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# Editorial

## Editorial: In This Issue; In This Issue – Reviews; The Human ChatGPT – The Use and Abuse of Research Assistants; Professor Francesco Francioni (1942–2024); Vital Statistics: Behind the Numbers

### In This Issue

This issue opens with a Foreword by the late Karen Knop. In 2020, the EJIL Editors-in-Chief invited Professor Knop to write an EJIL Foreword, an annual feature in the Journal designed to give a distinguished author the space to explore the ‘state of the field’ in a specific area of international law. Professor Karen Knop, holder of the Cecil A. Wright Chair at the University of Toronto, was such a distinguished author. She wrote ground-breaking books and articles on self-determination,<sup>1</sup> feminism and international law,<sup>2</sup> cities in international law<sup>3</sup> and foreign relations law.<sup>4</sup> In EJIL, she published ‘Eunomia Is a Woman: Philip Allott and Feminism’<sup>5</sup> and ‘Lorimer’s Private Citizens of the World’.<sup>6</sup> She was a great teacher and enabler of others’ work.

Karen enthusiastically accepted our invitation to write the 2024 Foreword, indicating that she would write on ‘populism, empire and the rise of foreign relations law/implications for international law’.

In September 2022, Karen suddenly died.

Karen did not have the chance to finish the Foreword that she had planned to write for EJIL, but she had written another Foreword: ‘Looking at Portraits’ is her Foreword to the collection edited by Immi Tallgren, *Portraits of Women in International Law: New Names and Forgotten Faces?* (2023). Acting fully in accordance with her theoretical commitments, Karen was a strong supporter of Tallgren’s project, thoroughly and constructively engaging with the draft chapters. After consultation with Karen’s husband, friends, Immi Tallgren and the publisher, Oxford University Press, we therefore thought it fitting to share that Foreword, her final Foreword, with EJIL readers.

<sup>1</sup> K. Knop, *Diversity and Self-Determination in International Law* (2002).

<sup>2</sup> K. Knop (ed.), *Gender and Human Rights* (2004)

<sup>3</sup> Knop, ‘The Hidden City in International Legal Thought’, in H. P. Aust and J. Nijman (eds), *Research Handbook on International Law and Cities* (2021) 442.

<sup>4</sup> Knop, ‘Foreign Relations Law: Comparison as Invention’, in C. Bradley (ed.), *Oxford Handbook of Comparative Foreign Relations Law* (2019) 45.

<sup>5</sup> 16 *European Journal of International Law (EJIL)* (2005) 315.

<sup>6</sup> 27 *EJIL* (2016) 447.

In this issue's Articles section, *Luíza Leão Soares Pereira* and *Fabio Costa Morosini* propose that international law textbooks can be used to map out the discipline and the profession. Looking at Brazilian textbooks, they argue that these works reveal both the particular sensibilities of their authors and the discipline's structural biases. Next, *Artur Simonyan* focuses on the invisible college of post-Soviet Eurasian international lawyers. Simonyan examines how Russia's historical influence in the former Soviet space affects these lawyers' engagement with the field and with current events, including the war in Ukraine. Closing the Articles section, *Andrew Lang* invites international lawyers to revisit late 20th-century neo-liberal global economic governance. Lang argues that technologies of reflexivity offer a better account than their programmatic counterparts, as well as a better reading of the contemporary post-neo-liberal age.

The issue continues with an EJIL: Debate! *Emanuel Castellarin* replies to Joris Larik's article on the United Kingdom's trade continuity agreements, which appeared in issue 34(4). Castellarin cautions against labelling the UK's trade continuity programme as a success for both the UK and the EU. Only future trade agreements that were not first negotiated by the EU can show the UK's true negotiating power, Castellarin argues.

Roaming Charges in this issue presents a theme of universal relevance: bereavement.

The issue's Critical Review of Jurisprudence rubric features two articles. *Fleur van Leeuwen* presents a feminist critique of the case law of the European Court of Human Rights on home births. Van Leeuwen argues that the Court endorses a medicalized view of childbirth and she highlights the Court's blindspots and androcentric assumptions. The second article, by *Ben Czapnik*, asks whether WTO members are required to be consistent when taking measures necessary to protect public morals. Czapnik shows the shortcomings of the Appellate Body's holdings in *Seal Products* and suggests the introduction of consistency testing in WTO dispute settlement.

