



Towards Just Institutional Approaches to Conflict Prevention and Resolution

RIANKA RIJNHOUT



EDITORIAL

ABSTRACT

In all societies around the world, conflicts arise. Some may be smaller conflicts between individuals and others larger ones between communities. It might be possible to prevent some conflicts from escalating, but, in all cases, conflicts will need to be resolved in order for those involved to be repaired and move forward productively. Individuals have the right to access justice and victims the right to remedies, yet realising these rights in practice is far from straightforward and subject to legal innovations. These issues and more were examined at the 2023 conference entitled: 'Towards just institutional approaches to conflict prevention and resolution', organised by the Universities of Utrecht, Nijmegen, and Leiden in the partnership 'Institutions for Conflict Resolution'.¹ This special issue of the Utrecht Law Review is one of the results of that conference.

CORRESPONDING AUTHOR:

Prof. mr. dr. Rianka Rijnhout

Professor, Program Leader
Empirical Legal Research
into Institutions for Conflict
Resolution, Utrecht University
School of Law, NL

r.rijnhout@uu.nl

KEYWORDS:

conflict prevention; conflict
resolution; just institutional
approaches

TO CITE THIS ARTICLE:

Rianka Rijnhout, 'Towards
Just Institutional Approaches
to Conflict Prevention and
Resolution' (2024) 20(4) Utrecht
Law Review 1–4. DOI: <https://doi.org/10.36633/ulr.1148>

It is essential that (1) substantive and (2) procedural legal norms are employed by (3) public actors in an endeavour to prevent or resolve conflicts in society. This is important at local, national, regional, and international levels. In addition to preventing or resolving conflicts in the legal context, these formal institutions must also maintain rule of law values and legitimacy. In this special issue, we refer to substantive law, procedural law, and public actors as formal institutions or as institutional approaches to conflict prevention and resolution. Such institutional approaches are often found in formal decision-making by courts and other public institutional actors, regulations, law enforcement, and compensation mechanisms or other remedies.

However, the premise that these substantive and procedural legal norms and public actors should contribute to preventing and resolving conflicts in society is highly complex and not always self-evident. In practice, three issues play an important role:

First, the needs and expectations of individuals who use legal norms and procedures do not (always) match with the aims, content, or outcomes of those substantive or procedural norms. As such, the social justice experience of those individuals might be negatively influenced by the formal structure of legal proceedings and processes, potentially even resulting in increasing conflicts.

Second, other (alternative or informal, non-public) actors play a role in conflict prevention and resolution, including communities or religious leaders, mediators, arbiters, unions, alternative compensation institutions or funds, etc. These private actors can replace, interact with, or co-exist next to public actors, resulting in a complex dynamic both for (lay) individuals who are affected by the conflict and for legal professionals in supporting their clients.

Third, contemporary society is significantly challenged by global and sometimes future developments, such as climate change, digitalisation, disinformation and fake news, and (increasingly) polarisation; which also (may) challenge substantive and procedural legal rules and the functioning of public actors in conflict prevention and resolution.

The 2023 COI-conference aimed to identify just institutional approaches that seek (real) conflict prevention and conflict resolution in the legal context. We departed from the notion that institutional approaches to conflict prevention and resolution should be ‘just’ from a legal-doctrinal, legal-empirical, and/or legal-normative or -theoretical perspective. We focused on three subthemes of the functioning of the formal core mechanisms for the prevention and resolution of conflicts; the functioning of law enforcement; and the functioning of compensation and other systems for restoration. The description of the articles of this special issue follow that order.

TACKLING ONLINE TROUBLEMAKERS THROUGH AN EXPERIMENTAL ADMINISTRATIVE LAW APPROACH

Bantema wrote the first contribution to this special issue, which looks at prevention of order disruptions. His article concerns to what extent Dutch mayors have the legal capacity to intervene in online disturbances in order to mitigate public order disruptions in the real world. Bantema combined legal desktop research with interviews and a questionnaire survey among Dutch mayors (empirical-legal research). His research provides a concrete overview of the gaps in the law and the difficulties associated with the difference between public and online spaces. Bantema’s article looks at (im)possibilities to prevent or mitigate conflicts in advance of escalation, and therefore has a strong link to the theme of this special issue.

READINESS TO MEDIATION – JUDGES AND ENTREPRENEURS PERSPECTIVE

The special issue continues with two contributions on mediation as a means for conflict resolution. First, Slawicki conducted a questionnaire survey (empirical research) with judges and entrepreneurs in Poland on their willingness to use mediation as a means of conflict resolution. This comparative research offers insights into what makes individuals within these

groups willing to mediate and how the relevant regulatory amendments are viewed. Slawicki's research thus contributes to a better understanding of parties' willingness to use alternative methods of conflict resolution to resolve an underlying conflict, rather than a legal dispute.

