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The principle of the immunity of states in the international community with an emphasis on the case of Germany and Italy

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ABSTRACT

The concept of judicial state immunity has changed due to international developments. This transformation has taken place in line with the international developments, including the limitation of the concept of the sovereignty of the states. In the light of developments in international law, the sovereignty of the state is subject to several criteria, and today absolute sovereignty is unacceptable, and governments in many cases must be held accountable for their actions, so one of the most important of which is the observance of human rights standards. The basis of immunity is the sovereignty of the state. The purpose of this research is to study the principle of the immunity of countries in the international legal community. The main emphasis is on the subject of the Court's ruling on the issue of Germany and Italy. The research has also been studied in descriptive and review methods and done in the library. In 2012, the International Court of Justice issued a verdict on the state immunity of the government in the German lawsuit against Italy. The Court reviewed the various aspects of the judicial immunity of the government and declared that the Italian Government issued a permit for a civil suit against Germany for violation of international humanitarian law by the Nazi Germany, the adoption of measures to enforce German property in Italy (Villa Vigoni), as well as by knowing the Greek judgments about the violation of humanitarian law in Greece by the Nazi Germany in the Italian courts, which it has breached its commitment to respect the immunities accorded by Germany to international law.

KEYWORDS: State immunity, Court of Justice, International Law, Germany and Italy

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El principio de la inmunidad de los estados en la comunidad internacional con énfasis en el caso de Alemania e Italia

RESUMEN

El concepto de inmunidad judicial estatal ha cambiado debido a los desarrollos internacionales. Esta transformación ha tenido lugar en línea con los desarrollos internacionales, incluida la limitación del concepto de soberanía de los estados. A la luz de la evolución del derecho internacional, la soberanía del estado está sujeta a varios criterios, y hoy la soberanía absoluta es inaceptable, y los gobiernos en muchos casos deben ser responsables de sus acciones, por lo que uno de los más importantes es la observancia de las normas de derechos humanos. La base de la inmunidad es la soberanía del estado. El propósito de esta investigación es estudiar el principio de la inmunidad de los estados en la comunidad legal internacional. El énfasis principal está en el tema de la decisión de la Corte Internacional de Justicia sobre el tema de Alemania e Italia. La investigación se ha orientado mediante el método descriptivo y revisión bibliográfica. En 2012, la Corte Internacional de Justicia emitió un veredicto sobre la inmunidad estatal del gobierno en la demanda alemana contra Italia. La Corte revisó los diversos aspectos de la inmunidad judicial del gobierno y declaró que el Gobierno italiano emitió un permiso para una demanda civil contra Alemania por la violación del derecho internacional humanitario por parte de la Alemania nazi, la adopción de medidas para hacer cumplir la propiedad alemana en Italia (Villa Vigoni); además de conocer las sentencias griegas sobre la violación del derecho humanitario en Grecia por parte de la Alemania nazi en los tribunales italianos, que ha violado su compromiso de respetar las inmunidades otorgadas por Alemania al derecho internacional.

PALABRAS CLAVE: Inmunidad del Estado, Tribunal de Justicia, Derecho Internacional, Alemania e Italia.

Introduction

State immunity is one of the first concepts and legal principles known in the international community. Historically, the history of this concept can be found in ancient international relations during the reign of the empires of Iran, Rome, and ancient Greece which was accepted on the grounds of the immunity of foreign ambassadors based on religious rituals and hospitality (Ramezani Ghavam Abadi et al., 2013). In contemporary International Law, States are prohibited from exercising judicial and executive jurisdiction over other states immunity under the International Law. Indeed, the actions of sovereign foreign governments, as well as their property, which are devoted to sovereignty, are immune from the judgment of the domestic courts of other states and their enforcement actions. Also, according to the doctrine act of state law, the domestic courts of a state will avoid judging the validity of the

