national personality which they enjoy in order to invoke the benefit in France of jurisdictional immunity and immunity from execution.

[This Court considers] that such immunities can only be lawfully invoked in France by those international organizations if they result from either an international agreement to which France is a party or from a customary rule.

France is a member of neither ECOWAS nor the Fund and it has not been alleged that it has ever concluded any agreement with either body which would confer such immunity upon them on its territory.

Proof of the existence of an international custom which would constitute an exception to the basic principle concerning the relative effect of treaties has not been produced.

It therefore follows that the appellants cannot base any appeal on jurisdictional immunity which, in any case, they have expressly and necessarily waived by instituting proceedings in France for payment against BCCI.

Equally, they cannot invoke immunity from execution, which would in any case be inapplicable since no measure of execution has been taken against ECOWAS or the Fund, whose assets are only unclaimable for the present as a result of the binding effect of general and permanent provisions of private law, which are a matter of public policy, contained in Articles 33 and 47 of the Law of 25 January 1985.

Consequently, and for these reasons alone, the judgment under appeal must be confirmed . . .

For these reasons, the Court . . . confirms the judgment under appeal in all its provisions.

[Report: Clunet 1993, p. 353 (in French)]
Diplomatic relations—Immunity—Inviolability of premises of diplomatic mission — Vienna Convention on Diplomatic Relations, 1961, Articles 22 and 31—Scope of application—The law of France

REPUBLIC OF ESTONIA

France, Court of Cassation (First Civil Chamber). 30 June 1993

(Grégoire, President; Lemontey, Rapporteur; Lupi, Advocate-General)

SUMMARY: The facts:—On 11 March 1990 the Republic of Estonia declared its independence from the Soviet Union. Its independence was recognized by the Supreme Soviet on 27 August 1991, following a failed coup d'état in the Soviet Union which led to the break-up of the Union into its constituent States. The Republic of Estonia then lodged an application before the French courts for the appointment of a court official to establish the identity of the occupants of a building in Paris which, it claimed, had been purchased and then used as its diplomatic mission from 1935 until 1939, prior to its annexation by the USSR. At first instance, and on appeal, the French courts dismissed the application as inadmissible on the ground that it was contrary to the principles of the inviolability of diplomatic premises and the immunity of diplomatic agents enshrined in Articles 22 and 31 of the Vienna Convention on Diplomatic Relations, 1961, as well as the jurisdictional immunity of foreign States. The Republic of Estonia appealed to the Court of Cassation.

Held:—The appeal was allowed and the case was remitted for a decision on the merits to the Court of Appeal of Versailles.

(1) The jurisdictional immunity of foreign States was not absolute. It could only be invoked by a State which believed that it was entitled to rely upon it, where it had not waived its right to do so. The Court of Appeal had held that the application at issue, which sought in due course to obtain recognition of property rights over the premises at issue, violated the jurisdictional immunity of a foreign State. However, the Court of Appeal had wrongly substituted its own assessment for that of the State which would be the defendant in any subsequent proceedings, on the point of whether that State would rely upon its immunity.

(2) According to the provisions of Articles 22 and 31 of the Vienna Convention on Diplomatic Relations, 1961, while the premises of diplomatic missions were inviolable, the agents of the receiving State could enter them with the consent of the head of the mission. The immunity from civil jurisdiction enjoyed by diplomatic agents only applied to proceedings which were brought against them in person. In holding that the investigation sought

1 Additional facts have been taken from a Note by Burdeau printed in Clunet 1994, p. 156 at p. 158.
would be of such a nature as to infringe the inviolability of diplomatic premises and the immunity of agents of a foreign State, the Court of Appeal had wrongly substituted its own assessment of the position for that of the State in question.

The following is the text of the judgment of the Court:

The Republic of Estonia has lodged an application with the President of the Tribunal de grande instance of Paris for the appointment of a court official (huissier de justice) with the task of establishing the identity of the occupants, and the conditions of their occupation, of a building in Paris. The Republic of Estonia claims that it is the owner of that building according to the terms of a certified document of 4 December 1935 and that the property was allocated for its diplomatic mission until its annexation by the USSR in 1939. The judgment under appeal (Paris, 2 October 1991) held that the application was inadmissible.

On the second part of the single ground of appeal

The Republic of Estonia argues that the judgment under appeal was wrong to have invoked the immunity from execution granted to foreign States, since the object of its action was not to obtain execution over property.

However, contrary to the ground of appeal put forward, the Court of Appeal did not base its decision on the immunity from execution of the State occupying the premises. This ground of appeal is therefore wrong in fact.

On the first part of the ground of appeal

The Court has considered the principles governing the jurisdictional immunity of foreign States. The jurisdictional immunity from which foreign States may benefit is not absolute. It can only be invoked by a State which believes that it is entitled to rely upon it, where it has not waived its right to do so.

The Court of Appeal held that the action brought by the Republic of Estonia, seeking in due course to obtain recognition of its property rights over the premises at issue, violated the principle of the jurisdictional immunity of foreign States.

However, by substituting its own assessment for that of the State which would be the defendant in any subsequent proceedings, on the point of whether that State would rely upon its immunity and thereby pre-judging the merits of such a claim, the Court of Appeal misconstrued the above-mentioned principles.
On the third part of the ground of appeal

The Court has considered Articles 22 and 31 of the Vienna Convention on Diplomatic Relations of 18 April 1961 and Articles 31 and 43 of the Vienna Convention on Consular Relations of 24 April 1963.

According to these provisions, whilst the premises of diplomatic and consular missions are inviolable, the agents of the receiving State may enter them with the consent of the head of the mission or the head of the consular post. The immunity from civil jurisdiction enjoyed by diplomatic agents and consular officials only applies to proceedings which are brought against them in person.

In holding that the investigation sought, to the extent that it would have to be carried out inside premises occupied by a third State, would be of such a nature as to infringe the inviolability of diplomatic premises and the immunity of agents of that State, the Court of Appeal once again substituted its own assessment of the position for that of the State in question and thereby violated the above-mentioned provisions.

For these reasons, the Court:

Quashes and annuls, in all its provisions, the judgment rendered between the parties on 2 October 1991 by the Court of Appeal of Paris;

Consequently returns the case and the parties to the state in which they were prior to that judgment; and

Remits the case for decision to the Court of Appeal of Versailles.

[Report: Clunet 1994, p. 156 (in French)]

NOTE.—An identical judgment was rendered on the same day by the same Chamber of the Court of Cassation in relation to a similar application lodged by the Republic of Latvia concerning a building which had been used for its diplomatic mission from 1927 until its annexation by the USSR in 1939 (Clunet 1994, Note at p. 158).