



MAX PLANCK INSTITUTE
FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

Pierre Lesaffre
Arbitrariness in International Law
MPIL Agora
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"Arbitrariness" arguably originated as a legal and political concept in the doctrinal discourse on law, and is therefore not the product of any positive legal system. Nonetheless, it can be found in several domestic legal orders and has long been referred to by international tribunals. A survey of international practice even suggests that it has become a prominent notion in some branches of contemporary international law, including international human rights law, international investment law, and international administrative law.

Such a development raises many questions. Despite the increased number of references to "arbitrary" acts or conduct across various areas of international law, "arbitrariness" remains poorly defined, and its proximity to other notions, norms, principles, or standards makes it very difficult to grasp. What exactly is arbitrariness, and how do we assess whether a State or international organization's conduct is arbitrary? When summoned in practice, is "non-arbitrariness" a mere yardstick for measuring compliance with other norms or principles (such as the principle of good faith and the prohibition of abuse of right), or the reflection of an autonomous norm? Can we identify a norm prohibiting arbitrary conduct in general international law? Does this even make sense?

Following a brief genealogical investigation into the concept of arbitrariness, Pierre Lesaffre will discuss his current research on the specific content, scope, and function(s) of the notion of arbitrariness in international law by sharing his attempt at a systematic presentation of international practice.

Pierre Lesaffre is a Ph.D. candidate at the Université Paris 1 Panthéon-Sorbonne, France. He holds a master's degree in International Law (Université Paris 1 Panthéon-Sorbonne) and a master's degree in Philosophy (Université Paris Nanterre). His doctoral research focuses on the notion of arbitrariness in public international law.

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