

Open Educational Resources and the Teaching of Public International Law: A German Lens on a Global Matter

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Abstract

This article explores the potential of Open Educational Resources (OER) as a means to mitigate the prevailing patterns of exclusion in the teaching of public international law. Furthermore, it suggests concrete solutions to overcome some of the existing challenges OER face. The article does so based on a non-representative survey conducted among German law students regarding access to teaching materials. The survey yields four key results: Firstly, a majority of students still prefer conventional, non-Open-Access teaching materials for reasons of quantity and quality. Secondly, the survey confirms that most, especially female, students lack access to teaching materials for financial reasons. Thirdly, findings suggest that enhancing the acceptance of OER among students depends on improving their quality, accessibility, and variety. Finally, female students emphasise the importance of inclusive language and non-prejudiced examples in educational resources.

Keywords

Open Educational Resources – open access – public international law – right to education

I. Introduction

In 1965, Bob Dylan famously sang in ‘It’s All Over Now Baby Blue’ that one should ‘take what you have gathered from coincidence’, a sentiment that resonated with the founding ethos of OpenRewi in 2020. One of the main goals of this initiative was to create openly accessible teaching materials in legal studies, a field that notoriously lags behind in open access (OA). The beginning of the project closely coincided with a call of the Committee on Economic, Social and Cultural Rights (CESCR) to ensure the open accessibility of scientific knowledge.¹ More recently, the German Science and Humanities Council endorsed this call, advocating for scientific publications to be freely accessible ‘immediately, permanently, in the original place of publication, and under an open license’.² Initially focusing on publishing German

¹ CESCR, General Comment No. 25 of 30 April 2020, E/C.12/GC/25, paras 49 and 62.

² German Science and Humanities Council (Wissenschaftsrat), ‘Empfehlungen zur Transformation des wissenschaftlichen Publizierens zu Open Access’ (21 January 2022), 8, <https://www.wissenschaftsrat.de/download/2022/9477-22.pdf?__blob=publicationFile&v=25>, last access 28 January 2023.

textbooks and casebooks, OpenRewi has expanded in scope. In spring 2024, it released its first English-language textbook on public international law,³ available under an open license.⁴ These developments already illustrate the growing significance of OA in academia.

While the relevance of OA is widely acknowledged in general, this article aims to identify and analyze the opportunities and challenges of Open Educational Resources (OER) for the teaching of public international law in particular. OER comprise teaching materials that are published under an open license and primarily target teachers, pupils, and students. OER can be accessed free of charge on open platforms, at least by all non-commercial users, and their content can be modified. The article commences by setting out the relevance of OER for the teaching of international law, with a particular emphasis on English-language textbooks. In a second step, it presents the major findings of a non-representative survey conducted among 24 international law students in Germany. The survey explored students' perceptions of OER in the field of international law.

The article's scope is limited in three dimensions. First, it primarily delves into the opportunities and limitations of OER for teaching public international law, rather than offering a comprehensive examination of OER in general. Secondly, the investigation is limited to English-language teaching materials. The article operates under the assumption that English serves as the predominant language for teaching international law, as it is globally recognised as *lingua franca* and widely used.⁵ This does not mean that teachings in Arabic, French, Chinese, and other languages are less important or valuable; they, however, lack the global relevance English teaching materials have. Thirdly, the survey is based on a small sample of international law students in Germany. Consequently, the findings are specific to German students, and one should be careful to draw general conclusions from its findings for international law students elsewhere. Nonetheless, the survey offers valuable insights, particularly in illuminating the necessary conditions for increasing students' use of OER in the future.

³ The terms 'public international law' and 'international law' will be used interchangeably in this article.

⁴ Sué González Hauck, Raffaela Kunz and Max Milas (eds), *Public International Law: A Multi-Perspective Approach* (Routledge 2024).

⁵ For a critical discussion, see: Michael Bohlander, 'Language, Culture, Legal Traditions, and International Criminal Justice', *JICJ* 12 (2014), 491-513; Maria Angeles Orts Llopis, 'Legal English as the Lingua Franca for International Law', *Voices, Stimmen. VAKKI-symposiumi XXXVII* (2017), 17-28; Justina Uriburu, 'Between Elitist Conversations and Local Clusters: How Should we Address English-centrism in International Law?', *Opinio Juris*, 2 November 2022.

II. Opening the Closed Teaching Environment in International Law: Open Educational Resources

Students of international law depend on access to a diverse array of teaching materials to succeed in their studies. However, it is a well-known fact that many of these resources are still hidden behind paywalls. Institutional access provided by universities is often limited or unavailable altogether. This holds true even for essential teaching materials such as textbooks, casebooks, educational articles in journals, and case analyses. Consequently, students frequently find themselves spending over 100,00 € per term on teaching materials or relying on the limited selection available in crowded libraries. This situation disproportionately affects socio-economically disadvantaged students and those with mobility or disability issues. OER offer a solution to this challenge by providing teaching materials free of charge online, ensuring access for all students.⁶

1. Existing Barriers in the Teaching of Public International Law

The teaching of public international law is governed by exclusion. Although international law – like no other field of law – is shaped by global, universal aspirations, its teaching is provincialised financially, personally, geographically, and epistemologically. This is particularly evident for textbooks, which constitute the primary focus of this section. For the majority of students and instructors of public international law, textbooks serve as the primary, and often sole, source of teaching materials.⁷ Textbooks not only provide an entry point but also offer comprehensive coverage of public international law, summarising critical areas in a manner accessible to students supplemented by references to additional literature.⁸

⁶ For a thorough discussion of the advantages of OER, see: Jan Hylén, 'Open Educational Resources: Opportunities and Challenges', OECD's Centre for Educational Research and Innovation, <<https://www.oecd.org/education/ceri/37351085.pdf>>, last access 20 December 2023; Li Yuan, Sheila MacNeill, and Wilbert Kraan, 'Open Educational Resources – Opportunities and Challenges for Higher Education', JISC Centre for Educational Technology & Interoperability Standards Briefing Paper, <https://www.oerknowledgecloud.org/archive/OER_Briefing_Paper.pdf>, last access 20 December 2023.

