November 2005

GERMANY

(a)	**Registration no.**	D/1
(b)	**Date**	31 Octobre 1978
(c)	**Author(ity)**	Bundesminister des Auswärtigen (Federal Foreign Minister)
(d)	**Parties**	
(e)	**Points of law**	Objection to the reservation of the Soviet Union concerning Article XI, paragraph 2 of the International Convention on Civil Liability for Oil Pollution Damage
(f)	**Classification no.**	0.c, 1.b
(g)	**Source(s)**	Bundesgestzblatt (Federal Law Gazette) 1979 Part II, p.299
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

Article XI, paragraph 2 of the Convention:

"With respect to ships owned by a Contracting State and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in Article IX and shall waive all defences based on its status as a sovereign State."

Reservation of the Soviet Union:

"The Union of Soviet Socialist Republics does not consider itself bound by the provisions of Article XI, paragraph 2 of the Convention, as they contradict the principle of the judicial immunity of a foreign State."

Translation of the German Note:

The Federal Republic of Germany, without excluding the accomplishment of any treaty relations on the basis of the convention, declares not to accept the reservation of the Soviet Union; according to customary international law no state can claim immunity before the courts of another state with regard to ships, which are used by the state for commercial purposes or which are operated by a corporation registered as a supplier or a ship-owner in that state.

Appendix: German text of the objection (Bekanntmachung über den Geltungsbereich des Internationalen Übereinkommens über die zivilrechtliche Haftung für Ölverschmutzungen - see Source)

(a)	**Registration no.**	D/2
(b)	**Date**	6 April 1989
(c)	**Author(ity)**	*Bundesregierung* (Federal Government)
(d)	**Parties**	
(e)	**Points of law**	Government draft of Act of Parliament required by Article 59 (2) of the Basic Law (for the text see D/20 under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). The Explanatory Memorandum shows that the Federal Government supports the concept of relative state immunity embodied in the Convention.
(f)	**Classification no.**	0.c, 1.b, 2.a (refers to the European Convention)
(g)	**Source(s)**	Deutscher Bundestag, 11. Wahlperiode, Drucksache 11/4307 (official prints of the German Federal Diet)
(h)	**Additional information**	The Act of Parliament was passed in a slightly revised version and signed by the Federal President on 22 January 1990 (BGBl.1990 II, 34 – see D/20). The Federal Republic of Germany ratified the Convention (but not the Additional Protocol) on 15 May 1990.
(i)	**Full text – extracts – translation - summaries**	

English Translation of Excerpt from Government Draft:

"The Convention follows the concept of relative state immunity which is approved by legal doctrine and case law in the Federal Republic of Germany ..." (title page under B.)

Partial Summary of the *Denkschrift* (explanatory memorandum of the Federal Government to the Convention):

According to the jurisprudence of the Federal Constitutional Court approved by legal doctrine a state enjoys immunity only with regard to *acta iure imperii*. The question whether state action is *iure imperii* or *iure gestionis* must be determined according to the law of the forum state. In Germany, judicial practice focuses on the nature of the state action or of the ensuing legal relationship and not on the motive or purpose of the state action because all state activity is ultimately linked to sovereign purposes and responsibilities. With regard to execution against a foreign state, which is not *a priori* inadmissible under customary international law, there is no exact parallelism in German law between jurisdictional immunity and immunity of execution because the effects of an execution will hit a foreign state much harder than a judgment and thus the risk of political complications will be greater.

If there is no jurisdictional immunity because a private law activity of a foreign state is involved or because this state has submitted to the jurisdiction of the forum state that does not mean that an execution will also be admissible. The admissibility of an execution does not depend on whether the foreign state owns the object of the execution as a sovereign or merely as a legal person under private law. The decisive question is rather whether the object of the execution serves sovereign purposes of the foreign state at the time at which the execution is bound to commence. (Part I.A. [p.30])

Article 15 attributes immunity to states even with regard to disputes concerning *acta iure gestionis* which are not covered by the exceptions in Articles 1 to 13. However, Article 24 authorizes states parties to make a unilateral declaration, thereby extending the jurisdiction of their courts to acts of foreign states not so covered but excluding *acta iure imperii*. As the Federal Republic of Germany adheres to the restrictive theory of sovereign immunity, it intends to make such a declaration. This declaration shall primarily preserve the jurisdiction of German courts in labor disputes between employees and the foreign states which employed them. (Explanations by the Federal Government with regard to Articles 15 and 24 [pp.34, 36-7]) (see also D/2)

Appendix: *Gesetzentwurf* and *Denkschrift* of the Federal Government (see Source). Text of Convention and Additional Protocol (ibid. p.7-29) not included.

