

Laws Lifting Sovereign Immunity In Selected Countries

Cuba • Iran • Libya • Russian Federation
Sudan • Syria

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Contents

Comparative Summary1

Cuba2

Iran6

Libya10

Russian Federation.....11

Sudan.....15

Syria16

Comparative Summary

*Peter Roudik
Director of Legal Research*

This report provides a review of laws adopted in Cuba, Iran, Libya, Russia, Sudan, and Syria on lifting the sovereign immunity of foreign states. Individual lawsuits against the United States brought before national and international courts by these countries are also analyzed.

The surveys demonstrate some diversity and common threads with regard to lifting the sovereign immunity of the US and other countries. Except for Iran and Russia, the surveyed countries have no specific legislation addressing general principles of sovereign immunity. Iran uses domestic counterterrorism legislation to facilitate the freezing of financial assets of foreign governments. Syria uses such legislation to freeze the assets of individuals, including government officials, while Sudan uses it simply to prosecute foreign nationals. Cuba and Iran have adopted special laws targeting the US.

Laws on jurisdictional immunity passed by the Russian and Iranian legislatures are based on the principle of negative reciprocity meant to deter the lifting of sovereign immunity of Russia or Iran by other countries. These laws allow domestic courts to try civil cases against foreign governments. While the focus of the Iranian law appears to be limited to violations of international law and cases of terrorism, Russian law is broader and allows considering foreign state property in Russia as an asset in any civil suit against a foreign government brought before a Russian court. In both cases, the countries' foreign ministries determine the damage inflicted on the nation's sovereign immunity and recommend the level of reciprocity to the court.

Where antiterrorism legislation is relied on, national laws generally allow the prosecution of foreign nationals, including public officials living abroad, and seizure of their assets. Such laws in Sudan and Syria are vague and extend their jurisdiction to "offenses against the interests of the country." Cuba is the only country that uses its domestic civil legislation rather than a separate legal act to adjudicate judicial claims for human and economic damages inflicted by foreign states. On the basis of the Civil Code's provisions concerning civil liability, Cuban courts have ruled in two cases against the US and ordered it to compensate the injured parties.

The reports identify Cuba and Iran as having laws directly abrogating the sovereign immunity of the US. Cuban law provides for liability arising from specific acts supported by the US government, and allows affected Cuban individuals to submit claims to the government-run Claims Commission. The law of Iran is aimed at the US, its citizens, its agents, and other countries that cooperate with the US in "conducting inhuman acts against Iranians" and plotting against "the interests of Iran."

Information on recent cases against the US tried in domestic courts is included in the report. It appears that such cases are often used for domestic propaganda purposes.

Cuba

Gustavo Guerra
Senior Foreign Law Specialist

SUMMARY The Cuban government has judicially adjudicated claims against the United States for personal injury and economic damages, as explained below. Cuba also enacted Law No. 80 of 1996, the Law Reaffirming Cuba’s Dignity and Sovereignty, which provides that individuals who themselves or whose family members have been victims of personal injury or material damages as the result of actions sponsored or supported by the United States of America may file claims for compensation.

I. Introduction

The governments of the United States and Cuba met in December 2015 in order to discuss claims that both countries have against each other, in the context of reestablishing diplomatic relations between the two countries.¹ Although no official information appears have been released on the details of this meeting concerning the Cuban claims, the Brookings Institution reported that the Cuban government claims that, as of 2015, “accumulated economic damages from the US economic sanctions had reached \$121 billion.”² Cuba also claims personal injury damages from US “acts of terrorism,” including thousands of deaths and disabling injuries,³ amounting to US\$181 billion.⁴ These claims were approved by Cuban courts in the two lawsuits described below.

II. Cuban Civil Code

The concept of civil liability in Cuban law used in the lawsuits detailed below is found in the title IV, chapter IV, of the Civil Code, which generally provides that whoever illicitly causes damage to another is required to compensate the victim.⁵

¹ Press Release, U.S. Department of State, United States and Cuba Hold Claims Talks in Havana (Dec. 7, 2015), <http://www.state.gov/r/pa/prs/ps/2015/12/250426.htm>, archived at <https://perma.cc/89KF-NKPK>.

² RICHARD E. FEINBERG, BROOKINGS INSTITUTION, RECONCILING U.S. PROPERTY CLAIMS IN CUBA: TRANSFORMING TRAUMA INTO OPPORTUNITY 13 (Dec. 2015), <http://www.brookings.edu/~media/research/files/papers/2015/12/01-reconciling-us-property-claims-cuba-feinberg/reconciling-us-property-claims-in-cuba-feinberg.pdf>, archived at <https://perma.cc/6ZD2-47G5>.