actions and decisions of other governments. Of course, both state immunity and the doctrine of government practice in contemporary international law have limitations. Immunity is a barrier to the jurisdiction of domestic and international courts. This barrier is not permanent and it is temporary. The first is that immunity is not absolute and we see a limitation of the principle of immunity, and the second is that immunity does not mean lack of responsibility. This rule was observed in the 1946 Convention. In cases where the government or the organization resists immunity, the same process that ruling is still subject to the limitation of the principle of immunity. the German lawsuit against Italy at the International Court of Justice notice that in 2004 the Supreme Court of Italy in the Farini case against Germany announced that the Italian courts were liable to compensation for persons who had been exiled to Germany during World War II for forced labor which jurisdiction and the immunity of that state is not a valid reason for disqualifying Italy's domestic courts. The Italian Supreme Court argued that the identification of civil immunity in civil matters to compensate for violations of fundamental human rights (rights protected by non-violent norms) would prevent the survival of the rules of state immunity (Sadat Meidani, 2015). With this introduction, this thesis seeks to examine the legal issue of the principle of state immunity in the international perspective, with an emphasis on the issue of Germany and Italy.

1. The concept and basics of immunity

Immunity is a legal concept and in fact the term is immunity from jurisdiction. Jurisdiction has priority over immunity. If there is no jurisdiction, there is no reason to consider the issue of immunity. In general, immunity is defined as the exception or exclusion of a state's jurisdiction over an entity, person or property, or in other words, a bar to exercise jurisdiction or restriction. According to important sources of government immunity, which include international treaties, international conventions, and international courtesy, the heads of state have immunity from enforcement and penalties as well as functional and personal immunities (Kadkhodaie & Daie, 2011). In fact, each country or its top government officials in another country have a range of privileges under international law, which are called "immunity" privileges. Holders of such privileges are either immune from being harassed, immune from prosecution or being guilty of any administrative or executive action, and generally immune from the territorial jurisdiction of any other country, In general, they are immune from the territorial jurisdiction of another country. So, immunity is in fact immunity from jurisdiction, which results in a waiver of responsibility (Azizi, 2013). The purpose of immunity in international law is respect for the sovereignty of the countries, and hence there is a direct and extensive link between sovereignty and immunity. Today, the trend of immunity is based on a twofold breakdown. On the one hand, there is a distinction between immunity from invasion, judicial immunity and enforcement, and, on the other hand, between the exercise of sovereignty and the exercise of power. Government immunity or governor immunity is one of the concepts and principles of public international law, according to which a government which seeks

to exercise jurisdiction over another government, in order to maintain international order and coordination which will necessarily refrain from exercising jurisdiction over another state. Therefore, the effect of immunity is to protect a government from the jurisdiction of tribunals and other domestic authorities (Thomas & Small, 2003). In article 2 of the draft, the immunity of the government is defined as follows:

> "Principally, any foreign government should be immune from the jurisdiction of the headquarters state in respect of acts committed in the exercise of its authority" (De Sena, & De Vittor, 2005).

The purpose of state immunity and the support of the state institution or the "state-country" as the main function of international law is against prosecution in foreign courts with the obligation of this institution to be subject to external action (Talmon, 2012: 431). Under the rule of state immunity, a state recognized as an international person has the right to be immune from prosecution of other state tribunal. The question that comes to mind in this case is that what is the underlying cause of this immunity? Why do domestic courts with general jurisdiction prohibit in this particular case? In short, cause, necessity, or social reality has required such immunities. Recognizing this cause or causes is important because it is basically the validity of each rule that depends on the survival of its existential causes. And if other social and historical causes have removed or influenced the initial necessity of the emergence of the rule, it would be equally affected by the rule of law or its validity. Therefore, paying attention to the basis and the cause of the existence of immunity is important. Especially since many controversies and arguments about some developments in the field of state immunity are based on the claims of transformation in its foundations (Zimmermann, Andreas, 1995).

2. Fundamentals of Immunity of Governments from the perspective of the International tribunal of Justice

First of all, the tribunal emphasized that the actions of the German military forces in the Second World War against Italian citizens were to ignore the "primordial considerations of humanity" as well as the "gross violations of international law governing armed conflict". It points out that this is different from the subject of the lawsuit, namely, "international law governing immunity" (Mir Abbasi & Sadat Meidani, 2010). In order to assess German claims, the Tribunal maintains that the applicable law in this case, both in the law of treaties and in international law (the 1978 Immigration Convention and the United Nations Convention on the Privileges and Immunities of Governments and their Properties 2004). The Tribunal believed that it would be necessary to analyze the case, in accordance with customary international law. This issue doubles the importance of the tribunal's judgment because the findings of the Tribunal as international conventions have the capability of referring to all states, even non-parties. The tribunal first introduces the technical basis for extracting the relevant international conventions inspired by its previous judicial system. The Tribunal believes that in order to establish a rule as a customary law, there should be a unified form with the belief in the binding nature of the rule (Nanda, 1998). The

