

PROJECT DESCRIPTION FOR YOUNG RESEARCH TALENTS GRANT PROPOSAL

Project Title: *State Consent to International Jurisdiction: Conferral, Modification and Termination*

Project Manager: Prof. Dr. Freya Baetens

1. Relevance relative to the call for proposals

A stable and predictable legal system to resolve international disputes is premised on States' willingness to accept that an 'external force', such as an international court or tribunal, has the **power to judge** whether they have complied with their international obligations. To put it in legal terms, the question is one of: 'State consent to international jurisdiction'. After the sharp rise in the creation of new international courts in recent decades, States are now restricting the scope of their consent or even withdrawing it altogether due to nationalist or populist allegations that international courts are unduly limiting their sovereign powers. State consent to jurisdiction is not a linear or progressive process, but it serves as a **barometer indicating fluctuations in State support for the international legal system**. In particular, this highlights the need for an up-to-date detailed analysis of the international law regulating when and how States can confer, modify or terminate consent to jurisdiction.

Examples include Colombia's withdrawal from the Pact of Bogotá following the International Court of Justice (ICJ)'s decision in the first *Nicaragua/Colombia* case; Burundi's, South Africa's and the Gambia's denunciation of the International Criminal Court (ICC) Statute (and the subsequent changes of mind by South Africa and the Gambia); Ecuador's, Bolivia's and Venezuela's termination of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention); the announcement by Turkey and the UK that they are considering whether to terminate their consent to the jurisdiction of the European Court of Human Rights; and the UK's severe restriction of its consent to the ICJ's jurisdiction in reaction to the (unsuccessful) nuclear disarmament claim brought by the Marshall Islands. These actions threaten to undermine the international legal system as a whole by making it increasingly difficult to hold States accountable for violations of their international obligations.

The **fundamental dichotomy** underlying this research project is that, on the one hand, States wish to reserve 'manoeuvring space' to determine their own conduct through **maintaining the possibility of retreat** from the international dispute settlement process. On the other hand, they wish to **restrict the scope of unpredictable behaviour of other States *inter alia*** by making international law enforceable through the establishment of international courts – even though these combined goals formally go against the reciprocity principle. In other words, one of the main incentives for States to confer consent to international jurisdiction is that, even though in the short-term a dispute may not be decided in a State's favour, it is in its long-term interest that other States can be made to comply with their international obligations.

This project investigates **how international law accommodates this fundamental dichotomy** by analysing the **legal process and procedures** through which States: (1) confer consent to the jurisdiction of an international court or tribunal; (2) modify earlier conferrals of consent; and (3) terminate consent. It uses legal methodology to examine these questions, while acknowledging that the reasons for which States confer or retract consent are often deeply political (Alter 2014; Çali 2015; Hirschman 1970; Ginsburg 2013; Helfer 2006; Keohane et al 2000). The legal findings will be complemented by conducting an in-depth study of dispute settlement clauses in selected treaties and showing how these clauses enable States to modify or withdraw their consent to be subjected to the powers of an international court. **For example, one working hypothesis** is that allowing for the possibility of modification increases the likelihood of conferral of consent, while decreasing the chances of later withdrawal. Arguably, a practice is developing whereby States tend to withdraw more often from treaties that contain a mandatory jurisdiction clause, after definitive consent to jurisdiction has been given, the treaty has entered into force and the court has started functioning.

The project will be led by Professor of Public International Law, **Freya Baetens**, assisted by a research team, within the framework of PluriCourts, the University of Oslo's Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order. Through acting as counsel or expert in international disputes alongside her academic activities, she has acquired first-hand knowledge of the negative consequences for international justice when there is legal uncertainty surrounding States' consent to the jurisdiction of international courts and tribunals.