³ *Id.*

⁴ *Cuba y EEUU sostendrán este martes reunión informativa*, CUBADEBATE (Dec. 7, 2015), <http://www.cubadebate.cu/noticias/2015/12/07/cuba-y-eeuu-sostendran-este-martes-reunion-informativa/#.V0ML2EY-V7J>, archived at <https://perma.cc/84FQ-78YU>.

⁵ CÓDIGO CIVIL DE LA REPÚBLICA DE CUBA, Ley No. 59/1987, arts. 81–83, available on the website of the Cuban Supreme Court, at http://www.tsp.cu/ley_59_codigo_civil_cubano, archived at <https://perma.cc/9NWA-7W9H>.

III. People of Cuba v. Government of the United States for Human Damages

The civil liability provisions of the Civil Code were used as the main legal basis for a multibillion-dollar lawsuit against the US government in 1999. In *People of Cuba v. Government of the United States for Human Damages*, the plaintiffs sought damages in the amount of US\$181.1 billion.⁶

The alleged grounds of this suit were violations inflicted upon Cuba by the United States since 1959 through many actions that caused harm and resulted in the loss of lives and injuries to Cuban citizens, including the Bay of Pigs invasion.⁷ The case was filed in a Cuban court in May 1999, and a judgment against the United States was issued later that year.⁸ The main Civil Code provisions invoked refer to civil liability for material and moral damages.⁹

IV. People of Cuba v. Government of the United States for Economic Damages

Another lawsuit was filed in a Cuban Court against the United States Government, *People of Cuba v. Government of the United States for Economic Damages*, in which the plaintiffs sought compensation in the amount of US\$121 billion for economic damages resulting from the embargo imposed by the United States.¹⁰

The cause of action for damages in this lawsuit was primarily an alleged violations of provisions of the Civil Code on illicit acts.¹¹ A judgment against the US was issued on May 5, 2000.¹² On May 15, 2015, *Granma*, the official newspaper of the Cuban Communist Party Central Committee, published a report summarizing the evidence presented during the proceedings of this lawsuit as follows:

⁶ Demanda del Pueblo de Cuba al Gobierno de Estados Unidos por Daños Humanos [Complaint of the People of Cuba Against the United States Government for Human Damages], filed May 31, 1999, <http://www.cuba.cu/gobierno/DEMANDA.html>, archived at <https://perma.cc/ZE3N-ELWL>.

⁷ *Id.*

⁸ *Cuba y EEUU sostendrán este martes reunión informativa*, CUBADEBATE (Dec. 7, 2015), <http://www.cubadebate.cu/noticias/2015/12/07/cuba-y-eeuu-sostendran-este-martes-reunion-informativa/#.V0ML2EY-V7J>, archived at <https://perma.cc/84FQ-78YU>; see also Frances Robles, *In Talks Over Seized U.S. Property, Havana Counters With Own Claim*, N.Y. TIMES (Dec. 13, 2015), <http://www.nytimes.com/2015/12/14/world/americas/talks-begin-in-cuba-on-confiscated-us-property-worth-billions.html>, archived at <https://perma.cc/D33Q-NJA7>.

⁹ Demanda del Pueblo de Cuba al Gobierno de Estados Unidos por Daños Humanos [Complaint of the People of Cuba Against the United States Government for Human Damages], filed May 31, 1999, <http://www.cuba.cu/gobierno/DEMANDA.html>, archived at <https://perma.cc/ZE3N-ELWL>.

¹⁰ Demanda del Pueblo Cubano al Gobierno de los Estados Unidos por los daños económicos ocasionados a Cuba [Complaint of the People of Cuba Against the United States Government for Economic Damages Caused to Cuba], filed Jan. 3, 2000, available at <http://www.granma.cu/granmad/secciones/verdad/a015.htm>, archived at <https://perma.cc/7VAN-L427>.

¹¹ *Id.*

¹² Andrés Zaldívar Diéguez, *Lawsuit Against the United States for Financial Damages*, GRANMA (May 15, 2015), <http://en.granma.cu/cuba/2015-05-15/lawsuit-against-the-united-states-for-financial-damages>, archived at <https://perma.cc/5BLJ-584E>.

Experts and witnesses demonstrated that since the beginning of the 60s, U.S. government measures against Cuba implied the loss of markets for its exports, as well as its main suppliers, as 70% of trade was previously conducted with the country. . . .

