The contribution of international courts and tribunals to the development of procedural rules

OC - (ILA-14052) - THE 'SPARSE AXIOMATIC STATEMENT OF ARTICLE 41' OF THE STATUTE OF THE ICJ AND THE COURT'S LATEST ORDERS: PATHEMATA MATHEMATA.

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1 - G-H Chambers

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He has pleaded cases before all domestic (Greek) Courts, as well as the European Court of Justice, the European Court of Human Rights and other International Courts and Tribunals, in the fields of Public International Law (Human Rights, Settlement of International Disputes, Commercial Arbitration and ICSID), E.U. Law and Aviation Law.

He has rendered his services to several States on issues of international dispute settlement, international criminal law – law of armed conflict and aviation law.

He was the Legal Counsel and Litigator of scheduled air-carriers in Greece (2001 to 2013). He has practiced in all relevant fields (e.g. IATA, Aviation Contracts, CAA, AP Facilities, Representative Offices etc). G-H Chambers is a frequent sponsor of the universally known annual IATA's Legal Symposium.

He holds an active membership in various organisations and societies, namely: European Aviation Club (2013), European Air Law Association (2012), PEOPIL (2010), ESIL (2008), Hellenic Aviation Society (2008), ILA (2000), International Society for Military Law and the Law of War (1997), ASIL (1994), BIICL (1994) and Hellenic Society of International Law & International Relations (1994).

His recent activities include: co-drafting Greece's Intervention before the International Court of Justice (Case Concerning the Jurisdictional Immunities of the State, Germany/Italy), where the Court held (in July 2011) that the Application of Greece asking permission to intervene ought to be granted; participating (counsel) in EU programs in the fields of IT and MED (2008 – 2013); providing technical assistance in the form of legal expertise to the EC/EU (DGEmp.-TFfG) and the Greek Ministry of Development & Competiveness (2014 - 2015).

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Abstract

1. In his 2006 edition on the Law and Practice of the International Court, Shabtai Rosenne argued that "the sparse axiomatic statement of Article 41 has clearly left the development of the law and procedure for indicating provisional measures to the control of the Court itself". To the best of my knowledge, this proposition remains unchallenged. In addition, should one have a more intimate view on a State's practice, instituting provisional measures before the Court yields only to the inherent right of self-defence. Surely, there is a close nexus with a State's willingness to resolve an international dispute before a competent judicial forum, for the very institution of provisional measures remains a part of the judicial arsenal each aggrieved State possesses.

2. There is no doubt whatsoever left and also no challenge against the backbone legal requirement, namely that a direct connection has to exist between the subject matter of the mainline claim and the particular instance of this jurisdiction that is invoked. Flexibility is, probably, the main feature of asking the Court to indicate provisional measures and it seems that States use diachronically large part of their resources to preserve their rights, as they understood it.

3. Still, developing procedural rules with the aim of achieving international regulatory certainty and promoting global public interest in cases of urgency under the rule of law, may not be rested solely on the premises of "judge-made law". The solid pronouncements rendered by the Court, despite their indeed special weight and authority, are not to be

considered as conclusive ones.

4. This being so, is there any possible way for a second reading of the Court's case-law? Is there any room for creative inspiration deriving from its recent Orders on the subject? And, more generally, can one identify a need for a different approach?

5. The suggested Paper will try and demonstrate that a more strict approach on provisional measures is needed, subject –always- to the clearly defined boundary of the State's consent to adjudication. Conclusions will, hopefully, follow.

Palavras-chave : Provisional Measures normative value, Urgency and Sovereignty, Threat to the Peace