Open Access for International Criminal Lawyers

Citation for published version (APA):

van Laer, C. (2016). Open Access for International Criminal Lawyers. *International Criminal Law Review*, 16(6), 1117-1136. <https://doi.org/10.1163/15718123-01606004>

Document status and date:

Published: 01/11/2016

DOI:

[10.1163/15718123-01606004](https://doi.org/10.1163/15718123-01606004)

Document Version:

Early version submitted to journal

Document license:

CC BY

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

www.umlib.nl/taverne-license

Take down policy

If you believe that this document breaches copyright please contact us at:

repository@maastrichtuniversity.nl

providing details and we will investigate your claim.

International Criminal Law Review

Open Access for International Criminal Lawyers

--Manuscript Draft--

Manuscript Number:	ICLA-1321
Full Title:	Open Access for International Criminal Lawyers
Short Title:	Open Access for International Criminal Lawyers
Article Type:	Special Issue: Maastricht Seminar for ICC Counsel
Corresponding Author:	Coen van Laer, PhD Maastricht University Maastricht, NETHERLANDS
Corresponding Author's Institution:	Maastricht University
First Author:	Coen van Laer, PhD
Order of Authors:	Coen van Laer, PhD
Abstract:	<p>This study investigates to what extent Open Access is useful for international criminal lawyers. Free reuse and distribution may be particularly advantageous for the audience in less resourceful countries. And individual authors need visibility to promote their academic reputation. However, many publishers share commercial interests that are not fully consistent with Open Access. It also explores the extended coverage of Open Access sources pertaining to international criminal law. Its inventory of various publishing channels shows the great potential of Open Access from different angles. Due to a couple of first-rate Open Access journals and free databases supported by international organisations evidence is found that Open Access is significant in the field of international criminal law</p>
Keywords:	copyright; Open Access; online publishing; legal journals; international criminal law; Creative Commons; Legal Tools Database; Social Science Research Network
Funding Information:	

Open Access for International Criminal Lawyers

Coen van Laer

Open Access Consultant, Maastricht University, Maastricht, The Netherlands
c.vanlaer@maastrichtuniversity.nl

Open Access for International Criminal Lawyers

Abstract

This study investigates to what extent Open Access is useful for international criminal lawyers. Free reuse and distribution may be particularly advantageous for the audience in less resourceful countries. And individual authors need visibility to promote their academic reputation. However, many publishers share commercial interests that are not fully consistent with Open Access. It also explores the extended coverage of Open Access sources pertaining to international criminal law. Its inventory of various publishing channels shows the great potential of Open Access from different angles. Due to a couple of first-rate Open Access journals and free databases supported by international organisations evidence is found that Open Access is significant in the field of international criminal law.

Keywords

copyright; Open Access; online publishing; legal journals; international criminal law; Creative Commons; Legal Tools Database; Social Science Research Network

Introduction

To introduce the potential of the many sources of Open Access for international criminal law, the following influential definition serves as the starting point:

By ‘open access’ to [peer-reviewed research literature], we mean its free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose, without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. The only constraint on reproduction and distribution, and the only role for copyright in this domain,

1 should be to give authors control over the integrity of their work and the right to
2 be properly acknowledged and cited.¹
3
4

5 Reader, reuse and redistribution rights are at the core of this definition, since these rights
6 have a wide impact on free availability of digital sources.
7

8 The definition given above determines the context of the following inventory of various Open
9 Access sources available in the domain of international criminal law. This inventory, which is
10 one of the main elements of this paper, aims to report on the current scope of Open Access to
11 international criminal law, which is now expanding to include works of legal scholarship in
12 the form of journal articles. This paper will not list common but valuable sources like
13 institutional websites, but focus on a couple of outstanding examples like the Legal Tools
14 Database.² An introduction to the potential of Open Access, as illustrated by the Legal Tools
15 Database, precedes comments on other databases, search engines or tools that are probably
16 useful for readers in the field of international criminal law.
17

18 Since users may be readers or authors of publications, the inventory of various sources will
19 show the potential of Open Access from different angles. From the perspectives of
20 researchers and authors, this contribution will point at tools to find Open Access journals as
21 publishing channels. This contribution also elaborates on Open Access journals and not so
22 much on primary source material like case law, as articles describe trends across the criminal
23 tribunals and investigate particular subject areas.³ A couple of concluding remarks will be
24 preceded by a section on the quality of Open Access journals, a recurring topic in the field of
25 this contribution that is crucial for all users.
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

44 2 Potential of Open Access

45
46
47 ¹ This definition stems from the Budapest Open Access Initiative, online at
48 <<http://www.budapestopenaccessinitiative.org/read>>, accessed 11 February 2016. Ten years later, in 2012, this
49 definition of Open Access has been reaffirmed <[http://www.budapestopenaccessinitiative.org/boai-10-](http://www.budapestopenaccessinitiative.org/boai-10-recommendations)
50 <recommendations>, accessed 11 February 2016.

51 ² Cf. A. Bestafka-Cruz, 'Searching Through Systems: Research Guide for UN Criminal Tribunals', 40
52 *International Journal of Legal Information* (2012) 530-531: 'The most valuable source of information for the
53 UN criminal tribunals often tends to be the websites for the tribunals themselves'. And: 'it is important to note
54 that the official websites of the tribunals are seen as so central to beginning any research or work related to the
55 systems that it is common practice for lawyers, staff, and administrators of the courts to begin almost every
56 project by first looking to the tribunal websites to begin a search'.

