

**Annual report 2013**

# **PLURICOURTS**

Centre for the Study of the Legitimacy of the International Judiciary



# TABLE OF CONTENTS

Introduction ..... 3

Welcome from the hosting department..... 5

A brief history ..... 7

Projects..... 13

Research areas..... 17

    Coordinators..... 18

    Human rights ..... 20

    Trade..... 23

    International criminal law..... 26

    Investment ..... 29

    Environment..... 31

International environmental law: Research on the pulse of time ..... 35

Publications and dissemination..... 39

Inaugural conference..... 44

PluriCourts events..... 47

People 2013..... 51

# INTRODUCTION

2013 has offered an exhilarating start to PluriCourts – the Centre of Excellence studying the legitimacy of international courts and tribunals.

By most standards PluriCourts is running at full speed within nine months of start up in April 2013. More than 20 workshop-based books and special issues in the works, cohosted conferences and PhD courses offered at our home base Oslo as well as in New York, Bangkok, and Copenhagen; pursued by a committed team of 25 academic and administrative colleagues selected from several global recruitment efforts. Thus at the end of 2013 we had a solid team of Postdocs, PhDs and visiting professors in law, political science and philosophy, together with an outstanding administrative staff headed by Administrative Manager Aina Nessøe. What are the secrets behind our flying start?

Our on-going ERC project on international human rights courts allowed PluriCourts to start at a rapid pace, with several scholars in place and book projects, seminars and conferences well under way when PluriCourts officially started. Rapid expansion of staff and projects in the sectors of investment, trade, international criminal law and environment is especially thanks to an energetic team of Coordinators from law and political science, and highly competent administrative support from the Department of Public and International Law. The Department has ensured rapid announcements and appointments, and seeks to help PluriCourts navigate toward refurbished offices with all deliberate speed.

Thus PluriCourts stands on the shoulders of projects past and teams of colleagues present when we can point to impressive publications and public events by the end of our first year:

- The first PluriCourts Annual Lecture by Professor Alain Pellet;
- Two volumes with Cambridge University Press - on the European Court of Human Rights and on Legitimacy, respectively;
- Several publications in journals covering law, political science and philosophy.
- PhD courses on international courts in general and for human rights in particular;
- Conferences on dialogues among domestic and international courts and on the roles of international judges – and on Machiavelli’s 500 year old lessons for international courts;
- And honorable participation in the Holmenkollen relay run.

The present report gives an overview of some of these activities of 2013.

Andreas Føllesdal and Geir Ulfstein



PluriCourts coordinators: Geir Ulfstein, Marlene Wind, Cecilia Bailliet, Andreas Føllesdal, Ole Kristian Fauchald, Siri Gloppen and Christina Voigt.  
Photo: Ola Sæther.

# WELCOME FROM THE HOSTING DEPARTMENT

PluriCourts - Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order - is a Centre of Excellence at the Department of Public and International Law, The Faculty of Law of the University of Oslo. PluriCourts is funded by the Research Council of Norway.

As the first Department at the Faculty of Law we are proud to host a Centre of Excellence. It is exciting for the Department as well as for the Faculty of Law to have this inspiring, international, expansive and creative group of researchers at all levels amongst us.

**“As the first Department at the Faculty of Law we are proud to host a Centre of Excellence.”**

The Department welcomes all international researchers and guests at the Centre. Some will stay for a longer, others for a shorter time. We do hope they will enjoy the facilities of the Centre, and that they together with other researchers at the University of Oslo will create interesting and excellent research.

I am excited about the research in the forms of seminars, publications and academic dialogues that will come out of this environment in the years to come.

Professor LL.D. Ulf Stridbeck  
Head of the Department



Head of Department Ulf Stridbeck.  
Photo: University of Oslo





PluriCourts team March 2014.  
 Top row : Claudio Corradetti, Nobuo Hayashi, Sofie A.E. Høgestøl, Annette Hovdal, Matthew Saul, Daniel Behn, Marlene Wind, Geir Ulfstein, Andreas Føllesdal, Aina Nessøe, Ole Kristian Fauchald, Cecilia Bailliet  
 Bottom row: Michelle Q. Zang, Liv Inger Gabrielsen, Amrei Müller, Theresa Squatrito, Laura Letourneau-Tremblay, Siri Gloppen, Hanna Karv, Christina Voigt, Silje Aambø Langvatn.  
 Photo: Ola Sæther.

# A BRIEF HISTORY

*PluriCourts started in 2013 as one of ten centres of excellence at the University of Oslo. The primary research objective of PluriCourts is to analyze and assess the legitimate present and future roles of this plurality of international courts (thus: PluriCourts) and tribunals – an emerging global judiciary – in the international and domestic order.*

## Background: The growth of an international judiciary

During the last century, an array of international courts and tribunals (ICs) has been established to resolve international disputes. In order to understand this expansion, we must look at the far-reaching changes to international relations that have taken place simultaneously.

The 20<sup>th</sup> century saw rapid growth in the interaction between states. More and more issues became subject to international cooperation. Today there is hardly any field in which states do not cooperate, at least to some degree. In fields as diverse as security, trade, finance, communications, health, education, environment and scientific research there are both bilateral and multilateral networks of cooperation. This development has also been paralleled by a growth in border-crossing activities by non-state actors, such as non-governmental organisations, corporate enterprises and private individuals.

To an increasing degree these transnational activities bring new challenges to the court systems. The dispute resolution and enforcement mechanisms provided by national courts no longer meet the needs created by increased international interaction. The multiplication of international judicial bodies is a response to states' as well as non-states actors' demand to regulate this increased international cooperation and subject it to the rule of law. As cooperation evolves in new fields, international law regulating it appears to follow. This diversification of areas governed by international law has made the legal

**Centre of Excellence** (*Senter for fremragende forskning, SFF*) is a national programme under the auspices of the Norwegian Research Council, whereby the Research Council funds high-quality research of an international calibre for a period of ten years.



systems at both national and international level more complex and more diverse.

## Why worry about the legitimacy of international courts?

In this increasingly globalised world, ICs are by many hailed as elements of effective world governance. By introducing rule of law and constitutional constraints to the otherwise anarchic system of states, ICs become a means not only to peaceful dispute resolution: States have agreed to curtail their sovereignty to address a wide range of common objectives.

But sceptics challenge the legitimacy of the global judiciary. Critics claim that ICs:

- Seldom achieve their intended effects;
- Circumvent national legislatures and ignore cultural differences;
- Are central culprits of 'judicialization' with little accountability or checks and balances;
- Promote unbridled free market values and avoid transparency;
- Result in turf wars among the mushrooming ICs replace the anarchy among states;
- Fall victims to their own success: the European Court of Human Rights (ECtHR) is overburdened and in danger of collapse.

The question of the legitimacy of ICs thus grows in urgency. Why should they enjoy such authority as they currently do, or claim? That is, for which sound reasons should domestic or international authorities, or private individuals and bodies, defer to ICs? Indeed the very effectiveness of the courts in international dispute settlement and governance – and thus the international rule of law – seems to depend on them being perceived as legitimate, since the international order has but weak means of enforcement. PluriCourts' working hypothesis is that ICs should be subject to legitimacy standards known from domestic constitutional debates, such as democratic control, rule of law values, subsidiarity in relation to national organs, and achievement of their objectives. But these standards must be critically assessed, realigned, specified and adapted to the international context, to ICs' interaction with national constitutional orders, and to differences among courts, e.g. for world trade or human rights.

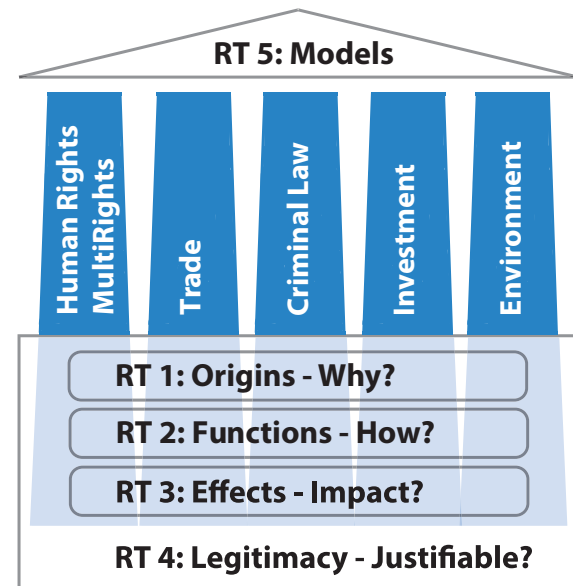


Illustration of the PluriCourts project.

## An ambitious research agenda

The primary objective of PluriCourts is to analyse the legitimate present and future roles of ICs in the international and domestic order. PluriCourts scrutinizes the concerns of the proponents as well as those of the critics of ICs. This objective depends on empirical and legal analyses of three issues in five sectors of international law, pursued as secondary research objectives.

- The Origins of the ICs: what did states want to achieve with the ICs, how have they been established and why do we have ICs for some international challenges – but not others?
- How ICs Function, operate and are structured.
- The Effects of ICs, especially how well they promote their founders' objectives, adjusted as these may have been.

The final secondary objective is to explore and assess models for the future development national judiciaries. PluriCourts thus also contributes to debates on legitimate global governance.

