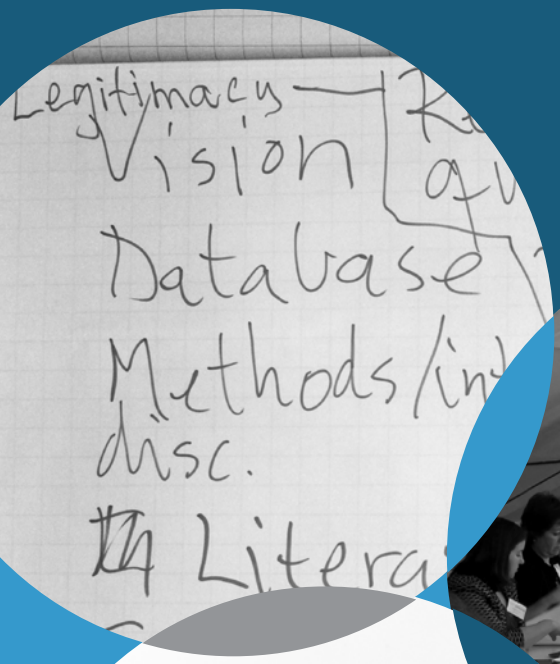
PluriCourts

Centre for the study of the legitimacy of the international judiciary



2015

Norwegian Centre of Excellence

The Research Council of Norway

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Norwegian Centre of Excellence
The Research Council of Norway
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European Research Council
Established by the European Commission

The year 2015

Director Geir Ulfstein

The year 2015 was an exciting and successful year for PluriCourts.

A major highlight in 2015 was the 11th Annual Conference of the European Society of International Law (ESIL) which PluriCourts hosted in September. 400 scholars and international judges met in Oslo to discuss the increased judicialization of international law and placed PluriCourts firmly on the landscape of leading research on international courts and tribunals. The conference will result in a book edited by PluriCourts and published by Oxford University Press.

The Centre also saw its first Ph.D. defense when Nino Tsereteli successfully defended her thesis "The Pilot Judgment Procedure of the European Court of Human Rights (ECtHR) – illegal but legitimate?" in June.

The level of activity at the Centre remained exceptionally high, reflected in a large number of conferences, workshops and seminars and a substantive list of publications. The first book in PluriCourts' book series at Cambridge University Press, Studies on International Courts and Tribunals, was published in 2015. Worth mentioning especially is the ongoing work on a database on international investment arbitration awards, and ongoing comparative studies of the ECtHR and the Inter-American Court of Human Rights. PluriCourts continues to have regular seminars with Norwegian judges, in 2016 together with the Norwegian Courts Administration, under the auspices of the annual Ryssdal Conference.

A main focus in 2015 has also been on updating the PluriCourts research strategy. The academic discussions are coupled with many social activities. PluriCourts scored very high at this year's working environment survey (ARK), confirming the staff's commitment to and satisfaction with the Centre.

In 2015, the research team underwent a number of changes. As the Centre marked its second anniversary on 1 April, Geir Ulfstein took over as Director as planned. Two part-time coordinators in political science, Siri Gloppen and Marlene Wind, and one part-time professor, Steinar Andresen, returned fully to their home institutions. In order to ensure continuity and strengthen the political science aspects of PluriCourts' research, Daniel Naurin was hired as a full-time research professor and coordinator in political science from1 January 2016 and has already provided significant input to the research agenda in 2015. Three Post-doctoral Fellows were recruited based on global calls, and three Ph.D. candidates started their affiliation with PluriCourts.

Research area:

Human rights

2015 was a rich year for human rights research at PluriCourts, both at its two affiliated research projects on human rights courts and on other human rights research projects.

In June, the MultiRights project, funded by the European Research Council and based at PluriCourts, entered into its final year of operation. The main focus of research shifted from accounts of subsidiarity to democratic values underpinning the international human rights judiciary.

It was also the final year of the project Judicial Dialogues, funded by the Norwegian Research Council and the European Science Foundation (ECRP). An anthology on dialogues between domestic courts and international human rights courts and tribunals was submitted and will be published by Cambridge University Press in 2016.

Main events and publications

The MultiRights Annual Conference on "Subsidiarity and the Margin of Appreciation" discussed the judge-made margin of appreciation doctrine of the European Court of Human Rights. According to this doctrine, states should be given some leeway in deciding how to interpret and implement their human rights obligations arising from the European Convention on Human Rights. The Court should not interfere unduly with national sovereignty. At the same time, granting too much power to the states could potentially lead to eroding normative guidance and freezing the development of the law. It is therefore not surprising that the question how the Court should grant states a margin of appreciation has been at the forefront of the recent high level political discussions regarding the reform of the Convention machinery. The Annual Conference critically reviewed the Court's practice – which sometimes appears to be inconsistent – but also the political arguments where to strike a balance between which questions should be left to the states and in which cases the Court has to decide.

Post-doctoral Fellow Matthew Saul hosted two workshops on the relationship between the international human rights judiciary and domestic parliaments. These workshops highlighted the potential for domestic parliaments to play a key role in the realization of human rights – if domestic governments and international bodies empower them. These workshops will result in an edited publication.

In cooperation with the Supreme Court of Norway and the Norwegian Courts Administration, PluriCourts has initiated an annual seminar series focusing on the international human rights judiciary and Norwegian law and judicial practice. The topic of the 2015 conference was "UN Human Rights Bodies and their Implications for Norwegian Law".

Key findings and achievements

At least two overarching themes have emerged from the research on the human rights judiciary: the need for a system-view – i.e. the complex roles of the global judiciary within the global basic legal structure; and some elements of a doctrine of subsidiarity.

There is a very complex interdependence between international courts and domestic authorities, also beyond the various human rights 'systems' to also include the complex of interdependent regional and international courts and treaty bodies AND domestic authorities. That is: we should choose a 'Kantian' vantage point, to consider the public institutions at the domestic and the international level as parts of the same system. This means that we cannot assess the legitimacy of the international organs in isolation: the problem may lie in the national organs or in their interplay.

Secondly, we suggest that an improved doctrine of subsidiarity should include at least two building blocks, which will *inter alia* allow a more precise and more legitimate doctrine of a margin of appreciation.

There are many versions of subsidiarity, all of which hold a rebuttable presumption for local authorities, e.g. expressed by terms such as the state having 'primary responsibility'. Many international law scholars have favoured a state centric version of the subsidiarity principle, whereby international courts' legitimacy depends on how necessary they are to promote the interests of states. This creates the risk that the human rights judiciary no longer are guardians, but lapdogs of the states. We would hold the complementary view that the more defensible version of subsidiarity does not stop at the state level, but goes 'all the way down': the normative touchstone should include person-centric subsidiarity. The question we should ask is how well international courts promote the interests not of states, but of individual human beings – sometimes against the interests of their state authorities. From this point of view, states are not principals, but agents of their people.

We also insist that subsidiarity has at least two important strands which are relevant for the international judiciary. Considerations of subsidiarity certainly support the role of international courts and treaty bodies as state constraining – a safety net. But the international human rights judiciary should also be subsidiary in another sense well known from the history of subsidiarity: as state enabling. These judiciaries should be authorized to assist the domestic authorities – not in doing what the domestic authorities want, but to assist the state in respecting and promoting the human rights of their citizens.

Ambitions for 2016-2017

In April 2016 the ERC advanced grant project MultiRights will be completed. After its completion, the Human Rights pillar will pursue three main strands of research on international human rights courts and tribunals (HRICs):

1) The "Constitutionalisation" of international human rights courts and tribunals

We consider the roles and status of HR ICs relative to other ICs and domestic bodies in processes of harmonization/ integration of international law, including:

- how are tensions between WTO, investment tribunals, ICC, and HR ICs currently dealt with, what options are there, which should be pursued?
- the relation between HR ICs and domestic bodies, including civil society.

2) Reform of regional HR courts and treaty bodies

Several international human rights bodies are in the midst of prolonged reforms. The European Court of Human Rights (ECtHR) is of particular interest as it is responding to legitimacy challenges:

- attempts by some states to roll back the perceived power of the ECtHR, by including calls for 'subsidiarity' and a wide 'margin of appreciation' to be enjoyed by the states.
- revised modes of interaction between the courts and the states –a cross-cutting topic of interest for other PluriCourts research as well. Changes include evolving doctrines of the margin of appreciation; constraining this margin when it perceives an 'emerging European consensus' among the states; and a possible turn from performing substantive human rights review toward proceduralism – toward checking whether domestic authorities have followed certain procedures.

3) Comparisons between regional HR courts

The regional human rights courts merit comparative research, not least because they are often thought to be adjudicating human rights which are universal in some sense. Such comparisons are among the cross-cutting PluriCourts topics. Issues include how they interact with domestic authorities with varying democratic and rule-of-law credentials and different roles for civil society: the discretion they grant states as regards application of treaty norms and remedies; interpretation of apparently similar rights and of social and economic rights; gender equity among judges.

In 2017 we may be engaging with the development of human rights regime in the ASEAN region in the aftermath of the ASEAN Declaration on human rights, in collaboration with the National University of Singapore. We may also initiate comparative research about the European, the Inter-American and the African courts engaged in human rights adjudication.

HUMAN RIGHTS TEAM

Coordinators:
Andreas Føllesdal
Geir Ulfstein

Post-doctoral fellows:
Amrei Müller
Claudio Corradetti
Matthew Saul

Researcher:
Laura Létourneau-Tremblay

PhD fellows:
Nino Tsereteli
Øyvind Stiansen

Research area:

Trade

The year 2015 witnessed significant public attention to and debates on regional trade agreements (RTAs). In October, negotiations of the Trans-Pacific Partnership Agreement (TPP) were concluded. Substantial progress was made on completion of the Transatlantic Trade and Investment Partnership (TTIP) and the Comprehensive Economic and Trade Agreement (CETA). At the adjudication front, the case Peru – Agricultural Products raised debates as regards the relationship between the World Trade Organization (WTO) and RTAs.

PluriCourts has designed its research and publication activities in line with such developments and hosted key researchers on the relevant topics. In a number of seminars, we have discussed and analysed the role and potential of international tribunals in the era of mega RTAs.

Main events and publications

Research in the trade pillar centred around a major book project on "The Legitimacy of International Trade Tribunals". It analyses multilateral, bilateral, trilateral and regional mechanisms of dispute settlement. It covers thirteen different courts and tribunals with a specific emphasis on understudied regions and regimes.

After an initial individual analysis of each of the tribunals, the book will compare the different mechanisms. The most recent developments in international adjudication will be particularly studied. The volume is mainly based on legal analysis with further contributions from political scientists and philosophers.

Key findings and achievements

While the WTO dispute settlement system remains the most important forum for resolving disagreement on trade issues, we have increasingly focused on the new regional and bilateral trade agreements with their own mechanisms for dispute resolution. A striking feature has been a convergence between trade and investment disputes. Finally, a challenge has been to determine the relationship between international obligations and national regulatory freedom. The trade pillar is focusing on the legitimacy issues raised in all these connections.

Research visits

Michelle Q. Zang was Visiting Researcher at the Lauterpacht Center for International Law, University of Cambridge, October–December 2015.

In addition to this, PluriCourts received a number of visiting scholars.

Dr. Lorand Bartels from the University

Trade and Investment Forum

While international trade and investment law and regimes developed very differently in the post-war period, in recent times we see increasing convergence of the regimes. In 2015, the PluriCourts' trade and investment pillars joined forces and launched the Trade and Investment Forum (TIF), targeting issues of common interest, including trade and investment agreements, and dispute settlement procedures in international trade and investment. The Forum organizes internal workshops and public seminars, and has started working on a joint conference and anthology.

of Cambridge visited PluriCourts in September 2015. During his visit, he presented his paper "Applicable Law in WTO Dispute Settlement",

Professor Andrew Mitchell, University of Melbourne, joined PluriCourts for a two month visit in September-October 2015. Among other things, Mitchell participated in the public debate "Lawfare: the Tobacco Industry's Use of International Trade and Investment Law", which was held at Litteraturhuset.