57 ³ Bestafka-Cruz, *supra* note 2, p.535: 'Academic articles and journals are particularly helpful in exploring trends
58 across the criminal tribunals and investigating particular subject areas. The critical nature of these sources lends
59 itself to going in-depth and providing very comprehensive analysis of the structures and ongoing work of the
60 tribunals'.
61
62
63
64
65

1 The definition of Open Access given as a starting point includes free reuse and redistribution
2 of materials by anyone, thereby granting free and unrestricted online access to academic
3 papers and other sources. Accordingly, Open Access publications are not locked behind an
4 expensive paywall, but freely available for viewing and downloading. Therefore, it can safely
5 be assumed that Open Access journals reach more readers than subscription-based journals.
6 Advantages of Open Access may also include greater efficiency and lower cost of the process
7 of dissemination and access to scholarly research. Finally, Open Access is not just about
8 public access rights or general dissemination of knowledge, but also about stimulating
9 societal impact via newspapers, mentions in social media, etcetera.

10 By removing price barriers that constrain access to scholarly research papers, Open Access
11 bridges the divide that often separates rich and poor citizens. This could be particularly
12 advantageous for users in less developed countries where traditional access to legal
13 information may be substandard for reasons of infrastructure or finance.⁴ Particularly, free
14 availability in the public domain will democratise access to information on international
15 criminal law, thus enabling practitioners to find appropriate legal arguments relevant to a case
16 and creating preconditions for criminal justice in materially less resourceful countries. In this
17 context, it may be assumed that Open Access will favour practitioners more than academics
18 that have institutional access to paid journals.⁵ Obviously, these advantages are almost absent
19 in environments that are only sporadically powered by electricity or where internet use is
20 expensive.

21 Open Access developments have to be signalled because most academic institutions, whether
22 in developing countries or not, are ever less able to afford high subscription fees which
23 cannot be fully justified by the costs of the research and publishing process. It is almost
24 common knowledge that not so much researchers but publishers are to blame for this

25 ⁴ *Ibid.*, p.532-533: 'Unless one is fortunate to be in The Hague, Geneva, or some other city with institutions that
26 maintain substantial and comprehensive collections, access to hard-copy materials can be difficult'. Free
27 availability on the public internet may change this inequality; Cf. M. Bergsmo, O. Bekou and A. Jones, 'New
28 Technologies in Criminal Justice for Core International Crimes: The ICC Legal Tools Project', 10 *Human
29 Rights Law Review* (2010) 715, 723: 'The availability of the Legal Tools serves to level the playing field in the
30 documentation, investigation, prosecution and adjudication of core international crimes and in the defence of
31 persons accused of them, allowing national judicial institutions to process international crimes involving their
32 nationals or committed on their territory that may otherwise have lacked the means to do so'.

33 ⁵ The audience interested in international criminal law, a new field of international law, is heterogeneous in so
34 far as it consists of practitioners and academics. Cf. M.J. Christensen, 'Academics for International Criminal
35 Justice: The Role of Legal Scholars in Creating and Sustaining a New Legal Field', (2014) *iCourts Working
36 Paper Series*, No. 14, <<http://ssrn.com/abstract=2539048>> or <<http://dx.doi.org/10.2139/ssrn.2539048>>,
37 accessed 11 February 2016.

detrimental development.⁶ Authors want to maximise their audience and, accordingly, have their own interests, which do not always fully coincide with those of commercial publishers. The definition of Open Access given as a starting point is one-sided, as it seems to be limited to readers and does not pay much attention to the possible benefits for authors looking for useful publishing channels. However, as far as authors are concerned, it is plausible that their Open Access articles have a potential for increased visibility, use, and citations by a large number of readers. Open Access journals of sufficient quality may be publishing channels that are appropriate to contribute to the academic reputation of individual authors. In addition, there is an increasing trend to push academic legal scholars to publish Open Access, although making Open Access a main requirement for publicly funded research could directly affect academic independence and freedom and, in particular, hurt younger scholars.⁷ However, compared to other academic disciplines, law journals that are freely available on the web are underrepresented as of yet.⁸ Arguably, the main cause of this small proportion is the lack of lasting reputation and stable quality as perceived for Open Access journals in the legal domain.⁹

3 The Legal Tools Database

⁶ F. Baetens and C. Wui Ling, 'Being an international law lecturer in the 21st century: where tradition meets innovation', 2 *Cambridge Journal of International and Comparative Law* (2013) 974, 992: 'Take journal publishing practices as an example. The researcher does not require any fee for turning over his or her research findings and article to the publisher. He or she considers him- or herself remunerated for the research through his or her salary from his or her academic institution. Research costs are usually covered by the researcher's academic institution or external funding sources. Upon being submitted to the journal concerned, the research article is assessed and refined by peer-reviewers and editors who are academics and provide these services without charge. Upon the article's acceptance and though the researcher does not receive any financial remuneration for the published article, he or she is required to sign over all copyright to the publisher concerned. By insisting on exclusive copyright and charging high subscription fees, the publisher limits access of the research article to those who can afford it'.

⁷ C. Stahn and E. De Brabandere, 'The Future of International Legal Scholarship: Some Thoughts on 'Practice', 'Growth', and 'Dissemination'', 27 *Leiden Journal of International Law* (2014) 1, 9: 'Open-access policies'.

⁸ G.F Frosio, 'Open Access Publishing. A Literature Review' (2014) 1 *CREATE Working Paper* 1, 73 <<http://www.create.ac.uk/wp-content/uploads/2014/01/CREATE-Working-Paper-2014-01.pdf>>, accessed 11 February 2016.

