

Young Scholar Forum

Custom without the State

Speaker:
Prof. MASSIMO LANDO
University of Hong Kong

Discussant:
Dr. SUHONG YANG
International Court of Justice

Moderator:
Prof. MARTIN LAI
City University of Hong Kong

Massimo is an assistant professor at the University of Hong Kong, Faculty of Law and a general international lawyer. Previously, he was an Associate Legal Officer at the International Court of Justice, working with Judge Dalveer Bhandari and Judge ad hoc Charles N. Brower. Massimo completed his PhD at the University of Cambridge. He obtained an LLM also from the University of Cambridge and an LLB from the University of Milan. He is a member the Bar of England and Wales (Gray's Inn).

Massimo is a Global Fellow at the Centre for International Law of the National University of Singapore. He will be Director of Studies at the 2027 Winter Session of The Hague Academy of International Law.



States are traditionally seen as the makers of customary international law. In fact, their centrality in custom formation is overstated. States are not central to custom formation because their practice and opinio juris is not used properly in identifying customary rules. Therefore, customary rules as identified are likely to differ from those that have formed, which reduces the role of States as their makers. Custom identification is typically carried out by judges sitting on international courts and tribunals. Empirical research shows that judges use little evidence of State practice and opinio juris, they use only evidence readily available to them, work under the constraints of deliberation processes, and likely choose identification methods with limited legitimacy capital. As a result, judges identify customary rules that do not necessarily reflect the customary rules that States have made. Identification practices affect the formation of customary rules because of the feedback between identification and formation. Rules must be clear and publicly available to set standards of conduct within a given community. Once customary rules have been identified, they set standards of conduct which States must either heed or challenge. Different from the traditional narrative of custom, it is States that conform their conduct to the rules improperly identified by international courts and tribunals, and not international courts and tribunals that conform the rules they identify to the practice and opinio juris of States.

TIME: 5:30 PM - 6:30 PM

DATE: 28 MARCH, THURSDAY

FORMAT: ONLINE

REGISTER IN ADVANCE AT:

<https://cityu.zoom.us/meeting/register/tJcocO-ppjsoGtYbmhvIZjLPo6wRWQ6-nKWP>

