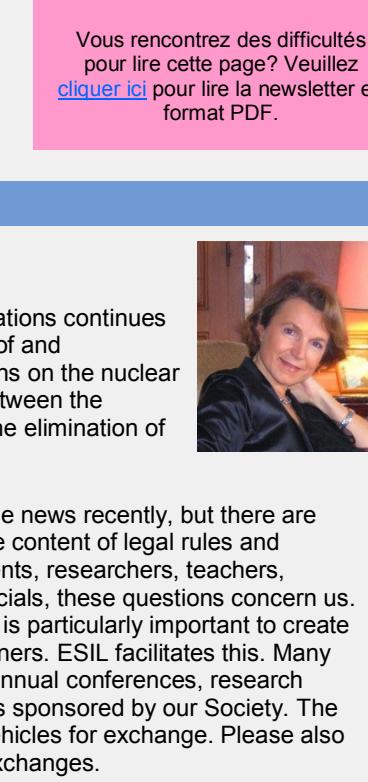
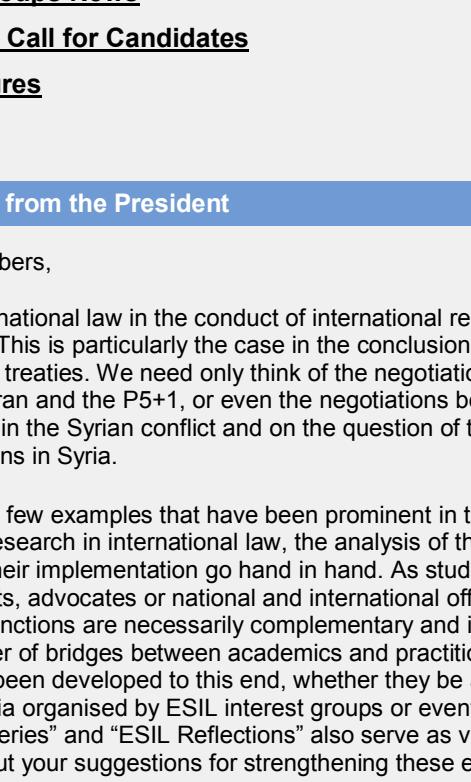
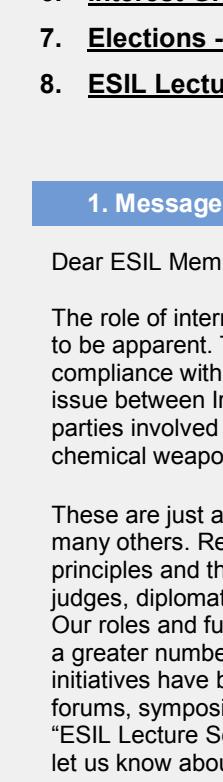


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1. Message from the President

Dear ESIL Members,

The role of international law in the conduct of international relations continues to be apparent. This is particularly the case in the conclusion of and compliance with treaties. We need only think of the negotiations on the nuclear issue between Iran and the P5+1, or even the negotiations between the parties involved in the Syrian conflict and on the question of the elimination of chemical weapons in Syria.

These are just a few examples that have been prominent in the news recently, but there are many others. Research in international law, the analysis of the content of legal rules and principles and their implementation go hand in hand. As scholars and practitioners, our work and functions are increasingly complementary and it is particularly important to create a greater number of bridges between academics and practitioners. ESIL facilitates this. Many initiatives have been developed to this end, whether they be annual events, research forums, symposia organised by ESIL interest groups or events sponsored by our Society. The "ESIL Lecture Series" and "ESIL Reflections" also serve as vehicles for exchange. Please also let us know about your suggestions for strengthening these exchanges.

We will next meet in Göttingen at the invitation of Peter-Tobias Stoll and the International Economic Law Interest Group of ESIL to discuss preferential trade agreements. We will meet again in Tallinn in June - at the invitation of Lauri Mälksoo and ESIL's interest Group on International Legal Theory - to discuss the "Approaches of Liberal and Illiberal Government to International Law". There will then be in Vienna - at the invitation of August Reinisch and his colleagues - ESIL's Annual Conference. Moreover, many of ESIL's interest groups will organise events and invite your participation. Other events will also take place in Geneva, Brussels and Moscow in the coming months.

With regard to other aspects in the life of ESIL, I would like to remind you to renew your membership. ESIL relies on the support of its members. In addition, during the ESIL Annual Conference in Vienna in September 2014, the General Assembly will elect eight members of the Executive Committee. The Society is growing and we need people who wish to actively engage in the life of the Society. I encourage you to consult our website for the application requirements.

I take this opportunity to wish you a prosperous 2014 and hope that it is a year in which the values and goals of our Society are strengthened.

