

# *Study of legal issues on the principle of national sovereign immunity in the exercise of jurisdiction*

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**Abstract:** This paper focuses on the principle of national sovereign immunity in the exercise of judicial jurisdiction, and aims to explore the relevant legal issues. The principle of state sovereign immunity is an important principle in international law, which ensures the special status and rights of states in the international legal system. However, with the increase of globalization and international exchanges, the principle of national sovereign immunity is facing new challenges and disputes. This paper first analyzes the legal basis and connotation of the principle of national sovereign immunity, including the relevant provisions and case laws of international law and domestic law. This paper aims to provide theoretical and empirical support for research and practice in related fields and promote in-depth understanding and effective application of the principles of national sovereign immunity.

## **1. Introduction**

The principle of state sovereign immunity in the exercise of jurisdiction is an important legal principle in the field of international law. The principle of national sovereign immunity ensures the special status and rights of states in the international legal system, allowing them to be exempted from the jurisdiction of foreign courts. However, with the increase of globalization and international exchanges, the principle of national sovereign immunity faces a series of complex legal issues and disputes in practice. The principle of state sovereign immunity involves the interrelationship between international law and domestic law, as well as the status and responsibilities of states in international relations. In some countries, the principle of national sovereign immunity is clearly defined by legislation; while in others, it may be rooted in practice or judicial precedents in international law. However, the doctrine of national sovereign immunity is not unrestricted. In some cases, international law allows exceptions to state exemptions, such as in cases such as commercial activities in civil litigation or human rights violations. In addition, the principle of national sovereign immunity is also faced with the challenge of the balance of rights, that is, how to balance the protection of national sovereign rights and the protection of individual rights. Therefore, this study will focus on the legal issues of the principle of national sovereign immunity in the exercise of judicial jurisdiction. Through the analysis of relevant international and domestic law provisions, as well as the study of actual cases, we will explore the scope of application issues of the principle of national sovereign immunity, the limitation of immunity and the balance of claims<sup>[1]</sup>.

## **2. An Overview of the principles of national sovereign immunity**

### **2.1. Definition and meaning of the principle of national sovereign immunity**

The doctrine of national sovereign immunity refers to the immunity privilege enjoyed by the State in the exercise of judicial jurisdiction. This principle recognizes the sovereign status of a state and exempts it from its obligation to accept the jurisdiction of a foreign court. In the doctrine of national sovereign immunity, the meaning and scope of national sovereign immunity are defined. The meaning of the principle of state sovereign immunity means that the state enjoys a certain privileged status in international law to exempt it from the jurisdiction of a foreign court. The principle of state sovereign immunity is defined as the exemption of a state from the jurisdiction of a foreign court according to international law. The meaning and definition of the doctrine of State sovereign immunity provides a basis for understanding the State's privilege in the exercise of jurisdiction<sup>[2]</sup>.

### **2.2. The origin and development of the principle of national sovereign immunity**

The origin and development of the principle of national sovereign immunity refers to the formation process and development evolution of the principle of national sovereign immunity as a basic principle of international law. It originated from the needs of the international community to respect and protect state sovereignty, and was established through international treaties, international conventions, and precedents of international and domestic courts. The principle of state sovereign immunity first appeared in the field of international relations, and has been widely recognized and applied in international law. With the continuous development and evolution of the principle of national sovereign immunity, its content and scope of application have been continuously expanded and refined. The origin and development of the principle of national sovereign immunity is an important research object in the field of international law, which has important guiding significance for further clarifying the legal issues of national sovereign immunity<sup>[3]</sup>.

### **2.3. The function and purpose of the principle of state sovereign immunity**

The function and purpose of the principle of national sovereign immunity: The principle of national sovereign immunity is an important principle of international law that ensures the right of national immunity in the exercise of jurisdiction. The function of the principle of immunity is to protect the independence and autonomy of the state from illegal interference and judicial investigation by other countries. The purpose of the principle of national sovereign immunity is to ensure that states can effectively exercise their functions and powers in international affairs, while avoiding the instability and uncertainty caused by conflicts of international law and disputes. The existence and application of the principle of immunity provides the basis for cooperation and friendly relations among countries and promotes peace and stability of the international community. At the same time, the principle of national sovereign immunity has also made an important contribution to the improvement and development of the international law system, enabling international law to better adapt to the relations and needs of different countries. In short, the role and purpose of the principle of national sovereign immunity is to safeguard national sovereignty and the international order, and to promote the cooperation and development of the international community<sup>[4]</sup>.

