The African Union's Mediation

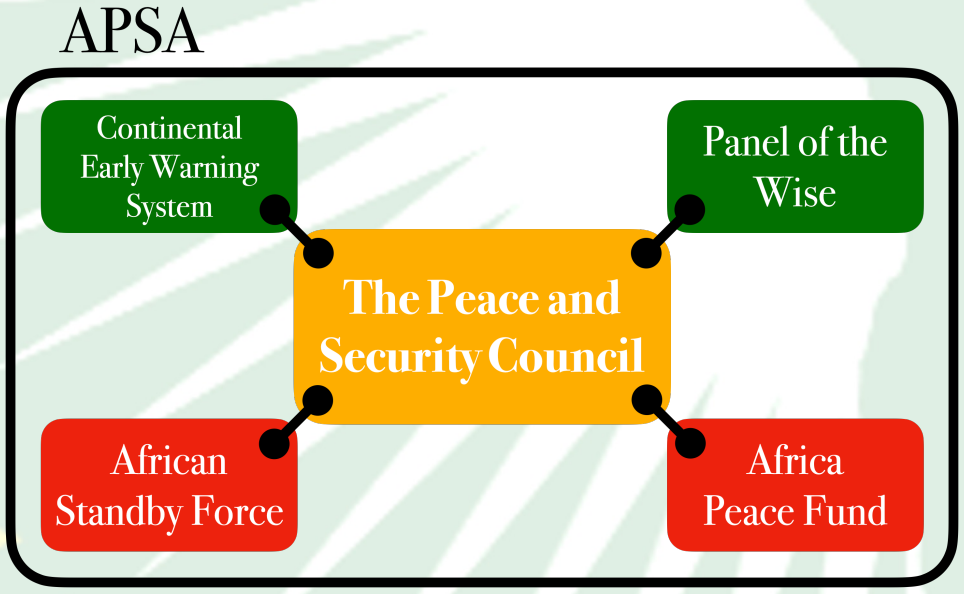
Legal and Empirical Dimensions

Research Interest

The African Union (AU) has a formal commitment to conflict prevention and dispute settlement. Bringing together all 55 African States, the AU established a broad institutional structure for peace and security known as the African Peace and Security Architecture (APSA).

The AU opts for mediation as the primary form of non-adjudicative dispute settlement under various circumstances, including inter-State and intra-State conflicts.

Therefore, AU mediation is the litmus test of the organization's ability to handle complex political and security challenges.



Yet, conflict mediation under the AU received criticism. Some scholars contend that the AU mediation compromises democracy and overlooks long-term consequences.

Further questions arise: How is the mediation procedure initiated? What is the institutional framework for mediation within the AU structure? Who is the mediator? And how is implementation monitored?

Methodology

The thesis primarily conducts empirical research to examine the mediation procedures under the auspices of the AU and assesses their effectiveness in settling African disputes.

In general terms, the thesis comprises both descriptive and normative comparative methodologies. The descriptive part assesses legal norms within the AU, whilst the normative methodology aims to study traditional African characteristics of mediation found within the domestic laws of AU Member States and whether they can be incorporated into the AU manual on mediation.

The case studies chosen are the mediations in Libya, Somalia. Sudan, and the Grand Renaissance Dam Dispute between Sudan, Egypt and Ethiopia.

Provisional Findings

There are shortcomings in the legal structure of the AU, as exemplified by case studies where the AU was the responsible organ for mediation.

The Grand Renaissance Dam

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Recognition and Enforcement of Civil and Commercial Judgments in Domestic Private International Law

The Case of the Netherlands

Background

Article 431(1) of the Dutch Code of Civil Procedure (DCCP) prohibits enforcement of non-EU judgments not covered by a treaty to which the Netherlands is a party ("third state judgments").

Article 431(2) DCCP states that the dispute as settled by a third state court can be dealt with and decided again by the Dutch court.

In 2014, the Dutch Supreme Court, in the *Gazprombank* case, clarified the conditions under which third state judgments can be recognised and subsequently enforced as Dutch judgments via an Article 431(2) DCCP procedure.

Methodology

I will first examine the current Dutch legal regime for recognition and enforcement in the light of the evolving case law.

I will next survey recognition and enforcement as regulated by supranational and international instruments, as well as in England and Wales, Germany and France.

