

Forum: International Court of Justice

Topic: Jurisdictional Immunities of the State (Germany v. Italy)

President / Chair

Introduction

The International Court of Justice (ICJ) case Germany v. Italy concerns the Jurisdictional Immunities of the State; it can be presented as a significant controversy at the ICJ due to the connection between state sovereignty, responsibility, and international law. In 2008, this issue was brought by Germany before the court. It highlighted that Italian courts allowed civil lawsuits against Germany for civilian damages suffered in World War II. This issue did not arise because there was doubt as to whether Germany committed war crimes, as the German government took responsibility for several violations of humanitarian law. Instead, the issue is whether such acts should deprive the state of its immunity from jurisdiction.

The complexity of the issue was heightened after Greece's association, as its courts had previously made rulings against Germany in connection with the massacre that occurred in 1944 in Distomo. It was therefore not only about the legal disputes between Germany and Italy but was larger in its scope as far as the general question of whether national courts can give recognition and effect to a foreign judgement against another sovereign state.

A vital aspect of this case revolves around the contradiction between two essential issues of international law. One of them is the concept of sovereign immunity, which provides for the equality and sovereignty of states and does not allow the courts of one state to exercise jurisdiction over any other state without its consent. The second issue relates to the provision of international law according to which victims of crimes against humanity need to receive justice and have the right to request compensation under the circumstance that humanitarian law is violated. Therefore, this case involves an important legal and moral problem that denies a state its right to sovereign immunity before foreign courts.

The court ruling in this case has had quite an impact and is of very high significance

on international law, as it acknowledged the principle of state immunity even when there have been severe violations of international humanitarian law. At the same time, the issue initiated a dispute on the subject. Hence, the case of Jurisdictional Immunities of the State became an important milestone in the development of international law.

Definition of Key Terms

International Court of Justice (ICJ)

Founded in 1945, it is the main court of the United Nations (UN). It provides advisory opinions on matters of international law and resolves legal disputes between states.

Jurisdictional Immunities of the State

An international legal principle that prevents a state from being sued in another state's courts without that state's consent

Compensation

It is a form of reparation in which a state or responsible party provides financial payment or other remedies for loss, injury, or damage caused by wrongful conflict.

International Humanitarian Law (IHL)

The body of international law that governs armed conflict and safeguards civilians, prisoners of war (POWs), and other non-combatants.

Jurisdiction

The legal authority of a court to hear and decide a case.

War crimes

War crimes are a serious violation of IHL committed during an armed conflict, such as intentionally targeting civilians, torturing prisoners, or destroying civilian property without military necessity. These acts are considered criminal under international law.

General Overview

The Jurisdictional Immunities of the State (Germany v. Italy) case is a landmark international legal dispute that revolves around the relationship between state sovereignty and responsibility for severe international humanitarian law breaches. The key question relates to whether an act of a state may be sued in the domestic courts of another state regarding war crimes and crimes against humanity, or whether state immunity remains applicable regardless of the nature of the acts committed. This controversy has come to be one of the main precedents of the International Court of Justice around sovereign immunity.

This case is associated with actions undertaken at the end of World War II. As soon as Italy concluded an armistice agreement with the Allied powers in September 1943, Germany seized a large part of northern and central Italy. As a result of the occupation, serious human rights violations, including breaches of international humanitarian law, occurred against civilians and members of the Italian armed forces. Specifically, thousands of mass executions took place. At the same time, approximately 600,000 soldiers of the Italian force who refused to continue to fight for Germany were then captured and forced to work in Germany-occupied territories. There were also multiple cases when civilians were deported and forced into slave labour, which were executed under extremely poor conditions such as insanitary living, little access to food, and medical care.

After the end of the war, Germany took full accountability for the war crimes and crimes against humanity committed and signed multiple international conventions related to reparations and compensation. The Paris Peace Treaty in 1947 and the Bonn Agreement of 1961 included compensation payments for certain categories of victims and attempts to settle any remaining claims of both states. However, hundreds of Italian civilians and internees were left out of those compensation programmes and were deprived of effective judicial justice, which is the basis of this case.

