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Due Process in the United Nations

Devika Hovell

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Certain UN organs continue to resist procedural limitations on their decision-making authority. Yet, paradoxically, failure to accord due process has compromised the strength of UN authority, as seen in relation to the targeted-sanctions regime and the Haiti cholera outbreak that began following the arrival of UN peacekeepers in 2010. This article questions current, formalistic approaches to due process in the UN setting—which rely on traditional sources of international law. As an alternative, it presents a value-based approach that takes into account instrumentalist, dignitarian, and public interest principles.

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Through doctrinal and statistical analysis of ICTY and ICTR sentencing judgments, we find that the gravity of the crime and aggravating factors declared by the Tribunals as sentencing factors are significantly related to sentence length but that the mitigating factors proclaimed by the Tribunals—all but one of which are associated with diplomatic and policy objectives—are not significantly related to the term of imprisonment. We conclude that Tribunal sentences prioritize punishment of the individual over other diplomatic and policy goals.

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