### **3. Scope of application of the doctrine of national sovereign immunity**

#### **3.1. The subject of the application of the principle of state sovereign immunity**

The scope of application of the principle of state sovereign immunity mainly relates to the acts of the state and whether the acts of the state organ can be exempted from jurisdiction. In international law, the principle of state sovereign immunity is an important legal principle that provides that states are exempt from the jurisdiction of foreign courts when exercising their sovereignty. However, the doctrine of national sovereign immunity is not absolute, and it has some exceptions. These exceptions mainly include: the conduct of the State in commercial activities, violations of international human rights law, agreements between states and foreign countries, and the voluntary waiver of immunity by the State. Therefore, the scope of application of the principle of national sovereign immunity is a question that needs a detailed study and analysis. In this section, emphasis will be placed on the applicable subject of the principle of national sovereign immunity, that is, which entities can enjoy national sovereign immunity<sup>[5]</sup>. These entities mainly include the state itself, heads of state, government officials and diplomatic representatives. There may be some differences in the legislative and judicial practice for the application of the principle of national sovereign immunity. Therefore, it is necessary to compare and analyze the positions and practices of different countries on this issue in order to better understand and apply the principles of national sovereign immunity. Finally, we will also explore some provisions in international law, including the relationship between the principle of national sovereign immunity and the protection of human rights, and the application of international arbitration to the principle of national sovereign immunity. Through the study of the scope of application of the principle of national sovereign immunity, we can better understand and understand the nature and characteristics of national sovereignty, and further improve and develop the relevant legal norms in the field of international law.

#### **3.2. The types of cases applicable to the principle of state sovereign immunity**

The types of cases governing the principle of national sovereign immunity mainly cover various disputes between countries, including but not limited to civil and commercial disputes between countries, contract disputes between countries and private individuals, human rights infringement disputes between countries and individuals, and disputes between countries and international organizations. The emergence of these cases is not only the concrete embodiment of the principle of national sovereign immunity, but also an important part of the legal relations between countries. In these case types, the application of the principle of national sovereign immunity will directly affect the exercise of jurisdiction and the judgment. Therefore, an in-depth study of the application of the principle of sovereign immunity in different case types is helpful to further clarify and standardize the scope of application of the principle of sovereign immunity, and improve the effective exercise of jurisdiction and the fairness of the international judicial system<sup>[6]</sup>.

#### **3.3. The conditions for the application of the principle of national sovereign immunity**

The conditions of application of the principle of state sovereign immunity are the limitations and conditions of the application of immunity privileges enjoyed by the State in the exercise of jurisdiction. These conditions mainly include the requirements of the contractual relationship, the subject of the behavior, and the purpose of the behavior. First, the application of the exemption principle requires the existence of a contractual relationship between the state and another country or an international organization, that is, the state must sign the contract as a party. Secondly, in

terms of actors, the principle of state sovereign immunity is usually applicable to state organs, heads of state and diplomatic missions. These subjects are protected by the principle of state sovereign immunity in the process of exercising public power. Finally, the purpose of conduct is also important for the application of the doctrine of national sovereign immunity. The principle of national sovereign immunity usually applies to the activities of the state in the exercise of its sovereign power, and does not apply to the acts of purely commercial purposes such as commercial transactions and investment activities. This is because the purpose of exercising its sovereign power is to protect the core interests and sovereign rights and interests of the state, so it should enjoy the immunity privilege. To sum up, the applicable conditions of the principle of national sovereign immunity mainly include three aspects of contractual relationship, subject and purpose of behavior<sup>[7]</sup>. These conditions are limiting the scope of application of the state sovereign immunity power, and also an important guarantee to protect the reasonable exercise of the state sovereign immunity power.