The blockade measures attempted to prevent all maritime trade with Cuba. The banning from U.S. ports of ships of any nationality which traded with Cuba was imposed, and in force for 14 years, and after a brief period in which this policy was discontinued, the Torricelli Act in 1992 resumed it, resulting in the rising cost of freight and other damages. The evidence demonstrated the economic losses due to the ban on travel to Cuba by U.S. citizens; the refusal to allow Cuban aircraft to offer commercial flights to the United States, the inability to use the shortest routes to arrive at certain destinations, the resulting additional layovers and necessary use of technologically outdated equipment, together with many other adverse effects.

The abrupt cutoff from traditional sources of financing both within and outside of the United States, and the huge losses due to frozen assets—arbitrarily made use of—dollar exchange rate moves in foreign trade and external debt, damages due to prices and interest rates, the loss of opportunities for credit facilities and other damages to the external financial sector, were also highlighted.

. . .

On the final day of testimony, a detailed expert report evaluating damages caused by the economic, commercial and financial blockade in various spheres as well as the attacks on economic and social targets, was presented. By early 2000, the blockade had cut short 15 years worth of development for Cuba.

The damages resulting from the blockade at that time amounted to over \$67 billion dollars, . . . while those resulting from attacks amounted to \$54 billion, giving a total of over \$121 billion U.S. dollars. The Court ordered the U.S. government to pay reparations and compensation to the Cuban people for this amount.¹³

A footnote to the report noted that “[t]he cost of the blockade is continually updated,” and that the Cuban Foreign Ministry in 2014 valued the damages from the blockade alone at over US\$116.8 billion.¹⁴

V. Law Reaffirming Cuba’s Dignity and Sovereignty

Law No. 80 of 1996, the Law Reaffirming Cuba’s Dignity and Sovereignty, declared that the Helms-Burton Act of 1996,¹⁵ which strengthened the US embargo against Cuba, is illegal. It directed the national government to adopt measures to protect current and potential foreign

¹³ *Id.*

¹⁴ *Id.* n.ii.

¹⁵ 22 U.S.C. §§ 6021-6091 (2012), <http://uscode.house.gov/view.xhtml?path=/prelim@title22/chapter69A&edition=prelim>, archived at <https://perma.cc/UBB2-4S5U>.

investments in Cuba and defend Cuba's legitimate interests against actions resulting from the Helms-Burton Act.¹⁶

Article 12 of this law provides for liability arising from several acts allegedly supported by the US. It states that individuals who themselves or whose family members have been victims of personal injury or material damages as the result of actions sponsored or supported by the US may file claims for corresponding compensation before the Claims Commissions to be created by the Ministry of Justice, which has the authority to decide on the validity of these claims as well as the amount owed by and responsibility of the US.¹⁷ Information on the existence and operations of the Claims Commissions could not be located.

¹⁶ Ley No. 80 de 24/12/1996, Ley de reafirmación de la Dignidad y la Soberanía, GACETA OFICIAL [G.O.] [OFFICIAL GAZETTE] No. 48/1996, Dec. 27, 1996, available on Juriscuba, an online repository of Cuban law, at <http://juriscuba.com/legislacion-2/leyes/> (click on "Ley No. 80" to open document), archived at <https://perma.cc/572V-G264>.

¹⁷ *Id.*

Iran

Shadi Karimi

Foreign and Comparative Law Consultant

SUMMARY This report reviews three Iranian laws enacted to lift the sovereign immunity of other countries and provides an overview of domestic litigation and recent legislative activity on the topic. According to the language of the legislation and various articles by authors in the Iranian government and academia, the three relevant laws are designed as negative reciprocity, a deterrent against violations of the sovereign immunity of Iran by other countries. One of three laws is specifically aimed at the United States. Pursuant to that law, an Iranian businessman received a favorable judgment against the US in 2003, but enforcement was unsuccessful. A pending bill seeks to intensify anti-US measures in response to recent US court decisions against the Iranian government.

I. Laws Lifting Sovereign Immunity of the US or Other Countries

The following Iranian laws lift the sovereign immunity of the US or other countries:

A. Law on Combating Financial Support of Terrorism

According to article 12 of the Law on Combating Financial Support of Terrorism,¹ which was enacted in 2016, the first-degree criminal courts of Tehran have jurisdiction to try international crimes of terrorism that are committed against the Islamic Republic of Iran, regardless of whether the action occurred abroad or within the territory of Iran. In this Law, there is no specific reference to foreign states; however, article 12 could be interpreted as lifting the sovereign immunity of a subject foreign state.

B. Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments

The Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments,² enacted in 2012, provides that, in order to combat and prevent terrorism and violations of international law, eligible natural and legal persons may file actions for damages with the Public and Revolutionary Court of Tehran against foreign governments that have violated the sovereign immunity of Iran or its officials. The Court must investigate such claims and issue an appropriate judgment. The Ministry of Foreign Affairs maintains a list of

¹ Law on Combating Financial Support of Terrorism of 29 Mar. 2016, <http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=10219> (in Persian), archived at <https://perma.cc/DWC7-J72J>.

² Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments of 8 May 2012, <http://rooznamehrasmi.ir/Laws/ShowLaw.aspx?Code=715> (in Persian; all translations by author), archived at <https://perma.cc/7VR4-ZHCW>; see also Mahdi Haddadi, *Jurisdiction of Iranian Courts to Deal with Civil Lawsuits Against Foreign States*, 47 INT'L LETTERS SOC. & HUMANISTIC SCI. 46, 46–53 (2015), <https://www.scipress.com/ILSHS.47.46.pdf>, archived at <https://perma.cc/S9WD-UJNW>.

foreign governments subject to this countermeasure. Governments that assist listed foreign governments in violating Iran's sovereign immunity are also subject to such measures.³

In rendering judgment the Court must determine the degree of damages according to comparable judgments issued by the foreign state in question. Assets of foreign governments are not immune from enforcement under the Act unless immune under international agreements that are binding on Iran, with some exceptions. Attorney fees and litigation costs awarded are to be deposited with the Iranian National Treasury after enforcement of the judgment.⁴

The Public and Revolutionary Court may assert personal jurisdiction over civil cases brought against foreign governments (including agents, officials, or entities related to or controlled by such foreign governments) if (1) the victim, or his/her descendants or next of kin, are Iranian nationals, either at the time the alleged incident occurred or when the case was initiated; or (2) the victim was employed by the Iranian government when the damage occurred.⁵

In furtherance of this Act, a special international division of the Public and Revolutionary Court has been created.⁶

C. Law Intensifying Countermeasures Against the US Government's Terrorist Activities

The 1989 Law Intensifying Countermeasures Against the US Government's Terrorist Activities has the stated purpose of countering the US government's measures and obligates the President of Iran to "take the necessary measures to arrest and punish the Americans and their direct and indirect agents who have been sentenced in the Iranian judicial courts."⁷ All states cooperating directly or indirectly with the US in "kidnapping Iranian nationals or plotting against their lives" are subject to this Law,⁸ and all US citizens, agents, and other countries cooperating with the US in "abducting and entering into plots against the life of Iranian citizens and interests of [Iran]" must be tried in Iran's domestic courts on the basis of Islamic law.⁹

³ Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran arts. 1–3.

⁴ *Id.* arts. 4, 5, 8, 9.

⁵ *Id.* arts. 6, 7.

⁶ *International Court Will Hear Cases Related to Criminal Activities of Foreign Nationals and Lawsuits Brought by Private Persons Against Foreign States and Nationals*, EKHTEBAR (July 14, 2013), <http://www.ekhtebare.com/دادسرای-امور-بین-الملل-تشکیل-خواهد-شد/#more-4199> (in Persian), archived at <https://perma.cc/UZL6-V87F> (citing Enforcement Regulation of the Act on Jurisdiction of the Judiciary of the Islamic Republic of Iran to Try Civil Cases Against Foreign Governments of 1 July 2013, <http://isna.ir/fa/news/92101709099/آیین-نامه-قانون-صلاحیت-دادگستری-در-ر-سیدگی> (in Persian), archived at <https://perma.cc/4E9R-9NNN>).

⁷ Law Intensifying Countermeasures Against the U.S. Government's Terrorist Activities of 1 Nov. 1989, sole art., <http://rc.majlis.ir/fa/law/show/91723> (in Persian), archived at <https://perma.cc/AMR7-YK9F>.

⁸ *Id.* n.1.

⁹ *Id.* n.2.

The Law Intensifying Countermeasures is valid and enforceable from the date of enactment “for as long as the US President is empowered to conduct inhuman acts against the lives and interests of the Iranian nationals and no action has been taken to officially abrogate it.”¹⁰

II. Domestic Litigation and Court Judgments

In 2003, a Tehran court awarded approximately half a billion dollars in damages to an Iranian businessman, who was abducted in 1992 in a sting operation by American undercover customs officers in the Bahamas. The businessman had been charged with a violation of US sanctions against Libya, and was accordingly held in a US jail for approximately four months. After release, he successfully filed a lawsuit in a Tehran court under the existing Law Intensifying Countermeasures Against the US Government’s Terrorist Activities (discussed above).