(a)	**Registration no.**	D/3
(b)	**Date**	15 May 1990
(c)	**Author(ity)**	Permanent Representative of Germany to the Council of Europe
(d)	**Parties**	
(e)	**Points of law**	*Declaration concerning Article 24 made at the time of deposit of the instrument of ratification concerning the European Convention on State Immunity (ETS No.74). The declaration shows that the Federal Government supports the theory of relative state immunity beyond the scope of the Convention.*
(f)	**Classification no.**	0.b; 1.b
(g)	**Source(s)**	Council of Europe – Treaty Office (http://conventions.coe.int/)
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

Text of Declaration:

"The Federal Republic of Germany declares in accordance with paragraph 1 of Article 24 of the Convention that, in cases not falling within Articles 1 to 13, its courts are entitled to entertain proceedings against another Contracting State to the extent that its courts are entitled to entertain proceedings against States not Party to the Convention. Such a declaration is without prejudice to the immunity from jurisdiction which foreign States enjoy in respect of acts performed in the exercise of sovereign authority (*acta jure imperii*)."

(a)	**Registration no.**	D/4
(b)	**Date**	3 June 1992
(c)	**Author(ity)**	Permanent Representative of Germany to the Council of Europe
(d)	**Parties**	
(e)	**Points of law**	Declaration concerning Article 28 made at the time after the reunification of Germany, replacing an earlier declaration made at the time of deposit of the instrument of ratification concerning the European Convention on State Immunity (ETS No.74). It shows that the Federal Government intended to convey the benefit of state immunity with regard to sovereign acts to all the constituent states of Germany.
(f)	**Classification no.**	0.c, 1.b, 2.a (refers to the European Convention)
(g)	**Source(s)**	Council of Europe – Treaty Office (http://conventions.coe.int/)
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

Text of Declaration:

“The Federal Republic of Germany hereby amends its declaration relating to Article 28, paragraph 2, of the Convention to the effect that all constituent states (Laender) of the Federal Republic of Germany ... shall be able to invoke the provisions of the Convention applying to the Contracting States and shall have the same duties as the latter.“

(a)	**Registration no.**	D/5
(b)	**Date**	11 November 1994
(c)	**Author(ity)**	Permanent Mission of Germany to the United Nations
(d)	**Parties**	
(e)	**Points of law**	Statement during the discussions on the ILC draft Convention on Jurisdictional Immunities of States and their Property in the Sixth Committee of the United Nations General Assembly, 49th Session. The statement outlines the German position on different questions arising from the draft.
(f)	**Classification no.**	0.c, 1.b (refers to the draft Convention)
(g)	**Source(s)**	Permanent Mission of Germany to the United Nations, 49th General Assembly, Sixth Committee, Item 143, 60, in: Deutschland 1994 (Collection by the Federal Foreign Office)
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

Excerpt from Statement:

- On the qualification of a transaction as commercial or non-commercial

"In the interest of legal certainty, my Government continues to maintain that only the objective nature of a transaction involving a foreign state and not its subjective purpose can determine whether the state is entitled to immunity. Legal transactions with foreign states would carry a risk impossible to calculate if the purpose of state action were to constitute a criterion.

[...]

Some of these proposals admit a reference to the purpose of a transaction if the purpose is relevant to the invocation of immunity under the national law of the respective state. In our opinion this would make it too difficult for a party involved in a transaction with a foreign state to predict whether it will be able to pursue a claim in court. Furthermore, the question of reciprocity would arise since the granting of state immunity would necessarily differ according to the applicable law.

As far as the idea of requiring a general declaration by a state to refer to the criterion of purpose is concerned this would solve none of the problems. It would not ensure a greater measure of certainty. Since such a general declaration would not be able to take into account that law and practice of a state might change, it would remain difficult for the private party to predict in which situations the contracting state could invoke immunity. A specific notification of the state about the potential relevance of the purpose criterion would be preferable to a general declaration. However, in the view of my delegation, this proposal still leaves too much uncertainty since it does not require the consent of the private party.

If in addition to nature as the primary criterion, the parties could also expressly agree that a transaction be designated as non-commercial, the granting of immunity would not be left up to the discretion of a foreign state involved in a transaction. We see merit in this proposal which in cases of doubt would make the objective nature of the transaction the decisive criterion."

- On enforcement measures

"In the opinion of my Government the problem of state immunity and enforcement measures is an essential component of the draft convention without which it would be robbed of its justification.

The provision in article 18 para. 1 (c) of the ILC draft, according to which enforcement measures would be restricted to property with some connection to the claim, constitutes a limitation of the liability of the foreign state that goes too far. It would amount to a limited exemption from financial consequences of commercial transactions engaged in by a state. In our view, the interest of a state party is already sufficiently protected by the remaining limitations contained in articles 18 and 19."

- On prejudgement measures

"With regard to prejudgment measures we hold it necessary that they be subject to the same legal regime as postjudgment measures. The exclusion of measures of constraint intended to afford temporary protection could endanger the implementation of judgements against a state party in cases where it does not enjoy immunity."

- On the liability of state agencies or other legal entities connected with a state

" As far as the treatment of state agencies or other legal entities connected with a state is concerned the question is primarily whether, as compensation for the liability of such legal entities, it will be possible, in certain cases to access the property of the parent state. To exclude the possibility of recourse to the state entirely would enable states to avoid financial liability for commerical transactions by setting up independent entities."

