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Is the International Court of Justice Politically Biased?
Eric A. Posner and Miguel de Figueiredo[1]

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Abstract. The International Court of Justice has jurisdiction over disputes between nations, and has decided dozens of cases since it began operations in 1946. Its academic defenders argue that the ICJ decides cases impartially and confers legitimacy on the international legal system. Its critics – mostly outside the academy – argue that the members of the ICJ vote the interests of the states that appoint them. Prior empirical scholarship is ambiguous. We test the charge of political bias using statistical methods. We find strong evidence that (1) judges favor the state that appoints them; (2) judges favor states whose wealth level is close to that of the judges' own state; and (3) judges favor states whose political system is similar to that of the judges' own state. We find weak evidence that judges are influenced by regional and military alignments.

The International Court of Justice is the principal judicial organ of the United Nations, and the only international court that has general jurisdiction over disputes between all of the members of the United Nations, virtually every state in the world.[2] It has jurisdiction over three types of cases: (i) cases by "special agreement," where the parties to a dispute agree to submit their case to the court; (ii) cases authorized by a treaty that provides that future disputes arising under the treaty will be adjudicated by the ICJ; and (iii) cases between states that have declared themselves subject to the "compulsory jurisdiction" of the court. Sixty-four states have accepted the compulsory jurisdiction of the court, albeit frequently with reservations, and numerous multilateral treaties provide for ICJ adjudication.[3] One hundred and three cases have been filed with the ICJ; about half of these were dropped before the ICJ was able to make a substantive decision. In 56 cases, the ICJ judges voted on substantive questions.[4]

The ICJ has considerable importance, both political and scholarly. Many of the ICJ's judgments appear to have resolved real international disputes. And although in many cases states have failed to comply with its judgments, or to acknowledge its jurisdiction, the ICJ remains a potent symbol of the possibilities of an international legal system. For its defenders, the ICJ "plays the leading role in legitimating the

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[2] The Court has two other functions as well: to provide advisory opinions to certain international organizations and to appoint arbitrators to other international tribunals; these functions are outside the scope of this paper.

[3] The ICJ also has the authority to issue advisory opinions at the request of certain international organizations associated with the United Nations, and it has issued 24 such opinions. We exclude the ICJ advisory jurisdiction from our study.

[4] In our data analysis, we consider only these 56 cases and ignore the others. Note also that a case may have several of what we classify as "proceedings," that is, an opportunity for the judges to vote. Most cases have one (a ruling on preliminary objections) or two (a ruling also on the merits); a few have three (an interpretive ruling or a ruling on remedy). On average, each case had a bit less than two proceedings.

[international legal] system by resolving its disputes in a principled manner."[5] Critics of the ICJ – mainly politicians and diplomats from states that have recently lost their cases – argue that the ICJ's rulings are politically motivated.[6] In the words of Jeane Kirkpatrick, the ICJ is a "semi-legal, semi-juridical, semi-political body which nations sometimes accept and sometimes don't."[7]

The ICJ is also of intrinsic scholarly interest for legal academics, even those who do not study international law. It is, after all, a court, and resembles domestic courts in the United States and other countries. A large literature debates judicial voting in domestic courts, focusing on whether judges' decisions reflect ideology or disinterested application of the conventions of legal reasoning.[8] The academic discussion has a parallel in the dispute about whether the voting of ICJ judges reflects national interests or not. A study of the voting patterns of ICJ judges might be of interest for those who study domestic judicial decisionmaking.

This paper examines data on the voting patterns of ICJ judges. We test the claim of the critics that the judges vote the political interest of the state that appoints them rather than enforcing international law in a disinterested way. The null hypothesis, then, is that judges are "unbiased." A judge votes in an unbiased way if he is influenced only by the relevant legal considerations – such as the proper interpretation of a treaty – and not by legally irrelevant considerations such as whether one party has a military alliance with the judge's state. The ideal way to determine whether a judge is unbiased, is just to figure out the proper legal outcome of a dispute and then see whether his vote matches that outcome, taking account legitimate differences in the legal cultures in which judges are educated. The problem with this approach, however, is that the proper legal outcome is rarely obvious, and, further, judges may mistake and vote the wrong way even though they are unbiased.

To avoid this problem, we can look at voting patterns alone and see if they are related to legally irrelevant factors. The null hypothesis implies that an unbiased judge from state X is no more likely to vote for state X than is an unbiased judge from state Y. The unbiased judge from state X is also no more likely to vote for state Z, where Z is an ally of X, than an unbiased judge from state Y, where Z is an enemy of Y. We are thus not assuming that unbiased judges always vote the same way – as there can be legitimate, legally relevant grounds for disagreeing on the outcome of a dispute – but only that their

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[5] Thomas Franck, Fairness in International Law and Institutions 346 (1995). Franck describes criticisms of the ICJ as "remarkably toothless." Id.