In its 2003 ruling, a Tehran court accused US investigators of “kidnapping, false imprisonment, using force, battering, abusing, and ultimately inflicting physical and psychological injuries.” A writ of enforcement was issued, requiring the US to respond to that ruling by paying damages or presenting a list of assets to be seized as compensation. When the US disregarded the writ, the plaintiff identified the American Embassy as the defendant’s most valuable asset. The Iranian Judiciary dismissed the claim that the US Embassy in Tehran could be sold to pay for the judgment. According to news reports, the Tehran deputy prosecutor stated that, “[b]ased on international laws, embassies cannot be sold or confiscated.”¹¹

III. Other Developments

According to various governmental news publications, including the Islamic Consultative Assembly News Agency (ICANA), the Islamic Republic of Iran Broadcasting News Agency (IRIB), and the Iranian Students’ News Agency (ISNA), on May 17, 2016, the Islamic Consultative Assembly of Iran passed the general outline of a bill to Compel the Government to Pursue Indemnification for Damages Caused by the Actions of the United States Against the Iranian People.¹² If the bill were adopted, the Iranian government would be required to demand

¹⁰ *Id.* n.3.

¹¹ Michael Theodoulou, *Tehran Court Rules Against US*, CHRISTIAN SCIENCE MONITOR (Feb. 3, 2003), <http://www.csmonitor.com/2003/0203/p06s01-wome.html>, archived at <https://perma.cc/7LNX-VD9D>; Michael Theodoulou, *Iran: US Embassy Is Seized Again to Settle £270m “Compensation” Order*, THE TIMES (Apr. 13, 2007), <http://www.freerepublic.com/focus/f-news/1816637/posts>, archived at <https://perma.cc/D6XB-W755>; *Iran Says US Embassy Not for Sale*, IRAN FOCUS (Apr. 16, 2007), http://www.iranfocus.com/en/index.php?option=com_content&view=article&id=10896:iran-says-us-embassy-not-for-sale&catid=4&Itemid=109, archived at <https://perma.cc/V93E-CG3K>.

¹² *Islamic Consultative Assembly of Iran Passes Urgent Outline of Bill to Demand Damages from United States*, ICANA (May 15, 2016), <http://www.roobahnews.com/index.php/component/content/article/74-latest-news/16916-1395-02-26-10-35-35> (in Persian), archived at <https://perma.cc/Y6KV-XR9W>; Marina Alshalan, *Iran’s Grievance Against the United States: United States Attempts to Confiscate Iranian Assets Through Judicial Actions*, ISNA (May 16, 2016), available at <http://ir.sputniknews.com/iran/20160516/1500555.html> (in Persian), archived at <https://perma.cc/V82L-M9K7>; *Islamic Consultative Assembly: Government Should Demand Damages from U.S.*, RFI (May 17, 2016), <http://fa.rfi.fr/iran/20160517-امريکا-خسارت-بخواهد-مجلس-شورای-اسلامی-دولت-باید-از> (in Persian), archived at <https://perma.cc/F5H3-JNCW>; *Iranian Ministry of Foreign Affairs’ Strong Protest Against U.S. Court*

indemnification for damages allegedly caused by the US since the 1953 coup d'état. The bill indicates that it is intended as a countermeasure against the United States, according to news sources.

Various Iranian officials have stated that the bill is mostly in retaliation against (1) the April 20, 2016, decision of the US Supreme Court to award over US\$2 billion in frozen Iranian funds to families of the victims of the 1983 Beirut attack;¹³ and (2) the March 9, 2016, decision of the Federal District Court for the Southern District of New York ordering Iran to pay approximately US\$10 billion in damages to the families of victims who were killed in the September 11, 2001, tragedy.¹⁴ Mohammad Javad Zarif, the minister of foreign affairs of Iran, reportedly condemned these judgments in an April 29, 2016, official letter to UN Secretary General Ban Ki-moon, in which he stated that “[t]he government of the Islamic Republic of Iran retains its right to take legal actions, including the necessary countermeasures, aiming to reconstitute the benefits and rights of the Iranian people against the violations of the international law.”¹⁵

Judgments, TASNIM NEWS (Apr. 26, 2016), <http://www.tasnimnews.com/fa/news/1395/02/07/1058859/> اعتراض شدید- وزارت-خارجہ-ایران-بہ-آرای-دادگاہ-ہای-آمریکا (in Persian), archived at <https://perma.cc/F6ZB-URTY>.

¹³ *Bank Markazi v. Peterson*, No. 14-770 (U.S. Sup. Ct., Apr. 20, 2016), http://www.supremecourt.gov/opinions/15pdf/14-770_9o6b.pdf, archived at <https://perma.cc/85SC-V2HZ>.