The journal's ESIL Corner returns in this volume with *Jean d'Aspremont* and *Federica Cristani*'s impressions of the 18th annual conference of the European Society of International Law, which was held in Aix-en-Provence in September 2023. The theme of the conference was 'Is International Law Fair?'. D'Aspremont reflects on what it means for international lawyers to ask this question in 2023. He notes that the discussions at the annual conference oscillated between the 'quaintness' of the question and feelings of revolt that it is even asked in the face of international law's complicity with so much unfairness. For her part, Cristani looks back on discussions on fairness in the International Economic Law Interest Group. She concludes that it is for international economic lawyers to make the impressionistic nature of the concept of fairness more concrete and solid.

The Last Page presents a poem from *Rabindranath Tagore's Gitanjali* collection, for which he was awarded the Nobel Prize for Literature in 1913.

ALB

## In This Issue – Reviews

Two essays begin the review section, one by *Alan Nissel* and another by *Rebecca Mignot-Mahdavi*. Nissel reviews Kathryn Greenman's *State Responsibility and Rebels*:

*The History and Legacy of Protecting Investment Against Revolution*, suggesting that it has ‘tremendous import for the philosophy of international law’ with its postcolonial critique and discussion of a better framework for the law of state responsibility. Mignot-Mahdavi meanwhile explores ‘the complex cartographies’ of global algorithmic governance in her essay on Claudia Aradau and Tobias Blanke’s *Algorithmic Reason: The New Government of Self and Other*, arguing for anti-solutionist and anti-formalist analysis.

We move to Melanie O’Brien’s review of Melinda Rankin’s *De Facto International Prosecutors in a Global Era: With My Own Eyes*, a book that traces three examples of when international criminal law ‘extend[ed] its reach...into the hands of individuals’ – lawyers, witnesses, and survivors.

Swati Srivastava’s book *Hybrid Sovereignty in World Politics* is, according to Jan Klabbers, ‘a thoughtful and intelligent study, compulsory reading for anyone with an interest in sovereignty and the relations between public and private authority’.

Klabbers’ review is followed by one by Anne Saab, who explores the influence of international organizations, such as the Food and Agriculture Organization, on the World Trade Organization’s policies on food security. Saab remarks that Matias E. Margulis’ *Shadow Negotiators: How UN Organizations Shape the Rules of World Trade for Food Security* ‘is a valuable contribution to fervent debates about the so-called “neo-liberal food regime”’.

Finally, Serena Forlati reviews *Identity and Diversity on the International Bench: Who Is the Judge?*, edited by Freya Baetens, describing it as ‘a welcome addition to the literature discussing diversity in international arbitration and adjudication’.

GCL and CJT

## The Human ChatGPT – The Use and Abuse of Research Assistants

Recent meetings of the Advisory Boards of EJIL and I•CON were dedicated, among other issues, to, surprise surprise, the ChatGPT challenge. In the context of law faculties and legal education, one acute problem, as a recent Editorial noted, relates to the possible use of AI by students in exams and, even more acutely, when writing seminar papers.

A different set of problems arises in the context of scholarly publications. How should we deal, we asked ourselves, with submissions to EJIL and I•CON where AI has been used by the author? Some cases are easy enough. We regularly receive submissions that were clearly written by, say, ChatGPT, the quality of which is such that even after only a cursory read they can be consigned to the dustbin. But as the technology develops (and ChatGPT 4.0 is already significantly better than the 3.5 version), and the skill in using prompts intelligently improves, one can well imagine a submission where the use of AI will not be detectable and where the quality is high and would be welcome were it written by a human author.

Some took the view that learned journals are in the business of publishing high-quality scholarship. Consequently, they argued, if a submission passes the

quality test, we should not be concerned by the use of ChatGPT, even in a case where the article was substantially written by AI and the human author did little more than embellish the content. Others, quite forcefully, for reasons which are both obvious and intuitive, took the opposite view. It is, it was argued, simply a different form of plagiarism.

The dilemma is further sharpened by the fact that publication in high-quality peer-reviewed journals plays an important role in a variety of career contexts – academic appointments and promotions, to state the most obvious examples. And since scholarly journals such as EJIL and I•CON receive many more quality submissions than they are able to publish, the selection of an AI-generated submission might lead to injustice and harm to others. No conclusion was reached and we are still in the process of deliberation.

