
Editorial

Editorial: Editor-in-Chief Sarah M.H. Nouwen; Best Practice – Writing a Peer-Review Report; In This Issue

Editor-in-Chief Sarah M.H. Nouwen

We are very pleased to announce that, as of this issue, the *EJIL* family (*EJIL*, *EJIL: Talk!* and *EJIL: Live!*) will be led by two Editors-in-Chief. By unanimous decision of *EJIL*'s Board of Management, Sarah Nouwen will join J.H.H. Weiler at the helm of *EJIL*. Dr Nouwen serves as Senior Lecturer at the University of Cambridge and was recently appointed as Professor of International Law at the European University Institute. She has been a member of *EJIL*'s Editorial Board for several years (<https://www.law.cam.ac.uk/people/academic/smh-nouwen/40>). See Sarah Nouwen in conversation with Joseph Weiler on *EJIL: Live!* here: https://youtu.be/ONVuF_mRiYM.

Best Practice – Writing a Peer-Review Report

The importance of peer review has, if anything, increased in recent times. The enthrallment of current academia with 'objective' quantitative measures in the processes of selection, promotion and evaluation of academic performance has put a premium on publication in 'peer-reviewed' journals. Instead of a faculty reading carefully the work and making up their own mind as to its quality, they will outsource it to two anonymous peer reviewers. Also, in the face of the avalanche of self-publication in outlets such as SSRN (valuable in and of itself) and the like, peer review may help the discerning reader navigate these channels, thereby providing some guarantee of excellence.

Yet this importance is often not matched by the practice of peer review. The rate of refusal to peer review is as high as 50 per cent – oftentimes by authors who themselves have published in, and benefited from, peer-reviewed journals. Authors who publish in *EJIL* and *I•CON* undertake to peer review for our journals, an undertaking not always honoured. Of course, there is only so much peer reviewing that one can do and we understand when we receive a request to beg off with a promise to do it on some other occasion.

Then there is the problem of tardiness. Four to six weeks is a reasonable time to expect a peer-review report to come in. Frequently, to our and our authors' frustration, it can be as long as 24 weeks, after a slew of 'gentle' and somewhat less gentle reminders.

And then there is the question of the quality of the review, oftentimes perfunctory and hardly helpful.

So here are some guidelines to this act of high academic citizenship.

There is a common misconception that the most important thing the Editors want is a judgment: publish or do not publish. Of course we are interested in that final judgment. We rarely, if ever, will publish an article where both peer reviewers have recommended rejection. But it should be remembered that all journals engage in initial screening, picking out the articles that will be sent to peer review. Articles may be screened out for a variety of reasons, such as subject matter interest, pipeline management (too many articles on the same topic) but also, of course, for quality. The editorial team will not send out to peer review articles that they expect will be rejected – that is not a clever way to manage this scarce resource. The result is that articles sent to peer review are those considered potentially publishable which, in turn, means that the most common outcome of the process will be a double ‘revise and resubmit’ (R&R), in borderline cases one R&R and one rejection (R) and rarely two Rs.

Even when the recommendation is a straight A (acceptance, excuse the pun), good peer reviewing will still provide the Editors with a reasonably detailed evaluation of the piece, explaining their view of its quality and the original contribution it makes and, operating on the principle that there is nothing that is so good that it cannot be improved, providing abundant suggestions and recommendations to the author. The evaluation for the Editors is particularly valuable in those cases where there is a divergence of opinion among the peer reviewers. Explaining the originality and importance of the article is key in a positive peer review because the Editors, knowledgeable as they may be, cannot be masters of all specialities in the general field and, whereas they can discern good or bad writing, powerful or weak reasoning and the like, will often be less confident in assessing originality and importance in areas not their own.

When the evaluation is negative it is even more imperative to invest in the rejection report, both for the benefit of the Editors as well as for the benefit of the author. If, for example, the claim is that the piece is not original, it should be accompanied by a couple of references to work that substantiates that opinion. If the negative judgment goes to quality rather than, or in addition to originality, for instance if it is poorly reasoned, contains lapses in argument and the like, once again this should be spelled out in the report.

