

Consistency in international law

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Summaries

Abstract (English)

Unlike domestic law, where rule-making is the job of legislative houses, rule-making in international law is decentralised. No central authority or unified government creates international legal rules. Instead, its subjects build international law by signing treaties, practising customs, and recognising general principles. A consequence of decentralisation is that most of the time, international legal rules have no clear priority relationships between them. The scenario grew even more complicated after 1945 with the expansion of international law. We are undergoing a period of accelerated growth in the number of rules of international law; at the same time, its thematic scope is diversifying and its institutions are proliferating. This scenario leaves the subjects of international law in a tight spot, as it is common for them to face a mass of applicable rules that, if applied, would lead to incompatible outcomes. That is, these subjects often face conflicts. Conflicts leave subjects uncertain about their legal positions, which, in turn, hinders their ability to plan and decide what to do.

Against this background, this PhD dissertation's research question asks how subjects can extract a consistent set of legal positions from international law's ruleset despite the fact that international law is decentralised and ever-expanding. This dissertation explains that there is a significant difference between statements and rules, which leads to different concepts of consistency. There is the consistency of statement sets (S-consistency) and the consistency of rulesets (R-consistency). A statement set is S-consistent if all statements in that set can be true at the same time. If they cannot, that set is S-inconsistent. A ruleset is R-consistent when it cannot lead to conflicts. If it can lead to conflicts, it is R-inconsistent. With these two kinds of consistency in place, this dissertation advances a two-part thesis: more rules do not always lead to a ruleset's R-inconsistency; even if a ruleset is R-inconsistent, we can still extract an S-consistent statement set on what outcomes obtain as subjects' legal positions. This thesis leads to two corollaries: international law's decentralised expansion does not necessarily lead to its R-inconsistency; even if international law's ruleset is R-inconsistent, subjects can make sense of it by extracting an S-consistent statement set on their legal positions. Subjects can extract S-consistent statement sets from R-inconsistent rulesets by reasoning with and about rules to figure out what rules apply and what outcomes obtain and, so, reveal their legal positions.

This dissertation is divided into six chapters. Chapter 1 introduces the research. Then, chapter 2 explains international law's decentralised expansion. Chapter 3 clarifies that the complexity underlying international law's decentralised expansion is one of uncertainty concerning the legal positions of subjects. Chapter 4 develops a logical framework for reasoning with and about rules to help subjects figure out their legal positions. Chapter 5 draws on earlier chapters to supply some applications for the theory developed in this text. Finally, chapter 6 concludes this study by summarising its main findings.

Resumo (Portuguese)

Diferente do direito interno, onde a regulamentação é função de casas legislativas, a regulamentação do direito internacional é descentralizada. Não existe uma autoridade central ou um governo unificado que crie regras jurídicas internacionais. Em vez disso, são os próprios sujeitos do direito internacional que o constroem assinando tratados, praticando costumes e reconhecendo princípios gerais. Uma consequência da descentralização é que, na maioria das vezes, as regras jurídicas internacionais não têm uma relação de prioridade clara entre si. O cenário fica ainda mais complicado depois de 1945, com a expansão do direito internacional. Há atualmente um processo de crescimento acelerado do número de regras do direito internacional, seu escopo temático se diversificou e suas instituições se proliferaram. Este cenário deixa os sujeitos de direito internacional em uma situação difícil, pois é comum que eles enfrentem uma massa de regras aplicáveis que, se aplicadas, levariam a resultados incompatíveis. Ou seja, estes sujeitos muitas vezes enfrentam conflitos de regras. Tais conflitos deixam os sujeitos incertos sobre suas posições legais, o que, por sua vez, dificulta sua capacidade de planejar e decidir o que fazer.

Diante disto, esta Dissertação de Doutorado pergunta como os sujeitos podem extrair um conjunto consistente de posições legais do conjunto de regras do direito internacional apesar do direito internacional ser descentralizado e permanecer em contínua expansão. Esta Dissertação explica que existe uma diferença significativa entre declarações e regras, o que leva a diferentes conceitos de consistência. Há a consistência dos conjuntos de declarações (S-consistência) e a consistência dos conjuntos de regras (R-consistência). Um conjunto de declarações é S-consistente se todas as declarações nesse conjunto puderem ser verdadeiras ao mesmo tempo. Se isso não for possível, esse conjunto é S-inconsistente. Um conjunto de regras é R-consistente quando não pode levar a conflitos. Se pode levar a conflitos, é R-inconsistente. Com estes dois tipos de consistência, esta Dissertação avança as teses de que

mais regras nem sempre conduzem a um conjunto de regras R-inconsistente, e mesmo que um conjunto de regras seja R-inconsistente, ainda podemos extrair uma declaração S-consistente definida sobre posições legais dos sujeitos de direito. Estas teses levam a dois corolários: a expansão descentralizada do direito internacional não leva necessariamente à sua R-inconsistência; mesmo que o conjunto de regras do direito internacional seja R-inconsistente, os sujeitos podem dar sentido ao direito internacional ao extrair um conjunto de declarações S-consistentes sobre suas posições legais. Os sujeitos podem extrair conjuntos de declarações S-consistentes de um conjunto de regras R-inconsistentes, ao raciocinar com e sobre regras para descobrir quais regras se aplicam e quais resultados obtêm e, assim, revelar suas posições legais.