Finally, I will bring together those analyses in a comparative framework with a view to discuss and clarify the rationale(s) of recognition and enforcement under Dutch private international law.

Relevance

According to Ten Wolde *et al.* (2017), the principles underlying recognition and enforcement of third state judgments in the Netherlands remain unclear.

In April 2022, the Court of Justice of the EU, in the *H Limited* case, ruled that merger judgments are judgments in the sense of Article 2(a) of the Brussels I-*bis* Regulation and enforceable in other Member States with the possibility of refusal based on the grounds set in Article 45 Brussels I-*bis*.

Research question

To what extent should third states' civil and commercial judgments be recognised and enforced in the Netherlands?

Preliminary Results

- Trust in the sound administration of justice in third states is not the basis of recognition and enforcement.
- The purpose of a recognition and enforcement regime is to give effect to parties' rights as judicially determined abroad, without letting faulty judgments enter the domestic legal system.
- Principles governing recognition and enforcement are ultimately sovereignty and legal certainty.
- Sovereignty and legal certainty may stand in tension and should be reconciled within a novel, more transparent and predictable legal regime.
- Exequatur is preferable to merger judgments.

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Adaptation of 'Unknown' Orders and Measures in Intra-EU Enforcement of Civil and Commercial Judgments

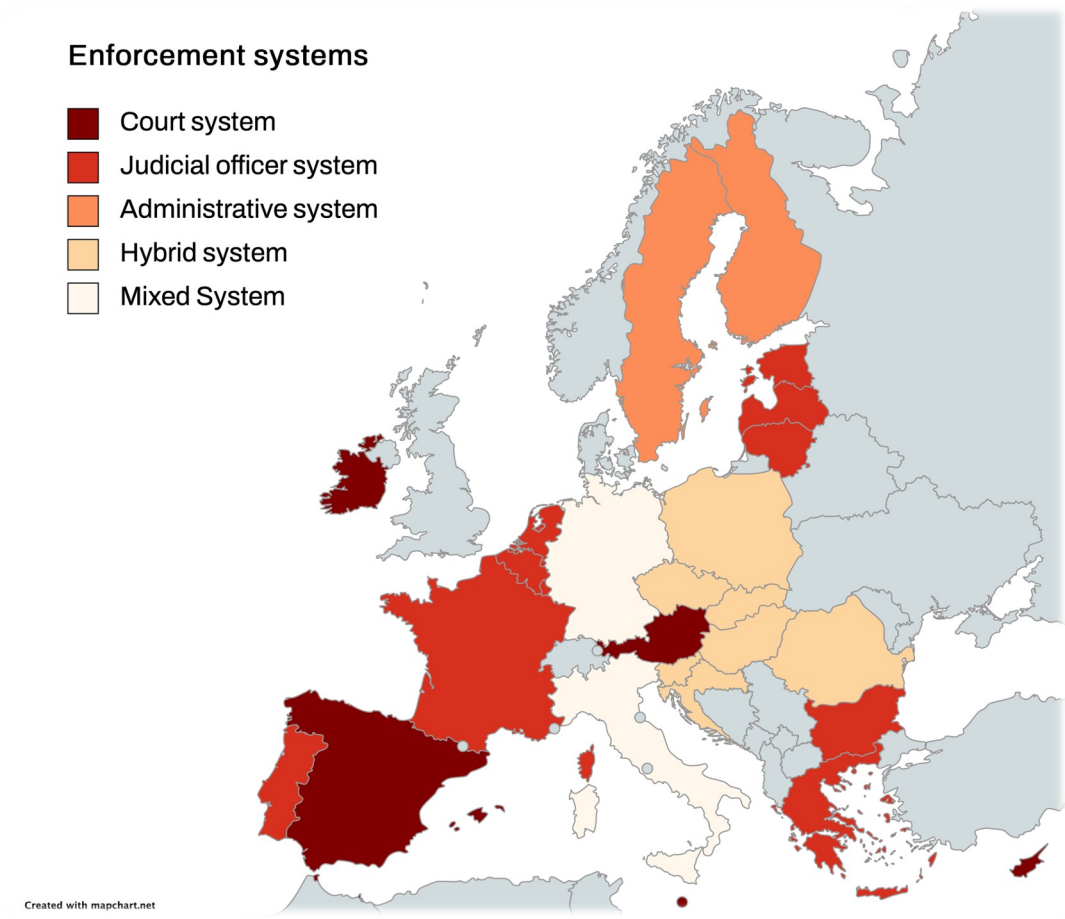
Research Interest

Under the Brussels I-*bis* Regulation, the procedural law of the Member State of enforcement determines the means and methods available for the execution of judgments, which vary across the Member States.

