SOVEREIGN IMMUNITY AND THE ENFORCEMENT OF CONTRACT*

1.1 INTRODUCTION

Sovereignty as understood in international law is the exclusive right to assert within a clearly defined limits the functions of a state. It refers to the supreme, absolute and uncontrollable power by which the independent state is governed having supreme political authority, paramount control of the constitution combined with the rights and powers of regulating its internal affairs without foreign dictation. The principle of sovereignty is fundamental in international customary law.

In the context of Public international law the law of state immunity means the legal principles and rules under which a foreign state may claim exemption from, suspension of or non amenability to the jurisdiction of another state (the territorial or forum state). Jurisdiction means the comprehensive governmental power of a state, including, in particular, its legislative, judicial and administrative powers.

After years of evolution and institutionalization by public international law and the internal laws of the members of the community of nations, one may speak of a general idea of sovereign immunity that has various manifestations[1].

Elementarily, contract is a promise or set of promises that the law will enforce. Where it relates to an arrangement between persons, it is susceptible to a clear understanding. This is a situation where parties to the transaction are objects of international law. New consideration is bound to arise where one of the parties is a subject of international law. This paper will examine the ramifications of the development of the principle of sovereign immunity in relation to the enforcement of contract.

2.2 DEVELOPMENT OF THE DOCTRINE OF ABSOLUTE IMMUNITY

It has been argued that the foundation of sovereign immunity remains a disputed matter. The view is that the members of the international community are bound by customary public international law to accord immunity to foreign sovereigns because of their equality and independence; a refusal to do so is a breach of an international obligation and that the purpose of foreign sovereign immunity is to avoid friction in international relations[2].

Substantive domestic legal principles like *princeps legibus solutus* or "the King can do no wrong" reflected the concept of absolute immunity of the state before its own courts, but also tended to support a comprehensive immunity accorded to foreign states and sovereigns. This became questionable, later, when the distinction between the ruler and the state and between his private and public acts became prevalent and increasing number of states were subjected to the jurisdiction of their domestic courts

The decisions granting immunity relied on the public nature or purpose of the foreign state's conduct or property in question. Stating that an exercise of jurisdiction would in-fringe upon the "equality", the "independence" or the "honour" of the foreign state.

2.2.1 UNITED STATES

From an early stage, United States courts adhered to a quite general immunity from jurisdiction, even in cases where commercial or trading transactions were involved[3]. In general, the courts recognized as a rule of international law a general immunity from execution. Infact, waiver of immunity from jurisdiction did not constitute waiver of immunity from execution, for which a distinct submission was required. From this strict position the courts in the U. S. never formally departed, though there were some executive statements and decisions that tended to weaken this position by allowing immunity from execution remaining general despite restrictive immunity from jurisdiction[4].

2.2.2 BRITAIN

The earlier history of sovereign immunity from the execution in British courts closely parallels that in the United States. A quite general doctrine of immunity was adopted extending both to actions *in personam* and *in rem*, whether or not related to commercial or private law transaction. This basic rule was canonically stated by Lord Atkin thus:-

> Two propositions of international law engrafted into our domestic law which seem to me to be well established and to be beyond dispute. The first is that the courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages. The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for the commercial purposes of the sovereign or to personal private property. In this country it is my opinion well settled that it applies to both.[5]

In essence, the courts required a clear submission to execution against property (though whether an unequivocal submission to the substantive jurisdiction of the court amounted to submission to execution was never conclusively settled)[6]. Nor would they allow proceedings directly relating to state property, between third parties[7].

2.2.3 OTHER JURISDICTIONS (INCLUDING NIGERIA)

Development in order jurisdictions is slow and their decisions unhelpful unlike in the United States and Britain where we can draw practice direction from. For example, the commercial court of Alexandria, in 1943, upheld execution proceedings against property of a state commercial enterprise, but the decision cannot be assumed to represent the law in Egypt[8]. The supreme court of Argentina once treated a submission to the jurisdiction as entailing submission to subsequent execution, but the decision is equivocal since it concerned the service of a writ of execution rather than the forcible seizure and sale of property[9].

