Open Access

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Opening Access, Closing the Knowledge Gap? – International Legal Scholarship going online

How can we make international legal scholarship more accessible and inclusive and how can the Internet facilitate this transformation? These are two of the questions the DFG-funded conference "Opening Access, Closing the Knowledge Gap – International Legal Scholarship going online" sought to discuss. The conference took place at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg in hybrid format on September 8 and 9, 2022 and was organized by Völkerrechtsblog.

Four panels consisting of two to four presentations each addressed different topics such as increasing opportunities to participate in international legal discourses, the publishing infrastructure in international law with a special focus on blogs, and the role of open educational resources for the teaching of international law. The program was complemented by a keynote speech by Professor Anne Peters (Max Planck Institute for Comparative Public Law and International Law, Heidelberg) on "Open Science in Times of Populism" in which she called for open science to be free and responsible, participatory, situated, and universalist. While a participatory open science governance, i.e. the opportunity for citizens to take part in research agenda setting or the actual research activity sounds promising, such an approach also poses special threat to science and scholarship in a post-truth society, for instance the banalization of science as a mere event or obscure pseudo-scientific activities on conspiracy-like topics that have long been settled, Anne Peters argued.

I. Opening Access: More Than a Format of Publication

Open Access, as defined in the Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities[1], firstly requires authors and right holders to grant

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1 Max Planck Society, Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities, https://openaccess.mpg.de/Berlin-Declaration, accessed October 26, 2022.

 DOI: 10.5771/2699-1284-2022-2-138

to all users "a free, irrevocable, worldwide, right of access to, and a license to copy, use, distribute, transmit and display the work publicly and to make and distribute derivative works, in any digital medium for any responsible purpose, subject to proper attribution of authorship […] as well as the right to make small numbers of printed copies for their personal use." Secondly, "[a] complete version of the work and all supplemental materials […]" must be "deposited (and thus published) in at least one online repository using suitable technical standards [...]."

Raffaela Kunz (Max Planck Institute for Comparative Public Law and International Law, Heidelberg/Collegium Helveticum, Zürich) pointed out in her opening speech that this definition of Open Access, as well as the 2002 Budapest declaration[2], are both brimming with euphoria about a new, more democratic and more independent era of publishing. They bear testimony to how urgently researchers had hoped to finally see equal access to knowledge all around the globe when the Internet became popular in the early 2000s. As seen in subsequent years, their expectation was disappointed, however, it revived when the pandemic hit. In light of videoconferencing and online participation in international legal scholarship in the past three years, the debate has considerably shifted from "open access" publishing only to a broader understanding of "*opening* access". While open access publications may contribute to mitigating global epistemic and economic injustice, the crucial question is how existing power imbalances and (invisible) barriers *transcend* the format of publication.

II. The In(di)visible College of International Lawyers

Lys Kulamadayil (Geneva Graduate Institute) and Lutiana Valadares Fernandes Barbosa (Federal University of Minas Gerais) kicked off the discussion by reflecting on participation and exclusion in international legal scholarship, and both linked their thoughts to Anthea Roberts' oeuvre "Is International Law International?" (2017). Roberts' idea of a "divisible" college describes international lawyers as members of separate, fragmented communities with "their own understandings and approaches, as well as their own distinct influences and spheres of influence", although their understandings may sometimes overlap.[3] The term is inspired by Oscar Schachter's description of the elite international legal profession as an "invisible college" from 1977.[4]

In her presentation titled "Ableism in the College of International Lawyers", Lys Kulamadayil demonstrated the potential of critical disability studies for deconstructing the "idealized version of normalcy" in international legal scholarship. She pointed out how a standardized idea of the typical international legal scholar was built up in the

2 Budapest Open Access Initiative, Budapest Open Access Initiative, https://www.budapestopenaccessinitiative.org/read, accessed October 26, 2022.

3 Roberts, Is International Law International?, 2017, p. 7 (online edition), https://doi.org/10.1093/oso/9780190696412.001.0001.