PluriCourts considers ICs in a wide sense, encompassing international institutions whose formal function is dispute settlement, even if not called a 'court' (as in the World Trade Organization, WTO) or if only able to make non-legally binding decisions (such as the UN human rights treaty bodies). We compare ICs in five substantive sectors, at various territorial levels, and study their interplay. The five sectors PluriCourts focuses on are:

- Human rights
- International trade law
- International criminal law
- International investment law
- International environmental law

In order to gain traction on the comparative, multi-level and multi-disciplinary primary objective concerning the legitimacy of the ICs, PluriCourts must combine legal, empirical and normative elements. The project thus draws on and contributes to the interdisciplinary exchange in international law, political science/ international relations and political philosophy – and international political economy, international political history and the sociology of law where relevant.

## Cooperation across disciplines and borders

The ambition of PluriCourts is to form a leading international research centre for the study of ICs. In order to do so, PluriCourts engages leading international scholars from a variety of disciplines, both in the Scientific Advisory Committee, which provides advice and critically examines the overall direction of the project, and as visiting professors or research fellows.

The team in Oslo is composed of a multi-disciplinary core of lawyers, philosophers and political scientists under the leadership of the duo Andreas Føllesdal (currently director) and Geir Ulfstein (currently deputy director). Five of the seven coordinators are based here, and the remaining two are located at the University of Copenhagen (Marlene Wind) and University of

**“PluriCourts’ working hypothesis is that international courts should be subject to legitimacy standards known from domestic constitutional debates, such as democratic control, rule of law values, subsidiarity in relation to national organs, and achievement of their objectives.”**

Bergen (Siri Gloppen). In addition to the coordinators, there is an academic staff consisting of both visiting and permanent researchers, postdocs, PhD candidates and research assistants.

The administration is led by administrative manager Aina Nessøe, who joined PluriCourts in September, taking over after temporary managers Elin Kaurstad and Øyvind Henden. Nessøe is assisted in the daily running of the centre by senior executive officer Leiry Cornejo Chavez.

### **The first year at a glance**

PluriCourts got a flying start as the project from the beginning incorporated two ongoing projects – the European Research Council advanced grant *The Legitimacy of Multi-Level Human Rights Judiciary* (MultiRights) and the Norwegian Research Council funded *Judicial Dialogues on the Rule of Law*. MultiRights was going on its third year in 2013, and already had many events and publications planned for the year. The four-year project *Judicial Dialogues* was also well underway, and provided additional levy as it was included under the PluriCourts umbrella.

During the first year of the PluriCourts project, the focus has been on issues of legitimacy and on defining the key concepts for the project. This was also the theme of the PluriCourts workshop *Concepts and Methods* in September, where 45 participants representing all PluriCourts disciplines discussed the key concepts from different academic perspectives for two intense days in Oslo. Legitimacy issues are discussed in the books *Kantian Theory and Human Rights* edited by Reidar Maliks

and Andreas Føllesdal; and *The Legitimacy of International Human Rights Regimes* edited by Andreas Føllesdal, Johan Karlsson Schaffer and Geir Ulfstein.

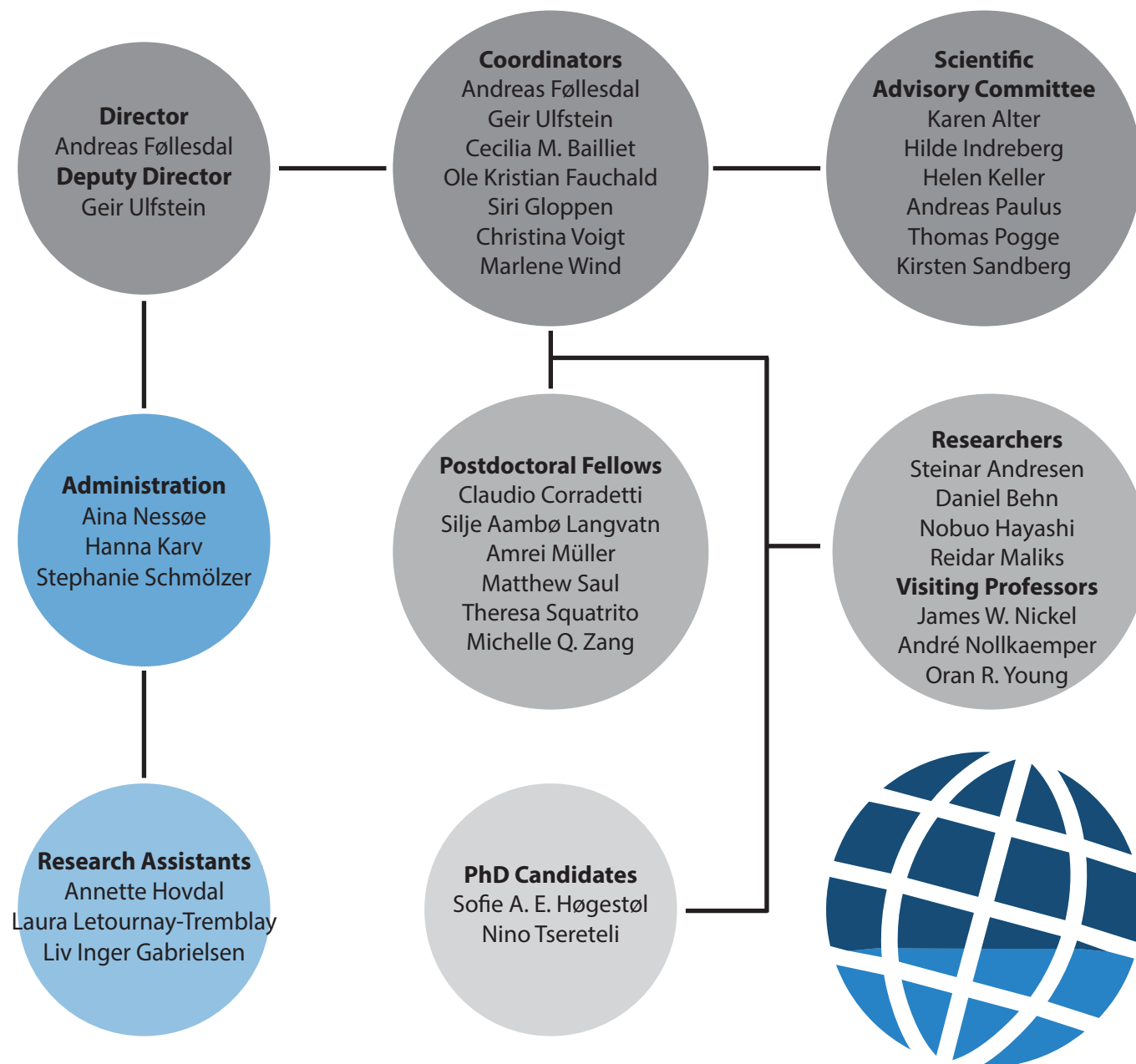
More than 20 special issues of journals and anthologies have been initiated during the first year of PluriCourts. By the end of this year PluriCourts scholars have also compared the European and the Inter-American systems of human rights courts, determining that noncompliance by unwilling states is a challenge for both courts, regardless of their differences (Bailliet, Chavez). Others have explored the impact of ICs on domestic courts and how they make law (Saul, Ulfstein). Contributions to public debates have argued that a better globe – also for Norway – is not one free from ICs, but one with a better set of ICs (Ulfstein, Føllesdal). PluriCourts has also co-hosted PhD courses in Copenhagen in cooperation with the Danish Centre of Excellence on International Courts iCourts in June and the Second Bangkok Winter School on Human Rights in November as part of its mission to help gain insight and competence about ICs.

### **What lies ahead?**

During the next two years PluriCourts will seek a better understanding of the courts and tribunals in each of the sectors, especially how they function and their effects. Two shared themes will be firstly, issues concerning rule of law standards such as legality and consistency and the ICs: how well they stand up to such standards, and to what extent and how these courts and tribunals promote such standards. Another shared topic explores the relevance and plausibility of a principle

of subsidiarity as brought to bear on the various ICs in different sectors. Is a presumption for local or national authorities always appropriate – that is, that the state should take responsibility except for those objectives that can better be promoted by more centralized courts? Quite different arguments may be relevant for ICs in the areas of human rights, trade and the environment, to name a few.





\* Organisation as of March 2014

# PROJECTS

*There are two projects at PluriCourts: the ERC funded project MultiRights and the ECPR project Judicial Dialogues on the Rule of Law.*

## MultiRights

As of 1 April 2014, the European Research Council (ERC) project MultiRights was made part of PluriCourts. As the research questions are similar to those of PluriCourts, and given the partial overlap of academic personnel, many of the planned activities within the MultiRights project were broadened to fit into the more general PluriCourts calendar of activities.

In the first eight months of PluriCourts' existence, the MultiRights team was still located at the Norwegian Centre for Human Rights. The PluriCourts Directors sought to overcome the divide between the two groups of researchers by consistently inviting the teams to each other's events.

The MultiRights project has a number of recurring events which are organized on

a regular basis: The MultiRights seminars, having a strong focus on inter-disciplinarity, take place every fortnight; while many of the academic presentations are given by University of Oslo staff, eight lectures per year are held by guests from Europe and overseas.

