

THE PERFORMANCE
OF INTERNATIONAL COURTS
AND TRIBUNALS

International courts and tribunals now operate globally and in several world regions, playing significant roles in international law and global governance. However, these courts vary significantly in terms of their practices, procedures, and the outcomes they produce. Why do some international courts perform better than others? Which factors affect the outcomes of these courts and tribunals? *The Performance of International Courts and Tribunals* is an interdisciplinary study featuring approaches, methods, and scholarship from law and political science, which proposes the concept of performance to describe the processes and outcomes of international courts. It develops a framework for evaluating and explaining performance by offering a broad comparative analysis of international courts, covering several world regions and the areas of trade, investment, human rights, and criminal law, and offers interdisciplinary accounts to explain how and why international court performance varies.

THERESA SQUATRITO is Assistant Professor/Lecturer in the Department of Politics at the University of Liverpool.

ORAN R. YOUNG is Professor Emeritus at the Bren School of Environmental Science and Management, University of California, Santa Barbara.

ANDREAS FOLLESDAL is Professor of Philosophy at the University of Oslo.

GEIR ULFSTEIN is Professor of Law at the University of Oslo.

Cambridge University Press
978-1-108-42569-8 — The Performance of International Courts and Tribunals
Edited by Theresa Squatrito, Oran Young, Andreas Follesdal, Geir Ulfstein
Frontmatter
[More Information](#)

STUDIES ON INTERNATIONAL COURTS AND TRIBUNALS

General Editors

Andreas Follesdal, University of Oslo
Geir Ulfstein, University of Oslo

Studies on International Courts and Tribunals contains theoretical and interdisciplinary scholarship on legal aspects as well as the legitimacy and effectiveness of international courts and tribunals.

Other Books in the Series:

Mads Andenas and Eirik Bjorge (eds.) *A Farewell to Fragmentation: Reassertion and Convergence in International Law*

Cecilia M. Bailliet and Nobuo Hayashi (eds.) *The Legitimacy of International Criminal Tribunals*

Amrei Müller with Hege Elisabeth Kjos (eds.) *Judicial Dialogue and Human Rights*

Harlan Grant Cohen and Andreas Follesdal (eds.) *Legitimacy and International Courts*

Robert Howse and Geir Ulfstein (eds.) *The Legitimacy of International Trade Courts and Tribunals*

THE PERFORMANCE
OF INTERNATIONAL
COURTS AND TRIBUNALS

Edited by

THERESA SQUATRITO

University of Liverpool

ORAN R. YOUNG

University of California, Santa Barbara

ANDREAS FOLLESDAL

University of Oslo

GEIR ULFSTEIN

University of Oslo



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
978-1-108-42569-8 — The Performance of International Courts and Tribunals
Edited by Theresa Squatrito, Oran Young, Andreas Føllesdal, Geir Ulfstein
Frontmatter
[More Information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
New Delhi – 110025, India
79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.
It furthers the University's mission by disseminating knowledge in the pursuit of
education, learning, and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781108425698
DOI: 10.1017/9781108348768

© Cambridge University Press 2018

This publication is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without the written
permission of Cambridge University Press.

First published 2018

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Squatrito, Theresa, editor. | Young, Oran R., editor. | Føllesdal, Andreas,
editor. | Ulfstein, Geir, 1951– editor.

Title: The performance of international courts and tribunals / edited by
Theresa Squatrito, University of Liverpool; Oran Young, University of California,
Santa Barbara; Andreas Føllesdal, University of Oslo; Geir Ulfstein,
University of Oslo.

Description: Cambridge [UK] ; New York, NY : Cambridge University Press,
2018. | Series: Studies on international courts and tribunals
Identifiers: LCCN 2017051170 | ISBN 9781108425698

Subjects: LCSH: International courts.

Classification: LCC KZ6250 .P45 2018 | DDC 341.5/5–dc23

LC record available at <https://lcn.loc.gov/2017051170>

ISBN 978-1-108-42569-8 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of
URLs for external or third-party internet websites referred to in this publication
and does not guarantee that any content on such websites is, or will remain,
accurate or appropriate.

