

THE MULTIPLICATION OF INTERNATIONAL JURISDICTIONS AND THE INTEGRITY OF INTERNATIONAL LAW

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ABSTRACT

While the multiplication of international courts shows the vitality and versatility of international law, it can also create serious problems for its unity and coherence and ultimately lead to its fragmentation. After briefly analyzing the reasons for the expansion of international jurisdictions, this article delves into the dangers that such a phenomenon poses to the integrity and cohesiveness of international law. The fact that international courts do not stand in hierarchical relation to one another explains such problematic aspects as the potential for jurisdictional overlapping and the risk of inconsistent interpretations of international rules. On the positive side, such institutional multiplicity is an indication of the increasingly important role played by international courts in the field of international dispute settlement and provides fertile ground for exploration of new concepts and ideas, which is bound to improve the quality of international law and strengthen the rule of law in inter-state relations.

I. INTRODUCTION

Arguably, one of the most significant developments in the recent history of international relations is the enormous expansion and transformation of international judicial institutions. Since its creation in 1920 and for the three subsequent decades, the Permanent Court of International Justice and its successor, the International Court of Justice (ICJ), were the sole permanent fora

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for the settlement of international disputes. From the early 1950s, the ICJ co-existed with two other international courts based in Europe, the European Court of Human Rights (ECHR) and the Court of Justice of the European Coal and Steel Community, later to become the European Court of Justice (ECJ). These three institutions basically stood alone in the international judicial arena until international judiciary bodies started to multiply, roughly three decades ago.

In 1981, the Inter-American Court of Human Rights rendered its first judgment and, one year later, the United Nations Convention on the Law of the Sea (UNCLOS) provided for the creation of the International Tribunal for the Law of the Sea (ITLOS), which began to function in 1996. In the early 1990s, the Central American Integration System gave birth to the Central American Court of Justice, and the Agreement establishing the World Trade Organization (WTO), signed in 1994 in Marrakesh, included a quasi-judicial dispute settlement mechanism for trade-related issues. The ad hoc International Tribunals for the former Yugoslavia and Rwanda were also set up in the mid-nineties, as were the Court of Justice of the Andean Community and the African Court of Human and Peoples' Rights. The Caribbean Court of Justice, the African Court of Justice and the International Criminal Court saw the light at the turn of the twenty-first century. Finally, a number of so-called hybrid jurisdictions, that is, courts consisting of both national and international judges, can be added to this non-exhaustive enumeration: the Extraordinary Chambers in the Courts of Cambodia, the Special Court for Sierra Leone and the Special Tribunal for Lebanon.

The multiplication of international judicial bodies is a development that shows the vitality and versatility of international law and contributes to the strengthening of the rule of law in inter-state relations. However, the expansion of these bodies can also create serious problems for the unity and coherence of international law, encouraging phenomena such as jurisdictional competition and forum shopping, and giving rise to potentially divergent and incompatible interpretations of international norms. This article addresses the issue of the expansion of international jurisdictions, analyzing both its causes and its consequences, with particular emphasis on some of its most undesirable side-effects.

II. CAUSES OF THE PROLIFERATION OF INTERNATIONAL JURISDICTIONS

The origin of the proliferation of international courts can be traced back to the systemic transformation of international relations brought about by the process of globalization. Much has been said about the causes of this process, from the technological revolution in the fields of transport and telecommunications to the triumph of the doctrines of market economy and free trade, from the liberalization of investment and the deregulation of financial markets, to the end

of bipolarism and its replacement by a multilateral approach to world affairs—challenged nonetheless by unilateral stances on issues of peace and security and, to a certain extent, commercial and environmental matters.

Leaving aside the controversy about its etiology, globalization has been both a cause and a consequence of the expansion and diversification of international relations over the last few decades. The growth of inter-state cooperation in many areas has been coupled with the expansion of international law to domains hitherto excluded from multilateral arrangements (such as trade, development, environment, human rights, terrorism and weapons of mass destruction, to name but a few). As a result, new international organizations have been created, and the existing ones transformed to deal with this ever-growing panoply of issues that now cover almost every domain of human activity.

