UTRECHT JOURNAL OF
INTERNATIONAL AND EUROPEAN LAW

Editorial

EDITORIAL

DESIREE VAN IERSEL

Author affiliations can be found in the back matter of this article

ubiquity press

CORRESPONDING AUTHOR:
Desiree van Iersel
Utrecht University, NL
utrechtjournal@urios.org

KEYWORDS:
Competiton Law; Principle of Proportionality; Myanmar; Cooling-off provision; Responsibility to Protect

TO CITE THIS ARTICLE:
Desiree van Iersel, 'Editorial' (2021) 36(1) *Utrecht Journal of International and European Law* pp. 11–13. DOI: *https://doi.org/10.5334/ujiel.537*

I. INTRODUCTION

Dear Reader,
Thank you for picking up the first Issue of Utrecht Journal of International and European Law of 2021. Before delving into the articles we published, I first want to express my gratitude to everyone who is part of this journal. First and foremost to the Editorial Board for the hours of work they put into reviewing the enormous amount of submissions flocking in in the last few months. Thanks to their combined efforts, we managed to review and select the best articles submitted to us. Secondly, I would like to thank Deputy Editor-in-Chief Carlos Ramaglia Mota, for his leadership, support, and loyalty to this journal. Thirdly, our Advisory Board for their council and guidance and last but not least, everyone who submitted their articles to our journal.

The seven articles that together form this General Issue 2021 each address different legal questions. Even though they diverge widely on their topics, they seem to follow one of two tracks: either the article sheds more light on a concept of international or European law or the article provides a different perspective in a debate in international law. I will briefly touch upon these articles and follow the core division made above.

II. ARTICLES

In 'The Principle of Proportionality in Modern Ius Gentium', Talya Ucaryilmaz provides a historical overview of the principle of proportionality from ancient times to rulings of the International Court of Justice. Ucaryilmaz combines this overview with a focus on the development of the principle within the context of the law of war and the Aristotelian tendency to consider this principle functions both as a justification and a measurement of force needed. She delves deeply into the principle and reaches the conclusion that proportionality is never an objective measure and its application is case and context specific.

S.R. Subramanian discusses the international legal foundations of the principle of R2P in 'UN Security Council and Human Rights: An Inquiry into the Legal Foundations of the Responsibility to Protect in International Law'. The article discusses the international legal foundation for the principle and the author shows that it is more than a mere political commitment. However, he notes that lacunae exist in the legal foundation of the principle and calls for a strengthening of the existing international instruments and institutions.

In 'Theorizing the Cooling-off Provision as an Additional Standard of Investment Protection', Danilo Di Bella explores the cooling-off provision as a hidden and sometimes overlooked procedural standard of investment protection. This provision aims at granting the host State an opportunity to redress the problem before the investor submits the dispute to arbitration.[1] Di Bella goes beyond considering it a procedural requirement and opens a new debate regarding the provision's status as a standard of investment protection flowing from an International Investment Agreement concluded between investor and host State in the case of default on the side of the State. Instead of having to (partially) bear the cost for not complying with the cool-off provision, the State defaulting in its obligation to organise consultation meetings should bear the full cost of the arbitration.

In 'Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US' Brian Ikejiaku and Cornelia Dayao shed light on the protectionist policy adopted in the regulation of competition law. Protectionist policy aims at impeding foreign trade access and preserving or even improving the position of domestic producers at the cost of foreign producers.[2] Traditionally carried out through the imposition of a broad range of (visible) barriers to trade, the practice has become murkier now that more subtle measures of distorting free trade are taken. As it has become more difficult to spot protectionist steps taken, the authors consider it necessary to create a set of underlying unified competition principles to address this problem.[3]

Johanna Buerkert, Michaël Schut, and Lili Szuhai's 'All About That Face (No Trouble?) An Analysis of the Dutch Ban on Face-Covering Garments in the Light of the ECHR, ICCPR and CEDAW, together with Feminist Theory' sheds light on the desirability of the Dutch Burqa Ban and brings narratives of female agency and choice back into the debate. Their focus on the two types of women who wear face-veils in combination with the Westernized focus of what it means to be successful sketches an insightful picture as to why the Dutch ban is not always beneficial to the women it aims to 'liberate'. Indeed, as the authors note 'it has the opposite effect, by confining them to their homes, with the possibility of hindering equal career opportunities as well as impacting women's access to education and appropriate healthcare.'[4] The authors call for a reconsideration of the Ban and ask for inclusion of the women concerned.

Christopher Evans' 'Questioning the Status of the Treaty on the Prohibition of Nuclear Weapons as a "Humanitarian Disarmament" Agreement' takes a state-centric approach in a debate that has become increasingly more victim-centred since the Cold War. He starts by tracing the shift in focus to the individual followed by highlighting the existence of security-driven considerations which exist next to humanitarian benefits as laid down in the Treaty. Evans shows that the co-existence of both interests may even increase the impact of the Treaty.

The final article in this General Issue creates a bridge between the subdivisions made earlier. 'Civil society and UNGA-Created Mechanisms in the Investigation

and Prosecution of Genocide, Crimes Against Humanity and War Crimes- A case study of Myanmar' by Konstantina Stavrou connects the process of gathering evidence by civil society in Myanmar to the broader international legal concept of UNGA-created mechanisms. Civil society documentation of the crimes committed against the Rohingya in Myanmar becomes an indispensable tool in situations where the State is reluctant to conduct investigations. The status of Civil Society obtained evidence and its admissibility in court is problematic. The UNGA- created Independent Investigative Mechanism for Myanmar can create the required connection between such evidence and the obligation to investigate and prosecute by ensuring that the files are admissible in third state's trials. Konstantina Stavrou fleshes out this international legal mechanism and brings back the individual in this area of the law by using Myanmar's civil society evidence-gathering as a case-study.

The articles published in this General Issue all add to their respective academic debates and bring back points of view that are sometimes overlooked in International Law. These articles bring up many more questions to be researched and policy-areas to be discussed in future articles – perhaps interesting to consider for our next General Issue?

NOTES

1 *Burlington Resources v Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction, 2 June 2010, para 315. <*https://www.italaw.com/sites/default/files/case-documents/ita0106.pdf*> accessed 6 February 2021.

2 Ikejiaku, B., and Dayao, C. 2021. Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US. *Utrecht Journal of International and European Law*, 36(1).

3 ibid.

4 Buerkert, J., Schut, M. and Szuhai, L. 2021. All About that Face (No Trouble?). *Utrecht Journal of International and European Law*, 36(1).

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR AFFILIATION

Desiree van Iersel *orcid.org/0000-0003-2008-4005*
Utrecht University, NL

TO CITE THIS ARTICLE:
Desiree van Iersel, 'Editorial' (2021) 36(1) *Utrecht Journal of International and European Law* pp. 11–13. DOI: *https://doi.org/10.5334/ujiel.537*

Submitted: 06 February 2021 Accepted: 19 February 2021 Published: 10 March 2021