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Introduction: LJIL in the Age of Cyberspace

LARISSA VAN DEN HERIK*

1. INTRODUCING THE SILVER JUBILEE

In 2012, the *Leiden Journal of International Law* (LJIL) celebrates its silver jubilee. Such a milestone calls for a brief sketch of LJIL's life and development over the past quarter of a century. This editorial accordingly narrates how LJIL grew from a modest student-run journal to establishing itself as a respected participant in the international academic arena. It is premised on the idea that LJIL's professionalization process and the gradual formation of a distinct identity in the field may be of interest to our entire epistemic community and those interested in the dynamics of the dissemination of scholarly ideas. Eventually, this editorial engages with some of the greatest challenges with which LJIL – as well as other actors in scholarly publishing – will most likely be confronted in the years to come.

2. THE *LEIDEN JOURNAL OF INTERNATIONAL LAW*: FROM BIRTH TO MATURITY

LJIL was born in May 1988. It started out as a student-run journal published in-house by the LJIL Foundation. The publication was made possible by support from the Leiden Law School and the Leiden University Fund as well as donations by law firms and companies. Under this simple business model, LJIL began its life as a journal made *by students for students*. In the editorial of the very first LJIL issue, the student editors expressed the hope that student contributions would form the nucleus of each issue.[1] The youthful and innocent setting characterized many aspects of LJIL's early life. LJIL's first editors were inspired by a sincere – perhaps slightly ingenuous – faith in international law and its capacity to improve the world. They articulated the wish that LJIL would 'promote the understanding of the principles and purposes of international law'.[2]

Interestingly, a subsequent editorial introduced an aspiration for dialogue as an additional element of LJIL's mission. The editors voiced their intention to have LJIL function as 'a forum for . . . differing opinions'.[3] They were keen on transforming LJIL into an academic agora where experts and students could meet and exchange

* Prof. Dr, Professor of Public International Law at the Grotius Centre for International Legal Studies at Leiden University and Editor-in-Chief of this journal [L.van.den.Herik@LAW.leidenuniv.nl].

1 Editorial, (1988) 1 LJIL 1, at 1.

2 Editorial, (1990) 3 LJIL 2, at 115.

3 Editorial, (1992) 5 LJIL 2, at 169.

their views.[4] It is noteworthy that the seeds of dialogue and critical distance that make LJIL flourish today were thus sown at a very early stage.

A profound alteration in editorial policy was implemented in 1995. After a 'process of soul-searching', two new editors-in-chief proposed to bestow LJIL with a more visible identity. Henceforth, substantive EC law and human rights law would be left to specialized journals in the field, whereas LJIL would focus on international dispute prevention and settlement in a wide sense.[5] At this moment, the focus shifted to *The Hague*. A new section was established. This section was called 'Hague International Jurisprudence'. The Hague focus is still part of LJIL's core identity. Meanwhile, the notion of progress continued to inform the editorial agenda. In the editorial of LJIL's eighth volume, the editors expressed their mission as follows: 'we must actively strive for the acceptance of the stabilizing role of international law and its further development and improvement.'[6]

The second part of LJIL's fundamental transformation in the mid-1990s came as a more strategic move. As part of a professionalization process, LJIL entered into an alliance with a publishing house. Upon the conclusion of its first decade, LJIL pursued its professionalization under the auspices of Kluwer Law International. In these years, LJIL further refined its personality as an international law journal and it became more theory-oriented. The theoretical perspectives offered by LJIL included attention on the New Approaches to International Law (the so-called – and late – NAIL). Leadership for this novel and crucial step can be traced back to one of LJIL's most important guides: Thomas Skouteris. It was also under his direction and guidance as editor-in-chief that LJIL, as of Volume 16, embarked on its association with Cambridge University Press.

LJIL's last decade has been marked by consolidation of the core features, steady quality improvement, and openness to diversity. The Editorial Board is no longer confined to Leiden academics. It features leading academics from several Dutch and foreign universities and is a fine example of a spirit of co-operation rather than competition. High-level staff members from several Hague international courts and tribunals further reinforce the editorial slate. It is the avowed aim of LJIL to foster intergenerational dialogue and to open its doors to promising new voices in the field, all under the banner of excellence. We believe that talented PhD researchers in the last stages of their research are uniquely placed to offer fresh perspectives and to provide thought-provoking ideas. In terms of substance, LJIL's two vital areas still are centred on international legal theory and conceptual thinking on the one hand and on international dispute settlement on the other. Indeed, it has been LJIL's ambition to examine new trends in international legal thinking and to look beyond mainstream conceptualizations. In addition, LJIL stands out for its comprehensive coverage of the activities of the most prominent international tribunals in The Hague. It is well known that, in its so-called Hague International Tribunals section, fundamental judgments and key developments are systematically and

