Recharacterising International Disputes
Exploring the Phenomenon of Multi-Fora Litigation

CALL FOR PAPERS

With the proliferation of international and regional courts and tribunals, the number of disputes submitted to various regimes has significantly increased. International and regional dispute settlement bodies are more frequently addressing issues involving a broader set of norms and circumstances than those with which they are seised. This phenomenon is not new, but it has become more prevalent in recent decades. The phenomenon can be attributed to several factors, including the hyper-judicialisation of international crises and the growing use of international adjudicative bodies as part of forum shopping strategies and separate international lawfare tactics. In view of these, concerns about coherence and unity in the international legal order continue to surface.

More than 15 years after the ILC Fragmentation Report, the fear of fragmentation has been partly replaced by more affirmative perceptions. These range from recognising opportunities for convergence and harmonisation, to a welcomed diversification, creativity, politicisation of the international judicial processes and refinement of international law. Boisson de Chazourne (2017) furthermore argues that remaining concerns posed by the proliferation of courts seised with the same facts under different normative environments can be mitigated, as these bodies have developed a managerial approach to address such situations, including through coordination and cooperation mechanisms like judicial dialogue. Drawing on the concept of inter-legality, Klabbers and Palombella (2019), recognising the increasing tendency of international decision makers to affirm that different legal orders coexist and interact on an equal footing to draw a 'just' solution, suggested that forum shopping would become 'a less useful activity'. Yet, it has become an ever more common practice for international legal actors to recharacterise, compartmentalise, disaggregate (Hill-Cawthorne, 2019), or reframe their dispute so as to fall within the jurisdiction of one or more international or regional bodies. This institutional dimension of inter-legality is now put to the test in numerous crises. For instance, disputes involving the use of force have been brought before both the European Court of Human Rights, the International Criminal Court, and the International Court of Justice, but under the framework of a specific treaty such as the Genocide Convention or the Convention on the Elimination of Racial Discrimination. Similarly, issues related to climate change have been brought to the attention of the European and Inter-American Courts of Human Rights, the Human Rights Committee, and the Committee on the Rights of the Child, while requests for advisory opinions involving climate change issues have been made to the International Tribunal for the Law of the Sea and the International Court of Justice. Likewise, disputes related to issues of self-determination have been brought before the International Criminal Court and the Committee on the Elimination of Racial Discrimination, and have been the subject of advisory opinions by the International Court of Justice.

In light of this heightened practice, it is worth considering the norms, areas of law, and factual circumstances that give rise to this kind of recharaterisation of disputes and instances of multiple-fora litigation. Such consideration could shed light on the current challenges facing the international legal order and attempts to accommodate the diverse and evolving needs of the international community.

We invite submissions on this topic, including, but not limited to the following questions:

- Are there issues that are more prone to recharacterisation and, if so, what are the reasons for such practice?
- How do/should international courts and other (quasi-) judicial bodies approach disputes that have been recharaterised so as to fall within their jurisdiction? Does this approach differ depending on whether proceedings are contentious or advisory, and how has the advisory jurisdiction of international and regional courts been used in the recharacterisation of international disputes?
- To what extent do factors such as the nature of a body (international, regional, or quasi-judicial), its competence (individual criminal responsibility vs. State responsibility), jurisdiction (general vs. specialised), and the type of case (individual complaint vs. inter-State complaint) influence the authority of a body to recharacterise broader issues and align them within its jurisdictions?
- How have international courts and other (quasi-) judicial bodies utilised or potentially exploited the substantive/procedural law divide when addressing matters beyond their own jurisdiction?
- How do international courts and other (quasi-) judicial bodies consider specific norms beyond their subject matter jurisdiction? Do these bodies engage in the interpretation and application of these norms? If so, how does that influence their content?
- How international courts and other (quasi-) judicial bodies approach disputes that have already been brought before other bodies? Is there a specific role of the ICJ in exerting influence over the different regimes of international law?
- Have certain international bodies played a particularly prominent role in the development of norms of general international law?
- Do such bodies employ certain techniques to combat divergence/ensure consistency in norms of general international law?

Practical Information

Interested applicants should submit an abstract (up to 400 words) and a brief author bio (up to 100 words) by the **deadline of 31 January 2024**. Please ensure that the author's name is clearly mentioned in the abstract file. Abstracts and author bios must be submitted via our online platform.

Authors of selected abstracts will be asked to submit draft papers of 4,000-5,000 words by 31 May 2024. **The conference will take place on 12-13 June 2024**, both in person at the **Law Faculty at Maastricht University** and online.

For those who require financial assistance to attend, travel funding may be available. Eligible applicants who lack alternative means of covering their travel expenses are encouraged to indicate this during the application process.

We also aim to explore options for a post-conference publication (e.g., an edited volume or a special issue in an international law journal). Applicants interested in post-conference publication should make this known in their application.

Any questions about the conference or the submission process should be directed to the organisers, Dr Craig Eggett (craig.eggett@maastrichtuniversity.nl) and Dr Alexandre Skander Galand (alexandre.skander.galand@maastrichtuniversity.nl).

Organising Committee: Alexandre Skander Galand, Craig Eggett
Scientific Committee: Alexandre Skander Galand, Craig Eggett, Jure Vidmar, Başak Çalı, Margaretha Wewerinke-Singh, Liesbeth Lijnzaad

References

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