

S/10

Appendix 1

Rättsavdelningen

Stockholm, November 12, 1970.

ds Reuterswärd, IL



Dnr 440		
Avd HP	Grp 59	Mål I

Sir,

With reference to your letter of August 27, 1970 (J/4.085 Div II), regarding the draft European Convention on State Immunity, I have the honour to inform you that the competent Swedish authorities, although they have not yet completed their study of this draft Convention, wish to submit the following preliminary observations.

1. The Committee of Experts on State immunity has chosen to propose a regional arrangement between the member States of the Council of Europe on this subject. The Committee's mandate was, however, to study the question of State immunity in all its aspects. A regional arrangement, in itself, represents of course only a partial solution of the problem. The question remains what rules should be applied by States parties to the proposed Convention in their relations with other States. The Committee of Experts, in its report, does not offer any comments on this question.
2. In view of the inconvenience of having to apply different principles of State immunity to some States than to others, the Swedish authorities, for their part, are of the opinion that at least the direct rules of non-immunity of the draft Convention should be formulated in such a way that they can be applied to any State. For this purpose, it would seem that the "catalogue" of the draft should be based, to a greater extent, on a distinction

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between different kinds of activities of a State. Particularly in the area of the contractual obligations of a State, the provisions of the draft go too far in excluding immunity regardless of the nature of the State activities which have given cause for proceedings against the State. The most far-reaching of these provisions are contained in Article 4. The Swedish authorities are of the opinion that this article should be confined to contractual obligations assumed by a State in connection with activities jure gestionis in the commercial, industrial and financial fields.

3. The Swedish authorities have noted with some concern the divergent views which have been expressed within the Committee of Experts on the interpretation of the general reservation made in Article 32 with regard to diplomatic and consular immunities. It seems important that the question of the implications of the draft Convention as regards the immunity of States in connection with the activities of their embassies and consulates should be clarified.

4. According to the provisions of Article 25 of the draft Convention, States having made the declaration provided for in Article 24 would in their mutual relations be bound, under certain conditions, to give effect to judgments which are not covered by the "catalogue". It seems unsatisfactory that a State under these provisions may have to give effect to a judgment given by a court of another State even if its own courts would have accorded immunity to the other State in a similar case. The Swedish authorities are of the opinion that there should be reciprocity as regards the obligation to give effect to judgments. It should be considered whether this aim could be achieved by confining Article 25 to judgments rendered in connection with State activities jure gestionis in the commercial, industrial or financial field.

5. The Swedish authorities reserve themselves the right to comment on other provisions of the draft Convention at a later stage.

I avail myself of this opportunity, Sir, to renew to you the assurance of my highest consideration.

For the Minister:

L. Kellberg
Head of the Legal Department