

# Immunity from Execution under International Law Revisited

MATSUI Akihiro

This paper revisits immunity from execution under international law, to show international law rules on which the foreign state shall be immune from execution, and the reason why granting immunity from execution is the obligation under international law. The concern is how international law regulates the discretion of forum states to grant immunity from execution in relation to foreign state property. This paper clearly distinguishes the external restrictions on international law and domestic restrictions on international civil procedure law and shows the limitation of the state jurisdiction under international law.

First, this paper shows that the criteria of immunity from execution under international law are only the purpose of use of the targeted property, instead of the owner of the property. Immunity from execution, therefore, may be granted in relation to the property which not only foreign states itself but also foreign state enterprises and central banks own. On the other hand, we can affirm some arguments beyond the above international law rule: execution shall be possible against property which has connection with the underlying claim, or, immunity from final execution after judgment and immunity from prejudgment attachment shall be distinguished, execution is required the permission of the executive branch before final execution. However, the rules are not under international law, but international law leaves these regulations to the discretion of forum states.

Secondly, the established criteria of immunity from execution as the rule of international law are whether the purpose of use is concerned with "exercise of sovereign authority" at the time of execution. However, states are not under the obligation to grant immunity in relation to property of which the use in the "future" is for the exercise of sovereign authorities, although the tendency to grant immunity can be confirmed.

Thirdly, in recent codifications, we can confirm the insertion of provisions to grant absolute immunities in relation to bank accounts under the name of diplomatic missions and central banks, but these provisions play a complementary role when it would be difficult to make decision on immunity from execution.

Fourthly, the enforcement of arbitral awards in the forum where the property of recalcitrant states is situated is also the same international law rules on immunity from the execution of judgments rendered before domestic courts. In addition, we examine terminus ad quem of codification at the United Nations, based on the close investigations on the customary international law of immunity from execution. In conclusion, we confirm that the relation between the profit of developing countries and private rights in developed countries is the important angle to consider in the context of immunity from execution.