

**ANALYSIS OF THE TOPIC OF JURISDICTIONAL IMMUNITIES OF STATES AND THEIR
PROPERTY SUBMITTED BY THE GOVERNMENT OF CZECHOSLOVAKIA TO THE
SECRETARIAT OF THE UNITED NATIONS ON 20 JULY 1979**

The Permanent Mission of the Czechoslovak Socialist Republic would like to point out in this connection that Section 47 of Act No. 47/1963 concerning private international law and the rules of procedure relating thereto constitutes the basic provision of Czechoslovak law in the sphere of an exclusion of foreign States and their property from the jurisdiction of Czechoslovak civil courts and notarial offices. It clearly follows from this provision that the Czechoslovak law is based in this respect on the theory of absolute immunity.

This theory represents a legal concept according to which a foreign State (and its property as well), being a sovereign territorial and political entity, cannot be submitted to jurisdiction of another State unless it expressly agrees to it. The theory of absolute immunity is the only possible and logic consequence of one of the cornerstones of contemporary international law - the principle of sovereign equality of States.

The application of this principle in international relations is based on the assumption that the will of a State will always be duly and fully respected. This principle does not, however, exclude the possibility that a State under certain circumstances can find it desirable or otherwise appropriate to submit a certain case to the jurisdiction of another State. This case being the consequence of that State's own decision is the only example when a State may establish its jurisdiction in respect to another State. Where there is no expressly declared readiness on the part of one State to submit certain cases to the jurisdiction of another State be it by an oral agreement or by an international treaty, any attempts to establish the jurisdiction unilaterally (by internal law, by decisions of the courts or otherwise) must be considered to be contrary to international law.

There is no rule in contemporary international law identifying possible exceptions from the immunity of States for certain areas of their activities (e.g. economy, finance, trade etc.).

With reference to Section 47, para. 2, subpara. (a) of the enclosed Act the Permanent Mission underlines that this provision can in no way be viewed as forming an exception from the basic principle set forth in Section 47, para 1. This rule, quite on the contrary, confirms the respect for the principle of the sovereign equality of States since its sole aim is to ensure the indisputable and self-evident link that exists between a territorial State and an object forming a content of real property or rights relating to real property in the State concerned.

Summing up, the Permanent Mission would like to note that since the concept of absolute immunity is shared by a considerable number of members of the international community, the correctness and purposefulness of the attitude that the International Law Commission, or to be more exact, its appropriate Working Group, has adopted in this respect on its thirtieth session last year, must necessarily be questioned. The Permanent Misssion has in mind particularly the following part of the above-mentioned Working Groups report: "A working distinction may eventually have to be drawn between activities of States performed in the exercise of sovereign authority which are covered by immunities, and other activities in which States, like individuals, are engaged in an increasing manner and often in direct competition with private sectors. ... In other words only *acta iure imperii* or acts of sovereign authority as distinct from *acta iure gestionis* or *iure negotii* are covered by State immunities." (U.N. document A/33/10, p. 388, para. 29). This approach to the topic in question cannot lead to any positive results, since it cannot be met in the affirmative by at least a significant part of the international community.*