Abhandlungen

Opening the Access to International Legal Scholarship – an Introduction

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Introduction

Open Access, understood as the free accessibility and reusability of academic publications online, is hitting the shores of international law. The aim of this brief introduction is to show how the concept has found its way into international legal documents and become a frequently used publication modality for international legal scholars. However, I would also like to argue that treating Open Access as a mere technicality and publication modality does not do justice to its implications. Rather, the ongoing transformation to Open Access is a good moment to take a step back and address some fundamental questions concerning the politics of the knowledge production in international legal scholarship and the constitution of the famous 'invisible college of international lawyers'. As I would like to demonstrate, thinking about what 'openness' and 'access' to international legal scholarship mean, and should mean, directs our gaze to numerous questions that so far have largely escaped debate; questions seemingly only concerning the 'back-end' of the knowledge production, but that nonetheless invisibly and often unnoticedly shape and frame our discipline.

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I. Open Access in International Legal Documents and as a Scholarly Practice in International Law

The modern Open Access movement emerged around the turn of the millennium with the rise of the internet. Over the years, the concept has siginificantly expanded – today the term 'Open Science', which has grown to include a broad range of 'open' practices along the entire research cycle including data sharing ('Open Data'), has almost replaced the term 'Open Access'. While this terminological shift initially seems to imply a focus on the natural sciences, it is firmly established today that the principles and practices of Open Science extend to all disciplines, including in the social sciences and humanities, even though to different degrees. In the legal discipline, access to *publications* remains the most pertinent question; I will thus continue to employ the term 'Open Access' in this context and furthermore refer to *scholarship* rather than *science*.

Besides broadening in scope, also the coalition of those advocating for open research practices has strongly grown over the years: Initially, the claim to open up access to scholarship emerged from transnational multi-stakeholder initiatives such as the *Budapest Open Access Initiative*[1] and the *Berlin Declaration on Open Access*.[2] Today, also international organisations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO)[3] or the Organization for Economic Co-operation and Development (OECD)[4] alongside science policy makers all over the globe promote the free online accessibility of scientific and scholarly information ('Open Science') and teaching materials ('Open Educational Resources'). The World Bank has itself switched to a publication model in which it licenses its own publications for free use and re-use under a Creative Commons license specifically developed for international organisations.[5] The reasons are clear: Open Science not only promises to foster collaboration, transparency, and reproducibility, thus speeding up innovation, but also to make the scientific endeavour more inclusive and democratic. The unprecedented COVID-19 pandemic, in which 'science has opened up in a

1 Budapest Open Access Initiative of February 2002, <https://www.budapestopenaccessinitiative.org/read/>, last access 15 May 2024.

2 Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities of October 2003, <https://openaccess.mpg.de/Berlin-Declaration>, last access 15 May 2024.

3 UNESCO Recommendation on Open Science of November 2021, <https://unesdoc.unesco.org/ark:/48223/pf0000379949.locale=en>, last access 15 May 2024.

4 OECD Legal Instruments – Background Information, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0347#backgroundInformation>.

5 <https://openknowledge.worldbank.org/home>, last access 6 May 2024.

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unique way'[6] while states imposed border closures, certainly drove home important arguments in favour of Open Science. Against this backdrop, it is not surprising that in 2020, the Committee on Economic, Social and Cultural Rights (CESCR) found that Open Science furthers the so-called right to science, enshrined in articles 15(1)(b) of the CESCR and 27(1) of the Universal Declaration of Human Rights (UDHR), and is therefore a matter of human rights law. In its much-awaited interpretation of article 15(1)(b) CESCR, it explicitly asked states to promote Open Science.[7]

Besides increasingly being recognised in international legal documents, Open Science has also reached the community of international legal scholars, albeit here, as already mentioned, the most pertinent issue remains access to publications. Publishing one's work under an 'open' license and thus making it freely available to readers around the globe on the internet has become frequent and common also in international law. Many international legal scholars today opt to pre-publish their work on platforms such as Social Science Research Network (SSRN), share it after the official publication on academic social networks such as academia.edu or ResearchGate, or simply publish via the 'gold route', which makes their scholarship freely accessible immediately in the original place of publication upon payment of a fee ('Article Processing Charge').