Appendix: Full Text of the statement (see source)

(a)	**Registration no.**	D/6
(b)	**Date**	18 October 1995
(c)	**Author(ity)**	Bundesregierung (Federal Government)
(d)	**Parties**	
(e)	**Points of law**	Verbal note from the Federal Government of Germany to the embassy of the Republic of Greece concerning Greek Court decisions dealing with claims for compensation against Germany in connection with the German occupation during World War II. In the verbal note the Federal Foreign Office explained the German position on state immunity.
(f)	**Classification no.**	0.a, 1.c
(g)	**Source(s)**	Grote, Völkerrechtliche Praxis der Bundesrepublik Deutschland 1995, III, 18 (www.virtual-institute.de/de/prax1995/praxb95_.cfm); Röben, Völkerrechtliche Praxis der Bundesrepublik Deutschland 1996, III, 18 (www.virtual-institute.de/de/prax1996/pr96_.cfm)
(h)	**Additional information**	In an answer to a parliamentary question concerning the compensation of Greek victims of the Nazi-Regime the Federal Government in 1997 *inter alia* referred to the relevant verbal note.
(i)	**Full text – extracts – translation - summaries**	

Translation of Verbal Note (Excerpt):

Proceedings before Greek courts concerning claims of Greek citizens against the Federal Republic of Germany based on incidents in World War II are not consistent with international law, and therefore any action before Greek Courts against the Federal Republic of Germany is inadmissible. The basic principle of state immunity in international law hinders any conduct of a case before the courts of one state as far as the proceeding is directed against a foreign state in relation to that state's sovereign action (*acta iure imperii*).

[…]

Furthermore according to international law the direction of individual claims for compensation of material and immaterial damages against another state based on that state's belligerent conduct is impermissible.

(a)	**Registration no.**	D/7
(b)	**Date**	30 October 1962
(c)	**Author(ity)**	Bundesverfassungsgericht (Federal Constitutional Court)
(d)	**Parties**	Submission by the Bundesgerichtshof [Federal High Court] under Art.100 (2) of the Basic Law (for the text *infra* under Additional Information). Parties in the underlying civil suit: Vereinigte Kaliwerke Salzdetfurth AG (plaintiff); Federative National Republic of Yugoslavia (defendant)
(e)	**Points of law**	Federal Constitutional Court applies theory of relative immunity to suit concerning legation premises. The case concerned the premises of the Yugoslav Military Mission in Berlin which had been sold by plaintiff to defendant. Plaintiff claimed that the conveyance of property was void and sought rectification of the land register in its favor which required defendant's consent. Suit was filed to obtain this consent.
(f)	**Classification no.**	0.b.1; 1.b.
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.15, p.25 *et seq.* (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communitites 1952-1989 (published by the Members of the Court), 1992, p.137 *et seq*.
(h)	**Additional information**	This Federal Constitutional Court decision was followed by the Bundesverwaltungsgericht [Federal Administrative Court] in a decision of 17 May 1999 [ZOV 1999, 381 *et seq*.] which concerned the transfer of an embassy compound to the heirs of the original owner who had been expropriated during the Nazi

		period because of his race. Article 100 (2) of the Basic Law (German Constitution of 1949) reads as follows: “Where in the course of litigation doubt exists whether a rule of international law is an integral part of federal law and whether such rule directly establishes rights and obligations for the individual (Article 25), the court shall seek a ruling from the Federal Constitutional Court.“ (Official translation published by the Press and Information Office of the Federal Government)
(i)	**Full text – extracts – translation - summaries**	

English Excerpt (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.148)**:**

“[N]o general rule of public international law whereby domestic jurisdiction in suits against a foreign State in relation to its legation premises are in every case ruled out can be found. The immunity of legation premises instead reaches only as far as is requisite for carrying out the tasks of the diplomatic mission.“

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

Appendix 3: Federal Administrative Court decision of 1999 (mentioned under Additional Information)

(a)	**Registration no.**	D/8
(b)	**Date**	30 April 1963
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Submission by the Cologne Regional Court under Art.100 (2) of the Basic Law (for the text see D/7 under Additional Information). Parties in the underlying civil suit: anonymous heating installation repair shop (plaintiff); Iranian Empire (defendant)
(e)	**Points of law**	Federal Constitutional Court adopts and explains the theory of relative state immunity. The case arose when the defendant refused to pay plaintiff for repair work done at the Iranian Embassy building in Cologne.
(f)	**Classification no.**	0.b.1; 1.b.
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.16, p.27 *et seq.* (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communitites 1952-1989 (published by the Members of the Court), 1992, p.150 *et seq*
(h)	**Additional information**	This decision of the Federal Constitutional Court is quoted in the Explanatory Report to the European Convention on State Immunity (ETS No.74) as an "important decision" that "adopted the principle of relative State Immunity" (§5).
(i)	**Full text – extracts – translation - summaries**	

English Excerpt (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.150 [headnotes])**:**

"1. A rule of public international law whereby domestic jurisdiction for actions against a foreign State in relation to its non-sovereign activity is ruled out is not an integral part of Federal law.

2. a) The criterion for distinguishing between sovereign and non-sovereign State activity is the nature of the State's action.

   b) Classification as sovereign or non-sovereign State activity is in principle to be done according to national law."

