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## **Editorial**

We are proud to present the Goettingen Journal of International Law's first issue of 2012. After the successful three issues of last year, GoJIL can now turn to its new and exciting projects of 2012! Since our last issue in January 2012, several events of global importance have filled the newspapers, confronting the global community with the need for new judicial and political solutions. The Arab Spring movement still continues, with the situation in Syria aggravating further, which has led to the UN Security Council to authorize the establishment of the United Nations Supervising Mission in Syria (UNSMIS).

One topic heavily discussed was also the 2011 intervention in Libya, which ultimately led to the issuing of arrest warrants for Muammar al-Gaddafi by the Pre-Trial Chamber of the International Criminal Court.

In his article, "The Status and Future of International Law after the Libya Intervention", *Pierre Thielbörger* addresses the Libya intervention and examines whether or not its reliance on the mechanisms of collective security under the UN Charter suggests that international law has finally overcome its post-9/11 crisis. He explores whether the Libya intervention has put new emphasis on what has been termed as the "emerging right of democratic governance" and examines whether the case in Libya shows a new international attitude towards States that violate the most fundamental human rights of their citizens. At the end he suggests that, in this third

respect, a more muscular liberalism is indeed on the rise in international law, challenging the former concept of almighty State sovereignty.

Aside from the intervening forces in the Libyan conflict, the African Union played an important role in the conflict's resolution. *Jens M. Iverson* and *Tom Kabau* both tackle subjects relating to the African Union. In his article, “The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union’s Interventions”, Kabau examines the dilemmas and opportunities for the African Union in implementing the responsibility to protect policies regarding forceful intervention to prevent or stop genocide, crimes against humanity, and war crimes. He is of the opinion that the African Union's system fails to resolve the dilemma between sovereignty and intervention due to the failure to implement Article 4(h) of the Constitutive Act. This failure is furthermore aggravated by the inability to institutionalize the concept of responsible sovereignty within the Union legal framework and processes.

On another hand, Iverson’s article, “The Continuing Functions of Article 98 of the Rome Statute”, discusses a topic of International Criminal Law. With a look to the African Union Commission's vehement objections towards the International Criminal Court's (ICC) reading of Article 98 of the Rome Statute, he demonstrates its continuing function: the reinforcement of immunities resulting from agreements under Article 98(2), as well as customary immunities pertaining to property, persons, diplomatic immunity, and State immunity.

In April 2012 the Office of the Prosecutor at the ICC decided to reject Palestine’s attempt to accept the ICC’s jurisdiction pursuant to Article 12(3) of the Rome Statute.<sup>1</sup> Not only does Palestine struggle with its recognition

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<sup>1</sup> The Office of the Prosecutor, 'Situation in Palestine' (3 April 2012) available at <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf> (last visited 3 May 2012).

as a State, Kosovo, too, is still no Member State of the United Nations due to other states' non-recognition of its sovereignty. *David I. Efevwerhan*, in his article, "Kosovo Chances of UN Membership: A Prognosis", examines the case of Kosovo's application for admission into the membership of the United Nations after the International Court of Justice ruled that Kosovo's unilateral declaration of independence neither violated the general rule of international law nor the *lex specialis*. He reviews the rules and practices of UN membership admission, assesses Kosovo's chances of success, and argues that, ordinarily, Kosovo meets the requirements for admission into the UN. The political considerations of the permanent members of the Security Council, however, would constitute a clog in Kosovo's ambition.

Meanwhile, the current financial crisis has been holding the world in a tight grip. A number of the Mediterranean Member States of the EU continuously struggle with the impending risk of insolvency. *Matthias Goldmann* and *Maximilian Hocke* take a look at the impact of the current financial crisis on States. In his article, "Sovereign Debt Crises as Triggers of Armed Conflict: Towards Restructurings under Chapter VII of the UN Charter?" Goldmann states that a sovereign debt crisis may significantly decrease the level of enjoyment of socio-economic rights for the population in the affected States. The resolution of the sovereign debt crises, however, is compromised by legal obstacles resulting from the absence of a statutory and obligatory bankruptcy procedure for States. The article explores whether and to what extent the powers UN Security Council could be deployed in order to mitigate these problems. Hocke examines how measures against the Global Financial Crisis, e.g. the acquisition of shares or the refusal to help particular financial institutions, affected the protection guaranteed by International Investment Law. In his article, "Have measures adopted by States to cope with the global financial crisis been in accordance with their

obligations under International Investment Law?” The article argues that, due to public policy reasons, the measures have been in accordance with all protection standards.

Despite the magnitude of current developments, our GoJIL Focus is dedicated to a less visible but equally relevant development in International Law: The impact of human Rights in various fields of law. The topic is based on the 4<sup>th</sup> annual Legal Research Network Conference held in Göttingen on 15-16 September 2011. After a thorough analysis and discussion, it is revealed that there is hardly any branch of law that is beyond the reach of human rights.

In his article, “Human Rights and International Investment Law: Investment Protection as Human Right,” *Nicolas Klein* argues that certain material standards of International Investment Law can be thought of as guarantees of a minimum standard of protection for all individuals, much like human rights. Furthermore, he explains that such an approach may serve as a precedent to restrict the trivial and false interpretations of investment treaties and to balance economic rights with other fundamental human rights in case of cultural norm conflict.

Moreover, *Laurens Lavrysen* highlights certain areas of concern in the European Asylum System from the viewpoint of the European Convention on Human Rights. In his article, “European Asylum Law and the ECHR: An Uneasy Coexistence”, he particularly focuses on the “Dublin II” system of responsibility for examining asylum applications, the reception conditions, and the detention of asylum seekers.

In her article “Re-thinking the Role of Indigenous Peoples in International Law: New Developments in International Environmental Law and Development Cooperation” *Maria Victoria Cabrera Ormaza* expresses the necessity to reassess the definition of ‘indigenous peoples’. In doing so,

she points out that a human rights-based approach to the definition of indigenous peoples is being overtaken by a rather functional one.

Subsequently, *Sebastiaan Vandenbogaerde* analyses the relevance of human rights in Belgian juridical periodicals in his article “They entered without any rumour. Human rights in the Belgian legal periodicals.” His main question is to what extent human rights were deemed to be important for Belgian legal practitioners. Therefore he focuses especially on the most influential periodical in Flanders: the *Rechtskundig Weekblad*.

Finally, *Herman Voogsgerd*'s article, “The EU Charter of Fundamental Rights and Its Impact on Labour Law - A Plea for a Proportionality-Test-“Light” treats the clash between fundamental (labor) rights and the four ‘fundamental’ economic freedoms of the European Union. Firstly, *Voogsgerd* takes a closer look on the ‘fundamental’ nature of the four economic freedoms. Then, he examines the effect of the enactment of the Lisbon Treaty, with respect to fundamental rights, by analyzing case law in the field of European labor law since December 2009.

We hope that all these articles in this issue provide, in their diversity, a worthwhile read to our readership.

The Editors