In relation to Nigeria, it must be appreciated that the country became independent, that is became a nation *sui juris*, only in 1960 and therefore the position in England before 1960 is authoritative and of significance. Even after 1960, the practice direction as to whether proceedings against a state property will be allowed is not clear. Only in relation to the cognate issue of immunities and privileges vested in an international corporation was a decision made recently[10]. This much is clear, that there is no body of municipal case law of importance in the jurisdictions under reference.

3.3 DEVELOPMENT OF THE DOCTRINE OF RESTRICTIVE IMMUNITY.

After World War II, in a period of rapid expansion of international economic relations and extensive participation of states, their subdivisions, agencies and instrumentalities in them, the concept of functionally limited immunity became prevalent in state practice and legal doctrine. In view of this development it was increasingly felt that when doing business in the same manner as private persons, states should not be privileged by immunity when it came to legal controversies resulting from such conduct.

It recognises an obligation under general international law to accord immunity only with regard to the foreign state's conduct *jure imperii* and to its property serving public purposes, leaving it to the forum state whether or not to grant immunity for conduct *jure gestionis* or with regard to non-public property.

The principle of independence protects essentially the substance and the exercise of the public, governmental functions of the states, but not their conduct or property outside this public sphere. Restrictions of immunity outside this scope, therefore, do not conflict with the principle of independence.

Jurisdiction of the territorial state as well as immunity of the foreign state are both principles of international law based on the independence of sovereign states. Under international law neither principle takes priority over the other, both their limits being governed by international law. The conclusion has been stated thus:-

> Therefore to grant some of the trappings of sovereign power to a foreign sovereign beyond the limits of his own state by granting him immunity from domestic sovereign power is to subtract from the indisputable territorial supremacy of the domestic sovereign and to add something extraterritorial to the power of the foreign sovereign.[11]

Essentially, it must be recognised that sovereign immunity is not a necessary incident of sovereignty (i.e. that a state is subject to no power not imposed by itself). The real basis of sovereign immunity seems to be a mutual recognition of the desirability of "being free to perform certain political acts without undergoing the embarrassment or hindrance of defending the propriety of such acts before foreign courts"[12]

Acta jure imperii refers to when a state acts in a sovereign capacity; and the commercial acts and operations of a state are *jure gestionis*. The former in essence relates to sovereign acts of a state and the latter, those carried out in a private or commercial capacity.

The question is, what sovereign acts are distinct from commercial transaction? For example "commercial transaction" has been defined to mean contracts for the supply of goods or services, loan or financial transaction and any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) in to which a state enters or in which it engages otherwise than in the exercise of sovereign authority"[13]. It will be readily apparent that in the last phrase lies the genesis of many a future litigation for it remains open for the state to contend that the activity is conducted in the exercise of sovereign authority and thereby to maintain its immunity. In this regard the question that may be asked is how can one classify state's purchase or sale of armaments? One should note that there are likely to be many controversial activities. By way of contract the U.S. Foreign Sovereign Immunities Act of 1976 makes no mention of acts done in the exercise of sovereign authority but refers simply to a "commercial activity" and defines the commercial character of the activity by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose[14].

4.4 SCOPE OF IMMUNITY

In principle, only foreign sovereign states are protected by the rules of public international law on state immunity.

Organs or organisational subdivisions of the foreign state's central government without separate legal personality such as heads of state prime ministers, ministers acting in their official capacity, ministers departments, agencies and offices for purposes of international immunity form part of the foreign state, even if they are capable of suing or being sued under their domestic law or under the law of the Forum State.

There is no consistent state practice with regard to immunity of constituent states of Federal states or a federal state or provinces, regions, districts, municipalities, Local government areas or of other political sub-divisions with separate legal personality distinct from the central government or of agencies, instrumentalities or other entities legally distinct from the foreign state.

