

# The Public Good of Academic Publishing in International Law

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## I. INTRODUCTION

Each of the four issues of the twenty-fifth volume of the *Leiden Journal of International Law* opened with an editorial by one of the journal's editors. Originally construed as a special feature of the anniversary volume, it has been decided to perpetuate this practice. This means that from now on every issue of the journal will start with some critical reflections and observations by one member of the editorial board. Such thoughts will pertain to a wide range of topics, including substantive or procedural issues of international law, epistemological questions, and any other matters concerning the discipline, or questions of academic publishing. The editorials will be written in the editors' personal capacities. They are thus not meant to reflect the views of the board as a whole. There is not such a unified view anyway. Indeed, LJIL takes pride in the diversity of expertise, thinking, understanding of law, and talents that are brought together in its editorial board. It is this very diversity that LJIL's new policy seeks to showcase. Exhibiting LJIL's special plural identity – and the multifold talents of those implementing our standards of excellence and assisting authors in producing top-quality scholarship – is, however, not the only goal of these editorials. Such editorials also constitute an exercise of transparency towards our readership and future potential authors, for they help reveal the inextricable scientific, institutional, conceptual, and methodological biases that inform our decision-making process and shape the scholarship which we help produce and disseminate. In this sense, editorials are thus also conceived as an endeavour to reach out to the professional community for which LJIL tries to be a platform. It is in this context that the editors-in-chief of the journal seize the opportunity of this very first editorial in this post-jubilee series to address some cross-cutting challenges of academic publishing. Drawing on questions raised in the jubilee editorials, the following observations will particularly seek to entice (self-)reflection on the public good at the heart of academic publishing.

## 2. THE PUBLIC GOOD IN ACADEMIC PUBLISHING

There seems to be unanimity that academic publishing serves the public good. Indeed, academic publishing is almost unanimously elevated into a lofty and noble activity performed in the interest, if not of society as a whole, at least of the professional community concerned. It is the idea as well as the future of the public good projected on academic publishing in international law on which the following

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considerations focus and critically reflect. In focusing on the public good of academic publishing, we do not ignore the externalities thereof. Nobody can dispute that academic publishing generates billions of tonnes of carbon dioxide by virtue of production, shipping or even online access,<sup>1</sup> exacerbates the egos of authors, leads to overcommitment of all stakeholders – whether authors, reviewers, editors, or publishers – and contributes to the proliferation of legal thinking,<sup>2</sup> which, in social sciences, can be extremely harmful for the discipline as a whole. Yet, this is not the topic of the following observations, which rather explore the public good possibly associated with academic publishing.

It goes without saying that perceptions of what the public good of academic publishing is are extremely diverse and aplenty, if not in contradiction. Indeed, every member of the epistemic community of international law has its own take on what type(s) of public good academic publishing supposedly serves. In our eyes, the primary public good of academic publishing – and thus the main mitigating parameter of the above-mentioned externalities – lies in the *crystallization of knowledge about law* that it contributes to making possible. More specifically, by selecting, ensuring (a given) quality, marrying their name and reputation to certain authors and themes, and disseminating scholarly works, law journals permit the information and opinions of sufficient quality to be disseminated and subsequently validated as legal knowledge within a given community. We thus believe that in the intricate social process from information to knowledge law journals constitute an essential medium<sup>3</sup> and that the public good of law journals such as LJIL primarily boils down to their contribution to the crystallization of information and opinions in legal knowledge. Put differently, law journals, like LJIL, are constitutive parts of the assembly line for the validation as knowledge of information and opinions about international law.

### 3. THE ASSEMBLY LINE OF KNOWLEDGE ABOUT INTERNATIONAL LAW

In our view, the alchemy necessary to allow the above-mentioned crystallizing effect to take place requires a few carefully fine-tuned operations which are briefly mentioned here. Two particular techniques must be found on the assembly line for it to generate a crystallization effect necessary for knowledge production. According to us, these necessary techniques primarily pertain to quality and order. A few words need to be said about each of these two central features of law journals. Yet, it is of preliminary import to recall that quality and order are respectively the cause and the consequence of one inherent feature of law journals: selectiveness. Indeed, even if the proliferation of law journals – whether paper or electronic – has significantly eased

1 On the unsettling carbon footprints of data centres, see J. Glanz, 'Power, Pollution and the Internet', *New York Times*, 22 September 2012.

2 On this idea of proliferation of international legal thinking, see J. d'Aspremont, 'Softness in International Law: A Rejoinder to Tony D'Amato', (2009) 20 EJIL 911.

