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PluriCourts

Centre for the Study of the
Legitimate Roles of the Judiciary in
the Global Order



International Courts



The Research Council of Norway

Table of Contents

2020 at a glance...an active yet different year for PluriCourts	3
Spotlight on highlights from 2020	5
Public Reason and Courts	6
Workshop on the Political and Legal Theory of Courts and Tribunals 2020	8
Annual Conference	9
IUROPA	10
The Ryssdal Seminar	11
Concepts and Methods:	12
When International Courts and Tribunals Defer to States	12
PhD Midway Assessments	13
Identity and Diversity on the International Bench	14
Spotlight on Rosa Manzo	16
Spotlight on Antoinette Sherz	18
Awards and Other Remarks	20
Highlighted Research Findings	22
Dispute by design? Legalization, backlash, and the drafting of Investment Agreement	22
Empirical Perspectives on Investment Arbitration: What Do We Know? Does it Matter?	23
Building legitimacy: Strategic case allocations in the CJEU	24
Studies on International Courts and Tribunals	25
Adjudicating Trade and Investment Disputes. Convergence or Divergence?	25
International Judicial Review. When Should International Courts Intervene?	25
Public Reason and Courts	25
Guest Researchers	26
New at PluriCourts	28
The Team	33
Events	34
Conferences and workshops	35
Publications and presentations	36



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PLURI COURTS

2020 at a glance...

an active yet different year for PluriCourts

While this year has been unpredictable due to the COVID-19 pandemic, we have adapted to ever-changing circumstances. PluriCourts has continued to produce high levels of research and publications, while working vigorously to nurture our inspiring research environment - mainly from our respective home offices.

In 2020, PluriCourts has published 23 articles, 5 books, and 14 chapters in anthologies.

Naturally, the extraordinary circumstances affected our ability to physically host publication-oriented conferences in Oslo and abroad. While some of our planned conferences had to be postponed, we hosted several conferences online. Our workshops have gathered experts virtually, and addressed cross-cutting dimensions among a broad range of international courts. Our experiences with online

meetings will no doubt enhance our plans for future activities.

We keep on implementing our Research Council of Norway projects 'Responses to the legitimacy crisis' of international investment law (LEGINVEST) and 'State Consent to International Jurisdiction: Conferral, Modification and Termination' led by Ole Kristian Fauchald and Freya Baetens respectively. In 2020, two applications for Centres of Excellence (SFF) were submitted by our coordinators Freya Baetens and Christina Voigt. Through the ISDS Academic Forum, researchers from PluriCourts actively participate in the UNCITRAL Working Group III on reform of ISDS. The Academic forum provides input on the reform process based on findings from ongoing research.

We have also engaged with the Faculty of Law to explore the legacy of PluriCourts.



Screendump Zoom

This includes an inter-faculty Ph.D. course – which unfortunately was postponed due to Covid-19, and «Ryssdalseminaret», an annual seminar with Norwegian judges, which this year had a hybrid form as it took place physically while streamed live online.

As a well-established research centre, PluriCourts attracts young scholars and serves as a springboard for their career development. In 2020, we saw several colleagues move to new endeavours: our researchers Tarald Laudal Berge, Mikael Holmgren, and Antoinette Scherz, and research assistants Victoria Skeie, Lara M. Wik and Ellen Emilie Henriksen. In 2020, we have welcomed several

new staff members to PluriCourts. We received two new postdoctoral fellows – Johan Vorland Wibye and Matthias Brinkmann, as well as research assistants Louisa Boulaziz, Even Espelid, and Mahalet Tadesse.

In order to be an inspiring and inclusive workplace for all team members, we also strive to organise a range of social activities. Luckily, our ski weekend occurred just before the March lockdown, but our famous Thursday lunch quizzes have mostly taken place on Zoom.

We hope that 2021 will be equally academically stimulating and successful – and more fun.



Spotlight on

highlights from 2020

PUBLIC REASON AND COURTS

In 2013, Silje Aambø Langvatn wrote her Ph.D. thesis in political philosophy on John Rawls' concept on public reason. When Langvatn started as a postdoctoral fellow at PluriCourts a few years later she wished to take an interdisciplinary approach to public reason, and cooperate with legal scholars.

She then allied with Professor Wojciech Sadurski at the University of Sydney, and Professor Mattias Kumm at Berlin Social Science Center, who had also immersed themselves in the topic. The three of them organised a conference on how public reason occurs in international and national courts, which in May 2020, resulted in the publication of the book *Public Reason and Courts*.

With contributions from leading scholars in legal theory, political philosophy, and political science, the book shows that public reason is not just an abstract theoretical concept used by political

philosophers, but an idea that spurs new perspectives and normative frameworks also for legal scholars and judges.

Digital book launch

Because of the COVID-19 pandemic, the book launch took place digitally in June 2020. The editors had invited four commentators. Even though only half of the authors were able to participate, Editor Silje Aambø Langvatn made sure all the contributions were represented



«I had prepared a PowerPoint presentation with introductions of all the chapters, as not every chapter were commented on during the event. As I found it important to honour all the authors' contributions, I put a lot of work into compressing the content of the chapters, especially to create interest in the authors who were not as well-known as the more prominent contributors.»

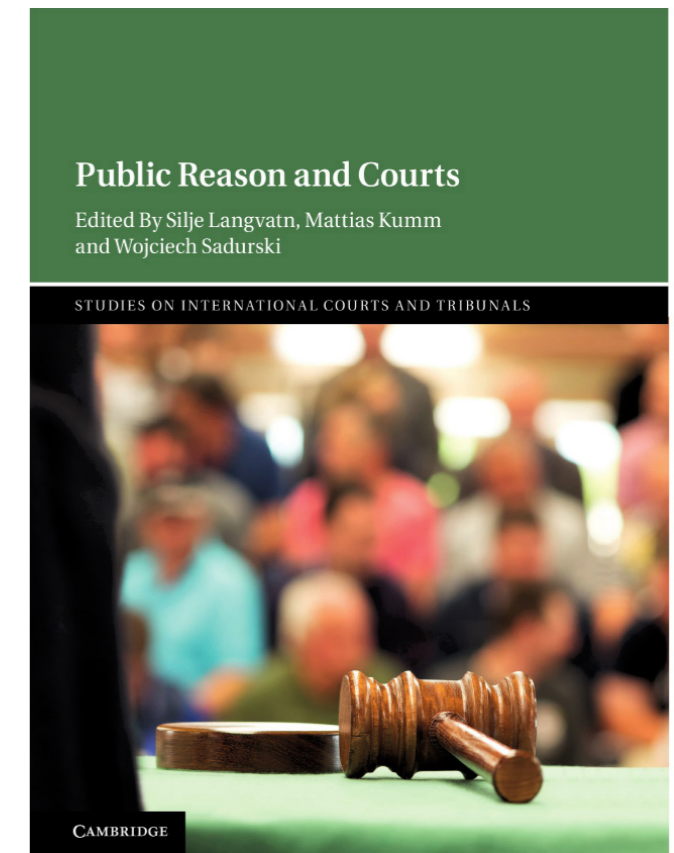
With people participating from North America, Europe, Asia and Australia, the time schedule had to be adjusted accordingly.

Camping commentator

Due to the differences in time zones the launch was somewhat shorter than a normal book launch, yet this made it possible for early birds in the Americas, as well as night owls in Australia to participate. In the digital age, participants can truly be anywhere, and one commentator joined from his caravan as he was camping with his family. Fortunately the line was stable both in tests and during the event.

While the digital solution resulted in some limitations, it also had its advantages. «Of course, it would have been even nicer gathering for a dinner afterwards, but overall, we reached more people doing it this way, and even more authors had the opportunity to participate», says Langvatn.

Silje Aambø Langvatn was a postdoctoral fellow at PluriCourts from 2013-2017. She is now postdoc at the University of Bergen.



WORKSHOP ON THE POLITICAL AND LEGAL THEORY OF COURTS AND TRIBUNALS 2020

PluriCourts Annual Workshop on The Political and Legal Theory of International Courts and Tribunals 2020 on the topic Independence, accountability, and domination in International Courts took place over Zoom on 20-21 July 2021.

