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IDENTICAL SUBMISSION
TO THE SPEAKER



DEPARTMENT OF STATE

Washington, D.C. 20520

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Dear Mr. President:

The Department of State and Department of Justice submit for your consideration and appropriate reference the enclosed draft bill, entitled "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." This is a proposed revision of the draft bill which was submitted in a letter (enclosed) to the President of the Senate dated January 22, 1973, and subsequently introduced by Senators Roman Hruska and Hugh Scott as S. 566 and by Senator William Fulbright as S. 771. A revised Section-by-Section Analysis explaining the provisions of the bill in some detail is also enclosed. A hearing was held on the companion bill H.R. 3493 before the Subcommittee of the Judiciary in the House of Representatives in the first session of the Ninety-Third Congress on June 7, 1973.

The broad purposes of this legislation -- to facilitate and depoliticize litigation against foreign states and to minimize irritations in foreign relations arising out of such litigation -- remain the same. To this end the revised bill, like its predecessor, would entrust the resolution of questions of sovereign immunity to the judicial branch of Government. The statute would codify and refine the "restrictive theory" of sovereign immunity which has guided United States practice with respect to jurisdiction originally set forth in the letter of May 19, 1952, from the Acting Legal Adviser, Jack B. Tate, to the Acting Attorney General, Philip B. Perlman. It would also replace the absolute immunity now accorded foreign

The Honorable
Nelson A. Rockefeller,
President of the Senate.

states from execution of judgment with an immunity from execution conforming more closely to the restrictive theory of immunity from jurisdiction. The measure also includes provisions for service of process, venue, and jurisdiction in cases against foreign states which would make it unnecessary to attach the assets of foreign states for purposes of jurisdiction.

Numerous technical changes have been made in the bill on the basis of the hearing in the House of Representatives, commentaries in a number of legal journals, and extensive discussions which have been held with members of the bar as well as the reports and recommendations of committees of several bar associations. A number of these technical revisions are important, but none of them alters the basic concept of the legislation as originally submitted.

The most important changes include (1) further definition of "commercial activity carried on in the United States by a foreign state" and "public debt" in Section 1603; (2) clarification of the limitations of immunity in tort actions (Section 1605(5)), in respect of counterclaims (Section 1607), and in case of execution of judgment (Section 1610); and (3) substantial revision of Section 1608 relating to service of process to conform with Article XXII of the Convention on Diplomatic Relations, signed at Vienna April 18, 1961, and with the Federal Rules of Civil Procedure.

In addition, important new provisions have been added to preserve the jurisdiction of the courts of the United States in cases in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of a foreign state (Section 1605(b)), and to avoid interference with disbursements to foreign states by certain international organizations located in the United States (Section 1611(a)). These and other changes are discussed in the enclosed Analysis.

The Departments of State and Justice believe that this revised draft bill is worthy of and will receive the support of the bar and would welcome hearings before

the appropriate committees of the Senate to consider this measure as soon as possible.

The Office of Management and Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the Administration's program.

Sincerely,

Robert S. Ingersoll
Deputy Secretary of State

Harold R. Tyler, Jr.
Deputy Attorney General

Enclosures:

1. Revised Draft Bill
2. Revised Section-by-Section Analysis
3. Letter to the President of the Senate
dated January 22, 1973

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FOREIGN SOVEREIGN IMMUNITIES ACT OF 1975

Section-by-Section Analysis

This bill, entitled the "Foreign Sovereign Immunities Act of 1975," sets forth the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by foreign states before federal and state courts in the United States. It is intended to preempt any other state or federal law (excluding applicable international agreements) for according immunity to foreign sovereigns, their political subdivisions, their agencies and their instrumentalities. It is also designed to bring U.S. practice into conformity with that of most other nations by leaving sovereign immunity decisions exclusively to the courts, thereby discontinuing the practice of judicial deference to "suggestions of immunity" from the Executive Branch. (See Ex Parte Peru, 318 U.S. 578, 588-589 (1943).

The bill is not intended to affect the substantive law of liability. Nor is it intended to affect either diplomatic or consular immunity, or the attribution of responsibility between or among entities of a foreign state -- e.g., whether the proper entity of a foreign state has been sued, or whether an entity sued is liable in whole or in part for the claimed wrong.

Aside from setting forth comprehensive rules governing sovereign immunity, the bill prescribes: the jurisdiction of United States district courts in cases involving foreign states; procedures for commencing a lawsuit against foreign states in both federal and state courts; and circumstances under which attachment and execution may be obtained against the property of foreign states to satisfy a judgment against foreign states in both federal and state courts.

FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976

Constitutional authority for enacting such legislation derives from Congress' power to prescribe the jurisdiction of federal courts (Art. I, Sec. 8, Cl. 9; Art. III, Sec. 1); to define offenses against the "Law of Nations" (Art. I, Sec. 8, Cl. 10); to regulate commerce with foreign nations (Art. I, Sec. 8, Cl. 3); and "to make all Laws necessary and proper for carrying into Execution . . . all . . . Powers vested . . . in the Government of the United States," including the judicial power of the United States over controversies between "a State, or the Citizens thereof, and foreign states . . ." (Art. I, Sec. 8, Cl. 18; Art. III, Sec. 2, Cl. 1). See National Bank v. Republic of China, 348 U.S. 356, 370-71 (1955) (Reed J., dissenting); cf. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964).

This section-by-section analysis supersedes the section-by-section analysis that accompanied the earlier version of the bill (i.e., S. 566 and H.R. 3493, 93d Cong., 1st Sess.); the prior analysis should not be consulted in interpreting the current bill and its provisions, and no inferences should be drawn from differences between the two.

SEC. 2. Jurisdiction in Actions Against Foreign States

Section 2 of the bill adds a new Section 1330 to Title 28 of the United States Code, and provides for subject matter and personal jurisdiction of U.S. district courts over foreign states and their political subdivisions, agencies and instrumentalities. Section 1330 provides a comprehensive jurisdictional scheme in cases involving foreign states. Such broad jurisdiction in the federal courts should be conducive to uniformity in decision, which is desirable since a disparate treatment of cases involving foreign governments may have adverse

foreign relations consequences. Plaintiffs, however, will have an election whether to proceed in federal court or in a court of a State, subject to the removal provisions of Section 6 of the bill.

(a) Subject Matter Jurisdiction. Section 1330(a) gives federal district courts original jurisdiction in personam against foreign states (defined as including political subdivisions, agencies and instrumentalities of foreign states). The jurisdiction extends to any claim with respect to which the foreign state is not entitled to immunity under Sections 1605-1607 proposed in the bill, or under any applicable international agreement of the type contemplated by the proposed Section 1604.

As in suits against the United States Government, jury trials are excluded. See 28 U.S.C. 2402. Actions tried by a court without jury will tend to promote a uniformity in decision where foreign governments are involved.

In addition, the jurisdiction of district courts in cases against foreign states is to be without regard to amount in controversy. This is intended to encourage the bringing of actions against foreign states in federal courts. Under existing law, the district courts have diversity jurisdiction in actions in which foreign states are parties, but only where the amount in controversy exceeds \$10,000. 28 U.S.C. 1332(a)(2) and (3). (See analysis of Section 3 of the bill, below.)

(b) Personal Jurisdiction. Section 1330(b) provides a federal long-arm statute over foreign states (including political subdivisions, agencies and instrumentalities of foreign states). It is patterned after the long-arm statute Congress enacted for the District of Columbia. Pub. L. 91-358, §132(a), Title I, 84 Stat. 549. Two criteria must be met: (1) the claim must be one over which the district courts have original jurisdiction under Section 1330(a), meaning a claim for which the

foreign state is not entitled to immunity; and (2) proper service of process must be made under the new Section 1608 in the bill.

The first criterion necessitates a substantial contact or other nexus between the United States and the challenged activity of the foreign state. Cf. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) and McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). Thus, the activities which under Sections 1605-1607 in the bill deny to a foreign state immunity from suit involve either a nexus with the United States or a waiver by the foreign state of its immunity from jurisdiction.

(c) Effect of an Appearance. Section 1330(c) states that a mere appearance by a foreign state in an action does not confer personal jurisdiction with respect to claims which could not be brought as an independent action under this bill. The purpose is to make it clear that a foreign state does not subject itself to claims unrelated to the action solely by virtue of an appearance before a U.S. court. While the plaintiff is free to amend his complaint, he is not permitted to add claims for relief not based on transactions or occurrences listed in the bill. The term "transaction or occurrence" includes each basis set forth in Sections 1605-1607 for not granting immunity, including waivers.

SEC. 3. Diversity Jurisdiction as to Foreign States

Section 3 of the bill amends those provisions of 28 U.S.C. 1332 which relate to diversity jurisdiction of U.S. district courts over foreign states. Since jurisdiction in actions against foreign states is comprehensively treated by the new Section 1330, a similar jurisdictional basis under Section 1330 becomes superfluous. The amendment deletes references to "a foreign state" now found in paragraphs (2) and (3) of 28 U.S.C. 1332(a), and adds a new paragraph

(4) to provide for diversity jurisdiction in actions brought by a foreign state as plaintiff. These changes would not affect the applicability of Section 1332 to entities that are both owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). See analysis to Section 1603(b).

SEC. 4. New Chapter 97: Sovereign Immunity Provisions

Section 4 of the bill adds a new Chapter 97 to Title 28, U.S. Code, which sets forth the legal standards under which federal and state courts would henceforth determine all claims of sovereign immunity raised by foreign states and their political subdivisions, agencies and instrumentalities. The specific sections of Chapter 97 are as follows:

Section 1602. Findings and Declaration of Purpose.

Section 1602 sets forth the central premise of the bill: that decisions on claims by foreign states to sovereign immunity are best made by the judiciary on the basis of a statutory regime which incorporates standards recognized under international law.

Although the general concept of sovereign immunity appears to be recognized in international law, its specific content and application have generally been left to the courts of individual nations. There is, however, a wide acceptance of the so-called "restrictive theory" of sovereign immunity -- i.e., that the sovereign immunity of foreign states should be "restricted" to cases involving acts of a foreign state which are sovereign or governmental in nature, as opposed to acts which are either commercial in nature or those which private persons normally perform. This restrictive theory has been adhered to by the Department of

State since the "Tate letter" of May 19, 1952. (4) to (1) actions brought by these changes would not affect the applicability of Section 1332 to entities that are both owned by a foreign state and are also citizens of a state of the United States. (See analysis to Section 1603(b) and (d). See analysis to Section 1603(c) and (d).)

Section 1603. Definitions.

Section 1603 defines five terms that are used in the bill:

(a) Foreign State. Subsection (a) defines the term foreign state as used in all provisions of Chapter 97, except Sections 1606 and 1608. In those latter two sections, the term "foreign state" refers only to the sovereign state itself.

As the definition indicates, the term "foreign state" as used in every other section of Chapter 97 includes not only the foreign state but also political subdivisions, agencies and instrumentalities of the foreign state. The term "political subdivisions" includes all governmental units beneath the central government including local governments.

(b) Agency or Instrumentality of a Foreign State. Subsection (b) defines an "agency or instrumentality of a foreign state" as any entity (1) which is a separate legal person, (2) which is an organ of a foreign state or of a political subdivision of a foreign state, or a majority of whose shares or other ownership interest is owned by a foreign state or by a foreign state's political subdivision, and (3) which is neither a citizen of a State of the United States as defined in 28 U.S.C. 1332(c) and (d) nor created under the laws of any third country.

The first criterion, that the entity be a separate legal person, is intended to include a corporation, association, foundation or any other entity which, under the law of the foreign state where it was created, can sue or be sued in its own name, contract in its own name or hold property in its own name.

The second criterion requires that the entity be either an organ of a foreign state (or of a foreign state's political subdivision), or that a majority of the entity's shares or other ownership interest be owned by a foreign state (or by a foreign state's political subdivision). If such entities are entirely owned by a foreign state, they would of course be included within the definition. Where ownership is divided between a foreign state and private interests, the entity will be deemed to be an agency or instrumentality of a foreign state only if a majority of the ownership interests (shares of stock or otherwise) is owned by a foreign state or by a foreign state's political subdivision.

The third criterion excludes entities which are citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d) -- for example, a corporation organized and incorporated under the laws of the State of New York but owned by a foreign state. See Amtorg Trading Corp. v. United States, 71 F.2d 524 (C.C.P.A. 1934). Also excluded are entities which are created under the laws of third countries. The rationale behind these exclusions is that if a foreign state acquires or establishes a company or other legal entity in a foreign country, such entity is presumptively engaging in activities that are either commercial or private in nature.

An entity which does not fall within the definitions of Sections 1603(a) or (b) would not be entitled to sovereign immunity in any case before a federal or state court. On the other hand, the fact that an entity is an "agency or instrumentality of a foreign state" does not in itself establish an entitlement to sovereign immunity. A court would have to consider whether one of the sovereign immunity exceptions contained in the bill (see Sections 1605-07 and 1610-11) was applicable.

As a general matter, entities which meet the definition of an "agency or instrumentality of a foreign state" could assume a variety of forms, including a state trading corporation, a mining

enterprise, a transport organization such as a shipping line or airline, a steel company, a central bank, an export association, a governmental procurement agency or a department or ministry which acts and is suable in its own name.

(c) United States. Paragraph (c) of Section 1603 defines "United States" as including all territory and waters subject to the jurisdiction of the United States.

(d) Commercial Activity. Paragraph (c) of Section 1603 defines the term "commercial activity" as including a broad spectrum of endeavor, from an individual commercial transaction or act to a regular course of commercial conduct. A "regular course of commercial conduct" includes the carrying on of a commercial enterprise such as a mineral extraction company, an air line or a state trading corporation. Certainly, if an activity is customarily carried on for profit, its commercial nature could readily be assumed. At the other end of the spectrum, a single contract, if of the same character as a contract which might be made by a private person, could constitute a "particular transaction or act."

As the definition indicates, the fact that goods or services to be procured through a contract are to be used for a public purpose is irrelevant; it is the essentially commercial nature of an activity or transaction that is critical. Thus, a contract by a foreign government to buy provisions or equipment for its armed forces or to construct a government building constitutes a commercial activity. The same would be true of a contract to make repairs on an embassy building. Such contracts should be considered to be commercial contracts, even if their ultimate object is to further a public function.

