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CALL FOR PAPERS

Jurisdictional Immunities of States and Their Property: Emergence of New International Customary Law Rules – by Whom?

The question of Jurisdictional immunities of States¹ is a controversial issue in current International law. A State may respect or disregard the sovereign immunity of other States in such instances as lawsuits of private parties, enforcement of judicial and arbitral awards, or measures of constraint against foreign States. The approach taken by a particular State may demonstrate its approach to International law in general, to preferred means and modes of international dispute resolution, and to protection of human rights, property and investments.

The 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (“the Convention”) rejected the old paradigm of absolute immunity, and served as a catalyst for subsequent changes. The result challenges the classical *par in parem*

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CO-ORGANIZERS:

- Faculty of Law of National Research University Higher School of Economics (Moscow)
- PluriCourts Center, Faculty of Law of the University of Oslo

¹ “Jurisdictional Immunities”, “State Immunity”, “Sovereign Immunity” and “Jurisdictional Immunity” are used as synonyms in this paper.

non habet jurisdictionem approach according to which every State was immune from adjudication (civil, administrative or criminal) in courts of another State. The principle of absolute immunity is gradually losing its importance, although some powerful, non-Western countries including China, for example still adhere to the absolute immunity rule.

Contemporary international law including the UN Convention, the Council of Europe Convention on the Immunity of States, the case law of the European Court of Human Rights (ECtHR), and the legislation of a significant number of states demonstrate developments towards recognition of a restricted jurisdictional immunity rule. This does not only apply to the distinction between *acta iure imperii* and *acta iure gestionis*, favouring equal commercial opportunities between private and State actors. There are also developments towards restricting immunity to protect fundamental human rights. Moreover, issues may arise in counterterrorism measures, such as freezing of state assets, and in execution of awards in investor-State disputes. Sovereign immunity of States also has close connection with immunity of State officials from foreign criminal jurisdiction, currently discussed in the International Law Commission.

However, the new rule of the restricted immunity endorsed by the UN Convention is yet immature and imprecise. Hazel Fox and Philippa Webb in their comprehensive monograph "The Law of State Immunity" list main lines of fracture in International law and national legal systems that have appeared after abolition of the absolute immunity doctrine². Furthermore, rules concerning jurisdictional immunities are changing literally every day under the influence of the rapid developments of national legislation, and the practice of national and international courts. They can also differ noticeably among different national jurisdictions and be subject to different conditions, exceptions and reservations.

These developments in national and international law require a fresh and critical assessment of the current situation in the customary international law of jurisdictional immunities, and the interests and values involved.

² They include difficulties with defining scope of actors acting as foreign state (constituent units and political subdivisions, state agencies and instrumentalities, representatives of the state, central banks, etc), lack of uniform interpretation of what may constitute consent/waiver of the foreign state to the exercise of jurisdiction by the court of the forum state (effect of arbitration agreements, counterclaims, cases of implied consent, etc), different techniques for evaluation of private and public acts of a foreign state (purpose, nature, context of the act, change of circumstances over time), immunities of individuals acting on behalf of the foreign state.

**THE FOLLOWING ISSUES ARE SUGGESTED
FOR CONSIDERATION AND DISCUSSION:**

- ✓ How can the current shrinking of jurisdictional immunities of States be explained and assessed from legal, political, economic and philosophical perspectives? Does it reflect or reject Western hegemony, or rather crystallize universal or regional standards of accountability of States?
- ✓ To what extent are restrictions on sovereign immunity desirable, to protect a free market, protection of fundamental human rights and other interests? Who are the drivers for further restrictions of sovereign immunity?
- ✓ What are the main risks of such shrinking of state sovereignty for international law and international relations? How do affected States react to lawsuits and measures of constraint taken against them in foreign jurisdictions? What roles do China and Russia play?
- ✓ How can the current turbulence be explained from the TWAIL and Global South perspective?
- ✓ Will national courts (mostly courts of several Western countries, such as USA, UK, France, Germany, Italy) remain the driving force in developing contemporary international law of jurisdictional immunities? How should this situation be assessed in terms of the universality and legitimacy of the global legal order?
- ✓ Should international courts (the ICJ, the ICC, the ECtHR, the International Tribunal for the Law of the Sea) play a more active role to consolidate and interpret the law of jurisdictional immunities of States and balance between different interests?
- ✓ Do international courts usually favor a more cautious and conservative understanding of the law of jurisdictional immunities of States compared to national courts? If so, why?
- ✓ In what areas/situations are international courts better placed to consider sovereign immunity issues in comparison with national courts and *vice versa*?

APPLICATIONS

The Paper proposals should be submitted via e-mail to the following addresses: Prof. Geir Ulfstein (geir.ulfstein@jus.uio.no) and Dr. Vladislav Starzhenetskiy (vstarzhenetskiy@hse.ru).

THE DEADLINE FOR SUBMITTING PROPOSALS IS 1 JULY 2019.

Please include the following information:

- the **author's** name and affiliation;
- a 400-600-word **abstract** [Word file or PDF];
- the author's **CV**, including a list of relevant **publications**, if applicable;
- the author's **contact details**, including e-mail address and phone number.

Co-authored papers are also welcomed.

Applicants will be informed of the selection committee decision no later than **1 August 2019**.

PUBLICATION OPPORTUNITIES

The organizers have **publication plans** for the presented papers. The precise format of publication will be discussed during the conference. The Organizers envisage to publish a collective monograph or a special issue of the journal.

Organizing Committee:

Professor Geir Ulfstein (PluriCourts)

Professor Andreas Follesdal (PluriCourts)

Professor Vera Rusinova (HSE)

Associate Professor Vladislav Starzhenetskiy (HSE)