2. Aspects relating to the research project

Background and status of knowledge

The creation of international legal obligations has often been accompanied by the establishment of new courts and tribunals, or the expansion of the scope of competence of existing ones. In recent years, these international dispute settlement mechanisms have encountered a **backlash from States** (Waibel 2010; Alter, Gathii & Helfer 2016; Krisch 2014; Shelton 2015; Baetens 2016-b). The conferral of judicial powers on an increasingly complex set of international courts that sometimes render controversial judgments in politically sensitive cases has turned some States against settling disputes at the international level, usually because it is viewed as encroaching on their sovereignty (Labuda 2013; Baetens 2016-a; Jin Tao 2016; Squatrito, Føllesdal, Ulfstein & Young 2017). This backlash consists not only of protests against particular judgments but of calling into question international courts' functions, their competence and even their *raison d'être* (Krisch 2014; Bronckers & Baetens 2013; Hernández 2015; Baetens 2017).

The project will serve to expand existing knowledge in the area by providing a **cross-institutional study of not only withdrawal but also conferral and modification of consent** to jurisdiction. Extensive legal research exists on jurisdiction in international law, including general studies on approaches to jurisdiction outside of treaty-based mechanisms (e.g., Ryngaert 2015) and on matters such as different forms of jurisdiction, competence and admissibility (e.g., Amerasinghe 2009). The latter study is cross-institutional but has a partially different focus: it examines only one human rights court – the European Court of Human Rights – as well as international courts not forming part of this project, such as international administrative tribunals and the Permanent Court of International Justice. The current project will also cover human rights courts outside of Europe, namely the Inter-American Court of Human Rights and the African Court of Human and Peoples' Rights, and examine consent to the jurisdiction of the ICC as well as the variety of dispute settlement options under the UN Law of the Sea Convention (UNCLOS).

This project focuses solely on the issue of consent to jurisdiction to the **exclusion of related topics** such as admissibility. To the extent that legal scholars have looked specifically at this, it has been with regard to one particular court (e.g., Couvreur 2017) or within one field of international law (e.g., in investment arbitration: Katselas 2014; Schreuer 2010; in international criminal law: Helfer and Showalter 2017; Bartels 2017), focusing mostly on withdrawal of consent without looking at conferral and modification. Similarly, recent high-profile withdrawals of consent have received some scholarly attention (e.g., Bohler-Muller & Zongwe 2017) but this attention has not extended to considering the **relationship of withdrawal to modification and conferral of consent** and, in particular, whether the ability of parties to modify their consent has an impact on frequency of recourse to withdrawal. As a result, current scholarship does not fully shed light on how international law reconciles States' wish to have a stable, predictable international dispute settlement system while also allowing them to tailor their consent to various forms of international jurisdiction.

Approaches, hypotheses and choice of method

Starting assumption – The research project will undertake a comprehensive study of the current international law and policy relating to States' conferral, modification and termination of consent to jurisdiction of international courts and tribunals. The starting (albeit contested – Buchanan 2010; Bodansky 2013; Krisch 2014) assumption is that the international legal system should, on the one hand, be firmly based upon the consent of States to the jurisdiction of any international court, while on the other hand, consent, once given, should not be withdrawn simply because of a change in government or because the State has violated its international obligations and does not wish to be held accountable. The focus of the project will be to examine **how and to what extent international law accommodates or restricts State behaviour** with regard to consent to jurisdiction, investigating whether this allows for certain **patterns in the behaviour of both States and courts**. As a result, the project will be divided into two main fields of enquiry: specific legal questions and systematic policy patterns. In addition, the research will be structured in three parts: conferral, modification or termination of consent to jurisdiction.

Delimitation of the scope – The project focuses on **consent to the jurisdiction of international courts and tribunals**, not consent to international law as such.

- Consent to and withdrawal from treaties on substantive grounds is beyond the scope of this project. For example, this project does not study State consent to the UN Convention on the Law of the Sea (UNCLOS), but consent to the international dispute settlement mechanisms with jurisdiction to render binding interpretations of UNCLOS.

The project assesses selected international courts and tribunals that are competent to issue **legally binding decisions**.

- The dynamics of ‘soft law’ and ‘non-binding jurisdiction’ are different so, for example, views of the Human Rights Committee to the International Covenant on Civil and Political Rights are excluded because it is legal for a State not to comply with these views (Viljoen & Louw 2007).

The selection of international courts focuses on **universal or large multilateral courts and tribunals**.

