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Immunity of foreign states under the  
jurisdiction of U.S. courts.

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1973

Mr. RODINO (for himself and Mr. HUTCHINSON) introduced the following bill;  
which was referred to the Committee on the Judiciary

## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That title 28, United States Code, as amended—

4 (1) by inserting after chapter 95 the following new

5 Chapter:

House of Representatives

Referred to Subcommittee No. 2  
Chairman, Hon. Harold D. Donohue  
Counsel, Mr. William P. Shattuck

Date - 2/7/73 *Ben E. Dick*  
Staff Director

*Executive Communication*

*Dept. of State*

93D CONGRESS  
1ST SESSION

# H. R. 3493

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- 3 That title 28, United States Code, as amended—
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- 5 Chapter:

1 **“Chapter 97.—JURISDICTIONAL IMMUNITIES OF**  
 2 **FOREIGN STATES**

“Sec.

“1602. Findings and declaration of purpose.

“1603. Definitions.

“1604. Immunity of foreign states from jurisdiction.

“1605. General exceptions to the jurisdictional immunity of foreign states.

“1606. Immunity in cases relating to the public debt of a foreign state.

“1607. Counterclaims.

“1608. Service of process in United States district courts.

“1609. Immunity from execution and attachment of assets of foreign states.

“1610. Exceptions to the immunity from execution of assets of foreign states.

“1611. Certain types of assets immune from execution.

3 **“§ 1602. Findings and declaration of purpose**

4 “The Congress finds that the determination by United  
 5 States courts of the claims of foreign states to immunity  
 6 from the jurisdiction of such courts would serve the interests  
 7 of justice and would protect the rights of both foreign states  
 8 and litigants in United States courts. Under international  
 9 law, states are not immune from the jurisdiction of foreign  
 10 courts in so far as their commercial activities are concerned,  
 11 and their commercial property may be levied upon for the  
 12 satisfaction of judgments rendered against them in connection  
 13 with their commercial activities. Claims of foreign states  
 14 to immunity should henceforth be decided by United States  
 15 courts in conformity with these principles as set forth in  
 16 this chapter and other principles of international law.

17 **“§ 1603. Definitions**

18 “(a) For the purposes of this chapter, other than sec-

1 tions 1608 and 1610, a ‘foreign state’ includes a political  
 2 subdivision of that foreign state, or an agency or instrumen-  
 3 tality of such a state or subdivision.

4 “(b) For the purposes of this chapter, a ‘commercial  
 5 activity’ means either a regular course of commercial conduct  
 6 or a particular commercial transaction or act. The commer-  
 7 cial character of an activity shall be determined by reference  
 8 to the nature of the course of conduct or particular transaction  
 9 or act, rather than by reference to its purpose.

10 **“§ 1604. Immunity of foreign states from jurisdiction**

11 “Subject to existing and future international agreements  
 12 to which the United States is a party, a foreign state shall be  
 13 immune from the jurisdiction of the courts of the United  
 14 States and of the States except as provided in this chapter.

15 **“§ 1605. General exceptions to the jurisdictional immunity**  
 16 **of foreign states**

17 “A foreign state shall not be immune from the jurisdic-  
 18 tion of courts of the United States or of the States in any  
 19 case—

20 “(1) in which the foreign state has waived its im-  
 21 munity either explicitly or by implication, notwithstand-  
 22 ing any withdrawal of the waiver which the foreign  
 23 state may purport to effect after the claim arose;

24 “(2) in which the action is based upon a commer-  
 25 cial activity carried on in the United States by the for-

1 foreign state; or upon an act performed in the United States  
 2 in connection with a commercial activity of the foreign  
 3 state elsewhere; or upon an act outside the territory of  
 4 the United States in connection with a commercial ac-  
 5 tivity of the foreign state elsewhere and that act has a  
 6 direct effect within the territory of the United States;

7 “(3) in which rights in property taken in viola-  
 8 tion of international law are in issue and that property  
 9 or any property exchanged for such property is present  
 10 in the United States in connection with a commercial ac-  
 11 tivity carried on in the United States by the foreign state  
 12 or that property or any property exchanged for such  
 13 property is owned or operated by an agency or instru-  
 14 mentality of the foreign state or of a political subdivision  
 15 of the foreign state and that agency or instrumentality is  
 16 engaged in a commercial activity in the United States;

17 “(4) in which rights in property in the United  
 18 States; acquired by succession or gift, or rights in im-  
 19 movable property situated in the United States are in  
 20 issue; or

21 “(5) in which money damages are sought against a  
 22 foreign state for personal injury or death, or damage to or  
 23 loss of property, caused by the negligent or wrongful  
 24 act or omission in the United States of that foreign state  
 25 or of any official or employee thereof except that a for-

1 foreign state shall be immune in any case under this para-  
 2 graph in which a remedy is available under Article  
 3 VIII of the Agreement Between the Parties to the  
 4 North Atlantic Treaty Regarding the Status of Their  
 5 Forces.

