

## Editorial

### Editorial: *Altneuland* – European Law Open Published by Cambridge University Press: Welcome; In This Issue; In This Issue – Reviews

#### *Altneuland* – European Law Open published by Cambridge University Press: Welcome

There is cause for celebration in the European legal publishing world and indeed beyond: a new journal, *European Law Open* (*ELO*), is published by Cambridge University Press. We warmly welcome this new venture.

*ELO* is unlike any other learned journal dedicated to European law. It has an illustrious past in the form of the pioneering *European Law Journal* (*ELJ*), which first blazed a trail beyond the more traditional forms of legal scholarship to which other European law journals at the time were mainly dedicated.

Some readers may recall the outraged Editorial we wrote a couple of years ago in response to what we considered to be the entirely unethical and anti-academic conduct of Wiley Publishing, which led to the collective resignation of *ELJ*'s Editors-in-Chief and its entire Editorial and Advisory Boards: <http://www.icconnectblog.com/2020/02/wiley-and-the-european-law-journal/>. You might want to refresh your memory here: <https://europeanlawblog.eu/2020/02/04/what-a-journal-makes-as-we-say-goodbye-to-the-european-law-journal/>. It is both an ugly and a sobering story. It is a stark and unpleasant example of how the relationship between a publisher and an academic scholarly journal should not be. As an academic community we, whose labour and commitment supplies the intellectual content, editorial curation and peer reviewing that create the journal's value, should not tolerate or accept Wiley-like conduct. We should support and contribute to journals that are founded on relationships of mutual responsibility and respect between publisher and the academic community.

We are writing to express our delight at the birth of *European Law Open*. *ELO* is the imaginative and creative reincarnation of the old *European Law Journal*. You could do no better than to look at the statement of its Editors introducing the new venture to appreciate how it contains both elements of continuity with the original *European Law Journal* and also a whole range of new and exciting thinking about both European law and the role of scholarly journals in this field: <https://doi.org/10.1017/elo.2022.12>.

For our part, we would like to highlight a number of features of the new *ELO* which we find particularly appealing.

First, *ELO* represents both a model for a responsible relationship between a learned journal and a publisher as well as a creative navigation of the new Open Access world of publishing.

Second, *ELO* brings a spirit of experimentation to both format and substance. The journal breaks with some of the conventional formats of publishing, for example, the classic 10,000-word article, and will be experimenting with both longer and shorter pieces as well as other innovative possibilities.

Third, while *ELO* will continue to welcome its hallmark law-in-context scholarship, and indeed the best of doctrinal legal scholarship, the journal's titular openness aims to welcome many other forms as well. It positions itself as a meeting place for different disciplinary approaches to the field, and as a journal which is intellectually, methodologically and geographically open.

Finally, for our part, given the successful recent experience of the European Society of International Law (originally a creature of the *European Journal of International Law*) and of ICON•S (originally the brainchild of the I•CON journal), with annual meetings that attract one thousand participants and more, is it not time for a European Law Society centred on *ELO* and conceived in a similar spirit, as a counterweight to the staid, expensive and hierarchical International Federation of European Law (FIDE)? There is clearly a thirst for an intellectual forum of this kind, an annual meeting place for the wide-ranging community of scholars that *ELO* aims to serve. Watch this space!

*GdeB and JHHW*

## In This Issue

Our Articles section in this issue opens with a contribution by *Hsien-Li Tan*, who proposes that the post-2007 ASEAN presents a new regionalization model to the regional trading arrangement landscape. Introducing the concept of 'concordance legalization', Tan argues that this model allows sovereignty-centric states to dynamically expand their regionalization agenda without supranationalism. In the next article, *Victor Crochet* argues that the European Union (EU) is using trade defence instruments as extractivist policy tools to ensure its industries' access to raw materials in resource-rich developing countries and that such practice infringes upon developing countries' sovereignty over their natural resources and may hamper the development of downstream industries in these countries. Thereafter, *Henning Lahmann* addresses the issue of establishing state responsibility for transboundary disinformation. Focusing on the questions of attribution and causation, Lahmann analyses the distinct challenges they face in the context of transboundary disinformation and how they may be tackled by various doctrinal constructs. Concluding this section, *Michael Ramsden* develops a structure for evaluating the impact of strategic litigation before the International Court of Justice (ICJ) through a study of *The Gambia v. Myanmar* case. Identifying the goals of the parties and the foreseen and unforeseen effects of the litigation, Ramsden argues that using the ICJ as a site for strategic litigation has both prospects and perils.

This issue's EJIL: Debate! section begins with a Reply by *Thomas Grant* and *F. Scott Kieff* to *Maria Laura Marceddu* and *Pietro Ortolani's* article, 'What Is Wrong with

Investment Arbitration? Evidence from a Set of Behavioural Experiments', published in *EJIL* 31:2. Whereas Marceddu and Ortolani had interpreted their empirical data to suggest that public criticism of investment arbitration depends on the institutional design of the bodies adjudicating such disputes, Grant and Kieff offer an alternative hypothesis: the attributes of the people who decide may be more relevant than the institutional format.

This section continues with two debates. In the first debate, *Nico Krisch* asserts that the international law of jurisdiction has undergone a fundamental transformation and has become unbound and assembled. He argues that, particularly in the economic realm, the practice of jurisdiction should be seen as a hierarchical structure of global governance through which a few powerful states govern transboundary markets. In his Reply, *Roger O'Keefe* questions Krisch's account of the international law of jurisdiction and argues that international law can and does serve cooperative national regulation to secure transnational public goods and that it is political will, not international law itself, that stands in the way of harnessing this progressive potential.