Measures and orders that are not known to the law of the Member State of enforcement raise therefore special difficulties and, pursuant to Article 54 I-*bis*, must be adapted to equivalent measures or orders.

Each Member States determines by whom and how such adaptation must be carried out (Recital 28 Brussels I-*bis*).

The obligation to adapt 'unknown' measures and orders may fall on national enforcement authorities other than courts, depending on the applicable enforcement system, as shown in the map.



Despite its practical importance for the day-to-day administration of justice, the implementation and application of Article 54 Brussels I-*bis* in the Member States still await thorough investigation.

Research Questions

My research focuses on the implementation and application of the 'adaptation rule' in Article 54 Brussels I-*bis*, asking the following questions:

- What is the rule's function?
- How did the Member States implement it in their respective legal systems?
- How do the competent national authorities apply it?
- Does diversity across the Member States' enforcement systems contribute to explain national differences in the implementation and application of the rule?
- To what extent does such diversity undermine the effective enforcement of judgments?

Methodology

My research relies on and integrates different methodologies:

- Identifying the adaptation rule's function and mapping its implementation requires a **doctrinal approach**.
- Examining the application of the rule calls for **empirical research**, i.e. surveys and interviews, as adaptation decisions may emanate from authorities other than the courts and remain unpublished.
- Assessing the interplay between implementation and application of the rule, as well as its implications for the effective cross-border enforcement of judgment, requires **comparative and normative evaluation**.

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Strategic Litigation before the CJEU

Towards a New Legal Framework?

Strategic litigation (SL) is an expanding phenomenon: a growing number of NGOs, public bodies and individuals take action before court to foster collective interests and fundamental rights protection.

While social sciences largely developed the notion of legal mobilisation, legal science leaves this field underexplored. This thesis aims firstly to fill this gap.

I. What is Strategic Litigation?

Many answers, little clarity

My PhD thesis will deal with key defining issues, formally and substantively.

Taxonomy of Strategic Litigation

Literature and practitioners adopt a wide variety of expressions when referring to SL. My thesis will map them and bring clarity to SL terminology.

Literature lacks a common understanding of SL, resulting in countless notions. My thesis will lay out characteristics of SL in the European context.

Research Question 1:

A Special Framework for Strategic Litigation in the EU legal system?

II. Strategic Litigation and EU Litigation Law

The EU is expanding the scope of its legislation in core fields of public interest. Thus, more and more strategic cases fall under the scope of EU law and come before the CJEU.
My PhD project will look into the CJEU's approaches to SL, via two case studies.

Case study 1: Rule of Law Litigation

Judicial independence cases and EU's own rule of law and litigation.

Case study 2: Digital Sphere Litigation

Litigation in the field of digital rights and platforms (e.g. DSA, DMA, GDPR).

Research Question 2:

How to accommodate Strategic Litigation in current or reformed EU litigation law?

