, paragraph 2 of Article 24 and paragraph 3, sub-paragraph b, of Article 25 are the following:

- a. the presence in the territory of the State of the forum of property belonging to the defendant, or the seizure by the plaintiff of property situated there, unless:
 - the action is brought to assert proprietary or possessory rights in that property, or arises from another issue relating to such property; or
 - the property constitutes the security for a debt which is the subject-matter of the action;
- b. the nationality of the plaintiff;
- c. the domicile, habitual residence or ordinary residence of the plaintiff within the territory of the State of the forum unless the assumption of jurisdiction on such a ground is permitted by way of an exception made on account of the particular subject-matter of a class of contracts;
- d. the fact that the defendant carried on business within the territory of the State of the forum, unless the action arises from that business;
- e. a unilateral specification of the forum by the plaintiff, particularly in an invoice.

A legal person shall be considered to have its domicile or habitual residence where it has its seat, registered office or principal place of business.

Appendix V

**Additional Protocol to the European Convention on State Immunity
(Basle, 16.V.1972)**

The member States of the Council of Europe, signatory to the present Protocol, Having taken note of the European Convention on State Immunity – hereinafter referred to as "the Convention" – and in particular Articles 21 and 34 thereof; Desiring to develop the work of harmonisation in the field covered by the Convention by the addition of provisions concerning a European procedure for the settlement of disputes,

Have agreed as follows:

Part I**Article 1**

1. Where a judgment has been given against a State Party to the Convention and that State does not give effect thereto, the party which seeks to invoke the judgment shall be entitled to have determined the question whether effect should be given to the judgment in conformity with Article 20 or Article 25 of the Convention, by instituting proceedings before either:
 - a. the competent court of that State in application of Article 21 of the Convention; or
 - b. the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol, provided that that State is a Party to the present Protocol and has not made the declaration referred to in Part IV thereof.

The choice between these two possibilities shall be final.

2. If the State intends to institute proceedings before its court in accordance with the provisions of paragraph 1 or Article 21 of the Convention, it must give notice of its intention to do so to the party in whose favour the judgment has been given; the State may thereafter institute such proceedings only if the party has not, within three months of receiving notice, instituted proceedings before the European Tribunal. Once this period has elapsed, the party in whose favour the judgment has been given may no longer institute proceedings before the European Tribunal.
3. Save in so far as may be necessary for the application of Articles 20 and 25 of the Convention, the European Tribunal may not review the merits of the judgment.

Part II**Article 2**

1. Any dispute which might arise between two or more States parties to the present Protocol concerning the interpretation or application of the Convention shall be submitted, on the application of one of the parties to the dispute or by special agreement, to the European Tribunal constituted in conformity with the provisions of Part III of the present Protocol. The States parties to the present Protocol undertake not to submit such a dispute to a different mode of settlement.
2. If the dispute concerns a question arising in proceedings instituted before a court of one State Party to the Convention against another State Party to the Convention, or a question arising in proceedings instituted before a court of a State Party to the

Convention in accordance with Article 21 of the Convention, it may not be referred to the European Tribunal until the court has given a final decision in such proceedings.

3. Proceedings may not be instituted before the European Tribunal which relate to a dispute concerning a judgment which it has already determined or is required to determine by virtue of Part I of this Protocol.

Article 3

Nothing in the present Protocol shall be interpreted as preventing the European Tribunal from determining any dispute which might arise between two or more States parties to the Convention concerning the interpretation or application thereof and which might be submitted to it by special agreement, even if these States, or any of them, are not parties to the present Protocol.

Part III

Article 4

1. There shall be established a European Tribunal in matters of State Immunity to determine cases brought before it in conformity with the provisions of Parts I and II of the present Protocol.
2. The European Tribunal shall consist of the members of the European Court of Human Rights and, in respect of each non-member State of the Council of Europe which has acceded to the present Protocol, a person possessing the qualifications required of members of that Court designated, with the agreement of the Committee of Ministers of the Council of Europe, by the government of that State for a period of nine years.
3. The President of the European Tribunal shall be the President of the European Court of Human Rights.

Article 5

1. Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part I of the present Protocol, the European Tribunal shall consist of a Chamber composed of seven members. There shall sit as *ex officio* members of the Chamber the member of the European Tribunal who is a national of the State against which the judgment has been given and the member of the European Tribunal who is a national of the State of the forum, or, should there be no such member in one or the other case, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber. The names of the other five members shall be chosen by lot by the President of the European Tribunal in the presence of the Registrar.
2. Where proceedings are instituted before the European Tribunal in accordance with the provisions of Part II of the present Protocol, the Chamber shall be constituted in the manner provided for in the preceding paragraph. However, there shall sit as *ex officio* members of the Chamber the members of the European Tribunal who are nationals of the States parties to the dispute or, should there be no such member, a person designated by the government of the State concerned to sit in the capacity of a member of the Chamber.
3. Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or of the present Protocol, the Chamber may, at any time, relinquish jurisdiction in favour of the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be obligatory where the resolution of such question might have a result inconsistent with a judgment previously delivered

by a Chamber or by the European Tribunal meeting in plenary session. The relinquishment of jurisdiction shall be final. Reasons need not be given for the decision to relinquish jurisdiction.

Article 6

1. The European Tribunal shall decide any disputes as to whether the Tribunal has jurisdiction.
2. The hearings of the European Tribunal shall be public unless the Tribunal in exceptional circumstances decides otherwise.
3. The judgments of the European Tribunal, taken by a majority of the members present, are to be delivered in public session. Reasons shall be given for the judgment of the European Tribunal. If the judgment does not represent in whole or in part the unanimous opinion of the European Tribunal, any member shall be entitled to deliver a separate opinion.
4. The judgments of the European Tribunal shall be final and binding upon the parties.

