
Editorial

Editorial: COVID-19 and EJIL; The Self-Asphyxiation of Democracy; Publishers, Academics and the Battles over Copyright and Your Rights I; Festschrift? ‘That Which Is Hateful to You, Do Not Do to Your Fellow! That is the Whole Torah; The Rest is Interpretation’ (from the Elder Hillel in Babylonian Talmud, Shabbat 31a); Vital Statistics; A Less Exclusive Submission Process; In this Issue

COVID-19 and EJIL

We are pulled in opposite directions in the face of a global upending of normal life. We find it attractive, even if hunkered down at home, as is our whole editorial team, in six different countries, to continue serenely our normal work in the face of a-normalcy. The life of the mind, the scholarly endeavour, continues – even when juggled with caring responsibilities – not least as an act of faith in better times to come. Unlike war – a metaphor which is widely used and abused – we are not faced by the actions of evil men and women against whom one should rise in indignant protest. Yes, incompetence and irresponsibility might have played a role, but one should not rush to throw the first stone. With time such issues can be and will be sorted out.

And yet, in the face of spreading death and imploding economic circumstances on a truly global scale, continuing as if nothing is happening borders on the callous. That grave consideration apart, there are obvious issues of international governance and international law for which EJIL should be a forum for serious reflection. Do we wait till the dust settles, the crisis is overcome, and then turn with distance and perspective to serious and rigorous reflection and analysis? In some respects, one does not have that luxury – there are issues happening in real time which will not wait for that perspectival reflection.

It is our fortune at EJIL that we do not have to face that choice. EJIL Talk! is not a locus of gossip and emotive ‘from the hip’ commentary. It is a forum, as is proven week in and week out, for brief but incisive legal commentary, oftentimes of the indispensable doctrinal genre (legal or illegal) in which immediate reactions to the COVID-19 crisis have already appeared and will continue to appear. Blogposts have covered wide-ranging aspects of the crisis, from the (not) functioning of the World Health Organization to the human rights dimensions of states’ responses, and from possibilities to sue states for their deficient responses to the trade and intellectual properties dimensions (for an overview, see:

<https://www.ejiltalk.org/category/global-health/>). International law aspects of COVID-19 were also the focus of the latest experiment of the EJIL family: the EJIL: Podcast (see <https://www.ejiltalk.org/ejil-the-podcast-page/>). The first two episodes of the podcast attracted just on 7,500 downloads across the globe. The deeper conceptual and theoretical, doctrinal and otherwise, reflection will appear organically in EJIL as time passes and the community of scholars engage with this perspectival dimension to our work.

EJIL is a community – of readers and authors. Keep safe!

We would like to end by publishing here, with the permission of the poetess Lynn Ungar (lynnungar.com), her evocative poem *Pandemic*. It speaks for itself.

Pandemic

Lynn Ungar

What if you thought of it
as the Jews consider the Sabbath—
the most sacred of times?
Cease from travel.
Cease from buying and selling.
Give up, just for now,
on trying to make the world
different than it is.
Sing. Pray. Touch only those
to whom you commit your life.
Center down.

And when your body has become still,
reach out with your heart.
Know that we are connected
in ways that are terrifying and beautiful.
(You could hardly deny it now.)
Know that our lives
are in one another's hands.
(Surely, that has come clear.)
Do not reach out your hands.
Reach out your heart.
Reach out your words.
Reach out all the tendrils
of compassion that move, invisibly,
where we cannot touch.

Promise this world your love—
for better or for worse,
in sickness and in health,
so long as we all shall live.

Orbán and the Self-Asphyxiation of Democracy

It came as no big surprise that Orbán has used COVID-19 to dismantle further the checks and balances that are an integral part of any functioning democracy. On 30 March 2020, with the authorization of the Hungarian Parliament (in which the government has a large majority), an Act was passed¹ which effectively gave the government sweeping powers to rule by decree. It is not unusual in times of emergency for the executive branch to revert to extraordinary measures, though in this case they have a Hungarian twist: the new law is of indeterminate duration (though Parliament can end it when it sees fit – in the case of Hungary *de facto* when the Executive sees fit) and the powers granted exceed those necessary to deal with COVID.