In the second debate, *Joost Pauwelyn* and *Krzysztof Pelc* use text-analysis tools to trace the authorship of World Trade Organization (WTO) rulings: it is the Secretariat staff who 'hold the pen', and it is also possible to pinpoint the authors of anonymous dissenting opinions. They argue that as anonymity serves to strike a balance between judicial autonomy and political control, this balance may be upset by the widespread access to text-analysis tools, creating significant implications for the WTO's future design. *Armin Steinbach* contests the method used by Pauwelyn and Pelc, arguing that stylometric analysis cannot conclusively inform on the authorship of the rulings. And even if it could, Steinbach argues, the findings are not necessarily problematic: an assertive and 'rule of law'-driven WTO Secretariat can enhance the legitimacy of WTO rulings and member states' interests.

Our Roaming Charges image, by *Michal Saliternik*, takes us to a small haven of peace and beauty in the Benedictine Monastery of Abu Ghosh, an Arab-Israeli town near Jerusalem.

In Critical Review of Governance, *Ceren Zeynep Pirim* examines the changes in Turkish law regarding the ratification and termination of international treaties following the establishment of a presidential system in 2017 and highlights their constitutional and international legal effects. *Aleydis Nissen* discusses the EU's first trade and sustainable development complaint under its Free Trade Agreement with Korea and argues that the EU has not been 'more assertive', as it had promised, towards the enforcement of labour and environmental issues.

In Critical Review of Jurisprudence, *Mathias Möschel* examines the use of the *jura novit curia* principle by the European Court of Human Rights and argues that the Court should use this principle carefully and consistently, especially in the later stages of proceedings and when used to reduce the Court's caseload. For their part, *Ching-Fu Lin* and *Yoshiko Naiki* discuss the *Korea-Radionuclides* case to offer a critique on the science/non-science dichotomy in the case law on the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures.

In The Last Page, we publish a poem that rewrites Leonard Cohen's justly celebrated Hallelujah. In this rewrite, the poem gives voice to Bathsheba, and the dark sides of

Cohen's 'baffled' King David 'whose faith was strong' come to light. For the benefit of our readers, we print below the poem the Biblical text from the book of Samuel in which this story of sexual violence and murder is starkly recounted. We also invite readers to listen to the song at <https://youtu.be/yC5YFk0CHaA>.

WC, SMHN, JHHW

## In This Issue – Reviews

The Review Section of this issue features one review essay and five regular reviews. We begin with *Jean d'Aspremont's* essay on Anne Orford's *International Law and the Politics of History*, a wide-ranging discussion that situates Orford's critique of contextualism and empiricism in scholarly accounts of international law and its history. D'Aspremont finds Orford's critique 'uncontestable', but at the same time suggests that empiricism and contextualism are 'entrenched' in international legal scholarship, perhaps indeed 'inescapable' – and that even Orford could not quite escape them.

The five regular reviews take us into five fields of our ever-broadening discipline. Two of them explore interfaces with history and IR scholarship. *Jade Roberts* is very impressed with Mira Siegelberg's *Statelessness: A Modern History*, which could 'help reframe the "problem" of statelessness as a problem of citizenship, governance and inequality'. *Jan Klabbers* enjoyed reading Jens Steffek's *International Organization as Technocratic Utopia*, an account focused on 'writings about international organization' that 'explore[s] how people have been thinking about international organizations as vehicles of expert governance' and that speaks to international lawyers and IR scholars.

Where Steffek offers a macro-perspective focused on ideas, Gavin Sullivan's interest is with the concrete practice of international organizations 'in action'. *Alexandra Hofer* reviews his *Law of the List*, which illustrates how 'global security techniques' (such as the Security Council's listing of terror suspects) 'create and shape our world'. Hofer's review highlights how, even where it purports to constrain them, 'the law adjusts to [these practices]' and eventually 'gives way to counterterrorism policies' – a sobering account of a landmark piece of global security governance.

Finally, this issue features reviews of works in French and German (of which I wish we had more— please get in touch if you have suggestions for reviews!).

*Paolo Palchetti* discusses Hadi Azari's monograph on counterclaims before the International Court of Justice (*La demande reconventionnelle devant la Cour internationale de Justice*): a detailed account of the Court's rules and practice, and, as such, eminently useful. However, as it is written from a relatively 'narrow perspective' it offers, according to Palchetti, little insight on 'the dynamics governing the Court's activity'. We conclude the Review section with *Ingo Venzke's* discussion of *Die postkoloniale Konstellation: Natürliche Ressourcen und das Völkerrecht der Moderne* by Sigrid Boysen, a critical rereading of attempts to govern access to natural resources. Venzke is impressed with Boysen's account, not least because it is written in 'a lucid and unencumbered style'. (No clichés, but how often have you read this about German legal

monographs?). As we prepare to celebrate the 50th anniversary of the Stockholm Declaration, Boysen's sceptical take on international environmental law bears reflection: in Venzke's words, international environmental law 'has taken over patterns of resource exploitation that existed during colonial rule and, to the present day, continue to subject environmental problems to the logic of the market'.

*CJT*