The single-paragraph peer-review report that one sees from time to time – ‘This is an unoriginal, poorly reasoned and badly written article: Reject!’ – is singularly unhelpful as well as lacking credibility. It is unlikely that the Editors would send out such a piece to peer review, and imagine yourself, as an author, receiving such an evaluation.

Here are some pitfalls in the judgmental function of peer reviewing.

One of the most common pitfalls is the confusion between ‘I don’t agree, the author is wrong’ and ‘this is a bad article’. I will grant you that the line between the two can be fuzzy, but you grant me that there is, nonetheless, a difference between these two categories of judgment. And since we always seek specialists in the field covered by the article submitted, this inadvertent danger is enhanced since the peer reviewer has a

stake in the field, in positions taken and the like. The only remedy is awareness of this distinction and self-awareness in the process of peer reviewing.

Another pitfall is ideological bias in the peer review. We notice this from time to time when we receive divergent evaluations of quality which track the ideological disposition of the peer reviewers. The remedy in this case is similar: awareness of the potential problem, self-awareness and a sense of intellectual integrity.

The most common pitfall is ... being perfunctory. A quick read, a quick report. A careful read, some reflection and a thoughtful non-hurried report is the Gold Standard.

For the reasons explained above, Revise and Resubmit is the most common judgment and the report requires a little extra work. In the first place, the articulation of the defects that prevent a straight A should, somewhat paradoxically, be more detailed and expansive than those in a Rejection report, since here one wants to list not only those defects that are lethal to publication, but also non-lethal defects correction of which would improve and enhance the eventual published article.

Critical in an R&R report is the 'road map' approach. The author should not only understand the weaknesses but should understand perfectly what needs to be done so that, if performed to an adequate standard, the revised article is likely to be accepted on resubmission. In drafting the R&R report, the peer reviewer should keep in mind this road map approach. Editors will often send the R&R report to the author, asking for reactions to the recommendations, an indication whether they are in agreement with the peer review and an indication of how they plan to revise the piece. The clearer the road map, the better this process unfolds.

Peer reviewers are typically asked whether they would be willing to review the revised piece. It always shocks me a bit when the No box is ticked. It is like a job left half done. Who better than the peer reviewer herself or himself to evaluate whether the revision is satisfactory? But, be that as it may, if the 'not willing to review the revision' box is ticked, all the more important to have a very clear and elaborate road map so that the Editors themselves can better evaluate the revision.

Good peer reviewing probably requires somewhat more effort than preparing to comment on a paper at a conference. Yet it does not give the same exposure and, scandalously, is not taken into consideration in many places when evaluating the file of academics. These days people list in their CV their blog entries. I believe that listing peer reviewing should become standard practice. If deans and the profession place, as they do, so much weight on publication in peer-reviewed journals, surely it should mean something as regards reputation in the field that someone has been trusted to undertake peer reviews by those very journals. This thankless act of high academic citizenship should be valued.

As a token of our deep gratitude to our colleagues in the international law field who accept our invitation to review for *EJIL*, we offer a free online subscription to the Journal for one year and, in addition, OUP provides a 30 per cent discount on book purchases.

Furthermore, as a start towards confirming broader recognition of the importance and value of peer reviewing to our Journal and to scholarly writing in general, we plan

to institute a special prize each year to the referee of an outstanding review. In particular, we hope it will be a signal to deans and other academic authorities that peer reviewing should be considered as a meaningful element in assessing both the scholarly impact and academic citizenship in the context of appointments, renewals and promotions.

In This Issue

This issue opens with three articles that address underexplored corners of international law. The first article focuses on the topic of customs unions. Adopting a historical perspective, *Michal Ovádek* and *Ines Willemyns* identify gaps and ambiguities in the contemporary legal definition of custom unions. They then conduct a comparative analysis to examine how different custom union agreements address these ambiguities. They observe that the design and performance of these agreements are affected by concerns over state sovereignty. Finally, they draw lessons for a possible post-Brexit EU-UK agreement regarding customs.

The second article, by *Miles Jackson*, discusses instigation to commit wrongful acts. He argues that contrary to the common perception, international law does include a general prohibition on instigation. In accordance with this prohibition, a state that induces or incites another state to breach its international obligations may be held responsible for an internationally wrongful act. According to Jackson, the prohibition on instigation is founded on a general principle of law accepted in many domestic jurisdictions, which should be transposed to international law.