More ominously, alongside that enabling law, the Penal Code was amended, permanently, to introduce two new crimes – punishable by up to five years' imprisonment for any activity that interferes with the government in the discharge of its emergency responsibility and for any publication 'distorting the truth' that might alarm a large number of persons – which I imagine could mean any publication that contradicts the government narrative. I consider this part of the package far, far more pernicious.

There have also been reports of government changes to the education package in schools to bring it into conformity with the government view of Hungarian history and 'appropriate' Hungarian authors.

Hungary has deepened further its 'illiberal democracy' – a juicy oxymoron.

Not unexpectedly, the social networks were full of (justified) fire and brimstone, though the official reaction of the European Union by the President of the Commission was, in the eyes of many, rather 'gentle'. (The Christian Democrat EU family, which in this case strikes me as neither Christian nor Democrat, really needs to do some soul searching.)

But a characteristic of the popular social network was, again not unexpectedly, like a commercial jingle: Orbán here, Orbán there, Orbán, Orbán everywhere.

And herein lies what I consider a real problem, both in analysing the problem and reacting to it. In the name of democracy, we forget the basics of the democratic ontology.

First, there is an ironic paradox in this last act. Of all countries, the one that least of all needs emergency powers to facilitate the functioning of its Executive is Hungary. The systematic dismantling of the substance of liberal democracy, though carefully if entirely artificially sticking to the form (that's the strategy and tactic), means that already before the Act the executive branch had a far freer hand – in fact a totally free hand – than most other governments. And these last measures are not the most grave in the process – the earlier *de facto* emasculation of an independent judiciary, for example, was a far weightier assault.

The real point, however, is that by saying again and again Orbán, Orbán, Orbán (and make no mistake, he is vile), we fall into the trap that reflects a widespread malaise in our general democratic discourse of 'deresponsibilizing' the People, the nation, the electorate. Orbán has been clear and transparent – he declares openly, to the world and his

¹ See <https://hungarianspectrum.org/2020/03/21/translation-of-draft-law-on-protecting-against-the-coronavirus>.

electorate, that he wants an ‘Illiberal Democracy’ (to repeat, an oxymoron in my vocabulary). He, and those to his right, were elected with a significant majority and, hugely significantly, were re-elected even after the reality of his regime was there to be seen by all and sundry. We call him a dictator. That is, paradoxically, comforting; the classical image that Dictator and Dictatorship conjures is one of 10 million Hungarians suffering under a repressive regime with all the attendant paraphernalia: the knock on the door in the middle of the night, disappearances, torture, gulags, etc. This is not the case in Hungary. Mercifully not even close. But it is precisely because he is no Franco, he is no Pol Pot, he is no Ceausescu; this is not the Greek colonels or the Argentinian generals; there is no Securitate or Tonton Macoute and the like, which makes the new phenomenon, in the heart of Europe, in the European Union, so demoralizing.

This is not a regime about which it can be said that the free will of ‘the people’ has been repressed. Even though the information and deliberative processes have been perverted, no serious observer could deny that he (and those to his right) enjoy widespread and deep support from a significant majority of the electorate. The Parliament, with his constitutional majority, is a more or less accurate and true reflection of the popular will. The majority of MPs who voted for these and previous acts, and the President who signed them, are expressing the collective will of a majority of the Hungarian people.

All the attempts to avoid this incredibly uncomfortable truth – they don’t understand, the media is controlled etc. – fall into the trap of that otiose Marxist trope of False Consciousness, a trope that expresses both arrogance and disrespect. Those among the Hungarian people who voted for him – a substantial majority – understand perfectly well, just as you and I do, what he is about, what his worldview is, and they approve of it.

Now, we all know, or should know, the difference between individual guilt, which is indeed individual, and collective responsibility that a society has to assume, admirably articulated in the recent 8 May speech of the President of Germany.² Laudably and with utmost integrity, like several of his predecessors, he did not resort to the ‘Hitler, Hitler, not us the Germans’ obfuscation.

