
Editorial

Continent in Crisis; There is Chutzpah and Then There is David Cameron; On My Way Out – Advice to Young Scholars III: Edited Books; From the Editor’s Mailbag; Conflicts of Interest in the Editorial Process; In this Issue

I have invited Jan Klabbers, member of our Scientific Advisory Board, to write a Guest Editorial for this issue.

Continent in Crisis

In the early 1990s, when many were dancing in the streets to celebrate the fall of the Berlin Wall and the long-awaited arrival of the end of history in the form of a liberal victory, historian Mark Mazower was working on a book that would caution some sobriety.¹ The victory of liberalism, he wrote, had not been inevitable, nor due to its inner charms and attractions; it had, instead, been hard-won, locked in deadly battle with the forces of totalitarianism both on the left and the right. The fact that liberal democracy came out victorious owed as much to the failings, structural and strategic, of fascism and communism as to liberalism’s own virtues. If anything, so Mazower demonstrated, Europe has always been a rich and fertile soil for totalitarian movements; the fact that these were momentarily defeated should not result in too much complacency and self-congratulations about European values and all that.

Recent events demonstrate painfully just how correct Mazower’s assessment was. While communism remains largely dead and buried (unless one counts the surprise emergence of left-wing politicians in the UK and even the US as manifestations of a resurgence), Euro-fascism is clearly on the rise again. This is visible in Hungary and Poland, where the Rule of Law has been all but abandoned or, in an alternative narrative, cynically deployed so as to undermine itself. This is visible in much of the Balkans, with governments building fences and walls to keep out people fleeing persecution and destitution. This is visible in the streets of Finland, where self-appointed vigilantes patrol the streets at night in order to fight largely imaginary crimes, and find considerable encouragement in the speech by which the President inaugurated the parliamentary year in 2016. This is visible in Denmark, which enacts laws to strip poor people of their belongings so as to pay for being treated unkindly. This is visible in the streets of

¹ M. Mazower, *Dark Continent: Europe’s Twentieth Century* (1998).

Germany and the Netherlands, with Pegida demonstrations demanding attention. This is visible in Ukraine, where the streets are filled with Russian militias. This is visible in the United Kingdom's rediscovered isolationism mixed with delusions of grandeur. This is visible, in short, all over Europe: the triumph of liberal democracy is quickly giving way to the triumph of what can only be called some kind of fascism. And it is not limited to Europe, if the presidential campaigning in the US is anything to go by: who would have thought, even a few months ago, that a vulgar loudmouth such as Donald Trump, not hindered by any trait of common decency, would stand any chance of success?

So what do the international lawyers do? Well, we talk a lot. We talk about the responsibility to protect, which is a great idea that, somehow, does not seem to include a responsibility to protect refugees, or poor people generally. We talk about globalization, which is a lot of fun for us and our peers (bankers, businessmen), jetting across the globe but, one suspects, is a lot less fun for the immigrants slaving away at building football stadiums in Qatar, or for nimble-fingered factory workers across South East Asia. We talk about human rights, especially about the rights of access to justice and the protection of property of wealthy businessmen rather than any putative rights of poor people not to be subject to austerity measures or lose the right to work – not even the right to a paid holiday that was still mentioned, with admirable optimism, in the Universal Declaration. We talk a great deal about investment protection and the expected benefits of megalomaniac trade agreements, under the happy slogan that 'a lifting tide raises all boats'. Even if that were true for all parties to those agreements (which is debatable), it would come at the expense of third parties, not coincidentally perhaps the very same third parties whose citizens are now fleeing rampant poverty and destitution, if not outright violence. And we talk a lot about such institutions as the ICC, fighting the extreme manifestations of political crime without doing anything about either the underlying causes or the more mundane international crimes of human trafficking and slavery, or the arms trade. Oh wait, let me rephrase this: we did talk a little about the arms trade on the occasion of the conclusion of the wonderful Arms Trade Treaty back in 2013. And just for the record: the treaty has actually entered into force (no, I had not noticed either). As so often, it will have to do without Russia, China, India and Pakistan, while the US and Israel are signatories but have not ratified. But fear not: much of Western Europe has joined, and the good news (truly wonderful, blissful news) is that even Andorra has signed, although it has yet to ratify. Soon the world will be a better place.