With my best wishes,
Laurence Boisson de Chazournes
President of European Society of International Law (ESIL)

2. Guest Editorial

The Law of International Immunities after Germany v. Italy, Mothers of Srebrenica and Jones: The Best is Yet to Come

Riccardo Pavoni, Professor of International and European Law, Department of Law, University of Siena

Stormy times for the law of international immunities. Among the many developments occurring in this field of international law over the past two years, three judicial decisions must be singled out for their significance, not least because they were delivered by prominent international courts. These are the ICJ judgment in *Jurisdictional Immunities of the State* (*Germany v. Italy*) (3 February 2012) and the decisions of the European Court of Human Rights in *Mother of Srebrenica v. the Netherlands* (11 June 2013) and, most recently, in *Jones v. UK* (14 January 2014).

Although the core subject-matter underlying these three cases was the same (i.e., the relationship between immunities and the protection of fundamental human rights), they covered distinct aspects of this area of law: State immunity (*Germany v. Italy* and, partially, *Jones*), immunity of international organizations – namely, that of the UN (*Mother of Srebrenica*), and immunity of State officials (*Jones*). Yet, in essence, all the decisions reached an identical, unqualified conclusion: human rights violations – whether they involve *ius cogens* prohibitions such as those on torture, war crimes and genocide, or the right of access to justice and reparation for the torture, war crimes and genocide of the alleged犯人 – do not require any denial of the jurisdictional immunities enjoyed by the alleged perpetrators: they may be States, IOs or State officials, in foreign domestic courts. On the contrary, denial may well engorge State responsibility with the attendant necessity to make reparations, for instance by nullifying the pertinent domestic judicial decisions (*Germany v. Italy*).

This is an absolute triumph for State sovereignty under the guise of State immunity and for the 'sovereign' attributes of core IOs, such as the UN, especially if one considers that a major protagonist of the case law in question is precisely a key human rights court, i.e., the ECtHR. Its decision in *Jones* ruled out a violation of the right of access to justice even vis-à-vis the grant of *ratione materiae* immunity to the UN. The ECtHR either continued to sideswipe the *ius cogens* principle, or, most strikingly, abandoned (*Mother of Srebrenica*) the test of alternative means of redress available to the victims as a crucial yardstick for reviewing the legality of conferrals of immunity by respondent States.

This case law may be taken as just another symptom of the ongoing identity crisis experienced by the ECtHR, torn between activism in advancing the protection of human rights (see the decisions on State immunity in employment matters) and self-restraint dictated by its barely tolerable docket.

Game over? Is it true that this unprecedented involvement of international courts in immunity cases has the effect of silencing turbulent domestic courts and freezing the law, at least until the same or other international courts have overruled these decisions at issue? Not at all, in my view. That would be contrary to the dynamics and methods which have always shaped international law and its evolution. The latter takes place according to a complex, relentless and dialectical interplay between State practice and its confirmation at the international level, including between domestic and international courts.

Indeed, the dust has not settled, contrary to what various commentators have suggested in the aftermath of *Germany v. Italy*. It should be evident to anyone familiar with the erratic and largely self-referential immunity practice of the United States (see for instance the 2012 *Samaritan* decision by the Fourth Circuit Court of Appeals upholding a *ius cogens* exception to the rationale of state immunity of State officials in a civil procedure case). But more to the point, a few days ago (21 January 2014), the Tribunal of Florence brought a constitutional challenge before the Italian Constitutional Court against the customary international law rule affirming State immunity for war crimes committed (at least in part) on Italian soil, as well as against the Italian legislation implementing Article 94 of the UN Charter, in so far as the latter binds Italian courts to comply with the decision of the German v. Italy judgment sanctioning the above rule. The constitutional yardstick invoked by the Tribunal is the right of access to justice, a 'supreme principle' of the Italian Constitution (Article 24). Arguably, the outcome of this case is unpredictable.

True, this is just a part of the story. Somewhat amazingly, at the same time as the *Ferrini* litigation had come to an end with a ruling by the plenary session of the Court of Cassation unconditionally complying with the ICJ judgment and refusing a reference to the Constitutional Court. Unfortunately, at the moment of finalizing this editorial, the full text of the Court of Cassation's ruling has not been made public. Regardless, the move of the Florence Tribunal should not be briskly dismissed as a last resort *escamotage* stemming from the misconceived desire to certain circumstances to refer them to their constitutional court. I believe that this is part and parcel of the *ius cogens* principle, which is a host of logical and policy considerations and abundant doctrine militated in favour of the opposite conclusion. Moreover, the ECtHR either continued to sideswipe (*Jones*), or, most strikingly, abandoned (*Mother of Srebrenica*) the test of alternative means of redress available to the victims as a crucial yardstick for reviewing the legality of conferrals of immunity by respondent States.

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