6 **“§ 1606. Immunity in cases relating to the public debt of a**  
 7 **foreign state**

8 “(a) A foreign state shall be immune from the jurisdic-  
 9 tion of the courts of the United States and of the States in  
 10 any case relating to its public debt, except if—

11 “(1) the foreign state has waived its immunity ex-  
 12 plicitly, notwithstanding any withdrawal of the waiver  
 13 which the foreign state may purport to effect after the  
 14 claim arose; or

15 “(2) the case, whether or not falling within the  
 16 scope of section 1605, relates to the public debt of a  
 17 political subdivision of a foreign state, or of an agency  
 18 or instrumentality of such a state or subdivision.

19 “(b) Nothing in this chapter shall be construed as im-  
 20 pairing any remedy afforded under sections 77 (a) through  
 21 80 (b) -21 of Title 15, United States Code, as amended, or  
 22 any other statute which may hereafter be administered by the  
 23 United States Securities and Exchange Commission.

24 **“§ 1607. Counterclaims**

25 “In any action brought by a foreign state in a court of

1 the United States or of any State, the foreign state shall not  
2 be accorded immunity with respect to—

3 “(1) any counterclaim arising out of the transac-  
4 tion or occurrence that is the subject matter of the claim  
5 of the foreign state; or

6 “(2) any other counterclaim that does not claim  
7 relief exceeding in amount or differing in kind from that  
8 sought by the foreign state.

9 **“§ 1608. Service of process in United States district courts**

10 “Service in the district courts shall be made upon a  
11 foreign state or a political subdivision of a foreign state and  
12 may be made upon an agency or instrumentality of such a  
13 state or subdivision which agency or instrumentality is not a  
14 citizen of the United States as defined in section 1332 (c)  
15 and (d) of this title by delivering a copy of the summons  
16 and complaint by registered or certified mail, to be addressed  
17 and dispatched by the clerk of the court, to the ambassador  
18 or chief of mission of the foreign state accredited to the Gov-  
19 ernment of the United States, to the ambassador or chief of  
20 mission of another state then acting as protecting power for  
21 such foreign state, or in the case of service upon an agency  
22 or instrumentality of a foreign state or political subdivision  
23 to such other officer or agent as is authorized under the law  
24 of the foreign state or of the United States to receive service  
25 of process in the particular case, and, in each case, by also

1 sending two copies of the summons and of the complaint by  
2 registered or certified mail to the Secretary of State at Wash-  
3 ington, District of Columbia, who in turn shall transmit one  
4 of these copies by a diplomatic note to the department of the  
5 government of the foreign state charged with the conduct  
6 of the foreign relations of that state.

7 **“§ 1609. Immunity from execution and attachment of**  
8 **assets of foreign states**

9 “The assets in the United States of a foreign state shall  
10 be immune from attachment and from execution, except as  
11 provided in section 1610 of this chapter.

12 **“§ 1610. Exceptions to the immunity from execution of**  
13 **assets of foreign states**

14 “(a) The assets in the United States of a foreign state  
15 or political subdivision of a foreign state, to the extent that  
16 they are used for a particular commercial activity in the  
17 United States, shall not be immune from attachment for  
18 purposes of execution or from execution of a judgment ren-  
19 dered against that foreign state or political subdivision if—

20 “(1) such attachment or execution relates to a claim  
21 which is based on that commercial activity or on rights  
22 in property taken in violation of international law and  
23 present in the United States in connection with that  
24 activity, or

25 “(2) the foreign state or political subdivision has

1 waived its immunity from attachment for purposes of  
2 execution or from execution of a judgment either ex-  
3 plicitly or by implication, notwithstanding any pur-  
4 ported withdrawal of the waiver after the claim arose.