Prof. Tania Voon, University of Melbourne, came for a research visit of 2 weeks at PluriCourts in September. She participated in the public debate on "Lawfare: the Tobacco Industry's Use of International Trade and Investment Law", at Litteraturhuset, Oslo,

Post-doctoral fellow Michelle Q. Zang arranged a workshop for Law Professors on Public Choice Economics at the School of Law, George Mason University, in March 2015. The goal of the workshop was to introduce law professors to the concepts of public choice in trade and investment policy making; and how to use those concepts in their research and teaching.

Ambitions for 2016-2017

The Faculty of Law has announced a professorship in International Economic Law which will be dedicated to PluriCourts until the Centre finishes in 2023. This will represent a considerable strengthening of the trade and investment pillars of PluriCourts.

The edited book on "Legitimacy of International Trade Courts and Tribunals" will be launched in the second half of 2016. Besides studies of the prominent trade adjudicators, e.g. the WTO and the European Court of Justice, this book further collects research on a number of regional courts and tribunals in Latin American, Africa and Asia that are highly under-studied. This volume is dedicated to inter-disciplinary cooperation, enclosing not only legal analysis but also contributions from political scientist and political philosopher.

In August 2016, PluriCourts is hosting the TIF conference on "Adjudicating international trade and investment disputes: between interaction and isolation". A number of prestigious scholars and experts have confirmed their participation and we have accepted sixteen paper presentations. The conference highlights three specific themes evolving around the converging trend between trade and investment regimes, namely the new mega-regionals, comparisons and practices, cross-fertilization and learning. The conference aims at selective paper publication in the form of edited book.

Throughout 2016-2017, PluriCourts will host a number of research visitors specialized in international trade and investment with their contribution in research activities and cooperation.

ARTICLE

Michelle Q Zang, "Shall We Talk? Judicial Communication between the CJEU and the WTO Adjudicators", Jean Monnet Working Paper 2015 - 2016, University of Geneva.

TRADE TEAM
Coordinator:
Geir Ulfstein

Postdoctoral fellows:
Michelle Q. Zang
Theresa Squatrito

Research area:

International criminal law

International criminal law (ICL) tribunals are experiencing significant, reflective critiques. The ad hoc tribunals are in the process of winding down amid mixed reviews. The creation of the International Criminal Court (ICC) has failed to live up to many of the optimistic expectations that were imposed upon it, with some African states such as Namibia and South Africa taking steps to withdraw from the Rome Statute. At the same time, calls are being made for new courts and ad hoc jurisdictions to be created as a solution to atrocities and for new crimes to be added to the list of core international crimes. The present trend is to look towards complementarity mechanisms. The pillar will further juxtapose the perspectives of practitioners and academics, while conducting both normative (law & philosophy) and empirical studies (social sciences). We will explore positive and negative consequences of complementarity. This will be in accordance with the pillar's over-arching discussion of ICT's relation to democracy, rule of law, and the principle of legality. Finally, the pillar will underscore ICT's relationship to other areas of law (inviting comparison of institutions), as well as gaps in relation to additional criminal phenomena- such as narco-trafficking and terrorism.

The ICL pillar increased its activities in 2015, as it commenced a series of "International criminal law lunch seminars". The seminars have covered various topics and have become popular with both students and academics. The pillar aims to have a monthly lunch seminar where a relevant topic is presented and discussed.

Criminal law themes are also covered in PluriCourts seminars and lunch seminars by the research group on international law.

In addition to this, we have introduced a weekly ICL news summary - rounding up publications, decisions, and news from the field. The ICL round up is publicly available at PluriCourts' website.

Main events and publications

The ICL team completed the editing of a volume on the Legitimacy of International Criminal Tribunals (ICT), which is forthcoming in 2016 with Cambridge University Press. The contributions to the book were based on presentations given at the 2014 conference on the Legitimacy of ICTs. PluriCourts researchers Nobuo Hayashi, Cecilia Bailliet, and Joanna Nicholson have edited the book. The book includes chapters on the theories of legitimacy, ICTs' contribution to normative development, truths and narratives, positive complementarity, and regional alternatives to the International Criminal Court; as well as the roles played by various shapers of ICT legitimacy and effectiveness, including prosecutors, victims, convicted persons, states, and non-governmental organisations. PluriCourts researchers Nobuo Hayashi, Kjersti Lohne, Silje Aambø Langvatn, and Teresa Squatrito have all contributed chapters to the book.

ICL LUNCHES 2015

- Is Targeting Naked Child Soldiers a War Crime? Joanna Nicholson
- "Imagined Identities": Defining the Racial Group in the Crime of Genocide, Carola Lingaas

Another major event for PluriCourts in 2015 was the book launch of the volume "Promoting peace through international law" (Oxford University Press), edited by professors Cecilia M. Bailliet and Kjetil Mujezinovic Larsen. The book explores the normative foundations of a right to peace, while discussing the interaction of peace with topics such as transitional justice, the role of international courts, dispute settlement within the WTO, and fact-finding mechanisms.

Joanna Nicholson published the brief "Can War Crimes Be Committed by Military Personnel Against Members of Non-Opposing Forces?" in the International Crimes Database (ICD).

In addition to this, researchers Joanna Nicholson and Nobuo Hayashi have been teaching International Criminal Law at the Faculty of Law.

Key findings and achievements

Researcher Joanna Nicholson's research examines the role played by precedent in enhancing the legitimacy of the International Criminal Court. She has been exploring "to what extent does the jurisprudence of the ICC deviate or adhere to the principle of legality when choosing whether or not to go beyond the list of sources within the ICC statute to make reference to external judicial decisions from other ICTs."

Nobuo Hayashi published "Issues Relating to Admissibility of Evidence", 43 Annotated Leading Cases of International Criminal Tribunals 576 (2015)

In 2015, Silje Aambø Langvatn and Theresa Squatrito pursued interdisciplinary discussions about international criminal courts and tribunals, proposing that there is a one-sidedness in much of the purely legal literature and offering recommendations on alternative approaches.

Guest researcher Kjersti Lohne studied (NGOs) which transferred moral authority to the ICC (victims' advocates) but paid little attention to defence rights.

Ambitions for 2016-2017

The ICL pillar aims to gather scholars and practitioners from ICTs and complementarity tribunals from around the world. In August 2016, the pillar hosts a conference on Strengthening the Validity of ICTs. The results from the conference will be published in an edited volume or special edition of an international journal. The ICL Pillar aims to gather scholars and practitioners from ICTs and complementarity tribunals from around the world.

International Criminal Justice pursues a Western, liberal model which focuses on individual responsibility as opposed to state responsibility and is more concerned with punishment than reparation. The call for papers highlight an interest in TWAIL (Third World Approaches to International Law), feminist, and critical legal theory, including multi-disciplinary perspectives in order to complement our normative perspectives.

The pillar will be growing in the years to come, when a new post-doctoral research fellow, Alain Zysset, joins the team in 2016. The post-doctoral fellow will seek to elucidate the tension between ethical and political accounts of normative legitimacy. The pillar will also be strengthened when researcher Kjersti Lohne joins the pillar in spring 2016. Her next project is on non-governmental organizations (NGOs) at Guantanamo which focus on defence rights (prisoners' advocates) and seek to de-legitimize the Military Commission.

Post-doctoral research fellow Silje Aambø Langvatn will explore how Marx is being used in the debate about ICTs legitimacy, especially in the TWAIL literature and by representatives of critical legal studies. Researcher Joanna Nicholson will write an article on the principle of legality within the ICC jurisprudence, to be submitted to an international peer-reviewed journal in 2016.

ICL TEAM
Coordinator:
Cecilia M. Bailliet

Postdoctoral fellow:
Silje Aambø Langvatn

Researchers:
Joanna Nicholson
Kjersti Lohne
Nobuo Hayashi
Shakira Bedoya Sanchez

Research area:

Investment

In 2015, the investment pillar expanded its network of collaborators, both within the University of Oslo and internationally. The research team was strengthened with one associate professor, one researcher, one Ph.D. candidate, two research assistants, and three visiting scholars.

A particularly vivid debate in 2015 concerned the draft model bilateral investment treaty (BIT) presented by the Norwegian government. This new push for a model BIT came at a time when demonstrations against TTIP (Transatlantic Trade and Investment Partnership) between the EU and the US as well as TISA (Trade in Services Agreement) were omnipresent in the media. Researchers from the investment pillar enlightened the debates, both in the media, by organizing public seminars about the Norwegian draft text, and by submitting written comments during the public hearing.

Main events and publications

The research focus within the investment pillar was strongly oriented towards empirical perspectives on investor-state adjudication. One of the challenges facing research within the pillar is that decisions by investment tribunals are often not published. The pillar tries to solve this knowledge gap by building a comprehensive database of investment treaty arbitration cases.

A book project on empirical perspectives on investment treaty arbitration is underway. In August some 25 scholars from political science and law gathered in Oslo in order to discuss draft contributions to the publication. The book is to be finalized for publication in 2016.

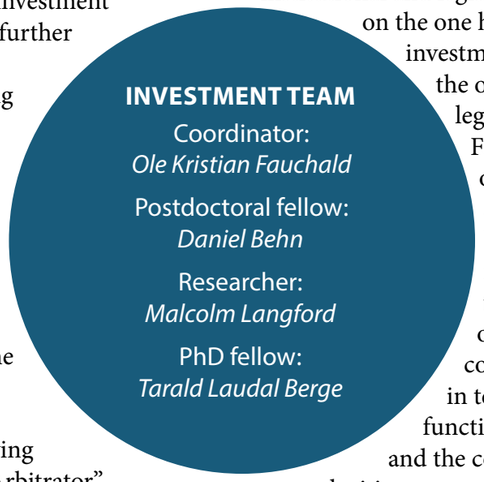
The investment team has been collaborating with the environment team at PluriCourts. The research focus has been on how practices in investment treaty arbitration might be shaped or reformed in a way that can both promote environmental sustainability and protect responsible and legitimate foreign investments. The two teams arranged a joint symposium on this topic in November with the title "The Present and Future Role of Investment Treaty Arbitration in Adjudicating Environmental Disputes" with 40 participants. Papers presented at the symposium will be processed to become a special issue of the Journal of World Investment and Trade.

The investment team submitted a major application for Horizon 2020 funding in 2015, entitled "Operationalizing a just and sustainable international investment policy for Europe". The application succeeded in meeting the threshold for being considered, but did not achieve

funding. The effort was important for establishing the investment team as an attractive partner in future applications, and has been followed up through research activities with some of the collaborating partners.

Key findings and achievements

A key achievement in 2015 has been the emergence of the first publications based on the database on investment arbitration awards (further details below). The database is providing a solid empirical basis for research on investment arbitration cases and international investment agreements.



A proud moment the past year was when a paper "Managing Backlash: The Evolving Investment Treaty Arbitrator" submitted by Daniel Behn and Malcolm Langford, won the first European Society of International Law (ESIL) young scholars prize. The paper was to be presented at the Agora "Managing Legitimacy: Empirical Perspectives on the Responses of International Judges and Arbitrators to Backlash and Discontent", which was organized by the Investment team at the ESIL 2015 Conference. The prize is awarded the best paper submitted to the Conference by scholars at an early stage in their academic career. Another proud moment was when the students at our FDI Moot Court Team brought home the prize for the "Memorial with the Best Damages Section". Their arguments will be published as a journal article.