CONTENTS

<i>List of Figures</i>	page vii
<i>List of Tables</i>	viii
<i>List of Maps</i>	ix
<i>List of Contributors</i>	x
<i>Acknowledgments</i>	xvi
<i>List of Abbreviations</i>	xvii

INTRODUCTION 1

- 1 A Framework for Evaluating the Performance of International Courts and Tribunals 3**
 THERESA SQUATRITO, ORAN R. YOUNG, ANDREAS FOLLESDAL, AND GEIR ULFSTEIN

PART I 37

- 2 Court Performance within the Multilateral Trade Regime 39**
 COSETTE D. CREAMER AND ANTON STREZHNEV
- 3 Performance of Investment Treaty Arbitration 77**
 DANIEL BEHN
- 4 Performance of Regional Human Rights Courts 114**
 DINAH SHELTON
- 5 Performance of International Criminal Courts and Tribunals 154**
 NOBUO HAYASHI

PART II 191

- 6 Assessing the International Criminal Court 193**
 HYERAN JO, MITCHELL RADTKE, AND BETH A. SIMMONS

- 7 How the Fragmentation of the International Judiciary Affects the Performance of International Judicial Bodies** 234
 BENJAMIN FAUDE
- 8 International Judicial Performances and the Performance of International Courts** 261
 JEFFREY L. DUNOFF AND MARK A. POLLACK
- 9 International Courts' Socialization Strategies for Actual and Perceived Performance** 288
 NICOLE DE SILVA
- 10 What Happens after a Judgment is Given? Judgment Compliance and the Performance of International Courts and Tribunals** 324
 CHIARA GIORGETTI
- 11 Problem-Solving Structure and International Courts and Tribunals: Lessons from the Study of International Regimes** 351
 STEINAR ANDRESEN
- PART III 371
- 12 Measurement and Methods: Opportunities for Future Research** 373
 THERESA SQUATRITO
- 13 What We Know So Far** 406
 ORAN R. YOUNG, THERESA SQUATRITO, ANDREAS FOLLESDAL, AND GEIR ULFSTEIN
- Index* 434

FIGURES

2.1	Dispute status by year	<i>page 45</i>	
3.1	IAs signed by year (1980–2017)	85	
3.2	ITAs initiated by year (1987–2017)	89	
3.3	Finally resolved ITA cases (1990–2017)	98	
3.4	Jurisdictional decisions in finally resolved cases (across time)	99	
3.5	Economic sector distribution for all registered ITA cases (1990–2017)	102	
3.6	ITA compensation ranges in USD (155 cases)	104	
3.7	Average length of ITA proceedings (in years)	110	
6.1	States parties to the ICC statutes	198	
6.2a	Ngrams: Relative references in university library holdings to the International Criminal Court versus the International Court of Justice	199	
6.2b	Ngrams: Relative references in university library holdings to various branches of international law (human rights, criminal, trade and investment)	199	
6.3	UN attention to ICC crimes: Number of United Nations General Assembly resolutions mentioning ICC crimes (1993–2013)	201	
6.4	Monthly count of civilian fatalities from LRA attacks (1997–2014)	215	
6.5	Monthly count of LRA attacks compared with number of battles (1997–2014)	221	
6.6	Internally displaced people in Uganda, 1999–2011 (in millions)	224	
9.1	IC reporting on socialization strategies	311	
9.2	IC reporting on internal and/or external socialization strategies	313	