By contrast, a foreign state's mere participation in a foreign assistance program administered by the Agency for International Development (AID)

is an activity whose essential nature is public or governmental, and it would not itself constitute a commercial activity. By the same token, a foreign state's activities in and "contacts" with the United States resulting from or necessitated by participation in such a program would not in themselves constitute a sufficient commercial nexus with the United States so as to give rise to jurisdiction (see Section 1330) or to assets which could be subjected to attachment or execution with respect to unrelated commercial transactions (see Section 1610(b)). However, a transaction to obtain goods or services from private parties would not lose its otherwise commercial character because it was entered into in connection with an AID program. Also public or governmental and not commercial in nature, would be the employment of diplomatic, civil service or military personnel, but not the employment of American citizens or third country nationals by the foreign state in the United States.

The courts would have a great deal of latitude in determining what is a "commercial activity" for purposes of this bill. It has seemed unwise to attempt an excessively precise definition of this term, even if that were practicable. Activities such as a foreign government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of laborers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation, would be among those included within the definition.

(e) Commercial Activity Carried on in the United States by a Foreign State. As paragraph (d) of Section 1603 indicates, a commercial activity carried on in the United States by a foreign state would include not only a commercial transaction performed and executed in its entirety in the United States, but also a commercial transaction or act having a "substantial contact" with the United States. This definition includes cases based on commercial transactions performed in whole or in part in the United States, import-export transactions involving

sales to, or purchases from, concerns in the United States, business torts occurring in the United States (cf. § 1605(a)(5)), and an indebtedness incurred by a foreign state which negotiates or executes a loan agreement in the United States, or which receives financing from a private or public lending institution located in the United States (e.g. loans, guarantees or insurance provided by the Export-Import Bank of the United States). It will be for the courts to determine whether a particular commercial activity has been performed in whole or in part in the United States. This definition, however, is intended to reflect a degree of contact beyond that occasioned simply by U. S. citizenship or U.S. residence of the plaintiff.

Section 1604. Immunity of Foreign States from Jurisdiction.

New Chapter 97 of Title 28, United States Code, starts from a premise of immunity and then creates exceptions to the general principle. The chapter is thus cast in a manner consistent with the way in which the law of sovereign immunity has developed. Stating the basic principle in terms of immunity may be of some advantage to foreign states in doubtful cases, but, since sovereign immunity is an affirmative defense which must be specially pleaded, the burden will remain on the foreign state to produce evidence in support of its claim of immunity.

The immunity from jurisdiction provided in Section 1604 applies to proceedings in both federal and state courts. Section 1604 would be the only basis under which a foreign state can claim immunity from the jurisdiction of any federal or state court in the United States.

All immunity provisions are made subject to "existing" treaties and other international agreements to which the United States is a party. In the event of any conflict with this bill, provisions

in treaties and international agreements would control. They include inter alia treaties of friendship, commerce and navigation and bilateral air transport agreements which contain provisions relating to the immunity of foreign states. Similarly, this bill would not alter the rights or duties of the United States under the NATO Status of Forces Agreement or similar agreements with other countries; nor would it alter the provisions of commercial contracts, or existing and future agreements to which the United States is a party, calling for exclusive nonjudicial remedies through arbitration or other procedures for the settlement of disputes.

The immunity provisions are also subject to "future" international agreements. Included in this concept is the possibility of a future international convention on sovereign immunity, just as there are in existence at present international conventions on diplomatic and consular immunity.

Section 1605. General Exceptions to the Jurisdictional Immunity of Foreign States.

Section 1605 sets forth the general circumstances in which a claim of sovereign immunity by a foreign state, as defined in Section 1603(a) would not be recognized in a federal or state court in the United States.

(a)(1) Waivers. Section 1605(a)(1) treats explicit and implied waivers by foreign states of sovereign immunity. With respect to explicit waivers, a foreign state may renounce its immunity by treaty, as has been done by the United States with respect to commercial and other activities in a series of treaties of friendship, commerce, and navigation, or a foreign state may waive its immunity in a contract with a private party. Since the sovereign immunity of a political subdivision, agency or instrumentality

of a foreign state derives from the foreign state itself, the foreign state may waive the immunity of its political subdivisions, agencies or instrumentalities.

With respect to implicit waivers, the courts have found such waivers in cases where a foreign state has agreed to arbitration in another country or where a foreign state has agreed that the law of a particular country should govern a contract. An implicit waiver would also include a situation where a foreign state has filed a responsive pleading in an action without raising the defense of sovereign immunity.

The language, "notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver," is designed to exclude a withdrawal of the waiver both after and before a dispute arises except in accordance with the terms of the original waiver. In other words, if the foreign state agrees to a waiver of sovereign immunity in a contract, that waiver may subsequently be withdrawn only in a manner consistent with the expression of the waiver in the contract. Some court decisions have allowed subsequent and unilateral rescissions of waivers by foreign states. But the better view, and the one followed in this section, is that a foreign state which has induced a private person into a contract by promising not to invoke its immunity cannot, when a dispute arises, go back on its promise and seek to revoke the waiver unilaterally.

(a) (2) Commercial Activities Having a Nexus with the United States. Section 1605(a) (2) treats what is probably the most important instance in which foreign states are denied immunity, that in which the foreign state engages in a commercial activity. The definition of a "commercial activity" is set forth in Section 1603(d) of the bill, and is discussed in the analysis to that section.

Section 1605(a)(2) mentions three situations in which a foreign state would not be entitled to immunity with respect to a claim based upon a commercial activity. The first of these situations is where the "commercial activity [is] carried on in the United States by the foreign state." This phrase is defined in Section 1603(e) of the bill. See the analysis to that section.

The second situation, an "act performed in the United States in connection with a commercial activity of the foreign state elsewhere," looks to conduct of the foreign state in the United States which relates either to a regular course of commercial conduct elsewhere or to a particular commercial transaction concluded or carried out in part elsewhere. Examples of this type of situation might include: a representation in the United States by an agent of a foreign state that leads to an action for restitution based on unjust enrichment; an act in the United States that violates U.S. securities laws or regulations; the wrongful discharge in the United States of an employee of the foreign state who has been employed in connection with a commercial activity carried on in some third country.

Although some or all of these acts might also be considered to be a "commercial activity carried on in the United States," as broadly defined in Section 1603 (e), it has seemed advisable to provide expressly for the case where a claim arises out of a specific act in the U.S. which is commercial or private in nature and which relates to a commercial activity abroad. It should be noted that the acts (or omissions) encompassed in this category are limited to those which in and of themselves are sufficient to form the basis of a cause of action.

The third situation -- "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States" -- would embrace commercial conduct abroad

having direct effects within the United States which would subject such conduct to the exercise of jurisdiction by the United States consistent with principles set forth in Section 18, Restatement of the Law, Second, Foreign Relations Law of the United States (1965).

Neither the term "direct effect" nor the concept of "substantial contacts" embodied in Section 1603(e) is intended to alter the application of the Sherman Antitrust Act, 15 U.S.C. 1, et seq. to any defendant. Thus, the bill does not affect the holdings in such cases as United States v. Pacific & Arctic Ry. & Nav. Co., 228 U.S. 87 (1913), or Pacific Seafarers, Inc. v. Pacific Far East Line, Inc., 404 F.2d 803 (D.C. Cir. 1968), cert. denied, 393 U.S. 1093 (1969).

(a) (3) Expropriation Claims. Section 1605(a) (3) would, in two categories of cases, deny immunity where "rights in property taken in violation of international law are in issue." The first category involves cases where the property in question or any property exchanged for such property is present in the United States, and where such presence is in connection with a commercial activity carried on in the United States by the foreign state, or political subdivision, agency or instrumentality of the foreign state. The second category is where the property, or any property exchanged for such property, is (i) owned or operated by an agency or instrumentality of a foreign state and (ii) that agency or instrumentality is engaged in a commercial activity in the United States. Under the second category, the property need not be present in connection with a commercial activity of the agency or instrumentality.

The term "taken in violation of international law" would include the nationalization or expropriation of property without payment of compensation required by international law. It would also include takings which are arbitrary or discriminatory in nature. Since, however, this section deals solely with issues of immunity, it in no way affects existing

law on the extent to which, if at all, the "act of state" doctrine may be applicable.

(a) (4) Immovable, Inherited and Gift Property. Section 1605(a)(4) denies immunity in litigation relating to rights in real estate and in inherited or gift property located in the United States. It is established that, as set forth in the "Tate Letter" of 1952, sovereign immunity should not be granted in actions with respect to real property, diplomatic and consular property excepted. 26 Dept. of State Bulletin 984 (1952). It does not matter whether a particular piece of property is used for commercial or public purposes.

It is maintainable that the exception mentioned in the "Tate Letter" with respect to diplomatic and consular property is limited to questions of attachment and execution and does not apply to an adjudication of rights in that property. Thus the Vienna Convention on Diplomatic Relations, concluded in 1961, provides in Article 22 that the "premises of the mission, their furnishings and other property thereon and the means of transport of the mission are immune from search, requisition, attachment or execution." Actions short of attachment or execution seem to be permitted under the Convention, and a foreign state cannot deny to the local state the right to adjudicate questions of ownership, rent, servitudes, and similar matters, as long as the foreign state's possession of the premises is not disturbed.

There is general agreement that a foreign state may not claim immunity when the suit against it relates to rights in property, real or personal, obtained by gift or inherited by the foreign state and situated or administered in the country where the suit is brought. As stated in the "Tate Letter," immunity should not be granted "with respect to the disposition of the property of a deceased person even though a foreign sovereign is the beneficiary." The reason is that, in claiming rights in a decedent's estate or obtained by gift, the foreign state claims the same right which is enjoyed by private persons.

(a) (5) Non-Commercial Torts. Section 1605(a) (5) is directed primarily at the problem of traffic accidents but is cast in general terms as applying to all tort actions for money damages, not otherwise encompassed by Section 1605(a) (2) relating to commercial activities. It denies immunity as to claims for personal injury or death, or for damage to or loss of property, caused by the tortious act or omission of a foreign state or its officials or employees, acting within the scope of their authority; the tortious act or omission must occur within the jurisdiction of the United States, and must not come within one of the exceptions enumerated in the second paragraph of the subsection.

As used in Section 1605(a) (5), the phrase "tortious act or omission" is meant to include causes of action which are based on strict liability as well as on negligence. The exceptions provided in subparagraphs (A) and (B) of Section 1605(a) (5) correspond to many of the claims with respect to which the United States Government retains immunity under the Federal Tort Claims Act, 28 U.S.C. 2680(a) and (h).

Like other provisions in the bill, Section 1605 is subject to existing and future international agreements (see Section 1604) including Status of Forces Agreements; if a remedy is available under a Status of Forces Agreement, the foreign state is immune from such tort claims as are encompassed in Sections 1605(a) (2) and 1605(a) (5).

Since the bill deals only with the immunity of foreign states and not its diplomatic or consular representatives, Section 1605(a) (5) would not govern suits against diplomatic or consular representatives but only suits against the foreign state. It is noteworthy in this regard that while the Vienna Convention on Consular Relations of 1963 expressly abolishes the immunity of consular officers with respect to civil actions brought by a third party for "damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft," there is no such provision in the Vienna Convention on Diplomatic Relations of 1961. Consequently, no

case relating to a traffic accident can be brought against a member of a diplomatic mission.

The purpose of Section 1605(a)(5) is to permit the victim of a traffic accident or other non-commercial tort to maintain an action against the foreign state to the extent otherwise provided by law. See, however, Section 1605(c).

(b) Maritime Liens. Section 1605(b) denies immunity to a foreign state in cases where (i) a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of that foreign state, (ii) the maritime lien is based upon a commercial activity of the foreign state, and (iii) the conditions in paragraphs (1) and (2) of Section 1605 (b) have been complied with.

The purpose of this subsection is to permit a plaintiff to bring suit in a United States district court arising out of a maritime lien involving a vessel or cargo of a foreign sovereign without arresting the vessel, by instituting an in personam action against the foreign state in a manner analogous to bringing such a suit against the United States. Cf. 46 U.S.C. 741, et seq. In view of Section 1609 of the bill, Section 1605(b) is designed to avoid arrests of vessels or cargo of a foreign state to commence a suit. Instead, as provided in paragraph (1), a copy of the summons and complaint must be served either on the master or other person having possession of the vessel and cargo against either of which the maritime lien is asserted, or on their agent (such as the second in command of the ship). If, however, the vessel or its cargo is arrested or attached, the plaintiff will lose his in personam remedy and the foreign state will be entitled to immunity -- except in the rare case where the plaintiff was unaware that the vessel or cargo of a foreign state was involved. This would be a rare case because the flag of the vessel, the circumstances giving rise to the maritime lien, or the information contained in ship registries kept in ports throughout the United States

should make known the ownership of the vessel in question, if not the cargo. If, however, the vessel or cargo is mistakenly arrested, such arrest or attachment must, under Section 1609, be immediately dissolved when the foreign state brings to the court's attention its interest in the vessel or cargo and, hence, its right to immunity from arrest.

Under paragraph (2), the plaintiff must also be able to prove that the procedures for service of process under Section 1608(a) or (b) have commenced -- for example, that the clerk of the court has mailed the requisite copies of the summons and complaint, etc. The plaintiff need not show that service has actually been made under Section 1608(c). The reason for this second requirement is to help make certain that the foreign state concerned receives prompt and actual notice of the institution of a suit in admiralty in the United States, even if the copies served on the master of the vessel should fail to reach the foreign state.

(c) Scope of Liability When Immunity is not Accorded. Section 1605(c) makes clear that if the foreign state, political subdivision, agency or instrumentality is not entitled to immunity from jurisdiction, liability exists as it would for a private party under like circumstances. However, the tort liability of a foreign state itself (but not of a political subdivision, agency or instrumentality of a foreign state) does not extend to interest prior to judgment or to punitive damages. Under current international practice, punitive damages are usually not assessed against foreign states. See, 5 Hackworth, Digest of International Law, 723-26 (1943); Garcia-Amador, State Responsibility, 94 Hague Recueil des Cours 365, 476-81 (1958). This subsection is based upon 28 U.S.C. 2674, which places similar limitations on the liability of the United States Government in tort.

Section 1606. Claims Involving the Public Debt.

Section 1606 provides for the immunity of a foreign state itself (as opposed to its political subdivisions, agencies or instrumentalities) in cases relating to the public debt of the foreign state.