⁹ Cf. T Eger, M. Sheufen and D. Meierrieks, 'The Determinants of Open Access Publishing: Survey Evidence from Countries in the Mediterranean Open Access Network (MedOANet)' (2014), online at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2457550>, accessed 11 February 2016. Quote from page 22: 'We have shown that the most important hurdle for Open Access publications is the lack of reputation of these journals. There are a few disciplines (e.g., 'Biology & Life Science', 'Health Science' and 'Physics & Astronomy') with a number of Open Access journals with high reputation. In most of the other disciplines, however, authors are not motivated to spend time and effort to publish Open Access, since there is no benefit in terms of reputation'. *Ibid.* T. Eger, M. Scheufen and D. Meierrieks, 'The determinants of open access publishing: survey evidence from Germany', 39 *European Journal of Law and Economics* (2015) 500.

1 The Legal Tools Database¹⁰ is an exemplary Open Access source for all tribunals in the field
2 of international criminal law. The Legal Tools Database is a service owned by a permanent
3 public international organisation, which has no commercial interests in the Database. This
4 database provides free online access to more than 100,000 legal sources and enjoyed more
5 than 2,000,000 hits in 2015. Consequently, it has been observed ‘This can be of distinct
6 practical importance to users with limited access to proprietary legal information (such as
7 subscription-based databases or journals, or expensive publications).’¹¹

8 The Legal Tools Database has been qualified as ‘the leading online resource for legal sources
9 in international criminal law. It provides free online access to most legal documents that may
10 be relevant to cases involving core international crimes ... The Database is a victory of the
11 ideas of open and free access to legal information and of legal information as public goods.’¹²
12 Leaving aside the question whether this cheering claim is fully correct, it is pretty clear that
13 the Legal Tools Database illustrates the great potential of Open Access.

14 The Legal Tools Database is a single-stop location that is comprised of thirteen in-depth
15 collections of documents. The list below indicates the extended coverage of this Open Access
16 source:

- 17 • International Criminal Court Documents
- 18 • International Criminal Court ‘Preparatory Works’ and Statute Amendments
- 19 • International Legal Instruments
- 20 • Other International Law Decisions and Documents
- 21 • Human Rights Law Decisions and Documents
- 22 • International(ised) Criminal Jurisdictions
- 23 • International(ised) Criminal Decisions

24 ¹⁰ See <<https://www.legal-tools.org/>>, accessed 11 February 2016. In fact, ‘Legal Tools Database’ is an
25 abbreviation for ‘ICC Legal Tools Database’ of the International Criminal Court (ICC).

26 ¹¹ *Building a public commons of legal sources in international criminal law*
27 <[https://www.casematrixnetwork.org/fileadmin/_migrated/content_uploads/151117_LTD_leaflet__Second_Edit
28 ion.pdf](https://www.casematrixnetwork.org/fileadmin/_migrated/content_uploads/151117_LTD_leaflet__Second_Edition.pdf)>, accessed 11 February 2016.

29 ¹² <<http://www.casematrixnetwork.org/icc-legal-tools-database/>>, accessed 11 February 2016. *See also*
30 Bestafka-Cruz, *supra* note 2, p. 579 ‘This system has developed out of the ongoing work of the ICC and having
31 a need to collect the jurisprudence of different national and international criminal tribunals. As such, the
32 database has collected documents from both national courts and the tribunals covered by this guide. Through its
33 browsing-based system, the database allows a researcher to look through categories of information and find
34 independently stored files of documents relevant to international criminal law. In a way, the tool has become a
35 sort of single-stop location for many files from different tribunals. Because of this, the system seems like an
36 ideal model for what might be a centralized document system for all UN criminal tribunals in the future, thereby
37 making research significantly more uniform’.

- National Jurisdictions
- National Implementing Legislation
- National Cases Involving Core International Crimes Publications
- United Nations War Crimes Commission
- International(ised) Fact-Finding Mandates.

It may be stated that the Legal Tools Database is a great collection of reference documents and case law and the most important Open Access source of international criminal law. It is frequently consulted by defence counsel in preparation for filings and courtroom appearances and it is used to find precedents in other international criminal law cases, or to understand how the statute and rules have previously been applied. For these reasons, the Legal Tools Database is invaluable to many scholars of international criminal law.

In this context, the International Crimes Database¹³ has to be mentioned as a database that complements the Legal Tools Database. The International Crimes Database covers primary sources of law and it offers a comprehensive database on international crimes. The database, hosted and maintained by the T.M.C. Asser Institute in The Hague, has a broad scope and aims to provide as much information as possible and to facilitate free access for students, reporters, victims, and lawyers. In addition to case law on international crimes,¹⁴ the website incorporates general background information about international crimes, scholarly as well as news articles, working papers (ICD Briefs), and relevant links.

¹³ <<http://www.internationalcrimesdatabase.org/>>, accessed 11.02.2016. *See also* G. Partin, 'International Criminal Law' *Electronic Resource Guide* <https://www.asil.org/sites/default/files/ERG_CRIM.pdf?v=1>, accessed 11 March 2016. Page 4 (updated April 1, 2015) on the International Crimes Database (ICD).

¹⁴ Bestafka-Cruz, *supra* note 2, p.561: 'Judgments form the most central type of information related to the tribunals as they are, after all, the purpose for a tribunal's existence. As a result, researchers looking into various types of questions may find it useful, or in many cases necessary, to look into the case law of a tribunal. From understanding the interpretations of laws to getting facts about what occurred during the conflicts that gave rise to the tribunals, judgments are an invaluable source in getting access to objective and extremely detailed information. Because these documents are so central, each court will make a prominent part of the tribunal website geared to accessing these documents. For the older and more established tribunals, the system will often use a search engine while younger or smaller tribunals will use a browsing system. This in part is due to the volume of documents available thus far, but it also is a result of the time the tribunal has had to establish systems for research. Regardless of the type of system though, a tribunal's website is almost always the most up-to-date and comprehensive location for a researcher to explore case law'.

