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Editorial Board
Massimo Iovane (Napoli) and Geir Ulfstein (Oslo)

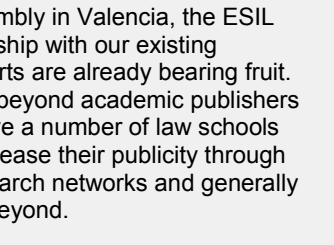
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1. Message from the President and the Secretary General

Dear ESIL Members,

The strength of ESIL is in its members and their diversity. We are pleased to report that our membership has been increasing steadily and we hope that it will continue to do so. It is always a pleasure for us to meet you at biennial conferences, research fora and other ESIL events, as well as to communicate with you through different electronic media.



With regard to membership, the Society is very keen on developing links with other institutions, and in particular attracting some of them to become institutional members. The benefits of such partnerships are mutual, and more than just financial.

On the basis of the authority given to it by the ESIL General Assembly in Valencia, the ESIL Board has launched a number of efforts to strengthen our partnership with our existing institutional members and to attract new members, and these efforts are already bearing fruit. But we also wish to expand our membership drive so as to reach beyond academic publishers to a wider range of institutions. In particular, our ambition is to have a number of law schools become institutional members. Not only will this allow them to increase their publicity through ESIL, but it may present an excellent opportunity for creating research networks and generally promoting cooperation between law schools across Europe and beyond.

We are looking forward to welcoming new members and working together towards strengthening the scientific standing of ESIL. We will equally always welcome any ideas or suggestions from the membership regarding the work of the Society and our interaction more generally.

Laurence Boisson de Chazournes
President

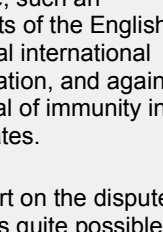
Marko Milanovic
Secretary-General

European Society of International Law (ESIL)

2. Guest Editorial

Two comments on the decision of the ICJ on State immunity

Benedetto Conforti - Professor Emeritus of International Law, The University of Naples 'Federico II'



It is common knowledge that the ICJ ruled against Italy in the judgment of 3 February 2012 in *Jurisdictional Immunities of the State (Germany v. Italy)*, because of the refusal of the Italian courts to recognize the immunity of Germany in a number of civil cases brought by individuals seeking to obtain compensation for damage resulting from the heinous crimes committed by German troops during World War II.

The Court grounded its decision on the extensive practice of domestic courts in favour of immunity even when gross violations of human rights are involved. From this point of view, the decision does not seem easy to criticize. It is true that the position of the Italian courts appeared to be innovative and the Court did not feel able to sustain it. In my view, however, precisely the emphasis given by the Court to almost all of the decisions of the domestic courts calls for two observations.

The first observation is the following. On immunity, as implicitly acknowledged by the Court in respect of the immunity of States, it is mainly the domestic Courts which build up the process of forming customary international law. But then, if we want customary law to evolve, we must admit that its formation must be characterized by decisions that conflict with the existing customary law. This is true for any customary norm, but it is even more so on the question of immunity, where the domestic Courts must also take their own legal systems into account, particularly with the limitations that constitutional requirements may pose in order to protect the interests of individuals. For example, one may consider unlawful the behaviour of the Italian and Belgian courts when, in the twenties, by introducing the distinction between acts *jure imperii* and acts *jure gestionis*, they innovated the existing practice which was in favour of absolute immunity of the foreign State from civil jurisdiction. And, to continue the example, such an unlawful act lasted for at least forty years, since only after that time did the Courts of the English-speaking world accept the distinction and bring about its consolidation in general international law. In my view, the same thing is happening today in the case of another innovation, and again at the hands of the domestic Courts, this time with regard to the increasing denial of immunity in respect of the economic aspects of the employment relationship with foreign States.

