November 2005

SWEDEN

In Sweden, the question of State immunity has hardly been regulated and case-law on the matter is scarce. Nevertheless, it has for a long time been argued in literature as well as by courts and the Executive, that Sweden adheres to the restrictive theory of State immunity. In reality, however, the practice of the courts has been rather unclear. This is why it was of utmost importance when the Supreme Court in 1999 handed down a decision in which it invoked the restrictive theory of State immunity. As regards the important question of the categorisation of states' acts as sovereign or commercial, the Supreme Court commented that it is difficult to formulate a distinction applicable in all circumstances. For that reason the Court did not make the categorisation only by considering the form and nature of the act nor solely by considering the State's purpose with the act. Instead, the Supreme Court found that the practical solution, when making such a categorisation, was to make an assessment in casu of the circumstances that support one position or the other.

Very few national laws and regulations deal with State immunity in Sweden. There is one act on certain regulations regarding foreign State-owned vessels and their cargo (issued in 1938) and another act on immunity from embargo for certain aircraft (issued in 1939). Furthermore, Sweden has ratified the International Convention for the Unification of Certain Rules Concerning the Immunity of State-owned Ships of 1926.

At the international level, Sweden has actively participated in the work of the ILC and of the Sixth Committee of the General Assembly on State immunity. In these fora, Sweden has consistently argued in favour of the restrictive theory of State immunity.

Preliminary phase of collection of data

As mentioned above, Swedish case-law regarding State immunity is rather scarce. Furthermore, it has been somewhat difficult to fully study the practice of the district courts and of the courts of appeal since these courts still lack easily accessible information systems regarding their decisions and judgements.

The enclosed preliminary collection of data has been divided into three different parts. The first part is concerned with the practice of the Courts and Tribunals (S/CT), whereas the second and third parts include material from the Executive (S/E) and the Legislative (S/L) respectively. As regards the Executive, the material is furthermore subdivided according to the subject dealt with in every document: S/E 1 – S/E 3 comment on the European Convention on State Immunity, S/E 4 – S/E

(a)	**Registration No**	S/1 (Sweden/Courts and Tribunals No. 1)
(b)	**Date**	21 December 1972
(c)	**Author(ity)**	Supreme Court (*Högsta domstolen*) Decision
(d)	**Parties**	Tekno-Pharma AB vs. Iran (State)
(e)	**Points of law**	The Supreme Court finds that an arbitration clause does not constitute an explicit waiver of immunity
(f)	**Classification No.**	0.a, 1, 2.c
(g)	**Sources**	- *Nytt Juridiskt Arkiv 1972*, *Avd. I*, Case No. 1972c434 - http://www.infotorg.sema.se
(h)	**Additional information**	- Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd. I*, Case No. 1999:112) - Svea Court of Appeal decision 18 June 1980 (*Rättsfall från Hovrätterna 1981*, Case No. 76:81)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text ***** Appendix 2: Summary ***** Appendix 3: Summary in English

S/1

Appendix 3

Decision of the Supreme Court (*Högsta domstolen*) on 21 December 1972.

Tekno-Pharma AB of Stockholm vs. the State of Iran through the Embassy of Iran in Stockholm regarding appointment of arbitrator. Tekno-Pharma AB applied for the appointment of an arbitrator since the Embassy had failed to do so according to a mutual arbitration agreement between the company and the Embassy. The Embassy claimed immunity. The County administrative board of Stockholm found that the Embassy was entitled to invoke immunity before the board in the matter, regardless of the fact that the Embassy had signed an arbitration agreement, why the board found itself to be legally prevented from trying the company's application. Tekno-Pharma AB appealed to the Svea Court of Appeal, which found that the quoted arbitration clause was not equal to an explicit waiver of immunity, why the appeal was overruled. The decision was appealed to the Supreme Court, which affirmed the decision of the Court of Appeal.

(a)	**Registration No.**	S/2
(b)	**Date**	18 June 1980
(c)	**Author(ity)**	Svea Court of Appeal (*Svea hovrätt*) Decision
(d)	**Parties**	Libyan American Oil Company vs. Libya (State)
(e)	**Points of law**	The Court of Appeal finds that Libya, by the approval of an arbitration clause, has waived its immunity.
(f)	**Classification No**	0.a or 0.b.3, 1, 2.c
(g)	**Sources**	- *Rättsfall från Hovrätterna 1981*, Case No. 76:81 - http://www.infotorg.sema.se
(h)	**Additional information**	- Supreme Court decision 21 December 1972 (*Nytt Juridiskt Arkiv 1972*, *Avd. I*, Case No. 1972c434) - Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd. I*, Case No. 1999:112)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text ***** Appendix 2: Summary in English

S/2

Appendix 2

Decision of the Svea Court of Appeal (*Svea hovrätt*) on 18 June 1980.

Libyan American Oil Company vs. the State of Libya. In an agreement for an oil license between the Company and the State an arbitration clause was included for the settlement of disputes. After a dispute had arisen and an arbitration had been passed, the Company applied for the arbitration to be executed as a Swedish judgement that has acquired legal force. Libya raised objections and claimed immunity from the jurisdiction of Swedish courts. The Svea Court of Appeal found that by the approval of the arbitration clause Libya had waived its immunity. Thereafter, Libya appealed to the Supreme Court whereupon the Company withdrew its case.

(a)	**Registration No.**	S/3
(b)	**Date**	4 March 1986
(c)	**Author(ity)**	Supreme Administrative Court (*Regeringsrätten*) Judgement
(d)	**Parties**	Ministerium Fur Aussenhandel der Deutschen Demokratischen Republik (DDR) vs. Riksförsäkringsverket (*National Social Insurance Board*)
(e)	**Points of law**	The Supreme Administrative Court finds that the Ministry of DDR has waived its possible immunity by not invoking immunity earlier than before the Supreme Administrative Court
(f)	**Classification No.**	0.b.3, 1, 2.c
(g)	**Sources**	- *Regeringsrättens årsbok 1986*, Case No. 1986 ref 66 - http://www.infotorg.sema.se
(h)	**Additional information**	Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd. I*, Case No. 1999:112)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Statement by the Swedish Ministry for Foreign Affairs * Appendix 3: Summary in English

S/3

Appendix 3

Judgement of the Supreme Administrative Court (*Regeringsrätten*) on 4 March 1986.

Ministerium Fur Aussenhandel der Deutschen Demokratischen Republik (DDR) vs. Riksförsäkringsverket, RFV (*National Social Insurance Board*). RFV charged the Ministry of DDR for employment tax in Sweden for DDR citizens working at the DDR Handelszentrum (trading centre) in Gothenburg, Sweden. The Ministry refused to pay and appealed to the Stockholm Administrative Court of Appeal. The Ministry claimed that what had been paid to the employees was not to be considered as salary and furthermore that the employees would not raise any social claims to the Swedish State.