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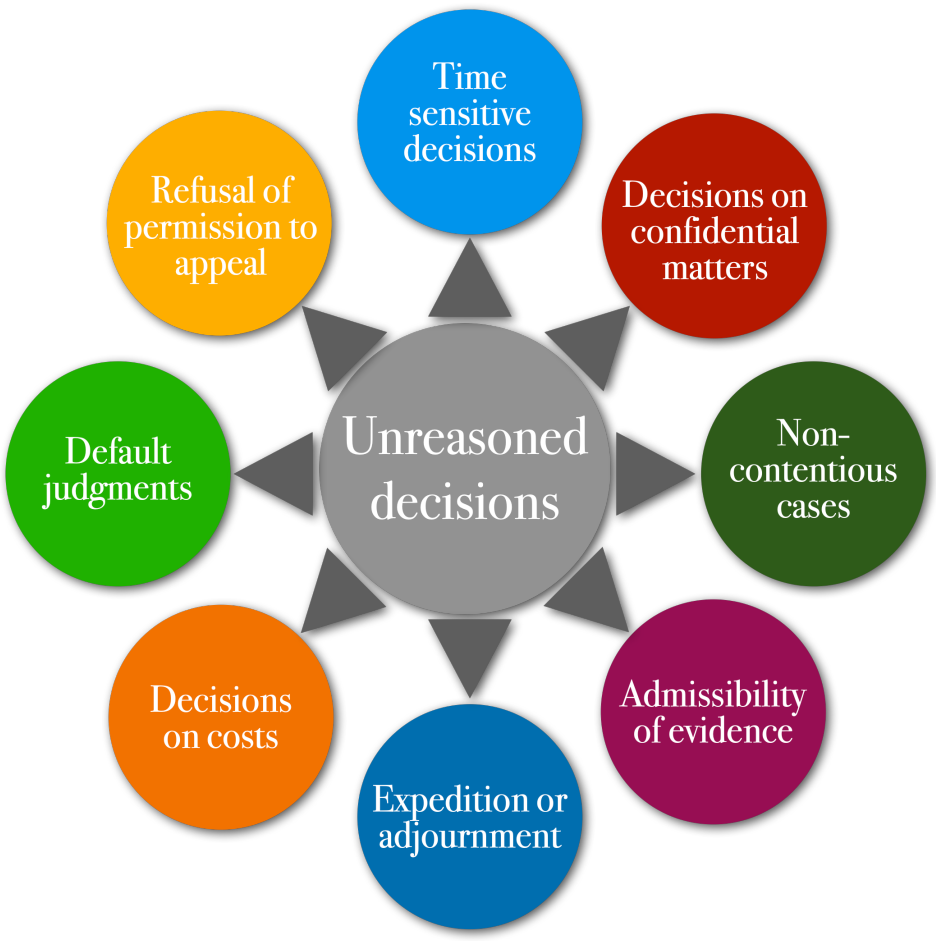
In Search of Reasons

Unreasoned Decisions in Civil Proceedings in Germany and England

Research Interest

Even though German and English legal scholarship agree on the advantages of reason giving in terms of accountability and acceptability, a legally enforceable judicial duty to give reasons only developed in Germany. However, German and English courts increasingly refrain from giving reasons, either because a statute compels them to or by development of judicial practice.

In civil proceedings, this tendency can be observed in similar types of decisions or under similar circumstances of the case, as shown in the diagram.



A common justification for unreasoned decisions is efficiency of legal proceedings and the legal system more generally. This, however, is only part of the picture.

My research focuses on explanations *other than efficiency* for the courts' practice not to give reasons for certain kinds of decisions or in given circumstances. It looks for them in constitutional values that may plausibly justify the abstention from giving reasons.

Research Question

In civil proceedings in Germany and England, which judicial decisions need not be reasoned? In particular, should refusal of permission to appeal, pronounced by either the *Bundesgerichtshof* or the UK Supreme Court, be one such decision?

Bundesgerichtshof

THE SUPREME COURT

Structure of the Thesis

Part I	What constitutes a reason?
	Why did a duty to give reasons emerge in Germany but not in England?
Part II	What are reasons for not giving reasons?
	Why are certain kinds of decisions or factual scenarios exempt from reason-giving?
Part III	To what extent do the English and German permission to appeal differ?
	Should the *BGH* and the UKSC give reasons as they refuse permission to appeal?

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Procedural Truth

Establishing facts in civil proceedings in Germany and the US

Research Interest

In **Germany**, the aim of civil proceedings is commonly considered to be the settlement of the dispute at hand. To do so, it is sufficient to assume that the facts as alleged by the parties are true for the purpose of the proceedings. The aim of civil proceedings being dispute resolution as opposed to striving for substantive truth, less extensive evidence-taking suffices in case of disputed facts.

