

Erosion of state immunity in spotlight as £37m salvage case reaches Supreme Court

By [Michael Cross](#) | 27 November 2023

A Supreme Court case brought over silver salvaged from a wartime ship sinking could have consequences for the UK's position as a global commercial hub, a specialist lawyer has warned. In *Argentum v Republic of South Africa*, **five Supreme Court judges** will consider the case for overturning a **2022 Court of Appeal judgment** which critics say erodes the principle of state immunity from interference from foreign courts.

The specific issue is the ownership of silver carried by the British India Steam Navigation Company's ship Tilawa, which sank in the Indian Ocean after being torpedoed by a Japanese submarine in November 1942. Of the 1,000 people on board, mainly Indian civilians emigrating to Africa, 280 died. They included radio officer Edmund Duncan who remained at his post to send an SOS which brought rescuers to the scene.

The ship's silver was destined to be minted into coinage by the Union of South Africa, an independent dominion of the British Empire. For decades, the wreck was regarded as unsalvageable but in 2017 a UK company Argentum Exploration Limited recovered 2,364 bars of silver worth more than £37m from a depth of 2.5 kilometres. The company declared the find to the Receiver of Wreck as required by the Merchant Shipping Act.

In the following year, however, the government of the Republic of South Africa claimed ownership of the silver. It applied to strike out Argentum's claim for salvage on the basis that it is immune from the jurisdiction of the United Kingdom under the State Immunity Act 1978. The Supreme Court will rule on whether state immunity applies when the cargo was 'in use or intended use for commercial purposes' - an exception under the act.

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Jehad Mustafa, lawyer at international firm Volterra Fietta, said any Supreme Court ruling that state immunity does not apply could have profound consequences. 'These protections exist to prevent states and their diplomats from being sued or prosecuted in the domestic courts of other states, save for narrow and carefully calculated exceptions, such as for commercial activity,' he said. The Court of Appeal's ruling 'is the latest in a series of recent English court judgments that have eroded those state and diplomatic immunity protections in the UK. Via the courts, the UK is expanding the "exceptions" to the immunity that it gives other states, thus arguably unilaterally reducing the immunities from their international law scope'.

He added: 'If the Supreme Court continues with the same approach to restricting immunity, London's status as a commercial and legal hub will be put into question.'

A two-day hearing before Lord Lloyd-Jones, Lord Briggs, Lord Hamblen, Lord Leggatt and Lord Richards opens on Tuesday.