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## **Editorial**

Dear Readers,

At the time of this issue's publication, the COVID-19 pandemic declared by the World Health Organization (WHO) in March 2020,<sup>1</sup> still continues to impact the lives of individuals as well as their societies and economies.<sup>2</sup> It has become apparent that many healthcare systems, as well as social programmes, were not in a condition to adequately respond to the challenges posed by the COVID-19 pandemic.<sup>3</sup> However, the lack of resilience and capacity in the public sector is not an unforeseen and sudden problem, as pointed out by the UN Committee on Economic, Social and Cultural Rights in its statement on the pandemic and its impact on the enjoyment of economic, social and cultural rights. The committee stresses that decades of underinvestment, accelerated by the global financial crisis of 2007-2009, predated the current crisis.<sup>4</sup>

The global financial crisis exposed the flaws of international financial regulation, a truly one-of-a-kind area of international law, as it does not operate with the use

<sup>1</sup> See WHO, 'Coronavirus disease 2019 (COVID-19) Situation Report –51' (2020), available at <https://apps.who.int/iris/bitstream/handle/10665/331475/nCoVsitrep11Mar2020-eng.pdf?sequence=1&isAllowed=y> (last visited 22 April 2021).

<sup>2</sup> J. W. Goodell, 'COVID-19 and finance: Agendas for future research', in 35 *Finance Research Letters* (2020), Article 101512, 1; Indian Department of Economic Affairs, 'Monthly Economic Review' (April 2021), available at <https://dea.gov.in/sites/default/files/MER%20April%202021.pdf> (last visited 8 May 2021), 10.

<sup>3</sup> As WHO director-general remarked at the closing of the annual session of the World Health Assembly, see UN News, 'COVID-19: Consequences of 'chronic under-investment in public health' laid bare: Tedros', 13 November 2020, available at <https://news.un.org/en/story/2020/11/1077652> (last visited 22 April 2021).

<sup>4</sup> United Nations Committee on Economic, Social and Cultural Rights, *Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights*, UN Doc E/C.12/2020/1, 17 April 2020, 2, para. 4.

of traditional instruments such as treaties but rather via nonbinding agreements.<sup>5</sup> Due to its so-called *soft law* framework, some have gone as far as denying that international financial law is in fact law after all.<sup>6</sup> The rationale behind this system, which builds on the assumption that its non-binding nature provides regulators with the necessary flexibility, has been called into question in the debate on how to improve the regulation of international finance.<sup>7</sup>

Another prevailing issue that has been brought to the surface due to the COVID-19 pandemic is the vulnerability of social rights,<sup>8</sup> including employment and labor rights, the right to social security, social and medical assistance, the right to be protected against poverty and social exclusion, and the right to education and housing.<sup>9</sup> In the circumstances, decision-makers fighting Covid-19 should be giving special consideration to vulnerable groups such as migrant workers, children and families, women, elderly people and persons with disabilities.<sup>10</sup> For example, many women are particularly burdened by the crisis due to their professional situation. Making up almost 70% of the health care workforce, they are often at greater risk of infection.<sup>11</sup> This adds up to previously existing inequalities<sup>12</sup> and increased responsibilities in the private sphere, not to mention the increase in domestic violence.<sup>13</sup>

International financial regulation as well as the effective protection of economic and social rights, and gender equality remain pressing and topical issues, not only in their interplay, but also each in their own regard. This is starkly illustrated by the current pandemic and well reflected in important contributions to our current issue.

<sup>5</sup> C. Brummer, 'How International Financial Law Works (and How it Doesn't)', 99 *Geo. L.J.* 257 (2011), 261.

<sup>6</sup> *Ibid.*

<sup>7</sup> Verdier, *supra* note 5, 1406.

<sup>8</sup> European Committee of Social Rights, 'Statement on COVID-19 and social rights' (2021), available at <https://rm.coe.int/statement-of-the-ecsr-on-covid-19-and-social-rights/1680a230ca> (last visited 23 April 2021), 14.

<sup>9</sup> *Ibid.*, 2-8, 13.

<sup>10</sup> *Ibid.*, 7, 9-12.

