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The Content of Provisional Measures in Inter-State Proceedings

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ABSTRACT

This study examines the content of provisional measures in inter-State proceedings. The term 'content' refers to what is granted as interim relief. This study analyses the law and practice of only these international courts and tribunals that have already granted provisional measures in inter-State disputes. They are the Central American Court of Justice, the Permanent Court of International Justice, the International Court of Justice, the International Tribunal for the Law of the Sea, the European Court of Human Rights, the Court of Justice of the European Union, the United Nations Tribunal in Libya, and inter-State arbitration within and outside the framework of the United Nations Convention on the Law of the Sea.

The central research question is what is granted as provisional measures and why. Auxiliary questions are: (1) what the legal basis is for granting provisional measures other than those requested; (2) whether there are patterns in ordering similar interim relief in comparable cases; and (3) what criteria guide the selection of the content of provisional measures. This study argues that the international courts' discretion in choosing the content of interim relief is not unlimited; it is constrained by legal criteria.

This study consists of five parts. After the Introduction, Chapter I analyses the procedural framework for granting provisional measures. It also explains the legal basis under which an international court may grant interim relief other than that requested. Chapter II compares all decisions in which international courts have ordered provisional measures. It categorises them according to their subject matter and the nature of the urgent risk of irreparable prejudice. This allows examining whether international courts have granted similar interim relief in comparable cases. The issue of criteria for selecting the content of provisional measures is the subject of Chapter III. Based on the jurisprudence of international courts, it identifies four criteria that condition the choice of interim relief. This chapter also discusses possible emerging criteria. The Conclusions provide observations *de lege lata* and proposals *de lege ferenda*.

The methodology employed in this study is both dogmatic and comparative. The study examines and contrasts the provisions contained in the constitutive instruments of the international courts under consideration, their rules of procedure, and the relevant academic literature. At its core, the analysis offers a critical review of the international courts' extensive jurisprudence.