[6] The critics are mainly politicians and others outside the academy. See also Davis R. Robinson, The Role of Politics in the Election and the Work of Judges of the International Court of Justice, 97 ASIL Proc. 277 (2003) (arguing that the ICJ's judges frequently vote in a political way). Robinson was the agent for the U.S. in the Nicaragua case.

[7] See Freepedia, Nicaragua v. U.S., available at: http://en.freepedia.org/Nicaragua_v._United_States.html.

[8] See Jeffrey A. Segal & Harold J. Spaeth, The Supreme Court and the Attitudinal Model (1993); Lee Epstein & Jack Knight, The Choices Justices Make (1998); Mario Bergara, Barak D. Richman, and Pablo T. Spiller, Modeling Supreme Court Strategic Decision Making: The Congressional Constraint, 28 Legislative Studies Quarterly (May 2003).

disagreements are random (or correlated with relevant legal factors), and not correlated with political factors.

The simplest way to test this claim is to examine whether judges vote in favor of their home state when that state appears as a party. Previous studies have found some support for this claim, but have also disputed the significance of this finding.[9] We use more sophisticated empirical tests, as well as more data, to show that, in fact, judges are significantly biased in favor of their home state when that state appears as a party. Whereas judges vote in favor of a party about 50 percent of the time when they have no relationship with it, that figure rises to 85-90 percent when the party is the judge's home state.

This finding has limited importance, however, because it does not tell us anything about the voting behavior of judges when their home state is not a party. It is possible that *only* the judges whose home states are parties are biased, in which case their votes cancel out, leaving 13 or so other judges to resolve the case impartially. We hypothesize that even when a judge's home state is not a party, his home state may have an interest in one party prevailing, and that the judge's vote will reflect his state's interest. Previous studies have found no evidence for this hypothesis. The most recent such study concluded:

> [T]he record does not reveal significant [voting] alignments, either on a regional, political, or economic basis. There is a high degree of consensus among the judges on most decisions. The most that can be discerned is that some judges vote more frequently together during certain periods than do others, and that in rare instances, notably with the Soviet and Syrian judges, they have always voted the same way. But there have not been persistent voting alignments which have significantly affected the decisions of the Court.[10]

However, this study and the earlier studies all have flaws; chiefly, the failure to rely on statistical techniques that control for relevant factors.

To test our hypothesis, we classify states into blocs – based on region, wealth, military political alliances, and similar factors – so that we can determine whether judges are biased in favor of state parties that belong to the same bloc as the judges' home state does. We find substantial evidence for this hypothesis.

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[9] For example, Suh found that judges vote in favor of their government in 82 percent of the cases, but concluded that his data do "not support the theoretical contention that the system of national judges must necessarily be out of harmony with international justice." See Il Ro Suh, Voting Behavior of National Judges in International Courts, 63 Amer. J. Int'l L. 224, 230 (1969). See also Thomas R. Hensley, National Bias and the International Court of Justice, 12 Midwest J. Pol. Sci. 568 (1968); William Samore, National Origins v. Impartial Decisions: A Study of World Court Holding, 34 Chi.-Kent L. Rev. 193 (1956). See Edith Brown Weiss, Judicial Independence and Impartiality: A Preliminary Inquiry, in The International Court of Justice at a Crossroads (Lori F. Damrosch ed. 1987).

[10] Weiss, supra note __, at 134.

The paper proceeds as follows. Part I provides some background, including the history of the ICJ and a brief discussion of the political and academic debates about the ICJ. Part II provides our hypotheses. Part III describes the data and tests the hypotheses.

I. Background

The ICJ was not the first world court; it is the successor of the Permanent Court of International Justice. The PCIJ began operations in 1922, and at its peak in the late 1920s and early 1930s issued about two judgments on contentious cases per year. However, it gradually lost relevance for governments beset by the problems created by the worldwide depression and the rise of fascism. By the late 1930s the PCIJ, like the League of Nations, had become irrelevant and it was not used at all during World War II.

The founders of the United Nations resurrected the PCIJ, albeit with a new name, in the hope that a world court would operate more successfully if backed by the United Nations, which was designed to be a stronger institution than the League of Nations and enjoyed the participation and leadership of the United States. Indeed, the United States was a champion of the ICJ from the beginning, and soured on it only in the 1980s, as we will discuss shortly.

The ICJ is based on the statute of the International Court of Justice, which is independent of, but referenced by, the United Nations charter. All members of the United Nations charter are parties to the statute, as are a few other states as well, so virtually every state has from the ICJ's founding been subject to the jurisdiction of the ICJ. The statute of the ICJ is a vague document, and has been supplemented over the years with other agreements, internal court orders, and customs.