Enter search terms

> ADVANCED CASE SEARCH

4 Finding Open Access Journals

To retrieve articles published in Open Access journals, specific search engines that are dedicated to Open Access, international criminal law, or both, are useful to locate, read, and download relevant scholarly journal articles at no cost. These search engines are particularly useful if they have been developed by professionals or organizations of high reputation. Such is the case with three tools: (1) the Directory of Open Access Journals, (2) the Free Full-Text Online Law Review/Journal Search, and (3) the Annette's Open Access Law Reviews and Commentary MetaSearch. Before going into some details of these tools, it has to be stressed that the choice of suitable search terms is crucial to find as many relevant sources as possible.¹⁵ Besides, journal articles and other secondary sources retrieved via search engines always require careful evaluation for authority, contents, and currency.

The generic Directory of Open Access Journals¹⁶ has to be mentioned first. The Directory of Open Access Journals is not a search engine solely dedicated to legal journals; it contains only 201 legal journals and only 7 journals have been classified as pertaining to international criminal law.¹⁷ This small number of law journals that are freely available on the web is disappointing, but where it comes to international criminal law, the Directory of Open Access

¹⁵ Bestafka-Cruz, *supra* note 2, p.521 and 524: '[it is important] to include as many variations of terms as possible both in regard to key concepts and in the names of institutions. Synonyms like tribunal, court, chambers, war crimes, crimes against humanity and others are terms that are often used interchangeably. To ensure one's research captures a wide portion of relevant materials, a researcher should look at ways terms may be varied and combined to enlarge the search results. In doing so, it should be kept in mind though that broader terms will result in broader and larger results whereas narrower terms will tend to lead to more discrete and fewer results'. And: 'One of the most overlooked nuances of researching the tribunals is the difference between British English and American English'.

¹⁶ <<https://doaj.org/>> accessed 12 February 2016. *See also* <<https://doaj.org/about>>, accessed 12 February 2016. The Directory of Open Access Journals aims to be comprehensive and covers over 11000 quality Open Access peer-reviewed academic journals.

¹⁷ *Diritto Penale Contemporaneo*; *Hoechststrichterliche Rechtsprechung im Strafrecht*; *International Journal of Criminal Investigation*; *Open Forensic Science Journal*; *Rivista di Criminologia, Vittimologia e Sicurezza*; *Temida*; *Zeitschrift für Internationale Strafrechtsdogmatik*.

Journals points at the multilingual *Zeitschrift für Internationale Strafrechtsdogmatik*.¹⁸ This Open Access journal was established in 2006 to pay attention to the ‘Europeanization of Criminal Law’ and to cover German and international criminal law as well as criminal procedure law.¹⁹ Notably, the Directory of Open Access Journals can not only be used to check whether a journal is full-fledged Open Access, but also to retrieve Open Access articles, for example 150 articles on different aspects of human trafficking, though the system may be misleading.²⁰

The Directory of Open Access Journals is a useful tool; conducting metasearches is an alternative approach to get an overview of Open Access journals. Metasearch engines apply sophisticated algorithms to cover more search engines and to combine their results. However, the algorithms involved are not really transparent and their results may be too many or only partially relevant.

¹⁸ Or Review of International Criminal Law Doctrine; on: <<http://www.zis-online.com/>>, accessed 12 February 2016.

¹⁹ <<http://www.zis-online.com/?sektion=4&sektionsub=1&language=eng>>, accessed 12 February 2016.

²⁰ Bestafka-Cruz, *supra* note 2, p.537: ‘Although the system allows one to search directly for articles, the system can be a little misleading as it does not necessarily search into each journal the database has access to. As an example, the Duke Journal of Comparative and International Law may be accessed through the database. By following that link to the journal's website, one can search for ‘international tribunal’ in the archives of the journal and find an article on the relationship between national and international courts in prosecuting war crimes. But, if one searches even the title of the article in the DOAJ system, it will result in nothing. Because of this, researchers can search the system for keywords or abstract descriptions, but to fully explore the collection, one will need to enter into journals of interest and search using each journal's archive or search system’.

Free Full-Text Online Law Review/Journal Search

Print | Feedback | ShareThis | A A
Advertisement

Powered by Google Custom Search Engines.

This free search engine searches the free full-text of over 400 online law reviews and law journals, as well as document repositories hosting academic papers and related publications such as Congressional Research Service reports. Several of the law reviews and legal journals (such as the Stanford Technology Law Review), working papers, and reports are available online only.

Coverage may vary; for more complete coverage visit your local law library and fee-based online legal research services. Also see our list of reviews/journals/document repositories which have free full-text available online, but which must be searched/browsed manually.

Viewing tip: for PDF files, click on the "View as HTML" or "Quick View" links for quick viewing.

[Suggest a Resource](#)

The first metasearch engine for free international criminal law journals is available on the website of the American Bar Association and is called Free Full-Text Online Law Review/Journal Search.²¹ This free engine searches the free full-text of over 400 online law reviews and law journals as well as document repositories hosting academic papers, such as the Social Science Research Network. A Canadian law librarian, Annette Demers,²² developed another search engine to retrieve free international criminal law journals: Annette's Open Access Law Reviews and Commentary MetaSearch.²³ Like the American Bar Association's search engine, Annette's Open Access Law Reviews and Commentary MetaSearch is a Google Custom Search. It is important to note that the scope of these tools is not identical but complementary. Annette's Open Access Law Reviews and Commentary MetaSearch is not restricted to journals or papers. It covers the BePress Law Commons Network and the BePress Law School Institutional Repositories, but contrary to the American Bar Association's search engine, Annette's Open Access Law Reviews and Commentary MetaSearch excludes the Social Science Research Network.²⁴

²¹See

<http://www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/free_journal_search.html>, accessed 12 February 2016.

