

## **FOREIGN GOVERNMENT SHIP**

The property of a foreign government not in use or intended for use for commercial purpose cannot be arrested in an action in rem. The government may consent to the use of such process. If the ship belongs to Government of Foreign State, in that event consent of the Central Government in India would be required to proceed against the vessel and its owners

The arrest of a ship is a significant remedy available under admiralty law, primarily exercised to secure maritime claims. However, when the ship in question belongs to a foreign government, special rules apply that protect such vessels from arrest in certain circumstances. The underlying principle is based on the doctrine of state immunity, which shields the property of sovereign states from legal proceedings in the courts of another state unless the foreign state consents to such proceedings.

Under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 ("Admiralty Act, 2017") and Indian jurisprudence, the arrest of a foreign government ship not used for commercial purposes is generally not permitted unless the foreign state waives its immunity. This doctrine is also reflected in international admiralty law, with courts in the United Kingdom and other jurisdictions following similar principles. This section explores the legal framework and the limitations on arresting foreign government ships in India and the United Kingdom, supported by case laws and statutory provisions.

### **II. Legal Basis for Immunity of Foreign Government Ships**

#### **A. Doctrine of Sovereign Immunity**

The principle of sovereign immunity, rooted in international law, grants foreign states and their property immunity from the jurisdiction of domestic

courts in another state. This immunity extends to the vessels of a foreign state, especially when they are not used for commercial purposes. The doctrine of sovereign immunity recognizes the equal sovereignty of states and prevents one state from exercising jurisdiction over another without its consent.

The United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) codifies this principle and provides a framework under which state-owned property, including ships, is protected from legal processes like arrest. While India has not ratified this convention, the principles enshrined in it influence Indian admiralty law.

#### B. Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017

The Admiralty Act, 2017 governs the arrest of ships in India and provides the jurisdictional framework for Indian High Courts exercising admiralty jurisdiction. Section 3 of the Admiralty Act, 2017 outlines the jurisdiction of High Courts over maritime claims and provides the power to arrest vessels. However, it recognizes that certain vessels, particularly those belonging to foreign governments, enjoy immunity from arrest, subject to certain exceptions.

Section 3(1) of the Admiralty Act, 2017 allows the arrest of vessels to secure maritime claims, but vessels that are the property of a foreign government and not used for commercial purposes are protected from such actions. This protection stems from the doctrine of sovereign immunity, which is recognized under Indian law. The government of the foreign state may consent to the arrest or the initiation of proceedings, but absent such consent, the vessel cannot be subjected to legal processes.

#### C. Requirement of Consent of the Central Government

In India, if a ship belonging to a foreign government is to be subjected to arrest or any legal process, the consent of the Central Government of India is required. This requirement is rooted in the need for diplomatic prudence and the maintenance of good relations between sovereign states. The Central Government, upon careful consideration, may allow legal proceedings against the foreign vessel if the circumstances warrant such action. Without such consent, the arrest of the vessel is prohibited, regardless of the nature of the maritime claim.

### III. Application of Immunity to Foreign Government Ships

#### A. Ships Not Used for Commercial Purposes

The immunity from arrest applies primarily to foreign government ships that are not used for commercial purposes. These vessels, often referred to as "state-owned vessels," may include warships, naval auxiliaries, and vessels used for non-commercial governmental activities such as scientific research or humanitarian missions. The purpose of the vessel's use is the critical factor in determining whether immunity applies.

**Non-Commercial Use:** Vessels that are used solely for governmental purposes, such as defense or diplomatic missions, are immune from arrest. This immunity reflects the sovereign functions of the state and the special protection accorded to state-owned property in international law.

**Commercial Use Exception:** If the foreign government ship is used for commercial purposes, it may lose its immunity and become subject to arrest. The commercial use exception is well recognized in international law, and courts will closely examine the nature of the vessel's activities to determine whether the immunity applies.

