

Annual report 2014

PLURICOURTS

Centre for the Study of the Legitimacy of the International Judiciary



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INTRODUCTION

2014 has been a year of full activity for PluriCourts – the Centre of Excellence studying the legitimacy of international courts and tribunals. The work on more than 25 books and special issues sped up, and 10 authors’ workshops and conferences took place in Oslo and abroad. PluriCourts hosted and co-hosted a range of conferences and PhD courses worldwide. The number of seminars on international courts skyrocketed. A major conference was organized by PluriCourts and its European Research Council project MultiRights, together with the Council of Europe. The conference gathered 150 experts, judges and practitioners to discuss the long-term future of the European Court of Human Rights. In addition to the multiple activities and events, PluriCourts can already point to an impressive list of publications.

PluriCourts continued bolstering its team. Based on global recruitment, PluriCourts hired three post doctoral fellows who, together with the existing team, provided a significant lift to all of PluriCourts’ pillars. By the end of 2014, the core team consisted of 24 energetic and committed staff in Oslo, and a number of senior academic affiliates who visited the Centre on a regular basis and contributed to its research continuously throughout the year. In addition, 13 guest

researchers provided valuable input on on-going work. One of our post docs, Marjan Ajevski ended his position with PluriCourts in January. There have also been shifts in the administration.

The team is increasingly integrated. The human rights pillar of PluriCourts, which currently consists of the ERC-funded project MultiRights, is firmly placed within the PluriCourts research environment. While work continued on each individual pillar, increasing focus was put on cross-cutting issues. Common seminars and projects, but also regular staff meetings, excursions and celebrations strengthened the team spirit at the Centre. PluriCourts also continued the focus on career development for the researchers in the beginning of their careers and temporary researchers.

PluriCourts maintains close relationships with its hosting department, the Department of Public and International Law, both academically and socially. After a year spent in temporary offices, PluriCourts is glad to be back in physical proximity together with parts of the Department’s research groups and dedicated administration.

Aina Nessøe, Andreas Føllesdal and Geir Ulfstein

PEOPLE 2014

Coordinators

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

Professor II

Andresen, Steinar E.

Postdoctoral fellows

Ajevski, Marjan
Behn, Daniel F.
Corradetti, Claudio
Langvatn, Silje Aambø
Müller, Amrei
Penca, Jerneja
Sancez, Shakira Maria B.
Saul, Matthew
Squatrito, Theresa
Zang, Michelle Q.

PhD candidates

Tsereteli, Nino
Høgestøl, Sofie

Master students

Gabrielsen, Liv Inger

Research assistants

Letourneau-Tremblay, Laura
Torsvoll, Eirik

Administration

Chavez, Leiry Cornejo
Hovdal, Annette
Karv, Hanna
Nessøe, Aina
Schmölzer, Stephanie

Visiting professors

Nickel, James

Guest researchers

Acedo, Teresita
Arato, Andrew
Cohen, Jean
Collins, David
Davies, Gregory
Dobson, Lynn
Etison, Adam
Hayshi, Nobuo
Peters, Birgit
Ruud, Morten
Schmidt, Rebecca
Williams, Howard



PluriCourts team, February 2015 (not all are present)
Back row: Eirik Torsvoll, Annette Hovdal, Matthew Saul, Geir Ulfstein, Andreas Føllesdal, Daniel F. Behn, Aina Nessøe, Marlene Wind, Cecilia M. Bailliet, Ole Kristian Fauchald
Front row: Michelle Q. Zang, Laura Letourneau-Tremblay, Amrei Müller, Maxim Usynin, Hanna Karv, Zhanna Petrukovich, Theresa Squatrito, Shakira Maria B. Sancez, Christina Voigt, Siri Gloppen

Photo: Daniel Høgli Olufsen

COORDINATORS



Andreas Føllesdal



Siri Gloppen



Cecilia M. Bailliet



Ole Kristian Fauchald



Geir Ulfstein



Christina Voigt



Marlene Wind

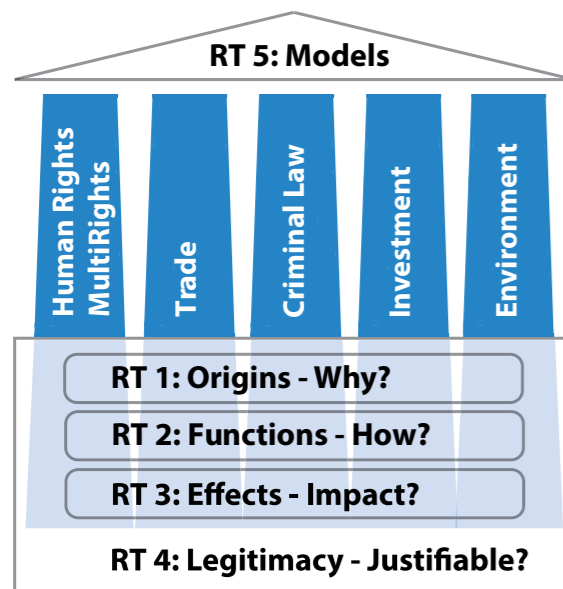


THE YEAR 2014

PluriCourts started in 2013 as one of ten Centres of Excellence at the University of Oslo. The primary objective of PluriCourts is to analyse the legitimate present and future roles of international courts and tribunals (ICs) in the international and domestic order.

Our research agenda at a glance

PluriCourts examines the concerns of both proponents and critics of ICs. Our research



objective is carried out through analyses of three issues in five sectors of international law:

- The “origins” of the ICs: What do states want to achieve with the ICs, how have they been established and why do we have ICs for some international challenges – but not others?
- How ICs “function”, operate and are structured
- The effects of ICs, including how well they promote their founders’ objectives, adjusted as these may have been

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

PluriCourts considers ICs in a wide sense, encompassing international institutions

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

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

In order to understand the legitimacy of international courts, PluriCourts combines legal, empirical and normative elements. The project thus draws on and contributes to the interdisciplinary exchange in international law, political science, international relations and political philosophy, as well as international political economy, international political history and the sociology of law, where relevant.