State-owned enterprises without a distinct legal personality are covered by the Immunity of the foreign state *ratione personae*. The situation is different, however, for enterprises with distinct legal personality where a substantial part of the shares or of other ownership interest is owned by the foreign state or which are in any other way under the special control or prevailing influence of the foreign state. State practice with regard to immunity (*ratione personae*) of such entities, again, is rather inconsistent; it does not result in an obligation, under general international law, to accord them immunity *ratione personae*. There appears to be a trend by states in support of the suggestion that property or funds of separate state instrumentalities, engaged in non immune transactions, should be more generally available for execution in respect of transactions of the instrumentality. This is practised in particular with regard to central banking institutions like "Central Banks", where courts have frequently left undecided the legal status of the institutions[15].

5.5 CONSIDERATIONS FOR DETERMINING NATURE OF FOREIGN STATE'S ACTIVITY

It appears firmly settled that under contemporary international law the forum state is obligated to accord a foreign state immunity from adjudication with respect to proceedings relating to claims of action based on conduct (acts or omissions, legal or illegal) of the foreign state performed in the exercise of its sovereign (public) power i.e *jure Imperii* - It has no obligation to accord immunity with respect to proceedings relating to claims based on a conduct of the foreign state performed *jure gestionis*.

What has been lacking in the literature so far is the very clear account of the fundamental considerations, by reference to which the nature of foreign state's activity is determined. However mention, has been made in respect of certain criteria.[16]

Firstly, there are certain transactions which international law, as an autonomous system of law, purports to govern as between the parties. In a sense, in those cases, international law is the proper law of the transaction. For example, questions of the validity or termination of a treaty or the location of an international boundary, are matters that international law integrally govern.

If a matter is integrally governed by international law, it is governed by a legal system which contains that choice of forum rule and municipal courts, if they are to act consistently with international law, must accord immunity to a foreign state in proceedings involving it in respect to such matters. Therefore, an assessment of the international law of immunity that ignores the context in which the question primarily arises would be of little value.

A second consideration is to be found in the notion of "domestic jurisdiction" In this context it refers to those transactions - usually transactions within the community of a particular state-which international law refers exclusively to the competence of that state. This view appears to be correct in so far as general international law does not preclude the forum state from providing in its domestic law for criteria for such determination. International law is interested in the result conforming with the obligations it imposes upon states, not in the techniques by which the forum state achieve such result. However, the results of this criteria when judged according to international law must be in conformity with the obligations to grant immunity with respect to a conduct jure Imperii of the foreign state. Typical examples are the disposition of armed forces within the jurisdiction and the exercise of legislative power over nationals resident within the state.

In the development of functionally restricted immunity the decisive step was that the criterion central to designating conduct as *jure imperii* or *jure gestionis* has shifted from the purpose of the foreign state's conduct to its intrinsic legal nature[17].

6.6 JUDICIAL INTERPRETATIONS

The problem of enforcement of contract against a foreign sovereign, its organs, constituents, state owned and state controlled enterprises has been considered in a large number of decisions of municipal courts[18]. The purport of this paper is a consideration of the judicial inquiry relating to the classic distinction between acts jure gestionis and acts *jure imperii.*

In ***Mighell* V. *Sultan of Jahore***[19], the sultan, who had been living in England Incognito, was sued for breach of promise of marriage. When he raised the question of sovereign immunity, it was held that the courts have no jurisdiction over an independent foreign sovereign, unless he submits to the jurisdiction. Further, the court held that the fact that a foreign sovereign has been residing in the country and has entered in to a contract there, under an assumed name, as if a private individual, does not amount to a submission to the jurisdiction or render him liable to be sued for breach of such contract[20].

In *Kaham V. Pakistan Federation*[21], the plaintiff entered into a contract for the supply of Sherman tanks armoured fighting vehicles with the Pakistan Government, whom he sued for breach of contract as to payment etc. The court held inter alia that no proceeding may be brought against the property of an independent sovereign state which will have the effect of impleading that state, that is, of forcing that state to take action in the English courts if it desires to protect its property. Finally it held that Pakistan can not be impleaded here without its consent and consent must be actual submission to the jurisdiction in the face of the court and addressed to the court.