Be all this as it may, in the course of deliberation one member of our Board threw a little verbal hand grenade: How is the use of ChatGPT, he asked, different from the use of research assistants? How indeed?

One difficulty in answering this question is a result of the very different traditions of using research assistants in different jurisdictions.

Here, too, there are two easy cases. For the sake of preserving anonymity, I will not use names in describing the first easy case. This one comes from Germany. A very famous German scholar, respected by all of us, in an earlier stage of their career, included in their publication list a book and a couple of articles which were published under the name of their professor alone, indicating that they were in fact the result of their work too.

The only exceptional thing about this incident is the courage of our colleague in bringing this truth out of the closet. The practice itself, of putting one's name to an article which in large part or even entirely was written by a research assistant, and merely acknowledging, if at all, this 'assistance' in a footnote rather than giving full authorship or co-authorship, is, though diminishing, still quite common in Germany and elsewhere.

I can already hear across the Atlantic the shrieks of protest by my German colleagues. *Ja Ja*. But who are you kidding? I particularly like the defence of 'The voice is Jacob's voice, but the hands are the hands of Esau' (Gen. 27:21-23). 'Those were my ideas, he or she only put them into writing'. Another *Ja Ja*. This may well be true (not always, but not infrequently, both the voice and the hands are those of the hapless research assistant) but, even if so, both names should feature as authors. Easy case.

The other easy case, in my view, is when the research assistant has done the valuable task of, say, 'find me all the cases in which animal rights were discussed by this or that court'. Or, 'prepare for me a bibliography of recent secondary literature on this subject'. Here, a mere thank-you footnote will suffice.

The hard cases lie in that vast grey zone in between those two easy cases. I cannot offer a bright-line rule. But there reaches a point where the help of the research assistant moves from the technical/clerical to the actual development of ideas and formulation of text. One possible way to think of this is as follows: If the input came from a colleague, and not a research assistant, would the expectation be one of

co-authorship? Wherever you may draw the line, grant me that a line does exist somewhere between the second easy case (where a simple thank-you note will suffice) and the first easy case, the crossing of which should result in co-authorship.

A particularly delicate case occurs in the growing field of empirical work. This, to give but one example, often involves the coding of a large number of cases (court cases or other types of 'cases'). This can involve a considerable amount of work by RAs. How and where does one draw the line? My own view is that if the principal investigator designed the research question(s) and formulated and tested the coding scheme, probably the 'manual' work of actual coding by RAs might not justify co-authorship. I put 'manual' in quotes since it is not merely manual: in coding cases, judgment and analytical prowess are indispensable if the coding is to be executed well. It might still not be the kind of creativity which rises to authorship, though it would certainly merit a generous and explicit recognition in the body of the published piece. Still, this is not a hard and fast preference, and a lot will depend on specific circumstances such as, for example, significant revisions to the coding suggested by the RA during their work. Many other examples of these types of hard cases can be experienced and there is no mathematical formula (today we would say algorithm) that can produce easy answers.

In this context I might also mention the opposite type of abuse, that of overreaching research assistants themselves: namely, where any contribution that goes beyond the second easy case forms the basis of a demand for co-authorship. I sympathize with the sentiment, given the ruinous quantitative milieu imposed these days on early-career academics. Claiming co-authorship would result not only in another line in one's publication list but also in the prospect, perhaps, of appearing in prestigious fora and alongside, perhaps, a prestigious senior colleague. But it can still be abuse if the contribution of the research assistance is not such that would merit true authorship. No easy solutions.

One could argue that a best practice would be to discuss *ab initio* with the research assistant the question of co-authorship and be as clear as possible about the prospect, positive or negative. *Patti chiari, amicizia lunga*, as the Italians say. Such a conversation may be useful not only in settling the issue of co-authorship but also more generally in understanding the scope of the assistance to be given.

(A nice Talmudic question concerns the order of the names in a co-authored piece. The convention is that following a strict alphabetical order indicates the equal contribution of all co-authors. By contrast, if the first name mentioned disrupts the alphabetical order, it is an indication that s/he is the principal author. It is not a fully satisfactory solution since it privileges the Zacharias of this world. But what of the Abrahams? Even if they appear first, it will be assumed that the list simply follows the alphabet. We can leave this second-order conundrum to the deliberations of the sages.)