Legitimacy issues

During 2014, we continued research on our primary research objective: Legitimacy. The content and limits of this term are contested. One way to start understanding the term is by looking at the claims of legitimacy deficits of ICs, including the following:

- ICs which fail to achieve their intended effects
- ICs which bypass national legislatures

- and ignore cultural differences
- ICs which fuel ‘judicialization’ with little accountability or checks and balances
- ICs which promote unrestrained free market values and avoid transparency
- Competition among the mushrooming ICs, and
- ICs which fall victims to their own popularity: the European court of Human Rights as a case in point, which is overburdened and in danger of collapse

These criticisms reveal that the legitimate authority of ICs is questioned in several ways. The judgment of a legitimate IC makes other actors, such as domestic authorities, somewhat more likely to comply, defer or give weight to these judgments. These judgments give other actors new reasons to act, be it because they are socialized to do so, or because they regard the IC as a rightful authority – even when the IC rules against them. However, this authority of ICs in the eyes of other actors may only grow over time, and may deteriorate if such challenges of legitimacy deficits are not addressed. The risk is thus that a variety of other actors will disregard the judgments of the IC, and possibly abandon or dismantle it. The impact of the IC is thus at stake.

PluriCourts has discussed the legitimacy issues at several workshops during the year. One specific workshop in March was dedicated to address several of the central philosophical issues and offer alternative frames to orient further legal and empirical research required to assess the legitimacy of ICTs: Individual courts or tribunals and the global judiciary as a whole. The

Legitimacy deficits? A practitioner's view

Philippe Boillat, Director General of the Council of Europe, expressed this legitimacy concern succinctly at our conference on The long-term future of the European Court of Human Rights:

“Such criticisms represent a threat to the basic philosophical, political and institutional concepts that lie at the origin of our system. In their possible concrete effects – widespread disrespect for Court judgments, or a State party quitting the Convention – these criticisms ultimately represent a political threat to the system’s continued effectiveness and viability.”

results of these discussions, the follow-up discussions in a workshop in 2015, and the individual authors work on the topic will be published in Carnegie journal on ethics and international affairs.

Linking legitimacy with underlying issues

PluriCourts’ working assumption is that bolstering the legitimacy of ICs can be clustered into three main categories: to attend closer to the “origins” of the ICs, its “functions”, or its “effects”. During 2014, we started preparing research on the legal aspects of the function of ICs, and the effects of ICs.

In regard to the legal aspects of the function of ICs, PluriCourts has contributed to workshops on how well ICs satisfy requirements of independence and necessary expertise, due process guarantees and transparency. We have also prepared research on the forms of independence and expertise required in different ICs to maintain support, ranging from investment and trade to international criminal courts. We have published texts and are planning further workshops on the procedural relationship between the international and national level reflecting a principle of subsidiarity, including the complex judicial dialogues among courts.

With regard to the “effects” of ICs, PluriCourts has initiated research on the performance of ICs. Particular studies have been devoted to the impact of ICs in the Nordic states, and to the backlash in several jurisdictions against IC’s judgments regarding sexual and reproductive rights; and we are preparing a database of all international investment arbitrations. Read more about the projects relating to the research of international courts’ effects on page 23.

“The Convention is a legal instrument whose effectiveness, in the end, depends on political will: political will of domestic authorities to act within their areas of competence; and political will of national governments to act collectively at European level. So another question must be, how to reinforce this political will? How to translate that political will into effective action?” (Boillat 2014).

RESEARCH AREAS

HUMAN RIGHTS

PluriCourts studies the legitimacy of multi-level human rights ICs at regional and international levels. States have started to question the legitimacy of these ICs, for example the professionalism of the members of those treaty bodies or how they stifle the scope of domestic decision making.

PluriCourts' human rights pillar consists of two research projects.

The ERC funded project MultiRights – The legitimacy of the multi-level human rights judiciary started operating in June 2011. It became a part of PluriCourts on 1 April 2013 and will run until 2016. MultiRights examines claims of legitimacy deficits of the international human rights organs. The project considers reform proposals for global and European human rights organs and develops four plausible models, ranging from primacy of national courts to a world court of human rights.

In 2014 there were several MultiRights workshops and seminars. In March, Postdoctoral fellow Claudio Corradetti, organized a workshop where the participants discussed the issues of cosmopolitanism and the role of courts in the advancement of the cosmopolitan progression. 20 MultiRights seminars were organized throughout the year, gathering the human rights team at PluriCourts and external speakers to discuss current issues

connected to human rights and ICs.

The NRC funded project Judicial dialogues on the rule of law: Interaction between national courts and the European Court of Human Rights is a two-year project (2013-2015) which contribute specifically to the research on the human rights judiciary at the European level. Postdoctoral fellow, Amrei Müller and Hege Elisabeth Kjos (University of Amsterdam) are editing a book which examines and discusses judicial dialogue in the area of international human rights law.

The long-term future of the European Court of Human Rights

In cooperation with the Council of Europe, PluriCourts and MultiRights hosted a conference on the long-term future of the European Court of Human Rights in Holmenkollen, Oslo, from 7 to 8 April 2014. The conference, which was opened by the Norwegian Minister of Justice, Anders Anundsen, gathered about 150 participants from all over Europe; governmental representatives, judges (from the European Court of Human Rights as

well as national supreme courts), academia and representatives from civil society. The conference was chaired by Morten Ruud, from the Norwegian Ministry of Justice, also an associate of PluriCourts, and Norwegian member of the Council of Europe Steering Committee for Human Rights. The proceedings of the conference are published both on paper and on the internet.

As a follow-up to a ministerial conference in Brighton 18 to 20 April 2012, The Council of Europe Steering Committee for Human Rights (CDDH) is currently preparing a report on the long-term future of the control machinery for the European Convention on Human Rights and the need for reform. The Holmenkollen conference was intended to give inputs to this work, especially from academic circles which are not regularly involved in the inter-governmental work carried out within the organs of the Council of Europe.

The purpose of the conference was to analyse what are the future challenges to the enjoyment of the rights and freedoms guaranteed by the Convention, and how the European Court of Human Rights (ECtHR) best can fulfil its twin role of acting as a safeguard for individuals and authoritatively interpreting the Convention.