As noted in the Introduction, the ICJ can obtain jurisdiction in three ways: by special agreement, by treaty, and by unilateral declaration under the optional clause. For some cases, jurisdiction is based on more than one source.

Fifteen judges sit on the ICJ. Each judge has a nine year, renewable term. Their terms are staggered, so that the composition of the court shifts by one fifth (not counting retirements and so forth) every three years. No two judges may share a nationality. Judges must have the standard qualifications, and typically they have significant experience as lawyers, academics, diplomats, or domestic judges. Judges are (roughly) nominated by states or coalitions of states,[11] and then voted on by the security council and the general assembly. If a state appears before the court as a party, and a national from that state is not currently a judge, the state may appoint an ad hoc judge who serves only for that case but otherwise has the same powers as the permanent judges.

The nomination process identifies candidates who have suitable substantive legal knowledge and are of appropriate caliber for the Court, while the election process ensures the Court will have a balance of regional, legal, and political representation.[12] The initial

[11] The actual nomination procedure is more indirect.
[12] Rosenne 59-60.

nominations process varies with individual countries, but generally starts with a national group of four people chosen by the government that would nominate individuals to the ICJ. These individuals then consult with domestic legal associations, domestic sections of international legal associations, its highest court, and local law schools in order to obtain and confirm candidates for nomination. Each country may nominate no more than four candidates to the Court, two of which may be of the nationality of the country.[13] The nominations are then given to the U.N. General Assembly and Security Council, who go through an elaborate voting process to select candidates.

Shabtai Rosenne provides an example of how this process works in the United States. The American National Group sends a letter to the Chief Justice of the Supreme Court, the American Society of International Law, the Chairman of the International section of the American Bar Association, the Chairman of the American branch of the International Law Association, and the Deans of the principal U.S. law schools, among others.[14] The American National Group then decides on the candidates it will send for election in the U.N.

In electing candidates the General Assembly and Security Council conduct independent elections. The two groups then go through successive rounds of voting until each of the exact number of candidates each receive a simple majority.

If there are fifteen slots but 190 states (by the end of our period), how are the states that receive representation determined? The slots are distributed by region, currently as follows: Africa – 3; Latin America – 2; Asia – 3; Western Europe and "other" states (including Canada, the United States, Australia, and New Zealand) – 5; Eastern Europe (including Russia) – 2. This distribution is the same as that of the security council, and the permanent members of the security council are guaranteed one slot each.[15] Thus, the U.S., Russia, Britain, and France always have a judge on the court;[16] other states rotate. There have been 90 judges so far. They have served an average term of about 9 years. In 79 proceedings, one or both of the parties used an ad hoc judge. Table 1 shows the number of proceedings in which a state has had a judge on the court (excluding ad hocs); as there have been a little more than 100 proceedings, the numbers also roughly give the percentage. As is clear from the table, larger, wealthier, and more powerful states – even those that are not permanent members of the security council – enjoy greater representation on the court over time.

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[13] Rosenne 63.

[14] Rosenne 62.

[15] The distribution is not formally recorded, but is the custom. See asil article; email from UN's Information Officer. There is no official list of the countries in each region, which is a problem for our coding, especially as this ambiguity is sometimes exploited:

> In 1999, for example, Jordan was suddenly considered as an Asian country while it had been considered as an African country until then. Judge Al-Khasawneh from Jordan was accordingly able to succeed Judge Weeramantry from Sri Lanka.

Email from Laurence Blairon, Information Officer for the International Court of Justice, to Wayne Hsiung (July 12, 2004).

[16] China did not have a judge from 1967 to1985.

Table 1: Years Served on Court by Nationality

Nation	Years Served	Guyana	9 (15.5)	Philippines	9 (15.5)
Algeria	19 (32.8%)	Hungary	10 (17.2)	Poland	47 (81.0)
Argentina	27 (46.6)	India	20 (34.5)	Russia	56 (96.6)
Australia	9 (15.5)	Italy	27 (46.6)	Senegal	27 (46.6)
Belgium	6 (10.3)	Japan	37 (63.8)	Sierra Leone	10 (17.2)
Benin	9 (15.5)	Jordan	4 (6.9)	Slovak Republic	1 (1.7)
Brazil	24 (41.4)	Lebanon	11 (19.0)	Spain	9 (15.5)
Canada	12 (20.7)	Madagascar	13 (22.4)	Sri Lanka	4 (6.9)
Chile	9 (15.5)	Mexico	24 (41.4)	Sweden	9 (15.5)
China	39 (67.2)	Netherlands	7 (12.1)	Syria	8 (13.8)
Egypt	25 (43.1)	Nigeria	20 (34.5)	USA	58 (100)
El Salvador	12 (20.7)	Norway	24 (41.4)	United Kingdom	56 (96.6)
France	57 (98.3)	Pakistan	6 (10.3)	Uruguay	18 (31.0)
Germany	19 (32.8)	Panama	4 (6.9)	Venezuela	88 (13.8)
Greece	9 (15.5)	Peru	9 (15.5)	Yugoslavia	12 (20.7)

