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The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to invite their attention to a recent decision of the United States Supreme Court concerning the immunities of foreign states from the jurisdiction of courts in the United States.

The Foreign Sovereign Immunities Act (“FSIA”), enacted in 1976, is a federal statute that provides specific and limited exceptions to sovereign immunity. One exception is that a foreign state is not immune from a court’s jurisdiction in a lawsuit in which “rights in immovable property situated in the United States are in issue.” (28 U.S. C. §1605(a)(4)). On June 14, 2007, the Supreme Court interpreted this exception to mean that courts in the United States have jurisdiction over a lawsuit to establish the validity of a tax lien on real property owned by a foreign sovereign. The Court concluded that this interpretation was consistent with international practice when the FSIA was enacted. The decision is available at <http://www.supremecourtus.gov/opinions/06pdf/06-134.pdf>.

The Supreme Court decision concerned only immunity from jurisdiction. The decision did not address the merits of the underlying question, which is whether property taxes are owed on the real properties at issue. That tax question may now be addressed by the federal district court.

The Secretary reiterates the Department of State's previous guidance that, under the FSIA, decisions on sovereign immunity are made exclusively by the courts. In the event a lawsuit is filed against a foreign state in a court in the United States, the foreign state should retain private counsel and address jurisdictional and other defenses, including claims of sovereign immunity, to the court. It is the responsibility of the foreign state, together with its legal counsel, to assert immunity or otherwise to defend the action in court.

Department of State,

Washington,

June 28, 2007

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