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Editorial

Dear Readers,

this issue marks the beginning of the Goettingen Journal of International Law's fifth volume.

Since its foundation in December 2008, various persons and institutions have supported the journal in various manners. Such precious support enabled GoJIL to constantly improve its quality as well as to broaden its readership. Therefore many students, primarily from the Faculty of Law, have hitherto been engaged in the project.

We are particularly indebted to those members of the Scientific Advisory Board who from the very beginning have made vital contributions with their expertise to the journal's success. At the same time, we welcome the new members and we are looking forward to excellent future cooperation.

Likewise, the journal itself is in steady flux. This issue comes with a new appearance: our homepage and centrepiece www.gojil.eu has been comprehensively overhauled. Yet another modification pertains to the issues' layout, which hopefully benefits the journal's readability.

This issue is a special issue on the topic of "The Law and Politics of Indigenous Peoples in International Law". In the past years, the term "indigenous people(s)" has spurred vivid academic debate yielding a plenitude of publications from not only an ethnological or political but, likewise, a legal vantage point. In order to cast a light on the legal and political problems, we selected the following eight contributions:

The first article “By What Right”: The Contributions of the Peninsular School for Peace to the Basis of the International Law of Indigenous Peoples’ by *Sílvia Maria da Silveira Loureiro* provides a philosophical background to the issue of indigenous peoples’ rights. By analyzing the writings of Francisco de Vitória, Luis de Molina, and Francisco Suárez, the author outlines the main ideas of the so called *Peninsular School for Peace* arguing that this School may form the theoretical basis for the recognition of indigenous peoples as subjects of collective rights.

Subsequently, in ‘Romanticization Versus Integration?: Indigenous Justice in Rule of Law Reconstruction and Transitional Justice Discourse’ *Padraig McAuliffe* examines the role of indigenous justice in the process of transitional justice and the usually simultaneous rule of law reconstruction. The author concludes that indigenous legal processes have the capacity to significantly contribute to the processes of transitional justice if the persons working in this field learn from the process of de-romanticization the legal pluralists went through in the 1970s and 1980s and the experience of peace-building missions.

The ensuing articles are all based on the assumption that indigenous peoples have special relation to their environment, land, and resources.

Katja Göcke in ‘Protection and Realization of Indigenous Peoples’ Land Rights at the National and International Level’ analyzes the recognition and protection of indigenous land rights in the USA, Canada, Australia, and New Zealand, stating that the differing, yet somewhat similar national approaches do not in themselves entirely abide by international law standards and that States may mutually benefit from other States’ experiences in the implementation of such land rights.

Giovana F. Teodoro and *Ana Paula N. L. Garcia* analyze the protection of communal property rights under the Inter-American Human Rights System. In ‘A Step Further on Traditional Peoples Human Rights: Unveiling the Key-Factor for the Protection of Communal Property’, they conclude that the Inter-American Court of Human Rights has shown a progressive understanding of the protection of communal property rights but still needs to go further that way: All ethnic designations should be put aside to avoid the exclusion of communities who have a deep cultural relationship to their land but fail to meet the criteria for indigenous or tribal peoples.

Similarly in reference to the protection of human rights under the Inter-American system, *Efrén C. Olivares Alanís* in his article ‘Indigenous Peoples’ Rights and the Extractive Industry: Jurisprudence From the Inter-American System of Human Rights’ examines the handling of the conflict between indigenous peoples’ rights to their ancestral lands, territories, and natural resources and the interests of the extractive industry regarding these lands and resources. The author focuses on the development and contents of the right of indigenous peoples to consultation prior to resource extraction projects on their lands, positing that this right is well-established in the Inter-American System. The few details that still remain vague are likely to be clarified in the near future. In his conclusion, *Alanís, inter alia*, points to the Pascua Lama Project.

Gonzalo Aguilar Cavallo’s article ‘Pascua Lama, Human Rights, Indigenous Peoples: A Chilean Case Through the Lens of International Law’ then revolves around just this project. The article deals with one of the many examples of exploitation of natural living spaces of indigenous peoples on a domestic level which infringes upon the emerging body of international environmental law and the rights of indigenous peoples. The author delineates the interwoven nature of the different regimes. Moreover, the article reveals the persisting gap between international legal aspirations and domestic reality.

In their article “‘We Will Remain Idle No More’: The Shortcomings of Canada’s Duty to Consult Indigenous Peoples’ *Derek Inman, Stefaan Smis, and Dorotheé Cambou* elaborate on Canada’s recent legislative amendments, which were adopted without consultation of indigenous peoples’ representatives and their conformity with the internationally recognized duty to consult indigenous peoples before adopting measures that may affect them. Following a closer look on the evolution, content, and scope of the duty to consult in the jurisprudence of the Supreme Court of Canada, under international law, and under the Inter-American Human Rights System, the authors conclude that Canada has in fact violated its international legal obligations towards indigenous peoples.

The last article of this Special Issue ‘Rights of Indigenous Peoples and the International Drug Control Regime: The Case of Traditional Coca Leaf Chewing’ by *Sven Pfeiffer* explores the conflict between the international drug control regime and the rights of indigenous peoples, especially the clash between the traditional consumption of coca leaves and the UN Conventions on drug control. *Pfeiffer* argues that the conflict may be solved through an application of

the methods of treaty interpretation, but only to the disadvantage of indigenous peoples' rights.

We hope that this thoroughly chosen selection of articles provides for another worthwhile read to our readership.

The Editors