

11TH MUN
ICT



INTERNATIONAL COURT OF JUSTICE

BACKGROUND

**“Addressing the issue of state immunity in cases
of war crimes and crimes against humanity,
particularly related to WWII reparations.
(Germany v. Italy)”**

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WELCOME

Greetings delegate,

Welcome to the International Court of Justice of the Model United Nations of Instituto Cultural Tampico 2025.

The committee chair expresses its total gratitude for participating in this committee and appreciates your interest in learning about the topic to be debated. We believe that your experience, whether as a judge or lawyer, will be pleasant and with learning. It is an honor for us to guide you on this wonderful committee.

The topic that the Chair chose this year is the Jurisdictional Immunities of the State. In the case of Germany V. Italy, addressing the issue of state immunity in cases of war crimes and crimes against humanity, particularly related to WWII reparations.

It is an honor for the chair to welcome new delegates and The Court recognizes the courage and commitment the judges and advocates have chosen to be part of this distinguished committee.

We once again extend our sincere appreciation for your invaluable contribution to this Court. We extend our best wishes and deepest thanks.

Sincerely,

ICJ 's Chair.

- **President:** *Alfredo Trujano Human*
- **Moderator:** *Ana Camila Barroso Martinez*
- **Secretary:** *Christopher Armstrong Llama*

HISTORY OF THE COMMITTEE

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organ. Its official languages are English and French.

The creation of the Court represents the culmination of a long process of developing methods for the pacific settlement of international disputes, the origins of which can be traced back to classical times.

Article 33 of the United Nations Charter lists the following methods for the pacific settlement of disputes between States: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, which should also be added to good offices. Some of these methods involve the services of third parties. For example, mediation places the parties to a dispute in a position in which they can themselves resolve their dispute thanks to the intervention of a third party.

Arbitration goes further, in the sense that the dispute is submitted to the decision or award of an impartial third party, so that a binding settlement can be achieved. The same is true of judicial settlement (the method applied by the International Court of Justice), except that a court is subject to stricter rules than an arbitral tribunal, particularly in procedural matters.

INTRODUCTION

Jurisdictional immunity is a rule of international law that operates on the national plane. Put differently, it is the intersection of international law and national law in national legal systems. Jurisdictional immunities are granted to international organizations to enable them to accomplish their objectives and purposes.

The jurisdictional immunities of international organizations are derived from the intent of their Member States, expressed in constituent treaties or agreements on privileges and immunities about to the legal relationship between that organization and its members, in headquarters agreements, or in the national laws governing the legal relationship with the State that hosts the international organization in its territory.

The law applicable to international organizations is the result of the agreement of the members of the organization that decide to concede immunity in order to give it operational capacity, through constituent treaties or headquarters agreements concluded with States where international organizations are located.

In this case, state immunity is the main point to address in the Germany v. Italy dispute, the point to discuss is whether state immunity should be present in the context of war crimes and crimes against humanity, particularly those committed during World War II.

Particularly speaking on the Italian citizens, victims of the Nazi Germany in World War II, these citizens had come to Italian courts to seek reparations from Germany through Italian Courts. Germany appealed to the International Court of Justice arguing that the Italian Courts were violating the state immunity that Germany should have as a sovereign nation.

In response to this accusation, the Italian courts stated that state immunity should not apply to serious violations of human rights and war crimes. Finally, the International Court of Justice sided with Germany arguing that state immunity should be present even when talking about crimes against humanity.

HISTORICAL BACKGROUND

On 23 December 2008, the Federal Republic of Germany instituted proceedings against the Italian Republic, requesting the Court to declare that Italy had failed to respect the jurisdictional immunity that Germany enjoys under international law by allowing civil claims to be brought against it in the Italian courts seeking reparation for injuries caused by violations of international humanitarian law committed by the Third Reich during the Second World War.

On 13 January 2011, Greece filed an Application requesting permission to intervene in the case. In its Application, Greece stated that it wished to intervene in the aspect of the procedure relating to judgments rendered by its own courts on the Distomo massacre and enforced (exequatur) by the Italian courts.