As Professor Cesare Romano puts it, the multiplication of international judicial fora is, to a certain extent, “the precipitate of the accrued normative density of the international legal system.”¹ Indeed, since states “increasingly vest specialized international organizations with the power to create international legal standards,” it is only natural for them to empower those organizations “to interpret and uphold such standards.”² On the other hand, following the pattern set by the European Union (EU), other regional integration organizations, such as the Andean Community, the Common Market for Eastern and Southern Africa, and the Arab Maghreb Union, have also created judicial bodies for the purpose of settling disputes between members arising out of the implementation of their treaties and agreements, upholding the rules and provisions contained therein, ensuring their consistent interpretation and securing continuous access to legal remedies.³

Together with the enlargement of the material scope of operation of international law, there has been a multiplication of actors in international relations, with growing functions performed by non-governmental organizations (NGOs), multinational corporations and private individuals.⁴ These non-state players increasingly engage in transnational activities, and as a result there is a growing tendency to grant them some degree of international personality, even though, as Professor Malanczuk acknowledges, the whole subject remains

1. Cesare P. R. Romano, *The Proliferation of International Judicial Bodies: The Pieces of the Puzzle*, 31 (No. 4) N.Y.U. J. INT'L L. & POL. 709, 729 (1999).

2. *Id.*

3. *Id.* at 735.

4. Although globalization has not brought about the end of the state, it has contributed to its disaggregation and to the emergence of transnational networks, in which public institutions interact with their counterparts abroad as well as with private parties that are increasingly performing many of the traditional functions of the state. See Anne-Marie Slaughter, *The Real New World Order*, FOREIGN AFF., Sept.–Oct. 1997, at 183, 184.

extremely controversial.⁵ In any case, one of the many implications of this development is that international law is being increasingly invoked by individuals, corporations and NGOs not only in their own courts but also in foreign ones, and pressure is mounting to allow them some sort of participation in international adjudication when it affects them.⁶

In conclusion, the enlargement of the scope of international law both *ratione materiae* and *ratione personae* has led to an unprecedented multiplication of international judicial fora. This responds to a large extent to recent developments in world affairs and may be considered a way for the international legal system to adapt to fundamental changes in inter-state relations. As mentioned before, this phenomenon undoubtedly has positive effects since it enforces the rule of law in international relations. As Professor Pierre Dupuy points out, the establishment of new jurisdictions makes international disputes more justiciable and improves the efficiency of international law by contributing to the implementation of obligations while creating “a more refined and precise system of interpretation of norms.”⁷ At the same time, it helps generate a more objective system of international rules, since it is “less and less characterized by self-appreciation of legality by its subjects and authors, the sovereign states.”⁸ Therefore, in Dupuy’s opinion, “the growing number of international jurisdictions . . . should be seen . . . as a decisive step in the evolution of the international legal system as it develops a real judicial function.”⁹

5. P. MALANCZUK, AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW 100 (7th rev. ed. 1997). On the position of non-state actors in international law, *see id.* at 96–104.

6. In this respect, however, there is a “sharp dichotomy” between judicial bodies with a universal scope and regional judicial bodies: whereas the former “remain much more impervious” to non-state actors, regional judicial bodies are relatively accessible to them. Professor Romano explains this accessibility in the following terms:

At the moment at which international organizations receive power to affect individuals’ interests directly, it becomes essential to guarantee the substance of the legal protection normally found under national law in new international fora. If such guarantee is not provided, either individuals risk being stripped of judicial protection or, if they have retained the right to have recourse against the REIA’s [Regional Economic Integration Agreement] legislation in the courts of member states, the consistent interpretation of the regime’s normative structure cannot be ensured.

Romano, *supra* note 1, at 743–45.

7. Pierre-Marie Dupuy, *The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice*, 31 (No. 4) N.Y.U. J. INT’L L. & POL. 791, 796 (1999).