- Regional integration courts such as the Court of Justice of the EU have not been included because their objective of progress towards ‘an ever closer Union’ signals a significantly different (more restrictive) approach towards potential modification and termination.

The selection of international courts focuses on **permanent international judicial institutions and institutionalised arbitration**.

- *Ad hoc* ICJ jurisdiction, *ad hoc* arbitration and international criminal tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY), are excluded because in those cases, State consent is given for one particular dispute or conflict situation, so any withdrawal or modification issues are substantially different from those arising before more permanent bodies.

International courts and tribunals were selected because they represent a **variety of models for consent to jurisdiction**, allowing for an examination of diversity. For example, the selection includes international courts with minimal issues relating to consent, as well as courts where consent is highly contested. The ICC exercises jurisdiction over individuals, but it has nevertheless been included in this study as it can also order States to cooperate and, more importantly, as it requires States – not individuals – to consent before it can exercise its jurisdiction.

Forms of jurisdiction – Broadly speaking, the jurisdiction of international courts and tribunals in this study can be divided into three categories. **‘Optional jurisdiction’** implies that States may be parties to a treaty (e.g., the American Convention of Human Rights or the ICJ Statute) without subjecting themselves to the jurisdiction of the affiliated court. **‘Compulsory jurisdiction’** means that as soon as States become members of a treaty (e.g., the World Trade Organisation (WTO) Agreements or the European Convention on Human Rights), they are automatically subjected to the jurisdiction of the affiliated court. **‘Compulsory but mixed jurisdiction’** is used to refer to treaties (e.g., UNCLOS and many investment agreements) that require States parties to consent to international jurisdiction, but offers them a choice of which international dispute settlement mechanism they will be subjected to (e.g., in the case of UNCLOS: ICJ, International Tribunal for the Law of the Sea (ITLOS) or arbitration).

First stage: consent database – In the first stage of this project, a Consent Database will be constructed of documents through which States have conferred, modified or withdrawn their consent to the jurisdiction of the selected international courts and tribunals. These documents can be found at various locations in the public domain (e.g., annual reports of individual courts, UN Treaty Series database) but the first key contribution of this study to the existing scholarship will be the **creation of a user-friendly database providing all ‘consent documents’ in a centralised manner**. In light of the manageable number of declarations and dispute settlement clauses (*see overview below*), it is not necessary to impose any time period restrictions, allowing for in-depth analysis of consent to each selected court’s jurisdiction from its establishment to 2020.

Selected court	Form of jurisdiction	Source of jurisdiction	Database action
ICJ	optional jurisdiction	- Unilateral declaration (“optional clause”): 72 declarations are in force, excluding those that were submitted but later withdrawn (several have been modified) - Treaty referral (“compromissory clause”): over 300 treaties contain such clauses, e.g., Genocide Convention, Convention against Racial Discrimination	- mapping all declarations (including reservations), modifications and withdrawals ever submitted - mapping all treaties that contain compromissory clauses (including reservations), as well as modifications and withdrawals from such treaties
WTO Dispute Settlement Body	compulsory jurisdiction	- WTO Agreements	- mapping signature and accession documents and relevant treaty provisions
ICC	compulsory jurisdiction	- ICC Statute	- mapping signature and accession documents and relevant treaty provisions
UNCLOS	compulsory but mixed jurisdiction	- UNCLOS: 48 (out of 168) States parties have submitted declarations under Article 287 relating to ‘choice of procedure for	- mapping all declarations (including reservations), modifications and withdrawals ever submitted

		dispute settlement'	
Investor-State arbitration	compulsory but mixed jurisdiction	- investment treaties (substantive law: approximately 2500 treaties in force) and procedural rules as found in the ICSID Convention	- mapping the dispute settlement clauses in investment treaties - mapping all conferrals, modifications and withdrawals to/from ICSID Convention
European Court of Human Rights	compulsory jurisdiction	- European Convention on Human Rights	- mapping signature and accession documents and relevant treaty provisions
Inter-American Court of Human Rights	optional jurisdiction	- American Convention on Human Rights: 20 declarations in force	- mapping all declarations (including reservations), modifications and withdrawals ever submitted
African Court of Human and Peoples' Rights	compulsory and optional jurisdiction	- African Convention on Human and People's Rights: compulsory for inter-State claims, optional for individual/NGO claims: 7 declarations in force	- mapping all declarations (including reservations), modifications and withdrawals ever submitted