Notable Absents (except, in some cases, as ad hocs)
Austria, Bulgaria, Colombia, Cuba, Denmark, Finland, Indonesia, Iran, Iraq, Ireland, Israel, Libya, Malaysia, New Zealand, Portugal, Saudi Arabia, South Africa, South Korea, Thailand, Turkey

The history of the ICJ can be seen as a struggle between the internationalist aspirations of the court's supporters and the efforts of states to limit their international obligations. Consider the bases of jurisdiction. Jurisdiction by special agreement poses no threat to states because they can avoid it simply by refusing to consent to jurisdiction. The ICJ, in special agreement cases, serves as an elaborate arbitration device. To be sure, unlike traditional arbitration, the state parties that use the ICJ do not select most of the judges, so that the ICJ, unlike traditional arbitration panels, may be willing to decide cases in a way that reflects the interests of states other than the two parties. But for just this reason states may use traditional arbitration rather than the ICJ, if they wish.

Next we have treaty-based jurisdiction. Here, state consent is also needed – at the time that the treaty is ratified – so in theory states have nothing to fear from treaty-based jurisdiction. But in practice states sometimes must agree to ICJ resolution of treaty disputes if they want any of the benefits of the treaty, and, as ICJ jurisdiction is always reciprocal, states agree to ICJ jurisdiction so that they have the power to bring other states to court. These states can then find themselves pulled before the ICJ against their will, often many years after the treaty was ratified.

Finally, we have compulsory jurisdiction. Again, states can avoid compulsory jurisdiction just by not filing a declaration. But many states have filed this declaration, apparently because they believe the benefit – being able to pull another state before the ICJ – exceeds the costs – being pulled before the ICJ by another state. Note that the obligation is strictly reciprocal: a state can be pulled before the ICJ only by another state that has itself filed the declaration. In addition, most states have, through reservations,

consented to compulsory jurisdiction only for a narrow range of cases. The US's declaration, for example, excluded cases involving national security. When the ICJ nonetheless found that this clause was satisfied in the Nicaragua case (discussed below), the U.S. pulled out of compulsory jurisdiction. France also withdrew from compulsory jurisdiction after the ICJ took a case without France's consent in the early 1970s. No permanent member of the security council remains subject to compulsory jurisdiction except the UK, which has, in any event, been brought to court only once under this head of jurisdiction and won the case.[17]

The ICJ has dealt with a diverse set of disputes, which can be broken down as follows:

Table 2: Types of Cases

Type of Case[18]	Frequency
Aerial Incident	13
Border Dispute	29
Diplomatic Relations	8
Diplomatic Relations/Property	1
Use of Force	23
Property	13
Trusteeship/Decolonization	4
Other	9
Total	100

A few examples follow.

Corfu Channel (1947-1949). This case was the ICJ's first contentious case. In 1946 British warships struck mines in Albanian waters and were damaged. The United Kingdom filed an application with the ICJ, charging that Albania was responsible either for laying the mines or for not clearing them. The ICJ held Albania violated international law, and awarded Britain damages of ₤844,000. The Albanian government refused to pay and a settlement was not reached until 1992.[19]

Treatment in Hungary of Aircraft and Crew of the United States of America (United States v. USSR) (1954). This case is the first between the two superpowers; it also disappeared, apparently because the Soviet Union refused to participate. A few other cases in which the U.S. or other western powers filed applications against the Soviet Union or its satellites also never advanced beyond preliminary stages. The Soviet

[17] Bulgaria v. UK; Serbia has also sued the UK and every other Nato country in the wake of the Kosovo intervention; this case has not yet been resolved.
[18] From Ginsburg and McAdams.
[19] Rosenne, 44.

Union and its satellites have never filed applications. For the most part, the ICJ was used during the cold war (and after) only by western powers and developing countries.

The Temple of Preah Vihear (1962). The case was one of many border disputes arising from decolonization. Cambodia filed an application against Thailand, complaining that Thailand illegally occupied Cambodian territory around the Temple of Preah Vihear. The ICJ ruled in favor of Cambodia. Thailand accepted the judgment and relinquished its claim.