States have established manifold regional and international courts (ICs) to resolve disputes, interpret treaties, and deter illegal behaviour. The ICs cover a range of issues including, human rights, trade, investment, border disputes, and international crimes. ICs' competences, level of authority, method of interpretation, and geographical reach widely vary. Their increase in number and influence has spawned controversy and complaints, often phrased as charges of illegitimacy.

Critics of ICs frequently claim that they have gained too much independent authority. They lament juristocracy: the arbitrary rule of autocratic judges rather than democratic decisions and the rule of law. This critique is often phrased as concerns about domination. It is feared that the independent authority of ICs, together with the deep consequences of their decision making, may result

in arbitrary and illegitimate exercise of power.

At the same time, independence of certain kinds is important for courts to function

properly. Independence can indeed be seen as necessary for impartiality and for courts' abilities to legitimately settle disputes. More generally, many see ICs not as the source of the problem of domination in international affairs, but rather as a response and a remedy to lawlessness and power abuse in international politics.

The tension between independence and accountability, and the conditions under which the power and authority of ICs should be seen as dominating or non-dominating, raises both philosophical and more practice-oriented questions about the activities of ICs. Thus, the call for papers opened up for many different approaches and attracted many submissions. We received nearly 70 applications, and hosted 10 scholars via zoom. Participants contributed constructively to the papers, both in plenum and in small breakout room groups of two to three participants. With the breakout rooms we were able to simulate the small talk that would normally happen over a coffee at a conference, and feedback from participants was positive. One stating in the feedback form:

«It was fantastic! A great virtual replacement for coffee-break chats.»

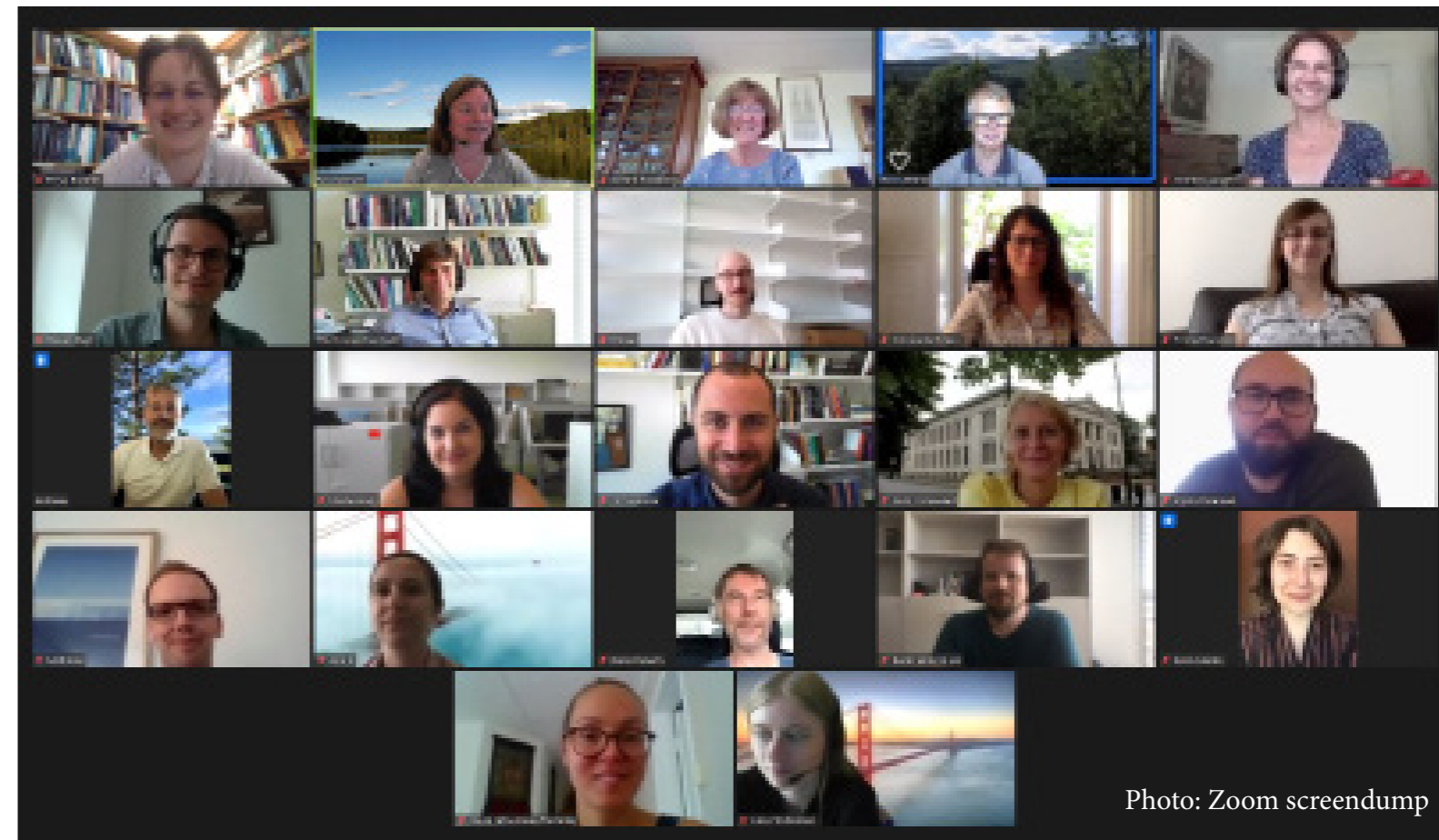


Photo: Zoom screendump

ANNUAL CONFERENCE

This year's annual conference took place online, 24-25 June. During the two days, all the researchers and visiting researchers at PluriCourts presented ongoing work and results. The presentations were followed by academic discussions.

The Scientific Advisory Committee usually attends the annual conference. This year, they participated digitally in a meeting with the management at PluriCourts, as well as a closed meeting with the academic staff, where the staff

got the opportunity to discuss relevant issues regarding the working conditions at PluriCourts. The management did not participate in the closed meeting.

The annual lecture, which is a regular segment at the annual conference, was postponed due to the COVID-19 pandemic. The lecture is scheduled to be held by Professor of Political Science and Law at Northwestern Pritzker School of Law in Chicago Karen Alter, at the annual conference in 2021.

IUROPA

PluriCourts is part of a project based at the University of Gothenburg - IUROPA. IUROPA provides a multidisciplinary platform for research on judicial politics in Europe, combining ongoing work at PluriCourts, the University of Gothenburg and the European University Institute.

Studying judicial independence and the rule of law, the project looks at how court decisions influence political development, and how different actors outside the court influence its decisions. A central element of the project is to develop a comprehensive deep-coding database allowing groundbreaking research on issues before the court, doctrinal development, and actors that interact with the court - national courts, parties to the cases, and lawyers.

The database will be available online in a research friendly format, and is set to launch the summer of 2021. IUROPA is co-financed by the Swedish Research Council, the Norwegian Research Council, and the European University Institute Research Council.

Participants from PluriCourts: Professor Daniel Naurin (Coordinator). Silje Synnøve Lyder Hermansen, Tommaso Pavone, and Tom Stiansen (Project management team). Mikael Holmgren, Louise Boulaziz, and Even Espelid (Project team).

THE RYSSDAL SEMINAR

The Ryssdal seminar took place for the seventh time on 26 October, this time at Litteraturhuset, in collaboration with the Norwegian Courts Administration. The seminar is held in the spirit of Rolv Ryssdal, previous judge, vice-president and president of the European Court of Human Rights (ECtHR). Its purpose is to raise questions about the interaction between Norwegian and international law, with a particular focus on human rights. The seminar had three topics: the 70th anniversary of the European Convention on Human Rights, the NAV (Norwegian Labour and Welfare Administration) case, and crisis legislation during the pandemic.

The conference opened with a speech by Robert Spano, President of the European Court of Human Rights. He was invited to speak about the ECtHR's impact on national level. «The future of the Convention system depends on strong dialogue and meaningful, good faith cooperation between the court and the national authorities,» said Spano.

