

Sovereign Immunity Or The Rule Of Law New

Goliath, an oversized Doberman pinscher, and his owner working on construction need to find a place to live in Long Island. This would not be an easy task considering the dog's fierce and vicious appearance, not too many people were willing to rent their apartments out to a man with a dog like that. Throughout their journey the pair meet different people who all had the same answer-no. Finally, a ray of hope was found in a little Puerto Rican lady from suburban Port Jefferson, Long Island who agrees to take Goliath in also in exchange for some help on her aging house that was in dire need of repair. With their newly found ray of hope, they knew little of the never ending, twisting, and turning road into a deeper madness awaiting them.

James Cooper-Hill is one of a very few lawyers to have conducted successful litigation against terrorist nations on behalf of victims of international terrorism. When his friend became the first hostage held in Baghdad during the 1992 Persian Gulf War, he became engaged in litigation against three terrorist nations: Iraq, Libya, and Sudan. Of the three judgements against Iraq that have been paid to date, two of them are cases in which Cooper-Hill represented the plaintiff. This path-breaking treatise explores the many stages involved when trying to thwart sovereign immunity and obtain damages against terrorist nations. Topics covered include pre-statutory U.S. administrative procedure, pre-1976 statutory exemptions, due process requirements, and collateral international terrorism law. Extensive appendices include the key laws and acts on sovereign immunity and compensation for victims of terrorist acts.

'Evidence and Burden of Proof in Foreign Sovereign Immunity Litigation: A Procedural Guide for International Lawyers and Government Counsel' (3rd Revised Edition, 2017) is the first specialized and practically useful analysis of the evidence problems and the burden of proof in matters of foreign sovereign immunity litigation, both regarding jurisdictional immunities and immunity from execution. The monograph is a comparative law analysis that spans six of the seven existing national statutes on foreign sovereign immunity, starting with the United States' Foreign Sovereign Immunities Act, 1976, to the Canadian State Immunity Act, 1982. The study concludes in demonstrating two distinct rules of the burden of proof, for each kind of immunity; the rules are widely uniform, and were corroborated by case law and scholarly opinion in all of the examined jurisdictions. They can be said to form today rules of international law. The monograph is of high practical value for litigation lawyers and government counsel struggling with evidence problems regarding foreign sovereign immunity. It can be taken as a reference guide for solving the evidence problems in those trials, and as such is a precious asset in any international law library. The only titles that in scope, depth and size can be compared with the present study are already quite out of date, and they have, if ever, only randomly dealt with the specific procedural problems of evidence and the burden of proof in international sovereign immunity litigation.

Sovereign Immunity

State Immunity and the Violation of Human Rights

State Immunity

Sovereign Immunity and the Protection of Intellectual Property

A Lawyer's Manual on Evidence and Burden of Proof for Every Phase of the Trial

The author shows through a careful analysis of the law that restrictive immunity does not have vox populi in developing countries, and that it lacks usus. He also argues that forum law, i.e. the lex fori is a creature of sovereignty and between equals before the law, only what is understood and acknowledged as law among states must be applied in as much as the international legal system is horizontal.

The doctrine of state immunity bars a national court from adjudicating or enforcing claims against foreign states. This doctrine, the foundation for high-profile national and international decisions such as those in the Pinochet case and the Arrest Warrant cases, has always been controversial. The reasons for the controversy are many and varied. Some argue that state immunity paves the way for state violations of human rights. Others argue that the customary basis for the doctrine is not a sufficient basis for regulation and that codification is the way forward. Furthermore, it can be argued that even when judgments are made in national courts against other states, the doctrine makes enforcement of these decisions impossible. This fully restructured new edition provides a detailed analysis of these issues in a more clear and accessible manner. It provides a nuanced assessment of the development of the doctrine of state immunity, including a general comprehensive overview of the plea of immunity of a foreign state, its characteristics, and its operation as a bar to proceedings in national courts of another state. It includes a coherent history and justification of the plea of state immunity, demonstrating its development from the absolute to the restrictive phase, arguing that state immunity can now be seen to be developing into a third phase which uses immunity allocate adjudicative and enforcement jurisdictions between the foreign and the territorial states. The United Nations Convention on Jurisdictional Immunities of states and their Property is thoroughly assessed. Through a detailed examination of the sources of law and of English and US case law, and a comparative analysis of other types of immunity, the authors explore both the law as it stands, and what it could and should be in years to come.

