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Editorial

Since our last issue in May 2011 several events with global impact have filled the newspapers and confronted us with the need for new judicial and political solutions. In the meantime, Hosni Mubarak's trial has begun and it raises again important questions on how to handle trials of ex-dictators. The trial may foreshadow the future stance to the rule of law of Egypt's new politic system. The events in Libya and also Syria sparked a new discussion about the concept of responsibility to protect.

But major change did not limit itself to North Africa and the Middle East: The ongoing financial crisis shook the faith in the monetary systems worldwide. In a recent *Foreign Policy* article David Bosco, assistant Professor at the American University's School of International Service, discussed the impact of the financial crisis on international institutions.¹ He argued that – against widespread fears – the current financial crises might strengthen the international institutions rather than weakening them. According to David Bosco, States' behavior becomes more “centripetal” as the States come together to solve the ongoing international crises. Despite pessimistic “realistic” estimations, the Security Council and the United Nations played a decisive role in conflicts such as Sudan, the Ivory Coast or Haiti. However, if this strengthening of international institutions helps to solve current and upcoming policy dilemmas, remains to be seen.

¹ D. Bosco, ‘Come Together. Leaders struggling to fix a world spiraling out of control are turning to international institutions. Are they up to the task?’, *Foreign Policy* (23 August 2011) available at http://www.foreignpolicy.com/articles/2011/08/18/come_together (last visited 2 September 2011)

Underlining the importance of international organizations, the article “A System of Collective Defense of Democracy: The Case of the Inter-American Democratic Charter” by *Vasiliki Saranti* highlights the role of the Organization of American States in the process of democratization in Middle and South America. A close look is taken on the recent developments especially in Honduras and therefore the article displays how the defense of democracy can be a part of the responsibility to protect.

Taking a more theoretical approach in their articles, *Christopher Peters* and *Ranieri Lima Resende* examine the impacts and references of international organizations’ and general public international law. In his article “Subsequent Practice and Established Practice of International Organizations: Two Sides of the Same coin?” Peters highlights the importance of distinguishing between subsequent practice of the parties according to Art. 31 (3) (b) of the Vienna Convention on the Law of Treaties and the established practice amounting to rules of an international organization (Art. 5 Vienna Convention on the Law of Treaties) – they are not two sides of the same coin. He shows in detail how both serve different purposes: subsequent practice primarily serves interpretation, whereas established practice amounting to a rule of the organization is quasi-customary law specific to the respective organization. Resende, on the other hand, addresses in his article “Normative Heterogeneity and International Responsibility: Another View on the World Trade Organization and its System of Countermeasures” the relationship between the WTO Law and the law of international responsibility. He reaches the conclusion that it is impossible to deal with the legal framework of the WTO as a self-contained regime. In relation to countermeasures authorized and monitored by the Dispute Settlement Body of the WTO Resende concludes that they may generate international responsibility shared between the WTO and the Member executing the retaliatory action.

In “The Politics of Deformalization in International Law” *Jean d’Aspremont* analyzes the current debate on deformalization which endorses a higher flexibility of international law materials. He shows the problematic consequences of deformalization, e.g. the decline of normative standards, the loss of a common scientific language and the higher difficulty in distinguishing between norms and other material. He shows that it is important and possible to find alternatives to this process: He finds those alternatives in the Global Administrative Law, the Heidelberg project on exercise of international public authority, Martti Koskenniemi’s culture of

formalism and postmodern legal positivism. D'Aspremont concludes that deformalization and formalization need to go hand in hand in order to avoid negative outcomes.

In contrast to international organizations' law, *Mayeul Hiéramente* and *Alexander R. J. Murray* have examined international criminal law. Whereas Hiéramente's article "The Myth of 'International Crimes: Dialectics and International Criminal Law'", questions the widely accepted categories of 'international', 'national' and 'ordinary' crimes and points out the influence labeling and discourse can have on the evolution of the normative order as well as how repeated references to the presupposed 'international nature' influence the evolution of international law, Murray focuses on the necessity of the crime 'genocide' in Art. 6 Rome-Statute. In his article "Does International Criminal Law Still Require a 'Crime of Crimes'? A Comparative Review of Genocide and Crimes against Humanity" he discusses and compares the role of genocide and crimes against humanity in international criminal law. By examining three different crimes against humanity (persecution, extermination and torture), the author argues that 'crimes against humanity' are better positioned than the 'crime of genocide' to prevent criminal acts in the future as the former personalizes the violence and brings the individual's responsibility back into the focus of international criminal law. Thus, 'crimes against humanity' is an adequate alternative to prosecuting individuals for acts of genocide. In general, the author argues for a pragmatic rather than a philosophical approach to international justice.

Focusing on one of the consequences of international crimes, the articles by *Vladislava Stoyanova*, *Killian S. O'Brien* and *Julian M. Lehmann* examine the judicial treatment of refugees and irregular migrants. Stoyanova's article "Complimentary Protection for Victims of Human Trafficking" deals with the possible rights granted by the European Convention on Human Rights (ECHR) to victims of human trafficking with legitimate reasons for not wanting to go back to their countries of origin, e.g. in case of dangers of re-trafficking and rejection by family or in case of developed social ties within the receiving State. Concentrating on the high seas as an escape route, O'Brien examines the extent to which International Law of the Sea and International Refugee Law can contribute to the protection of the so called 'Boat People' in his article "Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem". Lehmann instead explores the human rights protection of

irregular migrants in relation to irregular migrants' entry/admission and expulsion/deportation. In his article, entitled "Rights at the Frontier: Border Control and Human Rights Protection of Irregular International Migrants", he clarifies the term 'migrant' and analyses the international human rights law framework applying to individuals with and without need for international protection, when their claims have a socio-economic dimension. Throughout the text, particular attention is given to the principle of non-refoulement.

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

The Editors