South West Africa (1966). South Africa controlled neighboring territory (now Namibia), claiming the right under a League of Nations Mandate. Ethiopia, Liberia, and many other African countries objected to South Africa's control and its policies, and, after political efforts failed, filed an application with the ICJ. The ICJ took jurisdiction over the application on a close vote, but then subsequently (after a change in the bench) ruled that it did not have jurisdiction. The case is significant because the outcome outraged the newly powerful bloc of former colonial countries, which resolved to boycott the ICJ.[20] The court repudiated its reasoning in a later case, an event likened to the U.S. Supreme Court's repudiation of the jurisprudence of *Lochner*.[21]

United States Diplomatic and Consular Staff in Tehran (United States v. Iran) (1979-1981). The U.S. filed an application against Iran after the Iranian government permitted militants to seize the American embassy and take members of the embassy staff hostage. The ICJ ruled in favor of the U.S. but the ruling did not appear to have any influence on Iran, which refused to participate in proceedings.

Nicaragua (1984). As a result of *South West Africa*, many developing countries regarded the ICJ as a tool of the Great Powers, and especially the United States. All this changed with the *Nicaragua* case. The U.S. had been supporting insurgents in Nicaragua, which was controlled by the Soviet backed Sandinista government. The CIA mined Nicaraguan ports and harbors in a secret operation; when Nicaragua found out, it filed an application in the ICJ, claiming that the U.S. had violated various treaties as well as general principles of international law. The U.S. argued that the ICJ did not have jurisdiction because (i) the treaties did not confer jurisdiction on the ICJ, and (ii) compulsory jurisdiction did not apply. When the ICJ held against the U.S., the U.S. refused to comply with the ruling, and withdrew its consent to compulsory jurisdiction. Now it was the United State's turn to argue that the ICJ's decisions were politically motivated.

Breard (1998). *Nicaragua* was the first case in which a developing country challenged a western power. Before then, nearly all cases were either between two developing countries or between two western countries. In a very few cases – such as the Tehran Hostages case – a western power challenged a developing country. Breard involved an application by Paraguay, challenging the United States' failure to advise a Paraguayan national of his rights under the Vienna Convention on Consular Relations at

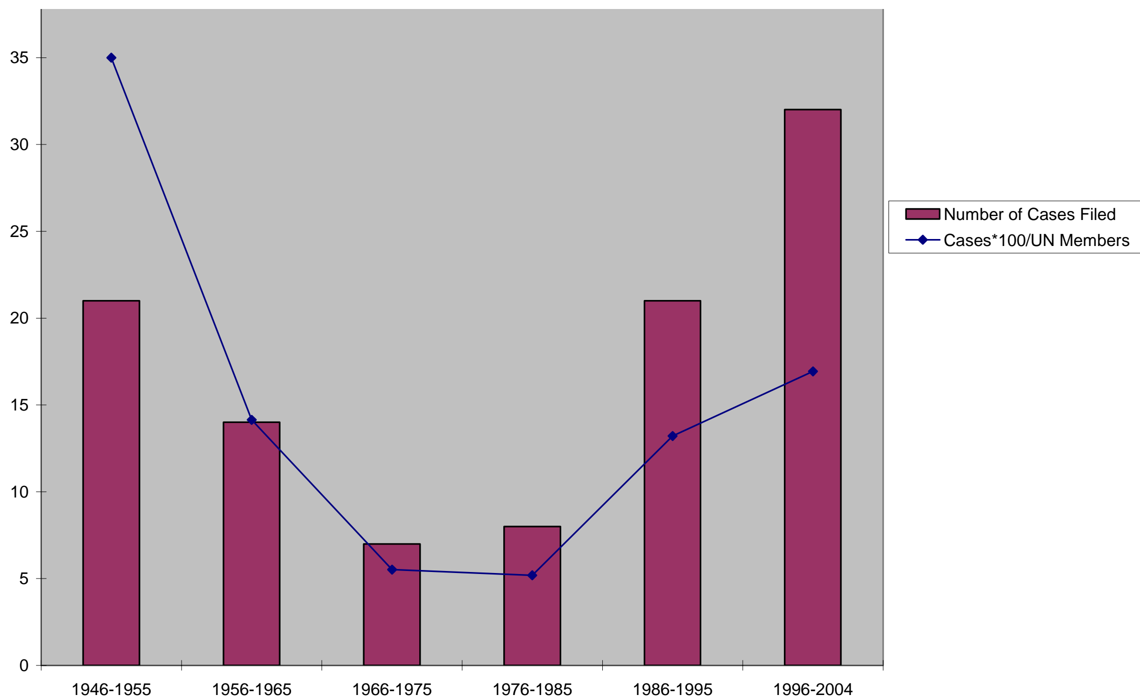
[20] See Edward McWhinney, Judical Settlement of International Disputes 158 (1991).
[21] The Namibia (1971) advisory opinion.

the time of his arrest. The ICJ tried to stop the U.S. from executing the Paraguayan national, but the U.S. refused to obey the ICJ's order. The U.S. lost two subsequent cases (LaGrande (1999), brought by Germany; Avena (2003), brought by Mexico) on similar facts, and in both those cases also refused to obey the ICJ's orders.