Paolo Amorosa then explores a forgotten episode in the well-studied history of the international legal struggle for women's equality. Whereas the common narrative dates the beginning of this struggle to the aftermath of World War II, Amorosa traces its roots to the signing of the Equal Nationality Treaty and the Equal Rights Treaty at the 1933 Montevideo Conference. In so doing, he takes a step towards the re-inclusion of early feminist activists in the dominant history of international law.

Following, we feature a profound exchange on the question of 'hospital shields' and international humanitarian law. *Neve Gordon* and *Nicola Perugini* analyse the history of hospital bombings, identify numerous legal justifications for such attacks due to the alleged shielding of military targets and argue for an absolute protection of medical units. *Yishai Beer* questions this proposal. He argues that such an absolute ban is neither feasible nor desirable. In his opinion, it would damage the current balance and rationale of international humanitarian law.

The next section of this issue examines the learning and teaching of international law, featuring two empirically-based studies on the pedagogical aspects of international law. *Ryan Scoville* and *Mark Berlin* evaluate possible explanations for the variation across states in the compulsory study of international law. They find that legal tradition is the most important determinant of the compulsory study of international law, whereas other factors such as the strategic interests or socio-political conditions of states do not play a significant role. These findings suggest opportunities for educational reform, and they also bear implications for the comparative study of international law.

The next article by *Sondre Torp Helmersen* shifts the focus from learning to teaching. Helmersen asks how the International Court of Justice identifies ‘the most highly qualified publicists’ whose teachings should serve as a complementary source of international law according to Article 38(1)(d) of the ICJ Statute. He finds that the Court takes into account the quality of the work, the expertise and official positions of the author(s) and agreement between multiple authors.

Roaming Charges in this issue invites readers to reflect on the continuing crisis and contestation in the European Union with a photograph entitled ‘Do Not Discard’.

In the next section, we feature a symposium on International Law and Economic Exploitation in the Global Commons. Following the Introduction by *Isabel Feichtner* and *Surabhi Ranganathan*, *Matt Craven* traces how the law on outer space was designed to prevent it becoming a place of warfare or the object of colonization, appropriation or primitive accumulation resulting in rational irrationalities of Cold War commons. *Surabhi Ranganathan* shifts the focus from the sky to the sea and sheds light on how the interplay between national jurisdiction and international administration has led to ocean floor grab. She shows that the regimes created qua the constitutive effect of law and with the help of international lawyers cater only to a few. *Isabel Feichtner*, in her contribution, examines the relationship between the principle of common heritage of humankind and the fiscal regime of deep seabed exploitation as well as its transformation over time. *Karin Mickelson* concludes the symposium, scrutinizing whether and to what extent the principle of common heritage of humankind can limit the exploitation of the global commons.

Cosette Creamer and *Zuzanna Godzimirska* conclude the articles section of this issue with a contribution in our Critical Review of Jurisprudence section. Based on interviews with court officials and surveys with government agents, they analyse trust (building) in international courts and shed light on the important role of the registry of the European Court of Human Rights.

On The Last Page we publish Friedrich Schiller’s Hymn to Joy. While he himself self-critically qualified his appraisal of global brotherhood as flawed and ‘detached from reality’, the poem later became world-renowned due to Ludwig van Beethoven’s avail in the fourth movement of the 9th Symphony, which ultimately was adopted as the Anthem of Europe – discarding Schiller’s lines.

Continuing the celebration of *EJIL*’s 30th anniversary, coinciding with the 30th anniversary of the fall of the Wall, click the URL (<https://www.youtube.com/watch?v=G6Yh6qghzc8>) and sense audio-visually the historic moment when musicians from the United Kingdom, USA, Russia, France as well as East and West Germany performed Beethoven’s 9th Symphony, conducted by Leonard Bernstein, in East Berlin at Christmas 1989, transforming the ‘ode to joy’ into an ‘ode to freedom’.¹

JHHW

¹ Ironically at that very moment the original music score – recognized in the UNESCO Memory of the World Register – was still divided precisely at measure 699 (‘Be embrac’d, ye millions yonder’), with half of it deposited in East Berlin and the other half in West Berlin.