The convention has since its creation in 1950 ensured that the 47 member countries adhere to basic human rights for its around 830 million European citizens. Erik Møse, a recently retired Norwegian Supreme Court Judge that served as a judge on the ECtHR from 2011 to 2018, stated that the protection of human rights in Europe has been strengthened due to the Convention's legally binding nature. In the seminar's second session, Finn Arnesen, Professor of Law at the University of Oslo (UiO) and head of the board that investigated the NAV scandal, spoke



about their findings. Marianne Vollan, President of Borgarting Lagmannsrett, commented on the courts' responsibility in the NAV case.

Professor of Law at UiO Benedikte Moltumyr Høgberg introduced the last session, where she gave a presentation on Norwegian legislation during the COVID-19 pandemic. The panel consisted of Professor of Law at UiO, Hans Petter Graver, Professor at the European University Institute Martin Scheinin, and Adele M. Mestad, director at the Norwegian National Human Rights Institution.



Towers of the Court of Justice of the European Union (CJEU). Photo: Laurent Verdier, Wikimedia commons

CONCEPTS AND METHODS: WHEN INTERNATIONAL COURTS AND TRIBU- NALS DEFER TO STATES

International Courts and Tribunals (ICs) sometimes allow national actors a certain discretion in their implementation of international obligations: The WTO Appellate Body has granted states some latitude to restrict trade under reference to protection of ‘public morals’; the European Court of Human Rights sometimes grant states a ‘margin of appreciation’ in applying the European Convention on Human Rights.

Deference by ICs towards states raises several theoretical, conceptual, and methodological challenges for philosophical, legal and social science scholarship. Therefore, we invited papers that asked; when do ICs defer, why, what are the effects, and how should we assess such deference? We received 51 papers, of which 13 researchers were invited to participate based on their contribution to PluriCourts’ Research Plan.

At the Political and Legal Theory Workshop that took place on Zoom in July 2020, we had great success with a so-called «mingling session» that allowed for more informal socialising among the researchers. To repeat the success, we decided to conclude the Concepts & Methods workshop’s first day with a similar, but voluntary mingling session. The participants were allocated in three breakout rooms in Zoom, where they could discuss, chat and get to know each other in a more informal manner. The aim was to imitate the mingling and socialising that often take place at ordinary academic conferences, which we to a large degree lose at online events.



Photo: UiO

PHD MIDWAY ASSESSMENTS

In February 2020, Emma Hynes Brandon and Nicola Strain completed their midway assessments as part of the formal requirements for progressing in a Ph.D. program.

Brandon presented her project titled «Holding Signatories to Account: States’ Obligations Upon Signing a Treaty Granting Jurisdiction to an International Criminal or Human Rights Tribunal», which examines the international legal obligations that states have to cooperate with international criminal and human rights tribunals between signature and ratification of the treaties that established the tribunals. Professor Paolo Palchetti (University of Macerata/Université Paris 1 – Panthéon – Sorbonne) was the assessor of the midway.

Strain presented her project titled «Consent to the Jurisdiction and Applicable Law of the WTO and Investor-State Dispute Settlement Mechanisms», which analyses the approach of these dispute settlement mechanisms to bringing in other areas of public international law. The assessor of the midway was Professor Régis Bismuth (The Sciences Po Law School).

Both Brandon and Strain had received an Overseas Research Grant from the Research Council of Norway for research stays at Columbia University in New York and at Leiden University, the Netherlands, respectively. Unfortunately, their research stays were cut short due to the COVID-19 pandemic and they returned to Oslo to continue their research from here.

IDENTITY AND DIVERSITY ON THE INTERNATIONAL BENCH : Educational background of international judges is more decisive than nationality.

In her new book, *Identity and Diversity on the International Bench*, Professor Freya Baetens investigates the impact of the overrepresentation of judges from certain backgrounds on the legitimacy of international courts and tribunals.

«The diversity in the European Court of Human Rights is currently going down,» says Baetens.

Each of the European Council's 47 member states have their own judge on the bench. The member state nominates three persons that are considered capable for the role, whereas only two of the nominees can be of the same gender. «Once the number of female judges had reached about one third, states were of the opinion that sufficient diversity had been achieved, so Malta and Belgium

nominated three men, arguing that they could not find a competent woman among their nationals. But even assuming that this were true rather than breaking the diversity requirement, they could have nominated a national from another country, as Liechtenstein frequently does, there is no obligation to nominate one of one's own nationals,» says Baetens.

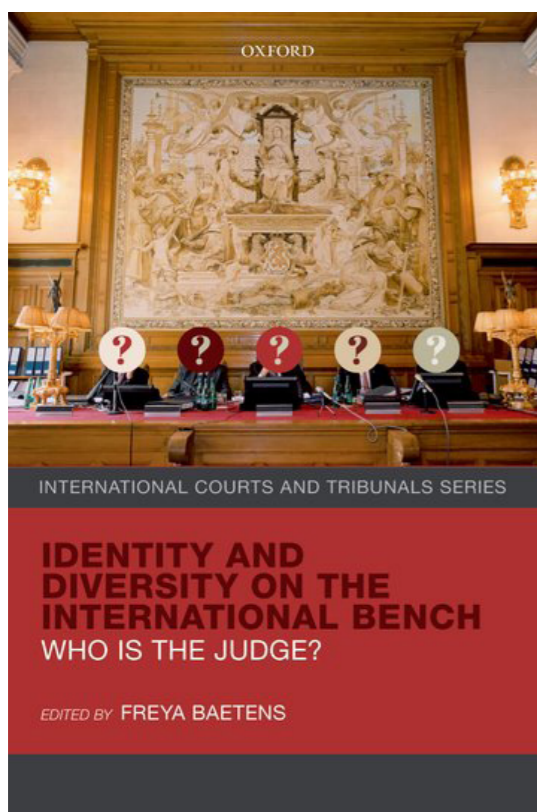
The discussion goes straight to the core of Baetens's most recent book *Identity and Diversity on the International Bench*, which critically investigates the impact of the overrepresentation of judges and arbitrators from certain backgrounds on the outcomes and legitimacy of international dispute settlement.

White, male, Anglophone, westerners

Although international courts and tribunals hold the power to decide on questions involving grave human rights violations or international crimes globally, certain groups still tend to be overrepresented on international benches, while others remain underrepresented.

«In spite of all incentivisation schemes and 'calls for inclusion', white, male, westerners, mainly North-Americans or Europeans, often Anglophones, and often from privileged socioeconomic backgrounds, tend to make up most seats on the benches of international courts.»

One important finding of the project is the importance of education, including where judges receive their legal training.



«On the one hand, it is nice for professors that education can play such a role, but it also forces us to think how accessible good education is. Are we admitting students to our universities because of where they are born or who their parents are, or are we admitting students because of their intellectual capacity?» asks Baetens.



Navanethem Pillay also serves as an ad hoc judge in the *Gambia v Myanmar* disputes, an ongoing case before the ICJ where Gambia has accused Myanmar of committing genocide against its Rohingya population.

A group of peers

«Certain roads seemed closed to her»

Baetens reports that women have written more than half of the chapters, junior scholars and practitioners have written about a third, and more than half were authored by non-Europeans.

One of the contributors is the South African jurist Navanethem Pillay, who has written the book's foreword. Throughout her career, Pillay has served as a United Nations High Commissioner for Human Rights, as a judge in the International Criminal Court, as well as being first a judge, then the President of the International Criminal Tribunal for Rwanda. She was also the first non-white woman judge of the High Court of South Africa. No matter how impressive Pillay's CV seems, her way to the courts was not hurdle free:

«Although she is one of the first female lawyers in Africa and one of the first African women to obtain a doctorate from Harvard, she could not get a job in a law firm. She needed to establish her own law firm instead. It did not matter that she was a brilliant lawyer - she was a woman, and coloured, so certain roads seemed closed to her,» explains Baetens.

«We do not want a case like that decided solely by white European men. This is important as a matter of individual fairness, but also for the legitimacy of the system.»

Even if the adjudicators' identity may not be the only or even decisive influence for their judicial decision-making, the book illustrates how the relative lack of diversity has an effect on the judicial process, its outcomes and compliance. This in turn might entail broader implications for the legitimacy of international law.