3 On the concept of knowledge formation in international law, see J. d'Aspremont, 'Wording in International Law', (2012) 25 LJIL 575.

access to professional publication, law journals such as LJIL select the information and opinions they disseminate. This is hardly surprising. Given their current format, journals cannot materially publish everything. Even for exclusively online journals, selectiveness is a central feature short of which they would simply be no different to databases. It is true that selectiveness is a feature which law journals share with blogs, although, given their nature and assigned functions, the latter have usually been less selective than law journals. However, the understanding of selectiveness by law journals is a key factor in how they contribute to the crystallization of knowledge about international law. Indeed, the yardstick for selection (quality) and the way in which selection takes form (order) are very determinative of the crystallization effect that will transform opinion and information into legal knowledge.

### 3.1. Quality control and certification

Certainly, the most central technique that allows law journals to contribute to the crystallization of the information and opinions in knowledge is the certification of quality of the scholarship that is published. Needless to say, that quality is not an objective finding and remains contingent on those criteria which are *in abstracto* elevated into yardsticks of quality as well as on the way they are applied *in concreto* by those to whom quality-evaluation is delegated. The quality-indicators to which journals may be resorting can be of an extremely wide variety. Practices in academic publishing can vary enormously between journals but also along cultural and geographical lines. For instance, quality control is strictly defined in continental Europe or in Asia and will usually take the form of peer review. In contrast, in the United States, quality control is more loosely defined, alternative criteria such as sources, originality, and impact being commonly resorted to by those in charge of the law journals.<sup>4</sup> It is certainly not the place to discuss the value and merit of each of these quality indicators and the practices of quality evaluation. What matters to highlight here is that, whatever quality indicators they embrace, law journals are (seeing themselves as) endowed with the responsibility of tracing and certifying quality. The reason thereof is that quality is a constitutive element of knowledge formation. If the quality of the scholarly opinions and information disseminated by journals could not be certified, such scholarly output would have little chance to crystallize someday in any sort of knowledge.

### 3.2. Order

We argue that the gargantuan flow of information and opinions about law cannot be digested and made sense of by the members of the professional community of international law. It is true that law journals contribute to the deluge caused by prolific scholarly production. Still, in our view, they also help structure these floods. In particular, they frame and set a pace for the stream of opinions and information that are constantly produced about international law. By ordering the production of information and opinions about international law, we believe that journals enhance

4 It is important to note that very different standards are applied with respect to the publication of monographs, where quality indicators resemble those used in Europe.

the possibility of such scholarly work being received and validated by peers as legal knowledge. The attention of those members of the professional community is spared and only drawn to those scholarly opinions and information which the editors of the journal deem worthy of their attention. This, in turn, increases the chance of peer reception and peer validation, indispensable for such information and opinions to crystallize in legal knowledge.

#### 4. DIGITALIZING THE ASSEMBLY LINE

Needless to say, quality control (and certification) as well as ordering – and the way they are practised by law journals – are being seriously affected by the rise of new actors in academic publishing.<sup>5</sup> Indeed, academic publishing is undergoing a pluralization as a result of new technologies and new actors, having gained a foothold therein. Interestingly, the above-mentioned two features of law journals are precisely those aspects by virtue of which these new actors distinguish themselves from law journals. Other media like blogs and open-access databases operate on the basis of methods of dissemination radically more liberal when it comes to order and quality.

While it is a foregone conclusion that the era of paper journals is coming to an end, it remains open to question whether (someday exclusively online) law journals will be able to preserve the two above-mentioned distinctive features. Vindicating the two techniques is vital if law journals want to remain a central medium in the assembly line of knowledge production. It should be made clear, however, that the existence of law journals should not be vindicated just for the mere sake of law journals themselves. Vindicating these two features of academic publishing should thus not be construed as a – dogmatic – defence of law journals but as a plea for the preservation of the two central features – quality control and order – as indispensable elements of the public good. The ebbing away of quality control and certification, as well as of order would not only lead to a dilution of law journals but also severely erode the crystallizing effect necessary for knowledge production.

While not defending law journals per se, we do not see, for the time being, any possible replacement parts in the assembly line of knowledge production. In our view, law journals have not yet become a replaceable part in that line. Beyond a horizon of five years, however, there is much likelihood that the sequential organization of the assembly line, the various parts thereof, or their respective motions will undergo sweeping upheaval. In particular the techniques of quality control and order may well in time be bestowed upon other actors. It is thus irrespective of the sustainability of the current role played by law journals that we would like to formulate a few final observations. These considerations are phrased in the form of questions in that they are meant to invite all the stakeholders in the business of academic publishing to reflect upon five central questions for the public good of knowledge production of tomorrow. In our view, the answers thereto will determine

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<sup>5</sup> On these challenges, see L. van den Herik, 'LJIL in the Age of Cyberspace', (2012) 25 LJIL 1.

the design and nomenclature of the assembly line of knowledge production in international law in the decades to come.