4 Editorial, (1994) 7 LJIL 1, at 1.
5 Editorial, (1994) 7 LJIL 2, at 1.
6 Editorial, (1995) 8 LJIL 1, at 4.

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critically dissected and evaluated. Such a treatment includes in-depth salutations on authoritative judges who have served on these tribunals. These salutations analyse the impact these judges may have had on the development of international law.[7] In turn, LJIL has also inspired the international judiciary. Many LJIL articles have been cited in a variety of judgments, pleadings and judicial opinions from different courts.[8] It would not be an exaggeration to see these citations as LJIL's imprint on contemporary international law.

3. LJIL's 25TH ANNIVERSARY

It is against the backdrop of this rich and unconventional history that we celebrate the 25th anniversary of the journal. I would like to use this celebratory moment to pay tribute, on behalf of the current Editorial Board, to all previous editors who have faithfully and passionately nurtured LJIL in its early life. We would also like to take this opportunity to convey to the staff of Cambridge University Press how pleased we are with their excellent and professional support and service to LJIL. As the incumbent editor-in-chief, I would like to express further gratitude to my current colleague editors, since LJIL has always been a collective enterprise par excellence. This is why I have invited three senior editors to write special jubilee editorials in the subsequent anniversary issues. These editorials will present agenda-setting ideas and challenging queries. They will provide food for thought for our entire epistemic community. In line with LJIL's identity, these editorials will seek to pry and to provoke rather than to solve and to settle.

Another initiative that will mark the silver jubilee is the launch of the Hugo Grotius Prize. In LJIL's very first issue in 1988, the editors announced the Hugo Grotius Award and they made a promise: 'the next issue will contain more information.' On the occasion of its 25th anniversary, LJIL has decided to belatedly make good

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7 See, e.g., R. Higgins, 'Fleischauer Leaves the Court', (2003) 16 LJIL 1, at 55–6; M. Brus, 'Judge Peter Kooijmans Retires from the International Court of Justice', (2006) 19 LJIL 3, at 699–717; S. Punzhin and N. Wiles, 'Judge Vereshchetin: A Russian Scholar at the International Court of Justice', (2006) 19 LJIL 3, at 719–40; T. Buergenthal, 'Rosalyn Higgins: Judge and President of the International Court of Justice (1995–2009)', (2009) 22 LJIL 4, at 703–13; K. Keith, 'Thomas Buergenthal: Judge of the International Court of Justice (2000–10)', (2011) 24 LJIL 1, at 163–71.

8 See, e.g., L. J. van den Herik and E. van Sliedregt, 'Ten Years Later: The Rwanda Tribunal Still Faces Legal Complexities: Some Comments on the Vagueness of the Indictment, Complicity in Genocide and the Nexus Requirement for War Crimes', (2004) 17 LJIL 3, at 537–57, as cited by Judge ad hoc M. Mahiou to the judgment of the International Court of Justice in the case on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, [2007] ICJ Rep. 43, footnote 61; C. Stahn, 'Constitution without a State? Kosovo under the United Nations Constitutional Framework for Self-Government', (2001) 14 LJIL 531, cited in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion of 22 July 2010, [2010] ICJ Rep. 141 (Judge Cançado Trindade, Separate Opinion), para. 187 and footnotes 206, 207; J. d'Aspremont, 'Regulating Statehood: The Kosovo Status Settlement', (2007) 20 LJIL 649, as cited during the public sitting held on Friday 4 December 2009 in the *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (Request for Advisory Opinion Submitted by the General Assembly of the United Nations)*, [2010] ICJ Rep. 141, footnote 23; O. Triffterer, 'Causality, a Separate Element of the Doctrine of Superior Responsibility as Expressed in Article 28 Rome Statute?', (2002) 15 LJIL 1, at 179–205, as cited in ICC, *Prosecutor v. Jean Pierre Bemba Gombo*, Decision Pursuant to Art. 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor against Jean-Pierre Bemba Gombo, Case No. ICC-01/05–01/08, T.Ch. II, 15 June 2009, footnote 551.