The general view expressed by the members of the Steering Committee that attended the conference was that this was



The conference venue: Holmenkollen Park Hotel

TRADE

PluriCourts studies the various forms of dispute settlement under the WTO and regional trade courts and tribunals.

The WTO is the prime mechanism for international trade dispute settlement. Dispute settlement under WTO is of a traditional bilateral character. The WTO system has no formal court, but includes ad hoc panels, an Appellate Body and the Dispute Settlement Body (DSB). Recently questions have been raised regarding the relevance of the WTO; countries have moved towards sealing their own free-trade deals on a country-to-country or region-to-region basis, deals that move beyond the traditional scope of products, investments and intellectual property to include rules on competition, and the inclusion of labour laws and environmental guidelines.

PluriCourts initiated broad research on multilateral, bilateral, trilateral and regional mechanisms of dispute settlement. Our research covers 13 different courts and tribunals with specific emphasis on highly understudied regions and regimes. PluriCourts co-director Geir Ulfstein, professors Hélène Ruiz-Fabri and Rob Howse and Postdoctoral Fellow Michelle Q. Zang are editing a book dedicated to the legitimacy of these international trade tribunals. A book workshop was organized

EU regulations on seal products

23 June, Postdoctoral fellow, Michelle Q. Zang had a presentation on “EU regulations on seal products” at a PluriCourts Lunch. On May 22, 2014, the WTO Appellate body issued its report of the EC - seal products dispute. The decision arose from complaints by Canada and Norway against the EU legislative scheme relating to the sales of seal products. Under this scheme, the placing of seal products on the EU market is prohibited unless certain conditions are satisfied.

As one of the most significant jurisprudent of international trade law in 2014, the EC- seal products not only developed continued discussion on the fundamental principle of non-discrimination under the WTO; furthermore, it also sheds light upon the controversial debates over the balancing and interaction between trade liberalization, on the one hand, and other critical social values, i.e. public morals and animal welfare.



ECtHR Judge Helen Keller held a presentation at the conference.

very useful in opening up for new ideas in a dialogue between the governmental experts and scholars, and thus gave valuable impetus for the work carried out within the Council of Europe.

The proceedings of the conference has been used as an important background for the work subsequently carried out by the Steering Committee and its subordinate bodies in the drafting of the report on reform, and have been referred to in several background papers used in this process.

In addition, PluriCourts director Andreas Føllesdal was invited to a meeting with the CDDH immediately after the conference while co-director Geir Ulfstein was invited to a meeting of the working group preparing the draft report in December 2014. The CDDH report is envisaged to be finalised in December 2015.

Human rights team

- Coordinator* Andreas Føllesdal
- Professor* Geir Ulfstein
- Postdoctoral fellow* Marjan Ajevski
- Postdoctoral fellow* Matthew Saul
- Postdoctoral fellow* Claudio Corradetti
- Postdoctoral fellow* Amrei Muller
- PhD. Candidate* Nino Tsereteli
- Master student* Liv Inger Gabrielsen

in Geneva to discuss the scope and preliminary findings of the research. 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.

In an individual book project, Postdoctoral fellow Michelle Q. Zang examines judicial engagement among trade tribunals and investor-state investment arbitrations. Zang will map the overall picture of judicial engagement among trade and investment tribunals. She will then develop a model of judicial engagement for trade and investment tribunals. This model will address existing legitimacy concerns related to these tribunals. Furthermore, it will promote competent “judicial governance”, as part of the global governance of economic matters.

Trade team

Coordinator: Geir Ulfstein
Postdoctoral fellow: Michelle Q. Zang
Postdoctoral fellow: Theresa Squatrito

INTERNATIONAL CRIMINAL LAW

International criminal tribunals, such as the International Criminal Court (ICC), the Special Court for Sierra Leone or the Extraordinary Chambers in the Courts of Cambodia have been hailed as a major advancement of international law. However, in recent years they have been put into question from several actors.



Do international criminal tribunals do what they are intended to? Are the courts effective? Is there a bias in case selection? Do the tribunals provide viable solutions for conflict-stricken societies and individual victims?

The ICC, seen by many as a Western institution which primarily investigates situations in Africa, has been criticized as being not only illegitimate, but ultimately ineffective. This question was discussed by Professor Beth Simmons in her PluriCourts annual lecture on “Does the International Criminal Court deter atrocity?” (see page 28).

The international criminal law pillar at PluriCourts is uniquely placed to contribute to research on many of the most pressing issues relating to the illegitimacy claims against international criminal tribunals. In 2014, it laid the foundations for theoretical and empirical research for the years to come.

Guest Researcher Nobuo Hayashi co-hosted the Legitimacy and Effectiveness of International Criminal Courts conference in August.

Research finding 2014

Nobuo Hayashi, guest researcher and co-editor of "The anthology on the legitimacy and effectiveness of international criminal tribunals", presented his research at the August conference. He looked at whether the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia reveals a bias on the part of its judges towards "hyper"-humanising international humanitarian law, the body of substantive law on which the tribunal derives its war crimes jurisdiction. That such a bias exists has been a growing source of complaints by scholars and practitioners alike. However, a careful study of selected cases leaves the matter inconclusive. At best, the alleged bias is imagined, exaggerated, or ignored.

A major PluriCourts event in 2014 was the conference on "The legitimacy and Effectiveness of International Criminal Courts". Conference participants had a wide variety of academic and professional backgrounds. Two recognized academics, Charles Chernor Jalloh and Diane Marie Amann, held the keynote speeches. Jalloh is a renowned expert in the field of international criminal law and the intense relations between Africa and the ICC. Amann is the International Criminal Court prosecutor's special adviser on children in and affected by armed conflict.

At the conference, political scientists highlighted issues such as regime complex and shifting as applied to Africa's proposed alternative to the ICC, or the politics of non-cooperation with international criminal tribunals and their de-legitimation. Lawyers addressed state consent to proceedings, but also whether voluntary state financing may be an element of judicial bias. Others questions whether the system's liberal focus on individual accountability for mass atrocities is appropriate, whether victim participation in proceedings is sufficient, and whether peace can be promoted through justice. This conference will result in an anthology edited by coordinator Cecilia Bailliet and guest researcher Nobuo Hayashi.

