

International Courts and the Quest for Legitimacy

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Since the end of the cold war, international courts have grown in number and strength. In particular, their jurisdictional reach has expanded, as have their accessibility to individuals, their authority to review national regulatory measures, and their remedial powers. These developments have led to a sharp rise in the number of cases referred to, and decided by, international courts. Their growing influence on global politics and the economy and their increasing impact on international and national law were met with resistance from national governments and courts. Their activism raised also concerns within the academia about their legitimacy.

The growing role of international courts raises two sets of questions concerning their legitimacy:

First ,what are the minimal preconditions that international courts must have for reviewing and thereby constraining the regulatory policies of national governments and of international organizations? Are there inherent features, or actual constraints facing international courts that limit their legitimate scope of authority, such as their sometimes limited independence, their lack of accountability towards specific constituencies, or the real or perceived lack of democratic support for the norms they make and apply?

Second ,what strategies have international courts actually adopted in order to attract greater legitimacy, including securing acceptance for their broader new authorities? Have courts been ultimately successful in attaining legitimacy in the eyes of their principal constituencies? Should other legitimacy-enhancing strategies be developed? For example, to what extent are international courts resorting to compliance-monitoring measures or increased process-transparency in order to increase their perceived legitimacy? To

what extent are judicial law-making, on the one hand, and deference to other decision making entities (other international organs, national courts, other courts), on the other hand, effective legitimacy-enhancing strategies?

Investigating the quest for legitimacy on the part of international courts may help us in identifying the proper role for international courts in an increasingly diverse constellation of global law-interpreting and applying actors. Given the relationship between the quest for legitimacy and the capacity to successfully fulfill assigned judicial roles, such a course of investigation may also contribute to assessing the effectiveness of international courts.

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