But perhaps it is a good thing that we are only talking, and not much more, for cynics might suggest that the law has little to offer. If clever Hungarians with decent legal training can use the Rule of Law so as to undermine the Rule of Law, then perhaps the lawyers cannot boast any special understanding of the good life. If Estonian prosecutors put novelist Kaur Kender on trial (and trial behind closed doors, in a wonderfully retrograde move that Stalin would surely admire) for having an imaginary character engage in pedophilia and thus accuse the novelist of child pornography, then either the law or the prosecutor is a bit unclear.² And if Danish children's rights activist Lisbeth Zornig can be accused of human trafficking for having given a ride to a family of Syrian refugees, with the law seemingly unable to distinguish between acts of

² <http://news.err.ee/v/politics/e633db33-f593-4e7d-94b2-5d43faa8754f/trial-of-kaur-kender-on-child-porn-charges-to-be-partially-closed-to-the-public> (last visited 14 June 2016).

compassion and acts of greed, then yes, maybe all that rests is silence.³ And yes, then maybe it is better that large numbers of international lawyers spend huge amounts of intellectual energy blogging about whether nasty individuals from nasty countries can perhaps, in the future, if caught, and if extradited, and if evidence can be gathered, and if complementarity can be overcome, and if the prosecutor has the required courage, whether such a nasty individual can maybe, perhaps, one day be prosecuted before the ICC. By contrast to trials behind closed doors and punishing empathy, this seems a fairly harmless parlour game. Still, Estonia and Denmark, lest we forget, are member states of the EU, that most wonderful of inventions ‘founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights’ – the language stems from Article 2 of the Treaty on European Union, and if that were not enough, there are plenty of lofty human rights references elsewhere in the TEU – enough to make one wonder how the EU’s member states can condone trials behind closed doors (and about freedom of expression, for crying out loud) or punish their citizens for helping out the poor and dispossessed.

And then there is Brexit – the United Kingdom is intent on leaving the EU, for all the wrong reasons. I am writing this a few days after the British referendum, when everything (literally everything) is still wrapped in layers of uncertainty. It is still uncertain when – or actually even whether – the British government – or what’s left of it – will invoke Article 50 of the TEU. Since that has never happened before, it is uncertain what will happen when the UK does. It is uncertain how the EU and its leaders will respond, and whether the initial anger and vengeance noticeable after the referendum will give way to cooler and perhaps more accommodating heads. And it is uncertain whether other member states might be tempted to follow suit. Apparently, part of the French population is keen on leaving (the right-wing, xenophobic part), as is part of the Dutch population – or maybe it is just a few right-wing, xenophobic politicians who are keen on leaving, and keen on tapping into general misery and alienation with a view to gaining some populist brownie points and realizing their own personal ambitions. So things are a bit unclear, as is indicated also by the plunging of stock markets and the rush by Britons to acquire an additional EU nationality.

A couple of things though seem reasonably clear. One is, that including a withdrawal clause in a treaty such as the TEU is asking for trouble. Obviously, this is something the founding fathers of the League of Nations also found out, with Germany and Japan making a quick exit after their domestic ambitions were no longer deemed compatible with the simple ambition of the League to keep the peace. Such an exit can never be prohibited (and it would be wrong even to try), but including a withdrawal clause makes it all too tempting to actually withdraw. Here the law of the possible applies: if a facility is created, it will sooner or later be used – and often enough for all the wrong reasons. Those of us who have ever sat through a committee meeting that in advance was limited to two hours will know the feeling: reserve two hours for a meeting, and it will last the full two hours, even if the business can be done in 20 minutes.

³ <https://www.theguardian.com/world/2016/mar/11/danish-childrens-rights-activist-lisbeth-zornig-people-trafficking> (visited 14 June 2016).