Legality of Use of Force (1999). Serbia filed ten applications against the ten NATO states that participated in the military intervention in Kosovo. These applications are pending.

Overall, the ICJ has heard 92 contentious cases over 47 years.[22] Figure 1 shows the size of the docket, by decade, both in absolute terms and relative to the total number of nations, which more than tripled over this period. The docket declined in the 1960s and 1970s and recovered somewhat in the late 1980s and 1990s, most likely in connection with the improving international climate.

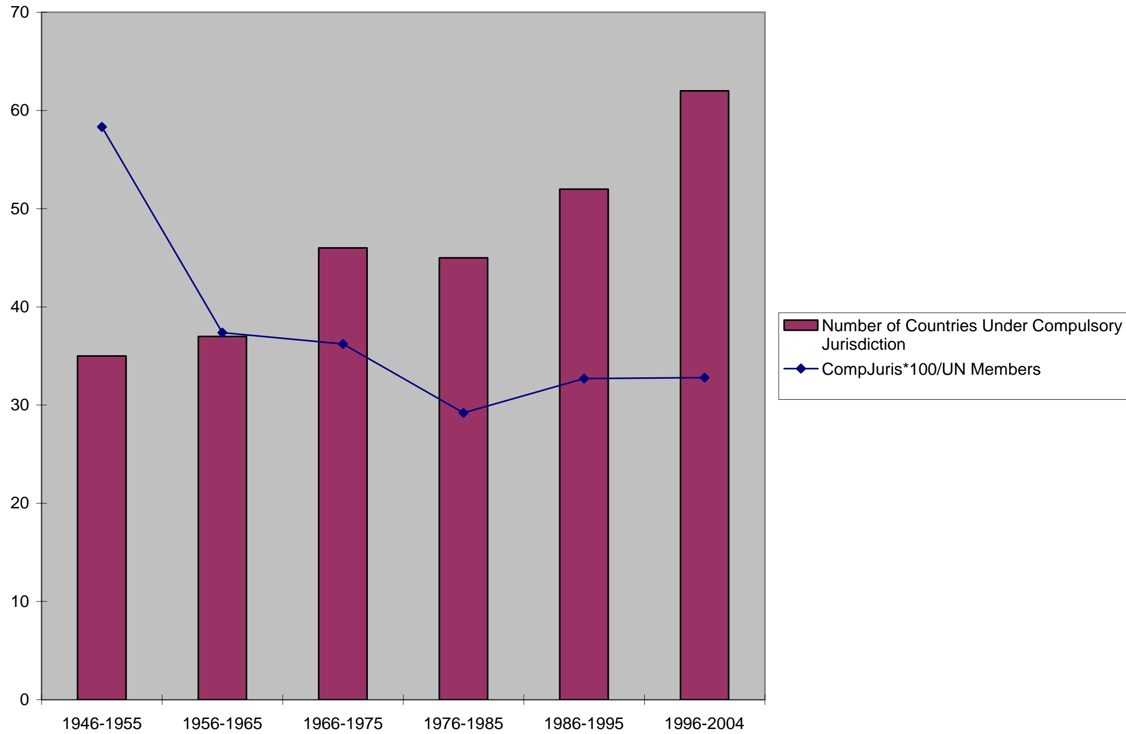
Figure 1: Usage of ICJ



[22] It also has advisory opinion jurisdiction, which it exercises sporadically. There have been 103 cases filed and 107 proceedings, for an average of 1.04 proceedings per case. If we exclude cases without proceedings, the average rises to 1.41 proceedings per case.

Another measure of the success of the ICJ is the use of the compulsory jurisdiction. As Figure 2 shows, the use of the optional clause has declined in relative terms. As mentioned before, only the UK among major powers has a live declaration under the optional clause.

Figure 2: States Subject to Compulsory Jurisdiction



Conventional wisdom holds that states generally comply with the judgments and orders of the ICJ despite a few spectacular instances of noncompliance.[23] Ginsburg and McAdams conducted a systematic study, and found an overall compliance rate of 61 percent.[24] The figure breaks down as 40 percent for compulsory jurisdiction cases; 60 percent for treaty cases; and 86 percent for special agreement cases. The data thus suggest, intuitively, that states are more likely to comply with judgments when the proceedings are based on relatively immediate consent rather than consent that occurred in the distant past.

II. Hypothesis

Scholars have proposed a range of motives for judges of domestic courts: they may seek to maximize their wealth, their status, their leisure, attainment of their political goals, or the probability of elevation or other future position. They also may seek sincerely to rule in the manner dictated by law. Empirical studies so far have been suggestive but inconclusive. Numerous studies find that judicial votes are correlated with

[23] E.g., Rosenne, 42-48.
[24] Ginsburg and McAdams.

the ideology or party affiliation of the judge, but these studies are vulnerable to methodological objections.[25]

The international setting adds a new factor: national identity. National identity could affect decisionmaking in three ways: psychologically, economically, or via selection effects.