⁷ For the students participating in the survey to be discussed shortly, textbooks are the most essential study material for public international law. 88 % of the participants indicated that they use printed textbooks.

⁸ Discussing the relevance of textbooks for the teaching of public international law: 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: Social Cognition and Knowledge Production in International Legal Processes* (Oxford University Press 2021), 293-307.

A first barrier is of financial nature. All established textbooks are published under restricted licenses. Thus, students either have to spend up to 125,00 € for a textbook or use an institutional account, if they exist.⁹ But exclusions also arise on the side of authors who wish to publish under an OA license, due to high fees,¹⁰ which start at 10,000.00 € when publishing with renowned houses.¹¹ While well-to-do students or researchers from well-funded universities may not find these costs exclusionary,¹² for many students and teachers, especially those from structurally disadvantaged backgrounds, these prices create a serious hurdle. Considering that students typically need to buy multiple books per term and teachers may wish to publish multiple books throughout their careers, these costs become even more challenging to manage.¹³

A second barrier relates to methods. Almost all textbooks on public international law were written by scholars who rely on a doctrinal method in their research and teaching. This perspective on international law is essentially based on the two basic premises of legal positivism: Law can be traced back to the will of the state (voluntarist element) and is to be interpreted free of moral value judgements (unifying element).¹⁴ However, this is only one perspective on (international) law. The purported neutrality of international law has increasingly come under pressure.¹⁵ While some argue that law and politics cannot be neatly separated, others point to the indeterminacy of international law which inevitably results in interpretations based on value

⁹ Malcom N. Shaw, *International Law* (9th edn, Cambridge University Press 2021), £110.00; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, Oxford University Press 2019), £54.99; Gleider Hernández, *International Law* (2nd edn, Oxford University Press 2022), £39.99; Jan Klabbers, *International Law* (3rd edn, Cambridge University Press 2020), 93, £36.00.

¹⁰ Raffaela Kunz, 'Opening Access, Closing the Knowledge Gap? Analysing GC No. 25 on the Right to Science and Its Implications for the Global Science System in the Digital Age', *HJIL* 81 (2021), 23-46 (31).

¹¹ Routledge starts at 13.000,00 €; see <<https://www.routledge.com/our-products/open-access-books/publishing-oa-books/book-publication-charges>>, last access 28 January 2023; Cambridge University Press starts at 10.000 €, see <<https://www.cambridge.org/core/services/open-access-policies>>, last access 28 January 2023.

¹² Kunz (n. 10), 30, 32 referring to Peter Suber, *Open Access* (The MIT Press 2012) 30-32.

¹³ Discussing OA in general: Julia Emtseva, Angelo Jr Golia and Tom Sparks, 'Open Access ... And Then?', *Verfassungsblog*, 22 December 2021, doi: 10.17176/20211222-115814-0.

¹⁴ Frauke Lachenmann, 'Legal Positivism' in: Anne Peters (ed.), *MPEPIL* (online edn, Oxford University Press 2011), paras 2-3.

¹⁵ Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005); Martti Koskenniemi, 'The Politics of International Law', *EJIL* 6 (1990), 4-32; Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford University Press 2016).

judgements.¹⁶ Critical perspectives explore the colonial, racist, capitalist, and gender-discriminatory origins and effects of international law.¹⁷ Additionally, approaches based on naturalism, humanism, interdisciplinarity, and anti-anthropocentrism are often overlooked or marginalised in traditional textbooks.¹⁸ Non-doctrinal approaches are usually left out of textbooks in favor of presenting an assumed unambiguity of international law that reflects neither international law in the academy nor in practice. While textbooks authored by scholars such as Jan Klabbers¹⁹ and Gleider Hernández²⁰ do touch upon critical approaches, more often they are relegated to peripheral mentions or treated merely as supplements to traditional doctrinal knowledge. These existing textbooks undoubtedly enrich the teaching of international law. However, they exclude important voices from the discourse and ignore valuable analytical tools for describing the development of international law.²¹ To ensure a comprehensive understanding, these textbooks should be complemented by others that treat non-doctrinal approaches on equal footing.

Thirdly, almost all major textbooks on public international law were written by men who grew up, were educated, and mainly teach in the 'Global North'.²² Their life experiences, their perceptions of law and their idea of a global order may be very different, yet they share commonalities rooted in their geographical locations, gender, and societal status. Many teachers and

¹⁶ Bianchi (n. 15), 135-136.

¹⁷ Anthea Roberts, *Is International Law International?* (Oxford University Press 2017); Bianchi (n. 15), 183-204, 205-226; Srinivas Burra, 'Teaching Critical International Law: Reflections from the Periphery', *Third World Approaches to International Law Review: Reflections*, 12 March 2021; Bhupinder Singh Chimni, 'Teaching and Research of International Law in Asia: Some Reflections on the Way Forward', presentation in Conference on Teaching and Researching International Law in Asia (20-22 June 2018), 7 <<https://cil.nus.edu.sg/wp-content/uploads/2018/07/CHIMNI-TEACHING-AND-RESEARCH-OF-INTERNATIONAL-LAW-IN-ASIA-23-MAY-2018.pdf>>, last access 18 December 2023.

¹⁸ Critical and other approaches are cited merely as examples of what is excluded, as a comprehensive discussion of the necessity of heterodox approaches would extend beyond the scope of this article.

¹⁹ Klabbers (n. 9).

²⁰ Hernández (n. 9).

²¹ On this in general: Chimni (n. 17), 7.