5 “(b) The assets in the United States of an agency or  
6 instrumentality of a foreign state or of an agency or instru-  
7 mentality of a political subdivision of a foreign state, which  
8 is engaged in a commercial activity in the United States, or  
9 does an act in the United States in connection with such a  
10 commercial activity elsewhere, or does an act outside the  
11 territory of the United States in connection with a commer-  
12 cial activity elsewhere and the act has a direct effect within  
13 the territory of the United States, shall not be immune from  
14 attachment for purposes of execution or from execution of a  
15 judgment rendered against that agency or instrumentality if—

16 “(1) such attachment or execution relates to a claim  
17 which is based on a commercial activity in the United  
18 States or such an act, or on rights in property taken in  
19 violation of international law and present in the United  
20 States in connection with such a commercial activity in  
21 the United States, or on rights in property taken in  
22 violation of international law and owned or operated by  
23 an agency or instrumentality which is engaged in a com-  
24 mercial activity in the United States; or

25 “(2) the agency or instrumentality or the foreign

1 state or political subdivision has waived its immunity  
2 from attachment for purposes of execution or from execu-  
3 tion of a judgment either explicitly or by implication,  
4 notwithstanding any purported withdrawal of the waiver  
5 after the claim arose.

6 **“§ 1611. Certain types of assets immune from execution**

7 “Notwithstanding the provisions of section 1610 of this  
8 chapter, assets of a foreign state shall be immune from  
9 attachment and from execution, if—

10 “(1) the assets are those of a foreign central bank  
11 or monetary authority held for its own account; or

12 “(2) the assets are, or are intended to be, used in  
13 connection with a military activity and

14 (a) are of a military character, or

15 (b) are under the control of a military author-  
16 ity or defense agency.”; and

17 (2) by inserting in the analysis of Part IV, “Juris-  
18 diction and Venue,” of that title after

“95. Customs Court.”,

19 the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

20 SEC. 2. Chapter 85 of title 28, United States Code, is  
21 amended—

22 (1) by inserting immediately before section 1331  
23 the following new section:

1 **“§ 1330. Actions against foreign states**

2 “(a) The district courts shall have original jurisdiction  
3 of all civil actions, regardless of the amount in controversy,  
4 against foreign states or political subdivisions of foreign  
5 states, or agencies or instrumentalities of such a state or sub-  
6 division, other than agencies or instrumentalities which are  
7 citizens of a State of the United States as defined in section  
8 1332 (c) and (d) of this title.

9 “(b) This section does not affect the jurisdiction of the  
10 district courts of the United States with respect to civil ac-  
11 tions against agencies or instrumentalities of a foreign state  
12 or political subdivision thereof which agencies or instrumen-  
13 talities are citizens of a State of the United States, as defined  
14 in section 1332 (c) and (d) of this title.”; and

15 (2) by inserting in the chapter analysis of that  
16 chapter before—

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

17 the following new item:

“1330. Actions against foreign states.”.

18 SEC. 3. Section 1391 of title 28, United States Code, is  
19 amended by adding a new subsection (f), to read as follows:

20 “(f) A civil action against a foreign state, or a political  
21 subdivision of a foreign state, or an agency or instrumentality  
22 of such a state or subdivision which agency or instrumentality  
23 is not a citizen of a State of the United States as defined in

1 section 1332 (c) and (d) of this title may, except as  
2 otherwise provided by law, be brought in a judicial dis-  
3 trict where: (1) a substantial part of the events or omissions  
4 giving rise to the claim occurred, or (2) a substantial  
5 part of the property that is the subject of the action is  
6 situated, or (3) the agency or instrumentality is licensed to  
7 do business or is doing business, if the action is brought  
8 against an agency or instrumentality, or (4) in the United  
9 States District Court for the District of Columbia if the  
10 action is brought against a foreign state or political sub-  
11 division. Nothing in this subsection shall affect the venue of  
12 actions against agencies or instrumentalities of a foreign  
13 state or political subdivision thereof which agencies or in-  
14 strumentalities are citizens of a State of the United States,  
15 as defined in section 1332 (c) and (d) of this title.”

16 SEC. 4. Section 1441 of title 28, United States Code, is  
17 amended by adding a new subsection (d), to read as follows:

18 “(d) Any civil action brought in a State court against  
19 a foreign state, or a political subdivision of a foreign state,  
20 or an agency or instrumentality of such a state or subdivision  
21 which agency or instrumentality is not a citizen of a State of  
22 the United States as defined in section 1332 (c) and (d) of  
23 this title, may be removed by the foreign state, subdivision,  
24 agency or instrumentality to the district court of the United  
25 States for the district and division embracing the place where



1 such action is pending. Nothing in this subsection shall affect  
2 the removal of actions against agencies or instrumentalities of  
3 a foreign state or political subdivision thereof which agencies  
4 or instrumentalities are citizens of a State of the United  
5 States, as defined in section 1332 (c) and (d) of this title.”