What seems also reasonably clear is that Britain is unlikely to be better off as a result, by whatever standard. Economically it is difficult to think of this as progress, especially if Japanese companies relocate their manufacturing plants with a view to access to the internal market, and London's financiers do the same. It will lose its influence on formal EU decision-making, and that influence is considerable – those who regularly attend EU working group meetings will confirm that the UK is quite effective in obstructing any proposal that interferes with neo-liberal market orthodoxies. Of course, it will retain its permanent seat on the Security Council, but one wonders whether this is not part of the UK's problem: it constantly feeds the delusions of grandeur that are unmatched by any concrete achievements, in much the same way that North Korea's possession of nuclear weapons may tempt it to try to punch above its weight (and no, the analogy is not accidental). And to make the spectacle even more compelling: if Brexit was Boris Johnson's bid for national greatness, leading naturally to Tory leadership and a prime ministerial vacancy, to Churchill 2.0, then it has unravelled at unparalleled speed. Brexit would make some sense if the UK truly was more than a middling power, and could act so to preserve a balance of power on the continent and in the world at large – and one can only presume that this is the geopolitical fiction driving some Brexiteers, but fiction it is.

In the end, though, Brexit might be a blessing for the EU, which can no longer be held hostage to British whims and free market orthodoxies. While France and Germany have enough problems of their own, a shifting of the centre of gravity in their direction may help provide the impetus for a more democratic and, whisper it, more social European Union. It is problematic to draw all too facile lessons from history, but De Gaulle may have had a point when he refused British applications for EU membership in the 1960s precisely because he feared British accession would diffuse French-German leadership. Of course, the EU of 2016 is not the same animal that the UK joined in 1973, and perhaps too much has gone wrong to imagine that the EU might have another shot at reforming itself in more democratic and social directions. As someone once quipped: European integration is a great good – too bad it's left to the EU. On the other hand, without the UK, the EU might have a better chance than ever at reforming itself.

Jan Klabbers

There is Chutzpah and Then There is David Cameron

It is hard to translate the Yiddish word Chutzpah. Cheek doesn't quite capture it. 'What a cheek' is not the same as 'What Chutzpah'. Chutzpah involves a certain brazenness. 'What Chutzpah' is usually associated with a rubbing of the eyes or a shake of the head in disbelief. Even a kind of perverse admiration. The classical example of Chutzpah is the son who kills his mother and father and then turns to the judge and pleads: Mercy, I'm an orphan.

Cameron has taken Chutzpah to new heights.

A good place to start would be in the final weeks of the campaign when Cameron's refrain was 'Brits don't Quit!' Rub your eyes – this from the Brit who just months earlier had presented his 'either we get this and this and that or, well yes, we quit'.

Takes some nerve, does it not? Of course to have any credibility in his pre-referendum Brussels negotiations he would have to sell himself and his country as ready to quit.

You would think that in playing against the grain of 'Brits don't quit' there would have to be something huge at stake. You may just remember the weeks that became months when the world and its sister were waiting for him to present his list of demands. You will certainly not have forgotten the disdainful disbelief from all and sundry when he finally presented his Potage of Lentils – that thin gruel of demands for which he was willing to gamble the future of the UK membership of the European Union and much more.

It was also an insult to one's political intelligence. As a ploy to address internal party politics – the real reason behind the whole unfortunate manoeuvre – did he really believe that even if his demands were met in full (and they mostly were) this would keep the wolves at bay? Even more damning in my view, it was clear that Cameron never grasped the serious problems of the European construct which, if one were to use the 'nuclear option' of threatening to quit, could and perhaps should have been raised.

One issue in his list of demands did not appear trivial. So a word about the immigration item – no small measure of Chutzpah here too. Of course the Union had nothing whatsoever to do with the long-term rise in migrant numbers from non-EU countries. And not being part of Schengen, the UK did not have to face one of the trickiest aspects of the intra-Schengen dilemma. (Merkel, in a conversation with Renzi, is reputed to have praised the efficiency of the Italian railway system...). But as one surely recalls, it was the decision of the UK, an excellent decision on many fronts, not to avail itself of a transitional period in accepting migrants from the 'new' member states. You open your gates – and then you squeal – the Barbarians are here? Mercy, I'm an orphan ...

It does not end here. Having presented his thin gruel, it was not surprising that he essentially obtained that which he requested, though how he was to sell this to the general electorate was anyone's guess. At this point, having earlier argued that if the UK did not receive its request it would quit, he now had to change his tune and predict brimstone and fire, ashes and embers were it actually to quit. But if this were the fate awaiting Brexit, how to explain his earlier negotiating stance in Brussels?