Another prominent feature of the MultiRights project is its focus on exchange with researchers who are invited to stay in Oslo for a longer period of time. In 2013, there were two invited guest researchers who stayed for 2-3 weeks each: Professor James Nickel (philosophy, University of Miami), and Professor Oran Young (political science, University of California, Santa Barbara). They were given concrete tasks, including holding lectures and providing feedback on research

**MultiRights examines** claims of legitimacy deficits of the International Human Rights organs. The project consider reform proposals for global and European human rights organs and develops four plausible models, ranging from Primacy of National Courts to a World Court of Human Rights.

### MultiRights team

*Principal investigator:* Andreas Føllesdal  
*Head of legal research team:* Geir Ulfstein  
*Postdoctoral fellows:* Marjan Ajevski, Claudio Corradetti, Matthew Saul  
*PhD candidate:* Nino Tsereteli



Matthew Saul, postdoctoral fellow at the MultiRights project.  
Photo: Ola Sæther

projects of PluriCourts and MultiRights postdocs. They contributed to building common conceptual frameworks across the disciplines, in particular as regards the notions of effectiveness (Oran Young) and the interlinkages between human rights and environment (James Nickel). Their stays in Oslo have had a longer-term impact on the research activities of PluriCourts. Both are involved in projects with PluriCourts coordinators – Oran Young on effectiveness, Jim Nickel and Christina Voigt.

On 9-19 June 2013 MultiRights held a Summer Academy for young researchers in Oslo. Ten political scientists and political theorists from different continents spent two weeks at the Norwegian Centre for Human Rights to discuss their current work. The Summer Institute had a strong focus on

methodology. It was concluded on 19 June 2013 with a workshop.

On 21-22 June 2013, the MultiRights Annual Conference took place in Oslo. It centered on questions of the ECRP project on Judicial Dialogues. The articles from this conference will be published in a book edited by postdoctoral fellow Amrei Müller.

PhD candidate Nino Tsereteli presented the progression of her doctoral thesis “Legitimacy of Pilot Judgments of the European Court of Human Rights” in a midterm evaluation on 8 October 2013.

## Judicial Dialogues on the Rule of Law

Judicial Dialogues on the Rule of Law is a four-year project funded by the Norwegian Research Council (NRC)/European Science Foundation (ECRP). The project studies the interaction between national courts and the European Court of Human Rights.

The subsidiary nature of the European Court of Human Rights, on one hand, and the fundamental role of national authorities in protecting human rights, on the other hand, were stressed in the Interlaken Declaration, adopted by member states of the Council of Europe at the High Level Conference on the Future of the European Court of Human Rights on 19 February 2010.

The principle of subsidiarity may be implemented in different ways. The research examines three possible approaches of national courts: Resistance, Deference and Constitutionality.

These different approaches are different ways of applying the principle of subsidiarity, from giving priority to the national level, giving priority to the international level, or acknowledging the different legitimate roles of the international and national levels, namely that the international and national levels in practice function in a ‘constitutional’ manner.

The project also studies how the European Court deals with practice from national courts in order to assess the ‘constitutional’ function of the legal order as a whole. The project has both descriptive and normative elements, in that it both examines the actual practice of national courts and the European Court, and provides guidance on how these courts should balance effective international protection of human rights while acknowledging the essential role of national courts.

The main activity of the project in 2013 was organizing the conference “Transnational Judicial Dialogue: Concept, Methods, Extent, Effects” in Oslo on 21-22 June, in cooperation with the ERC project MultiRights and with PluriCourts. The conference gathered eminent European experts and judges. The contributions will be published in a book edited by the postdoctoral fellows Amrei Müller (Oslo) and Hege Elisabeth Kjos (Amsterdam). Amrei Müller also participated in a conference by a cooperating university in Lodz, Poland. The purpose was to discuss relevant human rights research in Central and Eastern Europe.

### Judicial Dialogues team

*Principal investigator* Geir Ulfstein

*Postdoctoral fellow* Amrei Müller



# RESEARCH AREAS

# COORDINATORS



Andreas Føllesdal



Siri Gloppen



Cecilia M. Bailliet



Ole Kristian Fauchald



Geir Ulfstein



Christina Voigt



Marlene Wind





# HUMAN RIGHTS

*PluriCourts studies the legitimacy of international human rights courts and tribunals at regional and international levels. In 2013 focus was on the impact of the human rights courts on human rights values, that is the human rights situation on the ground.*

Recently states have started to question the legitimacy of international human rights courts, for example, the professionalism of the members of those treaty bodies or how they stifle the scope of domestic decision making.

PluriCourts considers reform proposals to overcome the fragmented institutionalization of international human rights: four models ranging from “Primacy of National Courts” to a “World Court of Human Rights”; the EU’s accession to the European Convention on Human Rights, and the reform process of its Court. Four normative standards of legitimacy are revised to assess these models: Human Rights values, Rule of Law, Subsidiarity, and Democracy.

PluriCourts studies the legitimacy of multi-level human rights International Courts and Tribunals (ICs) at regional and international levels. In 2013 we focused on the impact of the human rights courts on human rights values, that is the human rights situation on the ground.

One of the main events in 2013 was the MultiRights Summer Institute in June, which

brought together a highly selective team of eight political scientists to shed light on the impact of international human rights courts and tribunals. In addition to their own separate research, we could garner at least two main shared findings. Firstly, when the international human rights courts matter, they largely do so through and by bolstering or mobilizing domestic dissent by various institutions, as (independent) courts, governments, civil society, domestic opposition parties, and legislatures. This has important implications for the larger legitimacy issues within the human rights sector of PluriCourts. Concerns about international courts as overriding domestic democratic structures seem overdrawn, insofar as the effects are rather to mobilize domestic voices within domestic political structures, democratic or otherwise. Secondly, more hard law and sanctions may not be necessary, nor particularly helpful. One important implication is that concerns about institutional reforms should not necessarily aim to strengthen the international sanctions that human rights courts may leverage. Rather, the objective should be to explore ways how international courts can further strengthen



Eleanor Roosevelt holding the Universal declaration of Human Rights in Spanish at Lake Success, New York. November 1949.  
Photo: FDR Presidential Library and Museum under CC BY.

domestic institutions and groups.

The annual MultiRights conference 21-22 June addressed the forms and roles of dialogue among judges of national and European courts. The conference was a collaboration between MultiRights and the European Science Foundation project 'International Law through the National Prism: the Impact of Judicial Dialogue'. In addition to the presentation of selected academic papers, we witnessed several roundtable discussions with national and European Court of Human Rights (ECtHR)

judges. They addressed the actual practice of several domestic courts and the ECtHR. In her impressive summary, professor Beth Simmons of Harvard University noted that "judicial dialogue" was used to cover non-national legal information as an element of influence in authoritative rule interpretation, in ways ranging from meetings to citations. Among the important issues raised were which courts are more likely to engage in dialogue, why the practices seem to be on the increase, not least among "transitional" countries with newly independent courts.

# TRADE

*PluriCourts studies the various forms of dispute settlement under the World Trade Organization and regional international trade courts and tribunals. In 2013 we have started a book project comparing regional systems and their interaction with the WTO.*

The World Trade Organization (WTO) – born in 1995 out of the General Agreement on Tariff and Trade, the original body created in 1948– is the primary global arbiter of trade agreements and dispute resolution. With its 159 members, the organisation is responsible for regulating trade between states, with the goal of securing a smooth cross-border flow of goods, services and intellectual property. Recently questions have been raised regarding the relevance of the WTO, as countries have moved towards sealing their own free-trade deals on a country-to-country or region-to-region basis, deals that move beyond the traditional scope of products, investments and intellectual property to include rules on competition, and the inclusion of labour laws and environmental guidelines.

PluriCourts studies the various forms of dispute settlement under the World Trade Organization and regional international trade courts and tribunals. Dispute settlement under WTO is of a traditional bilateral character. The WTO system has no formal court, but includes ad-hoc panels, an Appellate Body and the Dispute Settlement Body (DSB). A country

prevailing in a dispute may be authorized to demand compensation or to counter with limited trade sanctions (e.g. suspension of concessions) to enforce a binding recommendation or ruling of the DSB.

The organizational, procedural and substantive aspects of the WTO system all merit scrutiny, especially the involvement of third countries through formal intervention and use of amicus curiae briefs by other stakeholders. The WTO system's interaction with other legal sectors, such as environmental law and human rights law is of interest. Likewise, WTO's relationship to the national level will be studied, e.g. due to popular charges of "illegitimate" decisions such as prohibitions of trade measures for health reasons or subsidies, and protection of patents in medicine.

Regional systems for resolving trade disputes have been established in different parts of the world. PluriCourts has initiated a book project comparing such regional systems and their interaction with the WTO system. The overall focus of the book will be the legitimacy of these tribunals in light of their composition, procedure, fact-

### Publications

Bailliet, C. M. (2013) "Measuring Compliance with the Inter-American Court of Human Rights: The ongoing Challenge of Judicial Independence in Latin America", *Nordic Journal of Human Rights*, 31(4): 477-495.

Chavez, L. C. (2013) "Panel on the comparison of the European and Inter-American Courts of Human Rights", *Nordic Journal of Human Rights* 31(4): 513-531.