Xiaodong Yang examines the issue of jurisdictional immunities of States and their property in foreign domestic courts.

Sovereign--governmental Immunity

The Immunity of States and Their Officials in International Criminal Law and International Human Rights Law

A Study Relating to Sovereign Immunity

United States Law of Sovereign Immunity Relating to International Financial Transactions

Personal Liability of Public Officials, Sovereign Immunity, and Compensation for Loss

Foreign State Immunity and Arbitration

Ours is a world in which the volume of the external trade of the vast majority of nations has greatly expanded and continues to be on the rise. Transnational intercourse of all kinds is now a feature of an interdependent world economy in which no nation can afford to stand aloof from a market-place which has assumed global dimensions. It is also a world where many nations, and not only of the Socialist bloc, conduct some of their transnational business themselves, or else they entrust it to state-owned corporations and to agencies of the state. In these circumstances it becomes of prime importance to know whether a foreign state or an agency or instrumentality thereof can be sued before the local courts and, if so, whether the final

judgement obtained can be enforced against the funds or property of the judgement debtor. The question of the immunity of states from suit and from execution is thus one of direct practical relevance not only to the legal profession but also to governments and the business and banking communities all over the world. The economic effects of a particular legal stand on state immunity are obvious. The position of national courts on state immunity can either attract more business or discourage further dealings with foreign states or their agencies. It can thus affect the balance of payments and, in general, the role the country plays in the world market. 'Evidence and Burden of Proof in Foreign Sovereign Immunity Litigation' is the first specialized and practically useful analysis of the evidence problems and the burden of proof in matters of foreign sovereign immunity litigation, both regarding jurisdictional immunities and immunity from execution. The monograph is a comparative law analysis that spans six of the seven existing national statutes on foreign sovereign immunity, starting with the United States' Foreign Sovereign Immunities Act, 1976, to the Canadian State Immunity Act, 1982. The study concludes in demonstrating two distinct rules of the burden of proof, for each kind of immunity; the rules are widely uniform, and were corroborated by case law and scholarly opinion in all of the examined jurisdictions. They can be said to form today rules of international law. The monograph is of high practical value for litigation lawyers and government counsel struggling with evidence problems regarding foreign sovereign immunity. It can be taken as a reference guide for solving the evidence problems in those trials, and as such is a precious asset in any international law library. The only titles that in scope, depth and size can be compared with the present study are already quite out of date, and they have, if ever, only randomly dealt with the specific procedural problems of evidence and the burden of proof in international sovereign immunity litigation.

While sovereign immunity has increasingly been set-aside in international criminal proceedings, it continues to block most cases of civil lawsuits based upon the same circumstances. The main explanation given by judges for this decision is that a wide consensus supporting an exception to the sovereign immunity rule, based on violation of human rights, cannot be found. This work argues against the above claim. It's main object is to exposes the reasons judges give for their reluctance to adjudicate human rights claims as unconvincing. Through the analysis of the structure of sovereign immunity, it becomes very clear that the current outlook prevents a new exception from emerging. Not only do judges look at the concept in a way that fits their aim; they also base their claim on outdated arguments. By suggesting a different view of the situation, the book complicates the argument against using state immunity to bar jus cogens actions, opening the door to further considerations and future developments. Hence, it should be especially useful to international lawyers, human rights advocates or anyone interested in the situation of human rights.