«Identity may partly determine how you analyse issues as a lawyer. For example, if you are trained in the common law system, it affects how you look at evidence and deal with witnesses. If you have never left the university library, there may be elements in court proceedings that you fail to understand,» says Baetens.

«International courts depend on people accepting and complying with the decisions even if they are not in their favour. People will more easily perceive a decision as the 'right' one if they have been judged by a group of people who they trust, a group of peers.»

SPOTLIGHT ON ROSA MANZO

Rosa Manzo successfully defended her PhD on October 2, 2020. She was a PhD fellow at PluriCourts from January 2015 to June 2020.

Title of Project: Equity as a legal concept and its role in the development of international law on climate change. Equity has been a controversial issue in international climate change negotiations for decades, but the 2015 Paris Agreement tries to tie all the different interests together. I investigate the legal concept of equity in light of the Paris Agreement.

Background: LL.M. in Public International Law from the University of Oslo.

What did you investigate in your thesis?

– The role of equity as a legal concept in international law, specifically the role of equity in climate change law. Through the lenses of an equity prism, I have analysed the climate change regime since 1992 until the adoption of the Paris agreement in 2015.

What do you consider your most important finding?

– I concluded that equity is a multifaceted concept that can be represented as a prism with four phases: distributive equity, corrective equity, intergenerational equity and procedural equity. The Paris Agreement can be understood as the peak of equity because it tries to reflect all the four phases; it has embedded an impartial understanding of equity. Therefore, we should not consider equity as an abstract word, but as a legal concept.

What is the common understanding of the principle of equity in the climate change regime, and how has the adoption of the Paris Agreement challenged this?

– Traditionally, the principle of equity has been understood synonymously with the principle of common but differentiated responsibilities and respective capabilities. This has put the burden of mitigation obligations exclusively upon developed countries,

as those are historically responsible for CO2 emissions. The adoption of the Paris Agreement challenges the common understanding of equity because it allows parties to ask for compensation in case of damages due to climate change and because it includes a progressive clause, which forces the parties to upgrade their policy every five years.

Why did you want to investigate equity in international law on climate change?

– Equity has been on the table in international climate change negotiations for years, but no countries have agreed on one definition of equity. I was triggered by the enigma of equity and whether it is possible to find some core elements that all countries can agree on.

Why has equity been so controversial in international climate change negotiations?

– Climate change is a global problem and cannot be solved by one state unilaterally; it needs universal cooperation. However, not all countries are equally responsible for causing climate change, whereas other countries feel more hit by the consequences of emissions, and are consequently more concerned. Some countries will also benefit from the changes in the climate. Then there is the question of future generations, and how much responsibility we have towards them, and if so, for how many generations. This question regards all states.



Photo: UiO



Photo: Siri Johnsen, UiO

SPOTLIGHT ON ANTOINETTE SHERZ

Antoinette Sherz was a postdoctoral fellow at PluriCourts from August 2017 to September 2020

Title of project: The Legitimacy of the International Courts: Concepts, Standards and Institutional Relationships. It was concerned with conceptual questions of normative legitimacy and how to think about different legitimacy standards for international courts.

Background: Ph.D. in political philosophy from the University of Zürich, postdoctoral fellowship at the Goethe University in Frankfurt.



Photo: UiO

What have you worked on at PluriCourts?

– I have worked on an autonomy-based conception that assesses the legitimacy of political institutions on the grounds of the risks and benefits to the autonomy of those subject to their rules. My paper «Tying Legitimacy to Political Power» in The European Journal of Political Theory defines varying legitimacy standards according to the political power of the institution in question and starts to outline the idea of an autonomy-based conception of legitimacy that I want to develop further as part of this project. The paper considers how the width and depth of political power, i.e. the competences of an international institution, influence the required legitimacy standards. I argue that «(t)he more political power an institution exercises, the more demanding the legitimacy standards it needs to fulfil in order to be legitimate.» The paper defines varying legitimacy standards according to the political power of the institution in question.

– I also co-edited a special issue on «Legitimacy beyond the State: Normative and Conceptual Questions», published in the Critical Review of International Social and Political Philosophy. This issue also includes a paper which I co-authored, entitled «The UN Security Council, Normative Legitimacy and the Challenge of Specificity», discussing the legitimacy of UNSC's changing competences and its connection to the ICC.

I have also co-organised a workshop at the University of Amsterdam on «Should States Do It Alone? New Perspectives on the Legitimacy of Multilateral and Bilateral Power Structures» that aims for a special issue publication, which also includes my paper «You Can't Tell Me What To Do! Which Reasons to Comply for States Can Ground International Institutions' Legitimate Authority?».

This paper discusses what reasons states have to comply and how these considerations are relevant for the ECHR's legitimate authority. Another paper on the Committee on Economic, Social and Cultural Rights' (CESCR) new mechanism to receive individual complaints and issue views, «Reforming through Reasons: Treaty Interpretation, Proportionality and the Legitimate Authority of the CESCR», which I have co-authored, has received a revise-and-resubmit from Global Constitutionalism.

Looking back at your time at PluriCourts – what has been the highlights?

– The interdisciplinary exchange and the Annual Political and Legal Theory Workshops have been very rewarding. In addition, I have very much enjoyed the social interactions and events, in particular the ski weekend in Hafjell.

How did your stay at PluriCourts affect your research?

– I have learned a lot from the broader interdisciplinary perspective, particularly the input from international legal scholars. Because of all the people who present at either the Wednesday lunch seminars or the annual conference and theory workshop, I have met with many scholars whom I otherwise would not have met.

Awards and Other Remarks



MALCOLM LANGFORD, DANIEL BEHN AND RUNAR HILLEREN LIE

In January 2020, Professor and Senior Research Fellow Malcolm Langford, Associate Professor Daniel Behn and Ph.D. Candidate Runar Lie, were awarded with the prestigious John H. Jackson Prize for the best article in the Journal of International Economic Law (JIEL).

The prize was for their article «The Revolving Door in International Investment Arbitration» that offers the first empirical analysis of the individuals that make up the entire investment arbitration community.

The basis of their work is their own PIT-AD database on all known investment arbitration cases and the known individuals that form the investment arbitration community. Using network analysis, the article describes the investment arbi-

tration community and addresses key sociological and normative questions in the literature. Notably, they highlight the widespread nature of «double hatting», whereby arbitrators also act as legal counsel in concurrent cases.

The John Jackson prize is awarded annually to the article or other contribution in the JIEL that most significantly breaks new ground and adds new insights to the study and understanding of international economic law. Langford, Behn and Lie's article attracted significant attention when it was published in 2017. It has been widely cited, and is on JIEL's list of the most cited articles in the last five years. The article has helped shape reform processes in the UN Commission on International Trade Law.

CHRISTINA VOIGT

At the last day of the climate conference COP25 in Madrid, PluriCourts Coordinator Professor Christina Voigt was unanimously elected as co-chair of the Paris Agreement's Committee to Facilitate Implementation and Promote Compliance ('Compliance Committee').



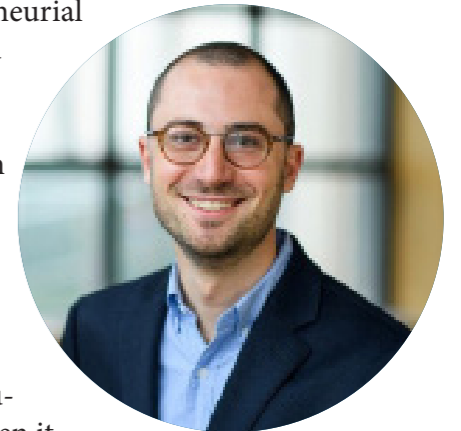
Voigt will serve as a committee member in her individual, expert capacity. At PluriCourts, Voigt coordinates the research on the role and value of non-compliance mechanisms.