8. *Id.*

9. *Id.*

III. RISKS ENSUING FROM THE MULTIPLICATION OF INTERNATIONAL COURTS

For all the benefits it certainly has, the creation of new jurisdictions may also entail some dangers to the unity and integrity of international law, mainly owing to the fact that international judicial bodies do not stand in hierarchical relation to one another. Two of these dangers are worthy of note: the risk of conflicting jurisdiction and the threat of divergent jurisprudence. As for the first, the potential for overlapping jurisdictions has increased with the multiplication of international courts, paving the way to a form of inter-institutional competition between courts and enabling a party to a dispute, normally the one taking the initiative, to choose the judicial body that best suits its interests.¹⁰ Although this practice, known as forum shopping, may foster a certain spirit of healthy competition between judicial bodies and stimulate their imagination and creativity, it also has negative implications that have been voiced by, among others, the former President of the ICJ, Gilbert Guillaume. In his opinion, all judicial bodies tend, consciously or not, to assess their worth by reference to the frequency with which they are seized. As a result, some courts could “be led to tailor their decisions so as to encourage a growth in their caseload, to the detriment of a more objective approach to justice.”¹¹ Such a situation could arise, for example, in the field of maritime disputes, in which both the ITLOS and the ICJ have jurisdiction.¹² In this respect, Professor Kingsbury considers that a case of forum shopping may be found in the dispute between New Zealand and Australia, on the one hand, and Japan, on the other, concerning southern bluefin tuna conservation.¹³ He suggests that one of the reasons underlying the plaintiffs’ decision to proceed under Part XV of the UNCLOS rather than invoking the jurisdiction of the ICJ pursuant to the

10. This choice may be based on criteria such as the court’s composition, its procedural rules, its case-law or its power to make some particular decisions that other jurisdictions may not be entitled to take. See Press Release, I.C.J., The Proliferation of International Judicial Bodies: The Outlook for the Int’l Legal Order, Speech by His Excellency Judge Gilbert Guillaume, President of the I.C.J., to the Sixth Committee of the General Assembly of the U.N. (Oct. 27, 2000), <http://www.icj-cij.org/presscom/index.php?p1=6&p2=1&pr=85&search=%22nagymaros%22> (last visited Sept. 6, 2008).

11. *Id.*

12. See United Nations Convention on the Law of the Sea, art. 282, 286–87, Dec. 10, 1982, 1833 U.N.T.S. 397. Under Articles 286 and 287 of the UNCLOS, the ITLOS may be given jurisdiction to hear cases related to the interpretation and application of the Convention. Jurisdiction may also be conferred on the ICJ by virtue of Article 282 of the UNCLOS. *Id.*

13. The Southern Bluefin Tuna Cases (N.Z. & Austl. v. Japan), 117 I.L.R. 148, 152–53 (Int’l Trib. L. of the Sea 1999). In what can be regarded as an example of conflicting jurisprudence, the provisional measures granted by the ITLOS were subsequently revoked by an arbitration tribunal set up by the parties to decide on the merits, which found that it lacked jurisdiction. On the Southern Bluefin Tuna Cases, see generally Howard S. Schiffman, *UNCLOS and Marine Wildlife Disputes: Big Splash or Barely a Ripple?*, 4 J. INT’L WILDLIFE L. & POL’Y 257, 271–76 (2001).

declarations made under Article 36(2) of its Statute was the “explicitly binding nature of the ITLOS provisional measures.”¹⁴ Similarly, in the *Swordfish Stocks* case,¹⁵ the parties to the dispute invoked the jurisdiction of two fora at the same time: the ITLOS and the WTO dispute settlement mechanism.¹⁶ As these two cases indicate, it is not far-fetched to think that, in the future, proceedings could be brought to a particular court based on the fact that it is more sympathetic to certain doctrines, concepts or interests than others.

