Національний університет «Києво-Могилянська академія»
Факультет правничих наук
кафедра міжнародного та європейського права

МАГІСТЕРСЬКА РОБОТА
на тему:

“ПАРАЛЕЛІЗМ ЮРИСДИКЦІЙ МІЖНАРОДНИХ СУДІВ, ТРИБУНАЛІВ І КВАЗІ-СУДОВИХ ОРГАНІВ ТА ВРЕГУЛЮВАННЯ ЮРИСДИКЦІЙНИХ КОНФЛІКТІВ”

(англійською мовою)

Виконав:
Студент 2 року навчання магістерської програми “Право”
Віщик Максим Андрійович
m.vishchyk@ukma.edu.ua

Наукова керівниця:
докторка права, доцентка,
Антонович Мирослава Михайлівна

Рецензентка:
докторка юридичних наук, професорка
Медведєва Марина Олександрівна

Магістерська робота захищена з оцінкою _____

Секретар ЕК_____

___ _____ 2022 р.

Київ-2022

National University of Kyiv-Mohyla Academy
Faculty of Law
International and European Law Department

MASTER'S THESIS
on the topic:

"PARALLELISMOF JURISDICTIONS OF INTERNATIONAL COURTS, TRIBUNALS AND QUASI-JUDICIAL BODIES AND REMEDYING JURISDICTIONAL CONFLICTS"

Written by
2-year student
of the Master's Program "Law"
Maksym Vishchyk
m.vishchyk@ukma.edu.ua

Supervisor:
Doctor of Law, Associate Professor,
Myroslava Antonovych

Reviewer:
Doctor of Law, Professor
Maryna Medvedieva

The Master's thesis grade: _____

Secretary: _____

"__" _____2022

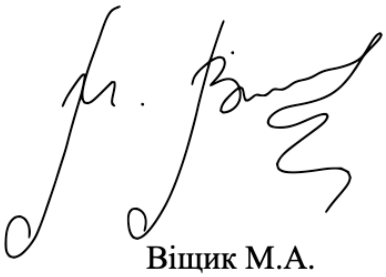
Kyiv-2022

DECLARATION OF ACADEMIC INTEGRITY

Я, Віщик Максим Андрійович, студент 2 року навчання магістерської програми за спеціальністю “Право” факультету правничих наук НаУКМА підтверджую таке:

- написана мною кваліфікаційна (магістерська) робота на тему “Паралелізм юрисдикцій міжнародних судів, трибуналів і квазі-судових органів та врегулювання юрисдикційних конфліктів” (англійською мовою: “Parallelism of jurisdictions of international courts, tribunals and quasi-judicial bodies and remedying jurisdictional conflicts”) відповідає вимогам академічної доброчесності та не містить порушень, передбачених п. 3.1 Положення про академічну доброчесність здобувачів освіти у НаУКМА, зі змістом якого я ознайомлений;
- заявляю , що надана мною для перевірки електронна версія роботи є ідентичною її друкованій версії.

10 червня 2022 року



Віщик М.А.

TABLE OF CONTENTS

TABLE OF ABBREVIATIONS *6*

INTRODUCTION *8*

CHAPTER 1. OVERVIEW OF CONTEMPORARY SYSTEM OF INTERNATIONAL COURTS AND TRIBUNALS: PALETTE OF HUNDRED COLOURS *12*

1.1. Evolution of international adjudication: from the initial singularity to the universe of galaxies **13**

1.1.1. Pre-adjudication era: from the ancient times until the end of the 18th century 15

1.1.2. The rise of international arbitration: from the late 18th century until the early 20th century 17

1.1.3. The birth of permanent adjudication mechanisms: from late 19th century to the end of the Second World War 19

1.1.4. Flourishing of international justice and proliferation of courts and tribunals: from 1945 until the modern days 24

1.2. Contemporary international adjudication architecture: systematising the constituents **34**

1.2.1. Different issues of ratione materiae jurisdiction 35

1.2.2. Jurisdictions ratione temporis, ratione personae and territorial jurisdictions 38

1.2.3. Judicial, arbitral and quasi-judicial bodies 40

1.2.4. Varying results, including reparations 41

CHAPTER 2. PARALLEL AND CONFLICTING JURISDICTIONS: DEFINING THE PHENOMENA AND OUTLINING THE PROBLEM *44*

2.1. The notions of jurisdictional parallelism and jurisdictional conflicts **44**

2.1.1. Jurisdictional parallelism 45

2.1.2. Jurisdictional conflicts 59

2.2. Benefits and risks of jurisdictional parallelism, including conflicts **63**

2.2.1. Positive implications of jurisdictional parallelism, including conflicts 63

2.2.2. Negative implications of jurisdictional parallelism, including conflicts 66

CHAPTER 3. RESOLVING JURISDICTIONAL CONFLICTS: LEGAL AND POLICY TOOLS AVAILABLE TO INTERNATIONAL COURTS 71

3.1. Normative tools for handling conflicting jurisdictions' risks 71

3.1.1. Lis pendens principle 72

3.1.2. Judicial propriety doctrine 81

3.1.3. Abuse of judicial process and/or procedural rights 87

3.1.4. Res judicata 90

3.2. Policy instruments for addressing the risks of conflicting jurisdictions 92

CONCLUSIONS 96

BIBLIOGRAPHY 101

TABLE OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
CRDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD Committee	Committee on the Elimination of Racial Discrimination
CJEU	Court of Justice of the European Union
(WTO) DSU	(World Trade Organisation's) Dispute Settlement Understanding
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EComHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
GATT	General Agreement on Tariffs and Trade
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC	International Law Commission

ITLOS	International Tribunal for the Law of the Sea
ITO	International Trade Organisation
MERCOSUR	Mercado Común del Sur
NAFTA	North American Free Trade Agreement
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
RTA	Regional trade agreement
UN	United Nations
UN CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
United Arab Emirates	UAE
US	United States
WTO	World Trade Organisation

INTRODUCTION

International relations as we know them today have never in human history been so justiciable and densely regulated by legal norms. The modern legal order is in a constant state of development, which moved from a highly decentralized and force-centred system to a law-oriented order, where States are no longer judges of their own behaviour. As normative regulation expands, so does the network of mechanisms adjudicating them.

One will see a striking difference when looking at international law as it was three centuries ago. Adjudicating bodies were largely absent, and attempts to establish them were fragmented and non-systemic. Since then, international adjudication grew into a network of hundreds of institutions – permanent and *ad hoc*, regional and universal, specializing on specific issues or a wide range of matters at once. The system's expansion manifests the States' and other actors' trust in international adjudication as opposed to the rules of might dominating international relations of the previous epochs.

At the same time, more cases of jurisdictional parallelism, whereby several bodies pursue their activities in parallel, arise. They bring various implications both enriching international law and sometimes threatening its consistency. In radical cases, jurisdictional parallelism can lead to conflicting jurisdictions, when two or more bodies possess jurisdiction over the same subject-matter.[1]

While this scenario could be theoretical a few decades ago, the recent trends expose that such situations have become increasingly common.[2] Keeping several venues open has multiple positive effects, e.g., increased justiciability of

[1] Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (OUP, 2003) ('Shany (2003)'), p. 21.
[2] See, e.g., D. Keane, 'Application of the CERD Convention (Qatar v UAE) and "Parallel Proceedings" before the CERD Committee and the ICJ' (*EJIL:Talk!*, 17 May 2019) <https://www.ejiltalk.org/application-of-the-cerd-convention-qatar-v-uae-and-parallel-proceedings-before-the-cerd-committee-and-the-icj/> accessed 8 June 2022.

international relations and a wider choice of forums, but it also generates risks, e.g., parallel proceedings, conflicting judgments, waste of resources and forum shopping.

Throughout the last decades, conflicting jurisdictions have gained more attention from scholars, practitioners and judges. Already in October 2000, the then President of the International Court of Justice, Gilbert Guillaume, addressed the Sixth Committee of the United Nations (UN) General Assembly, speaking of the risks of conflicting jurisdictions, which "have become a reality."[3] Various scholars, most notably Yuval Shany,[4] Joost Pauwelyn and Luiz Eduardo Salles,[5] August Reinisch,[6] dedicated remarkable writings to the matter. Other figures contributed to analysing specific issues, e.g., investment arbitration, human rights or trade. The authors also studied the ways to remedy jurisdictional conflicts outlining the most viable options.

At the same time, significant works exist on mapping the existent adjudication infrastructure, among others, a study by Ruth Mackenzie, Cesare PR Romano, Yuval Shany and Philippe Sands,[7] with more specifically focused studies of, e.g., William Anthony Schabas on the legacy of the European Court of Human Rights and International Criminal Court.[8] Many works focused specifically on the wider interplay between jurisdictions and legacy of various courts.[9]

---

[3] 'Proliferation of International Judicial Bodies: The Outlook for the International Legal Order, Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice to the Sixth Committee of the General Assembly of the United Nations' (*International Court of Justice*, 27 October 2000) <https://www.icj-cij.org/public/files/press-releases/1/3001.pdf> accessed 7 June 2022 ('Guillaume's Speech (27 October 2000)'), p. 3.
[4] Shany (2003).
[5] J. Pauwelyn and E.L. Salles, 'Forum Shopping before International Tribunals: (Real) Concerns, (Im)Possible Solutions' (2009) 42(1) *Cornell International Law Journal* 77 ('Pauwelyn and Salles (2009)').
[6] A. Reinisch, 'International Courts and Tribunals, Multiple Jurisdiction' (2011) *Max Planck Encyclopedia of Public International Law* ('Reinisch (2011)').
[7] R. Mackenzie, C.P.R. Romano, Y. Shany, P. Sands, *The Manual on International Courts and Tribunals* (OUP, 2nd ed., 2010) ('Mackenzie, Romano, Shany and Sands (2010)').
[8] W.A. Schabas, *The International Criminal Court - A Commentary on the Rome Statute* (OUP, 2nd ed., 2016); W.A. Schabas, *The European Convention on Human Rights: A Commentary* (OUP, 2015).
[9] See, e.g., M. Andenas, E. Bjorge (eds), *A Farewell to Fragmentation Reassertion and Convergence in International Law* (CUP, 2015); E. Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39(2) *The Journal of Legal Studies* 547.

At the same time, jurisdictional parallelism and conflicts have not gained attention among Ukrainian scholars. By date, the author was unable to identify any works dedicated to or at least briefly reflecting on the issue. This work, thus, aims to fill this gap. The **scientific value and topicality** of the analysis rest on several points. First, it seeks to provide answers to unconventional problems which (despite thorough studies described above) remain largely unsettled. Second, it compiles several approaches to analysing jurisdictional interplay usually taken separately, namely viewing conflicting jurisdictions in a broader context of jurisdictional interplays, especially with a focus on the Ukrainian context. Third, the work seeks to discover options available to address unregulated issues of conflicting jurisdictions.

The **object** of the analysis is international normative and policy regulation of jurisdictional activities of international (quasi-)judicial bodies, while the **subject of study** concerns the cases of jurisdictional parallelism and conflicting jurisdictions, as well as mitigating the risks via available normative and policy options.

The general **purpose** of the present analysis is three-fold: (i) to comprehensively lay out the evolution of international adjudication and map out the modern adjudication architecture and the roots of the problem, (ii) to define the phenomena of jurisdictional parallelism and conflicts, and their key implications, and (iii) to study the options available to mitigate the risks resulting from the latter.

This purpose will be achieved via several **tasks**: (1) to describe the history of international adjudication; (2) to characterise its current state and its main constituents; (3) to categorise jurisdictions of international (quasi-)judicial bodies; (4) to define jurisdictional parallelism and conflicts, and their key implications; (5) to describe the most perspective normative options for mitigating the risks; (6) to evaluate potential policy responses to the problem.

The analysis was based on various philosophical, scientific (general and special) and juridical **methods**, primarily a dialectical approach to studying the mentioned phenomena. General scientific methods were used, including modelling, comparison, extrapolation, in- and deduction. Specific questions were analysed via special scientific methods. For instance, contextualising adjudication's evolution and mapping out its modern architecture was based on comparative historical method, systemic-structural, institutional, functional, analytical, and phenomenological methods. The development of response mechanisms required the use of axiological, formal-logical, hypothetical and other methods. Specific juridical methods were inevitably used, namely formal juridical, comparative, interpretative and modelling methods.

At the end of every chapter and of the overall study, the analysis outlines the key conclusions reached and the prognosis built. In many respects, the analysis below is a reflection on the most critical points, while the further extensive study can be initiated to reflect in more detail every point discussed.

CHAPTER 1

OVERVIEW OF CONTEMPORARY SYSTEM OF INTERNATIONAL COURTS AND TRIBUNALS: PALETTE OF HUNDRED COLOURS

"There is only one rational way in which states coexisting with other states can emerge from the lawless condition of pure warfare. Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws."

~ Immanuel Kant "Toward Perpetual Peace".[10]

It seems indisputable today that among numerous other regulative functions, dispute settlement subjected to analysis through the lenses of the rules of law remains one of the primary tasks that any legal system – be it municipal or international – performs. The high mission performed by courts and tribunals in interpreting and developing the law, as well as settling and preventing conflicts between various subjects, be it an individual human being or a global entity, such as a sovereign State, is perceived as an indispensable part of the modern legal order. One can hardly imagine the times when no international court existed to adjudicate the issues of human rights violations, delimit territorial borders or interpret international treaties.

Yet, half of a century ago, two courts, even less quasi-judicial bodies, exercising parallel jurisdictions over a dispute seemed an overly exceptional precedent, while a century ago, a diverse international dispute settlement architecture would only be a dream of globalist internationalists. Even beyond 20th

[10] J. Crawford, I. Brownlie, *Brownlie's Principles of Public International Law* (OUP, 8th ed., 2012), p. 8 referring to I. Kant, *Perpetual Peace: A Philosophical Sketch* (1795).

century, two hundred years ago, any modern dispute settlement mechanisms were rather nonsense in a time when the first isolated temporary bodies emerged to deal with very particular cases in an *ad hoc* fashion. In retrospective, competing jurisdictions of international courts and tribunals is a phenomenon that international lawyers of previous times could never comprehend.

Why at all did the international adjudication mechanisms arise? Why did sovereign States decide, as Immanuel Kant pointed out, that adapting to the system of "coercive laws" subjected to third-party adjudication was a scenario to follow? What did the historical evolution of the network of courts and tribunals look like? And where does the modern international adjudication architecture stand?

The present Chapter will serve as an introductory part for further substantive analysis of jurisdictional parallelism and competition. It will describe the evolution of the international (quasi-)judicial institutional framework showing how through hundreds of experiments, precedents, failures and successes, the network of international courts and tribunals evolved to its modern state. The Chapter will further draw a picture of what the international adjudication network looks like today. After all, this Chapter aims to form a basis for further understanding and discussion as to why the phenomena of jurisdictional parallelism, competition and conflicts emerged and became a natural feature of contemporary international law.

1.1. Evolution of international adjudication: from the initial singularity to the universe of galaxies

One of the theories of the emergence of the universe stipulates that before the Big Bang brought stars and other space bodies into being, a condition called "initial singularity" encompassed the embryos of everything that human beings observe today in the midnight sky.[11] Before the Big Bang there was arguably nothing at all

[11] M. Wall, 'The Big Bang: What Really Happened at Our Universe's Birth?' (*Space.com*, 21 October 2011) <https://www.space.com/13347-big-bang-origins-universe-birth.html> accessed 24 November 2021; E. Siegel,

that is so traditional to the human eye – no stars, no galaxies, no black holes, no planets or asteroids. The condition back then is said to have been peculiar from the standpoint of all physical characteristics – temperature, density, space[12] – something that we can hardly imagine today. It is contended that only following the Big Bang, the shape of the modern universe with the whole net of space bodies started to look more or less typical to what modern humankind got used to.[13]

Though the theory of the initial singularity comes under scientific criticism today,[14] *in abstracto* it forms a perfect reason to reflect on how many common phenomena that we observe every day routinely did not even exist at some point in human history. International lawyers are accustomed to international courts and tribunals in the 21st century: they accompany the national authorities in litigation before international forums, they rely heavily on the jurisprudence of (quasi-)judicial adjudication bodies, and they take part in creating new courts and tribunals and broadening jurisdictions of existing mechanisms. After all, the problem of parallel and competing jurisdictions of international courts and tribunals does not sound like a nonsense today – many lawyers perceive it as an indispensable feature of the modern international affairs.[15] But similar to the theory of physics and astronomy, "initial singularity" existed for a very long period in the sphere of international adjudication, when no permanent international bodies consisting of impartial and independent third parties served to resolve inter-State disputes.

'StArticles With A Bang, 'There Was No Big Bang Singularity' (Forbes, 27 July 2018) <https://www.forbes.com/sites/startswithabang/2018/07/27/there-was-no-big-bang-singularity/?sh=333cded87d81> accessed 24 November 2021.

[12] *Ibid.*

[13] *Ibid.*

[14] *See, e.g.,* E. Siegel, 'StArticles With A Bang, 'There Was No Big Bang Singularity' (Forbes, 27 July 2018) <https://www.forbes.com/sites/startswithabang/2018/07/27/there-was-no-big-bang-singularity/?sh=333cded87d81> accessed 24 November 2021.

[15] 'Address by H.E. Judge G. Guillaume, President of the International Court of Justice, to the United Nations General Assembly' (*International Court of Justice*, 26 October 2000) <https://www.icj-cij.org/public/files/press-releases/9/2999.pdf> accessed 24 November 2021 ('Guillaume's Address (26 October 2000)').

1.1.1. Pre-adjudication era: from the ancient times until the end of the 18th century

For a long time, waging wars was a central tool of enforcing rights and obligations in international relations. As Hugo Grotius argued, "war is a substitute for courts because courts are the original substitutes for war".[16] To put it otherwise, war served to enforce rights in the context where courts were unavailable, like in municipal legal systems.[17]

Wars served a variety of functions that modern international courts and tribunals perform, such as collecting debts, securing compensations, punishing criminals, defending people and territory, remedying violations of rights, etc.[18] In view of Hugo Grotius, the reason behind waging wars were the same as behind litigation before courts, where they were available, namely to remedy what States perceived as wrong.[19] In such a decentralized system, where every States was a warrior of its own, the system of *ad hoc*, let alone permanent courts, was not something inevitable – States could resolve all controversies by means of self-help. By virtue of their privilege to use force, they should not even necessarily have resorted to war but could use less grave means, such as gunboat diplomacy[20] – instruments of political threats and pressure – to impose and enforce their will towards other States. The principle "Might is Right", as Oona A. Hathaway and Scott J. Shapiro called it in their invaluable work "The Internationalists and Their Plan to Outlaw War",[21] governed the international relations until the prohibition of the use of force crystallised in the 20th century.

Yet, some fragmented and experimental forms of third-party adjudication have developed already before modern times. One can only recall inter-*polis* meetings in

[16] O.A. Hathaway, S.J. Shapiro, *The Internationalists: and Their Plan to Outlaw War* (Penguin UK, 2017), p. 11.
[17] *Ibid*, p. 23.
[18] *Ibid*, pp. 9-11.
[19] *Ibid*, p. 9.
[20] *Ibid*, p. 97.
[21] *Ibid*, p. 9.

Ancient Greece or attempts to involve the Pope in settling disputes between sovereigns.[22] Some proto-arbitration forms were also pursued among and by sovereigns in the fields of law of war and prize law,[23] delimitation of territorial boundaries,[24] indemnity, division of prisoners, etc.[25] In many cases, "arbitrators", who were mostly sovereigns (such as kings), bishops, cardinals, parliaments and town councils,[26] acted firstly as mediators before turning to legal analysis.[27] Sometimes such arbitration in the meaning of the Middle Ages was even used to end wars.[28] Yet these forms of proto-arbitration were far from what we today imagine as classical third party adjudication

Although the creation of a network of courts and tribunals was not seen as something unavoidable, reflections on the possibility of creating stable adjudication mechanisms in international relations were quite natural in analogy to what exists in human (municipal) societies.[29] It is much undisputed that settling disputes and providing coordination for the behaviour of various actors are some of the primary functions that every legal system serves.[30] So if individuals in municipal systems could transfer their rights of seeking redress and remedies to an independent body, whose rulings upon disputes would be binding, why could not the same system work equally successfully for States?

---

[22] J.B. Moore, *International Law and Some Current Illusions and Other Essays* (New York: Macmillan Company, 1924) ('Moore (1924)'), p. 97; J.H. Ralston, 'A Brief History of International Disputes' [1926] 88(8) *Advocate of Peace through Justice* 487 ('Ralston (1926)'), p. 487; C.G. Roelofsen, 'International Arbitration and Courts' in B. Fassbender and A. Peters, *The Oxford Handbook of the History of International Law* (OUP, 2012) ('Roelofsen *in* Fassbender and Peters (2012)'), pp. 155-156, J. H. Ralston, *International Arbitration from Athens to Locarno* (Calif: Stanford University Press, 1929) ('Ralston (1929)'), p. 174-176.
[23] Roelofsen *in* Fassbender and Peters (2012), p. 153-155; Ralston (1929), p. 174.
[24] Ralston (1926), p. 487
[25] Ralston (1929), pp. 176-178.
[26] *Ibid*, pp. 180-186.
[27] *Ibid*, pp. 179-180.
[28] *Ibid*, pp. 180-183.
[29] *Ibid*, p. 487.
[30] K.M. Ehrenberg, *The Functions of Law* (OUP, 2016), p. 183.

However, while substantial centralisation of legal authority, and, thus, dispute settlement and coercion mechanisms, was rather natural and typical for the history of municipal legal systems (where individuals have always adhered to some form of hierarchy and authority), such models were atypical for the decenralised system of sovereign States. This resonates with the opinions of Hersch Lauterpacht, suggesting that inquiry of any general character in the field of international relations, inasmuch as dispute settlement mechanisms, was from the very beginning confronted with the doctrine of sovereignty.[31] Put otherwise, if a dispute arose in the international arena in the past, "the State [was] in principle the sole judge of the existence of any individual rules of law, applicable to itself."[32] Nevertheless, the ice started to melt at the end of the 18th century.

1.1.2. The rise of international arbitration: from the late 18th century until the early 20th century

The increase in international cooperation during 18th-19th century prompted States to develop means of securing their interests, which would be an alternative to war and the ones contrasting with the predominant views on sovereignty as an absolute concept.[33] Although pursuing wars might be an efficient tool for mighty States to achieve their goals, for example, when matters became radical or expedient reaction was needed, waging wars also involved substantial human and material resources, which in many cases could be overly burdensome for States. For example, once the end of the war produced new matters of disagreement, commencing the new war would risk creating a vicious circle, which is difficult to break and which would lead to serious losses of human lives and available resources, including territories.

[31] H. Lauterpacht, *The Function of Law in the International Community* (OUP, 2011), p. 4.
[32] *Ibid*, p. 4.
[33] Roelofsen *in* Fassbender and Peters (2012), p. 147.

