

DEVELOPMENT OF THE STATE JURISDICTIONAL IMMUNITY INSTITUTION IN PRIVATE INTERNATIONAL LAW

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Abstract. This article provides a comprehensive analysis of the theoretical and historical legal underpinnings of the establishment and evolution of the concept of state immunity. The study delves into the key trends shaping the development of this institutional framework, elucidates the notion of immunity, and examines its implications within the realm of legal norms. Moreover, it highlights the multifaceted challenges arising from the application of state immunity in private law contexts. The article underscores the role played by customary norms and judicial precedents in shaping this progression. It investigates the origins of absolute state immunity and the emergence of limited immunity, accentuating the dualistic nature of state immunity. This duality stems from the state's simultaneous roles as both a custodian of sovereign authority and an economic entity, alongside a guardian of private interests. The article emphasizes the imperative to enhance domestic legislation and standardize the tenets of private international law in this domain. In addition, this article scrutinizes the theoretical and legal foundations of jurisdictional immunity of states within the purview of private international law and elucidates its methodological tenets. The author scrutinizes the groundwork upon which the jurisdictional immunity of states is established, delineates its conceptual framework and characteristics, and enumerates the principal forms of state immunity. Moreover, the study appraises the primary theories of jurisdictional immunity: absolute immunity and functional (limited) immunity. Special attention is accorded to the legal framework governing the jurisdictional immunity of states on both international and domestic fronts. Essential facets of the concept of jurisdictional immunity of states within international private law interactions are identified.

Furthermore, the article assesses the immunity of the state as an entity governed by private international law and delineates the spectrum of relationships in which the state might engage as a subject of international law. Sovereignty stands as the bedrock upon which immunity is founded. The analysis dissects the core concepts of jurisdictional immunity of states, namely absolute immunity and functional (limited) immunity, elucidating their attributes and codification within international legal instruments and national statutes.

Keywords: state jurisdictional immunity, establishment of state immunity, absolute immunity, limited immunity, legal framework for state immunity

INTRODUCTION

The contemporary complexities surrounding the jurisdictional immunity of states in private law relationships, coupled with the evolving trends in its development within international and domestic legal frameworks, hold significant implications, particularly in the context of the imperative to reform Ukraine's legislation in this domain. The pressing necessity for the legal regulation of interactions between the Ukrainian state and foreign entities within the sphere of civil law relations emerges from the escalating growth of economic ties, the establishment of agreements with private foreign individuals, and Ukraine's active engagement in global and regional integration initiatives, such as its accession to the World Trade Organization and the deepening of relations with the European Union. The exigency for this regulatory framework is underscored by the burgeoning expansion and deepening of international economic, trade, and cultural relations, a phenomenon characterized by the participation of a substantial number of states in international economic discourse. Nevertheless, this evolving landscape of cooperation engenders a host of challenges, primarily associated with the steadfast adherence to the fundamental principles and norms of international law, notably the principle of state immunity, as well as the correlated tenets of sovereign equality among states and the prohibition of interference in internal affairs.

The conceptualization of state immunity, including its legal nature and justifications, bears profound methodological significance in engendering comprehension of this intricate matter. In the present era, the issue of constraining state immunities remains pertinent not only to Ukraine but extends across the majority of nations globally. A notable example is witnessed in the years 2002-2004 when American courts deliberated upon the issue of appropriating several artworks by the renowned Austrian artist Gustav Klimt from the Austrian National Gallery and their subsequent transfer to a private individual, a citizen of the United States, who laid claim to ownership rights. Analogous situations arose in Germany, where in 2001, a Greek court issued an order for the seizure of German real estate in Athens, including prominent edifices like the Goethe Institute and the German Archaeological Museum. Additional challenges persist around the United Nations Convention on Jurisdictional Immunities of States and Their Property, a treaty adopted in 2004, which awaits ratification by a majority of its signatories, thus impeding its effective implementation.

MATERIALS AND METHODS

Scholars such as A.S. Dovgert, O.T. Hirenko, Y. Dzera, Y. Korniychuk, M. Buromenskyi, M. Hnatovskyi, N. Chuchkova, and H. Burkhard, among others, have extensively explored the trajectory of the establishment and evolution of the institution of state immunity.