But there was more to come. Having lost the campaign, it became in short order clear not only that there was no well thought out road map for Brexit but that in fact there had been no cost-benefit analysis or serious risk assessment – not least the threat to the integrity of the UK itself – prior to engaging in the referendum folly.

To cap it all was his 'principled' resignation, leaving others to deal with the mess he created. In this last respect he of course is not alone in that shameful corner.

There is Chutzpah and then there is David Cameron, former Prime Minister of Little England.

On My Way Out – Advice to Young Scholars III: Edited Books

I have most certainly reached the final phase of my academic and professional career and as I look back I want to offer, for what it is worth, some dos and don'ts on different topics to younger scholars in the early phases of theirs. This is the third instalment

and it is one in which, even more than my earlier instalments, I look back ruefully and in St Augustine fashion offer a ‘don’t do what I did...’ set of suggestions.

A more appropriate title would have been *Unedited Books* and the crux of my advice is – proceed with caution, avoid if at all possible.

The routine is well-known and well-practised. You receive an invitation to present a paper at some conference. You accept (see below). You may adapt something you have already written or something that you are working on which is in some way connected. It is often not exactly what the conveners had asked for or had in mind, but perhaps close enough so as not to have to reject the invitation. The conveners are often accomplices in this little approximation. They are committed to the conference; it is often part of some grant they have received. Almost always you are pressed for time – after all it is not as if these invitations arrive when you are sitting back, twiddling your thumbs and looking for things to do. In general they are disruptive of your flow of work. So the result is not as good as it might have been. Sounds familiar?

You attend the conference. It shows. The papers presented are of very variable quality and relevance. There is the usual conference overload so that the habitual 10–15 minute ‘commentator’ input may be interesting but of limited value to your paper. The general (‘unfortunately we only have xx minutes for questions’) discussion is even less so – how many actually read the papers (which not infrequently arrive two days before the conference)? Still sounds familiar?

At the end of the conference the conveners remind participants of the publication plans. More often than not they already have an agreement, even a contract, with the publishers. Typically one is given a deadline for the final version of the paper. How much work is done on the draft presented at the conference? It varies, of course, but in general not much. Crossing T’s and dotting I’s. One is already busy preparing the next paper for the next conference. Now we arrive at the crux of the problem. How often does one receive detailed editorial comments from the ‘Editors’ on one’s final submission? The sad answer is – rarely. And even when one does they are all too often of a tentative and even perfunctory nature. How often have you, as editor – hand on your heart – sent out such? The fiction is that the conference, with the commentators and discussion, would have served that editorial function. It is a fiction.

The publisher is meant to act as a quality brake. Even those who have a referee system usually end up with an overall quality assessment, but not with serious editorial input to the individual papers. Occasionally a paper or two are nixed, but that too is more an exception than a rule. There is copyediting of variable (very variable) quality. This is true even for many of the most illustrious publishers in the Anglo-American world and certainly true for the European continental publishers who rely entirely on the book editors.

The editors will typically write an Introduction that, more often than not, is a reworking of the Mission Statement of the conference, with the addition of a road map giving a synoptic capsule of the contributions. The classical Introduction, which uses the papers in the book for the purposes of writing a serious Introduction, pulling threads together and producing a major contribution that enhances the overall added value of the contribution, is a rarity. Still sounds familiar?

The book is then published with an enticing title and on occasion wonderful artwork. More often there is ‘programmatically artwork’: flags, a globe, whatever. The publishers assess the captive market and act accordingly. The print runs are small, the price

typically exorbitant and in any event unattractive for individual purchase. It is common that the conveners have budgeted a subsidy to the publishers. An expensive cemetery – rightly so. If you are lucky, the book may be reviewed. And if you are even luckier, the review will be more than, well, a rehashed version of the ‘Introduction’ and road map.

Am I exaggerating? Yes, I am. Am I that far from the truth? No, I do not think so. And sure, there are exceptions – sure, the book you edited, the book to which you contributed. But these are exceptions.