on this promise. In co-operation with the Grotius Centre for International Legal Studies, the Editorial Board is pleased to announce the implementation of the Hugo Grotius Award. This biennial prize will be awarded to the author(s) of the article that best presented or examined a new trend in international legal thinking. As a tribute to the laureate, a one-day seminar entirely centred on the prized article will be organized at the Grotius Centre for International Legal Studies of Leiden University. The author(s), acting as keynote speaker(s), will be offered the opportunity to present his/her/their ideas to the academic community and the international judiciary present in The Hague. In addition, the author(s) will be offered £250-worth of books from Cambridge University Press. The first award ceremony will be held in spring 2012. Articles from all sections in Volumes 20–24 will be considered. The second award, to be presented in 2014, will consider all articles in the two preceding Volumes 25 and 26. The Editorial Board will be entrusted with the responsibility of preparing a shortlist. The final selection will be made by a jury composed of the editor(s)-in-chief and one or two prominent academics and/or practitioners in the field of international law. Current members of the Editorial Board are not eligible for the award.

Last, but not least, this 25th anniversary presents an occasion on which to introduce two revolutionary digital devices that will mark the next decade of LJIL and push LJIL into the next era. First, LJIL will make one more leap in its professionalization scheme by adopting the famous Scholar One platform for its submissions and peer-review process, already in use with a few top international law journals. Communication with authors and reviewers will, from the moment of introduction of the new system onwards, be carried out through this new interface. Second, LJIL is proud to announce its newly established partnership with Opinion Juris (OJ).[9] As an online companion, OJ will provide a virtual platform on which the ideas presented in LJIL will be challenged and debated. In doing so, LJIL wants to emphasize the potential complementarity between journals and virtual environments. These latter environments can offer a useful platform to pursue discussions emanating from scholarly contributions carefully selected by peer-reviewed journals like LJIL. For each future issue of LJIL, a few articles will be the object of debates on OJ, including a rejoinder by the author of the article concerned.

4. LJIL'S FUTURE IN THE AGE OF CYBERSPACE

Whilst an anniversary creates an irresistible inclination to mull over the past – a temptation to which I have just succumbed in the second section of this editorial – I believe that any such retrospective ruminations must be accompanied by an outlook to the future if it is to be of any relevance to the broader professional community and not only to the traditional readership of this journal. This is why the last part of this editorial discusses the production of scholarly ideas and their dissemination in the age of cyberspace. The following considerations will be non-conclusive, as their

9 LJIL's Law Review Partnership with OJ will feature at http://opiniojuris.org/category/special-content/law-review-partnerships.

aim is not to engage in any foretelling enterprise about what the future will bring. I will restrict myself to a few – somewhat trite – observations as to the probable expected changes that academia will undergo in the years and decennia to come as the development of cyberspace continues. In this era, new forms of dissemination of legal scholarship will continue to emerge. The emergence of new instruments of circulation and promotion of scholarly ideas is definitely fascinating, not only for its expected quantitative dimension, but even more for the restructuring of traditional legal publishing that these new instruments can possibly bring about. Yet, such developments might simultaneously jostle law journals off the map. Therefore, as editors and publishers of the early twenty-first century, we are confronted with the intriguing question: will law journals still feature in the legal scholarship scenery 25 years from now, in 2037? Or will these academic institutions perish in the open-access universe? The death of law reviews in the electronic era was already forecast in 1996.[10] Whilst such a prediction has so far not come true, it should not be fully dismissed either, for the odds of the cyber age seem not to be favourable to traditional law journals.

In the subsequent paragraphs, I will not seek to answer definitely the question of whether law journals will turn obsolete in 25 years or whether we should bemoan such a possible development. This editorial is not meant as an exercise of prescience as regards the ultimate fate of law journals. Rather, I find it insightful to ponder a more immediate future. My starting point is a belief that, in the next five years, law journals in the upper tier will remain central actors in the academic landscape. Therefore, the prime question on the table is not existential in nature, but rather relational: how should law journals as established academic institutions relate and respond to innovative technologies, especially open-access databases such as SSRN or the blogosphere? Such a concrete question calls for a more fundamental and foundational interrogation that the following considerations cannot ignore: what are the transformative effects of cyberspace on the culture, the dynamics, the methods of cognition, and the tools of communication of the international legal discipline?