In the above case, the statement of Lord Atkin in ***companía Naviera Vascogado V. S.S Cristina*** was quoted thus : "The foundation for the application to set aside the writ and arrest of the ship is to be found in two proportions of international law.........................The first is that the courts of a country will not implead a foreign sovereign, that is they will not by their process make him against his will a party to legal proceedings, whether the proceedings involve process against his power or seek to recover from him specific property or damages. The second is that they will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for commercial purposes of the sovereign or to personal private property. In this country it is in my opinion, well settled that it applies to both."[22]

It can be submitted without equivocation that there has been a shift from the above last statement of Lord Atkin.

Also in ***Thai-Europe tapioca service Ltd. V. Government of Pakistan***,[23] Lord Denning's statement is hereby stated in extenso:

"I may perhaps say that I had occasion to study sovereign immunity in *Rahimtoola V. HEH the Nizam of Hyderabad.*[24] I took more pains about it than any other case in which I have taken part. On coming back to it now, I would adhere to all I said then and in particular:

> ....sovereign immunity should not depend on whether a foreign government is impleaded, directly or indirectly, but rather on the nature of the dispute............. Is it properly cognisable by our courts or not? If the dispute brings into question, for instance, the legislative or international transactions of a foreign government, or the policy of its executive, the court should grant immunity

if asked to do so ... ... .but if the dispute concerns, for instance, the commercial transactions of a foreign government (whether carried out by its own departments or agencies or by setting up separate legal entities), and it arises properly within the territorial jurisdiction of our courts, there is no ground for granting immunity."

This test would apply to all the exceptions which I have stated. I would stress particularly the necessity that the dispute should arise properly within the territorial jurisdiction of our courts'. By this I do not mean merely that it can be brought within the rule for service out of the jurisdiction .... I mean that the dispute should be concerned with property actually situate within the jurisdiction of our courts or with commercial transactions having a most close connection with England such that, by the presence of parties or the nature of the dispute, it is more properly cognisable here than elsewhere.

But none of the exceptions applies in the present case. None of the transactions here occurred within the territorial jurisdiction of these courts. They are as far off as the moon. Here a state corporation in Pakistan agreed to buy fertilizers from a firm in Poland. They may even have bought them from a government department in Poland. The goods were shipped by a Polish concern on a vessel owned by a German company and carried to Karachi. When there, the vessel was bombed by hostile aircraft and damaged. The shipowners claimed demurrage. The state department in Pakistan has since been dissolved, but its assets and liabilities have been taken over by the Pakistan government. I can see no possible justification for these courts asking the government of Pakistan to come here to contest the claim. That sovereign has offered to let the case be decided by the courts of Pakistan. Seeing that the delay occurred at Karachi, that is a very proper forum.

In my opinion this case comes within the very first principle which I stated, that a foreign sovereign cannot be personally impleaded in our courts save within the exemptions recognised by law; and this case is within none of the exemptions.

I would therefore uphold the sovereign immunity and dismiss the appeal'.

In ***The Philippine Admiral V. Wallem Shipping Ltd.***[25] a vessel owned by the Government of the Philippines but operated by a private corporation under the terms of a conditional sale was arrested in an *in rem* proceeding in Hong Kong. Plaintiffs sought payment for supplies furnished to the vessel, reimbursement for disbursements and damages for the breach of a charter party. The Government of the Philippines made applications for orders staying the actions on grounds of sovereign immunity. In a landmark opinion by Lord Cross, the Privy Council re-examined the foundation and development of the doctrine of absolute sovereign immunity in Anglo-American and International law, the spread of the restrictive doctrine of foreign sovereign immunity in the legal literature, international conventions and the Internal laws of many nations

In the light of changed world conditions and demands of justice, the court declared that foreign sovereign immunity no longer avails in an *in rem* action against a vessel owned by a foreign government if the vessel is being used, either by the government itself or by a third party, for trading purposes.