²²See <<http://www.uwindsor.ca/law/library/277/annette-demers-acting-law-librarian-and-sessional-lecturer>>, accessed 12 February 2016.

²³See <https://cse.google.com/cse/publicurl?cx=015927997327406776761:rrg_rml78a>, accessed 12 February 2016.

²⁴ The webpages included in Annette's MetaSearch are an interesting collection mainly in English but they do not exclusively cover international criminal law journals as illustrated by the following list of websites: BePress Law Commons Network, BePress Law School Institutional Repositories, *Centre d'accès à l'information juridique* (CAIJ), Cornell Law School Working Papers Series, Dalhousie Journal of Legal Studies, Directory of Open Access Journals – Law, Duke Law Scholarship Repository, European Integration Online Papers, European Journal of International Law, European Research Papers Archive, International Review of the Red Cross, JurisBistro, Law Review Commons, Manitoba Law Journal, McGill Law Journal/Revue de droit de McGill, New England Law Library Consortium (NELLCO) Legal Scholarship Repository, including Harvard (DASH), Columbia (Academic Commons) and New York University (Faculty Digital Archive), Osgoode Digital Commons, Ottawa Law Review/Revue de droit d'Ottawa, Queen's Law Journal (current issue embargoed), *Revue du Barreau*, *Revue de droit de l'Université de Sherbrooke* (RDUS), University of Alberta's

5 Open Access Publishing Channels

The author looking for publishing channels has not always the same interests as the reader. Therefore, some guidance will be given on useful and trustworthy publishing channels paying attention to the fact that authors looking for Open Access publishing channels have a couple of options: to use repositories, to buy off individual articles, or to ascertain that the journal is full-fledged Open Access. The Social Science Research Network is a subject repository that will be described first to show how it allows preprints that have not been fully completed to be published in journals.

The Social Science Research Network²⁵ is an Open Access repository: not an institutional repository but an overarching online archive of academic papers in a particular subject area. It consists of a number of specialised research networks in each of the social sciences; the Legal Scholarship Network is one of these subdivisions. Any paper an author uploads to the Social Science Research Network is downloadable for free, worldwide. Abstracts published via the Social Science Research Network are indexed by major online search engines like Google. To some degree, the public download counts are a measure of reader interest in an author's work. Academic or working papers can be uploaded directly to the site and free of charge.²⁶ The author retains copyright, as the Social Science Research Network does not take a copyright for any papers posted.²⁷

To increase distribution speed, legal papers may be first published as preprints on the Social Science Research Network before being submitted to an academic journal that applies mechanisms like peer review to improve quality. However, policies of journals to publication

Constitutional Forum and Review of Constitutional Studies, Western University's Journal of Legal Studies, Windsor Yearbook of Access to Justice, WorldLII - International Legal Scholarship Library <http://www.uwindsor.ca/law/library/sites/uwindsor.ca.law.library/files/list_of_websites_searched_1.docx>, accessed 12 February 2016.

²⁵ <<http://papers.ssrn.com/sol3/DisplayAbstractSearch.cfm>>, accessed 12 February 2016.

²⁶ See: step-by-step submission instructions to submit or revise submissions to SSRN's eLibrary <http://ssrn.com/update/general/ssrn_faq.html>, accessed 12 February 2016.

²⁷ Frequently Asked Questions, Submitting a Paper to the SSRN eLibrary (11) What do I need to know about Copyright Policies? <http://ssrn.com/update/general/ssrn_faq.html>, accessed 12 February 2016.

on the Social Science Research Network may vary and there is a wide diversity of approaches, as some journals may oppose publication of preprints and other journals may ask for an embargo period before the article can be distributed on the Social Science Research Network.²⁸ In sum, the Social Science Research Network is an attractive Open Access publishing channel to reach an audience not barred by paywalls, and, due to its emphasis on working papers, the Social Science Research Network is a useful current awareness service, but the search function is not ideal since the Social Science Research Network does not search full text.²⁹

SSRN eLibrary Database Search

Search Term(s):

Options: ☐ Title Only ☒ Title, Abstract, Abstract ID & Keywords

Author(s):

To Search Papers by
 Title, Abstract, Abstract ID or Keywords: Enter a word, phrase or abstract ID number in the Search Term(s) field
 Keywords: Enter a word, phrase or abstract ID number in the Search Term(s) field
 Exact match: Enclose the exact wording or phrase in quotes in the Search Term(s) field
 Title: Select Title Only
 Date: Select date range from the drop-down list to limit results
 Author: Enter a name in the Author(s) field

Access eLibrary by
 Abstract & Author
 Journal or topic
 JEL topic list

Feedback to SSRN

SSRN eLibrary Statistics:
 Papers & Authors:
 Abstracts: 628,094
 Full Text Papers: 523,840
 Authors: 289,779
 Papers Received in Last 12 months: 63,004

Journals like the *Zeitschrift für Internationale Strafrechtsdogmatik* and repositories like the Social Science Research Network are completely Open Access. Apart from these Open Access publishing channels, there are so-called ‘hybrid’ journals that are not full-fledged Open Access but offer the opportunity to publish selected articles in Open Access. In hybrid Open Access journals like the *International Journal of Transitional Justice*, the *International Criminal Law Review*, and the *European Journal on Criminal Policy and Research*, some of the articles are in Open Access and the remaining articles are only accessible for individuals

²⁸ Frosio *supra* note 8 p. 67-68.