To judge from the *EJIL* and *I-CON* mailbags, far more ‘edited books’ are published in our field than single or double-authored monographs. It’s a bit of a mystery, since so many of them are hardly ever read, certainly not cover to cover. Do a reality check with your own reading habits over, say, the last year. I am reasonably confident that you have bought hardly any, and read, if any, not many more. Even if I were to allow reading just a handful of papers rather than the whole edited book, I am sure the results would not be appreciably different.

In preparing this instalment of my Advice to Young Scholars I recently conducted a little wholly unscientific survey. In relation to the six edited books I surveyed even some of the contributors to the book had not read all the contributions of their fellow authors. And I harbour the suspicion that in some cases, especially with those heavy tomes such as *Festschriften*, where everybody since the author’s Bar Mitzvah has been invited to contribute (and the honoree supposedly does not know of this wonderful surprise being prepared by his or her faithful assistants), not only do the authors not read the other contributions, even the editors, and I suspect the honoree him or herself, don’t get much beyond the table of contents.

I can understand the publishers – their business plan calls for loads of these tomes that each produce a modest profit, and which all adds up at the end of the year. But what about us? Why do we continue to engage in this scholarly farce, which is all the more mysterious since as far as prestige or kudos is concerned, rarely does one enjoy much of either of these, not by being the ‘Editor’ of a book nor for publishing therein.

I can think of many explanations, some of which are not mutually exclusive and which I present in no particular order.

So why do people contribute?

- You get a trip to somewhere – hopefully beautiful, sometimes exotic – where your paper will be presented as part of a workshop/conference. Sometimes these conferences are even interesting. One learns.
- There may be some interesting people to meet.
- There is not always a workshop or conference involved. Sometimes you do it because a good colleague or friend has asked you, pleaded with you and you do it as a favour. Other times it is someone ‘important’ who does the asking and you are ‘honoured’ at having been asked.
- Sometimes you look at the other contributors (or would-be contributors) and think ‘if they are there, how can I not be there?’ or some variant on this theme. In these cases it is even less likely you will read with attention the other contributions – the book typically arrives a year or more after the deadline for submission – your agenda has moved on.

- Oftentimes it is just so easy to say yes because you already have a ready-made paper that you have already posted on SSRN and that will just require some cosmetic retouching – so the whole thing becomes a boondoggle.
- Alternatively, it is easy to say yes because the deadline is a very long time ahead. If the deadline were, say, two months from the time of request you would probably say no, but lo and behold, even in the first instance, you actually get to the writing not more than two months before the deadline.
- Occasionally it is a serious project with serious people, which actually interests you – and maybe the book and your piece will draw attention, be read, discussed and add to the conversation.

What about the editors of such books? Why do they go down this road, the results of which are so often of so little gravity at all?

Oftentimes the edited book is the result of a workshop, conference or some such event, which is part of some funded ‘research project’ – yet another instance of the corrupting effect that money has wrought on the academic vocation. All too often these ‘research projects’ are nothing much more than a good, or not so good, idea or theme that is more or less worth exploring, and on which a bunch of scholars are invited to contribute papers which are then presented at the conference for the results of which, see above.

Indeed, the ‘barriers to entry’ of such publishing ventures are usually quite low. Once the theme is set, the planning consists of trying to think of the persons who will be invited and ensure their participation. The mission statement is often cursory and generic – most times a contribution to a subtheme within the general framework. The result is a potpourri of pieces of different lengths and quality and only tenuous connectivity.

So what is my advice for young scholars in the face of this rather demoralizing phenomenon?

Invitations to participate are often tempting: the company your piece will be in; the prestige of the editors, the flattery of being invited, the general excitement (for what it is) of travelling to a conference or workshop somewhere with the attendant accoutrements (the dinner, etc). There are several costs, the most important being the opportunity cost. It will distract you from your own sovereignly set research agenda. You pay here a double price: pieces written for these events and the ensuing books are often hurried and recycled and hence unsatisfying, adding little to the field (and to your reputation). The saving grace is that they are, as mentioned above, hardly ever read. But then, why bother? More painfully, since research, thinking and writing time as well as mental energy are our most precious and scarce resource, it is not only the forgettable paper you prepare that suffers, but the more important piece of work you are working on.

