

## UNITED STATES

### 1. Information on domestic legislation existing on this particular issue.

Under U.S. law, the conduct of litigation in which the United States or its agencies are a party or have an interest is generally reserved to the Department of Justice. 28 U.S.C. 516. The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States. 28 U.S.C. 517. Furthermore, the United States may file an amicus-curiae brief without the consent of the parties or leave of the court. Fed. R. App. P. 29(a). The Solicitor General is authorized to represent the United States in the Supreme Court, to determine when the United States will appeal from adverse decisions in the district courts, and to determine when the United States will file an amicus brief or intervene in a court of appeals. 28 C.F.R. 0.20.

While some agencies have specific statutory authorization to conduct their own litigation, the U.S. Department of State does not have statutory authorization that would permit it to participate directly in lawsuits against foreign states or international organisations to address immunity or other international law issues. However, when the Department determines that it is appropriate to bring to the court's attention the foreign policy or international law implications of a case, it may communicate with the Department of Justice, which then makes the final decision on whether to file the brief.

### 2. Means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in this field.

#### Sovereign Immunity

In a circular note sent to Chiefs of Mission at Washington on December 10, 1976, the Department of State informed foreign states of the enactment of the Foreign Sovereign Immunities Act ("FSIA") and explained that the FSIA had transferred the responsibility for making decisions on a foreign state's immunity from the Executive Branch to the Judicial Branch. As a result, the Department is no longer able to entertain, as it did before the enactment of the FSIA, diplomatic requests to determine questions of a foreign state's immunity or of conveying such determinations to the courts. The Executive Branch, of course, continues to play the same role that it does in other types of litigation – e.g., appear as amicus curiae in cases of significant interest to the Government. Judicial Construction of the FSIA continues to be of general interest to the Department of State, since the statute endeavours to incorporate many aspects of international law on sovereign immunity into domestic United States law and practice. If a court should misconstrue the new statute, the United States may well have an interest in making its views on the legal issues known to an appellate court.

#### Immunity of Diplomatic and Consular Officers

As explained in a circular note to the Chiefs of Mission in Washington sent on December 20, 1985, the Department of State will provide certifications to U.S. courts regarding the immunity status of diplomatic and consular officers and employees and their families at the request of the employing embassy. If the Department receives a request for such a certification from a U.S. court or public officer or an attorney representing a private party, the Department will provide the certification only after ascertaining first whether the employing embassy wishes to waive immunity.

**3. Prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs.**

See response to Question 1.

**4. Communications with the Parties engaged in procedures before national courts**

In consultation with the Department of Justice, the Department of State generally makes itself available for meetings with parties engaged in litigation in U.S. courts. At those meetings, the Department is prepared to hear the parties' views on both factual and legal issues raised by the litigation.