Psychologically, if judges identify with their countries, they may find it difficult to maintain impartiality. Most ICJ judges are not only nationals who would normally have strong emotional ties with their country; they also have spent their careers in national service as diplomats, legal advisors, administrators, and politicians.[26] Even with the best of intentions, they may have trouble seeing the dispute from the perspective of any country but that of their native land. National and linguistic differences may also interfere with the establishment of collegiality on the court. Indeed, most cases have multiple opinions, though it is difficult to say whether there are more or fewer than in cases decided by the U.S. Supreme Court.

Economically, judges may be motivated by material incentives. Judges who defy the will of their government by holding against it may be penalized. The government may refuse to support them for reappointment, and also refuse to give them any other desirable government position after the expiration of their term. These considerations are likely to weigh even more heavily in the calculations of judges from authoritarian states, as these judges do not necessarily have the option to take refuge in the private sector if they displease their government.

The selection effect works as follows. Because governments choose the judges, they can ensure that their judges are not too independent minded by drawing from the pool of officials who have shown reliability and the appropriate attitudes. There is evidence that the appointment of judges is a highly political process.[27] States try to appoint judges who are already inclined to advance the national interest.

These factors suggest that judges will vote in favor of the interests of the state that appoints them.[28] The contrary view – the null hypothesis – is that judges take their legal

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[25] See supra note __.
[26] See the biographies of the current court at http://www.icj-cij.org/icjwww/igeneralinformation/icvjudge/tomka.htm. Biographies of members of earlier courts can be found in the ICJ Yearbooks (1947-2004). A small number of judges are former professors, albeit ones who have been heavily involved in international legal affairs on behalf of their country.
[27] See Rosenne, supra.
[28] The literature on domestic courts makes a distinction between naïve and sophisticated voting – where a naïve judge votes his ideology, and a sophisticated judge takes account of the possible responses of Congress and so may suppress his ideological instincts when doing so would elicit a negative reaction from Congress. We do not take into account the possibility that states or international institutions might respond to ICJ judgments by overturning them or ignoring them, though the latter does happen. Our working hypothesis is that judges care more about their own government's and state's attitudes toward them than the attitudes of other states or international organizations. Thus, the judges are sophisticated, but their incentives are national, not international. Future research might consider the possibility that judges seek to

role seriously because they are ideologically committed to the development of international law, or think that they are more likely to be rewarded for impartiality than for bias, or are not selected on the basis of national bias.

The simplest hypothesis is that *ICJ judges vote in favor of the country that appointed them when that country is a party to the case*. Thus, if the applicant is the U.S., and the judge is an American, then the judge will vote in favor of the applicant. If the respondent is Nigeria, and the judge is an ad hoc appointee of Nigeria (whether he is himself Nigerian or not), then the judge will vote in favor of the respondent.

This first hypothesis is simple and easily tested, but it does not resolve the main question, which is whether the ICJ, as a court, is biased. For the normal two party case, only two of the judges are nationals of the parties. We expect that their votes will cancel each other out, and the question is, what about the other judges? Regarding these judges, we hypothesize that *they will vote in favor of the state party whose strategic interest is more closely aligned with the strategic interest of the judge's home state*. We examine several such alignments:

1. Region. UN General Assembly voting often divides along regional lines, and the ICJ has region-based representation. Accordingly, we predict regional alignments. We will focus on continental alignments (North America, South America, Africa, Europe, Asia) but also discuss smaller regional groupings.

2. Military. We predict that NATO states and states within the Soviet sphere of influence voted as blocs during the cold war (before 1989).

3. Wealth. Wealthier and poorer countries often form blocs in international conflicts, for example, over trade. Thus, we predict that judges from wealthier countries will favor wealthier parties, and that judges from poor countries will favor poorer parties. States may also support members of trade alliances or organizations such as the EU and the OECD.

4. Democracy. Many scholars argue that democracies share interests, and are more likely to cooperate in international relations. We thus test the hypothesis that judges from democracies are more likely to favor democracies; we also look at whether judges from nondemocracies are more likely to favor nondemocracies.

5. UN organization. We test to see whether judges from states that are permanent members of the security council are more likely to vote for permanent members of the security council.

III. Data

A. Approach

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strengthen and legitimate the court, and for that reason would sometimes vote against the interests of their own states.

The case reports include a majority opinion, plus concurring and dissenting opinions when they exist. The reports also show a vote tally for each issue that is decided. Earlier reports showed only the vote tally, and not the identities of the judges who voted each way, but one can usually (though not always) determine each judge's vote on each issue by reading all the opinions. Later reports give the vote tally and also reveal the way each judge voted. Thus, one can determine how every judge votes on nearly every issue in every case.