Yes, there was a not insignificant minority that voted against Orbán. And one should do everything in one’s power to support them. But democracy also means collective responsibility. I observed the same with Bush over Iraq. Bush, Bush, Bush. But it was not simply Bush, it was the American people who voted for him (twice – thus retroactively approving of his policies) and a Congress that also overwhelmingly approved his actions, *ex ante* and *ex post*. Responsibility for Iraq rests as much with the American people as it does with Bush. There are endless similar examples – choose your favourite. If Trump is re-elected in November, there will be no excuses.

Why, then, is it all the time Orbán, Orbán, Orbán, and not pointing the finger also at those responsible for Orbán? Why do we refuse to acknowledge that Orbán enjoys majoritarian legitimacy, albeit in a state that has ceased to conform to our normal notions of liberal democracy?

² <https://www.bundespraesident.de/SharedDocs/Reden/EN/Frank-Walter-Steinmeier/Reden/2020/05/200508-75th-anniversary-World-War-II.html>.

There are, to my mind, several reasons.

The first is that we operate under the false assumption that if it is democratic it is okay. It is good. How false. If it is not democratic it is certainly bad. As a technology of governance, obviously, with all its flaws, we consider democracy indispensable. But the opposite is not necessarily true. A democracy of evil people will be an evil democracy. A democracy of (socially) unjust or uncaring or indecent people will be a socially unjust, uncaring and indecent democracy. To point the finger and condemn those who, if we believe in democracy, should be the first and last to be held responsible – those who elected and re-elected Orbán – is not to show disrespect to democracy, it is the opposite, it is to show respect for democracy. If we do not, we actually disrespect democracy.

The second is that we shy away from any statement that inculpates ‘people’ – i.e. not those in power. We always think of ‘people’ as entitled to rights and benefits, and all other good things. We are not in the habit of holding them responsible. But in democracy they, we, are. We shy away from collective responsibility, but the essence of democracy is collective responsibility. Democracy is not only for the people; it is also by the people.

And as I noted above, there is a difference between individual guilt, for which individuals should be judged on an individual basis, and collective responsibility of the demos which constitutes the democracy – provided their will was freely given in reasonably free elections.

And there is a third reason. ‘Orbánizing’ the phenomenon and infantilizing the people who vote for him in droves serves as an exculpating device for us. It obviates the need to do some serious soul searching regarding the failures of our liberal democracy to which millions of Europeans across the continent turned their back. When we keep parroting Orbán, Le Pen, Salvini and other fellow travellers, we do not need to ask where we went wrong and can continue to bask in our sanctimonious self-righteousness. This should not be read as any kind of justification for ‘illiberal democracy’. But we cannot remain complacent when so many in so many of our Member States seem to be turning their back to the European construct and to the basics of liberal democracy.

Thus, to point a finger not only at Orbán and his likes but at the people who freely put him there and endorsed his programmes through their votes would impose on us, too, the same moral imperative of democratic responsibility – to reintroduce us to a more honest form of republican democracy, a form to which we have become less and less accustomed.

So, let’s reserve the appellation Dictator to the likes of Pol Pot or Franco. The last instalment in the Hungarian saga is another drop in that poisonous chalice. But this is not a military coup d’état. And this is not rule by terror. This is an act of collective democratic self-asphyxiation, of willed action, which could have been stopped at the ballot box. Let us call it as it is, and this call makes the Hungarian situation ever more disconcerting: a vile leader supported by a significant majority of his subjects.

JHHW

Publishers, Academics and the Battles over Copyright and Your Rights I

Academic publishers and academics live in a symbiotic relationship. Even university presses are dependent (this is the most delicate way of putting it) on profits and they earn such from our writing. Without us, they would be out of business. And we, the writers, even in the age of the internet, need publishers. They provide an important service in a variety of ways. You would not be reading this Editorial if this were not the case.

This symbiosis would suggest a relationship of equals; with few exceptions, for most of us this is hardly the case. We approach publishers like supplicants before an all-powerful despot. The Road to Canossa was a spring jog by comparison. Sounds familiar? It's always them doing us a favour by publishing our book rather than us doing them a favour by giving them our work. Sounds familiar?

One area where this disparity of power is most noticeable is in relation to copyright and associated rights over the fruit of our labour. There is much that is unacceptable, driven by inertia ('that's how we have always done it'), caprice (yes), and greed.