The present study is grounded in the utilization of civil law methods and techniques. The civil method, as a multifaceted category, encompasses several distinct features:

Legal Equality, Autonomy, and Independence: The essence of legal equality among participants, coupled with their autonomy and independence, underscores that individuals engaged in pertinent legal relationships possess equitable legal avenues to attain and exercise civil rights. This framework

empowers them to assume civil obligations and discharge them, devoid of any form of legal subordination or authoritative dependency upon each other.

Volitional Choice: The principle of optionality governs the behavioral latitude of members entwined in civil relationships. This implies that the involved parties retain the prerogative to act in an initiative, unencumbered manner, driven by their interests and objectives.

Judicial Dispute Resolution: The recourse to judicial resolution for the settlement of disagreements among members of civil relationships is a hallmark feature. This highlights the availability of legal mechanisms for the amicable resolution of disputes through the judicial framework.

Property-Compensatory Character of Enforcement Measures: The coercive measures imposed upon defaulting parties bear a distinctive property compensatory nature. In cases where a participant in a legal relationship defaults on their obligations, resulting in the infringement of the rights of other participants or impeding their rightful execution, corrective measures are enacted. These measures, primarily of a pecuniary nature, aim to restore the violated rights, legally safeguarded interests, or the well-being of the aggrieved party.

In essence, the application of civil law methodologies offers a comprehensive framework for understanding the intricacies of state immunity, within which the principles of legal equality, volitional agency, dispute resolution, and property-compensatory measures harmoniously coalesce.

RESULTS AND DISCUSSION

The etymology of the term “immunity” traces its origins to the Latin term “*communitas*,” signifying exemption from certain obligations, inviolability, or autonomy. In the historical legal context, the term “immunity” found use in ancient Rome to denote exemption from taxes or civic duties, including military service. Such exemptions were granted either permanently, as in the case of certain social categories like priests and men above 45 years of age, or for a specified duration, exemplified by the “*immunis apparitions*” concept, which entailed immunity for lower-ranking staff members. The bestowal of immunity rested with the Senate, and later, with the emperor (Kobrin, 2011).

Contemporary legal scholarship offers diverse interpretations of the term “immunity.” In criminal proceedings, it signifies the exemption of individuals from specific procedural obligations. In constitutional law, the term “indemnity” often accompanies “immunity,” particularly in the context of parliamentary members. On the international law front, immunity pertains to the absence of jurisdiction of one state’s courts over another state. According to the Legal Encyclopedia, “State immunity has evolved as an absolute principle, entailing that foreign states, their entities, and state-owned property enjoy immunity. A foreign state cannot be sued in a foreign court unless it has expressly consented. Property owned by a foreign state cannot be subjected to coercive measures such as seizure, and it cannot be the subject of claims or foreclosure in the enforcement of court or arbitral awards” (Shemshuchenko, 1999).

The immunity of a foreign state, known as jurisdictional immunity, designates the exemption of one state from the jurisdiction of another. This jurisdictional immunity concept aligns with the general understanding of jurisdiction as the exercise of state power emanating from sovereignty – a

state's authority to make determinations regarding its actions and the manner thereof (Oxman, as cited in the text).

This immunity of a state as a subject of international law from the jurisdiction of another state forms a crucial principle and firmly established rule in international law. It signifies that a state remains beyond the jurisdiction of another state and does not fall under the purview of any form of foreign authority – be it legislative, executive, or judicial. The underpinning rationale lies in the state's possession of sovereignty and the principle of equality among states. This equality, as evident in ancient Rome, is encapsulated in maxims such as “*par in parem pop habet imperium*” (“equal over equal has no power”) and “*par in param nonhabit jurisdiction*” (“equal over equal has no jurisdiction”). This pertains to equality among states and not participants in private legal relations. State sovereignty forms the cornerstone of paramount rights and obligations within international relations, ensuring equal footing for all states under international law.

The principle of immunity of a foreign state, although not immutable, possesses a historical trajectory intertwined with the evolution of public and private international law. As noted by foreign scholars, the transition from absolute sovereignty to a limited doctrine that denies immunity to sovereigns engaged in commercial activities is emblematic of this evolution. This change, occurring over the past century, reflects a transition from the doctrine of absolute sovereignty towards the nuanced recognition of immunity in the context of commercial undertakings (Folsom, Gordon, Spanogle, 1996).

Historically, the principle of state jurisdictional immunity finds its roots in the feudal era. As early as the 14th century, the ancient Roman adage “*par in parem nonhabit imperium*” found resonance in the works of Italian jurist Bartolus. This principle stipulated the equality of states in interactions among supreme political authorities, precluding one state from exercising jurisdiction over another at that level.