Ambitions for 2016-2017

In 2016-2017 the investment team aspires to gain more insight into the core challenges regarding the legitimacy of ISDS, including causes and effects, and strategies to improve legitimacy, based on empirical and experimental studies. We hope to get a clearer picture of the links between the underlying institutional and legislative framework on the one hand, and investment tribunals, on the other, in terms of legitimacy challenges. Focus will also be on the differences and similarities between investment tribunals and other international courts and tribunals in terms of origins, function and effects, and the consequences for legitimacy.

In 2016-2017, the pillar will be reinforced with two new post-doctoral fellows and one permanent professor in International Economic Law. The post-doctoral fellows will begin their work in 2016, while the position as professor has recently been announced by the Faculty of Law.

We will continue to broaden our network, and will in the coming years cooperate with empirically oriented scholars on matters regarding the interaction between ISDS and commercial arbitration. The pillar is already attracting attention and will be visited by several prominent scholars in the near future.

Research area:

Environment

Given the absence of an international court or tribunal in the field of international environmental law, studying the legitimacy of international adjudication with regard to environmental protection means studying the legitimacy of adjudicative bodies that are not specialized in environmental law. It means looking at disputes that have an environmental component but are being dealt with by international courts with general jurisdiction, i.e. the International Court of Justice (ICJ), or international courts and tribunals with special – but not environmental – jurisdiction, e.g. Human Rights courts and treaty bodies, international trade panels and the dispute settlement system of the WTO and investment tribunals. Such spread of adjudicative bodies involves the careful study and analysis of a significant amount of different international juridical practice.

Accordingly, in 2015, the work of the environmental pillar together with the investment pillar has focused on the study of investment treaty arbitration when dealing with environmental cases and analysed the role of investment treaty arbitration for advancing and promoting stronger environmental protection. In November 2015, the two pillars collaboratively organized an international symposium on the role of investment treaty arbitration in environmental cases. The symposium will produce a special issue of the Journal of World Investment and Trade - Law, Economics and Politics.

Simultaneously, the environmental field offers an exceptional opportunity to study avenues of dispute resolution that, while reaffirming faith in institutionalised, predictive and legitimate conflict resolution, challenge existing courts/tribunals. The study of the variety and contribution of these alternative fora beyond the courts provides an important platform for linking the environmental pillar with others.

New Ph.D. student and guest researchers

In 2015 the research team was strengthened by its first Ph.D. candidate, Rosa Manzo, who works on the legal principle of equity and its use by international courts. The pillars also received two guests in 2015. Oran Young, professor emeritus at the Bren School of Environmental Science and Management at the University of California, Santa Barbara, visited the pillar during the fall for a shorter stay. The pillar was also visited by Professor Michael Byers, Canada Research Chair in Global Politics and International Law at the University of British Columbia, in May. During his stay, he had a lunch seminar on

"Who owns the North Pole?" where he discussed the functioning of the dispute mechanism under the United Nations Convention on the Law of the Sea (UNCLOS).

Main events and publications

This year, the environment team published a special issue on Human Rights courts and environmental disputes of the Journal in Human Rights and Environment. The volume follows the conference with the same name, which the team organized on the theme "the legitimacy of human rights courts in environmental disputes" together with the Human Rights pillar in 2014. The special issue, which contains a selection of articles from the conference, was published in September 2015.

The pillar is also following recent developments in establishing a compliance mechanism under the Paris Agreement on climate change. In 2015, work focused on the UNFCCC negotiations of that agreement. Christina Voigt, the coordinator of the pillar, participated in the Norwegian delegation at the climate negotiations COP21 in Paris as the principal legal advisor and climate negotiator for the topic of compliance. This work gave detailed insights into the "establishment" of a compliance mechanism and its relationship to the normative content of Parties' treaty obligations. She was also appointed by the Norwegian government to the list of environmental arbitrators at the Permanent Court of Arbitration.

ENVIRONMENT TEAM

Coordinator:
Christina Voigt

Postdoctoral fellow:
Jerneja Penca

PhD fellow:
Rosa Manzo

Ambitions for 2016-2017

In 2016, the environmental pillar of Pluricourts will be responsible for organizing the 14th Colloquium of the International Union for the Conservation of Nature (IUCN) Academy of Environmental Law in Oslo. The colloquium will have the theme "The Environment in Court" and is expected to attract 200-280 participants. From the colloquium, two edited publications are planned. In addition, participation and presentation both of a paper and of Pluricourts as the host of the 2016 IUCN colloquium is expected at the World Congress on Environmental Law in Rio de Janeiro, Brazil, hosted by the World Commission in Environmental Law. A personal invitation to Professor Christina Voigt was extended by the World Commission's president Justice Antonio H. Benjamin in September 2015. The visit will be combined with a special event and talk at the Supreme Court of Rio prior to the Conference.

In 2017, the environmental pillar continues with investigating legitimacy issues where courts with general or specific non-environmental competences deal with environmental cases. The team plans a general symposium on the role of the International Court of Justice with a specific focus on fact-finding and use of scientific evidence, risk and precaution, and a smaller symposium on how trade agreements' compliance systems deal with environmental disputes.

"It became clear that, for many questions regarding the performance of international courts, interdisciplinary collaboration is not only fruitful but, in some instances, necessary - an insight that is consistent with broader developments in research on international courts."

From blog post at the PluriCourts blog on "The Performance of International courts" by workshop participant Nicole De Silva

PluriCourts - The new hub for empirical investment law research

With its new, unique databases, the investment pillar has contributed to establishing PluriCourts as a hub for empirical legal research on investment treaty arbitration – and is shining some empirical light on the contested issue of investment treaties.

International investment law is a highly contested field, with those who defend the system and those who want to change it firmly standing their ground against each other.

Until now, the debate has to a large extent been theoretical, based on the language of treaties and on discussions of individual cases. As a result, the debate on investment arbitration has not been sufficiently grounded in empirical knowledge on the general use and effects of the legal regime. Simply put, it has been hard to tell how the system really works.

The investment team at PluriCourts is shedding some much-needed empirical light on some of the more contested issues. The outcome of this will be the rejection or verification of general claims, which in turn will lead to a more empirically grounded debate.

Empirical myth-busters

PluriCourts post-doctoral research fellow Daniel Behn has recently verified one contested claim, namely that of the relationship between GDP and arbitration outcome. The debate has been whether or not the wealth of a country as measured by its GDP has any effect on the outcome of the case.

- While a recent article claimed that a country's development status did not affect their likelihood of success in investment treaty arbitration, we have recently shown that the outcome of cases correlates strongly with a country's GDP. Behn explains that countries with a lower GDP not only have more chances of having a case brought against them, but the odds of them losing the cases are also higher. While some myths are verified, others are falsified. Pillar coordinator professor Ole Kristian Fauchald mentions here the claim that the arbitration system is only used by large multinationals from a few sectors.

- It is no longer just the extractive industries and large infrastructure companies that are using this system. Investment treaty arbitration is diversifying in terms of which sectors and investors are using the system as well as in terms of countries that are being sued. We are now increasingly seeing cases being brought against developed countries, he says.

However, without access to updated data, such developments would have been hard to trace. Nobody has a complete picture due to the secrecy surrounding many cases. The data collected by the PluriCourts team is currently the most extensive available.

Putting PluriCourts on the map

For the last two years, the pillar has put many hours into developing a database on investment treaty arbitration and a database on bilateral investment agreements. They are now starting to harvest the fruits of their hard labour. There are several potentially ground-breaking publications in the pipeline.

- PluriCourts is quickly becoming well-known among those interested in empirical research on investment law, explains coordinator Fauchald.

The pillar is attracting reputable international scholars and the word on the database project has spread rapidly in relevant research circles on a global scale. In this sense, PluriCourts now functions as a hub for empirical research on investment arbitration.

- This is because of a tight-knit team that is up-to-date on the latest findings and research questions. We are now bringing new perspectives to the debate, says Fauchald.

- One of our chief advantages is that we do not have vested interests in investment arbitration; we remain independent researchers.

Not so secret after all?

Researching the outcome of investment cases can often be challenging as not all awards are made public. This has also been one argument of the opponents of the system.

Through diligent research, many of the cases do at some point reach the PluriCourts team. Fauchald estimates that at this point, the team knows of 90 percent of the investment arbitration cases.

ARTICLE

Behn, Daniel, Langford, Malcolm and Berge, Tarald L. (2016) "Development or Democracy? Explaining Outcomes in Investment Treaty Arbitration", *PluriCourts research paper no. 1-16.*

- We know of law firms that have the cases. They will neither confirm nor deny the existence of the case, but we know that they are there, Behn adds.

- The days when investment treaty arbitration could be kept secret are slowly running out.

Background

A system of private judges

For a long time investment disputes were handled either by the International Court of Justice, inter-state or in commercial arbitration. Cases before the International Court of Justice and inter-state arbitration have been infrequent and dependent on the willingness of states to bring the cases forward. Commercial arbitration is usually conducted under the auspices of one of the major international arbitration institutions, such as the International Chamber of Commerce or the London Court of International Arbitration to name just two.

With the increasing diffusion of investment agreements over the last 50-60 years, investment treaty arbitration has - in the course of the last 25 years - become a major avenue for investors seeking protection of their investments against state acts. When an investor brings a case against a state, it can either be resolved by a tribunal hosted by an arbitration institution, such as the World Bank International Centre for the Settlement of Investment Disputes (ICSID) or by a tribunal with no institutional affiliation.

The investment arbitration system has been criticized for many reasons. Among the issues that have been raised are: it is biased in favour of investors from OECD countries investing in less developed countries, it is expensive, opaque and it restrains the freedoms of sovereign states to adopt and implement policies.

- This is not dispute settlement on the cheap, says Fauchald and explains that expenses have been a concern for small and medium sized enterprises, which have been struggling to use the system until now.

Professor Ole Kristian Fauchald (left) and post-doctoral fellow Daniel Behn (right) are doing research on the legitimacy of international investment tribunals. Photos: University of Oslo.

- It is a system of private judges, and law firms acting on behalf of enterprises have so far been very expensive, so you have had to pay a lot for case, adds Behn But the competition among law firms is reducing their fees and consequently costs seem to go down significantly.

As the legal costs for arbitration are going down, the arbitration system is becoming more accessible to businesses that were previously excluded due to the high costs. In the earlier days of investment arbitration, the system was mainly used by the extractive industries and investors in large infrastructure projects.

- This was the situation in the 1990's and early 2000's, but the system is changing. Smaller firms have started to bring cases, Behn says and adds that this will meet some of the criticism on the bias of the system.

It is not a response to the legitimacy crisis, but rather a consequence of the legal field maturing. This development can be compared to that of the human rights sector when it faced the same transition, Fauchald adds.

Investment treaty arbitration

Investment treaty arbitration is a form of dispute settlement that foreign investors can use when their rights under investment treaties are violated by a host country. Protection typically extends to difficulties arising from the action, or lack of action, of the host state, this includes the parliament, the courts, and public officials at both national and local levels.

The investor brings the claim to an arbitral tribunal, which makes findings on the host country's behaviour towards the investor. The tribunal is established ad hoc and the investor and the host country each appoint an arbitrator to the case. The third arbitrator, who will be chairing the tribunal, is either appointed by the two arbitrators or by a neutral third party.

Investment treaty arbitration is based on an investment treaty, more frequently bilateral, but increasingly also on multilateral treaties such as chapter 11 of the North American Free Trade Agreement (NAFTA). There exist currently almost three thousand such treaties in force.