Subsection (b) relates to the immunity of a foreign state with respect to debt obligations incurred for general governmental purposes and backed by the full faith and credit of the foreign state. Such immunity was recognized in dictum in Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2nd Cir.), cert. denied, 381 U.S. 934 (1964). Where the underwriters of such securities regard immunity as detrimental to the success of the issue, the foreign government may surrender its immunity by express waiver.

Section 1606(b) embodies the generally accepted view that the immunity of the central government of a state for public debts is not shared by its subordinate political entities or agencies or instrumentalities of the foreign state. Immunity with respect to the public debt of political subdivisions, agencies or instrumentalities would be governed by other provisions of the bill, such as Section 1605 (a)(2). Thus, in cases where an agency or instrumentality, such as a central bank, incurs an indebtedness for general governmental purposes which constitutes an obligation backed by the full faith and credit of the foreign state, Section 1606(b) would apply only to the obligation of the foreign state and not to that of the agency or instrumentality.

Section 1606(b)(1) provides for explicit waivers of immunity in public debt cases. The waiver must be that of the foreign state. Where the debt obligation is incurred through an agency or instrumentality of the foreign state, a waiver from the agency or instrumentality would be deemed to be a waiver of the foreign state only where the waiver is made in the name of the foreign state. Section 1606(b)(2) preserves any remedies under the Federal Securities Laws applicable to foreign states. In applying Section 1606(b), courts will have to determine whether a debt obligation is for general governmental purposes or for a specific governmental or other purpose.

Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2nd Cir.), cert. denied, 381 U.S. 934 (1964). Where the underwriters of such securities regard immunity as detrimental to the success of the issue, the foreign government may surrender its immunity by express waiver.

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Section 1607. Counterclaims.

Section 1607 applies to counterclaims against a foreign state which brings an action or intervenes in an action in a federal or state court. It would deny immunity in three situations. First, immunity would be denied as to any counterclaim for which the foreign state would not be entitled to immunity under Sections 1605 and 1606, if the counterclaim had been brought as a direct claim in a separate action against the foreign state. This provision is based upon Article I of the European Convention on State Immunity.

Second, even if a foreign state would otherwise be entitled to immunity under Sections 1604-1606, it would not be immune from a counterclaim "arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state." This is the same terminology as that used in Rule 13(a) of the Federal Rules of Civil Procedure and is consistent with Section 70(2)(b), Restatement of the Law, Second, Foreign Relations Law of the United States (1965). Certainly, if a foreign state brings or intervenes in an action based on a particular transaction or occurrence, it should not obtain the benefits of litigation before U.S. courts while avoiding any legal liabilities claimed against it and arising from that same transaction or occurrence.

Third, notwithstanding that the foreign state may be immune under subsections (a) and (b), the foreign state nevertheless would not be immune from a counterclaim to the extent that the counterclaim seeks relief neither exceeding in amount nor differing in kind from that sought by the foreign state. Subsection (c) codifies the rule enunciated in National Bank v. Republic of China, 348 U.S. 356 (1955).

Section 1608. Service of process; time to answer; default.

Section 1608 sets forth the exclusive procedures with respect to service of process on, the filing of an answer or other responsive pleading by, and obtaining a default judgment against a foreign state or its political subdivisions, agencies or instrumentalities. These procedural provisions are intended to fill a void in existing federal and state law.

All of the provisions of Section 1608 are made "subject to existing and future international agreements to which the United States is a party." As in Sections 1604 and 1609, this language contemplates the possibility of a future international convention on sovereign immunity, and in particular on procedures to be used in litigation against foreign states. An "existing" international agreement which is applicable is the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, 20 UST 361, TIAS 6638 (1965).

(a) Service on Foreign States and Political Subdivisions. Subsection (a) of Section 1608 sets forth the exclusive procedures for service of process on a foreign state, or political subdivision thereof, but not on an agency or instrumentality of a foreign state which is covered in subsection (b). There is a hierarchy in the methods for serving process under subsection (a). Paragraph (1) provides for service in accordance with any special arrangement which may have been agreed upon between a plaintiff and the foreign state or political subdivision. If such an arrangement exists, service must be made under this method. The purpose of subsection (a)(1) is to encourage potential plaintiffs and foreign states to agree by contract for a procedure on service of process.

If no special arrangement exists, subsection (a)(2) provides two alternative methods of service. The first method, set forth in subparagraph (A), involves the transmittal of "a letter rogatory or a request"

for ultimate service in a foreign country. This method is currently provided under Rule 4(i)(B), F.R. Civ. P., for service on nonresident defendants. The Department of State has the authority to transmit letters rogatory from a court in the United States to authorities in foreign countries, under 28 U.S.C. 1781(a)(2). The transmittal of letters rogatory or requests may also be governed by international agreements such as the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, supra. Service under a letter rogatory or request under such international agreements would be "directed by an authority of the foreign state" within the meaning of subparagraph (A).

The alternative method, set forth in Subparagraph (B), is for service by mail on the foreign minister or other official in charge of the foreign affairs of the foreign state. This method is based on Rule 4(i)(D), F.R. Civ. P.

Subsection (a)(3) provides, as a method of last resort, service through diplomatic channels. It is applicable only if 60 days have elapsed since service was initiated under any method provided in subsections (a)(1) or (2) and if proof of service has not been made.

However, the method for direct service through diplomatic channels cannot be resorted to in every case. One situation where it is available is where the claim is against a foreign state arising from an act of a diplomatic or consular representative of a foreign state. Such acts might include the entering into a contract to construct an embassy or a consulate, or a traffic accident caused by a diplomatic or consular representative acting within the scope of his employment for which the foreign state is liable under the doctrine of respondent superior. Not included are personal claims against diplomatic or consular representatives as individuals, which again are not covered by this statute.

The only other situations where this method of direct service through diplomatic channels may be resorted to are set forth in subparagraphs (B) and (C) of subsection (a)(3). A list maintained by the Secretary of State and published in the Federal Register shall be conclusive evidence of whether a

foreign state may be subject to service through diplomatic channels under subparagraphs (B) or (C).

In those cases where direct service may be made through diplomatic channels, the transmittal of a copy of the summons and complaint with translation by diplomatic note will in itself constitute service. This is to be distinguished from the transmittal of a letter rogatory by the Department of State, which is simply an administrative step leading to the ultimate service in a foreign country under the direction of a foreign authority, usually a foreign court.

(b) Service on Agencies or Instrumentalities. Subsection (b) of Section 1608 provides the methods under which service shall be made upon an agency or instrumentality of a foreign state, as defined in Section 1603(b). Again, service must always be made in accordance with any special arrangement for service between a plaintiff and the agency or instrumentality. If no such arrangement exists, then service must be made under subsection (b) (2) which provides for service upon officers, or managing, general or appointed agents in the United States of the agency or instrumentality.

If there is no special arrangement and if the agency or instrumentality has no representative in the United States, service may be made under one of the three methods provided in subsection (b) (3). The first two of these methods, provided in subparagraphs (A) and (B), are identical to methods applicable to service on a foreign state or political subdivision under subsection (a) (2).

The third method, in subparagraph (C), authorizes a court to fashion a method of service, for example under Rule 83 F.R. Civ. P., provided the method is "consistent with the law of the place where service is to be made." This latter language takes into account the fact that the laws of foreign countries

may prohibit the service in their country of judicial documents by process servers from the United States. It is contemplated that no court will direct service upon a foreign state by appointing someone to make a physical attempt at service abroad, unless it is clearly consistent with the law of the foreign jurisdiction where service is to be attempted. It is also contemplated that the courts will not direct service in the United States upon diplomatic representatives, Hellenic Lines Ltd. v. Moore, 345 F.2d 978 (D.C. Cir. 1965), or upon consular representatives, Oster v. Dominion of Canada, 144 F. Supp. 746 (N.D.N.Y. 1956), aff'd 238 F.2d 400 (2d Cir).

(c) When Service is Made. Subsection (c) of Section 1608 establishes the time when service shall be deemed to have been made under each of the methods provided in subsections (a) and (b).

(d) Time to Answer or Reply. Subsection (d) of Section 1608 gives each foreign state, political subdivision thereof or agency or instrumentality of a foreign state or political subdivision up to 60 days from the time service is deemed to have been made in which to answer, file a responsive pleading or other reply to a pleading or counterclaim. This corresponds to similar provisions applicable in suits against the United States or its officers or agencies. Rule 12(a), F.R. Civ. P.

(e) Default Judgments. Subsection (e) of Section 1608 provides that no default judgment may be entered against a foreign state, or its political subdivisions, agencies or instrumentalities, "unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." This is the same requirement applicable to default judgments against the United States Government under Rule 55(e), F.R. Civ. P. In determining whether the claimant has established his claim or right to relief, it is expected that courts will take into account the extent to which the plaintiff's case depends on appropriate

discovery against the foreign state. Once the default judgment is entered, notice of such judgment must be sent in the manner prescribed for service of process in Sections 1608(a) or (b).

Special note should be made of two means which are currently in use in attempting to commence litigation against a foreign state. First, the current practice of attempting to commence a suit by attachment of a foreign state's property would be prohibited under Section 1609 in the bill, because of foreign relations considerations and because such attachments are rendered unnecessary by the liberal service and jurisdictional provisions of the bill. See the analysis to Section 1609.

A second means, of doubtful validity, involves the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state. Section 1608 precludes this method so as to avoid questions of inconsistency with Section 1 of Article 22 of the Vienna Convention on Diplomatic Relations, 23 UST 3227, TIAS 7502 (1961), which entered into force in the United States on December 13, 1972. Subsequent to the introduction of S. 566 and H.R. 3493, 93rd Cong. 1st Sess., several foreign governments brought to the attention of the Department of State that the drafters of the Vienna Convention had construed Article 22 as prohibiting the service of any process or writ, "even by post, within the premises of a diplomatic mission." The United States has formally acknowledged this view. See 71 Dept. of State Bull. 458-59 (1974). Service on an embassy by mail would be precluded under this bill.

Section 1609. Immunity from Attachment and Execution of Property of a Foreign State.

As in the case of Section 1604 of the bill with respect to jurisdiction, Section 1609 states a general proposition that the property of a foreign state, as defined in Section 1603(a), is immune from attachment and from execution, and then exceptions to this proposition are carved out in Sections 1610 and 1611. Here, it should be pointed out that neither Section 1610 nor 1611 would permit an attachment for the purpose of obtaining jurisdiction over a foreign state or its property. For this reason, Section 1609 has the effect of precluding attachments as a means for commencing a lawsuit.

Attachment of foreign government property for jurisdictional purposes has been recognized "where under international law a foreign government is not immune from suit" and where the property in the United States is commercial in nature. Weilamann v. Chase Manhattan Bank, 21 Misc. 2d 1086, 192 N.Y.S. 2d 469 (Sup. Ct. N.Y. 1959). Even in such cases, however, it has been recognized that property attached for jurisdictional purposes cannot be retained to satisfy a judgment because, under current practice, the property of a foreign sovereign is immune from execution.

Attachments for jurisdictional purposes have been criticized as involving United States courts in litigation not involving any significant U.S. interest or jurisdictional contacts, apart from the fortuitous presence of property in the jurisdiction. Such cases frequently require the application of foreign law to events which occur entirely abroad.

Such attachments can also give rise to serious friction in the United States foreign relations. In some cases, plaintiffs obtain numerous attachments over a variety of foreign government assets found in various parts of the United States. This shotgun approach has caused significant irritation to many foreign governments.

At the same time, one of the fundamental purposes of this bill is to provide a long-arm statute that makes attachment for jurisdictional purposes unnecessary in cases where there is a nexus between the claim and the United States. Claimants will clearly benefit from the expanded methods under the bill for service of process on a foreign state (Section 1608), as well as from the certainty that such service will, under Section 1330(b) of the bill, confer personal jurisdiction over a foreign state in federal courts as to every claim for which the foreign state is not entitled to immunity. The elimination of attachment as a vehicle for commencing a lawsuit will ease the conduct of foreign relations by the United States and help eliminate the necessity for determinations of claims of sovereign immunity by the State Department.

Section 1610. Exceptions to Immunity from Attachment or Execution.

Section 1610 sets forth circumstances under which the property of a foreign state is not immune from attachment or execution to satisfy a judgment. Though the enforcement of judgments against foreign state property remains a somewhat controversial subject in international law, there is a marked trend toward limiting the immunity from execution.

A number of treaties of friendship, commerce, and navigation concluded by the United States permit execution of judgments against foreign publicly-owned or controlled enterprises (e.g., Treaty with Japan, April 2, 1953, Art. 18(2), 4 UST 2063, TIAS 2863). The widely ratified Brussels Convention for the Unification of Certain Rules relating to the Immunity of State-Owned Vessels, April 10, 1926, 196 L.N.T.S. 199, allows execution of judgments against public vessels engaged in commercial service in the same way as against privately owned vessels.

Although not a party to this treaty, the United States follows a policy of not claiming immunity for its publicly owned merchant vessels, both domestically, 46 U.S.C. 742, 781, and abroad, 46 U.S.C. 747; 2 Hackworth, Digest of International Law, 438-39 (1941). Articles 20 and 21 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958 (15 UST 1606, TIAS 5639), to which the United States is a party, recognize the liability to execution under appropriate circumstances of state-owned vessels used in commercial service.

However, the traditional view in the United States concerning execution has been that the property of foreign states is absolutely immune from execution. Dexter and Carpenter, Inc. v. Kunglig Jarnvagsstyrelsen, 43 F.2d 705 (2d Cir. 1930). Even after the "Tate Letter" of 1952, this continued to be the position of the Department of State and of the courts. See, Weilamann v. Chase Manhattan Bank, 21 Misc. 2d 1086, 192 N.Y.S.2d 469, 473 (Sup. Ct. N.Y. 1959). Sections 1610(a) and (b) are intended to modify this rule by partially lowering the barrier of immunity to execution, so as to make this immunity conform more closely with the provisions on jurisdictional immunity in the bill.

(a) Execution Against Property of Foreign States. Section 1610(a) relates to execution against property of a foreign state, including a political subdivision, agency or instrumentality of a foreign state. The term "attachment in aid of execution" is intended to include attachments, garnishments and supplemental proceedings available under applicable federal or state law to obtain satisfaction of a judgment. See Rule 69, F.R. Civ. P. The property in question must be used for a commercial activity in the United States. If so, attachment in aid of execution, and execution, upon judgments entered by federal or state courts against the foreign state would be permitted in any of the circumstances set forth in paragraphs (1) - (5) of Section 1610(a).