The Compliance Committee is an important institutional building block of the Paris Agreement. It is tasked to address situations of non-compliance of Parties with their legally-binding obligations under the Agreement. It will also function as a back-stop to the transparency framework, where Parties do not provide their reports consistent with adopted guidance. Voigt has also joined the panel of top international lawyers that are trusted with drafting a legal definition of 'Ecocide' as a potential international crime. The panel has been convened by the Stop Ecocide foundation and is expected to draft the definition in 2021.

TOMMASO PAVONE

In May 2020, the Law and Society Association awarded Postdoctoral Fellow Tommaso Pavone the Dissertation Prize for his dissertation «The Ghostwriters: Lawyers and the Politics behind the Judicial Construction of Europe». The prize is awarded to the dissertation that best

Pavone conducted 350 interviews in Italy, France and Germany and used innovative methodological approaches, which included patio-temporal mapping, to advance an alternative narrative of the actors behind the institutionalisation of European law. Pavone's research illustrates that entrepreneurial



lawyers, as opposed to «activist judges» or courts were the motors of European legal integration. Pavone's dissertation was complimented for making both empirical and theoretical contributions, especially when it comes to understanding transnational legal change. He was praised for the way he integrated and presented his wealth of data in the dissertation without overwhelming the reader.

The Ph.D. dissertation was also awarded the European Union Studies Association Prize for best dissertation on the EU and the 2020 Edward S. Corwin Dissertation Award from the American Political Science Association for best dissertation in public law.

Highlighted Research Findings

DISPUTE BY DESIGN? LEGALIZATION, BACKLASH, AND THE DRAFTING OF INVESTMENT AGREEMENTS

Tarald Laudal Berge's article «Dispute by Design? Legalization, backlash, and the Drafting of Investment Agreements» presents the first empirical analysis of what drives risk in investment agreements. By drawing on states' own reform narratives, and on unique data on the content of over two thousand investment agreements, Berge analyses how legislation in investment agreements is associated with the risk of attracting investor-state dispute settlement claims.

In this article Berge tackles a central question in current reform debates; whether the contents of investment agreements influence the risk of attracting investor-state dispute settlement claims. Berge comments «reformers have mainly focused on increasing the precision of investment

agreements, and adding more flexibility mechanisms to them. The main finding in «Dispute by Design?», is that the only dimension in investment agreements associated with the risk of investor-state dispute settlement claims is the amount of substantive protections states include in the agreements.»



Berge's findings suggest that states should focus more on what substantive clauses they include in their investment agreements, rather than on how these clauses are written. «Precision and flexibility have no bearing on the risk of claims. This finding has significant implications for states working on their domestic investment treaty programmes, and for the broader reform debates going on at the United Nations», says Berge.

EMPIRICAL PERSPECTIVES ON INVESTMENT ARBITRATION: WHAT DO WE KNOW? DOES IT MATTER?

In the article «Empirical Perspectives on Investment Arbitration: What Do We Know? Does it Matter?», Daniel Behn, Malcolm Langford and Laura Létourneau-Tremblay seek to provide a state-of-the-art summary and assessment of empirical studies on the six identified concerns of states: legal cost, duration of proceedings, consistency, correctness, diversity and independence.

Investor-state dispute settlement (ISDS) has suffered a so-called legitimacy crisis for more than a decade. As a response to this crisis, in 2017, the United Nations Commission on International Trade Law's (UNCITRAL) Working Group III was tasked by states to reform ISDS, and was given a broad mandate to address six legitimacy concerns.

Behn, Langford and Létourneau-Tremblay uncovered an emerging base of quantitative, qualitative and computational evidence for justifying some of the states' concerns, but not all.

When asked about their findings, Létourneau-Tremblay comments «[h]ighlighting the limitations of empirical findings, namely the lack of access to all relevant data. Still, we find, in some instances, clear evidence of a problem - diversity, costs, or clear evidence that raises questions as to whether there is a significant problem, like duration of proceedings. In other areas - consistency, independence, and correctness - we know less and what we do know so far only points partly towards a problem.»



BUILDING LEGITIMACY: STRATEGIC CASE ALLOCATIONS IN THE COURT OF JUSTICE OF THE EUROPEAN UNION

Silje Synnøve Lyder Hermansen's paper «Building legitimacy: strategic case allocations in the Court of Justice of the European Union» argues that a court's legitimacy is built by its leadership already at the case-management stage, as the President of the Court of Justice of the European Union (CJEU) is sensitive to the judiciary's political environment when he allocates cases.

By analysing 9623 appointments of judges responsible for drafting court decisions, the study demonstrates two interconnected selection criteria applied by the leadership. The paper was selected among European Union Studies Association biennial conference best papers in 2019.

The CJEU's president has promoted specialisation at the individual level, rather than the practice of specialised chambers. The argument is that it provides flexibility to make strategic allocation choices while promoting consistency within a policy domain.

«The strategy promotes a coherent case law, but simultaneously ensures that the President only faces a minimal trade-off between specialist knowledge and political considerations when making his pick», says Hermansen.

Furthermore, the study demonstrates how the considerations of domestic politics mainly spill over to the CJEU case management when case law is yet to be developed. The effect decreases as the

Court's interpretation crystallises. «A subset of Court cases have a potential for politicization insofar as member state governments have expressed divergent views on the matter. In these instances, the President avoids appointing judges whose current government occupies an extreme position compared to the remaining member states. The strategy shields individual judges from undue pressure while avoiding polarizing already politicized cases», says Hermansen

Hermansen comments «this study argues on the one hand that the internal practices of ICs can empower individual judges and therefore reintroduce elements of political accountability that collective decisions and secret voting aim to cut short. On the other hand, it argues that hierarchically organised courts allow the leadership both to shield individual judges from such undue external pressure while simultaneously imposing discipline among rank-and-file members.»

One of the insights from the study is that «the random or administrative case allocations that some courts rely on would regularly lead to matches between judges and cases that would unnecessarily polarize the court's decision making.»



STUDIES ON INTERNATIONAL COURTS AND TRIBUNALS

NEW ADDITIONS TO THE PLURICOURTS BOOK SERIES

ADJUDICATING TRADE AND INVESTMENT DISPUTES. CONVERGENCE OR DIVERGENCE?

Edited volume by Szilárd Gáspár-Szilágyi, Daniel Behn and Malcolm Langford.



Recent trends suggest that international economic law may be witnessing a renaissance of convergence – both parallel and inter-sectional. The adjudicative process also reveals signs of convergence. These diverse claims of convergence are of legal, empirical and normative interest. Yet, convergence discourse also warrants scepticism.

This volume contributes to both the general debate on the fragmentation of international law and the narrower discourse concerning the interplay between international trade and investment, focusing on dispute settlement. It moves beyond broad observations or singular case studies to provide an informed and wide-reaching assessment by investigating multiple standards, processes, mechanisms and behaviours.

Methodologically, a normative stance is largely eschewed in favour of a range of 'doctrinal', quantitative and qualitative methods that are used to address the research questions. Furthermore, in determining the extent of convergence or divergence, it is important to recognize that there is no bright line or clear yardstick for determining its nature or degree.

PUBLIC REASON AND COURTS

Edited volume by Silje Aambø Langvatn, Matthias Kumm and Wojciech Sadurski.

Read more about the book on page 6-7 in this report.

INTERNATIONAL JUDICIAL REVIEW. WHEN SHOULD INTERNATIONAL COURTS INTERVENE?

Book by Shai Dothan.

This book is motivated by a question: when should international courts intervene in domestic affairs? To answer this question thoroughly, the book is broken down into a series of separate inquiries: When is intervention legitimate? When can international courts identify good legal solutions? When will intervention initiate useful processes? When will it lead to good outcomes? These inquiries are answered based on reviewing judgments of international courts, strategic analysis, and empirical findings.

The book outlines under which conditions intervention by international courts is recommended and evaluates the implications that international courts have on society.



Guest Researchers

VEGARD TØRSTAD

Vegard Tørstad was a Ph.D. researcher at the European University Institute and a visiting researcher at PluriCourts until December 2020. He successfully defended the thesis on how decision-making procedures matter for the legitimacy of the UNFCCC, the WTO and the UN Security Council in January 2021.

Why did you choose to be a guest researcher at PluriCourts?

