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Editorial

Dear readers,

Once more the Goettingen Journal of International Law was involved in organizing an international conference and publishing the contributions. On 9 and 10 March 2012 scholars from Germany, Israel and Norway assembled in the “Paulinerkirche” in Goettingen to present their research on “Precursors to International Constitutionalism: The Development of the German Constitutional Approach to International Law”. The symposium was the final step of a research project organized by the Institute of International and European Law of the Georg-August University Goettingen and the Minerva Center for Human Rights, Hebrew University, Jerusalem. Its central idea is that international constitutionalism is not only a topic contemporarily much discussed, but finds its precursors in earlier “German” constitutional approaches.

This issue not only contains articles derived from presentations held at the conference, but starts off with an introduction into the topic by *Tomer Broude* and *Andreas L. Paulus*, which offers an overview of the issues delved into during the research project.

The rest of the issue is divided into three segments: the first explores the historical and philosophical background of international constitutionalism. The second focuses on judicial constitutionalism and the role of democracy and the third discusses whether fragmented constitutionalism or a pluralistic postnational order is at hand.

The first section begins with an article “German Federalist Thinking and International Law” by *Dirk Hanschel*, who analyzes what value German and related federalist ideas have for the constitutionalization of international law. On the basis of scholars’ theses he establishes that international federalism can be regarded as a natural extension of national constitutional doctrine. *Hanschel* concludes that the ideas presented, though heavily disputed, have helped to lay the foundation for a doctrine on the division of competences in international law.

Focusing on the works of one particular scholar, *Thomas Kleinlein* discusses the question whether Alfred Verdross can be considered founding father of international constitutionalism. *Kleinlein* presents the corner pillars of Verdross's thoughts and writings and establishes how Verdross transferred the concept of constitution to international law and developed a "moderate" monism. It becomes clear that Verdross, even if not a founding father, was at least a pioneer of international constitutionalism.

The third contribution is *Reut Y. Paz*' article "Making it Whole: Hersch Lauterpacht's rabbinical approach to international law". *Paz* deals with the question if and how Lauterpacht's Jewish identity is the reason for his understanding of international law.

This is followed by *Rotem Giladi*'s paper "Francis Lieber on Public War" which examines Lieber's concept of modern war as "public war", meaning war can only be made by States. In this respect, the author demonstrates that Lieber's writings not only had a significant impact on the development of international humanitarian law but also on international law in relation to the establishment of nation States in the 19th century. Further, *Giladi* seeks to ascertain why Lieber's ideas can still be considered relevant today for finding solutions to current issues of international law such as the involvement of non-state actors in warfare.

Last, but not least, in this section, *Phillip-Alexander Hirsch* delves into the Kantian way of constitutionalization in international law in his paper "Legalization of International Politics: On the (Im)Possibility of a Constitutionalization of International Law from a Kantian Point of View". *Hirsch* aims at illustrating that Kant's ultimate ideal is a cosmopolitan republic as only this can be called a constitution in a Kantian sense. Moreover, he discusses in how far the ideal of a peace federation features a rightful condition and comes to the conclusion that international law is to be considered a constitutional conduct of government. For this reason, the current conception of constitutional international law contradicts Kant's ideas. Considering the development concerning the comprehension of constitutional international law, the only expectant course of events is a legislation of international politics.

In the second section, *Tomer Broude*'s paper "The Constitutional Function of Contemporary International Tribunals, or Kelsen's Visions Vindicated" focusses on contemporary international courts and Kelsen's theories. He explores parallels between Kelsen's views on national constitutional courts and international tribunals, exposes the relation of Kelsen's theories to the modern evolution of international judiciary and to debates on international constitutionalism and analyzes how Kelsen's view

have been vindicated. Special attention is drawn to the ICJ, the WTO Dispute Settlement System and the ECtHR.

Second, from the view of political sciences, is “Why Global Constitutionalism Does not Live up to its Promises” by *Christian Volk*. In order to explore the gap between the promises and the actual performance, he first defines the term “global constitutionalism” and presents the promises derived from it. Then, *Volk* illustrates manners with which global constitutionalism ought to be implemented. He discusses problems and possible resulting scenarios caused by understanding and applying democracy differently and asks to what extent global constitutionalism could be an adequate instrument of governance. At last, *Volk* debates which aspects need to be taken into account to enable the reverse or at least a decrease of this issue.

In the last section, the issue presents four papers addressing constitutionalism and its relation to other concepts.

First, in his article “The Relationship Between Constitutionalism and Pluralism”, *Geir Ulfstein* examines the question whether the international legal system is of a constitutional or a pluralist nature. Assuming that international law is based on treaties and customary international law, a rather pluralist international system is indicated. *Ulfstein* explains the challenge of securing certain constitutional requirements in a pluralist legal order.

Markus Kotzur approaches constitutionalism from a different viewpoint: In his paper “Overcoming Dichotomies: A Functional Approach to the Constitutional Paradigm in Public International Law”, he discusses why a constitutional matrix might be preferable to other matrices and what it would need to encompass for it to really be preferable. *Kotzur* considers the need for legitimacy, human needs and dignity and by exploring the functions of constitutions.

Third is the article “Constitutionalism as a Cipher: On the Convergence of Constitutionalist and Pluralist Approaches to the Globalization of Law” by *Lars Viellechner*. This contribution points out that constitutionalism in international law serves as a “placeholder” for the reconstruction of law in times of globalization. *Viellechner* presents both pluralist and constitutionalist views and then concludes by discussing views derived from the convergence of both: the System’s Theory and Constitutional Pluralism.

Fourth in this section is the *Clemens Mattheis*’ article which examines Luhmann’s theory on the character of systems. In “The System Theory of Niklas Luhmann and the Constitutionalization of World Society” *Mattheis* contemplates whether there are structural couplings between the legal and

the political system at a global level, which could facilitate the constitutionalization process.

As this symposium was an enormously rewarding experience for us – regarding its contents as well as the organization – we hope to be able to organize further conferences to contribute to scientific debate in the future. We are delighted to present this issue of the GoJIL to our readership and hope that it will be a worthwhile read.

The Editors