However, this issue was of added controversy after the Italian Court of Cassation's decision in the Ferrini case in 2004. An Italian citizen, Luigi Ferrini, was forced by the Germans to labour in their arms industry after being forcibly deported during WWII. The court ruled that Germany was not entitled to sovereign immunity since the crimes committed were war crimes and crimes against humanity, which are considered the worst offenses according to international law. Such a decision was a historic turn of events in the interpretation of state immunity; it also paved the way for several lawsuits filed against Germany in Italy. Some of the lawsuits resulted in compensation for those civilians or their families, while Italian courts authorized actions against assets in German-owned companies in Italy.

However, the dispute grew internationally due to Greece's involvement in this issue. In 1997, the Greek courts ordered Germany to pay compensation to the families of those slaughtered during the events that occurred at Distomo in 1944, when the Waffen-SS, a combat branch of the Nazis' paramilitary, murdered more than 200 citizens in vengeance for their partisan resistance activities. Greek courts confirmed the decision, but it could not be enforced in Greece since no approval from the government was provided. As a result, the parties decided to apply the Greek decision through Italy concerning the property of Germany located there.

Proceedings were commenced by Germany in the ICJ on the 23rd of December 2008, where it alleged that Italy had acted in contravention of international customary law by allowing

civil claims against Germany, and by adopting any activities of execution against German state property. Germany argued that jurisdictional immunity was a procedural rule originating from the concept of sovereign equality of the states under Article 2(1) of the Charter of the United Nations. In the view of Germany, jurisdictional immunity does not preclude the fact that a wrongful act was committed and neither excuses any responsibility for such wrongful acts, but it only decides whether there is jurisdiction of the courts of one state over another.

Contrastingly, Italy claimed that there must be an exception where international humanitarian law has been breached, especially if the victims do not have any other recourse for compensation. In its view, the victims are being denied their right to justice, even with the universal ban on crimes against humanity and war crimes. Italy argues that the basic tenets of human dignity, accountability, and an available remedy should apply if there were severe violations.

In this regard, this case strongly represents this year's AMMUN theme, "Moderating Morality", through its portrayal of the challenges involved in reconciling one's legal and moral responsibilities. From a moral standpoint, it can be argued that those who suffered at the hands of some of the worst crimes in history should have had the means to achieve justice and reparations. However, from a legal standpoint, the court had to apply the known standards of customary international law regarding sovereign immunity without considering the history behind the controversy.

Major Parties Involved

The Federal Republic of Germany

Germany is the applicant in the lawsuit before the International Court of Justice (ICJ). On December 23, 2008, Germany filed an application against the Italian Republic, saying that Italy had broken international law by enabling civil litigation against Germany in Italian courts for atrocities committed by German forces during World War II.

Germany's involvement in this dispute stems from its view that Italy violated the principle of state immunity under customary international law. Germany maintained that sovereign states cannot be sued in another state's domestic courts without their agreement, regardless of the gravity of the claims. According to Germany, state immunity is a procedural requirement that safeguards states' equality and independence while also contributing to the stability of international relations. Germany argued that permitting national courts to consider such cases would undermine this long-standing principle and create ambiguity in international law.

Germany maintained that postwar peace agreements and reparations had already resolved compensation for victims affected by WWII. It requested that the ICJ declare Italy had violated Germany's jurisdictional immunity.

The Italian Republic

Italy is the respondent in this case before the International Court of Justice (ICJ). During WWII, many Italian civilians and soldiers were deported, forced to work, massacred, and subjected to various crimes committed by Nazi Germany. In the early 2000s, some victims filed legal claims against Germany in Italian courts, resulting in the historic Ferrini decision in 2004, in which the

Italian Court of Cassation held that Germany could be sued despite its claim to governmental immunity.

Italy's involvement in the case arises from its position that the principle of sovereign immunity should not exclude victims of significant violations of international humanitarian law from seeking justice. Italy contended that war crimes as well as crimes against humanity are among the most serious violations of international law, and that an exception to state immunity should apply in such rare circumstances. It argued that when victims have no other viable means of seeking compensation, national courts should be authorized to hear their cases.

Italy contended that even if this restricts sovereign immunity, victims of grave international crimes should be able to pursue compensation. It felt that victims did not receive justice if they were denied access to national courts.