-I applied to become a guest researcher at PluriCourts because I felt that the topic of my Ph.D. thesis—the effects of proce-

dural reforms on the legitimacy of international institutions—matched well with the research agenda of PluriCourts; and because I was intrigued by PluriCourts' roster of excellent legitimacy scholars. *How has your stay at PluriCourts affected your research?*

-Being a guest researcher at PluriCourts has had several beneficial effects on my research. Most importantly, it enabled me to receive useful feedback on my work at multiple occasions from an exceptionally knowledgeable group of people with different backgrounds and approaches to legitimacy and international courts.

Do you have any recommendations to other researchers who would like to have a research stay at PluriCourts?

-Get in touch! PluriCourts takes good care of its guest researchers, offering a welcoming atmosphere, very supportive administrative staff, and excellent facilities.



JULIE CRUTCHLEY

Julie Crutchley was a Ph.D. candidate at City, University of London and a visiting researcher at PluriCourts until December 2020. She successfully defended her thesis on «A critical rearticulation of the role of victims within international criminal justice and its contribution towards positive peace» in December 2020.

Why did you choose to be a guest researcher at PluriCourts?

-As a guest researcher at PluriCourts I have been able to join this world-renowned centre for multidisciplinary research on international courts. I have long been aware of the research produced by PluriCourts. I had an opportunity previously to attend a number of seminars in which both interesting research on international courts was presented, and very useful and relevant feedback was given all the participants from PluriCourts.

-My own interdisciplinary research has focused on the legitimacy of the international criminal court and hybrid courts within international law. As such, I knew that the multidisciplinary focus of PluriCourts ensured that I could work with scholars in the fields of law, political science and philosophy, receiving feedback on my project from experts in these fields.

How has your stay at PluriCourts affected your research?

-My time at PluriCourts has helped to refine my research and enhance the clarity

of my arguments. The feedback I received from other researchers, both through informal conversations and the lunchtime seminars was invaluable. Additionally, the range of interdisciplinary research covered through the variety of workshops and seminars has enriched my future research plans.

-It is a very supportive research community, and this is aided by the entire team who encourage all the various individual projects. The family friendly environment helped me to complete my research following the end of my maternity leave. Flexible opening hours of the office gave me the opportunity to work evenings and weekends, normally with some other colleagues around.

Do you have any recommendations to other researchers who would like to have a research stay at PluriCourts?

-For researchers working on International Courts, especially on issues of legitimacy, I would recommend a research stay at PluriCourts. There is a wide range of expertise and this will benefit your research whether it falls under one discipline or has a multidisciplinary focus. Finally, it provides a good opportunity to be based in Oslo, a city where outdoor activities are very accessible all year round. The team at PluriCourts ensure that everyone can experience the delights of Norwegian culture in their free time.

New at PluriCourts

In 2020, two new postdoctoral fellows joined the team at PluriCourts.

Johan Vorland Wibye



Title of project: The Legitimacy of Adjudication as Self-imposition of Duties
Background: I originally started out as a commercial lawyer, but after getting acquainted with legal philosophy through a subsequent MJur, I gradually moved over into philosophy and ethics, with the hope of someday being able to contribute something in the combination of these disciplines.
Hidden talent: I never mentioned to the hiring committee that I'm fairly decent with a fishing tackle.

What is your project about?

-The project is about applied rights theory as a method of clarifying and evaluating claims about the legitimacy of international courts, or about graded legitimacy standards. The goal is to situate normative claims pertaining to rights in a solid analytical setting, to highlight inconsistencies and perhaps also to establish a guiding framework for which claims it is safe to make and, more importantly, which should be avoided. It is a reaction to a tendency to make indiscriminate claims in the area of rights theory, which leads to overly hasty rejection of typologies and conceptual overreach.

What originally attracted you to PluriCourts?

-PluriCourts offers something that is fairly rare in Norwegian (and Scandinavian) academia, which is a concerted and lasting effort to bring together scholars from legal, philosophical and empirical backgrounds. It is one of the rare occasions that a postdoctoral fellowship in the philosophy of law has been made available, and the multidisciplinary environment is stimulating.

What is your best first memory?

-The best first memory (of PluriCourts) is the introductory summer lunch with Co-director Føllesdal and the other postdoctoral hires. It promised a genuinely curious academic community and access to specialists in their respective fields.

Matthias Brinkman



Title of project: Instrumentalist Theories of Legitimacy in the Context of International Courts
Background: I have a philosophy background with lots of interdisciplinary interests thrown in. I did an undergraduate degree in philosophy and economics, and I am still interested in the philosophy of economics, and topics which intersect with law and political science. (I am trying to write an article saying that every philosopher should dabble in at least one other field.) In graduate school, I became increasingly interested in political philosophy, where I would say my main research focus lies.
Hidden talent: I've recently played lots of chess in my free time. But I'm not sure I would call it a talent--I'm terrible! I asked my wife and she says one of my hidden talents is that I am «very good at keeping score at boardgames». It's a very hidden talent!

What is your project about?

-I have recently completed a book project about instrumental theories of legitimacy, which goes back to a series of articles I wrote, and ultimately my dissertation. It defends the view that political institutions are justified because of their instrumental benefits. At PluriCourts, my aim is to further develop the theory, and see how it applies to international courts. Philosophers have traditionally focused on legitimacy in the context of the state, and this has often narrowed their vision. International courts are an important test case to see whether your theory of legitimacy is adequate and flexible.

What originally attracted you to PluriCourts?

-«Legitimacy» is a very niche area in philosophy. No matter which university you would go to, you would normally have at most one or two other people to talk to about legitimacy. It is very exciting to be surrounded by other researchers who are each experts on the issue in their own right!

What is your best first memory?

-I was very impressed how nice and modern the Domus Juridica is. I love my new office! It's a shame I haven't been able to use it for a while.

RESEARCH ASSISTANTS

LOUISA BOULAZIZ

Louisa Boulaziz is a Masters' student in political science at UiO. Her master thesis will investigate the relationship between lawyer experience and its importance for winning a case in the European Court of Justice. At PluriCourts, Louisa will mainly be working on collecting and compiling data in order to create a large ECJ database. Her supervisor is postdoctoral fellow Silje Synnøve Lyder Hermansen.



EVEN ESPELID

Even Espelid is a Masters' student in political science at UiO. His thesis will investigate what factors influence member states' degree of compliance with the EFTA Courts' decisions, and in addition, what factors affect the judicial behaviour of the EFTA Court. Espelid will write his thesis under the supervision of postdoctoral fellows Øyvind Stiansen and Tommaso Pavone.



MAHALET TADESSE

Mahalet Tadesse is a Masters' student in Public International Law at the University of Oslo. She holds a bachelor's degree in International Studies with an international law concentration from UiO. At PluriCourts, Tadesse is in charge of organising the Wednesday Lunch Series, where internal and external scholars are invited to present new and ongoing research, as well as larger conferences.



