

The contribution of international courts and tribunals to the development of procedural rules

OC - (ILA-14054) - INTERNATIONAL PROCEDURAL REGULATION IN THE COMMON INTEREST: THIRD-PARTY INTERVENTION, AMICUS CURIAE AND FACT-FINDING POWERS BEFORE THE ICJ

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Abstract

'Community interests' and 'common concern' tend to transcend States' individuals' interests and ensure the protection of the international community. The way in which international courts and tribunals (ICTs) deal with inter-State dispute settlement procedure and community interests reflects the basic question of how courts regard the nature and scope of their own judicial function. Dispute settlement cannot solely capture the full relevance of international courts' decisions. Indeed, the role of international courts is not limited to the bilateral dispute settlement between States. They perform other important functions, such as the development of normative expectations – in order to achieve international adjudication's full potential, which is the realisation of justice. By developing international law, the role of ICTs encompasses the protection and development of the international community and its values.

Having the ICJ as a focus, this analysis will address the Court's ability to promote community interests by adjudicating inter-State claims. However, the main obstacle faced by the ICJ relates to the existing tension between the bilateral nature of its own proceedings and the multilateral nature of the conflicting substantive law. Whereas the rules of that protect community interests are considered to be substantive law, those guiding international adjudication are of a procedural nature. As procedure may guide and shape the application of substantive law, it should itself be interpreted and developed in a manner to ensure community interests.

Arguably, by using its power to 'frame rules for carrying out its functions' (Art. 30 of the Statute of the ICJ), independently from consent, the Court should assume expanded procedural powers in order to ensure the effective application of substantive law whenever community interests are at issue. Arguably, most procedural rules can be adjusted and tailored for multiparty aspects (enhancing participatory mechanisms) with the aim of protecting community interests and

enhancing international court's legitimacy. There is indeed a need to expand rules permitting the standing and participation of the international community in bilateral proceedings.

In the same vein, judicial procedures could be expanded in a way to strengthen the democratic legitimation of judicial decisions; procedural rules providing for greater transparency and opportunities of participation would reflect this trend. Therefore, in cases involving litigation in the 'common interest', a diverse range of procedural issues may raise particular concerns, notably the rules regarding intervention of third parties; participation of non-State actors as *amici curiae*; and fact-finding powers and rules of evidence.

However, one may wonder how far ICTs should go in accommodating the function of protecting the interests of the international community without losing their legitimacy in the broader picture of dispute settlement. There is indeed a fear that any expansion of procedural rules would open the floodgates and expose the ICJ to an uncontrolled number of subjects, which could compromise its function of settling bilateral disputes by undermining party equality and the efficient management of proceedings. In this context, this paper aims to address the expansion of procedural rules and related challenges.

Palavras-chave : international adjudication, procedure, international court of justice