TABLES

1.1	The performance of ICs	<i>page 14</i>	
2.1	Status of WTO disputes, as of December 31, 2014		46
3.1	Registered ITA cases by host and home state World Bank income groups	94	
6.1	ICC ratification and change in domestic crime statutes that reflect incorporation of ICC-consistent international criminal law		207
6.2	Major events for Lord's Resistance Army (1997–2014)		212
6.3	Intervention analysis on monthly count of logged civilian fatalities and LRA attacks (1997–2014)		219
6.4	Intervention analysis on different type of LRA attacks on civilians (1997–2014)		222
6.5	Intervention analysis on monthly count of logged civilian fatalities and LRA attacks within and outside of Acholi Region (1997–2007)		225
7.1	Interstate disputes handled by overlapping International Courts and Tribunals		239
9.1	IC socialization strategies		293
9.2	ICs' performance challenges and socialization strategies		310

MAPS

- 3.1 Most frequently invoked IIAs in ITA *page* 91
- 3.2 Most frequent respondent states in ITA 92
- 3.3 Most frequent investor home states in ITA 96

CONTRIBUTORS

STEINAR ANDRESEN is a political scientist from the University of Oslo, currently working as a research professor at the Fridtjof Nansen Institute in Norway where he has also been a research director. He has been a professor at the Department of Political Science, University of Oslo, and an adjunct professor at the PluriCourts Centre. He has been affiliated with a number of international research institutions including Princeton University and the Brookings Institution. He has published extensively internationally, including nine books, and has been a guest editor of several international journals. Most of his publications are on international environmental governance.

DANIEL BEHN is a Postdoctoral Research Fellow in International Dispute Settlement at the PluriCourts Centre, Faculty of Law, University of Oslo. His previous working experience includes legal practice in international arbitration and legal consultancy positions for institutions such as the World Bank. He is an associate editor for the *Journal of World Investment and Trade* and a member of Executive Council of the Yale Policy Sciences Society.

COSETTE D. CREAMER is the Benjamin E. Lippincott Chair in Political Economy and Assistant Professor in the Department of Political Science and Law School at the University of Minnesota. She holds a JD from Harvard Law School and a PhD from the Department of Government, Harvard University.

NICOLE DE SILVA is Assistant Professor of Political Science at Concordia University in Montreal. She was previously the IKEA Research Fellow in International Relations at the University of Oxford. Her research broadly focuses on international organizations and international law in regional and global governance. She is currently examining the politics of international courts, particularly in the areas

of human rights and international criminal justice. Her research on how international courts promote compliance with international law received the International Studies Association's Lawrence Finkelstein Award, and her study of African states' opposition to the International Criminal Court received the British International Studies Association's *African Affairs* Prize and the International Studies Association's Stephen C. Poe Award.

JEFFREY L. DUNOFF is Laura H. Carnell Professor at Temple University Beasley School of Law. His research and writing focus on public international law, international courts, international organizations, international regulatory regimes, including international trade law, and interdisciplinary approaches to international law. His publications include *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (coedited with Mark A. Pollack, Cambridge, 2012), and *Ruling the World?, Constitutionalism, International Law, and Global Governance* (coedited with Joel P. Trachtman, Cambridge, 2009). He is currently working with Mark Pollack on an interdisciplinary research project on international judicial practices.

BENJAMIN FAUDE is Senior Research Fellow in the Global Governance Department at the WZB Berlin Social Science Center. His research focuses on the implications of institutional overlap on global governance. After visiting scholarships at the University of California at Berkeley and the Vrije Universiteit, Brussels, he joined the WZB in 2011, coming from the University of Bamberg, where he held a grant from the DFG Training Group on "Markets and Social Systems in Europe" and earned a doctorate (*summa cum laude*). Faude has published his research in various international journals such as *The Review of International Organizations*, *Global Governance*, and *Global Environmental Politics*. Recently, he published his first book *Von Konkurrenz zu Arbeitsteilung: Komplexität und Dynamik im Zusammenspiel internationaler Institutionen* [From Competition to Division of Labor: Complexity and Dynamics in the Interplay of International Institutions]. Faude has taught at the University of Bamberg, at Free University Berlin, and at Charles University in Prague.

ANDREAS FOLLESDAL is Professor of Political Philosophy in the Faculty of Law at the University of Oslo. He is a codirector of the

PluriCourts Centre. He publishes in the field of political philosophy, mainly on issues of international political theory, globalization/Europeanization, human rights, and socially responsible investing.