The new era was marked with the signing of the Jay Treaty between the United States (US) and Great Britain in 1794,[34] whereby two States agreed to appoint commissioners (for three mixed claims commissions) to adjudicate the issues of establishing the river boundary (territorial matter), private claims based upon maritime seizures (of British citizens against the US, and the US citizens against Great Britain), and compensation by the US for its pre-war debts.[35] Though at some points (such as determining the issue of the US compensation) commissioners failed to produce the expected result, in other respects, outcomes of the commissioners' work are cited as "eminently successful", having produced awards for hundreds of private individuals.[36]

The Jay Treaty arbitration can be seen as a continuation of arbitration initiatives of previous centuries, whereby States and other international entities sought to resolve their disputes with the involvement of a third party. Yet, among commentators, there is a common consensus that the Jay Treaty arbitration laid the foundations for a new era of arbitration and subsequent dispute settlement mechanisms of a new character.[37] It constituted the revival of the judicial process of arbitration, which had been in disuse during the preceding centuries,[38] and set a precedent, where a separate judicial body – not a third sovereign or religious representative – adjudicated legal issues upon the consent of the parties. The heritage of the Jay Treaty arbitration is evident from the international law records of the

[34] Ralston (1926), p. 488; M.O. Hudson, *International Tribunals: Past and Future* (Carnegie Endowment for International Peace and Brookings Institution, 1944) ('Hudson (1944)'), p. 3, para. 2.
[35] For detailed history of treaty provisions, surrounding negotiations and outcomes, *see* J.B. Moore, *International Adjudications: Ancient and Modern History and Documents* (New York, OUP, 1931); T.C. Marion, *American Neutrality in 1793: A Study in Cabinet Government* (New York, Columbia University Press, 1931), pp. 275-277.
[36] Ralston (1926), p. 488; Hudson (1944), p. 3, para. 2.
[37] Ralston (1929), p. 194; Hudson (1944), p. 3, para. 3; T.C. Marion, *American Neutrality in 1793: A Study in Cabinet Government* (New York, Columbia University Press, 1931), p. 277; H. Lammasch, 'The Anglo-American Arbitration Treaty' (1911) 1 *International Conciliation* 871, p. 873.
[38] Moore (1924), pp. 97-98; Hudson (1944), p. 3, para. 3; E.C. Mower, *International Government* (D.C. Heath and Company, 1931), p. 308.

following century: according to the estimates of international lawyers of the relevant period, around 170-180 arbitrations were held during the next century between States of various regions of the world, primarily Europe, the US and Latin America resulting into thousands of awards granted to private individuals and other international law matters settled.[39]

The rise of arbitration in the 19th century undoubtedly contributed to the development of the modern adjudication framework. Yet, the period in question could rather be characterised as a system of fragmented *ad hoc* organised bodies (such as mixed claims commissions) dealing with very particular situations upon the parties' consent. This condition can be imagined as a combination of hundreds of little dots on the big global map of international relations, which could only be connected between themselves by abstract political ties rather than comprehensive systemic connections. In such circumstances, it is difficult to imagine how sovereign States agreed, for example, to establish two arbitral tribunals dealing with similar issues, since all arbitral proceedings remained under the close supervision of States initiating them. Hence, no jurisdictional competition, conflict or parallelism could exist in such a system of isolated temporary context-based judicial bodies.

In the late 19th century, however, initiatives to create a permanent arbitration forum started to circulate, marking the start of a new era of international dispute settlement.

1.1.3. The birth of permanent adjudication mechanisms: from late 19th century to the end of the Second World War

In the second half of the 19th century, the arbitration network started to develop at a new speed with arbitration clauses included in a variety of treaties and general

[39] *See, e.g.*, H. Lammasch, 'The Anglo-American Arbitration Treaty' (1911) 1 *International Conciliation* 871, p. 873; E.C. Mower, *International Government* (D.C. Heath and Company, 1931), p. 308, Hudson (1944), p. 3, para. 3; J.B. Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party* (Washington, GPO, 1898).

arbitration treaties proposed for the conclusion between various States.[40] While in the middle of the 19th century some governments, such as the British one, perceived arbitration initiatives as a potential threat to their national interests,[41] in the end of the century governments' proposals on establishing the permanent arbitration forums started to circulate.[42] As a result, the Hague Convention 1899 provided for the establishment of the Permanent Court of Arbitration (PCA).[43] The PCA was not a typical court – rather an administrative mechanism providing the possibility to establish arbitral tribunals in case of a need, where every States listed four delegates to the overall list of arbitrators to choose from.[44]

In the subsequent years, after the establishment of the PCA, a similar regional initiative inspired by the Hague processes emerged in Central America due to numerous disputes between the States in the region bringing the threat of the armed conflicts.[45] From 1908 to 1918, the Central American Court of Justice was established with the competence to hear both inter-State disputes and cases between States and private individuals.[46] The jurisdiction of the Court was obligatory for five States in the region, while cases, where other States were involved, could be brought before the Court by special agreement.[47] The Central American Court of Justice can, thus, be seen as an attempt to establish the first regional tribunal hearing cases not on the *ad hoc* basis, but possessing a wider and more inclusive jurisdiction. This initiative, as the case would be with other regional court established in the future, was motivated by the reported particularity of the legal heritage of the region.[48]

[40] Hudson (1944), pp. 5-6, paras 5-8.
[41] *Ibid*, p. 239, para. 9.
[42] Moore (1924), pp. 97-98; Hudson (1944), p. 6, para. 9.
[43] *See* overall history and roots in 'History' (*Permanent Court of Arbitration*) <https://pca-cpa.org/en/about/introduction/history/> accessed 6 June 2022.
[44] Moore (1924), p. 99; Hudson (1944), p. 8, para. 14.
[45] Ralston (1929), p. 240.
[46] Hudson (1944), p. 173, para. 8; Ralston (1929), p. 240.
[47] Hudson (1944), p. 173, para. 8.
[48] Hudson (1944), pp. 173-174, para. 9.

However, after the Court's period for which it had been created expired, no successive mechanism was established despite relevant proposals.[49]

The PCA was indeed the first permanent and relatively universal platform allowing States to resolve their controversies by arbitration in various fields. Yet the PCA, similar to the Central American Court of Justice, was far from being a permanently operating universal judicial institution with a stable composition of judges hearing inter-State disputes. Thus, following the First World War, States decided to establish the first permanently operating judicial institution of a universal character – the Permanent Court of International Justice (PCIJ) – with judges sitting continuously and not being appointed by particular parties.[50] The contemporaries called the PCIJ "the highest form of international judicial determination"[51] and expected it to become "great bulwark of peace".[52] The Court's important function was dealing with marginal disputes related to "major sources of international tension in the inter-War period"[53] through dozens of advisory opinions, judgments and orders.[54] The Court's functioning also bore a strong symbolic meaning encouraging settlement of disputes, offering a forum for the latter and developing international law.[55]

At the same time, numerous other proposals were made, and actual adjudication mechanisms were established in parallel to the PCIJ, including mixed claims commissions, arbitral tribunals and conciliation procedures.[56] The Treaty of Versailles provided for the establishment of the special tribunal consisting of five

[49] Hudson (1944), p. 173, para. 8.
[50] Ralston (1926), p. 495; Ralston (1929), pp. 299-303; Hudson (1944), pp. 9-10, paras 16-17.
[51] Ralston (1926), p. 490.
[52] M.O. Hudson, *International Tribunals: Past and Future* (Washington: Carnegie Endowment for International Peace and Brookings Institution, 1944), pp. 238-239.
[53] Sh. Rosenne, *The Law and Practice of the International Court, 1920-2005* (Brill, 2006) ('Rosenne (2006)'), p. 29.
[54] Hudson (1944), p. 11, para. 20. See also p. 141, paras 7-8.
[55] Hudson (1944), p. 11, para. 21.
[56] Hudson (1944), pp. 11-12, paras 22-23.

appointed judges (one from each of the allied Victorious Powers) to try former German Emperor William II for "a supreme offence against international morality and the sanctity of treaties".[57] The plan, however, never became effective.

In the inter-war period, the experience of the PCIJ also inspired ideas on permanent international tribunals in narrower fields. For example, proposals were made to establish a permanent tribunal for commercial disputes or the international loans tribunal.[58] Other initiatives concerned the establishment of the permanent International Criminal Court to deal with the crime of terrorism or a criminal chamber within the PCIJ to adjudicate "crimes constituting a breach of international public order or against the universal law of nations", referred to it by the organs of the League of Nation.[59] Extension of the PCIJ's jurisdiction to individual claims was also debated,[60] while the American States returned to the idea of establishing the Inter-American Court of International Justice.[61] Likewise, the plan to create an International Prize Court was enshrined in the XII Hague Convention 1907 and further debated.[62]

Apart from the PCIJ and *ad hoc* commissions in operation, none of the enumerated ideas was brought into being. However, all of them are valuable to reflect on how discussions on international adjudication mechanisms intensified after the establishment of the PCA and PCIJ. The two institutions were the first international experiments on permanent international adjudication mechanisms functioning in parallel to the settled practice of *ad hoc* arbitral tribunals and mixed claims commissions. The heritage of the PCIJ would further become the fundament for the creation of other universal and regional permanent courts in various fields,

[57] Treaty of Versailles (signed on 28 June 1919, effective from 10 January 1920), Article 227.
[58] Hudson (1944), pp. 204-219.
[59] Hudson (1944), p. 185.
[60] Hudson (1944), p. 203.
[61] Hudson (1944), pp. 13-14, para. 25.
[62] Convention (XII) relative to the Creation of an International Prize Court (signed 18 October 1907).

including both general and special jurisdictions, as it created the confidence in the methods of adjudication.[63]

In the circumstances of the inter-war period, it is evident that the adjudication system no longer looked like a field full of unconnected dots. While the model remained the same, an important variable was introduced: a permanent tribunal of general jurisdiction operating in parallel to the *ad hoc* commissions. This can be seen as the beginning of the era of parallel jurisdictions of international courts and tribunals. It, thus, could be a hypothetical case when the same subject-matter would be brought before two different bodies – the PCIJ and an arbitral tribunal. The risk of such a situation already emerged in the PCIJ's *Upper Silesia* case between Poland and Germany, whereby the PCIJ was found it necessary to decide whether the adjudication pending before the arbitral tribunal could somehow affect the admissibility of the claim. This precedent will be analysed in greater detail in Chapters 2 and 3.

When the Second World War commenced, PCIJ's service became virtually impossible and was suspended for a couple of years.[64] In the meantime, scholars of the epoch continued to reflect on the future perspectives of international justice. Manley Hudson, one of the most prominent commentators among the contemporaries of the PCIJ, argued that after the war, the need for judicial agencies would be greater than in the past, while it was also crucial to preserve continuity of serving international justice.[65] According to Hudson, creation of a new court substituting PCIJ would not be an option, as it could reopen old contests among States and threaten the continuity.[66] Hudson also reflected on the possibilities of granting the PCIJ compulsory jurisdiction over States' disputes, but found this

[63] Rosenne (2006), p. 3.
[64] 'History' (*International Court of Justice*) <https://www.icj-cij.org/en/history> accessed 6 June 2022.
[65] Hudson (1944), p. 137, para. 1.
[66] Hudson (1944), p. 143, para. 14.

scenario improbable due to "great" States' reluctance to risk their interests.[67] He also cautioned against the risk of particularistic development of international law through the creation of regional courts.[68] Lastly, Hudson predicted that after the end of the War, establishment of international criminal tribunals on an hoc basis would be desirable, but it appeared unlikely that a permanent international criminal institution would be needed: he encouraged State to strengthen their cross-border cooperation in criminal matters instead of creating "international penal law".[69]

In many ways, Hudson's reflections appeared right: the continuity of the PCIJ's legacy was pursued by the establishment of the International Court of Justice (ICJ), while *ad hoc* criminal tribunals were indeed established following the Second World War in Tokyo and Nuremberg. At the same time, the new era following the war gave a fresh breath to the development of international justice, and the latter rushed with a new boost.

1.1.4. Flourishing of international justice and proliferation of courts and tribunals: from 1945 until the modern days

Close to the end of the war, States anticipated that League of Nations and agencies created under its auspices were to be dissolved and replaced by new institutions.[70] In October 1945, the PCIJ held its last sessions discontinuing two of the pending cases,[71] and in January 1946, the PCIJ members formally resigned giving way to the PCIJ's dissolution.[72] Finally, on 18 April 1946, the League of Nations adopted the resolution, which cstated that considering the creation of the ICJ and its functioning under Article 92 of the UN Charter and dissolution of the

[67] Hudson (1944), p. 153, para. 31.
[68] Hudson (1944), p. 179, para. 19.
[69] Hudson (1944), p. 186, para. 12.
[70] Rosenne (2006), p. 14.
[71] Rosenne (2006), pp. 14-15.
[72] Rosenne (2006), p. 15. *See also,* M. M. Whiteman, *Digest of International Law* (US Department of State, 1963), pp. 1161-1169.

League of Nations, the need to dissolve PCIJ emerged, and as all judges of the PCIJ resigned, the League of Nations decided "that the PCIJ for all purposes is considered dissolved".[73] The newly established ICJ, thus, inherited the role of the PCIJ and being at the same time a different institution.[74] The ICJ nevertheless had some jurisdictional links to the PCIJ,[75] frequently called the latter its "predecessor",[76] and from the very first case – *Corfu Channel* – referred to the PCIJ's decisions.[77] As the ICJ made clear in the 1959 *Aerial Incident* judgment the drafters of the ICJ Statute had an "intention to preserve, to secure continuity" and "to continue in being something which was in existence, to preserve existing acceptances, to avoid that the creation of a new Court should frustrate progress already achieved".[78] Thus, the continuity between the PCIJ and ICJ, which was advocated by the PCIJ's contemporaries, such as cited Hudson, was achieved in the post-war era.

While the ICJ's judicial business continued to enhance, the successes of previous times inspired the creation of new permanent institutions functioning in parallel to the ICJ. The tragedies and horror of the Second World War gave a boost to the international human rights law's development. In May 1948, the International Committee of Movements for European Unity convened the Congress of Europe in

[73] League of Nations, Resolution of 18 April 1946, 21st session of the Assembly of the League of Nations, in M. M. Whiteman, *Digest of International Law* (US Department of State, 1963), p. 1166.
[74] Rosenne (2006), p. 7.
[75] *See, e.g.*, Statute of the International Court of Justice (signed 26 June 1945, entered into force 18 April 1946) USTS 993 ('ICJ Statute'), Articles 36(5) and 37, which stipulate that the validity of declarations made under the PCIJ's Statute accepting the Court's compulsory jurisdiction shall be preserved and be deemed as acceptance of the ICJ's jurisdiction; likewise, compromissory clauses in treaties referring to the PCIJ or any other tribunal established under the League of Nations shall be viewed as reference to the ICJ.
[76] *See, inter alia, Appeal Relating to the Jurisdiction of the ICAO Council*, Judgment (1972) ICJ Rep 46, p. 73; *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Jurisdiction and Admissibility, Judgment (1984) ICJ Rep 392 ('1986 *Nicaragua v. US* judgment'), para. 32; *East Timor* (*Portugal v. Australia*), Judgment (1995) ICJ Rep 90, para. 22.
[77] *Corfu Channel*, Judgment (1949) ICJ Rep 4, p. 24.
[78] *Case concerning the Aerial Incident of July 27th, 1955* (*Israel v. Bulgaria*), Preliminary Objections, Judgment (1959) ICJ Rep 127, p. 145.

the Hague.[79] The latter issued the 'Message to Europeans' enshrining the aspirations to draft a Charter of Human Rights and to create "a Court of Justice with adequate sanctions for the implementation of this Charter".[80]

After three years of lengthy considerations, discussions and negotiations, the European Convention on Human Rights (ECHR) establishing the European Court of Human Rights (ECtHR) and the European Commission of Human Rights (EComHR) was adopted in 1951.[81] At first, the EComHR was only capable of dealing with the inter-State applications, while the right of individual complaints emerged only in 1955.[82] In 1960, the ECtHR finally became operational.[83] The ECtHR, thus, became the second permanent judicial institution after the PCIJ/ICJ. Moreover, the ECtHR can be considered as having set the trend of regional courts of special jurisdictions (in contrast to the universal and general jurisdiction of the PCIJ/ICJ).

In the meantime, the end of the World War prompted negotiations on the instruments and forums regulating cooperation in the field of international trade. In the late 1940s, initiatives to establish the International Trade Organisation (ITO) – an early analogue of the modern World Trade Organisation (WTO) – were in the air. It was considered that for the sake of effective dispute settlement, it was necessary to create a body competent to make legal assessments resulting in ruling and recommendations.[84] Yet drafting and adopting the ITO Charter was left for future considerations (which, in fact, never took place), and the General Agreement on

[79] W.A. Schabas, The European Convention on Human Rights: a Commentary (OUP, 2015) ('Schabas (2015)'), p. 3; A.H. Robertson, *Council of Europe: Its Structure, Functions & Achievements* (New York: Frederick A. Praeger, 1956) ('Robertson (1956)'), p. 160.
[80] *Ibid*.
[81] Robertson (1956), pp. 160-168; Schabas (2015), pp. 3-10; O. Svarlien, *Introduction to the Law of Nations* (McGraw-Hill, 1955), pp. 443-444.
[82] Robertson (1956), pp. 174-179; Schabas (2015), p. 9.
[83] Schabas (2015), p. 10.
[84] M. Martin, *The Regulation of International Trade: The Multilateral System; Theories, Qualifications, History and Objectives in WTO Dispute Settlement Understanding and Development* (Brill / Nijhoff, 2013), pp. 41-42.

Tariffs and Trade (GATT), envisioned as an interim arrangement – not initially as a forum of any kind, was adopted instead,[85] leaving the idea of a comprehensive system of dispute settlement in trade matters overboard.

In parallel to the emergence of the European system of human rights protection, the 1950s gave rise to regional integration. In 1951, the Paris Treaty established the European Coal and Steel Community.[86] The Treaty established the Court of Justice (commonly known as the European Court of Justice – ECJ),[87] which was competent to adjudicate actions brought by the Member States or by the Council over a variety of legal matters arising from the application of a treaty or its violations.[88]

Later in 1957, when the European Economic Community and the European Atomic Energy Community were established, the Court was set up as a common forum for all three communities operating under three different yet parallel procedures.[89] Later, the ECJ became officially known as the Court of Justice of the European Union (CJEU) following the Treaty of Lisbon.[90] The ECJ, hence, became the next element in the chain of permanent regional courts operating within the sui generis system of the economic community established on the European continent. In comparison to the ECtHR, the ECJ was designed as an even more particularistic court serving the interests of the very limited circle of States within very sphere-specific communities established by them.

[85] D.A. Irwin, P.C. Mavroidis, A.O. Sykes, 'The Creation of the GATT' *in* D.A. Irwin, P.C. Mavroidis, A.O. Sykes, *The Genesis of the GATT* (CUP, 2011), pp. 95-96.
[86] Treaty establishing the European Coal and Steel Community (signed 18 April 1951, entered into force 23 July 1952).
[87] *Ibid*, Chapter IV.
[88] *Ibid*, Article 33.
[89] I. Kavass, *Supranational and Constitutional Courts in Europe: Functions and Sources* (Buffalo, N.Y., W.S. Hein., 1992), p. 18 *et seq*.
[90] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306 (signed 13 December 2007, entered into force 1 December 2009) ('Lisbon Treaty'), Article 9F.

The following decades became even more dynamic for the system of international adjudication. Fundamental moves were made in the system of human rights protection, especially in its regional dimension. While the Conference of the Organisation of American States adopted the American Declaration on the Rights and Duties of Man already in 1948 (in parallel to universal and European human rights aspirations), eleven years after – in 1959 – States of the region established the Commission on Human Rights.[91] The Commission conducted the work on the development of the future human rights convention, which entered into force in 1978.[92] Since then, the Inter-American Court of Human Rights (IACtHR) and Commission (IAComHR) engaged in another phase of regional human rights adjudication. Ten years later, in 1987, another region obtained its own human rights adjudication platform: the African Commission on Human and Peoples' Rights (ACHPR) was first inaugurated, yet the African Court became operational only in 2006.[93] In the European arena, in parallel to the ECtHR, the ECJ worked out its own competence to deal with human rights issues leading to the double system of the human rights protection in Europe.[94]

In parallel to the development of regional human rights courts, universal human rights protection mechanisms with special jurisdictions were brought into being. Particular treaties and/or their successive instruments, e.g., protocols, established quasi-judicial human rights organs to deal with individual, collective and/or inter-State complaints.[95] Some treaties, such as Conventions against Racial

[91] T.M. Antkowiak, A. Gonza, 'The Inter-American Human Rights System's Impact, Major Institutions, and Legal Instruments' *in* T.M. Antkowiak, A. Gonza, *The American Convention on Human Rights: Essential Rights* (OUP, 2017) ('Antkowiak and Gonza (2017)'), pp. 5-10; J.L. Cavallaro *et al.*, *Doctrine, Practice, and Advocacy in the Inter-American Human Rights System* (OUP, 2019) ('Cavallaro *et al.* (2019)'), pp. 22-25.
[92] T Antkowiak and Gonza (2017), p. 7; Cavallaro *et al.* (2019), pp. 32-49.
[93] M. Ssenyonjo, 'The African Commission and Court on Human and Peoples' Rights' in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018), p. 481.
[94] E. Ravasi, *Human Rights Protection by the ECtHR and the ECJ* (Brill | Nijhoff, 2017), pp. 2-4.
[95] *See, e.g.*, International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 ('ICERD'), Article 14; Convention Against Torture and

Discrimination (CERD Committee), against Torture, and against Discrimination against Women established respective committees to deal with the mentioned types of complaints, while the opportunity was also opened for States to bring disputes on the application and interpretation of the conventions before the ICJ.[96]

International investment law became another classical international law sphere subjected to uniform dispute settlement procedures. In 1965, the Washington Convention established the International Centre for Settlement of Investment Disputes (ICSID),[97] which during the subsequent decades replaced *ad hoc* arbitration, which dominated in the sphere previously. ICSID, however, became only one of the possible venues for the settlement of investment disputes, and other opportunities for establishing arbitral tribunals remained open to States and other involved actors.

Further, during the 1980s, codifications and progressive development of the law of the sea, previously shaped mainly by the ICJ, were pursued. They resulted in the UN Convention on the Law of the Sea, which set up several dispute settlement venues.[98] Article 287 of the Convention opened the possibility for States when signing, ratifying or acceding to it, to submit a written declaration choosing one or more possible venues for the settlement of disputes on the interpretation or application of the Convention, namely the International Tribunal for the Law of the Sea (ITLOS) established in Hamburg; the ICJ, an arbitral tribunal or a special arbitral

Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 ('UN CAT'), Article 22; Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('Optional Protocol to the ICCPR'), Articles 1-2; Annex to Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW') (adopted 10 December 1999, entered into force 22 December 2000) 2131 UNTS 83 ('Annex to Optional Protocol to the CEDAW'), Article 2.

[96] ICERD, Articles 14, 22; UN CAT, Articles 22, 30; CEDAW, Article 29 and Annex to Optional Protocol to the CEDAW, Article 2.

[97] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (signed 18 March 1965, entered into force 14 October 1966), 575 UNTS 159.

[98] Convention on the Law of the Sea (concluded 10 December 1982, entered into force 1 November 1994) 1833 UNTS 397.

tribunal constituted for specific category/-ies of disputes.[99] Additionally, State Parties were obliged to accept the jurisdiction of the Seabed Disputes Chamber of ITLOS, which was not to be affected by the possible choice of other venues.[100] The first session of the newly established ITLOS was convened in 1996,[101] thus, opening a new era for the law-making and law-shaping in the special regime of the law of the sea.