### Human rights team

Coordinator Andreas Føllesdal  
Professor Geir Ulfstein  
Postdoctoral fellow Marjan Ajevski  
Postdoctoral fellow Claudio Corradetti

Føllesdal, A., B. Peters, G. Ulfstein, (eds) (2013) *Constituting Europe: The European Court of Human Rights in a national, European and global context*. Studies on Human Rights Conventions. Cambridge: Cambridge University Press.

Føllesdal, A., J. Schaffer, G. Ulfstein (eds) (2014) *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives*. Studies on Human Rights Conventions. Cambridge: Cambridge University Press.

Postdoctoral fellow Amrei Müller  
Postdoctoral fellow Matthew Saul  
PhD candidate Nino Tsereteli  
Master student Elise Gedde Metz





Photo: "Containers, Port of Rotterdam" by Luke Price under CC BY.

finding, interpretative approaches, forum shopping between different systems, and the implementation and interaction with national courts. A first meeting between the authors will be convened in Geneva, October 2014. The book on the WTO and regional trade courts will be edited by professors Hélène Ruiz Fabri (University of Paris I – Sorbonne), Robert Howse (New York University Law School) and Geir Ulfstein (PluriCourts).

#### Trade team

*Coordinator* Geir Ulfstein

*Postdoctoral fellow* Michelle Q. Zang

*Postdoctoral fellow* Theresa Squatrito

*Visiting researcher* Daniel Behn



# INTERNATIONAL CRIMINAL LAW

*The establishment of international criminal tribunals have been hailed as a great achievement within international law. PluriCourts examines the substantive and procedural jurisprudence generated by these tribunals.*

The establishment of International Criminal Tribunals, such as the ICC, the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL), has been hailed as a great achievement within international law. They are seen to promote peace and reconciliation by seeking to punish, prevent, and deter war crimes, crimes against humanity, and genocide. However, in recent years critical voices have been raised regarding these international tribunals, questioning whether punitive justice is the best reparation for the victims of the crimes, and whether the focus on pursuing the cases after the crimes have been committed are getting in the way of positive actions to prevent the atrocities in the first place. The critics also bring up the lack of consultation of the local population by the international courts (ICs) as evidence of a lack of legitimacy. Because of this there is a need for multi-disciplinary evaluation to assess legitimacy of these tribunals.

Within the frames of the PluriCourts project we will examine the substantive and procedural jurisprudence generated by

these ICs. Questions we seek to answer are: How and to what extent have the oft-cited axes of input - e.g., common v. civil law traditions, military v. civilian considerations, international v. criminal law methodologies, and demands of accountability v. procedural fairness - really influenced ICs' case law, legal developments, and practice? In what way has their work affected, and been affected by, neighbouring disciplines such as international humanitarian law and human rights law? It will also explore the question as to whether ICs ensure due process.

There have been charges of selective geographical engagement; as well as critique as to how ICs interact with the UN Security Council. We seek to pursue research that will illuminate the relationship between ICs and national courts via the principle of complementarity. Have ICs promoted reform of national penal systems? What is the perception of ICs held by national executives, legislatures, and courts? How does this impact funding, support and compliance?



Third day of Case 002 in the Extraordinary Chamber in the Courts of Cambodia.  
Opening Statements, 23 November 2011.

Photo: Extraordinary Chamber in the Courts of Cambodia under CC BY.



In 2013, we received an enormous response to our call for papers for an international conference on the Legitimacy of International Tribunals to be held in August 2014. The primary aim of this conference is to assess the legitimacy of the ICs by examining fairness and effectiveness, the application of legal standards, the relationship to the Security Council, cross-fertilization with other regimes, and funding challenges. The conference will pursue identification of lessons learned from comparative studies of the tribunals: best practices that may be applied by ICs and other relevant mechanisms. We sought papers pursuing empirical, normative, comparative or theoretical approaches. Hence we solicited contributions from law and social science, including philosophy, sociology, criminology, psychology and history. Guest Researcher Nobuo Hayashi, PhD Candidate Sofie A.E. Høgestøl, and Coordinator Cecilia Bailliet reviewed abstracts and finalized the conference program with the aim of creating a book project to follow the event. We invited eminent scholars Larry May, Diane Amman, and Charles Jalloh to participate as keynotes. On 4 December, Sofie Høgestøl, Kjersti Lohne, and Silje Aambø Langvatn gave a presentation on the legitimacy of the International Criminal Court at a PluriCourts lunch. Langvatn and Høgestøl wrote a book review addressing the legitimacy of International criminal law; it will be published in the Nordic Journal of International Law in 2014. Further, Bailliet has worked together with Kjetil M. Larsen on an edited volume titled *Promoting Peace through International Law* (Oxford University Press, forthcoming 2014). The book includes various chapters addressing the actual and potential impact of international tribunals upon peace.

#### **Criminal law team**

*Coordinator* Cecilia M. Bailliet

*Researcher* Nobuo Hayashi (Guest researcher 2014)

*Postdoctoral fellow* Silje Aambø Langvatn

*PhD Candidate* Sofie A.E. Høgestøl

*PhD Candidate* Kjersti Lohne (Department of Criminology and Sociology of Law)

# INVESTMENT

*International investment law has developed in a bilateral context since the end of the 1950s. Among PluriCourts' research topics is the future design of this area of law.*

The initial purpose of International investment law was to protect investments from government intervention. This area of law has thus directly served the interests of capital exporting countries, but also indirectly served the interests of capital importing countries by making it easier for them to attract capital.

Tribunals have been an essential element of international investment law since its beginning by providing a means by which investors can ensure compliance with obligations. The tribunals mainly apply bilateral treaties, but the general frameworks for the tribunals are multilateral, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID convention) being the most important such framework. Cases are essentially triggered by multinational companies when the value of their long-term investments is threatened or reduced due to acts of host states. Such cases raise many and important issues concerning legitimacy in relation to the investor, host states and third parties. As it gets harder to divide the world into capital exporting and importing states,

and as multinational companies increase in size and power, the existing system faces calls for reform that are closely related to legitimacy concerns.

The first year has focused on collecting data concerning the activities of investment tribunals. This poses a number of challenges, since many cases are kept secret and knowledge about them is hard to obtain.

Four persons, including one professor, one post-doctoral fellow and two students, have been working on the project during parts of the first year. The result has been two student dissertations and one draft article, as well as an emerging database on the practice of investment tribunals. The draft article is an in-depth survey and study of the case law of 2012 and 2013 (approximately 100 cases). It focuses primarily on which investors use the tribunals, why they use them, and how the tribunals are used. The student dissertations focus on loss of protection under investment treaties due to the conduct of the investor, and on transparency. Both dissertations will be published electronically.

The first year has also been used to prepare for a book project to be finalized by the end of 2015. The book project will focus on empirical aspects of investment treaty arbitration, and is planned to constitute a basis for cooperation on collection and dissemination of data regarding investment tribunals among key researchers in the field.

Investment team

Coordinator Ole Kristian Fauchald  
Guest researcher Daniel Behn  
Master student Christoffer Mollestad

ENVIRONMENT

Currently there are no international courts dedicated solely to environmental issues. Environmental cases are instead dealt with by courts. The question is how efficient these international courts are in dealing with cases concerning environmental law.

The legitimacy of international environmental governance has received increased attention. There are no specialized courts in international environmental law. In their absence, non-compliance, appeals and review mechanisms and procedures with judicial features have been established to deal with multilateral environmental issues that require preventive rather than reparative approaches, and provide assistance and capacity-building rather than sanctions, for example the Compliance Committee under the Kyoto Protocol.

At the same time are environmental problems being addressed by existing International Courts and Tribunals (ICs) that are not specialized in environmental matters. Examples include the International Court of Justice, human rights courts, committees and treaty bodies, the Dispute Settlement System of the World Trade Organization (WTO), investment panels etc. With few exceptions, environmental laws often remain outside the legal mandate of these “non-environmental” ICs.

The environment sector of PluriCourts attempts to assess what this situation

means for the effectiveness and legitimacy of these bodies when they deal with environmental issues as “externalities”? Which procedural and substantive norms applied by those ICs are opportune to environmental decisions making and which might in fact be a hindrance to the effectiveness and/or legitimacy of such decisions? Which effect does the fragmented and “external” dealing with environmental legal issues have on the strength, effectiveness and development of environmental law?

In the early months, a significant effort was made to conceptualize and plan this sector. For this purpose, The environment sector of PluriCourts was presented to practitioners and scholars in order to receive feedback and comments on its future work-plan. Presentations were held at the Norwegian Ministry of the Environment in March 2013, at the PluriCourts Inaugural Conference held in June 2013, and for the Research Group on Natural Resources Law Annual Summer Seminar.

We received the acceptance to host the International Union for Conservation of

Photo: “Stock market quotes in newspaper” by Andreas Poike under CC BY.



Nature (IUCN) Academy of Environmental Law Annual Colloquium in 2016. This colloquium will attract hundreds of environmental lawyers and decision-makers. The topic of the colloquium will be “The Environment in Court” and will result in an edited book on the same topic.

