

Editorial

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When Mindy Cooper, current Editor-in-Chief of *Merkourios*, kindly sent me an invitation to write the editorial for Issue 76 of the Journal, I accepted with pleasure. Over the years, *Merkourios* has proved itself to be an invaluable resource for scholars of international and European law, with articles of high quality made freely available on the internet.

This issue of *Merkourios* is unusual in the sense that it is the Journal's first 'general' issue. It does not have a specific theme, as previous issues have. Instead, the contributions deal with a broad array of topics, ranging from investor-State disputes to the protection of war correspondents. However, one connecting thread keeps all the articles firmly linked: they all deal with the role of individuals in influencing the continuous development of international law and international dispute settlement. After having introduced the articles, the remainder of this editorial is used to say a few words about this development in general terms: Where are we headed?

Daniel G Hare (University of Maryland) suggests that Europeans broadly defined – the European Union, European States, European municipalities and European individuals – have much to learn from the American model of climate change litigation in their efforts to ensure liability for damages caused by climate change. Another article about advancing legal dispute settlement mechanisms is the article by Sachet Singh (NALSAR University of Law) and Sooraj Sharma (Gujarat National Law University). The authors propose a workable roadmap for reform of investor-State dispute settlement mechanisms to ensure their consistency and predictability.

Instead of going to court, some individuals go to the streets and protest to make their voices heard. Such protests can get out of hand, and the police are constantly looking for new ways of control and containment. In her article, Donna Cline (Utrecht University) examines the legality of the practice of 'kettling'. This term refers to attempts by the police to control large groups of protesters by isolating them and confining them to a particular area in the city. Protesters then have to stay there until they have calmed down and are permitted to leave. This type of confinement can last for hours. The European Court did not see this practice as a violation of Article 5 of the European Convention on Human Rights, which guarantees to everyone the right to liberty and security of person.

Yet another group of individuals with a significant influence on global developments are journalists. Isabel Düsterhöft (University of Hamburg) provides an insightful piece about the protection of journalists in armed conflict. In recent conflicts – think of Syria – journalists have been specifically targeted by the parties to the conflict as it is increasingly understood that journalists play a big role in winning the hearts and minds of the public, and thus in winning the war. The author suggests that existing legal protections are adequate and in any case, difficult to change, but also submits that there is room for improvement when it comes to their implementation on the ground.

Gonzalo Aguilar Cavallo, Professor of Public International Law and Human Rights at the Universidad de Valparaiso in Chile, presents an article about the human right to water and the responsibility of private corporations at the international level in relation to this right. The author sees evidence of the emergence of what could be termed 'international corporate human rights responsibility.'

This issue of *Merkourios* also contains a note by Professor Radmila Nakarada (University of Belgrade) on the case of Ante Gotovina and Mladen Markač before the International Criminal Tribunal for the Former Yugoslavia; a book review by Professor Arno R Lodder (Vrije Universiteit Amsterdam) of Georg Kerschischnig's *Cyberthreats and International Law*; and an interview about the future of the Responsibility to Protect with one of its key proponents: Simon Adams, Executive Director of the Global Centre for the Responsibility to Protect.

In the collection of articles in Issue 76 of *Merkourios*, one thus finds plenty of examples of attempts, by interested individuals, to influence the further development of international (legal) regimes. Whether it is through innovative use of climate change litigation; by proposing reforms of the investor-State dispute mechanisms; by protesting in the streets; by unveiling the 'truth' during armed conflict; or by demanding acknowledgement of further human rights responsibilities by corporations, all these individuals attempt to make a change. Such efforts are interesting from an academic point of view, because they question the central role of the State in international affairs, including in the development of international law.

This role has been challenged in theory for decades, but such challenges are much more influential when backed by actual protest and – sometimes – even revolution. Such challenges might be refreshing, but they raise many questions: How best to identify the individuals that ought to be involved? What influences do and should they have both formally and in practice in the further evolution of international legal regimes? Much has been written about this already, but the articles in this issue

once again show that there is a need for a thorough scientific analysis of the role various interested individuals – often referred to as ‘stakeholders’ - can and do play in the evolution of international legal regimes.

This is a highly topical subject, for various reasons. Stakeholder gatherings are organised more and more frequently. Using Facebook or other social online networks, it is easy to mobilise a group of people. But after you have mobilised a crowd, or after thousands of people have signed your petition calling for reform, what then?

These gatherings or mobilisations appear to be examples of a more general trend of claims for public participation. Malou van Hintum, columnist of the *Volkskrant* (a Dutch newspaper), made the following prediction for the New Year: ‘2013 will be our year, citizens. We will be more autonomous, and invest in the type of society in which we wish to live.’¹ She suggested that interested citizens, especially in times of crisis, should stop blaming the State for everything wrong in the world, and start taking the organisation of society into their own hands. We need only think of the Arab Spring to understand that this is not a purely Dutch phenomenon.

Such participation might also increase the chances of success of international institutions that wish to take the lead in tackling the big global challenges of today, primarily the United Nations. Already in 1955, the second Secretary-General Dag Hammarskjöld remarked that, in his view, ‘everything will be all right — you know when? When people, just people, stop thinking of the United Nations as a weird Picasso abstraction, and see it as a drawing they made themselves.’² It appears that the time is now to put this idea into practice, to give those citizens that are interested in painting their own brush to paint.

In my view, there are four possible perspectives to study public participation on a global level. From a normative perspective, one can examine the contribution of particularly interested individuals in the development of a normative framework to define the values, purposes and principles, or in short: our common goals. From an institutional perspective, one can analyse the development of methods to implement these goals, based on the principle of shared responsibility. We can examine the division of responsibilities and interaction between governments and private parties in the continuous development of legal regimes. The third perspective we can identify is the instrumental perspective: various responsible parties have different public and private instruments at their disposal to contribute to the realisation of the common goals. Here we can look at the cross-fertilisation and mix of both public and private instruments, as well as both public and private participation. Finally, we can approach the development from the perspective of conflict resolution. We can examine how conflicts between private and public participants can be prevented, and how they - if they occur - can best be resolved, or at least contained.

There is much work yet to be done in elucidating the role of particularly interested individuals – or ‘stakeholders’ – in influencing the continuous development of international law and international dispute settlement. The articles in this issue of *Merkourios* each make a valuable contribution to this debate. Such scholarly contributions could be complemented by written accounts of the practical experience of people who have identified themselves as stakeholders and who have tried to ‘change the rules of the game’. Pieces like the interview with Simon Adams do act to provide this type of insight; however, there could also be a place for other individuals – farmers, field workers and fishermen, so to speak – to voice their experiences and to bring more clarity to these questions concerning the roles that stakeholders should assume. Perhaps, this is something for a future issue. ■

1 Malou van Hintum, ‘In 2013 worden we minder afhankelijk van de onbetrouwbare overheid’ (*Volkskrant.nl*, 26 December 2012) <http://www.volkskrant.nl/vk/nl/6177/Malou-van-Hintum/article/detail/3368600/2012/12/26/In-2013-worden-we-minder-afhankelijk-van-de-onbetrouwbare-overheid.dhtml?utm_source=scherm1&utm_medium=button&utm_campaign=Cookiecheck> accessed 22 January 2013.

2 ‘United Nations: World on Trial’ *Time Magazine* (27 June 1955).