I know how difficult it can be to say No. I also know how easy it is to rationalize this oftentimes irrational behaviour. The obvious solution is Aristotelian or Maimonidean – exercise good measure; ration yourself; be rigorous about it.

When it comes to editing a book, the best advice is to avoid the dubious honour and work. Still, I want to offer some advice as regards successful edited books, which should and often do get read. If you are to edit a book try and follow good practice in this respect.

- Aim for a focused overall theme and a tight and ordered table of contents. This will make the resulting book not only interesting but indispensable in its systematic coverage of the theme.
- Invest in the invitation. Not simply the overall mission and the subject you wish the author to contribute, but provide an individualized description of what you expect the author to cover. There can be some overall reflection pieces but this must be part of your plan.
- 'Big names' are far more difficult to control, far less likely to pay attention to your requests and suggestions and far more difficult to nix if their contribution is not up to scratch. Keep this in mind.
- Workshops are better than conferences if you have an edited book in mind. But make sure it is a veritable Workshop – with real time to 'workshop' the contributions, with commentary on content and form. Make sure that commentators do not use the occasion simply to present their ideas, but take their task with the seriousness of a good journal referee. Insist that they provide the author with a detailed written comment on their paper.
- Manage the expectations of your contributors, starting with the letter of invitation. Describe the planned editorial process and prepare them to expect detailed commentary and to be ready to respond to such – just as they would when submitting a piece to a journal.
- It is bad form to edit a book and not to include within it your own contribution. But consider the Introduction as your principal intellectual contribution, in some ways, the *raison d'être*, the justification for the entire project. It should not be just, or above all, a summary of the contributions but the proof that the whole is greater than the sum of the parts. Unlike your contributors, you are the one who has the opportunity to deal with the whole, to benefit intellectually from the range of individual contributions. A good introduction should be able to stand – with somewhat different framing – as a major contribution in its own right.

All this sounds like hard work. It is. It is rarely done, but that is your opportunity. If you do it, do it right.

From the Editor's Mailbag

The following are two letters received from Claus-Dieter Ehlermann and Robert Howse respectively.

I am writing to you as Editor of the European Journal of International Law about the recent article by Robert Howse, 'The World Trade Organization 20 Years On: Global Governance by Judiciary' in the *EJIL*, Volume 27, No. 1 (2016). At page 41, Professor Howse devotes a paragraph to the resignation of Debra Steger, the first Director of the Appellate Body Secretariat, in late March 2001.

As Chair of the Appellate Body at that time, I would like to offer some facts to avoid misunderstandings.

First, as WTO Director of the Information and Media Relations Division, Keith Rockwell, said at the time, Professor Steger resigned for personal reasons. Second, the Appellate Body Members have always held her in the highest respect, she has always been very loyal and respectful to us, and we remain very close friends to this day. Third, there was absolutely no linkage whatsoever to the *EC-Asbestos* amicus brief issue. All seven Appellate Body Members and Professor Steger were in complete agreement on this issue and case all the way through.

C-D.E.

We should all be grateful to Claus-Dieter Ehlermann, former Member of the WTO Appellate Body, and one of its original Members, for clearing the air concerning the Appellate Body's relationship with its Secretariat, and particularly the head Debra Steger, during the turbulent formative years that were marked by, inter alia, the controversy over amicus curiae briefs. I have always had excellent amicable professional relations with both Dr. Ehlermann and his former Appellate Body colleagues, as well as with Ms. Steger; given my high esteem for all involved it is comforting to be assured that the controversy in question did not in any way test or strain a vital working relationship that was very likely crucial to the Appellate Body's early success as a true trade court.

R.H.

Conflicts of Interest in the Editorial Process

EJIL encourages the submission of articles that challenge received knowledge and subject institutions of the international legal order to critical scrutiny. Inevitably, this may result in conflicts of interest in the editorial process. Members of the Board of Editors are not remote from the life of international law. They write articles and books, act in cases, serve on courts and tribunals. From time to time we receive a submission which may implicate such: be critical of a book or article written by a Member of the Board, relate favourably or otherwise to a case decided by a Member of the board or in the process of being decided, etc. Our standard practice when such a conflict of interest comes to our attention is immediately to recuse the Member in question from any editorial decision pertaining to the item concerned.