²² Only three textbooks are (co-)edited by women: Cecily Rose, Niels Blokker, Daniëlla Dam-de Jong, Simone van den Driest, Robert Heinsch, Erik Koppe and Nico Schrijver, *An Introduction to Public International Law* (Cambridge University Press 2022) and Alina Kaczorowska-Ireland, *Public International Law*, (6th edn, Routledge 2023); Emily Crawford, Alison Pert and Ben Saul, *Public International Law* (Cambridge University Press 2023); only one English textbook is edited by authors from the 'Global South': Adithya Anil Variath and Swati Singh Parmar, *An Introduction to International Law* (Thomson Reuters 2021). However, this textbook is currently available only in India and for a fee.

students of international law find themselves far away from this reality. The homogeneous, but for international law authoritative, authorship produces a provincialised perspective on international law.²³ Students across borders study an Anglo-American perspective on how law should apply globally, taught by academics trained in European and North American legal thinking. However, international law is not only studied and taught in Boston, Melbourne, Oxbridge, and Paris, but also in Bogotá, Delhi, Jakarta, Lagos, and Shenzhen. Lost in the unilateral transfer of knowledge are perspectives from teachers from the 'Global South' as well as from socioeconomically disadvantaged and non-male academics.²⁴

The three primary barriers are not exclusive to textbooks but also extend to other forms of scholarly publications such as monographs or edited volumes. Similar to textbooks, these resources are typically accessible only through payment or institutional funding, featuring predominantly authors from the 'Global North'. By contrast, materials such as journal articles, blogs, and syllabi, often provide more cost-effective options and are sometimes freely accessible to both teachers and students. However, even in cases where there are no direct costs, students may encounter barriers in utilising these resources due to potential limitations in comprehensiveness (as with journal articles or syllabi) or concerns regarding the lack of authority (as with blogs or syllabi).

2. The Role of Open Educational Resources in Opening up the Teaching of Public International Law

In 1998, Anne Orford called for opening up international law scholarship by encouraging critical approaches and interdisciplinary research.²⁵ While the significance of her call for the epistemological opening of international law should not be underestimated, it tends to overlook the personal and economic obstacles to a comprehensive opening of international law. To fill this gap, the following section will discuss the advantages and boundaries of OER in opening up the teaching of international law.²⁶

²³ Henry Jones and Aoife O'Donoghue, 'History and Self-Reflection in the Teaching of International Law', *London Review of International Law* 10 (2022), 71-103 (92-93).

²⁴ Roberts (n.17), 51-128; Burra (n. 17).

²⁵ Anne Orford, 'Embodying Internationalism: The Making of International Lawyers', *Austr. Yb. Int'l L.* 19 (1999), 1-34.

²⁶ For other forms of 'opening' the teaching of public international law, see: Jones and O'Donoghue (n. 23); Chimni (n. 17).

a) Open Educational Resources

OER extend beyond traditional teaching materials and can include videos, podcasts, interactive exercises, and online courses.²⁷ The legal framework governing the use of OER often relies on Creative Commons (CC) licenses.²⁸ In contrast to traditional teaching materials, OER can be freely utilised, setting them apart from traditional materials that are subject to copyright restrictions, limiting their accessibility, shareability, and adaptability.²⁹ Typically, OER are licensed under CC-BY-SA 4.0, allowing users, including both students and teachers, to access and modify them at no cost. For example, instructors can integrate sections from textbooks into their lecture notes and share them with students. The only limitation is that, when remixing teaching materials, teachers must mention the original authors, the original license, and any changes made. Furthermore, remixed teaching materials must also be distributed under a CC-BY-SA 4.0 license.³⁰

In this respect, OER adhere to the criteria outlined by the *Open Knowledge Foundation's* Open Definition, a non-profit organisation dedicated to promoting free resources, which has significantly influenced the OA movement. According to this definition, knowledge is considered open if 'anyone is free to access, use, modify, and share it – subject, at most, to measures that preserve provenance and openness'.³¹ To fall under this definition, material must be available in its entirety, downloadable free of charge via the internet, and in an open format. The latter requirement means that access is not restricted financially or in any other way, and that the material can be fully edited using free software. The *Open Knowledge Foundation* supplements

²⁷ David Wiley, TJ Bliss and Mary McEwen, 'Open Educational Resources: A Review of the Literature', in: Jonathan Michael Spector, M. David Merrill, Jan Elen and MJ Bishop (eds), *Handbook of Research on Educational Communications and Technology* (Springer 2013), 781-789 (781-782); Guntram Geser (ed.), *Open Educational Practices and Resources* (OLCOS – Open eLearning Content Observatory Services 2012), 20-24, 130-132; UNESCO, Forum on the Impact of Open Courseware for Higher Education in Developing Countries, CI.2002/CONF.803/CLD.1, 2002, paras 49, 62; William + Flora Hewlett Foundation, Open Education Networks Database, <<https://hewlett.org/open-education-networks-database/>>, last access 28 January 2023; UNESCO, Recommendation on Open Educational Resources (OER), CL/4319, <<https://unesdoc.unesco.org/ark:/48223/pf0000373755/PDF/373755eng.pdf.multi.page=3>>, last access 28 January 2023, 5-10.

²⁸ Javiera Atenas and Leo Havemann, 'Questions of Quality in Repositories of Open Educational Resources: a Literature Review', *Research in Learning Technology* 22 (2014), 20889-20902 (20892); Wiley, Bliss and McEwen (n. 27), 782-783.

²⁹ Kunz (n. 10), 24-25.

³⁰ See: Creative Commons, 'CC BY-SA 4.0', <<https://creativecommons.org/licenses/by-sa/4.0/deed.en>>, last access 18 December 2023.

