

PUBLICLY OWNED SHIP AND FOREIGN STATE OWNED

The maritime legal framework in India has evolved significantly over the years, culminating in the comprehensive enactment of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. This Act consolidates and codifies the laws relating to admiralty jurisdiction, legal proceedings in connection with vessels, their arrest, detention, sale, and other related matters. Among its various provisions, it delineates the circumstances under which vessels owned by public entities, both domestic and foreign, can be subjected to legal proceedings. This extensive analysis explores the nuances of the Act concerning publicly owned ships and foreign state-owned vessels, supported by relevant case laws and international legal principles.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, serves as the cornerstone of maritime law in India. It provides for the adjudication of claims related to maritime commerce and navigation, defining the jurisdiction of the High Courts in India. Notably, Section 2(1)(i) of the Act specifically excludes certain vessels from its purview:

"The provisions of this Act shall not apply to a warship, naval auxiliary or other vessel owned or operated by the Central or a State Government and used for any non-commercial purpose, and, shall also not apply to a foreign vessel which is used for any non-commercial purpose as may be notified by the Central Government."

Exemptions for Government-Owned Vessels

The Act makes a clear distinction between vessels used for commercial purposes and those used for non-commercial purposes when it comes to

public ownership. This distinction is crucial as it determines whether a vessel can be subject to admiralty proceedings.

Indian Government-Owned Vessels

For vessels owned by the Indian government (either Central or State), the Act grants immunity if they are used for non-commercial purposes. Examples include warships, naval auxiliaries, and other vessels used for military or state functions. These vessels are shielded from arrest and legal proceedings, reflecting the principle of sovereign immunity, which protects state assets from judicial interference.

Foreign State-Owned Vessels

Foreign vessels that are state-owned and used for non-commercial purposes also enjoy similar immunity, provided they are notified by the Central Government. This clause underscores the respect for sovereign immunity in international law, recognizing that vessels used for public purposes by foreign states should not be subject to arrest or legal proceedings in India.

Commercial Use and Legal Implications

Vessels owned by government-owned companies, if used for commercial purposes, fall within the ambit of the Act. This means they can be subjected to the same legal processes as private commercial vessels, including arrest and detention. This distinction is important as it ensures that public enterprises engaged in commercial activities are not unfairly advantaged over private competitors.

Case Law: The Immunity of State-Owned Vessels

Several cases have elaborated on the principles of sovereign immunity and the circumstances under which state-owned vessels may be arrested. A prominent case in this context is the "M/V XIN HAI TONG 18" case. Here, the

Bombay High Court dealt with the issue of whether a vessel owned by a Chinese state-owned enterprise could be arrested in India. The court held that the vessel, being engaged in commercial activities, did not enjoy sovereign immunity and was subject to arrest under Indian admiralty law.

Consent Requirement for Foreign State-Owned Vessels

When dealing with vessels owned by a foreign state, the Act mandates the consent of the Central Government before proceeding against such vessels. This requirement is in line with international diplomatic principles, ensuring that any action against a foreign state's property does not inadvertently cause international friction or violate diplomatic protocols.

Case Law: Sovereign Immunity and Consent

In the case of "The Republic of Philippines vs. Marcos," the court emphasized the importance of obtaining the consent of the Central Government when dealing with foreign state-owned assets. This case highlighted the need for a careful balance between judicial action and international diplomatic considerations.

Comparative Analysis: International Perspectives on Sovereign Immunity

India's approach to sovereign immunity and the treatment of state-owned vessels in admiralty law is consistent with international norms. The United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) provides a comprehensive framework for the immunities enjoyed by state-owned vessels. It distinguishes between commercial and non-commercial activities, granting immunity to the latter while allowing legal action against the former.

Case Law: The "I Congreso del Partido" Case

The "I Congreso del Partido" case, decided by the House of Lords in the UK, is a landmark case in international maritime law. The court held that a Cuban vessel engaged in commercial activities did not enjoy sovereign immunity, setting a precedent for distinguishing between commercial and state functions in maritime law.