In relatively the same period, State Parties to GATT launched negotiations (the so-called Uruguay rounds) on reforming the system of regulating the international trade.[102] The Marakesh Agreement of 1994 marked the creation of the World Trade Organisation – a universal venue, which was fought for by many diplomats already in the 1940s (in the form of ITO, as described above). Since then, WTO Dispute Settlement Understanding (DSU) enshrined the creation of a permanent mechanism enabling States to resolve their controversies through panels, decisions of which can be appealed to the Appellate Body.[103] In the meantime, the conclusion of various regional trade agreements, such as, for example, North American Free Trade Agreement (NAFTA) and Mercado Común del Sur (MERCOSUR),[104] led to the development of regional dispute settlement venues under these specific treaties.[105]

The 1990s also went down the history as the dawn (or rebirth) of international criminal justice. Devastating events of the Yugoslav War, severe atrocities

[99] *Ibid*, Article 287(1).
[100] *Ibid*, Article 287(2).
[101] 'Timeline' (*International Tribunal for the Law of the Sea*) <https://www.itlos.org/en/main/the-tribunal/history/> accessed 7 June 2022.
[102] 'The Uruguay Round' (*World Trade Organisation*) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm> accessed 7 June 2022.
[103] Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401 (15 April 1994) ('WTO DSU'), Articles 6 *et seq*., and 17 *et seq*.
[104] *See, among others*, North American Free Trade Agreement, 32 I.L.M. 289 & 605 (1993), Chapters Nineteen and Twenty; Olivos Protocol for the Settlement of Disputes in MERCOSUR (signed 18 February 2002; entered into force 1 January 2004) 2251 UNTS 243.
[105] *See* description of various bodies in question in Mackenzie, Romano, Shany and Sands (2010), pp. 250-289.

committed in Rwanda and Sierra Leone triggered the reaction of the international community compelling it to establish accountability mechanisms. Inspired by the post-World War experience UN Security Council resolutions established two international tribunals – for the Former Yugoslavia (ICTY)[106] and for Rwanda (ICTR).[107] Later, the two institutions were succeeded by the International Residual Mechanism for Criminal Tribunals, whose mission was to complete the work started by ICTY and ICTR.[108] The situation in Sierra Leone came under the jurisdiction of the Special Court established upon the agreement between the State's government and the UN[109] – the institution that is commonly regarded as a hybrid criminal justice mechanism bearing features of both domestic and international courts.[110] Similar hybrid mechanisms were later established in East Timor, Cambodia and Lebanon, while War Crimes Chambers were created in the courts of Kosovo and Bosnia and Herzegovina.[111]

The horrific context of the 1990s revitalised discussions on the creation of a permanent international criminal judicial institution (the ones led already before and during the World Wars I and II (see above).[112] The International Criminal Court (ICC) was, thus, intended to contrast with the *ad hoc* and temporary tribunals[113] with the jurisdiction covering core international crimes – genocide, war crimes, crimes against humanity and later the crime of aggression – which were committed only after the Rome Statute (or respective Kampala Amendment on the crime of

[106] UN Security Council, Resolution 827 (1993), UN Doc no. S/RES/827 (1993), 25 May 1993 ('ICTY Statute').
[107] UN Security Council, Resolution 955 (1994), UN Doc no. S/RES/955 (1994), 8 November 1994.
[108] UN Security Council, Resolution 1966 (2010), UN Doc no. S/RES/1966 (2010), 22 December 2010.
[109] Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone (concluded 16 January 2002), 2178 UNTS 137.
[110] 'Hybrid courts' (*Asser Institute*) <https://www.asser.nl/nexus/international-criminal-law/the-history-of-icl/hybrid-courts/> accessed 7 June 2022; Mackenzie, Romano, Shany and Sands (2010), pp. 214-215.
[111] Mackenzie, Romano, Shany and Sands (2010), p. 214.
[112] V.P. Nanda, 'The Establishment of a Permanent International Criminal Court: Challenges Ahead', 20(2) *Human Rights Quarterly* 413, p. 413.
[113] W.A. Schabas, *The International Criminal Court - A Commentary on the Rome Statute* (OUP, 2nd ed., 2016), p. 67.

aggression) entered into force (or, if a State became a Party to the Statute after the entry into force, the jurisdiction commences only after this date, unless a State made a declaration confirming otherwise).[114] As of June 2022, the Office of the Prosecutor of the ICC investigated 17 situations (including the situation in Ukraine),[115] and held preliminary examinations in 10 other situations (three ongoing and 11 closed).[116]

The development of permanent institutions throughout the 20th century did not put an end to previously traditional *ad hoc* dispute settlement mechanisms. *Ad hoc* arbitration still remains a popular option enshrined in a variety of treaties, and some prominent examples in the recent years, such as Iran-US Claims Tribunal and Eritrea-Ethiopia Claims Commission, demonstrate the method's relevance for the contemporary system despite critical remarks voiced against these bodies.[117]

Likewise, the 21th century did not stop the proliferation of international (quasi-)judicial institutions. Discussions have continued as to the necessity of creating other adjudication mechanisms, e.g., human rights courts in the Arab region and other parts of Asia. For example, in 2014, the Council of the League of Arab States adopted the Statute of the Arab Court of Human Rights,[118] which, however, did not enter into force as of November 2021 as no State has ratified the Statute.[119] At the same time, the prescribed system faced criticism of some international lawyers,

---

[114] Rome Statute of the International Criminal Court (signed 17 July 1998, entered into force 1 July 2002), 2187 UNTS 3 ('Rome Statute'), Articles 5, 11.

[115] 'Situations under investigation' (*International Criminal Court*) <https://www.icc-cpi.int/pages/situation.aspx> accessed 7 June 2022.

[116] 'Preliminary examinations' (*International Criminal Court*) <https://www.icc-cpi.int/situations-preliminary-examinations> accessed 7 June 2022.

[117] *See* more generally on the establishment and the activities of two organs in E. Greppi E., L. Poli, 'The 2000 Algiers Agreements' *in* A. de Guttry, H.H.G. Post, G. Venturini (eds), *The 1998–2000 Eritrea-Ethiopia War and Its Aftermath in International Legal Perspective* (T.M.C. Asser Press, 2021), pp. 67-86; D.P. Stewart, L.B. Sherman, 'Developments at the Iran-United States Claims Tribunal: 1981-1984' *in* R.B. Lillich (ed.), *Iran-United States Claims Tribunal, 1981-1983* (University Press of Virginia, 1984), pp. 1-50.

[118] Z. Eyadat, H. Okasheh, 'Human Rights Mechanisms in the Arab World: Politics and Protection' *in* G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018) ('Eyadat and Okasheh *in* Oberleitner (2018)'), p. 516.

[119] 'Emerging Arab States Human Rights Mechanisms' (*The University of Melbourne*) <https://unimelb.libguides.com/c.php?g=928011&p=6704321> accessed 7 June 2022.

including the International Commission of Jurists, suggesting that if developed, the system will be highly ineffective, so the Commission called upon member States to refrain from ratifying the Statute unless progressive changes are made.[120] At the same time, the Arab Human Rights Committee established in 2009 bears a more monitoring function as opposed to adjudication or complaints-review.[121] Similar problem is common to the rest of Asia and the Pacific, where no regional human rights adjudication mechanisms analogous to those in other regions exists.[122]

Debates have also been ongoing on the regionalisation of international criminal law. After the African Union launched criticism against the International Criminal Court for its alleged selective targeting of African leaders, it placed a particular emphasis on the need to enhance more regional-based criminal tribunals,[123] which would be oriented at peculiarities of local contexts.

Thus, it can be expected that in the foreseeable future, the international community can witness the emergence of new regional and universal courts and tribunals, which would complement the existing architecture of international adjudication. The next Section will complement this contextual picture by classifying modern adjudication mechanisms, thus, drawing a comprehensive and systemic picture of how contemporary adjudication architecture looks like.

[120] International Commission of Jurists, 'The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court' (2015) <https://www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Report-2015-ENG.pdf > accessed 7 June 2022.
[121] *See* the description of the Committee's powers in Eyadat and Okasheh *in* Oberleitner (2018), pp. 515-516.
[122] S. Petcharamesreein, 'ASEAN Human Rights Mechanisms' *in* G. Oberleitner (ed.), International Human Rights Institutions, Tribunals, and Courts. International Human Rights (Springer, 2018), pp. 527-548.
[123] African Union, 'Draft 2. Withdrawal Strategy Document' (version of 12 January 2017, published by Human Rights Watch) <https://www.hrw.org/sites/default/files/supporting_resources/icc_withdrawal_strategy_jan._2017.pdf>, paras 1-4, 8.

1.2. Contemporary international adjudication architecture: systematising the constituents

International law is and has always been decentralised, polycentric and pluralistic. The decentralised nature of international law implies that it lacks a centralised source of rule-making (legislature), coordinated judiciary with compulsory jurisdiction and organised enforcement system.[124] Polycentricity and plurality in international law create a situation whereby activities of numerous States, international organisations, courts and tribunals produce a multiplicity of legal orders, regimes and understandings governing the behaviour of different actors in the international arena.[125] Nevertheless, as the International Law Commission pointed out in its Conclusions on the fragmentation of international law, international law is a legal *system*: its norms and principles do not exist as a mere random collection but are connected by "meaningful relations".[126]

The same conclusion is likewise applied to the network of international courts. Even though, in contrast to municipal systems, they are not united in a centralised, hierarchical system, they are not a mere set of unconnected institutions, and a sense of correlation still exists between them. Based on the contextual picture of the contemporary adjudication system and its evolution presented in Section 1.1, this Section will systematise and classify modern adjudication mechanisms forming a background for further analysis of jurisdictional parallelism and competition.

[124] M. Shaw, *International Law* (CUP, 8th ed., 2017) ('Shaw (2017)'), p. 38.
[125] *See* related discussion in E. van Sliedregt, S. Vasiliev, 'Pluralism: A New Framework for International Criminal Justice' *in* E. van Sliedregt, S. Vasiliev (eds.), *Pluralism in International Criminal Law* (OUP, 2014), p. 10.
[126] International Law Commission (ILC), 'Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law' (2006), 58th session, ILC Yearbook 2006, Vol. II, Part 2 ('ILC Conclusions on the Fragmentation of International Law (2006)'), para. 251(1).

1.2.1. Different issues of ratione materiae jurisdiction

During the last decades, the scope of international regulation has significantly increased, leading to the fragmentation of international law.[127] In addition to classical legal areas, such as diplomatic law, new and special spheres of law, i.e., the so-called self-contained regimes, and specific treaty systems, limited both geographically and functionally, emerge in the international legal system seeking to respond to the contemporary requirements.[128] In line with these trends, international disputes can come under the jurisdiction of two types of bodies depending on their *ratione materiae* jurisdiction. International courts can have either general or special jurisdictions.

Courts of general jurisdictions can adjudicate a wide variety of matters brought before them. Today there is a limited number of such bodies: the ICJ and the PCA being the brightest examples.[129] For example, the ICJ Statute describes the Court's jurisdiction in broad terms: it encompasses (i) all cases referred to it by the parties; (ii) all matters specially provided for in the UN Charter or (iii) in treaties in force.[130] Additionally, a State can declare that it recognises *ipso facto* the Court's jurisdiction to hear all disputes concerning the treaty interpretation, any questions of international law, alleged breaches of international obligations and reparations.[131] These formulations can apparently cover a wide series of issues, which is further evidenced by the Court's jurisprudence. Between 1947 and late 2021, 181 cases were entered in the Court's General List,[132] some of them concerning, e.g., frontier

[127] *Ibid*, para. 241.
[128] *Ibid*, paras 241, 247.
[129] C. Giorgetti, *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Brill, 2012) ('Giorgetti (2012)'), p. 4.
[130] ICJ Statute, Article 36(1).
[131] ICJ Statute, Article 36(2).
[132] 'Cases' (*International Court of Justice*) <https://www.icj-cij.org/en/cases> accessed 7 June 2022.

delimitations,[133] State immunities,[134] State responsibility for genocide,[135] racial discrimination[136] or terrorism financing,[137] the use of nuclear weapons,[138] etc.

In contrast, courts of special jurisdiction adjudicate cases concerning a limited legal sphere.[139] For instance, ICC and international criminal tribunals could only judge upon the issues of individual criminal responsibility for international crimes, while human rights courts and committees can only hear matters pertaining to human rights violations. Moreover, jurisdictions of such courts are usually limited to certain obligations and questions stemming from particular treaty instruments. To illustrate, ECtHR's jurisdiction is confined to "all matters concerning the interpretation and application of the [European] Convention and the Protocols", and not all human rights-related matters.[140] Likewise, WTO dispute settlement bodies can only adjudicate matters regarding WTO Agreements and not all trade-related disputes.[141]

Constituent instruments of some adjudication mechanisms also prescribe that they possess exclusive jurisdiction over the matters prescribed in those treaties, e.g., only the WTO is entitled to adjudicate claims under the GATT.[142] Treaties governing

---

[133] *See, e.g.,* 'Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/75> accessed 7 June 2022.
[134] *See, e.g.,* 'Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/143> accessed 7 June 2022.
[135] *See, e.g.,* 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/91> accessed 7 June 2022.
[136] *See, e.g.,* 'Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/172> accessed 7 June 2022; 'Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/166> accessed 7 June 2022.
[137] 'Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)' (*International Court of Justice*) <https://www.icj-cij.org/en/case/166> accessed 7 June 2022.
[138] 'Legality of the Threat or Use of Nuclear Weapons' (*International Court of Justice*) <https://www.icj-cij.org/en/case/195> accessed 7 June 2022.
[139] Giorgetti (2012), p. 4.
[140] European Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950; entered into force 3 September 1953) ETS 5 ('ECHR'), Article 32(1).
[141] WTO DSU, Article 23.
[142] *Ibid.*

the functioning of some other international courts de facto install a temporal priority of bringing the matter to that very court before making recourse to other bodies.[143] Particularly, Article 35(2) of the ECHR provides that application before the ECtHR would be inadmissible, if substantially the same application was submitted to another international investigation or settlement mechanisms,[144] which makes ECtHR's jurisdiction automatically the first one in the sequence of adjudication bodies hearing the case, and creates some sense of exclusivity. The jurisdiction of many other courts does not preclude recourse to other dispute settlement venues. For instance, Article 95 of the UN Charter clearly stipulates in relation to the ICJ that nothing in the Charter "shall prevent [UN] Members from entrusting the solution of their differences to other tribunals",[145] thus, to a certain degree debunking any claims of exclusivity in relation to the ICJ.

Additionally, jurisdiction can be categorised as (non-)compulsory. Jurisdiction of some forums commences once a State expresses consent to be bound by a treaty (e.g., WTO, ECtHR).[146] In such situations, a State against whom the complaint is launched cannot choose whether to appear before the court in a particular dispute. In contrast, jurisdictions of other bodies, e.g., the ICJ, require a separate expression of a State's consent by virtue of either (i) a unilateral declaration; or (ii) special agreement; or (iii) ratifying a treaty with a compromissory clause.[147] The latter variant can often be a tool to avoid appearing before the court in "uncomfortable" disputes.

---

[143] ECHR, Article 35(2).
[144] *Ibid*.
[145] Charter of the United Nations (signed 26 June 1945; entered into force 24 October 1945) 1 UNTS ('UN Charter'), Article 95.
[146] Rome Statute, Article 12(1); 'Functions, objectives and key features of the dispute settlement system' (*World Trade Organisation*) <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s3p3_e.htm> accessed 7 June 2022; European Court of Human Rights, 'Proceedings of the Seminar: Ten Years of the "New" European Court of Human Rights. 1998-2008 Situation And Outlook' (2009) <https://www.echr.coe.int/Documents/10years_NC_1998_2008_ENG.pdf> accessed 7 June 2022, p. 12.
[147] ICJ Statute, Article 26(1o

1.2.2. Jurisdictions ratione temporis, ratione personae and territorial jurisdictions

International courts can also be grouped according to the geographical or global coverage of their jurisdictions. Universal courts offer their services to all States around the globe, accepting their jurisdiction. The ICJ, as a principal judicial organ of the UN, UN human rights committees, WTO dispute settlement bodies, ICC and ITLOS are only a few examples of universal courts and quasi-judicial bodies. In turn, regional courts only deliver justice to States of a particular region or are attached to a particular regional organisation. They include Inter-American, European human rights courts and African Court of Justice and Human Rights (check), dispute settlement mechanisms of regional integration organisations, e.g., CJEU. Country-specific courts or tribunals usually focus on a particular context, e.g., the Yugoslav War or the Rwandan genocide in cases of ICTY and ICTR.[148]

At the same time, courts can be categorised by their temporal jurisdiction. As demonstrated in the previous Section, the history of international adjudication began with *ad hoc* arbitral institutions adjudicating disputes arising from very specific contexts. It was not until the early 20th century that permanent forums, such as PCA and PCIJ emerged. They were open to a variety of situations and not a particular case. Though during later decades, the number of permanent institutions continued to increase, modern history witnessed a variety of *ad hoc* tribunals as well, for example, Iran-US Claims Tribunal, ICTY or ICTR, operating in parallel to permanent courts. Historically, a distinction was drawn between the notions of "courts" and "tribunals", with the former being considered permanent ones and the latter temporary ones.[149] Today, however, this differentiation is no more than a formal one.[150]

[148] Giorgetti (2012), p. 6.
[149] Giorgetti (2012), p. 5.
[150] Giorgetti (2012), p. 5.

As to the personal jurisdiction, historically, States were primary subjects of international law, and international courts operated in this model, being competent to adjudicate purely inter-State disputes.[151] Progressive development of international law multiplied its personal scope bringing more weight to non-State actors, especially individuals and private companies, as well as international organisations.[152] As a result, many forums opened their jurisdictions for private individuals: first and foremost, human rights organs. Investment tribunals started to hear cases of companies. On the other hand, international criminal courts and tribunals put individuals on the other side of the process – on trial. International organisations and their organs also obtained competencies before international courts, e.g., to request advisory opinions.[153]

Other supranational entities, e.g., the EU, also forms an interesting category of ratione personae jurisdiction. For example, as the WTO Member[154] EU can become both an applicant and a respondent before the WTO dispute settlement mechanism,[155] while the CJEU can issue decisions on request of and against EU organs.[156] Lastly, in a closer European perspective, the EU can become a party to the European Convention on Human Rights and, thus, potential respondent before the ECtHR.[157]

---

[151] Giorgetti (2012), p. 5.

[152] P.-M. Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice' (1999) 31(4) *New York University Journal of International Law and Politics* 791 ('Dupuy (1999)'), p. 795; L.B. Arevalo, 'The Multiplication of International Jurisdictions and the Integrity of International Law' (2008) 15(1) *ILSA Journal of International & Comparative Law* 49 ('Arevalo (2008)'), p. 51.

[153] In relation to the ICJ, *see, e.g.*, UN Charter, and the overall list of competent bodies in 'Organs and agencies authorized to request advisory opinions' (*International Court of Justice*) <https://www.icj-cij.org/en/organs-agencies-authorized> accessed 7 June 2022.

[154] 'The European Union and the WTO' (*World Trade Organisation*) <https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm> accessed 7 June 2022.

[155] WTO DSU provides standing to all "Members" of the organisation: *see* WTO DSU.

[156] Lisbon Treaty, Article 9F.

[157] *See* Lisbon Treaty, Protocol Relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, OJ C 326, 26 October 2012, pp. 273–273; ECHR, Article 59(2).

1.2.3. Judicial, arbitral and quasi-judicial bodies

International legal history provides a variety of procedures upon which a dispute settlement body can operate. To establish the nature of the body in question, international jurisprudence suggests looking at "the nature of the procedure followed by those states before the body in question".[158]

Some international forums operate as judicial organs – courts – similar to their municipal appearance. Some international lawyers have even developed a set of criteria to differentiate judicial bodies from other adjudication institutions: judicial bodies are (1) permanent institutions; (2) consisting of independent judges undergoing scrutinised selection with a usually lengthy tenure in office; (3) adjudicating disputes between 2+ entities one of which (at least) is a State or an international organisation; (4) operating based on predetermined procedures; and (5) issuing legally binding decisions.[159] Yet, this test should not apply as uniform and an exclusive one.[160] For example, the ICC does not fall within the third criterion, but it will be meaningless to deny its judicial nature: it follows clear procedures set out in the Rome Statute, operates in analogy to municipal criminal procedures, and renders judgments having a direct impact on the destiny of individual persons. Contemporary scholars count around thirteen courts (without the ICC), falling under the mentioned characteristics: they include, e.g., ICJ, regional human rights courts, several integration communities' courts (namely CJEU and Central American Court of Justice), etc.

Institutions, which do not fall under these criteria, can be considered quasi-judicial bodies, even though they mimic many features of fully judicial organs. For

[158] *Laguna del Desierto* 113 ILR, pp. 1, 42 *in* Shaw (2017), p. 795.
[159] C.P.R. Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle' (1999) 31 *New York University Journal of International Law and Politics* 709, pp. 711-723; J. Alvarez, *International Organizations as Law-makers* (OUP, 2006), p. 458.
[160] C.P.R. Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle' (1999) 31 *New York University Journal of International Law and Politics* 709, p. 715.

instance, human rights committees or WTO panels also operate upon an established set of procedures, yet they consist of experts – not judges – with the former issuing mere recommendations in contrast to binding decisions.

The two categories described above should also be distinguished from arbitral institutions, forming a very separate set of adjudication mechanisms, which are confidential, voluntary and consensual, i.e., accompanied by the parties' choice of arbitrator, applicable rules, procedures, etc.[161] It is, thus, contended that arbitration as a method of dispute settlement combines judicial and diplomatic procedures.[162]

1.2.4. Varying results, including reparations

Different international courts and tribunals are, by their very nature, capable of providing different forms of remedies. While a customary set of reparations common to the general international law includes three traditional forms (i.e., restitution, compensation and satisfaction),[163] this classical toolkit is not common to all international courts. The three forms are widely used by the ICJ, as evidenced by its jurisprudence.[164] However, other international bodies, e.g., the WTO mechanisms, do not apply compensation as a remedy: they should only recommend a State to bring its measures in conformity with its international obligations (in case the violation is established) and can suggest in which way it can be done.[165] Instead compensation along with countermeasures constitutes only a temporary and voluntary method covering the period, when recommendations of the WTO bodies are not duly implemented.[166]

---

[161] Shaw (2017), pp. 795-801.
[162] Shaw (2017), p. 800.
[163] ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc. A/RES/56/83 ('ILC Articles on State Responsibility (2001)'), Articles 34-37.
[164] ILC, 'Commentary to the Articles on Responsibility of States for Internationally Wrongful Acts' (2001), ILC Yearbook 2001, Vol. II, Part Two, UN Doc. A/CN.4/SER.A/2001, Commentary to Articles 34-37, pp. 95-107.
[165] WTO DSU, Article 19; H. Horn, P.C. Mavroidis, 'Remedies in the WTO Dispute Settlement System and Developing Country Interests' (11 April 1999), Section 3.2.
[166] WTO DSU, Article 22.

Remedies in other international courts are also marked with specificity. For example, the ICC and criminal tribunals, by their very nature, are only capable of sentencing or acquitting a person on trial, and have nothing to offer to individual victims, their communities or victim States (some assistance can, however, be provided by the Victims Trust Fund of the ICC).[167] Some human rights committees are only entitled to issue recommendations to States, which were found in breach of their obligations.[168] In contrast, human rights courts, e.g., the ECtHR, are entitled to order both individual (restitution, cessation of the breach, just satisfaction, etc.)[169] and general measures (e.g., adopting new legal frameworks, launching reforms, etc.)[170] in order to bring State's acts in compliance with its obligations. Thus, available remedies in a particular forum can form one of the decisive factors in considering whether the forum should be used.

***

In conclusion, the emergence of international adjudication mechanisms can be seen as a reasonable consequence of the dynamic development of international law similar to societies of human beings. Once the initial singularity of international courts and tribunals has developed into a complex architecture of hundreds of permanent and *ad hoc* institutions resolving controversies in the international arena – a universe of hundreds of galaxies. This process was steady: it started with *ad hoc* arbitration as the most popular dispute settlement method of the late 18th – early 20th

[167] 'Trust Fund for Victims (TFV). Background Summary' (*International Criminal Court*) <https://www.icc-cpi.int/tfv> accessed 7 June 2022.
[168] 'Individual Communications. What happens once a Committee decides a case?' (*UN Office of the High Commissioner for Human Rights*) <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#navigation> accessed 7 June 2022.
[169] 'Individual measures' (*Council of Europe*) <https://www.coe.int/en/web/human-rights-convention/individual-measures> accessed 7 June 2022.
[170] 'General measures' (*Council of Europe*) <https://www.coe.int/en/web/human-rights-convention/general-measures> accessed 7 June 2022.

century and initially branched into various general and specific judicial and quasi-judicial institutions born throughout the last hundreds of years.

Such a retrospective view provides a valuable insight into the modern state of the international adjudication system and describes the context in which the modern system has emerged and has been operating. Particularly it will be an important step to further understanding the jurisdictional parallelism and competition of modern (quasi-)judicial institutions and its historical roots.

As Section 1.2 demonstrated, elements of modern international adjudication architecture can be categorised in accordance with different variables. The combination of the latter serves as a crucial factor when States decide which forum to exploit and whose jurisdiction to consent to. Yet, even more crucially, it is logical to anticipate that in the arena where different institutions of the same category operate, their activities will necessarily run in parallel and come into competition with one another. Thus, the described variables are at the root of the phenomena of jurisdictional parallelism and conflicts, which will be discussed in the next Chapter.