The epoch of developed absolutism, characterized by the concentration of state power in the monarch's hands, witnessed the iconic declaration by French King Louis XIV, “The state is me.” Notably, the early proponents of diplomatic and sovereign immunity, Hugo Grotius and Alberico Gentili, did not explicitly address the immunities of the state.

In summary, the term “immunity” encompasses an array of historical and contemporary meanings, shaped by diverse interpretations across various legal disciplines. Its historical roots in ancient Rome, its evolution within international and domestic legal contexts, and its association with the principle of state sovereignty highlight its intricate significance within the legal discourse.

The institution of state immunity finds its roots not only within the pinnacle of feudalism known as absolutism but is also associated with the broader era of feudalism. Doctor of Science V. Shamrai elucidates this connection, stating that the emergence of the principle of immunity dates back to the barbarian kingdoms arising from the ruins of the Western Roman Empire and the realm of Charlemagne in the 9th century. Within the context of feudal practice, immunity denoted the authority of a feudal lord to govern his domain as a *de facto* autonomous ruler. The scope of immunities exhibited certain variations but typically encompassed essential state functions such as tax collection, justice administration, police oversight, and coinage issuance.

While feudal lord immunity was formally confirmed through royal charters, it was more an acknowledgment and formal validation rather than a conferred privilege. Feudal immunity underpins the intricate web of relations of personal dependency and service among medieval feudal lords, particularly the distinct dynamics between suzerains and vassals, which defied a monolithic ladder of consistent hierarchical subordination. Consequently, the hierarchical structure of medieval society remained inherently decentralized, with rights and obligations specific to each participant. The feudal realm characterized a society devoid of a unified political denominator. Building upon this premise, Shamrai underscores the conditional nature of considering the states of the feudal era in Europe, given that a notion of a unified state could be asserted only in Germany or Italy from the latter half of the 19th century. Even in France, renowned for its model of royal absolutism and centralization endeavors, genuine unity of state governance and the political system was achieved solely through the revolution in the late 18th century (Shamrai, 2006).

In the Middle Ages and during the zenith of feudal relationships, especially in the era of absolutism where state power was equated with the monarch's persona, and the monarch's possessions were sacrosanct, foreign jurisdiction could not be exercised over the monarch's person or possessions. In the incipient stages of this institution, courts justified the right of foreign states to immunity through international courtesy – *comitas gentium* (Girenko, 2004). An illustrative instance is the 1668 decision of a Dutch court, often regarded in historiography as one of the earliest judgments on state immunity. This case recognized the immunity of a foreign state when three Spanish warships were detained in a foreign port due to private claims against the Spanish king. The seizure was deemed unlawful, as Spanish warships couldn't be apprehended for debts of the monarch, and it contravened norms of foreign sovereign courtesy.

The portrayal of medieval immunity is vividly presented by Swedish scholar E. Annens in his work "History of European Law." He delineates a defining trait of the feudal system, as manifested in the Frankish state and subsequently disseminated throughout Europe (except Sweden, Norway, and Finland), which entailed the legal immunity of both feudal lords and their officials. This immunity extended to church property as well. Royal officials were barred from setting foot on a feudal lord or vassal's land. They were also precluded from conducting court proceedings, reprisals, and executions on these lands, effectively precluding the fulfillment of their essential duties and services. The lands of feudal lords and their vassals remained exempt from official taxation (Annens, 1994).

As time progressed, court practice increasingly acknowledged international customary law predicated on the principles of state independence and sovereignty as the bedrock of state immunity from foreign jurisdiction. This recognition, whether grounded in courtesy or international customary law, consistently hinged upon the foundation of state independence and sovereignty. Even in the early stages of practice, the autonomy and sovereignty of the state emerged as the paramount rationale for immunity. The 1812 decision of the US Supreme Court, premised on the existence of international custom, emphasized: "This complete equality and absolute independence of sovereigns, and these common interests, inducing them to mutual relations, and the exchange of good offices with each other, have given rise to a species

of litigation which proceeds from the assumption that each sovereign refuses to exercise a part of that complete, exclusively territorial jurisdiction which is regarded as a property of every state.”