³¹ Open Knowledge Foundation, 'Open Definition', <<http://opendefinition.org/od/2.1/en/>>, last access 28 January 2023.

these essential conditions with additional, optional proposals. For instance, the license should be irrevocable and permit the use, redistribution, and modification of the work. However, the definition allows providers of OA materials to require attribution of contributors, rights holders, donors, and creators, provided that such requirements are not unreasonably restrictive.³²

b) Open Educational Resources and the Teaching of Public International Law

There is a growing trend towards making (teaching) materials for public international law freely available. Some academic journals have taken progressive steps by publishing articles under OA licenses, with some even including teaching materials.³³ Legal blogs contribute to this landscape by disseminating content under open licenses. Occasionally, this involves CC licenses (as seen in *AJIL Unbound*, *TWAILR*, *Verfassungsblog*, and *Völkerrechtsblog*), while at other occurrences, the content is freely accessible via the internet without specifying the license framework (as seen in *Afronomics*, *EJIL:Talk*, and *Opinio Juris*). In some instances, entire courses have been released as OER.³⁴ Despite these advancements, a notable gap persists in the availability of OER that comprehensively cover all canonical aspects of public international law for students. Existing materials are dispersed, and not all topics relevant to an introductory course in public international law are covered by OER. However, in spring 2024, the first OA textbook on public international law has been published.³⁵

aa) Advantages

The absence of comprehensive OER in public international law is a considerable concern. OER not only facilitate access but also empower both students and educators in actively participating in a field that – distinguishing itself from other disciplines – wields substantial practical influence in fields

³² Open Knowledge Foundation (n. 31).

³³ See: OA-mag, 'List of Open Access International Law Journals', <<https://oa.mag/journals/open-access-international-law-journals>>, last access 20 December 2023; see also: Emtseva, Golia and Sparks (n. 13); European Journal of International Law (Editors in Chief), International Journal of Constitutional Law (ICON) (Editors in Chief) and London Review of International Law (Editorial Board) 'Editorial: Open Access: No Closed Matter', *EJIL* 34 (2023), 545-551.

³⁴ Samuel Moyn, 'International Law and Human Rights (Fall 2016)', *H20* (2016), <<https://opencasebook.org/casebooks/393-international-law-and-human-rights-fall-2016/>>, last access 20 December 2023.

³⁵ González Hauck, Kunz and Milas (n. 4).

such as human rights, warfare, peacekeeping, the economy, and health.³⁶ Setting (international) law apart from the natural sciences, it is characterised by its susceptibility to discourse and deliberation, as opposed to being dictated by objective truths. Given the relevance and discursiveness of public international law, it becomes even more crucial that many individuals affected by international law can participate in shaping this legal field. While acknowledging the utopian nature of such a proposition, OER can contribute to its realisation on limited scale. Students and teachers of public international law can access and use OER via the internet without incurring any costs.³⁷ Particularly in light of the high expenses associated with teaching materials and global economic inequality, OER enable less well-off students and teachers worldwide to study and teach international law.³⁸ In doing so, OER effectively address the financial barriers associated with both publishing and accessing teaching materials in public international law.

However, the impact of OER extends beyond mere financial considerations. Potentially, OER may remedy some of the personal and epistemological barriers mentioned above as well because OER are often created *collaboratively*. Thereby, they also challenge some of the other attributes of conventional teaching materials. Unlike 'closed' teaching materials, where collaboration is often confined to co-authorship and lacks inherent integration into workflows, OER foster a holistic collaborative approach. From conceptualisation through development to publication and revision, collaboration in OER strives to engage as many individuals from the interested community as possible.³⁹ Epistemologically, OER significantly facilitate the process of authorship. Not only do OER remove financial constraints, thereby opening the door for a broader spectrum of contributors, but they also promise to diversify perspectives within teaching materials. In traditional publications, authors often face constraints concerning content selection and presentation

³⁶ For a critical discussion, see: Francis A. Boyle, 'The Irrelevance of International Law: The Schism between International Law and International Politics', *Cal. W. Int'l L.J.* (1980), 193-218.

³⁷ Richard A. Danner, 'Open Access to Legal Scholarship: Dropping the Barriers to Discourse and Dialogue', *Journal of International Commercial Law and Technology* 7 (2012), 65-79 (68); David Wiley and John Hilton, 'Defining OER-Enabled Pedagogy', *International Review of Research in Open and Distributed Learning* 19 (2021), 134-147 (134-136).

³⁸ For OA in international in general, see: Emtseva, Golia and Sparks (n. 13)

³⁹ Lisa Petrides, Cynthia Jimes and Carol Hedgpeth, 'Knowledge Sharing and Collaboration as Indicators of Learning in OER Communities', in: Alexandra Okada, Theresa Connolly and Peter Scott (eds), *Collaborative Learning 2.0: Open Educational Resources* (IGI Global 2012), 38-50 (39-43); Anup Kumar Das, 'Emergence of Open Educational Resources (OER) in India and Its Impact on Lifelong Learning', *Library Hi Tech News* 2011, 10-15 (10-12); Maimoona Al Abri and Nada Dabbagh, 'Open Educational Resources: A Literature Review', *Journal of Mason Graduate Research* 6 (2018), 83-104 (84).

which are either imposed by the publishers or by the authors themselves. These limitations may emerge from (perceived) commercial interests, editorial guidelines, or the thematic focus of specific journals or book series. Consequently, authors may find themselves compelled to limit the breadth of perspectives and ideas. Although there is currently limited empirical evidence of the diversity generated by OER, the inherent freedom associated with OER publication, unencumbered by traditional notions of 'publishability', suggests that it may create a richer tapestry of perspectives.

Besides addressing these personal and epistemological barriers in the teaching of international law, OER offer several practical advantages. In the absence of an intermediary publisher, research communities can create new teaching materials collaboratively, add further content to existing materials, and rectify errors, all in a cost-free and seamless manner.⁴⁰ Particularly in the rapidly evolving field of international law,⁴¹ prompt adaptation of teaching materials is imperative to provide students with up-to-date and relevant resources. Furthermore, by utilising free software or online platforms for crafting, disseminating, and editing OER, teachers of public international law can seamlessly tailor existing materials to their unique course requirements. This adaptability is especially crucial given the substantial variations among international law courses. Employing open software and websites to create and publish teaching materials also allows the research community to add audio, video, and interactive elements to the traditional, text-based forms of teaching materials.⁴² Thereby, teaching materials may increase their appeal to students and address different learning styles.⁴³ OER can thus help to overcome the primacy of the course companion in public international law.⁴⁴ Additionally, the online dissemination of OER facilitates unrestricted access to teaching materials regardless of location. Consequently, even students with limited access to libraries, in peripheral regions, or with mobility constraints can access the same content as their counterparts who acquire teaching

⁴⁰ Guntram Geser, *Open Educational Practices and Resources* (OLCOS – Open eLearning Content Observatory Services 2012), 20-24.