Timeline of Event

Date	Event
1939	Germany invaded Poland, sparking the start of World War II.
1943-1945	Germany invaded northern and central Italy. German forces perpetrated war crimes during this period such as forced labour, massacres, and the

	deportation of both soldiers and civilians.
1947	Italy and the Allied Powers signed the Peace Treaty which covered post-war compensation and reparations.
1961	Saw the signing of compensation agreements by Germany and Italy for certain Nazi persecution victims. Later, Germany claimed that all reparations claims were resolved by these accords.
2004	In the Ferrini case, the Italian Court of Cassation decided that, despite the state immunity doctrine, Germany might be sued in Italian courts for war crimes.
2006-2008	Italian courts continued to entertain litigation against Germany and authorized enforcement actions against German state property in Italy.
December 23, 2008	Germany filed a case before the International Court of Justice (ICJ) alleging that Italy breached

	international law by allowing this litigation.
12-16 September 2011	The ICJ convened oral hearings, during which Germany, Italy and Greece presented their legal arguments before the court.
3 February 2012	The international court of justice found in Germany's favour, finding that Italy had infringed Germany's sovereign immunity by permitting its courts to consider claims against Germany.
2014	The Italian constitutional court determined that victims' right to access justice may exceed governmental immunity and some situations, sparking further legal dispute.

Attempts to solve the issue

Proceedings before the ICJ (2008-2012)

On the 23rd of December 2008, the International Court of Justice received an application by Germany, claiming that Italy had violated Germany's immunity from jurisdiction by allowing cases concerning compensation for World War II war crimes and crimes against humanity. Germany further challenged Italy's acceptance of judgments from Greece on the same matter and the actions taken to enforce the judgment against German sovereign property.

On the 3rd of February 2012, the decision of the ICJ was given in favour of Germany by twelve to three votes. According to the court's ruling, Italy had indeed violated Germany's international customary law regarding immunity of jurisdiction and ruled that there was no exception under customary international law regarding immunity of the State if crimes committed can be categorized as crimes against humanity or war crimes.

Application of the ICJ's verdict

As a result of this judgment, the Italian legislature put in place laws to follow the decision made by the Court by limiting the power of its courts in relation to issues of foreign immunity from jurisdiction. However, in 2014, the Italian Constitutional Court ruled that in rare situations where war crimes or crimes against humanity have been committed, the right to access the court as outlined in the constitution is more important than state immunity. As a result, some civil suits against Germany became allowed, causing friction between the right of Italy under its own constitution and its international obligations.

Possible Solutions

Establishing an International Compensation Committee for victims of War Crimes

One of the key problems pointed out in Germany v. Italy is that there have been many victims of war crimes committed by Nazis who have not received sufficient compensation. Instead of allowing national courts to set aside sovereign immunity, the UN could create an independent international committee that will deal with compensation claims from victims of past war crimes. This committee will consider the cases according to established legal standards and will compensate when necessary. Members of this committee will comprise independent legal experts, historians, and human rights specialists.

Creation of an International Framework for State Immunity

Even though the ICJ upheld the principle of state immunity, issues surrounding its applicability alongside war crimes and crimes against humanity remain unclear. The UN Member States can formulate an international framework or protocol that outlines when the principle of jurisdictional immunity is to be enforced in situations of human rights violations. Such a framework can include clear guidelines on how civil claims are to be handled, require states to provide other forms of compensation and even push for diplomatic resolution before any case goes to domestic courts.

Improving International Reparations Processes

Many victims felt that postwar compensation processes failed to compensate for their suffering. Considering the above, countries that have been involved in conflicts need to set up reparations commissions permanently to address any outstanding claims and compensate victims accordingly. Reparations commissions should consist of government officials, legal scholars, and victims' organizations. This process will enable countries to avoid prolonged

litigation processes while promoting reconciliation and improving diplomatic relationships between governments.

Guiding Questions

1. What is state (sovereign) immunity, and why is it relevant to international law?
2. Why did Germany file a case against Italy at the ICJ?
3. What events during World War II led to this legal dispute?
4. Why did Italy's Court of Cassation rule against Germany in the Ferrini case?
5. What are Germany's main legal arguments?
6. What are Italy’s main legal arguments?
7. Why is this case considered both a legal and moral issue?
8. What was the ICJ’s final judgment, and why?
9. How does this case affect victims seeking compensation for war crimes?
10. Should there be exceptions for state immunity for crimes against humanity? Why or why not?

Appendix

History, facts, legal arguments, and overall summary of the case

https://www.icj-cij.org/case/143

Factual background and court proceedings

https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e2184

Understanding the principle of sovereign equality of states

https://www.un.org/en/about-us/un-charter

Customary international law and human rights violation research

https://ihl-databases.icrc.org/en/404

Treaty application in international legal disputes: understanding

https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

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