The notion that state immunity originates from the personal immunity of a sovereign against the jurisdiction of another state is widely accepted. This viewpoint resonates among domestic and foreign scholars alike. As V. Timashova points out, “the special rule of state immunity, arising from the personal immunity of the sovereign, was first formally formulated in connection with cases on state courts” (Timashova, 2015). Australian scholar Ian Sinclair underscores that the foundations of modern state immunity law can be traced back to early theories of personal immunity of sovereigns or heads of state (Sinclair, 1980). Sompong Sucharitkul from Thailand anchors his perspective on the adage, “The king cannot be a defendant in his courts,” referencing the United Kingdom. Given that the king embodied the state, courts, as an extension of the central government, lacked jurisdiction over the sovereign. The courts could merely act on behalf of the sovereign, underlining the immunity of the king. From this immunity of the king, the UK extended analogous immunity to sovereigns of friendly foreign states, which subsequently evolved into the immunity of foreign states and governments. Sucharitkul contends that the doctrine of state immunity in international law derives from the sovereign’s immunity against the jurisdiction of courts within his state (Sucharitkul, 1959).

In summation, the concept of state immunity traverses historical epochs and disciplinary boundaries, encapsulating diverse meanings across different legal contexts. Its emergence during the feudal era and its subsequent evolution within the intricate tapestry of international law attest to its profound implications within legal discourse.

The principle of state immunity garnered acknowledgment in the practices of numerous states during the 19th century. E. Korniychuk posits that “the development of the principle of immunity of foreign states in common law states was significantly influenced by the traditional immunity of their sovereign, in conjunction with the rules of international courtesy (*comitas gentium*). This doctrine was a direct corollary of the constitutional and legal maxim in England that the King could not be sued or prosecuted in his courts. This rule was predicated on the premise that the king personified the state, and since the courts constituted an integral part of the central state power, their jurisdiction could solely extend to the individual on whose behalf they operated, rendering judgments” (Korniychuk, 2019).

The recognition of foreign rulers’ sovereignty by analogy with domestic sovereigns’ sovereignty found reflection in English case law, particularly the renowned 1820 case concerning the immunities of foreign states and their property, *The Prins Frederik*. Throughout the 19th and early 20th centuries, decisions in cases linked to state immunity were rendered in favor of reinforcing its underpinning. S. Sucharitkul, the inaugural Rapporteur of the UN International Law Commission on Jurisdictional Immunity of States and Their Property, references Lord Atkin’s verdict in the eminent 1938 case “*The Cristina*,” which underscored the application of international law principles governing state immunity. Lord Atkin elucidated, “The foundation for setting aside the court order and the vessel’s arrest are two international legal provisions, mirrored in our domestic law and firmly established. Firstly,

courts of a nation must not summon a foreign sovereign to their tribunal, effectively refraining from including it in proceedings, irrespective of whether they pertain to the sovereign's person or claims involving specific property or compensation for damages. Secondly, during proceedings, whether or not the foreign sovereign is a party, seizing or detaining his property, assets under his ownership or disposal, is proscribed."

Beyond the mentioned instances, notable court decisions encompass state immunity, such as the 1812 ruling of the US Supreme Court in *The Schooner Exchange v. M'Faddon*, which alluded to the presence of an international customary practice: "This complete equality and absolute independence of sovereigns, and these common interests, inducing them to mutual relations, and to exchange good offices with each other, have given rise to a variety of cases which proceed from the fact that each sovereign refuses to exercise a part of that complete, exclusively territorial jurisdiction which is regarded as a property of every State." Other court cases on state immunity include *The Prins Frederik*, 1820 (England), *Blanchet c. Gouvernement d'Haïti*, 1827 (France), *De Haber v. The Queen of Portugal*, 1851 (England), *The Parlement Belge*, 1880 (England), *Kawananakao v. Polyblank*, 1907 (USA), and *The Cristina*, 1938 (England). In the *De Haber v. The Queen of Portugal* case, it was explicitly noted that "summoning a foreign monarch to a domestic court in respect of any complaint against him in his public capacity is contrary to international law." In the case of *The Parlement Belge*, it was stated that "prosecuting a foreign state in court would be an insult to the 'royal dignity.'" Similarly, *The Cristina* case emphasized that "...the courts of the country should not bring a foreign sovereign to court ... that is, make it a party to the proceedings..." (Korniychuk E., 2007), among others.