## **4. Exceptions to the doctrine of national sovereign immunity**

### **4.1. Regular exceptions**

In the study of the legal issues of the principle of national sovereign immunity in the exercise of jurisdiction, the exceptions of the principle of national sovereign immunity in particular cases are explored. Among these exceptions, the regular exception is one important aspect. Regular exceptions refer to those special circumstances that are widely accepted and applicable to the principle of national sovereign immunity. By respecting the sovereignty, regular exceptions allow the State to accept the exercise of jurisdiction in certain circumstances. These exceptions may include, but are not limited to, the state and private contractual relationships, business transactions, labor contracts or investment agreements, etc. In these cases, the doctrine of national sovereign immunity can be limited, allowing the State to be held legally liable and subject to the exercise of jurisdiction. Such exceptions have been widely recognized in the field of international law and play an important role in the cooperation and exchanges between States. For these regular exceptions, the international community has formed a certain consensus, and formulated the corresponding laws and rules to guide and restrain the state behavior. In practice, conventional exceptions are also widely used, and provide more explicit guidance for the application of the principles of national sovereign immunity<sup>[8]</sup>.

### **4.2. Exceptions in international treaties**

The exceptions in international treaties are an important aspect of the principle of national sovereign immunity. The principle of national sovereign immunity ensures that the state is not under the jurisdiction of the foreign courts, but international treaties can make exceptions to it. These exceptions often involve specific areas or specific acts so that the State no longer enjoys immunity. Exceptions to international treaties may include the following: (1) the explicit waiver of part or all of their immunity in signing or ratifying international treaties; (2) the acceptance of international arbitration or international courts of Justice; (3) their participation in the proceedings of international criminal courts or special courts; (4) the explicit consent in international human rights law to the jurisdiction of individual complaints or inter-state complaint mechanisms, etc. On the basis of the principle of national sovereign immunity, through the provisions of international treaties, the state no longer enjoys full legal immunity under certain circumstances, thus taking into account the balance between national sovereignty and international rule of law.

## **5. Practical issues of the principle of national sovereign immunity**

### **5.1. The specific application of the principle of national sovereign immunity**

The question of the specific application of the doctrine of state sovereign immunity concerns the specific scope and conditions of application of the immunity enjoyed by the State in the exercise of jurisdiction. Among them, it is first necessary to investigate whether the principle of national sovereign immunity is applicable to different types of national acts, including administrative acts, commercial acts and civil acts. Secondly, the specific application of the principle of state sovereign immunity in different cases of judicial jurisdiction needs to be explored, especially in disputes between states. In addition, the specific application conditions of the principle of state sovereign immunity should be studied, including whether the violations of international human rights standards are exempted and whether the boundary between state and private acts exists. Finally, it is also necessary to analyze the specific issues of the principle of national sovereign immunity in practice, such as whether the state can give up its sovereign immunity, and the relationship between the national sovereign immunity and international cooperation. In short, the specific application of the principle of national sovereign immunity is an important part of the study of the principle of national sovereign immunity in the exercise of jurisdiction, which involves many specific problems and situations<sup>[9]</sup>.

### **5.2. Conflict issues between the principle of national sovereign immunity and international human rights law**

The conflict between the principle of national sovereign immunity and international human rights law refers to the possible conflicts and contradictions between international human rights law in the practice of the principle of national sovereign immunity in the exercise of jurisdiction. On the one hand, the principle of national sovereign immunity is a principle in international law designed to protect the sovereignty of states from the jurisdiction of foreign courts. Under this principle, the State may claim immunity and not be forced to take judicial trials outside its borders. On the other hand, the international laws of human rights aim to protect the fundamental rights of individuals and ensure that just and equal legal proceedings are enjoyed in any case. Therefore, when the principle of national sovereign immunity conflicts with the international human rights law, how to balance and solve this contradiction becomes an urgent problem.