Tribunal continues to assume that the raw material of customary international law must first be investigated in the actual practice and the commitment of governments to be bound by the rule. Although multilateral treaties can play an important role in enacting or regulating rules of the custom, or in fact help to develop them. Given the precedent of its previous jurisprudence the Tribunal considers that the performance of governments in relation to judicial immunity should be governed by national law, domestic legislation, the censure of governments for immunity from foreign courts, and statements by government representatives during the work of the Commission on Laws International in 2004, as well as the drafting of the United Nations convention on the immunization of governments and their properties. The spiritual element of the customary international law, in the opinion of the tribunal, especially in the claim of governments in the enjoyment of their immunity as a right in international law, is the acknowledgment by the administering power State of a commitment in accordance with international law and, on the contrary, the claims of other states in the exercise of jurisdiction over foreign governments should be sought. Of course, the tribunal does not appreciate the widespread imposition of immunity in some cases beyond international law, and believes that such cases are not necessary with the binding requirement, and thus have no effect on the subject matter of the review (Mir Abbasi & Sadat Meidani, 2010). In the opinion of the tribunal, the source of the immunity of governments lies in the function of governments. Procedures indicate that, on the basis of immunity for themselves or for others, governments have generally emphasized that there was a right in international law that entails a duty to respect and enforce immunity for other states.

The principle of state immunity has an important place in the international system and international law. This rule derives from the principle of equality of the sovereignty of States referred to in paragraph 1 of Article 2 of the Charter, which is one of the fundamental principles of the international legal order. This principle should be seen in conjunction with the principle that each State is governed by its sovereign land, and that this jurisdiction constitutes the jurisdiction of that State in relation to events and individuals in its land. Of course, immunity can be a point of departure from the principle. Regarding the nature of the issue of the immunity of governments, the tribunal, with its emphasis on judicial procedure, declares that immunity is essentially a form of nature. This legal branch actually involves the exercise of jurisdiction over a particular conduct and is therefore different from the substantive law that determines whether it is legal or illegal. In other words, as in the case of the immunity of public officials, the immunity of governments is a different matter as the legality of an act. As discussed below, these basics are of the type of government immunity analysis and exceptions that have a key role (Hatami & Sadat Hosseini, 2016).

3. The case of Germany and Italy

Between 1943 and 1945, large parts of Italy were occupied by German forces. German military forces committed brutal, inhumane and violent acts against the Italian military and civilian population during their presence. They massacred a large number

of Italians and transferred a large number to Germany in order to work in compulsory camps. With the end of the Second World War and the defeat of Germany in the war, the issue of compensation to Italian victims became the subject of international agreements and treaties (1947 Peace Agreement with Italy and Treaty of 1961 Germany and Italy). In the form of these agreements, the Italian government paid the amount of compensation to victims and survivors of the Italian. In Germany, laws were adopted for this purpose (the 1953 Compensation Act and the 1965 Amendment Act, the 2000 Act). However, for a variety of reasons, including the exclusion of certain people from laws and the legal status of grievance complaints (for example, prisoners of war), and many Italian nationals were not able to obtain compensation from Germany. Their complaints to the German judiciary were also unsuccessful, and German courts stated that general international law did not grant individuals the right to compensation for forced labor. Similar developments occurred in Greece, whose nationals during the Second World War were the victims of violent acts of the German forces. In the famous case of Dystomo, the Greek paternal court sentenced Germany on September 25, 1997 to pay compensation. The vote was approved by the Supreme Court on May 4, 2000. However, given that the enforcement of sentences against governments in Greece is subject to the permission of the Minister of Justice, and the ruling was not possible to enforce in Greece (Pittrof, 2004). The set of judicial developments in the above cases created a legal disagreement between the Italian and German governments. In order to resolve the dispute, Germany, pursuant to the European convention on the peaceful settlement of disputes of 1957, and filed a lawsuit with the International court of justice.