The Stockholm Administrative Court of Appeal established that the Ministry was a foreign employer that had employed staff in Sweden why it was obliged to pay employment tax. In the appeal to the Supreme Administrative Court the Ministry claimed immunity.

The Supreme Administrative Court asked for a statement by the Swedish Ministry for Foreign Affairs on the question of immunity for the trading centre. In the statement (appendix 2) the Ministry for Foreign Affairs noted that in the agreement concerning the establishment of diplomatic relations between Sweden and DDR, it had been stated that if a trading office was established it should not be seen as a part of the diplomatic mission. Furthermore, the Ministry for Foreign Affairs noted that in the said agreement there had not been included any regulations regarding immunity or privileges for the trading office. In the light of the statement by the Ministry for Foreign Affairs, the Supreme Administrative Court found that the only question that remained to be solved was if the Ministry should be considered to enjoy such general immunity that might belong to foreign States' authorities. In this respect the Supreme Administrative Court pointed out that the Ministry had not claimed immunity before RFV or before the Court of Appeal. In view of this the Supreme Administrative Court was of the view that the Ministry had waived the immunity that it possibly could have been entitled to, why it left the appeal without assent.

(a)	**Registration No.**	S/4
(b)	**Date**	4 May 1988
(c)	**Author(ity)**	Labour Court (*Arbetsdomstolen*) Decision
(d)	**Parties**	Douglas H (individual) vs. Korea Trade Center (KTC)
(e)	**Points of law**	The Labour Court affirms the decision of the Stockholm City Court that KTC enjoys immunity because of its activities and close connections with the Korean State
(f)	**Classification No.**	0.a, 1, 2.c
(g)	**Sources**	- Riksarkivet (*National Archives*), Arbetsdomstolens arkiv, Inkomna mål 1987, Vol. EI:1219, målnr B 41/87 - *Nytt Juridiskt Arkiv 1987*, *Avd I*, Case No. 1987:59 (partly published) - http://www.infotorg.sema.se
(h)	**Additional information**	Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd. I*, Case No. 1999:112)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text, Labour Court * Appendix 2: Full text, Stockholm City Court, Svea Court of Appeal, Supreme Court * Appendix 3: Statement by the Swedish Ministry for Foreign Affairs * Appendix 4: Summary in English

S/4

Appendix 4

Summary in English

Decision of the Labour Court (*Arbetsdomstolen*) on 4 May 1988.

Douglas H (individual) vs. Korea Trade Center (KTC). Douglas H sued KTC for damages on account of having been given notice to quit without grounds of fact. KTC claimed state immunity for being an entity of the Korean State. The Stockholm City Court asked for a statement by the Swedish Ministry for Foreign Affairs on the question of immunity. In the statement (appendix 3) the Ministry concluded that the information sent by the Swedish Embassy in Seoul implied that KTC acted as a public entity (*jure imperii*), why it would enjoy immunity according to the interpretation of public international law claimed by Sweden before the UN. Based on the information about KTC's activities and its close connections with the Korean State, the Stockholm City Court found that it had been made clear that KTC enjoyed immunity. Douglas H appealed to the Svea Court of appeal that affirmed the City Court's dismissal of the appeal on the same grounds. Douglas H appealed to the Supreme Court, which found that the claim referred to a dispute that should have been appealed to the Labour Court. Therefore, the Supreme Court sat aside the decision of the Court of Appeal and handed over the case to the Labour Court. Finally, the Labour Court affirmed the decision of the Stockholm City Court.

(a)	**Registration No.**	S/5
(b)	**Date**	18 November 1992
(c)	**Author(ity)**	Svea Court of Appeal (*Svea hovrätt*) Decision
(d)	**Parties**	Praktikertjänst AB Pensionsstiftelse vs. Kronofogdemyndigheten i Stockholm (*Stockholm Enforcement Service*)
(e)	**Points of law**	The Court of Appeal finds that the Enforcement Service is prevented from trying an application for an order to pay directed to an embassy according to the summary proceedings, since these proceedings exclude the kind of examination that is necessary to try the question of possible jurisdictional immunity for the defendant
(f)	**Classification No.**	0.c, 1, 2.c
(g)	**Sources**	- *Rättsfall från Hovrätterna 1993*, Case No. 1993:31 - http://www.infotorg.sema.se
(h)	**Additional information**	- Svea Court of Appeal decision 18 June 1980 (*Rättsfall från Hovrätterna 1981*, Case No. 76:81) - Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd I*, Case No. 1999:112)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

S/5

Appendix 2

Summary in English

Decision of the Svea Court of Appeal (*Svea hovrätt*) on 18 November 1992.

Praktikertjänst AB Pensionsstiftelse (hereinafter the Foundation) vs. Kronofogdemyndigheten i Stockholm (*Stockholm Enforcement Service*). The Foundation had let apartments to an embassy and sent an application for an order to pay rents that were overdue to the Enforcement Service. The Stockholm Enforcement Service dismissed the application on the grounds that the embassy enjoyed immunity. The Foundation appealed to the Svea Court of Appeal. The court pointed out that the Foundation had not sued the embassy before a court but had filed an application with the enforcement service within the scope of the so-called *"summariska processen"* (summary proceedings). According to these proceedings the authority has essentially to grant the application if the defendant has not contested it on due time. The court pointed out that the aim of these proceedings is *inter alia* to avoid matters of judgement, why the court found that the summary proceedings essentially exclude the kind of examination that is necessary to try the question if the defendant enjoys jurisdictional immunity in a civil case. Therefore, the Svea Court of Appeal established that the Enforcement Service had been prevented from trying the Foundation's application.

(a)	**Registration No.**	S/6
(b)	**Date**	20 November 1993
(c)	**Author(ity)**	Market Court (*Marknadsdomstolen*) Decision
(d)	**Parties**	N.N. (inidividual) vs. Portugal (State)
(e)	**Points of law**	The Market Court dismisses an application according to the Market Court Law since the state of Portugal is found not to be considered as a “manufacturer”
(f)	**Classification No.**	0.a, 1.c, 2.c
(g)	**Sources**	- Marknadsdomstolens avgöranden 1993, Case No. 1993:21 - http://www.infotorg.sema.se
(h)	**Additional information**	Market Court decision 2 February 1994
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Decision of the Market Court (*Marknadsdomstolen*) on 20 November 1993.

N.N. (inidividual) vs. Portugal (State). In an application N.N. claimed that the Market Court should prohibit the State of Portugal to advertise in Sweden guaranteeing safe investment in Portugal, and also to do publicity for a functioning legal framework in Portugal. N.N. claimed that misleading marketing had taken place through a magazine published by Portugal's Tourist Agency and through a booklet published by Portugal's Trading Centre, and that the State of Portugal had to be considered as the responsible authority for these two institutions and for the information given.