The jurisprudential landscape of 19th-century European states and the United States reaffirms the customary character of international norms about state immunity and the prevalence of the doctrine of state immunity, rooted in state sovereignty. This dominance was notable, except in cases of the Scandinavian countries and the Netherlands, where their rulers and governments fell within the purview of national court jurisdiction (Phillimore G. G., 1925).

The rationale behind state immunity can be traced to the imperative of preserving official relations between sovereign states and facilitating interactions on each other's territories, particularly through permanent diplomatic missions and delegations. Consequently, state immunity was initially absolute in scope, encompassing all activities of a foreign state and its property. However, as states extended their involvement in private law domains such as trade, procurement of goods and services, and real estate transactions, a shift occurred. This led to the emergence of the concept of limited immunity in the late 19th century, which is now widely acknowledged. Under this framework, immunity is confined solely to situations where a state exercises sovereign authority, i.e., activities conducted under *jure imperii*. In contrast, in legal relationships of a commercial nature (*jure questions*), the state does not enjoy immunity, as legal entities and individuals engaging in such interactions with a foreign state must retain legal protection.

Professor Denysov aptly underscores that "the 1963 decision of the Federal Constitutional Court of Germany underscores that immunity hinges on how the foreign state operates: whether in the exercise of its sovereign

authority or akin to a private individual, that is, within the realm of private law. Even states that did not extend judicial immunity to foreign private individuals still granted them immunity from execution, grounded in the principle of state independence (as seen in the practices of Spain, and France, among others). This trend signaled a departure from absolute immunity towards a more pragmatic restrictive practice, wherein actions carried out by a state as a sovereign power were exempted from local court proceedings, while those linked to its non-sovereign activities were retained" (Denysov, 2011).

The dawn of the 20th century ushered in shifts as efforts were invested in regulating state immunity through interstate agreements. As countries expanded their engagement in trade and economic activities, particularly with private law subjects of other states, the notion of absolute immunity began to give way to the emergence of functional immunity. This paradigm gained prominence among most states. The 20th century witnessed the establishment of state legislation, bilateral and multilateral treaties, and the evolution of international legal doctrine regarding state immunity, shaped by judicial practices.

Various informal endeavors also transpired in this regard, with E.V. Korniychuk highlighting "the Harvard research project, three resolutions of the Institute of International Law, and the draft Montreal Convention developed in 1982 and revised in 1994 by the International Law Association" (Korniychuk, 2019). The Harvard Project, released in 1932, featured Philip Jessup's report titled "The Competence of Courts concerning Foreign States," which examined diverse judicial practices across over thirty countries. The report advocated for the limited (functional) concept of state immunity.

The Institute of International Law initially drafted the "International Rules on the Jurisdiction of Courts in Proceedings against Sovereign States or Heads of State of Foreign Countries," adopted by its plenary session in 1891. Subsequently, the "Resolution on the Immunity of Foreign States from Jurisdiction and Judicial Execution" was passed on April 30, 1954. Further elucidation on certain aspects of state immunity concerning jurisdiction and judicial execution was provided in a resolution on September 2, 1991. The Institute of International Law also formulated the "Resolution on Immunities of Heads of State and Heads of Government (Verhoeven, 2001)" in 2001. The Institute acknowledged both absolute and limited state immunity, while consistently asserting that enforcing court judgments at the expense of non-commercial state property is impermissible.

The draft Montreal Convention emerged from the International Law Association's conference in Montreal in 1982. It restricted the application of the general immunity principle to acts through which a state exercises its sovereign authority, incorporating exceptions stipulated in the United Kingdom's Immunities of States Act. The draft aligned broadly with the structure and content of this legislative act, with minor deviations (for instance, requiring the state to substantiate its judicial immunity claim). In 1994, the International Law Association ratified this draft with minor modifications during a conference in Buenos Aires.

Numerous endeavors to systematize the principles governing case law within the realm of state immunity culminated in success with the establishment of an international unification convention in 1926. The inaugural International Convention for the Unification of Certain Rules About

the Immunity of State-Owned Vessels was formally adopted in Brussels on April 10, 1926, and became available for signature. The Brussels Convention remains operational among select states. Over time, the Convention, along with its associated Protocol ratified on May 24, 1934, garnered endorsement from nations such as Brazil, Belgium, Chile, Germany, Holland, Italy, Mexico, Norway, Portugal, Sweden, and the Netherlands before the outbreak of World War II. In 1951, Greece joined the accord, followed by France in 1955.