The issue of copyright differs according to the nature of the work published, monographs, edited books, and journal articles being the principal cases.

I plan to take each in turn and start with what I consider the 'easiest' case – contributions to edited books. *Nota bene*: I will not discuss here copyright in the edited book itself, but just in the individual contributions thereto.

This is the most banal of occurrences. It is hard for me to believe that readers of this Editorial would not have found themselves in this situation at least once, and with the years passing countless times. You are invited to contribute to an edited book. For some irrational reason you agree and eventually consign your contribution. In most cases the only editing of your work that will take place is copy editing, but that is a movie we have already been to (see 'On My Way Out – Advice to Young Scholars III: Edited Books', <https://doi.org/10.1093/ejil/chw047>).

As the date of production nears, you receive, typically directly from the publisher, sometimes from the editors of the book, a request to sign the copyright form.

The following is a typical form – it happens to be from one of the most distinguished publishers in our field.

Let me walk you through the salient points.

Your eye draws you to Clause 2.2, which fills you with joy:

The copyright in the Text shall remain vested in the Contributor.

Of course, you think. It is my work, my thoughts, my brilliant ideas etc., etc. Hold your horses! What Peter giveth Paul taketh. You skipped a clause. Take a deep breath (if these matters bother you), settle down and read:

The Contributor hereby grants to the Publisher *for the legal term of copyright* including any renewals and extensions the *exclusive and irrevocable* right and licence to produce publish display communicate to the public and exploit and to license the production publication display communication to the public and exploitation of

[...] the Text

[...] any part of the Text

[...] any new edition or other adaptation or any abridgement of the Text ... in all languages throughout the world in volume form *and in any other form or medium whatsoever* including (but not by way of limitation) any form of electronic publication display distribution or transmission (whether now known or hereafter invented) that the Publisher may wish. The rights granted in this Clause may be exercised by the Publisher, and its wholly owned subsidiary [name of distinguished publishers] and include without limitation the right to exercise and grant sub-licences of all translation and subsidiary rights on such terms as the Publisher may determine (my emphases).

Copyright, which remains vested in you, has just lost practically all meaning.

You might be the freeholder of the field, but you have granted a lease that deprives you of any future benefit of your work. This is not all: read the following sweet clause:

The Contributor agrees that the Publisher and/or the Editor may amend and alter the Text in such manner as the Publisher and/or the Editor may reasonably consider necessary.

There is no mention of receiving your consent to any such changes. Imagine this were a painting or a photograph and let your imagination work.

You should be rubbing your eyes in disbelief at all of the above and vowing to read more carefully what you sign the next time. The disparity of power is so great that now it is common practice for authors to receive the copyright form online and, like some software you are buying, be given the simple option of clicking Accept or Reject.

In a flair of generosity, the publisher in Clause 3 allows that:

Provided that full acknowledgement of the Work is given and that such use does not affect prejudicially the sales of the Work, the Publisher shall not object to the use by the Contributor of parts (being less than the whole or a substantial part) of the Text in reworked form as the basis for articles in law journals, conference papers or internal training materials or newsletters.

So, to give but one example, should you wish to publish in book form a collection of your essays, that would be a no no. One publisher once required that I pay them for photocopying one of my book chapters for the use of my students.

Our example copyright form happens to come from a UK publisher; mindful of the English doctrine which provides that a contract with no consideration might not be enforceable, we find the clause entitled Remuneration (you should be sitting down):

In consideration for providing the Text for publication in the Work on the terms of this Agreement, the Contributor shall be entitled to receive on publication one presentation copy of the Work.

If you ever wondered what a peppercorn as consideration meant, here you have it.

I have from time to time asked colleagues why they agree to sign such an unconscionable term. (And I remind you that I am here only discussing contributions to edited books. Different considerations may apply to other learned publications.)

The three most common answers I receive are the following:

- a. I never read it. I just sign. What's the point? It's like pressing 'I agree' on the latest download of some computer program or application. (Hey, you are not the author of that program or application).
- b. I sign and don't care. I do with my work what I want. (True most of the time, but not always. If you want to republish in a different language in another book, or in an anthology,

the new publisher might request that you obtain a copyright release. Then things might get complicated.)