The Court, in an Order of 4 July 2011, considered that it might find it necessary to consider the decisions of Greek courts in the Distomo case, in light of the principle of State immunity, to make findings with regard to Germany's submission that Italy had breached its jurisdictional immunity by declaring enforceable in Italy decisions of Greek courts founded on violations of international humanitarian law committed by the German Reich during the Second World War.

In its Judgment rendered on 3 February 2012, the Court first examined the question whether Italy had violated Germany's jurisdictional immunity by allowing civil claims to be brought against that State in the Italian courts.

Finally, the Court examined the question whether Italy had violated Germany's immunity by declaring enforceable in Italy civil judgments rendered by Greek courts against Germany in proceedings arising out of the massacre committed in the Greek village of Distomo by the armed forces of the Third Reich in 1944.

Distomo massacre

On June 10, 1944, Fritz Laufenbach, captain of the 2nd company of the 1st battalion of the 7th SS armored regiment, was ordered to move his troops from Livadia to Distomo, Steiri and Kyriaki in order to locate guerrillas on the western side of Helicon Mountain.

This move by the German soldiers was in retaliation for several troops who had been killed by the Greek Resistance. As bait, the Nazis had used two Greek civilian trucks filled with SS men disguised as villagers. The two trucks were moving ahead of the main phalanx.

After the casualties they had suffered at Steiri, the Nazis entered Distomo with a clear intention of retaliation for their losses. The cold-blooded massacre of everyone they found in the village then began.

Ferrini v. Germany

Luigi Ferrini is an Italian citizen who was captured and deported to Germany by Nazi troops in August 1944, where he was forced to work and subsequently transferred to a concentration camp until April 1945.

On 23 September 1998, Luigi Ferrini took proceedings against the German Government before the Tribunal of Arezzo, in Italy, seeking damages for the physical and psychological injury suffered as a result of his capture and deportation. Germany pleaded jurisdictional immunity under customary international law.

On 3 November 2000, the Tribunal of Arezzo dismissed the suit for lack of jurisdiction, holding that the acts of which Germany was accused were acts performed *jure imperii*. Ferrini appealed against this decision, but the Court of Appeal of Florence confirmed the previous judgment. Ferrini challenged this second decision before the Supreme Court (*Corte suprema di cassazione*) exclusively on the point of jurisdiction.

On 11 March 2004, the Italian Supreme Court reversed the Court of Appeal's judgment and denied state immunity to Germany. The Court thus transferred the case again to the Tribunal of Arezzo for examination of the merits.

The Italian Supreme Court held that while customary law prescribes immunity from jurisdiction of a foreign state for acts which are the expression of its sovereign authority, such immunity should be lifted when such acts amount to international crimes. For the Court, violations of fundamental human rights encroach upon universal values protected by *jus cogens* norms, which lie at the top of the hierarchy of norms in the international legal order, and thus take precedence over conflicting law, including state immunity. The judgment paved the way for hundreds of damage claims against Germany in Italian courts.

Paris Peace Treaties

Paris Peace Treaties, (1947) series of treaties between the Allied powers and five defeated European countries that had been aligned with Germany and the Axis powers during World War II, specifically Italy, Hungary, Romania, Bulgaria, and Finland.

Territorial adjustments were a major part of the 1947 Paris Peace Treaties. The treaties aimed to redraw the boundaries of Europe and adjust the territories of the defeated countries to establish peace and stability in the region. The territorial adjustments made by the treaties were controversial, as they led to the forced migration of millions of people and the displacement of ethnic minorities.

The defeated countries had to pay war reparations. Italy was required to pay \$125 million to Yugoslavia, \$105 million to Greece, \$100 million to the Soviet Union, \$25 million to Ethiopia, and \$5 million to Albania. Bulgaria was required to pay \$25 million to Yugoslavia and \$45 million to Greece. Hungary was to pay \$200 million in commodities to the Soviet Union and \$100 million in commodities to be split between Yugoslavia and Czechoslovakia. Moreover, Romania and Finland each were required to provide \$300 million in commodities to the Soviet Union over a period of years.