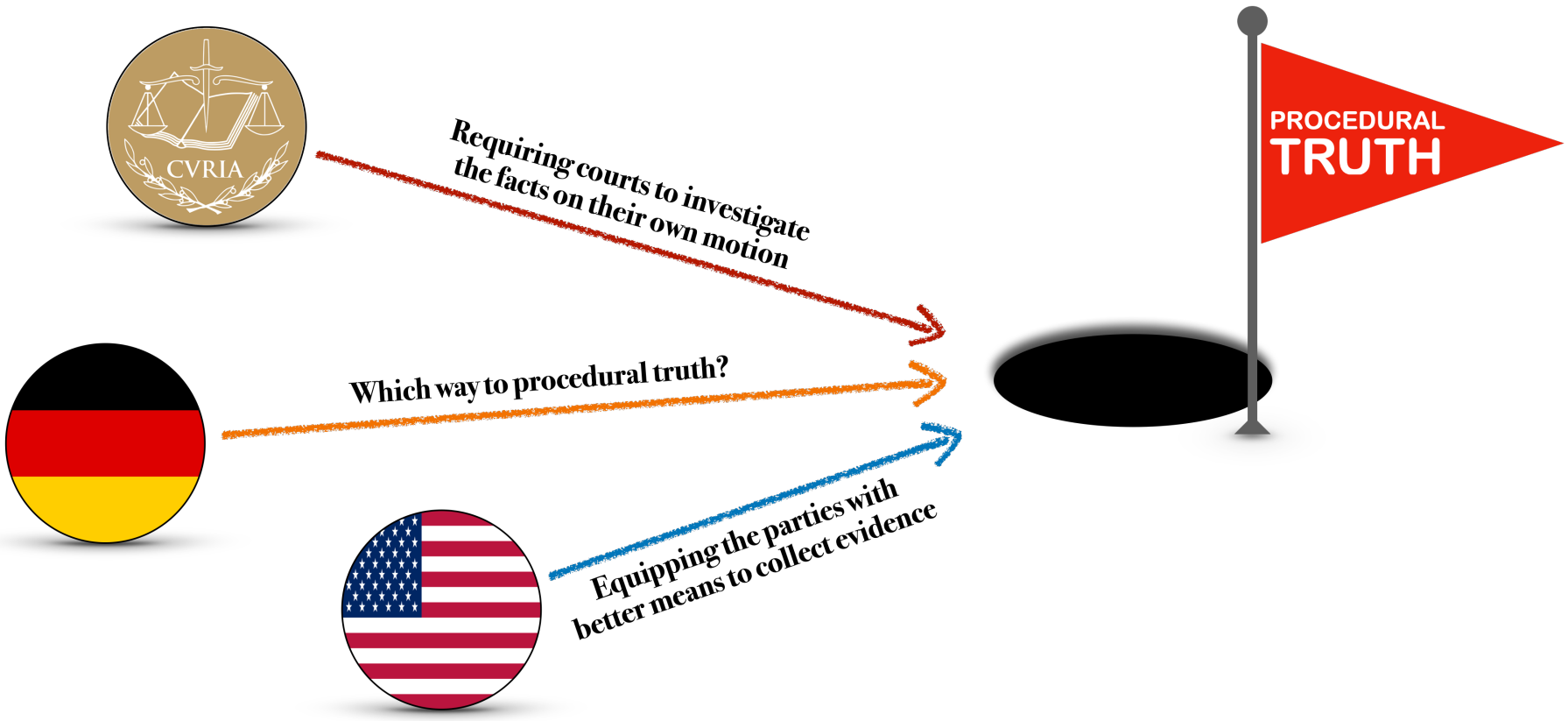
In **United States**, justice is not done unless the facts of the case, as laid out before the court, reflect reality as accurately as possible. To achieve this goal, procedural law in the US provides for far-reaching measures to facilitate the gathering of evidence by the parties, especially at the stage of pre-trial-discovery.

Recently, the **European Court of Justice** ruled in several consumer cases, e.g. in *Profi Credit Polska*, that courts might be obliged to investigate facts on their own motion. This could lead to a change in the concept of 'procedural truth' both in the EU and in Germany.

These differing approaches to 'procedural truth' invite a comparative analysis embracing US law and German law, as embedded in the wider context of EU law.

Research Questions

- How does procedural truth differ from substantive truth?
- Is striving for substantive truth in civil proceedings a feasible and sensible goal?
- How and why do approaches to establishing facts in civil proceedings differ, with special reference to the US and Germany?
- Do such different approaches impact on the extent to which the parties or the public accept a judgment?
- Is it justified to devote more time and resources to fact-finding in certain types of cases, e.g., in cases of public interest?
- Is court-driven fact-finding justified to compensate for asymmetries between the parties?
- How much – if at all – do the CJEU's rulings in consumer cases affect the understanding of 'procedural truth' in Germany?



