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Editorial

Demystifying the *EJIL* Selection and Editorial Process: How Does One Get Published in *EJIL*?; Who Gets Published in *EJIL*?; In the Dock, in Paris – The Judgment; In this Issue

Demystifying the *EJIL* Selection and Editorial Process: How Does One Get Published in *EJIL*?

EJIL receives hundreds of unsolicited articles each year. We welcome these submissions. They are an important part of who we are. They constitute the pool from which, alongside the pieces we commission ourselves, we build our individual issues. A few of the submissions are just awful. But most are good and, naturally, we receive many more fine articles than we are able to publish. We know it is disappointing for authors to receive a rejection letter. We truly hope that authors will not give up on us if they are not always successful with this or that submission.

In 21 years we have never laid bare our selection and editorial process. This is not exactly an apology: at one time or another I have sat on the Editorial, Advisory, Scientific and other such Boards of over 23 different journals and do not recall ever seeing another journal doing such. Be that as it may, I decided that both our authors and readers should know how the process works.

I also compiled some basic aggregate statistics on our authors over the first 20 years of *EJIL* – and slightly more detailed stats from the last two years. (Relax, nothing personal – country of submission, gender, etc.) We ourselves were surprised by some of the results. But first things first: How is the selection of articles for publication made?

The key thing to note is that *EJIL* functions with a skeletal staff. Anny Bremner, our redoubtable Managing Editor, works out of Florence and *EJIL* is but one of her many tasks. Karine Caunes, the current Associate Editor, works out of NYU and *EJIL* is but one of *her* many tasks. I estimate that for both of them *EJIL* takes about a third to half of their time. Our copy-editors work freelance and the proofreaders are hired by OUP, for which we are but one – the best I am sure – of their many journals. I, too, have one or two other things on my plate apart from editing *EJIL*. The editorial side of *EJIL* is thus a challenging game of juggling time and making editorial trade-offs, which ultimately, in our judgment, ensures high-quality and interesting issues.

The two basic trade-offs are the following:

In the first, we spend considerable time and human resources on the selection process – seriously trying to avoid false positives and false negatives. By contrast, we spend less time in the actual ‘editing’ of articles. *EJIL* articles are very lightly edited by us. We want to believe that this trade-off results in the publication of very interesting and important articles of lasting value, even if at times the linguistic or stylistic polish could have profited from some extra buffing. I dislike heavy editing for another reason, too: it obliterates the ‘voice’ of the author. Many articles in some of the heavily edited journals, especially the student-edited American law reviews, tend to have a similar ‘accent’.

The second trade-off tries to find a balance between commissioned and unsolicited articles. We could easily populate *EJIL* at the very highest level simply by selecting the best from the unsolicited pool of submissions. It has always been our policy to be proactive in commissioning pieces. I *gestimate* that in an average year (no year is really average) the ratio is about 50/50. Commissioned articles allow us to shape the content of *EJIL* in directions which we think are important without having to rely on the vagaries of the mailbag. We are decidedly *Dirigiste* in this respect. *EJIL* Board members – its Editor-in-Chief, its Editorial Board and its Scientific Advisory Board – are all pretty opinionated individuals and have views as to what is important and unimportant. These preferences are mostly reflected in the commissioned pieces – normally in symposia. The downside, of course, is our more limited ability to control quality once the commissioned pieces arrive. Sometimes a commissioned piece will not even meet the threshold of peer review, and if it were unsolicited would be rejected outright. But our practice, even in such cases, is to send to peer review and just hope and pray that the author will improve the piece in the light of the reviewers’ comments. I am not known to be a squeamish or cowardly person, but there is only so much that even I can do in such circumstances. The inconvenient truth is that once a piece is commissioned it is more difficult to reject it outright – though this does happen from time to time. We have, of course, one sanction: such an author will never again be commissioned.

Be that as it may, I do not want to give the impression that this is a major problem and I firmly believe that *EJIL*’s identity is shaped in large part because of its historic practice of proactive agenda-setting in commissioning what we believe to be interesting symposia, debates and reaction pieces.

