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["L'Immunité de Jurisdiction de l'Etat en Matière de Procédure Civile: Position de la Cour Internationale de Justice \(The Jurisdiction of the State Immunity of Civil Procedure Material: Position of the International Court of Justice\)"](#) 

(2014) 20 NZACL Yearbook

(2015) 21 CLJP/JDCP 245-274.

[Victoria University of Wellington Legal Research Paper No. 23/2019](#)

[ALBERTO COSTI](#), Victoria University of Wellington - Faculty of Law

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French Abstract: Le 3 février 2012, la Cour internationale de justice (CIJ) rendait son jugement sur l'immunité juridictionnelle de l'Etat en matière de procédure civile. L'affaire concernait l'immunité de juridiction de l'Allemagne devant les instances judiciaires italiennes suite à la commission de violations graves du droit international humanitaire perpétrées par le Reich allemand contre des ressortissants italiens et grecs au cours de la Seconde Guerre mondiale. Tranchant en faveur de l'Etat allemand, la Cour affirmait dans son jugement majoritaire que la République italienne avait failli à son obligation de respecter l'immunité reconnue à l'Allemagne par le droit international. Après avoir décrit les faits de l'affaire et analysé la décision de la CIJ, l'auteur fait valoir que le jugement de la majorité fondé sur un raisonnement positiviste reflète l'état du droit international coutumier en matière d'immunité de l'Etat.

English Abstract: On 3 February 2012, the International Court of Justice (ICJ) delivered its judgment on the jurisdictional immunity of the State. The case concerned Germany's immunity before the Italian courts following the perpetration of grave violations of international humanitarian law by the German Reich against Italian and Greek citizens during World War II. Deciding the case in favour of Germany, the majority of the Court stated that the Republic

of Italy had violated its obligation to respect the immunity recognised to Germany under international law. After describing the facts of the case and analysing the ICJ's decision, the author argues that the majority judgment is founded on a positivist approach reflecting the current state of customary international law on state immunity.

["L'Arrêt De La Cour Internationale De Justice Dans L'Affaire Des Immunités Juridictionnelles De L'État \(The Judgement of the International Court of Justice in the Jurisdictional Immunities of the State Case\)"](#) 

(2015) Hors Série Juin 2015 Revue Québécoise de Droit International 267-311

[Victoria University of Wellington Legal Research Paper No. 24/2019](#)

ALBERTO COSTI, Victoria University of Wellington - Faculty of Law

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French Abstract: Cet article offre une critique de l'arrêt de la Cour internationale de justice (CIJ) sur l'immunité juridictionnelle de l'État en matière de procédure civile rendu le 3 février 2012. Opposant la République fédérale d'Allemagne à l'Italie, l'affaire concernait l'immunité de juridiction de l'Allemagne devant les instances judiciaires italiennes suite à la commission de violations graves du droit international humanitaire perpétrées par le Reich allemand contre des ressortissants italiens et grecs au cours de la Seconde Guerre mondiale. La Cour trancha en faveur de l'État allemand, affirmant dans son jugement majoritaire que la République italienne avait manqué à son obligation de respecter l'immunité reconnue à l'Allemagne par le droit international. Nous introduisons d'abord brièvement la règle de l'immunité de l'État, relatant son historique et son évolution. Nous décrivons ensuite les faits de l'affaire, les arguments des parties et la décision de la CIJ. Suit une analyse de l'arrêt en deux temps. En premier lieu, nous faisons valoir que, de lege lata, le jugement de la majorité fondé sur un raisonnement positiviste reflète l'état du droit international coutumier en matière d'immunité de l'État. En deuxième lieu, nous nous demandons s'il ne faudrait pas, de lege ferenda, reconnaître une exception à l'immunité de l'État pour des violations des normes de jus cogens, lorsqu'il n'y a pas de voies de recours alternatives. Finalement, nous sommes d'avis que l'émergence d'une telle exception paraît actuellement peu probable en marge de la pratique des États, et que le jugement de la CIJ pourrait ralentir, voire ossifier, l'évolution du droit en la matière. Avec cette contribution, nous avons voulu rendre hommage au professeur Jacques-Yves Morin, dont les classes nous inspirèrent à poursuivre une carrière académique dédiée au jus inter gentes.

English Abstract: The article offers a critique of the judgment of the International Court of Justice (ICJ) on the jurisdictional immunity of the State delivered on 3 February 2012. Opposing the Federal Republic of Germany to Italy, the case concerned Germany's immunity before the Italian courts following the perpetration of grave violations of international humanitarian law by the German Reich against Italian and Greek citizens during World War II. The ICJ decided the case in favour of Germany, the majority of the Court stating that the Republic of Italy had violated its obligation to respect the immunity recognised to Germany under international law. We first introduce the rule of State immunity. We then describe the facts of the case, the arguments of the parties and the Court's decision. A two-part analysis of the judgment follows: first, de lege lata, we argue that the majority judgment is founded on a positivist approach reflecting the current state of customary international law as concerns state immunity; second, de lege ferenda, we query whether violations of norms of jus cogens should give rise to an exception to State immunity, when no alternative remedies are available to the victims. Finally, we believe that it is unlikely for such an exception to emerge in the foreseeable future in view of current State practice, and that the ICJ judgment could slow down, or even ossify, any evolution of the law on the subject. With this article, we wish to pay tribute to Professor Jacques-Yves Morin, whose classes inspired us to pursue an academic career in international law.

["L'Immunité De Juridiction De L'Etat En Matière De Procédure Civile: Position De La Cour Internationale De Justice \(The Jurisdictional Immunity of the State in Civil Claims: Position of the International Court of Justice\)"](#) 

(2014) 20 Yearbook of the New Zealand Association for Comparative Law

[Victoria University of Wellington Legal Research Paper No. 25/2019](#)

ALBERTO COSTI, Victoria University of Wellington - Faculty of Law

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French Abstract: Le 3 février 2012, la Cour internationale de justice (CIJ) rendait son jugement sur l'immunité juridictionnelle de l'Etat en matière de procédure civile. L'affaire concernait l'immunité de juridiction de l'Allemagne devant les instances judiciaires italiennes suite à la commission de violations graves du droit international humanitaire perpétrées par le Reich allemand contre des ressortissants italiens et grecs au cours de la Seconde Guerre mondiale. Tranchant en faveur de l'Etat allemand, la Cour affirmait dans son jugement majoritaire que la République italienne avait failli à son obligation de respecter l'immunité reconnue à l'Allemagne par le droit international. Après avoir décrit les faits de l'affaire et analysé la décision de la CIJ, l'auteur fait valoir que le jugement de la majorité fondé sur un raisonnement positiviste reflète l'état du droit international coutumier en matière d'immunité de l'Etat.

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Victoria University of Wellington Legal Research Papers series primarily contains scholarly papers by members of the [Faculty of Law at Victoria University of Wellington](#). Some issues collect a number of papers on a similar theme to form a suite of papers on a single topic. Others issues are general or distribute mainly recent work.

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Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Appellate Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

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