²⁹ Bestafka-Cruz, *supra* note 2, p.536: ‘SSRN is a unique service that collects academic writings and papers in work as submitted by authors. The nature of the collection allows its sources to be very timely and cutting edge as they are available often before the articles are officially published. As a result, the service allows researchers to have a sneak peak at upcoming publications, arguments, and materials that may be relevant to the area they are interested in. The use of a search engine system allows the collection to be very user-friendly for new researchers as they can search across topics, keywords, articles and other information to find either general information or specific types of articles. Furthermore, as the nature of the tribunals involve rapidly developing areas of law (in comparison to other types of law), these working papers can be invaluable in giving researchers an idea of the changing areas without requiring a fee as many journal collections require for already published materials ... Because of the extent of the database, there is a balance to strike between the use of broad search terms when looking for general information and yet still having a narrow enough search so as to still make sure the results are closely connected to the international tribunals. In using the tool, researchers should be careful to avoid terms that may include results outside of the UN criminal tribunals (such as only searching for “international” and “tribunals” since the database will likely include papers written on other topics with those words. In part, because the database does not search full text, the results can be filtered by instead strategically searching in titles and abstracts’.

1 or institutions having paid their subscriptions. To get their articles in Open Access, individual
2 authors usually have to pay article-processing charges, but there is an alternative that shifts
3 this financial burden to institutions. In the Netherlands, an agreement on transition to Open
4 Access reached with Springer³⁰ serves to collectively buy off article processing charges for
5 individual articles by all corresponding authors at universities. As a result, individual authors
6 will no longer have to pay for Open Access publications in journals like the *European*
7 *Journal on Criminal Policy and Research*.

8 As said, if a collective buy-off has not been arranged, the author has to pay article processing
9 charges for individual articles although many argue this perpetuates the traditional
10 subscription model since the publishers involved still charge institutions to make the very
11 same hybrid journals available. The level of the amounts involved can be illustrated for two
12 leading journals covering international tribunals: the *International Journal of Transitional*
13 *Justice* (published by Oxford University Press) and the *International Criminal Law Review*
14 (published by Brill). For the first journal, the regular Open Access charge applicable is EUR
15 2275;³¹ and for the second title publication charges rates depend on the license opted for:
16 either EUR 1330 or EUR 1995.³² Payment of the higher amount allows everybody to sell or
17 translate the article without permission, thereby reducing expected income for Brill, the
18 publisher.

19 In the process of looking for acceptable Open Access publishing channels, authors may be
20 inspired to submit their papers to legal journals following the Open Access Law Principles.³³
21 To promote Open Access, these principles include some requirements that strike an
22 exemplary balance between authors' rights and publishers' interests, thereby giving the
23 authors sufficient control of their works:³⁴

24 ³⁰ Agreement with the Association of Dutch Universities and Academy Institutes:

25 <<http://www.springer.com/gp/open-access/springer-open-choice/agreements/42388>>, accessed 12 February
26 2016.

27 ³¹ <http://www.oxfordjournals.org/our_journals/ijtj/for_authors/>, accessed 12 February 2016.

28 ³² EUR1330 for CC BY NC licenses or EUR1995 for CC BY licenses <<http://www.brill.com/about/open-access/publication-charges>>, accessed 12 February 2016. The CC BY and the CC BY NC licenses are rather
29 common standard licenses and will be explained hereafter.

30 ³³ <<http://sciencecommons.org/projects/publishing/oalaw/principles>>, accessed 12 February 2016.

31 The principles have been formulated by professors Dan Hunter and Mike Carroll

32 <[https://blog.creativecommons.org/2005/06/06/creativecommonsandsciencecommonsannounceopenaccesslawpr
33 ogram/](https://blog.creativecommons.org/2005/06/06/creativecommonsandsciencecommonsannounceopenaccesslawprogram/)>, accessed 12 February 2016. The Open Access Law Journal Principles have been promulgated in 2005:
34 Frosio *supra* note 8 p. 72. Science Commons is overseen by members of the Creative Commons board

35 <<http://sciencecommons.org/about/whoweare/>>, accessed 12 February 2016. Not that many law journals have
36 adopted the Open Access Law Journal Principles or have policies consistent with them

37 <https://wiki.creativecommons.org/wiki/Open_Access_Law_Adopting_Journals>, accessed 12 February 2016.

38 ³⁴ 'The only constraint on reproduction and distribution, and the only role for copyright in this domain, should
39 be to give authors control over the integrity of their work and the right to be properly acknowledged and cited'
40 <<http://www.budapestopenaccessinitiative.org/read>>, accessed 11 February 2016. Ten years later, in 2012, this

- 1) The journal will require from the author no more than a reasonable, limited-term exclusive license for commercial publication.
- 2) In the event of reprinting or republication (of any part) of the article the author will always ascribe first publication to the journal, unless the journal does not require this.
- 3) Upon publication of the article, the journal will make available to the author an electronic version of the edited article—a citable copy of the final version such as the PDF or the Word processing document of the published article.