4 Schachter, The Invisible College of International Lawyers, Northwestern University School of Law Review 1977, pp. 217–226.

past, but still shapes reality today, despite some development so far, especially in terms of gender equality and current movements centering racial diversity. Critical analysis, Lys Kulamadayil stated, can be particularly fruitful when it comes to dismantling ableism, i.e. the discrimination against disabled and chronically ill people, within the college of international lawyers, a topic which has not yet received sufficient attention.

Interestingly, the discussion highlighted how this ideal may considerably differ from societal expectations outside of this academic circle, for example regarding parenthood and care responsibilities: while especially women are still expected to want and have children in today's societies, they are expected not to want children within legal academia in order to not hamper their career.

It was this particular perspective of parenthood and the special vulnerabilities of primary caregivers who are also scholars of international law that Lutiana Valadares Fernandes Barbosa focused on from a matricentric TWAIL feminist angle. On the one hand, the pandemic facilitated the participation in online conferences for parents from the Global South, and levelled the playing field: Covid hindered the otherwise expected flow of people from Southern to Northern institutions that has always excluded primary caregivers, which, in heteronormative patriarchal societies, happen to be mostly mothers. On the other hand, their academic production substantially dropped and left many of them with a significant additional load.

It became clear that the audience resonated with Lys Kulamadayil's and Lutiana Valadares Fernandes Barbosa's presentations. During the discussion, which also included the sharing of other participants' personal experiences on the topic, another interesting dynamic of a divisible college came up: Marginalized scholars will often be quoted in critical theory, like Global South Scholars for TWAIL or women in feminist approaches to international law. When it comes to the foundations or history of international law, however, there seems to be a tendency to cite mostly cis men from the Global North. This shows that marginalized people can still too often not simply be academics but serve as token representation of their marginalized group.

III. Publishing in International Law

The next panel covered various aspects in the area of publishing in international law. "Does the Right to Science require Open Access in the Digital Era?", Monika Plozza (University of Lucerne) and Raffaela Kunz asked in their presentation. The bundle of different rights known as the right to science is sometimes considered to be the "sleeping beauty" of human rights law, although it is enshrined in Art. 15 of the International Covenant on Economic, Social and Cultural Rights and Art. 27 of the Universal Declaration of Human Rights. By analyzing the General Comment No. 25 by the Committee on Economic, Social and Cultural Rights from 2020[5], they showed that Art. 15 ICESCR does not only foresee access to the fruit of research, for example a new medi-

5 Committee on Economic, Social and Cultural Rights, General comment No. 25 (2020) on science and economic, social and cultural rights, article 15 (1) (b), (2), (3) and (4) of the

cation, but also to knowledge and scientific information stemming from the research activity itself. Moreover, it specifically requires states to promote open access publication of research, implement a national strategy for the conservation, development and diffusion of science and explicitly acknowledges financial and copyright barriers relating to open access. However, it remains to be seen which judicial and political pathways (e.g. through national courts, a communication to the Committee, UNESCO Procedure 104, State Reporting Procedure to the Treaty Body or under the Universal Periodic Review to the Human Rights Council) can be used in advocating for open access through the right to science.

Daniel R. Quiroga-Villamarín (Geneva Graduate Institute) unpacked an entirely different aspect of publishing: the choice of language. While many European and North American scholars who were trained in English-speaking institutions would not waste a thought on this question, or their preferred organs of publication often set language requirements themselves anyway (e.g., only accepting publications in English and French), this perspective is not universal. Especially Global South Scholars may be caught between vernacular approaches (and an imminent danger of romanticizing the ethno-national), "imperial loyalty" when using the colonizer's language, and strategic thinking (How can one best join the debate in a Global North dominated scholarship?). Daniel's presentation advocated for the latter, referencing the story of ancient Germanic Arminius who fought his brother Flavus in battle by speaking Latin, the brother's language.[6] This approach may include having to translate core concepts back into one's mother tongue, while allowing to critically join the global scholarly discourse in English.

