Forum Shopping for UNCLOS Disputes Relating to
Marine Scientific Research

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Abstract

The ability to resort unilaterally to binding dispute settlement remains one of the most important features of the 1982 United Nations Convention on the Law of the Sea. Despite the growing number of cases brought under the Convention, no international tribunal has yet had to resolve a dispute concerning marine scientific research. But the fact that no cases have so far arisen tells us little about disputes on the subject. Others may have been settled without resort to an UNCLOS tribunal—or may have been avoided altogether by virtue of the fact that, with some important exceptions, there is compulsory jurisdiction over disputes concerning marine scientific research. The parties to an UNCLOS dispute have a choice of forum, both in advance of any dispute and ad hoc should one arise, but this requires the agreement of both parties; it is not a choice that can be exercised by the claimant State alone. Both parties will of course seek a forum in which they think they are more likely to win, but unlike private litigation neither can dictate a forum to their own advantage. There will be advantages and disadvantages to whatever choice they make, but the nature of the dispute should be considered carefully before deciding on the most appropriate forum. In this respect the characteristics of disputes concerning marine scientific research are sufficiently special to merit particular attention. That should be the central question: which forum is best suited to handling this type of dispute?

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1. What is Forum Shopping?

To a private international lawyer, forum shopping entails choosing the court which is most likely to be favourable to the plaintiff’s claim from among all those which potentially have jurisdiction to decide the case. European law facilitates such choices: transboundary tort claims may, for example, be brought in the place where the defendant is domiciled, or in the place where the harmful activity is located, or in the place where the damage is suffered. In such situations there is nothing either objectionable or inappropriate in forum shopping for the benefit of the plaintiff, although it adds to the expense and uncertainty of litigation. The choice will depend on such issues as the applicable law, the availability of remedies, the location of the defendant’s assets, the cost of the proceedings, the speed with which the court will hear and decide the case, and so on. But whatever the range of options available, the forum shopper in private international law must eventually choose just one jurisdiction in which to proceed: bringing multiple cases on the same basis in different courts will not normally be a viable strategy.

Is there any analogy to this kind of forum shopping in international law? Within strict limits, yes. Trade disputes in North and South America may be brought respectively before a NAFTA tribunal or a MERCOSUR tribunal, but they can alternatively be taken to the WTO. Here there is genuine forum shopping and the claimant state has a real either/or choice to make. But there are few other examples of forum shopping of this kind in public international law. More often, the only real choice facing a claimant state concerns how to formulate the dispute—for example as an interstate

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