The Law of State Immunity

State Immunities and Trading Activities in International Law

Evidence and Burden of Proof in Foreign Sovereign Immunity Litigation

You are Being Betrayed by the U.S. Government

A Report on Sovereign Immunity

Crs Report for Congress

With the rise of globalization, the contracts between private parties and foreign governments have inevitably increased cross-border legal disputes, making the FSIA a significant component of U.S. international dispute resolution practice. Foreign sovereign immunity issues are important to today's topical issues including the world-wide oil and natural gas industry, and the financial services industry.

This title is a comprehensive treatment of the development of international human rights law, international criminal law and international immunities, and asks whether states and their officials can shield themselves from foreign jurisdiction by invoking international immunity rules when human rights issues are involved.

This book offers a critical analysis of current challenges and developments of the State immunity regime through three dimensions: it looks at State immunity from a comparative perspective; it discusses the major trends relating to the interplay between State immunity and the protection of human rights as well as counter-terrorism; and it examines the relationship between State immunity and the financial obligations of States. Part I, Sovereign Immunity from a Comparative Perspective: Weak v. Strong Immunity Regimes, deals with the diversity of existing regimes of State immunity at the national level. This part aims to explore different approaches of particular states to sovereign immunity and their general attitude to international law, and attempts to understand why some States favour a weaker State immunity regime by multiplying exceptions or interpreting them broadly, while others continuously support a stronger one and sometimes rely on the doctrine of absolute immunity. Part II, International Customary Law of Sovereign Immunity, Human Rights and Counter-Terrorism, highlights how human rights and counter-terrorism have shaped the law and practice of sovereign immunity. This part specifically discusses the role of national legislators and judges in the development of international law, emerging conflicts between national constitutional norms and the rules of international law concerning State immunity and human rights, and possible ways of their reconciliation. Part III, Sovereign Immunity of States and their Financial Obligations, contributes to on-going debates related to the mixed and complex nature of States' financial obligations. In this part, authors elaborate on perceptions of the underlying public-private law divide, cross influences in public and private international law and their consequences for State immunity, as well as recent trends relating to immunity from execution.--

Differing Perceptions? Market Practice and the Evolution of Foreign Sovereign Immunity

Can the Sovereign Immunity Rule be Curtailed?

The State Immunity Controversy in International Law

The American Law of Sovereign Immunity

The Law of Sovereign Immunity and Terrorism

Hearing Before the Committee on Indian Affairs, United States Senate, One Hundred Fifth Congress, Second Session : Oversight Hearing to Provide for Indian Legal Reform

Pierre F. Walter presents a comparative law analysis that spans two of the seven existing national statutes on foreign sovereign immunity, the United States' Foreign Sovereign Immunities Act, 1976, and the Canadian State Immunity Act, 1982. The study concludes in demonstrating two distinct rules of the burden of proof, for each kind of immunity; the rules are widely uniform, and were corroborated by case law and scholarly opinion in both of the examined jurisdictions. In addition, they can be said to form today rules of international law. The monograph is of high practical importance for international lawyers and government counsel in both the United States and Canada. It can be taken as a reference guide for foreign sovereign immunity litigation in these important jurisdictions. Pierre F. Walter shows in this study that solid knowledge of procedural rules and the law of evidence in sovereign immunity litigation is often the basis of winning a case. While this is generally so, it is of even more importance in the highly complex trials that involve foreign sovereign immunity. The law firm stands out that can anticipate the judge's assessment of the burden of proof situation in every phase of the trial, thereby reducing cost for the client and substantially shifting probability up for winning the case.

"Sovereign Immunity or the Rule of Law suggests a fresh look at the doctrine of sovereign immunity through the lens of political philosophers whose writings were well known to the people who framed and ratified the United States Constitution. Some of those philosophers espoused theories of sovereignty that logically compelled sovereign immunity. John Locke, the philosopher upon whom the former colonists predominantly relied, espoused a theory of sovereignty that, by contrast, cannot tolerate the idea of sovereign immunity - a government not answerable to its own laws or to the instrument that gave it life. Donald L. Doernberg argues that the United States Constitution exists for no purpose other than to restrain government power, and that to declare the government immune from accountability under it is a profanation of our political and philosophical history."--BOOK JACKET.