If this is true, the game is not over yet in our case. Despite the ruling of the Court on the dispute between Italy and Germany, a judgment valid only for the parties in question, it is quite possible, and highly desirable for reasons of justice, that domestic Courts establish a practice aimed at eliminating immunity for gross violations of norms protecting human rights.

The second observation concerns the role that the international Courts, and particularly the ICJ, can play in this. They should encourage this practice, giving at least some signal in the right direction. From this point of view, with this judgment concerning Italy and Germany, the ICJ has been extremely disappointing. No signal of this kind is to be found in the decision, and, with all due respect, it reflects the most antiquated conservatism. Yet the Court has not always behaved in this way, even in disputes which did not concern serious violations of international rules. Let us consider, for example, the various innovations introduced, or the signal given, in the Advisory Opinion on reservations of 1951, or the *Barcelona Traction* Judgment of 1970 in the part relating to *erga omnes* obligations, the Advisory Opinion on the use of nuclear weapons of 1996, and the *Gabčikovo-Nagymaros Project* Judgment of 1997 in the part setting out a general obligation of non-pollution. Yet, even in these cases, as in the case at hand, the practice was either contradictory or non-existent!

3. 2013 Membership

ESIL members are invited to pay their membership fees for the year 2013. The fees are:

- ESIL Patron = 500€
- Regular Member = 115€
- Regular Member for 5 years (2013 – 2017) = 500€
- Retired Member = 85€
- Student Member = 60€

You are kindly requested to fill in the online Membership Registration Form so that we have your current contact details on file and you can choose whether to receive the optional subscription to the *European Journal of International Law*: <http://www.eui.eu/AEL/Online/ESIL/esil-subscription.jsp>

The payment options are explained when you submit the membership registration form. You can pay by sending a fax, or by using the online payment system, or by bank transfer. Regular members can pay their membership dues for up to 5 years, either by completing the fax form or by selecting the 5-year membership option.

If you have any problems at all, please feel free to contact Joyce Davies, ESIL Administrative Director: esil.secretariat@eui.eu

4. Call for Reflections

The first series of ESIL Reflections has now been published and this provides us with a timely opportunity to look to the future and call on members to continue contributing to ESIL's online publication platform.

The ESIL Reflections published so far mirror the way that the European Society has positioned itself. Although ESIL Reflections may relate to topical practical issues, they are not limited to these and may also address current developments in the practice and theory of international legal scholarship. They aim to offer up-to-date reflections on current events or on recent developments in international law in a way that is relatively accessible to non-experts. Contributions should be concise and to the point - not a law review article but not a newspaper article either.

ESIL Reflections are relatively short (between 1,000 and 2,000 words) and should be entertaining papers with an op-ed-ish style that offer a fresh angle on a relevant subject quickly, effectively, and with style. The papers are meant to foster discussion among ESIL members and indeed among all international law scholars – in Europe, and beyond.

We don't wish to limit the invitation to contribute only to more senior scholars. We would also like to extend the call wholeheartedly to younger scholars, including PhD students whose work is at an advanced stage.

ESIL Reflections are peer-reviewed by the editorial board. They are published on the ESIL website regularly (on average, about once a month) and they are also distributed to all ESIL members.

The editors are Anne van Aaken, Jan Klabbers, André Nollkaemper (editor in chief), and Thomas Skouteris. Members who have an interest in contributing are encouraged to do so. Suggestions can be sent to André Nollkaemper at P.A.Nollkaemper@uva.nl

5. 2013 Amsterdam Research Forum

Online registration for the 5th ESIL Research Forum 2013, International Law as a Profession, opened on 1 December: <http://www.esil2013.nl/>.

The 5th ESIL Research Forum will take place on 23-25 May 2013, in Amsterdam. It will be organized jointly by the Amsterdam Centre for International Law (University of Amsterdam) and the Department of Transnational Legal Studies (VU University Amsterdam). The building (Felix Meritis, built in 1788, one of the grandest buildings in the old center of Amsterdam) can accommodate about 250 persons, so early registration is recommended.