CHIARA GIORGETTI is Associate Professor of Law at Richmond Law School. She teaches and writes in the areas of public international law, international arbitration, international dispute resolution, and state failure and fragility. Her scholarship has appeared in the *American Journal of International Law*, the *Columbia Journal of Transnational Law*, and the *University of Pennsylvania Journal of International Law*. Professor Giorgetti is a member of the Executive Council and Executive Committee of the American Society of International Law. She is a codirector of Studies of the American Branch of the International Law Association, a member of the board of the International Law Students Association, and a Vice-Chair of the Academic Council of the Institute for Transnational Arbitration. Prior to joining the Richmond Law faculty in 2012, Professor Giorgetti practiced international arbitration in Washington, DC, and Geneva, Switzerland, and worked extensively with the United Nations in New York and Somalia. Professor Giorgetti clerked at the International Court of Justice in The Hague. She holds an LLM and JSD from Yale Law School, an MSc from the London School of Economics, and a Law Degree (Laurea) from Bologna University.

NOBUO HAYASHI specializes in the law of armed conflict, international criminal law, and public international law. His most significant works cover military necessity, threat of force, and the law and ethics of nuclear weapons. He has over seventeen years of experience performing advanced research, advising international prosecutors, authoring court submissions, teaching at universities, and publishing scholarly articles in the aforementioned areas as well as other related fields. Major positions he has held include: Senior Legal Advisor, International Law and Policy Institute; Visiting Lecturer, UN Interregional Crime and Justice Research Institute; Researcher, PluriCourts, Faculty of Law, University of Oslo; Visiting Professor, International University of Japan; Researcher, Peace Research Institute Oslo; Legal Advisor, Norwegian Centre for Human Rights; Legal Officer, Prosecutions Division, Office of the Prosecutor (OTP); International Criminal Tribunal for the Former Yugoslavia (ICTY); and Associate Legal Officer, ICTY OTP Legal Advisory Section.

LIST OF CONTRIBUTORS

xiii

HYERAN JO is Associate Professor of Political Science at Texas A&M University. She is the author of *Compliant Rebels: Rebel Groups and International Law in World Politics* (Cambridge, 2015). Her other works appeared in *International Organization*, *British Journal of Political Science*, *Journal of Conflict Resolution*, as well as in several edited volumes. She studies international institutions and international law, focusing on the role of international involvement in conflict zones around the world.

MARK A. POLLACK is Professor of Political Science and Law, Jean Monnet Chair, and Director of Global Studies at Temple University, where he conducts research on international law and international relations and on the European Union. He has published widely on these subjects, including most recently *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (coedited with Jeffrey L. Dunoff, Cambridge, 2013), and *Who Supports International Law, and Why? The United States, the European Union, and the International Legal Order*, a special issue of the *International Journal of Constitutional Law* (Vol. 13, No. 4, 2015). He is currently working on a project, with Jeffrey L. Dunoff, on international judicial practices.

MITCHELL RADTKE is a Visiting Assistant Professor at St. Olaf College. His research interests include international conflict, autocratic decision-making, economic sanctions, and international intervention. His dissertation focused on the effect of cronyism and nepotism on autocracies' conflict behavior. He has recently published in *International Studies Quarterly*.

DINAH SHELTON is the Manatt/Ahn Professor Emeritus at the George Washington University Law School. She served as a member of the Inter-American Human Rights Commission (2010–2014) and in 2010 she was president of the Commission. Professor Shelton is the author of three prize-winning books, *Protecting Human Rights in the Americas* (coauthored with Thomas Buergenthal), *Remedies in International Human Rights Law*, and the three-volume *Encyclopedia of Genocide and Crimes against Humanity*. She has also authored other articles and books on international law, human rights law, and international environmental law. Professor Shelton is a member of the board of editors of the *American Journal of International Law*. She has served as a legal consultant to international organizations and is on the board of

numerous human rights and environmental organizations. In 2006, Professor Shelton was awarded the Elisabeth Haub Prize for Environmental Law and, in 2013, she received the Goler Butcher Prize in Human Rights. She was conferred the degree of doctor *honoris causa* at the University of Stockholm in 2012 and the Pazmany Peter Catholic University of Budapest in 2014.