INNOVATIVE APPROACHES TO DISPUTE RESOLUTION IN ACADEMIA: INSIGHTS FROM THE UNIVERSITY OF BOLOGNA

Mancuso and Felicetti's article shows how the University of Bologna – and universities in Spain and the USA more generally – are evolving from sanctioning modes of conflict resolution to negotiated conflict management. This creates room for mediation and restorative practices, which enable personal growth and 'sustainable coexistence within the community'. The research method is descriptive – but also comparative given the discussion of ADR methods within each university. This contribution thus provides interesting insights about restorative conflict management in (our own) university context.

EPPO, CONFLICTS AND THE €100,000 FINANCIAL THRESHOLD: A MEANS TO CIRCUMVENT INVESTIGATIONS?

With Zuidema's contribution, we move from the functioning of core mechanisms for conflict prevention and resolution, to law enforcement – the European Public Prosecutor's Office (EPPO). Zuidema explains the EPPO as the European Union's (EU) independent public prosecution office, with responsibilities, among other things, for the investigation and prosecution of crimes against the EU's financial interests. The EPPO takes precedence over investigation and prosecution on the national level. However, in cases with an interest of less than €100,000, the EPPO may choose to delegate these tasks to national authorities. Zuidema's main question is: can the EPPO circumvent its obligation to initiate an investigation with this threshold of €100,000? On the basis of a normative legal desktop study, the article advocates how the EPPO should deal with this. This article contributes to making law enforcement transparent at EU level.

DIVORCING THE SUBSTANTIVE FROM THE PROCEDURAL IN RACIST POLICE VIOLENCE CASES AT THE ECtHR: A JUST INSTITUTIONAL APPROACH?

Varnagy and Kennedy studied case law on the interpretation and application of Articles 2, 3, and 14 of the *European Convention on Human Rights* by the European Court of Human Rights in racist police violation cases. Hence, they connect law enforcement to the rule of law. They grant insight into how the European Convention can provide legal accountability in these complex issues involving racial bias and discrimination. In their research, they focus on anti-Roma violence, and analysed a total of 53 judgments. Using quantitative and qualitative analysis, they explain how judgments are characterised and what can be improved.

ADDRESSING INTEGRITY & ACCOUNTABILITY COMMISSIONS

From law enforcement, we move to the theme of compensation. In her contribution, Laarman focuses on individual claims settlement after a medical error. Her article shows that a more responsive approach is needed regarding such sensitive cases. Based on insights into the settlement of these cases, she demonstrates that the current settlement method can be aggravating for patients. By means of a theoretical study, she provides insight into what she means by a restorative approach and how it can contribute to a more just response to harm in healthcare.

INTEGRITY & ACCOUNTABILITY COMMISSIONS OF INQUIRY: A SOUTH AFRICAN PERSPECTIVE

This special issue concludes with Kohn's contribution, which goes beyond individual restoration to look at larger issues of corruption – which she argues is one of the biggest causes of state-societal conflict today. Her article examines Commissions of Inquiry and how they can be

strengthened for the benefit of conflict resolution and restoration – potentially as a branch of state. Kohn does so by reflecting on the work of the Commission of Inquiry into State Capture in South Africa (the “Zondo Commission”). She uses a normative approach for her research to demonstrate how (alternative) institutions like Commissions of Inquiry can contribute to conflict resolution and restoration on a more permanent basis.

TO CONCLUDE

This editorial began by explaining that the theme of the conference was broad, which is also reflected in the contributions of this special issue. Many more topics could have been discussed, also with other methods and approaches. However, the contents of this special issue reflect the fact that conflict resolution is relevant for a wide range of societies and individuals in different circumstances, such as workplace disputes, medical errors, and racial discrimination. It reiterates that institutions and people everywhere continue to struggle with and innovate how to improve conflict resolution and prevention. This special issue will therefore not be a closure, but a start towards more research into just institutional approaches to conflict prevention and resolution.

As guest editors, we are thankful to all our contributing authors, the many peer reviewers, and to the generous support of the editorial team at the Utrecht Law Review, and support by ULR student assistants: Juerui Hou and Tikhon Filonov.

Dr Julie Fraser, Prof. dr. Rianka Rijnhout, Dr. Machiko Kanetake, and Dr. Joost Huijter.

COMPETING INTERESTS

The author has no competing interests to declare.

AUTHOR AFFILIATIONS

Prof. mr. dr. Rianka Rijnhout

Professor, Program Leader Empirical Legal Research into Institutions for Conflict Resolution, Utrecht University School of Law, NL

TO CITE THIS ARTICLE:

Rianka Rijnhout, ‘Towards Just Institutional Approaches to Conflict Prevention and Resolution’ (2024) 20(4) Utrecht Law Review 1–4. DOI: <https://doi.org/10.36633/ulr.1148>

Published: 16 December 2024

COPYRIGHT:

© 2024 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

Utrecht Law Review is a peer-reviewed open access journal published by Utrecht University School of Law.