One of the questions asked at the conference, "how good are international criminal tribunals at discovering truth?",

links directly to the second strand of research commenced in the end of 2014.

In recent decades forensic exhumations of mass graves have become a frequent occurrence globally. They provided evidence in domestic and international legal settings. PluriCourts examines the concrete implications of exhumation initiatives and the manner by which these are constituted as evidence before international criminal tribunals.

Embracing the perspective of ethnographic approaches to international law, the pillar theorizes the phenomenon of "evidence" through the concrete process by which it is created, negotiated, produced and shaped among forensic agencies and judicial networks. This work implies extensive field work in several continents, and will result in a series of articles.

Criminal law team

Coordinator Cecilia M. Bailliet
Guest researcher Nobuo Hayashi
Postdoctoral fellow Silje Aambø Langvatn
Postdoctoral fellow Shakira Maria B. Sancez
PhD. Candidate Sofie Høgestøl

INVESTMENT

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

Investor-state dispute settlement on the basis of investment treaties has increased significantly in the last decades. Such disputes concern significant assets of investors, and they may concern policy measures of great importance to the country hosting the investment. The main rationale for channeling such disputes to international tribunals often rests on the investors' perception that the dispute cannot be appropriately dealt with by the domestic courts of the host state. Many stakeholders and scholars have questioned the legitimacy of using ad hoc international investment tribunals to resolve such disputes. PluriCourts explores the legitimacy concerns of such practice and search for ways to deal with them.

In 2014, PluriCourts continued to work on the establishment of an investment treaty arbitration database. The aim is to provide an updatable, modifiable, and comprehensive set of data on all investment treaty arbitrations. This database is intended as one of general applicability. The dataset will be made available on the PluriCourts website. It has already yielded important

results. In addition, in the course of 2014, two master theses were completed and draft articles were presented at various conferences.

The planning of the book project on empirical perspectives on the legitimacy of international investment tribunals continued. A book workshop in 2015 will gather 25 researchers from multiple disciplines that will base themselves to a large extent on the database to explore legitimacy concerns specific to investment treaty arbitration.

The investment pillar at PluriCourts continued its significant public outreach activities. Postdoctoral fellow Daniel Behn blogged about several decisions and processes in international investment law. In May 2014, when debates about the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the U.S. were in focus, PluriCourts coordinator Ole Kristian Fauchald hosted a public event about the TTIP at Litteraturhuset.

ENVIRONMENT

Who governs the world economy?

In the panel debate at Litteraturhuset, supporters and skeptics of the TTIP presented their views; is the agreement necessary to enhance trade and investment between the EU and the U.S.; will it impede on national sovereignty; will the planned arbitration clause contribute to bypassing domestic organs, including the parliament and domestic courts? These were some of the questions addressed. Discussants pointed to the opaque negotiation process which left many questions regarding the reach of the tribunals unanswered.

Postdoctoral fellow Daniel Behn contributed to the debate by explaining that international investment tribunals are by no means novel institutions and they can contribute significantly to legal security, rather than diminishing the robustness of the legal system. Even though proceedings before these tribunals can be very costly, the role of the tribunals should not be overrated in the trade relationship between the EU and the U.S. and investors from the two regions.

Investment team

Coordinator Ole Kristian Fauchald
Postdoctoral fellow Daniel F. Behn

Currently there are no international courts dedicated solely to the adjudication of environmental issues. Environmental cases are instead dealt with by international courts with general jurisdiction, i.e. the ICJ, or with specific, non-environmental competences.

The question is how efficient - and, eventually, legitimate international courts are in dealing with cases concerning environmental law and can these courts increase the effectiveness of international environmental governance?

PluriCourts analyses the proceedings of various (specialized) international courts and tribunals where environmental issues have been at stake from the perspective of the courts' competence and procedural rules. It asks to what extent these courts are equipped to deal with environmental issues and draws conclusions as to the effectiveness and legitimacy of those courts when dealing with environmental matters.

In this context, PluriCourts organized an international symposium on the roles and functions of human rights courts in environmental disputes in September. The proceedings of the symposium will be published in a special edition of the Journal for human rights and the environment, later in 2015. In 2015, a similar event is planned that will investigate the legitimacy

of investment arbitration in disputes involving environmental concerns.

The UN climate negotiations

In the absence of an international court with specific competence to hear environmental cases, many multilateral environmental agreements (MEAs) contain in-house arrangements to address cases of non-compliance, so-called non-compliance mechanisms. One such MEA currently under negotiation is a global, comprehensive climate agreement to be adopted by the 21st Conference of the Parties to the United Nations convention on climate change in December 2015 in Paris. Professor Christina Voigt, coordinator for the environmental pillar of PluriCourts, is taking part in these negotiations, more particularly in the establishment of a compliance mechanism.



Workshop on the Legitimate Role(s) of Human Rights Courts in Environmental Disputes.

In 2014 (and 2015) PluriCourts examines which role ICs play in international environmental governance and whether they have so far contributed to increase the effectiveness of international environmental governance. Other questions to be asked are: Does a more issue-specific international environmental court have the potential to enhance the effectiveness of international environmental governance, and is such an institution possible to be established?

The planning of the colloquium of the International union for conservation of nature academy of environmental law continued. This grand international conference on “The environment in court” will in June 2016 gather environmental law scholars and practitioners from all over the world. A publication will collect the most relevant contributions to the conference for the analysis of the legitimacy of international courts and tribunals in environmental matters.

Environmental team

Coordinator Christina Voigt
Professor II Steinar Andresen
Postdoctoral fellow Jerneja Penca

RESEARCH ACROSS THE PILLARS: EFFECTS

A main focus of our research across the pillars in 2014 was on the effects (RT3) of ICs. Some prominent examples of this research include a study devoted to the impact of ICs in the Nordic states, as well as an analysis on the backlash of several jurisdictions against ICs judgments regarding sexual and reproductive rights. Additionally, PluriCourts also initiated research on the performance of ICs.