The second problem arising from the proliferation of judicial bodies is the risk of divergent jurisprudence. As Professor Jonathan I. Charney points out, normative systems of law are based on the assumption that like cases are treated alike.¹⁷ If this were not the case, the “legitimacy of international law as a whole” would be challenged and the very “perception that an international legal system exists” could be called into question.¹⁸ The President of the ICJ, Judge Rosalyn Higgins, considers the potential for inconsistent jurisprudence to be real, “[h]owever understandable the reasons for the arrival of the new tribunals on the international scene and however true it is that in large part they do what the ICJ, because of its Statute and nature, cannot do.”¹⁹ In dealing with the issue of fragmentation of international law, the International Law Commission (ILC)²⁰

14. Benedict Kingsbury, *Foreword: Is the Proliferation of International Courts and Tribunals a Systemic Problem?*, 31 (No. 4) N.Y.U. J. INT’L. & POL. 679, 685 (1999). However, this particular question has lost part of its interest after the ICJ judgment in the *LaGrand* case, in which the Court recognized the binding nature of its orders for provisional measures. See *LaGrand Case* (F.R.G. v. U.S.), 2001 I.C.J. 503 (June 27).

15. Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (*Chile v. Eur. Cmty.*), Special Chamber, 40 I.L.M. 475, 475 (Dec. 20).

16. However, after reaching an arrangement on the dispute, Chile and the EU jointly requested that the proceedings before the ITLOS and the WTO be suspended. See Schiffman, *supra* note 13, at 267.

17. Jonathan I. Charney, *The Impact on the International Legal System of the Growth of International Courts and Tribunals*, 31 (No. 4) N.Y.U. J. INT’L. & POL. 697, 699 (1999).

18. *Id.*

19. Rosalyn Higgins, *The ICJ, the ECJ, and the Integrity of International Law*, 52 (No. 1) INT’L & COMP. L.Q. 1, 18 (2003).

20. In 2002, the ILC included the topic “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” in its program of work and established a Study Group on the topic. See U.N. GAOR, 58th Sess., ILC Report on the Work of its Fifty-Fifth Session ¶ 410, U.N. Doc. A/58/10 (2003) [hereinafter ILC Fifty-Fifth Session Report]. It also decided to undertake a series of studies on the following issues: (a) The function and scope of the *lex specialis* rule and the question of “self-contained regimes;” (b) The interpretation of treaties in the light of “any relevant rules of international law applicable in the relations between the parties” (art. 31(3)(c) of the Vienna Convention on the Law of Treaties), in the context of general developments in international law and concerns of the international community; (c) The application of successive treaties relating to the same subject matter (art. 30 of the Vienna Convention on the Law of Treaties); (d) The modification of multilateral treaties between certain of the parties only (art. 41 of the Vienna Convention on the Law of Treaties); (e) Hierarchy in international law: *jus cogens*, obligations *erga omnes*, Article 103 of the Charter of the United Nations, as conflict rules. Vienna

identified different patterns of divergent jurisprudence arising from three types of possible conflicts.²¹

The first conflict is between different interpretations of general law. The *Tadić* case, of which the International Criminal Tribunal for the former Yugoslavia (ICTY) was seized in 1999, offers a prime example of this type of situation.²² For the Tribunal to determine its competence, it had to come to the conclusion that there was an international armed conflict in Bosnia and Herzegovina, which in turn required the establishment of the fact that some of the participants in the internal conflict in that country were acting under the control of a foreign power, the Federal Republic of Yugoslavia (as Serbia and Montenegro was then called).²³ In its judgment, the Appeals Chamber of the Tribunal referred to the decision of the ICJ in the *Nicaragua* case,²⁴ but only to embark on a different course.²⁵ In that instance, the ICJ had declared that for a military or paramilitary group to be regarded as acting on behalf of a foreign power in an apparently internal armed conflict, the foreign state had to exercise “effective control of the military or paramilitary operations in the course of which the alleged violations [of human rights and humanitarian law] were committed.”²⁶ The ICTY, however, departed from this approach, based on article 8 of the ILC Articles on state responsibility, and instead opted for a less strict criterion—the “overall control” of the groups by a foreign state—adopting a new interpretation of international law in the matter of state responsibility.²⁷ The divergence resurfaced in the *Genocide* case,²⁸ opposing Bosnia and Herzegovina to Serbia and Montenegro, where the ICJ rejected the “overall control” doctrine and reaffirmed the validity of the “effective control” test to conclude that the acts of genocide at hand were not committed by individuals acting on the instructions of the Federal Republic of Yugoslavia or under its

Convention on the Law of Treaties, arts. 30, 31(3)(c), 41 May 23, 1969, 1155 U.N.T.S. 243; U.N. Charter art. 103. See ILC Fifty-Fifth Session Report, *supra*, ¶¶ 425, 427. In 2006, the Study Group completed its work and adopted a report on the issue. Subsequently, the ILC decided to take note of the conclusions included in the report and commended them to the attention of the General Assembly. See U.N. GAOR, 61st Sess., ILC Report on the Work of its Fifty-Eighth Session ¶¶ 233, 237, U.N. Doc. A/61/10 (2006).