The Market Court established that the State of Portugal was not to be considered as a “manufacturer” by carrying out the activities commented above. Therefore, the activities could not give rise to any action according to the Marketing Act, why the application was dismissed.

(a)	**Registration No.**	S/7
(b)	**Date**	2 February 1994
(c)	**Author(ity)**	Market Court (*Marknadsdomstolen*) Decision
(d)	**Parties**	N.N. (inidividual) with Industrial Cleaning Consulting vs. ICEP (Portugal's Trading Centre)
(e)	**Points of law**	The Market Court dismisses an application according to the Market Court Law since ICEP is found to not be considered as a “manufacturer”
(f)	**Classification No.**	0.a, 1.c, 2.c
(g)	**Sources**	- Marknadsdomstolens avgöranden 1994, Case No. 1994:2 - http://www.infotorg.sema.se
(h)	**Additional information**	Market Court decision 20 November 1993
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Decision of the Market Court (*Marknadsdomstolen*) on 2 February 1994.

N.N. (individual) with Industrial Cleaning Consulting vs. ICEP (Portugal's Trading Centre). In an application N.N. claimed that the Market Court should prohibit ICEP to advertise in Sweden guaranteeing safe investment in Portugal, and also to do publicity for a functioning legal framework in Portugal. N.N. claimed that misleading marketing had taken place through a booklet published by Portugal's Trading Centre, and that the State of Portugal had to be considered as responsible for the marketing as the responsible authority for ICEP, which in itself should be considered to act with the State's authorisation.

According to the information that the Market Court obtained from ICEP's representation in Stockholm, ICEP is a governmental body principally financed by the State and subordinated to the Ministry for Trade and Tourism.

The Market Court noted that ICEP is a Portuguese State institution. Furthermore, the Court found no reason to judge the activities differently than it had done in the decision of 20 November 1993. Taking all this into consideration the Court found that the prerequisites of the Marketing Act were not fulfilled, why the application was dismissed.

(a)	**Registration No.**	S/8
(b)	**Date**	30 December 1999
(c)	**Author(ity)**	Supreme Court (*Högsta domstolen*) Decision
(d)	**Parties**	Västerås kommun (The Local Authority of the Municipality of Västerås) vs. Icelandic Ministry of Education and Culture
(e)	**Points of law**	The Supreme Court points out that immunity can be invoked only in disputes relating to sovereign acts as such, but not in disputes concerning matters of a commercial nature; and furthermore the Court establishes criteria for such a categorisation finding that the practical solution is to make an assessment in each particular case of the circumstances that support one position or the other.
(f)	**Classification No.**	0.a, 1.b, 2.c
(g)	**Sources**	- *Nytt Juridiskt Arkiv 1987*, *Avd I*, Case No. 1999:112 - http://www.infotorg.sema.se - Mahmoudi Said, “Local Authority of Västerås v. Republic of Iceland”, *American Journal of International Law*, 2001, Vol. 95 No. 1, pp. 192-197
(h)	**Additional information**	- Supreme Court decision 21 December 1972 (*Nytt Juridiskt Arkiv 1972*, *Avd. I*, Case No. 1972c434) - Labour Court decision 16 November 2001 (*Arbetsdomstolens domar 2001*, Case No. AD 2001 Nr. 96)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Decision of the Supreme Court (*Högsta domstolen*) on 30 December 1999.

Västerås kommun (The Local Authority of the Municipality of Västerås) vs. Icelandic Ministry of Education and Culture. The Local Authority of Västerås had given flight-technician education to Icelandic students according to a contract between the Local Authority and the Icelandic Ministry of Education and Culture. In the contract a reference was made to a Nordic agreement on common education. After having given the education, the Local Authority sued the Republic of Iceland claiming that Iceland had to defray costs for the students according to the above mentioned contract. The Republic of Iceland claimed immunity.

The Västerås District Court found that the contract between the parties had a public-law character, which indicated that the dispute concerned a public act. Therefore, Iceland enjoyed immunity. The Svea Court of Appeal affirmed the ruling of the District Court whereupon the Local Authority appealed to the Supreme Court.

Initially, the Supreme Court pointed out that it is a general principle of international law that an independent state cannot be compelled to appear as a party before a court of another state, or be subject to a compulsory action by the authorities of that state. The Court also noted that this immunity has long been recognised in Swedish law although it has also been presumed that there may be cases in which immunity could be denied. According to the Court immunity can only be invoked in disputes relating to sovereign acts as such, but not in disputes concerning matters of a commercial or private-law nature. Furthermore, the Court commented that in establishing criteria for such a categorisation of states' acts it is disputed whether the criteria should be the form and nature of the act or the purpose of the state with the act. The Court found that it would be difficult to formulate a distinction that is applicable in all circumstances and that it in this regard was equally difficult to speak of an established practice of states. The Court concluded that the practical solution was to make an assessment in each particular case of the circumstances that support one position or the other.

In the case before it, the Supreme Court noted that the contract between the parties concerned a subject that is typically of a public-law nature, and that it had also been regulated by an intergovernmental agreement mentioned in the contract. Therefore, the Court established that Iceland's act of concluding a contract with the Local Authority had to be considered as a sovereign act that gave Iceland the right to invoke immunity.

Finally, the Court found that Iceland had not waived its immunity in spite of the contract's choice-of-law clause, which selected Swedish law. The Court was of the view that the clause did not constitute an unequivocal declaration of willingness on behalf of Iceland to subject itself to the jurisdiction of the Swedish courts with respect to disputes under the contract. The Supreme Court left the appeal without assent.

(a)	**Registration No**	S/9
(b)	**Date**	16 November 2001
(c)	**Author(ity)**	Labour Court (*Arbetsdomstolen*) Decision
(d)	**Parties**	GP (individual) vs. Cypriotiska Statens Turistorganisation, CST (Cyprus' Tourist Organisation)
(e)	**Points of law**	The Labour Court refers to the ruling of the Supreme Court in Case No. 1999:112 when it makes an assessment of the circumstances in the case before it, and finds that CST is entitled to invoke immunity regarding the employment of GP
(f)	**Classification No.**	0.a, 1.b, 2.c
(g)	**Sources**	*Arbetsdomstolens domar 2001*, Case AD 2001 Nr. 96 - http://www.infotorg.sema.se
(h)	**Additional information**	- Supreme Court decision 30 December 1999 (*Nytt Juridiskt Arkiv 1999*, *Avd I*, Case No. 1999:112)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Decision of the Labour Court (*Arbetsdomstolen*) on 16 November 2001.

GP (individual) vs. Cypriotiska Statens Turistorganisation, CST (Cyprus' Tourist Organisation). GP was a former employee of CST who sued the latter for damages on account of having been given notice to quit without grounds of fact. CST claimed state immunity.

