Title:
ICC Award No. 2321, YCA 1976, at 133 et seq. (also published in: Clunet 1975, at 938 et seq.)

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4. PRELIMINARY AWARD MADE IN CASE NO. 2321 IN 1974

A. Appointment of arbitrator - Plea of State immunity

The arbitrator was sitting in Sweden in a dispute between two enterprises as claimants and, as defendants a State other than their own and a public authority of this latter state. The action against the State was based on the fact that it had in the contract guaranteed the commercial transaction entered into by the public authority. Before going into the merits of the case, the arbitrator was called upon to decide two points of a procedural nature raised by the defendants.

[...]

B. Jurisdiction of the Arbitrator

[...]

As this argument to some extent is connected with another argument advanced by the defendants, namely that the question of immunity concerns the legal status of a State, I will, however, consider both these arguments at the same time.

I must admit that I have found some difficulties to follow a line of reasoning that a State, just because of its supreme position and qualities, should be unable to give a binding promise. The principle of *pacta sunt servanda* is generally acknowledged in international law and it is difficult to see any reason why it should not apply here. A sovereign State must be sovereign enough to make a binding promise both under international law and municipal law. As to the latter aspect of the question I was informed by the Counsel of the First Defendant that according to both . . . . and English law the capacity of the State to enter into arbitration clauses was not restricted as such and that also the State could be sued in its own courts. To require or assume then that a promise of a State to submit to arbitration, in order to be binding has to be confirmed in the face of the arbitrator, would probably impair the sovereignty of a State and its dignity more than the arbitrator's performance of his task, conferred upon him in accordance with what the parties once have agreed upon.

[...]

Referring Principles:

| IV.1.2 - Sanctity of contracts |
IV.2.3 - No repudiation of contractual consent by state party