Conferral, modification and termination – States may accept the jurisdiction of an international court or tribunal broadly in two ways. First, a State may **participate in the negotiation, conclusion and ratification** of a treaty establishing a new international court or tribunal (*e.g.*, the WTO Agreements, setting up the WTO Dispute Settlement Body) or giving an existing court or tribunal new competences (*e.g.*, the drafters of the Genocide Convention, giving jurisdiction to the International Court of Justice over disputes regarding the interpretation and application of this Convention). Second, a State may **accede to an existing treaty** and subject itself to an already-functioning legal system (*e.g.*, accession to the European Convention on Human Rights now includes accepting the jurisdiction of the European Court of Human Rights).

Consent is not static: conferral of consent can normally be modified, either during the process through which a treaty enters into force or thereafter. The **possibility to modify consent** is a **built-in mechanism to prevent termination** altogether, the underlying reasoning being that the international legal system prefers to keep States 'on board' as long as there is still consent regarding certain aspects of the treaty. However, not all international courts allow for the possibility of modification of consent to jurisdiction. The WTO Agreements, for example, requires State parties to accept the WTO dispute settlement system's mandatory exclusive jurisdiction and does not offer any middle ground. Where the possibility of modifying consent exists within a specific dispute settlement regime, the important question is which (prospective) legal effects this has. Such effects might entail that a State continues to be bound by the jurisdiction of an international court for a certain time period.

Specific legal questions and systematic policy patterns – A distinction is made in the project between specific legal questions and systematic policy patterns: not every act that is legally allowed is desirable from a policy perspective or will be enacted by all States in the same manner. The research results illuminating these patterns of consent, or highlighting relevant differences, aim to be useful for **States negotiating treaties** (*e.g.*, by including exception clauses or 'cooling off' periods as part of exit regulations) as well as for **international courts considering internal reforms**, in an attempt to avoid further withdrawals. Some of the questions listed below presuppose that States act (mostly) as rational actors, which may well not be the case – but that is beyond the scope of this project (Goodman and Jinks 2013). The focus is on how international law accommodates States to act on their perceptions (or impedes them from doing so) and how this creates certain patterns in State behaviour (and perhaps, correlatively, court behaviour).

Second stage: specific legal questions – In the second stage of the project, the researchers will conduct an **empirical analysis** of the documents gathered in the **Consent Database**. This requires a critical reading of the declarations deposited by States, against the background of the applicable legal provisions (either in general international law or in the specific treaty constituting the international court at hand) with the aim of giving an overview of the current international legal mechanisms relating to consent to jurisdiction. Divided according to whether they relate to conferral, modification or termination of consent, these issues include:

Conferral of state consent to jurisdiction

- How is 'conferral of consent to jurisdiction' as a unilateral declaration **defined under international law** and how does it relate to conferring effective consent to other international rules as stipulated in the Vienna Convention on the Law of Treaties (VCLT)? Which **actors** can validly give consent on behalf of the State? What is the **legal effect** of conferring consent to jurisdiction and when does it take effect?
- States may participate in the negotiation of a treaty but subject their ratification to a **reservation** purporting to exclude its dispute settlement provisions. What is the legal effect of such practice in light of the VCLT's requirements for reservations? This question necessitates an enquiry into the

‘object and purpose’ of a treaty and the legality of reservations to compromissory or jurisdictional clauses. Key ICJ cases that examine this question are the 1951 *Advisory Opinion on Reservations to the Genocide Convention*, the 1973 *Fisheries Jurisdiction* case, and the 2005 *Armed Activities* case.