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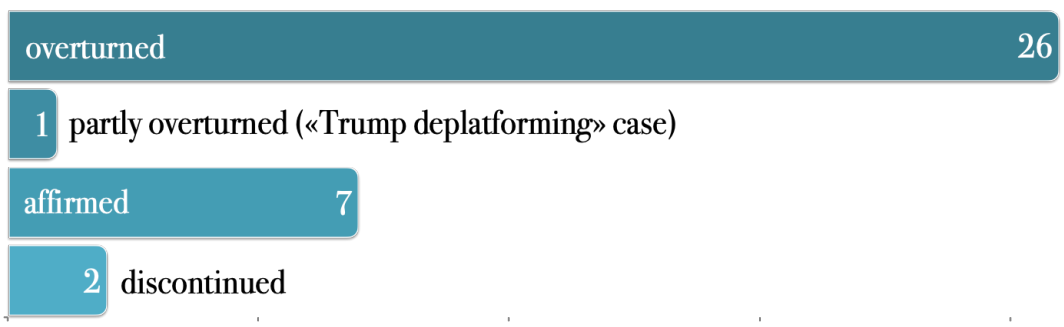
Meta's Oversight Board

A Global Human Rights Institution in the Making

Background

The Oversight Board is a court-like body deciding on permissible speech on Facebook and Instagram, in operation since October 2020. Its functioning is ensured by an irrevocable grant by Meta whose size is comparable to that of the International Court of Justice's budget.

The Board receives about 1 million appeals per year and handles them by means of AI-powered certiorari. The Board's decisions bind Facebook. So far, the Board overturned Meta's decisions in more than 75% of the cases.



Since 2019, I closely followed the making of Board, its workings and output. Those investigations led me to three interrelated theoretical claims on the Board's nature, function, and prospects.

A Global Institution

To enable the Board's operation, Meta first set up a Trust under Delaware law. The Trust created a Limited Liability Company that gives the Board administrative support and enters into service contracts with individual Board members. However, the Board *itself* lacks legal personality under US law (unlike, e.g., the ICANN).

Such complex private law structure forms the substratum of a custom-based global institution. This claim rests on the following assumption: silence about an entity's legal-system membership - a Board's feature - implies global law membership if matched by a credible claim to global significance (*not* legitimacy) couched in the language of law.

Chasing Global Legal Particles: Some Guesswork about the Nature of Meta's Oversight Board (EJIL:Talk! 2021)

A Human Rights Body

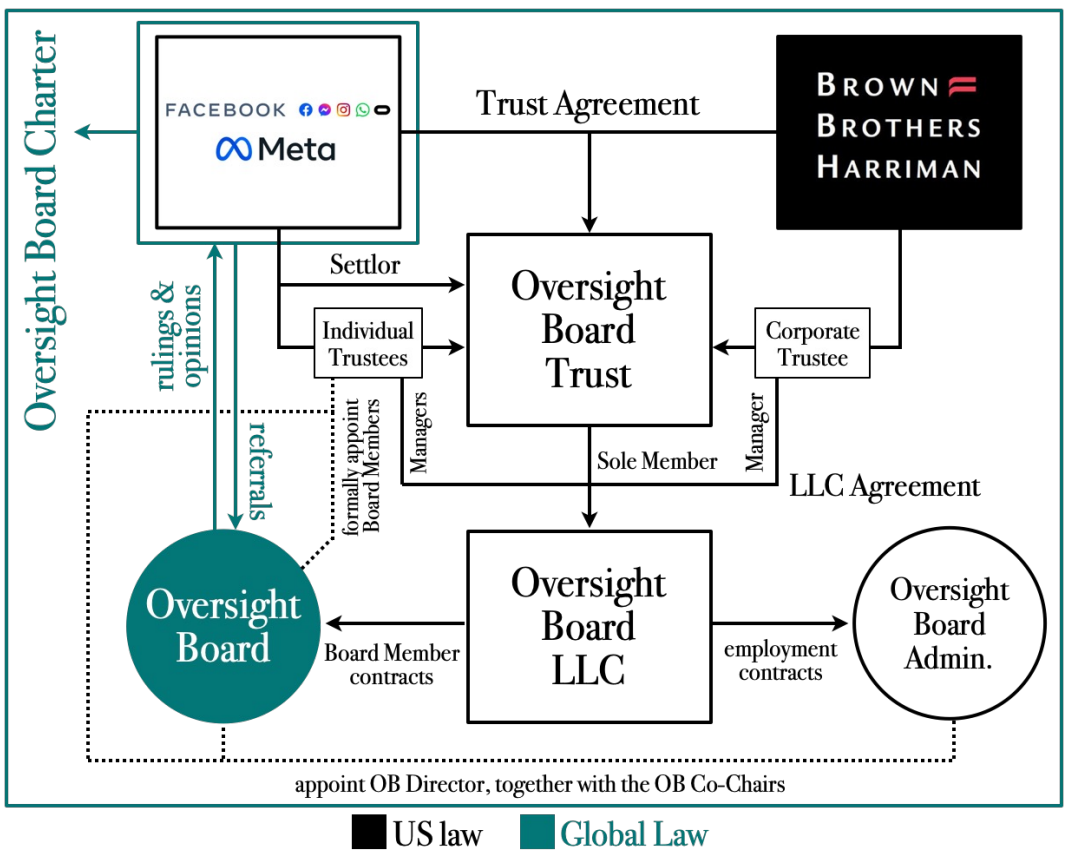
In the consultation process prior to the establishment of the Board, Facebook pushed back against suggestions to give prominence to international human rights. However, the Board single-mindedly turned human rights into the touchstone of Meta's performance as enforcer and *maker* of online speech rules.