In September 2014 the environment sector of PluriCourts is organizing an international

colloquium on the role of human rights courts in environmental protection. The seminar secured the participation of several internationally renowned experts in this field. The colloquium will result in a special edition of the Journal of Human Rights and the Environment, to be published in early 2015.

#### Environment team

Coordinator Christina Voigt  
Professor II Steinar E. Andresen  
Master student Marte Jervan

#### Publications

Voigt, C. (ed.) (2013) *Rule of Law for Nature* (Cambridge: Cambridge University Press).

Voigt, C. (2013) ‘Comment on CJEU case C-366/10’, *Applications of Public Law* 12(1): 59-62.

Voigt, C. (forthcoming 2014) ‘Art. 11 TFEU in the Light of the Principle of Sustainable Development in International Law’, in: Sjøfjell B. and Wiesbrock A. (eds), *Taking Article 11 TFEU Seriously: The Greening of European Business* (Routledge).

Voigt, C. (forthcoming 2014) ‘Climate Change and Damages’, in: C. Carlarne, K. Grey and R. Tarasofsky (eds), *Oxford Handbook of International Climate Change Law* (Oxford University Press).

Voigt, C. (forthcoming 2014) ‘Delineating The Common Interest in International Law’, in: W. Benedek, K. de Feyter, C. Voigt (eds) *Common Interest in International Law* (Intersentia).

Voigt, C. (forthcoming 2014) ‘Environmentally Sustainable Development and Peace: What Role for International Law?’, in: C. M. Bailliet and K. M. Larsen (eds), *Promoting Peace through International Law* (Oxford University Press).

Ulfstein, G. and C. Voigt (forthcoming 2014) ‘Rethinking the Legal Form and Architecture of a New Climate Agreement’, in: T. L. Cherry, J. Hovi, and D. McEvoy (eds) *Toward a New Climate Agreement: Conflict, Resolution and Governance* (Routledge).

Jervan, M. (forthcoming 2014) ‘Contribution of the International Court of Justice to the Development of the Law Concerning Transboundary Environmental Harm’ (master thesis to be submitted April 2014).







Christina Voigt.  
Photo: Ola Sæther

# INTERNATIONAL ENVIRONMENTAL LAW RESEARCH ON THE PULSE OF TIME

*International environmental law is one of the five main research areas at PluriCourts. The relatively new research field challenges the traditional legal way of thinking, and demands an interdisciplinary orientation.*

*By Elise Koppang Frøjd and Hanna Karv*

International environmental law is one of the youngest legal fields, going back only a few decades. Effectively addressing environmental problems is also special in the sense that it is a complex challenge which cuts across many legal fields, such as trade law, human rights, property law, investment law, etc. But what is environment?

- The International Court of Justice has said that environment is everything around us, the natural, physical, and chemical environment, tells Professor Christina Voigt, coordinator for the environment sector at PluriCourts.

## A new way of thinking

Working within the field of environmental law demands a different way of thinking. It challenges the traditional judicial reasoning.

- You have to think very differently from the usual "cause and effect" reasoning, when it comes to environmental issues. The mechanisms are not linear, but complex.

They follow their own "natural" logic. For this reason, environmental law is closely connected to science - or the absence thereof. In particular scientific uncertainty with regard to many of the complex environmental relations challenges the classical burden of proof within law. The burden of proof without reasonable doubt can often be an obstacle in environmental litigations if it is put on those that aim at avoiding an activity with high risk of environmental damage, Voigt explains.

Recently there have been instances where courts have reversed the burden of proof when faced with scientific uncertainty. For example, in 2009 the Versailles Court of Appeal reversed the burden of proof in a case brought by residents living next to a phone mast against the mobile phone company owning the installation. The inhabitants were concerned about the potential health risks of mobile radiation. In its judgment, the Court of Appeal, rather than ask the inhabitants to bring proof that the mast was harmful, asked the owner of



the mast to provide proof that it was not. As the owners were unable to do so, the Court ordered the company to take the mast down.

## The absence of environmental courts

Currently there are no international courts dedicated solely to environmental issues. Environmental cases are instead dealt with by courts, which have a primary function in another field, such as human rights courts, trade law panels or investment arbitration tribunals. The field environmental law might therefore not be an obvious choice of research for a centre that investigates international courts and tribunals. But the research question for the environment sector within PluriCourts is how effective and legitimate these international courts are in dealing with cases concerning environmental law.

- There are several reasons why we do not have environmental courts, says Voigt. The main reason is political. States are unwilling to give away sovereignty in an area that is so intimately linked with territorial matters regarding for instance natural resources and the subsequent economic consequences. Another reason lies in the fact, that environmental disputes are only “environmental” for one party to the dispute. For the other party, economic interests or other non-environmental interests may be at stake; reducing that party’s willingness to submit the dispute to an environmental court, Voigt explains.

Against the background of the present situation, an important question is whether other international courts take sufficient

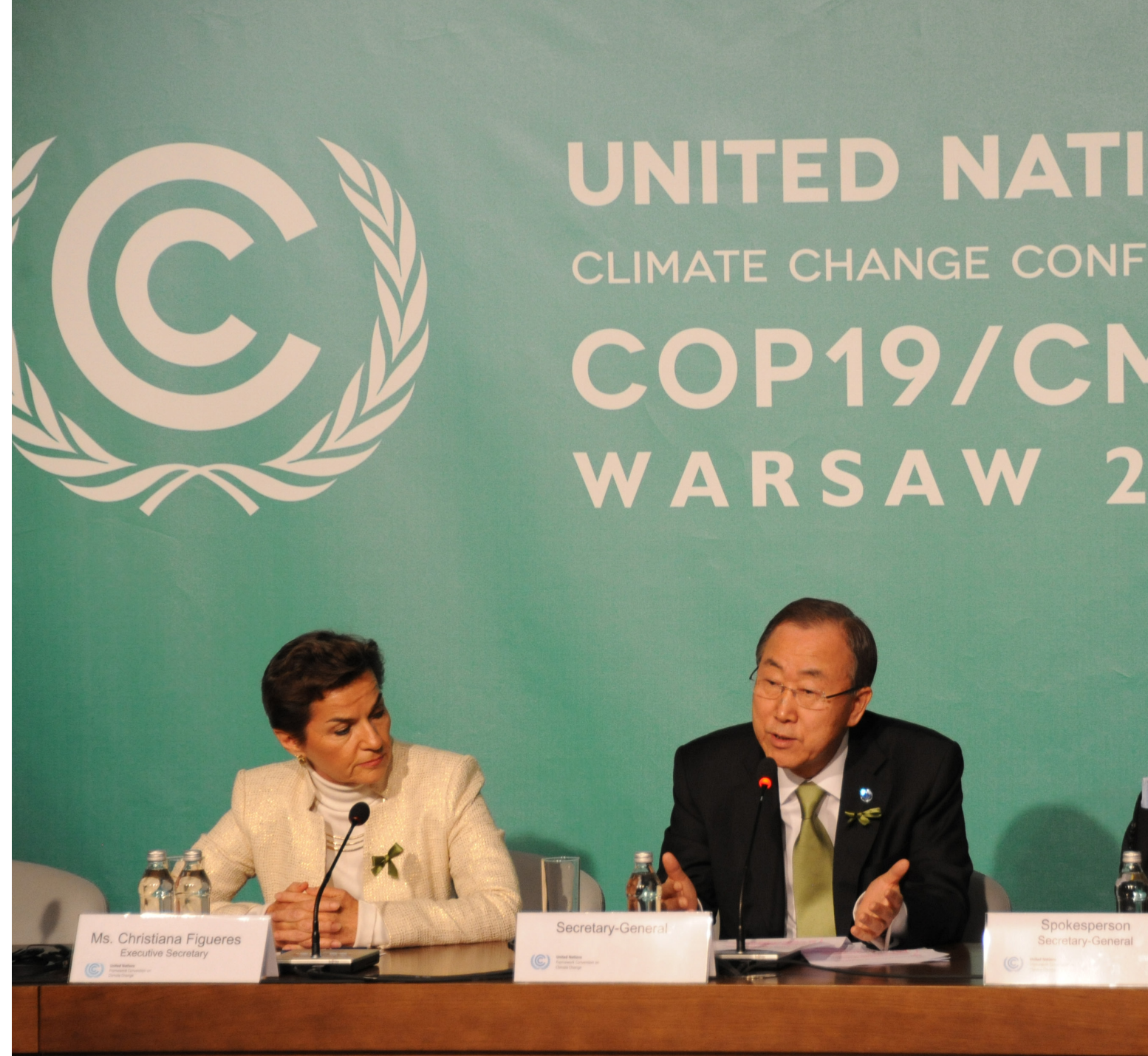
consideration of environmental concerns. And, do the “other” courts consistently favour other interests over environmental interests? If this turns out not to be the case, do we then need a specialized court for the environment, and how would such court look and function? What would its role be in the light of existing international judicial bodies? These are some of the questions PluriCourts investigates.

Regarding the development in environmental law, Voigt draws a parallel between the development in the field of human rights and environmental law. She hopes that environmental law will see the same expansion as human rights has experienced, which in the early days was also without broad international support and lacking courts and enforcement mechanisms. However, in order for this to happen, environmental issues have to be included in the curriculum at all stages of the education, so that the next generation of law students takes this perspective with them as they enter working life.