CHAPTER 2

PARALLEL AND CONFLICTING JURISDICTIONS: DEFINING THE PHENOMENA AND OUTLINING THE PROBLEM

The diversity of international courts and tribunals developed during the previous century has not only led to increased justiciability of international relations but also caused many practical problems – either immediate or potential – connected with the jurisdictional interplay of adjudication platforms. As the caseload of international courts grew, it became inevitable that sooner or later, their jurisdictions would "collide" creating implications which require both legal and policy solutions.

This Chapter aims to describe the phenomenon of jurisdictional parallelism emanating from the expansion of the international adjudication network and leading to jurisdictional conflicts. It will focus on the interrelations between the notions of jurisdictional parallelism and conflicts, as well as the positive and negative implications of both.

2.1. The notions of jurisdictional parallelism and jurisdictional conflicts

When a dispute arises between several legal subjects or when the law needs to be interpreted, recourse is made to an independent third party – a court, a tribunal or other quasi-judicial mechanism. In domestic legal systems, competences of national institutions are (ideally) outlined in legal acts. Procedural codes and laws clearly point to a body which possesses territorial, personal and material jurisdiction over the case. Citizens know precisely well that if a crime is committed, judges or chambers specialising in criminal cases will hear a dispute. If a contract is breached, courts or chambers of civil jurisdictions will adjudicate the matter. If jurisdictions of several courts are seized in relation to the same dispute, there will be procedural tools to prevent parallel proceedings. Even if the laws are applied differently by

various low-level courts, there are always appellate and supreme courts to ensure that the law is interpreted and applied uniformly.

The decentralised international legal system is rather different. Every State, by virtue of its sovereignty, independently decides whether to join a particular dispute settlement forum or abstain from it. Due to the nature of international law, it would be impossible to establish a universal set of rules regulating how jurisdictions of dozens of permanent and hundreds of *ad hoc* bodies must interplay. This leads to 'jurisdictional parallelism' whereby different bodies adjudicate international law issues in parallel.

2.1.1. Jurisdictional parallelism

The modern international legal order benefits from the process of accumulation and complementarity of different obligations stemming from various sources.[171] For example, contemporary human rights protection is based on various sources – both treaty and customary – stemming, e.g., from the UN Charter, regional human rights agreements,[172] or rules of international criminal law. As the ITLOS put it in the *Southern Bluefin Tuna* case, a particular act of a State can violate obligations under more than one treaty, and "there is frequently a parallelism of treaties, both in their substantive content and in their provisions for the settlement of disputes arising thereunder."[173] Many inter-State disputes due to their unorthodox, intricate and multi-dimensional nature can only be effectively resolved by a combination of methods and the use of as many tools and avenues as possible either at the same time or successively.[174]

[171] *Southern Bluefin Tuna* (*New Zealand-Japan, Australia-Japan*) (2000) 23 UNRIAA 1 ('*Southern Bluefin Tuna*'), para. 52.
[172] *Ibid*, para. 52.
[173] *Ibid*, para. 52.
[174] *Aegean Sea Continental Shelf* (*Greece v. Turkey*), Judgment (1978) ICJ Rep 3, Separate Opinion of Judge Lachs ('*Aegean Sea Continental Shelf* (*Greece v Turkey*), Separate Opinion of Judge Lachs'), p. 52.

This very logic is reflected in the UN Charter. As mentioned above, Article 95 in the Chapter related to the ICJ stipulates that the provisions of the Charter – and, more broadly, the jurisdiction of the Court – must not prevent Members of the UN from submitting their disputes to any other forums[175] they can consider viable. This provision – although general in its scope – mirrors the nature of today's system of international adjudication, whereby the States are free to establish and turn to as many dispute settlement venues as they wish to resolve their controversies.

Jurisdictional parallelism as a phenomenon must be understood in broad terms. It is not confined merely to the situations where jurisdictions of the courts compete or come into conflict (see the analysis further). Rather it describes the general condition in which every international court does not operate in isolation: even if its jurisdiction is exclusive or limited due to various circumstances, its activities remain connected to those of other courts and tribunals. Some authors even went further to contend that international courts and tribunals are "involved in a hegemonic struggle in which each hopes to have its special interests identified with the general interest."[176] Regardless of whether this characteristic is realistic and precise (as it can arguably be), it only underlines that even in the absence of direct conflicting jurisdictions, all international courts and tribunals operating in parallel to each other are involved in various interactions resulting from their jurisdictional activities.

This Sub-Section will describe the notion of parallel jurisdictions based on two examples – jurisdictional parallelism in terms of legal interpretations and jurisdictional parallelism regarding the same situations. Situations where

[175] UN Charter, Article 95.
[176] M. Koskenniemi, P. Leino, 'Fragmentation of International Law? Postmodern Anxieties' 15 *Leiden Journal of International Law* 553, p. 562 cited in E. Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39(2) *The Journal of Legal Studies* 547, p. 552.

jurisdictional parallelism leads to conflicting jurisdictions will be described in Section 2.1.2.

2.1.1.1. Jurisdictional parallelism in the context of legal interpretations

Jurisdictions of some international courts can seem remote and separated. For example:

- Situation A: regional human rights court deals with an individual complaint regarding human rights abuses in State A resulting from atrocities committed by armed group A acting under certain control of State A.
- Situation B: at the same time, *ad hoc* international criminal tribunal adjudicated the matters of individual criminal liability for international crimes committed in the context of an armed conflict in State B.
- Situation C: universal international court of general jurisdiction (e.g., the ICJ) deals with issues of State responsibility for violations of international humanitarian and human rights law committed in State C.

All three situations are distinct geographically and temporarily, and involve different actors, different legal issues and jurisdictions of different courts. However, in essence, each of the three courts can produce legal interpretations, especially over some novel matters, which can be relevant to the jurisdiction exercised by another court.

For example, it is impossible to imagine a situation where the jurisdictions of the ICJ and the ICC will come into a conflict. The ICJ is a universal court of general jurisdiction competent to adjudicate inter-State cases and issue advisory opinions based on different sources of international law, including multiple treaties and customary rules. In contrast, the ICC is a specialised court dealing with individual criminal responsibility for international crimes and functioning within the limits of its constituent instrument – the Rome Statute. Its jurisdiction is, however, linked to a limited number of other international law sources. Among them are, e.g., the

Genocide Convention, as well as customary and conventional rules of international humanitarian law.[177] Yet, the ICC cannot step over the limits of this jurisdiction ratione materiae and ratione personae and somehow reach the jurisdictional field of the ICJ to create a jurisdictional overlap. The same is especially true in relation to *ad hoc* international criminal tribunals, e.g., the ICTY, which operated within the frontiers of its Statute adopted by the Security Council resolution and dealt exclusively with the issues of individual criminal responsibility for the crimes committed within a limited territory, affected by the atrocities in the territory of the former Yugoslavia.[178]

Nevertheless, it would be too bold to suggest that jurisdictions of the ICJ and the ICC / the ICTY have been unconnected because of the mere fact that their jurisdictions have not been competing. There are innumerable other ways in which both jurisdictions and the outcomes of their exercise interplayed because they keep operating in jurisdictional parallel. From the broadest possible perspective, it can be the case that these bodies interpret the same (or connected) rules of law. On several occasions, the ICJ has touched upon the legal issues of relevance for the international criminal forums. For example, the 1996 *Nuclear Weapons* Advisory Opinion provided an interpretation of the interplay between international humanitarian and human rights law[179] (which was additionally discussed in the 2005 *Armed Activities* judgment and the 2004 *Palestinian Wall* Advisory Opinion),[180] as well as the protection of the environment during the armed conflict.[181] Another illustration is

[177] *See* Rome Statute, Articles 6 and 8. The definition of 'genocide' in Article 6 repeats the definition of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 277, Article 2. In turn, Article 8 directly refers to Geneva Conventions, as well as laws and customs of international humanitarian law.
[178] ICTY Statute, Article 1.
[179] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (1996) ICJ Rep 226 ('*Nuclear Weapons* AO'), para. 25.
[180] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136 ('*Palestinian Wall* AO'), para. 106.
[181] *Nuclear Weapons* AO, paras 29-33.

the 2007 *Bosnian Genocide* judgment, where the Court interpreted the legal requirements to genocide under the Genocide Convention (see below).[182]

In these circumstances, legal interpretations provided by one court *can* impact or *do* impact the exercise of jurisdiction over the subject-matter of another international court. This impact is not, however, always complementary in the meaning that international courts do not always adopt interpretations provided by their fellow colleagues from other institutions without reservations or dissent. In the very same context of the ICJ and the ICTY, discussions on the so-called 'control tests' adopted by them can be seen as an example of how one court can attempt to (re-)shape legal standards generated by another body exercising its parallel jurisdiction.

In the 1986 *Nicaragua* judgment, the ICJ faced the issue as to whether US control over *contras* operating in Nicaragua was sufficient to establish attribution of wrongful conduct to the US and, consequently, US State responsibility.[183] For these purposes, the Court analysed the level of influence exercised by the US over *contras*, and ruled that the necessary threshold for establishing attribution is the 'effective control' test.[184] The Court argued:

> "the United States participation, even if preponderant or decisive, in the financing, organising, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself […] for the purpose of attributing to the United States the acts committed by the contras in the course of their military or paramilitary operations in Nicaragua […] For this conduct to give rise to legal responsibility of the United States, it would in principle have to

[182] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, Merits (2007) ICJ Rep 43 ('2007 *Bosnian Genocide* judgment'), paras 186-201.
[183] 1986 *Nicaragua v. US* judgment, para. 111.
[184] *Ibid*, para. 115.

be proved that that State had effective control *of the military or paramilitary operations in the course of which the alleged violations were committed.*"[185]

In the Court's understanding, thus, State responsibility for the conduct of non-State groups operating, inter alia, in the realities of the armed conflict, would only arise, if the State exercised respective control over *every* wrongful conduct or operation, e.g., by training, financing, organising, or equipping the group.[186] In that period this test constituted a rather novel development, inasmuch as the law of State responsibility remained largely uncodified. The Nicaragua's approach presented at least some form of an answer to the interrelation between the State and armed groups acting purportedly under its control.

The judgment was, however, the beginning of a wider legal discussion. The question of control further became the cornerstone for the legal activities of another body, the jurisdiction of which was distinct from the ICJ in many possible respects. The ICTY was an *ad hoc* body, with the jurisdiction confined to a particular region and situation, competent to deal with the matters of individual criminal responsibility. For the ICTY working on the matters of armed conflicts, it was likewise crucial to determine the State's role in the course of the military operations in the former Yugoslavia – primarily to qualify the conflict as an international or non-international one.

However, in *Tadić*, the Appeals Chamber went beyond analysing this issue and criticised the ICJ's approaches to the law of State responsibility, despite lacking immediate competence to deal with the latter matters. The Chamber pronounced that *Nicaragua* test is "unconvincing" and "unpersuasive" due to "the very logic of the entire system of international law on State responsibility" and being "at variance

[185] *Ibid*, para. 115.
[186] *See* more explanation in J. Crawford, *State Responsibility. The General Part* (CUP, 2013), pp. 146-149.

with international judicial and State practice."[187] Instead, the Tribunal insisted that the "overall control" test is the correct standard to apply to both issues of attribution under the law of State responsibility and qualifying the armed conflict for the purposes of determining the elements of international crimes for individual criminal liability.[188] The overall control test is a much lower standard if compared to the effective control test, and is satisfied once a State equips and finances the group, as well as "coordinate[s] or help[s] in the general planning of its military activity", in contrast to each wrongful operation or conduct.[189]

The Chamber proceeded to analyse the practice of various tribunals and courts, including the Iran-US Claims Tribunal and the ECtHR, merging the approaches from various sue generis spheres into a single interpretative framework.[190] This analysis, however, did not seem to pay sufficient weight to the context in which various bodies delivered their functions, including their jurisdictional limits. Several times, the Chamber stated that it did not share the view that the tests for State responsibility are immaterial to the questions of individual criminal liability.[191]

In a few years, the ICJ criticised this line of reasoning. Considering the rules of attribution under the law of State responsibility in the 2007 *Bosnian Genocide* judgment, the ICJ elaborated on why the ICTY was wrong in its considerations of the law of State responsibility.[192] Remarkably, the ICJ clearly pointed out that the ICTY went beyond the limits of its jurisdiction when making the relevant pronouncements:

---

[187] *Prosecutor v. Tadić*, IT-94-1-A, Appeal Judgment, 15 July 1999 ('*Tadić* Appeals Judgment'), paras 115-116, 123-124.
[188] *Tadić* Appeals Judgment, para 122, 131. *See also,* 2007 *Bosnian Genocide* judgment, para. 404.
[189] *Tadić* Appeals Judgment, para 131.
[190] *Ibid*, paras 123 *et seq.*
[191] *Ibid*, paras 103-104.
[192] 2007 *Bosnian Genocide* judgment, paras 398-407.

> "The Court has given careful consideration to the Appeals Chamber's reasoning in support of the foregoing conclusion, but finds itself unable to subscribe to the Chamber's view. First, the Court observes that the ICTY was not called upon in the Tadić case, nor is it in general called upon, to rule on questions of State responsibility, since its jurisdiction is criminal and extends over persons only. **Thus, in that Judgment the Tribunal addressed an issue which was not indispensable for the exercise of its jurisdiction**. As stated above, the Court attaches the utmost importance to the factual and legal findings made by the ICTY in ruling on the criminal liability of the accused before it and, in the present case, the Court takes fullest account of the ICTY's trial and appellate judgments dealing with the events underlying the dispute. **The situation is not the same for positions adopted by the ICTY on issues of general international law which do not lie within the specific purview of its jurisdiction and, moreover, the resolution of which is not always necessary for deciding the criminal cases before it**" (emphasis added).[193]

Hence, the ICJ's reasoning was clear: the matters of State responsibility evidently rested outside ICTY's jurisdiction, which was confined to a specific legal regime of individual criminal liability. Technically speaking, no rule or principle expressly prohibits a court or a tribunal from interpreting rules of legal regimes outside its specific jurisdiction. It seems that the ICTY made use of this door and expressed its reflections on the matter between the lines of its main thread of judicial reasoning on issues relevant to its judgment. This approach only underlines that even if jurisdictions of courts and tribunals are distinct and have no chance to come into an immediate conflict, they nevertheless interact, at least in the matters of judicial interpretation, where one court can "cross" its jurisdictional "borders" and influence

[193] *Ibid*, para. 403.

the content of the legal standards of the general international law. Such an approach, as will be explained further, can endanger the consistency of the law and create several conflicting interpretations, of which parties can make use.

The ICJ's judgment made it clear how such situations should be treated. The Court's logic stipulated: if some body's jurisdiction is confined to specific issues or legal regimes, only legal pronouncements on the matters of those very regimes are to be ascribed great weight by other international courts. This position was further implicitly manifested in the ICJ's further jurisprudence. When dealing with the human rights issues in the 2010 *Diallo* judgment, the Court credited the interpretation of human rights bodies. It stated:

> "Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the [International Covenant on Civil and Political Rights] on that of the [Human Rights] Committee, it believes that **it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty**" (emphasis added).[194]

The Court ascribed the same due weight to the interpretation of human rights law by regional bodies, such as the ACHPR, ECtHR, and IACtHR, as to "independent bodies which have been specifically created […] to monitor the sound application of the treaty in question."[195]

If, to the contrary, the body with a specific jurisdiction goes beyond its limits and interprets provisions of general international law, such interpretations are to be treated with caution (arguably, only if they deviate from commonly adopted approaches – if they do not, they can strengthen common practices). In such

[194] *Ahmadou Sadio Diallo* (*Republic of Guinea v. Democratic Republic of the Congo*), Merits, Judgment (2010) ICJ Rep 639, para. 66.
[195] *Ibid*, para. 67.

situations, if the interpreted issues are not "indispensable" for the exercise of such body's jurisdiction, and such interpretations are not of "utmost importance".[196]

At the same time, in its another 2021 judgment in *Qatar v. UAE*, the Court went to interpret the ICERD and considered the interpretation of the CERD Committee for that purpose.[197] Remarkably, though, the ICJ adopted the interpretation different from that of the Committee.[198] Referring to *Diallo* the Court noted that while it indeed should "ascribe great weight" to the interpretation of human rights committees set up to interpret respective conventions, it also reaffirmed being "in no way obliged, in the exercise of its judicial functions, to model its own interpretation […] on that of the Committee."[199] This led to the situation where essentially the same treaty concepts, e.g., 'national origin' in the *Qatar v. UAE* case, acquired different interpretation by two bodies competent to adjudicate dispute arising from the treaty application or interpretation. And here again, this divergence of views has very immediate practical consequences: not only finding on (the absence of) a breach of obligations on behalf of the State, but also the scope of protection provided by international human rights instruments, especially in such a delicate matter, like racial discrimination.

However, the parallelism of jurisdictions in terms of legal interpretations is not merely characterised by negative implications. In many instances, parallel jurisdictional activities of international courts and tribunals are complementary and mutually strengthen the interpretation of the law. The 2010 *Diallo* judgment cited above is only one such example. Many other illustrations exist in the practice of various (quasi-)judicial bodies. For example, the ICC, when making use of

[196] Based on 2007 *Bosnian Genocide* judgment, para. 403.
[197] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) ('*Qatar v. UAE*'), Judgment, Preliminary Objections (2021) General List No. 172 (2021 *Qatar v. UAE* judgment), paras 100-101.
[198] 2021 *Qatar v. UAE* judgment, para. 101.
[199] 2021 *Qatar v. UAE* judgment, para. 101.

provisions of human rights law for the purposes of interpreting elements of international crimes, makes recourse to the practice of human rights organs.[200] Likewise, the ICC derives much inspiration from the practice of *ad hoc* criminal tribunals, such as the ICTY.[201] In a similar manner, the ECtHR frequently refers to interpretations provided by other regional human rights bodies, including IACtHR,[202] and by the ICJ.[203] For example, the ECtHR made recourse to the ICJ's findings as to the law of treaties,[204] interim measures ordered by an international court,[205] elements of State responsibility,[206] reparations,[207] interrelation between international humanitarian and human rights law,[208] etc.

It can, thus, be summarised that to the same extent as parallel jurisdictional activities can endanger the coherence of interpretation of international law, they often enrich the legacy of courts and tribunals when the latter benefit from external references to interpretations provided by other bodies.

2.1.1.2. Jurisdictional parallelism regarding the same situation or factual context

In addition to the situations described above, where different bodies simply provide interpretations to rules or regimes employed by other courts, there are other cases where parallel jurisdictions deal with not only the same law but also the same situations or contexts. For example, once a dispute emerges regarding one State's

[200] *See, e.g., Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007, para. 86, ftn. 97.
[201] G. Guillaume, 'The Use of Precedent by International Judges and Arbitrators' (2011) 2(1) *Journal of International Dispute Settlement* 5, p. 20; W.A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (OUP, 1st ed., 2010), p. 397.
[202] *See, e.g., Mamatkulov and Askarov v. Turkey* [GC], Nos. 46827/99 and 46951/99, 4 February 2005 ('*Mamatkulov and Askarov v. Turkey*'), paras 112 *et seq*.
[203] E. Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39(2) *The Journal of Legal Studies* 547, pp. 562-564; D. Spielmann, 'Fragmentation or Partnership? The Reception of ICJ Case-Law by the European Court of Human Rights' *in* M. Andenas, E. Bjorge (eds), *A Farewell to Fragmentation Reassertion and Convergence in International Law* (CUP, 2015) ('Spielmann *in* Andenas and Bjorge (2015)'), pp. 175-176.
[204] *Stoll v. Switzerland* [GC], No. 69698/01, 10 December 2007, paras 59-60.
[205] *Mamatkulov and Askarov v. Turkey*, paras 117 *et seq*.
[206] Spielmann *in* Andenas and Bjorge (2015), pp. 181-182.
[207] *Ibid*, p. 182.
[208] *See, e.g., Hassan v. United Kingdom*, App. no. 29750/09, 16 September 2014, paras 35-37, 83.

unlawful use of force against another State's territory, it can be brought (in various aspects) before different courts and tribunals. For example, the ICJ can (in theory, once jurisdictional preconditions are met) adjudicate the matters of State responsibility for unjustified use of force; human rights bodies will dwell into the issues of human rights violations; the ICC or an *ad hoc* criminal tribunal will deal with international crimes committed during the invasion; ICSID can deal with investment matters resulting from the invasion, etc. In such situations, applicable and interpreted rules can be different, yet jurisdictional parallelism continues to perform another important role, particularly in the interaction of (quasi-)judicial fact-finding.

This interaction is again perfectly illustrated by the example of jurisdictional activities in the situation of the genocide committed in the territory of the former Yugoslavia. In essence, the same factual background was considered by both – the ICTY and the ICJ – with the former dealing with the responsibility of individual perpetrators of the crime of genocide and the latter considering State responsibility for the act of genocide. By the time when the ICJ issued its judgment on the merits, the ICTY had already been operating for around a decade.[209] Expectedly, by that moment, the ICTY did substantial work on establishing the factual context for exercising the jurisdiction over the situation. This was noted by the ICJ, which in its 2007 *Bosnian Genocide* judgment stated that it "should in principle accept as highly persuasive relevant findings of fact made by the Tribunal at trial" and that it "attaches the utmost importance to the factual […] findings made by the ICTY."[210] In the very same judgment, the Court also relied heavily on legal interpretations

[209] While the Tribunal was established in 1993, it its first trial began in 1996. *See* K.L. King, J.D. Meernik, 'Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia: Balancing International and Local Interests While Doing Justice' *in* B. Swart, A. Zahar, G. Sluiter, *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (OUP, 2011), p. 49.
[210] 2007 *Bosnian Genocide* judgment, paras 223, 403.

provided by the ICTY on the questions of the construction of the crime of genocide.[211]

This process of factual "borrowing" resulting from parallel jurisdiction is not merely beneficial for a court but sometimes indispensable and crucial. For example, as Gattini explains, with all the ICJ's powers under the Statute, the Court is nevertheless "simply not well-equipped" to collect the whole body of necessary evidence, which would be fully conclusive[212] – the standard applied by the Court with regard to the acts of genocide.[213] In such cases, it is inevitable for the ICJ to rely on the work of international criminal bodies, which are presumed to have conducted a scrupulous review of available facts.[214] Otherwise, the Court would appear in a difficult position, if dealing with the described categories of cases without prior findings of an international criminal body.[215] However, the question stands as to whether given the proliferation of international bodies, the Court would be ready to treat factual findings of other – non-criminal bodies – with the same readiness.[216]

Apart from the factual findings, jurisdictional activities over the same situation can concern legal findings – yet not of a general interpretative nature (as described above), but specific legal conclusions regarding a particular context. For instance, in the 2004 *Palestinian Wall* Advisory Opinion, the ICJ determined whether the two International Human Rights Covenants applied to the territory

[211] 2007 *Bosnian Genocide* judgment, paras 188 *et seq*.
[212] A. Gattini, 'Evidentiary Issues in the ICJ's Genocide Judgment' (2007) 5(4) *Journal of International Criminal Justice* 889 ('Gattini (2007)'), p. 903.
[213] 2007 *Bosnian Genocide* judgment, para. 209.
[214] Gattini (2007), p. 903.
[215] *Ibid*, p. 903.
[216] *Ibid*, pp. 903-904.

occupied by Israel.[217] The Court "took note" of the view of HRC and the Committee on Economic, Social and Cultural Rights and in essence adhered to them.[218]

The Ukrainian context presents a remarkable example of such parallelism. Various bodies, whose jurisdictions do not come into conflict but are exercised in parallel, are engaged in establishing and assessing facts related to the contexts of Crimea and Donbas (from 2014 and onwards) and Russia's full-scale invasion of Ukraine (from 24 February 2022 and onwards). Among those bodies, the fact-finding and fact-assessing activities of the ICJ, ECtHR and ICC interact the most closely. It will inevitably, thus, be the case that the findings made by one court will be of great use for another Court, even despite the differences of their jurisdictions. For example, to date, the European Court of Human Rights had already determined that the Russian occupation of Crimea commenced on 27 February 2014.[219] This very finding will be useful for the ICJ in determining the moment since when Russia's effective control over the peninsula commenced and since when Russia started to bear respective responsibilities under international human rights law, particularly under the ICERD. It will be likewise important for the ICC to consider when the international armed conflict between Russia and Ukraine commenced in the territory of Crimea, pointing, thus, to the presence of contextual elements of war crimes.

