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ROCKET VETOED  
EFF. MIDNIGHT 10/23/76  
MEMO OF DISAPPROVAL  
DATED 10/21/76, ISSUED  
ON 10/22/76



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 18 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bills

- (1) H.R. 11315 - Foreign Sovereign Immunities Act of 1976  
Sponsor - Rep. Rodino (D) New Jersey and Rep. Hutchinson (R) Michigan
- (2) S. 3553 - Foreign Sovereign Immunities Act of 1976  
Sponsor - Sen. Hruska (R) Nebraska, Sen. Eastland (D) Mississippi, and Sen. Scott (R) Pennsylvania

Last Day for Action

October 23, 1976 - Saturday

Purpose

Defines the jurisdiction of United States courts in suits against foreign states; defines the jurisdictional immunities of a foreign state; and authorizes removal of suits brought in State courts against foreign states.

Agency Recommendations

Office of Management and Budget	Approval of H.R. 11315 Disapproval of S. 3553 (Memorandum of disapproval attached)
Department of State	Approval of H.R. 11315 (Signing statement attached)
Department of Justice Administrative Office of the United States Courts	Approval of H.R. 11315
Department of Commerce	No objection to either bill No objection to either bill, but defers to Justice
Securities and Exchange Commission	No recommendation received



## Discussion

The broad purposes of this legislation are to facilitate litigation against foreign states and to minimize irritations in foreign relations arising out of such litigation.

Currently, the incompleteness of the law of sovereign immunity in the United States has created a substantive uncertainty for the courts in cases involving foreign states. This, coupled with the growth in trade between the United States and foreign countries, makes it increasingly important to provide precise statutory guidance to American courts to adjudicate disputes between private parties and foreign states arising out of their commercial activities and other activities which are of a private law nature.

Accordingly, the bills would establish exclusive standards to be used in resolving questions of sovereign immunity raised by foreign states before Federal and State courts. The legislation is intended to preempt any other Federal or State law, excluding applicable international agreements, and to bring U.S. practice into conformity with that of most other nations. It would accomplish this purpose by leaving sovereign immunity decisions exclusively to the courts, thereby discontinuing the current practice of judicial deference to "suggestions of immunity" from the Executive branch. (i.e., when the Department of State receives requests from foreign states for sovereign immunity and determines whether to request the Department of Justice to suggest the defense in Federal courts, it adheres to the so-called "restrictive theory of immunity." Under that theory, immunity is only granted in suits arising out of a foreign state's governmental acts and is not extended to suits arising out of its commercial or proprietary acts, or other acts affecting private persons.)

This legislation is the product of a joint endeavor by the Departments of State and Justice, which began almost a decade ago to modernize the law of foreign state immunity in the United States. It reflects several years of consultation with the organized bar and the academic community. The bill is substantially similar to legislation submitted by the Departments of State and Justice to the Congress.



In its haste to adjourn, the Congress passed identical Senate and House bills. At the time the Senate passed H.R. 11315, it attempted to vacate its earlier passage of S. 3553 but was unable to do so because it had left the Senate's jurisdiction. The House, unaware that the Senate had passed the House bill, also passed the Senate bill.

#### Summary of H.R. 11315 and S. 3553

The legislation consists of three principal parts: (1) definition of the jurisdiction of the United States courts in actions against foreign states; (2) codification with judicial standards of the so-called "restrictive theory of sovereign immunity", i.e., the jurisdictional immunities of foreign states; and (3) removal of suits brought in State courts against foreign states to Federal courts.

#### Original Jurisdiction of Federal Courts in Actions Against Foreign States

Original jurisdiction, both subject matter and personal, would be established in the U.S. District Court in any claim, without regard to the amount in controversy, against any foreign state or its entity when either that foreign state has waived immunity in the case or the case is based on its commercial or property transactions in the U.S. Jurisdiction could not be established when it would contravene existing treaties or other international agreements preserving immunity.

#### Jurisdictional Immunities of Foreign States

##### -- Codification of the restrictive theory of sovereign immunity.

The so-called "restrictive theory of sovereign immunity"-- that the sovereign immunity of foreign states should be limited to cases involving acts of a foreign state which are governmental in nature, as opposed to acts which are either commercial in nature or those acts which private persons normally perform--would be refined and codified. As law it would be applicable to the foreign state, a political subdivision of the state, or an agency or instrumentality of the foreign state having status as a



legal entity or separate person (e.g., a trading corporation, shipping line, export associations, etc.). Consequently, the engagement of foreign governments in a non-governmental activity, which is either commercial or private in nature, would constitute an implied waiver of sovereign immunity with respect to that activity and it would be subject to suit in a Federal court.