Be this as it may, the reality of academic research is that it is not – and should not be – an industrial process. Research is not predictable. What begins with an assignment for a literature review may go nowhere because the literature review shows that everything has already been said. Or the research assistant may make such sharp

observations in the literature review that one realizes that co-authorship is the way forward, not only in the sense of putting two names under the title but also in the sense of actually developing the arguments and writing together. Again, no easy answers, other than the need for flexibility and reflexivity during the ongoing research and writing process.

Other than that, the only words of wisdom I can offer are that awareness of the issue, transparency with the RAs and ultimately *discernment* in cutting one way or another increase the chance of an equitable solution. Research assistants as human ChatGPTs? No, they are first and finally human.

## Coda

The text below is culled from the Guiding Principles of Good Scientific Work in Public Law prepared by the German Association of Constitutional Law (Vereinigung der Deutschen Staatsrechtslehrer)

....

2. *The publication of another's text [even] with their consent under one's own name ('ghostwriting'), with or without remuneration, is ... scientifically dishonest.*
3. *It is scientifically dishonest for a professor to have their employees draft texts and then publish these under their own name as a single author.*
4. *Any input which makes a substantial intellectual contribution to a publication shall lead to (co-)authorship.*
5. *Mere changes to wording and language do not lead to a loss of authorship by the author of the draft. Whether or not the professor can claim authorship depends on whether they have made a substantial qualitative or quantitative contribution to the draft.*
6. *Only where support by scientific employees is limited to mere assistance such as research, gathering materials, footnoting and similar routine activities shall such support not lead to authorship. In these cases, it is sufficient to note thanks in a footnote.*

JHHW

## Professor Francesco Francioni (1942–2024)

Professor Francesco Francioni, who was Professor of International Law and Human Rights at the European University Institute (EUI) in Florence, Italy, from 2003 to 2012, and Professor of International Law at the University of Siena from 1980 to 2003, passed away in Siena on 2 February 2024. He is survived by his wife, Susan Fisher, and his children Cino and Bianca.

A long-standing member of the Editorial Board of this Journal, Francesco was a pioneering and far-sighted scholar and legal advisor in the field of cultural and environmental heritage. He was in a very real sense a founding figure in this field, having played important roles as a legal advisor to the Italian government in the conferences and meetings organized under the Antarctic treaty system and leading to the successful negotiation (among others) of the Protocol on Environmental Protection to

the Antarctic Treaty (1991). He also served as a member of the Italian national commission to UNESCO, and as President of UNESCO's World Heritage Committee (which nominates sites for World Heritage Status). For all those who knew him, he will be remembered also as a generous and kind person who was ineffably sincere and diplomatic at the same time, and who had a sensitive appreciation of the cultural and natural environment – especially in his native Italy, but also wherever he happened to be.

Francesco was born in Empoli, Tuscany. His father was a textiles and clothes salesman (*rappresentante commerciale*) who worked for an important Tuscan firm and travelled by car all around Italy for his work, frequently with his son Francesco, who deeply enjoyed these trips with his father. Francesco graduated in Law from the University of Florence in 1966. He studied international law with the influential post-war international law scholar (and former resistance fighter) Giuseppe Barile, but did not seem destined for a scholarly career. He was rather interested in pursuing a diplomatic career with the Ministry of Foreign Affairs or, alternatively, in becoming a practising lawyer with an international legal firm. A Fulbright Scholarship to study for an LLM at Harvard in 1967–1968 changed his fate. At Harvard, in addition to reuniting with his girlfriend Susan (a Californian linguist whom he had met in Florence in 1963 and eventually married in 1972), he met Benedetto Conforti, who was completing research for his book *La funzione dell'accordo nel sistema delle Nazioni Unite* in the depths of the Langdell Library. Conforti was at that time Professor of International Law in Siena, but he would go on to be a profoundly influential figure in the Italian international law scene, holding chairs in Padova, Napoli and at the coveted Roma La Sapienza, as well as being elected as a member of the former European Commission of Human Rights, and then judge at the European Court of Human Rights.