- c. Well, they are entitled to something, after all they published my work. They took the risk.

No, this is all Alice through the Looking Glass. Yes, publishers, including university presses, are not charities. They need to cover their costs and turn a profit. But of what risk are we talking here? They are pretty shrewd in assessing the minimal sale potential of a book and with a simple formula into which this figure plus the number of pages are inserted will price the book so as not to show a loss. Any book whose sales exceed this estimate is pure gravy. And the occasional bestseller has them laughing all the way to the bank. Things might go bad now and again, but the unending plethora of edited books is proof enough that we need not worry about their bottom line.

Now you might get the impression that my concern is with economic exploitation and ‘iniquity’. Not in the least. Royalties, if paid to contributors of edited books, would be derisory – enough to pay for a nice dinner (without wine). It is the restriction on our sovereignty over our works that riles me. As mentioned, I would have some empathy if I could imagine any scenario where subsequent use of such a piece, for example placing a version in a well-read journal (since edited books are in many cases cemeteries), would compromise the sale of the book or any other rent the publisher might obtain from it. I have discussed this at length with two of my publishers – they were unable to come up with any realistic scenario where this would be the case or any actual history where it was the case. I am willing to be educated but not by outlandish hypotheticals.

Yes, there is the issue of translation and publication in other languages. But if you consigned an article in English, why should you be asked to cede your rights in all other languages? Again, it is not about the money. Having to obtain translation rights (over your own work!) for which the publisher will always extract their pound of flesh has a chilling effect on the possibility of translation. I speak from considerable experience.

So, what’s to be done? For many years I have adopted the same policy when confronted with these copyright forms.

- a. I strike out the ‘all languages’ clause and have the agreement apply only to the language of the chapter submitted.
- b. I add three little letters to one word in the offending Clause 2.1 and its brethren. I insert by hand the word ‘non’, so that exclusive becomes non-exclusive. They still have all the rights they want, universally and irrevocably, and the editors of the book may, appropriately, give them exclusive rights to the book itself as whole. But I also retain irrevocable freedom to make any use I wish with the fruits of my labour.

Now, you might be thinking the following: You, JW, are an established scholar and you might get away with this, but not everyone is in that position. This is true. It might not work for young scholars at the beginning of their career. But there are hundreds and thousands of ‘established’ scholars, and in practically every edited book there are a few of those old geezers. And of course, there are the editors of the volume who are in a much stronger position than any individual author to negotiate a fair copyright clause for the individual contributions. If they, we, all routinely followed my practice

or something similar, at least in relation to this form of publication, the oppressive draconian cession of rights would wither away.

JHHW

‘That Which Is Hateful to You, Do Not Do to Your Fellow! That is the Whole Torah; The Rest is Interpretation’ (from the Elder Hillel in Babylonian Talmud, Shabbat 31a)

I am creeping up to the age where some friends and former students have approached me with the idea of a Festschrift (*Mélange, Liber Amicorum*). Of course I was touched and moved by the expression of friendship and respect. But it took me no more than a few nanoseconds politely to decline, having Hillel’s version of the Golden Rule in mind.

It is an institution that has lost any real meaning in more than one sense. When is the last time you actually picked up one of those expensive tomes to read through it? When you are approached by the well-meaning organizers and ‘editors’ (here’s another Golden Rule: do not expect anything more than copyediting in Festschriften) your heart sinks. Of course one cannot say No to an enterprise honouring a colleague whom you respect, oftentimes a friend. In a world where most of us are always behind with our writing commitments it is usually a considerable disruption. Not surprisingly, many Festschriften are replete with recycled writing, and understandably so. Are we expected to drop what we are doing and start some new research project and pen a new article because someone’s birthday is approaching? And then see it buried in a Festschrift, no matter how eminent the honoree? If most edited books are cemeteries, Festschriften are the Arlington National Cemetery of legal scholarship. Since there is a deadline connected to a birthday, it is hard to delay, and so the pieces become even more rushed and the editing even more lax. If there is any honour in these tomes it is not in the content but, it would seem, in the list of names (‘My festschrift is longer than yours...’). I have often wondered if the honoree himself or herself manages to wade through the whole thing beyond the Table of Contents.