1961 Bonn Agreements

Under which Germany paid a forfeit sum to Italy as final settlement of war reparations, whose criteria were so restrictive that benefitted only few former deportees.

OBJECTIVE

The objective of this committee is to create a community with different skills that help build a better future through people with interpersonal relationships. Through their participation, delegates will work on their active listening, critical analysis, debate techniques and communication skills that will serve them throughout their lives.

Our judges and lawyers will do a deep investigation into the topic to be discussed. We hope that judges and lawyers are prepared with evidentiary and real arguments that help to see the case more deeply in a way that is respectful and find viable solutions and proposals that help us build peace. The judges will debate with data and arguments about their country using their previous research while the lawyers will show evidence about the main countries in this conflict.

By being aware of the fine moral line in which the countries operate within, each one of the delegates shall draw their own conclusions whether the things each country does are actually the right thing to do.

The main objective is to know, debate and seek solutions to the conflict of Jurisdictional Immunities of the State which was a case concerning the extent of state immunity before the International Court of Justice.

DELEGATION JUDGES

Judge of the Federal Republic of Germany

German courts follow international law rules on restrictive immunity. The concept of restrictive immunity refers to the principle that a state may enjoy immunity in domestic courts when exercising its sovereign power (*acta jure imperii*) but not for commercial activities (*acta jure gestionis*). In this case, Germany argues that independently of the acts committed, the Italian courts shall not breach the state immunity and allow civil claims in foreign courts.

Judge of the Italian Republic

During World War II, the forces of the Republic of Germany committed numerous war crimes and damage to the Italian Republic as such, the citizens of Italy are seeking reparations through the Italian courts. This violates State immunity, an international law that prevents a state from being sued in the courts of another state without its consent. The previously mentioned Italian courts ruled in favor of the victims, the Italian courts also encouraged the victims to demand compensation from the Republic of Germany. These decisions were based on the argument that state immunity should not apply to serious violations of international humanitarian law.

Judge of the Hellenic Republic (Greece)

Greece in the second world war was occupied by the Axis forces, including Germany. During the German occupation the country suffered multiple war crimes and abuses such as the Distomo Massacre in June 1944, where more than 200 civilians were assassinated in retaliation for partisan attacks. The occupation also led to the Great Famine of 1941-1942,. Greece intervened in this case before the case was official in the International Court of Justice.

Judge of the Republic of Poland

Poland was the first country invaded by Germany on September 1st 1939, which led to World War II. During the German occupation Poland was submitted to a brutal oppression, including the destruction of the Warsaw Ghetto in 1943 besides, Poland was the epicenter of the Holocaust, including the most extensive concentration camps such as Auschwitz. After the war ended Poland suffered big geopolitical changes and the loss of millions of Polish citizens.

Judge of the Republic of Austria

The Republic of Austria started being part of the German Nazi in 1938 and became an integral part of the Third Reich. During the war. During this conflict Austria contributed to the manufacture of the German war machinery. Austria was staged for multiple war crimes with the deportation of Jew Civilians to concentration camps. Austria was treated as a victim of the nazi assaults which complicated the judgment of the responsibility of the acts committed in the territory. Austria was occupied by the Allies until the country got back their independence in 1955.

Judge of the United Kingdom

The United Kingdom was one of the leading members of the Allies maintaining a strong posture against the German Republic since the start of the war in 1939. The Kingdom was part of important operations such as the Battle of Britain in 1940, which prevented the German invasion of the British Isles. After the end of the war, the United Kingdom took part as one of the big forces behind the Nuremberg trials and the creation of a legal framework to address war crimes.