Constitutional Review via the Oversight Board, or Platform Governance's *Marbury v Madison* (Verfassungsblog 2021)

An Expanding Jurisdiction?

The Trust Agreement expressly provide for the possibility of extending the Board's jurisdiction to other social media providers, limiting it for now to US companies. However, since the Board operates under global law, interested providers, like Twitter or TikTok, could grant it additional jurisdiction and corresponding resources under that law, without Meta's consent.

Twitter Complaint Hotline Operator: Will Twitter Join Meta's Oversight Board? (Verfassungsblog 2022)



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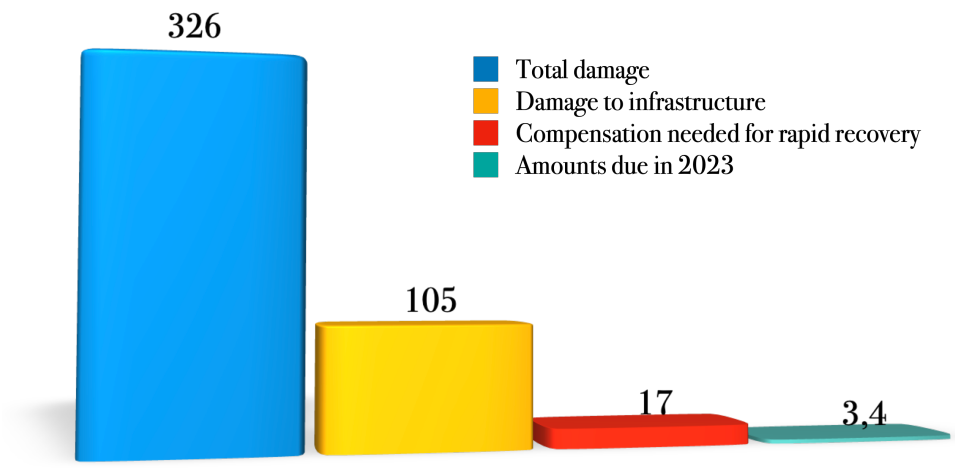
Compensating for Damage Caused by Russia's Illegal Acts on Ukrainian Territory

International and Domestic Remedies

Background

On 24 February 2022, Russia started a war of aggression against Ukraine. The ongoing hostilities have caused extensive damage to civilians, their property, and all kind of vital infrastructure.

According to a joint assessment by the Ukrainian Government and the World Bank, the total direct damage resulting from the war of aggression amounts to approximately USD 326 billion. To set itself on the path to recovery, Ukraine would have to receive at least USD 17 billion in compensation in the short term. It is expected to recover less than 4 billion by the end of 2023.



Direct damage caused to Ukraine and compensation needed for rapid recovery (billions of dollars)

This raises the question of how to speed up the collection of sums from the aggressor State. The Ukrainian Government, in cooperation with several international partners, is exploring the possibility of setting up an international compensation mechanism.