I have done a quick unscientific check (the kind of stuff you can get away with if you are writing for a Festschrift): outside the German-speaking world (where anyway you have a bevy of assistants to do your research for you), citations to Festschriften are scarce. And although the practice is changing, contributions to Festschriften are not as systematically entered into data bases and are thus less susceptible to contemporary modes of legal research. The cost of production is such – especially the heavy multi-volume ones, in which the world and his sister are invited to contribute – that not infrequently even the contributors do not get a free copy, given the prohibitive cost of the entire work (I always sigh in relief). I am practically positive that no individual buyer has ever shelled out for a Festschrift.

If there is any interest at all in the work, it is to see who’s in and, even more interestingly, who’s not. Sometimes one is told that ‘it is a secret’! I don’t always believe it and in any event if it really were a secret that is a risky path. Who may you have forgotten? Who might you have erroneously included?

I want to believe that at least some of you concur. So why does this plague still rain down on us? Mostly inertia I suspect and a practice which, alas, has become normative. A wish, perhaps, of appreciative students and friends not to offend or disappoint a beloved teacher or colleague by not organizing one? And, of course, *Vanitas Vanitatum*, the Human Condition in all its glory. But surely there are a myriad other ways to display respect and affection. A simple card, signed by friends? Five words rather than 5,000?

So here: Geriatrics of the World, Unite! Just Say No!

JHHW

Vital Statistics

For several years now we have regularly monitored and published statistics for manuscripts received at EJIL at the three different stages of the submission process: total submissions, accepted manuscripts and published articles. We think it is useful, indeed vital, to understand who makes up our ‘pool’ of authors and how it evolves over the years.

Generating these statistics is not a purely computer-based exercise. Each year, we pose new questions and reconsider our categories. This year, we wanted to assess how we are doing on our aim of publishing voices that are new to EJIL. We also decided to be more granular in assessing where the submissions originate.

To assess whether we publish the same authors over and over again or give plenty of space to new voices, we traced first-time vs repeat authors of articles accepted for publication in EJIL over the nine years since we began to use an online submission database in 2011. We found that 86 per cent of authors published one article in EJIL over that time, whilst 14 per cent published two or more articles. This figure is very much in line with our aim to promote a diversity of scholars.

Of course, diversity also has a geographic component.

In 2010, when we first began keeping figures on EJIL submissions, it seemed reasonable to divide the world for statistical purposes into four areas: the European Union; Council of Europe countries not in the EU; USA and Canada; and the rest of the world. In these past 10 years, we have seen changes in the geographical distribution of submissions received. To reflect this evolution and provide more information on who submits to EJIL, we have changed the categories to Europe minus the United Kingdom, the United Kingdom, Asia, Oceania, Africa, North America and South America. We have separated the UK from Europe because of the relatively high percentage of submissions from the UK. For a similar reason, we have decided to separate Oceania from other parts of the world and to subdivide that category further per continent.

Table 1 shows that just over half of all manuscripts received, accepted and published come from Europe - UK and the United Kingdom. We are receiving a larger number of submissions from Asian countries, though this is not yet reflected in the number of accepted or published articles. While we saw a higher percentage of articles accepted and published from North America this past year, the countries of Oceania, Africa and

South America still constitute a relatively small percentage of submissions, acceptances and published articles.

Table 2 provides information on the language of authors of submissions, accepted manuscripts and published articles. Recall that we use authors' affiliation as the indicator of language. Thus, we may find a Spanish author affiliated with a UK university or an Australian author working at a European university. Nonetheless, we think the numbers pan out to give a reasonable indication of the linguistic origins of our authors. As in previous years, the percentage of accepted and published articles by authors from non-English speaking countries is lower than the percentage of submissions received from those countries. This may be accounted for by an increase in the number of submissions we receive from non-English speaking countries – a growth of just on 10 per cent over the past eight years – whilst the percentages of accepted and published articles by authors from non-English speaking countries have remained relatively stable over the years.