Stewart Manley (University of Malaya) shed light on another challenge that disproportionately affects scholars from the Global South. While scholars all around the world suffer from enormous stress to publish in elite journals, university leaders in Global South countries may even aggravate the tension because they as well are under pressure to rise in global rankings. The use of bibliometric publication data in ranking calculations was originally intended to allow for a more objective assessment, e.g. when appointing professors. But it turned out to put even more tension on Global South scholars due to the manifold structural barriers and discriminations in the process of publishing in a narrow selection of elite journals situated in the Global North. To illustrate one component of these barriers, Stewart Manley presented some empirical research on the presence of Global South scholars as editors or authors of such journals and book chapters. For instance, he examined nine journals on private and public international law that are indexed in the Clarivate Analytics' Web of Science Social Science Citation Database with volumes from 2019 to 2021. Out of 1,148 authors, 126 (11 percent) were affiliated with Global South institutions. Furthermore, he

International Covenant on Economic, Social and Cultural Rights, April 30, 2020, https://digitallibrary.un.org/record/3899847, accessed October 26, 2022.

6 Sailor, Arminius and Flavus across the Weser, TAPA 2019, p. 77–126, https://www.doi.org/10.1353/apa.2019.0003.

analyzed edited books published by Cambridge University Press in the twelve months before July 19, 2022. Out of 90 book editors whose affiliation could be identified, only six were affiliated with a Global South institution (6,7 percent), and even these six Global South editors could be questioned as some of them hold prestigious positions in Global North institutions in parallel. Out of 907 authors who contributed book chapters, 100 (11 percent) held Global South affiliations. How to improve the situation? Stewart Manley concluded his presentation with a plea for a more collaborative and benevolent understanding of peer review, which could help Global South scholars to practice adapting to the expected scholarly habits.

IV. Infrastructures in the Context of Epistemic Violence

This approach was shared by AfronomicsLaw Editor Olabisi Akinkugbe (Dalhousie University, Halifax) and Contributing Editor Vellah Kedogo Kigwiru (Technical University of Munich's School of Social Sciences and Technology / Max Planck Institute for Innovation and Competition, Munich) in the following panel on the role of blogs, who elaborated on "editing as power sharing". AfronomicsLaw is a blog on international economic law and public international law as they relate to Africa and the Global South. Besides presenting the ideas behind the AfronomicsLaw blog, they also shared their views on publishing culture and pressures for scholars from the African continent. Adding to the points previous speakers had raised, they described the structures in which research on Africa is dominated by non-African researchers with journals on African studies that are located in the Global North. The reverse, however, a scholar based in the Global South commenting on an issue in the Northern hemisphere, hardly ever occurs. This leads them to wonder "How much Africa is there in African studies?". These processes are, among other factors, due to likely rejection of a paper if it does not fit into the dominant epistemologies, entailing the crucial question: What kind of knowledge does Western scholarship accept as knowledge? Vellah Kedogo Kigwiru and Olabisi Akinkugbe also spoke about self-stigmatization in African research. This phenomenon is a product of the colonization of knowledge and describes the false perception that African research was of low quality, a thought that is even present within African scholarship itself[7], they made clear.

The dynamics Olabisi Akinkugbe and Vellah Kedogo Kigwiru presented must be understood in an environment systematically characterized by epistemic violence, gatekeeping and silencing by Global North institutions and individuals. This underpinning of our current global academic system goes well beyond our discipline alone. Epistemic violence[8] can be understood as the intentional or unintentional refusal of

7 Ssentongo, 'Which journal is that?' Politics of academic promotion in Uganda and the predicament of African publication outlets, Critical African Studies 2020, pp. 283–301, https://doi.org/10.1080/21681392.2020.1788400.

8 On epistemic violence, see: Spivak, Can the Subaltern Speak?, in: Nelson/Grossberg (eds.), Marxism and the Interpretation of Culture, 1988, pp. 271–313; Dotson, Tracking Epistemic Violence, Tracking Practices of Silencing, 2011, pp. 236–257, JSTOR, http://www.jstor.org/

an audience to engage in communicative exchange with the speaker and / or to not listen to them due to "pernicious ignorance"[9]. As Pramod K. Nayar puts it in the Postcolonial Studies Dictionary: "Whatever knowledge is produced by the Westerner then becomes established as truth, to be consumed by both the Western audience and the natives alike."[10] Referencing Gayatri Chakravorty Spivak's canonical essay "Can the subaltern speak?"[11], one could conclude that dominant Western, Eurocentric international legal scholarship simply does not foresee any space for voices – or only for certain voices – from the Global South to be heard.