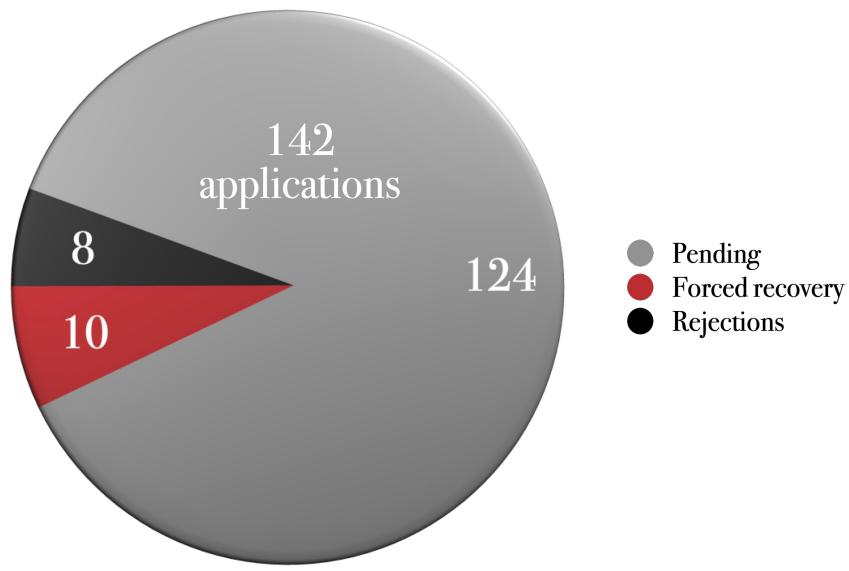
Compensation for War Damages: International and Domestic Avenues

In the recent past, Ukrainian subjects successfully resorted to dispute settlement under the auspices of the PCA to claim damages suffered as a result of the annexation of Crimea. The current devastation, however, requires remedies of a different kind and scale.

And yet, the establishment of an international compensation mechanism has so far proven elusive, despite the overwhelming support Ukraine enjoys internationally.

Lacking international remedies, the Ukrainian Government took steps to facilitate the taking of Russian assets, notably by enacting the resolution 'On approval of the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation'.

Among the measures adopted are the freezing of bank accounts and the arrest of Russian property on Ukrainian territory, the provision of exceptions to the principle of state immunity, and the creation of expeditious and enforcement-friendly procedures.



Applications for recovery of debt from Russia submitted to the Ukrainian Ministry of Justice

Research Purpose

I am currently closely following the developments in Ukrainian legal practice concerning war damages. The purpose of my investigation is to identify the challenges this practice faces - from the identification of the defendant to the criteria for setting the amount of compensation - and to propose solutions, also in the light of the relevant case law of international courts.

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Cross-border Enforcement of Judgments in Economic Matters in the Eurasian Economic Union

Current Legal Framework and Future Prospects

Research Interest

Treaties between former Soviet Republics bearing on recognition and enforcement of judgments date back 20 to 30 years. Since then, the geopolitical, socioeconomic, and legal context changed significantly and keeps on changing.

Such shifts include the establishment of the Eurasian Economic Union (EAEU), the adoption of the Hague Judgments Convention, the pandemic, ongoing judicial and e-justice reforms in the region, Russia's exit from the ECHR system, the taking of sanctions against Russia and, in response, the adoption of measures to protect national interests.

All these factors raise questions about the future of judicial cooperation in the region.

Research Question

What are the current trends and prospects for the recognition and enforcement of judgments in economic matters among the EAEU Member States?

Methodology

I am carrying out a comparative analysis of the legal practices prevailing in Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, i.e. the Members of the EAEU.

My research includes Uzbekistan, currently enjoying observer status, as that country has close economic and social ties with EAEU Member States.

I took 1992 as a starting date for legal analysis, which I complement with a historical retrospective on Soviet legislation since the 1930s and a detailed empirical survey of trends in domestic judicial practices as of 2018.

My research sheds light on potential reasons behind phenomena such as missing documents, delays in the proceedings, changes and lack of uniformity in the interpretation of grounds for refusal of recognition.

In my research, I also draw comparative insights from EU law and the relevant Hague Conventions.

Preliminary Findings

- Despite current challenges, judicial and economic cooperation remains a reality in the region.
- Currently, Russia has increased judicial control over cross-border disputes involving Russian parties, making recognition and enforcement more difficult.
- Domestic legislative and judicial practices – especially supreme courts' rulings – are driving adjustments to the changing context.
- A new unified recognition and enforcement regime in the region may no longer be the most desirable or realistic option.

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