In general, Germany argued that the functioning of the Italian courts, both in dealing with Italian citizens' complaints against the German government, as well as in identifying and enforcing judgments in the Greek courts through the German government in Italy which was in violation of international law. This is because the Italian government has breached its international obligations to Germany. In contrast, Italy defended its judicial function by invoking certain exceptions to international contractual law and customary international law. The case essentially contains the inhumane and hideous attitudes that the Nazi troops had committed against the Italian people during the years 1943-1943. There was no doubt about the illegality of these acts, and during this process no objection was made to this issue. In fact, Germany accepted its responsibility in this regard. The tribunal stated that the immunity conferred by international law was customary and could not be violated by international treaties. The parties agree on the validity and importance of government immunity as part of customary international law and their disagreement on how to apply the rule and determine the scope of government immunity. In accordance with the principles stated in the interpretation of Article 3 of the International commission on the law of the state on the responsibility of governments, according to the rules, the legality of the measure that was at the time of the commission of the act was feasible. In this case, there should be a difference between Germany and Italy. For this reason, the Tribunal merely complied with Italy's practice of violating the immunity,

stating that it is not important, at the time of committing, to have practice in relation to the customary immunity in international law. It is important that there is a rule of mandatory immunity at the time when the immunity has been breached in the national courts. Both sides agree that in general, they have immunity in relation to the sovereignty of the state, but Italy has objected to this immunity, and Germany didn't accept it. In fact, the tribunal, in concluding a concise statement, argued Italy for violating German immunity: Despite the fact that immunity is considered for the exercise of state authority, and it does not include torture, death, injury or property damage in the territory of the court. Regardless of the place where the act took place, Germany could still not be considered as immune. Germany argued that, apart from Italian cases and the Dystomo case in Greece, no other national tribunal ruled that it was not immune to government forces in its armed forces. In contrast, the courts in several different countries have explicitly ruled out their jurisdiction over such cases and ruled that the mentioned country had immunity.

The tribunal examined three different areas with consideration of international procedures. Initially, it examined the conventions and international treaties, including the European convention on immunity and the UN convention. The tribunal raised the question whether Article 11 of the European convention on the immunization of the state or Article 12 of the united nation convention confirmed Italy's view that Germany was not entitled to immunity for the type of acts committed. In response, the tribunal acknowledged that, because there was a violation of Article 12 of the convention, and the offense was in the territory of the court, and this article was not cited. Article 11 of the European convention cannot be invoked as a result of Article 31 and its interpretation, which itself violates Article 11 of the convention. It is worth noting that neither Germany nor Italy have signed this convention. The tribunals reviewed the laws of the 10 states named by the parties and, in the third area, examined the courts of Ireland, Slovenia, the United States and Greece, stating that only the country other than Italy has such a provision and only the Greek Supreme Court's verdict is in the case of Dystomo. The Court concluded that international law does not include a pseudo-crime excuse to the government's immunity from government action, and despite what Italy has discussed in the proceedings, the Italian court's decision to disregard German immunity based on the principle of pseudo- crime is not justified. Italy ignores immunity in relation to the particular nature of the acts that are the subject of the lawsuits in the Italian courts and the circumstances in which the claims were made. After examining both national and international procedures, the Tribunal concluded that, in the context of customary international law, a state won't be deprived of its right to be immune from accusations of gross violation of human rights or international law governing armed conflict. In relation to the second branch of the Italian argument, the Tribunal stated that, even if the rights to armed conflicts were in accordance with the rules of international law, there was no conflict between those rules and the rules of immunity of the states. The Tribunal stated that these two sets of laws raise different issues (Sadat Meidani, 2015). Government immunity laws are defined to determine whether the courts of a state can apply their jurisdiction

in relation to another government. And they cannot question the legality or non-existence of an issue.