Conforti invited Francesco to apply for a post as assistant of international law (a now-abolished tenured position roughly comparable to a Research Fellow) that had been opened by the University of Siena. Francesco successfully competed for the post and, from then on, he adopted Conforti as his 'Maestro' in that distinctive Italian sense which combines veneration, pupillage and integration into a scholarly network of influence (*una Scuola*, which in a way is also a family, *una famiglia*). Working with Conforti led Francesco to Siena and Padova, as well as an academic year teaching law at the National University of Somalia – where one of their students was Abdulqawi Yusuf, a current judge and former President of the International Court of Justice. From 1980 to 2003, Francesco held the chair of International Law at Siena, where he also became Vice-Rector of the University. Those who studied international law in Siena during this time recall Francesco's concerted efforts to 'internationalize' the ancient city-state university's relationships; he was an influential figure in both the Law Faculty and the wider university, shepherding dozens of exchange agreements with foreign universities to signature, and bringing the most notable international lawyers of the time to lecture in Siena. Throughout the 1980s and 1990s, Francesco was a regular visiting faculty member in Alexandria (Egypt), Munich, New Orleans (Louisiana), Austin (Texas), Paris and Oxford.

His pioneering scholarship in the domain of international cultural heritage and environmental law was a product of his 20 years' experience in Italian national delegations to international conferences and meetings, including the Antarctic Treaty

diplomatic conferences. He understood international law, without doubt, as a law produced by sovereign states; but he was equally committed to international law's role as protector and codifier of common interests and public goods; his concern for cultural heritage stemmed from a belief that human communities' cultural experiences and products were an essential dimension of the patrimony of humanity as a whole – even if international law functioned principally through the conduct of states, it could generate consequences and effects that helped crystallize and protect the general interests of humanity as a whole. As President of the World Heritage Committee between 1997 and 1998, he supported World Heritage Status for a number of important sites, including many iconic Italian places, such as the Royal Palace in Caserta, Pompei and Urbino.

In a reflection on the death of his own Maestro, Conforti, Francesco noted that one of the characteristics that defined Conforti as a human being was the 'generosity and optimism which he [Conforti] dedicated to his students'. Students of Francesco experienced such generosity and optimism too. He would regularly mention proudly a new book or success of one his PhD supervisees, and was a reliable source of support and encouragement for those students who encountered personal or professional challenges in completing their studies. He wore his kindness, as he wore his knowledge, quite lightly – Francesco never, ever made you feel that he was doing you a favour by helping you out; graciousness was practised not preached. Despite having been awarded the most significant marks of accomplishment in the world of international law – General Editor of the *Italian Yearbook of International Law* for a long time, President of the Italian Society of International Law, Member of the Institute of International Law and Lecturer at the summer courses of the Hague Academy of International Law – Francesco remained curious and open-minded about newer intellectual currents in his field. Memorably, one of his last seminars at the EUI concerned 'Science Fiction and International Law', which was co-taught with Professor Orna Ben-Naftali.

After his retirement from the EUI in 2012, he was appointed by the Italian government as judge *ad hoc* at the International Tribunal for the Law of the Sea (ITLOS) and was one of five members of the arbitral tribunal tasked with adjudicating a high-profile dispute between Italy and India concerning the maritime incident that led to the death of two Indian fisherman, allegedly at the hands of two Italian marines (the *Enrica Lexie* case). He is widely acknowledged as the mastermind behind the decision of the tribunal which found that Italy had jurisdiction to prosecute the accused marines (hence the Italian press designation of Francioni as 'the man who saved the marines'). At that time, he continued to supervise remaining PhD students at the EUI, and to teach at LUISS University in Rome as a visiting Professor. During the *vendemmia*, Francesco could be found picking and crushing grapes at a small vineyard he maintained near Siena in his beloved Chianti region, and bottling the resultant wine – that is, doing what he in fact told colleagues to do: be a peasant (*un contadino*). His passing is a great loss to our communities of scholarship, and to all those who experienced his mentorship, friendship and intellectual generosity.