Moreover, in the very same decision, the ECtHR "synchronised the watches" with other courts regarding legal matters. For example, it ensured that when establishing the limits of its *ratione materiae* jurisdiction over the case, it acted in accordance with approaches undertaken by other dispute settlement forums in this respect.[220] While stating that it was not "called upon to decide whether Crimea's

[217] *Palestinian Wall* AO, paras 110-112.
[218] *Ibid.*
[219] *Ukraine v. Russia (re Crimea)* [GC] App. nos. 20958/14 and 38334/18, 16 December 2020, para. 335.
[220] *Ibid*, paras 339; 341.

admission […] into the Russian Federation was lawful from the standpoint of international law" it mentioned similar approaches of the ICJ in it 2019 Judgment in *Ukraine v. Russia*.[221] In the latter, the ICJ likewise mentioned that it was not within the limits of its jurisdiction to "rule on issues concerning the Russian Federation's purported "aggression" or its alleged "unlawful occupation" of Ukrainian territory" or "on the status of Crimea."[222]

In conclusion, apart from the context of legal interpretations in general, jurisdictional activities of various courts and tribunals can be parallel in terms of the factual and legal assessment conducted in terms of one situation.

2.1.2. Jurisdictional conflicts

Apart from the situations described above, where jurisdictions are exercised in parallel yet never overlap directly, there are also cases where jurisdictions of two or several (quasi-)judicial bodies come into an immediate competition or conflict. In one of the most remarkable works in the field of competing jurisdictions authored by Yuval Shany, competing jurisdictions are defined as a situation where a particular dispute can be within the jurisdiction of more than one available forum.[223] Shany develops several criteria according to which jurisdictions can be considered as truly competing or conflicting:[224]

- The forums constitute viable alternatives, i.e., are capable of providing comparable results;
- The forums share comparable features;
- The forums are dealing with similar issues (parallel disputes concern similar or related claims);

[221] *Ibid*, paras 339; 341.
[222] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Ukraine v. Russian Federation*), Judgment, Preliminary Objections (2019) ICJ Rep 558, para. 29
[223] Shany (2003), p. 21.
[224] *Ibid*.

- The forums are seized by identical parties.[225]

Similar criteria are reflected in the legal rules governing competing procedures between different courts, e.g., the *lis pendens* rule, which precludes parallel litigations (see Section 3.1.1 below) having the same parties and subject-matter and pursued before similar bodies.[226]

Hence, in determining the interrelation between jurisdictional parallelism and jurisdictional conflict or competition, the conflict is always an expression of parallelism, yet not every parallelism leads to conflict under the criteria described above.

In the last decades, the proliferation of international dispute settlement forums and the increase in their caseload multiplied the probability of conflicting jurisdictions establishing a bunch of illustrative examples which arose in several different contexts.

Firstly, the matters of conflicting jurisdictions came into play in the context of proceedings pursued simultaneously before different bodies over the related matters. For example, in the ICJ's *Qatar v. United Arab Emirates* (UAE) case related to the UAE's alleged patterns of racial discrimination, the UAE claimed that Qatar brought the same dispute before both the CERD Committee and the ICJ creating, thus, a situation of parallel proceedings.[227] The UAE complained that such conduct "erodes" procedural rights and impairs the proceedings' integrity creating the risk of inconsistent outcomes in two cases.[228] The jurisdictional pitfall lied in the Racial

[225] *Ibid*.
[226] *Qatar v. UAE*, Provisional Measures, Order of 23 July 2018 (2018) ICJ Rep 406, Dissenting opinion of Judge *ad hoc* Cot ('2018 *Qatar v. UAE* Order, Dissenting opinion of Cot'), para. 5; *Certain German Interests in Polish Upper Silesia* (*Germany v Poland*), Preliminary Objections, Judgment (1925) PCIJ Series A. No 6 ('*Upper Silesia* judgment'), p. 20.
[227] Verbatim Record of the public sitting held on 9 May 2019 in the *Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) CR 2019/7 ('CR 2019/7 Verbatim Record'), pp. 11, 14, paras 4, 16.
[228] CR 2019/7 Verbatim Record, p. 14, para. 16.

Discrimination Convention (ICERD), which provided for the possibility to bring inter-State complaints on the violations perpetrated by the State to the CERD Committee, as well as to initiate proceedings as to interpretation or application of the ICERD before the ICJ.[229] Both ways were regulated by different provisions of the Convention, and the CERD Committee procedure stood separately from the general dispute settlement clause referring, among others, to the ICJ.[230] This led Qatar and UAE to argue whether the Convention permits parallel proceedings.[231] The Court, however, left the matter unaddressed.[232]

Another illustration is provided by the series of *MOX Plant* cases instituted by Ireland against the UK due to the latter's release of radioactive discharges in the Irish Sea.[233] The case eventually came to the jurisdiction of three different bodies (although under different angles): (i) arbitral tribunal under the Convention for the Protection of the Marine Environment of the North-East Atlantic; (ii) arbitral tribunal under the UNCLOS; (iii) and the ECJ.[234] This example demonstrates how forums available under very specific regimes, e.g., the law of the sea and the EU legal order, can be exploited simultaneously in view of their specificity.

Secondly, the issue of jurisdictional conflicts has concerned the question as to what forum out of several available would serve as the best option for adjudicating the dispute. For example, in *Mexico – Soft Drinks* case adjudicated by the WTO, where Mexico asked the panel and then the Appellate Body to surrender its

[229] ICERD, Articles 11 and 22.
[230] *Ibid*, Articles 11 and 22.
[231] Verbatim Record of the public sitting held on 9 May 2019 in the *Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) CR 2019/6, p. 25, para. 44; CR 2019/7 Verbatim Record, p. 17, para. 4.
[232] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*), Provisional Measures, Order of 14 June 2019 (2019) ICJ Rep 361, para. 25.
[233] N. Lavranos, 'Regulating Competing Jurisdictions Among International Courts and Tribunals' (2008) 68 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 575 ('Lavranos (2008)'), p. 579.
[234] *Ibid*, pp. 579-583.

jurisdiction in favour of the NAFTA forum.[235] Mexico contended that the dispute concerned a vast number of issues, which could not be covered by the material jurisdiction of the WTO dispute settlement system, in contrast to NAFTA, which would serve as a better option given that "the history, prior procedures, and substantive content of the bilateral […] dispute" were inseparable from non-WTO issues.[236] This argument was, however, disregarded by the WTO bodies with the panel noting (and Appellate Body upholding) that the panel lacked "discretion to decide whether or not to exercise its jurisdiction in a case properly before it."[237]

The *Southern Bluefin Tuna* case decided by the ITLOS provides an additional explanation in this respect. The dispute, which concerned the matters under several treaties, including UNCLOS and a special treaty for the bluefin tuna preservation, was brought to the dispute settlement mechanism of UNCLOS.[238] Japan – a respondent in the case – contended that the choice of forum was wrong since the special treaty is to be prioritised over (purportedly) umbrella provisions of the UNCLOS.[239] The Tribunal, however, denied this logic. As it was cited above, the Tribunal explained that parallelism of obligations under different treaties is a normal condition for international law, including in terms of dispute settlement.[240] Hence, it implies that no rule could preclude a party from seeking redress under any instrument chosen.

To conclude, in some situations of jurisdictional parallelism, jurisdictions of international courts can come into a conflict, overlap or competition. In some cases,

[235] *Mexico – Tax Measures on Soft Drinks and Other Beverages*, Report of the Panel, WT/DS308/R (25 October 2005) ('*Mexico – Tax Measures on Soft Drinks and Other Beverages* – Panel Decision'), paras 4.102-4.108.
[236] *Ibid*, para. 4.106.
[237] *Ibid*, para 7.18; *Mexico – Tax Measures on Soft Drinks and Other Beverages – AB-2005-10*, Report of the Appellate Body, WT/DS308/AB/R (6 March 2006) ('*Mexico – Tax Measures on Soft Drinks and Other Beverages* – Appellate Body's Decision'), para. 57.
[238] *Southern Bluefin Tuna*, para. 48.
[239] *Ibid*, paras 48, 51.
[240] *Ibid*, para. 52.

this capacity results in parallel simultaneous proceedings before two bodies regarding the same subject-matter (as in *Qatar v. UAE* and *MOX Plant* series), and in other cases, jurisdictions are only potentially conflicting (e.g., where one court decides whether another forum suits better to resolve the dispute).

2.2. Benefits and risks of jurisdictional parallelism, including conflicts

As contended above, jurisdictional parallelism, including competition, results from the proliferation of international courts and tribunals and, thus, is a natural and unavoidable phenomenon. Parallelism or conflicts are not themselves a purely positive or negative phenomenon. In their essence, they can be compared with the fragmentation of international law: it constitutes an integral part of the modern development of international law yet brings its own risks, which have to be addressed or considered. This Sub-Section will briefly elaborate on the benefits and risks presented by jurisdictional parallelism, including conflicts, which will be critical for addressing the key issue of the next Chapter: whether jurisdictional overlaps have to be regulated on the normative or policy level.

2.2.1. Positive implications of jurisdictional parallelism, including conflicts

As a legal phenomenon, jurisdictional parallelism positively impacts international legal order in several ways. Firstly, multiple parallel adjudicating mechanisms speak of and contribute to the vitality and versatility of international law.[241] Jurisdictional parallelism, even leading to conflicts, demonstrates that international law remains a living system in which one dispute can come to the attention of numerous forums addressing it from very different perspectives. In other words, there will be no parallelism should the States consider them futile and useless.

Even in cases of overlapping or conflicting jurisdictional activities, multiple operative and authoritative forums develop new concepts, ideas and interpretations,

[241] Arevalo (2008), p. 49.

setting the boundaries for legal tests and contributing to clarity of the law, as well as strengthening the rule of law within the international legal order.[242] In such a way, quantitative proliferation of international adjudication forums is also accompanied by the qualitative transformation of international law via establishing more compliance monitoring mechanisms[243] and via multi-facet interpretation of norms,[244] which leaves less space for the ambiguity of the latter's content.

Secondly, parallel jurisdictional activities also expand the justiciability of international affairs in different fields,[245] which were previously outside the traditional domain of international adjudication, e.g., human rights and the environment.[246] This effect has two dimensions. From one perspective, international law, hence, becomes less dependent on the discretionary will of States but becomes rather based on the independent third-party verification of the rules' content.[247] From another side, even if jurisdictions of some bodies overlap in a particular legal field, one court's jurisdiction can be wider and encompass additional issues, which are not covered by the jurisdiction of another court. This was particularly what Mexico claimed in the WTO *Soft Drinks* case (cited in Section 2.1.2 above), contending that the dispute is far more complicated than the issues of the WTO law and that NAFTA bodies are well-equipped to address these wider issues. Despite Mexico's overall jurisdictional claim was rejected, its essence reflects the reality: as ICJ's Justice Lachs argued "unorthodox nature of the problems facing States today requires" making recourse to as many avenues open as possible – complementarily or even simultaneously – "to resolve the intricate and frequently multi-dimensional issues

[242] *Ibid*, p. 49.
[243] K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction-Problems and Possible Solutions' (2001) 5(1) *Max Planck Yearbook of United Nations Law Online* 67 ('Oellers-Frahm (2001)'), p. 69.
[244] Dupuy (1999), p. 796.
[245] *Ibid*, p. 796.
[246] ILC Conclusions on the Fragmentation of International Law (2006), para. 247.
[247] Dupuy (1999), p. 796.

involved."[248] Thus, jurisdictional parallelism can also ensure that a dispute does not remain partly unresolved and that various matters of law and fact are addressed, even if it happens in several different forums.[249]

Thirdly, the parallelism of jurisdictions – even conflicting ones – allows States to select a dispute settlement forum according to their specific needs or interests in the unique contexts of their disputes. While this is also risky due to the forum shopping problem, as will be explained below, the wide variety of parallel jurisdictions makes the dispute settlement process more flexible and efficient. To illustrate, States can pursue regional forums, e.g., as their caseload is less, they are more aware of the local contexts or the "spirit" of the local treaty, offer a more effective system of compliance monitoring, etc. This observation is especially relevant for States which are no global or regional leaders or which are developing countries.[250] In turn, universal courts can be chosen if States want to make a "loud case" attracting attention to their contexts or seek an authoritative decision in the matters of global importance.

Moreover, some forums can be chosen because of the reparations they offer, which can be unavailable in other forums. For example, the ECtHR offering a wide range of relief options, including pecuniary ones,[251] can have a priority over universal quasi-judicial human rights, which do not provide for such options. Additionally, specialised forums, in contrast to courts of general jurisdictions, can be more prepared to work with specialised and technical matters.[252] Likewise, *ad hoc* bodies can be preferable because States possess levers to control the bodies'

[248] *Aegean Sea Continental Shelf* (*Greece v Turkey*), Separate Opinion of Judge Lachs, p. 52
[249] Pauwelyn and Salles (2009), p. 80.
[250] Guillaume's Speech (27 October 2000), p. 2.
[251] ECHR, Article 42; 'Just satisfaction claims', Practice direction issued by the President of the ECtHR in accordance with Rule 32 of the Rules of Court (*European Court of Human Rights*, 28 March 2007) <https://www.echr.coe.int/documents/pd_satisfaction_claims_eng.pdf> accessed 7 June 2022.
[252] F.K. Tiba, 'What Caused the Multiplicity of International Courts and Tribunals?' (2006) 10 *Gonzaga Journal of International Law* 202, pp. 212-213

procedures, the specialisation of judges and cost considerations.[253] Some bodies suit better for emergency situations, where an urgent reaction is needed.[254] For example, the ICJ's proceedings can last for years, while other forums, can act more efficiently being not less effective in the issue reparations. Other forums can be more cost-efficient for States.[255]

Lastly, jurisdictional parallelism can enrich the legacy of international courts and tribunals, providing for the cross-fertilisation of their approaches, judicial dialogue between them and mutual control of each other's activities.[256] For example, if one court commits a mistake of law, other courts operating with the same legal standards in parallel can express their position correcting the mistake. Moreover, and as contended in Sub-Section 2.1.1, parallel jurisdictional activities provide for an easier fact-finding process, where different courts can benefit from the fact-collecting activities of other bodies.

2.2.2. Negative implications of jurisdictional parallelism, including conflicts

At the same time, jurisdictional parallelism, especially in terms of conflicts, pose a variety of risk to the international legal order.[257] Firstly, overlapping jurisdictions create the risk of parallel (simultaneous) proceedings when an already pending dispute is further submitted to another forum by either party. For example, a respondent in the case can start proceedings in another – more favourable forum – in response to the claimant's initial application, or it can be the applicant choosing several forums at the same time (e.g., as in *Qatar v. UAE*),[258] for example, to increase the chances of winning.

[253] *Ibid*, pp. 221-222
[254] *Ibid.*
[255] *Ibid*, p. 213.
[256] Pauwelyn and Salles (2009), p. 80.
[257] *See, e.g.,* Guillaume's Speech (27 October 2000), p. 7.
[258] C. McLachlan, *Lis Pendens in International Litigation* (Leiden/Boston: Martinus Nijhoff Publishers 2009), p. 38 in I.P. Amaza, 'Multiplicity of International Dispute Settlement Forums: Avoiding the Risk of Parallel Proceedings' (2012) 6(12) *Dispute Resolution International* 149 ('Amaza (2012)'), p. 150.

Simultaneous proceedings can generate several unfavourable effects. First, the courts involved can reach different conclusions on either facts or law or both. It can result from applying different standards (including the standards of proof), precedents and interpretations.[259] The potential outcome of parallel proceedings can be several mutually controversial decisions, including the findings of the internationally wrongful act committed by the State or award of the reparations.

For example, in theory, the situation is possible when a trade-related dispute can come to the jurisdiction of the WTO adjudicating bodies, the ICJ and a forum under the regional trade agreement (RTA) under several different treaties (e.g., the GATT, RTA and a treaty on trade and friendship with a compromissory clause referring a dispute to the ICJ). Given the approaches of the WTO bodies in the *Mexico – Soft Drinks* case, it is unlikely that the WTO will surrender its jurisdiction, similar to other bodies, if they find the normative framework dealing with parallel proceedings to be inapplicable (see Section 2.1.2 above). If, then, each of the forums comes to different findings, the question arises of how parties should comply with binding decisions.

One of the potential ways is to seek the clarification as to how decisions are to be implemented, e.g., in the ICJ – by means of Articles 98-100 of the Rules of the Court prescribing for the procedure of the revision or interpretation of the judgment,[260] as, for example, in *Avena and Other Mexican Nationals* case.[261] However, this procedure can be time- and recourses-consuming and can again lead to divergent interpretations forcing parties into a deadlock. Not even to mention that this situation will be hard to handle without damaging courts' own or each other's

[259] Guillaume's Speech (27 October 2000), p. 2.
[260] ICJ, 'Rules of Court' (adopted on 14 April 1978, entered into force on 1 July 1978), Articles 98-100.
[261] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals* (*Mexico v. United States of America*), Judgment (2009) ICJ Rep 3.

legitimacy, which with threaten the stability and legitimacy of the whole international dispute settlement system[262] leading to legal uncertainty.[263]

There can also be a different scenario, where in parallel proceedings, different tribunals award reparations, e.g., compensation to be paid by the respondent party. This generates a risk of double jeopardy,[264] whereby a respondent State will be forced to pay a double compensation for the same wrongful act violating substantially the same obligation under different treaties. Hence, the logic of the ITLOS in the *Southern Bluefin Tuna* decision (see Sections 2.1.1 and 2.1.2 above) calls for additional analysis here: if parallelism of treaty obligations and related litigations is a normal condition for international law, how should the principle precluding double jeopardy play out in this aspect?

Additionally, as illustrated in Sub-Section 2.1.1 above, parallel jurisdictions can generate diverse interpretations of the same legal standards or concepts, threatening the integrity and coherence of the legal order and deepening its fragmentation.[265] This is especially acute for courts and tribunals with special *ratione materiae* jurisdiction operating within the sui generis regimes, where they apply the standards or concepts of general international law adjusting them to such special regimes.[266] This challenge can extend ever further: it can create an illusion that some regimes, e.g., the EU, are completely autonomous and unconnected to the general international law.[267]

[262] Pauwelyn and Salles (2009), p. 83.
[263] Guillaume's Address (26 October 2000), p. 5.
[264] Pauwelyn and Salles (2009), p. 81.
[265] Arevalo (2008), pp. 49, 52; Dupuy (1998), p. 792; G. Abi-Saab, 'Fragmentation or Unification: Some Concluding Remarks' (1999) 31 *New York University Journal of International Law and Politics* 919 ('Abi-Saab (1999)'), p. 924; Amaza (2012), p. 151; Oellers-Frahm (2001), p. 70
[266] M. Koskenniemi, 'Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought', Speech, delivered at Harvard University on 5 March 2005 in Amaza (2012), p. 152; Guillaume's Address (26 October 2000), p. 5.
[267] Dupuy (1998), p. 796.

Another negative implication is linked to the costs spent for parallel proceedings resulting from competing jurisdictions. Engaging in such proceedings requires additional financial and other resources of both State Parties to the proceedings[268] (especially if the respondent State is a developing country), e.g., by the need to employ additional counsels performing extra activities. Yet, it is also contrary to the principle of the economy of judicial resources since parallel proceedings take extra time for administrative personnel involved, and put the burden on the courts' business and caseload (which can lead to the extension of time of all the proceedings), etc. [269]

Last yet not the least essential, conflicting jurisdictions can encourage forum shopping.[270] While the free choice of the forum out of several viable alternatives can bring positive consequences as described in the previous Sub-Section (e.g., the possibility to adjust the choice to individual needs of the parties to the proceeding), forum shopping of itself is usually characterised negatively.[271] Not only it undermines the fairness and efficiency of the proceedings,[272] it can also arguably amount to the abuse of procedural rights and process as a whole, whereby a State maximises the chances of winning the case, e.g., by instituting several parallel proceedings regarding the same issue.[273]

***

In conclusion, the proliferation of international (quasi-)judicial bodies has quite naturally led to the emergence of parallel jurisdictions. Parallelism of jurisdictions can take a variety of forms and does not necessarily involve situations

[268] Reinisch (2011), para 2; Amaza (2012), p. 153.
[269] *Ibid*.
[270] Arevalo (2008), p. 50; Amaza (2012), p. 152; Guillaume's Address (26 October 2000), p. 5; Guillaume's Speech (27 October 2000), p. 3.
[271] M. Petsche, 'What's Wrong with Forum Shopping – An Attempt to Identify and Assess the Real Issues of a Controversial Practice' (2011) 45 *International Lawyer* 1005, p. 1006.
[272] *Ibid*, pp. 1010-1017
[273] E. Gaillard, 'Abuse of Process in International Arbitration' (2017) *OUP ICSID Review* 1, pp. 6-10.

where jurisdictions overlap: they can likewise take a form of parallelism of interpretation or fact-finding activities. Each of them can be either complementary (i.e., positively contributing to the development of the law or handling a complex context) or generating controversies and deepening fragmentation of international law. At the same time, parallel jurisdictions can be conflicting (or competing/overlapping, as the context requires), whereby the same situations (involving the same parties and subject-matter) are brought before bodies similar in nature (particularly those capable of providing similar reparations).

Parallelism of jurisdictions – with or without overlap – is a phenomenon natural to international law at its current stage of development (like, e.g., fragmentation of international law or proliferation of institutions). Hence, jurisdictional parallelism, including conflicts, has both positive and negative implications for parties to the proceedings and international legal order in general. Parallelism can enhance the effectiveness of international law, the justiciability of international relations and provide parties with a choice of means specific to the very contexts of their disputes. At the same time, parallelism and conflicts can endanger the coherence of international law, generate parallel proceedings risking mutually controversial outcomes and double jeopardy, involve extra resources and encourage forum shopping.

In such a situation, it appears desirable that the mentioned negative implications should be mitigated by both legal and policy tools. The next Chapter will inquire into what options are available to international courts in this regard.

CHAPTER 3

RESOLVING JURISDICTIONAL CONFLICTS: LEGAL AND POLICY TOOLS AVAILABLE TO INTERNATIONAL COURTS

As demonstrated by previous Chapters, international courts and tribunals become more and more likely to encounter the challenges connected with parallel jurisdictions, especially if they come into conflict. As this topic remains rather novel to international adjudication, it cannot be stated with certainty that international bodies are equipped with a well-established toolkit for dealing with the mentioned problems. This Chapter will outline what normative and policy toolkits are already in place or can be developed to effectively combat the risks described in Sub-Section 2.2.2. While the normative tools can better suit dealing with the situations of jurisdictional conflicts, policy tools can be useful for the wider context of jurisdictional parallelism, including the situations of conflicts.

3.1. Normative tools for handling conflicting jurisdictions' risks

In essence, while the parallelism of jurisdictions, in general, generates its risks, they are to be perceived as a normal condition for the international legal order, which normative tools cannot mitigate. As every international court is autonomous and independent, it is both impossible and undesirable to force the courts in a normative way to follow each own's approaches mitigating inconsistent interpretations of law and facts in parallel jurisdictional activities.

The same is, however, not valid in relation to conflicting (competing or overlapping) jurisdictions. In each of them – as illustrated above – the challenges are not abstract yet real and visible in the particular proceedings, e.g., those pending in parallel. In such cases, international courts should explore the normative options to mitigate the risks.

The first and the easiest way will be to enshrine a rule regulating the choice of forum or providing exclusive jurisdiction in the international treaty.[274] In such cases, the parties to the proceedings will have no option but to refer a dispute to a chosen forum or to refrain from bringing particular matters to other bodies. However, such a scenario will not be practical in most cases: not simply because treaties can fail to cover these matters, but it can also be the case where the exclusive jurisdiction of an adjudicating body will cover only matters under a particular treaty and not extend to similar or analogous relations under different instruments. For example, while the WTO DSU prescribes that the WTO adjudication mechanism possesses exclusive jurisdiction over the GATT matters,[275] it does not essentially mean that the parties cannot bring a similar dispute under other trade or trade-related agreements to other international bodies, which will concern the same facts, yet not the same rules of law.