Paragraph (1) relates to explicit and implied waivers, and is governed by the same principles that apply to waivers of immunity from jurisdiction under Section 1605(a)(1) of the bill. A foreign state may have waived its immunity from execution inter alia by the provisions of a treaty, a contract, an official statement, or certain steps taken by the foreign state in the proceedings leading to judgment or to execution. As in Section 1605(a)(1), a waiver on behalf of an agency or instrumentality of a foreign state may be made either by the agency or instrumentality or by the foreign state itself.

Paragraph (2) of Section 1610(a) denies immunity from execution against property used by a foreign state for a commercial activity in the United States, provided that the commercial activity gave rise to the claim upon which the judgment is based. Included would be commercial activities encompassed by Section 1605(a)(2). The provision also includes a commercial activity giving rise to a claim with respect to which the foreign state has waived immunity under Sections 1605(a)(1). In addition, it includes a commercial activity which gave rise to a maritime lien with respect to which an admiralty suit was brought under Section 1605(b). One could, of course, execute against commercial property other than a vessel or cargo which is the subject of a suit under Section 1605(b), provided that the property was used in the same commercial activity upon which the maritime lien was based.

The language "is or was used" in paragraph (2) contemplates a situation where property may be transferred from the commercial activity which is the subject of the suit in an effort to avoid the process of the court. This language, however, does not bear on the question of whether particular property is to be deemed property of the entity against which the judgment was obtained. The courts will have to determine whether property in the custody of an agency or instrumentality is property of the agency or instrumentality, whether

property held by one agency should be deemed to be property of another, whether property held by an agency is property of the foreign state. See Prelude Corp. v. Owners of F/V Atlantic, 1971 A.M.C. 2651 (N.D. Calif.); American Hawaiian Ventures v. M.V.J. Latuharhary, 257 F. Supp. 622, 626 (D.N.J. 1966).

Paragraph (3) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and which has been taken in violation of international law or has been exchanged for property taken in violation of international law. See the analysis to Section 1605(a)(3).

Paragraph (4) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and is either acquired by succession or gift or is immovable. Specifically exempted are diplomatic and consular missions and the residence of the chiefs of such missions. This exemption applies to all of the situations encompassed by Sections 1610(a) and (b): embassies and related buildings could not be deemed to be property used for a "commercial" activity as required by Section 1610(a); also, since such buildings are those of the foreign state itself, they could not be property of an agency or instrumentality engaged in a commercial activity in the United States within the meaning of Section 1610(b).

Paragraph (5) of Section 1610(a) would deny immunity with respect to obligations owed to a foreign state under a policy of liability insurance. Such obligations would after judgment be treated as property of the foreign state subject to garnishment or related remedies in aid or in place of execution. The availability of such remedies would, of course, be governed by applicable state or federal law. Paragraph (5) is intended to facilitate recovery by individuals who may be injured in accidents, including those involving vehicles operated

by a foreign state or by its officials or employees acting within the scope of their authority.

(b) Additional Execution Against Agencies and Instrumentalities Engaged in Commercial Activity in the United States. Section 1610(b) provides for execution against the property of agencies or instrumentalities of a foreign state in circumstances additional to those provided in Section 1610(a). However, the agency or instrumentality must be engaged in a commercial activity in the United States. If so, the plaintiff may obtain an attachment in aid of execution or execution against any property, commercial and noncommercial, of the agency or instrumentality, but only in the circumstances set forth in paragraphs (1) and (2).

Paragraph (1) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States, where the agency or instrumentality has waived its immunity from execution. See the analysis to paragraph (1) of Section 1610(a).

Paragraph (2) of Section 1610(b) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States in order to satisfy a judgment relating to a claim for which the agency or instrumentality is not immune by virtue of Section 1605(a)(2), (3) or (5), or 1605(b). Property will be subject to execution irrespective of whether the property was used for the same commercial or other activity upon which the claim giving rise to the judgment was based.

Section 1610(b) will not permit execution against the property of one agency or instrumentality to satisfy a judgment against another, unrelated agency or instrumentality. See Prelude Corp. v. Owners of F/V Atlantic, 1941 A.M.C. 2651 (N.D. Calif.). There are compelling reasons for this.

If United States law did not respect the separate juridical identities of different agencies or instrumentalities, it might encourage foreign jurisdictions to disregard the juridical divisions between different U.S. corporations or between a U.S. corporation and its independent subsidiary. However, a court might find that property held by one agency is really the property of another. See the analysis to Section 1610(a)(2).

(c) Necessity of Court Order Following Reasonable Notice. Section 1610(c) prohibits attachment or execution under Sections 1610(a) and (b) unless the court has issued an order for such attachment and execution. In some jurisdictions in the United States, attachment and execution to satisfy a judgment may be had simply by applying to a clerk or to a local sheriff. This would not afford sufficient protection to a foreign state. This subsection contemplates that the courts will exercise their discretion in permitting execution. Prior to ordering attachment and execution, the court must determine that a reasonable period of time has elapsed following the entry of judgment, or in cases of a default judgment, since notice of the judgment was given to the foreign state under Section 1608(e). In determining whether the period has been reasonable, the courts should take into account procedures, including legislation, that may be necessary for payment of a judgment by a foreign state, which may take several months. Courts should also take into account representations by the foreign state of steps being taken to satisfy the judgment.

(d) Attachments Upon Explicit Waiver to Secure Satisfaction of a Judgment. Section 1610(d) relates to attachment against the property of a foreign state, or of a political subdivision, agency or instrumentality of a foreign state, prior to the entry of judgment or prior to the lapse of the "reasonable period of time" required under Section 1610(c). Immunity from attachment will be

denied only if the foreign state, political subdivision, agency or instrumentality has explicitly waived its immunity from attachment prior to judgment, and only if the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, etc., in the same action. This subsection provides, in cases where there has been an explicit waiver, a provisional remedy to prevent assets from being dissipated or removed from the jurisdiction in order to frustrate satisfaction of a judgment.

Section 1611. Certain Types of Property Immune from Execution.

Section 1611 exempts certain types of property from the immunity provisions of Section 1610 relating to attachment and execution.

(a) Property Held by International Organizations. Section 1611(a) precludes attachment and execution against funds and other property of certain international organizations. The purpose of this subsection is to permit international organizations designated by the President pursuant to the International Organizations Immunity Act, 22 U.S.C. 288 et seq., to carry out their functions from their offices located in the United States without hinderance by private claimants seeking to attach the payment of funds to a foreign state; such attachments would also violate the immunities accorded to such international institutions. See also Art. 9, Section 3 of the Articles of Agreement of the International Monetary Fund. International organizations covered by this provision would include, inter alia, the International Monetary Fund and the World Bank. The reference to "international organizations" in this subsection is not intended to restrict any immunity accorded to such international organizations under any other law or international agreement.

(b) Central Bank Funds and Military Property.

Section 1611(b)(1) provides for the immunity of central bank funds from attachment or execution. It applies to funds of a foreign central bank or monetary authority which are deposited in the United States and "held" for the bank's or authority's "own account" -- i.e., funds used or held in connection with central banking activities, as distinguished from funds used solely to finance the commercial transactions of other entities or of foreign states. If execution could be levied on such funds without an explicit waiver, deposit of foreign funds in the United States might be discouraged. Moreover, execution against the reserves of foreign states could cause significant foreign relations problems.

Section 1611(b)(2) provides immunity from attachment and execution for property which is, or is intended to be, used in connection with a military activity and which fulfills either of two conditions: the property is either (A) of a military character or (B) under the control of a military authority or defense agency. Under the first condition, property is of a military character if it consists of equipment in the broad sense -- such as weapons, ammunition, military transport, warships, tanks, communications equipment. Both the character and the function of the property must be military. The purpose of this condition is to avoid frustration of United States foreign policy in connection with purchases of military equipment and supplies in the United States by foreign governments.

The second condition is intended to protect other military property, such as food, clothing, fuel and office equipment which, although not of a military character, is essential to military

operations. "Control" is intended to include authority over disposition and use in addition to physical control, and a "defense agency" is intended to include civilian defense organizations comparable to the Defense Supply Agency in the United States. Each condition is subject to the overall condition that property will be immune only if its present or future use is military (e.g., surplus military equipment withdrawn from military use would not be immune). Both conditions will avoid the possibility that a foreign state might permit execution on military property of the United States abroad under a reciprocal application of the Act.

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SEC 5. Venue.

This section amends 28 U.S.C. § 1391, which deals with venue generally. Under the new subsection (f), there are four express provisions for venue in civil actions brought against foreign states, political subdivisions or their agencies or instrumentalities.

(1) The action may be brought in the judicial district where "a substantial part of the events or omissions giving rise to the claim occurred." This provision is analogous to 28 U.S.C. § 1391(e), which allows an action against the United States to be brought, inter alia, in any judicial district in which "the cause of action arose." The test adopted, however, is the newer test recommended by the American Law Institute and incorporated in S. 1876, 92d Cong., 1st Sess., which does not imply that there is only one such district applicable in each case.

In cases where property or rights in property are involved, the action may be brought in the judicial district in which "a substantial part of the property that is the subject of the action is situated." No hardship will be caused to the foreign state if it is subject to suit where it has chosen to place the property that gives rise to the dispute.

(2) If the action is a suit in admiralty to enforce a maritime lien against a vessel or a cargo of a foreign state and if the action is brought under the new Section 1605(b) in this bill, the action may be brought in the judicial district in which the vessel or cargo is situated at the time notice is served pursuant to Section 1605(b)(1).

(3) If the action is brought against an agency or instrumentality of a foreign state, as defined in the new Section 1603(b) in the bill, it may be brought in the judicial district where the agency or instrumentality is licensed to do business or is doing business. This provision is based on 28 U.S.C. § 1391(c).

(4) If the action is brought against a foreign state or political subdivision, it may be brought in the United States District Court for the District of Columbia. It is in the District of Columbia that foreign states have diplomatic representatives and where it may be easiest for them to defend. New subsection (f) would, of course, not apply to entities that are owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). For purposes of this bill, such entities are not agencies or instrumentalities of a foreign state. See the analysis to Section 1603(b).

As with other provisions in 28 U.S.C. 1391, venue under the new subsection (f) could be waived by a foreign state, such as by failing to object to improper venue in a timely manner. See Rule 12 (h), F.R. Civ. P.

SEC. 6. Removal of Cases from State Courts.

The bill adds a new provision to 28 U.S.C. 1441 to provide for removal to a federal district court of civil actions brought in the courts of the state against a foreign state or a political subdivision, agency or instrumentality of a foreign state. In view of the potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area, it is important to give foreign states clear authority to remove to a federal forum actions brought against them in the state courts. New subsection (d) of Section 1441 permits the removal of any such action at the discretion of the foreign state, even if there are multiple defendants and some of these defendants desire not to remove the action or are citizens of the state in which the action has been brought.

As with other removal provisions, a petition for removal must be filed with the appropriate district court in a timely manner. 28 U.S.C. 1446. However, in view of the 60 day period provided in Section 1608(c) in the bill and in view of the bill's preference that actions involving foreign states be tried in federal courts, the time limitations for filing a petition of removal under 28 U.S.C. 1446 may be extended "at any time" for good cause shown.

Upon removal, the action would be heard and tried by the appropriate district court sitting without a jury. Cf. 28 U.S.C. 2402, precluding jury trials in suits against the United States. Thus, one effect of removing an action under the new Section 1441(d) will be to extinguish a demand for a jury trial made in the state court. Cf. Rule 81(c), F.R. Civ. P. Because the judicial power of the United States specifically encompasses actions "between a State, or the Citizens thereof, and foreign States" (U.S. Constitution, Art. III, Sec. 2, Cl. 1), this preemption of state court procedures in cases involving foreign sovereigns is clearly constitutional.

This section, again, would not apply to entities owned by a foreign state which are citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d), or created under the laws of a third country.

SEC. 7. Severability of Provisions

This action provides that if a portion of the Act of any application of the Act should be found invalid for any reason, such invalidity would not affect any other provision or application of the Act.

SEC. 8. Effective Date.

This section establishes that the effective date of the Act shall be 90 days after it becomes law. A 90-day period is deemed necessary in order to give adequate notice of the Act and its detailed provisions to all foreign states.

Upon removal, the action would be heard and tried by the appropriate district court sitting without a jury. Cf. 28 U.S.C. 2402, precluding jury trials in suits against the United States. Thus, one effect of removing an action under the new Section 1441(d) will be to extinguish a demand for a jury trial made in the state court. Cf. Rule 81(c), F.R. Civ. P. Because the judicial power of the United States specifically encompasses actions "between a State, or the Citizens thereof, and foreign States" (U.S. Constitution, Art. III, Sec. 2, Cl. 1), this preemption of state court procedures in cases involving foreign sovereigns is clearly constitutional.

This section, again, would not apply to entities owned by a foreign state which are citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d), or created under the laws of a third country.

SEC. 7. Severability of Provisions

This section provides that if a portion of the Act of any application of the Act should be found invalid for any reason, such invalidity would not affect any other provision or application of the Act.

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

"§1330. Actions against foreign states

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

A B I L L

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Foreign Sovereign Immunities Act of 1975."

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

"§1330. Actions against foreign states

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

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

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

(b) by inserting in the chapter analysis of that chapter before -

"1331. Federal question; amount in controversy; costs."

the following new item:

"1330. Actions against foreign states."

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

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

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

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

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

"Chapter 97. - JURISDICTIONAL IMMUNITIES OF
FOREIGN STATES

"Sec.

"1602. Findings and declaration of purpose.

"1603. Definitions.

"1604. Immunity of a foreign state from jurisdiction.

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

"1606. Claims involving the public debt.

"1607. Counterclaims.

"1608. Service of process; time to answer; default.

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

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

"1611. Certain types of property immune from execution.

"§1602. Findings and declaration of purpose

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

"§ 1603. Definitions

"For purposes of this chapter -

"(a) a 'foreign state', except as used in sections 1606 and 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) an 'agency and instrumentality of a foreign state' means any entity

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

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

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

"(c) the 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

"(d) a 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

"(e) a 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States.

"§ 1604. Immunity of a foreign state from jurisdiction

"Subject to existing and future international agreements to which the United States is a party, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605-1607 of this chapter.