The modern Open Access movement emerged in the early years of the new millennium against the backdrop of the rise of the internet, which led to what many considered to be a mismatch between the public nature of scientific knowledge and the private, exclusive ways of its dissemination. 'For the first time ever, the Internet now offers the chance to constitute a global and interactive representation of human knowledge, including cultural heritage and the guarantee of worldwide access […]', reads the enthusiastic introductory statement of the *Berlin Declaration on Open Access*.[8] The new medium seemed to perfectly align with the public nature of science, as reflected in the scientific norm of *communism* (today often referred to as *communalism*), the second of the four norms which according to the science

6 Juuso P. Ala-Kyyny, Open Science During Coronavirus Outbreak – an Overview of the Manifestations of Openness, Think Open, 30 April 2020, <https://blogs.helsinki.fi/thinkopen/open-science-coronavirus/>, last access 6 May 2024.

7 General No. 25 on Science and Economic, Social and Cultural Rights (Article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights), UN DOC E/C.12/GC/25, 16: '[…] States should promote open science and open source publication of research. Research findings and research data funded by States should be accessible to the public.' See also 49: 'States must exert every effort to ensure equitable and open access to scientific literature, data and content, including by removing barriers to publishing, sharing and archiving scientific outputs.

8 See above, n. 2.

sociologist *Robert K. Merton* form the *normative structure* or *ethos* of science.[9] Clearly formulated with natural sciences in mind, *communism* stresses the collaborative nature and common ownership of science, 'which cannot enter into the exclusive possession of the discoverer'.[10] From the joint character of establishing new knowledge, which always builds on previous findings and depends on being tested, verified or refuted by others, results the need to publicise these findings – according to Merton, '[s]ecrecy is the antithesis of this norm; full and open communication its enactment'.[11]

However, as is well-known today, the 'access revolution'[12] was not the logical consequence of the technological developments, and the potential of the internet remained unrealised. This was mainly attributed to the existing copyright regime, which became the main target of the soon emerging 'Access to Knowledge' movement,[13] of which the demand to make *scientific* knowledge accessible constituted only one facet. Indeed, developments in the global publishing industry, which in the second half of the 20th century and as a consequence of the enormous growth of research conducted at global level increasingly transformed into 'big business',[14] coincided with a 'dramatic expansion of intellectual property'.[15] Paired with the particularities of the academic market, marked by demand inelasticity,[16] this ultimately resulted in a significant market concentration among a few major international publishers and a steady increase of the prices of academic publications

9 Robert King Merton, 'The Normative Structure of Science [1942]', in: Robert King Merton, *The Sociology of Science: Theoretical and Empirical Investigations* (University of Chicago Press 1973), 267-278.

10 Merton (n. 9), 273.

11 Merton (n. 9), 274.

12 Peter Suber, *Open Access* (The MIT Press 2012), 1.

13 Gaëlle Krikorian and Amy Kapczynski (eds), *Access to Knowledge in the Age of Intellectual Property* (Zone Books 2010).

14 Jean-Claude Guédon, *In Oldenburg's Long Shadow: Librarians, Research Scientists, Publishers, and the Control of Scientific Publishing* (Reprint, Association of Research Libraries 2010), 1; Manon A. Ress, 'Open-Access Publishing: From Principles to Practice', in: Krikorian and Kapczynski (n. 13), 475-496 (475).

15 Amy Kapczynski, 'Access to Knowledge: A Conceptual Genealogy', in: Krikorian and Kapczynski (n. 13), 17. Boyle speaks of a 'second enclosure movement'; see James Boyle, 'The Second Enclosure Movement and the Construction of the Public Domain', Law & Contemp. Probs. 66 (2003), 33-74.

16 Demand inelasticity results from the fact that scholarly pulications are individual and unique goods that cannot be substituted because of their claim to originality. If prices increase, those on the demand end – researchers, but in practice more often libraries providing the necessary information to the reseachers of their institutions – are unable to shift to cheaper goods. See on this Niels Taubert and Peter Weingart, 'Changes In Scientific Publishing: a Heuristic for Analysis' in: Peter Weingart and Nils Taubert (eds), *The Future of Scholarly Publishing: Open Access and the Economics of Digitisation* (African Minds 2017), 1-33 (9-10).