V. The Role of Blogs

With three blogs present at the conference, the audience was fascinated to follow a rarely happening exchange between blogs. The challenges they each face are (un-) surprisingly similar, e.g. regarding sustainable funding options, as for example explained by Erik Tuchtfeld (Max Planck Institute for Comparative Public Law and International Law, Heidelberg) and Sué González Hauck (German Center for Integration and Migration Research – DeZiM, Berlin) who presented Völkerrechtsblog. One particular challenge they explained is the gap between the wish for more diverse perspectives on the one hand, and the fact that Völkerrechtsblog has emerged from the German-speaking, Global North trained and predominantly white legal academia. Thus, as long as representation and a truly international editorial team have not been achieved yet (and even then), in which ways can the blog contribute to the end of Western hegemony in international legal scholarship?

The three blogs also debated a shared experience touching upon the ambiguous relationship between blogs and journals. Are blogs simply less prestigious journals? In fact, should blogs be striving to assimilate to journals at all, especially taking into account the insights Stewart Manley provided on the marginal role of Global South journal editors or authors? The position of blogs within the sphere of academic publishing is indeed not as clear-cut as one might expect.

Shubhangi Agarwalla (International Law and the Global South Blog / Sidley Austin) illustrated her opinion on this question with the particularities of the musician Jimi Hendrix. Just like Jimi Hendrix was the first to distinguish between an electric guitar and an acoustic guitar in how he played them and appreciated the electric guitar's uniqueness and particularities, we should acknowledge that blogs and journals are

stable/23016544, accessed October 26, 2022; Dhawan, Hegemonic Listening and Subversive Silences: Ethical-Political Imperatives, in: Lagaay/Lorber (eds.), Destruction in the Performative, 2012, pp. 47–60.

9 Dotson, Tracking Epistemic Violence, Tracking Practices of Silencing, Hypatia 2011, pp. 236–57, JSTOR, http://www.jstor.org/stable/23016544, accessed October 26, 2022.

10 Nayar, The Postcolonial Studies Dictionary, 2015, pp. 65–66, https://doi.org/10.1002/9781119118589.ch5.

11 Spivak, Can the Subaltern Speak?, in: Nelson/Grossberg (eds.), Marxism and the Interpretation of Culture, 1988, pp. 271–313.

two very different types of publications that can peacefully coexist within academic publishing.

Even more so, blogs assume tasks only they could assume: their low-threshold accessibility holds the potential to fill gaps that a closed legal scholarship has created, namely the gap between the interested public and the scholarly discourse, as well as other scholarly or scientific disciplines and (international) law. In addition, due to their flexible structure, blogs can discuss current questions more quickly, they hold more space for critical approaches than established journals and allow for more unusual formats such as interviews or experimental pieces. Notably, a lot of journal articles would not have been written without an earlier blogpost on its central ideas, as blogs provide space to put thoughts into sentences for the first time that might have previously only been voiced in a Twitter thread. Especially in Global South scholarly communities, blogs can facilitate the creation of their own academic identity that is so often erased by dominating publishing structures – a task which AfronomicsLaw and the International Law and the Global South blog have dedicated themselves to.

The International Law and the Global South blog, in particular, can look back on a big success which underlines how blogs can also serve as a platform for advocacy and community exchange. In her presentation, Shubhangi Agarwalla describes blogging as an everyday practice of relationship making. When it comes to customary international law, the lack of documentation of state practice in India or other parts of the Global South gave room for Global North state practice to prevail and contributed to the subjugating nature of customary international law, Shubhangi Agarwalla argued. To fight this, the International Law and the Global South blog published a draft petition to the Ministry of External Affairs in India.[12] The petition demanded, inter alia, a better documentation of Indian state practice and improved accessibility to already existing such documents; and it entailed news coverage, meetings with Ministry officials and the creation of an interest group. A blog's more deliberative and collaborative nature and wider reach in the general public in comparison to journals thus significantly supported action that might change international law itself.