The Brussels Convention aligns the treatment of state-owned merchant ships and affiliated cargo, belonging to signatory states, with that of merchant vessels and cargo owned by legal entities and individuals. The Convention permits the apprehension of state-owned merchant ships and their subsequent seizure. To determine vessels exempt from the purview of the 1926 Brussels Convention, it employs two methodologies (Article 3): firstly, it establishes a broad criterion centered around the non-commercial service nature of state-owned merchant ships; secondly, it enumerates an inventory of vessel categories excluded from its scope. This roster encompasses military, patrol, sanitary, auxiliary, supply ships, and state yachts. These maritime entities were exempt from the prospects of confiscation, detention, or arrest. The Protocol of May 24, 1934, supplemented the Brussels Convention, addressing certain inconsistencies and gaps inherent within it. Notably, the Protocol (Article 1) conferred immunity upon ships chartered by a state exclusively for government-related non-commercial endeavors.

In the words of O. Borshchevska, the Brussels Convention implies that “absolute state immunity encompasses the prerogative of a state to fully exercise its sovereignty, encompassing all state institutions and property holdings. Given this articulation, absolute state immunity does not foster the advancement of economic relations between states, as it curtails the ability of states to seek judicial safeguarding of their property interests. Consequently, when entering into agreements, states must incorporate terms of reciprocity or potential countermeasures, thereby safeguarding their entitlements. Accordingly, the predominant policy trajectory of many states has shifted toward embracing functional (limited) state immunity. The fundamental tenet of such immunity primarily stems from the provision that when a state functions as a sovereign entity, as a participant in international law, it invariably possesses absolute immunity. Conversely, if a state acts akin to a private entity within the ambit of private international law and foreign economic law, engaging in commercial undertakings, it forfeits absolute immunity. In such instances, it assumes functional (limited) sovereignty” (Borshchevska, 2021).

Substantive progress in harmonizing legal norms within the domain of state immunity was notably advanced by European nations on May 16, 1972, through the adoption of the European Convention on Immunity of States (European Convention on the Immunity of States, 1972). This treaty was further supplemented by a Protocol that came into effect on May 22, 1985, and found adherence from Austria, Belgium, Cyprus, Luxembourg, the Netherlands, Germany, and Switzerland. The European Convention of 1972 codified the theory of limited immunity into legal practice, mirroring a parallel trend of enacting national legislation concerning state immunity, with the United States State Immunity Act of 1978 as its pioneering manifestation.

The overarching objective of the European Convention of 1972 revolves around addressing the jurisdictional immunity of states and encompasses

several distinctive features. It governs matters concerning the recognition and enforcement of judgments rendered against foreign states. However, the Convention does not extend to scenarios involving social security, nuclear damage compensation, customs obligations, tax or criminal penalties, or proceedings tied to the management of state-owned ships. By the European Convention on the Immunity of States, a foreign state relinquishes immunity under two circumstances: firstly, upon the explicit waiver of immunity; secondly, when its activities or transactions align with the categories wherein immunity is not conferred. The Convention (Articles 1-3) outlines modalities for the relinquishment of immunity by a foreign state. Such relinquishment may manifest as 1) a direct, explicit form; and 2) an indirect, implied form. The former form may take shape through a) an international treaty; b) an unambiguous stipulation within a documented contract; or c) a distinct consent provided after the commencement of the dispute. The Convention also delineates avenues for indirect immunity waiver, which encompass a) the initiation of claims or involvement in legal proceedings within a court of another participating state; b) the initiation of a primary claim within a court of another participating state (entailing the non-recognition of immunity concerning a counterclaim); c) the initiation of a counterclaim within a court of another participating state; d) the implementation of measures by a foreign state pertinent to the substance of the proceedings.

The Convention specifies that the judicial immunity of a foreign state (subject to specific criteria) is not conferred in proceedings associated with employment contracts; obligations arising from contracts intended for fulfillment within the territory of the forum state; the state's participation in corporations and other legal entities headquartered within the forum state; industrial, commercial, and financial activities undertaken by the state through its agencies or institutions; proceedings involving patents, industrial designs, and trademarks.