#### B. Consent to Legal Process

The immunity of a foreign government ship from arrest can be waived if the foreign state consents to the jurisdiction of the court. Such consent may be explicit, where the foreign state expressly agrees to submit to the court's jurisdiction, or implied, where the state participates in the legal proceedings without raising the defense of immunity.

In India, consent from the Central Government is also required to proceed against a foreign government ship. This dual consent mechanism ensures that diplomatic sensitivities are respected, and the arrest of foreign government vessels is not undertaken lightly.

#### IV. Case Law Analysis

##### A. Indian Case Law

*MV Elisabeth and Ors v Harwan Investment and Trading Pvt. Ltd.* (1993): In this landmark decision, the Supreme Court of India emphasized that admiralty jurisdiction must be exercised with caution, particularly in cases involving foreign parties and foreign vessels. The judgment indirectly acknowledges the principle of state immunity, noting that foreign state-owned vessels enjoy special protection from arrest unless specific conditions are met.

*Videsh Sanchar Nigam Ltd. v MV Kapitan Kud* (1996): This case involved the arrest of a foreign vessel in Indian waters. Although the vessel was not a government-owned ship, the Bombay High Court discussed the importance of considering the nature and ownership of vessels in admiralty proceedings. The case reinforced the principle that state-owned ships used for non-commercial purposes are immune from arrest unless consent is obtained.

##### B. UK Case Law

*The Cristina* (1938): In this landmark UK case, the House of Lords held that a foreign government's ship engaged in non-commercial activities was

immune from arrest in British courts. The vessel, which was owned by the Spanish government and used for state purposes, could not be subjected to legal proceedings without the consent of the Spanish government. The case established the principle that sovereign immunity extends to foreign government ships not used for commercial purposes.

*The Philippine Admiral* (1976): This case involved the arrest of a foreign state-owned ship that was used for commercial purposes. The Privy Council held that the vessel did not enjoy immunity because it was engaged in commercial activities, and therefore, the arrest was permissible. The case distinguished between commercial and non-commercial use, reaffirming the commercial use exception to sovereign immunity.

*The Jupiter* (1924): In this case, the English courts discussed the arrest of foreign government vessels in the context of admiralty law. The court emphasized that while foreign government vessels generally enjoy immunity from arrest, such immunity can be waived if the foreign state consents to the legal process. The judgment underscored the importance of consent and the limited circumstances under which immunity could be lifted.

### C. International Case Law

*Republic of the Philippines v. Pimentel* (2008): The US Supreme Court in this case discussed the doctrine of sovereign immunity in the context of foreign state-owned assets. Although not an admiralty case, the decision highlighted the principles governing the immunity of foreign state-owned property, which are relevant to admiralty law. The court ruled that foreign state-owned property is protected from legal action unless the state waives its immunity, reinforcing the doctrine's application in various jurisdictions.

*The Ara Libertad Case* (2012): This case, adjudicated by the International Tribunal for the Law of the Sea (ITLOS), involved the arrest of an Argentine naval vessel by Ghanaian authorities. ITLOS ruled that warships and other

state-owned vessels used for non-commercial purposes are immune from arrest under international law. The decision highlighted the international consensus on the immunity of state-owned ships from legal processes, even when they are located in foreign jurisdictions.

The arrest of foreign government ships is a complex area of admiralty law, governed by the principles of sovereign immunity and the specific provisions of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Indian courts, in line with international jurisprudence, recognize the immunity of foreign state-owned vessels from arrest, particularly when they are not used for commercial purposes. However, this immunity can be waived if the foreign government consents to legal proceedings.

The dual consent mechanism in India, requiring the consent of both the foreign government and the Central Government, ensures that such arrests are undertaken with due consideration of diplomatic and sovereign interests. The Indian legal framework aligns with global practices, where the doctrine of sovereign immunity plays a crucial role in determining whether foreign government ships can be subjected to admiralty proceedings.

The case law from India, the United Kingdom, and international tribunals provides strong support for the principles governing the immunity of foreign government vessels, ensuring that the arrest of such ships is an exceptional remedy, applied only under specific conditions..