## A new research focus

- Although international courts have been the focus of research for many years, PluriCourts is the first to attempt systematically to examine these crosscutting issues in a broader perspective, says Voigt.

Providing legal context and synergy through more perspectives on all fields were one of the ideas behind PluriCourts originally. By having to work with leading scholars from other disciplines, the researchers are forced to keep up-to-date with the development.



Ban Ki-moon at the Climate Change Conference in Warsaw, 19 November 2013. Voigt co-chaired of the COP work programme on REDD-plus finance in 2013.  
Photo: UNclimatechange under CC BY.



Working with scholars from other disciplines can be quite challenging at times. The interdisciplinarity is also one of the great benefits of working in a centre like PluriCourts, according to Christina.

- PluriCourts is a good place to be challenged from the viewpoint of other disciplines. I learn a lot about law in different contexts from discussions and at seminars with other disciplinary backgrounds, such as philosophers and political scientists. I think it's a healthy exercise for all involved, says Voigt.

The research in the field environmental law at PluriCourts revolves around three main themes: The first focus is on already existing dispute settlement mechanisms, so called non-compliance mechanisms, in environment treaties. Questions asked are: Why do we have them? How effective are they? Are they different from or similar to courts? The second theme is how legitimate are existing international courts and tribunals in their dealings with environmental issues. How do they function when they are confronted with cases concerning environmental issues? What role does environmental law play in this context? The third issue is whether we, in light of the outcome of the other two fields, need a dedicated environmental court.

- If the conclusion is that environmental cases, when they come up in different courts, are actually being well dealt with by these international courts in a legitimate and effective manner, then we don't need one dedicated environmental court, says Christina Voigt.

The current research plan is to examine how environmental cases are handled by different international courts, starting with human rights courts in 2014, followed by trade and investment cases in 2015. In 2016 an international conference on "The Environment in Court" will be arranged in Oslo, bringing these questions together. The empirical material and the discussions at the conference will provide a basis for answering the question of whether or not we need an environmental court.

- The planned study of different legal disciplines is supposed to give a better light on how the interaction is between international courts and international and domestic courts, given their policy and legal space, concludes Voigt.

# PUBLICATIONS AND DISSEMINATION

## Books and articles in books

Bailliet, Cecilia M. "From CEDAW to the American Convention: Elucidation of Women's Right to a Life's Project and Protection of Maternal Identity within Inter-American Human Rights Jurisprudence", in: A. Hellum and H. Sinding Aasen (eds), *Women's Human Rights: CEDAW in International, Regional and National Perspectives*, Cambridge: Cambridge University Press.

Corradetti, Claudio. "Preface", in: J. Bohman, *Deliberazione pubblica : pluralismo, complessità e democrazia*, Trans. C. Corradetti.

Corradetti, Claudio. "What Does Cultural Difference Require of Human Rights?", in: C. Holder and D. Reidy (eds), *Human Rights : the Hard Questions*, Cambridge: Cambridge University Press: 136-150.

Dugard, Jackie, St. Clair Asunción Lera and Gloppen, Siri (eds), *Climate Talk: Rights, Poverty and Justice*, Landsdowne: Juta Publishers.

Føllesdal, Andreas; Peters, Birgit and Ulfstein, Geir (eds), *Constituting Europe: The European Court of Human Rights in a national, European and global context. Studies on Human Rights Conventions*, Cambridge: Cambridge University Press.

Føllesdal, Andreas; Schaffer, Johan Karlsson and Ulfstein, Geir (eds) (2014). *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives*, Cambridge: Cambridge University Press.

Maliks, Reidar and Føllesdal, Andreas (eds) (2014). *Kantian Theory and Human Rights*, New York and Oxon: Routledge.

Müller, Amrei. *The Relationship between Economic, Social and Cultural Rights and International Humanitarian Law : an Analysis of Health-Related Issues in Non-International Armed Conflicts*, Leiden: Nijhoff.

St. Clair, Asunción Lera and Gloppen, Siri. "Climate Change Lawfare", in: O. C. Ruppel, C. Roschmann and K. Ruppel-Schlichting (eds), *Climate Change: International Law and Global Governance. Volume II: Policy, Diplomacy and Governance in a Changing Environment*, Baden-Baden: Nomos Verlagsgesellschaft: 171-201.

Ulfstein, Geir. "Les Activités normatives de l'organisation internationale", in E. Lagrange and J.-M. Sorel (eds), *Droit des organisations internationales*, L.G.D.J : 737-755.



## Journal articles

- Ajevski, Marjan. "International Criminal Law and Constitutionalisation: on Hegemonic Narratives in Progress", *Erasmus Law Review*, 6(1): 50-61.
- Bailliet, Cecilia M. "Measuring Compliance with the Inter-American Court of Human Rights: The ongoing Challenge of Judicial Independence in Latin America", *Nordic Journal of Human Rights*, 31(4): 477-495.
- Bailliet, Cecilia M. and Larsen, Kjetil Mujezinović, "Nordic Expert Consultation on the Right to Peace: Summary and Recommendations", *Nordic Journal of Human Rights*, 31(2): 262-278.
- Chavez, Leiry Cornejo. "The Claude-Reyes Case of the Inter-American Court of Human Rights – Strengthening Chilean Democracy?", *Nordic Journal of Human Rights*, 31(4): 513-531.
- Chavez, Leiry Cornejo and Føllesdal, Andreas. "Fragile Democracies, Strong Human Rights Courts? Comparing European and Inter-American Cases", *Nordic Journal of Human Rights*, 31(4): 471-476.
- Corradetti, Claudio. "Philosophical issues in Transitional justice Theory: a (Provisional) Balance", *Politica e Società*, 2: 185-220.
- Føllesdal, Andreas. "The Legitimacy Deficits of the Human Rights Judiciary: Elements and Implications of a Normative Theory", *Theoretical Inquiries in Law*, 14(2): 339-360.
- Gloppen, Siri and Vallejo, Catalina. "Red-Green Lawfare: Climate Justice Discourse in Courtrooms", in: J. Dugard, A. L. St. Clair and S. Gloppen (eds), *Climate Talk: Rights, Poverty and Justice*, Landsdowne: Juta Publishers: 208-235.
- Kanie, Norichika; Haas, Peter M; Andresen, Steinar E; Auld, Graeme; Cashore, Benjamin; Chasek, Pamela S.; Oliveira, Jose A. Puppim de; Renckens, Stefan; Stokke, Olav Schram; Stevens, Casey; VanDeveer, Stacy D.; Iguchi, Masahiko. "Green Pluralism: Lessons for Improved Environmental Governance in the 21st Century", *Environment*, 55(5): 14-30.
- Schmölzer, Stephanie. "Novelle des Gleichbehandlungsgesetzes: Die verpasste Chance einer echten Reform", *Juridikum*, 2: 165-175.
- Ulfstein, Geir. "Awarding Compensation in a Fragmented Legal System: The Diallo Case", *Journal of International Dispute Settlement*, 4(3): 477-485.

## Book reviews

- Ajevski, Marjan. "The Margin of Appreciation in International Human Rights Law: Deference and Proportionality by Andrew Legg (Oxford University Press, 2012)", *Nordic Journal of Human Rights*, 31(4): 552-555.
- Chavez, Leiry Cornejo. "Jo M Pasqualucci, The Practice and Procedure of the Inter-American Court of Human Rights (2nd ed, Cambridge University Press, 2013)", *Nordic Journal of Human Rights*, 31(3): 461.
- Corradetti, Claudio. "After Evil: A Politics of Human Rights by Robert Meister. New York: Columbia University, 2010", *Perspectives on Politics*, 11(4): 1156-1157.
- Corradetti, Claudio. "Marcus Tullius Cicero: How to Run a Country: An Ancient Guide for Modern Leaders with Introduction by Philip Freeman", *Nordic Journal of Human Rights*, 31(3): 458-460.
- Saul, Matthew William. "Book Review: E. de Wet, and J. Vidmar (eds), *Hierarchy in International Law: The Place of Human Rights* (Oxford University Press, Oxford, 2012)", *Human Rights Law Review*, 13(1): 201-205.