Considering the aims and activities of CST, The Stockholm City Court found that CST could enjoy immunity. Furthermore, it found that there was a lot that indicated that the transfer of GP – which GP considered to be a notice to quit – had been carried out by Cyprus in its capacity as a sovereign state. Finally, the Stockholm City Court made an assessment of the circumstances in the case, and concluded that CST enjoyed immunity why the plaintiff's case should be dismissed. GP appealed to the Labour Court.

Initially, the Labour Court established that the investigations of the case revealed that CST was to be considered as the kind of legal entity that may invoke immunity. Thereafter, the Court pointed out that immunity can only be invoked in disputes relating to sovereign acts as such, but not in disputes concerning matters of a commercial or private-law nature. In establishing criteria for such a categorisation of states' acts, the Court referred to the statement of the Supreme Court in case No. 1999:112 that the practical solution was to make an assessment in each particular case of the circumstances that support one position or the other.

In the case before it, the Court commented that as regards employment agreements between entities of immunity and its employees, it has been claimed in the doctrine that immunity should from a general point of view apply according to public international law. Furthermore, the Court pointed out that this was also in line with the ruling of the Labour Court in the case AD 1958 No. 7. The Court thereafter noted that the European Convention on State Immunity, had Sweden been a party to it, would not have constituted an obstacle to CST to claim immunity. In making an assessment of the circumstances, the Court stated that it also paid attention to the position of GP at CST and to other circumstances regarding his employment at CST. The Labour Court's conclusion of the assessment of the circumstances was that CST had the right to invoke immunity.

Subject: Draft European Convention on State Immunity

(a)	**Registration No.**	S/10 (Sweden/Executive power)
(b)	**Date**	12 November 1970
(c)	**Author(ity)**	Ministry for Foreign Affairs Preliminary statement before the Council of Europe
(d)	**Parties**	L. Kellberg, Head of the Legal Department, Ministry for Foreign Affairs to the Secretary General of the Council of Europe
(e)	**Points of law**	Preliminary observations by Swedish authorities on the draft Convention regarding *inter alia* the distinction between kinds of activities; the relation between diplomatic immunity and state immunity; the obligation to give effect to judgements; the regional arrangement of the draft Convention
(f)	**Classification**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Ministry for Foreign Affairs, Internal Memorandum, 26 October 1983 - Ministry for Foreign Affairs, Statement, 17 March 1986
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text in English

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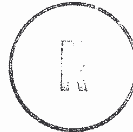
Appendix 1

Rättsavdelningen

ds Reuterswärd, IL

Stockholm, November 12, 1970.



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

Secretary General
Council of Europe

STRASBOURG

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 the 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

Subject: European Convention on State Immunity

(a)	**Registration No.**	S/11
(b)	**Date**	26 October 1983
(c)	**Author(ity)**	Ministry for Foreign Affairs Internal Memorandum
(d)	**Parties**	--
(e)	**Points of law**	Swedish objections to the Convention regarding Articles 4, 15, 20, 32 and also regarding the fact that rules of the Convention are only applicable between the Contracting States
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Ministry for Foreign Affairs, Preliminary statement, 12 November 1970 - Ministry for Foreign Affairs, Statement, 17 March 1986
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Ministry for Foreign Affairs, Internal Memorandum of 26 October 1983 entitled The European Convention on State Immunity and its Additional Protocol.

In the memorandum the main objections that Sweden had raised against the Convention during its preparation are discussed. The first of these objections concerned the fact that rules of the Convention are only applicable between the Contracting States. Sweden was of the view that it would have been better if at least the Convention's rules regarding restrictions of immunity had been formulated in such a way that they could apply to relations with all states. Furthermore, Sweden found that the Convention is to far-reaching when it comes to restrictions of immunity in its Article 4. The Swedish point of view was that restrictions of immunity should be restricted to *acta jure gestionis*. According to Article 32 the Convention shall not have any effect on diplomatic or consular immunities. However, during the preparation of the Convention different interpretations emerged that Sweden did not share and regretted, since the Convention may leave room for different interpretations. According to Article 20 a Contracting State is under certain conditions obliged to give effect to a judgement given against it by a court of another Contracting State. Sweden was of the view that the Convention should not deal with the legal force of judgements, which traditionally belongs to the Hague Conference on Private International Law. According to Article 15 a Contracting State shall be entitled to immunity if the proceedings do not fall within Article 1 to 14. Sweden found that such a formulation prevents further restrictions on immunity that might be desirable. Finally, it is commented in the memorandum that no Swedish decision, for or against Convention, is to be found in the archives.

Subject: European Convention on State Immunity

(a)	**Registration No.**	S/12
(b)	**Date**	17 March 1986
(c)	**Author(ity)**	Ministry for Foreign Affairs Statement
(d)	**Parties**	Ministry for Foreign Affairs to Ministry of Justice
(e)	**Points of law**	Sweden's earlier objections regarding the Convention are discussed (Articles 15, 32 and that the Convention is only applicable between Contracting States) whereupon it is commented that these objections might now be less valid
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Ministry for Foreign Affairs, Preliminary statement, 12 November 1970 - Ministry for Foreign Affairs, Internal Memorandum, 26 October 1983
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Ministry for Foreign Affairs, Statement made to the Ministry of Justice on 17 March 1986 regarding Sweden's position on the European Convention on State Immunity.

As regards Sweden's position during the preparation of the Convention, the statement basically repeats the objections that are discussed in the internal memorandum of 26 October 1983. In the statement it is said that Sweden's main objections during the preparation were the fact that rules of the Convention are only applicable between the Contracting States, and that according to Article 15 a Contracting State shall be entitled to immunity if the proceedings do not fall within Article 1 to 14, and finally also that the Convention leaves room for different interpretations regarding Article 32. Thereafter it is said that the above mentioned objections to the Convention might now be less valid, and that the Convention is supposed to be re-examined aiming at a possible accession to the Convention with its Additional Protocol during 1987.

Subject: ILC Draft Articles on State Immunity

(a)	**Registration No.**	S/13
(b)	**Date**	21 December 1987
(c)	**Author(ity)**	Governments of Denmark, Finland, Iceland, Norway and Sweden Statement
(d)	**Parties**	Governments of Denmark, Finland, Iceland, Norway and Sweden to the International Law Commission
(e)	**Points of law**	Comments of the Nordic Countries on ILC Draft Articles regarding Articles 3, 6,11, 18, 19, 21, 23 and 24 and also regarding the heading of Part III and the distinction between *acta jure imperii* and *acta jure gestionis*
(f)	**Classification No.**	0.c, 1, 2.c
(g)	**Sources**	- Archives of the Swedish Ministry for Foreign Affairs (not published)
(h)	**Additional information**	Governments of the Nordic Countries, Statement, 11 June 1992
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text in English

Appendix 1

Comments of the Governments of Denmark, Finland, Iceland, Norway and Sweden on draft Articles on Jurisdictional Immunities of States and their Property in accordance with Articles 16 and 21 of the Statute of the International Law Commission

The following is the comments and observations of the Governments of Denmark, Finland, Iceland, Norway and Sweden on the draft Articles on "Jurisdictional Immunities of States and their Property" as adopted by the International Law Commission at its 1972nd meeting in June 1986 (A/41/498).