We receive anywhere between three to eight unsolicited manuscripts a week through our online submission system. Every single submitted manuscript is read by the Associate Editor, Karine Caunes, who prepares a short report. Every single MS is then read a second time by me – a nice way to spend a Sunday morning – and I take a final screening decision. A decision to reject a MS without peer review is based on various factors. Often it is subject matter – the piece is not suitable because its subject matter lies outside our current interests; sometimes it is a piece that is interesting, but on which we have published recently or we have something on a similar subject in the pipeline. And sometimes the quality simply does not meet the peer review threshold. When in doubt, we err on the side of caution (not convicting the innocent . . .) and send the piece for review.

If the decision is to send to peer review, I will also choose the peer reviewers. We frequently turn to Members of our Scientific Advisory Board and to Members of the Editorial Board, but just as often we call upon other experts in the field. We rely on the academic civic virtue of colleagues to do the selfless task of peer reviewing – all the more important in the age of the internet with so much self-publishing going on (Self Selection Rejection? Never! I have been a conscientious objector to SSRN from its inception). Nevertheless, our reliance on the good will of our external referees may at times add to the length of the review process, as we cannot ask them to drop their many other commitments to serve *EJIL*. Recently we have taken to making a little gift as a token of our appreciation for our peer reviewers.

For the most part, pieces sent to peer review are accepted for publication, usually after some revision based on the reviewers' comments. Some pieces are rejected after peer review. The policy of *EJIL* is not to identify pieces that were rejected after initial screening and those rejected after outside peer review. Likewise, it is normally not our practice to explain the precise reasons for a rejection. Though we have a very orderly Review form, busy academics will often disregard it; sometimes the reviews are short, or terse, at times rude and I sometimes get on the phone to amplify and understand the reviewer. Given our volume, it would be a very time-consuming process to edit each and every one, a process for which we do not have the staff. (When tried in the past, it has also led sometimes to acrimonious correspondence of the 'your reviewer is an idiot and did not understand my piece' type.) More often than not, the reason for rejection is subject matter suitability rather than quality. We are keeping this policy under review.

Here is a touchy subject: our response time. We do our best to give replies to our authors in the shortest time possible – between eight and 12 weeks. The rate of arrival of articles is erratic. If a huge batch lands on our desk one week, a screening backlog can develop. Not infrequently reviewers are tardy in sending in their reviews. Sometimes they never come and we have to nudge and nudge or even change reviewer. There is always a delay around Christmas time and over the summer holidays. We really do give each and every manuscript careful attention. So we beg our authors' indulgence if there is a delay in getting a reply.

With two quirks the peer review process is a classical double blind peer review. The reviewer is not meant to know the identity of the author and the author is not given the identity of the reviewer. I say 'not meant' because not infrequently it is easy for the reviewer to guess the identity of the author – usually through the practice of self-citation (see my piece . . .). The two quirks are as follows: first, when I myself, in screening submissions, come across an article for which I am enthusiastic, I will designate myself as one of the peer reviewers and send it out only to one additional reviewer. I am aware of the identity of the author. Though we try to select our reviewers with care, and anonymity offers certain guarantees, we expect our peer reviewers to excuse themselves if there is any conflict of interest and the like. This happens from time to time.

Second, as noted, in the majority of cases, though far from all, the careful threshold scrutiny means that when a piece is received by a peer reviewer, the result is likely to

be either a full endorsement or a recommendation to revise before publication rather than an outright rejection. In the case of recommendations to revise I hate to act as a broken telephone, a go-between for the peer reviewer and the author. So in such cases I will independently ask the author and one of the reviewers if they agree to have their identity disclosed and to liaise directly with one another. Often they agree, and it has proven to be an efficient and fruitful method. When there is disagreement between the reviewers I act as tie-breaker. I would like to add that even Members of the Editorial Board and the Scientific Advisory Board are subject to this process and there have been occasions when their work has been refused. There is no peer review of my Editorials.