6 SEC. 5. Section 1332 of title 28, United States Code, is  
7 amended by striking subsections (a) (2) and (3) and sub-  
8 stituting in their place the following:

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

11 “(3) citizens of different States and in which citi-  
12 zens or subjects of a foreign state are additional parties.”

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93d CONGRESS  
1ST SESSION

# H. R. 3493

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## A BILL

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

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By Mr. RODINO and Mr. HUTCHINSON

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JANUARY 31, 1973

Referred to the Committee on the Judiciary

Chapter 95—JURISDICTIONAL IMMUNITIES

FOREIGN STATES

Sec. 1602. Findings and declaration of purpose.

1603. Definitions.

1604. Immunity of foreign states from jurisdiction.

1605. General exceptions to the jurisdictional immunity of foreign states.

1606. Immunity in cases relating to the public debt of a foreign state.

1607. Counterclaims.

1608. Service of process in United States district courts.

1609. Immunity from execution and attachment of assets of foreign states.

1610. Exceptions to the immunity of foreign states.

1611. Certain provisions of law to be construed.

1602. Findings and declaration of purpose.

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and citizens in United States courts.

Under international law, states are not immune from the jurisdiction of foreign courts in so far as their activities are concerned.

It is the policy of the United States to support the efforts of its courts to exercise jurisdiction over such cases.

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14 States and of the States except as provided in this chapter.

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20 “(1) in which the foreign state has waived its im-  
21 munity either explicitly or by implication, notwithstand-  
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24 “(2) in which the action is based upon a commer-  
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 3 state elsewhere; or upon an act outside the territory of  
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 3 VIII of the Agreement Between the Parties to the  
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 7 **foreign state**

8 “(a) A foreign state shall be immune from the jurisdic-  
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 16 scope of section 1605, relates to the public debt of a  
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 21 80 (b) -21 of Title 15, United States Code, as amended, or  
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 23 United States Securities and Exchange Commission.

24 **“§ 1607. Counterclaims**

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the United States or of any State, the foreign state shall not be accorded immunity with respect to—

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

“(2) any other counterclaim that does not claim relief exceeding in amount or differing in kind from that sought by the foreign state.

**“§ 1608. Service of process in United States district courts**

“Service in the district courts shall be made upon a foreign state or a political subdivision of a foreign state and may be made upon an agency or instrumentality of such a state or subdivision which agency or instrumentality is not a citizen of the United States as defined in section 1332 (c) and (d) of this title by delivering a copy of the summons and complaint by registered or certified mail, to be addressed and dispatched by the clerk of the court, to the ambassador or chief of mission of the foreign state accredited to the Government of the United States, to the ambassador or chief of mission of another state then acting as protecting power for such foreign state, or in the case of service upon an agency or instrumentality of a foreign state or political subdivision to such other officer or agent as is authorized under the law of the foreign state or of the United States to receive service of process in the particular case, and, in each case, by also

1 sending two copies of the summons and of the complaint by  
2 registered or certified mail to the Secretary of State at Wash-  
3 ington, District of Columbia, who in turn shall transmit one  
4 of these copies by a diplomatic note to the department of the  
5 government of the foreign state charged with the conduct  
6 of the foreign relations of that state.

**“§ 1609. Immunity from execution and attachment of  
assets of foreign states**

“The assets in the United States of a foreign state shall be immune from attachment and from execution, except as provided in section 1610 of this chapter.

**“§ 1610. Exceptions to the immunity from execution of  
assets of foreign states**

“(a) The assets in the United States of a foreign state or political subdivision of a foreign state, to the extent that they are used for a particular commercial activity in the United States, shall not be immune from attachment for purposes of execution or from execution of a judgment rendered against that foreign state or political subdivision if—

“(1) such attachment or execution relates to a claim which is based on that commercial activity or on rights in property taken in violation of international law and present in the United States in connection with that activity, or

“(2) the foreign state or political subdivision has

1 waived its immunity from attachment for purposes of  
 2 execution or from execution of a judgment either ex-  
 3 plicitly or by implication, notwithstanding any pur-  
 4 ported withdrawal of the waiver after the claim arose.