Database projects

As part of its empirical research ambitions, PluriCourts builds several databases to study under-explored phenomena related with the functioning, effects and legitimacy of international courts and tribunals, both within and between sectors and institutions. Unavailability of data has earlier hindered top-quality research in many of PluriCourts' focus areas. PluriCourts is uniquely placed to remedy this situation and build datasets benefiting not only the Centre, but also a global network of partners.

In 2015, the following database projects were started: International investment arbitration, Bilateral investment treaties, Business and human rights, Sexual and reproductive rights.

Here you will find more information on each database project.

Sexual and Reproductive Rights

The database on sexual and reproductive rights litigation collects information on international and national litigation on issues concerning sexual and/or reproductive rights. It is a joint project with the University of Bergen, where it serves as the foundation for a Ph.D. project. Similarly to the investment database, it collects relevant information about the cases without tailoring to a specific research question. Rather, it opens up for research on different aspects of international litigation on these rights. There are several planned publications from the database, amongst other a book chapter.

Bilateral Investment Treaties

Linking to the international investment arbitration database, the base on bilateral investment (BIT) treaties collects information on the existence and substance of existing BITs. Given the growing data on disputes, the BIT database allows for analysis of e.g. whether certain BITs are more frequent, and what characteristics these hold.

International Investment Arbitration

The database on international investment arbitration is collecting information about all known cases of investment arbitration. Currently the base holds almost 500 different cases and over 700 decisions. It aims to facilitate research on a multitude of research questions, and is not research question specific. There are already several publications on their way building on the data from the investment database, amongst others focusing on issues of democracy and backlash.

Business and Human Rights

A database collecting data on international standards regulating corporations on human rights issues was also developed. The aim of the construction of the base is to map out the current regulatory regime for businesses on human rights issues, speaking to the debate on the necessity of a binding treaty regulating corporations. A master thesis has already been written on the basis of the database, and there are two planned publications for 2016.

Judicial dialogue
– a tool to develop human rights law?

Domestic and international courts around the world play an important role in giving effect to human rights in constantly changing circumstances. Frequently, they do so by citing and engaging with each other's decisions – a phenomenon that has been coined 'judicial dialogue'.

Amrei Müller, post-doctoral fellow at PluriCourts, has studied different forms of judicial dialogue on human rights law: horizontal dialogue, between different domestic courts; and vertical dialogue, between national courts and international courts. She asks whether this dialogue leads to a better protection of human rights at the domestic and international level. She has recently finished editing a book, which contains the main results from a research project on judicial dialogues on human rights.

An increase in judicial dialogue

Both the number of national and international courts participating in judicial dialogue on human rights and the frequency with which it occurs has increased in recent years as a consequence of globalisation. When courts apply the same or similar law, dialogue is particularly common. This is the case in regions like South America and Europe, where judicial dialogue is promoted by regional human rights conventions such as the European Convention on Human Rights and the American Convention on Human Rights. Domestic courts and regional courts like the European Court of Human Rights and the Inter-American Court of Human Rights cite each other's decisions on the interpretation and application of these conventions. Moreover, the respective conventions have become part of domestic law in many European and Latin American countries and act as a '*conduit*' for horizontal dialogue between domestic courts.

- For example, other European courts assume that German courts' judgments are compatible with the European Convention on Human Rights. That makes it easier for instance for the UK Supreme Court to cite the judgments of a German court in a similar case where the UK Supreme Court also applies the European Convention, explains Müller.

The increase in judicial dialogue is also due to the fact that more and more judgments have become available on-line, and that more courts are translating their judgments into English, thereby making them more accessible. However, translating the judgments is resource demanding, and not all courts can afford it. Müller explains that this is one reason why decisions of some courts are cited more frequently than others. Courts that issue their judgments in English have the highest chance of getting cited by other courts, says Müller and adds that this also means that some courts are taking advantage of the system: they translate their judgments into English to increase their impact on the development of human rights law.

- It can be seen as an attempt to promote your own decisions, a means to have influence, Müller says.

Most frequently cited national courts are (Western) European apex courts like the German Constitutional Court, the UK Supreme Court and to some degree also the French Court of Cassation; the US Supreme Court; and Australian and Canadian courts.

Post-doctoral fellow Amrei Müller has edited the book "Judicial Dialogue and Human Rights", forthcoming with Oxford University Press. Photo: University of Oslo.

The existence of regional human rights courts can to some extent help to smooth out the varying influence that different domestic courts have on the interpretation and development of human rights law. The European Court of Human Rights, for example, aims to consider a broad range of comparative material from different member states of the Council of Europe in important judgments in which it seeks to develop the law in line with changing circumstance. Then the courts of smaller states also have an impact on the development of the law of the ECHR, says Müller.

Solving 'difficult' cases through dialogue

Courts engage in judicial dialogue on human rights for many reasons. One of the most common is to solve 'difficult' cases.

- There are many difficult questions that judges have to decide, especially in the area of human rights. This happens when you have rights that conflict with each other or when rights have to be limited e.g. for reasons of public safety, public order or public health. For instance the right to freedom of expression might offend the religious feelings of another

human being, and the right to freedom of movement might sometimes be restricted for reasons of public safety, Müller says.

In cases like this, judges have to strike the right balance between conflicting rights and interests. It is a delicate balance as any restrictions have to be proportionate. In these cases, the judges can look to other courts to see how they have handled similar cases before.

- In order to be legitimate, a court needs to give good reasons for its decision. For that it is useful for courts to look at what other courts did in similar cases. This is in particular so in cases where national or international courts need to legitimise the overturning of earlier precedents in light of social, technological or scientific developments or developments in international human rights law.

Regional courts like the European Court of Human Rights have additional reasons to engage in dialogue with domestic courts: to encourage domestic courts to take on an active role in the implementation of the European Convention on Human Rights. This is in line with the reform processes initiated at the Council of Europe in recent years that aim to ensure human rights are protected effectively at the national level so that fewer cases arrive in Strasbourg.

- This is the basic idea of the reform process. You need to protect the rights at the domestic level first and foremost, says Amrei Müller.

Mixed effects for the protection of human rights

Judicial dialogue can either increase or limit the protection of human rights. There is no guarantee that the judges will always cite cases that promote the protection of human rights. Müller remarks that in some cases the judges will use other courts' judgements to argue for limiting the protection. For example, national courts sometimes reject following more progressive foreign or international judgments with references to culture, history or the constitutional foundations of their respective country, thereby protecting their own interpretation of human rights.

However, most judicial dialogue on human rights contributes to enhancing the protection of human rights, notes Müller. It also helps the development of a shared understanding of how to interpret similar rights laid down in international and regional human rights treaties as well as in the domestic constitutions of numerous states.

- Dialogue helps determining the core of the rights, and the fundamental principles that are then applied by different courts Müller concludes.

Judicial dialogue with Russia and Germany

– soft but effective

The European Court of Human Rights is one of the most successful human rights courts. In recent years it has come under pressure because it has been overburdened with cases. Post-doctoral fellow Amrei Müller shows how the Court encourages domestic courts to take on a greater role in the protection of human rights through its judicial dialogue with domestic courts in an incremental but potentially successful attempt to overcome this burden.

The system for the protection of human rights works on many levels. Human rights treaties like the European Convention on Human Rights (ECHR) have to be implemented by national courts, but there are also regional courts, such as the European Court of Human Rights (ECtHR) that play a crucial role. Even though the national courts and the ECtHR operate on different levels and within different legal orders, they all deal with the interpretation and application of the European Convention on Human Rights (ECHR).

In order to avoid conflicts and secure a balanced development of the law of the ECHR in light of constantly changing circumstances, it is important that the courts interpret and apply the Convention in a consistent matter. In this way, the Convention becomes an effective tool for the protection of human rights in Europe. One way to ensure this is through judicial dialogue.

- Judicial dialogue is when one court cites the decision of another court for the purpose of solving a case. It is engaging with the arguments that the other court has made in its own reasoning, explains Amrei Müller.

Müller is a post-doctoral research fellow at PluriCourts – Centre of Excellence for the Study of the Legitimacy of the International Judiciary at the University of Oslo. She has recently finished editing a book, which contains the results from a research project on how national and international courts interact when it comes to the interpretation and application of human rights law. In the context of the project, Müller has examined how the ECtHR uses judicial dialogue to encourage Russian and German courts to effectively implement the provisions of the European Convention of Human Rights.

Encouraging effectiveness in domestic courts

As a regional human rights court, the ECtHR has limited capacities, especially when it comes to fact-finding and understanding domestic law. In regard to fact-finding, the Court therefore uses judicial dialogue to explain to national

courts how they should ensure that they get hold of all relevant facts to determine whether there has been a violation of the Convention. This is done by commenting both directly and indirectly on domestic courts' efforts to obtain relevant facts.

Through its dialogue with domestic courts, the ECtHR also encourages domestic courts to apply domestic law faithfully.

- The European Court is not an expert in national law. It therefore has to rely on the decision of national courts when it needs to understand national law. This is important for finding if there has been a violation of the ECHR, because the Convention refers back to domestic law in certain areas, Müller explains.

A wider margin of appreciation - if you do your job

One of the key findings of the study is that the Court will give a wider margin of appreciation to the national courts if they provide well-reasoned arguments for their rulings and if they engage diligently with the Convention. The margin of appreciation is the manoeuvring space that the Court grants the national authorities in fulfilling their obligations under the Convention.

Müller has found that there are three conditions under which the ECtHR is less likely to scrutinize the judgements of domestic courts: if the domestic courts gave good reasons for how they arrived at a certain conclusion; if they applied their domestic law in light of the Convention; and if they apply what the ECtHR has said before in its judgements. If they meet all these criteria, the Court is less likely to scrutinise the final domestic judgement very strictly.

- This can be thought of as an incentive for domestic courts to do a good job, says Müller.

The Court is communicating this to domestic courts through its judicial dialogue with domestic courts. By engaging with the arguments of the national courts, the Court shows what it wants them to do in future cases and consequently rewards this good behaviour.

- If you do your job at the domestic level, you will have a broader margin of appreciation. For instance there is the German Constitutional Court or regional courts in Russia that take up these signals and will give better reasons the next time, says Müller

Soft but effective

Müller has shown that judicial dialogue is a soft but effective tool that also has the potential to enhance human rights protection at the domestic level in a sustainable fashion. The German courts, in particular, have shown to be engaging more with the Convention and case law from the ECtHR over the years, something which has strengthened the position of the Convention in domestic law.

However, in some cases this is more difficult.

- In some cases the dialogue to encourage better reasoning and the effective application of the ECHR does not work. The judges may not be aware of the ECHR, the case law of the ECtHR, there may be language issues, the mind-set of the judges, and so on, Müller says.

- In some regions in Russia, it may take another generation before we have judges that are ready and able to apply the national law in light of the international conventions.

The effectiveness of the ECtHR's dialogue with domestic courts has also been seen in the context of political developments. When an issue becomes politicised, it becomes more difficult for courts to handle. One example to mention is the protection of LGBTI rights in Russia.

- This is one area where there can be clashes between more liberal interpretations of the Russian Constitution in light of the ECHR and more conservative interpretations in light of conflicting Russian law in the future.

In less politicised areas, , such as the protection of prisoners' rights through an improvement of prison conditions, progress has been made in recent years, including through dialogue between the ECtHR and Russian courts, says Müller.

Regardless of the political situation it is important that the Court remains a neutral institution that treats every state the same. Through her study of its interaction with Russian and German courts, Müller has found that it does.

Judicial dialogues and human rights

The book "Judicial Dialogue and Human Rights" is edited by Amrei Müller (in collaboration with Hege Elisabeth Kjos) and forthcoming with Oxford University Press.

The volume is an outcome of the project "International Law through the National Prism: The Impact of Judicial Dialogue", which was funded by the European Science Foundation as a European Collaborative Research Project in the Social Sciences (ECRP). The project was led by profssor Geir Ulfstein and administered by PluriCourts. The project was completed in December 2015.