This article examines the state sovereign immunity rule in the context of a rising number of sovereign wealth funds and their ever-increasing value of cross-border commercial activities in the aftermath of the latest global financial crisis. The concept of sovereignty and the rule of sovereignty remain in a state of flux while new actors such as sovereign wealth funds are participating in global commercial activities in a nontransparent and politically motivated manner. Accordingly, states may pursue strategic foreign policy objectives through these newer investment arms in an unconventional way, thereby being deeply involved in the political-economic arena and distorting the existing concepts of international law. This article posits that there is an international law black hole in which sovereign wealth funds have come to engage in commercial activities as well as exercise the public functions traditionally associated with states (acts jure imperii). The doctrine of restrictive immunity has come into question and the bulk of local court decisions have offered little clear guidance. Against this backdrop three interconnected perspectives are then discussed with reference to emerging economies like China: the immunity rule, the principle of sovereignty, and the balance of power in globalization.

State Immunity in International Law

State Immunity and Cultural Objects on Loan

An Analysis of Legal Interpretation

Report of the Attorney General's Task Force on Sovereign Immunity

Sovereign Immunity Or the Rule of Law

State Sovereign Immunity

The 20th century witnessed a transformative, "tectonic" shift in international law, from "absolute" to "restrictive" theories of sovereign immunity. As conventionally understood, however, this dramatic transformation represented only a shift in the default rule. Under absolute immunity, national courts could not hear lawsuits and enforce judgments against a foreign sovereign without its consent. Under restrictive immunity, foreign sovereigns were presumptively not immune when they engaged in commercial acts. We demonstrate that market practices undermine this conventional understanding. Using an extensive, two-century data set of contracts between foreign governments and private creditors, we show that contracting parties have long treated absolute immunity as akin to a mandatory rule, which they could not reliably change by contract. By contrast, we show that the Foreign Sovereign Immunities Act in the U.S. and the State Immunities Act 1978 in the U.K. -- two statutes largely overlooked by international law scholarship -- fundamentally reordered a global market for contracts. We explore why the conventional narrative, which relies on analysis of traditional legal materials, is at such odds with the "law on the ground."

In *State Immunity and Arbitration* the author explores the limits of the concept of State Immunity as it relates to both jurisdiction and execution against state property in arbitration cases. The current scope of state immunity from jurisdiction is examined with reference to legislative and jurisprudential developments in the US and UK where the author finds evidence of a definite shift away from the traditional restrictive theory of state immunity. A similar survey of state practice relating to waiver, both express and implied, of immunity from jurisdiction and the relevant rules of arbitration institutions such as the ICC also illustrate a trend towards shrinking immunity.

The field of international human rights has been one of the most prominent and dynamic areas of public international law in recent decades. At the same time the law of state immunity, albeit less prominent, has also been subjected to a process of dynamic change. The principle of

absolute immunity of states from the adjudicatory jurisdiction of foreign states has been replaced by a restrictive concept under which foreign states can be sued under certain circumstances. The violation of fundamental human rights by foreign states is, however, still widely regarded as immunity-protected conduct, be it because such violations must be considered as governmental acts (*acta jure imperii*) or because the violations were committed outside the territory of the foreign state. Consequently, it is often impossible for the victim of such violations to bring damage proceedings against the foreign state based on municipal (tort) law in a municipal court. The present study attempts to demonstrate that international law does not per se demand that foreign states be granted immunity in such cases. The current state of international immunity law as evidenced by state practice and the work of several international learned bodies is surveyed extensively. It is shown that the granting of immunity may contradict the procedural guarantees of the European Convention of Human Rights. The impact of human rights law on the traditional concept of diplomatic protection is described. The study concludes that a further restriction of the immunity privilege is necessary, and criteria are offered to distinguish between violations of human rights which should remain immunity-protected and violations where the interest of the perpetrating state to remain immune from foreign jurisdiction must yield to the interest of the injured individual to obtain adequate redress.