¹⁴ *In Re Terrorist Attacks on September 11, 2001*, No. 03-cv-09848 (S.D.N.Y., Mar. 9, 2016).

¹⁵ Zarif: *U.S. Court Judgments Are Against International Laws and Principles*, PRESS TV (Apr. 29, 2016), <http://www.presstv.ir/DetailFa/2016/04/29/463062/Iran-US-UN> (in Persian), archived at <https://perma.cc/H7DJ-U2PM>.

Libya

George Sadek
Senior Legal Analyst

No provision in Libya's legal system was located that allows the confiscation of financial assets or the legal prosecution of foreign nationals, including foreign governments or government officials. However, the Libyan government has filed a number of lawsuits against foreign governments seeking damages. For example, it was reported in November 2010 that the government of Libya had filed a lawsuit against Switzerland before the European Court asking for a financial compensation. The Libyan government accused Switzerland of insulting the former Libyan president Muammar al-Gaddafi. It alleged that one of the political parties in Switzerland used the photo of the former Libyan president on a political advertisement promoting the deportation of foreign immigrants who have committed offenses in Switzerland.¹ No other information confirming this announcement or identifying the court where the claim was allegedly filed has been located.

¹ *Libya Files a Lawsuit Against the Government of Switzerland after the Insult of Qadhafi*, AL-DOULIA (Nov. 22, 2010), <http://www.doualia.com/2010/11/22/kadhafi-veut-trainer-la-suisse-en-justice-pour-outrage-a-chef-detat/> (in Arabic), archived at <https://perma.cc/SM2E-QQMX>.

Russian Federation

Peter Roudik
Director of Legal Research

SUMMARY In 2015, a law regulating the application of sovereign immunity was passed in the Russian Federation. The law is based on the reciprocity principle under which Russian courts must consider the degree of immunity the Russian Federation enjoys in a foreign state when deciding whether to lift the jurisdictional immunity of that state. No legal act currently in force defines how the balanced response required by law for this determination is to be calculated. The Foreign Ministry is assigned with the duty to inform courts on how Russian sovereign immunity is treated abroad. Drafters of the law suggested that it aims to counteract claims against Russia and Russian property brought in foreign courts. The only court ruling against a foreign government disregarding the principle of sovereign immunity was issued by a court in Moscow in 2014 against the United States.

I. Current Legislation

On January 1, 2016, the Federal Law on Jurisdictional Immunity of a Foreign State and a Foreign State's Property in the Russian Federation entered into force. This Law was introduced in the Russian legislature in late-Summer 2015, and after a brief period of debate was passed by the Federal Assembly (legislature) and signed by President Putin on October 28, 2015.¹

II. Major Provisions of the Law on Jurisdictional Immunity of a Foreign State

The Law states that it regulates the application of jurisdictional immunity by foreign states over foreign-state property in the Russian Federation and provides for the priority of international treaty provisions over this Law if such a treaty has been concluded.² Foreign states, their components, bodies, institutions, organizations, and representatives are subject to the Law's jurisdiction. The Law applies to the components of a foreign state if these components are eligible to act in order to perform sovereign powers of the state, and to institutions and organizations of a foreign state regardless of whether they are legal entities if these institutions and organizations are eligible to act and *are actually acting* in order to perform sovereign powers of a foreign state.³ The Law defines "property of a foreign state" as property on the territory of the Russian Federation that belongs to a foreign state and is used by the same foreign state.⁴

¹ Federal Law No. 297-FZ on Jurisdictional Immunity of a Foreign State and a Foreign State's Property in the Russian Federation, <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102381335&ИНТЕЛЕСАПІХ=> (official publication, in Russian), archived at <http://perma.cc/PY6H-DFPT>.

² *Id.* art. 1.

³ *Id.* art. 2.

⁴ *Id.* art. 2(2).

Courts of general jurisdiction, including arbitration courts, have jurisdiction over jurisdictional immunity cases,⁵ and must apply Russian procedural legislation.⁶

Implementation of the Law must not damage the privileges and immunities of foreign states' diplomatic and consular offices, special missions, representations at international organizations, heads of state and governments, foreign ministers, aircraft, space equipment, naval ships, and other state vessels used for noncommercial purposes.⁷

Reciprocity is declared as a main principle under which Russian courts will consider the limits to jurisdictional immunity of a foreign state in relation to the degree of immunity the Russian Federation enjoys in that foreign state. The immunity of a foreign state can be limited in Russia if the foreign state limits Russian jurisdictional immunity. The Russian Ministry of Foreign Affairs is required to provide recommendations concerning the extent of jurisdictional immunity that the Russian Federation has in a foreign state.⁸

Articles 6 and 7 of the Law discuss the agreement of a foreign state to accept Russian jurisdiction and waivers of jurisdictional immunity. The agreement of a foreign state to apply Russian law in a particular trial and nonparticipation of a foreign state in a trial conducted in a Russian court must not be considered as the foreign state's waiver of jurisdictional immunity. A foreign state's decision on waiver is final. A foreign state waives its jurisdictional immunity if it submits a claim to a Russian court.