5 “(b) The assets in the United States of an agency or  
 6 instrumentality of a foreign state or of an agency or instru-  
 7 mentality of a political subdivision of a foreign state, which  
 8 is engaged in a commercial activity in the United States, or  
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 10 commercial activity elsewhere, or does an act outside the  
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7 “Notwithstanding the provisions of section 1610 of this  
 8 chapter, assets of a foreign state shall be immune from  
 9 attachment and from execution, if—

10 “(1) the assets are those of a foreign central bank  
 11 or monetary authority held for its own account; or

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14 (a) are of a military character, or

15 (b) are under the control of a military author-  
 16 ity or defense agency.”; and

17 (2) by inserting in the analysis of Part IV, “Juris-  
 18 diction and Venue,” of that title after

19 “95. Customs Court.”,  
 the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

20 SEC. 2. Chapter 85 of title 28, United States Code, is  
 21 amended—

22 (1) by inserting immediately before section 1331  
 23 the following new section:

1 **“§ 1330. Actions against foreign states**

2 “(a) The district courts shall have original jurisdiction  
3 of all civil actions, regardless of the amount in controversy,  
4 against foreign states or political subdivisions of foreign  
5 states, or agencies or instrumentalities of such a state or sub-  
6 division, other than agencies or instrumentalities which are  
7 citizens of a State of the United States as defined in section  
8 1332 (c) and (d) of this title.

9 “(b) This section does not affect the jurisdiction of the  
10 district courts of the United States with respect to civil ac-  
11 tions against agencies or instrumentalities of a foreign state  
12 or political subdivision thereof which agencies or instrumen-  
13 talities are citizens of a State of the United States, as defined  
14 in section 1332 (c) and (d) of this title.”; and

15 (2) by inserting in the chapter analysis of that  
16 chapter before—

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

17 the following new item:

“1330. Actions against foreign states.”.

18 SEC. 3. Section 1391 of title 28, United States Code, is  
19 amended by adding a new subsection (f), to read as follows:

20 “(f) A civil action against a foreign state, or a political  
21 subdivision of a foreign state, or an agency or instrumentality  
22 of such a state or subdivision which agency or instrumentality  
23 is not a citizen of a State of the United States as defined in

1 section 1332 (c) and (d) of this title may, except as  
2 otherwise provided by law, be brought in a judicial dis-  
3 trict where: (1) a substantial part of the events or omissions  
4 giving rise to the claims occurred, or (2) a substantial  
5 part of the property that is the subject of the action is  
6 situated, or (3) the agency or instrumentality is licensed to  
7 do business or is doing business, if the action is brought  
8 against an agency or instrumentality, or (4) in the United  
9 States District Court for the District of Columbia if the  
10 action is brought against a foreign state or political sub-  
11 division. Nothing in this subsection shall affect the venue of  
12 actions against agencies or instrumentalities of a foreign  
13 state or political subdivision thereof which agencies or in-  
14 strumentalities are citizens of a State of the United States,  
15 as defined in section 1332 (c) and (d) of this title.”

16 SEC. 4. Section 1441 of title 28, United States Code, is  
17 amended by adding a new subsection (d), to read as follows:

18 “(d) Any civil action brought in a State court against  
19 a foreign state, or a political subdivision of a foreign state,  
20 or an agency or instrumentality of such a state or subdivision  
21 which agency or instrumentality is not a citizen of a State of  
22 the United States as defined in section 1332 (c) and (d) of  
23 this title, may be removed by the foreign state, subdivision,  
24 agency or instrumentality to the district court of the United  
25 States for the district and division embracing the place where



1 such action is pending. Nothing in this subsection shall affect  
2 the removal of actions against agencies or instrumentalities of  
3 a foreign state or political subdivision thereof which agencies  
4 or instrumentalities are citizens of a State of the United  
5 States, as defined in section 1332 (c) and (d) of this title.”

6 SEC. 5. Section 1332 of title 28, United States Code, is  
7 amended by striking subsections (a) (2) and (3) and sub-  
8 stituting in their place the following:

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

11 “(3) citizens of different States and in which citi-  
12 zens or subjects of a foreign state are additional parties.”

13 state or political subdivision thereof which agencies or in-  
14 strumentalities are citizens of the United States,  
15 as defined in section 1332 (c) and (d) of this title.”

16 Sec. 4. Section 1441 of title 28, United States Code,  
17 amended by adding a new subsection (b) to read as follows:

18 “(b) Any civil action brought in a State court against

19 a foreign state or a political subdivision of a foreign state,

20 or an agency or instrumentality of such a state or subdivision

21 which agency or instrumentality is not a citizen of a State of

22 the United States as defined in section 1332 (c) and (d) of

23 this title, may be removed by the foreign state, subdivision,

24 agency or instrumentality to the district court of the United

25 States for the district and division embracing the place where

93<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3493

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## A BILL

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

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By Mr. RODINO and Mr. HUTCHINSON

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JANUARY 31, 1973

Referred to the Committee on the Judiciary