Authors who retained their copyright may intend to make their work freely available via the internet with minimum or no legal restrictions attached to their work. Various Creative Commons licenses have been coined to define different levels of public access, to communicate reader, reuse, and redistribution rights and to facilitate the choice of appropriate restrictions.³⁵ These Creative Commons licenses offer an easy and increasingly common way for copyright holders to manifest their consent to Open Access. The Creative Commons licenses are well established legal instruments for authors or right holders to visualise which rights to reuse the work have been granted since Creative Commons defines conditions of reuse and provides this legal information to users. Probably, the CC BY license (see the illustration below left) complies most with Open Access as it allows users to copy, distribute, and transmit the article, to adapt it and to make commercial use of it. Particularly, the CC BY license permits commercial and non-commercial re-use of an Open Access article, as long as the author is properly attributed. To a certain extent, the CC BY NC (see the illustration below right) license is more restrictive since it restricts reuse of the article to non-commercial use (hence the NC) and forbids commercial use. Although the definition of what constitutes commercial is vague, it is pretty clear that it is not allowed to resell the article.

requirement has been reaffirmed: <<http://www.budapestopenaccessinitiative.org/boai-10-recommendations>>, accessed 11 February 2016.

³⁵ Creative Commons licenses <<https://creativecommons.org/licenses/>>, accessed 11 February 2016.

Baetens and Wui Ling *supra* note 6, p. 994: ‘most researchers do not have the know-how or time to design licensing alternatives with which they can enter into negotiations with publishers. Recognising this, a non-profit company has developed a range of Creative Commons Licenses with which researchers can secure different levels of public access to their work. This still requires the researcher to be willing to take the time to negotiate with the publisher concerned and the publisher to be willing to make exceptions to the journal's publishing practices’.

The Creative Commons licenses may be used by authors or publishers. To check to what extent publishers apply Creative Commons licenses, Sherpa/Romeo³⁶ has to be mentioned as a tool to ascertain the diverse publishers' policies for self-archiving and reuse of their journals. This website is of importance for authors who want to promote Open Access and who want to know whether their article will become free of most copyright and licensing restrictions without giving users the right to do whatever they want with accessible publications.

Sherpa/Romeo is a useful starting point to examine journal's policies as it gives more information than the Directory of Open Access Journals, one of the sources providing journal information used by Sherpa/Romeo. Although the Directory of Open Access Journals lists the *Zeitschrift für Internationale Strafrechtsdogmatik* as an Open Access journal for international criminal law, this may only mean that it does not require any subscription payment and that it is freely available to read. Whether self-archiving and reuse are allowed may be checked in Sherpa/Romeo to start with; an appropriate Creative Commons license can exclude uncertainty in this regard. However, the coverage of Sherpa/Romeo is limited as law journals are sparsely represented within this directory.³⁷ Consequently, checking the website of the journal publisher concerned will be decisive in many cases; if not, the editor has to be asked permission for self-archiving and reuse.

³⁶ See <<http://www.sherpa.ac.uk/romeo/index.php>>, accessed 12 February 2016.

³⁷ There are reasons to believe that the number of Open Access legal journals will increase.

Cf. M. Robinson and A. Scherlen, 'Publishing in Criminal Justice: Assessing Journal Editors' Awareness and Acceptance of Open Access', 4 *International Journal of Criminal Justice Sciences* (2009) 115: 'editors of journals in the fields of criminal justice and criminology may very well be open to seriously considering making their journals Open Access at some time in the future; at the least, they are willing to consider it'. <<http://www.sascv.org/ijcjs/robinsonschlerlenijcjs2009.pdf>>, accessed 12 February 2016.

6 Quality of Open Access Journals

Although Open Access journals may be perceived as suffering from a lack of reputation or of quality, making potential authors reluctant to choose these publication channels, Open Access journals can be first-rate. Generally, the quality of a scholarly journal, Open Access or not, is mainly a function of its authors, editors, and referees. However, apart from the factors determining the quality of Open Access journals, there may be reasons for special concern as to whether questionable Open Access publishers can be trusted. Before discussing an approach to assess the quality of Open Access journals, a method to exclude unreliable journals has to be mentioned.

Publishers who call themselves ‘Open Access’ may send unsolicited bulk email in order to entice academics to become editorial board members, to submit their articles, and to attend and speak at conferences. Fortunately, when in doubt of the quality of an Open Access journal promoted in that way, the author of a paper can use Beall’s list³⁸ to check or exclude questionable publishers or predatory Open Access journals. So far, approximately five legal journals feature on Beall’s list, but that underrepresentation may be ascribed to the relative unpopularity of Open Access journals in the legal domain compared to other disciplines. Nevertheless, the fact that the *Zeitschrift für Internationale Strafrechtsdogmatik*³⁹ is not on Beall’s list indicates that this journal is trustworthy.

It is possible to measure the quality of hybrid Open Access journals only disclosing selected articles in Open Access. Many ranking systems, incorporating a variety of methodologies and factors, have evolved to compare the prestige of hybrid journals. One of these systems is the SCImago Journal Rank indicator,⁴⁰ which may determine the relative quality of hybrid journals according to the ranking of these journals. The SCImago Journal Rank indicator is a measure of scientific influence of scholarly journals that accounts for both the number of citations received by a journal and the importance or prestige of the journals where such citations come from. It ranks the *International Journal of Transitional Justice* (position 111) higher than two other hybrid journals (positions 131 and 147) on a list of 479 law journals in total compiled for the year 2014. As shown in the table below, the higher position runs

³⁸ <<http://scholarlyoa.com/individual-journals/>>, accessed 12 February 2016.

³⁹ Or Review of International Criminal Law Doctrine <<http://www.zis-online.com/>>, accessed 12 February 2016.