The Convention delineates a distinction between judicial immunity and immunity about provisional measures and executive actions. It is thus evident that the relinquishment of judicial immunity by a foreign state does not imply a simultaneous relinquishment of immunity concerning provisional measures and enforcement activities. Article 23 stipulates that provisional measures or enforcement actions cannot be taken against the property of another State Party unless explicit written consent has been obtained from that state for each instance in which such measures are to be applied. This implies that an interested party is not entitled to petition for the attachment or enforcement of property belonging to the respondent state through the courts of the jurisdiction in which the property is situated.

The subsequent stage in the evolution of the institution of immunity and the unification of norms in the domain of state immunities was marked by the inception of the UN Convention on Jurisdictional Immunities of States and Their Property. This convention was adopted through Resolution No. 59/38 on December 2, 2004 (UN General Assembly Resolution, 2004) during the 59th session of the UN General Assembly. Its formulation followed years of comprehensive effort, with the UN International Law Commission having included the matter of jurisdictional immunities of states and their property in its agenda during its inaugural session. The establishment of a Working Group in 1978 paved the way for the development of draft articles titled "On Jurisdictional Immunities of States and Their Property" in 1991. This draft

underwent finalization through the collaboration of several dedicated working groups. The discourse surrounding the discord between proponents of absolute state immunity and those advocating a restrictive approach to state immunity proved challenging. While the recognition of immunity was widely prevalent within international legal practice, a unanimous understanding regarding the scope and application of this principle remained elusive. States that had already enacted legislation in this sphere sought to ensure that their laws did not fundamentally conflict with the new convention, thereby avoiding the need for substantial alignment with international standards. The culmination of 27 years of exertion by the International Law Commission, the UN Sixth Committee, and the Ad Hoc Committee materialized in the adoption of the Convention on Jurisdictional Immunities of States and Their Property, receiving the endorsement of UN General Assembly Resolution 59/38 on December 2, 2004.

In the early 21st century, especially within the context of globalization, the realm of state involvement in both public and private legal relations marked by foreign elements has become considerably intricate. The state, in its role as a sovereign entity, inherently enjoys immunity. However, when the state partakes in activities akin to those of a private entity (such as foreign trade operations or commercial endeavors), its immunity becomes subject to limitations.

Controversies on state immunity, its organs, and its representatives remain unresolved. One example is the divergence of views regarding the application of immunity in the context of counterclaims, which may be subject to the general principles of judicial immunity for the state. An alternative perspective posits that consent from the state that initiated the claim is implied for the court's jurisdiction over counterclaims stemming from the same legal relationships or facts as the principal claim. This interpretation is evident in the provisions of multilateral international treaties such as the Vienna Convention on Diplomatic Relations of April 18, 1961 (Articles 31, 32), as well as other conventions concerning diplomatic law, such as the European Convention on the Immunity of States of 1972 (Article 1). Notably, Article 32, Paragraph 3 of the Vienna Convention states that the initiation of proceedings by a diplomatic agent or an individual enjoying immunity from jurisdiction under Article 37 of the Convention results in the forfeiture of the right to assert immunity from jurisdiction concerning counterclaims directly linked to the main action. Article 31 of the same Convention outlines that a diplomatic agent only benefits from immunity from civil jurisdiction concerning property or circumstances where they act on behalf of the accrediting state. The European Convention on the Immunity of States of 1972, Article 1, Paragraph 2, stipulates that a contracting state is precluded from invoking immunity from jurisdiction within the courts of another contracting state concerning a counterclaim founded on the legal relationships or facts underlying the principal claim.

Presently, the foundational framework governing the institution of jurisdictional immunity of states rests upon international legal treaties and domestic legislation. In some nations, judicial precedents serve as a substantive legal source, while in others, functional immunity finds its basis in judicial practices. Notably, Greece, Denmark, Italy, Norway, Finland, France, and Switzerland are among those countries where judicial practice holds significance as a source of law. Concerning the establishment of a universal

convention aimed at regulating matters of state immunity, existing protocols necessitate refinement and finalization.

CONCLUSIONS

The evolution of the jurisdictional immunity of the State underscores the imperative of maintaining equilibrium between private and public legal interests through a well-defined legislative demarcation between the domain of sovereign actions of the State (actions conducted *de jure imperii*) and its non-sovereign actions (actions conducted *de jure questions*). Nevertheless, even when categorizing state actions as *de jure imperii*, it is essential to prioritize human rights and refrain from extending the scope of immunity, particularly in instances of civil litigations arising from human rights transgressions, such as cases involving torture, as well as the execution of judgments on such litigations.

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