International courts and domestic politics

Marlene Wind, PluriCourts coordinator from the University of Copenhagen and iCourts, organised a workshop on the impact of ICs in Nordic states in the fall of 2014. Political scientists, sociologists and lawyers met at iCourts, The Danish National Research Foundation’s Centre of Excellence on International Courts, to talk about the impact of international judicial institutions on domestic legal and political orders. For instance, how do governments, parliaments, national courts, bureaucracies and other sub-state actors and institutions interact with the new authority of international courts? Under which conditions do these international judicial bodies become effective nationally? And how does this new and expanding international judiciary impact the established national constitutional democratic orders? These were some of the questions that were asked in the event. The workshop will be followed up in 2015 and eventually result in a book.

Sexual and reproductive rights

PluriCourts coordinator Siri Gloppen and Malcolm Langford at Christian Michelsen Institute (Guest Researcher at PluriCourts from February 2015) are editing a book on domestic and transnational actors’ use of international judicial mechanisms to advance or restrain sexual and reproductive rights. In 2014, the authors and commentators were invited to a large conference on “Internationalized sexual and reproductive rights lawfare” at Harvard Law School to discuss the following questions: Why are cases concerning sexual and reproductive rights brought before ICs and treaty bodies? How do ICs treat these highly normative and politicised issues (and what explains their behaviour)? What are the effects of such internationalized legal mobilization and adjudication? The aims of the book are to understand patterns of interaction between actors and institutions at the national, regional and international level that result in court cases before ICs.

The performance of international courts and tribunals

In September 2014 researchers from the three academic disciplines at PluriCourts, mainly from political science, met at a workshop at Harvard university. This was the first step towards an edited volume on “The performance of international courts and tribunals,” tentatively to be published by Cambridge University Press. The book will examine the variation in the performance of international courts, asking: Why do some courts perform better than others? What variables determine variation in the performance of these courts? Are there ways to improve the performance of international courts? The volume aims to develop a conceptual framework for analysing international court performance. It also aims to develop an alternative account that explains variation in performance by highlighting the complementarity of political and legal determinants.

The project is still in its initial phase, but fruitful discussions in 2014 advanced the project. After discussions, the editors shifted away from the concept “effectiveness” in favour of “performance” with the understanding that performance is a broader concept that will make a greater contribution to the literature. The editors of the book, Theresa Squatrito, Oran Young, Geir Ulfstein and Andreas Føllesdal, argue that performance conceptually captures the outcomes that courts produce as well as the processes of their operation.

Contributions to the intended volume will include an examination of the performance of international courts in a number of issue

areas, including trade, investment, human rights, criminal behaviour and environment. Secondly, some authors will turn to a set of cross-cutting themes in an effort to identify the determinants of performance. Briefly summarized, this research project will supplement important knowledge to the phenomena of international courts and provide fruitful avenues for future research in this field.

WORKING AT AN INTERDISCIPLINARY CENTRE

Theresa Squatrito is one of the editors of the book “The performance of international courts and tribunals.” She is a political scientist postdoctoral fellow at PluriCourts, and contributes with important research on ICs. What is it like to be a political scientist at an interdisciplinary centre; and in what way can a political scientist contribute to a field traditionally dominated by lawyers?

Squatrito was interested in the position at PluriCourts because she believed it to be a unique opportunity for her to work on ICs, an area she is greatly interested in. The position also allows her to focus on publishing. PluriCourts’ interdisciplinary environment appeals to her because she is exposed to new ideas and gains insight into different ways of studying the same phenomena. “I would not have the same exposure if I just worked with political scientists,” says Squatrito. At the same time, it can be a bit challenging when collaborating on projects with researchers across disciplines because one often does not speak the same “language,” she adds.

Political science perspectives on the study of ICs

Political scientists are trained in social scientific methods, unlike lawyers and philosophers; this is an important contribution that political scientists can bring to the centre, Squatrito explains. In addition, political scientists will use different theoretical perspectives than lawyers and

philosophers, and bring non-legal factors, such as political constraints and power, and actors beyond judges and lawyers into the dialogue of international courts. “There would not be the same conversation without political scientists; we look at the same picture but through different lenses,” Squatrito says.

However, to work at the intersection between law and politics can also be tricky. The biggest challenge is that many political scientists do not have legal training, Squatrito explains. “There may be difficulties with some case references and legal concepts, and sometimes I ask myself if I really understood the legal intricacies on a case,” she says. Another challenge is a more classic problem that empirical analysis often brings: the question of causality. Though you can show there is correlation between variables, but how can you be certain that it is the court that changes state’s behaviour and not other variables?



Posdoctoral fellow Theresa Squatrito (left) was a commentator at the annual lecture, see page 28.

Highlights from 2014

2014 was a productive year at PluriCourts with numerous seminars, book workshops as well as social events. When asking Squatrito what her highlight from 2014 was, she says she is happy to look back at a productive year for herself as well. She came a long way with her projects, participated in many international conferences, such as the annual American political science association conference and the European consortium for Political research's general conference. "It was a good year, I feel that I got a greater understanding of what I can contribute with my project and what the angle will be," says Squatrito. In addition, she highlights one particular event, namely the workshop on the performance of international courts at Harvard university in September. Squatrito found the event

to be very challenging, and believes that she both grew personally and was "pushed" professionally as a result of the workshop.

RESEARCH DISSEMINATION

In 2014, PluriCourts aimed at engaging the public in current debates on ICs and shedding light on important questions related to ICs.

Panel debates and blogging

Which role should the European Court of Human Rights have when deciding on Norwegian human rights issues? Should the Norwegian Supreme Court have the last word in the interpretation of human rights? Should we allow an international investment tribunal to overrule national parliaments? Does the International Criminal Court deter atrocities?

Such issues were hotly debated in Norway

and internationally in 2014. PluriCourts contributed to these discussions by organizing public panel debates at Litteraturhuset in Oslo. Offering their unique expertise, PluriCourts researchers and invited high-level panelists addressed difficult questions relating to the role, legitimacy and limits of international courts. Lively discussions were complemented by tricky questions from the audience.

