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The Application of the Doctrine of Intertemporality in Contentious Proceedings

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The doctrine of intertemporality prohibits the retroactive application of norms of international law in contentious proceedings and obliges the deciding court to positively ascertain the applicable historic rules. In situations in which the historic interaction between a European and a non-European entity needs to be litigated, problems arise. International law is lacking a universally recognised methodology, particularly regarding its unwritten rules. Also, the historic non-European peoples were often relied on oral tradition and did not produce any documentary evidence of their historic legal orders.

Historically, different regions of the world produced independent legal regimes. »Meta law« governing the interactions between entities of different regimes was non-existent since no regional order did claim global rule. Hence there were no rules governing the interactions between European and non-European entities.

The applicable historic law is presently ascertained by recourse to specific European phenomena. In contentious proceedings, this methodology leads to a situation of »différend« – a situation in which the method of solving the dispute already vindicates the position of one of the parties to the dispute.

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