In such a case, international tribunals will be forced to search for answers among the rules of customary law and general principles of law to handle challenges connected with conflicting jurisdictions. The analysis below focuses on some of the most viable normative options (while their list can be expanded with other variants, which are less likely to hold): the doctrines of *lis pendens*, judicial propriety, including *forum non conveniens*, and the abuse of judicial process and/or procedural rights.

3.1.1. Lis pendens principle

While normative mitigation of negative effects of conflicting jurisdictions remains a rather novel field, the practice of some international courts, as well as conventional and *arguably* customary rules, already provide some options. Among them, the most well-developed is the *lis pendens* principle, translated in English as

[274] *See, e.g.*, Kwak and Marceau (2003), p. 97.
[275] DSU, Article 23.

"the dispute elsewhere pending", providing that once an applicant chooses to pursue a process in one forum, no other parallel proceedings may be commenced.[276] This part will address (i) how *lis pendens* should be treated from the normative standpoint, i.e., what is it status under the rules of international law; and (ii) what criteria must be met for *lis pendens* to apply.

3.1.1.1. The status of *lis pendens* in international law

Before proceeding to address the relevant criteria of the test, it is worth analysing the status of *lis pendens* in international law. The principle originates primarily from the municipal civil law systems.[277] Later, it was reflected in some international treaties, among which the human rights law instruments are the most illustrative. For example, Article 35(2)(b) of the ECHR provides that an application to the ECtHR must be inadmissible if "substantially the same as a matter that […] has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."[278] The same rules are enshrined in a number of other universal human rights instruments.[279]

At the same time, the application of *lis pendens* outside the treaty regimes, where States expressly consented to such application, remains doubtful. The roots of the discussions trace back at the latest to the PCIJ's judgment in the 1925 *Upper Silesia* judgment, where the Court briefly analysed whether the claims pending before it and the Germano-Polish Mixed Arbitral Tribunal at the same period could trigger the application of *lis pendens* doctrine.[280] The mere fact that the Court (even back then where the issue of parallel jurisdictions did not stand that acutely) raised this point indicates that the doctrine was not a theoretically construed novelty but

[276] Kwak and Marceau (2003), p. 103.
[277] Pauwelyn and Salles (2009), p. 85.
[278] ECHR, Article 35(2)(b)
[279] *See, e.g.*, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013), Article 3(2)(c); Optional Protocol to the ICCPR, Article 5(2)(a).
[280] *Upper Silesia* judgment, p. 20.

had at least some chances of being applied. Otherwise, the Court would not have dwell on that issue *proprio motu* as it did in the 1925 *Upper Silesia* case. At the same time, the Court noted:

> "It is a much disputed question in the teachings of legal authorities and in the jurisprudence of the principal countries whether the doctrine of litispendance […] can be invoked in international relations, in the sense that the judges of one State should, *in the absence of a treaty*, refuse to entertain any suit already pending before the courts of another State, exactly as they would be bound to do if an action on the same subject had at some previous time been brought in due form before another court of their own country" (emphasis added).[281]

This expression underlines the contention above: unless *lis pendens* constitutes a treaty rule to which both States consented, it remained unsettled whether there was enough evidence of State practice and *opinio juris* for *lis pendens* to qualify as a rule of customary international law or a general principle of law binding upon States in the absence of treaty rules.

It can be argued that much has changed since 1925. Not only the proliferation of international bodies have brought the challenges of parallel proceedings to an absolutely different level and generated real problems connected with them, *lis pendens* has also been adopted in a variety of treaty instruments, as demonstrated above. This led some scholars to contend that *lis pendens* today amounts to a rule of customary international law or a general principle of law similar to, e.g., *res judicata*.[282]

Some support can be found for this argument. First, *lis pendens* is enshrined in the procedural laws of many civil law jurisdictions, and even in the common law jurisdictions, it, in essence, has a broader analogy in the form of *forum non*

[281] *Ibid*, p. 20.
[282] Pauwelyn and Salles (2009), p. 106.

conveniens principle (see below).[283] This can serve a proof that at least some rule governing parallel proceedings – either in the form of *lis pendens* or close to it in essence – shares general (widespread and representative) state practice accompanied by *opinio juris* to amount to a rule of customary international law.[284] Second, it can be argued that the inclusion of *lis pendens* into a variety of international treaties has either led to the crystallisation of a customary rule or given rise to state practice and opinio juris generating a new customary rule.[285] Likewise, the presence of a rule in different international treaties "may, but does not necessarily, indicate" that such treaty rule reflects a custom.[286] Third, judicial decisions applying such treaty norms can serve as subsidiary means for the determination of a customary nature of such rule.[287] Third, the status of *lis pendens* as a custom or general principle of law can be justified by ambitious goal to counter the shortcomings of parallel proceedings.

At the same time, these conclusions should be approached with caution. Not every procedural rule commonly enshrined in municipal laws can amount to the international reason simply because it can be construed specifically for its use in the national legal system and can be inappropriate for international adjudication. Likewise, the essence of such a rule can be useful for the purposes of international adjudication, yet it may nevertheless require some adjustment for its further employment in the international dispute settlement. In this respect, some scholars do argue that *lis pendens* suits perfectly well both national and international

[283] F. De Ly, A. Sheppard, 'ILA Final Report on Lis Pendens and Arbitration' (2009) 25 *Arbitration International* 3 ('De Ly and Sheppard (2009)'), pp. 7 *et seq*.
[284] ILC, 'Draft conclusions on identification of customary international law' (2018), ILC Yearbook 2018, Vol. II, Part Two, Conclusions 3-10.
[285] *Ibid*, Conclusions 11(1)(b) and (c).
[286] *Ibid*, Conclusions 11(2).
[287] *Ibid*, Conclusion 13(1).

adjudication mechanisms "in the exercise of the tribunal's competence to regulate its own proceedings."[288]

In turn, many other opinions tend to deny a customary or general principle of law status to *lis pendens.*[289] For example, in his remarkable address to the General Assembly's Sixth Committee, ICJ's President Guillaume mentioned that while domestic legal systems deal with overlapping jurisdictions by the application of the *lis pendens* principle, "the international system is sadly lacking in this regard."[290] The arguments to denying *lis pendens* a status of a custom or a general principle of law vary: some sources refer to the *lis pendens* origin from civil law jurisdictions and the absence of its immediate analogies in common law jurisdictions,[291] with the others agreeing that such rules are not universally applied in municipal systems.[292]

While *lis pendens* gained attention in some minority opinions of judges before some international tribunals,[293] the latest examples demonstrate that international courts are still cautious about digging into the matter in detail. In the remarkable *Qatar v. UAE* case, which opened the most visible perspective for the ICJ to discuss the matter, the Court left the issue with no substantive attention in the Order on provisional measures stating that it did not "consider it necessary, for the [those] purposes, to decide whether any *electa una via* principle or *lis pendens* exception are applicable in the [that] situation."[294] The issue did not gain any further attention in the judgment on preliminary objections, where the jurisdiction to proceed on the case was declined (yet not due to the parallel proceedings).[295] At the same time, the

[288] L. Vaughan, 'Overlapping Jurisdiction in International Tribunals' (1999) 20 *Australian Year Book of International Law* 191, p. 203.
[289] H. Wehland, *The Coordination of Multiple Proceedings in Investment Treaty Arbitration* (OUP, 2013) ('Wehland (2013)'), p. 196; Pauwelyn and Salles (2009), p. 106.
[290] Guillaume's Speech (27 October 2000), p. 4.
[291] Pauwelyn and Salles (2009), p. 106.
[292] Wehland (2013), p. 196.
[293] *See, e.g.,* discussion in Wehland (2013), p. 196.
[294] *Qatar v. UAE*, Provisional Measures, Order of 23 July 2018 (2018) ICJ Rep 406, para. 39.
[295] *Qatar v. UAE* judgment.

CERD Committee, where parallel proceedings were pending, expressed its position on the matter.[296] The Committee stressed that it "fail[ed] to see how the existence of "parallel "proceedings would entail the risk of compromising the fairness of the procedure and the equality of arms between the parties, since both parties have equal procedural rights before the two bodies."[297] Evidently, the application of *lis pendens* was rejected.

Hence, it would be most fair to describe the status of *lis pendens* – as ICJ's *ad hoc* Justice Cot did in the *Qatar v. UAE* case – as "not entirely clear" (at least before the ICJ).[298] As Justice Cot pointed, the rule's textual basis is absent in the Court's Statute or the Rules of the Court, and as the ICJ and PCIJ never expressly affirmed or rejected the applicability of *lis pendens*.[299]

This conclusion seems plausible and does not close the door for the Court (or other bodies) to adopt *lis pendens* in the future if an acute need arises, where the interests of justice are threatened by parallel proceedings. If the need for *lis pendens* application arises, even if confirmation of the *lis pendens* status under the customary law or the body of general principles of law is not be established, a rule of a similar kind can be deduced from the courts' inherent powers to regulate the matters pertaining to their jurisdiction *proprio motu*[300] according to judicial propriety (see below).

3.1.1.2. Test for the application of *lis pendens*

If *lis* pendens is still to be applied by international courts and tribunals, certain preconditions must be met. They are reflected in the so-called "triple identity"

[296] *Admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates*, Doc. CERD/C/99/4, 30 August 2019, paras 42-51.
[297] *Ibid*, para. 51.
[298] 2018 *Qatar v. UAE* Order, Dissenting opinion of Cot, para. 3.
[299] *Ibid*, para. 3.
[300] *Northern Cameroons* (*Cameroon v United Kingdom*), Judgment, Preliminary Objections (1963) ICJ Rep 15 ('*Northern Cameroons* judgment'), p. 29.

requiring the parties to parallel proceedings and their subject-matters to be the same, and the actions to be brought before two bodies of the same character.[301]

The criterion of the identity of parties invokes the least challenges. In most cases, it will be clear whether the actions are brought by two identical claimants, e.g., the same State or the same legal or natural person. For example, in the *Upper Silesia* case, the PCIJ contended that actions pending before it and the mixed arbitral tribunal do not involve the same parties since the former is brought by the State and the latter by a private company.[302] It, thus, appears logical that for *lis pendens* to apply *both* parties must be identical, since the identity of only claimant or respondent makes two actions essentially different.

The interpretation of two other elements of the identity test is likely to cause more difficulty. The identity of subject-matters can depend on numerous issues, including the legal and factual grounds of the claim,[303] relevance of relief (i.e., reparations) sought,[304] object and scope to claims,[305] etc. It will be natural to contend that neither of them has a pre-established weight, so the significance of each will be assessed on a case-by-case basis.

For example, two bodies can offer the same basic reparations, e.g., cessation of the internationally wrongful act. However, the possibility of further relief can be limited. One can imagine the situation where the jurisdictions of the ICJ and the WTO adjudicating mechanism are exercised in parallel over a trade-related matter. While the ICJ is entitled to grant a State compensation in case the breach of obligations is established, the WTO system does not provide for the possibility of compensation as a type of reparation at all: it only serves as a temporary solution for

[301] 2018 *Qatar v. UAE* Order, Dissenting opinion of Cot, para. 5; *Upper Silesia* judgment, p. 20.
[302] *Upper Silesia* judgment, p. 20.
[303] *V. O. v. Norway*, Communication No. 168/1984, U.N. Doc. CCPR/C/OP/2 at 48 (1990), para. 4.4; C-406/92 *Tatry v Maciej Rataj* (1994) ECR I-5439, para. 39.
[304] 2018 *Qatar v. UAE* Order, Dissenting opinion of Cot, para. 5; *Upper Silesia* judgment, p. 20.
[305] De Ly and Sheppard (2009), p. 18.

a period when a State breaching its international obligations does not bring its measures in conformity with the WTO rules.[306] In such a case, it can be argued that while a relief sought is not absolutely identical, its basic objectives in two forums is the same: to obtain a declaration of violation of obligations and cease the breach. The question stands: will the difference in subsequent possibilities of reparations be crucial in establishing the identity of actions?

Likewise, if the first forum seized deals with only a limited part of a broader factual context, while the second forum seized deals with both this part and additional issues closely interlinked with this part, to what extent should the latter forum declare the claim inadmissible? If all parts of the claim are closely interlinked and will fail if one of them is taken away, will declaring the claim inadmissible amount to the denial of justice for the applicant? These issues only underline that the application of *lis pendens* must be based on a delicate analysis of the facts of every particular case.

Lastly, analysing the similarity of adjudicating bodies can become a troublesome exercise. As mentioned above, the rules of some jurisdictions, e.g., the ECtHR, equate all adjudicating and investigating mechanisms engaged in consideration of the same subject-matter. Article 35(2)(b) of the ECHR cited above fails to specify the degree to which "another procedure of international investigation or settlement" must be similar or identical to the ECtHR's one. From this wording, it appears that even settlement under quasi-judicial bodies offering different reparations can be enough for the application to be declared inadmissible.

The situation outside specific treaty regimes is less clear. One of the most evident issues in this respect is the extent to which judicial and quasi-judicial bodies

[306] M. Bronckers, N. van den Broek, 'Financial Compensation in the WTO: Improving the Remedies of WTO Dispute Settlement' (2005) 8(1) *Journal of International Economic Law* 101, p. 102.

can be considered similar for the application of *lis pendens*.[307] While the two types of bodies are obviously different in some respects – e.g., the qualification of judges, particularities of adjudicating process, binding nature of decisions, etc. – there is some support to the position that judicial and quasi-judicial bodies are to be treated relatively equally for *lis pendens* application.[308] This approach is rather a development of a few last decades, when quasi-judicial bodies gained an important place in the international adjudication network,[309] since in *Upper Silesia*, the PCIJ denied to recognise the similarity between itself and mixed arbitral tribunal for the purposes of the application of *lis pendens*.[310]

Hence, several preliminary conclusions can be drawn in relation to the role of *lis pendens* in the resolution of jurisdictional conflicts. First, *lis pendens* as a normative tool was developed to regulate proceedings pending in parallel and can, in essence, be a viable instrument to combat negative implications of the latter. Second, while *lis pendens* clearly applies under certain treaty regimes, where it is directly prescribed, its status as a custom or a general principle of law remains unclear. There is considerable support among state and judicial practice to advance both positions, and the doors for the doctrine's application are left open to international courts and tribunals. Third, should international bodies proceed with the application of *lis pendens* as a custom or a general principle of law, they must ensure that a triple identity test is met. It will be relatively easy to establish an identity of parties, while similarity or identity of subject-matters or adjudicating bodies can present additional challenges. This leads to the conclusion that the elements of the test are to be carefully considered on a case-by-case basis.

[307] *See, e.g.,* 2018 *Qatar v. UAE* Order, Dissenting opinion of Cot, paras 8-11.
[308] *Ibid.*
[309] *Ibid*, para. 8.
[310] *Upper Silesia* judgment, p. 20.

3.1.2. Judicial propriety doctrine

Every international court or tribunal possesses an inherent power to adjudicate matters related to its own jurisdiction.[311] As the ICJ put it, "the Court possesses an inherent jurisdiction enabling it to take such action as may be required […] to ensure that the exercise of its jurisdiction over the merits, if and when established, shall not be frustrated, and […] to provide for the orderly settlement of all matters in dispute."[312] This principle essentially means that judicial bodies are the guardians of their own judicial integrity.[313]

The brightest illustration of this principle relevant to the issues of parallel jurisdictions, including competing ones, can be found in the ICJ's decision in the *Northern Cameroons* case. There the Court pronounced:

> "Even if the Court […] finds that it has jurisdiction, [it] is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand, the duty of the Court to maintain its judicial character."[314]

This pronouncement essentially dictates that even where all the formal preconditions to the Court's jurisdiction are met, there can be compelling circumstances for the Court to refuse to exercise such jurisdiction. In the *Northern Cameroons* case, the Court faced an obstacle to its effective delivery of justice, whereby its judgment would be deprived of "effective application" because the matters in question had already been resolved by the UN General Assembly.[315] This

[311] *See, e.g., Nuclear Tests* (*Australia v. France*), Judgment (1974) ICJ Rep 253 ('*Nuclear Tests* judgment'), para. 23; *Russia – Measures Concerning Traffic in Transit*, Report of the Panel, Doc. WT/DS512/R, 5 April 2019, para. 7.53.
[312] *Nuclear Tests* judgment, para. 23; *Northern Cameroons* judgment, p. 29.
[313] *Northern Cameroons* judgment, p. 29.
[314] *Ibid*.
[315] *Ibid*, p. 33.

approach was dictated by the doctrine known as "judicial propriety",[316] which encompasses situations where a court or tribunal chooses to stay prevented from exercising jurisdiction over the merits of a case (even though all technical legal preconditions are met) in order in order to adhere to its judicial function and due to various circumstances surrounding the case.[317]

The normative basis of the doctrine cannot be found anywhere in the Statutes of most international courts, e.g., the ICJ,[318] and it is impossible to predict in advance all the circumstances where the doctrine can come into play.[319] It originates rather from the international courts' inherent powers to regulate matters of their jurisdiction,[320] where its integrity and sound administration of justice is at risk. The principle was invoked before the ICJ on numerous occasions – although not always successfully,[321] and according to some opinions, including the one of the ICJ's Justice Gaja, the situation of conflicting jurisdictions also can be covered by the scope of the principle.[322]

There can be several underlying reasons for that, including primarily negative implications of conflicting jurisdictions described above in Sub-Section 2.2.2. Among them, obvious risks of conflicting judgments can severely undermine the courts' legitimacy and turn a justice process exclusively into a lawfare operation between parties, deprived of any dispute settlement goal. Parallel proceedings can also pose a question before the courts as to whether it will be in the interests of justice

[316] G. Gaja, 'Relationship of the ICJ with Other International Courts and Tribunals' *in* A. Zimmermann *et al*., *The Statute of the International Court of Justice: A Commentary* (OUP, 3rd ed., 2019) ('Gaja *in* Zimmermann *et al*. (2019)'), p. 656.
[317] A. Kaczorowska-Ireland, 'Judicial Propriety: International Adjudication' *Max Planck Encyclopedias of International Law* (updated April 2020) <https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3078.013.3078/law-mpeipro-e3078?prd=MPIL> accessed 7 June 2022 ('Kaczorowska-Ireland').
[318] Gaja *in* Zimmermann *et al*. (2019), p. 656.
[319] Kaczorowska-Ireland.
[320] Gaja *in* Zimmermann *et al*. (2019), p. 656.
[321] Kaczorowska-Ireland.
[322] *Ibid*.

for two different bodies to serve the same function twice and put themselves into a deadlock, further aggravating the disputes.

Among the forms in which judicial propriety can be used to surrender jurisdiction, a distant common law analogy of *lis pendens* is often cited – the principle of *forum non conveniens.*[323] This doctrine originating from international private law allows a court or a tribunal to surrender its jurisdiction in favour of another body, which it believes to be more convenient either for the parties' private interests or in the public interest (including the ideas of judicial propriety and judicial comity).[324]

In domestic jurisdictions, numerous factors can be taken into account when determining the more appropriate forum. Those can include the convenience of the forum for parties or witnesses, familiarity with the law of the jurisdiction in which one of the parties operates or enforceability of remedies. [325] Although this issue seems irrelevant in international litigation, they can be interpreted broader to include, e.g., forum's orientation at regional integration or specialisation in regional affairs (see Section 2.2.1 above), which can be crucial for deciding a case.

From the international perspective, these factors can gain another reading. They can include such considerations as, e.g.:[326]

- one body cannot possess jurisdiction over the whole dispute between the parties, thus, another forum, which has such jurisdiction is more preferrable;

[323] *Ibid.*
[324] L.G.P. Specker, 'Remedying the Normative Impacts of Forum Shopping in International Human Rights Tribunals' (2005) 2 *The New Zealand Postgraduate Law E-Journal*, p. 13; M.D. Greenberg, 'The Appropriate Source of Law for Forum Non Conveniens Decisions in International Cases: A Proposal for the Development of Federal Common Law' (1986) 4 *International Tax and Business Lawyer* 155, p. 155; *Koster v. Lumbermens* Mut. Cas. Co., 330 U.S. 518 (1947), p. 330.
[325] *Koster v. Lumbermens* Mut. Cas. Co., 330 U.S. 518 (1947), p. 528; *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947), p. 509.
[326] Gaja *in* Zimmermann *et al*. (2019), p. 656.

- dispute settlement process in one forum can be delayed, while the urgency of the dispute requires expedient reaction;
- another forum can be more qualified in technical or legal matters involved in the dispute, e.g., highly specialised legal field;
- procedures in one forum allow for wider opportunities for defence or relief, etc.

Nevertheless, assessing the current situation objectively, one is likely to come to the conclusion that applying *forum non conveniens* before the international courts is not a viable option unless the situation is unprecedented and radical and the uniqueness of the case so requires. In other words, it is unlikely that *forum non conveniens* will become an integral part of the international courts' normative toolkit.

Some support for this view can be found in the judicial practice. First, in the 1927 *Factory at Chorzów* judgment, the PCIJ ruled that faced with a situation, in which it had to "define its jurisdiction in relation to that of another tribunal" (the mixed arbitral tribunal in that case), the PCIJ

> "cannot allow its own competency to give way unless confronted with a clause which it considers sufficiently clear to prevent the possibility of a negative conflict of jurisdiction involving the danger of a denial of justice."[327]

Putting it differently, when the jurisdiction of the Court is established in the circumstances of conflicting competencies, the Court must ensure that its surrender for any reason will not lead to the denial of justice. In such cases, judicial propriety will dictate that surrender of jurisdiction does not harm judicial integrity much more than its preservation and further exercise. In the context of conflicting jurisdictions, the denial of justice can be an acute and real risk in most circumstances. For instance,

[327] *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Jurisdiction)* (*Germany v. Poland*), Judgment No. 8 (26 July 1927) PCIJ Series A No. 9, p. 30.

if the Court believes that another forum is potentially more competent or specialised to adjudicate the case, it cannot simply surrender its jurisdiction based on this factor since that second forum can subsequently refuse to exercise jurisdiction. Likewise, if the case before one court is not absolutely identical to the case before another forum or, e.g., grants more extensive possibilities of reparations, the denial of justice risk can likewise arise. As some scholars stress, it is impermissible for a forum to surrender jurisdiction for another forum if it fails to ensure that the latter can exercise jurisdiction over the whole dispute: otherwise, denial of justice will occur.[328]

So based on the principle outlined in *Factory at Chorzów*, the situation of the surrender of jurisdiction for the sake of judicial propriety can only be theoretically met, if (i) another forum has already established its jurisdiction over the case; (ii) the claims and perspectives of reparations are identical in both forums; (iii) the exercise of parallel jurisdictions will incur a grave risk of harm to the administration of justice, etc. But even in that situation, the question will arise as to whether, after the jurisdiction is surrendered and the remaining forum issues a judgment unfavourable to one party, will the denial of justice take place if another forum adjudicates the case and can potentially apply different standards leading to a different outcome? Hence, any aspect of the proceeding, in theory, can be interpreted as creating a risk of the denial of justice, once the jurisdiction is surrendered.

Second, current practice shows that international tribunals are not inclined to surrender their jurisdiction, even if another forum is, in theory, or according to one of the parties, more appropriate to deal with the case. For example, in the WTO's *Mexico – Soft Drinks* (discussed in Section 2.1.2 above), the WTO panel and the Appellate Body refused to follow Mexico's argument that NAFTA can be a better

[328] G. Cuniberti, 'Parallel Litigation and Foreign Investment Dispute Settlement' (2006) 21 *ICSID Review Foreign Investment Legal Journal* 381, p. 421 *in* Pauwelyn and Salles (2009), p. 112.

place to have the case heard.[329] The panel noted that its constituent instrument – the DSU – did not provide it with the "discretion to decide whether or not to exercise its jurisdiction in a case properly before it."[330] This conclusion demonstrates that at least within the WTO system, a more restrictive approach to jurisdiction applies, suggesting that if it was the party's choice to initiate the proceedings, the adjudicating body must follow its procedures and decide the case (unless a clear exception in the normative basis exists to point to the opposite). Some policy reasons can stand behind this approach. After all, every forum desires to stay busy with its caseload, so if the parties know that a forum can discretionally decide to decline jurisdiction over the case, then probably parties will be careful with the application to this forum any further.