- Due to, for example, a change in government after signing but before ratifying a treaty, there have been occasions where a State ‘un-signed’ a treaty, as was notoriously the case with the US **withdrawal of its signature** to the ICC Statute. What is the legal effect of this? To what extent could a State’s obligation to respect the object and purpose of a treaty be seen as establishing any consent with regard to jurisdiction under the treaty – at least with regard to facts occurring after the signature but before the un-signing of the treaty?
- Many treaties, such as the 1964 Fisheries Convention, the Energy Charter Treaty and the Economic Partnership Agreement between the EU and the CARIFORUM States, allow for **provisional application** of their provisions in the period between signature and ratification. Does provisional application also apply to the dispute settlement provisions? This has been problematic, for example, in a number of arbitral cases where the tribunal arrived at a (controversial) verdict as the responding State never ratified its conferral of consent (*e.g.*, *Yukos v. Russia* (Permanent Court of Arbitration 2009); *Kardassopoulos v. Georgia* (ICSID 2007)).

Modification of state consent to jurisdiction

- How is ‘modification of consent to jurisdiction’ **defined under international law** and how does it relate to modifying consent to other international rules as stipulated in the VCLT? Which **actors** can validly modify consent on behalf of the State, particularly as compared to those able to give consent?
- What is the **legal effect** of modifying consent to jurisdiction and when does it take effect? In particular, what are the conditions under which such modification may have any retrospective effects, *i.e.* apply to disputes concerning facts that occurred before the modification took place, or, to claims that were brought before the modification took place?
- Is it possible to modify consent to jurisdiction by adding a **reservation after consent** has been conferred?

Termination of state consent to jurisdiction

- How is ‘termination of consent to jurisdiction’ **defined under international law** and how does it relate to terminating consent to other international rules as stipulated in the VCLT? Which **actors** can validly terminate consent on behalf of the State, particularly as compared to those able to give and modify consent?
- Are there any **restrictions** to termination, for example, in terms of a minimum time period after conferral of consent, during which such consent cannot be withdrawn?
- What is the legal effect of terminating consent to jurisdiction and when does it take effect? This issue has arisen, for example, in the context of the withdrawal of Venezuela, Bolivia and Ecuador from the ICSID Convention.
- What, if any, **obligations remain after withdrawal**? In particular, what are the conditions under which such termination may have any retrospective effects, *i.e.* apply to claims that were brought before the termination took place? What is the position concerning facts that occurred before the termination took place? Of particular relevance is Article 127 of the ICC Statute which stipulates a set of obligations for States, after their withdrawal has entered into force, that is broader than the usual application to ongoing cases.
- Does the **withdrawal** carry any legal effects if it is, **in turn, withdrawn**? This situation has occurred, for example, with regard to the Gambia’s and South Africa’s denunciation of the ICC Statute. Does the reason for which it is withdrawn matter, *i.e.*, a change of mind on the part of the (newly elected) government (in the case of the Gambia) or a domestic judicial decision that the withdrawal was invalid (in the case of South Africa)?

Methods to examine specific legal questions – Each question may require the researchers to adopt a slightly different legal methodology. However, the primary sources are: relevant treaty provisions and declarations gathered in the **Consent Database, negotiation statements by States and subsequent practice**. The researchers will also draw on scholarly works where appropriate. Generally, the questions require the researchers to identify and then analyse and compare relevant provisions relating to conferral, modification and termination of consent incorporated in treaties and other documents of the international courts under consideration. The researchers will further examine what happened before the clause in question came into being (the preparatory works, including negotiation documents and unilateral statements) as well as after (implementation of the clause and any ensuing disputes). This will include drawing on recent instances

where States have utilised these provisions to examine how States and courts have interpreted them in practice. The project also analyses whether a **court's ability to reform its procedure** could impact on State's consent to jurisdiction and how international law accommodates this relationship. For this part of the analysis, other aspects of the framework of international courts will be examined, including time periods to adjust to withdrawal and other constraints on the withdrawal and modification of consent. Again, these rules will be examined within the context of recent examples where States' modification or termination of consent has prompted procedural reform at international courts.