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

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

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

"(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

"(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such

property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

"(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

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

"(A) any claim based upon the exercise or performance or the failure to exercise

or perform a discretionary function
regardless of whether the discretion be
abused, or

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

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

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

of process of arrest shall be deemed to constitute valid service of such notice; and

"(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days of the service of process as provided in subsection (b) (1) of this section.

"Whenever notice is served under subsection (b) (1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved; provided that a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b) (1) of this section.

"(c) As to any claim for relief with respect to which a foreign state is not entitled to immunity under this section or under sections 1606 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state itself,

as distinguished from a political subdivision thereof or from an agency or instrumentality of a foreign state, shall not be liable in tort for interest prior to judgment or for punitive damages;

"If, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

"§ 1606. Claims involving the public debt

"(a) For purposes of this section, a 'foreign state' shall not include a political subdivision of a foreign state or an agency or instrumentality of a foreign state.

"(b) Notwithstanding the provisions of section 1605 of this chapter, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States in any case relating to debt obligations incurred for general governmental purposes unless -

"(1) the foreign state has waived its immunity explicitly, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver; or

"(2) the case arises under provisions codified as sections 77a through 80b-21 of title 15, United States Code, as amended, or any other statute which may hereafter be administered by the United States Securities and Exchange Commission.

"§ 1607. Counterclaims

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

"(a) for which a foreign state would not be entitled to immunity under sections 1605 and 1606 of this chapter had such claim been brought in a separate action against the foreign state; or

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

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

"1608. Service of process; time to answer; default

"Subject to existing and future international agreements to which the United States is a party -

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

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

"(2) if no special arrangement exists, and if service is reasonably calculated to give actual notice,

"(A) by service of a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, as directed by an authority of the foreign state or of the political subdivision in response to a letter rogatory or request, or

"(B) by sending a copy of the summons and of the complaint, together with a translation into the official language of the

foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the official in charge of the foreign affairs of the foreign state which is, or whose political subdivision is, named in the complaint; or

"(3) if proof of service is not made within 60 days after service has been initiated under paragraphs (1) or (2) of this subsection, and if

"(A) the claim for relief arises out of an activity or act in the United States of a diplomatic or consular representative of the foreign state for which the foreign state is not immune from jurisdiction under section 1605 of this title, or

"(B) the foreign state uses diplomatic channels for service upon the United States or any other foreign state, or

"(C) the foreign state has not notified the Secretary of State prior to the institution of the proceeding in question that it prefers that service not be made through diplomatic channels,

by sending two copies of the summons and of the complaint, together with a translation into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court, to the Secretary of State at Washington, District of Columbia, to the attention of the Director of Special Consular Services, and the Secretary shall send one copy through diplomatic channels to the foreign state and shall send a certified copy of the diplomatic note to the clerk of the court in which the action is pending. The Secretary shall maintain and publish in the Federal Register a list of foreign states upon which service may be made under subparagraphs (B) and (C) of this paragraph, and such list shall be conclusive for purposes of subparagraphs (B) and (C);

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

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

"(2) if no special arrangement exists, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process in the United States; or

"(3) if service cannot be made under paragraphs (1) or (2) of this subsection, and if service is reasonably calculated to give actual notice,

"(A) by service of a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, as directed by an authority of the foreign state or of a political subdivision in response to a letter rogatory or request, or

"(B) by sending a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

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

"(c) for the purposes of this section, service of process shall be deemed to have been made -

"(1) in the case of subsections (a) (1) and (b) (1), when delivered in accordance with the terms of the special arrangement;

"(2) in the case of subsections (a) (2) (A) and (b) (3) (A), when delivered as directed by an authority of the foreign state or political subdivision;

"(3) in the case of subsections (a) (2) (B) and (b) (3) (B), when received abroad by mail, as evidenced by the returned, signed receipt;

"(4) in the case of subsection (b) (2), when delivered to an officer, managing or general agent or appointed agent in the United States;

"(5) in the case of subsection (a) (3), when sent through diplomatic channels, as evidenced by a certified copy of the diplomatic note of transmittal;

"(6) in the case of subsection (b) (3) (C), when served as directed by order of the court.

"(d) in any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or

instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service of the pleading in which a claim is asserted; and

"(e) no judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service of process in this section.

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

"Subject to existing and future international agreements to which the United States is a party, the property in the United States of a foreign state shall be immune from attachment and from execution except as provided in sections 1610 and 1611 of this chapter.

"(1) the foreign state has waived its

immunity from attachment in aid of execution

or from execution either explicitly or by

implication, notwithstanding any withdrawal of

the waiver the foreign state may purport to

effect except in accordance with the terms of

the waiver, or

"(2) the property is or was used for the

commercial activity upon which the claim is

based, or

"(3) the execution relates to a judgment

establishing rights in property which has been

taken in violation of international law or which

has been exchanged for property taken in violation

of international law, or

"(4) the execution relates to a judgment

establishing rights in property -

"§ 1610. Exceptions to the immunity from attachment
or execution

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

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

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

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

"(4) the execution relates to a judgment establishing rights in property -

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

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

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

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

"(1) the agency or instrumentality has waived its immunity from attachment in aid of

execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

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

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

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

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

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

"§ 1611. Certain types of property immune from execution

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

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

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

SEC. 2. That section 1391 of title 28, United States Code is amended by adding at the end thereof the following new subsections: "(2) the property is, or is intended to be, used in connection with a military activity and "(A) is of a military character, or "(B) is under the control of a military authority or defense agency."; and

(b) That the analysis of "Part IV. - Jurisdiction and Venue" of Title 28, United States Code, is amended by inserting after --

"95. Customs Court.",

the following new item:

"97. Jurisdictional Immunities of Foreign States."

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

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

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

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

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

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

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

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

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

of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown."

OCTOBER 26, 1976

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94TH CONG. STATUS PROFILE FOR H.R.11315

OFFICIAL TITLE.... FOREIGN SOVEREIGN IMMUNITIES ACT

SPONSOR..... RODINO

DATE INTRODUCED... DEC 19, 75

HOUSE COMMITTEE... THE JUDICIARY

TITLE..... A BILL TO DEFINE THE JURISDICTION OF UNITED STATES COURTS IN SUITS AGAINST FOREIGN STATES, THE CIRCUMSTANCES IN WHICH FOREIGN STATES ARE IMMUNE FROM SUIT AND IN WHICH EXECUTION MAY NOT BE LEVIED ON THEIR PROPERTY, AND FOR OTHER PURPOSES

CO-SPONSORS..... HUTCHINSON.

DEC 19, 75 REFERRED TO HOUSE COMMITTEE ON THE JUDICIARY.

DEC 31, 75 REFERRED TO SUBCOMMITTEE ON ADMIN LAW & GOVERNMENTAL RELATIONS.

JUN 2, 76 FIRST DAY OF SUBCOMMITTEE HEARINGS.

JUN 4, 76 FINAL DAY OF SUBCOMMITTEE HEARINGS.

SEP 1, 76 FIRST DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FINAL DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FORWARDED BY SUBCOMMITTEE TO FULL COMMITTEE AMENDED.

SEP 9, 76 FIRST DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 FINAL DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 ORDERED TO BE REPORTED AMENDED.

SEP 9, 76 REPORTED TO HOUSE AMENDED BY HOUSE COMMITTEE ON THE JUDICIARY. REPORT NO: 94-1487.

SEP 9, 76 PLACED ON UNION CALENDAR, NO: 766.

SEP 29, 76 PASSED HOUSE (AMENDED) BY VOICE VOTE.

OCT 1, 76 PASSED SENATE BY VOICE VOTE.

OCT 1, 76 MEASURE CLEARED FOR THE WHITE HOUSE.

OCTOBER 26, 1976

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94TH CONG. STATUS PROFILE FOR H.R.11315

OCT 12, 76 DELIVERED TO PRESIDENT.

OCT 21, 76 SIGNED BY PRESIDENT.

OCT 21, 76 BECAME LAW. PUBLIC LAW NO: 94-583.

28 2939

OCTOBER 14, 1976

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94TH CONG. STATUS PROFILE FOR H.R.11315

OFFICIAL TITLE.... ~~FOREIGN SOVEREIGN IMMUNITIES ACT~~

SPONSOR..... RODINO

DATE INTRODUCED... DEC 19, 75

HOUSE COMMITTEE... THE JUDICIARY

TITLE..... A BILL TO DEFINE THE JURISDICTION OF UNITED STATES COURTS IN SUITS AGAINST FOREIGN STATES, THE CIRCUMSTANCES IN WHICH FOREIGN STATES ARE IMMUNE FROM SUIT AND IN WHICH EXECUTION MAY NOT BE LEVIED ON THEIR PROPERTY, AND FOR OTHER PURPOSES

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DEC 19, 75 REFERRED TO HOUSE COMMITTEE ON THE JUDICIARY.

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SEP 1, 76 FINAL DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FORWARDED BY SUBCOMMITTEE TO FULL COMMITTEE AMENDED.

SEP 9, 76 FIRST DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 FINAL DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 ORDERED TO BE REPORTED AMENDED.

SEP 9, 76 REPORTED TO HOUSE AMENDED BY HOUSE COMMITTEE ON THE JUDICIARY. REPORT NO: 94-1487.

SEP 9, 76 PLACED ON UNION CALENDAR, NO: 766.

SEP 29, 76 PASSED HOUSE (AMENDED) BY VOICE VOTE.

OCT 1, 76 PASSED SENATE BY VOICE VOTE.

OCT 1, 76 MEASURE CLEARED FOR THE WHITE HOUSE.

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OCTOBER 14, 1976

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94TH CONG. STATUS PROFILE FOR H.R.11315

OCT 12, 76 DELIVERED TO PRESIDENT.

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OCTOBER 7, 1976

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94TH CONG. STATUS PROFILE FOR H.R.11315

OFFICIAL TITLE.... FOREIGN SOVEREIGN IMMUNITIES ACT

SPONSOR..... RODINO

DATE INTRODUCED... DEC 19, 75

HOUSE COMMITTEE... THE JUDICIARY

TITLE..... A BILL TO DEFINE THE JURISDICTION OF UNITED STATES COURTS IN SUITS AGAINST FOREIGN STATES, THE CIRCUMSTANCES IN WHICH FOREIGN STATES ARE IMMUNE FROM SUIT AND IN WHICH EXECUTION MAY NOT BE LEVIED ON THEIR PROPERTY, AND FOR OTHER PURPOSES

CO-SPONSORS..... HUTCHINSON.

DEC 19, 75 REFERRED TO HOUSE COMMITTEE ON THE JUDICIARY.

DEC 31, 75 REFERRED TO SUBCOMMITTEE ON ADMIN LAW & GOVERNMENTAL RELATIONS.

JUN 2, 76 FIRST DAY OF SUBCOMMITTEE HEARINGS.

JUN 4, 76 FINAL DAY OF SUBCOMMITTEE HEARINGS.

SEP 1, 76 FIRST DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FINAL DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FORWARDED BY SUBCOMMITTEE TO FULL COMMITTEE AMENDED.

SEP 9, 76 FIRST DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 FINAL DAY OF COMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 9, 76 ORDERED TO BE REPORTED AMENDED.

SEP 9, 76 REPORTED TO HOUSE AMENDED BY HOUSE COMMITTEE ON THE JUDICIARY. REPORT NO: 94-1487.

SEP 9, 76 PLACED ON UNION CALENDAR, NO: 766.

SEP 29, 76 PASSED HOUSE (AMENDED) BY VOICE VOTE.

OCT 1, 76 PASSED SENATE BY VOICE VOTE.

OCT 1, 76 MEASURE CLEARED FOR THE WHITE HOUSE.

OCTOBER 6, 1976

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U.S. HOUSE OF REPRESENTATIVES

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94TH CONG. STATUS PROFILE FOR H.R.11315

OFFICIAL TITLE.... FOREIGN SOVEREIGN IMMUNITIES ACT

SPONSOR..... RODINO

DATE INTRODUCED... DEC 19, 75

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TITLE..... A BILL TO DEFINE THE JURISDICTION OF UNITED STATES COURTS IN SUITS AGAINST FOREIGN STATES, THE CIRCUMSTANCES IN WHICH FOREIGN STATES ARE IMMUNE FROM SUIT AND IN WHICH EXECUTION MAY NOT BE LEVIED ON THEIR PROPERTY, AND FOR OTHER PURPOSES

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SEPTEMBER 30, 1976

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U.S. HOUSE OF REPRESENTATIVES

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HOUSE COMMITTEE... THE JUDICIARY

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2810261

Union Calendar No. 766

94TH CONGRESS
2d SESSION

H. R. 11315

[Report No. 94-1487]

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 1975

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

SEPTEMBER 9, 1976

Reported with amendments; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

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

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Foreign Sovereign
- 4 Immunities Act of ~~1975~~ 1976".

5 SEC. 2. (a) That chapter 85 of title 28, United States
6 Code, is amended by inserting immediately before section
7 1331 the following new section:

8 **“§ 1330. Actions against foreign states**

9 “(a) The district courts shall have original jurisdiction

1 without regard to amount in controversy of any nonjury
2 civil action against a foreign state as defined in section 1603
3 (a) of this title as to any claim for relief in personam with
4 respect to which the foreign state is not entitled to immunity
5 either under sections 1605-1607 of this title or under any
6 applicable international agreement.

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

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

16 (b) By inserting in the chapter analysis of that chapter
17 before—

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

18 the following new item:

“1330. Actions against foreign states.”.

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

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

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

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

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

10 **“Chapter 97.—JURISDICTIONAL IMMUNITIES OF**
11 **FOREIGN STATES**

“Sec.

“1602. Findings and declaration of purpose.

“1603. Definitions.

“1604. Immunity of a foreign state from jurisdiction.

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

“1606. Claims involving the public debt.

“1606. *Extent of liability.*

“1607. Counterclaims.

“1608. *Service of process; time to answer; default.*

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

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

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

“1611. Certain types of property immune from execution.

12 **“§ 1602. Findings and declaration of purpose**

13 “The Congress finds that the determination by United
14 States courts of the claims of foreign states to immunity from
15 the jurisdiction of such courts would serve the interests of
16 justice and would protect the rights of both foreign states
17 and litigants in United States courts. Under international

1 law, states are not immune from the jurisdiction of foreign
 2 courts insofar as their commercial activities are concerned,
 3 and their commercial property may be levied upon for the
 4 satisfaction of judgments rendered against them in con-
 5 nection with their commercial activities. Claims of foreign
 6 states to immunity should henceforth be decided by courts
 7 of the United States and of the States in conformity with the
 8 principles set forth in this chapter.