Articles 8 through 14 define situations when foreign states cannot insist on jurisdictional immunity in Russia. These include disputes concerning the commercial activity of a foreign state or civil law transactions,⁹ labor disputes,¹⁰ disputes concerning participation in organizations,¹¹ disputes concerning a foreign state's rights and obligations concerning real estate and other property located in Russia,¹² tort cases,¹³ intellectual property and copyright disputes,¹⁴ and disputes concerning commercial vessels.¹⁵ Immunity does not apply to measures taken to secure the claim¹⁶ or to execute a court ruling.¹⁷ The Law emphasizes that any property

⁵ *Id.* art. 2(7).

⁶ *Id.* art. 17.

⁷ *Id.* art. 3.

⁸ *Id.* art. 5.

⁹ *Id.* art. 8.

¹⁰ *Id.* art. 9.

¹¹ *Id.* art. 10.

¹² *Id.* art. 11.

¹³ *Id.* art. 12.

¹⁴ *Id.* art. 13.

¹⁵ *Id.* art. 14.

¹⁶ *Id.* art. 15.

¹⁷ *Id.* art. 16.

of a foreign state located in Russia can be used to secure the execution of a court ruling if this property is not used and/or not supposed to be used for the purposes of performing sovereign power functions.¹⁸

III. Legislative Intent

The Law was drafted and introduced by the Russian Ministry of Justice, which stated in the Explanatory Note to the Bill that the measure is aimed at abolishing the previously used doctrine of absolute sovereign immunity, which “contradicts the current practice of Russian foreign economic activities.”¹⁹ According to the drafters of the Law, “the number of claims against Russia in foreign courts is growing constantly, and no one is asking for Russia’s agreement to be sued.”²⁰ They proposed to establish a “balance” based on principles of reciprocity, saying that “if Russian property has limited or no immunity in a particular country, Russia shall be empowered to establish similar restrictions for that country’s property located in the Russian Federation.”²¹ At the same time, neither the Law nor accompanying documents define how a balanced response will be calculated. As one of the legislators said when the Law was discussed in the Federation Council (the upper legislative chamber), “this Law shall be of a preventive nature to protect Russia from the unfriendly actions of other countries.”²²

As stated in the Explanatory Note, the adoption of this Law was required because of “wide acceptance of the limited sovereignty concept in the legislation of foreign states, under which a foreign state, its bodies, and organizations do not enjoy immunity in regard to claims based on commercial activities of those subjects,” and that adoption must be in accordance with the 2004 UN Convention on Jurisdictional Immunities of States and Their Property.²³ The Explanatory Note also says that this Russian Law follows similar laws passed in the US, Canada, the United Kingdom, Australia, South Africa, and Singapore, and reflects decisions by courts in France, Denmark, Norway, Greece, Italy, and Germany.²⁴

Commenting on the passage of the Law, some Russian lawyers have disputed the need for this legislation, stating that the property of foreign states can be seized under current Russian law if there is a proper court order. They have also asserted that the implementation of this Law will

¹⁸ *Id.* art. 17(3).

¹⁹ Explanatory Note to Bill on Jurisdictional Immunity of a Foreign State and a Foreign State’s Property in the Russian Federation, <http://asozd2.duma.gov.ru/main.nsf/%28ViewDoc%29?OpenAgent&work/dz.nsf/ByID&886399D4D250B59843257E9A003E030D> (in Russian; all translations by author), archived at <http://perma.cc/4DGL-7VY7>.

²⁰ *Id.*

²¹ *Id.*

²² *Russian Government Suggests How to Respond to Seizures of Russian Property Abroad*, NEWSRU.COM (Aug. 5, 2015), http://www.newsru.com/russia/05aug2015/government_print.html (in Russian), archived at <http://perma.cc/TKP2-H7VS>.

²³ Explanatory Note, *supra* note 19 (citing UN Convention on Jurisdictional Immunities of States and Their Property, Dec. 2, 2004 (not yet in force), U.N. Doc. A/59/508, http://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf, archived at <https://perma.cc/F6U8-XPM7>).

