**BRIEFING NOTE ON SOVEREIGN IMMUNITY AND INTERNATIONAL ORGANIZATIONS (IOs)**

There are several aspects to sovereign immunity, ranging from immunity from jurisdiction to immunity from enforcement. In the context of the work of the IGO-INGO Curative Rights Working Group, the focus is on *jurisdictional immunity*.

The WG’s task may be complicated by the fact that there is ***no universal legal rule that defines a single scope of jurisdictional immunity***. Modern public international law has evolved such that the concept of “absolute” immunity has largely given way to the more nuanced idea of “restricted” (or qualified) immunity, where the distinction will generally be drawn between whether the act in question is a public (or official) act or one of a more private character, e.g. involving a commercial transaction. It would appear that while States generally accept the abstract concept of sovereign immunity, they differ on the extent to which they will grant the immunity in particular cases. Where IOs are concerned, an increasing number of countries now consider such immunity to be functional only, i.e. to the extent necessary for the IO to perform its functions and fulfill its objectives.

Additionally, a distinction may need to be drawn between a State (or government) and an IO, given their different natures and the diversity of types of IOs. The distinction may matter in issues such as the source of jurisdictional immunity – such as whether this is derived from treaty or from customary international law[[1]](#footnote-1) – and in relation to specific questions such as when a particular IO will be recognized as possessing legal personality within a particular country.

Several countries have enacted legislation governing the issue of sovereign immunity for foreign States as well as for IOs. These include:

***Australia*** – the *Foreign States Immunities Act* (1985), granting immunity to foreign States as well as individuals or corporations that are their agencies and instrumentalities, subject to certain exceptions (including a “commercial transactions” exception)

***Canada*** – the *State Immunity Act* (1985), granting immunity to foreign States, their political subdivisions and agencies, subject to certain exceptions (including a “commercial activity” exception); also the *Foreign Missions and International Organizations Act[[2]](#footnote-2)* (1991), granting immunity to IOs[[3]](#footnote-3) similar to that enjoyed by the UN under the relevant UN Convention (see below)

***Malaysia*** – the *International Organizations (Privileges and Immunities) Act* (1992), applying the two Conventions protecting the UN and its specialized agencies (see below) as well as extending protection to other international organizations to be designated from time to time by the Minister for Foreign Affairs

***The United Kingdom*** – the *International Organisations Act (1968)*, granting immunity to those IOs that the UK is a member[[4]](#footnote-4) of and that have been recognized to have legal personality by an Order in Council

***The United States*** – the *Foreign Sovereign Immunities Act* (1976), granting immunity to foreign States, their political subdivisions, agencies and instrumentalities, subject to certain exceptions (including a “commercial activity” exception); also, the *International Organizations Immunities Act* (1945), granting IOs “the same immunity from suit and every form of judicial process as is enjoyed by foreign governments”.

Note: Because the IOIA predates the FSIA, there is some disagreement amongst US courts and academics as to whether the more restrictive provisions of the FSIA now apply also to IOs – this arises because the IOIA was enacted when the prevailing theory of immunity was more of an absolute one.

Some relevant international treaties:

* Vienna Convention[[5]](#footnote-5) on the Law of Treaties (1969): <http://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf> (in force from 1980; governs the negotiation, entry, reservation and interpretation of treaties)
* Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (1986): <http://legal.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf> (not yet in force; would extend VCLTI to IOs)
* Convention on the Privileges and Immunities of the United Nations (1946)[[6]](#footnote-6): <http://www.un.org/en/ethics/pdf/convention.pdf> (affirming the “functional immunity” principle, at least as it applies to the UN)
* Convention on Privileges and Immunities of the Specialized Agencies of the UN (1947): <http://untreaty.un.org/unts/1_60000/1/35/00001733.pdf> (extending the same principle to the UN’s specialized agencies)

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1. Our limited research on the case law on this seems to show the position to be rather fragmented, with conflicting decisions in some countries (e.g. Belgium, France, Germany, Italy) and a more prevalent view in others (e.g. the Netherlands courts have tended to recognize IO immunity as being based on customary international law). [↑](#footnote-ref-1)
2. This statute contains a definition of “IO”, meaning “an intergovernmental organization, whether or not established by treaty, of which two or more states are members”. Note that this is more specific than the definition used in the Vienna Convention (see below). [↑](#footnote-ref-2)
3. The most current list of IOs that have been granted protection in Canada can be found here: <http://laws-lois.justice.gc.ca/eng/acts/F-29.4/>. [↑](#footnote-ref-3)
4. For those IOs where the UK is not a member, the Act can still apply if the organization “maintains or proposes to maintain an establishment in the UK”. [↑](#footnote-ref-4)
5. IOs are defined as intergovernmental organizations in the Vienna Convention. [↑](#footnote-ref-5)
6. Similar treaties have been concluded with regard to entities such as the Council of Europe and the Organization of American States. [↑](#footnote-ref-6)