As may be seen in Table 3, we receive a lower number of submissions by female authors, though this gap has slightly narrowed over the years. The average over the past eight years for submissions by female authors was 33 per cent. The good news is that the percentages of accepted and published articles by women are higher. While we are not there yet, it is better than how the journal started: in the first three years of EJIL, not one article by a female author was published!

So, what do we actually publish in our pages? We obviously receive many more manuscripts than we can possibly publish. By the same token, part of our mandate is to innovate and provoke discussion by organizing symposia and encouraging debate

Table 1: Geographical provenance of submissions, accepted manuscripts and published articles

	All submissions % of total	Accepted manuscripts % of total	Published articles % of total
Europe - UK	39	35	34
United Kingdom	14	22	20
Asia	26	13	12
Oceania	7	2	3
Africa	2	0	2
North America	10	28	29
South America	2	0	0

Table 2: Linguistic origin of submissions, accepted manuscripts and published articles

	All submissions % of total	Accepted manuscripts % of total	Published articles % of total
English-speaking countries	33	54	55
Non-English-speaking countries	67	46	45

Table 3: Gender of authors of submissions, accepted manuscripts and published articles

	All submissions % of total	Accepted articles % of total	Published articles % of total
Male	63	59	58
Female	37	41	42

articles on topics that we believe important for the international law community. For our 2019 volume, approximately 37 per cent of published articles were initiated by the editors. This figure is just a little higher than in recent years – the average for the previous eight years was 35 per cent and our ideal ratio is 2:1 in favour of unsolicited manuscripts. The slight increase may be due to the incubation time required for symposia, which meant that a number of symposia came to fruition this past year. Symposium articles go through as rigorous a review process as unsolicited articles. Finally, as part of our custom of fostering discussion and debate in the journal, we commissioned nine Reply articles in 2019 for the *EJIL*: Debate! and Afterword sections. The interesting and stimulating discussions provoked by these reaction pieces are often continued on our *EJIL*: Talk! blog. It is a good sign that we are receiving more and more unsolicited Reply articles. Let the debate continue!

SMHN

A Less Exclusive Submission Process

Authors who have ever submitted a manuscript to *EJIL* will invariably describe our peer review system as a lengthy, often protracted, perhaps even frustratingly long process. By its very nature, peer review, when undertaken in a serious and thorough manner, takes time. All manuscripts submitted to *EJIL* undergo a first in-house screening. Those submissions selected for further evaluation are sent to two or three external reviewers who provide extensive comments. We do not cut corners in order to hasten peer review. At the same time, we fully understand the frustration of authors who anxiously await the fate of their manuscripts. The pressure to publish in a timely manner as well as the desire to see one's work in print weigh heavily on authors during the review process. Some time ago, we instituted a system whereby authors are notified within six weeks of submission whether their manuscript has been selected for external review. As a further step towards making our review process author-friendly, we have removed the requirement of exclusive submission for the first in-house review stage. This means that manuscripts may be submitted to multiple journals. However, authors whose manuscripts are to be sent for external review will be notified and required to withdraw their manuscripts from consideration by other journals. We believe that this will go a long way towards facilitating the submission process for authors whilst maintaining our rigorous peer review process.

SMHN and JHHW

In this Issue

The first issue of the new decade opens with a special EJIL Foreword. Whereas each of the first five EJIL Forewords published since 2015 displayed an extensive theoretical analysis written by a distinguished scholar, this year's Foreword presents a comprehensive set of Guiding Principles on Shared Responsibility in International Law, drafted by a group of distinguished scholars – *André Nollkaemper* (co-chair), *Jean d'Aspremont* (co-chair), *Christiane Ahlborn*, *Berenice Boutin*, *Nataša Nedeski* and *Ilias Plakokefalos*. The Principles, which are accompanied by detailed Commentaries, seek to substantiate, supplement and adjust the existing rules on international responsibility of states and international organizations, focusing on questions of shared responsibility. We believe that the guiding principles and commentaries, albeit diverging from the usual format of our Foreword contributions, offer a most valuable advancement of the field of international responsibility. As always, the last issue of the year will include critical reactions to this Foreword: the Afterwords.

