

Mills and Trapp on Germany v. Italy

Alex Mills and Kimberley Natasha Trapp (Cambridge University) have posted *Smooth Runs the Water Where the Brook is Deep: The Obscured Complexities of Germany v. Italy* on SSRN.

This article examines and critiques the February 2012 decision of the International Court of Justice in the case of Jurisdictional Immunities of the State (Germany v Italy: Greece intervening). The focus is on three issues: first, the Court's analysis of the 'territorial tort' exception to immunity, and dismissal of its applicability to the conduct of armed forces in the context of an armed conflict; second, Italy's arguments based on the ius cogens status of the norms which had been violated by Germany and the lack of alternative means of enforcing those norms, rejected by the Court through its assertion of a decisive substance/procedure distinction; and third, the perhaps curious absence (in either the Court's judgment or Italian pleadings) of the argument that any violation of immunity might be justified as a lawful countermeasure. The Court found in favour of Germany on all counts, and by a clear majority. The decision was widely anticipated, and on first read the conclusions and reasoning of the Court appear inevitable, obvious, and even banal. But the apparent simplicity of the issues presented to and analysed by the Court is deceptive.

The paper was published in the first issue of the *Cambridge Journal of International and Comparative Law*.