9 "§ 1603. Definitions

10 "For purposes of this chapter—

11 "(a) A 'foreign state', except as used in sections
 12 ~~1606~~ and section 1608 of this title, includes a political
 13 subdivision of a foreign state or an agency or in-
 14 strumentality of a foreign state as defined in subsection

15 (b).

16 "(b) An 'agency and or instrumentality of a for-
 17 eign state' means any entity—

18 "(1) which is a separate legal person, corpo-
 19 rate or otherwise, and

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

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

5 "(c) The 'United States' includes all territory and
 6 waters, continental or insular, subject to the jurisdiction
 7 of the United States.

8 "(d) A 'commercial activity' means either a regu-
 9 lar course of commercial conduct or a particular commer-
 10 cial transaction or act. The commercial character of an
 11 activity shall be determined by reference to the nature
 12 of the course of conduct or particular transaction or act,
 13 rather than by reference to its purpose.

14 "(e) A 'commercial activity carried on in the
 15 United States by a foreign state' means commercial ac-
 16 tivity carried on by such state and having substantial
 17 contact with the United States.

18 "§ 1604. Immunity of a foreign state from jurisdiction

19 "Subject to existing and future international agreements
 20 to which the United States is a party *at the time of enactment*
 21 *of this Act* a foreign state shall be immune from the jurisdic-
 22 tion of the courts of the United States and of the States ex-
 23 cept as provided in sections 1605 to 1607 of this chapter.

11 **§ 1605. General exceptions to the jurisdictional immunity**
 12 **of a foreign state**

13 (a) A foreign state shall not be immune from the
 14 jurisdiction of courts of the United States or of the States
 15 in any case—

16 (1) in which the foreign state has waived its im-
 17 munity either explicitly or by implication, notwithstand-
 18 ing any withdrawal of the waiver which the foreign
 19 state may purport to effect except in accordance with the
 20 terms of the waiver;

21 (2) in which the action is based upon a commer-
 22 cial activity carried on in the United States by the foreign
 23 state; or upon an act performed in the United States in
 24 connection with a commercial activity of the foreign
 25 state elsewhere; or upon an act outside the territory of
 the United States in connection with a commercial ac-
 tivity of the foreign state elsewhere and that act causes
 a direct effect in the United States;

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

1 tality of the foreign state and that agency or instrumen-
 2 tality is engaged in a commercial activity in the United
 3 States;

4 (4) in which rights in property in the United
 5 States acquired by succession or gift or rights in immov-
 6 able property situated in the United States are in issue;
 7 or

8 (5) not otherwise encompassed in paragraph (2)
 9 above, in which money damages are sought against a
 10 foreign state for personal injury or death, or damage to
 11 or loss of property, occurring in the United States and
 12 caused by the tortious act or omission of that foreign
 13 state or of any official or employee of that foreign state
 14 while acting within the scope of his office or employ-
 15 ment; except this paragraph shall not apply to—

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

20 (B) any claim arising out of malicious prose-
 21 cution, abuse of process, libel, slander, misrepresen-
 22 tation, deceit, or interference with contract rights.

23 (b) A foreign state shall not be immune from the juris-
 24 diction of the courts of the United States in any case in which
 25 a suit in admiralty is brought to enforce a maritime lien

1 against a vessel or cargo of the foreign state, which maritime
2 lien is based upon a commercial activity of the foreign state:
3 *Provided, That—*

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

16 “(2) notice to the foreign state of the commence-
17 ment of suit as provided in section 1608 of this title is
18 initiated within ten days *either* of the ~~service of process~~
19 *delivery of notice* as provided in subsection (b) (1) of
20 this section *or, in the case of a party who was unaware*
21 *that the vessel or cargo of a foreign state was involved,*
22 *of the date such party determined the existence of the for-*
23 *ign state's interest.*

24 “Whenever notice is ~~served~~ *delivered* under subsection (b)
25 (1) of this section, the maritime lien shall thereafter be

1 deemed to be an in personam claim against the foreign state
2 which at that time owns the vessel or cargo involved: *Pro-*
3 *vided, That* a court may not award judgment against the
4 foreign state in an amount greater than the value of the vessel
5 or cargo upon which the maritime lien arose, such value to
6 be determined as of the time notice is served under subsection
7 (b) (1) of this section.

8 “§ 1606. *Extent of liability*

9 “(e) As to any claim for relief with respect to which
10 a foreign state is not entitled to immunity under ~~this section~~
11 ~~or under section 1606~~ *section 1605* or 1607 of this chapter,
12 the foreign state shall be liable in the same manner and to
13 the same extent as a private individual under like circum-
14 stances; but a foreign state itself, as ~~distinguished from a~~
15 ~~political subdivision thereof or from~~ *except for* an agency or
16 instrumentality ~~thereof of a foreign state, shall not be liable~~
17 ~~in tort for interest prior to judgment or shall not be liable~~
18 for punitive damages; if, however, in any case wherein
19 death was caused, the law of the place where the action
20 or omission occurred provides, or has been construed to
21 provide, for damages only punitive in nature, the foreign
22 state shall be liable for actual or compensatory damages
23 measured by the pecuniary injuries resulting from such death
24 which were incurred by the persons for whose benefit the
25 action was brought.

1 **“§ 1606. Claims involving the public debt**

2 ~~“(a) For purposes of this section, a ‘foreign state’ shall~~
3 ~~not include a political subdivision of a foreign state or an~~
4 ~~agency or instrumentality of a foreign state.~~

5 ~~“(b) Notwithstanding the provisions of section 1605~~
6 ~~of this chapter, a foreign state shall be immune from the~~
7 ~~jurisdiction of the courts of the United States and of the~~
8 ~~States in any case relating to debt obligations incurred for~~
9 ~~general governmental purposes unless—~~

10 ~~“(1) the foreign state has waived its immunity~~
11 ~~explicitly, notwithstanding any withdrawal of the~~
12 ~~waiver which the foreign state may purport to effect~~
13 ~~except in accordance with the terms of the waiver; or~~

14 ~~“(2) the case arises under provisions codified as~~
15 ~~sections 77a through 80b-21 of title 15, United States~~
16 ~~Code, as amended, or any other statute which may here-~~
17 ~~after be administered by the United States Securities~~
18 ~~and Exchange Commission.~~

19 **“§ 1607. Counterclaims**

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

24 “(a) for which a foreign state would not be entitled
25 to immunity under sections 1605 and 1606 section 1605

1 of this chapter had such claim been brought in a separate
2 action against the foreign state; or

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

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

9 **“§ 1608. Service of process; time to answer; default**

10 “Subject to existing and future international agreements
11 to which the United States is a party—

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

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

19 “(2) if no special arrangement exists, and if
20 service is reasonably calculated to give actual
21 notice—

22 “(A) by service of a copy of the summons
23 and of the complaint, together with a transla-
24 tion into the official language of the foreign
25 state, as directed by an authority of the foreign

1 state or of the political subdivision in response
2 to a letter rogatory or request, or

3 “(B) by sending a copy of the summons
4 and of the complaint, together with a transla-
5 tion into the official language of the foreign
6 state, by any form of mail requiring a signed
7 receipt, to be addressed and dispatched by the
8 clerk of the court to the official in charge of the
9 foreign affairs of the foreign state which is,
10 or whose political subdivision is, named in the
11 complaint; or

12 “(3) if proof of service is not made within
13 sixty days after service has been initiated under
14 paragraph (1) or (2) of this subsection, and if—

15 “(A) the claim for relief arises out of an
16 activity or act in the United States of a diplo-
17 matic or consular representative of the foreign
18 state for which the foreign state is not immune
19 from jurisdiction under section 1605 of this
20 title; or

21 “(B) the foreign state uses diplomatic
22 channels for service upon the United States or
23 any other foreign state; or

24 “(C) the foreign state has not notified the
25 Secretary of State prior to the institution of the

1 proceeding in question that it prefers that serv-
2 ice not be made through diplomatic channels,
3 by sending two copies of the summons and of the
4 complaint, together with a translation into the official
5 language of the foreign state, by any form of mail
6 requiring a signed receipt, to be addressed and dis-
7 patched by the clerk of the court, to the Secretary
8 of State at Washington, District of Columbia, to
9 the attention of the Director of Special Consular
10 Services; and the Secretary shall send one copy
11 through diplomatic channels to the foreign state and
12 shall send a certified copy of the diplomatic note
13 to the clerk of the court in which the action is
14 pending. The Secretary shall maintain and publish
15 in the Federal Register a list of foreign states upon
16 which service may be made under subparagraphs
17 (B) and (C) of this paragraph, and such list shall
18 be conclusive for purposes of subparagraphs (B)
19 and (C);
20 “(b) service in the courts of the United States and
21 of the States shall be made upon an agency or instrumen-
22 tality of a foreign state:
23 “(1) by delivering a copy of the summons and
24 of the complaint in accordance with any special ar-

1 arrangement for service between the plaintiff and the
2 agency or instrumentality; or

3 “(2) if no special arrangement exists, by de-
4 livering a copy of the summons and of the com-
5 plaint to an officer, a managing or general agent or
6 to any other agent authorized by appointment or
7 by law to receive service of process in the United
8 States; or

9 “(3) if service cannot be made under para-
10 graph (1) or (2) of this subsection, and if service
11 is reasonably calculated to give actual notice—

12 “(A) by service of a copy of the summons
13 and of the complaint, together with a trans-
14 lation into the official language of the foreign
15 state, as directed by an authority of the foreign
16 state or of a political subdivision in response to
17 a letter rogatory or request, or

18 “(B) by sending a copy of the summons
19 and of the complaint, together with a trans-
20 lation into the official language of the foreign
21 state, by any form of mail requiring a signed re-
22 ceipt, to be addressed and dispatched by the
23 clerk of the court to the agency or instrumen-
24 tality to be served, or

25 “(C) as directed by order of the court con-

1 sistent with the law of the place where service
2 is to be made;

3 “(c) for the purposes of this section, service of
4 process shall be deemed to have been made—

5 “(1) in the case of subsections (a)(1) and
6 (b)(1), when delivered in accordance with the
7 terms of the special arrangement;

8 “(2) in the case of subsections (a)(2)(B)
9 and (b)(3)(A), when delivered as directed by an
10 authority of the foreign state or political subdivision;

11 “(3) in the case of subsections (a)(2)(B)
12 and (b)(3)(B), when received abroad by mail, as
13 evidenced by the returned, signed receipt;

14 “(4) in the case of subsection (b)(2), when
15 delivered to an officer, managing or general agent or
16 appointed agent in the United States;

17 “(5) in the case of subsection (a)(3), when
18 sent through diplomatic channels, as evidenced by
19 a certified copy of the diplomatic note of trans-
20 mittal;

21 “(6) in the case of subsection (b)(3)(C),
22 when served as directed by order of the court;

23 “(d) in any action brought in a court of the United
24 States or of a State, a foreign state, a political subdivision
25 thereof, or an agency or instrumentality of a foreign state

1 shall serve an answer or other responsive pleading to
 2 the complaint or to a cross-claim, or a reply to a coun-
 3 terclaim, within sixty days after the service of the plead-
 4 ing in which a claim is asserted, and

5 ~~(1) (c)~~ “(c) no judgment by default shall be entered by a
 6 court of the United States or of a State against a foreign
 7 state, a political subdivision thereof, or an agency or
 8 ~~(c)~~ instrumentality of a foreign state, unless the claimant
 9 establishes his claim or right to relief by evidence satis-
 10 factory to the court. A copy of any such default judgment
 11 ~~(c)~~ shall be sent to the foreign state or political subdivision
 12 in the manner prescribed for service of process in this
 13 section.

14 “(a) Service in the courts of the United States and of
 15 the States shall be made upon a foreign state or political sub-
 16 division of a foreign state:

17 ~~(1) (b)~~ “(1) by delivery of a copy of the summons and com-
 18 plaint in accordance with any special arrangement for
 19 service between the plaintiff and the foreign state or po-
 20 litical subdivision; or

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

25 “(3) if service cannot be made under paragraphs

1 ~~(1) (d)~~ (1) or (2), by sending a copy of the summons and com-
 2 plaint and a notice of suit, together with a translation of
 3 each into the official language of the foreign state, by any
 4 form of mail requiring a signed receipt, to be addressed
 5 and dispatched by the clerk of the court to the head of the
 6 ministry of foreign affairs of the foreign state concerned,

7 or ~~(1) (e)~~ ~~(2) (b)~~ “(3) if service cannot be made within 30 days under
 8 paragraph (3), by sending two copies of the summons
 9 and complaint and a notice of suit, together with a trans-
 10 lation of each into the official language of the foreign
 11 state, by any form of mail requiring a signed receipt, to
 12 be addressed and dispatched by the clerk of the court to
 13 the Secretary of State in Washington, District of Colum-
 14 bia, to the attention of the Director of Special Consular
 15 Services—and the Secretary shall transmit one copy of
 16 the papers through diplomatic channels to the foreign
 17 state and shall send to the clerk of the court a certified
 18 copy of the diplomatic note indicating when the papers
 19 were transmitted.

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

23 “(b) Service in the courts of the United States and of

1 the States shall be made upon an agency or instrumentality
2 of a foreign state:

3 “(1) by delivery of a copy of the summons and com-
4 plaint in accordance with any special arrangement for
5 service between the plaintiff and the agency or instru-
6 mentality; or

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

14 “(3) if service cannot be made under paragraphs
15 (1) or (2), and if reasonably calculated to give actual
16 notice, by delivery of a copy of the summons and com-
17 plaint, together with a translation of each into the official
18 language of the foreign state—

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

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

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

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

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

7 “(2) in any other case under this section, as of the
8 date of receipt indicated in the certification, signed and
9 returned postal receipt, or other proof of service appli-
10 cable to the method of service employed.

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

17 “(e) No judgment by default shall be entered by a court
18 of the United States or of a State against a foreign state, a
19 political subdivision thereof, or an agency or instrumen-
20 tality of a foreign state, unless the claimant establishes his
21 claim or right to relief by evidence satisfactory to the court. A
22 copy of any such default judgment shall be sent to the foreign
23 state or political subdivision in the manner prescribed for
24 service in this section.