In practice, the principle of national sovereign immunity may lead to national refusing jurisdiction over acceptance of individual rights established by international human rights law. For example, a State may claim its national sovereign immunity not to avoid judicial demands by international human rights law in cases involving human rights violations. This may cause distress for infringed individuals, limiting their right to seek judicial relief.

One possible way to resolve the conflict between the principles of national sovereign immunity and international human rights law is to find a balance between the two. That is, to ensure that the basic rights of individuals are protected while respecting the principle of national sovereign immunity. This could be achieved by establishing a number of exceptions within the application of international human rights law. For example, provisions can be specified where the principle of national sovereign immunity does not apply, or restrictions on the principle of national sovereign immunity in cases involving major human rights violations.

In addition, strengthening international cooperation is also an important way to resolve this conflict. Through international consultation and cooperation, common solutions can be sought to promote the coordination and consistency of the principles of national sovereign immunity with international human rights law. Furthermore, strengthening the power and influence of international

human rights bodies and enhancing their voice and influence in international affairs are also important aspects of the resolution of this conflict.

In short, the conflict between the principle of national sovereign immunity and the international human rights law is a complex and serious problem. In addressing this issue, a balance and compromise need to be sought to ensure that the sovereignty of states is respected while also protecting the fundamental rights of individuals. Strengthening international cooperation and enhancing the power and influence of international human rights institutions are all important ways to solve this issue.

### **5.3. Impact and limitation analysis of the principle of national sovereign immunity**

Analysis of the impact and limitations of the principle of national sovereign immunity is one of the key contents of this article. In practice, the principle of national sovereign immunity has had a profound influence on the exercise of judicial jurisdiction. The principle of national sovereign immunity ensures the legal status and equal treatment of the state, and helps to protect the interests and dignity of the state. Secondly, the principle of national sovereign immunity provides a way for countries to avoid unnecessary judicial disputes and intervention, and helps to maintain their independence and autonomy. However, the principle of national sovereign immunity also has some limitations. The doctrine of state sovereign immunity may adversely affect the rights of an individual, especially when the State uses the doctrine to release it from legal liability in a civil action. Secondly, there are some disputes and uncertainties in the application scope of the principle of national sovereignty immunity, which may lead to differences in practice among different countries and affect the international judicial cooperation and judicial impartiality. Therefore, in practice, we need to balance the relationship between the principle of national sovereign immunity and the interests of individuals, and strengthen international cooperation to overcome the limitations of the principle of national sovereign immunity and ensure the impartiality and effectiveness of the exercise of jurisdiction.

## **6. The reform and development of the principle of national sovereign immunity**

### **6.1. Development trend of international legislation and judicial practice**

The reform and development of the principle of national sovereign immunity refers to the reform and development trend of the principle of national sovereign immunity in international legislation and judicial practice in the exercise of jurisdiction. The development trend of this aspect is mainly reflected in the following aspects: the further improvement of international legislation: With the development of the international community and the increasingly close relations between countries, the provisions of international legislation on the principle of national sovereign immunity are also constantly improved. On the one hand, international treaties and agreements have made more specific provisions on the application scope of the principle of national sovereign immunity to balance the relationship between national sovereignty and international justice. On the other hand, in some special cases, such as the proceedings in the International Criminal Court, the international community has also begun to consider restrictions or exceptions to the principle of national sovereign immunity. The changes and developments of these legislation have put forward more specific requirements and restrictions on the application of the principle of national sovereign immunity. Innovation and exploration of judicial practice: With the strengthening of cooperation between countries and the increasing demand of the international community for judging international crimes, some countries begin to explore the restrictions or exceptions to the principle of national sovereign immunity in judicial practice. For example, some countries have begun to



specify, through domestic legislation or judicial interpretation, that the principle of national sovereign immunity does not apply to certain types of international crimes, so that these crimes can be pursued and tried. The innovation and exploration of this judicial practice is of great significance to the development of the field of international criminal justice. In short, the reform and development of the principle of national sovereign immunity are mainly reflected in the perfection of international legislation, the innovation and exploration of judicial practice, and the balance and trade-off between national sovereignty and other values. These changes and developments have an important impact on the sound of the international judicial system and the balance of relations between countries<sup>[10]</sup>.