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	**Registration no.**	D/9
(b)	**Date**	13 December 1977
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Submission by the Bonn Local Court under Art.100 (2) of the Basic Law (for the text see D/7 under Additional Information). Parties in the underlying civil suit: anonymous landlord (creditor) and the Republic of the Philippines (debtor)
(e)	**Points of law**	The landlord had rented a house to the Republic of the Philippines which used it as an office for its Embassy in Germany. After the end of the tenancy agreement the landlord secured a default judgment against the Philippines concerning arrears of rent and expenses for necessary repair work. To execute this judgment he seized a current bank account used by the Philippine Embassy. The Republic of the Philippines lodged an objection with the Bonn Local Court claiming sovereign immunity. The Federal Constitutional Court upheld the objection.
(f)	**Classification no.**	0.b.1; 1.b; 2.b.
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.46, p.342 *et seq.* (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/1: International Law and Law of the European Communitites 1952-1989 (published by the Members of the Court), 1992, p.358 *et seq*.
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries/ Texte complet - extraits - traduction – résumés**	

English Excerpt (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.358 *et seq.* [headnotes])**:**

"5. "The fact that general customary international law contains the minimum obligation for contentious proceedings to grant immunity in relation to sovereign acts (*acta iure imperii*) does not by itself mean that, even as regards execution, it requires only limited immunity. ...

7. At present there is no practice of States that would as yet be sufficiently general and supported by the necessary legal conviction as to establish a general rule of intern[ation]al law whereby the State having jurisdiction would be barred from execution against a foreign State absolutely.

8. There is a general rule of international law that execution by the State having jurisdiction on the basis of a judicial writ of execution against a foreign State, issued in relation to non-sovereign action (*acta iure gestionis*) of that State upon that State's things located or occupied within the national territory of the State having jurisdiction, is inadmissible without assent by the foreign State, insofar as those things serve sovereign purposes of the foreign State at the time of commencement of the enforcement measure.

9. In the case of measures by way of security or execution against a foreign State, international law objects, at the time concerned serving its diplomatic representation in carrying out its official functions, may not be seized (*ne impediatur legatio*).

10. Because of the problems of demarcation in assessing endangerment of that functionality and because of the latent possibilities of abuse, general international law draws the area of protection in favour of the foreign State very broadly and focuses on the typical, abstract danger, not on the specific endangerment of the functionality of the diplomatic representation.

11. Receivables from a current ordinary bank account of the embassy of a foreign State existing in the forum State and intended to cover the embassy's expenses and costs are not subject to execution by the forum State.

12. It would constitute interference contrary to international law in the exclusive affairs of the sending State for the enforcement agencies of the receiving State to demand that the sending State, without its assent, give details of the existence or of the earlier, present or future uses of credits on such an account.

13. The question remains open whether and on what criteria claims and other rights on other accounts of a foreign State with banks in the forum State, for instance special accounts in connection with procurement purposes or issues of loans or on accounts without special earmarking, are to be treated as sovereign or non-sovereign assets and which limits in international law are accordingly to be taken into account as appropriate for the law of evidence. ...

14. The principle of the sovereign equality of States is a constitutive principle of contemporary general international law, which, at any rate within the sphere of the diplomatic transactions of States, requires far-reaching formal equality of treatment. Differential treatment of States in the sphere of diplomatic immunity according to their respective economic capacity would be incompatible therewith."

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	**Registration no.**	D/10
(b)	**Date**	26 September 1978
(c)	**Author(ity)**	*Bundesgerichtshof* (Federal High Court)
(d)	**Parties**	Plaintiff: religious association with legal personality as an association registered in Germany (branch of the Church of Scientology of California whose mother-church is domiciled in England); defendant: director of New Scotland Yard
(e)	**Points of law**	Plaintiff brought action for a permanent injunction against defendant in view of the fact that New Scotland Yard had issued a report on the Scientology movement accusing it of dishonest acts to the detriment of its members. This report had been sent to the Federal Office of Criminal Investigation (*Bundeskriminalamt*) upon its request and transmitted by it to all the state offices of criminal investigation (*Landeskriminalämter*). Plaintiff claimed that certain factual allegations made in the report were untrue. The action was dismissed because the German courts did not have jurisdiction in view of defendant's sovereign immunity.
(f)	**Classification no.**	0.a., 1.b
(g)	**Source(s)**	Neue Juristische Wochenschrift 1979, p.1101 *et seq.*
(h)	**Additional information**	
(i)	**Full text - extracts - translation - summaries**	

English Summary of Relevant Parts of Decision:

The question whether defendant is subject to jurisdiction of German courts is to be answered pursuant to the general rules of international law (see Article 25 of the Basic

Law [for the text see D/19 under Additional Information]). This refers to customary international law. While sovereign immunity no longer covers *acta iure gestionis* it still applies to sovereign acts of states. Whether the report of Scotland Yard about Scientology qualifies as a sovereign act or a non-sovereign act must be determined according to German law as the law of the forum. According to German law the exercise of police power is undoubtedly part of the sovereign activity of states. It even is at the core of sovereign power so that the report at issue here must be considered as an act *iure imperii* even if it had to be qualified as an act *iure gestionis* under English law. The report was sent to the Federal Office of Criminal Investigation upon its request pursuant to the international agreement between the Federal Republic of Germany and Great Britain on mutual assistance in criminal matters of 1961. Fulfilling an obligation arising under an international treaty on police cooperation in criminal matters always amounts to an act *iure imperii*. The acts of Scotland Yard and its director – the defendant – are sovereign acts of the British state and not an act of the defendant as a private person. It would undermine the unlimited immunity of foreign states with regard to their sovereign acts if German courts were to allow actions directly against the individual performing these sovereign acts on behalf of the state.

