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Editorial

Dear Readers,

Our current issue invites you on a *tour d'horizon* through different fields of international law: the protection of the atmosphere, health, the European Union (EU), arms control, the World Trade Organization (WTO) and the law of the sea. This variety of topics affirms what the Study Group of the International Law Commission (ILC) already pointed out in its Fragmentation Report 2006: diversification and fragmentation are inherent to International Law.¹

While the phenomenon is not a new one,² it remains full of new developments and is, thus, subject to changed perceptions.

International lawyers will continue to deal with its tensions: The call for more harmonization and universalism can run the risk of stopping progress in international law and of ignoring local particularities.³

At the same time, it cannot be ignored that the difficulties diversification and fragmentation create in case of normative conflicts are able to damage the authority of international law.

¹ ILC Study Group, *Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*, UN Doc A/CN.4/L.682, 13 April 2006, 246, para.486 [ILC, Fragmentation Report].

² *Ibid.*, 10, para. 5 indicating that the fragmentation debate is at minimum half a century old.

³ Cf. H. Aust, 'Between Uniformity and Diversity' in H. Aust & G. Nolte (eds), *The Interpretation of International Law by Domestic Courts* (2016), 331, 336 naming further authors; cf. the current discussion on the danger of ignoring the local <http://www.ejiltalk.org/remaking-globalization-for-the-local-the-real-search-for-equality-and-diversity-in-international-law/#more-14748>; <http://verfassungsblog.de/category/themen/voted-out-is-liberal-constitutionalism-becoming-a-minority-position-debates/> (last visited 15 November 2016).

The following articles will analyze not only the role of courts, but also of non-judicial actors and provide you with an insight into some current challenges the respective areas of international law are facing.

Handling the prospect of institutional fragmentation, in their article ‘Towards a New International Law of the Atmosphere?’, *Peter H. Sand* and *Jonathan B. Wiener* argue for a solution in between and, instead of calling for harmonization, they propose more cooperation and coordination among the several specialized institutions acting in the field of the law of the atmosphere. They take a close look at the initial ILC reports and debates in 2014 and 2015 and shed light on prospects and limitations. In their note the authors provide an overview over the latest work of the ILC.

Robert Frau evaluates in his article ‘Law as an Antidote? Assessing the Potential of International Health Law Based on the Ebola-Outbreak 2014’ the measures taken by actors such as the World Health Organization (WHO) in the Ebola crisis 2014. He offers suggestions on how to fight and handle outbreaks and spreading of epidemics and pandemics in future.

In ‘The EU Commission and the Fragmentation of EU Law: Speaking European in a Foreign Land’ *Avidan Kent* examines the EU Commission and its legal arguments in investment arbitration cases analyzing *amicus briefs* available exclusively to the author. He criticizes the EU Commission for fostering the fragmentation of international law by promoting the supremacy of the EU.

Sondre Torp Helmersen in ‘The Use of Scholarship by the WTO Appellate Body’ examines 110 Appellate Body reports and finally observes a trend of declining use of scholarship when interpreting trade agreements. To resolve upcoming questions, several explanations for these trends are given and examined at the end, such as the Appellate Body’s specialization, its members’ backgrounds, the external criticism and the increasing certainty of law as possible reasons.

In ‘The Evolution of Arms Control Instruments and the potential of the Arms Trade Treaty’ - *Tom Coppen* carves out the limited room to maneuver of the *ATT*’s organs - the Convention of the State Parties and the Secretariat. Based on an analysis of preceding arms trade treaties he illustrates how the organs, in spite of their limited authority, can subsequently develop the legal framework of the *ATT* by referring to experiences gathered during preceding arms trade treaties.

Valentin J. Schatz in ‘Combating Illegal Fishing in the Exclusive Economic Zone – Flag State Obligations in the Context of the Primary Responsibility of the Coastal State’ investigates various legal instrument in order to distinguish the obligations and possibilities coastal States and flag States have with regard to preventing illegal, unreported and unregulated fishing in Exclusive Economic Zones. He - in contrast to *P. Sand* and *J. Wiener* - calls for convergence and suggests that the unclear, but important role of flag States should be clarified by a new, fully binding multilateral treaty.

We hope these thoroughly selected articles provide for yet another worthwhile read to our readership.

At this point, we would also like to express our condolences for the relatives and friends of Prof. Dr. Dr. h.c. mult. Jutta Limbach, who passed away the 10 September 2016 at the age of 82 years. “As President Mrs. Prof. Dr. Limbach represented the Federal Constitutional Court in a manner which set new standards [...]. Not only due to her prudential management, but also due to her engaged and public advocacy for the fundamentals of the democratic constitutional state, she is one of the most formative judges of the Federal Constitutional Court and enjoys inside and outside the Court the highest esteem.”⁴

Her article ‘Human Rights in Times of Terror – Is Collective Security the Enemy of Individual Freedom?’⁵ published seven years ago in our first issue remains of relevance and continues to be a worthwhile read.

The Editors

⁴ BVerG, ‘Die ehemalige Präsidentin des Bundesverfassungsgerichts Prof. Dr. Dr. h.c. mult. Jutta Limbach ist verstorben’, Pressemitteilung Nr. 64/2016 (12 September 2016), available at <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2016/byg16-064.html> (last visited 15 November 2016), translated by the editors.

⁵ J. Limbach, ‘Human Rights in Times of Terror – Is Collective Security the enemy of Individual Freedom?’, 1 *Goettingen Journal of International Law* (2009) 1, 17.