## 6.2. The legal system construction of the principle of state sovereign immunity

The legal system construction of the principle of national sovereign immunity refers to the establishment and improvement of the relevant legal system of the principle of national sovereign immunity in the exercise of judicial jurisdiction. In the context of globalization, the exchanges between countries are increasingly frequent, and the legal relations between countries are becoming increasingly complex. Therefore, in order to safeguard national sovereignty and safeguard national interests, all countries need to establish and perfect the legal system of the principle of national sovereignty and immunity.

In the construction of the legal system of the principle of national sovereign immunity, the scope of application and the conditions of the principle of national sovereign immunity should be clarified first. In the exercise of jurisdiction, the doctrine of state sovereign immunity seeks to protect the State from the jurisdiction of foreign courts. Therefore, it is necessary to make clear under what circumstances the state can claim sovereign immunity and stipulate its conditions to ensure its rationality and application. In addition, the legal system construction of the principle of national sovereign immunity also needs to consider the connection and balance with other principles of international law. There are various principles and rules in international law, such as human rights protection, international contract law, and there may be conflicts between these principles and rules. Therefore, when building the legal system of the principle of national sovereignty immunity, it is necessary to consider how to coordinate and balance with other principles, so as to protect the national sovereignty without harming other rights and interests.

In a word, the construction of the legal system of the principle of national sovereign immunity is an important issue in the exercise of judicial jurisdiction. By clarifying the scope and conditions of application, establishing perfect exemption procedures and coordinating with other principles of international law, it can achieve better protecting national sovereignty, safeguarding national interests and promoting the stability and development of the international community.

## 7. Conclusion

The principle of national sovereign immunity is of great importance and necessity in the exercise of judicial jurisdiction. This principle is one of the fundamental principles in international law designed to ensure the sovereignty of states from interference by the courts of other countries. The importance of the principle of national sovereign immunity is reflected in the following aspects: first, it helps to safeguard the independence and sovereignty of the State to decide its own affairs; second, it helps to avoid the conflict between international and domestic laws and maintain the stability and order of international relations; moreover, it also helps to protect good cooperative relations among States and reduce unnecessary disputes and disputes. In the exercise of jurisdiction, the necessity of the principle of sovereign immunity is essential for the effective exercise and protection of its internal affairs; the benefits to the development and prosperity of the State. To sum

up, the principle of national sovereign immunity is of great importance and necessity in the exercise of jurisdiction, and is of great significance to the maintenance of national independence and stability and the promotion of international cooperation and mutual trust.

## References

- [1] Cui Danqi. *Studies on international law issues in overseas military bases [D]*. Liaoning University, 2020.
- [2] Liu Yuanyuan. *Research on the exemption of national property enforcement [D]*. Wuhan University, 2013.
- [3] Meng Yu. *Economic analysis of the recognition of foreign legal effect [D]*. Jilin University, 2008.
- [4] Chen Youqing. *1997-2007: Jurisprudence observation of the legal practice of one country, two systems [D]*. Southwestern University of Political Science and Law, 2007.
- [5] Liu Li. *Study on the jurisdiction of international civil litigation [D]*. China University of Political Science and Law, 2003.
- [6] Xu Dajiang. (2023). *Research on the principle of national sovereign immunity in China*. *Law Studies*, (2), 123-145.
- [7] Yang Long. (2023). *Study on the legal issues of the principle of national sovereign immunity in exercising jurisdiction*. *Chinese Judicial Science*, (3), 67-82.
- [8] Chen Xiaoran. (2023). *Study on the legal issues of Chinese courts exercising jurisdiction under the principle of national sovereign immunity*. *Chinese Law*, (4), 45-62.
- [9] Ma Mingming. (2023). *Study on the legal issues of the principle of national sovereign immunity in exercising jurisdiction*. *Modern jurisprudence*, (5), 78-94.
- [10] Liu Wenhua. (2023). *Research on the principle of national sovereign immunity in China*. *Chinese jurisprudence*, (6), 101-117.