In this regard, specific categories of exceptions to jurisdictional immunity would be established.

1. Waiver

A foreign state may waive immunity, either explicitly by renouncing its immunity by treaty, implicitly by agreeing to arbitration of a case under the laws of another country, or by filing a responsive pleading in a suit. However, mere appearance by the foreign state in another action unrelated would not confer personal jurisdiction or constitute a waiver of immunity. In transactions in which a foreign state has agreed to waiver of sovereign immunity, that waiver could only be withdrawn in a manner consistent with the expression of waiver in the original agreement.

2. Commercial Activity

"Commercial activity" includes the broad spectrum of activity from a singular commercial transaction to the regular conduct of a commercial enterprise. Under this definition, the fact that goods or services are to be procured via contract for public purposes would be irrelevant; the commercial nature of the transaction itself establishes the basis for the court's jurisdiction. In the final analysis, the court would make the determination whether or not an activity of a foreign state is commercial or public, thereby requiring the foreign state to plead sovereign immunity as an affirmative defense, if the case does not relate to either a treaty or other international agreement maintaining the immunity of that foreign state or to debt obligations incurred for general public purposes.



### 3. Ownership or Expropriation of Property

Immunity would be denied in cases involving a foreign government's ownership of real or "immovable" property located in the U.S. or when property owned by an entity of the U.S. and located in the foreign country has been seized or nationalized without compensation as required by international law.

### 4. Non-commercial Torts

Immunity would be denied a foreign state in all tort claims for monetary damages caused by the tortious acts or omissions of a foreign state or its officials or employees acting within the scope of their authority and occurring within U.S. jurisdiction, unless specifically excepted in statute or treaty. Immunity of foreign diplomats or consular representatives, themselves, would be unaffected.

### 5. Maritime Liens

Immunity would be denied to foreign states in cases where a suit in admiralty is brought to enforce a maritime lien based upon a commercial activity of that foreign state or its vessels.

Thus, the liability of a foreign state or its entity in cases where immunity is denied would be identical to that of a private individual defendant. The only exception would be that the foreign state cannot be held liable for interest on the monetary value of the claim prior to judgment or for punitive damages.

#### -- Extent of liability.

If a foreign state, political subdivision, agency, or instrumentality is not entitled to immunity from jurisdiction, it would be subject to the same liability as a private party under like circumstances. However, the tort liability of the foreign state or its political subdivision would not extend to punitive damages.



-- Counterclaims

Foreign states would be denied immunity in certain instances when a counterclaim is brought against the foreign state which has brought an action or intervened in an action in a Federal or State court.

-- Service of Process

A hierarchy of procedures for service of process would be established by the bill. Sequentially, these methods for service of process are:

1. A special agreement between plaintiff and defendant foreign state would be made on the preferred procedure for service of process.
2. If no special arrangement exists, service would be accomplished: (a) in accordance with an applicable international convention on service of judicial documents; (b) by the provision of a letter rogatory (letter from the U.S. Court to the court of the foreign state requesting the foreign court to assist the U.S. court) or request for ultimate service in a foreign country as directed by the authority of that state (this is a preliminary administrative step leading to service of process in a foreign country); or (c) by registered mail to the foreign minister or official in charge of the foreign affairs of the foreign state.
3. If 30 days have passed without proof that service was made by any of the preceding methods, service would be made through diplomatic channels as a last resort.

Service on foreign agencies or instrumentalities (e.g., foreign companies, trading associations, etc.) would be made in a manner similar to the hierarchy of methods outlined above, except diplomatic channels would not be used. In addition, service could also be made in accordance with the law and procedures of the foreign state.

No judgment of default could be entered against a foreign state or its entities unless sixty days have elapsed and the court determines that the claimant has substantially proved the validity of the claim with evidence.



-- Attachment and Execution of Property

The legislation would affirm that the property of a foreign state is generally immune from attachment and execution. However, in addition to explicit or implied waiver, other exceptions to immunity would be established when property is: (1) used for commercial purposes in the U.S. and upon which the claim is based; (2) taken in violation of international law; (3) acquired by succession or gift; (4) immovable; or (5) under a contractual obligation.

-- Property of International Organizations, Central Bank Funds and Military Property

Property held by international organizations, which have been designated by the President pursuant to the International Organizations Immunities Act, would not be subject to attachment and execution, e.g., the International Monetary Fund and the World Bank. In addition, funds of a foreign central bank deposited in the U.S. for that bank's "own account" and military property would also be similarly immune.