At the same time, it would be absurd to believe that blogs were immune to barriers of access simply because they are blogs, as Shubhangi Agarwalla illustrated with the example of a blog that requests the author's CV alongside their manuscript, hence perpetuating existing structural discrimination.

Still, various examples from the three blogs present pinpoint that blogs are not simply 'wannabe' journals. Finally, blogposts' unique features do not only matter within the landscape of academic publishing, but also in studying and teaching international law.

12 Agarwalla, Petition to the Ministry of External Affairs for the Creation of a Database: It takes a minute!, 2021, https://internationallawandtheglobalsouth.com/petition-to-the-ministry-of-external-affairs-for-the-creation-of-a-database, accessed October 26, 2022.

VI. Teaching International Law

In his presentation, Paul Stewens (Geneva Graduate Institute) vividly described how international law blogs served as a perfect setting for his first encounters with international law "in the wild" as they enable students to link their theoretical knowledge to current developments and crises. In comparison to a more extensive journal article or a more rigid textbook chapter, a blog post's digestible length and – ideally – more comprehensible style is more likely to spark a student's interest in international law or academic writing, as it happened to Paul Stewens himself. Blogs' benefits for early career researchers tie in with the concept of editing (or reviewing) as power sharing that Olabisi Akinkugbe, Vellah Kedogo Kigwiru and Stewart Manley brought up as well. Therefore, Paul Stewens concluded his remarks by recommending professors and lecturers of international law to enliven their teaching by including blog posts in their reading material, and to encourage students to try to write a blogpost themselves. Consequently, blog posts have taken up a life on their own: they are no longer a simple means to the end of academic publishing but have the potential to become their own text genre which can be used as an assessment format in midterm examinations or term papers.

Valentina Chiofalo (Free University of Berlin) and Max Milas (University of Münster) presented a survey that the German non-profit initiative OpenRewi had conducted among German law students regarding the status quo of open access study materials at the students' different universities. OpenRewi consists of junior scholars who edit textbooks and casebooks for law students. The books are published in open access format under Creative Commons licenses on platforms like Wikibooks and Pubpub as well as in download format in cooperation with publishing houses. The survey showed that students are particularly interested in high-quality materials which are freely accessible without any form of access barrier (e.g., without requiring to be connected to a university network, or login on a publisher's website). However, OpenRewi's understanding of open(ing) access does not end with the access to study materials itself, but aims to address economic justice as well as non-discriminatory study materials and inclusive language, too. Therefore, OpenRewi's work also includes advocacy in a still rather closed and inaccessible German *Rechtswissenschaft*.

Tamsin Paige (Deakin Law School) also focused on the access to study materials but was particularly interested in how the ubiquitous access to lecture videos can also influence the students' performance in a negative way. By telling her personal story, she illustrated the variety of personal situations and conditions that make recorded lectures indispensable for students, for example disability or chronic illness as well as a financial situation that forces students to work a full-time job next to their studies. Consequently, accessible education is a major question of economic justice and inclusion in today's meritocratic societies. Many years of teaching experience, however, have shed light on the following problem: When lectures are fully available online without having to request a link first, students who are not intrinsically motivated will not show up in class and fail their exams because they never caught up on their

delay. Therefore, in Tamsin Paige's opinion, students should have to request access to recordings first. Limitless access, she argues, is not always the best solution.

The second common narrative Tamsin Paige challenges is the notion that online or hybrid teaching is always more accessible. Every chronic illness or disability requires different adjustments and accessibility is never the same for every disabled or otherwise marginalized person. Drawing the line to hybrid conferencing in academia, online participation or livestreaming opens access for many people and should by all means become a new standard practice. It is important, though, to realize that accessibility goes way beyond that and that organizers cannot exculpate themselves by referring to hybrid conferencing per se. Examples for accessibility beyond online participation can include but are not limited to the choice of language (relating to Daniel's presentation), regular breaks and shorter sessions that benefit certain disabilities, neurodivergent people or parents, the choice of colors and fonts on slides and screens, automatic transcripts or sign language interpretation.