Appendix: German original (from the Juris online retrieval system)

(a)	**Registration no.**	D/11
(b)	**Date**	12 April 1983
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Constitutional complaint by the National Iranian Oil Company (a joint stock company under Iranian law owned by the Islamic Republic of Iran) against orders of attachment and distraint by German courts, issued on petitions by British and U.S. firms.
(e)	**Points of law**	The Federal Constitutional Court dismissed the complaint as unfounded because it drew a distinction between the sovereign state and separate legal entities under private law established by it.
(f)	**Classification no.**	0.b.1; 1.b; 2.b.
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.64, p.1 *et seq*. (German original); English extracts in: Decisions of the Bundesverfassungsgericht – Federal Constitutional Court – Federal Republic of Germany, Volume I/2: International Law and Law of the European Communitites 1952-1989 (published by the Members of the Court), 1992, p.479 *et seq*.
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Excerpt (quoted from Decisions of the Bundesverfassungsgericht [see *supra* under Source], p.479 *et seq.* [headnotes])**:**

"There is no general rule of international law requiring that a foreign State be treated as owner of receivables on accounts maintained with banks in the forum State kept in the name of an enterprise of the foreign State having legal capacity.

The forum State is not prevented from treating the enterprise concerned as entitled to receive claims and, on the basis of a title of enforcement given against that enterprise, issued in prior proceedings for protection of rights in relation to non-sovereign action by the enterprise, to distrain the receivables concerned in order to secure the claim in the title.

This applies irrespective of whether the credits on these accounts are freely available to the enterprise or are according to foreign law intended for transfer to an account of the foreign State with its central bank.“

Appendix 1: German original (see Source)

Appendix 2: English translation (see Source)

(a)	**Registration no.**	D/12
(b)	**Date**	30 September 1988
(c)	**Author(ity)**	*Bundesverwaltungsgericht* (Federal Administrative Court)
(d)	**Parties**	Asylum seeker filed suit against rejection of his application for asylum by the Federal Government.
(e)	**Points of law**	Tamile asylum seeker from Sri Lanka moved for the cross examination of the Indian minister of defense to support his allegation that Indian troops had engaged in indiscriminate killings of Tamiles in Sri Lanka. Motion was denied because of state immunity. On appeal the Bundesverwaltungsgericht rejected the argument that denial of motion amounted to procedural error.
(f)	**Classification no.**	0.a, 1.b
(g)	**Source(s)**	Deutsches Verwaltungsblatt 1989, 261 *et seq*
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Summary of Relevant Part of Decision:

The testimony of the Indian defense minister is a piece of evidence which cannot be obtained. Sovereign states enjoy unlimited immunity with regard to their sovereign acts (*acta iure imperii*) under customary international law which binds German courts according to Art.25 of the Basic Law (for the text see D/19 under Additional Information). This immunity extends to the officials acting for the states. It also excludes subpoenas which would direct them to testify as witnesses concerning those sovereign acts absent special provisions in a treaty. There is no such treaty between Germany and India. As the testimony of the Indian defense minister concerns the mission of Indian troops deployed in Sri Lanka, their motives and their official acts it undoubtedly concerns sovereign acts. Therefore the minister is under no legal obligation to testify, and he is not even required to do so by a rule of international comity.

Appendix: German original (from the Juris online retrieval system

(a)	**Registration no.**	D/13
(b)	**Date**	15 May 1995
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Submission by the *Kammergericht* [Berlin Superior Court] under Art.100 (2) of the Basic Law (for the text see D/7 under Additional Information) in criminal proceedings against persons indicted for espionage against the Federal Republic of Germany on behalf of the former German Democratic Republic. Constitutional complaints of persons against their conviction for espionage against the Federal Republic of Germany on behalf of the former German Democratic Republic.
(e)	**Points of law**	The decision mainly concerns the question whether there is a general rule of international law according to which it is inadmissible to prosecute persons for espionage committed on behalf of and from the territory of a state that later peacefully acceded to the state against which the espionage was directed. The existence of such rule was denied. In the course of argument the court briefly touched upon the state immunity issue and rejected the argument that it could be used as a defense against the prosecution of spies.
(f)	**Classification no.**	0.a, 1.c
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.92, p.277 *et seq.*
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Excerpt:

"There is no rule of international law according to which spies who are prosecuted by the state against which the espionage was directed could rely on the principles of sovereign immunity. There is an exception only if the accused enjoy the protection of the Vienna Conventions on Diplomatic Relations of 1961 or on Consular Relations of 1963 or of special agreements." (p.321)