In ***Trendtex Trading Corporation Ltd. V. Central Bank of Nigeria***[26]. In 1975, the Federal Government of Nigeria ordered a considerable quantity of cement from overseas suppliers. Payment was to be made through letters of credit established by the Central Bank of Nigeria against presentation of shipping documents to the Bank's correspondents in various countries. The letters of credit were not confirmed by the correspondent banks. When it became clear that the volume of cement arriving in Nigeria was too great for the country to handle the Nigeria Government ordered the Central Bank not to pay against further presentations of documents until certain new procedures had been put into force. Trendtex, a Swiss company, was the beneficiary of a letter of credit for an instalment contract to ship cement. Some of the installments had already been shipped but on presenting the documents for the latest shipments Trendtex was told by the correspondent bank in London that the Central Bank had countermanded its instructions to pay.

Trendtex, together with beneficiaries of other letters of credit repudiated in similar circumstances, sued the Central Bank in the High Court in England. Actions were also brought against the Central Bank in the courts of the Federal Republic of Germany and the United States by other beneficiaries: In this action Trendtex claimed the price of the shipments made, damages for non-acceptance of the balance to be shipped and in addition, sought an injunction - the English equivalent of *saisie conservatoire* to require the Central Bank to retain within the jurisdiction of the English court sufficient funds to meet the claim. In the High Court at first instance Mr. Justice Donaldson held that the Central Bank, though constituted in Nigeria law as an entity separate from the Government, was for the purpose of international law to be regarded as part of the State of Nigeria. As such it was absolutely immune, since English law drew no distinction between acts *jure imperii* and acts *jure gestionis* (State Immunity)

In 1977 Trendtex successfully appealed to the English Court of Appeal. Lord Denning, the presiding judge considered that the rules of customary international law as they exist from time to time, form part of the common law of England. Consequently a change in international law produces a corresponding change in English law notwithstanding earlier English judicial decisions to the contrary normally binding on courts in later cases. On the evidence produced on the present state of international law the judge was satisfied that the *jus imperii jus gestionis* distinction was now part of customary international law and thus part of English law, even if the cement had been required for State purposes such as the construction of army barracks. Thus even if the Central Bank were an organ of the Nigerian Government, which he doubted, it was not entitled to immunity in this case. Lord Justice Shaw held that the Central Bank was not part of the Nigerian Government and agreed with Lord Denning that even if it were, the restrictive doctrine of State immunity represented the international law rule and was thus part of the English law notwithstanding earlier English judicial decisions applying the absolute doctrine. The third judge, Lord Justice Stevenson, held that the Central bank was not part of the Nigerian Government and was thus not entitled to immunity; he did not agree with his colleagues, however, that the English doctrine of Judicial precedent could be avoided in the way they proposed.

The Central Bank appealed to the house of Lords as the ultimate judicial tribunal in the United Kingdom, but the case was settled between the parties before the appeal could be heard.

It should be observed that in applying the doctrine of restrictive immunity, Lord Denning and Lord Justice Shaw drew no distinction between immunity from suit and immunity from enforcement, notwithstanding evidence that the Central Bank funds sought to be retained by injunction were part of the overseas currency reserves of Nigeria.[27]

Another case in point is ***Arango V. Guzman Travel Advisors Corp***[28]. In that case, the plaintiffs purchased in Miami a package vacation tour in the Dominican Republic but the vacation was terminated prematurely when Dominican Immigration officials denied them entry as "undesirable aliens". The family was routed back to Miami through Puerto Rico and Haiti at their own expense. The plaintiffs then sued the travel agents, hotels and the state owned airline of the Dominican Republic, which was to provide transport and the necessary "tourist cards".

The court dismissed two counts of assault and battery against the airline based on the involuntary rerouting of the travellers on the ground that the airline was acting as an arm of the government in this role and was entitled to the same immunity as the government would be for the acts of its immigration officers. However, immunity was not recognised for the claims of breach of warranty and contract based on the non performance of the tour and the refusal to refund the purchase price.

The statutory definition of commercial activity states:

> 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[29].

