



Workshop Series: Identity on the International Bench

Workshop 2: Geography and Legal Culture on the International Bench

Call for Papers

The Hague, 17-18 May 2018

Organised by the PluriCourts Centre of Excellence (Oslo University)

Many statutes of international courts and tribunals provide for some form of geographic spread in order to assure **'representation' of the various regions and legal systems of the world** (cf. Art. 9, ICJ Statute). Yet adjudicators' legal thinking is arguably more influenced by where they studied and worked prior to their appointment rather than by their nationality. Moreover, when litigants are free to appoint their own adjudicators, as is the case in arbitration, the diversity of the arbitral appointments in terms of the arbitrator's geographic and legal cultural background drops dramatically.

The aim of this conference is to analyse when and how adjudicators' identity and, in particular, features relating to national origin and legal culture affect the composition of international courts and tribunals, as well as judicial behaviour. The causes and effects of **geographic representation** requirements, the prevalence of certain **educational backgrounds** and the **professional expertise** of adjudicators prior to their appointment, their **average age**, among other features, as well as the resulting implications for the legitimacy of the international adjudicatory institutions and the judicial decisions rendered, form the main focus.

ORGANISATION

The **PluriCourts Centre of Excellence** studies the legitimacy of international courts and tribunals from legal, political science and philosophical perspectives. Research at PluriCourts concerns the origins of international courts and tribunals, their functioning, and their effects.

GOALS

This conference seeks to promote a higher level of understanding of both current challenges and best practices in terms of **assessing and promoting geographic and legal cultural diversity** on the international bench. The underlying assumption is that, with increased diversity, the (perception of) **normative and social legitimacy** of the international judicial process will be enhanced. This will require an enquiry into the various perspectives



concerning geographic and legal cultural diversity on the international bench, including **judicial/institutional views** and the **standpoints of governments and private parties**. The conference also aims to go beyond these specific perspectives and investigate the **intersectionality** and the link with other kinds of diversity, such as gender or ethnicity.

Issues to be explored, from the perspective of their **effect on the legitimacy of the international courts and tribunals**, include:

1. Towards the bench

- How do geographical representation requirements function? Are they formulated as 'hard' or 'soft' law? How are these taken into account in the nomination and election of judges? Which enforcement mechanisms exist and how often are they relied upon? Do these achieve their stated (or implicit) goals?
- For States nominating persons to serve on the benches of permanent courts: do other requirements related to geography and legal culture play a role in the nomination process? How are these weighed against other factors? What difficulties do States encounter in the nomination process in this regard? Is State practice uniform in this regard or do different countries attach distinctive weight to specific factors?
- Which educational and professional backgrounds are prevalent among judges before their appointment to tribunals (*e.g.*, a career as an academic vs. a legal practitioner)? Does prior expertise matter more for particular legal regimes (*e.g.*, human rights as opposed to trade law)? Are there any differences in this regard between judges from different legal cultures?
- For institutions which may act as appointing authorities (such as the WTO, ICSID and PCA secretariat): are geographic and legal cultural background taken into account in selecting potential adjudicators and if so, how?
- For parties appearing in international disputes where an adjudicator can be appointed (*e.g.*, arbitration, *ad hoc* ICJ judge), are geographic and legal cultural background taken into account and if so, how and why? Why do parties when tasked with selecting a chairperson, seldom select, for example, non-western adjudicators for that role?
- To what extent do other rules aiming to create a diverse bench, *e.g.*, gender, interact or even conflict? If so, how could this be countered? Should certain forms of representativeness prevail over others?

2. On the bench

- Could being the first or only judge with a particular background affect adjudicatory 'style'? Could it affect the behaviour of the other adjudicators on the bench?
- Could identity features relating to geography and legal culture affect the interpretation of legal principles, facts, precedent, rules of procedure, rules of evidence, etc.? Have judges with a more 'unusual' geographic or legal cultural background had a specific discernible



impact on the development, application and interpretation of different legal regimes?

- Do certain judges tend to exhibit a higher or lower level of judicial restraint in participation in oral hearings, written decisions, separate or concurring opinions, and dissenting opinions? Does the time on the bench since appointment affect or impact upon lower or higher restraint?
- Do some areas of international law call for legal and professional-socialization modes of judicial decision-making while others permit application of realistic, personal discretion modes of decision-making? Understanding internal politics of international courts and tribunals: does the geographic and legal cultural background affect the roles which certain judges are allocated within the court (*e.g.*, procedural rules committee, hiring committee)?
- For counsel appearing before a bench: are litigation strategies and pleading styles adjusted to the geographic or legal cultural background of the adjudicator?

3. Beyond the bench

- Does geographic or legal cultural background affect which types of careers judges pursue after their time on the bench or, where this is allowed, while on the bench? How do their experiences on the bench affect this? What type of legacy does / should a judge aim for? How do judges with a more 'unusual' geographic or legal cultural background describe their roles in interviews, speeches, articles, etc. outside the court? How could these judges promote, inspire and prepare, *e.g.*, through mentoring, future judges?
- Does the presence and work of judges with diverse geographic or legal cultural backgrounds affect in any way compliance with the decisions rendered and/or the authority of the international court? Does this matter to the normative or social legitimacy of the international judicial institution? Does it affect the effectiveness of the international legal system more broadly?
- What level of representation and diversity regarding geography and legal culture is required for an international court or tribunal to be perceived as legitimate? Do the requirements differ in this regard among the adjudicatory systems? Are there certain lacks of representation or diversity (*e.g.*, clustering of certain backgrounds) that are more problematic than others?

This is **not an exhaustive list**, applicants are welcome to submit abstracts analysing other challenges and best practices in increasing geographic and legal cultural diversity on the international benches.

SUBMISSION OF PAPER PROPOSALS

The Organising Committee (chaired by Prof. dr. Freya Baetens) welcomes abstracts from scholars as well as practitioners, including staff of adjudicatory institutions and international organisations. Papers should be innovative, unpublished at the moment of presentation, and at an advanced stage of completion.



Proposals should be submitted by **28 February 2018** via the [online form](#) which consists of:

1. A **cover letter**, indicating whether the author (if selected) will be applying for financial support (this will not affect the selection process);
2. An **anonymized abstract** (in Word or Pdf-format, not exceeding 400 words);
3. A **one-page CV**, including the author's contact details and her/his most important/relevant publications.

Multiple abstracts per author will be considered, but each author will be invited to present one paper at most.

FINANCIAL ASSISTANCE

Financial assistance is available to support the travel and/or accommodation costs of speakers with financial hardship. Due to funding regulations, reimbursements can only be transferred once the applicant has submitted her/his final paper for publication.

TIMELINE

- The deadline for submission of abstracts is **28 February 2018**.
- Applicants will be informed of the outcome of the selection process by **10 March 2018**.
- The deadline for submission of draft papers / outlines is **10 May 2018**.
- The workshop will take place on **17 and 18 May 2018**.
- The deadline for submission of the final version of the papers is **31 August 2018**.

PUBLICATION

Applicants who submit a paper proposal thereby consent to publish their finalized paper in the edited collection or the special journal issue.

OTHER WORKSHOPS IN THE "IDENTITY ON THE INTERNATIONAL BENCH" SERIES

- Past: ***Gender on the International Bench***: 11-12 January 2018
- Future: ***Religion and Ethnicity on the International Bench***: October 2018

Authors are welcome to submit abstracts for more than one workshop.