The Tribunal added that the argument that it is based on the primacy of the customary rules of international law on the immunity of the states by the national courts is rejected. The third and final part of the tribunal also considered the Italians' arguments to be unreliable. The Tribunal failed to find any basis in relation to national and international procedures where international law has the right of a state to protect immunity from the existence of more effective alternatives to guarantee compensation. The Tribunal insists on the fact that the desirability of a state granting immunity to the ruler of another country is a matter entirely different from the fact that that state has an international responsibility and is obligated to compensate damages. In fact, the Tribunal considers the issue of immunity to be a matter of a form of denial of the domestic courts of other countries, which does not mean that a violation of a rule by the government has not been effected, because only domestic courts are not competent to deal with a practice contrary to the international law of the state. It is possible that international courts will enforce their jurisdiction if they have the eligibility. The Tribunal issued its vote on February 3, 2012. According to the vote, Italy has issued a German civil disputes lawsuit against Nazi Germany on international humanitarian violations, the adoption of German enforcement measures in Italy (Villa Vigoni), and the entry into force of the Greek judgments on the matter The violation of human rights in Greece by Nazi Germany in the Italian courts has violated its commitment to respect for the immunities accorded by Germany under international law. The Tribunal recommended that Italy settle claims of Italian victims in negotiations with the two governments concerned with the problem-solving approach and according to the Tribunal, Italy is committed to eliminate the effects of past and continuing violations of German immunity by legislating or adopting appropriate legal measures or by resorting to other methods of choosing and restoring former status.

4. Critical Case Study of Germany and Italy (Farini)

Most critics have criticized Farini's case based on international law. The "Lady Hazel Fox Case", a key source of state immunity, states that the Italian court has abandoned the "distinction between criminal responsibility of individuals and international responsibility of the state" in accepting a lawsuit against Germany, and "(More by referring to moral values instead of legal concepts) ". The Fox case points out that legal immunity is a rule that has been substantially approved by governments. The Fox case points out that legal immunity is a rule that has been substantially approved by governments. It also states that in the current traditional international legal structure, "there is no room for exceptions to the immunity of the state for violating international law" and the violation of international law "may only be judged by the consent of the alleged offending state." whether by international or regional human rights tribunals or by national courts. It seems that the Italian court "has ignored the fact that, as the jurisdiction of the International Court of Justice is subject to the consent of the country in which the lawsuit is brought against it, and the same applies

to the jurisdiction of the national courts for a lawsuit against a foreign government is not legally recognized and ineffective without the consent of that government".

Other writers also consider the Italian court's decision to be problematic. Professor Forkarley claims that the "Farini" case is incompatible with the current state of affairs. Professor Dusna and Professor Du Vitor criticized the Italian Supreme Court's ruling "Fraini" in his article entitled "Government and Human Rights Immunity". Professor Gattini calls this case "a prominent example of his guaranteed judicial system," adding that "the Italian Supreme Court has shown a bitter surface knowledge, because it confirms the principle of global jurisdiction as a result of the nature of international crimes combining personal responsibility and the responsibility of the state, and has not shown any attempt to examine the hypotheses that are contrary to the relevant international procedure".

This criticism is not surprising, since, in principle, secondary authorities claim that the practice of governments does not support the existence of a common rule that rests on their immunity. Indeed, the 2004 United Nations Convention on the Immunity of States and their property does not exclude immunity from cases of violations of international law. The Working Group of the International Law Commission, which studied the subject, concluded that the subject was not sufficiently developed for the implementation of the work. Certainly, multilateral efforts have been made to prove that in cases where the damage claimed is due to fundamental human rights violations, and governments should not be entitled to immunity from legal proceedings, but such efforts have often not been successful.

4.1. Paragraph 1: Violations of human rights in the face of government immunity

The immunity of the foreign government in domestic courts of other states has been accepted as a principle in international law and in the administration of states, as well as in the domestic laws of some states. The government's immunity has been expanded to include international developments. The rule of state immunity has been established in custom and treaties. However, this rule is not without exception, and the important thing is that there are no consensus on procedure and doctrine on the exceptions to it. The evolution of the concept of sovereignty in international law, the globalization of human rights and its focus, has challenged the rule of government immunity. In explaining the meaning of the rule of law, the Tribunal in the case of Barcelona Traction, stated that "in particular, it was necessary to distinguish between the obligations of governments to other governments. The nature of the first-party obligations is in such a way as to relate to all states. These obligations are general considered obligations. With the entry into force of the Convention on the Rights of the Treaties (Article 53) and the declaration of the invalidity of the treaties, the idea of the superiority of that rule of law on ordinary rules in all domains has been widespread acceptance in the international legal system. In the area of government immunity, the question also arises as to how the relationship between customary rules and the rules

of respect for the immunity of governments is established. In answer to this question, the legal doctrine has given a different answer. A group has ruled on the prevalence of customary rules of international law, including the immunity of governments. Some also consider it necessary to observe the immunity of governments even in violation of applicable rules (with other restrictions on immunity) (De Sena & De Vittor, 2005).