²⁴ *Id.*

depend on later interpretations because the definition of “reciprocity” is too vague. At the same time, some members of the State Duma’s Committee on Property Legislation believe that the Law does not go far enough to provide “real protection of Russian property interests abroad” and have proposed a package of related laws that will be discussed later in 2016.²⁵

IV. Commentary

Russian commentators have suggested that the Federal Law on Jurisdictional Immunity of a Foreign State and a Foreign State’s Property in the Russian Federation was adopted in response to the seizure of Russian property in France and Belgium in 2015, following the verdicts of the Permanent Court of Arbitration and the European Court of Human Rights under which Russia was required to pay US\$39.9 billion to former stockholders of the Yukos Oil Company. Russia did not recognize these rulings. Reportedly, in July 2015, because of the Russian government’s refusal to provide payment to the plaintiffs, Belgian officials informed forty-seven Russian and international companies that the property of these companies located in Belgium would be seized in order to secure the execution of the courts’ rulings against Russia and that Belgium was starting to inventory Russian property subject to seizure. At the same time, the accounts of a subsidiary of Russian state bank VTB in France were also seized. Russian officials, including members of the Cabinet of Ministers and the Press Secretary of the Russian Federation President, promised to take measures aimed at protecting Russian interests and to counteract foreign court judgments.²⁶

²⁵ *Ministry of Justice Proposed Seizing Foreign Property in Russia*, NEWSRU.COM (July 22, 2015), http://txt.newsru.com/russia/22jul2015/assets_print.html (in Russian), archived at <http://perma.cc/6ZET-SYCT>.

²⁶ *Kremlin Promised to Dispute Property Seizures in France and Belgium*, NEWSRU.COM (June 18, 2015), http://www.newsru.com/russia/18jun2015/belousov_print.html (in Russian), archived at <http://perma.cc/QS2J-PNCC>.

Sudan

George Sadek
Senior Legal Analyst

Sudan's Counter Terrorism Act of 2001 allows the government to prosecute foreign nationals living abroad. The Act does not exempt from prosecution foreign public officials who speak out against the current regime and its practices. Article 3(a) of the Act grants the Sudanese government the right to legally prosecute any individuals, including foreigners residing outside Sudan, for promoting what the law describes as "offenses against the interest of the country." Article 3(a) does not define this phrase. The article may also apply to foreign officials who are deemed by the government of Sudan to have damaged the interests of the country abroad. It states that "the present law shall apply to every individual accused of carrying out a terrorist act or attempting to commit one, or promoting domestically or abroad any offense against the interest of Sudan, its economy, and social and national security."¹

¹ Counterterrorism Act of 2001, <http://www.parliament.gov.sd/ar/index.php/site/LigsualtionVeiw/212> (in Arabic; translation by author), archived at <https://perma.cc/DC75-VQFA>.

Syria

George Sadek
Senior Legal Analyst

In February 2008, the Arab Republic of Syria announced that it would adopt legal measures against the United States. According to news reports, the foreign minister stated that his country would file a lawsuit against the United States asking for financial compensation. The minister said that the US is legally liable for the killing of Syrian nationals in Lebanon and claimed that the US government supplied the Israeli Air Force with weaponry used in the bombing of Lebanon in the 2006 war, which led to the killing of Syrian citizens living in Lebanon. However, the minister did not specify when and how his country would sue the United States or the court of jurisdiction.¹ It appears that there were no further legal developments following this statement.

An antiterrorism law that facilitates the freezing of the financial assets of foreigners, including foreign government officials, was passed in 2012.² Article 11 of the 2012 Counterterrorism Law authorizes the Syrian public prosecutor to issue an order freezing the financial assets of any individuals suspected of funding, sponsoring, or promoting what the Law describes as “terrorist acts” in Syria. Such freezing of financial assets is not limited to Syrian nationals, and foreign government officials are not exempt. Article 11 states,

[t]he prosecutor, or whoever he authorizes, may decide to freeze the movable and immovable property of anyone who perpetrates a crime in connection with the financing of terrorist acts or any of the crimes stated in this Law, if there is enough evidence to secure the rights of the State and the people affected.³

¹ *Damascus Files a Lawsuit Against the United States as a Response to the Sanctions*, ALBAWABA (Feb., 15, 2008), <http://www.albawaba.com/ar/أخبار/دمشق-تقاضى-الولايات-المتحدة-دا-على-توسيع-العقوبات> (in Arabic), archived at <https://perma.cc/2MAV-4A36>.

² Law No. 19 of 2012, posted on the official website of the Syrian Bar Association, at <http://www.syrianbar.org/index.php?news=987> (in Arabic; translation by author), archived at <https://perma.cc/ZL55-KE3X>.

³ *Id.*