## 5. THE FIVE RIDDLES OF THE PRODUCTION OF KNOWLEDGE IN THE FUTURE

1. Quality control – in the form of peer review as we usually organize it in Europe – is free of charge in our scientific family. Indeed, reviewers are not remunerated for evaluating the scholarly works of others. Quality evaluation thus depends on the sense of responsibility and civility of the members of the epistemic community of international law. Costs incurred by journals instead relate to their secretariats and their websites. In this context, the question of the affiliation of journals with major publishing houses necessarily arises for both publishers and journals. Given the multiplication of open-access databases and the skyrocketing amount of articles uploaded thereto by authors themselves, will publishers still find it sufficiently profitable to publish law journals in the future? Conversely, will law journals still find an interest in being affiliated to (and subject to the rules of) a major publisher if they can finance their overhead costs through other channels? If not, would emancipation from publishers actually lead to greater independence or rather to a mutated form of subjection to faculty funds and decision-making?
2. While the question of the kinship between law journals and publishers will come to the fore, that of the suitability of the creation of new journals will too. For instance, just in the professional community of international law, there is not a single year which does not witness the creation of a new journal. Despite the uncontested emergence of new areas of research from both an empirical and an epistemological standpoint, the creation of new – often ultra-specialized and narrowly focused – journals supposedly serving the public good of the epistemic community of international law raises two fundamental questions. First, does the creation of new journals not contribute to the proliferation of and repetitions in international legal thinking which, as was said, undermine the assembly line of knowledge production? Second, do law journals of a general ambit like LJIL not continue to offer an appropriate platform for publication of specialized work and contribute more usefully to the crystallization of information and opinion in knowledge?
3. Because quality control operates on a voluntary basis and hinges on the civic obligations of all members of the epistemic community, securing reviewers has become an uphill battle. Peer review has rightly been said to be in crisis.<sup>6</sup> That difficulty is growing in proportion with the enormous need for peer evaluation in our current profession. Indeed, as a result of the proliferation of law journals, as well as the financing of research through state-supported foundation of peer-evaluated research projects, international legal scholars are constantly

<sup>6</sup> On the crisis of peer review, see J. Weiler, Editorial: 'Peer Review in Crisis; From the Editor's Mail Box: The Perils of Publishing – Living under a False Title; The European Law Institute; In this Issue', (2012) 23 EJIL 309.

solicited to evaluate the work of one another. In these circumstances, the individual feelings of responsibility no longer suffice to entice members of that community to contribute to the evaluation of the works of peers. Additional incitements are necessary to convince members of the community to engage in peer evaluation and to do so seriously. In this context, will we be forced to move towards a paid-evaluation model as in natural sciences? Will it be necessary to discard the current anonymity paradigm of peer review processes and to disclose the names of reviewers for each volume of journals as a token of recognition for their work?

4. Quality control does not necessarily mean the peer review process. In the light of the above-mentioned crisis of the peer review model and the fact that peer review is not a panacea – for peer review processes are often politically loaded – the question of resorting to other quality indicators will arise more compellingly. Will we be tempted to embrace other quality indicators such as impact<sup>7</sup> – in the form of citation indexes or downloads – or footnoting and sources?
5. In the same vein, going online does not necessarily mean turning to gratuity and open access. Law journals can choose to become exclusively online publications while still limiting access to paying (individual or institutional) subscribers. Restricted access remains a question from the vantage point of public finances. As most authors and peer reviewers in this profession are paid by virtue of public funding, claims have been made that their scholarly output should be openly accessible and in the public domain. Since public institutions are also most often those paying for access to the databases or financing open access, it seems that public institutions pay twice. The current model thus shows a few (mostly private) actors benefiting from repeated and multi-layered public support. In the context of strained public finances, the question of open access will grow more pressing and with it the need to revisit the whole business model of academic publishing. If this is the case, will we be able to preserve the linchpins of the assembly line of knowledge production which we have discussed here?

It is hoped that, confronted with these challenges, all the stakeholders of the business of academic publishing will be able to elevate themselves in order to take a holistic approach informed by the public good of the production of knowledge about international law.

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<sup>7</sup> See the remarks of J. Weiler, 'EJIL – The Beginning of an Existential Debate', 23 EJIL 607.