⁴¹ Anne Peters, 'Are we Moving Towards Constitutionalization of the World Community?', in: The Late Antonio Cassese (ed.), *Realizing Utopia: The Future of International Law* (Oxford University Press 2012), 118-135 (118, 119-126).

⁴² Wiley, Bliss and McEwen (n. 27), 781-782; Geser (n. 40), 20-24, 130-132; Das (n. 39), 10-12.

⁴³ In-depth discussion on the controversial concept of learning styles: Harold Pashler, Mark McDaniel, Doug Rohrer and Robert Bjork, 'Learning Styles: Concepts and Evidence', *Psychological Science in the Public Interest* 9 (2008), 105-119.

⁴⁴ On this primacy, see: 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: Social Cognition and Knowledge Production in International Legal Processes* (Oxford University Press 2021), 293-307 (293-294).

materials in print or via libraries. This level of location-independent accessibility promotes equitable opportunities for all students, transcending geographical and physical constraints.

To be sure, also traditional teaching materials can and should incorporate all non-financial benefits offered by OER. Nevertheless, OER realise these benefits more frequently and more effectively, as concerns for a diverse authorship, e.g. in terms of scholarly approaches or geographical location, often form part of the creation process from the outset. In this regard, OER go beyond the conventional, financially-centered concept of openness of OA by adding personal and epistemological openness as well as practical advantages.

bb) Boundaries

The most important advantage of OER is also its biggest hurdle. Unrestricted use of the majority of OER relies on students and teachers of international law having access to the internet. While access to the internet is generally well-established in terms of infrastructure and funding in the ‘Global North’, this is only partially true for countries of the ‘Global South’. In North America and Europe, nearly 85 % of the population regularly use the internet, whereas in South Asia and sub-Saharan Africa, less than 40 % of the population had internet access in 2020.⁴⁵ Without reliable and permanent internet access, OER cannot be utilised. Consequently, 40 % of the world’s population is currently excluded from benefiting from OER.⁴⁶ However, this equally applies to traditional teaching materials. Students can access electronic materials only if they have access to the internet. Moreover, students are often required to use institutional accounts for accessing electronic teaching materials or must purchase books themselves, adding further institutional and economic barriers to accessing educational resources. While OER represent an improvement to the status quo of closed teaching of international law, it is crucial not to overlook the underlying issues: (postcolonial) economic global injustices are pervasive and thus also impact the accessibility of OER for international law.⁴⁷ Only by effectively addressing these injustices can the teaching of international law truly become open to all.

⁴⁵ International Telecommunication Union, ‘World Telecommunication / ICT Indicators Database’, <<https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>>, last access 28 January 2023.

⁴⁶ International Telecommunication Union (n. 45).

⁴⁷ Thomas Richter and Maggie McPherson, ‘Open Educational Resources: Education for the World?’, *Distance Education* 33 (2012), 201–219 (202–205, 214–215).

While previously excluded authors can now publish OER via open platforms, thereby potentially dismantling exclusionary structures inherent in traditional publishing,⁴⁸ this freedom comes with a trade-off. Publishers facilitate the dissemination of teaching materials by providing teaching copies to lecturers, by advertising teaching materials, and by adding materials to online databases that students can easily find and use. This promotion of materials is seldom replicated by the often lesser-known OER platforms. Furthermore, traditional publishers uphold the quality of their publications by rejecting contributions. In this regard, they serve as important gate-keepers, particularly for the audience, enabling readers to quickly assess the quality of a source.⁴⁹ Such a certification mechanism is absent for OER, which can be published on open platforms without prior review.⁵⁰ The absence of certification is also likely to dissuade many early career researchers from publishing OER, as it may not contribute significantly to their academic credentials when applying for jobs. Particularly for those socio-economically disadvantaged and originating from the ‘Global South’, prestigious publications are frequently regarded as essential for gaining prestige, recognition, and securing academic positions. These early career researchers may be reluctant to take on the risk associated with publishing less valued OER.

The broader dissemination of OER could pave the way for the establishment of certification mechanisms independent of traditional publishers. Platforms like Wikibooks or PubPub illustrate this shift. In principle they open the traditional peer-review process to everyone, including lay persons. These platforms make all reviews publicly accessible (“Open Peer Review”), enabling any interested reader to evaluate the credibility and reliability of OER (and the reviews). Moreover, if teachers of public international law integrate high-quality OER into their lectures, cite them in their publications, and recommend them within their networks, the OER will become more visible to students and their reputation will grow, eventually leading to more independence from publishers. Nonetheless, until OER gain widespread acceptance in the field of public international law, they may continue to be viewed with scepticism.

⁴⁸ See for the exclusion of African authors in EJIL: Sarah Nouwen and Joseph Weiler, ‘*Vital Statistics*’, EJIL:Talk 2021, <<https://www.ejiltalk.org/vital-statistics-6/>>, last access 28 January 2023.

⁴⁹ Lawrence B. Solum, ‘Download It While It’s Hot: Open Access and Legal Scholarship’, *Lewis & Clark Law Review* 841 (2006), 841-867 (861-862).

⁵⁰ Al Abri and Dabbagh (n. 39), 94-95.