Appendix: German original (see Source)

(a)	**Registration no.**	D/14
(b)	**Date**	3 July 1996
(c)	**Author(ity)**	*Bundesarbeitsgericht* (Federal Labor Court)
(d)	**Parties**	Plaintiff: Argentine citizen and former employee of the Argentine Consulate General in Germany; defendant: Argentine Republic
(e)	**Points of law**	Plaintiff considered termination of her labor contract as ineffective and sued defendant, seeking declaratory relief to the effect that her labor contract had continued beyond the date of the termination. Suit was dismissed according to §20 (2) of the Courts Act (see D/19) for lack of jurisdiction of the German courts. The decision of the Federal Labor Court heavily relies on the decisions of the Federal Constitutional Court reported under D/8 and D/9.
(f)	**Classification no.**	0.a., 1.b
(g)	**Source(s)**	Entscheidungen des Bundesarbeitsgerichts Vol. 83, p.262 *et seq*
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Summary of Relevant Parts of Decision:

The immunity claim by defendant must be evaluated according to the general rules of international law (§20 (2) of the Courts Act). Customary international law excludes the jurisdiction of German courts over sovereign acts of foreign states but not over their non-sovereign acts. The distinction turns not on the motive or purpose of the act but on its nature. The distinction is to be made according to the law of the forum state. However, the general rules of international law provide that all those acts of foreign states must remain exempt from the jurisdiction of the national courts which are considered as sovereign acts (*acta iure imperii*) by the majority of states even if the law of the forum state would rate them as *acta iure gestionis*. Although labor contracts are considered as private law contracts in Germany even if concluded on behalf of the state the pending case concerns *acta iure imperii* beyond the jurisdiction of the German courts. The reason is that plaintiff exercised consular functions (e.g., she issued Argentine passports and visas). These functions are within the core area of sovereignty. The concept of state immunity protects foreign states from German courts' interference in their sovereign functions. If an employee exercises sovereign functions as a consular official of a foreign

state, the review of this employee's dismissal by German courts would interfere with the consular functions of this state and thus run counter to the principle *ne impediatur legatio*.

Appendix: German original (from the Juris online retrieval system)

(a)	**Registration no.**	D/15
(b)	**Date**	24 October 1996
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Constitutional complaints of members of the government of the former German Democratic Republic who had after the reunification of Germany been convicted and sentenced for homicide with regard to the shooting and killing of persons who had tried to flee the GDR across the inner-German border.
(e)	**Points of law**	The decision mainly concerns the question whether the conviction of the complainants violates the prohibition of retroactive criminalization of acts not subject to punishment at the time when they were committed. But the complainants had also raised the state immunity defense which the court rejected in a short passage quoted below.
(f)	**Classification no.**	0.a, 1.c
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.95, p.96 *et seq.*
(h)	**Additional information**	See also the short decision of a chamber of the Federal Constitutional Court of 21 February 1992 which had rejected the immunity defense of former GDR head of state Honecker for the same reason (published in German with an English headnote in Deutsche Rechtsprechung zum Völkerrecht und Europarecht 1986-1993 [1997], p.129 *et seq.*). The headnote says: "The immunity of a head of state cannot outlast the existence of the state which he or she represented. After the extinction of a state its representatives can therefore be subject to the criminal jurisdiction of other states."

(i)	**Full text – extracts – translation - summaries**	

English Excerpt:

"... it is the generally accepted position in the international legal literature ... that the immunity does not continue beyond the existence of the state whose citizen was the person concerned. ... The argument of the complainant no.3 that Article 25 of the Basic Law was violated for the reason alone that his criminal prosecution disregarded the sovereignty of the German Democratic Republic is not correct for this reason." (p.129 *et seq.*)

Appendix 1: Relevant parts of the German original (see Source)

Appendix 2: Decision of chamber of Federal Constitutional Court (see Additional Information)

(a)	**Registration no.**	D/16
(b)	**Date**	10 Juni 1997
(c)	**Author(ity)**	*Bundesverfassungsgericht* (Federal Constitutional Court)
(d)	**Parties**	Constitutional complaint of a former ambassador against an arrest warrant issued for an act he had committed in his official function
(e)	**Points of law**	Complainant was accredited as the ambassador of his home state in the former German Democratic Republic. At that time, a terrorist bombing occurred in West Berlin which killed one person. The explosives had been stored at the embassy in East Berlin whose head was the complainant. After the reunification of the GDR and the Federal Republic of Germany an arrest warrant was issued against complainant for aiding and abetting the terrorist bombing. The complaint was rejected because complainant's diplomatic immunity recognized by the German Democratic Republic did not bind the Federal Republic of Germany. In this context the Federal Constitutional Court refered to distinctions between state immunity and diplomatic immunity which are summarized below.
(f)	**Classification no.**	0.a, 1.c
(g)	**Source(s)**	*Entscheidungen des Bundesverfassungsgerichts* Vol.96, p.68 *et seq*

(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Summary of Parts of the Decision:

The immunity of state officials, in particular members of the government, derives directly from state immunity. It must be distinguished from diplomatic immunity. State immunity and diplomatic immunity represent two distinct concepts of international law following their own rules so that one can draw no conclusions from the limits of one of the concepts as to the existence of similar limits of the other concept. Therefore exceptions to the concept of state immunity permitting the prosecution of state officials for international crimes etc. cannot be transferred to the concept of diplomatic immunity. This is so because of the personal element involved in diplomatic immunity which protects not only the sending state but also the diplomat personally. Even if a state does not enjoy immunity for non-sovereign acts this does not mean that a diplomat involved in such acts is subject to the jurisdiction of the receiving state. The distinction between *acta iure imperii* and *acta iure gestionis* which characterizes the concept of state immunity is unknown to the law of diplomatic relations. Diplomatic immunity for official acts thus is not a mere reflection of the immunity of the sending state but has its independent basis in the special status of the diplomat. His presence and his competence to act for the sending state in the territory of the receiving state is based on the consent of the latter in the form of the *agrément* while the extension of state immunity to state officials is based on nothing but the internal appointment processes of the state concerned (p.85 *et seq*.)

Appendix: German original (see Source)

(a)	**Registration no.**	D/17
(b)	**Date**	23 May 2000
(c)	**Author(ity)**	*Landgericht* Frankfurt/Main (Frankfurt District Court)
(d)	**Parties**	Defendant is creditor of plaintiff-debtor, the state of Brazil. Creditor has two executory titles against debtor and has commenced an enforcement procedure trying to attach claims of debtor against a group of banks arising from a Brazilian government bond which banks have subscribed. Debtor has filed a special appeal petitioning for a court order declaring inadmissible the execution against these claims.
(e)	**Points of law**	Inadmissibility of execution against assets of foreign state used for sovereign purposes.
(f)	**Classification no.**	0.b.3, 2.b
(g)	**Source(s)**	*Recht der Internationalen Wirtschaft 2001*, p.308
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Summary of the Decision:

Pursuant to a general rule of international law foreign states enjoy immunity from execution. Execution against their assets which serve sovereign purposes is inadmissible even if these assets are located in the forum state. The claims arising from the government bond against which execution is directed are exempt from execution because they serve the balancing of the Brazilian state budget. This has been proven by the Brazilian finance minister's affirmation in lieu of an oath. To require further proof would constitute an illicit interference in the internal affairs of Brazil.

Appendix: German original (see Source)

(a)	**Registration no.**	D/18
(b)	**Date**	25 October 2001
(c)	**Author(ity)**	*Bundesarbeitsgericht* (Federal Labor Court)
(d)	**Parties**	Plaintiff: German citizen and former employee of the Belgian Embassy in Germany working in a branch office of this Embassy; defendant: Kingdom of Belgium
(e)	**Points of law**	Termination of plaintiff's labor contract after she had abused an Embassy seal for private purposes was considered as ineffective by plaintiff. She therefore sued defendant, seeking declaratory relief to the effect that her labor contract had continued beyond the date of the termination. Suit was dismissed according to §20 (2) of the Courts Act (see D/19) for lack of jurisdiction of the German courts. The decision of the Federal Labor Court relies on its earlier decision reported under D/14.
(f)	**Classification no.**	0.a., 1.b
(g)	**Source(s)**	Betriebs-Berater 2002, p.787 *et seq*
(h)	**Additional information**	See also the decision of the Federal Labor Court of 23 November 2000 (Neue Zeitschrift für Arbeitsrecht 2001, p. 683 *et seq.*)
(i)	**Full text – extracts – translation - summaries**	

English Summary of Relevant Parts of Decision:

The defendant is not subject to the jurisdiction of the German courts (§20 (2) of the Courts Act [*Gerichtsverfassungsgesetz*]). Although Article 5 of the European Convention on State Immunity of 1972 excludes the state immunity defense in certain labor contract disputes Article 31 of the Convention expressly reserves the privileges and immunities of diplomatic and consular missions and accords priority to the Vienna Conventions on Diplomatic Relations of 1961 and on Consular Relations of 1963 in cases of conflict. Thus a state party to the European Convention on State Immunity of 1972 can claim sovereign immunity in labor contract disputes with employees of its embassies and consulates to a wider extent than in similar disputes with other employees. In particular, the international legal principle *ne impediatur legatio* applies in those cases. According

to Art.32 of the European Convention on State Immunity this convention is not meant to limit the sovereign powers of the states parties with regard to diplomatic and consular personnel any further than they were limited by the general rules of international law and the Vienna Conventions when the European Convention on State Immunity entered into force. This interpretation is also supported by Article 24 (1) of the European Convention on State Immunity pursuant to which the immunity of foreign states from jurisdiction with regard to *acta iure imperii* is expressly reserved.

According to §20 (2) of the Courts Act a foreign state is exempted from the jurisdiction of the German courts with regard to disputes arising from the termination of labor contracts with consular employees. (Here the court refers to its earlier decision reported under D/14.) The same applies with regard to embassy employees who perform consular functions in a branch office of the embassy. The judicial review of the dismissal of such an employee would interfere with the sovereign functions of the foreign state and thus run counter to the principle *ne impediatur legatio*. This holds true no less if the foreign state is a party to the European Convention on State Immunity (see Article 32 of this Convention).

