

## Summary

### State Enterprises in International Law

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## I. General Remarks

### A. Historic and functional aspects

State enterprises with activities transcending national boundaries may be observed — like (private) transnational corporations — relatively early in modern history; they are, however, to be distinguished from the latter by their objects and purposes: the „social principle“ (Lorenz von Stein) and the possibility to assume State's functions as regards foreign policy; e.g. the colonial companies of the past; within the frame-work of the so-called New International Economic Order state enterprises are attractive for the majority of the developing countries, and are even the pre-requisite for the establishment of such an order; since not only socialist countries but also western industrialized states make use of the device „state enterprise“ in their foreign policy, in particular in its economic branch, such enterprises play more and more a role also in international law.

### B. Notion, international terminology and characteristics vis-à-vis private enterprises

State enterprises are entities wholly or predominantly owned or controlled by a State or its constituent sub-divisions; legal form and terminology vary from State to State; they possess, in contrast to private enterprises, a potential dual function: they may, on the one hand, act in a foreign country like a private entity, thus being governed by the rules of the law of aliens; on the other hand, they may — openly or concealed — act as instrumentality of a foreign State; in that case, their legal position is different; very often, their factual situation, e.g. in cases of nationalization has been better compared to that of private investors; within the frame-work of the UN Commission on Transnational Corporations, the status of state enterprises remains, however, unsolved.

## C. Methods of state enterprises' international activities

### *1. The state enterprise acts in the territory of another State*

Without special arrangement with the host State, the general rules of the international law of aliens are applicable; special arrangements, in particular concession agreements, may grant the state enterprise a special status; if they contain internationalization clauses, which would confer upon private investors a restricted international legal personality, the same status would, *a minori ad maius*, be granted to foreign state enterprises.

### *2. The state enterprise acts in the territory of its home State and enters into contractual relationships with a foreign State or with foreign nationals*

In particular in the oil industry two major structures of state enterprises are noticeable: the joint stock company and the public corporation; in the latter case, it acts as an organ of its home State in most cases.

## II. Special Legal Problems

### A. The Problem of State Immunity

In spite of recent developments (European Convention 1972, US Foreign Sovereign Immunities Act of 1976, UK State Immunity Act 1978 and the Canadian State Immunity Act of 1982) which show the trend towards a restrictive theory of State immunity, no firm rules of international law are yet established in this respect.

### B. The Problem of State Responsibility

Since state enterprises, in contrast to private firms, may act as instrumentalities of their States „in the back“, their acts may be imputable to the latter; although the legal form, in establishing this imputability, is of great importance, the factual circumstances (control of management by the government, etc.) must also be taken into account.

### C. The Problem of the Settlement of Disputes

Similar to the inter-State relationships, third party settlement procedures, such as international arbitration, are only reluctantly accepted in cases in which a state enterprise is involved.

### III. Conclusions

State enterprises are in our days a common phenomenon, for which, however, international law is in the status of infancy; although — as in the case of State immunity — a general trend and a common conviction may be noticed, international law, due to the lack of a common political will, has still a far way to go to regulate this issue.