1. The Governments of the Nordic Countries are in favour of the concept of restrictive State immunity and support the Special Rapporteur's endeavours to draw workable lines of distinction between activities of States performed in the exercise of sovereign authority, acta jure imperii, which are covered by immunity, and other State activities, acta jure gestionis, which should not be covered by immunity due to their commercial character or other adherence to the province of private law. The draft Articles on immunity from lawsuit and execution are in

general harmony with this restrictive view which more or less corresponds to the trend in current international law on State immunity.

2. As regards draft Article 3, paragraph 2, it is therefore the view of the Governments of Denmark, Finland, Iceland, Norway and Sweden that in determining whether a contract for the sale or purchase of goods or the supply of services is commercial, reference should only be made to the nature of the contract and not to the purpose of the contract. By taking into account the purpose of the contract and the practice of a State, the general distinction between acta jure imperii and acta jure gestionis - the central idea of the restrictive theory - is in jeopardy. It is a necessity to develop a uniform practice of this concept. Hence, in determining whether a contract is commercial, weight should only be attached to an objective criterion, i.e. the nature of the contract.

3. With regard to the fundamental Article 6 in the draft a formula should be chosen that takes into account the future development of international law through the practice of States, national legislation and judicial proceedings of national courts. The law in this field is not advanced or ripe enough to warrant a final codification, or a legal "freeze", covering all situations. The Governments of the Nordic Countries consequently support the inclusion of the bracketed language at the end of draft Article 6, namely the words "and the relevant rules of general international law".

4. The heading of Part III should read "Limitations on State Immunity" (and not "Exceptions to State Immunity") in order to

reflect a less static approach to the subject. Cf. the argumentation in para. 3 above.

5. Article 11 on commercial contracts is carefully formulated to present accurately this the most important of limitations to State immunity. The Governments of Denmark, Finland, Iceland, Norway and Sweden agree with the supporters of the current wording that the application of the rules of private international law is probably a more suitable criterion for giving effect to this limitation than the possible existence in the State of the forum of, e.g., an office or bureau. On another point, however, difficulties in the application of this Article might arise. In recent years, State activity in the private sector has taken on diverse and complex forms for which reason the question of when a State can be said to have entered into a commercial contract will often be difficult to decide in concrete cases. The said Governments expect that it might at some stage during the codification process be beneficial to the solution of such difficulties to introduce and include in Article 11 a criterion concerning the structural relationship between the State and the commercial contract in question.

6. With regard to draft Article 18 on State-owned and State-operated ships, the Governments of the Nordic Countries are of the firm opinion that the concepts of "commercial service" and "commercial purposes" should not be confused by the added qualification of "non-governmental". The bracketed phrase should be deleted so as not bo blur the distinction between acta jure gestionis and acta jure imperii.

7. Regarding Article 19 on "Effect of an arbitration agreement", the Governments of the

Nordic Countries are of the view that it would not be in line with existing customary law to restrict the scope of non-immunity in arbitration matters to disputes over commercial contracts. Consequently, with regard to the two bracketed alternatives, "commercial contract" contra "civil or commercial matter", the latter should be chosen.

8. With regard to Part IV of the draft Articles, the Governments of Denmark, Finland, Iceland, Norway and Sweden are of the opinion that in general the right balance has been struck between the interests of the acting State, the territorial State and the private claimant. The principles laid down in Articles 21 - 23 furthermore seem to reflect a major trend in current State practice.

9. As to draft Article 21, the bracketed sentence "or property in which it has a legally protected interest" might permit a widening of the present scope of State immunity from execution which has little to say for it since the preceding words "on the use of its property or property in its possession or control" must be regarded as covering all State interest in property that is neither marginal nor, by its very nature, unaffected by the various measures of constraint. Hence, the identical bracketed sentence in Article 22 should also be deleted.

Furthermore, the Governments of the Nordic Countries agree that it was rightly pointed out in the debate in the Sixth Committee that the current doctrine of restrictive immunity rests on the assumption that once a foreign State has entered the market place it should be treated in the same way as others in the market place.

Hence, with reference to sub-paragraphs (a) and (b) of Article 21, the right to execute should not be limited to property that "has a connection with the object of the claim" or property that "has been allocated or earmarked by the State for the satisfaction of the claim"; the right to execute should apply to all property specifically in use for commercial purposes or intended for such use.

10. With regard to draft Article 23 on categories of property that shall not be considered in use for commercial purposes the Governments of the Nordic Countries have the following comment. In paragraph 1 (c) property of central banks in the territory of other States is unconditionally excluded from execution. This rule seems to be based on the view that because central banks are instruments of sovereign authority any activity they undertake must be covered by immunity from execution. However, if the foreign property of a central bank is used or intended for use by the State for commercial purposes it might be logic not to treat it differently from other State property that fulfils this condition.

11. Finally, the Governments of Denmark, Finland, Iceland, Norway and Sweden should like to make a comment as regards draft Article 24 on "Service of process". Paragraph 1 (a) provides for the possibility of special arrangements for service of process between the claimant and the State concerned. In many national legal systems special arrangements of this kind between the parties can not be taken into account. Article 24 therefore seems to be drafted on the assumption that States would be willing to modify their domestic rules of civil procedures
if a national ratification or accession would

require that. In that sense, draft Article 24 seems to be overambitious.

Copenhagen, Helsinki, Reykjavik, Oslo and Stockholm, 21 December 1987.

Subject: ILC Draft Articles on State Immunity

(a)	**Registration No.**	S/14
(b)	**Date**	11 June 1992
(c)	**Author(ity)**	Governments of Denmark, Finland, Iceland, Norway and Sweden Statement
(d)	**Parties**	Governments of Denmark, Finland, Iceland, Norway and Sweden to the International Law Commission
(e)	**Points of law**	Observations of the Nordic Countries on ILC Draft Articles and the possibilities to draw up a convention whose aim according to the Nordic Countries should be to draw workable lines of distinction between *acta jure imperii* and *acta jure gestionis*; and furthermore observations on the importance to secure most procedural questions before an international conference is convened
(f)	**Classification No.**	0.c, 1, 2.c
(g)	**Sources**	- United Nations, *Report of the Secretary General*, UN document A/47/326, p. 17 - Archives of the Swedish Ministry for Foreign Affairs
(h)	**Additional information**	Governments of the Nordic Countries, Statement, 21 December 1987
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text in English

Appendix 1

The Permanent Representative of Denmark to the United Nations presents his compliments to the Secretary-General of the United Nations and, with reference to the Secretary-General's Note LA/COD/23 of 20 December 1991 regarding General Assembly resolution 46/55 of 9 December 1991 concerning the final draft articles on jurisdictional immunities of States and their property adopted by the International Law Commission at its forty-third (1991) session, has the honour, on behalf of the Nordic countries, Denmark, Finland, Iceland, Norway and Sweden, to convey the following observations.