First doctoral defense

Nino Tsereteli

Nino Tsereteli became the first Ph.D. candidate at PluriCourts to graduate. She defended her thesis "The Pilot Judgment Procedure of the European Court of Human Rights – illegal but legitimate?" on 26 June 2015.

In her thesis "The Pilot Judgment Procedure of the European Court of Human Rights – illegal but legitimate?", Nino Tsereteli questions the legality of the pilot judgment procedure, a judicial innovation by means of which the European Court of Human Rights (ECtHR) specifies legislative and other reforms to be undertaken to tackle systemic or structural problems underlying numerous violations and sets time limits for their implementation. It is controversial as it alters the distribution of responsibilities between the ECtHR and states under the constitutive treaty. It enhances the role of the ECtHR beyond what was originally agreed upon and undermines states' freedom of implementation. Due to gradual consolidation of state support towards this initially contested approach, primarily due to its usefulness in reinforcing domestic remedial mechanisms, the case for the legal validity of this procedure became stronger. However, some forms of judicial engagement in matters of implementation, such as legislative injunctions, remain criticized.

The thesis further asserts that judicial practice of questionable legality can still be defended as legitimate, if certain jurisdictional, procedural and outcome related requirements are fulfilled in its application. While the ECtHR may avoid criticisms of states by operating within the frame of its original mandate, the inadequacy of the law (not enabling the Convention organs to react to the massive failure of states in reforming their laws and policies despite numerous findings of similar violations) and complexity of the formal amendment procedure call for adjustments through judicial practice. But is increasing prescriptiveness of judgments a proper solution in this situation? Is the fear that this procedure creates more problems than it solves justified? What kinds of adjustments would have legitimacy enhancing rather than legitimacy eroding effect?

In defining the appropriate scope of judicial engagement in matters of implementation that are normally within state domain, the author suggests that the decision-making on such matters should be shifted from the domestic to the European level, if and to an extent the state fails to solve the problems generating well-founded applications independently. This suggestion is made with the reservation regarding the compatibility of unnecessarily prescriptive judgments with the international judicial function and the ECtHR's lack of capacity to find adequate solutions to complex problems in domestic legal systems. Some of these concerns may be mitigated by reducing the distance between the ECtHR and those affected by its judgments through adjustments in the procedure. In identifying the procedural requirements to be fulfilled, the contribution highlights the relevance of transparency and inclusiveness of the proceedings. A significant safeguard against negative consequences of judicial prescriptiveness is also the enhancement of dialogic nature of interaction between the Court and national jurisdictions.

Nino Tseretely defended her thesis on 26 June 2015 at the Faculty of Law. Photo: University of Oslo.

Dissemination activities

PluriCourts has been engaging broadly with both the academic community and the public at large, hosting conferences, public seminars and increasing its social media presence.

Social media

In 2015 PluriCourts increased its efforts to be present and visible on social media. The centre's twitter account has quickly gained followers, and the PluriCourts blog has become a useful forum for commentary and timely analysis of issues relating to international courts and tribunals.

PluriCourts researchers are regularly present in Norwegian an international media, where they provide their expertise in the fields of international law and politics. Examples of the topics in which PluriCourts' research proved particularly valuable to shed light on current debates were:

- The status of the European Court of Human Rights' case-law in relation to the treatment of potentially dangerous persons who have served their prison sentence (Mullah Krekar)
- The planned Norwegian model investment treaty, which was criticized by many for putting in danger national sovereignty and precluding stricter health and environmental regulations
- The negotiations on a climate agreement in Paris, and possibilities to sanction states which do not comply with the agreement.

Public seminars

PluriCourts held two open events at Litteraturhuset.

On 23 March, the book "Promoting Peace Through International Law", edited by Professors Cecilia M. Bailliet and Kjetil Mujezinovic Larsen (Oxford University Press), was launched. A number of authors discussed how international law and institutions contribute to the establishment of peace, or fail to do so. One of the issues was how international courts further peace as an essential community interest, and which obstacles they face. The event was well-visited, and there was a lively discussion with the audience following the presentations.

On 28 September, PluriCourts hosted a panel debate on the tobacco industry's use of international trade and investment law. In recent years, tobacco giant Philip Morris has brought cases against several countries that introduced stricter tobacco laws in the name of public health. The

PluriCourts hosted a public debate on the tobacco industry's use of trade agreement at Litteraturhuset. Coordinator Ole Kristian Fauchald as well as post-doctoral fellows Daniel Behn and Michelle Q. Zang were on the panel. Photo: University of Oslo.

most prominent case is the ongoing investment dispute Philip Morris v. Australia, in which Philip Morris challenges the Australian plain packaging regulation. Two experts on the dispute, professors Andrew Mitchell and Tania Voon (University of Melbourne), presented the case and concluded that it was unlikely for Philip Morris to win the dispute. Nevertheless, the mere threat of costly litigation might dissuade governments of smaller states from introducing stricter health regulations. This tactic of causing "regulatory chill" amongst governments has been quite visible from the side of strong investors. Marianne Hammer, head of the legal division at the Norwegian Cancer Association, presented a case brought by Philip Morris against Norway's "out of sight, out of mind" regulation on display of tobacco products. This case was brought to domestic courts because Norway was not bound by a bilateral investment treaty. Philip Morris claimed that Norway violated free trade regulations under the European Economic Agreement, and Philip Morris lost on all accounts. In a last strand of debate, PluriCourts coordinator professor Ole Kristian Fauchald and Post-doctoral Fellow Daniel Behn assessed the threat of regulatory chill and investment disputes if Norway were to conclude new bilateral investment treaties. Behn stated that Norway's fear of future disputes weakened the model bilateral investment treaty currently under debate, and that litigation in the tobacco sector was quite unlikely in the

future.

Reinforced networking efforts

At the ESIL conference in September, a side event on "Women in International Law" gathered female researchers and practitioners with the aim of strengthening women representation in international law research and practice. PluriCourts supports research conducted within the GQUAL initiative aiming at increasing the proportion of female judges in international courts and tribunals.

PluriCourts organized several mentoring events targeting specifically at younger researchers. Topics in 2015 included career planning, publishing strategies, applications for Fulbright scholarships and one-on-one conversations with world-renowned lawyers at the "Meet the Jurist" event at the ESIL Conference.

PluriCourts co-operates closely with the Danish Centre of Excellence iCourts on International Courts, by co-organizing a summer school, workshops and fostering exchange between the two institutions.

Ties with Norwegian judges have been strengthened in 2015. PluriCourts cooperates with the Norwegian Courts Administration on seminars. In the future, more joint activities, including courses on recent international case-law, are planned.

Book series and publications

PluriCourts has a high publication activity within law, political science and philosophy. All researchers are involved, often as editors, in larger publication projects including special issues and anthologies.

A major milestone is the dedicated book series on "International Courts and Tribunals" with Cambridge University Press. The first volume of the series, "A Farewell to Fragmentation. Reassertion and Convergence in International Law", was published in fall 2015. Six books, spanning areas such as international human rights courts, the performance of international courts, the European Court of Human Rights' margin of appreciation doctrine, and the legitimacy of international criminal tribunals, are expected to follow in the near future.

As of December 2015, a total of 31 anthologies or special issues edited or co-edited by PluriCourts researchers were under way.

In particular younger researchers at PluriCourts are strongly encouraged to aim at publication in the most renowned journals. To this end, PluriCourts regularly organizes publication workshops that are sensitive to the specificities of the different disciplines represented within PluriCourts. Strong focus is given to the importance of ensuring that interdisciplinary projects receive equal recognition in each of the fields.

Cooperation

Norwegian Courts Administration

PluriCourts and the Norwegian Courts Administration initiated a cooperation in 2015. This cooperation will benefit both parties in the years to come.

In May 2015, PluriCourts and the Norwegian Courts Administration (NCA) initiated collaboration in areas of common interest. Both PluriCourts and the NCA expect great benefits from this cooperation. One of the NCA's main responsibilities is to ensure that Norwegian judges have the necessary competence to solve their tasks. PluriCourts can contribute to develop the competence of judges in the area of international law and international courts. In return, by creating meeting points with the NCA and judges, PluriCourts gains valuable insight on practical issues that judges and courts encounter, for example when it comes to the courts' independence vis-à-vis Government and society.

- We are very happy to cooperate with the NCA, and believe it will be beneficial for the research here at PluriCourts, says Director Geir Ulfstein.

In October a delegation from PluriCourts visited NCA's office in Trondheim to discuss the cooperation, and Geir Ulfstein held a presentation about PluriCourts to inform employees at the NCA about PluriCourts' research and perspectives.

In November, the NCA was involved in the organizing of the annual Ryssdal seminar. 10-15 judges participated at the event. The judges found the seminar to be very interesting, showing that there is a need for such seminars. In October 2016 the NCA will be co-organizing the Ryssdal seminar with PluriCourts. The topic will be the "independence of judges", and the main target group for the seminar is judges.

In September 2016, the NCA organizes a study trip for Norwegian judges to the European Court of Human Rights (ECtHR). PluriCourts will contribute with a half-day seminar at Gardermoen on the morning before the judges go to Strasbourg. The aim of the seminar is to increase the judges' competence on the ECtHR, for example on the politics and the reform processes of ECtHR. PluriCourts and NCA will in the years ahead look at further areas where we have common interests and can cooperate.

ESIL Annual Conference
2015

More than 400 participants took part in the 11th annual conference of the European Society of International Law, which was hosted by PluriCourts on 10-12 September.

The 11th annual conference of the European Society of International Law (ESIL) had the title "The Judicialization of International Law - A Mixed Blessing?". The conference addressed the international law aspects of the increased judicialization from an interdisciplinary perspective. A very high interest was shown to the conference as we received a record number of proposals and welcomed more than 400 participants from all over the world. Some sessions of the conference were streamed and have been viewed online by more than one thousand people.

Following the opening ceremony, the conference officially started with a keynote discussion between Judge James Crawford (International Court of Justice) and Martti Koskenniemi (University of Helsinki) which was chaired by Jutta Brunnée (University of Toronto). Both the opening ceremony and the keynote discussion took place in the University Aula, where the conference participants could enjoy famous paintings by Edvard Munch (1863–1944). During these three days of the conference, speakers addressed the international law aspects of the increased judicialization in specialized agorae and fora. Some sessions of the conference focused more particularly on discussing current issues such as the situation in Ukraine, the accession of the European Union to the European Convention on Human Rights, the fights against ISIS and the current refugee crisis. The conference also offered career building and networking events ('Meet the Jurist' and 'Women in International Law - Happy Hour') which were very successful. Philippe Sands (University College London) concluded the conference with his views on whether we can expect an end to judicialization.

During the conference, the 2015 ESIL Book Prize was awarded to Monica Garcia-Salmones Rovira (University of Helsinki) for her book *The Project of Positivism in International Law*'. Malcolm Langford (Norwegian Centre for Human Rights and PluriCourts) received the ESIL Young Scholar Prize (YSP) award for his co-authored paper with Daniel Friedrich Behn (PluriCourts). The ESIL YSP was awarded for the first time during the Oslo Conference.

The best papers presented at the conference will be available in a forthcoming book with Oxford University Press.

Annual lecture

Allen Buchanan

Professor Allen Buchanan gave the PluriCourts annual lecture on the topic "The Legitimacy of International Courts" at PluriCourts' Annual Conference in June.

In his lecture, Professor Allen Buchanan (Duke University) addressed the question what makes international courts legitimate, i.e. what are the bases of International Courts' (ICs) legitimacy, by considering what makes international courts different from other – domestic or international – institutions.