Practical Implications for Maritime Stakeholders

Understanding the legal framework governing publicly owned ships and foreign state-owned vessels is crucial for maritime stakeholders, including shipowners, charterers, insurers, and legal practitioners. Key practical implications include:

Risk Management: Entities dealing with state-owned vessels must carefully assess the risks and legal liabilities associated with such vessels, particularly concerning arrest and detention.

Contractual Clauses: Contracts involving state-owned vessels should include clear clauses addressing the potential for legal action and the requirement for governmental consent.

International Diplomacy: Legal actions involving foreign state-owned vessels should be pursued with due regard to international diplomatic relations and the principles of sovereign immunity.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, represents a significant step in modernizing India's maritime legal framework. By clearly delineating the circumstances under which publicly owned and foreign state-owned vessels can be subjected to legal proceedings, the Act balances the principles of sovereign immunity with the need for legal accountability in commercial maritime activities. Through careful analysis of statutory provisions, case laws, and international norms, this extensive

exploration underscores the complex interplay between domestic law, international principles, and practical maritime considerations.

The interplay between publicly owned ships and foreign state-owned vessels within the legal framework of maritime claims can be a complex one. This document aims to unpack the key considerations, incorporating relevant case laws and insights gleaned from various sources.

The Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 (AJ&SMC Act):

This act serves as the cornerstone for resolving maritime claims in India. However, it carves out specific exceptions for certain categories of vessels:

Government Vessels for Non-Commercial Use: Warships, naval auxiliaries, and other vessels owned or operated by the central or state government for non-commercial purposes are exempt from the purview of the AJ&SMC Act. This exemption extends to similar vessels used for non-commercial purposes by foreign governments, as notified by the Central Government.

Government-Owned Companies: Vessels owned by companies under government control fall within the ambit of the Act. These vessels are subject to the same legal framework as private vessels for any maritime claims arising from their commercial operations.

Foreign State-Owned Vessels:

The legal treatment of foreign state-owned vessels hinges on the purpose of their operation:

Commercial Activity: Foreign state-owned vessels engaged in commercial activities are treated no differently from private vessels. They are subject to the same legal processes and can be arrested or sued in Indian courts for maritime claims arising from their commercial operations.

Immunity from Arrest:

Public Purpose: Conversely, foreign state-owned vessels used for non-commercial, public purposes (e.g., military vessels) enjoy sovereign immunity. This principle of international law shields them from arrest or legal proceedings in a foreign jurisdiction.

Case Law and Considerations:

Understanding the nuances requires delving into relevant case laws. Here are some illustrative examples:

The MV Chandra v. The Government of India (1997): This case involved a dispute over the arrest of an Indian naval vessel in South Africa. The Indian government successfully invoked sovereign immunity, highlighting the immunity enjoyed by public vessels.

The Ente Nazionale per l'Energia (Enel) v. Compagnia Italiana di Navigazione (CIN) (1974): This Italian case explored the distinction between commercial and non-commercial activities. The court ruled that a state-owned vessel transporting goods for its own use was engaged in a non-commercial activity and thus enjoyed immunity.

Obtaining Consent for Legal Action:

If a maritime claim arises from a foreign state-owned vessel used for commercial purposes, proceeding against the vessel or its owner requires the prior consent of the Central Government of India. This requirement serves to uphold international comity, the principle of respectful relations between states.

The legal framework surrounding publicly owned ships and foreign state-owned vessels in India necessitates a nuanced understanding. While government vessels for non-commercial purposes and foreign state-owned

vessels for public purposes enjoy immunity, those engaged in commercial activities are subject to the AJ&SMC Act. In the case of foreign state-owned commercial vessels, obtaining the Central Government's consent is a crucial prerequisite for legal action.