The first group of lawyers believes in the supremacy of customary rules of international law, including the immunity of governments. Basically, this group of lawyers does not consider the distinction between the rules of law and the rules of form in the domestic legal system as generally applicable to the international legal system. The second group of lawyers considers it necessary to observe the immunity of governments even in cases of violations of customary rules, while respecting other restrictions on immunity, including the lack of immunity for the conduct of corporate affairs. The advocates of this approach argue that there is no conflict between the rules of the law and the rules of state immunity, because the rule of state immunity relates to the implementation of the rules of law and does not deal with the content of the rules and does not relate to it. In fact, in this approach, there is a difference between the field of principles of law and the field of form rules, and these two sets are not interconnected. The second groups of lawyer believe that respect for the immunity of the foreign government does not mean giving up the victim without support in the international arena. The immunity of governments, although it is a technical rule, and is based on a fundamental principle of international law, and the principle of equalization of the sovereignty of states. Therefore, domestic courts are also committed to complying with it. Immunity goals have intrinsic value. International law seeks to reconcile these values with a view to dealing with non-criminality, and not the superiority of a norm to another one. There is still no coherent approach for refusing governments to violate the rules of the law, especially in cases of torture. The Tribunal expressed its view in the German case against Italy that, under customary international law, a state is currently not deprived of its immunity because of its alleged gross violation of human rights or the international law of armed conflict. The characteristic of the rule of state immunity, which has a form of nature, is believed to be accepted by top international law scholars who believe in a fundamental distinction between the rule of law and the authority of the state, without having the material content upon which an arbitrary ruling can be enforced. The Tribunal accepted this view of the state immunity of the government and considered the opinion of other lawyers that the two principles had been differentiated formally and this discriminates from the realities of protecting human rights and would be ignores.

4.2. Paragraph 2: Dimensions and rules of government immunity

The principles of the rules governing the interpretation, implementation and enforcement of non-judicial and procedural rules are the substantive rules relating to the jurisdiction of courts and tribunals, such as rules on immunity from jurisdiction, rules on the acceptability of a lawsuit or claim, rules of form and rules of procedure and

it is the responsibility of international governments and international organizations. Although these rules are closely related to the substantive rules and these rules are not the same as the rules of the secondary ones. There are significant differences between the rules of form and the rules of the customary. Secondly, in most cases, rules of form are cited in order to prevent a trial being initiated, while substantive rules are invoked as to what has been violated. Third, the rules of form are not subject to the principle of turning mentioned stuff to us, while the principle is governed by the substantive rules. Although there may be links between the formal rules and substantive rules in international law which does not necessarily mean conflicts between these two types of rules. The tribunal has stated that principles of law cannot in themselves replace the rules of the government. The Tribunal's decision is based on the logic that there is no conflict between these two categories of rules. Judge Trinidad has said in his opposition that it is very important which all major crimes will be viewed from the perspective of the inclination to commit it, regardless of who committed it. The penal policy of the state and the compensation for crimes are not things that can be excluded as a state immunity. When a government engages in mass murder of a part of its people, and it cannot be concealed behind the title of immunity. The gross violations of international humanitarian law in the form of international crimes are contrary to the principle of law and cannot be easily abolished and relieved by the state's immunity. Judge Gaja believes that the review by the Tribunal of the Supreme Court of Justice has failed to take sufficient account of the richness of the unanimity vote of the Italian courts and the importance of the vote as evidence of a new exceptional appearance on the basis of the judicial immunity of the state. It seems that the Tribunal has limited its research spectrum and has adopted a diligent approach to the possible existence of new exceptions to judicial jurisdiction.