In the opinion of the five Nordic countries, the draft articles adopted by the International Law Commission form a solid basis for consideration at a diplomatic conference to draw up a convention on this topic. In accordance with the general trend in current international law on State immunity as reflected in the draft articles the aim of the convention should be to draw workable lines of distinction between activities of States performed in the exercise of sovereign authority, acta jure imperii, which should continue to be covered by immunity, on the one hand, and State activities, acta jure gestionis, which should not be covered by immunity due to their commercial character or other adherence to the province of private law, on the other. A functional approach should be adopted in this respect.

Furthermore, it is considered of the utmost importance that general agreement be secured on most procedural questions, and to the extent possible on the basic substantive issues, before an international conference is convened. In this regard the Nordic countries are ready to participate actively in the work of the open-ended working group of the Sixth Committee which shall consider issues of substance and procedural matters regarding the conclusion of a convention on jurisdictional immunities of States and their property.

The Permanent Representative of Denmark to the United Nations avails himself of this opportunity to renew to the Secretary-General of the United Nations the assurances of his highest consideration.

Subject: ILC Draft Articles on State Immunity

(a)	**Registration No.**	S/15
(b)	**Date**	17 September 1992
(c)	**Author(ity)**	Ministry for Foreign Affairs Internal Memorandum
(d)	**Parties**	--
(e)	**Points of law**	Comments on Articles 2, 10 and 18 of the Draft Articles and also on a deleted article regarding fiscal matters
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Ministry for Foreign Affairs, Fax to Permanent Mission of Sweden to the UN in New York, 29 September 1992
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Ministry for Foreign Affairs, Internal Memorandum of 17 September 1992 on the coming discussion within the UN regarding State immunity.

Initially, the memorandum briefly discusses the background of the work with the ILC Draft Articles as well as the difference between *acta jure imperii* and *acta jure gestionis*. International State practice as well as possible ways of reaching a codification of State immunity are also mentioned.

As regards the Draft Articles it is stated that the criticism of the West has among other things concerned Article 2 regarding the extent of the expression “commercial transactions”. The Article states that primarily the objective method is to be used in this respect, but it also leaves room for the subjective method, and according to the West it is not acceptable that the purpose of one of the parties with an activity can decide the classification of the activity. Moreover, the criticism concerns Article 18 regarding limitations of enforcement activities against state property. The principal rule is that such activities are prohibited even in cases when a state cannot claim immunity. Article 10 regarding activities by State owned companies is criticised, since it would be easy for a state to evade the limitations on immunity that the Article states for such companies. Finally, the memorandum mentions that an article on “fiscal matters” has been deleted. The Article included an exception from immunity for tax debts.

Subject: ILC Draft Articles on State Immunity

(a)	**Registration No.**	S/16
(b)	**Date**	29 September 1992
(c)	**Author(ity)**	Ministry for Foreign Affairs Fax
(d)	**Parties**	Ministry for Foreign Affairs Stockholm to the Permanent Mission of Sweden to the United Nations in New York
(e)	**Points of law**	Preliminary observations on Draft Articles, especially on "fiscal matters"
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Ministry for Foreign Affairs, Internal Memorandum, 17 September 1992 - Governments of Nordic Countries, Statement, 3 December 1987
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Ministry for Foreign Affairs, Stockholm to Permanent Mission of Sweden to the United Nations in New York.

The fax concerns the coming work of the UN Working Group on State immunity. As regards observations it is referred to the earlier comments of the Nordic Countries and also to the internal memorandum of 17 September 1992 (see S/E 6), which is to be regarded as preliminary observations. Finally, it is also said that the comments of the internal memorandum annexed to the fax are to be regarded as preliminary observations regarding “fiscal matters” and State immunity.

The internal memorandum annexed to the fax was drafted at the Ministry of Finance on 21 September 1992 and is entitled “Fiscal Matters and State Immunity”. It states that foreign states can be liable to taxation in various situations in Sweden, and that this is necessary to maintain fair competition between for example a Swedish private company and a foreign state that run the same kind of activity in Sweden. Consequently, it is commented that it would be totally unacceptable if a foreign state could evade liability to pay taxes by claiming State immunity. Therefore, it is recommended in the memorandum that an article such as the deleted Article 15 regarding “fiscal matters” is included again.

Subject: ILC Draft Articles on State Immunity and the coming work of the UN Working Group on State Immunity

(a)	**Registration No.**	S/17
(b)	**Date**	6 October 1992
(c)	**Author(ity)**	Ministry for Foreign Affairs Internal Memorandum
(d)	**Parties**	--
(e)	**Points of law**	Comments on the Draft Articles 1-3, 5, 6, 8, 10, 11, 16, 18-22
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Governments of Nordic Countries, Statement, 3 December 1987 - Documents annexed
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Ministry of Justice, Internal Memorandum, 5/10/92 * Appendix 3: Ministry for Foreign Affairs, Internal Memorandum, 30/9/92 * Appendix 4: Ministry for Foreign Affairs, Internal Memorandum, 2/10/92 * Appendix 5: Summary in English

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Appendix5

Summary in English

Ministry for Foreign Affairs, Internal Memorandum of 6 October 1992 on the coming work of the UN Working Group on State immunity.

The memorandum comments on various of the ILC Draft Articles on State immunity. Initially, it is commented that the general structure of the Draft is not all satisfactory. To establish immunity as a principal rule, to avoid the terminology of *acta jure imperii* and *acta jure gestionis* as well as to regulate a rather extensive immunity without possibilities to modify it in practice appear to almost obstruct the development.

The memorandum comments specifically on Articles 1-3, 5, 6, 8, 10, 11, 16, 18-22 of the Draft Articles. In this respect it is referred to *inter alia* the internal memoranda annexed to the document.

The first of the annexed memoranda was drafted at the Ministry of Justice on 5 October 1992 (appendix 2). It comments that the Draft Articles are in need of a rather extensive revision. It is also noticed that in the Draft the question whether a State is immune is not always separated from the question whether another State has jurisdiction. Various Articles are also individually commented. As regards Article 16 it is noted that it seems to extend the immunity in several aspects compared with the Convention of Brussels from 1926 (the International Convention for the Unification of Certain Rules Concerning the Immunity of State Owned Ships).