This brings us back to the first contributions of the conference by Lys Kulamadayil and Lutiana Valadares Fernandes Barbosa and the question of who can participate in international legal scholarship and who cannot.

VII. Conclusion: Opening Access, Closing the (Knowledge) Gap?

While conference organizers and journal editors must acknowledge that the same event or the same call for papers will never be equally accessible to every individual, we must turn away from norms that shape our current imagination of the international legal scholar in order to be able to uncover these so-thought invisible barriers. This means, for example, decolonizing our definition of knowledge and leaving behind far from reality standards – e.g. standards of non-disabled bodies, of people who have the financial means to travel around the world to attend conferences, who can afford considerable publication fees, or who do not have to care for children.

This conference has shown that international law blogs which publish in open access format can significantly contribute to closing the current gaps of knowledge and representation. They possess great potential to disrupt established discriminatory and unjust systems of publishing, but blogs cannot be left alone in this endeavor. Moving towards a more inclusive international legal scholarship requires a change of perspective and a reflection about individual privileges. There is no doubt: hybrid conferencing, open access publications and freely available teaching materials take an effort. But whenever possible, we should be willing to take that effort to render our debates more accessible, international law more international and our discipline more representative of humanity.

Zusammenfassung: Die hybride Konferenz „Opening Access, Closing the Knowledge Gap – International Legal Scholarship going online“ des Völkerrechtsblogs zielte darauf ab, das Verständnis von „Open Access“ als Publikationsstandard zu erweitern: „Opening Access“ beschreibt einen aktive Handlungen einfordernden, kontinuierlichen Prozess der Öffnung einer bis dato eher wenig zugänglichen Wissenschaft und Lehre des internationalen Rechts.
Aufgrund ihres niedrigschwelligen Online-Zugangs bergen Blogs auf dem Gebiet des internationalen Rechts ein erhebliches Potenzial, die Lücke zwischen der interessierten Öffentlichkeit oder anderen Disziplinen und dem innerfachlichen Diskurs zu schließen. Sie bieten mehr Raum für kritische Ansätze und experimentelle Beiträge als etablierte Journals und begünstigen, insbesondere wenn sie im Globalen Süden angesiedelt sind, die Herausbildung eigener akademischer Identitäten jenseits der vorherrschenden westlichen epistemischen Kultur.
Berücksichtigung finden muss jedoch die Frage, inwiefern Machtungleichgewicht und strukturelle Barrieren auch über die Grenzen des Publikationsformates hinaus gegenüber den Menschen wirken, die nicht dem konstruierten Bild des „typischen“ Völkerrechtswissenschaftlers entsprechen.
Dieser Bericht ruft Wissenschaftler*innen, Verlage und Herausgeber*innen dazu auf, ihr Verständnis von Wissen zu dekolonisieren und sich aktiv gegen bestehende Mechanismen der Exklusion – wie epistemische Gewalt und Gatekeeping – in der internationalen Rechtswissenschaft einzusetzen. Dabei ist immer zu bedenken, dass Zugänglichkeit für jeden Menschen anders aussehen kann.

Summary: Völkerrechtsblog’s hybrid conference “Opening Access, Closing the Knowledge Gap – International Legal Scholarship going online” aimed to expand the notion of ‘open access’ from a mere standard of publication to the continuous and active undertaking of ‘opening access’ in a closed international legal scholarship and in the teaching of international law.
Because of their low-threshold online accessibility, international law blogs hold considerable potential to close the gap between the interested public or other disciplines and the scholarly discourse. They also offer more space for critical approaches and experimental pieces than established journals and, especially when located in the Global South, can facilitate the creation of independent academic identities distinct from dominant epistemologies.
The crucial question, however, is how power imbalances and structural barriers, affecting academics who do not reflect the idealized concept of the ‘typical’ international legal scholar, transcend the format of publication.
This report calls upon individuals, publishers and editors to decolonize their understanding of knowledge and fight existing mechanisms of exclusion such as epistemic violence and gatekeeping in international legal scholarship, while keeping in mind that accessibility looks different for everyone.