Another curious area is in relation to the administration of natural resources.[30] ***In International Association of Machinists and Aerospace Workers V. Organisation of***

Petroleum Exporting Countries[31], *Consumers of oil and gasoline* sued the member states of OPEC for conspiracy to manipulate the price of Crude Oil in violation of the U.S antitrust laws. The court relied on sovereign immunity and invoked the act of state doctrine.

This much is clear, a case can certainly be made that regulation of natural resources by political authorities is not a commercial activity, particularly where the regulation is effected through the taxing power as in the OPEC situation. One can not but agree with the view that if a sovereign state makes and them breaks a contract for the sale of oil or monkeys, it should be held accountable for damages for breach of contract in any court of competent jurisdiction[32].

7.7 CONCLUSION

The development of the doctrine of sovereign Immunity has had a chequered history. It has been from absolute sovereign immunity to restrictive immunity through states practice, legal literature, international conventions and the municipal laws of nation states.

In the final analysis, it can be posited that restrictions of immunity serve judicial protection for private persons and thereby support the development of a human rights minimum standard of International procedure.

The (nonexclusive) distinction between "governmental" and "commercial" transactions sometimes employed, in this and other contexts in common law jurisdictions, has its own difficulties.

The better view, surely, is that while international law allows a measure of discretion to municipal courts or legislatures in prescribing the distinction between immune and non immune transactions, this distinction is a limited or controlled one, in the sense that municipal courts may not exercise jurisdiction in matters where immunity from local jurisdiction is required.

END NOTES AND REFERENCES

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1. See A.N. Yiannopoulus, "Foreign Sovereign Immunity and the arrest of the state owned ships: The need for an admiralty foreign sovereign Immunity Act" 1983 Tulane Law Review (vol. 57) P. 1274.

2. See Supra note 1

3. The Schooner Exchange V. M' Faddon II U.S. 116 (7 Cranch) (1812); Berizzi Bross V. S. s. Peraso 271 U.S. 1088 (1926).

4. 26 Dept State Bull (1952), New York and Cuba Mail S. S. Co. V. Republic of Korea 132 F. Sup. 684 (S.D.N.Y. 1955). Weilmann V. Chase Manhattan Bank 192 N.Y.S. 2d 469 (1959). See Zilber, "International Law – Sovereign Immunity – Seizure of property under Restrictive Immunity Doctrine", 54 Mich L. R. 1008. (1956). Metzger, "Immunity of foreign state property from attachment of Execution in the U.S.A., in 10 Neth. Y.B. Int'l L. 131, 136 (1979). For a detail discussion of the judicial decisions in the United States and in England that have made a substantial contribution to the development and formulation of the doctrine of foreign sovereign immunity as it applies to ships. See A. N. Yiannopoulus, Supra note 1 at pages 1276 – 1284.

5. Compania Naviera Vascongado V. S.S. Cristina (1938) A.C. 485, 490.

6. That a separate waiver from execution was required was established for the (cognate) law of diplomatic immunity by In Re Suarez (1917) 2 Ch. 131. Submission as a defendant was held not to amount to waiver of immunity with respect to property involved in the action. In Duff Development Co. V. Government of Kelantan (1924 A. C. 797) consent to arbitration was held not to constitute a waiver of immunity from the jurisdiction of the courts to enforce the resulting award. In Compania Navierra Vascongado V. S.S. Cristina (1938) A. C. 485, 517, Lord Maugham described the point as "not yet settled"

7. U; S. A. V. Dollfns Mieg et cie S.A. (1951) 1 All E. R. 672.

8. Egyptian Delta Rice Mills Co. V. Comisaria General De Abastecimentosy Iran Sportes de Madrid (1943) 55 Bull Leg & Jnr. Egypt 114 (1942-1943).

9. Government of Peru U.S.A. Sociedada Industia Financiera Argentina SIFAR (1958) 240 F. Corte Suprema 93, 26 ILR 195 (1963).

