

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

Session of Vancouver - 2001

Immunities from Jurisdiction and Execution of Heads of State and of Government in International Law

(Thirteenth Commission, Rapporteur : Mr Joe Verhoeven)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Recalling the draft international rules on the jurisdiction of courts in proceedings against foreign States, sovereigns and Heads of State it adopted at its 11th Session (Hamburg, 1891), as well as the Resolutions on “Immunity of Foreign States from Jurisdiction and Measure of Execution”, and on the “Contemporary Problems Concerning the Immunity of States in Relation to Questions of Jurisdiction and Enforcement”, adopted respectively at its 46th (Aix-en-Provence, 1954) and 65th (Basel, 1991) Sessions ;

Wishing to dispel uncertainties encountered in contemporary practice pertaining to the inviolability and immunity from jurisdiction and enforcement that a Head of State or Head of Government can invoke before the authorities of another State ;

Affirming that special treatment is to be given to a Head of State or a Head of Government, as a representative of that State and not in his or her personal interest, because this is necessary for the exercise of his or her functions and the fulfilment of his or her responsibilities in an independent and effective manner, in the well-conceived interest of both the State or the Government of which he or she is the Head and the international community as a whole ;

Recalling that the immunities afforded to a Head of State or Head of Government in no way imply that he or she is not under an obligation to respect the law in force on the territory of the forum ;

Emphasising that these immunities of Heads of State or of Heads of Government should not be understood as allowing him or her to misappropriate the assets of the State which they represent, and that all States shall render each other mutual assistance in the recovery of such funds by the State to whom they belong, in conformity with the principles stressed in the Institute’s Resolution on “Public Claims Instituted by a Foreign Authority or a Foreign Public Body” adopted at the Oslo Session (1977) ;

Adopts the following Resolution :

1st Part : Serving Heads of State

Article 1

When in the territory of a foreign State, the person of the Head of State is inviolable. While there, he or she may not be placed under any form of arrest or detention. The Head of State shall be treated by the authorities with due respect and all reasonable steps shall be taken to prevent any infringement of his or her person, liberty, or dignity.

Article 2

In criminal matters, the Head of State shall enjoy immunity from jurisdiction before the courts of a foreign State for any crime he or she may have committed, regardless of its gravity.

Article 3

In civil and administrative matters, the Head of State does not enjoy any immunity from jurisdiction before the courts of a foreign State, unless that suit relates to acts performed in the exercise of his or her official functions. Even in such a case, the Head of State shall enjoy no immunity in respect of a counterclaim. Nonetheless, nothing shall be done by way of court proceedings with regard to the Head of State while he or she is in the territory of that State, in the exercise of official functions.

Article 4

1. Property belonging personally to a Head of State and located in the territory of a foreign State may not be subject to any measure of execution except to give effect to a final judgement, rendered against such Head of State. In any event, no measure of execution may be taken against such property when the Head of State is present in the territory of the foreign State in the exercise of official functions.

2. When serious doubt arises as to the legality of the appropriation of a fund or any other asset held by, or on behalf of, the Head of State, nothing in these provisions prevents the State authorities of the territory on which those funds or other assets are located, from taking provisional measures with respect to those funds or assets, as are necessary for the maintenance of control over them while the legality of the appropriation remains insufficiently established.

3. In conformity with their obligations of cooperation, States should take all appropriate measures to combat illegal practices, in particular to clarify the origin of deposits and dealings in assets and to supply all relevant information in this respect.

Article 5

Neither family members nor members of the suite of the Head of State benefit from immunity before the authorities of a foreign State, unless afforded as a matter of comity. This is without prejudice to any immunities they may enjoy in another capacity, in particular as a member of a special mission, while accompanying a Head of State abroad.

Article 6

The authorities of the State shall afford to a foreign Head of State, the inviolability, immunity from jurisdiction and immunity from measures of execution to which he or she is entitled, as soon as that status is known to them.

Article 7

1. The Head of State may no longer benefit from the inviolability, immunity from jurisdiction or immunity from measures of execution conferred by international law, where the benefit thereof is waived by his or her State. Such waiver may be explicit or implied, provided it is certain.

The domestic law of the State concerned determines which organ is competent to effect such a waiver.

2. Such a waiver should be made when the Head of State is suspected of having committed crimes of a particularly serious nature, or when the exercise of his or her functions is not likely to be impeded by the measures that the authorities of the forum may be called upon to take.

Article 8

1. States may, by agreement, derogate to the extent they see fit, from the inviolability, immunity from jurisdiction and immunity from measures of execution accorded to their own Heads of State.

2. In the absence of an express derogation, there is a presumption that no derogation has been made to the inviolability and immunities referred to in the preceding paragraph; the existence and extent of such a derogation shall be unambiguously established by any legal means.

Article 9

Nothing in this Resolution prohibits a State from unilaterally granting to a foreign Head of State, in conformity with international law, larger immunities than those laid down by the present provisions.

Article 10

Nothing in this Resolution affects any right of, or obligation incumbent upon, a State to grant or refuse to the Head of a foreign State access to, or sojourn on, its territory.

Article 11

1. Nothing in this Resolution may be understood to detract from :
 - a. obligations under the Charter of the United Nations ;
 - b. the obligations under the statutes of the international criminal tribunals as well as the obligations, for those States that have become parties thereto, under the Rome Statute for an International Criminal Court.
2. This Resolution is without prejudice to :
 - a. the rules which determine the jurisdiction of a tribunal before which immunity may be raised ;
 - b. the rules which relate to the definition of crimes under international law ;
 - c. the obligations of cooperation incumbent upon States in these matters.
3. Nothing in this Resolution implies nor can be taken to mean that a Head of State enjoys an immunity before an international tribunal with universal or regional jurisdiction.

Article 12

This Resolution is without prejudice to the effect of recognition or non-recognition of a foreign State or government on the application of its provisions.

2nd Part : Former Heads of State

Article 13

1. A former Head of State enjoys no inviolability in the territory of a foreign State.
2. Nor does he or she enjoy immunity from jurisdiction, in criminal, civil or administrative proceedings, except in respect of acts which are performed in the exercise of official functions and relate to the exercise thereof. Nevertheless, he or she may be prosecuted and tried when the acts alleged constitute a crime under international law, or when they are performed exclusively to satisfy a personal interest, or when they constitute a misappropriation of the State's assets and resources.
3. Neither does he or she enjoy immunity from execution.

Article 14

Article 4, paragraphs 2 and 3, and Articles 5 to 12 of this Resolution apply *mutatis mutandis* to former Heads of State to the extent that they enjoy immunity under Article 13.

3rd Part : Heads of Government

Article 15

1. The Head of Government of a foreign State enjoys the same inviolability, and immunity from jurisdiction recognised, in this Resolution, to the Head of the State. This provision is without prejudice to any immunity from execution of a Head of Government.

2. Paragraph 1 is without prejudice to such immunities to which other members of the government may be entitled on account of their official functions.

Article 16

Articles 13 and 14 are applicable to former Heads of Government.

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(26th August 2001)