Legitimacy is a complex concept that has several meanings. Buchanan stressed that he did not talk about sociological legitimacy, which means that those ruled believe that an institution has the right to rule. Rather, his lecture referred to normative legitimacy, which is based on the notion that an institution has the right to rule. This implies a moral duty by the addressee of a directive to follow it.

Buchanan's aim was to introduce a new practical and realistic concept for conceiving of this "right to rule." Previous ideas of why an institution may rule were either too weak or too strict: Addressees were free to obey or not to obey a directive – or they were required to obey an institution under all circumstances, no matter what was the content of a directive. Between these extremes, Buchanan's proposed that addressees of a directive had a moral duty to be disposed to take directives seriously. This paves the ground for a certain room for assessment of the directive by those ruled.

International courts are special institutions inasmuch as they are judicial organs, whom we rightly expect to have particularly high standards in implementing the rule of law. ICs should protect, promote and exemplify the requirements of the rule of law. Being international organs, ICs particularly contribute to the legitimacy of international law by determining what the law is, and thus facilitating coordination amongst states.

Buchanan focused on the relation of reciprocal legitimation between ICs and their creators, states. For Buchanan, a necessary but insufficient condition for the legitimacy of ICs is state consent. It is necessary, because the way in which ICs come into existence needs to satisfy certain rule of law requirements. In the current world order the primary way of creating law is treaty-making by states, which requires consent. It is insufficient because consent can be coerced, and because ICs do not only address themselves to states, but also to individuals and groups. Hence, the consent of non-democratic states does not necessarily reflect consent by their population. In order to justify that ICs rule over these people, ICs can only be legitimate if they provide a real added value to individuals e.g. by effectively protecting their human rights.

ICs have no coercive power to force states to implement their decisions, so they must rely on states to implement judgments domestically or to put in place an enforcement system at the international level. States thus have a central role to play in ensuring ICs' effectiveness and legitimacy. For vulnerable groups, ICs can be a necessity as they provide remedies where the domestic institutions fail.

In turn, ICs contribute to the legitimacy of states – by authoritatively determining what the law is, and by ensuring respect for human rights in the domestic sphere. They thus help states act in a way that is in accordance with the rule of law, both nationally and internationally.

Professor Karen Alter (Northwestern University) and Former Judge at the International Court of Justice Bruno Simma commented on Buchanan's lecture.

Professor Allen Buchanan gave the PluriCourts annual lecture 2015 at the Annual Conference in June. Photo: University of Oslo.

Guest researcher

Gus Van Harten's view

Gus Van Harten is Associate Professor of Law at Osgoode Hall Law School at York University. He visited investment team at PluriCourts for one month in August 2015.

I came to PluriCourts as a visiting researcher in August of 2015. During my visit, I was able to interact with various researchers at PluriCourts who were working in my field of international investment law or in other fields of international adjudication including international trade law, international environmental law, and international criminal law. Our interactions were stimulating and helped me consider how my research integrates with broader work on international courts and tribunals and their legitimacy.

Gus Van Harten visited PluriCourts in 2015. Photo: York University.

In my immediate field of international investment law, I interacted at length with several faculty members and graduate or undergraduate students. A seminar was organized at PluriCourts to allow me to present aspects of my research on investment treaty arbitration and regulatory chill. At another seminar during my stay, I was able to hear and share ideas about current debates toward reform of investment treaty arbitration and about a proposed new (and in my view, I regret to say, flawed) new model bilateral investment treaty for Norway. At the conclusion of my stay, a vibrant two-day workshop was organized at which a range of empirical work on investment treaty arbitration and its legitimacy was presented and debated. My own contribution to this workshop (and to the related publication coordinated by PluriCourts colleagues) is an empirical study of who has benefited financially from ordered compensation in investment treaty arbitration. While the raw research for this study was carried out before my visit to PluriCourts, the time at PluriCourts was indispensable for allowing me the dedicated mental space to analyse my findings and to write and revise the paper. I also benefited from my exposure to the extensive empirical work carried out by PluriCourts faculty and staff to generate a baseline of publicly-available underlying data for research on international investment law and arbitration. I think that this unique resource will make a significant contribution to international research and understanding in this important and controversial area of international adjudication, which in its current design poses a significant challenge to values of democratic accountability, judicial independence, and public budgeting.

With these experiences and outputs in mind, I would say that PluriCourts offered a superbly welcoming, well-organized, eminently constructive, and very stimulating environment in which to collaborate with fellow scholars working on international adjudication and legitimacy, to conduct and share my research based on what I learned from our collaboration, and to consider in new ways how legitimacy issues arise and may be considered in the wild west of investment treaty arbitration. I am very grateful to PluriCourts and its funders for having permitted me the opportunity to join in this venture and I think the overall work of PluriCourts is making a significant contribution to our collective knowledge of international courts and tribunals while stimulating ideas about how to support and improve them.

"PluriCourts offered a superbly welcoming, well-organized, eminently constructive, and very stimulating environment"

Introducing the PhDs

In 2015 three new PhD candidates joined the team at PluriCourts: two political scientists and one lawyer.

Rosa Manzo

Thesis A Dynamic Interpretation of the principle of Equity in the Context of the Next Climate Change Regime – Equity as a force of gravity

Pillar Environment

Background Double Degree in Law

Hidden talent Gospel singer

What is your project about?
The overarching plan for my thesis is that the first part will be focused on the theory of law on the concept of equity and its role in judicial decisions. From there I would like to write a more experimental thesis where I would investigate how equity could inform and will be operationalized in the next climate change regime.

What originally attracted you to PluriCourts?
I met PluriCourts at an introduction meeting for students on my first day in Norway. I enjoyed taking part in lunch seminars and events organized by PluriCourts, mainly because of the high level of debate, which always touched upon the most recent topic under discussions.

What is your best first year memory?
My colleagues sang Happy Birthday to me…in Italian! This made my day.

PhD candidates (left to right) Øyvind Stiansen, Rosa Manzo and Tarald Laudal Berge.

Photo: University of Oslo.

Tarald Laudal Berge

Thesis International Investment Agreements and Investment Treaty Arbitration: Causes, effects and dynamics

Pillar Investment

Background Political science

Hidden talent Magic the Gathering

What is your project about?
My project is about the causes and effects of investment treaties and the investor-state dispute settlement (ISDS) system. I look at how treaties are negotiated, what their effects are on disputes, investment and domestic policy – and on what state-level characteristics drives ISDS decisions.

What originally attracted you to PluriCourts?
A small stipend that was provided to prepare a PhD proposal within the sphere of international law.

What is your best first year memory?
The recent investment workshop in Paris co-organized by PluriCourts, Dept. of Political Science and the Norwegian University Centre in Paris.

Øyvind Stiansen

Thesis The Politics of Compliance with International Human Rights Court Judgments

Pillar Human Rights

Background M.Phil. in Peace and Conflict Studies from the University of Oslo

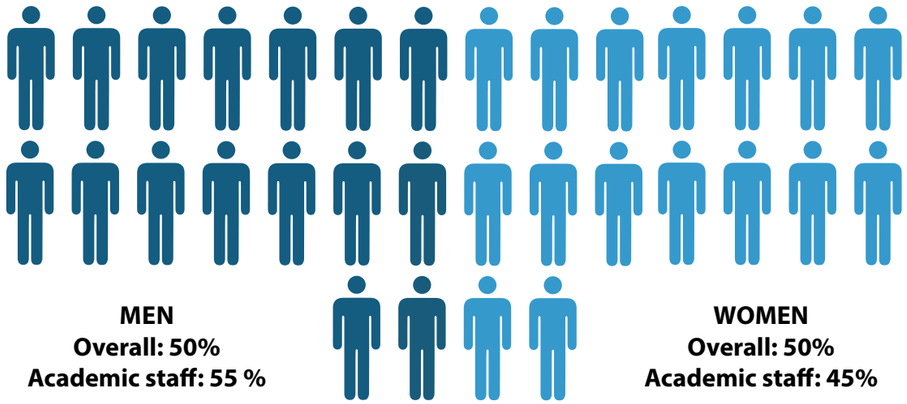
Hidden talent Can deadlift 270 kg

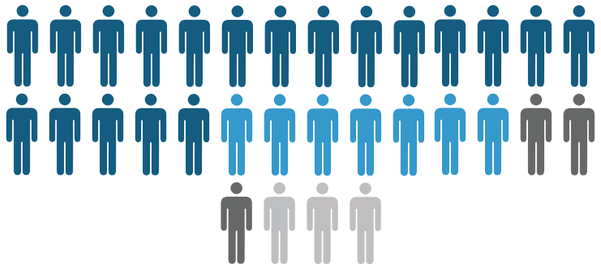
What is your project about?
I am interested in developing and testing explanations for variation in how quickly states comply with judgments from international human rights courts, such as the European Court of Human Rights. I investigate whether characteristics of the judgments and the responding states are associated with compliance outcomes.

What originally attracted you to PluriCourts?
The politics of international law and international courts have received limited attention by political scientists. PluriCourts presented an opportunity to contribute to political science research in this field.

What is your best first year memory?
Discussing recent political science contributions to the study of international courts in the PluriCourts Political Science Reading Group organized by post-doc and fellow political scientist Theresa Squatrito.

PluriCourts in numbers





DISCIPLINES
Law: 19 (66%)
Pol.sci.: 7 (24%)
Philosophy: 3 (10%)
Administration: 3

NATIONALITY

Norway 37 %
Europe (other) 34 %
America 13 %
Asia 10 %
Australia and Oceania 6 %

The team

Management
Director Geir Ulfstein
Co-director Andreas Føllesdal
Administrative manager Aina Nessøe

Coordinators
Bailliet, Cecilia M.
Fauchald, Ole Kristian
Gloppen, Siri (until 31 March 2015)
Voigt, Christina
Wind, Marlene (until 31 March 2015)

Professor II
Andresen, Steinar E.

Postdoctoral fellows
Behn, Daniel F.
Corradetti, Claudio
Langford, Malcolm
Langvatn, Silje Aambø
Müller, Amrei
Penca, Jerneja (on leave)
Saul, Matthew W.
Squatrito, Theresa
Zang, Michelle Q.

PhD candidates
Berge, Tarald L.
Manzo, Rosa
Stiansen, Øyvind
Tsereteli, Nino

Researchers
Bedoya Sanchez, Shakira
Hayashi, Nobuo
Létourneau-Tremblay, Laura
Nicholson, Joanna
Ruud, Morten
Semb, Anne Julie (professor)
Østerud, Øyvind (professor)

Research assistants
Kirkebø, Tori Loven
Torsvoll, Eirik

Master students
Alexandraki, Chrysa
Gabrielsen, Liv Inger
Petrukovich, Zhanna
Poppelwell-Scevak, Claire
Røed, Lars Jørgen
Usynin, Maksim
Ziyodillaev, Rinat

Administration
Hovdal, Annette
Karv, Hanna (on leave)
Schmölzer, Stephanie

Visiting professors
Nickel, James
Voeten, Erik
Young, Oran

Guest researchers
Cornejo Chavez, Leiry
Dovi, Suzanne
Dunoff, Jeffrey
Lohne, Kjersti
Mitchell, Andrew
Murray, Colin
O'Donoghue, Aoife
Qoraboyev, Ikboljon
Stone Sweet, Alec
Van Harten, Gus
Voeten, Erik
Voon, Tania

Events

Conferences and workshops

29-30.01 Conference, International Courts and Domestic Politics, Oslo

26-27.02 Workshop, The Normative Legitimacy of International Courts, Barcelona

12-13.03 Workshop, The International Human Rights Judiciary and National Parliaments, Oslo

21.05 Conference, PluriCourts Annual Conference: "The Legitimacy of International Courts", Oslo

22.05 Workshop, A World Court of Human Rights?, Oslo

02-03.06 Workshop, Database Building on International Courts and Tribunals, Oslo

04-05.06 Conference, MultiRights Annual Conference: Subsidiarity and the Margi of Appreciation, Oslo

27-28.08 Workshop, Empirical Perspectives on the Legitimacy of International Investment Tribunals, Oslo

10-12.09 Conference, 11th Annual Conference of the European Society of International Law: "The Increased Judicialization of International Law – A Mixed Blessing?", Oslo

19-20.09 Workshop, The European Court of Human Rights – Promotor or Predator of Democratic Transitions?, Istanbul

08-09.10 Workshop, The Performance of International Courts, Philadelphia

15-17.10 Workshop, The Politics of Judicial Independence and Accountability, Prague

30.10 Workshop, Challenges to Implementing the Judgments of the European Court of Human Rights: Dialogues on Prisoner Voting Rights, Moscow

05-06.11 Conference, The Present and Future Role of Investment Treaty Arbitration in Adjudicating Environmental Disputes, Oslo

09.11 Conference, UN Treaty Bodies and their Implications for Norwegian Law, Oslo

13-14.11 Workshop, The International Human Rights Judiciary and National Parliaments, London

07-08.12 Workshop on Concepts and Methods: Performance and Legitimation Strategies of International Courts, Oslo

Mentoring and networking events

29.01 Publish and Flourish Seminar: Cambridge University Press. Seminar with Elizabeth Spicer, Law Commissioning Editor of Cambridge University Press, on the publication process at CUP.