It goes without saying that these intricate questions cannot be answered here and now and it is of no avail to try to exhaust them in the few following paragraphs. Answers – if any can ever be provided – will most probably emerge from practice. Yet, all stakeholders – not only editors and publishers, but also authors – should be alerted to the fact that their individual actions will shape and inform these responses. At the same time, the discussion stretches beyond SSRN and law journals. The tension between free access and copyright pervades all areas in which the Internet has turned central in the distribution of ideas or, more generally, the output of intellectual or artistic creation. The question of the influence of the Internet on copyright matters echoes huge – and very contemporary – societal debates encapsulating many highly

10 B. J. Hibbitts, 'Last Writes? Re-Assessing the Law Review in the Age of Cyberspace', (1996) 71 *New York University Law Review* 615, as also published at www.law.pitt.edu/hibbitts/acrlw.htm and available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1546765. For earlier queries regarding the usefulness of law reviews dating back even to the interbellum period, see F. Rodell, 'Goodbye to Law Reviews', (1936) 23 VLR 38, available online at www.houseofrussell.com/legalhistory/alh/docs/rodell.html.

conflicting interests. Being aware of the comprehensiveness of the debate, let me just venture into a few observations on law journals and their attitude towards blogs and open-access databases. These two distinct newcomers certainly bear upon the way LJIL operates.

The influence of blogs on international legal scholarship and the art of legal blogging have already been discussed on various occasions.[11] In LJIL's view, the relationship with blogs can be a cordial and, above all, a mutually beneficial one. Together with most of the editors of this journal, I strongly believe that cross-fertilization, complementarity, and deference should be the qualities that feed the informal liaisons between these media. It is in this spirit that we have conceived the aforementioned new partnership between LJIL and OJ. Such a move was informed by the conviction that law journals cannot compete with blogs *as information providers*. We believe that law journals are simply too slow to keep up with the rapid pace of developments in our accelerated world. Furthermore, even law journals' online versions are not as easily and openly accessible as blog websites. In terms of (crude) information distribution, law journals are rapidly outpaced by blogs. Yet, I would submit that law journals can still complement blogs in offering in-depth studies that benefit from the hindsight that is, per se, lacking in the blogosphere. In that sense, the two media can be construed as offering distinct services and meeting different needs. Blogs are the new media of frontier and immediate knowledge, of direct and open accessibility. They can be used by scholars to keep up to date in a whirling – and sometimes daunting – storm of legal developments. In contrast, peer-reviewed law journals enjoy the benefit of distance inherent in the time required for quality control and production. Their format as well as the contingent constraints on their elaboration offer what is needed for human analytical thinking and reflecting processes: time and distance. According to the view developed here, there can thus be a clear and workable division of labour between law journals and new platforms of information like blogs. This is informed by the fact that thoroughness – rather than speed – characterizes law journals' contribution to the academic debate and to scientific research. In a complementary alliance, blogs offer rapid dissemination of information, whereas law journals retain a responsibility to produce analytical thinking.

This being said, even if one accepts such a division of labour, it does not mean that the role of law journals remains unaffected by contemporary developments of cyberspace, and especially blogs. One of the most central questions that editors, publishers and scholars, all together, need to reflect upon in the years to come is whether informative and descriptive commentaries – on cases or current legal developments – should not be left to platforms like blogs. In other words, one of the first questions that the discipline should engage with is whether law journals should gradually cede the function of publishing descriptive case notes to their virtual counterparts. This query, coupled with LJIL's objective to publish pieces that

11 See, e.g., J. d'Aspremont, 'In Defense of the Hazardous Tool of Legal Blogging', EJIL:Talk, 6 January 2011, available online at www.ejiltalk.org/author/jdaspremont; B. Leiter, 'Why Blogs Are Bad for Legal Scholarship', (2006) 116 *Yale Law Journal Pocket Part* 53, available online at www.yalelawjournal.org/images/pdfs/61.pdf.

withstand the passing of time, has led us to revisit the structure of our journal. We have accordingly decided to rename the section on 'Current Legal Developments' and henceforth call it 'International Law and Practice'. This newly entitled section will be placed immediately after the Articles section. The Articles section will from this time onwards be entitled 'International Legal Theory'. This title better reflects the orientation of the section and it also undercuts the incorrect former implication that pieces published in other sections would not qualify as articles. These changes, which are largely cosmetic in nature, are meant to streamline LJIL's structure and emphasize its ambition to publish timeless scholarship.

The other central question that the academic community should engage with is the relationship between law journals and open-source databases, particularly SSRN as the most dominant one. How should traditional law journals best react to the open-source revolution? How should the interests of publishing houses, editors, authors, and the broader academic community be aligned? These questions may prove even more challenging than the interaction between legal blogging and traditional peer-reviewed law journals. On this particular matter, LJIL has followed the input of the *European Journal of International Law* (EJIL) to the debate with great interest and appreciation.[12] It is the desire of LJIL's Editorial Board to further EJIL's initiatives and to stimulate an open discussion that balances the interests of authors in open access, the advantage of easy and rapid dissemination of ideas, copyright requirements, business constraints, and the necessity to preserve time and distance, which are instrumental in good analytical thinking.

