

## Sovereign Immunity: Comparative Perspective

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The immunity that foreign sovereigns possess against processes by national courts has been regarded as originating from comity and goodwill — each sovereign provides the same jurisdictional immunity to the other. Moreover, it has been held that to include foreign nations under the scope of a nation's court processes would be a violation of the law of nations.

However, with the increasing complexities of modern society, nations are now constrained to adopt an exception to the foregoing rule. The increasing level of international exchange and trade, for instance, indicates the growing trend of states toward engaging in commercial transactions as opposed to solely governmental activities. It is in this context that the Restrictive Theory — that national courts will not apply court processes only where the foreign nation performs its governmental and not where it engages in commercial activities — has been developed.

In this Article, the Author examines the Restrictive Theory and its development. In providing for a history on the matter, he cites European and American jurisprudence. Subsequently, he notes that the codification of the restrictive theory resulted in the production of both the Foreign Sovereign Immunities Act of 1976 (FSIA) as well as the State Immunity Act of 1978 (SIA). The Article then proceeds with its main purpose, which is to provide for a comparative discussion between the FSIA and the SIA. In the process, an analysis is made regarding how the codification of the restrictive theory faced issues on the definition of sovereignty, the characterization of an activity as commercial or governmental, and the enforcement of a judgment against a sovereign.