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Editorial

We are proud to present our first issue of 2012. After the successful 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 with global impact have filled the newspapers and confronted us with the need for new judicial and political solutions.

The Arab Spring movement is still continuing, with the situation in Syria aggravating further, which has led to the UN Security Council authorizing the establishment of the United Nations Supervising Mission in Syria (UNSMIS). One topic heavily discussed in the context of the Arab Spring was the Libya intervention in 2011, which ultimately led to the Pre-Trial Chamber of the International Criminal Court (ICC) issuing arrest warrants for Muammar al-Gaddafi.

In his article “The Status and Future of International Law after the Libya Intervention” *Pierre Thielbörger* addresses the Libya intervention in order to discuss three general claims about international law. He examines whether international law has overcome its post-9/11 crisis by the intervention relying on the mechanisms of collective security under the UN Charter. Furthermore he explores whether the emerging right to democratic governance has received new emphasis and examines whether the international attitude towards States violating fundamental human rights has changed through the case of Libya.

Besides the intervening forces in the Libyan conflict, the African Union (AU) played an important role in the conflict's resolution. *Tom Kabau* tackles the subject of the AU in his article "The Responsibility to Protect and the Role of Regional Organizations: an Appraisal of the African Union's Interventions", examining its dilemmas and opportunities in the implementation of the concepts of the responsibility to protect. He is of the opinion that the AU failed to implement Article 4(h) of its Constitutive Act and argues that this may have been aggravated due to the AU not institutionalizing the concept of responsible sovereignty within its legal framework.

The arrest warrants for members of the Gaddafi family by the ICC also raised questions of international criminal law. *Jens M. Iverson*, under the title "The Continuing Functions of Article 98 of the Rome Statute", demonstrates said functions with a look to the African Union Commission's vehement objections to the ICC's reading of Article 98 of the Rome Statute. This includes a demonstration of immunities resulting from agreements under Article 98(2), as well as customary immunities of 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.¹ Not only Palestine struggles with its recognition as a State, Kosovo too is still no Member State of the United Nations due to not being recognized as State by a number of other States, including China and

¹ 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 2 May 2012).

Russia.² *David I. Efevwerhan*, in his article “Kosovo’s Chances of UN Membership: A Prognosis”, examines the case of Kosovo applying 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 *lex specialis*. He reviews the rules and practice of UN membership admission, assesses Kosovo’s chances of success and argues that under normal circumstances, Kosovo would meet the requirements for admission into the UN, but political considerations of the permanent members of the Security Council stand in the way of a successful application of Kosovo. He then offers four ways out of the seemingly gridlocked situation which Kosovo finds itself in.

Meanwhile, the concurrent financial crisis has been holding the world in a tight grip. A number of the Mediterranean Member States of the EU continuously struggles with the impending risk of insolvency. *Matthias Goldmann* and *Maximilian Hocke* take a look at the impact of financial crises on States. In his article “Sovereign Debt Crises as Threats to the Peace: Restructuring under Chapter VII of the UN Charter?”, Goldmann states that following sovereign debt crises the population in affected States might suffer a significant loss of socio-economic rights. According to him the resolution of the debt crises is not only impeded by so-called vulture funds, but also by legal obstacles, which exist due to the lack of a statutory, obligatory bankruptcy procedure for States. He then discusses whether the UN Security Council might seize matters, when debt crises constitute a threat to the peace, as they are correlated to the outbreak of civil war. This includes an assessment of the concept of peace in Art. 39 UN Charter.

² List of recognitions available at <http://www.mfa-ks.net/?page=2,33> (last visited 4 May 2012).

Hocke examines how measures against the Global Financial Crisis, such as 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 4th 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 conceptualized to be human rights-like guarantees of a minimum standard of protection. Furthermore, he explains that such an approach may serve as an important concept to restrict the interpretation of investment treaties and to balance economic rights with other fundamental human rights in case of norm conflicts.

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 Rumor. Human Rights in the Belgian Legal Periodicals” His main focus is on how much importance was given to human rights by Belgian legal practitioners. He assesses this by examining the most influential periodical in Flanders: the *Rechtskundig Weekblad*.

Finally, *Herman Voogsgerd*’s article “The EU Charter of Fundamental Rights and Its Impact on Labor 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 entering into force 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