21. ILC Fifty-Fifth Session Report, *supra* note 20, ¶ 419.

22. Prosecutor v. Tadić, Case No. IT-94-1-A, Appeals Chamber Judgment, ¶ 146 (July 15, 1999).

23. *Id.* ¶ 147.

24. Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27).

25. *Id.* See Tadić, *supra* note 22, ¶ 115.

26. Military and Paramilitary Activities, *supra* note 24, at 65.

27. Tadić, *supra* note 22, ¶ 122.

28. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), Judgment, 46 I.L.M. 188, 188 (Feb. 26) [hereinafter Bosn. & Herz. v. Serb. & Mont. Case].

direct control and therefore could not be attributed to that state.²⁹ However, as Professor Cannizzaro points out, in this case the ICJ felt compelled to justify why it deviated from the Tribunal case law, and in so doing provided “guidance for future cases as to the type and degree of deference” which should be given to decisions from other international courts.³⁰

A second type of conflict arises when a special body diverges from the general rule “not as a result of disagreement as to the general law but on the basis that a special law applies.”³¹ In this case, no change is envisaged to the general law; the special body simply considers that a special law is applicable to the issue and acts accordingly. An example of such a body is the ECHR, which, on a number of occasions, has departed from the ICJ on issues concerning the validity of reservations considered to be incompatible with the European Convention of Human Rights. In the *Belilos* case,³² for instance, the ECHR understood an interpretative declaration made by Switzerland as constituting a reservation,³³ which was subsequently held invalid and severed from the instrument of ratification of the declaring state.³⁴ As a result, the Court determined that the disputed provision—the effect of which the declaration was purported to exclude—was binding since, in its view, it was considered “beyond doubt” that Switzerland “[was], and regard[ed] itself as, bound by the Convention irrespective of the validity of the declaration.”³⁵ In

29. *Id.* at 287, 288, 291.

30. See Enzo Cannizzaro, *Interconnecting International Jurisdictions: A Contribution from the Genocide Decision of the ICJ*, 1 EUR. J. LEGAL STUD. 1, 7 (2007). In paragraph 403 of its judgment, the ICJ acknowledged that it

. . . [a]ttaches 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.

Bosn. & Herz. v. Serb. & Mont. Case, 46 I.L.M. at 288. In Cannizzaro’s words, the Court considered that the authority of the Tribunal would depend on whether, in deciding a certain question, the Tribunal remained within the scope of its jurisdiction, as ascertained by the ICJ. . . [T]his passage of the judgment, perhaps beyond the subjective intention of its judges, foreshadows a methodological approach which can be useful in case of jurisdictional overlaps.

Cannizzaro, *supra* note 30 at 3, 7.

31. See ILC Fifty-Fifth Session Report, *supra* note 20, ¶ 419.

32. *Belilos v. Switzerland*, App. No. 10328/83, 10 Eur. H.R. Rep. 466 (1988).

33. *Id.* at 481.

34. *Id.*

35. *Id.* at 487.

the case of *Loizidou v. Turkey*,³⁶ a declaration by Turkey limiting the jurisdiction of the ECHR to acts or omissions performed within Turkish national territory was deemed a reservation³⁷ and struck down as incompatible with the object and purpose of the Convention.³⁸ Judge Guillaume considers that the decision diverges from the case-law of the ICJ, which “like its predecessor the Permanent Court of International Justice, has consistently held that such reservations are legal and must be upheld.”³⁹ However, the ECHR found convincing reasons for separating the practice under the European Convention from that of the ICJ.⁴⁰ Finally, the ECHR has also dismissed interpretations of international agreements or general international law rules aimed at creating exceptions to the obligations of the contracting states under the European Convention of Human Rights.⁴¹ This is what happened in the case of *Waite and Kennedy v. Germany*⁴² when the ECHR declared that the attribution of immunity from jurisdiction to international organizations could not “absolve” the contracting states “from their responsibility under the Convention in relation to the field of activity covered by such attribution,” particularly as regards the right of access to court, “in view of the prominent place held in a democratic society by the right to a fair trial.”⁴³ However, in this case the Court did not ultimately find such attribution of immunity to be incompatible with the purpose and object of the Convention, since the international organization in question had provided the applicants with an alternative means of legal redress.⁴⁴