Article 7

1. The European Tribunal shall draw up its own rules and fix its own procedure.
2. The Registry of the European Tribunal shall be provided by the Registrar of the European Court of Human Rights.

Article 8

1. The operating costs of the European Tribunal shall be borne by the Council of Europe. States non-members of the Council of Europe having acceded to the present Protocol shall contribute thereto in a manner to be decided by the Committee of Ministers after agreement with these States.
2. The members of the European Tribunal shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

Part IV

Article 9

1. Any State may, by notification addressed to the Secretary General of the Council of Europe at the moment of its signature of the present Protocol, or of the deposit of its instrument of ratification, acceptance or accession thereto, declare that it will only be bound by Parts II to V of the present Protocol.
2. Such a notification may be withdrawn at any time.

Part V

Article 10

1. The present Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. The present Protocol shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or acceptance.
4. A member State of the Council of Europe may not ratify or accept the present Protocol without having ratified or accepted the Convention.

Article 11

1. A State which has acceded to the Convention may accede to the present Protocol after the Protocol has entered into force.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 12

No reservation is permitted to the present Protocol.

Article 13

1. Any Contracting State may, in so far as it is concerned, denounce the present Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. The Protocol shall, however, continue to apply to proceedings introduced in conformity with the provisions of the protocol before the date on which such denunciation takes effect.
3. Denunciation of the Convention shall automatically entail denunciation of the present Protocol.

Article 14

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a. any signature of the present Protocol;
- b. any deposit of an instrument of ratification, acceptance or accession;
- c. any date of entry into force of the present Protocol in accordance with Articles 10 and 11 thereof;
- d. any notification received in pursuance of the provisions of Part IV and any withdrawal of any such notification;
- e. any notification received in pursuance of the provisions of Article 13 and the date on which such denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Protocol.

Done at Basle, this 16th day of May 1972, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

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| Portugal | 10/05/79 | | | | | | | | | |
| Romania | | | | | | | | | | |
| Russia | | | | | | | | | | |
| San Marino | | | | | | | | | | |
| Slovakia | | | | | | | | | | |
| Slovenia | | | | | | | | | | |
| Spain | | | | | | | | | | |
| Sweden | | | | | | | | | | |
| Switzerland | 16/05/72 | 06/07/82 | 07/10/82 | | | X | | | | |
| the former Yugoslav Republic of Macedonia | | | | | | | | | | |
| Turkey | | | | | | | | | | |
| Ukraine | | | | | | | | | | |
| United Kingdom | 16/05/72 | 03/07/79 | 04/10/79 | | | X | X | X | X | |

Non-member States of the Council of Europe:

| States | Date of signature | Date of ratification | Date of entry into force | Notes | R. | D. | A. | T. | C. | O. |
|--------|-------------------|----------------------|--------------------------|-------|----|----|----|----|----|----|
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| Total number of signatures not followed by ratifications : | 1 |
| Total number of ratifications/accessions : | 8 |

Notes :

a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Source: Treaty Office on <http://conventions.coe.int>

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| Portugal | 10/05/79 | | | | | | | | | | | | | | | | | | |
| Romania | | | | | | | | | | | | | | | | | | | |
| Russia | | | | | | | | | | | | | | | | | | | |
| San Marino | | | | | | | | | | | | | | | | | | | |
| Slovakia | | | | | | | | | | | | | | | | | | | |
| Slovenia | | | | | | | | | | | | | | | | | | | |
| Spain | | | | | | | | | | | | | | | | | | | |
| Sweden | | | | | | | | | | | | | | | | | | | |
| Switzerland | 16/05/72 | 06/07/82 | 22/05/85 | | | | | | | | | | | | | | | | |
| the former Yugoslav Republic of Macedonia | | | | | | | | | | | | | | | | | | | |
| Turkey | | | | | | | | | | | | | | | | | | | |
| Ukraine | | | | | | | | | | | | | | | | | | | |
| United Kingdom | | | | | | | | | | | | | | | | | | | |

Non-member States of the Council of Europe:

| States | Date of signature | Date of ratification | Date of entry into force | Notes | R. | D. | A. | T. | C. | O. |
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| Total number of signatures not followed by ratifications : | 2 |
| Total number of ratifications/accessions : | 6 |

Notes :

a: Accession - s: Signature without reservation as to ratification - su: Succession - r: Signature "ad referendum".
R.: Reservations - D.: Declarations - A.: Authorities - T.: Territorial Application - C.: Communication - O.: Objection.

Source: Treaty Office on <http://conventions.coe.int>

Appendix VIII

Pilot Project of the Council of Europe on State practice on State Immunity
Standard form/ Fiche-type

(Completed as an exemple – this information does not necessarily reflect an actual case or its facts, points of law, etc.)

| | | |
|-----|--|--|
| (a) | Registration no./N° d'enregistrement | E/2 |
| (b) | Date | 10 February 1986 |
| (c) | Author(ity)/(Service) auteur | Supreme Court (<i>Tribunal Supremo</i>) |
| (d) | Parties | Maria Pérez (individual) vs. Ecuatorial Guinea (State) |
| (e) | Points of law/ Points de droit | The Court establishes that Spanish courts are competent to consider labour disputes involving local employees of foreign missions and consular offices |
| (f) | Classification no./n° | 0.b.3, 1.b, 2.c |
| (g) | Source(s) | <i>Aranzadi</i> , 1986, No. 727 |
| (h) | Additional information/Renseignements complémentaires | Confirmed by decision of the Supreme Court of 1 December 1986 (<i>Aranzadi</i> , 1986, No. 7231) |
| (i) | Full text - extracts - translation - summaries/ Texte complet - extraits – traduction - résumés | Summary: Appendix 1 Full text: Appendix 2 Summary English: Appendix 3 |