-- Venue

Venue would be established in the judicial district: (1) where the cause of action substantially occurred; (2) for suits in admiralty to enforce a maritime lien against a vessel or cargo of a foreign state where the vessel is located; (3) where the agency or instrumentality is licensed to do business or doing business; and (4) for the District of Columbia.

Removal of Cases from State Courts

Suits in State courts with a party foreign state would be removed to the U.S. District Court at the discretion of the foreign state, even when there are multiple defendants of which one or more may be a citizen of the State in which the action was brought. This provision responds to the potential sensitivity of actions against foreign states by ensuring for them the opportunity to litigate their cases in the U.S. District Court. Consequently, a foreign state has the option of litigating under Federal law rather than being subjected to the differing laws and judicial procedures of the States.

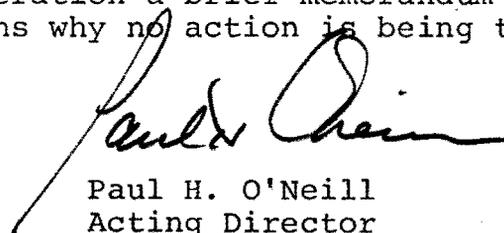
Finally, the legislation would take effect 90 days after enactment.



Recommendation

In its attached views letter, the Department of Justice advises that "in view of the Senate's action vacating its passage of S. 3553, there is most serious doubt that S. 3553 has been properly enrolled, and we recommend that no action be taken on S. 3553." We concur and recommend that you approve H.R. 11315 and take no action on S. 3553.

A proposed signing statement is enclosed with the State views letter for your consideration. We have also prepared for your consideration a brief memorandum of disapproval which explains why no action is being taken on S. 3553.



Paul H. O'Neill  
Acting Director

Enclosures



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Disapproval of S. 3553  
(Memorandum of disapproval attached)

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Approval of H.R. 11315  
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Department of Justice  
Administrative Office of the United States Courts  
Department of Commerce

Approval of H.R. 11315

No objection to either bill  
No objection to either bill,  
but defers to Justice

Securities and Exchange Commission

No recommendation received



MEMORANDUM OF DISAPPROVAL

I am withholding my approval from S. 3553, the Foreign Sovereign Immunities Act of 1976, for technical reasons.

In its haste to adjourn, the Congress passed identical Senate and House bills on this subject. At the time the Senate passed the House bill, H.R. 11315, it attempted to vacate its earlier passage of S. 3553 but was unable to do so because it had left the Senate's jurisdiction. The House, unaware that the Senate had passed the House bill, also passed the Senate bill.

In view of the Senate's action in attempting to vacate its passage of S. 3553, there is doubt that S. 3553 has been properly enrolled, and therefore I am separately approving H.R. 11315 and must withhold my approval from S. 3553.

THE WHITE HOUSE

October , 1976



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A handwritten signature in black ink, appearing to be 'OK' followed by a flourish.

THE WHITE HOUSE

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*Gerald R. Ford*

THE WHITE HOUSE,  
October 21, 1976





# Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,  
one thousand nine hundred and seventy-six*

## An Act

To define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Sovereign Immunities Act of 1976".*

SEC. 2. (a) That chapter 85 of title 28, United States Code, is amended by inserting immediately before section 1331 the following new section:

### "§ 1330. Actions against foreign states

"(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

"(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

"(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title."

(b) By inserting in the chapter analysis of that chapter before—"1331. Federal question; amount in controversy; costs."

the following new item:

"1330. Actions against foreign states."

SEC. 3. That section 1332 of title 28, United States Code, is amended by striking subsections (a) (2) and (3) and substituting in their place the following:

"(2) citizens of a State and citizens or subjects of a foreign state;

"(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

"(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States."

SEC. 4. (a) That title 28, United States Code, is amended by inserting after chapter 95 the following new chapter:

### "Chapter 97.—JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

"Sec.

"1602. Findings and declaration of purpose.

"1603. Definitions.

"1604. Immunity of a foreign state from jurisdiction.

"1605. General exceptions to the jurisdictional immunity of a foreign state.

"1606. Extent of liability.

"1607. Counterclaims.

"1608. Service; time to answer; default.

"1609. Immunity from attachment and execution of property of a foreign state.

"1610. Exceptions to the immunity from attachment or execution.

"1611. Certain types of property immune from execution.

**"§ 1602. Findings and declaration of purpose**

"The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

**"§ 1603. Definitions**

"For purposes of this chapter—

"(a) A 'foreign state', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) An 'agency or instrumentality of a foreign state' means any entity—

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States as defined in sections 1332 (c) and (d) of this title, nor created under the laws of any third country.