The wish of LJIL to play a leading role in this debate is why, at LJIL, we are encouraging other top-tiered European journals and major European publishing houses – including our own – to reflect upon a new and common position tailored to the contemporary needs of the discipline and not aligned to the dynamics dating to the pre-cyber age. It is our belief that only a joint policy that is informed by the interest of the various stakeholders, including authors, can succeed and be meaningful for the profession as a whole. Such an interest of LJIL in promoting a common position among the leading publishers and journals has particularly manifested itself in LJIL's taking the lead in such a debate in the discussions held by the European Society of International Law's groups of editors[13] and in the framework of which LJIL, together with the *British Yearbook of International Law*, will elaborate an exploratory study.

LJIL's position on the difficult question regarding the relationship between law journals and open-access databases is informed by a few elementary convictions that I want to report here. First, we think that US journals operate on the basis of business models and publishing traditions too different in terms of submission procedure and peer-review processes to be truly instructive and constitute a paragon. Second, the discussion of traditional publishing versus open access should be tailored to the specifics of the discipline of international law. It might well be that other disciplines, such as the hard sciences, require different approaches in light of the fundamental differences between the respective disciplines. Third, and more fundamentally, it is

12 J. Weiler, 'Editorial: Copyright, Law Journals and a Romantic View of EJIL', (2011) 21 EJIL 3, at 501.
13 For more on these law journals' meetings, see www.esil-sedi.eu/english/international_law_journals.html.

my personal belief – and this is shared by some of my closest collaborators on the Board – that law journals ought not necessarily to take a defensive stand towards open-access databases like SSRN. As with blogs, I believe the two media largely fulfil complementary functions. SSRN, to take only one example, offers open access; the opportunity for free, rapid, and worldwide exchange and dissemination of ideas in their early stages of development; and the possibility of rapid feedback. Like blogs, it also endows the profession with better tools to facilitate debates among scholars. Yet, in my view, leading law journals still remain, to this day, the most reliable venues for quality scientific output. Indeed, so far, only law journals – whether paper-based or purely electronic – can provide quality control, order, continuity, traceability, and identity. Whereas SSRN allows that publicity be given to an – often overwhelming and highly scattered – huge amount of articles, law journals such as LJIL only host well-researched and neatly referenced academic work whose quality has been controlled by virtue of peer-review mechanisms. This is not to say that peer review constitutes, in itself, a panacea. The drawbacks and limits of peer review are well known and do not need to be repeated here.[14] Yet, what needs to be pointed out here is that quality control, whether carried out by virtue of peer review or any other mechanisms, is at the heart (and constitutes a unique feature) of law journals.[15] Another virtue of traditional law journals is that, in contrast to the – rather chaotic – SSRN 'flood', they offer cadence and a more measured and regulated output. In the same vein, law journals like LJIL can act as indispensable navigators in the gigantic ocean of scholarly production in that they distribute scholarly ideas and analytical works in a systematic and ordered manner. Of course, such an ordering is not neutral and each journal's distribution of legal thinking is informed by different paradigms and policy decisions. Yet, the order in which scholarly works are distributed by law journals can be very conducive to scholars' ability to find their way in an otherwise proliferating jungle of scholarly ideas. Thanks to these specific features, law journals, like LJIL, provide a unique and, to this date, unrivalled service to the entire academic community. This service should not be undermined too irresponsibly by authors for the mere sake of the rapid promotion of their individual interests. Law journals remain indispensable actors in a fast-evolving landscape that serves authors' interests, too. It is my conviction that their specific functions – quality control as well as ordered and sustained dissemination – cannot, for the time being, be properly taken over by open-access databases and the individual authors who nourish them. Yet, this does not mean that, in the cyber age, such functions will always lie with law journals. It may well only be a question of time before new tools of dissemination of scholarly ideas match these assets of law journals. When that day comes, we editors, publishers, and authors will be forced to reconsider once again the place and role of law journals. It is hoped that those in charge of scholarly publication will then be equally amenable to the spirit of openness, the need for measured and ordered scholarly output, and the commitment to quality control.

14 P. Cohen, 'Scholars Test Web Alternative to Peer Review', *New York Times*, 24 August 2010, A1.
15 This was argued by d'Aspremont, *supra* note 11.