PluriCourts researchers were also active in the print and online media. The PluriCourts

The debates at Litteraturhuset

10.03. Proposals to include more human rights provisions in the Norwegian Constitution. *The debate featured PhD candidate Anine Kierulf and Dean of the Faculty of Law Hans Petter Graver, along with political representatives from the Standing Committee on Scrutiny and Constitutional Affairs in the Parliament.*

22.05. Who governs the world economy? *PluriCourts coordinator Ole Kristian Fauchald hosted a debate about the challenges under the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the U.S.*

13.06. Can the International Criminal Court deter atrocity? *PluriCourts annual lecture by Professor Beth Simmons (Harvard University)*

blog is gaining increasing attention, and several researchers are present on prominent international blogs. These exchanges again fuel broader public attention on issues of international law and courts.

Annual lecture: The deterrent effects of the ICC

The 2014 annual lecture also took place at Litteraturhuset. The lecture was on the topic of the deterrent effects of the ICC. The speaker, Beth Simmons from Harvard University, presented whether the ICC can deter atrocity. The ICC's jurisdiction covers serious war crimes, crimes against humanity and genocide committed by nationals of states parties to the Treaty of Rome. It has been widely criticized for being ineffective due to a lack of sanctions potential, lack of cooperation by states parties, and a too low number of actual prosecutions. So, does this institution, weak as it may be perceived, deter the intentional killing of civilians?

Simmons argued that the ICC can potentially act as a deterrent through both prosecutorial and social means. Simmons and Hyeran Jo at Texas A&M University have analysed a sample of 102 countries with some civil war experiences and 262 related rebel groups. Their analysis looked at whether direct or indirect prosecutorial deterrence and social deterrence affected intentional killings of civilians (as one measure of "atrocity") committed by governments and rebel groups.

Simmons and Jo found that government forces reduce intentional killings of civilians when the state is under ICC jurisdiction, and they reduce intentional killing even more when national crimes statutes conform with

ICC crimes. Also social deterrence is at play in relation to government forces; the number of intentional killings decreased as the number of human rights organisations increased and when the government is more dependent on foreign aid. In regard to rebel groups, their aims matter. A state's ratification of the Rome Statute leads to a reduction of intentional killings committed by rebel groups with governance aims. However, there is no effect on atrocities committed by rebel groups who are merely motivated by enrichment.

PLURICOURTS EVENTS

Conferences and workshops

10-11.02 Conference, A Future for the Margin of Appreciation in International Law? Paris

03-04.03 Conference, Debating "Transitional Cosmopolitanism Through Courts", Oslo

13-14.03 Workshop, The Legitimacy of International Courts and Tribunals, Oslo

07-08.04 Conference, The Long Term Future of the European Court of Human Rights, Oslo

Annual Conference of MultiRights, organised with the support of PluriCourts under the auspices of the Council of Europe

12.06 Book workshop with Samantha Besson, Human Rights as Law, Oslo

13.06 Annual Conference, International Courts and the Rule of Law, Oslo

28-29.08 Conference, The Legitimacy and Effectiveness of International Criminal Courts, Oslo

08.09 ESIL lecture, Human Rights Protection: The Role of the European Court of Human Rights, Oslo

An interview with Helen Keller, judge at the ECtHR. The event was organised in collaboration with ESIL

08-09.09 Symposium, The Legitimate Role(s) of Human Rights Courts in Environmental Disputes, Oslo

11-12.09 Conference, International Courts and Domestic Politics, Copenhagen

Coordinator Marlene Wind organised a conference at iCourts

12-13.09 Workshop, The Effectiveness of International Courts, Cambridge, MA

18-19.09 Symposium, Legitimacy and International Courts, Baltimore

A symposium organised with the University of Baltimore School of Law

17-18.10 Workshop, The Legitimacy of International Trade Tribunals, Geneva

Organised in collaboration with the Geneva centre for international dispute settlement.

06-07.11 Conference, International Sexual and Reproductive Rights Lawfare, Cambridge, MA

Organised in collaboration with Harvard Global School of Public Health

24-25.11 Workshop, The Legitimacy of International Courts and Tribunals, Oslo

Organised in collaboration with iCourts, the Danish Centre of Excellence on International Courts. A combined workshop and PhD course on the concept of legitimacy in relation to ICs

Seminars

07-17.12 PluriCourts lunches, Oslo

20 lunch seminars throughout the year. 7 seminar presentations were held by external speakers.

28.01-18.12 MultiRights seminars, Oslo

20 seminars throughout the year. 11 seminar presentations were held by external speakers

26.02-20.11 International law lunches, Oslo

9 lunch seminars. 6 seminar presentations were held by external speakers

27.02 International Law and Guantanamo, Oslo

03.03 Animal Welfare, Public Morals and Trade: The WTO Dispute in EC- Seal Products, Oslo

10.03 Do we Need Human Rights in the Norwegian Constitution? Oslo

Panel debate at Litteraturhuset

22.05 Who Governs the World Economy? Dispute Settlement under the TTIP, Oslo

Presentations and panel debate at Litteraturhuset

13.06 Can the ICC Deter Atrocity?

The PluriCourts annual lecture. Presentation held by Beth Simmons, Harvard University

27.10 Norway's Relations with the ECtHR

Memorial seminar to mark the 100th anniversary of Rolv Ryssdal, former chief justice at the Supreme Court and President of the ECtHR

Mentoring events

07.03 Workshop, Publish or Perish: How to Succeed?

Workshop organised in co-operation with the Department of Philosophy, Classics, History of Art and Ideas. The workshop targeted specifically young researchers.

16-20.06 Human Rights, International Law and Cosmopolitanism

PhD course organised by MultiRights, PluriCourts, the Department of Philosophy, Classics, History of Art and Ideas, and the Norwegian Kant Society.