Esta Dissertação divide seu texto em seis capítulos. O capítulo 1 apresenta a pesquisa. Em seguida, o capítulo 2 explica a expansão descentralizada do direito internacional. O capítulo 3 esclarece que a complexidade subjacente à expansão descentralizada do direito internacional é de incerteza quanto às posições jurídicas dos sujeitos. O capítulo 4 desenvolve uma estrutura lógica de raciocínio com e sobre regras para ajudar os sujeitos a descobrir suas posições legais. O Capítulo 5 extrai as conclusões de capítulos anteriores para fornecer algumas aplicações para a teoria desenvolvida nesta Dissertação. Finalmente, o capítulo 6 termina esta Dissertação resumindo suas principais conclusões.

Samenvatting (Dutch)

Anders dan in het nationale recht, waar het opstellen van regels de taak is van wetgevende lichamen, is het opstellen van regels in het internationale recht gedecentraliseerd. Er is geen centrale autoriteit die internationale rechtsregels opstelt. In plaats daarvan construeren haar rechtssubjecten internationaal recht door verdragen te ondertekenen, gewoontes toe te passen en algemene beginselen te erkennen. Deze decentralisatie heeft tot gevolg dat internationale rechtsregels meestal geen duidelijke onderlinge prioriteitsrelatie hebben. Het scenario is na 1945 nog ingewikkelder geworden door de uitbreiding van het internationaal recht. Het aantal regels van het internationaal recht neemt steeds sneller toe, de thematische werkingssfeer wordt steeds breder en het aantal instellingen groeit. Dit scenario brengt de subjecten van het internationaal recht in een lastig parket, aangezien zij vaak geconfronteerd worden met verscheidene toepasselijke regels die, indien zij worden toegepast, tot onverenigbare resultaten zouden leiden. Met andere woorden, rechtssubjecten van het internationale recht worden vaak geconfronteerd met conflicten. Conflicten zijn

problematisch omdat ze de betrokkenen in onzekerheid laten over hun rechtspositie, wat op zijn beurt hun vermogen om te plannen en te beslissen belemmert.

Tegen deze achtergrond heeft dit proefschrift de onderzoeksvraag hoe rechtssubjecten een consistente reeks rechtsposities uit de regelset van het internationaal recht kunnen afleiden, ook al is het internationaal recht gedecentraliseerd en breidt het zich voortdurend uit. In dit proefschrift wordt uitgelegd dat er een belangrijk verschil is tussen beweerzinnen en regels, wat leidt tot verschillende concepten van consistentie. Er is de consistentie van verzamelingen beweerzinnen (S-consistentie) en de consistentie van regels (R-consistentie). Een verzameling beweerzinnen is S-consistent als alle beweerzinnen in die verzameling tegelijkertijd waar kunnen zijn. Als dat niet het geval is, is de verzameling S-inconsistent. Een regelset is R-consistent als hij niet tot conflicten kan leiden. Als hij wel tot conflicten kan leiden, is hij R-inconsistent. Door deze twee soorten consistentie te onderscheiden, leidt dit proefschrift tot de conclusies dat meer regels niet altijd leiden tot R-inconsistentie van een regelset en dat zelfs als een regelset R-inconsistent is, we nog steeds een S-consistente uitsprakenverzameling kunnen afleiden over de rechtsposities van subjecten. Deze stellingen leiden tot twee verdere conclusies. Ten eerste dat de gedecentraliseerde uitbreiding van het internationaal recht niet noodzakelijkerwijs leidt tot zijn R-inconsistentie. En ten tweede dat zelfs als de regelset van het internationaal recht R-inconsistent is, subjecten er wijs uit kunnen worden door er een S-consistente verzameling over hun rechtsposities uit af te leiden. Ze kunnen dat door te redeneren met en over regels, om uit te zoeken welke regels van toepassing zijn en welke uitkomsten er zijn.

Dit proefschrift bevat zes hoofdstukken. Hoofdstuk 1 introduceert het onderzoek. Vervolgens wordt in hoofdstuk 2 de gedecentraliseerde uitbreiding van het internationaal recht toegelicht. Hoofdstuk 3 verduidelijkt dat de complexiteit die aan de gedecentraliseerde expansie van het internationaal recht ten grondslag ligt, er een is van onzekerheid over de rechtspositie van subjecten. Hoofdstuk 4 ontwikkelt een logisch kader voor het redeneren met en over regels om subjecten te helpen hun rechtspositie te bepalen. Hoofdstuk 5 put uit eerdere hoofdstukken om enkele toepassingen te bieden voor de in dit proefschrift ontwikkelde theorie. Hoofdstuk 6 ten slotte sluit dit proefschrift af met een samenvatting van de belangrijkste bevindingen.