In appendix 3 State immunity is initially discussed from a general point of view, after which some comments regarding the ILC Draft Articles follows. The use of the expression “commercial transactions” instead of *acta jure imperii* and *acta jure gestionis* is regretted as is the method of establishing State immunity as the principal rule. It is commented that it would have been better to establish the cases when State immunity could not be claimed, and at the same time point out that the list was not exhaustive to leave room for a further development through customary international law. Furthermore, the statement regarding “state enterprises” in Article 10 is regretted as it opens up for a state to evade its responsibility through a state owned enterprise doing unfair business. Finally, it is commented that ILC's Draft contains several other problems as well.

Appendix 4 is an internal memorandum drafted, just as the one included in appendix 3, at the Ministry for Foreign Affairs. It deals with ILC Draft Articles and immunity against enforcement (Articles 18 and 19). It is commented that according to current customary international law immunity against enforcement is probably only granted when it comes to *acta jure imperii*, and that in granting immunity with a few exceptions the Draft has to be regarded as a step backwards in this respect. It is further commented that the regulation of the Draft Articles is not likely to be accepted by several States. The conclusion is that unless there is a considerable improvement of the Draft, there is no meaning to conclude a global convention on State immunity and in particular not for Countries that acknowledge the principle of restrictive immunity.

Subject: National Inquiries on State Immunity

(a)	**Registration No.**	S/18
(b)	**Date**	13 November 1981
(c)	**Author(ity)**	Ministry for Foreign Affairs Official Letter
(d)	**Parties**	Hans Björk, Director, Ministry for Foreign Affairs to Mr Jens Pedersen
(e)	**Points of law**	In response to an inquiry, the Ministry for Foreign Affairs comments that its practice is to not make the kind of statement questioned for
(f)	**Classification No.**	0.c, 1.c, 2
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs and of the Stockholm Enforcement Service (not published)
(h)	**Additional information**	- Documents annexed
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Mr Jens Pedersen, Inquiry to the Ministry for Foreign Affairs, 10/11/81* Appendix 3: Stockholm Enforcement Service, Request for information, 4/11/81* Appendix 4: Stockholm Enforcement Service, Request for information under a penalty of a fine, 13/11/81 * Appendix 5: Summary in English

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Appendix 5

Summary in English

Ministry for Foreign Affairs, Official Letter of 13 November 1981 to Mr Jens Pedersen regarding the inquiries of the latter for a statement by the Ministry.

In connection with an application for execution, the Stockholm Enforcement Service on 16 October 1981 requested Mr Jens Pedersen to leave information regarding claims that the Republic of Uganda was said to have on a client's account of his. Mr Jens Pedersen refused to do so claiming that Uganda enjoyed immunity as a sovereign State against enforcement activities, why the application for execution should have been dismissed. On 4 November 1981, the Enforcement Service responded that it through a study of relevant literature had found that Uganda did not enjoy immunity against enforcement activities in consideration of the kind of dispute that was before the Enforcement Service. (Appendix 3)

On 10 November 1981, Mr Jens Pedersen wrote to the Ministry for Foreign Affairs asking for its point of view in the case regarding the question of immunity.

(Appendix 2)

On 13 November 1981, the Ministry for Foreign Affairs wrote to Mr Jens Pedersen explaining that the practice of the Ministry in cases like the present one was to not make the kind of statement that he asked for. Mr Jens Pedersen was recommended to turn to experts in public international law at the Swedish universities for advice. (Appendix 1)

As is apparent from appendix 4, the Stockholm Enforcement Service continued to handle the application for execution claiming that Uganda did not enjoy immunity.

Subject: National Inquiries on State Immunity

(a)	**Registration No.**	S/19
(b)	**Date**	8 April 1982
(c)	**Author(ity)**	Ministry for Foreign Affairs Official Letter
(d)	**Parties**	Hans Björk, Acting Director-General for Legal Affairs, Ministry for Foreign Affairs to National Tax Board
(e)	**Points of law**	Aeroflot is considered as a government-owned company, which should not be granted State immunity as its acts are commercial (*jure gestionis*) and not public (*jure imperii*), but it is also noted that Swedish case-law is very scarce on the matter why statements have to be made with a certain reservation
(f)	**Classification No.**	0.b.3, 1.b, 2.c
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Ministry for Foreign Affairs, Official Letter of 8 April 1982 to the National Tax Board in response to the Board's inquiry for a statement on the question of immunity for the Soviet airline company Aeroflot.

In the response to the Board it is initially stated that Aeroflot is to be regarded as a government-owned company. Thereafter and regarding the question of State immunity it is found that Aeroflot should probably not be considered to enjoy such immunity, since its acts are commercial (*jure gestionis*) and not public (*jure imperii*). However, it is also noted that Swedish case-law on State immunity is very scarce, why statements have to be made with a certain reservation.

Subject: National Inquiries on State Immunity

(a)	**Registration No.**	S/20
(b)	**Date**	4 January 1985
(c)	**Author(ity)**	Ministry for Foreign Affairs Statement
(d)	**Parties**	Ministry of Foreign Affairs to the Supreme Administrative Court
(e)	**Points of law**	On the question whether the trading centre enjoys immunity, the Ministry notes that in the agreement between DDR and Sweden concerning the establishment of diplomatic relations it is stated that if a trading office is established it shall not be seen as a part of the diplomatic mission, and that no regulations are included regarding immunity or privileges for the trading office
(f)	**Classification No.**	0.c, 1, 2.c
(g)	**Sources**	- *Regeringsrättens årsbok 1986*, Case No. 1986 ref 66 - Archives of the Ministry for Foreign Affairs
(h)	**Additional information**	- Supreme Administrative Court judgement (*Regeringsrättens årsbok 1986*, Case No. 1986 ref 66)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Ministry for Foreign Affairs, Statement of 4 January 1985 to the Supreme Administrative Court on the question whether DDR's trading centre in Gothenburg enjoyed immunity or not.

On 11 December 1984, the Supreme Administrative Court made an inquiry at the Ministry for Foreign Affairs regarding the question of immunity for DDR's trading centre in Gothenburg. In the statement, the Ministry for Foreign Affairs noted that in the Agreement concerning the establishment of diplomatic relations between Sweden and DDR (SÖ 1972:37), it had been stated that if a trading office was established it should not be seen as a part of the diplomatic mission. Furthermore, the Ministry for Foreign Affairs noted that in the said agreement there had not been included any regulations regarding immunity or privileges for the trading office.