23-.26.06 PluriCourts and iCourts joint PhD Summer School

07-16.07 PhD Summer School on Judicial Legitimacy and the Rule of Law

Summer Course organised by PluriCourts in cooperation with the Venice Academy of Human Rights

27.08 Flourishing while Publishing: How to Succeed in Academia

PUBLICATIONS AND DISSEMINATION

Books and book chapters

Benedek, Wolfgang, Koen De Feyter, Mattias Kettemann, and Christina Voigt (eds.). *The Common Interest in International Law*. Cambridge: Intersentia

Benedek, Wolfgang, Koen De Feyter, Matthias Kettemann and Christina Voigt. "Introduction" and "Conclusions: The Common Interest in International Law – Perspectives for an Undervalued Concept". In W. Benedek, Koen De Feyter, Mattias Kettemann, and Christina Voigt (eds.), *The Common Interest in International Law*. Cambridge: Intersentia

Corradetti, Claudio. "Deliberazione pubblica. Pluralismo, complessità, democrazia." Translation/preface of James Bohman (ed), *Public Deliberation: Pluralism, Complexity and Democracy*. MIT Press

Føllesdal, Andreas. "Federalism and Human Rights in Nepal's Constitutional Design: Challenges for the Judiciary". In D. Ehlers, H. Glaser and P. Kittisak (eds), *Constitutionalism and Good Governance: Eastern and Western Perspectives*. Nomos

Verlagsgesellschaft:195-205

Føllesdal, Andreas. "Global Citizenship". In A.B. Sterri, *Global Citizen-Challenges and Responsibility in an Interconnected World*. Sense Publishers: 71-82

Føllesdal, Andreas. "John Rawls' Theory of Justice as Fairness". In G. Fløistad (ed), *Contemporary Philosophy: A New Survey. Philosophy of Justice*. Springer Science+Business Media B.V: 311-328

Føllesdal, Andreas. "Del av problemet, og del av løsningen: Den europeiske menneskerettighetsdomstolen og demokratisk selvstyre". In H. Baldersheim og Ø. Østerrud (eds), *Det norske demokratiet i det 21. århundre*. Fagbokforlaget: 80-91

Føllesdal, Andreas. "Hvis det norske forbudet mot dobbelt norsk statsborgerskap er løsningen, hva er da problemet?". In N.R. Langeland (ed), *Politisk kompetanse: Grunnlovas borgar 1814-2014*. Pax Forlag: 78-87

Føllesdal, Andreas. "Competing Conceptions of Subsidiarity". In J. E. Fleming and J.T Levy (eds), *Federalism and Subsidiarity*. New York

University Press: 214-230

- Føllesdal, Andreas. "Kant, Human Rights and Courts". In Andreas Føllesdal and Reidar Maliks (eds), *Kantian Theory and Human Rights*. Routledge: 193-202
- Føllesdal, Andreas and Reidar Maliks (eds). *Kantian Theory and Human Rights*. Routledge
- Føllesdal, Andreas and Geir Ulfstein. "The European Court of Human Rights and the Norwegian Supreme Court: Independence and Democratic Control". In N. A. Engstad, A.L. Frøseth and B. Tønder, *The Independence of Judges*. Eleven International Publishing: 247-260
- Føllesdal, Andreas, Johan Karlsson Schaffer and Geir Ulfstein (eds). *The Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives*. Cambridge University Press
- Føllesdal, Andreas, Johan Karlsson Schaffer and Geir Ulfstein. "International Human Rights and the Challenge of Legitimacy". In A. Føllesdal, J. Karlsson Schaffer and G. Ulfstein (eds), *Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives*. Cambridge University Press: 1-31
- Føllesdal, Andreas. "Much Ado About Nothing? International Judicial Review of Human Rights in Well Functioning Democracies". In A. Føllesdal, J. Karlsson Schaffer and G. Ulfstein (eds), *Legitimacy of International Human Rights Regimes: Legal, Political and Philosophical Perspectives*. Cambridge University Press: 272-299
- Gloppen, Siri. "Courts, Corruption and Judicial Independence". In T. Søreide and D.A. Williams (eds), *Corruption, Grabbing and Development: Real World Challenges*. Edward Elgar Publishing: 68-79

- Langvatn, Silje Aambø. "Public Reason and Political Legitimacy". In C. Holst (ed), *Expertise and Democracy*. ARENA Report: 117-139
- Saul, Matthew William. *Popular Governance of Post-Conflict Reconstruction: The Role of International Law*. Cambridge University Press
- Saul, Matthew William. "Creating Popular Governments in Post-Conflict Situations: The Role of International Law". In C. Stahn, J. Easterday and J. Iverson, *Jus Post Bellum: Mapping the Normative Foundations*. Oxford University Press: 447-466
- Ulfstein, Geir. "Towards an International Human Rights Judiciary". In J. Ebbesson, M. Jacobsson, M. Klamberg, D. Langlet and P. Wrangle, *International Law and Changing Perceptions of Security*. Martinus Nijhoff Publishers: 296-306
- Ulfstein, Geir. "Law-Making by Human Rights Treaty Bodies". In R. Liivoja and J. Perman (eds), *International Law-Making. Essays in Honour of Jan Klabbers*. Routledge: 249-257
- Ulfstein, Geir and Christina Voigt. "Rethinking the Legal Form and Principles of a New Climate Agreement". In T. L. Cherry, J. Hovi and D.M. McEvoy (eds), *Toward a New Climate Agreement. Conflict, Resolution and Governance*. Routledge: 183-198
- Voigt, Christina. "Art. 11 TFEU in the Light of the Principle of Sustainable Development in international law". In B. Sjøfjell and A. Wiesbrock. (eds.), *Taking Article 11 TFEU Seriously: The Greening of European Business*. Routledge: 31-50
- Voigt, Christina. "Delineating the Common Interest in international Law". In W. Benedek, K. De Feyter, M. Kettmann, and C Voigt (eds.), *Common Interest in International Law*.