(especially journals).[17] The emergence of the modern Open Access movement was thus seen as a 'constitutional moment' for science,[18] a chance to liberate science from the shackles of 'greedy publishers',[19] tear down 'digital barbed wire',[20] and gain scientific autonomy.

For international law with its universalist aspirations, Open Access bears the promise to 'internationalise' the 'divisible college of international lawyers'.[21] More than other legal sub-disciplines, international legal scholarship depends on transboundary communication.[22] Yet, high prices to access scholarly materials provide hard and real hurdles, excluding scholars who cannot afford those costs, individually or through their institutions, from the discourse. While even the world's best-funded universities such as Harvard are unable to subscribe to all or even the majority of academic journals, this is even less the case for institutions from the 'Global South'.[23]

To be sure, the idea of providing the 'information poor' access to 'raw data' has been criticised in the development discourse as being problematic in and of itself, not only because of its techno-deterministic character, but also because it leaves untouched the assumptions underlying the dominant discourse and neglects the social conditions of information.[24] Along these lines, it has been argued that Open Access reinforces the idea of 'scientific catch-

17 This includes both natural and medical sciences (NMS) and social sciences and humanities (SSH) and concerns mainly Reed-Elsevier, Wiley-Blackwell, Springer, and Taylor & Francis. See Vincent Larivière, Stefanie Haustein and Philippe Mongeon, 'The Oligopoly of Academic Publishers in the Digital Era', PLOS ONE 10 (2015), e0127502; more recently Alejandro Posada and George Chen, 'Inequality in Knowledge Production: The Integration of Academic Infrastructure by Big Publishers', *22nd International Conference on Electronic Publishing* (Open Edition Press 2018).

18 Gert Verschraegen, 'Regulating Scientific Research: A Constitutional Moment?', J. L. & Soc. 45 (2018), 163-184.

19 Jonathan Gray and Stuart Lawson, 'It's Time to Stand Up to Greedy Academic Publishers', The Guardian, 18 April 2016; Stephen Buranyi, 'Is the Staggeringly Profitable Business of Scientific Publishing Bad for Science?', The Guardian, 27 June 2017.

20 Boyle (n. 15), 40.

21 On the 'divisible college' following the initial idea of the 'invisible college' as coined by Oscar Schachter, Anthea Roberts, *Is International Law International?* (Oxford University Press 2017), Chapter 1.

22 At the occasion of the publication of the first issue of this very journal in 1929, Viktor Bruns already stated (my translation): 'The aim is, especially in the field of international law, to inititiate a truly international discussion on the most pressing contemporary issues. Particularly, issues of international law are still too often discussed within individual national circles. […] And yet, for the formation of a supranational legal opinion, nothing is more necessary than an open discussion about the diversity of perspectives, understanding and learning about the various opinions.' See Viktor Bruns, 'Vorwort', HJIL 1 (1929), III-VII (IV).

23 Suber (n. 12), 30-32.

24 Jutta Haider and David Bawden, 'Conceptions of "Information Poverty" in Lis: A Discourse Analysis', Journal of Documentation 63 (2007), 534-557 (534-535).

ing-up' and even risks to 'become a tool of neocolonialism if it only gives students and academics better access to science from the North.'[25] Also in international law, the view of Open Access as closing the 'knowledge gap' has the connotation of relegating 'academics from the so-called global South […] to the role of eternal students', *as Anne Peters* aptly put it in a different context.[26] The potential of providing access should therefore not be overestimated – Open Access is not a panacea for all asymmetries in the community of international legal scholars, but nonetheless an improvement.