Third stage: systematic policy patterns – In the third stage of the project, the researchers aim to identify systematic policy patterns in States' conferral, modification or termination of consent to jurisdiction – and to assess **how international law accommodates or impedes these patterns**. Issues on which the researchers aim to shed light are:

Conferral of consent to jurisdiction

- Can states be divided into **rule/court-makers** and **rule/court-takers** (Pelkmans & Hamilton 2015)? Arguably, the same group of States (often developed countries) tends to be at the forefront of the creation of several international courts and tribunals, while another group of States (often developing countries) usually prefers to stand at the side-lines before joining a functioning system. A third group of States is averse to any form of international jurisdiction and (almost) never consents;
- Do international courts and tribunals tend to interpret their jurisdiction more narrowly at the outset and interpret their jurisdiction more broadly, thereby accepting a larger variety of cases, as time passes and the institution gains **increasing authority and experience**? This could have particular repercussions for recent dispute settlement mechanisms;
- When treaties are negotiated that either establish a new international court or tribunal, or contain forum clauses referring disputes under the treaty to an existing court, does this affect the **drafting process of the substantive provisions**? More specifically, are substantive provisions in such treaties more detailed and narrowly defined to prevent surprises, with controversial provisions being dropped during the drafting process? Arguably, these treaties can be subdivided into two categories: those that contain a mandatory dispute settlement clause and those that allow for reservations, 'opt-outs', *vis-à-vis* the dispute settlement clause – in the latter category, it may be that the effect on the substantive provisions will be more limited (Pauwelyn & Elsig 2012; Stone Sweet & Brunell 2013).

Modification of consent to jurisdiction

- Do States modify their consent to jurisdiction in **response to particular disputes**, as was the case for the US and Columbia after an allegedly unsatisfactory ICJ judgment? If not, what other patterns can be discerned? Could any action on the part of the judicial institutions, international organisations or other States have prevented such modification?
- Is modification of State consent to jurisdiction a **linear digressive move** (restricting formerly broad consent) or can it also be **progressive** (broadening formerly restricted consent)? What reasons are proffered for such movements? Can any patterns be identified in this respect? This question is of particular relevance in the context of recently filed reservations to the ICJ's Optional Clause.
- Can any **correlative effects** on the **judgments** of international courts be discerned, subsequent to the modification of consent by one or more States? Do they refer to such modification in their decisions?

Termination of consent to jurisdiction

- Are States more reluctant to withdraw from treaties with international courts that provide **reciprocal obligations and rights for States**, *e.g.* the WTO, than from international courts that impose only obligations on States *vis-à-vis* non-States, *e.g.* human rights courts?
- Can any patterns be identified in this respect, for example, a domino-effect among **regional or ideological coalitions** of States? In spite of the increasing number of statements by State officials questioning the legitimacy of international courts, has this resulted in a higher amount of terminations, compared to previous decades? What, if any, are the identifiable causes for this trend?
- Can any **correlative effects** on the **judgments** of international courts be discerned, subsequent to the termination of consent by one or more States, for example, in the form of references to such termination?
- Do **States claim** to terminate their consent to jurisdiction in response to particular disputes, as was the case for Colombia after allegedly unsatisfactory ICJ judgments? Which legal action on the part of the judicial institutions, international organisations or other States could impact such termination?

Overarching questions – Building on the findings of each part, researchers will seek to answer the following overarching questions:

- **Open versus restricted acceptance of jurisdiction:** what, if any, is the relationship between conferral of consent, the options for modification and the likelihood of termination? In other words, do broad modification options prevent termination? Do they increase the likelihood of conferral?
- **Judicial activity:** is there any link between the ‘activeness’ of a court (a high number of cases and/or a broad interpretation of its own jurisdiction) and the need States see for modification or termination (whether they have been involved as parties in disputes or not)?
- **Domino reactions:** can any examples be identified, whereby several States in short succession all confer, modify or terminate consent to a particular international court? What are the conditions under which such domino reactions might occur?
- Do the patterns of consent identified strengthen tentative responses to specifically legal questions?