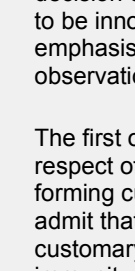
The Research Forum will explore the different roles exercised by international lawyers (the international lawyer as a judge or arbitrator; as a legal adviser, counsel or diplomat; as an academic, researcher, or teacher; and as a domestic lawyer). Each of these roles may come with different discourses and conceptions about how the making, the application, the interpretation, the enforcement, and the systematization of international law is carried out.

The preliminary programme is online at <http://www.esil2013.nl/>. The Organizing Committee is presently reviewing the proposals, which have been received in response to the Call for panels and proposals. Once the selection is made, the final programme will be published on the website, probably by mid-January.

6. Valencia 2012 - Recordings

The recordings of the ESIL 2012 Biennial Conference in Valencia are now available online. To view them, please [click here](#).

T.M.C. Asser Press is pleased to announce the publication of:



[The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law / La Cour de Justice et la Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence](#)

Court of Justice of the European Union (Ed.)

ISBN 978-90-6704-896-5

Distributed for T.M.C. Asser Press by [Springer](#)

The book was launched on December 4th in Luxembourg to celebrate the 60th anniversary of the Court of Justice in the presence of the Grand Duke of Luxembourg and many (former) judges of the Court and other representatives of the European Union. It provides an insight to the 60 years of case-law of the Court of Justice and its role in the progress of European integration. The book includes contributions from eminent jurists from almost all the EU Member States.

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Comité éditorial:
Massimo Iovane (Naples) et Geir Ulfstein (Oslo)

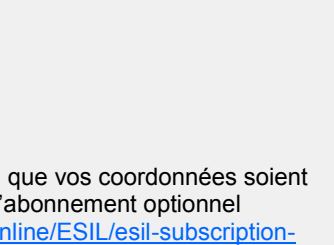
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1. Message de la Présidente et du Secrétaire Général

Chers membres de la SEDI,

La force de la SEDI réside dans ses membres et leur diversité. Nous sommes heureux de vous annoncer que leur nombre connaît une augmentation régulière. Nous espérons que ce phénomène se poursuivra durant les années à venir. Nous nous rencontrons lors des conférences biennales, lors des fora de recherches ou lors d'autres événements en lien avec la SEDI. Nous dialoguons également avec l'aide de différents supports électroniques. Nous vous serions reconnaissants de nous suggérer comment améliorer, voire accroître nos échanges.



Parmi ses membres, la Société souhaiterait notamment développer des liens avec d'autres institutions, et inciter certaines à devenir membres institutionnels. Les bénéfices de ces partenariats sont mutuels, et vont bien au-delà de l'aspect strictement financier.

La SEDI a une coopération établie bien établie avec différents éditeurs académiques, ce qui va de soi puisque c'est grâce à ces éditeurs que nous diffusons les alliances entre chercheurs. Les conférences de la SEDI et les fora permettent aux éditeurs de présenter leurs livres et publications à un large public académique et, de manière plus générale, d'approfondir les interactions avec notre communauté. De la même façon, le prix décerné par la SEDI, le « ESIL Book Prize », est devenu une distinction prestigieuse pour une publication d'exception.

Sur la base de l'approbation donnée par l'Assemblée générale de la SEDI à Valence, le Comité exécutif de la SEDI a poursuivi ses efforts afin de consolider les alliances avec les membres institutionnels existants et d'en attirer de nouveaux. Ces efforts donnent déjà des résultats. En plus des maisons d'édition, nous souhaiterions que d'autres membres institutionnels, de statut différent, deviennent membres. Notre ambition est notamment que les facultés et écoles de droit deviennent des membres institutionnels. Cela leur permettrait d'accroître leur rayonnement grâce à la SEDI. Cela constituerait également pour elles une opportunité de créer des réseaux de recherche et de nouer des alliances avec d'autres facultés ou écoles de droit, que ce soit en Europe ou ailleurs.