There is yet another danger. Today, the most successful Open Access model is the so-called 'gold' model,[27] in which authors continue to publish their work with the same journals as before, but under Open Access terms, making them immediately accessible in the original place of publication (rather than, for instance, in a digital repository at a later stage). The problem of this model is that most journals, especially those published by commercial publishers, require authors to pay for publication ('pay to publish'). In this model, costs are shifted from readers to authors via 'Article Processing Charges', and those who have already published with this model know that these costs are often prohibitively high. Commercial publishers thus once more managed to adapt to the changed circumstances; after inventing the 'pay-wall' this time by undertaking an 'economic re-interpretation'[28] of Open Access. Some even argue that they harnessed 'the digital revolution into a counterrevolution'.[29] As a consequence, Open Access risks to lose some of its more radical potential, and even to create exclusions in its own terms: while everyone around the globe with an internet connection now may access scholarly materials, they might be precluded from actively participating in the discourse themselves. Indeed, studies suggest that the 'gold' model has exclusionary effects for scholars from the 'Global South'.[30] More recently, the largest publishers' turn to the 'data analytics business' raises new concerns concerning 'surveillance publishing'[31] and algorithmic bias and distortion in research.[32]

25 Florence Piron, 'Postcolonial Open Access', in: Ulrich Herb and Joachim Schöpfel (eds), *Open Divide: Critical Studies on Open Access* (Litwin Books 2018).

26 Anne Peters, 'The American Law Institute's Restatement of the Law: Bastion, Bridge and Behemoth', EJIL 32 (2021), 1377-1397 (1387).

27 See for the latest numbers of 'gold' Open Access publications, Walt Crawford, *Articles in Journals (GOA8)* (Lulu Press 2023).

28 Weingart and Taubert (n. 16), 16.

29 Guédon (n. 14), 39.

30 Diana Kwon, 'Open-Access Publishing Fees Deter Researchers in the Global South', Nature, 16 February 2022.

31 Jeff Pooley, 'Surveillance Publishing', The Journal of Electronic Publishing 25 (2022), 38-50.

32 Raffaela Kunz, 'Tackling Threats to Academic Freedom Beyond the State: The Potential of Societal Constitutionalism in Protecting the Autonomy of Science in the Digital Era', Ind. J. Global Legal Stud. 30 (2023), 265-291.

II. Open Access as an Object of Inquiry for International Legal Scholarship

So far, I have shown how Open Access has found its way into international legal documents and that it is furthermore becoming a publication modality for international legal scholars. In the remainder of this short introduction, I would like to argue that Open Access should in addition become an object of inquiry of international legal scholarship.

Focusing on questions concerning the knowledge production is still frequently considered an 'exotic object of inquiry'[33] in international legal scholarship or even a 'distraction from real research'.[34] This certainly has to do with the fact that the role scholarship plays in international law in terms of the 'sources' doctrine is considered to be only of limited relevance. Article 38 of the Statute of the International Court of Justice (ICJ Statute) relegates the relevance of the 'teachings of the most highly qualified publicists of the various nations' to the role of a subsidiary source for the determination of international law. As one scholar put it, '(i)t is obviously not a question of "doctors" dictating the law, but of their influence on its better understanding'.[35]

Yet, this view is based on a false dichotomy between 'theory' and 'practice' and does not do justice to the role international legal scholarship plays in shaping and arguably also making international law.[36] The interdisciplinary field of science studies, formerly also known as 'metascience',[37] has long shown that science is both constitutive of and constituted by society.[38] The first dimension of 'co-production' circumscribes the fact that even the natural

33 Andrea Bianchi, 'Knowledge Production in International Law: Forces and Processes' in: Andrea Bianchi and Moshe Hirsch (eds), *International Law's Invisible Frames* (Oxford University Press 2021), 155-179 (156).

34 Referring to research about legal pedagogy and disagreeing with its irrelevance, Foluke I Adebisi, Suhraiya Jivraj and Ntina Tzouvala, 'Introduction: Decolonisation, Anti-Racism, and Legal Pedagogy' in: Foluke I Adebisi, Suhraiya Jivraj and Ntina Tzouvala (eds), *Decolonisation, Anti-Racism, and Legal Pedagogy: Strategies, Successes, and Challenges* (Routledge 2024).

35 Manfred Lachs, 'Teachings and Teaching of International Law', RdC 151 (1976), 161-252 (212).

36 On this dichotomy see Jeffrey L. Dunoff and Mark A. Pollack, 'Introduction: Setting the Stage', in: Jeffrey L. Dunoff and Mark A. Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge University Press 2022), section 1.2. On attempts to measure the influence of international legal scholars see Sandesh Sivakumaran, 'The Influence of Teachings of Publicists on the Development of International Law', ICLQ 66 (2017), 1-37.