Methods to examine systematic policy patterns and overarching questions – Identifying trends in States’ resort to conferral, modification and termination of consent will require the researchers to group examples identified at the previous stage according to observed similarities. This included events that prompted States to invoke clauses relating to the modification or termination of consent and the timing and manner in which they were invoked. The goal is not to search solely for **patterns that occur across all international courts**, but also to examine the **diversity in mechanisms** that exist for dealing with consent. Looking at correlations, or “links” between phenomena will require **empirical analysis**, based on the documents in the **Consent Database** as well as **case law** of international courts and tribunals. For example, international court judgments will be divided into time periods and for each period, so the percentage of cases in which the court finds jurisdiction can be examined. This quantitative approach is followed by a qualitative assessment, analysing whether similar questions (*e.g.*, whether a certain matter is covered by the consent) are answered differently in the course of time (*e.g.*, whether the threshold of evidence required by the court for finding jurisdiction changes).

To further enrich the project’s findings, the project manager will **solicit feedback** from current and former treaty negotiators (at the level of States and international organisations) as well as members of judicial institutions (including secretariats and registries). Where possible, these experts will have experience with recent examples of modifications and terminations of consent under relevant treaties but may also speak to the topic as experts in the field more generally. This feedback will encompass information relating to the negotiations that preceded the creation of international courts, including questions such as which States wanted to establish the relevant international court and by what design, as well as rationales for the inclusion of provisions for modification and termination of consent and specific requirements thereto.

Key challenges	Action to reduce impact of challenge
Identifying representative trends in States’ consent to jurisdiction when only using examples from selected international courts	Establish an international review board of 5-7 experts on the practice of the courts under investigation and request the board’s views on the interim results of the project, including representativeness of trends
During the research, further modifications or withdrawals of consent may occur at the international courts under consideration	Make the project plan flexible/subject to variation to allow the researchers time to incorporate new events (up to 2020) and update their conclusions
Access to information where documents such as the preparatory works to international conventions or documentation associated with States’ modifications or withdrawals are not a matter of public record	Enlist the assistance of international courts and States where unable to find relevant information. Where such information cannot be provided, the researchers will note this in their conclusions and any limitation that results

3. The project plan, project management, organisation and cooperation *[see also schematic overview, p. 10]*

Project plan and management – The goal is for the project manager to spend **50% of her time** on this project for a duration of four years. She plans to hire **two PhD fellows** for a duration of three years, who will be expected to have a background in public international law and international dispute settlement. The project manager will supervise the work of the PhD fellows throughout the project. She will also conduct the data-gathering, analysis of legal-technical processes and procedures, and investigation of systematic policy patterns in the context of the ICJ and the UNCLOS dispute settlement mechanisms.

Due to (1) the compulsory character of the WTO Dispute Settlement Body, the ICC and the European Court of Human Rights, (2) the impossibility to include reservations or modifications to their jurisdiction, and (3)

the limited number of treaties under investigation in the field of trade, criminal and human rights courts, the amount of research to be undertaken with regard to these adjudicatory mechanisms will be more limited in the first two stages. As a result, the **division of labour** will be as follows:

- PhD fellow 1 will focus on the WTO Dispute Settlement Body, the ICC and the human rights courts;
- PhD fellow 2 will focus on investor-State arbitration.

When entering the third stage of the project, the workload may be re-distributed.

Organisation and cooperation – **PluriCourts** has as its aim the study of the legitimate present and future roles of the international judiciary in the global legal order and its team brings together international legal and social science scholars with expertise in subject matter of the project. The project manager will be able to actively engage with her colleagues throughout the project, using *e.g.*, the already-developed PluriCourts Investment Treaty Arbitration Database (PITAD). Moreover, Oslo University is the home of the **Norwegian Centre for Human Rights (NCHR)** which will allow the project manager to draw on their extensive experience for the human rights courts studied in this project.

Given the inclusion of UNCLOS, the project will seek to utilise research conducted by the **K.G. Jebsen Centre on the Law of the Sea** at the Arctic University of Norway. The conclusions of this project will be disseminated to interested parties at other universities as well as the **Norwegian Polar Institute**. These conclusions may also be of interest to research teams at other Norwegian Institutions, and the project manager will seek to disseminate and hold workshops on the results of this project to promote national network-building. External possibilities for synergies furthermore exist with the Danish National Research Foundation's Centre of Excellence for International Courts (*iCourts*), the European University Institute (EUI), New York University (NYU), the **Max Planck Institutes** for International Law (Heidelberg) and Procedural Law (Luxembourg) and the **Lauterpacht Centre** of International Law at Cambridge University.