BETH A. SIMMONS is Andrea Mitchell University Professor of Law, Political Science and Business Ethics at the University of Pennsylvania. She received her PhD from Harvard University in the Department of Government, and she researches and teaches international relations, international law, and international political economy. She has held positions at Duke University, the University of California at Berkeley, and Harvard University. Her current areas of research include improving international human rights, the effects of rankings systems on state policy choices, and the thickening of international borders despite globalization. Two of her most prominent prize-winning books are *Who Adjusts? Domestic Sources of Foreign Economic Policy During the Interwar Years* (2004) and *Mobilizing for Human Rights: International Law in Domestic Politics* (2009). She has been elected to the National Academy of Sciences, the American Academy of Arts and Sciences, and the American Philosophical Society.

THERESA SQUATRITO is Assistant Professor/Lecturer in Politics and International Relations in the Department of Politics at the University of Liverpool. She was previously a postdoctoral research fellow at the PluriCourts Centre at the University of Oslo and with the Transdemos Program at Stockholm University. She has a PhD in political science from the University of Washington, Seattle. Her research focuses on international institutions, including international law, international organizations, and international courts. She is a coauthor of *The Opening Up of International Organizations: Transnational Access in Global Governance*. Her research has appeared in several internationally recognized journals, including *International Organization*, *The Review of International Organizations*, and *The Review of International Studies*.

ANTON STREZHNEV is a PhD Candidate in the Department of Government at Harvard University. His research focuses on the political economy of law and the governance of international trade and investment with an emphasis on investor-state dispute resolution.

LIST OF CONTRIBUTORS

XV

GEIR ULFSTEIN is Professor of International Law at the Department of Public and International Law, University of Oslo and a codirector of PluriCourts Centre at the University of Oslo. He has published in different areas of international law, including the law of the sea, international environmental law, international human rights, and international institutional law.

ORAN R. YOUNG is Professor Emeritus in the Bren School of Environmental Science and Management at the University of California (Santa Barbara). His theoretical work deals with the role of social institutions as steering mechanisms developed to solve a variety of societal problems and to guide societies toward the achievement of desired outcomes. He is closely associated with the rise of the concept of governance as a social function in contrast to government as an assemblage of organizations that often play important roles in fulfilling needs for governance. His applied work deals with issues of governance pertaining to the oceans, atmospheric issues including climate change, and the polar regions.

ACKNOWLEDGMENTS

This volume emerged from a stimulating exchange maintained over several workshops. We thank participants at two workshops on the effectiveness and performance of international courts and tribunals, at Harvard University and Temple University, for the insightful comments. In addition to the contributors of this book, participants included Karen Alter, Bill Burke White, Xinyuan Dai, Meg deGuzman, Larry Helfer, Jaya Ramji-Nogales, Ruth Mackenzie, Kathryn Sikkink, Jonas Tallberg, Joel Trachtman, and Erik Voeten. We thank the Weatherhead Center for International Affairs at Harvard and the Law School at Temple for generously hosting these workshops. Earlier drafts of the Introduction were presented at the 2015 Annual Convention of the International Studies Association, the 2015 General Conference of the European Consortium for Political Research, and the 2015 Annual Meeting of the American Political Science Association. We are grateful to Tana Johnson, Ronny Patz, and Carmela Lutmar for their remarks as discussants. Both the research and the workshops were supported in part by the Research Council of Norway through its Centres of Excellence Funding Scheme, project number 223274 – PluriCourts: The Legitimacy of the International Judiciary. We thank our colleagues at PluriCourts at the University of Oslo and participants at the 2015 PluriCourts Annual Conference for their comments. We are grateful for research assistance by Annette Hovdal, Claire Poppelwell-Scevak, and Eirik Torsvoll.