37 While in the German-speaking regions, the term science studies is generally understood to include the disciplines of philosophy / theory of science, sociology of science, and history of science, the Anglo-American discourse often distinguishes between Science and Technology Studies (STS) on the one hand and the History and Philosophy of Science (HPS) on the other.

38 See for example Sheila Jasanoff, 'The Idiom of Co-Production' in: Sheila Jasanoff (ed.), *States of Knowledge. The Co-Production of Science and Social Order* (Routledge 2004).

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sciences, as long recognised in science theory, do not stand 'outside' of society and, as it were, remain untouched by societal factors and influence. By way of example, feminist research has contributed to shake the image of impartial science;[39] and empirical studies such as those by *Bruno Latour* have shown how knowledge is 'constructed' in the laboratory.[40] *Paul Feyerabend*, a social constructivist voice and today often attributed to postmodernism, even questioned the idea of rationality and methodological rigour altogether, concluding that 'anything goes'.[41] Also in international law, the insight that scholarship inevitably rests on theoretical assumptions, value judgments, and political choices and is not 'an interconvertible truth to be revealed by disciplinary priests'[42] is increasingly being recognised.[43]

In the other direction, 'co-production' refers to the many ways disciplinary knowledge feeds back into society and shapes reality. In the legal discipline, this influence is even stronger due to the close ties with practice. Indeed, law schools 'still operate as conveyer belts' for legal practice.[44] *Michel Foucault* is among the prominent voices suggesting that knowledge is intertwined with social processes and power dynamics, legitimising certain power structures, norms, and values, while marginalising other perspectives.[45] In international law, one particular focus has been the disciplinary knowledge production's relationship with the colonial legacy of international law.[46] In recent years, however, 'scholarship about scholarship'[47] is expanding

39 Janet A. Kourany (ed.), *The Gender of Science* (Prentice Hall 2002).

40 Bruno Latour and Steve Woolgar, *Laboratory Life: The Construction of Scientific Facts* (Princeton University Press 1986).

41 Paul Feyerabend, *Against Method* (4th edn, Verso 2010).

42 Bianchi (n. 33), 156.

43 For an overview see Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press 2016), Chapter 1; Jeffrey L. Dunoff and Mark A. Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge University Press 2022).

44 Adebisi, Jivraj and Tzouvala (n. 34), arguing that this makes reform of legal education more difficult.

45 Michel Foucault, *The Archeology of Knowledge* (Pantheon Books 1972).

46 Vasuki Nesiah, 'The Ground Beneath Her Feet: "Third World" Feminisms', International Women's Studies 4 (2003), 30-38. On colonial knowledge system seminally Edward Said, *Orientalism* (Vintage Books 1979). With a focus on teaching international law see e. g. Rohini Sen, 'Teaching International Law in Asia: The Predicated Pedagogue', AfronomicsLaw, 24 September 2020; Mohsen Al Attar, '"I Can't Breathe": Confronting the Racism of International Law', AfronomicsLaw, 2 October 2020; Antony Anghie, 'Critical Thinking and Teaching as Common Sense – Random Reflections', OpinioJuris, 31 August 2020; Min Jing Tan, 'The Many Layers of Invisible Labour Decolonising the Academy', TWAILR, 12 March 2021: Reflections.

47 Jörg Kammerhofer, 'Lawmaking by Scholars' in: Catherine Brölmann and Yannick Radi (eds), *Research Handbook on the Theory and Practice of International Lawmaking* (Edward Elgar Publishing 2016), 305-326.

to include broader questions.[48] By way of example, *Ana Luísa Bernardino* shows how textbooks are 'invisible frames' that deeply influence and shape how we see international law.[49] Importantly, they not only play a role in identifying and, as it were, defining what the relevant questions and tropes of the discipline are, but by doing so also set the boundaries of what remains outside. In other words, they '[…] ensure that international lawyers share not only the same grammar, but also, and perhaps more importantly, the same ignorance and unawareness'.[50]