1 **“§ 1609. Immunity from attachment and execution of prop-**
 2 **erty of a foreign state**

3 —“Subject to existing ~~and future~~ international agreements
 4 to which the United States is a party *at the time of enact-*
 5 *ment of this Act* the property in the United States of a foreign
 6 state shall be immune from attachment ~~and from~~ *arrest and*
 7 execution except as provided in sections 1610 and 1611 of
 8 this chapter.

9 **“§ 1610. Exceptions to the immunity from attachment or**
 10 **execution**

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

17 “(1) the foreign state has waived its immunity from
 18 attachment in aid of execution or from execution either
 19 explicitly or by implication, notwithstanding any with-
 20 drawal of the waiver the foreign state may purport to
 21 effect except in accordance with the terms of the waiver,
 22 or

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

25 “(3) the execution relates to a judgment establish-

1 ing rights in property which has been taken in violation
 2 of international law or which has been exchanged for
 3 property taken in violation of international law, or
 4 “(4) the execution relates to a judgment establish-
 5 ing rights in property—

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

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

13 “(5) the property consists of any contractual obli-
 14 gation or any proceeds from such a contractual obli-
 15 gation to indemnify or hold harmless the foreign state
 16 or its employees under a policy of automobile or other
 17 liability or casualty insurance covering the claim which
 18 merged into the judgment.

19 “(b) In addition to subsection (a), any property in
 20 the United States of an agency or instrumentality of a for-
 21 eign state engaged in commercial activity in the United
 22 States shall not be immune from attachment in aid of execu-
 23 tion, or from execution, upon a judgment entered by a court
 24 of the United States or of a State after the effective date of
 25 this Act, if—

1 “(1) the agency or instrumentality has waived its
2 immunity from attachment in aid of execution or from
3 execution either explicitly or implicitly, notwithstand-
4 ing any withdrawal of the waiver the agency or instru-
5 mentality may purport to effect except in accordance
6 with the terms of the waiver, or

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

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

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

25 “(1) the foreign state has explicitly waived its

1 immunity from attachment prior to judgment, notwith-
2 standing any withdrawal of the waiver the foreign state
3 may purport to effect except in accordance with the
4 terms of the waiver, and

5 “(2) the purpose of the attachment is to secure
6 satisfaction of a judgment that has been or may ulti-
7 mately be entered against the foreign state, and not to
8 obtain jurisdiction.

9 **“§ 1611. Certain types of property immune from execution**

10 “(a) Notwithstanding the provisions of section 1610
11 of this chapter, the property of those organizations designated
12 by the President as being entitled to enjoy the privileges,
13 exemptions, and immunities provided by the International
14 Organizations Immunities Act shall not be subject to attach-
15 ment or any other judicial process ~~impeding~~ *impeding* the
16 disbursement of funds to, or on the order of, a foreign state
17 as the result of an action brought in the courts of the United
18 States or of the States.

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

22 “(1) the property is that of a foreign central bank
23 or monetary authority held for its own account, unless
24 such bank or authority, or its parent foreign government,
25 has explicitly waived its immunity from attachment in

aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

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

“(A) is of a military character, or

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

(b) That the analysis of “PART IV.—JURISDICTION AND VENUE” of title 28, United States Code, is amended by inserting after—

“95. Customs Court.”,

the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

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

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

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

“(2) in any judicial district in which the vessel

or cargo of a foreign state is situated, if the claim is asserted under section 1605 (b) of this title;

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

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

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

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

SEC. 7. If any provision of this Act or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act

1 which can be given effect without the invalid provision or
2 application, and to this end the provisions of this Act are
3 severable.

4 SEC. 8. This Act shall take effect ninety days after the
5 date of its enactment.

Union, and ordered to be printed
in the House of the Whole House on the State of the Com-
munications 8, 1936
Referred to the Committee on the Judiciary
December 10, 1936
By Mr. ROSEN and Mr. HUTCHINSON
other purposes.
may not be levied on their property, and for
immune from suit and in which execution
circumstances in which foreign states are
courts in suits against foreign states, the
To define the jurisdiction of United States

A BILL

[Report No. 34-1482]

79th CONGRESS

H. R. 11312

Union Calendar No. 190

6 instrumentality of a foreign state as defined in section
7 1403 (b) of this title; (A) "state" means any
8-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-122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- 1 which can be given effect without the invalid provision or
- 2 application, and to this end the provisions of this Act are
- 3 severable.
- 4 Sec. 8. This Act shall take effect ninety days after the
- 5 date of its enactment.

Union Calendar No. 766

94TH CONGRESS
2D SESSION

H. R. 11315

[Report No. 94-1487]

A BILL

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

By Mr. RODINO and Mr. HUTCHINSON

DECEMBER 19, 1975

Referred to the Committee on the Judiciary

SEPTEMBER 9, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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94TH CONGRESS
2D SESSION

H. R. 11315

[Report No. 94-1487]

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 19, 1975

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

SEPTEMBER 9, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Foreign Sovereign
4 Immunities Act of ~~1975~~ *1976*".

5 SEC. 2. (a) That chapter 85 of title 28, United States
6 Code, is amended by inserting immediately before section
7 1331 the following new section:

8 "**§ 1330. Actions against foreign states**

9 " (a) The district courts shall have original jurisdiction

1 without regard to amount in controversy of any nonjury
2 civil action against a foreign state as defined in section 1603
3 (a) of this title as to any claim for relief in personam with
4 respect to which the foreign state is not entitled to immunity
5 either under sections 1605-1607 of this title or under any
6 applicable international agreement.

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

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

16 (b) By inserting in the chapter analysis of that chapter
17 before—

18 “1331. Federal question; amount in controversy; costs.”

19 the following new item:

20 “1330. Actions against foreign states.”.

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

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

1 “(3) citizens of different States and in which citi-
2 zens or subjects of a foreign state are additional parties;
3 and
4 “(4) a foreign state, defined in section 1603 (a) of
5 this title, as plaintiff and citizens of a State or of different
6 States.”.

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

10 **“Chapter 97.—JURISDICTIONAL IMMUNITIES OF**
11 **FOREIGN STATES**

“Sec.

“1602. Findings and declaration of purpose.

“1603. Definitions.

“1604. Immunity of a foreign state from jurisdiction.

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

“1606. Claims involving the public debt.

“1606. Extent of liability.

“1607. Counterclaims.

“1608. Service of process; time to answer; default.

“1608. Service; time to answer default.

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

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

“1611. Certain types of property immune from execution.

12 **“§ 1602. Findings and declaration of purpose**

13 “The Congress finds that the determination by United
14 States courts of the claims of foreign states to immunity from
15 the jurisdiction of such courts would serve the interests of
16 justice and would protect the rights of both foreign states
17 and litigants in United States courts. Under international

1 law, states are not immune from the jurisdiction of foreign
 2 courts insofar as their commercial activities are concerned,
 3 and their commercial property may be levied upon for the
 4 satisfaction of judgments rendered against them in con-
 5 nection with their commercial activities. Claims of foreign
 6 states to immunity should henceforth be decided by courts
 7 of the United States and of the States in conformity with the
 8 principles set forth in this chapter.

9 **“§ 1603. Definitions**

10 “For purposes of this chapter—

11 “(a) A ‘foreign state’, except as used in sections
 12 ~~1606 and~~ section 1608 of this title, includes a political
 13 subdivision of a foreign state or an agency or in-
 14 strumentality of a foreign state as defined in subsection

15 (b).

16 “(b) An ‘agency ~~and~~ or instrumentality of a for-
 17 eign state’ means any entity—

18 “(1) which is a separate legal person, corpo-
 19 rate or otherwise, and

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

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

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

8 “(d) A ‘commercial activity’ means either a regu-
 9 lar course of commercial conduct or a particular commer-
 10 cial transaction or act. The commercial character of an
 11 activity shall be determined by reference to the nature
 12 of the course of conduct or particular transaction or act,
 13 rather than by reference to its purpose.

14 “(e) A ‘commercial activity carried on in the
 15 United States by a foreign state’ means commercial ac-
 16 tivity carried on by such state and having substantial
 17 contact with the United States.

18 **“§ 1604. Immunity of a foreign state from jurisdiction**

19 “Subject to existing ~~and future~~ international agreements
 20 to which the United States is a party *at the time of enactment*
 21 *of this Act* a foreign state shall be immune from the jurisdic-
 22 tion of the courts of the United States and of the States ex-
 23 cept as provided in sections 1605 to 1607 of this chapter.

11 **“§ 1605. General exceptions to the jurisdictional immunity**
 12 **of a foreign state**

13 **“(a)** A foreign state shall not be immune from the
 14 jurisdiction of courts of the United States or of the States
 15 in any case—

16 **“(1)** in which the foreign state has waived its im-
 17 munity either explicitly or by implication, notwithstand-
 18 ing any withdrawal of the waiver which the foreign
 19 state may purport to effect except in accordance with the
 20 terms of the waiver;

21 **“(2)** in which the action is based upon a commer-
 22 cial activity carried on in the United States by the foreign
 23 state; or upon an act performed in the United States in
 24 connection with a commercial activity of the foreign
 25 state elsewhere; or upon an act outside the territory of
 the United States in connection with a commercial ac-
 tivity of the foreign state elsewhere and that act causes
 a direct effect in the United States;

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

1 tality of the foreign state and that agency or instrumen-
 2 tality is engaged in a commercial activity in the United
 3 States;

4 **“(4)** in which rights in property in the United
 5 States acquired by succession or gift or rights in immov-
 6 able property situated in the United States are in issue;
 7 or

8 **“(5)** not otherwise encompassed in paragraph (2)
 9 above, in which money damages are sought against a
 10 foreign state for personal injury or death, or damage to
 11 or loss of property, occurring in the United States and
 12 caused by the tortious act or omission of that foreign
 13 state or of any official or employee of that foreign state
 14 while acting within the scope of his office or employ-
 15 ment; except this paragraph shall not apply to—

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

20 **“(B)** any claim arising out of malicious prose-
 21 cution, abuse of process, libel, slander, misrepresen-
 22 tation, deceit, or interference with contract rights.

23 **“(b)** A foreign state shall not be immune from the juris-
 24 diction of the courts of the United States in any case in which
 25 a suit in admiralty is brought to enforce a maritime lien

1 against a vessel or cargo of the foreign state, which maritime
2 lien is based upon a commercial activity of the foreign state:
3 *Provided, That—*

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

16 “(2) notice to the foreign state of the commence-
17 ment of suit as provided in section 1608 of this title is
18 initiated within ten days *either* of the ~~service of process~~
19 *delivery of notice* as provided in subsection (b) (1) of
20 this section *or, in the case of a party who was unaware*
21 *that the vessel or cargo of a foreign state was involved,*
22 *of the date such party determined the existence of the for-*
23 *ign state's interest.*

24 “Whenever notice is ~~served~~ *delivered* under subsection (b)
25 (1) of this section, the maritime lien shall thereafter be

1 deemed to be an in personam claim against the foreign state
2 which at that time owns the vessel or cargo involved: *Pro-*
3 *vided, That* a court may not award judgment against the
4 foreign state in an amount greater than the value of the vessel
5 or cargo upon which the maritime lien arose, such value to
6 be determined as of the time notice is served under subsection
7 (b) (1) of this section.

8 “§ 1606. *Extent of liability*

9 “~~(e)~~ As to any claim for relief with respect to which
10 a foreign state is not entitled to immunity under ~~this section~~
11 ~~or under section 1606~~ *section 1605* or 1607 of this chapter,
12 the foreign state shall be liable in the same manner and to
13 the same extent as a private individual under like circum-
14 stances; but a foreign state ~~itself, as distinguished from a~~
15 ~~political subdivision thereof or from~~ *except for* an agency or
16 instrumentality ~~thereof of a foreign state, shall not be liable~~
17 ~~in tort for interest prior to judgment or shall not be liable~~
18 for punitive damages; if, however, in any case wherein
19 death was caused, the law of the place where the action
20 or omission occurred provides, or has been construed to
21 provide, for damages only punitive in nature, the foreign
22 state shall be liable for actual or compensatory damages
23 measured by the pecuniary injuries resulting from such death
24 which were incurred by the persons for whose benefit the
25 action was brought.

1 **“§ 1606. Claims involving the public debt**

2 “(a) For purposes of this section, a ‘foreign state’ shall
3 not include a political subdivision of a foreign state or an
4 agency or instrumentality of a foreign state.

5 “(b) Notwithstanding the provisions of section 1605
6 of this chapter, a foreign state shall be immune from the
7 jurisdiction of the courts of the United States and of the
8 States in any case relating to debt obligations incurred for
9 general governmental purposes unless—

10 “(1) the foreign state has waived its immunity
11 explicitly, notwithstanding any withdrawal of the
12 waiver which the foreign state may purport to effect
13 except in accordance with the terms of the waiver; or

14 “(2) the case arises under provisions codified as
15 sections 77a through 80b-21 of title 15, United States
16 Code, as amended, or any other statute which may here-
17 after be administered by the United States Securities
18 and Exchange Commission.

