

A world mired in conflict calls for international tribunals that play multiple roles

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The International Court of Justice in The Hague has been busier than ever in recent years: it has been asked to render judgments and issue

advisory opinions on conflicts in Gaza, Ukraine and Myanmar, among others, and it settles border disputes all over the world. What roles does this Court of Justice play in such cases, and how can its authority be explained? Rosa Möhrlein examined these questions and will defend her Ph.D. thesis at Radboud University on 28 August.

In national legal systems such as that of the Netherlands, the roles and powers of a court, court of appeal or tribunal are fairly clear. It is different for international tribunals, which operate in the international legal system, partly due to the fact that regulations have not been drawn up by a central legislative body. The absence of any compulsory jurisdiction for international tribunals is also often cited as a complicating factor.

Delicate balance

"An [international court](#) therefore constantly faces challenges relating to its roles and has to try to strike a delicate balance: offering a resolution to the [dispute](#) without antagonizing the parties," Möhrlein writes.

In her research, Möhrlein deconstructs various rulings and advisory opinions by a number of interstate tribunals: the International Court of Justice (not to be confused with the International Criminal Court), the International Tribunal for the Law of the Sea and the Appellate Body of the WTO. Based on i) the legal issues of the dispute, ii) the application and interpretation of the law in the relevant case and iii) the answer or conclusion given by these tribunals, she identifies five judicial roles: dispute resolution, legal clarification, judicial lawmaking, legitimation, and control and compliance.

"Dispute resolution is often cited as the cornerstone of international law," explains Möhrlein. "Understandably so, as interstate tribunals have often been established with the notion that they provide an alternative to

armed conflict. But it is usually unclear exactly what dispute resolution entails and where the boundaries lie for what a court actually does within this role. In addition, other important roles are performed that also matter greatly for the development of stable relations between states as well as the formation and interpretation of the law. It is important to have a clear picture of those roles because that also explains why a court has and maintains authority."

A 'controversial crowbar'

"Judicial lawmaking involves not just applying the law, but also providing interpretations relating to how the law should be understood in case of gaps and in new areas of law. This is a controversial role given that it could see the International Court of Justice encroach too much on territory where only states have competence: the creation of new obligations in international law. Legitimation is also an important role in international rulings and advisory opinions.

"One example is the advisory opinion in the Namibia case, where the situation was politically deadlocked and the request for an opinion was supposed to signal a breakthrough. If you do it wrong, it becomes a controversial crowbar; if you do it right, it delivers valuable guidance," says Möhrlein.

Möhrlein's research offers explanations as to why international tribunals possess authority and why many states (continue to) knock on the Court's door.

"On the one hand, there is a perception that a court of this nature is limited in what it can achieve due to its focus on dispute resolution. On the other hand, rulings and advisory opinions are frequently used as arguments in other cases, including national ones. One explanation for this is that the International Court of Justice goes beyond simply

performing a dispute resolution role. You can see this, for example, in the advisory case relating to the wall Israel built around the West Bank.

"The Court of Justice issued an advisory opinion on this in 2004 and again last July. While these opinions are not (so far) improving the situation on the ground, they are seen as a guide to what is permissible in international law in this area and what is not. Moreover, they can damage a country's reputation and offer direction in terms of how the conflict is talked about," Möhrlein writes.

This may be why states continue to turn to the International Court of Justice.

More information: Möhrlein, R. The Multiplicity of Judicial Functions of International Courts and Tribunals. An Inquiry with a focus on the International Court of Justice.

Provided by Radboud University Nijmegen

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