Inter-state communications before UN treaty bodies: time for their wider use?

Dr Rosana Garciandia **Dr Jean-Pierre Gauci**

Image Credit: Palais Wilson, OHCHR Geneva headquarters

Developments at the international level over the past 5 years have re-ignited the relevance of a mechanism that had remained dormant for decades: inter-state communications before UN treaty bodies. Under-utilised and, consequently, under-studied, inter-state communications allow States to bring cases against other States for violations of their human rights obligations. The possibility is available, inter alia, under the International Covenant on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of Racial Discrimination, the Convention on the Rights of Migrant Workers, the Convention on the Rights of the Child (Optional Protocol 3) and the Convention on Enforced Disappearances.

The filing of the first ever such cases in 2018 before the International Committee on the Elimination of Racial Discrimination (*Qatar v Saudi Arabia, Qatar v. UAE and Palestine v Israel*), coupled with other developments at the international level, including proceedings before the ICJ initiated on an *erga omnes partes* basis by the Gambia, South Africa and Canada and the Netherlands, and massive third party interventions before the ICJ and the European Court of Human Rights in cases related to Ukraine, re-kindled the appetite for examining the possibilities and pitfalls of such communications.

Given the strong human rights dimension of those pending cases before the ICJ and the ECtHR and many other international disputes, we are pleased to announce a special issue of the International Human Rights Law Review , we have the pleasure of guest editing as part of our project on inter-state communications, hosted by the King's College London Centre for International Governance and Dispute Resolution (CIGAD) and the British Institute of International and Comparative Law. In this special issue, we propose a revisitation of the potential of inter-state communications which takes the reader on a journey through their features, opportunities, challenges and contradictions, offering thought provoking arguments on how the existing mechanisms that States have at their disposal can be most effectively used to settle disputes with a human rights dimension. This post reflects the content of the editorial note we wrote for the special issue, which is accessible here (open access).

Setting the scene, in the first article, Lawry-White focuses on the decision-making processes influencing State choices of dispute settlement options, building on the fact that inter-state communications do not exist in isolation but coexist with a number of alternative avenues for seeking justice including at the international level. Drawing on international practice, and highlighting the importance of taking a contextual perspective, the article examines some of the factors that play into a choice of whether or not, and if so where and how, to bring an international???and particularly human rights claim. The scene-setting exercise in this special issue also includes an exploration of inter-state applications across the three main regional human rights systems, where the use of this mechanism has increased in recent years. On the ECHR, Risini and Eicke contextualise inter-state cases before the European Court of Human Rights as a centrepiece of human rights supervision in Europe and identify the challenges that the relatively high number of cases brought poses for the Court, not least in terms of resource limitations, facts and evidence. On the inter-American system, Contesse examines the limited inter-state practice and reflects on the use of advisory opinions as a substitute for inter-state communications. In the African context, Viljoen explores some of the features of the system and its potential in terms of the collective enforcement of human rights including the compulsory nature of such processes whilst highlighting the rarity with which these options have been exercised - with only 3 cases filed, all before the Commission.

Looking at procedural features of inter-state communications before UN treaty bodies, Sthoeger explores one of the features that makes inter-state communications simultaneously attractive and controversial: recourse to conciliation for human rights related matters. Analysing the Palestine v Israel ongoing conciliation process under CERD and building on conciliation cases in other fields of international law (*Timor-Leste v. Australia* conciliation), he reflects on the suitability of conciliation for promoting human rights aims and on the factors that may influence the likely success or failure of such processes. The next contribution in the special issue explores a possible innovation in the existing features of inter-state communications, analysing the possibility of collective inter-state communications. Drawing on experiences and lessons from ongoing cases before the ICJ and other international fora, Garciandia and Gauci explore the potential of such collective approach and the risks that would need to be mitigated, reflecting on how to make such collective communications a viable option.

The final section of the special issue turns to two substantive areas where inter-state communications seem to show potential. Keane's article explores whether inter-state communications before the CERD Committee can be an avenue to protect cultural heritage. Whilst both *Armenia v. Azerbaijan* and *Azerbaijan v. Armenia* by-passed the possibility of communications before the treaty body, choosing instead to refer the cases to the ICJ, Keane offers insights into the way in which the views of the CERD Committee may inform the determinations of the Court (including on the challenging question of whether the destruction of heritage in the context of conflict falls within the scope of the convention). In doing so, the article draws attention to the dynamics of relationships between human rights treaty bodies and the ICJ. In the next and final article, Boticelli takes the reader to a particular situational context in exploring the possibilities for holding China to account for the denounced systematic mistreatment of Uyghur and other Muslim ethnic minorities in the so-called 're-education camps' in Xinjiang (China).

This special issue draws lessons, through each of its contributions, for what might be next for inter-state communications before human rights treaty bodies. The articles also open the discussion (emerging but currently under-researched) of whether and how the features of inter-state communications (at the UN treaty body level and elsewhere) help achieve the (perceived) aims of those treaties. States and other international actors have traditionally seen those aims as limited to ensuring treaty compliance or avoiding human rights violations. But this could be progressively changing as the work of UN treaty bodies puts emphasis on dispute settlement as an aim (e.g. CERD Committee) or as States may decide to use inter-state communications to hold other States to account, or to signal themselves as a good 'citizen' or signal others as failing to behave as such. How different actors understand those aims is likely to impact any decision on the features of inter-state communications and on the use of these mechanisms.

The special issue is the culmination of exploratory research on inter-state communications we led in a joint CIGAD-BIICL project. Its findings build on an event hosted by BIICL and on an expert workshop hosted by CIGAD and BIICL on the aims and features of inter-state communications. As guest editors, we are eternally grateful to the authors who have contributed their time, ideas, and insights through their articles, to the panellists of the event and the participants of the expert workshop, and to King's College for financially supporting the research that preceded and underpinned this special issue.

We hope that you will enjoy reading it and engaging with the thought-provoking ideas included in the respective contributions. This space will surely see an evolution in the next few years, and reflection on the mechanism, its potential, features and aims is of essence to confront such evolution in an informed manner.

Authors:

Dr Rosana Garciandia, Research Leader in Labour Exploitation and Human Rights, British Institute of International and Comparative Law (BIICL)

Dr Jean Pierre Gauci, Arthur Watts Senior Research Fellow in Public International Law and Director of Teaching and Training, British Institute of International and Comparative Law (BIICL)

URL: https://www.biicl.org/blog/76/inter-state-communications-before-un-treaty-bodies-time-for-their-wider-use

© 2026 BIICL | A company limited by guarantee | Registered in England No. 615025 | Registered Charity No. 209425