Cambridge: Intersentia: 9-27

Journal articles

- Ajevski, Marjan. "Fragmentation in International Human Rights Law- Beyond Conflicts of Law". *Nordic Journal of Human Rights*, 32 (2): 87-98
- Ajevski, Marjan. "Freedom of Speech as Related to Journalists in the ECtHR, IACtHR and Human Rights Committee: A Study of Fragmentation". *Nordic Journal of Human Rights*, 32 (2)
- Bailliet, Cecilia M. "Untraditional Approaches to Law: Teaching the International Law of Peace". *Santa Clara Journal of International Law*, 12 (2): 1-27
- Cordeo-Moss, Giuditta and Daniel F. Behn. "The Relevance of the Unidroit Principles in Investment Arbitration". *Uniform Law Review*: 570-608
- Langvatn, Silje Aambø. "Politisk filosofi for eit sosialdemokrati". *Nytt Norsk Tidsskrift*, 3: 343-346
- Saul, Matthew William. "Identifying Jus Cogens Norms: The Interaction of Scholars and International Judges". *Asian Journal of International Law*, 5 (1): 26-54
- Tallberg, Jonas, Thomas Sommerer, Theresa Squatrito and Christer Jonsson. "Explaining the Transnational Design of International Organizations". *International organization*, 68 (4): 741-774
- Voigt, Christina. "Equity in the 2015 Climate Agreement: Lessons from Differential Treatment in Multilateral Environmental Agreements". *4 Climate Law 2014*: 50-69

Book reviews

Langvatn, Silje Aambø and Sofie A.E. Høgestøl.

"Book Review: International Criminal Justice: Legitimacy and Coherence, edited by G. Boas, W.A. Schabas and M.P Scharf". *Nordic Journal of International Law*, 83 (3): 347-355

Master theses

- Jervan, Marte. "The Prohibition of Transboundary Environmental Harm: An Analysis of the Contribution of the International Court of Justice to the Development of the No-Harm Rule". University of Oslo
- Metz, Elise Gedde. "God nok grunn? En studie av rettspraksis om begrunnelseskravet i jursaker fra Den europeiske menneskerettighetsdomstol og Norges høyesterett". University of Oslo
- Mollestad, Christoffer Nyegaard. "See No Evil? Procedural Transparency in International Investment Law and Dispute Settlement". University of Oslo

Presentations (a selection)

- Andresen, Steinar. "The Role of Courts in international Environmental Politics: A Marginal Phenomenon?" PluriCourts lunch, 29.10
- Bailliet, Cecilia M. "National Case Law as a Generator of International Refugee Law: Rectifying an Imbalance Within the UNHCR Guidelines on International Protection." Conference paper, ESIL conference 04-06.09
- Bailliet, Cecilia M. "Third World Approaches to International Law". PluriCourts legitimacy reading group, 20.10
- Fauchald, Ole Kristian and Daniel F. Behn. "Governments Under Cross-Fire? Renewable Energy and International Tribunals". ESIL

- conference, 04-06.09
- Fauchald, Ole Kristian, Daniel F. Behn and Malcom Langford. "The Legitimacy of International Investment Tribunals: Towards a Grounded, Actionable and Empirically Informed Approach", Workshop on The Legitimacy of International Courts and Tribunals, 24-25.11
- Føllesdal, Andreas. "Approaches to the Legitimacy of International Courts - Is there an Elephant in the Room?", PluriCourts and iCourts joint PhD Summer School, 23-27.06
- Føllesdal, Andreas. "Future Topics of Cooperation", Conference on the Long-Term Future of the European Court of Human Rights, 07-08.04
- Gloppen, Siri. "Litigating Health Rights: Can Courts Bring More Justice to Health?" CPR seminar series, 30.01
- Langvatn, Silje Aambø. "Public Reason and the Legitimacy of International Courts". Workshop on the Legitimacy of International Courts and Tribunals, 13-14.03
- Langvatn, Silje Aambø. "What Does it Mean to Say that an International Court has a "Public Reason""? ECPR Conference, 02-04.09
- Müller, Amrei. "The ECtHR's Engagement with German and Russian Courts' Decisions: Encouraging Effective Cooperation Between Domestic Courts and the ECtHR to Secure ECHR-Rights?". MultiRights seminar, 13.05
- Müller, Amrei. "The ECtHR's Reliance on the Engagement with Domestic Court". PluriCourts lunch, 17.12
- Saul, Matthew. "International Human Rights Law and Domestic Parliaments". ESIL interest group on human rights roundtable, 04-05.09
- Saul, Matthew. "The European Court of Human Rights and the Promotion of Parliamentary Mobilization for Human Rights". XVII Nordic Political Science Congress, 12-15.08
- Schmölzer, Stephanie. "The Litigation Cascade: Austria and the Causes and Effects of International Lawfare". Workshop on International Sexual and Reproductive Rights Lawfare, 06-07.11
- Squatrino, Theresa. "Participation and International Courts: Legitimacy Enhancing?" European Consortium for Political Research general conference, 03-06.09
- Squatrino, Theresa. "Judicial Behavior and the Impact of Amicus in the WTO Dispute Settlement Proceedings". American Society of International Law mid year meeting, 06-08.11
- Ulfstein, Geir. Closing the Conference: Summing Up. Conference on the Long-Term Future of the European Court of Human Rights, 07-08.04
- Voigt, Christina. Flourishing While Publishing". Seminar on Flourishing While Publishing, 27.08
- Voigt, Christina. "ICJ's Judgment on Whaling in the Antarctic". PluriCourts internal seminar, 27-29.05
- Wind, Marlene. "Why Nordic Majoritarian Democracies have Escaped the European Court of Justice". Event at the University of Oxford, 07.05
- Media**
- Føllesdal, Andreas. "Etikken står på spill", Aftenposten, 27.03
- Føllesdal, Andreas and Geir Ulfstein. "Internasjonal strafferett i St. Olavs gate", Verdibørsen - NRK P2, 29.03
- Ulfstein, Geir. "Grunnlov og nasjonalromantikk". Klassekampen, 23.01.
- Ulfstein, Geir. "Kan folkeretten berge Ukraina?" Klassekampen, 11.03
- Ulfstein, Geir. "Har ikke anbefalt niqab-forbud". Aftenposten, 03.08.
- Ulfstein, Geir. "Selvforsvarets grenser". Klassekampen, 08.08
- Wind, Marlene. "EU-patentdomstol? Hvad pokker er det? MetroXpress, 31.03
- Wind, Marlene. "Wind om EU-domstolens fortolkningsstil". Weekendavisen, 03.01
- Wind, Marlene. "Wind: Berøringsangst overfor EU-Domstolen er væk". Information, 03.12

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Pogge Thomas
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Robinson Mitch
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