The plaintiff did in fact perform core consular functions at the branch office of defendant's embassy. She was empowered to sign visas and to use the embassy seal. She was also put on the list of personnel with signing authority.

Appendix 1: German original (from the Juris online retrieval system)

Appendix 2: Decision of Federal Labor Court mentioned under Additional Information

(a)	**Registration no.**	D/19
(b)	**Date**	17 July 1984
(c)	**Author(ity)**	Federal Parliament (*Bundestag* and *Bundesrat*)
(d)	**Parties**	
(e)	**Points of law**	Art.4 of the Second Act Amending the Act on the Federal Central Register (*Zweites Gesetz zur Änderung des Bundeszentralregistergesetzes*) rephrases §20 of the Courts Act (*Gerichtsverfassungsgesetz*). §20 (2) of the Courts Act incorporates the general rules of international law concerning the immunity of states and their officials.
(f)	**Classification no.**	0.c, 1.b
(g)	**Source(s)**	*Bundesgesetzblatt* (Federal Law Gazette) 1984 Part I, p.990, 993-4
(h)	**Additional information**	Article 25 of the Basic Law (German Constitution of 1949) reads as follows: "The general rules of international law shall be an integral part of federal law. They shall override laws and directly establish rights and obligations for the inhabitants of the federal territory." (Official translation published by the Press and Information Office of the Federal Government)
(i)	**Full text – extracts – translation - summaries**	

English Translation of §20 of the Courts Act:

"(1) The jurisdiction of the German courts does not extend to representatives of other states and their entourage who stay within the area of application of the present Act upon an official invitation of the Federal Republic of Germany.

(2) In other respects, the jurisdiction of the German courts does not extend either to other persons than those mentioned in paragraph (1) and in §18 [concerning diplomatic agents] and §19 [concerning consular officials] insofar as these persons are exempted from it pursuant to the general rules of international law, on the basis of international agreements or other provisions of law."

Appendix: German text of Zweites Gesetz zur Änderung des Bundeszentralregistergesetzes

(a)	**Registration no.**	D/20
(b)	**Date**	1 September 1989
(c)	**Author(ity)**	*Rechtsausschuß des Deutschen Bundestages* (Judiciary Committee of the German Federal Diet)
(d)	**Parties**	
(e)	**Points of law**	Report and Recommendation on the Government draft of Act of Parliament required by Article 59 (2) clause 1 of the Basic Law (for the text see infra under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). The Report shows that the Committee shares the theory of relative state immunity.
(f)	**Classification no.**	0.c, 1.b, 2.a (refers to the European Convention)
(g)	**Source(s)**	Deutscher Bundestag, 11. Wahlperiode, Drucksache 11/5132 (official prints of the German Federal Diet)
(h)	**Additional information**	See D/1, D/21. Article 59 (2) clause 1 of the Basic Law (German Constitution of 1949) reads as follows: "Treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the approval or participation of the appropriate legislative body in the form of a federal law. ..." (Official Translation published by the Press and Information Office of the Federal Government)
(i)	**Full text – extracts – translation - summaries**	

English Translation of Excerpt from Committee Report:

"The immunity of foreign States from national jurisdiction is an internationally recognized principle of customary international law, safeguarded by reciprocity. In the course of time, however, international and national practice as well as legal doctrine have moved away from the absolute immunity of foreign states. According to the theory of relative or

limited immunity a state shall enjoy immunity only with regard to sovereign acts but not with regard to private law acts. The certain and harmonious application of this by now well-established principle is not yet ensured, due to the lack of sufficiently defined agreements. Therefore the European Convention on State Immunity establishes general rules which specify the extent of immunity from juridiction which a state enjoys vis-à-vis the courts of other states. ...“ (p.1 under A)

Appendix: *Beschlußempfehlung und Bericht des Rechtsausschusses* (see Source)

(a)	**Registration no.**	D/21
(b)	**Date**	28 September 1989 (passed *Bundestag*); 20 October 1989 (passed *Bundesrat*)
(c)	**Author(ity)**	Federal Parliament (*Bundestag* and *Bundesrat*)
(d)	**Parties**	
(e)	**Points of law**	Act of Parliament required by Article 59 (2) of the Basic Law (for the text see D/20 under Additional Information) to enable the Federal Republic of Germany to ratify the European Convention on State Immunity of 1972 (ETS No.74). In assenting to the Convention without reservation, the German Parliament recognizes the theory of relative state immunity embodied therein.
(f)	**Classification no.**	0.c, 1.b, 2.a (refers to the European Convention)
(g)	**Source(s)**	*Bundesgesetzblatt* (Federal Law Gazette) 1990 Part II, p.34
(h)	**Additional information**	
(i)	**Full text – extracts – translation - summaries**	

English Translation of Article 1 of the Act:

“The European Convention on State Immunity, signed by the Federal Republic of Germany in Basle on 16 May 1972, is assented to. The Convention is published below.“

Appendix: Text of the Act (see Source)