36. *Loizidou v. Turkey*, App. No. 15318/89, 20 Eur. H.R. Rep. 99 (1995) [hereinafter *Loizidou v. Turkey*].

37. The applicant in this case had submitted that the element of territorial restriction in the Turkish declaration was “tantamount to a disguised reservation.” *Id.* at 132.

38. *Id.* at 137.

39. See Press Release, I.C.J., *supra* note 10.

40. The ECHR declared that given the fundamental differences between both Courts in terms of the context in which they operate (“the International Court is called on inter alia to examine any legal dispute between States that might occur in any part of the globe with reference to principles of international law” and “the subject-matter of a dispute may relate to any area of international law”) and their function (“the role of the International Court is not exclusively limited to direct supervisory functions in respect of a law-making treaty such as the Convention”), there was “a compelling basis for distinguishing Convention practice from that of the International Court.” *Loizidou v. Turkey*, *supra* note 36, at 136.

41. See Gerhard Hafner, *Risks Ensuing from Fragmentation of International Law*, U.N. GAOR, 55th Sess., ILC Report on the Work of its Fifty-Second Session, at 323–24 Annex, U.N. Doc. A/55/10/Annex (Sept. 27, 2000).

42. *Waite and Kennedy v. Germany*, App. No. 26083/94, 30 Eur. H.R. Rep. 261 (1999).

43. *Id.* at 287.

44. *Id.* at 288.

The third type of conflict identified by the ILC appears when specialized fields of law seem to be at variance with each other. In a number of cases, for example, the General Agreement on Tariffs and Trade (GATT)/WTO dispute settlement mechanisms have been requested to determine whether trade restrictions to protect the environment are permissible under the legal system created by those agreements. Jurisprudence on this issue is far from being consistent, as shown by the decisions in the *Tuna/Dolphin*⁴⁵ and *Shrimp/Turtle*⁴⁶ disputes. In 1994, a GATT dispute settlement panel ruled that a United States embargo on tuna harvested with techniques detrimental to dolphins was illegal under GATT rules.⁴⁷ While in its report the panel noted that “the objective of sustainable development, which includes the protection and preservation of the environment, has been widely recognized by the contracting parties to the General Agreement,”⁴⁸ it considered environmental treaties irrelevant to the interpretation of the text of the GATT Agreement.⁴⁹

This approach, however, was rejected in the *Shrimp/Turtle* case, which concerned a measure prohibiting imports of shrimp into the United States from countries that did not enforce the use of turtle protection devices similar to those under operation in the United States.⁵⁰ In this instance, the WTO Appellate Body clearly underscored the significance of environmental protection and preservation for the WTO members, as well as the need for them to adopt effective measures to protect endangered species and to act together bilaterally or multilaterally, within the WTO or other entities, to protect such species or the environment at large.⁵¹ Yet, it declared that for these kind of measures to be permissible, they had to conform to the requirement set out in the introductory paragraph of Article XX of the GATT Agreement and, therefore, could not be applied “in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.”⁵²

45. Panel Report, *United States-Restrictions on Imports of Tuna*, 33 I.L.M. 839 (July 1994) [hereinafter *Tuna/Dolphin II*]. See also Panel Report, *United States - Restrictions of Imports of Tuna*, 30 I.L.M. 1594 (Nov. 1991) [hereinafter *Tuna/Dolphin I*].

46. Appellate Body Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, ¶¶ 184–86, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter *Shrimp/Turtle*].

47. *Tuna/Dolphin II*, *supra* note 45, at 898.

