

Judicial activism and restraint in the creation of the International Judicial Function

Citation for published version (APA):

Ayoub, L. (2021). *Judicial activism and restraint in the creation of the International Judicial Function: How have activism and restraint shaped the international courts ?* [Doctoral Thesis, Maastricht University]. Ridderprint. <https://doi.org/10.26481/dis.20210118la>

Document status and date:

Published: 01/01/2021

DOI:

[10.26481/dis.20210118la](https://doi.org/10.26481/dis.20210118la)

Document Version:

Publisher's PDF, also known as Version of record

Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

www.umlib.nl/taverne-license

Take down policy

If you believe that this document breaches copyright please contact us at:

repository@maastrichtuniversity.nl

providing details and we will investigate your claim.

PROPOSITIONS

1. Academic legal research always carries an element of subjectivity since any analysis and resulting conclusion can only be understood within the limitations the legal researcher has set upon the work.
2. For most of its existence, the international legal system has been considered without its judicial component, as adjudication was not traditionally the preferred method of dispute resolution.
3. Judicial activism and restraint are two concepts that have emerged in scholarly debate as a result of academics being either displeased or impressed by the decision-making of certain courts and tribunals (be they national or international).
4. The nature of the international legal system is traditionally one that is characterised by a lack of a hierarchy of legal norms or systems, which is the result of the importance placed on State consent, in addition to the fragmentation of the system itself, as a result of the large number of self-contained systems found within it.
5. Within this legal order, the international judiciary as an institution has been left to create itself, with little or even no guidance from its creators or its domestic counterparts, and without unified codes of procedure or rules and regulations that national courts inherit.
6. It is this nature of the international legal system and its lack of procedural certainty that essentially leads international courts and tribunals to engage in activism or restraint in order to effectively be able to carry out their functions in the pursuit of administering justice and ensuring effectiveness.
7. Through the use of activism and restraint in order to administer justice, international courts and tribunals have also given form to the judicial function as one quite separate (yet not entirely unrelated) from that of the national judge.
8. While activism and restraint are addressed in the literature as opposing concepts, a more complementary relationship between the two might be better suited in order to describe how they interact within the decisions of the international judiciary in particular.
9. While international courts and tribunals are characterised by the self-regulating nature of the institutions within which they act, they are also judicial institutions staffed by capable members of the judiciary who have been tasked with resolving disputes within their specific context.
10. An examination of the use of judicial activism and restraint by the international courts shall reveal their role in the creation of the international judicial function, having led to international judicial institutions that now exist in their own right.
11. While writing your PhD thesis certainly makes you feel that you are becoming an expert in your field, completing it reflects the old adage that states ‘the more I learn, the more I realise how much I don’t know’.