3. Teaching a Global International Law Requires Global Approaches

Public international law, by its nature, has a global reach. Therefore, efforts to develop OER for international law should not only focus on providing free teaching materials but also aim to attract students from diverse backgrounds worldwide. However, achieving this goal requires an understanding of the specific learning styles and knowledge production preferences that vary across regions, knowledge that is often possessed only by local individuals.⁵¹ Advocates of OER often assume that their target audience has internet access and proficiency in English. As demonstrated, this assumption does not always hold true. This issue is particularly pertinent for a field like international law which strives for universal application. Without addressing global disparities in access to resources, international law education will remain inaccessible to many, even with the widespread dissemination of OER.⁵² Furthermore, a limited group of authors can hardly represent the intellectual and epistemological diversity of international law scholarship. Consequently, the aspiration for complete representation of individuals, regions, and approaches is inherently flawed. Nevertheless, every author, editor, and publisher of teaching materials for international law can strive to produce open, intellectually diverse, and high-quality materials by collaborating with other researchers from diverse backgrounds, including those from the Global South, non-male individuals, and people of colour.

III. Survey: German Student Perspectives on Open Educational Resources for International Law

Currently, no data exist allowing for an empirical assessment of the chances and challenges of OER. The survey undertaken for this paper aims to contribute towards filling this gap.⁵³ Before delving into the findings of the (non-representative) survey, this section will briefly explain the survey's design.

⁵¹ Richter and McPherson (n. 47), 202-206.

⁵² Kunz (n. 10), 37-41, 43-45.

⁵³ The survey has been undertaken by this paper's author together with Valentina Chiofalo.

1. Survey Design

The online survey was conducted in summer 2022 and disseminated across several German universities by lecturers as well as via social networks.⁵⁴ The survey collected data on German students' perspectives on OER in the field of international law. Individuals who received the survey link had the opportunity to participate via OpenRewi's Nextcloud server. Covering three distinct topics, the survey comprised a total of 19 questions, predominantly utilising Likert scales,⁵⁵ with a few allowing for open-text input. Data analysis was conducted using RStudio, employing the programming language R. During this analytical process, percentage values were rounded to two decimal places, resulting in occasional discrepancies where the sum may not precisely reach 1.00. The survey results and data analysis conducted in R are accessible via Zenodo.⁵⁶

24 students participated in the survey, all of whom were German law students with a background in international law or involvement in international moot court competitions. Among the participants, 62 % identified as female, 38 % as male, with none identifying as non-binary. The majority of students were either in the preparation phase for final exams ('Staatsexamen') (58 %) or in their specialisation ('Schwerpunktbereich') (33 %) at the time of the survey, while a smaller portion were undergraduates (8 %). Over two-thirds had completed at least seven semesters of their studies (68 %). Thus, the participants represent predominantly postgraduate German law students, with no additional information collected regarding nationality, background, political beliefs, or socioeconomic status. The study's limitations stem from its relatively small sample size, its exclusive focus on German students of international law, and the lack of comprehensive participant data. The survey was distributed primarily through social networks and teachers known to the author, and conducted via OpenRewi's Nextcloud server, which may affect its representativeness. Furthermore, the term 'open' educational resources likely carries a positive connotation, potentially biasing responses in favour of OER. Even though the survey's findings can therefore not be generalised,

⁵⁴ The same survey was conducted for German law teaching materials and published elsewhere. See Valentina Chiofalo and Max Milas 'Die geschlossene Gesellschaft der Rechtswissenschaft: Chancen und Grenzen von Open Educational Resources', *Zeitschrift für Didaktik der Rechtswissenschaft* 10 (2023), 168-187. This article exclusively presents the data from the survey on international law teaching materials, which remain unpublished.

⁵⁵ Ankur Joshi, Saket Kale, Satish Chandel and Dinesh Kumar Pal, 'Likert Scale: Explored and Explained', *British Journal of Applied Science & Technology* 7 (2015), 396-403 (396-398).

⁵⁶ Max Milas, 'Survey Data: German Student Perspectives on Open Educational Resources in International Law', <<https://doi.org/10.5281/zenodo.7662246>>, last access 21 February 2023.

they nonetheless provide an initial insight into students' perspectives on OER.

2. Results and Interpretation

a) Quantity and Quality of Teaching Materials

In the first part of the survey, students were tasked with evaluating the quantity and quality of teaching materials across three categories: physical copies accessible in libraries, electronic resources accessible via institutional accounts,⁵⁷ and freely available electronic teaching materials accessible without institutional accounts, referred to as freely available teaching materials. Importantly, the questions did not distinguish between sub-fields of international law but aimed at capturing students' impressions across all domains of international law. Respondents were presented with six predefined response options (very bad, bad, rather bad, rather good, good, very good). The responses provide valuable insights into students' satisfaction levels with freely available teaching materials as compared to traditional teaching materials.

The responses to these questions are summarised in **Table 1**. The majority of students provided positive ratings for the quantity of teaching materials in libraries (77 % positive ratings), while the availability of electronic teaching materials accessible via institutional accounts received moderate ratings (65 % positive ratings). By contrast, the quantity of electronic OA teaching materials garnered fewer positive ratings (29 %). Notably, even for the quantity of teaching materials in libraries, only 17 % of participants expressed being very satisfied, with the majority either satisfied or rather satisfied (60 %). Students rated the quality of materials in libraries and electronic resources accessible via institutional accounts much higher than the quality of electronic OER. 87 % of students rated the quality of library materials positively, and an even higher percentage, 95 %, rated the quality of electronic materials accessible via institutional accounts positively. However, only 54 % of students expressed satisfaction with the quality of electronic OER. It is noteworthy that none of the participants reported being very satisfied with the quality of electronic OER.

⁵⁷ Electronic teaching materials that are accessible via institutional accounts are teaching materials from databases that can only be accessed via the university network.

