Impact of the ILC Draft Articles on Responsibility of States for Internationally Wrong Acts in Continental European States

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The limited number of cases

Even though domestic cases in continental European states where courts adjudicate claims based on a breach of an international obligation easily numbers in the 100s a year, the ASR play a role in only an extreme minority of such cases.
The limited number of cases: reasons

- National law will often be sufficient / ASR have nothing to add
  - The Netherlands, Supreme Court, CDS v The State of the Netherlands, 30 March 1990, [1991] NYIL 249
- ASR are not applicable to the large majority of claims in national courts (made by individuals)
  - Germany, Argentine Bondholder Case, K and ors v Argentina, Decision of the Federal Constitutional Court, (ILDC 952 (DE 2007)
- Many conflicts between international law and national law are not seen as being of the type that they lead to state responsibility
- Special regimes
  - Germany, East German Expropriation Case ILDC 66 (DE 2004) *art 3 1907 Convention)
  - Italy, Court of Cassation, Dorigo, ILDC 1096 (IT 2007) (ECHR)

Responsibility decisions that not refer to the ASR

- Belgium, Mukeshimana-Ngulinzira and others v Belgium and others, ILDC 1604 (BE 2010) (art. 4, 6)
- France, Gardedieu v France ILDC 738 (FR 2007) (art. 1. 2)
- Germany, Görgülü ILDC 65 (DE 2004) (art. 1, 2)
- Latvia, Constitutional Court, Liniša v Latvia, ILDC 189 (LV 2004);
- Slovenia, Case concerning the Constitutionality of the Europe Agreement Establishing an Association between Slovenia and the European Communities, ILDC 532 (SI 1997)
Situations in which the ASR have been relevant

- Confirmation of international legal consequences of breach of an obligation
  - France, *Gardedieu v France* ILDC 738 (FR 2007)
  - Greece, *Germany v Margellos*, ILDC 87 (GR 2002)
- Attribution of acts between states or between states and states and international organizations
  - The Netherlands, *HN v Netherlands* ILDC 1092 (NL 2008) (art. 6)
  - Germany, *East German Expropriation Case* ILDC 66 (DE 2004) (art. 18 (of 17?))
- Aid and assistance
  - Germany, *Yemeni citizens extradition case* ILDC 10 (DE 2003) (art 16)
- Circumstances precluding wrongfulness (?)
  - Germany, *Argentine Bondholder Case* ILDC 952 (DE 2007)
- Legal consequences of breach of ius cogens
  - Germany, *East German Expropriation Case* ILDC 66 (DE 2004)

Situations in which the ASR have been relevant (continued)

Reparation cases, but without reference to ASR:

- Belgium, Court of Cassation, *ING België v B I*, Case No C.05.0154.N; ILDC 1025 (BE 2007)
Customary status of the ASR

- **Blind acceptance**
  - *HN v Netherlands* ILDC 1092 (NL 2008) (art. 6)
  - *East German Expropriation Case* ILDC 66 (DE 2004) (art 1, 18)
  - *Attorney of the Federal Armed Forces v Anonymous* (DE 2005) (art. 16)

- **´Critical´ review**
  - *Argentine Bondholder Case* (DE 2007)
  - *East German Expropriation Case* ILDC 66 (DE 2004) (art. 40/41)

- **Rejection**
  - *Constance Regional Court* (DE 2007) (art. 6)

The ASR as ´legislative text´

- *East German Expropriation Case* ILDC 66 (DE 2004) (art. 40/41)
Conservative effect

- Italy, *Presidency of the Council of Ministers v Markovic and ors*, ILDC 293 (IT 2002)
- Germany, *Argentine Bondholder Case* ILDC 952 (DE 2007)

Beyond the ASR

- Germany, *Yemeni citizens extradition case* ILDC 10 (DE 2003)
- Poland, *Bug River Claims, Czesław S v State Treasury and Minister of the State Treasury*, ILDC 268 (PL 2005)