⁴⁰ <<http://www.journalmetrics.com/sjr.php>>, accessed 12 February 2016.

parallel with the citation by document average in three years. To some extent, the higher position of the *International Journal of Transitional Justice* seems to justify the higher Open Access charge compared to the article processing charges required for the *International Criminal Law Review*.

Rank (2014)	Title	Total Cites (3years)	Citable Docs. (3years)	Cites / Doc. (3 years)
111	<i>International Journal of Transitional Justice</i>	97	71	1.366
131	<i>International Criminal Law Review</i>	42	86	0.488
147	<i>European Journal on Criminal Policy and Research</i>	38	59	0.644

The ranking of journals is important, but should not be decisive when it comes to identifying a publishing channel, since a topical fit or match of contents is required as it is almost obvious that a journal will not accept manuscripts that lie outside its subject area. This means that, in order to increase the chances to have one's paper published, information about the audience and the scope of the journal is needed. The comparison of the three journals mentioned above may illustrate how subtle the details may be.

*International Journal of Transitional Justice*⁴¹ covers transitional justice; that is the study of those strategies to deal with a legacy of human rights abuses and to effect social reconstruction;

⁴¹ This journal 'publishes high quality, refereed articles in the rapidly growing field of transitional justice; that is the study of those strategies employed by states and international institutions to deal with a legacy of human rights abuses and to effect social reconstruction in the wake of widespread violence. Topics covered by the journal include (but are not limited to): truth commissions, universal jurisdiction, post-conflict social reconciliation, victim and perpetrator studies, international and domestic prosecutions, institutional transformation, vetting, memorialization, reparations and ex-combatant reintegration'. <<http://ijtj.oxfordjournals.org/>>, accessed 12 February 2016; "Transitional justice" is defined broadly so as to engage with a wide spectrum of civil society and government initiatives. This is of particular importance as the field itself continues to grow and evolve in concept and scope'. <http://www.oxfordjournals.org/our_journals/ijtj/about.html>, accessed 12 February 2016.; And, finally: 'A central aim of the journal is to encourage debate and discussion across disciplines and geographic areas. Articles which bridge the academic-practitioner divide and represent a range of voices, including those of civil society and policy-makers, are encouraged'. <http://www.oxfordjournals.org/our_journals/ijtj/for_authors/>, accessed 12 February 2016.

1 *International Criminal Law Review*⁴² focuses on the development of a common ground on
2 which the work of the international courts can build, while the *European Journal on Criminal*
3 *Policy and Research*⁴³ sheds light on the European dimension of crime and looks at its
4 research and policy implications.
5

6
7 Unfortunately, there is no automated service to select international criminal law journals so
8 the best way to become familiar with the top journals is to read information about their
9 audience and scope, and especially the articles they have published.
10
11
12
13
14
15

16 **7 Conclusions**

17
18
19

20 All in all, Open Access presents an alternative to the traditional journal subscription business
21 model, removing price barriers that constrain access to journal literature. Open Access
22 practices are founded on the basic principle that research should be available online to the
23 widest audience possible and they criticise the current environment of the subscription based
24 publication process. Arguably, Open Access publishing channels are particularly useful for
25 underprivileged groups within the international criminal law audience. Although Open
26 Access publishing appears to be a solution to the rising costs of subscriptions, it involves
27 costs that have to be recovered by means of funding that may come from donations or be
28 provided by professional associations, aid and development agencies, etcetera.
29
30
31
32
33
34
35
36
37
38
39
40

41 ⁴² ‘The divide between the so-called common law and civil law systems and their differences in approach to
42 solving legal problems make it necessary to establish an international forum for discussion and development of
43 a common ground on which the work of the international courts can build. This is especially true with regard to
44 the so-called “General Part” of the substantive criminal law, like forms of participation, actus reus and mens rea
45 categories, defences and excuses, offence types, sentencing, enforcement etc. But also the procedural law still
46 lacks sharp features in many aspects; the ICC’s Rules of Procedure and Evidence will be in need of
47 interpretation. In addition, it will be helpful to the Courts to understand the societal background and effects of
48 the law. Thus there is also a need for criminological, sociological and historical research on the issues of
49 international criminal law. The Review publishes in-depth analytical research that deals with these issues’.
50 <<http://www.brill.com/international-criminal-law-review-0>>, accessed 12 February 2016.

51 ⁴³ This journal ‘monitors crime trends in today’s enlarged Europe and beyond’. The focus of its peer-reviewed
52 coverage is on understanding crime in different geographical and socio-economic contexts, on presenting
53 innovative crime prevention policies and practices, and on following legislative and institutional change.
54 Discussion includes the trade-off between security and rights and ways to optimize the effectiveness of criminal
55 justice systems with respect to human and civil rights. Recognizing that criminal justice systems are not the only
56 method for dealing with crime, the journal also devotes attention to alternative policies and practices’. And
57 below the heading Aims and Scope: ‘The Journal focuses on the European dimension of crime and looks at its
58 research and policy implications’. However, the following has been annotated: ‘making Europe the focus of the
59 Journal does not mean forgetting the international dimensions of crime’,
60 <<http://www.springer.com/social+sciences/criminology/journal/10610>>, accessed 12 February 2016.
61
62
63
64
65

Open Access publications in the international criminal law field are relevant primary sources and acceptable secondary sources, but these sources are often scattered. Open Access sources may be difficult to find, although there are a couple of useful dedicated search engines covering various virtual collections. Apart from these drawbacks, the inventory of Open Access sources corroborates the plausible statement that Open Access publishing could benefit international criminal law research. The Social Science Research Network is a useful current awareness service due to its increased distribution speed. Last but not least, Open Access journals can be first-rate and central sources like the Legal Tools Database may even be indispensable.