Nehal Bhuta, University of Edinburgh, UK

Riccardo Pavoni, University of Siena, Italy

Valentina Spiga, European University Institute, Florence, Italy



## Vital Statistics: Behind the Numbers

Anyone who is a regular reader of EJIL will know that we publish statistics each year on the submissions we receive as well as on articles accepted and published. We consider this to be part of our responsibility as Journal Editors – to keep a keen eye on the ‘who and where’ of authors submitting to EJIL and to inform our readers and authors accordingly. The tables below tell a clear story, one that is in fact not very different from those of recent years: the majority of our authors are based in European countries; the majority do not speak English as their first language; the majority, though with a smaller gap than in the past, are male authors; and in each case the majority increases for the percentages of accepted and published articles.

Yet, there is more to this story. What we do not see in these neat rows of numbers is the actual process of calculating the figures: the labour involved, the messy or incomplete data we work with on our relatively basic database, as well as difficult questions concerning criteria and categories. For the sake of transparency regarding our statistics, let us take a look at some of the hurdles we cross in drawing up the numbers.

The submissions database we rely on, OUP’s *ScholarOne*, provides basic, but incomplete, information on submissions received. Submissions list only the corresponding author. We manually count all the authors of multi-authored pieces for *accepted* and *published* articles, but the volume of manuscripts we receive each year makes it impossible to count all authors for the *submissions* category.

Our new age of artificial intelligence presents additional problems. We have found a not insignificant number of clearly AI-generated manuscripts appearing in our submissions database. The authors did not appear to exist or did not respond. We chose to exclude them from our figures as they came from a specific region and would have notably skewed our figures.

Regional origin is a factor that we are interested in but that poses definitional challenges. Academic life, and especially the international law academy, has for many become international: first degree in one country, a second in another, a first job in yet another and so on. Our OUP database asks an optional question about the submitter’s nationality, but many authors do not respond. For our statistics on regional origin, we instead use the author’s reported academic or professional affiliation. [Table 1](#) is therefore now explicitly called Region of Authors’ Affiliation, rather than Region of Origin as we had in the past. Thus, while the statistic of 0 articles by authors with their primary academic affiliation in South America published in 2023 remains depressing (and we can promise that 2024 will be at least a bit better), the figures are more optimistic if we look in the table of contents of EJIL 2023 for authors who enjoyed at least part of their legal education in South America.

Similarly, for the linguistic origin we look at the author’s affiliation, not the languages with which they grew up or that they studied (see [Table 2](#)). A Chinese author in the UK would therefore be counted as English-speaking, whilst an Australian in Japan would be included as non-English-speaking.

Gender has its own set of problems (see [Table 3](#)). *ScholarOne* offers Male/Female as an optional question, and again, many authors do not respond. We recognize that the

**Table 1:** Region of authors' affiliation (in percentages of total)

	<b>All submissions*</b>	<b>Accepted articles**</b>	<b>Published articles (often screened and accepted in the previous year)**</b>
Europe	53	62	66
Oceania	6	9	10
Africa	2	2	2
Asia	30	13	14
South America	2	2	0
North America	7	12	8

\* Number of submissions; \*\* Number of authors

**Table 2:** Linguistic origin (in percentages of total)

	<b>All submissions*</b>	<b>Accepted articles**</b>	<b>Published articles (often screened and accepted in the previous year)**</b>
English-speaking countries	34	34	35
Non-English-speaking countries	66	66	65

\* Number of submissions; \*\* Number of authors

**Table 3:** Gender (in percentages of total)

	<b>All submissions**</b>	<b>Accepted articles**</b>	<b>Published articles (often screened and accepted in the previous year)**</b>
Male	58	62	60
Female	42	38	40

\*\* Number of authors

binary category of Male/Female no longer responds to many people's sense of identity and we will be requesting a third category for the gender question on our database.

A final note: just over 90% of the articles published in the 2023 volume of EJIL, accounting for 85% of published pages, were by unsolicited authors. The EJIL Editors-in-Chief commission very few articles – the annual Foreword article and corresponding Afterword pieces, and occasionally Debate Replies or Legal/Illegal articles. For the most part, therefore, we publish articles received through the submission system.

These statistics, with all their flaws and shortcomings, provide a picture of the range of authors submitting to and publishing in EJIL. Be assured that none of this information – gender, regional base or language – plays any part in the peer review process. If you think that tracing trends in submissions to the journal is important, then please also answer the optional questions when you submit your next article – we look forward to reading it.

*AB, SMHN and JHHW*