

	<u>Sovereign Immunity</u>	<u>Act of State Doctrine</u>
Basic Rule:	Foreign nations are not subject to suit in the courts of the United States; foreign nations are “immune.”	US courts do not rule on the validity of foreign nations’ acts, including whether or not the foreign nation acted in violation of its own domestic law or of international law.
Source:	Originally: judicial “grace and comity” Now: federal statute -- FSIA	Developed by the courts based on notions of the constitutional separation of powers, in particular the courts’ belief in their inability to effectively and positively address issues which touch upon foreign affairs and diplomacy.
Exceptions:	All exceptions now based on provision of the FSIA, they include: <ul style="list-style-type: none"> • Waiver • Commercial activity in the US • Commercial activity outside the US that causes a direct effect in the US • Section 1605(1)(3): see below. • Others 	The basic rule has, in a very limited way, been overturned by federal legislation (aka, the “Sabbatino Amendment,” “Second Hickenlooper Amendment”) Requires US courts to inquire into whether or not a foreign nation’s act violated international law with regard foreign expropriation of property (unless the President requests that the courts do not do so). [See page 1267 for complete text.]
Notes:	Gray area between what constitutes “commercial” activity and “governmental” activity. Constitutional due process rights limiting jurisdiction still apply.	Conducting an inquiry does not necessarily mean that the courts are inclined to rule against the foreign nations. To date courts have been very reluctant to do so. There is no commercial exception to the Act of State Doctrine.

FSIA Section 1605(1)(3):

[Cases] in which rights in property taken in violation of international law are in issue and [either]

1. that property (or any property exchanged for such property) is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or
2. that property (or any property exchanged for such property) is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;