The ongoing transformation to Open Access is a good moment to add some further 'meta'-questions to this debate, interrogating once more the politics of the knowledge production in international legal scholarship. The developments invite us to think about what we want 'openness' and 'access' to international legal scholarship to mean – and to become active in shaping this transformation. What do we want to open up, and to the benefit of whom? *Jutta Haider* warns that even only superficially reading some of the official open strategies brought forward by science policy shows that 'the aspects of science that are seen as closed are not the ones that were challenged by, for instance, feminist, postcolonial, or post-development science studies scholars in their powerful critiques over the last decades'.[51] Rather, the open narrative as it is nourished in many of the official documents, especially in Western countries, aligns well with ideas of economic necessity, acceleration, and technological determinism that are increasingly dominant in science policy.[52] *Philip Mirowski* voices the suspicion that 'the agenda is effectively to re-engineer science along the lines of platform capitalism, under the misleading banner of opening up science to the masses'.[53]

The turn to openness thus directs our attention to aspects and actors that have so far to large extents escaped discussion.[54] And it forces us to

48 Lianne J. M. Boer, *International Law As We Know It: Cyberwar Discourse and the Construction of Knowledge in International Legal Scholarship* (Cambridge University Press 2021), 5.

49 Ana Luísa Bernardino, 'Going by the Book: What International Law Textbooks Teach Us Not to Know' in: Andrea Bianchi and Moshe Hirsch (eds), *International Law's Invisible Frames* (Oxford University Press 2021), 293-307.

50 Bernardino (n. 49), 294.

51 Jutta Haider, 'Openness as Tool for Acceleration and Measurement: Reflections on Problem Representations Underpinning Open Access and Open Science', in: Ulrich Herb and Joachim Schöpfel, *Openness as Tool for Acceleration and Measurement: Reflections on Problem Representations Underpinning Open Access and Open Science* (Litwin Books 2018), 17-28.

52 Haider (n. 51).

53 Philip Mirowski, 'The Future(s) of Open Science', Social Studies of Science 48 (2018), 171-203 (171).

54 See for an exception EJIL and ICON, 'Editorial: Open Access: No Closed Matter', EJIL: Talk!, 13 Juli 2023 and the contributions to the symposium 'Open / Closed' on Verfassungsblog <https://verfassungsblog.de/category/debates/open-closed/>, last access 6 May 2024.

turn our gaze to other disciplines such as science studies and sociology which have already undertaken extensive work on these questions. It directs our attention to the role of the publishing and research infrastructure which is increasingly digital. Science and Technology Study scholarship has long shown that these infrastructures are never neutral, working as mere blank pages in the background. Rather, they shape research in ways that remain largely unnoticed. These digital infrastructures are to large extents owned and maintained by a small handful of global business actors who currently are in the process of transforming them into platforms – with all consequences resulting from this turn that cannot be discussed in detail here.[55]

It also brings into focus the governance of universities which despite national and disciplinary differences is increasingly 'driven by the imperatives created by the new "standard of civilisation" that we call rankings'.[56] The current reward system in academia with reputation as its currency strongly incentivises academics to publish their research in the most renowned outlets, which typically are owned by leading publishers.[57] This, in turn, is fueled by science policy and the globally spreading governance of the university by rankings and numbers. It is a well-known fact today that (political) calls for efficiency and accountability have been translated into performance measuring both of researchers and institutions, transforming the 'impact factor' of a journal into a substitute for quality.[58] While digitally facilitated bibliometric indicators promise to translate information about research activities 'into numbers that, in their apparent neutrality, seem to transcend linguistic and cultural (including disciplinary) boundaries',[59] one of their side effects was to fuel the logic of 'publish or perish', leading academics to 'salami slice' their results into as many publications as possible or even favour topics that promise to 'please' publishers and 'earn' more citations.[60] The current reward system in academia thus further accentuates and even perverts the role of the

55 But see Benedikt Fecher, Raffaela Kunz, Nataliia Sokolowska and Marcel Wrzesinski, 'Platformisation of Science: Conceptual Foundations and Critical Perspectives for the Science System', LIBER Quarterly 34 (2024), 1-18; Kunz (n. 32), 270-274.

56 Anghie (n. 46).

57 On the idea that reputation can be seen as a 'surplus pressure' to extract surplus value in the science system see Gunther Teubner, 'The Constitution of Non-Monetary Surplus Value', Social & Legal Studies 30 (2021), 501-521 (502).

