

## Judicial Independence at International Courts and Tribunals: Lessons Drawn From the Experiences of the International Court of Justice and the Appellate Body of the World Trade Organisation

*KFG Working Paper Series, No. 41, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?"*

32 Pages Posted: 13 Feb 2020 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3519891](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3519891)

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Date Written: January 1, 2020

### Abstract

The guarantee of judicial independence is undoubtedly one of the most important institutional design features of international courts and tribunals. An independence deficit can adversely impact a court's authority, create a crisis of legitimacy, and undermine the very effectiveness of an international court or tribunal. It can hardly be denied that for an international court to be considered legitimate, a basic degree of independence is a must. An independent judiciary is a precondition to the fair and just resolution of legal disputes. In the context of interstate dispute settlement where the jurisdiction of courts is based on the principle of consent, in the absence of a basic degree of judicial independence, states may not be willing to submit to the jurisdiction of international courts. Comparing and contrasting the International Court of Justice and the Appellate Body of the World Trade Organisation, I assess whether those international judicial mechanisms possess the basic degree of independence required for a court to be able to maintain its credibility so that it can continue to perform its core function of adjudicating interstate disputes. With both those interstate adjudicative bodies constituting the two leading international courts in terms of participation and the sheer number of cases decided, much may be learned from comparing them. I argue there is a case for bolstering the independence of the ICJ; and without immediate reforms to the Appellate Body's institutional design, its recent demise may become permanent. I conclude that if a basic degree of judicial independence cannot be guaranteed, it is preferable to let a court vanish for a while than to maintain a significantly deficient one.

### **Suggested Citation:**

Gulati, Rishi, *Judicial Independence at International Courts and Tribunals: Lessons Drawn From the Experiences of the International Court of Justice and the Appellate Body of the World Trade Organisation* (January 1, 2020). KFG Working Paper Series, No. 41, Berlin Potsdam Research Group "The International Rule of Law – Rise or Decline?". Available at SSRN: <https://ssrn.com/abstract=3519891>