Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law 20

Ruiz Fabri | Nunes Chaib | Venzke | von Bogdandy (eds.)

International Judicial Legitimacy

New Voices and Approaches



Nomos

Max Planck Institute LUXEMBOURG for Procedural Law

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Studies of the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law

edited by
Prof. Dr. Dres. h.c. Burkhard Hess
Prof. Dr. Hélène Ruiz Fabri

Volume 20

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Hélène Ruiz Fabri | André Nunes Chaib | Ingo Venzke
Armin von Bogdandy (eds.)

International Judicial Legitimacy

New Voices and Approaches

Nomos

Max Planck Institute
LUXEMBOURG
for Procedural Law

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Coverpicture:
Title: Surreal faces in clouds | Image ID: 67247012
Media Type: Stock Photo | Copyright: Bruce Rolff

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at http://dnb.d-nb.de

ISBN 978-3-8487-6762-5 (Print)
978-3-7489-0866-1 (ePDF)

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-6762-5 (Print)
978-3-7489-0866-1 (ePDF)

Library of Congress Cataloging-in-Publication Data
Ruiz Fabri, Hélène / Nunes Chaib, André / Venzke, Ingo / Bogdandy, Armin von
International Judicial Legitimacy
New Voices and Approaches
Hélène Ruiz Fabri / André Nunes Chaib / Ingo Venzke / Armin von Bogdandy (eds.)
300 pp.
Includes bibliographic references and index.

ISBN 978-3-8487-6762-5 (Print)
978-3-7489-0866-1 (ePDF)

1st Edition 2020

© The Authors

Published by
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3-5 | 76530 Baden-Baden
www.nomos.de

Production of the printed version:
Nomos Verlagsgesellschaft mbH & Co. KG
Waldseestraße 3-5 | 76530 Baden-Baden

Printed and bound in Germany.

ISBN (Print): 978-3-8487-6762-5
ISBN (ePDF): 978-3-7489-0866-1

DOI: https://doi.org/10.5771/9783748908661

This work is licensed under a Creative Commons Attribution – Non Commercial – No Derivations 4.0 International License.

Onlineversion
Nomos eLibrary

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Preface

This book is the outcome of two workshops, mostly between members of the Max Planck Institutes from Heidelberg and Luxembourg (April 2015 and September 2015), in which they reacted to the publication "*In Whose Name? A Public Law Theory of International Adjudication*" by two of the editors. Following the workshops, the outcomes of our inter-institutional discussions were taken further in writing. Generally speaking, the topic of our discussions was not all-together new, to be sure. The legitimacy of international institutions, more specifically international courts, to conduct their business has been scrutinized for quite a while. However, our volume is particularly interesting because it showcases a variety of new approaches, mostly from younger scholars, on how to tackle the issue.

Initially, our discussions and texts on the legitimacy of international courts were framed as a direct reaction to arguments put forward in the book "*In Whose Name?*". The subjects ranged from a comparison between international organizations and international courts and how they can contribute to democratize international law to assessing the democratic legitimacy of international human rights courts.

As our debate progressed, a variety of different approaches to international judicial legitimacy emerged. Certain issues became central points treated across all chapters in this volume. At first, the present volume may seem like just another attempt to raise questions about the legitimacy and authority of international courts, but in fact it goes beyond that. Not only are we looking at the theoretical foundations of authority as a concept informing political action, but also as an analytical category, and how it has been employed in different ways by authors and scholars in the various social sciences. We are also looking at how such a concept allows one to properly gauge the very elements that justify the legitimacy of international courts. Considering the difference between the texts, a decision was made to extend the scope of the edited volume and include contributions that do not necessarily respond directly to *In Whose Name?*, but that rather discuss its general topic of the legitimacy of international courts. This allowed for the identification of a few lacunae in the treatment of such courts and a number of younger authors were invited to contribute to the volume.

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

The focus of the project also changed over time. Instead of remaining a simple reaction to *In Whose Name?*, it became an opportunity to debate and elaborate on the potential justifications for the legitimacy of specific international courts; and also to investigate how, given the importance of issues being dealt with by international courts, particular elements of legitimacy ought to be brought into discussion. The result was an astonishing collection dealing with both theoretical and practical questions regarding the legitimacy of international courts and how such problems relate to fundamental problems of our times.

Armin von Bogdandy, Heidelberg,
André Nunes Chaib, Maastricht,
Hélène Ruiz Fabri, Luxemburg,
Ingo Venzke, Amsterdam

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Table of Contents

Introduction 9
Prof. Hélène Ruiz Fabri / Dr André Nunes Chaib

Democratic Legitimacy and Non-Majoritarian Institutions: Reflections on the Functional and Democratic Legitimacy of International Adjudicative Bodies and Independent Regulatory Agencies 19
Alain Zamaria

In Nobody's Name: A Checks and Balances Approach to International Judicial Independence 45
Aida Torres Pérez

Not in the Name of the "Other": The Democratic Concept of International Adjudication through the Looking Glass 71
Parvathi Menon

Courtspeak: A Method to Read the Argumentative Structure Employed by the International Court of Justice in its Judgments and Advisory Opinions 91
Lorenzo Gasbarri

International Public Authority in Perspective: Comparing the Roles of Courts and International Organizations in Democratizing International Law 109
André Nunes Chaib

The Dispute Settlement Function of the International Court of Justice in *Croatia v. Serbia* 129
Cecily Rose

The Public Authority of the International Tribunal for the Law of the Sea 147
Lan Ngoc Nguyen

https://www.nomos-shop.de/isbn/978-3-8487-6762-5

Not in My Name! Claudia Pechstein and the Post-Consensual Foundations of the Court of Arbitration for Sport 169
Antoine Duval

Re-Imagined Communities: The WTO Appellate Body and the Communitization of WTO Law 203
Geraldo Vidigal

The Democracy We Want: Standards of Review and Democratic Embeddedness at the Inter-American Court of Human Rights 227
Rene Urueña

In the name of the European Union, the Member States and/or the European citizens? 249
Freya Clausen

In the Name of the European Club of Liberal Democracies: On the Identity, Mandate and National Buffering of the ECtHR's Case Law 271
Armin von Bogdandy / Laura Hering