The Contribution of International Courts to Promoting Peace

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Outline

• What is peace?
• What is the function of international courts (ICs)?
• The contribution of ICs to promoting and furthering the interests of peace:
  ➢ Solving inter-State disputes;
  ➢ Furthering a degree of accountability for mass atrocity crimes.
• Some relevant cases
• Concluding remarks and additional resources.
What Is Peace?

• Positive and negative peace:
  ➢ Negative peace: prohibition on the use of force;
  ➢ Positive peace: creating the necessary conditions for peace.

• Peace as an essential community interest;

• Protection of community interests under international law through ICs:
  ➢ Peaceful settlement of inter-State disputes;
  ➢ Accountability for mass atrocity crimes.
Key Int’l Documents on Peace

• 1945 UN Charter;
• 1949 UN General Assembly (GA) Resolution 290 (IV) Essentials of Peace;
• 1970 UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States;
• 1974 Charter on Economic Rights and Duties of States;
• 1992 An Agenda for Peace A/47/277 – S24111;
• 2005 World Summit Outcome Document: Responsibility to Protect.
Types of Courts (Kingsbury, CUP 2012)

- Ten major types of ICs:
  1. inter-governmental claims commissions;
  2. ad hoc inter-state arbitration;
  3. inter-State arbitration;
  4. standing international courts;
  5. international criminal courts;
  6. international administrative tribunals;
  7. regional human rights courts;
  8. regional economic integration courts;
  9. the WTO dispute settlement system; and
  10. investment arbitration tribunals.
Legal Basis for Promoting Peace

- *General legal basis*: Article 33 of the UN Charter: Peaceful settlement of disputes.
- *Specific legal basis*: Statutes establishing a number of ICs, including the ICJ (ICJ Statute annexed to the UN Charter), the ICC (ICC Statute), and the ICTY and the ICTR (respective Statutes, established by the UN Security Council).
Functions of International Courts (1)

- **Bogdandy and Venzke** (LJIL, 2013):
  1. settling disputes;
  2. stabilizing normative expectations;
  3. making law; and
  4. controlling and legitimating public authority.

- **Alter** (Princeton University Press, 2014):
  1. international dispute settlement;
  2. international administrative review;
  3. international law enforcement; and
  4. international constitutional review.
Functions of International Courts (2)

• **Alvarez** (OUP, 2014)
  1. dispute-settlement function;
  2. the fact-finding function;
  3. the law-making function; and
  4. the governance function.

• **Nollkaemper** (EJIL, 2012) sees international courts themselves as an intermediate public good, which contributes towards the provision of ‘final global public goods’.
Functions of International Courts (3)

• ICs provide legal services to those entities that have access to it, including States, international organizations and individuals (judicial function/ institutional role).

• Preventive/corrective effect, exercised either directly through their judicial activity, or through the indirect effect that the mere possibility of being subjected to judicial proceedings has on the behavior of States or non-State actors.

• Strengthening the rule of law both at an international and at the domestic level.
Role and Contribution of International Courts

• Securing peace in so far as this aim can be achieved by law... (Lauterpacht, 1958)
• Criteria for measuring contribution: scope of their jurisdictional reach, from the perspective of their judicial activity and from the perspective of how their users perceive and decide to employ them (or not) in relevant situations.
ICJ’s Contribution (1)

• Four main themes:
  1. prohibition of the threat or use of force;
  2. self-determination of peoples;
  3. the prohibition of racial discrimination; and
  4. the prohibition of genocide.
ICJ’s Contribution (2)

• Institutional role within the UN:
  1. *first* recognizing the latter’s international legal personality;
  2. *second*, laying the legal basis for peace-keeping and other quasi-military operations of the UN;53 and,
International Criminal Tribunals

• Serious violations of human rights and humanitarian law as threats to peace.

➤ Accountability for mass atrocity crimes:
  ➤ ICTY, ICTR, ICC;
  ➤ Hybrid/internationalized criminal tribunals (SCSL, ECCC, mixed panels in East Timor, Kosovo, Bosnia and Herzegovina).

➤ Peace v. justice dilemma;
➤ Collective memory/writing history at ICs.
Collective Memory (1)

• International law actors aim in certain cases to affect collective memory. The founders of some international tribunals (such as the Nuremberg tribunal) aimed to influence future collective memory by producing a historical narrative of the relevant events.

• The selection of cases brought before international criminal tribunals also seems to be affected by the goal of ensuring that the historical narrative emerging from the tribunal's case law would present the various aspects of the occurrence.

• The employment of international criminal tribunals as an instrument to shape collective memory invites an in-depth discussion on the suitability of using such legal mechanisms to affect collective memories.
Collective Memory (2)

- International tribunals' capacity to affect collective memory is influenced by several distinctive factors:
  - International tribunals are often powerful institutions in this sphere since they involve influential rituals.
  - In addition, where historical facts or their interpretation are disputed, international bodies that are vested with legitimacy (such as many international tribunals) have a significant capacity to affect the collective memory.
  - International legal institutions often deal with issues that attract public attention and they are more likely to affect collective memories. Though international bodies enjoy certain 'comparative advantages' in transmitting collective memories, some of their distinctive features constrain that capacity.
Collective Memory (3)

- Like domestic courts (but unlike other agents of memory like historians and journalists), international tribunals are restrained by evidentiary rules and the specific legal classifications (such as the particular elements of a specific obligation).

- More significantly, international courts’ competence to render binding decisions is commonly subject to the parties' consent. Thus, significant historical events are often not addressed by international tribunals.

* (Moshe Hirsch, Collective Memory and International Law, ESIL Reflection, 25 September 2014).
Concluding Remarks

• ICs are important actors in enforcing IL and promoting peace;

• The contribution of ICs to promoting peace should be understood taking into account:
  ➢ Institutional limitations;
  ➢ Judicial function and propriety;
  ➢ Political willingness and compliance.

• ICs serve as guardians of important community interests and values, where peace figures prominently.
Additional Resources


• Audiovisual Library of International Law: *Peace and Security*.

• Audiovisual Library of International Law: *Peaceful Settlement of Disputes*.


• Tracy Isaacs and Richard Vernon (eds), *Accountability for Collective Wrongdoing* (Cambridge University Press, 2011).