Nous nous réjouissons d'accueillir de nouveaux membres et de consolider plus encore l'assise scientifique de la SEDI. Nous serions heureux de recevoir toute idée ou suggestion que vous pourriez avoir concernant cet objectif.

Laurence Boisson de Chazournes
Présidente

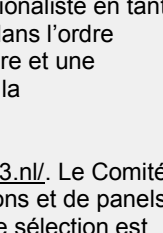
Marko Milanovic
Secrétaire générale

Société européenne du droit international (SEDI)

2. Editorial de l'invité

Two comments on the decision of the ICJ on State immunity

Benedetto Conforti - Professeur Emerite de Droit International, Université de Naples 'Federico II'



It is common knowledge that the ICJ ruled against Italy in the judgment of 3 February 2012 in *Jurisdictional Immunities of the State (Germany v. Italy)*, because of the refusal of the Italian courts to recognize the immunity of Germany in a number of civil cases brought by individuals seeking to obtain compensation for damage resulting from the heinous crimes committed by German troops during World War II.

The Court grounded its decision on the extensive practice of domestic courts in favour of immunity even when gross violations of human rights are involved. From this point of view, the decision does not seem easy to criticize. It is true that the position of the Italian courts appeared to be innovative and the Court did not feel able to sustain it. In my view, however, precisely the emphasis given by the Court to almost all of the decisions of the domestic courts calls for two observations.

The first observation is the following. On immunity, as implicitly acknowledged by the Court in respect of the immunity of States, it is mainly the domestic Courts which build up the process of forming customary international law. But then, if we want customary law to evolve, we must admit that its formation must be characterized by decisions that conflict with the existing customary law. This is true for any customary norm, but it is even more so on the question of immunity, where the domestic Courts must also take their own legal systems into account, particularly with the limitations that constitutional requirements may pose in order to protect the interests of individuals. For example, one may consider unlawful the behaviour of the Italian and Belgian courts when, in the twenties, by introducing the distinction between acts *jure imperii* and acts *jure gestionis*, they innovated the existing practice which was in favour of absolute immunity of the foreign State from civil jurisdiction. And, to continue the example, such an unlawful act lasted for at least forty years, since only after that time did the Courts of the English-speaking world accept the distinction and bring about its consolidation in general international law. In my view, the same thing is happening today in the case of another innovation, and again at the hands of the domestic Courts, this time with regard to the increasing denial of immunity in respect of the economic aspects of the employment relationship with foreign States.

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3. Inscriptions 2013

La SEDI invite ses membres à payer leurs frais d'inscription pour l'année 2013. Les frais sont:

- Bienfaiteur de la SEDI = 500€
- Membre régulier = 115€
- Membre régulier pour 5 ans (2013 -2017) = 500€
- Membre retraité = 85€
- Membre étudiant = 60€

Nous vous invitons à remplir le formulaire d'adhésion en ligne afin que vos coordonnées soient à jour et que vous puissiez décider si vous souhaitez souscrire à l'abonnement optionnel (*European Journal of International Law*): <http://www.eui.eu/AEL/Online/ESIL/esil-subscription-fr.jsp>

Les différentes options de paiement sont expliquées au moment de soumettre le formulaire d'adhésion. Les frais peuvent être payés par fax, directement en ligne, ou par virement bancaire. Les membres réguliers peuvent régler leurs frais d'adhésion pour un maximum de 5 années, soit en remplissant le formulaire de fax, soit en choisissant l'option d'adhésion pour 5 ans.

Si vous avez des questions concernant le formulaire d'adhésion ou le paiement des droits d'adhésion, n'hésitez pas à contacter Joyce Davies, Directrice administrative de la SEDI: esil.secretariat@eui.eu

4. ESIL Reflections - Appel à contributions

La première série de « ESIL Reflections » a été publiée. Cela donne l'occasion de penser à l'avenir et de solliciter les membres de la SEDI à contribuer à cette publication en ligne de la Société. Les « ESIL Reflections » parues jusqu'à ce jour reflètent le rôle que la Société a choisi de jouer.