One innovation that you may have noticed in recent issues which applies both to commissioned and unsolicited pieces is the publication of ‘reaction papers’ and ‘debates’ alongside the principal piece. Sometimes I decide that, although comments of the reviewer are pertinent, they fall into the ‘I disagree’ category rather than ‘the piece is weak’ category. That will often result in a commissioned debate or reaction pieces.

All communications with the authors on these matters are done through the Managing Editor, who is also responsible for overseeing the copy-editing process and other editing matters.

Who Gets Published in *EJIL*?

The ‘European’ in the *European Journal of International Law* has multiple meanings. I refer you to the Editorial in our first issue 21 years ago, partly replicated in the Editorial to our first issue of the 20th Anniversary volume: <http://ejil.org/pdfs/20/1/1789.pdf>. Still, how European has our authors list been in the first 20 years of *EJIL*? (Note, we do not check passports or birth certificates. We are using the institutional affiliation of the author as a proxy for origin. This can lead at times to amusing anomalies. We published a piece by Gráinne de Búrca on *Kadi*. A European writing about a European case. But, given her current US institutional affiliation, that would have counted as a submission from the USA in the stats. For the most part, the anomalies cancel themselves out and the institutional nationality serves as a reliable proxy – most submissions from Italian universities are by Italian nationals.)

Over 20 years about 62% of our articles originated in EU countries, a further 7% in Council of Europe countries not belonging to the EU, about 20% from the United States and about 11% from the rest of the world. This is a 20-year average, which can change from year to year. In 2010 about 57% originated in the EU, a further 22% in Council of Europe countries outside the EU, 15% from the rest of the world and 6% from the USA.

What about language? At an early stage in its life *EJIL* was bilingual – English and French. It netted very few pieces in French and irritated the Germans, Italians and Spaniards, who never liked a Two-Language solution for Europe. After much editorial agonizing, and some pressure from our publishers, we became all English (this all happened in the distant past).

Over 20 years a majority of our articles, 55%, originated in non-English-speaking countries and 45% in English-speaking countries. In 2010, 74% originated in non-English-speaking countries and 26% in English-speaking countries.

Gender has seen some remarkable changes. Over 20 years 81% of our articles were by male and 19% by female authors. In the first three years of *EJIL*'s life all articles were by men. From 1993 the numbers of female authors began to rise, reaching 37% in 2010. I was interested in the percentage of published articles by women in comparison to their percentage in the pool. We did not keep good records of submissions in earlier years. We have reliable records of submissions only for the last two years. In 2009 women constituted 31% of the pool and 33% of articles published. In 2010 the numbers were 31% and 37% respectively.

More information will come in future Editorials.

In the Dock, in Paris – The Judgment

On 3 March 2011, the *Tribunal de Grand Instance de Paris* issued its decision in the Criminal Libel Case brought against me based on a complaint by Dr Karine Calvo-Goller. It would appear that the Court ruled in our favour on all issues.

As will be recalled, the case was brought in my capacity as Editor-in-Chief of the *European Journal of International Law* and its associated Book Review website www.GlobalLawBooks.org. It was brought as a result of my refusal to remove a review, written by the distinguished German academic Thomas Weigend, critical of a book written by Dr Karin Calvo-Goller. Dr Calvo-Goller claimed the review was libellous and demanded its suppression. I offered her a right-of-reply which was declined. Since I did not consider the review libellous, its removal in my view would have seriously compromised academic freedom and the intellectual integrity of *EJIL* and book reviewing generally. For full details see <http://www.ejil.org/pdfs/20/4/952.pdf>.

The Trial took place in Paris on 20 January 2011, see <http://www.ejiltalk.org/in-the-dock-in-paris/>.

Represented by Maitre Thierry Marembert and Cécile Labarbe of the Paris Law Firm *Kiejman & Marembert*, we made two principal arguments in defence: first, that the Court should not exercise jurisdiction – the case being too remote from France; and second, that it should rule that in the circumstances of the case, initiating a criminal complaint amounted to an abuse of process by the Complainant.