58 See generally Yves Gingras, *Bibliometrics and Research Evaluation: Uses and Abuses* (The MIT Press 2016).

59 Lynn P. Nygaard and Rocco Bellanova, 'Lost in Quantification: Scholars and the Politics of Bibliometrics' in: Mary Jane Curry and Theresa Lillis (eds), *Global Academic Publishing* (Multilingual Matters 2017), 23-36 (23).

60 Nygaard and Bellanova (n. 59), 24.

publication in the science system – and thus ultimately strengthens the already powerful position of publishers.

These brief elaborations help to explain why a particular version of Open Access – a monetisable, commodified version – is prevailing. They also show that treating Open Access as a mere question of policy, technicality, or publication modality certainly does not do justice to its implications. Rather, they are strongly intertwined with questions that go to the heart of the constitution of the scholarly community of international lawyers. And they raise the question: how can we reclaim the potential of the internet for international legal scholarship rather than solely for the benefit of profit-seeking businesses?

III. Opening the Question of Access

The aim of this special issue is to make a start to this discussion. It is the result of a conference I had the chance to organise together with *Völkerrechtsblog* at the Max Planck Institute for Comparative Public Law and International Law on the topic 'Opening Access, Closing the Knowledge Gap?'. It deliberately chooses a wide approach to discuss the question of Open Access to international legal scholarship. One aim of the conference was to explore whether and how the digitalisation of scholarly communication has helped to overcome some of the existing barriers – or whether they are simply being reproduced or even perpetuated in the digital sphere.

Stewart Manley in his article sets the ground with some hard numbers on how international the 'invisible college of international lawyers' really is. He explores the representation of academics of the 'Global South' in elite international law publications. His analysis not only shows that today the system is not anymore about 'publish or perish', but 'publish in elite journals or perish'. It also confirms that indeed the difference between Global North and Global South within these publication outlets is striking, with the Global South being heavily underrepresented. *Manley* concludes that we should take this as a wake-up call.

Lutiana Valadares Fernandes Barbosa then explores the impacts of virtualisation on mothers who are scholars and practitioners from the Global South. Taking a closer look at Brazil, she shows that despite some chances generated by the turn to online tools and conferences, the pandemic has affected output in academia in unequal ways. On that basis, she finds that motherhood requires distinct attention as against other performative identi-

ties and should notably be included in feminist Third World Approaches to International Law (TWAIL) debates.

A basic condition to be able to participate in the international legal discourse is to master English as the global *lingua franca* of the invisible college. In his contribution, *Daniel R. Quiroga-Villamarín* turns to the role of language. He argues against an essentialist understanding of local languages in their quest to undermine imperial tongues. Instead of reclaiming the vernacular, critical and postcolonial international legal scholars can strategically inherit the legacies of hegemonic languages for anticolonial purposes, so the argument.

The last contribution explores yet another fundamental condition to participate in discourses. In his contribution, *Max Milas* explores the potential of Open Educational Resources (OER) as a means to mitigate some of the exclusionary patterns in the teaching of international law. Relying on a survey undertaken at German universities, his contribution confirms that one of the main reasons why students refrain from purchasing teaching materials are *financial*. The article also makes specific suggestions of how the acceptance of OER could be improved.

There are of course many other aspects that could and should be discussed. One of them is the role of ableism and its excluding effects for persons with disabling differences in international legal academia, as examined notably by *Lys Kulamadayil* in her work.[61] More attention should also be given to alternative publication formats such as blogs that are numerous in international law and are active players in the 'Global South'. Many of them have started as alternatives to traditional journals. Have they succeeded in breaking up old structures and hierarchies, enhancing diverse debates? Or, to the contrary, have they driven the 'publish or perish' mentality to new extremes? What lessons can be learned to harness blogs for a fruitful and sustainable advancement of international law? Hopefully, this special issue motivates and inspires numerous international legal scholars from around the globe to turn to some of these questions that invisibly shape and frame our discipline.

61 Lys Kulamadayil, 'Ableism in the College of International Lawyers: On Disabling Differences in the Professional Field', LJIL 36 (2023), 549-563.