**Summary**

The immunity of nation states from lawsuits in the domestic courts of other nation states is an important organizing principle of international law. Nations engage in many transnational activities with economic, political, and moral significance, and the issue of where they may be sued is of considerable importance. The scope of foreign sovereign immunity has undergone significant changes over time and remains controversial in many respects. This lecture describes the doctrine of foreign sovereign immunity, including its history and economic importance, the theoretical justifications offered on its behalf, and the contemporary controversies it generates. The lecture draws upon several examples, including the immunity of Argentina in litigation involving default on its sovereign debt, the immunity of Germany in cases involving forced labor in Italy and genocide in Namibia, and the immunity of Russia in litigation to enforce an arbitral award involving the former shareholders of the liquidated oil company Yukos.

**Outline**

I. **Introduction.**

Definition: State sovereign immunity means that a nation state cannot be sued before the domestic courts of another sovereign state without its consent.

Note that there are many additional kinds of immunity in international law that we will not discuss, including immunities of government officials and heads of state, diplomatic immunities, the immunities of international organizations, and so on.

II. **History and Sources of Law on State Sovereign Immunity.**

*Recommended Reading:* Deutscher Bundestag: Wissenschaftliche Dienste (Staatenimmunität):
[https://www.bundestag.de/resource/blob/190502/242de3dcac477fd44c4c4de6fa2996/staatenimmunitaet-data.pdf](https://www.bundestag.de/resource/blob/190502/242de3dcac477fd44c4c4de6fa2996/staatenimmunitaet-data.pdf)
III. Purpose and Justification

- respect for sovereign equality of states;
- ensure the effective performance of state functions;
- ensure the orderly exercise of jurisdiction.

IV. Scope of State Sovereign Immunity

A. Absolute v. Restrictive Approach

- What is “commercial activity” or acta iure imperii vs. acta iure gestionis?

Examples from litigation involving Argentina’s default on sovereign debt obligations. Background on that litigation (without discussing immunity): https://www.nytimes.com/2016/04/01/opinion/how-hedge-funds-held-argentina-for-ransom.html

Questions for consideration: Why does immunity law distinguish between sovereign and commercial acts? Should the exception to immunity for commercial conduct be narrowly or broadly construed?

B. Other Exceptions to Immunity

- Human Rights (“jus cogens”)
- Expropriations

Conduct in the forum state (does Russian hacking to influence the U.S. elections fall within an exception to immunity from suit in the United States? See this analysis: https://www.lawfareblog.com/russia-asserts-immunity-dnc-case

Examples from litigation against Germany in Italy for forced labor during WWII and in the U.S. for genocide of the Herero (introduction: https://www.sueddeutsche.de/politik/herero-nama-namibia-deutschland-voelkermord-1.4359508)

Questions for consideration: why is there an exception to immunity for commercial conduct, but not for grave human rights violations? Should there be a jus cogens or human rights exception to immunity? Does immunity violate the rights of victims to judicial forum to resolve their claim? Why is there an exception to immunity for certain conduct on the territory of the foreign state?
Why do you think that the United States recognizes an exception to immunity for expropriations of property in violation of international law? Consider the traditional position of the United States as a capital exporting country.

C. Immunity from Enforcement measures

- Immunity from enforcement of judgments against the property of foreign states has fewer exceptions than does immunity to adjudicate.


*Question for consideration:* why is immunity from execution broader than immunity from adjudication?

V. Immunity of State-Owned Enterprises.

Nations often conduct economic activities through legally distinct entities, such as state-owned or state-controlled railroads or banks. Under what circumstances are such entities entitled to the immunity to which the state itself is entitled? For a short overview of central bank immunity from enforcement proceedings see here: https://www.lawfareblog.com/sovereign-immunity-foreign-central-bank-assets.

VI. Conclusion and Discussion.