Lastly, in the most recent example, considerations of judicial propriety, including in the aspects of *forum non conveniens*, were not addressed by the Court in the *Qatar v. UAE* orders and judgment (discussed in the *lis pendens* section above), although the situation in question presented an experiment ground for that. This could mean that in that very case of parallel proceedings, the analogies to the *Northern Cameroons* situation were not clearly visible.

Hence, several conclusions can be made in relation to the application of judicial propriety and *forum non conveniens*. The former clearly has its basis in international jurisprudence, including that of the ICJ (yet in a totally different context unrelated to competing jurisdiction). So the door for its application is open if the need arises. At the same time, *forum non conveniens* as the corollary of judicial propriety has not been common in international judicial practice. So while the situation of conflicting jurisdictions can trigger the discussion on judicial propriety, it is likely to occur in

[329] *Mexico – Tax Measures on Soft Drinks and Other Beverages* – Panel Decision, paras 7.1, 7.18; *Mexico – Tax Measures on Soft Drinks and Other Beverages* – Appellate Body's Decision, para. 57.
[330] *Mexico – Tax Measures on Soft Drinks and Other Beverages* – Panel Decision, para 7.1.

rather radical circumstances, where the judicial integrity and sound administration of justice come under the manifest threat. Otherwise, judicial precedents do not demonstrate that courts are inclined to surrender their jurisdiction in favour of other tribunals, even if it can be argued that they are more appropriate forums for hearing the case.

3.1.3. Abuse of judicial process and/or procedural rights

As described in Section 2.2.1, by instituting parallel proceedings in competing forums, a party can seek to maximise its chances of winning the case or obtaining a double relief. In many domestic jurisdictions, including Ukraine, this type of behaviour can qualify as an abuse of process or procedural rights[331] - which is likewise prohibited by the general principle of law in international litigation.[332] The two types of abuse are, however, distinguished: abuse of process generally concerns the manner of initiating the proceedings, and the abuse of rights concerns the merits of the dispute.[333]

In international litigation, some forums have already considered multiple parallel proceedings on the same subject-matter to be abusive. This was mainly the case with the ICSID tribunals as, e.g., in the *Ampal v. Egypt* case.[334] There, the Tribunal held that maintaining the same claim in parallel investment arbitrations "is tantamount to double pursuit of the same claim in respect of the same interest."[335] Going further, the Tribunal contended that once jurisdiction of competing forums is

[331] *See, e.g.*, Civil Procedure Code of Ukraine of 18 March 2004 No. 1618-IV, Article 44(2)(2).
[332] I. Brownlie, *Principles of Public International Law* (OUP, 5th ed., 1998), pp. 447-448.
[333] F. Baetens, 'Abuse of Process and Abuse of Rights Before the ICJ: Ever More Popular, Ever Less Successful?' (*EJIL Talk*, 15 October 2019) <https://www.ejiltalk.org/abuse-of-process-and-abuse-of-rights-before-the-icj-ever-more-popular-ever-less-successful/> accessed on 15 May 2022 ('Baetens (2019)') referring to *Immunities and Criminal Proceedings* (*Equatorial Guinea v. France*), Preliminary Objections, Judgment (2018) ICJ Rep 292 ('2018 *Equatorial Guinea v. France* judgment'), paras 150-151.
[334] *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016.
[335] *Ibid*, para. 331.

clearly confirmed, it "would crystallise in an abuse of process for in substance the same claim is to be pursued on the merits before two tribunals."[336]

However, while these findings can be applicable to investment arbitration, the perspectives of their application before several forums of different nature are less clear. For example, both the ICJ and its predecessor have established an exceptionally high threshold for the application of the abuse doctrines and have been rather critical in relation to such claims.[337] For example, in the 1932 *Free Zones* judgment, the PCIJ mentioned that abuse of rights "cannot be presumed by the Court."[338] In one of the most recent examples in the 2018 *Immunities and Criminal Proceedings* judgment, the ICJ set the legal boundaries clearly when stating that "only in exceptional circumstances" the ICJ should reject a claim due to abuse of process, if its valid title of jurisdiction has been established.[339] It will, expectedly, require a credible proof of bad faith on behalf of the State instituting parallel proceedings in two competing forums, which, in practice, will be difficult if not an impossible case to prove. It will require evidence that a State acted knowingly when pursuing an abusive claim or behaviour.[340]

Moreover, some arguments are made to the point that the application of the abuse doctrines does not fit into the context of competing jurisdictions. For example, Kwak and Marceau stress that if States consented to refer disputes to various forums, one should assume their intention to reserve their rights to use both forums on distinct occasions.[341] Put it otherwise, if States indeed intended to omit overlapping

[336] *Ibid.*
[337] Baetens (2019).
[338] *Case of the Free Zones of Upper Savoy and the District of Gex* (*France v. Switzerland*) (1932) PCIJ Series A./B. No. 46, p. 167.
[339] 2018 *Equatorial Guinea v. France* judgment, para. 150.
[340] G.D.C. Taylor, 'The Content of the Rule Against Abuse of Rights in International Law' (1972-1973) 46 *British Yearbook of International Law* 323, p. 333.
[341] K. Kwak, G. Marceau, 'Overlaps and Conflicts of Jurisdiction between the WTO and RTAs' (2002) *WTO Conference on RTAs*, para. 28.

jurisdictions of two forums, they would draft a clause in the constituent instrument of either of them precluding for the possibility of simultaneous applications to both forums (as, e.g., States have done in human rights treaties – *see* the *lis pendens* section above).

This argument seems valid since the jurisdiction of all international courts and tribunals is based on the State's consent.[342] While it essentially means that no State can be compelled to participate in the proceedings without its will,[343] it can also be interpreted in a way that once States consented to a jurisdiction of the international court in that or another form – with or without limitations – the jurisdiction is to be exercised according to the form, in which it was consented to. So, if States decided not to exclude the possibility of parallel proceedings, it can be presumed that they did this knowingly. This finding can, however, be problematic in relation to courts or tribunals established earlier in the 20th century, when challenges of the proliferation of jurisdictions were not so acute and, thus, there was no need to predict various possible scenarios of States' misuse of their rights.

In any case, it can be concluded that the abuse of process or procedural rights doctrines can apply in the cases of conflicting jurisdictions, where several forums were seized simultaneously in relation to the same matter, as evidenced by the practice of the ICSID tribunals. Nevertheless, in other forums, including the ICJ, successfully applying the doctrines of abuse can require satisfying a very demanding standard of proof of bad faith on behalf of the State. Here again – as in the cases of *lis pendens* and judicial propriety – the doors for the principles' application in the cases of conflicting jurisdictions are not entirely close and much will depend on the circumstances of particular cases.

[342] *Status of Eastern Carelia*, Advisory Opinion (1923) PCIJ Series B. No. 5, p. 27.
[343] *Ibid.*

3.1.4. Res judicata

The last potential normative instrument that can assist in dealing with the negative implications of conflicting jurisdictions is the *res judicata* principle. In contrast to the options described above, *res judicata* does not pose challenges related to determining the aspects of its normative status since its "fundamental character" has been clearly recognised by the ICJ with reference to its judicial practice.[344] According to the ICJ's pronouncements in the 2007 *Bosnian Genocide* judgment, *res judicata* underlines that judicial decisions are final and "cannot be reopened by the parties as regards the issues that have been determined" to ensure the stability of international legal relations and to meet the parties' interest not to be forced to argue again over the already decided matters.[345]

In the context of conflicting jurisdictions, there are, however, several matters worth highlighting in the context of the *res judicata* principle. While its status in the international law is not disputed, ICJ's former President Guillaume underlined (similar to *lis pendens*) that the international system lacks the application of *res judicata* for the purposes of resolving the problems of overlapping jurisdictions in the forms adopted by domestic legal systems.[346] Yet, this statement leaves many issues ambiguous. It is unlikely that President Guillaume actually disputed the status of *res judicata* in international law, especially in view of the ICJ's pronouncements in the *Bosnian Genocide* judgment six years later. Rather, he could make a point that international judicial practice lacks precedents as to how *res judicata* can be helpful in resolving jurisdictional conflicts in contrast to municipal legal systems. Nevertheless, reluctance to apply *res judicata* can be observed in the practice of some forums, e.g., the WTO.[347]

[344] *See, e.g.,* 2007 *Bosnian Genocide* judgment, paras 115-116.
[345] *Ibid.*
[346] Guillaume's Speech (27 October 2000), p. 4.
[347] Pauwelyn and Salles (2009), p. 103.

In any case, *res judicata* only regulate the conduct of sequential proceedings, i.e., relitigating the issue, which has been subject to prior examination and final decision.[348] *Res judicata* is, thus, unable to address the challenges of a set of parallel proceedings. Moreover, *res judicata* requires several criteria to be met: the identity of parties, object or subject-matters of claims and their cause.[349] The latter criterion implies that a decision of one international forum cannot constitute *res judicata* for another forum.[350] This is also supported by the wording with which *res judicata* is incorporated in the constituent instruments of some international courts, e.g., the ICJ Statute.[351] Article 59 thereof is explicit in stating that the Court's decisions have "no binding force except between the parties and in respect of that particular case"[352] implying, thus, that one international court cannot be bound by the decisions of another international court on fact or law.

Hence, while *res judicata* plays an important role in precluding duplicative proceedings within one institution, it does not seem to have a significant bearing on dealing with conflicting jurisdictions.

In summary, if constituent treaty instruments of some forums do not regulate the matters of conflicting jurisdictions, international forums have back-up variants among the rules of customary law and general principles of law to address the risks emerging from conflicting jurisdictions. At the same time, each of the described paths is not without its flaws connected either to its doubtful status or peculiarities of its application. This finding does not, however, preclude the possibility that international courts can *proprio motu* explore the essence of these doctrines and adjust them to the very specific circumstances of their cases, should the need arise.

---

[348] *Ibid*, p. 85.
[349] *Ibid*, p. 103 *citing Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)* (1927) PCIJ Series A. No. 11, Dissenting opinion of Judge Anzilotti, p. 23.
[350] Pauwelyn and Salles (2009), p. 103.
[351] ICJ Statute, Article 59.
[352] ICJ Statute, Article 59.

At the same time, the last Sub-Section of the present analysis will inquire about what policy instruments remain available to international (quasi-)judicial bodies to mitigate the risk of conflicting jurisdictions.

3.2. Policy instruments for addressing the risks of conflicting jurisdictions

International courts and tribunals – more than their domestic analogies – are sensitive to the role of policy leverages in pursuing their activities. As the ICJ pointed out in the *Nuclear Weapons* advisory opinion (although on a different topic), many questions which arise in international life have political aspects in line with the legal ones,[353] which is a natural feature of international legal regulation. Therefore, regardless of whether normative instruments described above play out, international (quasi-)judicial bodies still possess room for manoeuvre in addressing the risks of conflicting jurisdictions with the use of various policy measures.

Such policy considerations can be said to accompany the living process of an international court from the very beginning of their existence. For example, in his landmark 2000 address to the General Assembly's Sixth Committee (also cited above), ICJ's President Guillaume suggested that before establishing new (quasi-)judicial bodies, the international community must ask itself whether such institution is needed,[354] and – extending its logic further – what will be its mandate, whether it has a potential of having its jurisdiction overlapping with those of other bodies, and whether such institution is truly needed at the current stage of development of international adjudication. Other policy instruments found their expression in a variety of reforms (analysed from a different perspective by a vast range of authors), which can mitigate the risks of conflicting jurisdictions. Among those frequently cited are, e.g., the procedure for the resolution of jurisdictional conflicts between

[353] *Nuclear Weapons* AO, para. 13.
[354] Guillaume's Address (26 October 2000), p. 5; Guillaume's Speech (27 October 2000), p. 6.

different forums by the ICJ,[355] broadening the range of actors competent to request advisory opinions from the ICJ,[356] including on the matters of conflicting jurisdictions, or providing the ICJ with an appellate function with respective amendments to the UN Charter).[357] Every of these proposals appears, however, only a result of a theoretical exercise. Implementing them or (at least) designing them will require – at minimum – massive political will and – at maximum – will be wholly revolutionary to the current system of international adjudication, which has been built for decades to appear as it is now. Taking one stone off the wall will lead to its fall – so policy considerations should inevitably be implemented within limits currently in place.

This means, primarily, that international courts and tribunals should be engaged in constant inter-forum dialogue, raising awareness of the legacy of other courts and tribunals and discovering carefully the danger caused by the fragmentation of international law and conflicting jurisdictions of international institutions.[358] The practice of some courts already presents a bright example of this approach – not only in terms of paying due weight to the legal and factual findings of other bodies (see Section 2.1.1 above) but also signs of political cooperation, e.g., invitations of judges of other courts for the opening sessions of judicial years,[359] etc.

When courts are already placed in the circumstances of conflicting jurisdictions and especially ongoing parallel proceedings, there are several instruments – outside purely normative ones – to mitigate the risks. First, the forum can decide to stay the proceedings by its order as the UNCLOS arbitral tribunal did

[355] Abi-Saab (1999), p. 930.
[356] Reinisch (2011), para. 24.
[357] Amaza (2012), p. 159.
[358] Guillaume's Speech (27 October 2000), p. 6.
[359] See e.g., 'ICC President addresses opening of European Court of Human Rights' judicial year' (*International Criminal Court*, 30 January 2017) <https://www.icc-cpi.int/news/icc-president-addresses-opening-european-court-human-rights-judicial-year> accessed 5 June 2022.

in the *MOX Plant* case (see Section 2.1.2 above), although the legal grounds there were not linked primarily to conflicting jurisdictions and involved a variety of much more complicated issues.[360] Nevertheless, this way can also be used as a semi-policy and semi-normative tool to avoid competition and to see how the situation unfolds (unless there are no risks of a denial of justice for the parties – see Section 3.1.2). Second, the courts can regulate the flow (including the duration of the proceedings) to see how a competing forum deals with the situation in question and to minimise the risk of direct confrontations.

So, even in the absence of normative instruments to counter the risks of competing jurisdictions, the principle of judicial comity as a diplomatic rule of goodwill[361] also opens the courts a wide room for manoeuvre in mitigating the risks of competing jurisdictions.

***

The risks of competing jurisdictions of (quasi-)judicial bodies undoubtedly require reaction on behalf of the adjudicating mechanisms. Such reaction should be multi-facet and take place in both normative and policy dimensions.

From a normative perspective, many challenges can be addressed through enshrining specific treaty rules governing the choice of forum or regulating the sequence or parallelism of proceedings. However, in the absence of such treaty rules, international courts and tribunals are expected to explore available options in customary international law and general principles of law. While the doctrines of *lis pendens*, judicial propriety (including its application through the *forum non conveniens* principle), prohibition of the abuse of judicial process or procedural rights and *res judicata* can offer a way forward, each of them can present its own challenges connected either to their normative status or peculiarities of their

[360] For the discussion, *see e.g.*, Lavranos (2008), p. 581.
[361] Amaza (2012), pp. 158-159.

application (or both). Nevertheless, when the need arises, international bodies can seek inspiration in these tools to regulate their procedural business.

In parallel, non-normative – policy – instruments can supplement the efforts of risk mitigation. Such policy instruments can come into play at various stages, including when courts are established and when they conduct their activities. Among them, constant judicial dialogue, considerations of judicial comity and increasing awareness of the risks of fragmentation of international law and proliferation of institutions play a crucial role. Likewise, policy considerations can allow the courts to postpone or stay the proceedings to reduce the tension resulting from competing jurisdictions.

All in all, a combination of both normative and policy instruments can serve as a viable option to respond to potentially critical situations resulting from the risks presented by conflicting jurisdictions of international (quasi-)judicial bodies.

CONCLUSIONS

Throughout the last two centuries, the international adjudication system has undergone significant and unprecedented transformations moving from the state of "initial singularity" to the network of permanent and *ad hoc*, universal and regional (quasi-)judicial bodies with general or special jurisdictions. This transformation is both illustrative of and symptomatic to the development of both general international law and specialised legal regimes, the regulation of which expends with the flow of human history.

Since the beginning of the 19th century, international dispute settlement has progressed from the violent means – the wars in the first place – to peaceful settlement of disputes via the wide network of third-party adjudication, offering significant perspectives to the maintenance of international peace and security. This development shows how the justiciability of international relations has increased and how – despite all ongoing armed conflict and global crises, and how the war was outlawed as the primary tool for resolving international disputes. Even in the context of the Russian large-scale invasion of Ukraine, which commenced and persisted as this analysis was in the drafting process, international justice was among the primary responses to the Russian aggression.

Since international law remains largely fragmented and decentralised, international dispute settlement mechanisms arose in very different contexts. As a result, their jurisdictions also differ in various dimensions – material, temporal, territorial and personal. The diversity of courts and tribunals has, thus, enabled the situations where jurisdictions of different forums are exercised in parallel. The phenomenon of jurisdictional parallelism should be understood in broad terms, i.e., outside the context of a specific case but in the framework of the whole international dispute settlement architecture. For example, technically, jurisdictions of some courts can never come into conflict, e.g., the ICC dealing with individual criminal

responsibility and the ICJ adjudicating matters of State responsibility. Nevertheless, it will be wrong to state that in the broader legal context, their jurisdictions never cross or interact.

First, such courts can deal with the same legal tests or interpretations of similar legal rules at the same moment in history. This kind of interaction can be both fruitful, i.e., the rules are interpreted consistently or in a way that crystallises their meaning or develops it further, and troublesome, i.e., when the interpretations are mutually contradictory and further increase the fragmentation of international law in the areas, where it could be avoided.

Second, both forums can deal with the same factual context in parallel. This scenario can involve producing the findings on facts and law by one forum in the exercise of jurisdiction by other forums. The case of Ukraine from 2014 onwards presents a bright example of such parallelism. The ICJ, the ECtHR, the WTO and various other forums are dealing in parallel with the situation in Crimea, Donbas and further the context of full-scale Russian invasion, and their findings can contribute to the truth- and fact-finding but also produce controversies. So it remains in the hands of competent bodies to deal with the issues in question in a manner which precludes further complications in the matters of facts and law when the same context is at stake.

Apart from these scenarios where jurisdictions of different courts do not collide directly, jurisdictional parallelism can take form of conflicting (or overlapping, or competing jurisdictions), where two or more forums of similar character capable of providing comparable relief are dealing with essentially similar claims between the same parties. Such a situation is a natural feature of the modern international dispute settlement system, which, in contrast to municipal systems, is not hierarchical and does not contain specific rules to resolve jurisdictional conflicts. So it is a normal state of affairs for the international adjudication when treaty

obligations apply in parallel, and their violation can trigger the jurisdiction of several forums – for each of them, in a specific dimension.

Parallel, including conflicting jurisdictions – similar to the phenomenon of fragmentation of international law – are neither negative nor positive in essence: they are indispensable to international law as it currently stands. However, the phenomenon of jurisdictional parallelism, including conflicts, can generate certain benefits and risks. As to the former, the multiplicity of jurisdictions enhances the justiciability of international affairs, clarifies the meaning of international legal rules, provides subjects of international law with a wider choice of dispute settlement options and venues specific to their contexts, etc. At the same time, parallel, including conflicting jurisdictions, can generate parallel proceedings leading to controversial outcomes, endanger coherence of international law and legitimacy of international institutions, involve superfluous judicial and other resources, and create a wide space for forum shopping.

These shortcomings require a response, which can be two-fold: normative and/or policy. In the normative dimension, constituent instruments of international bodies or other treaties can enshrine the rules governing jurisdictional conflicts, establish a sequence of application to international courts, or provide for exclusive jurisdictions of some bodies over the matters enshrined in some treaties. Yet, if such rules are absent, international (quasi-)judicial bodies can be expected to explore available cues in the customary international law and/or general principles of law.

Among the most viable normative alternatives, four options appear to be at the top of the discussion/analysis. They include:

- *Lis pendens* principle, which bars parallel proceedings between the same parties on similar claims brought before bodies of similar character;
- The doctrine of judicial propriety, which dictates that a court can surrender its jurisdiction for the sake of judicial integrity and sound administration of

justice. A corollary of this principle – *forum non conveniens* – rooted in common law jurisdictions provides that a court can surrender its jurisdiction in favour of a more appropriate forum.

- Prohibition of abuse of judicial process or procedural rights can lead to the inadmissibility of one of the parallel claims, which, e.g., was launched to maximise the chance of winning or obtaining a double relief.
- *Res judicata* doctrine bars relitigating issues which were already subject to a final and binding decision of a court/tribunal.

Yet, each doctrine or principle raises its own troublesome issues. For example, the status of *lis pendens* in international law remains largely unclear – similar to the substance of the criteria for its application. While judicial propriety emanates from the courts' inherent power to regulate the matters of their own jurisdiction, it has never been invoked in the cases of conflicting jurisdictions, including (purportedly) because of the risks of the denial of justice. Prohibition of abuse of judicial process or procedural rights has been applied restrictively by the ICJ and requires the proof of bad faith on behalf of the State, which is an especially challenging task, while the prohibition's application in the context of conflicting jurisdictions is doubted. Lastly, *res judicata* cannot resolve the challenges of parallel proceedings applying only to sequential applications and within the context of one forum (i.e., not between decisions of various bodies). Despite these challenges, it cannot be concluded that all these doctrines are unhelpful: should the need arise, international (quasi-)judicial bodies can find a rich doctrinal (and sometimes judicial) support for their application. It is, thus, expected that their relevance will only become a matter of increased interest in the future.

Apart from normative tools, international courts (and other actors) can employ a wide range of policy instruments to mitigate the negative implications of parallel, including conflicting jurisdictions. Some of the policy considerations can come into

play from the very moment when international courts are established, including thoroughly considering whether new courts are indeed needed and what their mandate will be. Additionally, international courts should engage in constant inter-forum dialogue, and keep aware of the practice of other bodies and the fragmentation of international law. During parallel (potentially competing) proceedings, international courts can decide to stay or delay proceedings until the risk of conflicting outcomes is mitigated – if the option is viable in the context of a particular case.

All in all, the phenomenon of jurisdictional parallelism, including conflicts, must be perceived as an integral part of the modern international dispute settlement order, which is likely to enhance in the future by bringing new perspectives and challenges. Hence, it is the time now for international judges and experts to develop a toolkit of available options to be ready to counter potential challenges once the need becomes acute.

BIBLIOGRAPHY

INTERNATIONAL TREATIES AND THEIR APPENDIXES

1. Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone (concluded 16 January 2002), 2178 UNTS 137.
2. Annex to Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (adopted 10 December 1999, entered into force 22 December 2000) 2131 UNTS 83.
3. Charter of the United Nations (signed 26 June 1945; entered into force 24 October 1945) 1 UNTS 16.
4. Convention (XII) relative to the Creation of an International Prize Court (signed 18 October 1907).
5. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.
6. Convention on the Law of the Sea (concluded 10 December 1982, entered into force 1 November 1994) 1833 UNTS 397.
7. Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, 78 UNTS 27.
8. Convention on the Settlement of Investment Disputes between States and Nationals of Other States (signed 18 March 1965, entered into force 14 October 1966), 575 UNTS 159.
9. Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401 (15 April 1994)

10. European Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950; entered into force 3 September 1953) ETS 5.
11. International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.
12. North American Free Trade Agreement, 32 I.L.M. 289 & 605 (1993).
13. Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
14. Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.
15. Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.
16. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013)
17. Protocol Relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, OJ C 326, 26 October 2012, pp. 273–273.
18. Rome Statute of the International Criminal Court (signed 17 July 1998, entered into force 1 July 2002), 2187 UNTS 3.
19. Statute of the International Court of Justice (signed 26 June 1945, entered into force 18 April 1946) USTS 993.

20. Treaty establishing the European Coal and Steel Community (signed 18 April 1951, entered into force 23 July 1952).
21. Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306 (signed 13 December 2007, entered into force 1 December 2009).
22. Treaty of Versailles (signed on 28 June 1919, effective from 10 January 1920).