JASTA

Policy Research Study

The International Law of Sovereign Immunity

The Foreign Sovereign Immunities Act Deskbook

A Reference Guide to the United States Constitution

Sovereign Immunity and Human Rights

This is the most thorough and up-to-date treatment of the Eleventh Amendment's guarantee of state sovereign immunity. Beginning with an extensive history of the Amendment and its ratification, Durchslag then provides a chronological discussion of the development of its jurisprudence from 1793-1890. The developments of various doctrinal components are then traced topically, along with suggestions as to how they may evolve. The work concludes with an erudite bibliographic essay to guide the reader to relevant primary and secondary works; it is fully indexed.

The Eleventh Amendment to the U.S. Constitution provides that "[t]he Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Although the amendment appears to be focused on preventing suits against a state by non-residents in federal courts, the U.S. Supreme Court has expanded the concept of state sovereign immunity to reach much further than the literal text of the amendment, to include immunity from suits by the states' own citizens and immunity from suits under federal law within a state's own court system. As a result of two landmark Supreme Court decisions in 1999, *Florida Prepaid* and *College Savings Bank*, the Eleventh Amendment currently bars an individual from successfully seeking damages from a state for violations of federal intellectual property laws unless the state clearly consents to being sued through waiver, or Congress legitimately abrogates state sovereign immunity. Valid waiver exists only where a state has clearly submitted itself to federal jurisdiction. Courts have interpreted this rule to validate waiver in several scenarios: where a state voluntarily ...

Sovereign Immunity Or the Rule of Law The New Federalism's Choice

Twilight for the Strict Construction of Waivers of Federal Sovereign Immunity

Recommendation Relating to Sovereign Immunity

Infringement of Intellectual Property Rights and State Sovereign Immunity

The Eleventh Amendment and Sovereign Immunity

Norms, Values and Interests

Hearing Before the Committee on the Judiciary, United States Senate, One Hundred Seventh Congress, Second Session, February 27, 2002

The Government of the United States has long benefited from two canons of statutory construction that tip the scales of justice in its direction in civil litigation by those seeking redress of harm by that government: First, the federal government's consent to be sued must be expressed through unequivocal statutory text. Second, even when a statute explicitly waives federal sovereign immunity on a particular subject matter, the traditional rule has been that the terms of that statute "must be construed strictly in favor of the sovereign." The restrictive effect of these rules has made a distinct difference in cases that truly matter to the lives and well-being of ordinary people. Since the dawn of the new century, however, the Supreme Court's increasingly common encounters with waivers of federal sovereign immunity are also becoming more conventional in interpretive attitude. During the first eleven years of the twenty-first century, the Court turned a deaf ear to the government's plea for special solicitude in the substantial majority of instances and frequently declared that the canon of strict construction was unhelpful or ill-suited. In four sovereign immunity cases decided in the 2012 Term, the Court continued to evidence a commitment to text, context, and legislative history, unblemished by any pressure for narrow construction. Notably during oral arguments in this most recent term, multiple members of the Court openly challenged the government's reach for broader immunity. In these recent decisions, the Court increasingly accepts a dichotomy between the question of whether sovereign immunity has been waived (requiring a "clear statement" by Congress) and the inquiry into how a statutory waiver should be interpreted in application (with the canon of strict construction fading away as a viable tool for statutory interpretation).

This study examines whether there is any rule of (customary) international law stipulating that cultural objects belonging to foreign States that are on loan for temporary exhibition are immune from seizure, or whether such a rule is emerging.

An Analytical and Prognostic View

Sovereign Immunity Litigation in the United States and Canada

Private Suits Against Sovereign States in Domestic Courts

A Study of the Past and Present Theory and Law of the Immunity of Governments from Liability for Torts

The New Federalism's Choice

The Tort Liability of Government and Its Officials