Table 1: Satisfaction with teaching materials

	<i>Very bad</i>	<i>bad</i>	<i>Rather bad</i>	<i>Rather good</i>	<i>Good</i>	<i>Very good</i>
Variety						
• Library (n=23)	0.00	0.04	0.17	0.43	0.17	0.17
• Institutional account (n=23)	0.00	0.09	0.26	0.39	0.09	0.17
• OER (n=24)	0.12	0.33	0.25	0.21	0.08	0.00
Quality						
• Library (n=23)	0.04	0.04	0.04	0.22	0.48	0.17
• Institutional account (n=24)	0.00	0.00	0.04	0.33	0.29	0.33
• OER (n=24)	0.12	0.04	0.29	0.42	0.12	0.00

Students' dissatisfaction with the quantity and quality of existing OER underscores the necessity of addressing their concerns to encourage broader adoption of OER. Vital steps include expanding the availability of OER across all domains of international law and tackling quality deficits. This can be achieved through recommendations from teachers, collaborations with reputable publishers, and increased transparency regarding the creation process and the academic qualifications of contributors. Additionally, OER should adhere to the rigorous but often appropriate standards set by conventional publishers of teaching materials. Moreover, the proliferation of OER and their integration into various international law fields is anticipated to positively impact students' perceptions of their quality.

Encouraging early career scholars to publish OER, especially by offering publication opportunities, can effectively convince this cohort to engage in OER initiatives. They possess the latest, experience-based knowledge of what are good teaching materials, making them valuable contributors to OER. While the engagement of the academic middle tier is crucial, the support and involvement of more senior scholars is equally vital for ensuring the quality and proliferation of OER. Established scholars can advocate more effectively for OER and, through their expertise, enhance the acceptance of OER for students. In the medium to long term, the participation of distinguished professors in OER initiatives is expected not only to increase the quantity of available OER but also to positively influence students' perceptions of OER's quality.

b) Financial Obstacles

In the second part of the survey, students were asked to indicate the frequency with which they refrained from purchasing essential teaching materials due to financial constraints. They could select from four possible responses (never, rarely, regularly, often). Any interpretation of their responses has to bear in mind that their answers ultimately depend on the students' subjective perception regarding the necessity of specific teaching materials. The more teaching materials students subjectively consider necessary, the more likely they are to have refrained from acquiring them in the past due to financial limitations. Nevertheless, analysing the responses allows for an assessment of the extent to which the cost of teaching materials acts as a barrier for students. Given that economic considerations often hinder their access to necessary teaching materials, students are assumed to derive financial advantages from OER.

The responses to this second part of the survey are summarised in **Table 2**. Only 38 % of the participants indicated that they never or rarely refrained from purchasing teaching materials due to financial reasons. Most students refrained from purchasing necessary teaching materials regularly or often (50 %) due to financial constraints. However, a notable disparity between male and female participants emerges upon examining gender-specific responses. While only 44 % of male students regularly or often refrain from purchasing textbooks due to financial reasons, this figure rises to 73 % among female students. Additionally, 22 % of male students, compared to only 13 % of female students, stated that they had never refrained from purchasing a textbook for financial reasons.

Table 2: Price as obstacle (n=24)

	Never	Rarely	Regularly	Often
Men	0.22	0.33	0.33	0.11
Women	0.13	0.13	0.00	0.73
All	0.17	0.21	0.12	0.50

A considerable portion of students find themselves unable to afford teaching materials they consider essential. A wider availability of OER holds the potential to alleviate this socio-economic disadvantage.⁵⁸ Moreover, survey data suggests an intersectional disadvantage for female students, who more

⁵⁸ Saskia Ebert, Nikolas Eisentraut, Katharina Goldberg, Rhea Nachtigall, Maximilian Petras, Lasse Ramson, and Lars Wasnick, 'Offene Rechtswissenschaft. Chancen einer Open-Science-Transformation', *Recht und Zugang* 3 (2022), 50-76 (60).

frequently than male students refrain from acquiring necessary teaching materials. However, the survey does not offer insights into potential reasons for this gender disparity. It is conceivable that male students may possess greater financial flexibility for acquiring teaching materials or prioritise such purchases more than other goods. Additionally, it is noteworthy that a significantly higher number of women participated in the survey compared to men.

c) Open Educational Resources

In the third part of the survey, students were asked to provide their perspectives on OER. Initially, participants indicated whether they had previously used OER. Additionally, they were invited to specify the conditions necessary for them to use OER more frequently in the future via open-text input. These responses offer insights into the utilisation of OER by students and the essential criteria for successful OER adoption.

More than two-thirds of the participants have already used OER in the field of international law, with a notably higher percentage among women (86 %) compared to men (67 %). To enhance analysis, the students' free-text responses regarding OER requirements were categorised into seven clusters (accessibility, discoverability, explanation, promotion of OER, quality, quantity, unawareness, no specific requirements).⁵⁹ The majority of participants articulated multiple requirements. For most students, increasing the quality (48 %) and quantity (47 %) of OER emerged as the most critical factors for using OER more frequently in the future. Accessibility (29 %) and discoverability (29 %) were also deemed important by the participants. Remarkably, only 1 % of participants reported having no specific requirements for OER. No student wished for a better explanation and promotion of OER. Some students expressed a desire to access OER outside of institutional accounts (6 %), although this aspect is fundamental to OER. Such responses underscore a lack of awareness among some students regarding the nature and utility of OER.

These responses highlight the importance of raising awareness about OER's existence, functionality, and utilisation to facilitate broader adoption among students. Existing and future OER projects should consider in their publication processes that students frequently lack knowledge of OER, encounter challenges in locating them, and may have difficulties understand-

⁵⁹ The allocation to the individual clusters can be obtained from the data set and R-code available online: Milas (n. 56).

ing their usage rights. By building on established efforts, using popular platforms, and emphasising the open nature of OER, publishers can enhance accessibility and comprehension among students seeking educational resources. Additionally, OER initiatives can mitigate fragmentation of existing OER by establishing dedicated platforms for OER specifically tailored to students' needs. Aggregating scattered OER projects on centralised websites holds significant promise. OER platforms make free teaching materials discoverable and searchable, thus increasing visibility for students. Furthermore, these platforms could integrate peer review functionalities. By enabling reviews from students and teachers, these platforms would offer a valuable framework for quality assessment. Well-reviewed resources would be more likely to be trusted and discovered by users, contributing to their impact and reach. A platform encompassing all OER related to international law would be most beneficial for students, although specialised platforms focusing on specific subfields or types of materials within international law can also be valuable.

d) Diversity and Inclusion

In the final part of the survey, students were asked to indicate the importance of inclusive language; ideological, gender, sexual, economic, and social diversity among authors; non-prejudiced examples; and professors as authors in teaching materials. OER typically integrate this aspect more extensively and effectively compared to traditional teaching materials.⁶⁰ Consequently, this study also investigates the intellectual inclusivity of teaching materials, a trait that could be achieved equally well in non-OER formats.⁶¹ Students were allowed to select four possible answers (not important, rather not important, rather important, important). These diversity-related responses shed light on the extent to which teaching materials should not only be economically accessible but also intellectually inclusive.