0. African Reinsurance Corporation. V Fantaye (1986) 2 NS CC 884.

1. P.J. Kincaid, "Sovereign Immunity of Foreign State – Owned Corporations" (1976) 10 JWTL 110, 111.

2. The Victory Transport Case (1964) 336 F 2d 354 per Smith J., at P. 360.

3. Section 3(3) of the United Kingdom's State Immunity Act of 1978. For a detailed analysis of this statute see Georges R. Delaume, "The State Immunity Act of the

United Kingdom" (1979) 7A JIL 184; See 1978 The Cambridge Law Journal 193

14. 90 Stat. 289 For further discussion see C. N. Brower, F.W. Bistline, G. W. Loomis. "The Foreign Sovereign Immunities Act of 1976 in Practice" (1979) 7 AJIL 200.
15. Blagojevic V. Banque du Japon, Clunet, vol. 103 (1976) P. 687; Lord Denning in Trendtex, ILM, Vol. 16 (1977) P. 471 at P. 485; Non-resident Petitioner V. Federal Republic of Nigeria, ILM, Vol. 16 (1977) P. 501; National American Corporation V. Central Republic of Nigeria, ILM, Vol. 16 (1977) P. 505. It should be noted that the United States Foreign Sovereign Immunities Act (Section 1611 (b) (1) and the United Kingdom State Immunity Act (Section 14 (4) contain special provisions regarding execution with respect to Central Banks and other monetary institutions. See also P. J. Kincaid op. cit. 110. tently with international law, must accord immunity to a foreign state in proceedings involving it in respect to such matters. Therefore, an assessment of the international law of immunity that ignored the context in which the question primarily arises would be of little value.
16. See Jams Crawford "Execution of judgments and Sovereign Immunity" (1981) 75 AJIL P. 820.
17. While the decisions granting immunity, such as the case of The Parlement Belge (1880) 5 P. D. 197, Porto Alexandre (1920) P.30, 89 LJP. 97, Pesaro 271 U.S. 562, 1926 were based on public purpose pursed by the foreign state, under the British and the United States Acts the legal form or nature of the conduct has as a rule become a decisive criterion for the qualification in question.
8. For a detailed analysis of some of these cases see James Crawford, Supra note 16.
9. (1894) Q.B. 149.
0. Efforts to say that a sovereign may lose his immunity and privileges by laying down his character as a sovereign and entering in to trading transactions as a private person in another country, were unsuccessful, in this case. Ibid at P. 154.
1. (1951) 2 K.B. 1003
2. Op.cit. 485 at P. 491.
3. (1975) 3 All E.R. 961, 966-967.
4. (1957) 3 All E. R. 463, 464.
5. (1976) 1 All E. R. 78.
6. (1977) 1 All E. R. 881.
7. However, the United kingdom's state immunity Act 1978, now provides in general that a foreign state shall be immune from enforcement measures, including injunctions, except in respect of property for the time being in use or intended for use for commercial purposes. But a specific amendment was introduced during the legislation's passage through Parliament to provide that property of a state's central bank shall not be regarded as used for commercial purposes whether the bank is an entity distinct from

the state or not. Thus if the facts of Trendtex were to arise again in English court, the Central bank of Nigeria would not be subject to the injunction although it would be subject to the suit.

28. 62IF. 2d 1371, 1371, 1379 (5th Cir. 1980).

29. 28 U.S.C. 1603 (d). This provision was applied properly in the case of McDonnell Douglas Corporation V. Islamic Republic of Iran 758 F. 2d 341 (8th Cir. 1985), where the court rejected Iran's claim of immunity in an action relating to a contract for the supply of parts for military aircraft. The position is that an action on a contract is based on a commercial activity even if the ultimate object of the contract is public function. Therefore a contract to purchase equipment for the armed forces and a contract for repair of an embassy building will fall into this category.

!0. See MOL. Inc V. The People's Republic of Bangladesh 736 F. 2d 1326 (9th Cir. 1984)

1. 427 F. Supp 553 (C.D. Cal. 1979).

2. Mark B. Feldman, "The United States Sovereign Immunities Act of 1976 in Perspective: A Founder's View" (1986) 35 ICLQ 302, 309-310.