27.04 Presentation of PluriCourts at the Faculty of Law. A meeting for all staff at the Faculty of Law to get to know PluriCourts and explore arenas for future cooperation, followed by tapas.

01.06 Publish and Flourish Seminar: Fulbright Fellowship Information Session. Open seminar on the application process for Fulbright scholarships.

10.09 Meet the Jurist. Networking event for younger scholars held at the ESIL Annual Conference.

11.09 Women in International Law. Networking event for female lawyers and practitioners, held at the ESIL Annual Conference.

07.12 Publish and Flourish Seminar: From Bright Idea to Cited Publication: Opening the Black Box. Seminar on publication strategies, specific requirements in law, political science and philosophy, and the peer review process.

PhD courses

22-26.06 PhD Summer School: "Courts and Contexts". Joint PluriCourts/ iCourts summer school held in Copenhagen.

6-12.07 Venice Acacemy of Human Rights Summer School. PluriCourts supports the Summer School, and the co-directors and/or coordinators give lectures at the summer school.

Seminars

17 PluriCourts lunches on topics pertaining to international courts and tribunals

18 MultiRights seminars specializing on human rights courts and tribunals

11 International law lunches dealing with general questions of international law

4 specialized seminars on trade, investment and international criminal law

15 reading group meetings on the most relevant publications on international courts and legitimacy in the fields of political science and philosophy

Publications and presentations

Books

Ajevski, Marjan. *Fragmentation in International Human Rights Law: Beyond Conflict of Laws*. Routledge.

Corradetti, Claudio; Eiskovits, Nir and Volpe, Jack (eds). *Theorizing Transitional Justice.* Ashgate.

Saul, Matthew William and Sweeney, James (eds). *International Law and Post-Conflict Reconstruction Policy*. Routledge.

Book chapters

Bailliet, Cecilia Marcela. "Normative Foundations of the International Law of Peace", in: *Promoting Peace Through International Law*. Oxford University Press.

Bailliet, Cecilia Marcela and Larsen, Kjetil Mujezinovic. "Promoting Peace Through International Law: Introduction", in: *Promoting Peace Through International Law*. Oxford University Press.

Bailliet, Cecilia Marcela and O'Connor, Simon. "The Good Faith Obligation to maintain international peace and security and the pacific settlement of disputes", in: *Promoting Peace Through International Law.* Oxford University Press.

Corradetti, Claudio; Eisikovits, Nir and Rotondi, John. "Transitional Times, Reflective Judgment and the Hōs Mē Condition", in: *Theorizing Transitional Justice*. Ashgate.

Fauchald, Ole Kristian. "World Peace through World Trade? The Role of Dispute Settlement in the WTO", in: *Promoting Peace Through International Law*. Oxford University Press.

Føllesdal, Andreas. "Democracy, Identity, and European Public Spheres", in: *European Public Spheres: Politics is Back*. Cambridge University Press.

Føllesdal, Andreas. "Democratic Standards in an Asymmetric Union", in: *Democratic Politics in a European Union under stress*. Oxford University Press.

Follesdal, Andreas. "International Human Rights Courts: Beyond a State of Nature - Foreword." in: *Fragmentation in International Human Rights Law: Beyond Conflicts of Laws.* Routledge.

Føllesdal, Andreas. "John Rawls' Theory of Justice as Fairness", in: *Philosophy of Justice.* Springer Science+Business Media B.V.

Føllesdal, Andreas. "Social Primary Goods", in: *The Cambridge Rawls Lexicon.* Cambridge University Press.

Gloppen, Siri. "Studying Courts in Context: The Role of Nonjudicial Institutional and Socio-Political Realities", in: *Closing the Rights Gap: From Human Rights to Social Transformation.* University of California Press.

Saul, Matthew William. "Conclusion: Towards a Fuller Understanding of the Foundations, Practice, and Future of the Role of International Law in Post-Conflict Reconstruction Policy", in: *International Law and Post-Conflict Reconstruction Policy.* Routledge.

Saul, Matthew William. "International Law and the Identification of an Interim Government to Lead Post-Conflict Reconstruction", in: *International Law and Post-Conflict Reconstruction Policy.* Routledge.

Saul, Matthew William and Sweeney, James. "Introduction", in: *International Law and Post-Conflict Reconstruction Policy.* Routledge.

Voigt, Christina. "Art. 11 TFEU in the Light of the Principle of Sustainable Development in International Law", in: *The Greening of European Business under EU Law. Taking Article 11 TFEU Seriously.* Routledge.

Voigt, Christina. "Environmentally Sustainable Development and Peace: What Role of International Law?", in: *Promoting Peace Through International Law*. Oxford University Press.

Voigt, Christina. "Principle 8 – Sustainable Production and Consumption", in: The Rio Declaration on Env*ironment and Development: A Commentary,* Oxford University Press.

Journal articles

Behn, Daniel Friedrich. "Legitimacy, Evolution and Growth in Investment Treaty Arbitration: Empirically Evaluating the State-of-the-Art". *Georgetown Journal of International Law*, vol. 46(2)

Behn, Daniel Friedrich and Fauchald, Ole Kristian. "Governments under cross-fire? Renewable energy and international economic tribunals". *Manchester Journal of International Economic Law,* vol. 12(2)

Bailliet, Cecilia Marcela. "National Case Law as a Generator of International Refugee Law: Rectifying an Imbalance within UNHCR Guidelines on International Protection". *Emory International Law Review,* vol. 29(3)

Bailliet, Cecilia Marcela. "Vulnerability of children within international law: Introduction". *Nordic Journal of International Law*, vol. 84(2)

Corradetti, Claudio. "Che cos'è la giustizia di transizione (Transitional Justice)? Uno sguardo d'insieme". *Parole Chiave* 2015

Corradetti, Claudio. "Kant's Legacy and the Idea of a Transitional Jus Cosmopoliticum". *Ratio Juris*, vol. 29(1)

Corradetti, Claudio. "The Priority of Conflict Deterrence and the Role of the International Criminal Court in Kenya's Post-Electoral Violence 2007–2008 and 2013". H*uman Rights Review*

Føllesdal, Andreas. "Machiavelli at 500: From Cynic to Vigilant Supporter of International Law". *Ratio Juris*, vol. 28(2)

Føllesdal, Andreas and Muñiz Fraticelli, Victor M. "The principle of subsidiarity as a constitutional principle in the EU and Canada." *Les ateliers de l'éthique*, vol. 10(2)

Langford, Malcolm. "Rights, development and critical modernity". *Development and Change*, vol. 46(4)

Langford, Malcolm. "Why Judicial Review?". *Oslo Law Review*, 2015(1)

Langvatn, Silje Aambø. Legitimate, but unjust; just, but illegitimate: Rawls on political legitimacy. *Philosophy & Social Criticism*, vol. 42(2)

Müller, Amrei Sophia. "Oslo-Strasbourg-back to Oslo and/or into wider Europe?: the ECtHR's engagement with the decisions of Norwegian courts for strengthening the convention system as a cooperative system". *Nordic Journal of Human Rights*, vol. 33(1)

Saul, Matthew William. "The European Court of Human Rights' Margin of Appreciation and the Processes of National Parliaments". *Human Rights Law Review*, vol. 15(4)

Voigt, Christina and Ferreira, Felipe. "The Legal Aspects of REDD+ Implementation: Translating the International Rules into Effective National Frameworks · The Warsaw Framework for REDD+: Implications for National Implementation and Access to Results-based Finance". *Carbon and Climate Law Review*, vol. 9(2)

Voigt, Christina and Grant, Evadne. "The Legitimacy of Human Rights Courts in Environmental Disputes – Editorial". *Journal of Human Rights and the Environment*, vol. 6(2)

Zang, Michelle Q. "The Uncompleted Mission of China — Electronic Payment Services: Policy Equilibrium between Market Access and National Treatment under the GATS". *Manchester Journal of International Economic Law*, vol. 12(1)

Book reviews

Ulfstein, Geir. "Transparency in International Law. Edited by Andrea Bianchi and Anne Peters. Cambridge, New York: Cambridge University Press, 2013". *American Journal of International Law*, vol. 109(2)

Zang, Michelle Q. "Joan Apecu Laker, 'African Participation at the World Trade Organization: Legal and Institutional Aspects, 1995-2010, Martinus Nijhoff Publishers, 2013'". *Nordic Journal of International Law*

PhD thesis

Tsereteli, Nino. Legal Validity and Legitimacy of the Pilot Judgment Procedure of the European Court of Human Rights. Doktoravhandlinger forsvart ved Det juridiske fakultet, Universitetet i Oslo (83).

Master thesis

Gabrielsen, Liv Inger Gjone. En styrking av menneskerettighetene? Betydningen av grunnlovsrevisjonen i 2014 for internasjonale menneskerettigheters stilling i norsk rett. Universitetet i Oslo 2015.

Kirkebø, Tori Loven. Closing the Gap. A Human Rights Approach to Regulating Corporations. 2015.

Usynin, Maksim. The Fall of Icarus: How States Attract Renewable Energy Investment Claims. Universitetet i Oslo. 2015.

Blog posts

Bailliet, Cecilia M. Gender Imbalance in International Courts. PluriCourts blog. 2015-09-22

Bailliet, Cecilia M. Launch of GQUAL! – A Global Campaign for Gender Parity in International Tribunals and Monitoring Bodies. PluriCourts blog. 2015-10-19

Bedoya Sanchez, Shakira Maria. My name is not 'NN': Field-notes from an exhumation site in Guatemala City. ALLEGRA - a Virtual Lab of Legal Anthropology. 2015-01-28

Bedoya Sanchez, Shakira Maria. The International Criminal Court and Kenyatta. PluriCourts blog. 2015-01-02

Behn, Daniel and Létourneau-Tremblay, Laura. The Bilcon Award: a recent decision from NAFTA investment tribunal sparks new debate on an old issue. PluriCourts blog. 2015-10-19

Behn, Daniel. Australia Prevails in its Arbitration Against Phillip Morris: Why this Outcome is a Boon to the Legitimacy of Investment Treaty Arbitration. PluriCourts blog. 2015-12-18

Corradetti, Claudio. Progressing towards a Cosmopolitan Condition – Kant's Ideal for the Formal Unity of International Law. PluriCourts blog. 2015-10-26

Føllesdal, Andreas. The EU's lack of shared interests will continue to inhibit the creation of genuine democratic culture. PluriCourts blog. 2015-01-12

Hayashi, Nobuo. Eliminating v. Prohibiting Nuclear Weapons? Debunking a False Dilemma. PluriCourts blog. 2015-11-09

Kirkebø, Tori Loven. "Handelsavtaler" mot menneskerettigheter. MRbloggen.