Judge of United States of America

The United States entered World War II after the attack on Pearl Harbor on December 7, 1941. As one of the main Allies, the United States played a crucial role in the defeat of Germany, participating in major operations such as D-Day in 1944. and the liberation of the concentration camps. At the end of the war, the US had great influence on decisions regarding the reconstruction of Europe and reparations policy. The United States supports the principle of state immunity to ensure international stability, prevent retaliatory legal action and to protect itself from lawsuits. The United States has a law in favor of the State Immunity, this act is called "Foreign Sovereign Immunities Act"

Judge of the French Republic

The French Republic is a big supporter of state immunity who as a former major member of the Allies during World War II also expresses concern for compensating victims. Another thing France is very keen on is, ensuring accountability for crimes against humanity (like supporting the International Criminal Court). The French legal system provides exceptions such as commercial activities such as the vast majority of countries. As such, France believes that exceptions should be agreed upon by states through treaties

Judge of the State of Japan

Japan is pretty similar to Germany with the number of lawsuits related to WWII atrocities received. Because of this, Japan strongly supports state immunity to prevent similar claims. The biggest example of this is the comfort women allegations between Japan, China and South Korea. More than 200,000 women were tricked into joining the military brothels to serve Japanese soldiers in World War Two. The victims continue to demand reparations and indemnization. Japan has argued that these issues were resolved through treaties, invoking state immunity to shield itself from additional claims.

Judge of the People's Republic of China

China has supported state immunity in their legal system, when making claims to the State of Japan or seeking reparations, China's approach is through diplomacy rather than legal disputes. This shows that the outcomes of cases like Germany v. Italy can influence how other countries, including China, approach the issue of state immunity. Taking into account that right now state immunity has been a barrier from further claims to Japan from China and South Korea, much like the case of Germany and Italy.

Judge of the State of Brazil

As a nation with 50% percent of their population being of European descent, including those from Italy and Germany, Brazil has deep historical, diplomatic and cultural ties with Europe. Although Brazil had been an advocate for State Immunity for a while, in 2021, during "The Changri-la case"; the case of a fisherman's boat being sunk by a German submarine, the STF (Supremo Tribunal Federal) quashed the State Immunity approach taken by lower courts. The STF adopted the following thesis for the case: "wrongful acts committed by foreign States in violation of human rights do not enjoy immunity from jurisdiction".

Judge of the Argentine Republic

After World War II, a lot of Nazi Germans escaped into Argentina, this plus the Volga German immigration to Argentina has made a big part of Argentina, German Argentines with 5.1% percent of Argentine.. On the other hand, we have Italy which has had two big Italian diaspora (or immigrations) to Argentina making up about 43% of the Argentine's ancestry; even more than Argentinian themselves with only 34.4%. At last, Argentina might fear similar lawsuits as Germany for their past conflicts such as the Dirty War, which was a horrible widespread violation of human rights.

Judge of the Soviet Union

For the campaign against the Soviet Union, the Germans allotted almost 150 divisions containing a total of about 3,000,000 men. Among these were 19 panzer divisions, and in total the “Barbarossa” force had about 3,000 tanks, 7,000 artillery pieces, and 2,500 aircraft. It was in effect the largest and most powerful invasion force in human history. The Germans’ strength was further increased by more than 30 divisions of Finnish and Romanian troops.

Judge of the Republic of Serbia

Judge of the Islamic Republic of Iran

During World War II, Iran was strategically important due to its location and oil resources. Initially neutral, Iran was invaded by Allied forces in 1941, as Britain and the Soviet Union sought to secure supply routes and prevent German influence in the region. The invasion led to the abdication of Reza Shah Pahlavi, and his son, Mohammad Reza Pahlavi, was installed as a more cooperative monarch. Despite this, the country endured hardship due to the occupation, including economic strain and famine.

APPLICANT PARTY ADVOCATES

GERMANY ADVOCATES

- **Germany advocate #1:** Konstantin Neimann
- **Germany advocate #2:** Bernd Borgmann
- **Germany advocate #3:** Sergey Kopylov

RESPONDENT PARTY ADVOCATES

ITALIAN REPUBLIC ADVOCATES

- **Italian Republic advocate #1:** Luigi Saucedì
- **Italian Republic advocate #2:** Maria Boschi
- **Italian Republic advocate #3:** Riccardo Fraccaro

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