

TERRITORY, TRIBE, AND TRADE: THE SYMBIOTIC RELATIONS BETWEEN STATE AND INDIVIDUALS IN STATE-STATE DISPUTE SETTLEMENT

This panel was convened at 12:00 p.m. on Thursday, April 7, 2022 by its moderator, Chiara Giorgetti of the University of Richmond Law School, who introduced the speakers: John R. Crook of the George Washington University Law School; Massimo Landi of the City University of Hong Kong School of Law; Aristeo Lopez Sanchez of Clark Hill Law; and Yusra Suedi of the London School of Economics and Political Science.

REMARKS BY CHIARA GIORGETTI*

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Good morning, good afternoon, and good evening, and welcome to our panel: Territory, Tribe, and Trade: The Symbiotic Relations Between the State and Individuals in State-State Dispute Settlement. I am really glad to have the opportunity to reflect on such an interesting topic and discuss it with these excellent experts and look forward to contributing substantively to this important discussion.

As it is well known, international law is the law that applies to states and among states: it applies internationally, i.e., inter-nations. However, as it is also well known, this is somewhat of a legal fiction. There are no states that walk around the world acting and speaking on their own behalf.

Instead, a state's behavior is an accumulation of actions by individuals, who are in states' capitals and take decisions that are considered to express the will of the state, or express the will of the state in negotiations with other individuals representing other states. States also act through individuals on the ground that perform specific actions. In many concrete ways, these actions affect the lives of individuals. Indeed, the legal fiction of the state as the central actor of international law obscures the reality that state actions result from individuals and the international rules governing state actions in fact govern individuals.

This session examines specifically how state-state disputes over boundaries and trade—which are areas that have seen the development some of the most important principles of international law—emerge from the actions of individuals and how their resolution affects individuals on different sides of a boundary, whether the boundary remains fixed or changed, and also affect the lives of individuals who are at the receiving end of trade decisions.

This phenomenon is clearly visible presently, as we witness the act of aggression by Russia in Ukraine and the subsequent boundary dispute that ensued, the sanctions that are imposed, and evacuation that also result from it. These actions are made by individuals and have repercussions on individuals, their territory, and in their economic relations.

In looking at selected disputes from the prism of the individual actions that cause state-state disputes and how the rules resolving the disputes impacted those individuals, the session also takes on the theme of the 2022 ASIL Annual Meeting “What about me?” in international

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law, highlighting not just how individuals experience international law in their daily lives and contribute to its creation, but what elements of their experience do state-state disputes take into account and which are highlighted or, instead, ignored.

Examples of the symbiotic relationship between states and individuals include issues the determination of compensation for impacts on livelihood, the displacement of individuals or communities when boundaries are redrawn, and how trade rules can create winners and losers both at home and abroad.

The panelists' discussion focused on three specific issues:

First, we examined how the determination of compensation for impacts of livelihood has changed and has evolved historically. It is particularly interesting in this area to think about international claims commissions and how their work has changed over time. For example, the commissioners of the United Nations Compensation Commission (UNCC)¹ which was established after Iraq's invasion of Kuwait, innovatively decided to prioritize small claims of individuals who had to flee the region over claims by companies and states. Those claims were compensated with a modest fixed sum. More recently, the International Court of Justice (ICJ) ordered Uganda to pay \$65 million to the Democratic Republic of the Congo (DRC) for five years for violation of human rights as well violation of the DRC's territorial sovereignty, and the looting, plundering, and exploitation of the DRC's natural resources.²

Second, we examined how boundaries and international decisions over boundaries affect individuals concretely. Boundary disputes often result in the displacement of individuals. The panelists discussed both territorial and maritime boundaries generally and focusing on specific example. Panelists in particular focused on mass expulsion and nationality issues that ensue from certain boundaries disputes. In this situation, the examples of the UNCC and the Eritrea-Ethiopia Claims Commission are important illustrative case studies.

Third, and finally, we explored the issues of trade and this create both winners and losers. The focus was on the negotiation of new trade agreements, specifically among the United States-Mexico-Canada Agreement (USMCA),³ and also addressed issues of labor rights.

The discussion was illuminating and I sincerely thank the speakers—John Crook, Massimo Landi, Aristeo Lopez, and Yusra Suedi—for engaging with these questions and for their thoughtful remarks.

REMARKS BY JOHN R. CROOK*

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Our panel is looking at the complex interactions between individuals and the processes for creating and applying international law. How do individual actions lead to state-state disputes? How do the rules and procedures for resolving these disputes impact affected people? As the panel notes says, the idea is to address a vital question: “what about me?”

Our caption refers to the “symbiotic relationship between states and individuals in state-state dispute settlement” in various areas. I am going to look briefly at two: the evolving position of individuals in international dispute settlement; followed by a brief comment about the importance of settled international borders.

¹ For an overview of the work of the UNCC, see UNCC, *Home*, at <https://uncc.ch>.

² *Armed Activities on the Territory of the Congo (Dem. Rep. v. Uganda)*, at <https://www.icj-cij.org/en/case/116>.

³ For more information, see <https://usmca.com>.

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