48. *Id.* at 898.

49. The panel observed that “practice under the bilateral and plurilateral treaties cited could not be taken as practice under the General Agreement, and therefore could not affect the interpretation of it” and thus found that “under the general rule contained in Article 31 of the Vienna Convention, these treaties were not relevant as a primary means of interpretation of the text of the General Agreement.” *Id.* at 892.

50. *Shrimp/Turtle*, *supra* note 46, ¶ 1.

51. See *id.* ¶ 185.

52. *Id.* ¶ 186.

On the other hand, in the *Beef Hormones* case,⁵³ the WTO Appellate Body ruled against a European Union import ban on hormone-treated beef from the United States and Canada on the grounds that it was not based on an adequate scientific risk assessment.⁵⁴ In that case, the Appellate Body dismissed the EU allegation that the precautionary principle had become a general customary rule of international law (or at least a general principle of law): even though it admitted that the precautionary principle “is regarded by some as having crystallized into a general principle of customary international environmental law,”⁵⁵ the Appellate Body declared that, outside that particular field of international law, the principle “still awaits authoritative formulation.”⁵⁶ In this instance, however, the WTO Appellate Body referred to the ICJ pronouncement in the *Gabčíkovo-Nagymaros Project* case,⁵⁷ in which the Court had acknowledged the emergence of new environmental norms and standards and declared that “[s]uch new norms have to be taken into consideration, and such new standards given proper weight”⁵⁸ But in the opinion of the Appellate Body, the ICJ stopped just short of considering that the precautionary principle was one of those recently developed norms.⁵⁹ In Professor Dupuy’s view, this is an example of how specialized judicial bodies can benefit from the insights and experience of the ICJ in matters related to the interpretation of basic principles of international law.⁶⁰

IV. CONCLUSION

The multiplication of international judicial bodies over the last few decades has given rise to a series of problems, such as jurisdictional overlapping, forum shopping and inconsistent interpretation of rules of law that should not be underestimated for they may endanger the integrity and cohesiveness of international law. However, in assessing the repercussions of this phenomenon, consideration must also be given to the positive aspects of such institutional build-up. First, the plurality of judicial bodies is indeed a

53. Appellate Body Report, *EC Measures concerning Meat and Meat Products (Hormones)*, WT/DS26/AB/R (Jan. 16, 1998) [hereinafter *Beef Hormones*].

54. *Id.* ¶ 2.

55. *Id.* ¶ 123.

56. *Id.*

57. *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7 (Sept. 25).

58. *Id.* at 78.

59. *Beef Hormones*, *supra* note 53, ¶ 123 n.93. The WTO Appellate Body added that the ICJ “also declined to declare that such principle could override the obligations of the Treaty between Czechoslovakia and Hungary of 16 September 1977 concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks,” which was at the heart of the dispute between Hungary and Slovakia in that case. *Id.*

60. Dupuy, *supra* note 7, at 807.

natural consequence of the expansion and diversification of international law in a globalized world and reflects an increase in its role in the settlement of international disputes. Second, institutional multiplicity leaves greater latitude for experimentation and exploration of new ideas, which can lead to improvements of international law. And third, these fora deal with numerous and often highly specialized issues that could not be handled by any single international court. They therefore complement the work of each other and, as a result, strengthen the system of international law, despite the risk of some losses in uniformity.⁶¹

In order to minimize such losses it is essential that all courts become fully aware of the dangers flowing from the decentralized nature of the international legal system that this article has sought to identify, and try to avoid them by acquainting themselves with each other's case-law and by increasing the mutually enriching interaction that, as seen in the *Beef Hormones* case, already exists among many of them.

61. According to Professor Charney, this risk, however real, is not excessively high since in basic areas of international law (such as the law of treaties, the sources of international law, state responsibility, the exhaustion of domestic remedies or international maritime boundary law) the different international tribunals hold "relatively coherent views." Charney, *supra* note 17, at 699. In his opinion, "[a]lthough differences exist, these tribunals are clearly engaged in the same dialectic. The fundamentals of this general international law remain the same regardless of which tribunal decides the case." *Id.*