In the Articles section, *Ezgi Yildiz* provides a framework for understanding how international courts develop treaty norms. Focusing on the development of the norms embedded in the European Convention on Human Rights by the European Court of Human Rights, Yildiz suggests that the Court has three different complementary characters (arbitrator, entrepreneur and delineator), each of which generates a distinct mode of norm development. We explore her article and her experience in researching and publishing it in an episode of EJIL: Live!

Exploring the work of the European Court of Human Rights from a different perspective, *Tilmann Altwicker* discusses the strategies that the Court employs to contest the universality of international human rights law. *Eyal Benvenisti* and *Doreen Lustig* conclude this section with an alternative historical analysis of the codification of the laws of war in the mid-19th century. Challenging the canonical narrative about the humanitarian sensibilities underlying this process, they argue that the main concern of key European governments that took part in it was to protect themselves from the threat of civil uprisings.

Thereafter, the issue features a Focus on Interpretation and Custom. It begins with *Danae Azaria*, who observes that in recent years the International Law Commission has increasingly engaged with the non-binding interpretation of the international law of treaties. She contends that this practice falls within the Commission's authority, and that it influences the creation, operation and termination of treaties across all fields of international law. *Kristina Daugirdas* argues that international organizations have the capacity to contribute directly to the creation of customary international law. She discusses the possible sources of this capacity and explains the importance of recognizing it. *Orfeas Chasapis Tassinis* discusses the role that interpretation plays in the identification and application of customary international law. This role, he argues, calls us to rethink the inherent plasticity of customary law and the difficulty of individuating its rules. *Jan Klabbers* replies to these three articles by emphasizing the need to acknowledge the political dimensions of international law-making.

This year, 2020, marks the 75th anniversary of the liberation of Europe from the tyranny wielded by National Socialist Germany and the subsequent opening of a new chapter in international law. We commemorate this liberation in *Roaming Charges* and on *The Last Page*, linked by the epitome of hell on earth. *Roaming Charges* portrays a photo taken at the death wall in Auschwitz. In place of our usual poem, *The Last Page* features Theodor W. Adorno's famous dictum in response to this breach of civilization, which has sparked rich and controversial debates ever since.³

In the EJIL: Debate! section, *Ivar Alvik* argues that recent developments in the protection of foreign investors privilege the latter over domestic investors in a manner that undermines the legitimacy of international investment law. He suggests that a more traditional international minimum standard for the treatment of foreign investment could better balance the need to protect foreign investors and the concern for equality between foreign and domestic investors. *Jürgen Kurtz* replies to Alvik by suggesting that a political economy analysis that focuses on the risk of hostile state action may provide justification for privileging foreign investors, at least with respect to some categories of investment.

In *Critical Review of Governance*, *Dai Tamada* analyses the Timor Sea conciliation between Timor-Leste and Australia. Tamada shows how by 'setting aside the parties' legal arguments', the conciliation process led to the successful settlement of a long-standing maritime boundary dispute.

The following contribution is the first in a series of short essays on the occasion of the important *Changing of the Guards* that recently took place in the European Union. With three key figures having completed their mandates in 2019, *Michael Waibel* kicks off this series with an essay on the legacy of former President of the European Central Bank, Mario Draghi.

This issue includes a review essay and three book reviews, emphasizing the continuing relevance of international investment law. In the review essay, *Lorenzo Cotulla* offers a detailed assessment of two recent works on investment contracts – one of which, *Petroleum Contracts and International Law*, was written by the late Rudolf Dolzer, a pioneer of investment law who sadly passed away in early April 2020. Continuing with the investment theme, *Joshua Paine* reviews *The Return of the Home State to Investor-State Disputes* by Rodrigo Polanco, an in-depth study of new trends in treaty-making. Not all is investment, though. *Alina Miron* finds much to agree with in two recent works on maritime delimitation and uses her review to offer a précis of the influence of the International Court of Justice on the law in this core field. Finally, we cover Quinn Slobodian's intellectual history of the rise of neo-liberalism in 20th-century thinking, which *Jan Klabbers* clearly enjoyed, including its engagement with international law.

SMHN and JHHW

³ See Wolfgang Johann, *Das Diktum Adornos* (2018).