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Banking by Richard Freeman

Will the Immunities Act be used?

An act that will change the meaning of national sovereignty—particularly of developing-sector nations—may be called into play by the U.S. Treasury, which will use the Iran crisis as its "legal" precedent.

The U.S. Treasury admitted last week that it is prepared, in the wake of the Iran crisis, to use the little-known Foreign Sovereign Immunities Act of 1976 to seize assets of any Third World nation that defaults on U.S. bank loans.

The French daily *Le Monde* noted Nov. 16 that whether or not the international financial system undergoes collapse because of the American measures [freezing Iran's assets], the most far-reaching consequence of these measures is the change in the meaning of national sovereignty.

U.S. Treasury General Counsel Santos told a reporter Nov. 22 that "the U.S. Treasury is very aware of the Foreign Sovereign Immunities Act. With respect to possible Third World debt defaults we are monitoring the Third World debt picture in coordination with the World Bank and the International Monetary Fund. While we see no reason to apply the act now, we are very sensitive to Third World debt problems."

In case of a debt default, under the terms of the act, a government could lose its monetary reserves held in the United States or London, various types of physical property, and its merchant vessels.

The chief beneficiary of the act is the International Monetary Fund whose austerity "conditionalities" depend on abrogating the national sovereignty of Third World governments. In this respect, the U.S. government would be acting as an IMF surrogate.

Under the act, all cases arising from commercial activity, including international loans, will be decided by U.S. courts. A foreign government is no longer immune from such prosecution, which for the most part, has been previously litigated under international law.

The act states that a foreign government, or "one of its subdivisions or instrumentalities" is liable under U.S. jurisdiction to seizure of its assets. This clause is invocable under conditions involving: a) "commercial activity"; b) "the violation of international law in which property is taken"; and/or c) a Third World government is induced to give a "waiver of immunity either explicitly or by implication."

The background of the Act shows that the people who authored it anticipated its use under crisis conditions. The first source working on the draft for the law, according to knowledgable sources, was Reed Ryan, a senior partner for the firm of Shearman and Sterling. Shearman and Stirling is the law firm now involved in deciding the legalities of the Iranian debt default. It is also the law firm of Citibank, one of the first banks to declare Iran in default. The other chief formulator of the act, again according to knowledgable sources, is Cyrus Vance, who in 1976 was a partner in the law firm of Simpson, Thatcher, Bartlett.

The act was signed into law by President Gerald Ford on Oct. 21, 1976, after quietly passing through the Congress.

The act specifies that "under international law states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned and their commerical property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the states in conformity with the principles set forth in this chapter."

Any countries not willing to negotiate loans under the jurisdiction of this act, as in the current case of Venezuela, are denied loans. The government of Venezuela three weeks ago demanded that $1.4 billion in new loans be booked under Venezuelan jurisdiction, and the lead New York and City of London banks have thus far halted the loans.

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