This project will benefit from the input of international actors at judicial institutions, governments, and international organisations. In particular, the project manager will cooperate with treaty negotiators and members of secretariats and registry offices at various stages of the project.

Budget: entered in the electronic grant application form

4. Key perspectives and compliance with strategic documents

Compliance with strategic documents

This project fits within the framework of PluriCourts, the University of Oslo's Centre for the Study of the Legitimate Roles of the Judiciary in the Global Order, the overriding objective of which is to analyze and assess the legitimate present and future roles of the international judiciary in the global legal order, including States' creation of and commitment to international courts. The Centre's directors, Geir Ulfstein and Andreas Føllesdal, have approved this project as fitting within the Centre's strategic objectives and research agenda.

Relevance and benefit to society

Beyond its scholarly contribution, this project aims to provide a critical and analytical voice to help stem the tide of nationalist and populist accusations against allegedly 'activist' courts, pushing a so-called 'liberal' agenda, in violation of the sovereign rights of States. International courts and tribunals need the power to hold States to account if they violate their international obligations. As the international legal system is not hierarchically imposed but based on State consent, it is crucial we understand how international law accommodates or restricts State decisions to (refuse to) accept the jurisdiction of these courts. An analysis of the available legal tools and mechanisms is most timely and relevant to not only international courts and tribunals but also the myriad of actors that benefit from a stable system of international dispute settlement, including States, civil society, international organisations, scholars and individuals.

Environmental impact

The project will not entail any significant environmental impacts given that it will be conducted as a desk-based exercise. Most required legal sources can be obtained from the University of Oslo's online databases and library resources, as well as those of the Peace Palace Library (The Hague). Researchers may need to undertake occasional travel to source materials from international courts or other research institutions.

Ethical perspectives

No ethical issues are raised by this project. Use of other academics' and third parties' work will be duly acknowledged. The views of the international review board and external experts will not directly be

incorporated into the research but used to inform the answers to the research questions. Because no formal interviews will be conducted, issues of research ethics and confidentiality will not arise.

Gender issues (Recruitment of women, gender balance and gender perspectives)

Women are well-represented in management and research positions across the PluriCourts Centre. The project manager will aim to maintain this balance when selecting researchers for the project.

5. Dissemination and communication of results: entered in the electronic grant application form

Selected references

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	Year 1: 2018		Year 2: 2019		Year 3: 2020		Year 4: 2021	
	Term 1	Term 2	Term 1	Term 2	Term 1	Term 2	Term 1	Term 2
Stage 1	Hiring research team & data-gathering							
Stage 2		Specific legal questions: one term each for conferral, modification and termination of consent to jurisdiction						
Stage 3					Systematic policy patterns: one term each for conferral, modification and termination of consent to jurisdiction			
Stage 4								Completion of research, practical training and final conference
Project manager	Hiring PhD fellows and start data-gathering	Supervision of PhD Fellows; data-gathering; research with focus on the ICJ and UNCLOS; conducting workshops			Supervision of PhD Fellows; research with focus on the ICJ and UNCLOS; conducting workshops			Finalising project results, and organising book launch, practical training sessions and international conference
PhD A		Data-gathering; research with focus on the WTO, ICC and human rights courts			Research with focus on the WTO, ICC and human rights courts			
PhD B		Data-gathering; research with focus on investor-State arbitration			Research with focus on investor-State arbitration			
Output		- Workshop with external experts - Journal article - Non-scientific dissemination	- Workshop with external experts - Journal article - Non-scientific dissemination	- Workshop with external experts - Edited collection - Journal article - Non-scientific dissemination	- Workshop with external experts - Journal article - First draft of research monograph and best practices publication - Non-scientific dissemination			- International conference - Practical training - Research monograph - Edited collection - Best practices publication - Non-scientific dissemination