Life at PluriCourts

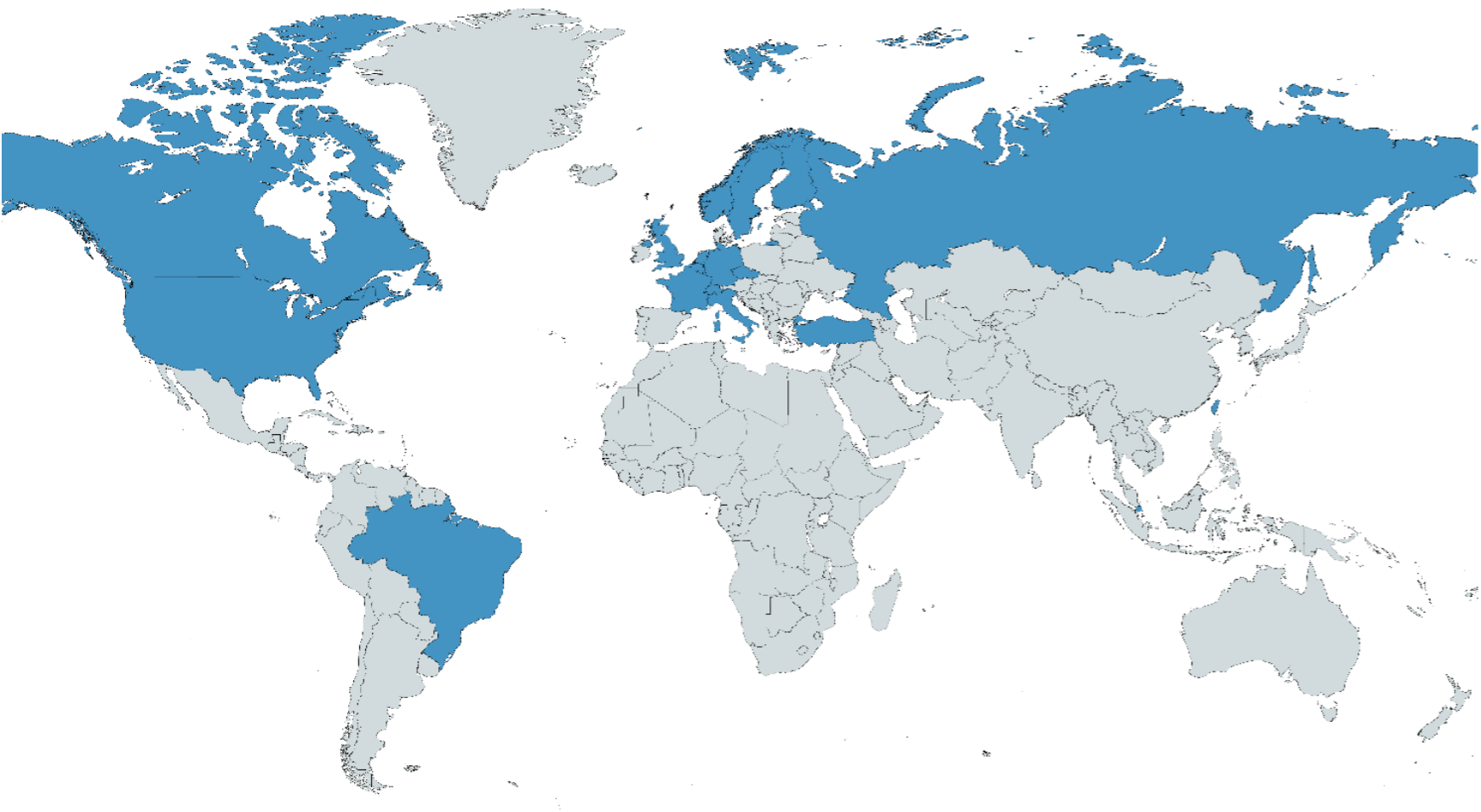
Two 'live' events in 2020



Photos: Siri Johnsen, UiO

International Cooperation

PluriCourts has an international team and cooperates with researchers across the world



The Team

Management

Director Geir Ulfstein
Co-director Andreas Føllesdal
Administrative manager Guro Frostestad
Administrative manager Siri Johnsen

Coordinators

Freya Baetens
Ole Kristian Fauchald
Daniel Naurin
Christina Voigt

Postdoctoral fellows

Matthias Brinkmann
Silje Synnøve Lyder Hermansen
Tommaso Pavone
Antoinette Scherz
Øyvind Stiansen
Martin Westergren
Johan Vorland Wibye
Mikael Holmgren

PhD candidates

Emma Hynes Brandon
Laura Trémbly-Letourneau
Runar Hilleren Lie
Nicola Strain
Tarald Laudal Berge

Researchers

Daniel Behn
Rosa Manzo

Research assistants

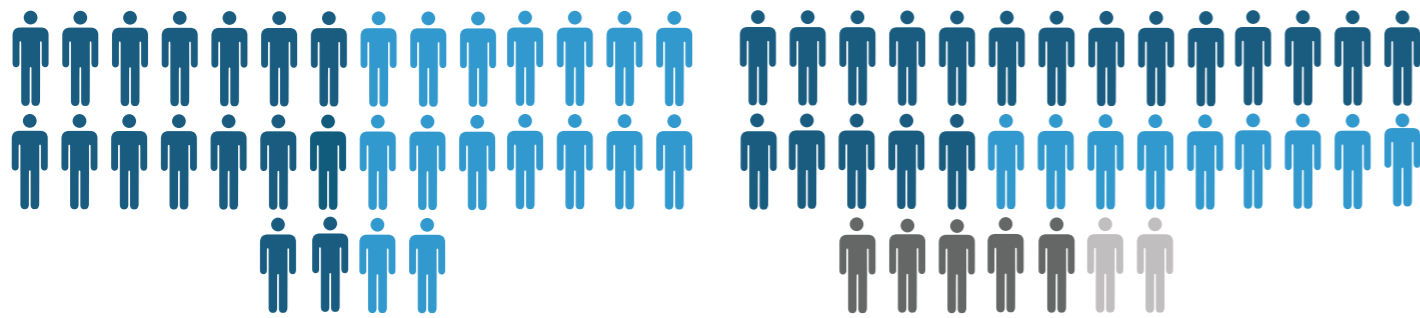
Louisa Boulaziz
Even Espelid
Ellen Emilie Henriksen
Karoline Hovland Lyngstadaas
Victoria Skeie
Mahalet Tadesse
Lara M. Wik

Administration

Lina Christensen
Marit Fosse (on leave)

Guest researchers

Erik Røsæg
Julie Chrutchley
Juan Pablo Pérez-León Acevedo
Matthew Saul
Stefan Mayr
Vegard Tørstad



MEN
Overall: 50%
Academic
staff: 56%

WOMEN
Overall: 50%
Academic
staff: 44%

DISCIPLINES
Philosophy: 5 Political Science: 9
Law: 19 Administration: 2

PluriCourts in numbers

Events

49
in total

Political and
Legal Theory
Workshops

2

24

PluriCourts Lunch
Seminars on topics
pertaining to
international courts and
tribunals

Reading groups on the
most relevant publications
on international courts and
legitimacy in the fields of law,
political science, and philosophy

23



3933 followers

549 followers



Conferences and workshops

- 16.01. Seminar, Norway and International law – welfare benefits under the EEA agreement and child protection under the European Convention on Human Rights, Oslo.
- 13.02. Seminar, International Political and Legal Theory Seminar, Stockholm.
- 18.06. Book Launch, Public Reason and Courts, Online video conference.

- 24.06-25.06. Conference, PluriCourts Annual Conference, Online video conference.
- 20.07-21.07. Workshop, The Political and Legal Theory of International Courts and Tribunals 2020, Online video conference.
- 26.10. Seminar, The Ryssdal Seminar 2020, Oslo.
- 24.11-25.11. Workshop, Concepts and Methods, Online video conference.

Publications and presentations

Books

Baetens, Freya (ed.). Identity and Diversity on the International Bench: Who is the Judge?. Oxford University Press.

Gáspár-Szilágyi, Szilárd; Behn, Daniel; Langford, Malcolm (eds.). Adjudicating Trade and Investment Disputes: Convergence or Divergence?. Cambridge University Press.

Langvatn, Silje Aambø; Kumm, Mattias; Sadurski, Wojciech (eds.). Public Reason and Courts. Cambridge University Press.

Pérez León Acevedo, Juan Pablo; Nicholson, Joanna (eds.). Defendants and Victims in International Criminal Justice Ensuring and Balancing Their Rights. Routledge.

Michelle Q. Zang. Judicial Engagement of International Economic Courts and Tribunals. Edward Elgar Publishing.

Book chapters

Baetens, Freya. «Identity and Diversity on the International Bench: Implications for the Legitimacy of International Adjudication» in Identity and diversity on the international bench: Who is the Judge?. Oxford University Press.

Føllesdal, Andreas. «Religion and the State: the ‘Lautsi’ Case of the European Court of Human Rights About Crucifixes in Italian Class Rooms» in State and Religion: Between Conflict and Cooperation. Nomos.

Gáspár-Szilágyi, Szilárd; Létourneau-Tremblay, Laura. «A Question of Impartiality: Who are the Dissenting Arbitrators in Investment Treaty Arbitration?» in Identity and Diversity on the International Bench: Who is the Judge?. Oxford University Press.