"(c) The 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

"(d) A 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

"(e) A 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States.

**"§ 1604. Immunity of a foreign state from jurisdiction**

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605-1607 of this chapter.

**"§ 1605. General exceptions to the jurisdictional immunity of a foreign state**

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of



the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

“(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

“(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

“(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

“(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

“(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

“(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

“(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state, provided that—

“(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit—unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice; and

“(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in subsection (b) (1) of this section or in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

Whenever notice is delivered under subsection (b) (1) of this section,



## S. 3553—4

the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b) (1) of this section.

**“§ 1606. Extent of liability**

“As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages;

“If, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

**“§ 1607. Counterclaims**

“In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

“(a) for which a foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

“(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

“(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

**“§ 1608. Service; time to answer; default**

“(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

“(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivisions; or

“(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

“(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

“(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the

court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Service—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a 'notice of suit' shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

"(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

"(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

"(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

"(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

"(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

"(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

"(C) as directed by order of the court consistent with the law of the place where service is to be made.

"(c) Service shall be deemed to have been made—

"(1) in the case of service under subsection (a) (4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

"(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

"(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

"(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

**"§ 1609. Immunity from attachment and execution of property of a foreign state**

"Subject to existing international agreements to which the United States is a party at the time of enactment of this Act, the property in

the United States of a foreign state shall be immune from attachment, arrest and execution except as provided in sections 1610 and 1611 of this chapter.

**“§ 1610. Exceptions to the immunity from attachment of execution**

“(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

“(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

“(2) the property is or was used for the commercial activity upon which the claim is based, or

“(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

“(4) the execution relates to a judgment establishing rights in property—

“(A) which is acquired by succession or gift, or

“(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

“(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

“(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

“(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

“(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of sections 1605(a) (2), (3) or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

“(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

“(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States,



shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

“(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

“(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

**“§ 1611. Certain types of property immune from execution**

“(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or the States.

“(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

“(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

“(2) the property is, or is intended to be, used in connection with a military activity and

“(A) is of a military character, or

“(B) is under the control of a military authority or defense agency.”.

(b) That the analysis of “PART IV.—JURISDICTION AND VENUE” of title 28, United States Code, is amended by inserting after—

“95. Customs Court.”,

the following new item:

“97. Jurisdictional Immunities of Foreign States.”.

SEC. 5. That section 1391 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

“(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought—

“(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

“(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

“(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or



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“(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.”

SEC. 6. That section 1441 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

“(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.”

SEC. 7. If any provision of this Act or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SEC. 8. This Act shall take effect ninety days after the date of its enactment.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

OCTOBER 22, 1976

Office of the White House Press Secretary

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THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

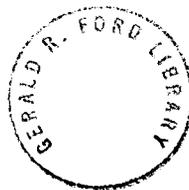
It is with great satisfaction that I announce that I have signed H.R. 11315, the Foreign Sovereign Immunities Act of 1976. This legislation, proposed by my Administration, continues the longstanding commitment of the United States to seek a stable international order under the law.

It has often been said that the development of an international legal order occurs only through small but carefully considered steps. The Foreign Sovereign Immunities Act of 1976 which I sign today is such a step.

This legislation will enable American citizens and foreign governments alike to ascertain when a foreign state can be sued in our courts. In this modern world where private citizens increasingly come into contact with foreign government activities, it is important to know when the courts are available to redress legal grievances.

This statute will also make it easier for our citizens and foreign governments to turn to the courts to resolve ordinary legal disputes. In this respect, the Foreign Sovereign Immunities Act carries forward a modern and enlightened trend in international law. And it makes this development in the law available to all American citizens.

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FOR IMMEDIATE RELEASE

OCTOBER 22, 1976

Office of the White House Press Secretary

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THE WHITE HOUSE

MEMORANDUM OF DISAPPROVAL

I am withholding my approval from S. 3553, the Foreign Sovereign Immunities Act of 1976, for technical reasons.

In its haste to adjourn, the Congress passed identical Senate and House bills on this subject. At the time the Senate passed the House bill, H.R. 11315, it attempted to vacate its earlier passage of S. 3553 but was unable to do so because it had left the Senate's jurisdiction. The House, unaware that the Senate had passed the House bill, also passed the Senate bill.

In view of the Senate's action in attempting to vacate its passage of S. 3553, there is doubt that S. 3553 has been properly enrolled, and therefore I am separately approving H.R. 11315 and must withhold my approval from S. 3553.

GERALD R. FORD

THE WHITE HOUSE,

October 21, 1976

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