## Conferences, debates, presentations

- Bailliet, Cecilia M. "Revisiting World Peace through Law", Public International Law Lunch, 17 April.
- Bailliet, Cecilia M. "Untraditional Approaches to Law: Teaching the International Law of Peace", Cambridge Journal of International and Comparative Law Conference on "Legal Tradition in a Diverse World", 18-19 May.
- Chavez, Leiry Cornejo. "Who will protect human rights in Venezuela?". Debate about Human Rights in Venezuela, 7 November.
- Corradetti, Claudio. "Kant's Cosmopolitan Legacy and the Idea of Transitional Jus Cosmopoliticum". Annual Meeting of the Nordic Network in Political Theory, 31 October-2 November.
- Corradetti, Claudio. Lecturer for the undergraduate course "Introduction to the Theory of Human Rights and Transitional Justice", 8 April.
- Corradetti, Claudio. Lecturer in History and Philosophy of Human Rights "Master Theory and Practice of Human Rights", 1 August -

- 31 December.
- Corradetti, Claudio. "Let Me Explain Why I Should Not Be Killed. Transitional Justice as Ante Bellum Strategy for Conflict Prevention". APSA Annual Conference, 29 August - 1 September.
- Corradetti, Claudio. "Reflective Judgment and the Hermeneutical Turn". Workshop on Pluralism, Democracy and Justice, 4-5 December.
- Corradetti, Claudio. "Transitional Times, Reflective Judgment and the Hös Më Condition". ECPR Annual Conference, 4-7 September.
- Føllesdal, Andreas. "About PluriCourts". Norwegian Centre for Human Rights, 7 October.
- Føllesdal, Andreas. "Applying to the ERC Starting Grants". PluriCourts Academic Career Workshop, 12 September.
- Føllesdal, Andreas. "Introduction". Workshop on Fragmentation of International Human Rights Law, 16 May.
- Føllesdal, Andreas. "Legitimacy of International Courts". Pluricourts workshop on Concepts and Methods, 11 September.
- Føllesdal, Andreas. "Machiavelli's lessons for International Courts". International Association for Constitutional Law, 19 October.
- Føllesdal, Andreas. "Machiavelli's 'The Prince' at 500 years: Lessons for international human rights courts." Bangkok Winter School on Human Rights, 21-24 November.
- Føllesdal, Andreas. "Machiavelli's 'The Prince' at 500 years: Lessons for international human rights courts". Nordic Network in Political Theory, 31 October.
- Føllesdal, Andreas. "Menneskerettigheter og relativisme - Menneskerettigheter under press". Faculty of Social Sciences, 26 June.
- Føllesdal, Andreas. "Om PluriCourts". Nordic Network in Political Theory, 31 October.
- Føllesdal, Andreas. "Om proporsjonalitetsprinsippet i EMD". Demokratiprogrammet, 31 October.
- Føllesdal, Andreas. "Religion and the State - the European Court of Human Rights and the 'Lautsi' case about crucifixes in Italian class rooms". CPG 4th Annual International Conference, 24 November.
- Føllesdal, Andreas. "Research training: 'Building a CV'", iCourts Summer School, 26 June-1 July.
- Føllesdal, Andreas. "Research Training: 'Your Public Persona'", iCourts Summer School, 26 June-1 July.
- Føllesdal, Andreas. "Testing for Proportionality: Protecting Human Rights and Respecting Sovereignty - or Neither?". World Congress of Philosophy of Law and Social Philosophy, 22 July.
- Føllesdal, Andreas. "The Fragmented Discourses of Legitimacy for International Courts - Is There Need for a Unifying Theory, and What might It Look Like?". iCourts Summer School, 27 June.
- Føllesdal, Andreas. "The Future of International Courts and Tribunals". NYU/PluriCourts workshop on The Functions of Judges and Arbitrators in International Law, 24 October.
- Føllesdal, Andreas. "Theories of Human Rights: Political or Moral - and Why It Matters". World Congress of Philosophy, 7 August.
- Langvatn, Silje Aambø. "Frå 'De Stummes Lejr' til 'idealet om offentlig fornuft'". Skjervheimseminaret 2013, 20-22 September.
- Langvatn, Silje Aambø. "Kvinna - Den tause borgar". Stemmerettsjubileet 2013, 27 November.
- Langvatn, Silje Aambø. "Rawls' Shift in Focus from 'Political Justice' to 'Political Legitimacy': What Difference Does It Make?". Nordic Network in Political Theory Conference, 31 October-2 November.
- Lohne, Kjersti; Langvatn, Silje Aambø and Høgestøl, Sofie A.E. "Reflections on the ICC-ASP Conference and International Criminal Justice". PluriCourts Lunch, 4 December.
- Melvær, Knut and Langvatn, Silje Aambø. "Grunnlov tatt for gitt? Demokrati og offentlig begrunnelse". Udannet (podcast), 1 October.
- Saul, Matthew William. "Creating Interim Governments after Conflict: the Role of International Law". Workshop on the Role of International law in Post-Conflict Reconstruction Policy, Durham University, 7 June.
- Saul, Matthew William. "The International Human Rights Judiciary and Domestic Institutions: Interaction as a Source of Democratic Legitimacy?". MultiRights Seminar, 28 May.
- Saul, Matthew William. "The Reception of Decisions of International Human Rights Courts at the Domestic Level". The Society of Legal Scholars Annual Conference: International Law Section, 5-6 September.
- Ulfstein, Geir. "Internasional Organisations and Law-Making". Course in international law, 5-9 August.
- Ulfstein, Geir. "Norway's Experiences with Human Rights Policy". Symposium, 29 August.
- Ulfstein, Geir. "Petroleum Activities in the Disputed Areas around Svalbard?". Arctic Frontiers, 20-25 January.
- Ulfstein, Geir. "Towards an International Human Rights Judiciary?". Conference contribution, 4 December.
- Ulfstein, Geir. "What Should Be the Functions of Human Rights Courts and Treaty Bodies?". Machiavelli seminar, 18-19 October.

## Media

- Føllesdal, Andreas. "Om menneskerettighets-erklæringen". *P1 Pluss* (radio), 10 December.
- Langvatn, Silje Aambø. "Eit rom fullt av elefantar (Om ICC sitt statspartsmøte i Haag 2013)". op.ed., *Klassekampen*, 29 November.
- Langvatn, Silje Aambø. "Ferdamann med stein i skoen. (Svar til Arild Pedersen sitt 'Ferdaminne frå Skjervheimen' i Dag og Tid, 27.10.2013)". *Dag og Tid*, 25 October.
- Langvatn, Silje Aambø. "Meir enn Stemmerett". Interview in *Stavanger Aftenblad*, 28 September.
- Strand, Vibeke Blaker; Hellum, Anne and Schmölzer, Stephanie. "Ett skritt frem og to tilbake. Debattinnlegg om Prop. 88 L (2012-2013) om endret diskrimineringslovgivning." *Klassekampen*.



# INAUGURAL CONFERENCE

*On 20 June 2013 PluriCourts had its formal inauguration in the premises of the Norwegian Academy of Science and Letters. The inaugural lecture was given by Professor Alain Pellet on the topic “The Growth of International Courts and Tribunals: Opportunities and Challenges”.*

Around 60 guests had been invited to the inaugural conference of PluriCourts. The programme included speakers from the University leadership, the Norwegian Research Council and the Norwegian Supreme Court as well as all the coordinators and a few designated rapporteurs. Much of the programme revolved around the agenda for the research to be conducted in the coming years. The speakers gave constructive input highlighting opportunities, but also challenges of PluriCourts’ interdisciplinary focus, and reflected on the global research context in which PluriCourts is placed. The Coordinators presented the plan for the imminent future. On the basis of this, the participants formed groups in the many delightful rooms of the Academy of Sciences and Letters for open discussions of the research topics.

The Conference was concluded with cocktails on the balcony of the Academy, followed by a festive three-course dinner in the main hall. The guests were entertained by the Corpsus Juris brass band, which featured judges’ robes and marching music.

However, before the day had gone that far, everyone sat down to listen to the inaugural lecture, which was given by Professor Alain Pellet, University of Paris Ouest, Nanterre/La Défense.

The title of Pellet’s lecture was “The Growth of International Courts and Tribunals: Opportunities and Challenges”. We witness a remarkable increase in the numbers of international judicial bodies. How should we conceptualise this “multiplication”, why is it taking place, and what are its ramifications – both for States and individual courts? In his lecture, Pellet, being an expert on the International Court of Justice (ICJ), focused also on the position of this Court in the emerging international judicial system.

The multiplication of international judicial bodies, Pellet argued, must be seen as a reply to a demand for more technically specialized fora by the states that set them up and feed them with cases. This horizontal expansion has led to specialised and regional courts, with detailed know-how and resources which the ICJ, having general jurisdiction but a small bench,

cannot provide. Whole new fields of expertise for international lawyers have opened up, and counsels must specialise in a limited number of areas. Individuals have been given a role in international disputes, especially in the field of human rights – as claimants – and in international criminal law – as accused persons – which was quite unimaginable for the ICJ.

The debate to what extent private persons should be given access to international courts and tribunals has not left the ICJ unaffected. Many urge a broadening of the access to the courts.

Pellet did not support this development. He saw the ICJ’s role as that of the prime organ of dispute settlement between states, in a world order in which sovereign



Professor Alain Pellet gave the inaugural lecture at the Norwegian Academy of Science and Letters.

concerns still structure international relations. Although taking matters to the ICJ, which has the mandate to make binding decisions on states, can often be a difficult political decision, Pellet argued that the Court is still the best arena for resolving inter-state disputes. Disputes involving private persons, on the other hand, require procedures and staff tailored to the character of the respective field. In other words, Pellet argued in favour of allowing every tribunal its own place.

Does the co-existence of international courts and tribunals with overlapping jurisdictions create competition, or threaten the unity of public international law? Should the ICJ be empowered to solve jurisdictional conflicts and incoherences? Pellet responded to the main arguments brought forward in the fervent debate on the alleged dangers of “fragmentation” of international law.

First, he viewed the emergence of many new specialised judicial bodies as a sign of dissatisfaction of states with the existing mechanisms– if the existing bodies were working in a satisfactory matter for the states, there would not be a need to set up new ones.