Likewise, if someone writes on a case in our Critical Review of Jurisprudence section we would normally not accept such from one of the counsel in the case. Where dealing with such a case is part of a larger piece, we expect full disclosure to the reader.

Book reviewers are asked to recuse themselves if there is a conflict of interest such as a relationship of close friendship or enmity.

To do otherwise could create harm not only to the reputation of the Journal but to the authors concerned and to sitting judges or arbitrators where the reader or their brethren might get the erroneous impression that they were in any way implicated in a decision to publish or not to publish. If the Editor-in-Chief is concerned, the matter and the decision is handled by another Member of the Board.

Members of the Board get no discounts in publishing learned articles. Their submissions are sent, if they pass screening, to anonymous peer reviewers as anyone else and there have been not a few cases where submissions by Members of the Board have been rejected.

As to content, we only edit transgressions of good taste. I can recall one occasion where I intervened, in consultation with the author, in an article critical of a piece written by an Editor to remove a word which I found gratuitously offensive, but I regarded that as part of our normal duty and such a word would have been removed regardless of the identity of its target. Both at *EJIL* and *EJIL: Talk* we insist on a sober tone and in more than one case we have removed posts which have transgressed the line of 'fit to print'. On the other hand, as you will all know, when we think a critical submission is neither libelous nor crossing the line of sober expression we are willing to go very far to protect academic freedom and freedom of expression.

In all delicate cases of this nature, we always contact the author, explain our position and seek an agreed solution.

In this Issue

This issue opens with a pair of articles addressing aspects of human rights protection in the European Union. In a compelling critique of the CJEU's adverse Opinion on the EU's accession to the European Convention on Human Rights, Turkuler Isiksel argues that the roots of the Court's Opinion lie in an attitude of 'European exceptionalism', that institutional accountability results in the better protection for human rights, and that this applies with equal force to the EU legal order itself. Nora Markard then examines the EU's practice of outsourcing its border controls, presenting a forceful argument that the involvement of third countries in this regard does not exempt the EU from international responsibility in relation to the law of the sea and the right to leave.

The next three articles in this issue investigate the intersection of international law and politics in several areas. Michal Saliternik argues that the introduction of procedural justice norms to peace negotiations will remedy representation deficits and enhance the success of such processes. Armin Steinbach explores the different analytical logics underpinning rational choice and behavioural economics, by comparing these approaches in their application to non-consensual forms of cooperation in international law. And Daniel Augenstein considers the relationship between the localization of the politics of human rights to sovereignty structures in global resource exploitation.

This issue features another rich selection of scholarship in our *New Voices* section, which brings together some of the most notable pieces from the Fourth Annual Junior Faculty Forum for International Law. Surabhi Ranganathan provides a critical account of two key concepts which shape the regulatory discourse on the global commons — 'tragedy of the commons' and 'the common heritage of mankind' — with a focus on the backgrounds and legacies of the speech-acts that constituted their initial public articulations. Deborah Whitehall excavates Rosa Luxemburg's early writings on the right of peoples to self-determination, thereby offering an alternative starting point from which to trace the emergence of that principle, and perhaps also a different view on its future. Drawing together the practice and trends of 20 jurisdictions, Philippa Webb analyses a new human rights dilemma: the immunity of states, diplomats and international organizations for abuses that occur in the employment context. Maria Varaki considers the principle of prosecutorial discretion in relation to the International Criminal Court and proposes an alternative policy, emphasizing the relationship between this principle and the perception of the Court's legitimacy.

Finally, Arman Sarvarian critically examines the project of codifying state succession practice through the cases of South Sudan and Scotland.

Roaming Charges in this issue features a photograph entitled Places of Strife: The Graffiti Wall by Tahrir Square, Cairo.

In this issue's *Critical Review of International Jurisprudence*, Miles Jackson brings us back to the European Convention on Human Rights, exploring its applicability to states' extraterritorial complicity in torture and advocating measures to ensure that cases of state complicity are captured under the Convention.

To conclude this issue, *The Last Page* presents a poem by Stewart Manley, entitled Scenes from a Failed Revolution.

JHHW