<sup>11</sup> OECD, 'Women at the core of the fight against COVID-19 crisis', available at [https://read.oecd-ilibrary.org/view/?ref=127\\_127000-awfnqj80me&title=Women-at-the-core-of-the-fight-against-COVID-19-crisis](https://read.oecd-ilibrary.org/view/?ref=127_127000-awfnqj80me&title=Women-at-the-core-of-the-fight-against-COVID-19-crisis) (last visited 7 May 2021), 1.

<sup>12</sup> *Ibid.*, 11.

<sup>13</sup> European Committee of Social Rights, *supra* note 9, 10.

This assemblage is further complemented by an engagement with the roots of the prohibition of what has famously been referred to as the *crime of crimes*:<sup>14</sup> the crime of genocide. In a related topic, perhaps with a future-oriented perspective, this issue also explores the protection of the environment through the means of International Criminal Law. While there have been no new international crimes since 1945, a recent initiative, aiming for an amendment of the Rome Statute, has commissioned an expert panel to draft a legal definition of *ecocide*.<sup>15</sup> While the outcome of this initiative is yet to be seen, the debate about the idea of a new international crime against the environment is ongoing.

This issue opens with *Julia Ciliberto's* article 'The Challenges of Redressing Violations of Economic and Social Rights in the Aftermath of the Eurozone Sovereign Debt Crisis'. The author turns to the question of whether the EU and national systems provide adequate remedies for violations of economic and social rights. In order to answer that question, she compares the legal remedies available for victims before national judicial organs, the Court of Justice of the European Union, international human rights bodies, as well as the European Court of Human Rights by focusing on their suitability to enhance the effective implementation of socio-economic rights.

In the second article, titled 'The Soft Touch of International Financial Regulation: Status, Flaws and Future', *Niall O'Shaughnessy* explores the rules regulating international financial institutions with regard to the question as to why they failed to prevent the 2008 global financial crisis. He analyses the internal flaws of the provisions of the Basel Accord, as well as the problems arising due to their *soft law* nature and gives an outlook on the future of financial regulation.

*Julia Klaus* retraces the normative development of the prohibition of genocide as a *jus cogens* provision which entails *erga omnes* obligations and highlights the role of natural law approaches. In her article 'The Evolution of the Prohibition of Genocide: From Natural Law Enthusiasm to Lackadaisical Judicial

<sup>14</sup> W. A. Schabas, *Genocide in International Law: The Crime of Crimes*, 2nd ed. (2009). However, the ICTY Appeals Chamber has stated that there is no hierarchy of crimes under its statute, see *Prosecutor v. Kayishema and Ruzindana*, Judgment (Reasons), ICTR-95-1-A, 1 June 2001, para. 367.

<sup>15</sup> For an interview with one of the panel's co-chairs, Philippe Sands, see P. Sands, J. Batura, P. Eschenhagen & Raphael Oidtmann, 'Defining Ecocide: An interview with Philippe Sands', *Völkerrechtsblog* (24 April 2021), available at <https://voelkerrechtsblog.org/de/defining-ecocide/> (last visited 25 April 2021).

Perfunctoriness – And Back Again?’ she looks back at the origins of the provision as a customary prohibition of genocide before its codification in the Genocide Convention in 1948 and follows the development up to the present, ending her analysis with comments on the *Myanmar Genocide case* at the International Court of Justice.

The prohibition of genocide may in principle, as the authors of the fourth article of this issue argue, also be applied to the destruction of the environment, in the case that a perpetrator envisages the resulting destruction of a protected group. However, emphasizing the difficulty of fulfilling the *mens rea* requirement, *Ammar Bustami* and *Marie-Christine Hecken* use the prohibition of genocide as one of their examples when arguing that the current legal framework of International Criminal Law is insufficient to guarantee an adequate protection of the environment. In their article ‘Perspectives for a New International Crime Against the Environment: International Criminal Responsibility for Environmental Degradation under the Rome Statute’, *Bustami* and *Hecken* call for a reform of environmental protection through International Criminal Law and advocate an ecocentric approach.

In the last contribution, *Natalie Alkiviadou* and *Andrea Manoli* address the approaches to gender equality in the jurisdiction of the European Court of Human Rights (ECtHR). In their article titled ‘The European Court of Human Rights Through the Looking Glass of Gender: An Evaluation’, they examine relevant ECtHR-case law concerning domestic violence, childbearing, and the wearing of religious dress by women. While the authors observe a significant positive tendency regarding the court’s role in promoting gender equality, they still see room for further improvement.

The Editors