Contents

1		
	1.1 Source Analysis	
	1.2 Jean Bodin's Philosophy on Sovereignty	
	1.4 The Influence of the Philosophy of Thomas Hobbes	
	1.5 Claims and Counter Claims	
	1.6 Final Remarks	
2	The Development of Sovereign Immunity	
	2.1 France before American Courts and its Aftereffects	
	2.2 Justice Marshall and his Ground Breaking Rule	
	2.3 Analysis of Chief Justice Marshall's Thesis	
	2.4 The Influence of Justice Marshall's Decision	
	2.5 The Influence of Justice Marshall's Judgment on English Courts	
	2.5.1 English Courts and the Sovereign Immunity Question	
	2.6 Civil Law Countries and Sovereign Immunity	
	2.7 Russia and the Sovereign Immunity Question	
	2.8 Is Sovereign Immunity an International Custom?	
	2.8.1 A Controversy	28
3	The Privileges and Immunities of States	33
	3.1 General Observations	33
	3.2 The Rational Foundation of State Immunity	37
	3.3 Diplomatic Immunities and State Sovereignty	40
	3.4 Comity of Nations, Reciprocity and Peaceful Coexistence	
	3.5 The Equality of States in the Sphere of International Law	
	3.6 Beneficiaries of State Immunities	
	3.6.1 State Immunity – Claims in English Courts	
	3.6.2 State Immunity in American Courts	
	3.6.3 State Immunity and the Mixed Courts of Egypt	
	3.6.4 State Immunity before South African Courts	
	3.6.5 State Immunity in British Commonwealth States	66
4	Restrictive Immunity in U.S. and U.K. Courts	69
	4.1 A Move Towards a New Rule	69
	4.2 Background	
	4.3 Early Practice in Belgium and Italian Courts	70
	4.4 A Move Towards Restrictive Immunity	72

	4.5 Restrictive Immunity and its Implication	74
	4.6 The Change of Heart in American Practice	77
	4.7 Sovereign Immunity Act of 1976: Current U.S. Law	78
	4.8 Jurisdiction of the Federal Courts	79
	4.9 Issues with Respect to Commencement of Action	
	4.10 Commercial Activity under FSIA	80
	4.11 Contacts and Direct Effect Approach	81
	4.12 Arbitration Clauses	
	4.12.1 Expropriation Claims	
	4.12.2 Non-Commercial Torts	
	4.12.3 Counterclaims	
	4.12.4 Attachment and Execution	
	4.13 The Change of Heart in British Practice	
	4.13.1 The State Immunity Act of the United Kingdom (1978)	
	4.13.2 Exceptions to Immunity Under the 1978 Act	
	4.13.3 Indirect Impleading	90
	4.13.4 Waivers of Immunity and Counterclaims	91
	4.13.5 Execution	
	4.13.6 Miscellaneous Considerations	
	4.14 Difficulties in Applying Restrictive Immunity	
	4.14.1 Difficulties Associated with Political Acts of State	
	4.14.2 Thoughts on Nationalization and Restrictive Immunity	97
5	Private Suits Against African Countries in Foreign Courts	101
	5.1 Preliminary Observations	
	5.2 Evidence of Resistance to the Restrictive Rule	
	5.3 Nigeria before English Courts	
	5.3.1 Trendtex Trading Corp v. Central Bank of Nigeria	
	5.3.2 Nigeria before German Courts	109
	5.3.3 Nigeria before American Courts: Part One	111
	5.3.4 Nigeria before American Courts: Part Two	
	5.4 Uganda before English Courts	
	5.5 Egypt before Indian Courts	
	5.6 United Arab Republic before American Courts	
	5.7 Tunisia before United States Courts	
	5.8 Zaire before English Courts	
	5.9 Somali Democratic Republic before American Courts	
	5.10 Libya before American Courts	
	5.11 The People's Republic of the Congo before Canadian Courts	
	5.12 Arbitration, Default Judgment and Enforcement	
	5.12.1 Nigeria before Switzerland and American Courts	
	5.12.2 Tanzania before American Courts	
	5.12.3 The Republic of Guinea before American Courts	
	5.12.4 Is Resistance by African States Legally Justified?	
-	, , , , , , , , , , , , , , , , , , , ,	
)	African States and the Practice of State Immunity	
	our is it sufficient state immunity or Restrictive immunity?	1 5 5