Langford, Malcolm; Behn, Daniel; Lie, Runar Hilleren. «Computational stylometry: predicting the authorship of investment treaty awards» in Computational Legal Studies - The Promise and Challenge of Data-Driven Research. Edward Elgar Publishing.

Langvatn, Silje Aambø. «Taking Public Reason to Court: Understanding References to Public Reason in Discussions about Courts and Adjudication» in Public Reason and Courts. Cambridge University Press.

Nussberger, Angelika; Baetens, Freya. «Diversity on the Bench of the European Court of Human Rights: A Clash of Paradigms» in Identity and Diversity on the International Bench: Who is the Judge?. Oxford University Press.

Pérez León Acevedo, Juan Pablo. «Judicial Legal Culture and Victim Procedural Status at the Special Tribunal for Lebanon and Extraordinary Chambers in the Courts of Cambodia» in Identity and Diversity on the International Bench: Who is the Judge?. Oxford University Press.

Pérez León Acevedo, Juan Pablo. «The Contribution of Female Judges to the Victim Jurisprudence of the International Criminal Court» in Identity and Diversity on the International Bench: Who is the Judge?. Oxford University Press.

Pérez León Acevedo, Juan Pablo. «The Extraordinary African Chambers in the Senegalese Courts and the Development of International Criminal Law in Africa» in Africa’s Role and Contribution to International Criminal Justice. Intersentia.

Pérez León Acevedo, Juan Pablo; Nicholson, Joanna. «Introduction» in Defendants and Victims in International Criminal Justice Ensuring and Balancing Their Rights. Routledge.

Pérez León Acevedo, Juan Pablo; Nicholson, Joanna. «Final Reflections on Defendants and Victims in International Criminal; Proceedings» in Defendants and Victims in International Criminal Justice Ensuring and Balancing Their Rights. Routledge.

Ulfstein, Geir. «Human Rights Law Protection of Academics and Academic Work - its importance and Limits» in Research and Human Rights. Novus Forlag.

Ulfstein, Geir; Churchill, Robin. «The Application of the Svalbard Treaty Offshore» in Svalbardtraktaten 100 år - et jubileumsskrift. Fagbokforlaget.

Voigt, Christina. «Climate Change, the Critical Decade and the Rule of Law» in Australian Year Book of International Law 2020.

Journal articles

Álvarez Zárate, José Manuel; Baltag, Crina; Behn, Daniel; Bonnitcha, Jonathan; De Luca, Anna; Hestermeyer, Holger; Langford, Malcolm; Mistelis, Loukas; Rodriguez, Clara Lopez; Shaffer, Gregory; Weber, Simon. «Duration of investor-state dispute settlement proceedings». Journal of World Investment & Trade.

Behn, Daniel; Langford, Malcolm; Letourneau-Tremblay, Laura. «Empirical Perspectives on Investment Arbitration: What Do We Know? Does It Matter?». Journal of World Investment & Trade.

Berge, Tarald Laudal. «Dispute by Design? Legalization, Backlash, and the Drafting of Investment Agreements». International Studies Quarterly.

Berge, Tarald Laudal; St. John, Taylor. «Asymmetric diffusion: World Bank ‘best practice’ and the spread of arbitration in national investment laws». Review of International Political Economy.

Fauchald, Ole Kristian. «International investment law in support of the right to development?». Leiden Journal of International Law 2020.

Føllesdal, Andreas. «Add international courts to The Idea of Human Rights and stir ... on Beitz' The Idea of Human Rights after 10 years». Critical Review of International Social and Political Philosophy.

Føllesdal, Andreas. «Survey Article: The Legitimacy of International Courts». Journal of Political Philosophy.

Gáspár-Szilágyi, Szilárd. «Let us Not Forget about the Role of Domestic Courts in Settling Investor-State Disputes». The Law & Practice of International Courts and Tribunals.

Giorgetti, Chiara; Letourneau-Tremblay, Laura; Behn, Daniel; Langford, Malcolm. «Special Issue: Reforming International Investment Arbitration - An Introduction». The Law & Practice of International Courts and Tribunals.

Hermansen, Silje Synnøve Lyder. «Building legitimacy: strategic case allocations in the Court of Justice of the European Union». Journal of European Public Policy.

Langford, Malcolm; Potestà, Michele; Kaufmann-Kohler, Gabrielle; Behn, Daniel. «UNCITRAL and Investment Arbitration Reform: Matching Concerns and Solutions». Journal of World Investment & Trade.

Naurin, Nils Daniel; Stiansen, Øyvind. «The Dilemma of Dissent. Split Judicial Decisions and Compliance with Judgments from the International Human Rights Judiciary». Comparative Political Studies.

Pavone, Tommaso. «Lawyers, judges, and the obstinate state: The French case and an agenda for comparative politics». French Politics.

Pavone, Tommaso. «Putting European Constitutionalism in its Place: The Spatial Foundations of the EU's Judicial Dialogue». European Constitutional Law Review.

Pérez León Acevedo, Juan Pablo. «The control of the inter-American court of human rights over amnesty laws and other exemption measures: Legitimacy assessment». Leiden Journal of International Law.

Stiansen, Øyvind; Naurin, Nils Daniel; Bøyum, Live Standal. «Law and Politics in the Inter-American Court of Human Rights. A New Database on Judicial Behavior and Compliance in the IACtHR». Journal of Law and Courts.

Stiansen, Øyvind; Voeten, Erik. «Backlash and Judicial Restraint: Evidence from the European Court of Human Rights». International Studies Quarterly.

Tørstad, Vegard. «Participation, ambition and compliance: can the Paris Agreement solve the effectiveness trilemma?». Environmental Politics.

Tørstad, Vegard; Sælen, Håkon; Bøyum, Live Standal. «The domestic politics of international climate commitments: which factors explain cross-country variation in NDC ambition?». Environmental Research Letters.

Ulfstein, Geir; Ruud, Morten; Føllesdal, Andreas. «The European Convention on Human Rights and other parts of international law». International Journal of Human Rights.

Voeten, Erik. «Populism and backlashes against international courts». Perspectives on Politics.

Voigt, Christina. «Climate Change, the Critical Decade and the Rule of Law». Australian Year Book of International Law.

Voigt, Christina. «Oceans, IUU Fishing, and Climate Change: Implications for International Law». International Community Law Review.

Selected lectures and presentations

Baetens, Freya. COVID-19 Defences against International Trade Law Claims. COVID-19 and International Law: Novel Strain or Old Wine in New Test Tubes?; 2020-12-15.

Baetens, Freya. Evaluating Compromissory Clauses Submitting Disputes to ICJ Jurisdiction: 'Matters Provided in Treaties and Conventions in Force'. State Consent to International Jurisdiction - Expert Seminar; 2020-12-14.

Baetens, Freya. Regional integration organisations and dispute settlement (intensive lecture series). Guest professorship Université Paris Nanterre; 2020-02-11 - 2020-02-13.

Baetens, Freya. Regionalism, Universalism and State Consent: Custom and the International Court of Justice. Conference on Regionalism in International Law; 2020-02-10.

Baetens, Freya. Working with authors: Second International Law Review Editors Roundtable. American Society of International Law (ASIL) Annual Meeting; 2020-06-25 - 2020-06-27.

Føllesdal, Andreas. Global Public Goods – what role for international courts?. International political and legal theory seminar, Stockholm University; 2020-02-13.

Føllesdal, Andreas. Polar Public Goods and beyond: How legitimate international courts can help secure Global Public Goods worth having. Nordic Network in Political Theory; 2020-10-22.

Strain, Nicola Claire. Assessing emergencies before investor-state arbitral tribunals: BITs fit for purpose to address global health pandemics?. 2020 CIBEL Global Network Young Scholars Workshop; 2020-08-20.

Strain, Nicola Claire. Confusion and Uncertainty in Procedure: The Forgotten Problem of Jurisdiction and Applicable Law in International Economic Disputes. ASIL Research Forum; 2020-10-29 - 2020-10-30.

PluriCourts annual report 2020

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