Table 3 reveals that inclusive language and non-prejudiced examples are more significant for female students, whereas diversity among authors is equally important for both women and men, and professors as authors are more crucial for men. Specifically, 87 % of female students rate the use of

⁶⁰ Christine Geith and Karen Vignare, 'Access to Education with Online Learning and Open Educational Resources: Can they Close the Gap?', *Journal of Asynchronous Learning Networks* 12 (2008), 105-126 (118, 120-122); Markus Deimann and Robert Farrow, 'Rethinking OER and Their Use: Open Education as Bildung', *International Review of Research in Open and Distributed Learning* 14 (2013), 344-360 (344-345, 347, 351-353).

⁶¹ Ebert, Eisentraut, Goldberg, Nachtigall, Petras, Ramson and Wasnick (n. 58), 65-71.

inclusive language in teaching materials as rather important or important, whereas only 50 % of male students consider inclusive language somewhat important. Similarly, 86 % of female students deem non-prejudiced examples rather important or important, while only 50 % of male students regard them as somewhat important. Conversely, diverse authorship of teaching materials holds equal importance for both women and men. However, men emphasise professors as authors of teaching materials much more than women do, with 62 % of men finding it important compared to only 20 % of women.

	<i>Not important</i>	<i>Rather not important</i>	<i>Rather important</i>	<i>Important</i>
Inclusive language				
• Men	0.38	0.12	0.38	0.12
• Women	0.00	0.13	0.20	0.67
Diverse authors				
• Men	0.25	0.00	0.75	0.00
• Women	0.07	0.13	0.33	0.47
Non- prejudiced examples				
• Men	0.12	0.38	0.25	0.25
• Women	0.07	0.07	0.33	0.53
Professors as authors				
• Men	0.00	0.38	0.62	0.00
• Women	0.07	0.73	0.13	0.07

Even if authors lack the financial capacity for OA publications, they should strive to open up their teaching materials intellectually by incorporating inclusive language and non-prejudiced examples.⁶² Furthermore, when selecting co-authors, authors should consider collaborating with underrepresented groups to enhance diversity in authorship.⁶³ This approach ensures that teaching materials reflect a broad range of perspectives and experiences, fostering inclusivity and enriching the educational experience for all students.

⁶² Dana Valentina, 'Stereotype in juristischen Ausbildungsfällen: Eine hamburgische Studie', *Social Transformations* 2 (2018), 1-29.

⁶³ Ebert, Eisentraut, Goldberg, Nachtigall, Petras, Ramson and Wasnick (n. 58), 65-71.

IV. Conclusion

This article examined the prevailing patterns of exclusion characterising the teaching of public international law. Recognising the need for a more inclusive approach to legal education, the article advocated OER as a practical remedy to counter some exclusionary tendencies. By doing so, it highlighted the potential of OER to foster a more inclusive and accessible learning environment within the realm of public international law. To substantiate these claims, the article presented findings from a survey conducted among German law students, exploring their awareness, utilisation, and perceptions of OER in the field of international law. This survey yielded four results: Firstly, a majority of students still prefer conventional, non-Open-Access teaching materials for reasons of quantity and quality. Secondly, the survey confirms that most, especially female, students lack access to teaching materials for financial reasons. Thirdly, answers suggest that acceptance of OER among students depends on improving their quality, accessibility, and variety. Finally, female students emphasise the importance of inclusive language and non-prejudiced examples in educational resources.

To further disseminate OER among international law students, more education about their existence, functionality, and utilisation is essential. Existing and future OER projects should consider in their publication processes that students frequently lack awareness of OER, encounter challenges in locating them, and may have difficulties understanding their usage rights. Additionally, OER initiatives can mitigate fragmentation of existing OER by establishing dedicated platforms for OER specifically tailored to students' needs. Aggregating scattered OER projects on centralised websites holds significant promise. Besides increased education about OER's characteristics and potential uses, it is crucial for their further dissemination to address students' quality concerns and to expand OER creation to more areas of international law. The possibility of publishing and accessing teaching materials free of charge is central to realising the core principles of economic equality and global justice.⁶⁴ Anecdotal evidence suggests that academic libraries and public research organisations are willing to support OER upon request. Furthermore, editors motivated to explore OER could collaborate with already experienced OER editors for guidance and knowledge sharing. However, funding OER should not fall solely on individual scholars, particularly early career ones. OER are dependent on money, time, and institutional support, and the authority of OER depends to a significant extent on the

⁶⁴ CESCR (n. 1), para. 77; Kunz (n. 10), 36.

publisher with which the works are published.⁶⁵ Therefore, policymakers must play a role in persuading publishers, pressuring academic institutions, and providing researchers with funding to facilitate broader distribution of OER.

Finally, teaching materials should not only become more economically accessible but also intellectually inclusive. Many students ask for inclusive language, diverse authorship, and non-prejudiced examples. It is striking that the majority of OER are published by individuals and organisations from the 'Global North', often by privileged groups, perpetuating global inequities. Without addressing global inequities international legal scholarship and to some extent also international law will remain a closed and exclusive space.⁶⁶

⁶⁵ Kunz (n. 10), 32.

⁶⁶ Kunz (n. 10), 37-41, 43-45.

