

Questions of jurisdictional immunities of the State and measures of constraint against  
State-owned property  
Germany v. Italy

Date filed: December 23, 2008

Court: International Court of Justice (ICJ)

Dispute: Whether Italy violated Germany's jurisdictional immunity through its court judgments regarding the crimes committed by German armed forces during the Second World War

Background:

The case originated from a dispute between Germany and Italy concerning the principle of jurisdictional immunity which means that one state cannot exercise jurisdiction in respect of another state, allowing states to enjoy immunity from the jurisdiction of foreign courts. The dispute arose from a series of domestic Italian court judgments which sought to provide reparations for injuries and crimes committed by the German armed forces during the Second World War.

The Rivalry Between Germany and Italy during Second World War

Initially, Germany and Italy were part of the Axis Powers, as they formed a political and military alliance known as the Rome-Berlin Axis prior to the outbreak of the Second World War. As both countries were led by fascist governments, Germany under Adolf Hitler's Nazi regime and Italy under Benito Mussolini's fascist regime, their political ideologies were shared and aligned. While Germany sought to expand its territorial boundaries in Europe, particularly in Eastern Europe, Italy worked to expand its influence in the Mediterranean and Africa. In 1940, in an attempt to secure its power and prestige in world affairs, Mussolini launched an ill-fated invasion of Greece which required German intervention to stabilize the invasion.

In 1941, Hitler launched a series of military campaigns which led to the successful invasion of Yugoslavia and Greece. Accumulating military losses in Greece and North Africa, Italy was weakened and was seen as poorly equipped and lacking in training compared to Hitler's armed forces in Germany. In July 1943, the leaders of the Fascist party were deposed and arrested Mussolini, finally surrendering to the Allies in September 1943. Ultimately, Italy joined the Allied Powers, and this worsened the relationship between the two countries by Germany's invasion of the northern half of Italy. The German forces freed Mussolini from prison, and Mussolini established the Italian Social Republic situated in the northern town of Salò where he was forced to become dependent upon Germany.

Germany's Position:

The Federal Republic of Germany instituted proceedings against the Italian Republic in light of Italy failing to respect the jurisdictional immunity of Germany in these cases. Germany

contends that the principle of state immunity should shield it from the jurisdiction of Italian courts. In addition, Germany further argues that Italy has violated Germany's immunity by "taking measures of constraint" against Villa Vigoni which is a German state property situated in Italian territory. Germany lastly accuses Italy of violating international law by influencing the decisions of the Greek civil courts on the acts committed by the Third Reich in the Second World War.

#### Italy's Position:

In its Counter-Memorial, the Italian Republic argues that jurisdictional immunity should not apply in cases involving grave human rights violations, such as war crimes and crimes against humanity. Italy contended that these crimes should take precedence over immunity claims, and Italian victims should have access to justice and reparations caused by the aftermath of the Second World War.

#### ICJ Judgment:

On February 3, 2012, the ICJ issued its judgment. The ICJ's judgment had significant implications for the principle of state immunity and the scope of exceptions related to human rights violations. It reaffirmed the importance of jurisdictional immunity for maintaining international relations, while also recognizing the need for an appropriate balance between immunity and the pursuit of justice for grave human rights violations.

#### Important Links:

- <https://www.icj-cij.org/case/143>
- [Video for Understanding ICJ brief](#)
- <https://history.army.mil/books/amh/amh-22.htm> - Summary of Italy/Germany relationship during the Second World War
- <https://ruwanthikagunaratne.wordpress.com/2013/01/03/jurisdictional-immunities-of-the-state-germany-vs-italy-summary/>