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Editorial

Dear Readers,

Once again, the Editorial Board of the Goettingen Journal of International Law is looking back at a highly successful year ending with this last issue of the fourth volume. The highlight of the past year was the symposium "German Precursors to International Constitutionalism" held in Göttingen in March 2012, which was organized in cooperation with the Institute of International and European Law of the University of Göttingen and the Minerva Institute for Human Rights, Hebrew University, Jerusalem. The research papers discussed at the conference were published in the previous issue of the GoJIL.

The Editorial Board of the GoJIL also welcomed several new editors during the last year and integrated them into a now younger Editorial Board. Despite these personnel changes, the Editorial is looking forward to a promising year 2013.

The first article of this issue is written by *Jochen von Bernstorff*. In his article "Georg Jellinek and the Origins of Liberal Constitutionalism in International Law" he analyzes Georg Jellinek's ideas on State sovereignty as well as his concept of 'auto-limitations' in the 20th century and the impact of Jellinek's idea of international law as a 'proto-constitution' on modern legal thinking.

Then, *Lando Kirchmair* in his article "The 'Janus Face' of the Court of Justice of the European Union: A Theoretical Appraisal of the EU Legal Order's Relationship with International and Member State Law" analyzes the jurisdiction of the European Court of Justice regarding the question of the relationship between the legal orders of the European Union and the UN and its incoherent use of the doctrines of monism and dualism. He concludes that the application of both doctrines on the EU is justified although it is necessary to draw a distinct line between the application of the dualistic and the monistic doctrine.

The following paper shifts the focus from the legal thinking of the 20th century and its modern impacts – as presented in the first two articles – to a more current issue. In her article "The Supplement of Deficiencies in the Complaint Within the WTO Dispute Settlement Mechanism" *Ana Constanza Conover* analyzes the WTO dispute settlement mechanism and addresses the issues developing countries face in the current system. She proposes an amendment to Article 7 of the Dispute Settlement Understanding in order to give developing countries a less underprivileged status as complainants.

The next article, "The Principles of 'Complementarity' and Universal Jurisdiction in International Criminal Law: Antagonists or Perfect Match?" by *Britta Lisa Krings*, examines the relation between universal jurisdiction and the principle of complementarity. After outlining her understanding of both principles, *Krings* discusses whether the term "has jurisdiction" in Article 17 of the Rome Statute refers solely to ordinary national jurisdiction or also to universal jurisdiction. If the latter were the case, a State exercising universal jurisdiction could claim precedence over the jurisdiction of the ICC. After a profound discussion, she concludes that this is the correct interpretation of Article 17 Rome Statute. Thereupon, *Krings* assesses whether States which have not signed the Rome Statute hold the same right and obligation to prosecute serious international crimes as States which have signed it and finishes by denying this.

In the following article "The Law of the International Criminal Court and Customary International Law", *Hiromi Satō* analyzes the absorption of customary international criminal law into national legislation. She concludes that most States retain their national provisions on the general principles of criminal law although the description of the relevant crimes from customary international law might be adopted. Based on different examples, *Satō* outlines the distinctions between the 'old' customary international criminal law and the 'new' international law of the Rome Statute. She concludes that the relationship between customary international criminal law, the law of the Rome Statute and national criminal law is quite intricate.

The article "Non-Recognition of State Immunity as a Judicial Countermeasure to Jus Cogens Violations: The Human Rights Answer to the ICJ Decision on the Ferrini Case" written by *Patricia Tarre Moser,* discusses whether the non-recognition of State Immunity can be regarded as a countermeasure to *jus cogens* violations. *Tarre Moser* concludes – contrary to the ICJ-decision in the *Ferrini* Case in which the ICJ declared

that the exercise of jurisdiction of Italian Courts with regards to claims against Germany for war crimes in World War II was in violation of international law[1] – that the non-recognition of State Immunity is a countermeasure against *jus coges* violations and points out the conditions under which a violation of State Immunity could be a countermeasure.

The second to last article of this issue is written by the winner of the annual Student Essay Competition, *Roee Ariav*. In his article "National Investigations of Human Rights Between National and International Law" *Ariav* examines how the duty to investigate certain human rights violations is a good example for the interplay between international and national law. In 1995, the European Court of Human Rights recognized the duty to investigate as the procedural aspect to the right to life and thereby influenced the jurisprudence of the national courts and the national law enforcement mechanisms.[2] From the author's point of view, this development is just one example for the great impact of international law on those domestic systems once considered an area beyond international influence.

The last article of this issue titled "The Need to Alleviate Human Rights Implication of Lage-scale Land Acquisitions in Sub-Saharan Africa", written by *Semahagn Gashu Abebe*, deals with the issue of so called 'land grabbing' in Sub-Saharan Africa. While *Gashu Abebe* also presents possibilities for betterment, the main emphasis is on the numerous grave problems the indigenous are faced with as well as on the responsibilities that must not be forgotten. The article concludes with measures that have been or are planned to be taken both on the international and on the national level to tackle the resulting negative aspects.

We hope that all these articles once again provide – in their diversity – a worthwhile read to our readership.

The Editors

1 ICJ, *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment, 3 February 2012.

2 *McCann and Others v. the United Kingdom*, ECtHR, Judgment, Appl. No. 18984/91, 27 September 1995.