

8 November 2000

Original: English

---

**Fifty-fifth session**

**Sixth Committee**

Agenda item 157

**Convention on jurisdictional immunities of States and their property**

## **Informal paper by the Chairman**

(Basis for further discussion, revised version)

### **Addendum**

#### **Item 5. Measures of constraint against State property**

*Principle:* Unless the State has expressly consented either ad hoc or in advance, or the measures of constraint, such as attachment, arrest and execution, taken by a court of another State against the property of the former involve property designated to satisfy the claim, no such act may be taken in connection with a proceeding before a court of another State except in certain well-defined circumstances according to applicable rules of international law, and against property that is not used for governmental purposes. Nevertheless, the State remains bound to satisfy the final judgement to the extent that it does not contradict its *ordre public*.

#### **Alternative I**

#### **Article 18**

##### **State immunity from measures of constraint**

1. No pre-judgement measures of constraint against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:

(a) The State has expressly consented to the taking of such measures as indicated:

- (i) By international agreement;
- (ii) By an arbitration agreement or in a written contract; *or*

(iii) In any other manner by a validly given declaration; *or*

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

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

(a) The State has expressly consented to the taking of such measures as indicated:

(i) By international agreement;

(ii) By an arbitration agreement or in a written contract; *or*

(iii) In any other manner by a validly given declaration; *or*

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

This paragraph is without prejudice to any other legal grounds *based on applicable rules of international law* for taking such measures against the property of a State in connection with a proceeding before a court of another State.

## **Alternative II**

### **Article 18**

#### **State immunity from measures of constraint**

1. *No pre-judgement measures of constraint against property of a State may be taken in connection with a proceeding before a court of another State unless and to the extent that:*

*(a) The State has expressly consented to the taking of such measures as indicated:*

*(i) By international agreement;*

*(ii) By an arbitration agreement or in a written contract; or*

*(iii) In any other manner by a validly given declaration; or*

*(b) The State has allocated or earmarked property for the satisfaction of the claim that is the object of that proceeding.*

*This paragraph is without prejudice to any other legal grounds based on applicable rules of international law for taking such measures against the property of a State in connection with a proceeding before a court of another State.*

2. *A State is obliged to give effect to a final judgement given against it by a court of another State if the former cannot claim immunity in the proceedings, unless this obligation would contradict the ordre public of that State.*

### **Alternative III**

#### **Article 18**

##### **State immunity from measures of constraint**

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

(a) The State has expressly consented to the taking of such measures as indicated:

- (i) By international agreement;
- (ii) By an arbitration agreement or in a written contract; or
- (iii) In any other manner by a validly given declaration; or

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

2. The preceding paragraph is without prejudice to any other legal grounds based on applicable rules of international law for taking such measures against the property of a State in connection with a proceeding before a court of another State.

### **Alternative IV**

#### **Article 18**

##### **State immunity from measures of constraint**

A State is obliged to give effect to a final judgement given against it by a court of another State if the former cannot claim immunity in the proceedings, unless this obligation would contradict the *ordre public* of that State.

#### **[Article 19]**

##### **Specific categories of property**

1. *Unless it appears from the circumstances that the State has consented to it, the following categories, in particular, of property of a State shall not be considered as property against which measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State:*

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

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

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

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

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

2. *delete]*

---