	6.2 Pre-Colonial Africa and Early African Dynasties	133
	6.2.1 Some Concrete Examples of Personal Sovereigns	134
	6.3 The Colonial Era	137
	6.4 English Sovereign Immunity Law in Africa States	141
	6.5 French Sovereign Immunity Law in African States	148
	6.6 Africa, Self-Determination and International Law	150
	6.7 Reflections on State Practice and Its Implications	153
	6.7.1 What Do We Mean by State Practice?	154
	6.7.2 Municipal Courts and Legal Arguments of a Defendant State	156
	6.7.3 Summary of Rules	159
	6.8 Custom and the Concept of Persistent Objector	160
	6.8.1 Are African States Bound by Restrictive Immunity?	161
	6.9 Some Thoughts on the Persistent Objector Rule	165
	6.10 The Position of African States on State Immunity	168
	6.11 Preceding Observations and Conclusions	171
7	The IV C Description of States	175
1	The ILC Report on Jurisdictional Immunities of States	175
	7.1 Composition of the International Law Commission	
	7.3 Specific Exceptions to Immunity of States	
	7.3.1 Commercial Elements and Jurisdictional Competence	
	7.3.1 Commercial Elements and Jurisdictional Competence	
	7.5 Execution against a Foreign State	
	7.6 Personal Injury or Damage to Property	
	7.7 Effects of Draft Article 2.2 on Restrictive Immunity	
	7.8 Third World Influence on the ILC Deliberations	
	7.8.1 Disagreement Over the Draft Articles	
	7.8.1 Disagreement Over the Dian Articles	
	•	
8	State Immunity and Certain Unresolved Problems	209
	8.1 Some Lingering Problems	209
	8.2 The Problems of Territorial Nexus or Connection	
	8.3 Problems of the Nature and Purpose Tests	
	8.4 Mixed Activities of States Involving Private Traders	
	8.5 The Continuing Problems of Arbitration	
	8.6 Central Banks and Certain Unsettled Problems	
	8.7 Some Problems Relating to the Act of State Doctrine	
	8.7.1 National Courts and Foreign Acts of State	
	8.8 The Overlap of Act of State and Sovereign Immunity	
	8.9 Final Remarks	249
9	State Immunity and the Violation of International Law	.251
_	9.1 Preliminary Matters	
	9.2 Private Suits Against States for Violating Human Rights	
	9.3 The State, Recognition and Juridical Equality	
	9.3.1 Immunities of Heads of States and Senior State Officials	
	9.4 Recent Case Law on International Law Crimes	

	9.4.1 General Pinochet before English Courts	
	9.4.2 Ex-President Habre before the Courts of Senegal and France	
	9.4.3 Colonel Qadaffi before the Courts of France	
	9.4.4 A Brief Study of Jus Cogens and the Obligationes Erga Omnes.	
	9.5 UK and Ireland before the European Court of Human Rights	
	9.6 State Immunity and World War Two Damage Claims	
	9.6.1 Germany before Greek Courts	271
	9.7 Some Salient Legal Issues before the ICJ	273
	9.7.1 The Legality of Use of Force before the ICJ	273
	9.7.2 Congo v. the Kingdom of Belgium	279
	9.7.3 The Immunity of a Foreign Minister in International Law	279
	9.8 Immunity, International Crimes and American Courts	287
	9.8.1 USSR Before American Courts	288
	9.8.2 Hugo Princz v. Germany before American Courts	289
	9.9 Amendment to US FSIA of 1976	293
	9.10 Final Remarks	295
10	UN Draft Convention on State Immunity	201
10.		
	10.1 Acceptance of the Proposed Draft Convention	
	10.2 The Concept of the State for Purpose of Immunity	
	10.3 State Enterprise and Commercial Transactions	
	10.4 Commercial Character of a Contract or Transaction	
	10.5 Contract of Employment	
	10.6 Measures of Constraint Against the State	
	10.7 A Perspective Sketch of Possible Future Problems	
	10.8 Conclusion	314
11	The Current Law of State Immunity	
	11.1 Some Thoughts on the Law	
	11.2 The Current State of the Law	
	11.3 The Changing Scope of Sovereign Immunity	319
	11.4 A Look at Current State Practice	
	11.4.1 Some Evidence of State Practice	327
	11.5 Asian-African Legal Consultative Committee's Report	
	11.6 Further Reflections on the State of the Law	341
	11.6.1 Some Salient Issues	341
	11.7 Embassy Bank Accounts and Foreign Reserves	344
	11.8 Employment Contracts and Restrictive Immunity	347
	11.9 The Future of the Law of Sovereign Immunity	356
12	Conclusion:	361
	12.1 A Proposal for Resolving the Controversy	
Ap	pendix	
	Treaty of Westphalia	
	The Schooner Exchange Decision	
	Judge Weiss Concept of Restrictive Immunity (1922)	
	The Tate Letter	409

European Convention on State Immunity	411
US: Foreign Immunities Act of 1976	
UK: Immunity Act of 1978	
The Singapore State Immunity Act of 1979	
The Pakistani State Immunity Ordinance 1981	
South African Foreign State Immunities Act 1981	
The ILA Montreal Draft Convention	
Foreign States Immunities Act No. 196 of 1985	467
State Immunities Act, Chapter S-18	485
ILC Draft Articles on Jurisdictional Immunities	
UN Draft Convention on State Immunity	501
Selected Bibliography	517
Index	535