Bien que cette publication électronique puisse traiter de l'actualité et de la pratique du droit international, elle ne se limite pas à ces questions. Les « ESIL Reflections » abordent également des questions relatives aux développements récents dans la doctrine et la théorie du droit international. Ces publications ont pour but d'offrir un examen d'événements ou de développements récents en droit international, dans un format accessible aux non-experts. Les contributions doivent être concises et aborder directement le thème choisi. Elles ne prétendent pas constituer des articles de doctrine, mais elles ne se limitent pas non plus à informer le public à l'instar d'un article de quotidien. Les « ESIL Reflections » doivent être courtes (entre 1000 et 2000 mots) et écrites avec le style efficace d'une tribune libre. Elles visent à exposer des idées innovatrices sous une forme dynamique qui va droit au but, en permettant ainsi d'offrir un aperçu original sur un sujet important d'une manière directe, efficace, accessible et stylée. Elles sont censées stimuler des discussions et échanges entre membres de la SEDI et, de manière générale, parmi les internationalistes en Europe et au-delà.

Nous n'invitons pas seulement les professeurs et praticiens reconnus à répondre à notre appel. Nous étendons aussi chaleureusement notre appel aux jeunes chercheurs, y compris les doctorants qui sont suffisamment avancés dans leur travail.

Les contributions d'« ESIL Reflections » sont évaluées par des pairs sous la responsabilité du Comité éditorial. Elles sont publiées régulièrement (en principe une fois par mois) sur le site de la SEDI et sont distribuées à tous les membres de la SEDI.

Les responsables éditoriaux sont Anne van Aaken, Jan Klabbers, André Nollkaemper (rédacteur en chef), et Thomas Skouteris. Les membres de la SEDI souhaitant contribuer aux « ESIL Reflections » sont invités à le faire en envoyant leurs suggestions à André Nollkaemper (P.A.Nollkaemper@uva.nl).

5. Forum de Recherche - Amsterdam 2013

Le 5ème Forum de Recherche consacré aux "métiers du droit international" aura lieu du 23 au 25 mai 2013 au cœur de la ville d'Amsterdam. Il est organisé conjointement par l'Amsterdam Center for International Law (ACIL) de l'Université d'Amsterdam (UvA) et le Department of Transnational Legal Studies de l'Université Libre d'Amsterdam (VU). Le Felix Meritis accueillera les travaux du Forum. Il s'agit d'un hôtel de maître, datant du 18ème siècle, qui peut accueillir jusqu'à 250 personnes (les places étant limitées, il est recommandé de s'inscrire aussi vite que possible).

Quatre rôles et cadres professionnelles des internationalistes retiendront tout particulièrement l'attention dans le qualité du Forum de recherche: l'internationaliste en tant que juge ou arbitre; l'internationaliste en tant que conseiller juridique, conseil ou diplomate; l'internationaliste en tant qu'académicien, chercheur ou enseignant; l'internationaliste en tant que juriste dans l'ordre interne. Chaque qualité professionnelle emporte généralement un discours propre et une conception distincte de l'élaboration, l'application, l'interprétation, l'exécution ou la systématisation du droit international.

Le programme provisoire est disponible à l'adresse suivante: <http://www.esil2013.nl/>. Le Comité organisateur examine en ce moment les nombreuses propositions de contributions et de panels qui ont été soumises en réponse à l'appel émis précédemment. Le processus de sélection est en cours et le programme final sera disponible vers la mi-janvier.

6. Valence 2012 - Vidéos

Les vidéos de la Conférence Biennale 2012 de Valence sont dorénavant disponibles en ligne. Pour visualiser les vidéos, veuillez [cliquer ici](#).

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