Subject: National Inquiries on State Immunity

(a)	**Registration No.**	S/21
(b)	**Date**	19 March 1985
(c)	**Author(ity)**	Ministry for Foreign Affairs Statement
(d)	**Parties**	Ministry for Foreign Affairs to the Stockholm City Court
(e)	**Points of law**	The Ministry states that the information received implies that Korea Trade Centre acts as a public entity (*jure imperii*), why it would enjoy immunity according to the interpretation of public international law claimed by Sweden before the UN
(f)	**Classification No.**	0.a, 1, 2.c
(g)	**Sources**	- Riksarkivet (*National Archives*), Arbetsdomstolens arkiv, Inkomna mål 1987, Vol. EI:1219, Case No. B 41/87 - Archives of the Ministry for Foreign Affairs
(h)	**Additional information**	- Labour Court decision 4 May 1988 (Case No. B 41/87)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Ministry for Foreign Affairs, Swedish Embassy in Seoul, Internal Memorandum, 13/3/85 * Appendix 3: Summary in English

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Appendix 3

Summary in English

Ministry for Foreign Affairs, Statement of 19 March 1985 to the Stockholm City Court regarding the question of immunity for Korea Trade Centre (KTC) in Sweden.

The Swedish Embassy in Seoul sent a memorandum to Sweden regarding KTC (appendix 2) informing that Korea Trade Promotion Corporation (KOTRA) was established by the State and that it is subordinated to the Ministry of Commerce. Furthermore, the Embassy informed that KOTRA is a non-profit organization and that the staff is paid by the State. KTC, one of KOTRA's trading offices abroad, has a liability to report to the Ambassador in Stockholm. It is concluded that KOTRA should probably be regarded as a State organ that runs non-profit activities.

In the statement (appendix 1), the Ministry concludes that the information sent by the Swedish Embassy in Seoul implies that KTC acts as a public entity (*jure imperii*), why it would enjoy immunity according to the interpretation of public international law claimed by Sweden before the UN.

Subject: National Inquiries on State Immunity

(a)	**Registration No.**	S/22
(b)	**Date**	25 January 1996
(c)	**Author(ity)**	Ministry for Foreign Affairs Statement
(d)	**Parties**	Ministry for Foreign Affairs to Swedish Competition Authority
(e)	**Points of law**	State immunity *ex officio*; Swedish practice regarding State immunity; the question of immunity regarding a contract on ferry-service
(f)	**Classification No.**	0.b.3, 1.b, 2.c
(g)	**Sources**	- Archives of the Ministry for Foreign Affairs (not published)
(h)	**Additional information**	- Document annexed - Swedish Competition Authority, Decision, 20 March 1998 (Dnr 300/95)
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Swedish Competition Authority, Request for Statement by the Ministry for Foreign Affairs, 7/12/95 * Appendix 3: Summary in English

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Appendix 3

Summary in English

Ministry for Foreign Affairs, Statement of 25 January 1996 to the Swedish Competition Authority regarding the question of State immunity in general as well as regarding a specific case before the Competition Authority.

The Competition Authority sent a request for a statement to the Ministry for Foreign Affairs on 7 December 1995 (appendix 2). In the request it was explained that the Authority dealt with a case regarding the ferry-service between Sweden and Estonia. The company Nordström & Thulin AB (N&T) had concluded an agreement in 1989 with the Soviet Estonian Transport Committee (ETC). The Government of Estonia later on decided to transfer said agreement to the Estonian Shipping Company. The agreement established a joint company Estline, which was given the exclusive right to run the ferry-service between Stockholm and Tallinn without competition during ten years. The Competition Authority investigated the matter according to Sweden's Competition Law and made inquiries at the Ministry for Foreign Affairs about the question of State immunity. The question regarded Swedish practice in general on State immunity, and in the present case if N&T's party in the agreement could enjoy State immunity.

The Ministry initially stated that the right to State immunity should be considered *ex officio*, and that establishing a contact with the foreign State's Ministry for Foreign Affairs might give an advance notification regarding the State's point of view on State immunity. Thereafter, it is stated that practice as well as literature indicate that Sweden has adopted the restrictive theory even though many questions remain to be solved. Furthermore, it is noted that according to Swedish literature in the matter it is likely that the subjective method should be used in Sweden to distinguish between *acta jure imperii* and *acta jure gestionis*.

As regards the case before the Competition Authority, the Ministry was of the view that according to the information included in the request, it seemed as if the purpose of the disputed act mainly had been to establish a commercial ferry-service between Stockholm and Tallinn. Therefore, the Ministry found that the act seemed to belong to acts *jure gestionis*, why it then would be difficult for the State of Estonia to invoke immunity before a court. The Ministry, however, pointed out that this naturally was a question to be settled by the court. Furthermore, the Ministry noted that the Estonian party to the agreement was a State owned business company, which also spoke against the right to invoke immunity.

(a)	**Registration No.**	S/23 (Sweden/Legislative power)
(b)	**Date**	Issued on 17 June 1938
©	**Author(ity)**	Swedish Parliament (*Sveriges Riksdag*) Act of Parliament
(d)	**Parties**	--
(e)	**Points of law**	Certain regulations regarding foreign State-owned vessels and their cargo
(f)	**Classification No.**	0.c, 1, 2
(g)	**Sources**	- Swedish Statute-book, SFS 1938:470 (*Svensk författningssamling,* SFS 1938:470) - http://www.infotorg.sema.se
(h)	**Additional information**	
(i)	**Full text – extracts – translation – summaries / Texte complet – extraits – traduction - résumés**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Swedish Parliament, Act of Parliament issued on 17 June 1938 with certain regulations regarding State-owned Vessels and their cargo.

In its first paragraph the Act states that the fact that a vessel is State-owned or used by a foreign State or that the cargo belongs to such a State, does not constitute an obstacle for a court in Sweden to hear a case regarding a debt owing to the use of the vessel or the transfer of the cargo, or to take measures of constraint because of such a debt.

In the second and third paragraphs exceptions to the principal rule of the first paragraph are stated. These exceptions concern *inter alia* warships used for sovereign acts as well as the cargo freighted with such ships, and also cargo belonging to the foreign State that is freighted with merchant vessels for non commercial purposes. These exceptions include jurisdictional immunity and immunity of execution.

(a)	**Registration No.**	S/24
(b)	**Date**	Issued on 4 January 1939
(c)	**Author(ity)**	Swedish Parliament (*Sveriges Riksdag*) Act of Parliament
(d)	**Parties**	--
(e)	**Points of law**	Immunity from embargo for certain aircraft
(f)	**Classification No.**	0.c, 1.c, 2
(g)	**Sources**	- Swedish Statute-book, SFS 1939:6 (*Svensk författningssamling,* SFS 1939:6) - http://www.infotorg.sema.se
(h)	**Additional information**	
(i)	**Full text – extracts – translation – summaries**	Appendix 1: Full text * Appendix 2: Summary in English

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Appendix 2

Summary in English

Swedish Parliament, Act of Parliament issued on 4 January 1939 regarding immunity from embargo for certain aircraft.

In the first paragraph it is *inter alia* stated that aircraft, which are used by foreign States exclusively for sovereign purposes, may not be embargoed. In the fourth paragraph it is established that the Act only apply to foreign aircraft, if the Government has declared so according to agreement with foreign State.