

## INTERNATIONAL JUDICIAL REVIEW

The book is motivated by a question: When should international courts intervene in domestic affairs? To answer this question thoroughly, it is broken down to a series of separate inquiries: When is intervention legitimate? When can international courts identify good legal solutions? When will intervention initiate useful processes? When will it lead to good outcomes? These inquiries are answered based on reviewing judgments of international courts, strategic analysis, and empirical findings. The book outlines under which conditions intervention by international courts is recommended and evaluates the implications international courts have for society.

SHAI DOTHAN is Associate Professor of International and Public Law at the University of Copenhagen, Faculty of Law affiliated with iCourts – the Centre of Excellence for International Courts. He is the author of *Reputation and Judicial Tactics: A Theory of National and International Courts* (Cambridge University Press, 2015).

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# INTERNATIONAL JUDICIAL REVIEW

When Should International Courts Intervene?

SHAI DOTHAN  
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*To Melinda*

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You may not be interested in international courts, but international courts – to paraphrase Trotsky’s famous aphorism – are interested in you. They can determine the borders of your country. They influence the price you pay for your groceries. They can protect your basic human rights. They may even, more often than not indirectly, get you in prison. International courts have a lot of power and this power has to be justified, regulated, and – sometimes – limited. That is what this book is about.

I am interested in international courts. In fact, I spent the last five years as an associate professor of international and public law at iCourts – the Danish National Research Foundation’s Centre of Excellence for International Courts at the University of Copenhagen, Faculty of Law. The book has been written over these five years as have some of the publications leading to it. I thank Mikael Rask Madsen, the director of iCourts, for his constant help and support during that period. iCourts is funded by the Danish National Research Foundation Grant no. DNR105.

Before coming to iCourts, I did research at the Max Planck Institute for Comparative Public Law and International Law; Tel Aviv University Faculty of Law at the Global Trust Research Project directed by Professor Eyal Benvenisti and funded by an ERC Advanced Grant; the Hebrew University of Jerusalem Faculty of Law at the Research Group on Effective International Adjudication directed by Professor Yuval Shany and funded by a European Research Council Starting Grant for Frontier Research; and the University of Chicago Law School. In all these places, I have written about a series of topics related to the question: When should international courts intervene in domestic affairs? This question is the focus of the book.

Chapter 2 of the book draws on my papers *In Defence of Expansive Interpretation in the European Court of Human Rights*, 3 *CAMBRIDGE J. INT’L & COMP. L.* 508 (2014); *The Three Traditional Approaches to Treaty Interpretation: A Current Application to the European Court of Human Rights*, 42 *FORDHAM INT’L L. J.* 765 (2019).

Chapter 3 draws on my papers: *The Optimal Use of Comparative Law*, 43 DENV. J. INT'L L. & POL'Y. 21 (2014); *Three Interpretive Constraints on the European Court of Human Rights*, in THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS: CONTESTATIONS AND DEFERENCE 227 (Machiko Kanetake & André Nollkaemper eds., 2016); *The Advantage of International Courts*, 31 BAR ILAN UNIVERSITY LAW REVIEW 675 (2018) (Hebrew); *Comparative Views on the Right to Vote in International Law: The Case of Prisoners' Disenfranchisement*, in COMPARATIVE INTERNATIONAL LAW 379 (Anthea Roberts et al. eds., 2018); *Judicial Deference Allows European Consensus to Emerge*, 18 CHI. J. INT'L L. 392 (2018).

Chapter 4 draws on my paper *International Courts Improve Public Deliberation*, 39 MICH. J. INT'L L. 217 (2018).

Chapter 5 draws on my papers: *Luring NGOs to International Courts: A Comment on CLR v. Romania*, 75 HEIDELBERG J. INT'L L. 635 (2015); *A Virtual Wall of Shame: The New Way of Imposing Reputational Sanctions on Defiant States*, 27 DUKE J. COMP. & INT'L L. 141 (2017); *Social Networks and the Enforcement of International Law*, in EDWARD ELGAR RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW 333 (Moshe Hirsch & Andrew Lang eds., 2018).

Chapter 6 draws on my paper *Deterring War Crimes*, 40 N. C. J. INT'L L. & COM. REG. 739 (2015).

I have taught a seminar on international courts at the Hebrew University of Jerusalem Faculty of Law and a course titled "International Organizations" at the University of Copenhagen, Faculty of Law. The discussions with my students in these courses were very useful for sharpening my thinking about some of the topics addressed in this book.

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