11. International Law and Restraints on the Exercise of Jurisdiction by National Courts of States

This chapter examines the methods by which States prevent their national courts from deciding disputes that relate to the internal affairs of another State. It considers three main ‘avoidance techniques’: State immunity, act of State, and non-justiciability. It discusses the arguments for and against the current prohibition on the determination of one State’s disputes in the national courts of another State, and identifies the challenges presented by the rule of law, an individual’s right of access to court, and the implementation of *jus cogens* norms to the maintenance of these avoidance techniques. It concludes with the observation that the pendulum continues to swing between prioritizing sovereignty by protecting the activities of States from judicial scrutiny and calling for greater accountability and remedies for violations of international law.