19 **“§ 1607. Counterclaims**

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

24 “(a) for which a foreign state would not be entitled
25 to immunity under sections 1605 and 1606 section 1605

1 of this chapter had such claim been brought in a separate
2 action against the foreign state; or

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

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

9 **“§ 1608. Service of process; time to answer; default**

10 “Subject to existing and future international agreements
11 to which the United States is a party—

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

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

19 “(2) if no special arrangement exists, and if
20 service is reasonably calculated to give actual
21 notice—

22 “(A) by service of a copy of the summons
23 and of the complaint, together with a transla-
24 tion into the official language of the foreign
25 state, as directed by an authority of the foreign

1 state or of the political subdivision in response
2 to a letter rogatory or request, or

3 “(B) by sending a copy of the summons
4 and of the complaint, together with a transla-
5 tion into the official language of the foreign
6 state, by any form of mail requiring a signed
7 receipt, to be addressed and dispatched by the
8 clerk of the court to the official in charge of the
9 foreign affairs of the foreign state which is,
10 or whose political subdivision is, named in the
11 complaint; or

12 “(3) if proof of service is not made within
13 sixty days after service has been initiated under
14 paragraph (1) or (2) of this subsection, and if—

15 “(A) the claim for relief arises out of an
16 activity or act in the United States of a diplo-
17 matic or consular representative of the foreign
18 state for which the foreign state is not immune
19 from jurisdiction under section 1605 of this
20 title; or

21 “(B) the foreign state uses diplomatic
22 channels for service upon the United States or
23 any other foreign state; or

24 “(C) the foreign state has not notified the
25 Secretary of State prior to the institution of the

1 proceeding in question that it prefers that serv-
2 ice not be made through diplomatic channels,
3 by sending two copies of the summons and of the
4 complaint, together with a translation into the official
5 language of the foreign state, by any form of mail
6 requiring a signed receipt, to be addressed and dis-
7 patched by the clerk of the court, to the Secretary
8 of State at Washington, District of Columbia, to
9 the attention of the Director of Special Consular
10 Services, and the Secretary shall send one copy
11 through diplomatic channels to the foreign state and
12 shall send a certified copy of the diplomatic note
13 to the clerk of the court in which the action is
14 pending. The Secretary shall maintain and publish
15 in the Federal Register a list of foreign states upon
16 which service may be made under subparagraphs
17 (B) and (C) of this paragraph, and such list shall
18 be conclusive for purposes of subparagraphs (B)
19 and (C);

20 “(b) service in the courts of the United States and
21 of the States shall be made upon an agency or instrumen-
22 tality of a foreign state:

23 “(1) by delivering a copy of the summons and
24 of the complaint in accordance with any special ar-

1 arrangement for service between the plaintiff and the
2 agency or instrumentality; or

3 “(2) if no special arrangement exists, by de-
4 livering a copy of the summons and of the com-
5 plaint to an officer, a managing or general agent or
6 to any other agent authorized by appointment or
7 by law to receive service of process in the United
8 States; or

9 “(3) if service cannot be made under para-
10 graph (1) or (2) of this subsection, and if service
11 is reasonably calculated to give actual notice—

12 “(A) by service of a copy of the summons
13 and of the complaint, together with a trans-
14 lation into the official language of the foreign
15 state, as directed by an authority of the foreign
16 state or of a political subdivision in response to
17 a letter rogatory or request, or

18 “(B) by sending a copy of the summons
19 and of the complaint, together with a trans-
20 lation into the official language of the foreign
21 state, by any form of mail requiring a signed re-
22 ceipt, to be addressed and dispatched by the
23 clerk of the court to the agency or instrumen-
24 tality to be served, or

25 “(C) as directed by order of the court con-

1 sistent with the law of the place where service
2 is to be made;

3 “(c) for the purposes of this section, service of
4 process shall be deemed to have been made—

5 “(1) in the case of subsections (a)(1) and
6 (b)(1), when delivered in accordance with the
7 terms of the special arrangement;

8 “(2) in the case of subsections (a)(2)(B)
9 and (b)(3)(A), when delivered as directed by an
10 authority of the foreign state or political subdivision;

11 “(3) in the case of subsections (a)(2)(B)
12 and (b)(3)(B), when received abroad by mail, as
13 evidenced by the returned, signed receipt;

14 “(4) in the case of subsection (b)(2), when
15 delivered to an officer, managing or general agent or
16 appointed agent in the United States;

17 “(5) in the case of subsection (a)(3), when
18 sent through diplomatic channels, as evidenced by
19 a certified copy of the diplomatic note of trans-
20 mittal;

21 “(6) in the case of subsection (b)(3)(C),
22 when served as directed by order of the court;

23 “(d) in any action brought in a court of the United
24 States or of a State, a foreign state, a political subdivision
25 thereof, or an agency or instrumentality of a foreign state

1 shall serve an answer or other responsive pleading to
 2 the complaint or to a cross-claim, or a reply to a coun-
 3 terclaim, within sixty days after the service of the plead-
 4 ing in which a claim is asserted, and

5 ~~(1) (c)~~ “(c) no judgment by default shall be entered by a
 6 court of the United States or of a State against a foreign
 7 state, a political subdivision thereof, or an agency or
 8 ~~(c)~~ instrumentality of a foreign state, unless the claimant
 9 establishes his claim or right to relief by evidence satis-
 10 factory to the court. A copy of any such default judgment
 11 ~~(c)~~ shall be sent to the foreign state or political subdivision
 12 in the manner prescribed for service of process in this
 13 section.

14 “(a) Service in the courts of the United States and of
 15 the States shall be made upon a foreign state or political sub-
 16 division of a foreign state:

17 ~~(1) (a)~~ “(1) by delivery of a copy of the summons and com-
 18 plaint in accordance with any special arrangement for
 19 service between the plaintiff and the foreign state or po-
 20 litical subdivision; or

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

25 “(3) if service cannot be made under paragraphs

1 ~~(1) or (2)~~, by sending a copy of the summons and com-
 2 plaint and a notice of suit, together with a translation of
 3 each into the official language of the foreign state, by any
 4 form of mail requiring a signed receipt, to be addressed
 5 and dispatched by the clerk of the court to the head of the
 6 ministry of foreign affairs of the foreign state concerned,

7 or
 8 “(4) if service cannot be made within 30 days under
 9 paragraph (3), by sending two copies of the summons
 10 and complaint and a notice of suit, together with a trans-
 11 lation of each into the official language of the foreign
 12 state, by any form of mail requiring a signed receipt, to
 13 be addressed and dispatched by the clerk of the court to
 14 the Secretary of State in Washington, District of Colum-
 15 bia, to the attention of the Director of Special Consular
 16 Services—and the Secretary shall transmit one copy of
 17 the papers through diplomatic channels to the foreign
 18 state and shall send to the clerk of the court a certified
 19 copy of the diplomatic note indicating when the papers
 20 were transmitted.

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

24 “(b) Service in the courts of the United States and of

1 *the States shall be made upon an agency or instrumentality*
 2 *of a foreign state:*

3 *“(1) by delivery of a copy of the summons and com-*
 4 *plaint in accordance with any special arrangement for*
 5 *service between the plaintiff and the agency or instru-*
 6 *mentality; or*

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

14 *“(3) if service cannot be made under paragraphs*
 15 *(1) or (2), and if reasonably calculated to give actual*
 16 *notice, by delivery of a copy of the summons and com-*
 17 *plaint, together with a translation of each into the official*
 18 *language of the foreign state—*

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

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

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

3 *“(c) Service shall be deemed to have been made—*
 4 *“(1) in the case of service under subsection (a)(4),*
 5 *as of the date of transmittal indicated in the certified copy*
 6 *of the diplomatic note; and*

7 *“(2) in any other case under this section, as of the*
 8 *date of receipt indicated in the certification, signed and*
 9 *returned postal receipt, or other proof of service appli-*
 10 *cable to the method of service employed.*

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

17 *“(e) No judgment by default shall be entered by a court*
 18 *of the United States or of a State against a foreign state, a*
 19 *political subdivision thereof, or an agency or instrumen-*
 20 *tality of a foreign state, unless the claimant establishes his*
 21 *claim or right to relief by evidence satisfactory to the court. A*
 22 *copy of any such default judgment shall be sent to the foreign*
 23 *state or political subdivision in the manner prescribed for*
 24 *service in this section.*

1 **“§ 1609. Immunity from attachment and execution of prop-**
 2 **erty of a foreign state**

3 — “Subject to existing ~~and future~~ international agreements
 4 to which the United States is a party *at the time of enact-*
 5 *ment of this Act* the property in the United States of a foreign
 6 state shall be immune from attachment ~~and from~~ *arrest and*
 7 execution except as provided in sections 1610 and 1611 of
 8 this chapter.

9 **“§ 1610. Exceptions to the immunity from attachment or**
 10 **execution**

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

17 “(1) the foreign state has waived its immunity from
 18 attachment in aid of execution or from execution either
 19 explicitly or by implication, notwithstanding any with-
 20 drawal of the waiver the foreign state may purport to
 21 effect except in accordance with the terms of the waiver,
 22 or

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

25 “(3) the execution relates to a judgment establish-

1 ing rights in property which has been taken in violation
 2 of international law or which has been exchanged for
 3 property taken in violation of international law, or

4 “(4) the execution relates to a judgment establish-
 5 ing rights in property—

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

7 or

8 “(B) which is immovable and situated in the

9 United States: *Provided*, That such property is not

10 used for purposes of maintaining a diplomatic or

11 consular mission or the residence of the Chief of such

12 mission, or

13 “(5) the property consists of any contractual obli-

14 gation or any proceeds from such a contractual obli-

15 gation to indemnify or hold harmless the foreign state

16 or its employees under a policy of automobile or other

17 liability or casualty insurance covering the claim which

18 merged into the judgment.

19 “(b) In addition to subsection (a), any property in

20 the United States of an agency or instrumentality of a for-

21 eign state engaged in commercial activity in the United

22 States shall not be immune from attachment in aid of execu-

23 tion, or from execution, upon a judgment entered by a court

24 of the United States or of a State after the effective date of

25 this Act, if—

1 “(1) the agency or instrumentality has waived its
2 immunity from attachment in aid of execution or from
3 execution either explicitly or implicitly, notwithstand-
4 ing any withdrawal of the waiver the agency or instru-
5 mentality may purport to effect except in accordance
6 with the terms of the waiver, or

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

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

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

25 “(1) the foreign state has explicitly waived its

1 immunity from attachment prior to judgment, notwith-
2 standing any withdrawal of the waiver the foreign state
3 may purport to effect except in accordance with the
4 terms of the waiver, and

5 “(2) the purpose of the attachment is to secure
6 satisfaction of a judgment that has been or may ulti-
7 mately be entered against the foreign state, and not to
8 obtain jurisdiction.

9 **“§ 1611. Certain types of property immune from execution**

10 “(a) Notwithstanding the provisions of section 1610
11 of this chapter, the property of those organizations designated
12 by the President as being entitled to enjoy the privileges,
13 exemptions, and immunities provided by the International
14 Organizations Immunities Act shall not be subject to attach-
15 ment or any other judicial process ~~impending~~ *impeding* the
16 disbursement of funds to, or on the order of, a foreign state
17 as the result of an action brought in the courts of the United
18 States or of the States.

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

22 “(1) the property is that of a foreign central bank
23 or monetary authority held for its own account, unless
24 such bank or authority, or its parent foreign government,
25 has explicitly waived its immunity from attachment in

1 aid of execution, or from execution, notwithstanding any
2 withdrawal of the waiver which the bank, authority or
3 government may purport to effect except in accordance
4 with the terms of the waiver; or

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

7 “(A) is of a military character, or

8 “(B) is under the control of a military au-
9 thority or defense agency.”

10 (b) That the analysis of “PART IV.—JURISDICTION AND
11 VENUE” of title 28, United States Code, is amended by in-
12 serting after—

“95. Customs Court.”,

13 the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

14 SEC. 5. That section 1391 of title 28, United States
15 Code, is amended by adding at the end thereof the follow-
16 ing new subsection:

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

19 “(1) in any judicial district in which a substantial
20 part of the events or omissions giving rise to the claim
21 occurred, or a substantial part of property that is the sub-
22 ject of the action is situated;

23 “(2) in any judicial district in which the vessel

1 or cargo of a foreign state is situated, if the claim is
2 asserted under section 1605 (b) of this title;

3 “(3) in any judicial district in which the agency or
4 instrumentality is licensed to do business or is doing
5 business, if the action is brought against an agency or
6 instrumentality of a foreign state as defined in section
7 1603 (b) of this title; or

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

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

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

23 SEC. 7. If any provision of this Act or the application
24 thereof to any foreign state is held invalid, the invalidity
25 does not affect other provisions or applications of the Act

1 which can be given effect without the invalid provision or
2 application, and to this end the provisions of this Act are
3 severable.

4 SEC. 8. This Act shall take effect ninety days after the
5 date of its enactment.

Union, and ordered to be printed
Office of the Woods House on the State of the Com-
mitted with amendments, committed to the Com-
SUNSHINE § 1976
Referred to the Committee on the Judiciary
December 18, 1919
By Mr. HORTON and Mr. HARRINGTON
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To define the jurisdiction of United States

A BILL

[Report No. 24-1481]

IN SENATE
JANUARY 1920

H. R. 11312

Union Calendar No. 166

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Union Calendar No. 766

94TH CONGRESS
2D SESSION

H. R. 11315

[Report No. 94-1487]

A BILL

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

By Mr. RODINO and Mr. HUTCHINSON

DECEMBER 19, 1975

Referred to the Committee on the Judiciary

SEPTEMBER 9, 1976

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

SEPTEMBER 10, 1976

BILL STATUS OFFICE
U.S. HOUSE OF REPRESENTATIVES

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94TH CONG. STATUS PROFILE FOR H.R.11315

OFFICIAL TITLE.... FOREIGN SOVEREIGN IMMUNITIES ACT

SPONSOR..... RODINO

DATE INTRODUCED... DEC 19, 75

HOUSE COMMITTEE... THE JUDICIARY

TITLE..... A BILL TO DEFINE THE JURISDICTION OF UNITED STATES COURTS IN SUITS AGAINST FOREIGN STATES, THE CIRCUMSTANCES IN WHICH FOREIGN STATES ARE IMMUNE FROM SUIT AND IN WHICH EXECUTION MAY NOT BE LEVIED ON THEIR PROPERTY, AND FOR OTHER PURPOSES

CO-SPONSORS..... HUTCHINSON.

DEC 19, 75 REFERRED TO HOUSE COMMITTEE ON THE JUDICIARY.

DEC 31, 75 REFERRED TO SUBCOMMITTEE ON ADMIN LAW & GOVERNMENTAL RELATIONS.

JUN 2, 76 FIRST DAY OF SUBCOMMITTEE HEARINGS.

JUN 4, 76 FINAL DAY OF SUBCOMMITTEE HEARINGS.

SEP 1, 76 FIRST DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FINAL DAY OF SUBCOMMITTEE CONSIDERATION AND MARK-UP SESSION.

SEP 1, 76 FORWARDED BY SUBCOMMITTEE TO FULL COMMITTEE AMENDED.

SEP 9, 76 REPORTED TO HOUSE AMENDED BY HOUSE COMMITTEE ON THE JUDICIARY. REPORT NO: 94-1487.

SEP 9, 76 PLACED ON UNION CALENDAR, NO: 766.

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No. 36

94TH CONGRESS
1ST SESSION

H. R. 11315

JURISDICTION-U.S. COURTS IN SUITS

AGAINST FOREIGN COUNTRIES

A BILL

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

By Mr. RODINO and Mr. HUTCHINSON

DECEMBER 19, 1975

Referred to the Committee on the Judiciary