Second, he stated that the competition between courts may lead to a situation in which some courts fall into disuse – which is a natural consequence of the shifting preferences of States.

Third, he considered as neither realistic nor useful to give the ICJ institutional pre-eminence over the other courts.

Even in the main field of competence of the ICJ – inter-state disputes – we can observe a surprising turn to other fora, in particular arbitration. The move away from the ICJ can be seen as an indication of that the Court and the new regional courts are not fulfilling the task given to them in a way that states want.

**Alain Pellet** is Professor of Law at the University of Paris Ouest, Nanterre/ La Défense, where he teaches Public International Law. He is the renowned author of numerous books and articles on public international law and has been counsel and lawyer in more than 40 cases in front of the International Court of Justice, as well as several international and transnational arbitrations, in particular investment cases.

# PLURICOURTS EVENTS

## Conferences and workshops

**16.05** Fragmentation in International Human Rights Law - Beyond Conflict of Laws, Central European University, Budapest.

*MultiRights organized a workshop on the contested topic of fragmentation of international human rights law in collaboration with the Central European University in Budapest.*

**19.06** MultiRights Summer Institute, Norwegian Centre for Human Rights (NCHR), Oslo.

*The selected participants of the MultiRights Summer Institute 2013 presented their research at the end of their fellowship with MultiRights.*

**20.06** PluriCourts Inaugural Conference, The Norwegian Academy of Science and Letters, Oslo.

**21-22.06** Conference on Transnational Judicial Dialogue: Concept, Method, Extent, Effects, Håndverkeren Conference Centre, Oslo.

*MultiRights, 'International Law through the National Prism: the Impact of Judicial Dialogue' and PluriCourts hosted a conference on 'Transnational Judicial Dialogue: Concept, Method, Extent and Effects'.*

**10-11.09** Workshop on Concepts and Methods, Håndverkeren Conference Centre, Oslo.

*The main objective of the workshop was to ensure a shared basis among legal scholars, political scientist and political philosophers associated with PluriCourts with regard to concepts central to PluriCourts: International courts, effectiveness and legitimacy.*

**12.09** Mentoring event, Oslo.

*In-depth workshop on how to secure funding from the European Research Council offered to young researchers. Conducted by representatives of the Netherlands-based training unit Yellow Research, the University of Oslo's EU office and EU advisers from the Faculty of Law.*

**27-28.09** Workshop on International Sexual and Reproductive Rights Lawfare and the Legitimacy of International Human Rights Courts and Treaty Bodies, Oslo.

*PluriCourts coordinator Siri Gloppen organized a workshop with the goal of kicking off a book project on international sexual and reproductive rights lawfare.*

**24.10** Workshop on The Function of Judges and Arbitrators in International Law, New York University, New York.

*PluriCourts and New York University*





Book launch for “Constituting Europe” in London on 3 October.  
Photo: Leiry Cornejo Chavez

organized a workshop on the Function of Judges and Arbitrators in International Law with the goal of publishing a special issue of NYU Journal International Law and Politics.

**13.12** Workshop on international trade courts.

The prospective editors of a book on international trade courts Geir Ulfstein, Hélène Ruiz-Fabri (University Paris I - Sorbonne) and Robert Howse (New York University) met in Paris with a small PluriCourts team (Ole Kristian Fauchald, Michelle Zang and Theresa Squatrito) to discuss the scope and focus of the book.

## Book launch

**05.06** Amrei Müller, *The relationship between Economic, Social and Cultural Rights and International Humanitarian Law* (Leiden: BRILL).

**03.10** Andreas Føllesdal, Birgit Peters and Geir Ulfstein (eds), *Constituting Europe: The European Court of Human Rights in a National, European and Global Context* (Cambridge: Cambridge University Press). Book launch held in London.

## PluriCourts lunch

**04.09** Cecilie Hellestveit and Simon O'Connor: “The use of force against Syria in the wake of the chemical weapons attack in Ghouta”

**18.09** Guest researcher Daniel Behn: “The Chevron - Ecuador case. The Complexities of International Dispute Settlement”

**22.10** Professor Oran Young: “The Effectiveness of Courts and Tribunals”

**30.10** Researcher Camila Gianella Malca: “Using International Courts to Enforce Sexual and Reproductive Rights”

**05.11** Professor Oliver C. Ruppel, Stellenbosch University: “The Role of Regional Courts for Economic Integration, Environmental and Human Rights Protection”

**13.11** The PluriCourts’ International Criminal Law Team.

**17.11** The PluriCourts’ International Trade Courts Team.

**04.12** Reflections on the ICC-ASP Conference and International Criminal Justice.

**09.12** Vera Gowlland-Debbas: “International courts”

**28.05** Matthew Saul: “The International Human Rights Judiciary and Domestic Institutions: Interaction as a Source of Democratic Legitimacy?”

**04.06** Carolina Bubnyte: “The Role of Courts in the Implementation of the European Convention on Human Rights in Lithuania”

**12.09** James Nickel: “International Human Rights: Indeterminacy, Adjudication, and Legitimacy”

**08.10** André Nollkameper: “International Courts, National Courts and the Rule of Law: Descending and Ascending Practices”

**26.11** Marjan Ajevski: “Unstable Identities: The European Court of Human Rights and the Slippery Margin of Appreciation”

**03.12** Daniel Viehoff: “Legitimacy, Authority, Rights, and the Courts”

## MultiRights seminar

**09.04** Johan K. Schaffer: “The Co-originality of Human Rights and Democracy in an international order”

**30.04** Reidar Maliks: “Kantian Courts: on the Legitimacy of International Human Rights Courts”

**07.05** Kit Wellman: “Procedural Rights”

**14.05** Victor Peskin: “The New Victor’s Justice vs. the Principle of Evenhandedness: Prosecutorial Selectivity from the Rwanda Tribunal to the ICC”

**21.05** Geir Ulfstein: “UN Human Rights Treaty Bodies: Law, Effectiveness and Legitimacy”

## International law lunch

**03.04** Christina Voigt: “Reflections of Equity in the UN Climate Regime after Doha”

**10.04** Ingvill Thorson Plesner, SMR: “European Court of Human rights: Case of Eweida and others v. the United Kingdom (2013)”

**17.04** Cecilia M. Bailliet: “Revisiting World Peace through Law”

**24.04** Morten Ruud: “The implementation of the Brighton Declaration on Reform of the European Court of Human Rights”

**15.05** Juan C. Ochoa-Sanches: “Defining the nature and features, under international law, of civil remedies for victims of human rights





Silje Aambø Langvatn.  
Photo: Ola Sæther.

infringements involving transnational corporation”

**29.05** Gentian Zyberl: “The contribution of the ICTY to the development and clarification of IHL: A review of recent caselaw”

### MultiRights reading group

**11.04** Sathanapally, ‘Beyond Disagreement: Open Remedies in Human Rights Adjudication’ (Oxford University Press, 2012) Chapter 1.

**18.04** Pasqualucci, ‘Introduction: The Practice and Procedure of the Inter-American Court of Human Rights’ 2nd edition (Cambridge University Press, 2013).

**06.11** Michel Rosenfeld “The Rule of Law and the Legitimacy of Constitutional Democracy”, *Southern California Law Review* 74: 1307.

**10.12** Gunther Teubner: *Constitutional Fragments: Societal Constitutionalism and Globalization*. Chapter 1 and 6.

**18.12** Daniel Bodansky: *The Legitimacy in International Law and International Relations*.

# PEOPLE 2013

## Coordinators

Bailliet, Cecilia  
Fauchald, Ole Kristian  
Føllesdal, Andreas  
Gloppen, Siri  
Ulfstein, Geir  
Voigt, Christina  
Wind, Marlene

## Professor II

Andresen, Steinar E.

## Postdocs

Ajevski, Marjan  
Corradetti, Claudio  
Langvatn, Silje Aambø  
Müller, Amrei  
Saul, Matthew  
Squatrino, Theresa  
Zang, Qingzi

## PhD candidates

Høgestøl, Sofie A.E.  
Tsereteli, Nino

## Master students

Jervan, Marte  
Metz, Elise Gedde  
Mollestad, Christoffer

## Research assistants

Leerberg, Nora  
Schmölzer, Stephanie

## Administration

Chavez, Leiry Cornejo  
Nessøe, Aina  
Henden, Øyvind  
Kaurstad, Elin  
Olafsen, Thomas

## Visiting professors

Nickel, James  
Young, Oran

## Guest researchers

Behn, Daniel Friedrich  
Bubnyte, Karolina  
Carvalho, Edzia  
Conrad, Courtenay  
Haglund, Jillienne  
Hill, Daniel W.  
Krommendijk, Jasper  
Malca, Camila Gianella  
Shaw, Ari  
Squatrino, Theresa  
Ritter, Emily Hencken  
Lupu, Yonatan  
Landman, Todd



PLURI  
COURTS



**European Research Council**

Established by the European Commission



The Research Council of Norway



**UiO** ● ●  
**University of Oslo**

PluriCourts Annual Report 2013  
Copyright: PluriCourts, University of Oslo  
Edited by: Hanna Karv and Elise Koppang Frøjd  
Coordinator portraits: Ola Sæther and Elise Koppang Frøjd, UiO  
Layout: Hanna Karv  
<http://www.uio.no/pluricourts>