INTERNATIONAL CASE-LAW AND PROCEEDINGS' RECORDS

International Court of Justice and Permanent Court of International Justice

23. *Aegean Sea Continental Shelf* (*Greece v. Turkey*), Judgment (1978) ICJ Rep 3, Separate Opinion of Judge Lachs.
24. *Ahmadou Sadio Diallo* (*Republic of Guinea v. Democratic Republic of the Congo*), Merits, Judgment (2010) ICJ Rep 639.
25. *Appeal Relating to the Jurisdiction of the ICAO Council*, Judgment (1972) ICJ Rep 46.
26. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, Merits (2007) ICJ Rep 43.
27. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Ukraine v. Russian Federation*), Judgment, Preliminary Objections (2019) ICJ Rep 558.
28. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*), Judgment, Preliminary Objections (2021) General List No. 172.
29. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*), Provisional Measures,

Order of 23 July 2018 (2018) ICJ Rep 406, Dissenting opinion of Judge *ad hoc* Cot.

30. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*), Provisional Measures, Order of 14 June 2019 (2019) ICJ Rep 361.
31. *Case concerning the Aerial Incident of July 27th, 1955* (*Israel v. Bulgaria*) , Preliminary Objections, Judgment (1959) ICJ Rep 127.
32. *Case Concerning the Factory at Chorzów (Claim for Indemnity) (Jurisdiction)* (*Germany v. Poland*), Judgment No. 8 (1927) PCIJ Series A. No. 9.
33. *Case of the Free Zones of Upper Savoy and the District of Gex* (*France v. Switzerland*) (1932) PCIJ Series A./B. No. 46.
34. *Certain German Interests in Polish Upper Silesia* (*Germany v Poland*), Preliminary Objections, Judgment (1925) PCIJ Series A. No 6.
35. *Corfu Channel*, Judgment (1949) ICJ Rep 4.
36. *East Timor* (*Portugal v. Australia*), Judgment (1995) ICJ Rep 90.
37. *Immunities and Criminal Proceedings* (*Equatorial Guinea v. France*), Preliminary Objections, Judgment (2018) ICJ Rep 292.
38. *Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów)* (1927) PCIJ Series A. No. 11, Dissenting opinion of Judge Anzilotti.
39. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) ICJ Rep 136.
40. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion (1996) ICJ Rep 226
41. *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Jurisdiction and Admissibility, Judgment (1984) ICJ Rep 392.

42. *Northern Cameroons* (*Cameroon v United Kingdom*), Judgment, Preliminary Objections (1963) ICJ Rep 15.
43. *Nuclear Tests* (*Australia v. France*), Judgment (1974) ICJ Rep 253.
44. *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals* (*Mexico v. United States of America*), Judgment (2009) ICJ Rep 3.
45. *Status of Eastern Carelia*, Advisory Opinion (1923) PCIJ Series B. No. 5.
46. Verbatim Record of the public sitting held on 9 May 2019 in the *Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) CR 2019/7.
47. Verbatim Record of the public sitting held on 9 May 2019 in the *Case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Qatar v. United Arab Emirates*) CR 2019/6.

International Criminal Court and criminal tribunals

48. *Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007.
49. *Prosecutor v. Tadić*, IT-94-1-A, Appeal Judgment, 15 July 1999.

European Court of Human Rights

50. *Hassan v. United Kingdom*, App. no. 29750/09, 16 September 2014.
51. *Mamatkulov and Askarov v. Turkey* [GC], Nos. 46827/99 and 46951/99, 4 February 2005.
52. *Stoll v. Switzerland* [GC], No. 69698/01, 10 December 2007.
53. *Ukraine v. Russia (re Crimea)* [GC] App. nos. 20958/14 and 38334/18, 16 December 2020.

World Trade Organisation

54. *Mexico – Tax Measures on Soft Drinks and Other Beverages – AB-2005-10*, Report of the Appellate Body, WT/DS308/AB/R (6 March 2006).
55. *Mexico – Tax Measures on Soft Drinks and Other Beverages*, Report of the Panel, WT/DS308/R (25 October 2005).
56. *Russia – Measures Concerning Traffic in Transit*, Report of the Panel, Doc. WT/DS512/R, 5 April 2019.

Other bodies

57. *Admissibility of the inter-State communication submitted by Qatar against the United Arab Emirates*, Doc. CERD/C/99/4, 30 August 2019.
58. *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Jurisdiction, 1 February 2016.
59. C-406/92 *Tatry v Maciej Rataj* (1994) ECR I-5439.
60. *Laguna del Desierto* 113 ILR, pp. 1, 42.
61. *Southern Bluefin Tuna* (*New Zealand-Japan*, *Australia-Japan*) (2000) 23 UNRIAA 1.
62. *V. O. v. Norway*, Communication No. 168/1984, U.N. Doc. CCPR/C/OP/2 at 48 (1990).

BOOKS

63. A. de Guttry, H.H.G. Post, G. Venturini (eds), *The 1998–2000 Eritrea-Ethiopia War and Its Aftermath in International Legal Perspective* (T.M.C. Asser Press, 2021).
64. A. Zimmermann *et al*., *The Statute of the International Court of Justice: A Commentary* (OUP, 3rd ed., 2019).
65. A.H. Robertson, *Council of Europe: Its Structure, Functions & Achievements* (New York: Frederick A. Praeger, 1956).
66. B. Fassbender and A. Peters, The Oxford Handbook of the History of International Law (OUP, 2012).

67. B. Swart, A. Zahar, G. Sluiter, *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (OUP, 2011).
68. C. Giorgetti, *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Brill, 2012).
69. C. McLachlan, *Lis Pendens in International Litigation* (Leiden/Boston: Martinus Nijhoff Publishers 2009).
70. D.A. Irwin, P.C. Mavroidis, A.O. Sykes, *The Genesis of the GATT* (CUP, 2011).
71. E. Ravasi, *Human Rights Protection by the ECtHR and the ECJ* (Brill | Nijhoff, 2017).
72. E. van Sliedregt, S. Vasiliev (eds.), *Pluralism in International Criminal Law* (OUP, 2014).
73. E.C. Mower, *International Government* (D.C. Heath and Company, 1931).
74. G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018).
75. G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018).
76. H. Lauterpacht, *The Function of Law in the International Community* (OUP, 2011).
77. H. Wehland, *The Coordination of Multiple Proceedings in Investment Treaty Arbitration* (OUP, 2013).
78. I. Brownlie, *Principles of Public International Law* (OUP, 5th ed., 1998).
79. I. Kant, *Perpetual Peace: A Philosophical Sketch* (1795).
80. I. Kavass, *Supranational and Constitutional Courts in Europe: Functions and Sources* (Buffalo, N.Y., W.S. Hein., 1992).
81. J. Alvarez, *International Organizations as Law-makers* (OUP, 2006).

82. J. Crawford, I. Brownlie, *Brownlie's Principles of Public International Law* (OUP, 8th ed., 2012).
83. J. Crawford, *State Responsibility. The General Part* (CUP, 2013).
84. J.B. Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party* (Washington, GPO, 1898).
85. J.B. Moore, *International Adjudications: Ancient and Modern History and Documents* (New York, OUP, 1931).
86. J.B. Moore, *International Law and Some Current Illusions and Other Essays* (New York: Macmillan Company, 1924).
87. J.H. Ralston, *International Arbitration from Athens to Locarno* (Calif: Stanford University Press, 1929).
88. J.L. Cavallaro *et al.*, *Doctrine, Practice, and Advocacy in the Inter-American Human Rights System* (OUP, 2019).
89. K.M. Ehrenberg, *The Functions of Law* (OUP, 2016).
90. M. Andenas, E. Bjorge (eds), *A Farewell to Fragmentation Reassertion and Convergence in International Law* (CUP, 2015).
91. M. M. Whiteman, *Digest of International Law* (US Department of State, 1963).
92. M. Martin, *The Regulation of International Trade: The Multilateral System; Theories, Qualifications, History and Objectives in WTO Dispute Settlement Understanding and Development* (Brill / Nijhoff, 2013).
93. M. Shaw, *International Law* (CUP, 8th ed., 2017).
94. M.O. Hudson, *International Tribunals: Past and Future* (Carnegie Endowment for International Peace and Brookings Institution, 1944).
95. O. Svarlien, *Introduction to the Law of Nations* (McGraw-Hill, 1955).
96. O.A. Hathaway, S.J. Shapiro, *The Internationalists: and Their Plan to Outlaw War* (Penguin UK, 2017).

97. R. Mackenzie, C.P.R. Romano, Y. Shany, P. Sands, *The Manual on International Courts and Tribunals* (OUP, 2nd ed., 2010).
98. R.B. Lillich (ed.), *Iran-United States Claims Tribunal, 1981-1983* (University Press of Virginia, 1984).
99. Sh. Rosenne, *The Law and Practice of the International Court, 1920-2005* (Brill, 2006).
100. T.C. Marion, *American Neutrality in 1793: A Study in Cabinet Government* (New York, Columbia University Press, 1931).
101. T.M. Antkowiak, A. Gonza, *The American Convention on Human Rights: Essential Rights* (OUP, 2017).
102. W.A. Schabas, *The European Convention on Human Rights: a Commentary* (OUP, 2015).
103. W.A. Schabas, *The International Criminal Court - A Commentary on the Rome Statute* (OUP, 2nd ed., 2016).
104. W.A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (OUP, 1st ed., 2010)
105. Y. Shany, *The Competing Jurisdictions of International Courts and Tribunals* (OUP, 2003).

BOOK CHAPTERS

106. C.G. Roelofsen, 'International Arbitration and Courts' in B. Fassbender and A. Peters, *The Oxford Handbook of the History of International Law* (OUP, 2012).
107. D. Spielmann, 'Fragmentation or Partnership? The Reception of ICJ Case-Law by the European Court of Human Rights' *in* M. Andenas, E. Bjorge (eds), *A Farewell to Fragmentation Reassertion and Convergence in International Law* (CUP, 2015).
108. D.A. Irwin, P.C. Mavroidis, A.O. Sykes, 'The Creation of the GATT', in D.A.
109. Irwin, P.C. Mavroidis, A.O. Sykes, *The Genesis of the GATT* (CUP, 2011).

110. D.P. Stewart, L.B. Sherman, ‘Developments at the Iran-United States Claims Tribunal: 1981-1984’ in R.B. Lillich (ed.), *Iran-United States Claims Tribunal, 1981-1983* (University Press of Virginia, 1984).
111. E. Greppi E., L. Poli, ‘The 2000 Algiers Agreements’ in A. de Guttry, H.H.G. Post, G. Venturini (eds), *The 1998–2000 Eritrea-Ethiopia War and Its Aftermath in International Legal Perspective* (T.M.C. Asser Press, 2021).
112. E. van Sliedregt, S. Vasiliev, ‘Pluralism: A New Framework for International Criminal Justice’ *in* E. van Sliedregt, S. Vasiliev (eds.), *Pluralism in International Criminal Law* (OUP, 2014).
113. G. Gaja, ‘Relationship of the ICJ with Other International Courts and Tribunals’ *in* A. Zimmermann *et al., The Statute of the International Court of Justice: A Commentary* (OUP, 3rd ed., 2019).
114. K.L. King, J.D. Meernik, ‘Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia: Balancing International and Local Interests While Doing Justice’ *in* B. Swart, A. Zahar, G. Sluiter, *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (OUP, 2011).
115. M. Ssenyonjo, ‘The African Commission and Court on Human and Peoples’ Rights’ in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018).
116. S. Petcharamesreein, ‘ASEAN Human Rights Mechanisms’ *in* G. Oberleitner (ed.), International Human Rights Institutions, Tribunals, and Courts. International Human Rights (Springer, 2018).
117. T.M. Antkowiak, A. Gonza, ‘The Inter-American Human Rights System’s Impact, Major Institutions, and Legal Instruments’ *in* T.M. Antkowiak, A. Gonza, *The American Convention on Human Rights: Essential Rights* (OUP, 2017).

118. Z. Eyadat, H. Okasheh, 'Human Rights Mechanisms in the Arab World: Politics and Protection' in G. Oberleitner (ed.), *International Human Rights Institutions, Tribunals, and Courts. International Human Rights* (Springer, 2018).

ARTICLES AND BLOGS

119. Gattini, 'Evidentiary Issues in the ICJ's Genocide Judgment' 5(4) *Journal of International Criminal Justice* 889 (2007).

120. A. Kaczorowska-Ireland, 'Judicial Propriety: International Adjudication' *Max Planck Encyclopedias of International Law* (updated April 2020) <https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3078.013.3078/law-mpeipro-e3078?prd=MPIL> accessed 7 June 2022.

121. A. Reinisch, 'International Courts and Tribunals, Multiple Jurisdiction' (2011) *Max Planck Encyclopedia of Public International Law.*

122. C.P.R. Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle' (1999) 31 *New York University Journal of International Law and Politics* 709.

123. D. Kaene, 'Application of the CERD Convention (Qatar v UAE) and "Parallel Proceedings" before the CERD Committee and the ICJ' (*EJIL.Talk!*, 17 May 2019) <https://www.ejiltalk.org/application-of-the-cerd-convention-qatar-v-uae-and-parallel-proceedings-before-the-cerd-committee-and-the-icj/> accessed 8 June 2022.

124. E. Gaillard, 'Abuse of Process in International Arbitration' (2017) *OUP ICSID Review* 1.

125. E. Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39(2) *The Journal of Legal Studies* 547.

126. F. Baetens, 'Abuse of Process and Abuse of Rights Before the ICJ: Ever More Popular, Ever Less Successful?' (*EJIL Talk*, 15 October 2019) <

https://www.ejiltalk.org/abuse-of-process-and-abuse-of-rights-before-the-icj-ever-more-popular-ever-less-successful/ > accessed on 15 May 2022.

127. F. De Ly, A. Sheppard, 'ILA Final Report on Lis Pendens and Arbitration' (2009) 25 *Arbitration International* 3.
128. F.K. Tiba, 'What Caused the Multiplicity of International Courts and Tribunals?' (2006) 10 *Gonzaga Journal of International Law* 202.
129. G. Abi-Saab, 'Fragmentation or Unification: Some Concluding Remarks' (1999) 31 *New York University Journal of International Law and Politics* 919.
130. G. Cuniberti, 'Parallel Litigation and Foreign Investment Dispute Settlement' (2006) 21 *ICSID Review Foreign Investment Legal Journal* 381.
131. G. Guillaume, 'The Use of Precedent by International Judges and Arbitrators' (2011) 2(1) *Journal of International Dispute Settlement* 5.
132. G.D.C. Taylor, 'The Content of the Rule Against Abuse of Rights in International Law' (1972-1973) 46 *British Yearbook of International Law* 323.
133. H. Horn, P.C. Mavroidis, 'Remedies in the WTO Dispute Settlement System and Developing Country Interests' (11 April 1999).
134. H. Lammasch, 'The Anglo-American Arbitration Treaty' (1911) 1 *International Conciliation* 871.
135. I.P. Amaza, 'Multiplicity of International Dispute Settlement Forums: Avoiding the Risk of Parallel Proceedings' (2012) 6(12) *Dispute Resolution International* 149.
136. J.H. Ralston, 'A Brief History of International Disputes' [1926] 88(8) *Advocate of Peace through Justice* 487.
137. J. Pauwelyn and E.L. Salles, 'Forum Shopping before International Tribunals: (Real) Concerns, (Im)Possible Solutions' (2009) 42(1) *Cornell International Law Journal* 77.

138. K. Kwak, G. Marceau, 'Overlaps and Conflicts of Jurisdiction between the World Trade Organization and Regional Trade Agreements' (2003) *The Canadian Yearbook of International Law* 83.
139. K. Kwak, G. Marceau, 'Overlaps and Conflicts of Jurisdiction between the WTO and RTAs' (2002) *WTO Conference on RTAs*.
140. K. Oellers-Frahm, 'Multiplication of International Courts and Tribunals and Conflicting Jurisdiction-Problems and Possible Solutions' (2001) 5(1) *Max Planck Yearbook of United Nations Law Online* 67.
141. L. Vaughan, 'Overlapping Jurisdiction in International Tribunals' (1999) 20 *Australian Year Book of International Law* 191.
142. L.B. Arevalo, 'The Multiplication of International Jurisdictions and the Integrity of International Law' (2008) 15(1) *ILSA Journal of International & Comparative Law* 49.
143. L.G.P. Specker, 'Remedying the Normative Impacts of Forum Shopping in International Human Rights Tribunals' (2005) 2 *The New Zealand Postgraduate Law E-Journal*.
144. M. Bronckers, N. van den Broek, 'Financial Compensation in the WTO: Improving the Remedies of WTO Dispute Settlement' (2005) 8(1) *Journal of International Economic Law* 101.
145. M. Koskenniemi, P. Leino, 'Fragmentation of International Law? Postmodern Anxieties' 15 *Leiden Journal of International Law* 553.
146. M. Petsche, 'What's Wrong with Forum Shopping – An Attempt to Identify and Assess the Real Issues of a Controversial Practice' (2011) 45 *International Lawyer* 1005.
147. M.D. Greenberg, 'The Appropriate Source of Law for Forum Non Conveniens Decisions in International Cases: A Proposal for the Development of Federal Common Law' (1986) 4 *International Tax and Business Lawyer* 155.

148. N. Lavranos, 'Regulating Competing Jurisdictions Among International Courts and Tribunals' (2008) 68 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 575.
149. P.-M. Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice' (1999) 31(4) *New York University Journal of International Law and Politics* 791.
150. V.P. Nanda, 'The Establishment of a Permanent International Criminal Court: Challenges Ahead', 20(2) *Human Rights Quarterly* 413.

RESOLUTIONS OF INTERNATIONAL ORGANISATIONS

151. League of Nations, Resolution of 18 April 1946, 21st session of the Assembly of the League of Nations.
152. UN Security Council, Resolution 1966 (2010), UN Doc no. S/RES/1966 (2010), 22 December 2010.
153. UN Security Council, Resolution 827 (1993), UN Doc no. S/RES/827 (1993), 25 May 1993.
154. UN Security Council, Resolution 955 (1994), UN Doc no. S/RES/955 (1994), 8 November 1994.

WORKS OF THE INTERNATIONAL LAW COMMISSION

155. 'Articles on Responsibility of States for Internationally Wrongful Acts' (2001) UN Doc. A/RES/56/83.
156. 'Commentary to the Articles on Responsibility of States for Internationally Wrongful Acts' (2001), ILC Yearbook 2001, Vol. II, Part Two, UN Doc. A/CN.4/SER.A/2001.
157. 'Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law' (2006), 58th session, ILC Yearbook 2006, Vol. II, Part 2.

158. ‘Draft conclusions on identification of customary international law’ (2018), ILC Yearbook 2018, Vol. II, Part Two.

CASES AND REGULATIONS OF MUNICIPAL JURISDICTIONS

159. Civil Procedure Code of Ukraine of 18 March 2004 No. 1618-IV.

160. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

161. *Koster v. Lumbermens* Mut. Cas. Co., 330 U.S. 518 (1947).

MISCALENEOUS

162. ‘Address by H.E. Judge G. Guillaume, President of the International Court of Justice, to the United Nations General Assembly’ (*International Court of Justice*, 26 October 2000) <https://www.icj-cij.org/public/files/press-releases/9/2999.pdf> accessed 24 November 2021.

163. ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/91> accessed 7 June 2022.

164. ‘Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/166> accessed 7 June 2022.

165. ‘Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/172> accessed 7 June 2022.

166. ‘Cases’ (*International Court of Justice*) <https://www.icj-cij.org/en/cases> accessed 7 June 2022.

167. ‘Emerging Arab States Human Rights Mechanisms’ (*The University of Melbourne*) <https://unimelb.libguides.com/c.php?g=928011&p=6704321> accessed 7 June 2022.
168. ‘Functions, objectives and key features of the dispute settlement system’ (*World Trade Organisation*) <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c1s3p3_e.htm> accessed 7 June 2022.
169. ‘General measures’ (*Council of Europe*) <https://www.coe.int/en/web/human-rights-convention/general-measures> accessed 7 June 2022.
170. ‘History’ (*International Court of Justice*) <https://www.icj-cij.org/en/history> accessed 6 June 2022.
171. ‘History’ (*Permanent Court of Arbitration*) <https://pca-cpa.org/en/about/introduction/history/> accessed 6 June 2022.
172. ‘ICC President addresses opening of European Court of Human Rights’ judicial year’ (*International Criminal Court*, 30 January 2017) <https://www.icc-cpi.int/news/icc-president-addresses-opening-european-court-human-rights-judicial-year> accessed 5 June 2022.
173. ‘Individual Communications. What happens once a Committee decides a case?’ (*UN Office of the High Commissioner for Human Rights*) <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#navigation> accessed 7 June 2022.
174. ‘Individual measures’ (*Council of Europe*) <https://www.coe.int/en/web/human-rights-convention/individual-measures> accessed 7 June 2022.
175. ‘Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/143> accessed 7 June 2022.

176. ‘Just satisfaction claims’, Practice direction issued by the President of the ECtHR in accordance with Rule 32 of the Rules of Court (*European Court of Human Rights*, 28 March 2007) <https://www.echr.coe.int/documents/pd_satisfaction_claims_eng.pdf> accessed 7 June 2022.
177. ‘Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/75> accessed 7 June 2022.
178. ‘Legality of the Threat or Use of Nuclear Weapons’ (*International Court of Justice*) <https://www.icj-cij.org/en/case/195> accessed 7 June 2022.
179. ‘Organs and agencies authorized to request advisory opinions’ (*International Court of Justice*) <https://www.icj-cij.org/en/organs-agencies-authorized> accessed 7 June 2022.
180. ‘Preliminary examinations’ (*International Criminal Court*) <https://www.icc-cpi.int/situations-preliminary-examinations> accessed 7 June 2022.
181. ‘Proliferation of International Judicial Bodies: The Outlook for the International Legal Order, Speech by His Excellency Judge Gilbert Guillaume, President of the International Court of Justice to the Sixth Committee of the General Assembly of the United Nations’ (*International Court of Justice*, 27 October 2000) <https://www.icj-cij.org/public/files/press-releases/1/3001.pdf> accessed 7 June 2022.
182. ‘Situations under investigation’ (*International Criminal Court*) <https://www.icc-cpi.int/pages/situation.aspx> accessed 7 June 2022.
183. ‘The Uruguay Round’ (*World Trade Organisation*) <https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm> accessed 7 June 2022.

184. ‘Timeline’ (*International Tribunal for the Law of the Sea*) <https://www.itlos.org/en/main/the-tribunal/history/> accessed 7 June 2022.
185. ‘Trust Fund for Victims (TFV). Background Summary’ (*International Criminal Court*) <https://www.icc-cpi.int/tfv> accessed 7 June 2022.
186. African Union, ‘Draft 2. Withdrawal Strategy Document’ (version of 12 January 2017, published by Human Rights Watch) <https://www.hrw.org/sites/default/files/supporting_resources/icc_withdrawal_strategy_jan._2017.pdf>.
187. E. Siegel, Starts With A Bang, ‘There Was No Big Bang Singularity’ (*Forbes*, 27 July 2018) <https://www.forbes.com/sites/startswithabang/2018/07/27/there-was-no-big-bang-singularity/?sh=333cded87d81> accessed 24 November 2021.
188. European Court of Human Rights, ‘Proceedings of the Seminar: Ten Years of the “New” European Court of Human Rights. 1998-2008 Situation And Outlook’ (2009) <https://www.echr.coe.int/Documents/10years_NC_1998_2008_ENG.pdf> accessed 7 June 2022.
189. International Court of Justice, ‘Rules of Court’ (adopted on 14 April 1978, entered into force on 1 July 1978).
190. International Commission of Jurists, ‘The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court’ (2015) <https://www.icj.org/wp-content/uploads/2015/04/MENA-Arab-Court-of-Human-Rights-Publications-Report-2015-ENG.pdf > accessed 7 June 2022.
191. M. Koskenniemi, ‘Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought’, Speech, delivered at Harvard University on 5 March 2005.

192. M. Wall, ‘The Big Bang: What Really Happened at Our Universe’s Birth?’(*Space.com*, 21 October 2011) <https://www.space.com/13347-big-bang-origins-universe-birth.html> accessed 24 November 2021.