In its Judgment, the Court upheld both claims. On the jurisdictional issue, a highly technical part of the Judgment, it seems to have ruled that although available on the internet, the Complainant did not prove to its satisfaction that the review was actually accessed in France during the period within which a criminal complaint had to be filed. The full Judgment in French and a translation may be found on the *EJIL* blog – www.ejiltalk.org.

In ruling on the issue of abuse of process by the Complainant, the Court was able to address the merits of the case. The following are excerpts from the Judgment in unofficial translation.

. . . As regards the choice made by the Complainant to invoke French criminal proceedings, though [Karine Calvo-Goller] holds dual French and Israeli nationality, she resides and works in Israel, the book which is the subject of proceedings was written in English, as was the Book

Review; [it was] published on an American website, linked to an American university at which Joseph Weiler works; [the Complainant] explained to the Court that she chose to use the French rather than the American or Israeli systems for financial reasons – the cost of proceedings would have been more expensive for her – as well as for reasons of expediency, being of the view that only French law offered her a chance of success;

. . . Karine Calvo-Goller thus acknowledges having engaged in what one can call “forum shopping”, that is to say a worldwide search, for the legal system which seems the most favourable to the person initiating legal proceedings, and which places her opponent, as much for legal reasons as for practical reasons – geographical or cultural remoteness – in the least favourable situation. . . . [T]he artificial choice in this case, of the French legal system, coupled with the choice of pursuing a criminal procedure by means of a complaint to an Investigating Judge resulting in both opprobrium and significant costs to the accused, characterizes the abuse of these proceedings;

. . . Karine Calvo-Goller failed to comprehend [respect] the scope of French Press law stating that the review which was made the subject of the proceedings could be held to be defamatory. . . . [I]n effect, the review of her book does not contain words damaging her honour or her reputation, and only expresses, what is more, in moderate terms, a scientific opinion on [her book] without ever exceeding the limits of free criticism to which all authors of intellectual works expose themselves;

. . . The bad faith of the Complainant – a lawyer, moreover one familiar with French law given her indication that she pursued her law studies in France – is therefore undeniably established; . . . It is therefore with just cause, that Joseph Weiler believes that the [Complainant] has abused her right to bring legal proceedings, on the one hand by initiating an action for defamation in relation to words that do not go beyond the limits of academic criticism, an essential element of academic freedom and freedom of expression and, on the other hand, by artificially bringing proceedings through the French criminal justice system.

Considering the resulting harm suffered by the accused, he will be justly compensated by judgment against the Complainant requiring her to pay to him the sum of €8,000 [about US\$ 11,000].

I hope this brings this sad saga to an end, though it should be noted that the Complainant has a right of appeal.

Be that as it may, I would like to thank my legal team, the Dean and faculty of NYU School of Law for moral and material support, and the many letters of encouragement by friends and strangers from around the world. Naturally, any damages will be donated to a charitable cause. As for the Judgment, I will follow the wisdom of the Sages, ‘Whoever Adds, Detracts.’

In this issue

We open with a symposium on the *The Human Dimension of International Cultural Heritage Law* convened by Francesco Francioni of the Board of Editors, whose Introduction articulates its *raison d’être*. One interesting thread which links the views of the various contributors (Ana Filipa Vrdoljak, Thérèse O’Donnell, Lucas Lixinski, Federico Lenzerini, Siegfried Wiessner, Karen Engle, Gaetano Pentassuglia and Micaela Frulli) is a shift from object to subject: property is featured as a channel towards the recognition and protection of cultural identity in its rich human dimensions. This phenomenon can be observed in the various facets of international cultural heritage law, whether

human rights law with its eternal tension between liberal and communitarian trends, or in the context of the law of war, both in its *jus in bello* and *jus post bellum* dimensions. The interest and importance of this symposium transcends its specific subject matter.

In this issue's ***EJIL: Debate!*** Sandesh Sivakumaran and Gabriella Blum skirmish about the international law of internal armed conflict, addressing both its patchwork doctrinal landscape and its conceptual physiognomy. The exchange repays careful study.

The ***Last Page*** features another memorable poem, *The Lion Pass*, by international law scholar Gregory Shaffer.

JHHW

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