

MEMORANDUM

TO: Executive Council, American Society of International Law
FROM: Jaya Ramji-Nogales, Chair 2023-2024 ASIL Book Awards Committee
DATE: December 4, 2023
RE: Report of the 2023 – 2024 ASIL Book Awards Committee

It was my pleasure to chair this year's Book Awards Committee, working with Jacques deLisle, Alexandra Huneeus, Chimène Keitner, and John Knox. The Book Awards Committee carefully reviewed fifty books and unanimously recommends the following authors and books for the four ASIL book awards. After considerable discussion, the Committee decided that two books were equally deserving and should both be awarded the Certificate of Merit in a Specialized Area of International Law.

1. CERTIFICATE OF MERIT FOR A PREEMINENT CONTRIBUTION TO CREATIVE SCHOLARSHIP

The Committee selected Immi Tallgren, ed., *Portraits of Women in International Law: New Names and Forgotten Faces?* (Oxford University Press 2023).

Portraits of Women in International Law is a tour-de-force that deftly critiques the exclusion of women in international law through an original and exceptionally creative framing. The edited volume puts to work the metaphor of portraits of women, which offers an “organizing imagery” for the forty-two biographies of women and gender non-conforming people presented in the book. Each chapter includes an actual image, in the form of a painting or portrait representing the subject of the biography. The volume itself is constructed as a “portrait gallery,” offering a provocative critical commentary on the idea of a canon, its domination of institutional spaces, and the inevitable absence of women – engaging in a struggle with the architectural blueprint and its profoundly troubling limitations. Relying on these two creative devices, the portraits and the gallery, the volume “re-curates” international law. The portraits render visible actors who have been essentialized, dislocated, and marginalized. The gallery critiques the reductionism that has marked and marred international law to date, problematizing its pretense of universality and reality of deep particularity to a specific white male identity. The Committee recognizes with particular appreciation the Foreword to the volume, contributed by the late Karen Knop, whose thoughtfulness, deep scholarly engagement, and inclusive ethos it reflects. The volume promises to be a touchstone for scholars of international law, who will continue to ruminate on its themes and return to it as a source of creative inspiration over time.

2. CERTIFICATE OF MERIT IN A SPECIALIZED AREA OF INTERNATIONAL LAW

The Committee selected both Michael Byers and Aaron Boley, *Who Owns Outer Space? International Law, Astrophysics, and the Sustainable Development of Space* (Cambridge University Press, 2023) and Tommaso Pavone, *The Ghostwriters: Lawyers and the Politics Behind the Judicial Construction of Europe* (Cambridge University Press, 2022).

Who Owns Outer Space? is a delightful collaboration between Michael Byers, an international lawyer, and Aaron Boley, an astrophysicist, who together co-founded the transdisciplinary Outer Space Institute. The Committee found this book to be both timely and accessible. The authors explore the pressures created by the human development of Space on the “common heritage” principle and present an incisive critique of current approaches, including the Artemis Accords. The result of their joint effort is a wake-up call about the hazards being created by human activities in the absence of a sufficiently coherent and binding legal framework for human activities in Space. It is also a roadmap for the myriad issues and considerations that must be taken into account in improving the global governance regime for Space. By conceptualizing Space as an issue of global environmental politics, the authors highlight the need to bring both doctrinal and behavioral insights to bear on the problems they identify. Moreover, although some key cooperative arrangements (such as the International Space Station) have survived Russia’s full-scale invasion of Ukraine, other elements of international Space cooperation have broken down. By cataloging and critiquing State practice and existing understandings across a range of areas, Byers and Boley remind us of the need to take action to forestall catastrophe in Outer Space, while we work to do the same on the Earth’s surface.

The Ghostwriters is an impressive book that provides a rich analysis of the role of enterprising lawyers who brought European Union law into the legal systems of member states, through strategically securing intervention by EU judicial institutions to address national laws that assertedly were inconsistent with EU law. While the transformative role of lawyers is not an entirely novel claim, the book does an extraordinary job of building the case—both empirically and conceptually—against the received wisdom of the “judicial empowerment thesis” which credits judges, rather than lawyers, for leading the transformative legal changes addressed in the book. Pavone impressively combines qualitative empirical work with a deep knowledge of relevant law, institutions, and politics, and a judicious use of quantitative evidence and analytical tools as well as case studies. Pavone’s book offers a group portrait of layered generations of lawyers—idealistic Europeanists, corporate lawyers seeking advantages for often-powerful clients, and increasingly politicized advocates as the clashes between EU and national law became more politically charged. *Ghostwriters* adds a significant new dimension to our understanding of EU law. It provides an interesting, especially well-written, and very strongly researched work examining an important and complex area of interaction between one area of international law (EU law) and comparative law (specifically, the domestic law of key EU member states).

3. CERTIFICATE OF MERIT FOR HIGH TECHNICAL CRAFTSMANSHIP AND UTILITY TO PRACTICING LAWYERS AND SCHOLARS

The Committee selected Esmé Shirlow and Kiran Nasir Gore, eds., *The Vienna Convention on the Law of Treaties in Investor-State Disputes: History, Evolution and Future* (Wolters Kluwer, 2022).

This book provides an authoritative – indeed, *the* authoritative – guide to the role of the Vienna Convention on the Law of Treaties in the resolution of disputes between states and foreign investors. Its twenty-eight contributors provide a highly diverse range of perspectives from scholars and practitioners active in the field. They address issues arising at every stage from the creation to the termination of investment treaties, with especially detailed attention to important questions of interpretation and to emerging challenges. The chapters are uniformly remarkable for their depth, clarity, and readability. Worthy of special note are the editors’ introductions not only to the book as a whole, but also to each part of the volume, which frame the contributions and integrate them

into a lively conversation with one another in a way that could be a model for many other edited works. All in all, the book provides an extraordinarily rich and engaging exploration of the issues at the intersection of investor-state disputes and the law of treaties.

4. ROBERT E. DALTON AWARD FOR OUTSTANDING CONTRIBUTION IN THE FIELD OF FOREIGN RELATIONS LAW

The Committee selected Robert Hutchinson, *After Nuremberg: American Clemency for War Criminals* (Yale University Press, 2022).

After Nuremberg is about an aspect of the Nuremberg legacy that is little discussed: the role of the American High Commissioner for Germany in creating a clemency process that led to all non-death-row-inmates receiving reduced parole or walking free by 1958. Even those charged with serious offenses such as murder and kidnapping received generous treatment, seeing their sentences reduced sometimes by decades. Other scholars have argued that American clemency was a concession to the Germans in a bid to have them firmly on the right side of the Cold War. But Hutchinson introduces an alternative argument, pointing instead to procedural inertia and misguided idealism about “American justice.” The book is beautifully written and thoroughly researched. It is rich on legal and personal details, drawing on new archival material that has been made available in recent years. Throughout, it is driven by Hutchinson’s thoughtful but persistent sense of quiet indignation at “the greatest of Nuremberg’s failures.”

In conclusion, it was a true pleasure to read and to discuss the books nominated this year. We were impressed by the high level of scholarship across a wide array of areas in international law. We also express our gratitude for the support of Selma Laporte of Tillar House.

Respectfully submitted,

2023-2024 ASIL Book Awards Committee

Jaya Ramji-Nogales, *Chair*
Jacques deLisle
Alexandra Huneus
Chimène Keitner
John Knox

cc: Gregory Shaffer, President
Michael Cooper, Executive Director