Kirkebø, Tori Loven. UN Treaty Bodies and their Implications for Norwegian Law. PluriCourts blog. 2015-11-13

Kirkebø, Tori Loven and Kistler, Daniela. På jakt etter en samstemt MR-politikk. MRbloggen 2015

Létourneau-Tremblay, Laura and Usynin, Maksim. Who Cares About the Environment in the Context of Investment Arbitration?. PluriCourts blog. 2015-11-19

Manzo, Rosa. A new and dynamic interpretation of equity in the post-2015 climate agreement. Our Common Future Under Climate Change. 2015-07-10

Manzo, Rosa. Climate Negotiations: What Is Going On?. PluriCourts blog. 2015-10-07

Nicholson, Joanna. Investigating Crimes against Peacekeepers in the Situation in Georgia" IntLawGrrls.

Nicholson, Joanna. The ICC Statute and War Crimes Committed against Members of Non-Opposing Forces. IntLawGrrls.

Tsereteli, Nino. The Margin of Appreciation Revisited – Some Reflections from the MultiRights Workshop. PluriCourts blog. 2015-06-16

Tsereteli, Nino. The Prosecutor's Office of the International Criminal Court seeks authorization for investigation into the situation in Georgia – what is next?. PluriCourts blog. 2015-10-13

Usynin, Maksim. PluriCourts and NGOs Discuss the Norwegian Model BIT. PluriCourts blog. 2015-08-24

Usynin, Maksim. Russian Constitutional Court Refers to the "Polluter-Pays" Principle and Reduces Liability by the Costs for Effective Mitigation. PluriCourts blog. 2015-06-03

Voigt, Christina. Historic Climate Agreement Adopted. PluriCourts blog. 2015-12-14

Voigt, Christina. On the Way to Paris – What to Expect of a Global Climate Agreement?. PluriCourts blog. 2015-11-18

Zang, Michelle Q. Bringing Sanctions to Justice: EU Sanctions against Russia. PluriCourts blog. 2015-11-04

Briefs

Nicholson, Joanna. "Can War Crimes be Committed by Military Personnel against Members of Non-Opposing Forces?", International Crimes Database Brief.

Presentations

Bailliet, Cecilia Marcela. Comments for Seminar on From Bright Idea to Cited Publication: Opening the Black Box. From Bright Idea to Cited Publication: Opening the Black Box; 2015-12-07

Bailliet, Cecilia Marcela. From Foreign Terrorist Fighters to Use of Torture in Abu Ghraib- The Value of Class Debates, Documentaries, and Case presentations as Teaching Tools. Undervisningsdag. 2015-10-29

Bailliet, Cecilia Marcela. Reflection on the PluriCourts Vision from the Perspective of the ICL Pillar. PluriCourts seminar. 2015-09-30.

Bailliet, Cecilia Marcela. Reinterpreting Refugee Law According to TWAIL. Third World Approaches to International Law On Praxis and the Intellectual; 2015-02-21 - 2015-02-24

Bailliet, Cecilia Marcela. Remarks at GQUAL Launch. Launch of GQUAL; 2015-09-17

Bailliet, Cecilia Marcela. The Greatest Threat to Peace: Global Apathy to Everyday Inequality, Discrimination, and Violence. The Greatest Threat to World Peace; 2015-04-22

Bailliet, Cecilia Marcela. The Protection of Conscientious Objectors and UNHCR's Role as a Norm Entrepreneur. Lecture; 2015-03-10

Behn, Daniel Friedrich; Langford, Malcolm. Managing Backlash: The Evolving Investment Treaty Arbitrator. ESIL Annual Conference, University of Oslo; 2015-09-04 - 2015-09-06

Behn, Daniel Friedrich; Langford, Malcolm. The Greening of Investment Treaty Arbitration?. The Role of Investment Tribunals in Adjudicating Environmental Disputes, University of Oslo; 2015-11-05 - 2015-11-06

Dovi, Suzanne. The Participation of Victims in the International Criminal Court. PluriCourts seminar; 2015-09-09

Dovi, Suzanne. The Politics of Non-Presence. Department of Political Science, University of Oslo; 2015-10-06.

Dovi, Suzanne. Understanding Political Participation. The Nordic initiative conference "The Challenges to Democracy"; 2015-11-05.

Dovi, Suzanne. Presentation at the American Political Science Association; 2015-09-03-06

Dovi, Suzanne. The Politics of Non-Presence. McGill University Workshop on Women and Representation; 2015-08-15.

Føllesdal, Andreas. Are Concepts of Legitimacy for International Courts Related, and How?. Political Philosophy Colloquium; 2015-07-16

Føllesdal, Andreas. Are Concepts of Legitimacy for International Courts Related, and How?. Workshop on "The Legitimacy of International Courts and Tribunals"; 2015-02-27

Føllesdal, Andreas. Are Concepts of Legitimacy for International Courts Related, and How?. ISA Annual Convention; 2015-02-19

Føllesdal, Andreas. Are Concepts of Legitimacy for International Courts Related, and How?. Justitia Amplificata conference on "The Challenges of Global Pluralism"; 2015-07-17

Føllesdal, Andreas. ASEAN Declaration on Human Rights: a principle of subsidiarity to the rescue. Seminar; 2015-11-25

Føllesdal, Andreas. ASEAN Declaration on Human Rights: a principle of subsidiarity to the rescue?. The 5th Biennial Conference of the Asian Society of International Law 2015; 2015-11-27

Føllesdal, Andreas. 'Brighton and Beyond: Backlashes against the European Court of Human Rights - and how to respond. Venice Academy of Human Rights Summer School; 2015-07-09 - 2015-07-09

Føllesdal, Andreas. Conclusions on Proportionality. Proportionality in International Law; 2015-02-17

Føllesdal, Andreas. Criteria for [parliamentary] civil disobedience of international courts. Workshop on 'International Human Rights Judiciary and Parliaments'; 2015-10-13

Føllesdal, Andreas. Criteria for [parliamentary] civil disobedience of international courts: A theory of Civil Disobedience for International Law. MultiRights Workshop on 'The International Human Rights Judiciary and National Parliaments'; 2015-03-13

Føllesdal, Andreas. Does The Margin of Appreciation Doctrine Benefit or Hinder the ECtHR's Contribution to Democratic Transitions?. The European Court of Human Rights: Promoter or Predator of Democratic Transitions?; 2015-09-19

Føllesdal, Andreas. Exporting Subsidiarity and the Margin of Appreciation: Lessons for the Inter-American Court of Human Rights. International human rights courts: enhancers or enemies of democracy - or both? European and Inter-American perspectives; 2015-07-27

Føllesdal, Andreas. Fragmentation and integration for better and worse: Assessing the doctrines of a Margin of Appreciation and of the Emerging European Consensus. The Global Challenge of Human Rights Integration: Towards a User's Perspective; 2015-12-19

Føllesdal, Andreas. Kommentar, "Bør banker berges?". Bør banker berges?; 2015-04-14

Føllesdal, Andreas. Legitimation strategies of international courts: strategic bootstrapping, transitional justice in practice, cynical manipulation – or all of the above. Panel on The Legitimacy of International Courts – What is it, Does it make a Difference? ECPR General Conference; 2015-08-29

Føllesdal, Andreas. On Effectiveness, Subsidiarity and the Margin of Appreciation. PluriCourts Annual

Conference; 2015-05-21

Føllesdal, Andreas. On the 'Emerging Consensus' Doctrine. MultiRights Annual Conference, "Subsidiarity and the Margin of Appreciation"; 2015-06-04

Føllesdal, Andreas. On the relationship between authority and legitimacy. Summer School: Courts and Contexts; 2015-06-25

Føllesdal, Andreas. On the relationship between authority and legitimacy of international courts - Reflections on Alter-Helfer-Madsen: 'How context shapes the authority of international courts'. Seminar; 2015-10-02

Føllesdal, Andreas. Review of Albert Weale: Democratic Justice and the Social Contract. Workshop; 2015-05-25

Føllesdal, Andreas. The European Court of Human Rights: Between Scylla and Charybdis? Does subsidiarity and the margin of appreciation help the Court protect international human rights and respect sovereignty - or neither?. Transnational Federalism; 2015-02-11

Føllesdal, Andreas. The European Court of Human Rights: Between Scylla and Charybdis? Does subsidiarity and the margin of appreciation help the Court protect international human rights and respect sovereignty - or neither?. Seminar on Sovereignty; 2015-03-26

Føllesdal, Andreas. The Legitimation Strategies of the European Court of Human Rights. Workshop on "The Quest for Legitimacy in World Politics – International Organizations' Self-Legitimations"; 2015-03-31

Føllesdal, Andreas. The Two Tribes at Lido: Fragmentation in MultiCultural Communities and in International Human Rights Law – Joint challenges and options. Venice Academy on Human Rights Summer School; 2015-07-06

Holst, Cathrine and Langvatn, Silje Aambø. Expertise and Democratic Accountability in Courts and Public Administration. Challenges to Democracy Today; 2015-04-16 - 2015-04-17

Langford, Malcolm. International Courts and Public Opinion. Law and Society Association Annual Conference; 2015-05-28 - 2015-05-31

Langford, Malcolm. Muddying the Waters: Assessing Target-Based Approaches in Development Cooperation for Water and Sanitation. 9th Conference on Global Health and Vaccination Research; 2015-03-17 - 2015-03-18

Langford, Malcolm and Creamer, Cosette. The Toonen Decision: Domestic and International Impact. European Society of International Law Annual Conference; 2015-09-10 - 2015-09-12

Langvatn, Silje Aambø. Courts and Public Reason: Why International Courts May be a Special Case. PluriCourts lunsjforedrag; 2015-05-29

Langvatn, Silje Aambø. Deliberative demokratimodellar. Vitenskapsforumet; 2015-01-20

Langvatn, Silje Aambø. How much can O'Neill's justificatory approach to human rights justify? - Comment on Onora O'Neill's Grimen lecture. 2015 Grimenforelesning; 2015-09-17

Langvatn, Silje Aambø. International Courts' Public Reason. The Normative Legitimacy of International Courts; 2015-02-15

Langvatn, Silje Aambø. Legitimate, but Unjust. Just, but Illegitimate. Counter Seminar, LUISS University; 2015-06-03

Langvatn, Silje Aambø. Rawls on Theoretical and Practical Reason. What is Reason? Theoretical and Practical Reason in Kant - On Discourse Ethics' Assessment of this Relationship in Kant's Philosophy; 2015-07-06 - 2015-07-07

Langvatn, Silje Aambø. Should International Courts use Public Reason?. BWGG Barcelona Workshops in Global Governance; 2015-01-15

Langvatn, Silje Aambø. The Legitimacy of International Courts: How do we conceptualize it?. Faultetssammenkomst Juridisk Fakultet; 2015-04-27

Langvatn, Silje Aambø. Why International Courts should use Public Reason. XXVII World Congress of the International Association for the Philosophy of Law and Social Philosophy (IVR); 2015-07-27 - 2015-08-01

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PluriCourts annual report 2015

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Contributions by: Annette Hovdal, Laura Letourneau-Tremblay,
Stephanie Schmölzer, and Tori Loven Kirkebø
Layout: Hanna Karv
http://www.jus.uio.no/pluricourts