ABBREVIATIONS

AB	Appellate Body
ACLED	Armed Conflict and Location Event Data
ACWL	Advisory Centre on WTO Law
AD	Anti-dumping
AfCHPR	African Court of Human and Peoples' Rights
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
ASP	Assembly of States Parties
ATJ	Andean Tribunal of Justice
AU	African Union
AUC	Autodefensas Unidas de Colombia
BiH	Bosnia and Herzegovina
BIT	Bilateral investment treaty
CACM	Central American Common Market
CAFTA-DR	Dominican Republic-Central American Free Trade Agreement
CAR	Central African Republic
CETA	EU-Canada FTA
CCJ	Caribbean Court of Justice
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CoM	Committee of Ministers
CRCICA	Cairo Regional Centre for International Commercial Arbitration
CVD	Countervailing duty
DRC	Democratic Republic of Congo
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
DSS	Dispute Settlement system
DSU	Dispute Settlement Understanding
EACJ	East African Court of Justice
EC	European Community
ECCJ	ECOWAS Court of Justice
ECHR	European Convention on Human Rights
ECJ	European Court of Justice

ECOWAS	Economic Community of West African States
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EFTA	European Free Trade Area
ERG	Expert Review Group
EU	European Union
FDI	Foreign direct investment
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HRWR	Human Rights Watch's World Report
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
IC	International courts and tribunals
ICC	International Criminal Court
ICJ	International Court of Justice
ICL	International criminal law
ICSID	International Center for the Settlement of Investment Disputes
ICT	International criminal tribunal
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced persons
IHL	International humanitarian law
IIA	International investment agreement
IL	International law
IO	International organization
IR	International relations
ISDS	Investor-state dispute settlement
ITA	Investment treaty arbitration
ITC	International Trade Commission
ITLOS	International Tribunal for the Law of the Sea
IUSCT	Iran-US Claims Tribunal
LCIA	London Court of International Arbitration
LR	Literature review
LRA	Lord's Resistance Army
MA	Meta-analysis
MAS	Mutually Accepted Solution
MCCI	Moscow Chamber of Commerce and Industry
Mercosur	Common Market of the South
MICT	UN Mechanism for International Criminal Tribunals
NAFTA	North American Free Trade Agreement
NIEO	New international economic order

LIST OF ABBREVIATIONS

xix

NGO	Non-governmental organization
NRA	National Resistance Army
OAS	Organization of American States
OIC	Organization of the Islamic Conference
OSPAR	Protection of the Marine Environment of the North-East Atlantic
OTP	Office of the Prosecutor
PCA	Permanent Court of Arbitration
PITAD	PluriCourts Investment Treaty and Arbitration Database
PSNR	Permanent sovereignty over natural resources
PTA	Preferential trade agreement
PTS	Political Terror Scale
QCA	Qualitative Comparative Analysis
RPE	Rules of Procedure and Evidence
RPT	Reasonable period of time
RTA	Regional trade agreements
SADC	Southern African Development Community
SCC	Stockholm Chamber of Commerce
SCSL	Special Court for Sierra Leone
SLA	Softwood Lumber Agreement
SPLM/A	Sudan People's Liberation Movement/Army
SPS	Sanitary and phytosanitary
STL	Special Tribunal for Lebanon
TEC	Treaty Establishing the European Community
TTIP	Trans-Atlantic Trade and Investment Partnership
UNCC	United Nations Compensation Commission
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade Development
UNLA	Uganda National Liberation Army
USTR	US Trade Representative
WJP	World Justice Project
WTO	World Trade Organization

Cambridge University Press
978-1-108-42569-8 — The Performance of International Courts and Tribunals
Edited by Theresa Squatrito , Oran Young , Andreas Follesdal , Geir Ulfstein
Frontmatter
[More Information](#)