The Immunity Doctrine, with this Tribunal view which will never progress. Judging from the research about the nature and purpose of the action is prohibited because the issue of immunity is a form that needs to be examined separately. There is no significant difference in the assessment of immunity as an act of dominant nature with respect to the subject of customary rules. In both cases, it is necessary to investigate the nature of the matter in order to determine whether the government has the conditions for maintaining immunity or not. There seems to be no perfect world consisting of two completely different systems of rules, one that is substantive and another is form rules. We do not deal with material elements such as oil and gas. The rules of the form of revelation are not perfect, because they are obtained by other laws and serve the rules and values. In fact, the Tribunal could adopt a substantive stance for the custom and attempt to explain its effects. This could have been done with a thorough analysis of the Farini case and other Italian cases and the consequences of the Court's decision that certain international crimes in the German military and other Nazi Germany had occurred as well as asking questions about the hierarchy of the customary rules governing judicial immunity in a rather distinct manner.

4.3. Third paragraph: The Right of Individuals for Justice and Compensation

Italy in its third branch argued that plaintiffs were deprived of compensation, and the Italian courts' judgments were their last hope. The Tribunal expresses its opinion that immunity does not necessarily require the provision of necessary remedies and guidelines and the government is not obliged to create mechanisms and solutions to compensate victims as we do for their immunity. Judge Youssef, in his opposition, believes that when judicial immunity conflicts with fundamental humanitarian rights, and the court of the headquarters of the court is committed for ensuring the fundamental values of the international community. In today's world, the application of state immunity to the denial of access to justice and the right to the effective redress may be considered as a disincentive to use immunity. He believes that by abolishing the government's immunity in the exceptional cases above, international humanitarian law will be better enforced, and human rights-based values of the international community are generally better protected. Judge Benona, in his separate vote, believes that governments are, in principle, immune from the domestic courts of other countries, but in exceptional circumstances, a state may be deprived of this immunity. This particular situation will arise if the offending government refuses to accept any liability for its illegal conduct. Judge Benona disagrees with the Tribunal's view that he had rejected the argument of "the last remedial solution "on the pretext of the lack of a statement of this theory in the context of the administration and judicial system. He was sorry for the reasoning of the Tribunal because it was not based on the character and features of contemporary international law. Therefore, immunity in its narrow sense does not have the full right of the government, but, depending on the circumstances of the particular circumstances of each case, and it is possible for a state to be tried in front of a foreign court. Judge Chroma wrote in a separate judgment that he accepts that individuals who receive compensation for violations of human rights are beneficiaries but that there is no legal right for individuals to claim compensation directly against a foreign government, and that Hague Convention of 1907 and the first additional protocol does not support such a hypothesis. It is a matter of regret that the Tribunal has not reviewed the constructive obligations of compensation for international human rights violations in international law. This is a commitment that has been emphasized in Article 3 of the 4th Hague in 1907 and Article 91 of the Additional Protocol 1 of the 1977 Geneva Convention in 1999, while compensation for such violations has been managed at the state level. This does not mean that final beneficiaries do not receive such mechanisms or they do not have the right to sue for compensation (Espósito, 2011).

Conclusion

Under the general rule of government immunity, any government is committed for avoiding the exercise of jurisdiction over the actions and property of other states. In the doctrine and jurisprudence, government immunity is often seen as a manifestation of the principle of equality of states. According to this view, each state, due to its

equality with other states, must avoid exercising its exclusive territorial jurisdiction in a case in which another state has sued. The root of this principle is in the historical belief that the king should not be subjected to internal or external jurisdiction, so that the foreign government, like the headquarters state which should have absolute immunity. The examination of the German case against Italy filed by the International Court of Justice shows us that, in its current structure of international law, and immunity is a rule of law that has been substantially approved by governments. In the current wording of the current international law, "in the current opinion," there are no exceptions to the immunity of the state for violating international law "and violations of international law may be subject to judgment only with the consent of the alleged offending state, whether by international or regional human rights tribunals or by national courts. The exercise of jurisdiction by a national court against a lawsuit against a foreign government, without the consent of that government, is legally unenforceable and inoperable. Most international law writers also consider the Italian court's decision to challenge the German government problematic. The United Nations Convention on the immunity of the Judiciary of States and their Properties of 2004 which has also made it an exception to the immunity from cases of violations of international law.

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