As a result, we can test our hypotheses in two ways. The case-by-case test asks whether a judge voted in favor of an applicant or respondent in a particular case.[29] The issue-by-issue test asks whether a judge voted in favor of an applicant or a respondent for a particular issue.

The advantage of the issue-by-issue approach is that there are more data. A single case may have as many as 10 issues, and the judges may vote differently by issue. The problem with the issue-by-issue approach is that it counts each issue equally. But a judge who votes in favor of the applicant on nine jurisdictional issues, and in favor of the respondent on one jurisdictional issue, is, as a practical matter, voting against the applicant. It is not clear that such a judge should be considered predominantly pro-applicant, or more so than in a case where he votes in favor of the applicant on the first of two issues and the respondent on the second. We run regressions using both approaches, but, as the results are quite similar, we report only the case level regressions.

Let $J_{sc} = 1$ if the judge for a particular state (s) votes in favor of the applicant in particular case (c); otherwise $J_{sc} = 0$. The regression equation is:

$$J_{sc} = \beta_1 + \beta_{2i} \text{ [nationality matches]} + \beta_{3i}\text{[other matches]} + \beta_{4i}\text{[controls]}$$

The first variable – *nationality applicant match* – is a dummy variable equal to 1 if the applicant state and the judge's state are the same; otherwise the variable equals zero. *Nationality respondent match* equals 1 if the respondent state and the judge's state are the same. For example, if the case is U.S. v. Iran, then for the observation containing the US judge, applicant match equals 1 and respondent match equals 0. For the observation containing the Iranian judge, the reverse is true. For the observations containing other judges, both variables equal 0.

Next, we look at bloc voting. *Nato applicant match* equals 1 if the applicant is a Nato country and the judge comes from a Nato country. The variable equals 0 if the applicant is not a Nato country, or it is and the judge does not come from a Nato country. Similarly, *Nato respondent match* equals 1 if the respondent is a Nato country and the judge comes from a Nato country. The variable equals 0 if the respondent is not a Nato

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[29] Note that the special agreement cases do not technically involve an applicant and respondent, because they are brought jointly by the two parties. In these cases, the words "applicant" and "respondent" are just placeholders and should be read as "one party or the other." Nothing in the analysis turns on the identity of a party as an applicant rather than as a respondent.

country, or it is and the judge does not come from a Nato country. We use a separate interaction variable to capture cases where the applicant, the respondent, and the judge are from Nato, in which case we predict no bias. Note that when a NATO country is an applicant, its own judge is a nationality applicant match as well as a NATO match. The national applicant match variable serves as a control in cases such as this.

These principles guide our tests of the other alliances and regional groups, including the OECD, EU, and Warsaw Pact. In the case of democracy and wealth, we can use a single variable. Our economic and demographic variables (such as per capita GDP and population) increase as the judge's state becomes closer (along the relevant dimension) to the applicant and farther from the respondent. In the case of per capita GDP, we take the absolute value of the difference between the judge's state's per capita GDP and the applicant's per capita GDP, and subtract it from the absolute value of the difference between the judge's state's per capita GDP and the respondent's per capita GDP. The variable takes a positive value when the judge's state and the applicant state have economies of the same size (large or small) and the respondent state's economy has a different size (small or large). The variable takes a negative value when the judge's state and the applicant state have economies of a different size, and the judge's state's economy is closer to the respondent state's economy. Similar principles determine our democracy variable.[30]

Finally, we use some controls, including controls for type of case (border dispute, use of force, and so forth), type of jurisdiction, the existence of multiple applicants or respondents, the existence of interveners, and so forth. Most important, we use fixed effects for cases, in order to ensure that case-specific factors do not bias the results. Suppose, for example, that bloc voting occurs only in hard cases or cases with certain attributes such as geopolitical salience, and does not occur in other cases. If we don't control for case-specific effects, our results will be inflated. We also control for judge-specific and country-specific factors. Our fixed effects model also controls for year.

Before we turn to the data, we should discuss selection effects. One problem with empirical studies of judicial decisionmaking is that the latter occurs only at the end of a lengthy and mostly invisible process. In the case of domestic lawsuits, one party does something that hurts or offends another party; the second party threatens to sue; files a complaint; initiates a trial; wins or loses and appeals; and so forth. At any stage, the two parties may settle. Everything else equal, the parties will settle the easiest claims in order to avoid litigation costs; only the most difficult cases will be resolved judicially. As a result, the pattern of disputes may reflect nothing about the court, and only the difficulty of the issues.

In the international setting, it is possible that judges are mainly influenced by legal variables, that the easy cases settle, and that therefore only the legally difficult cases reach judgment, and here, with the law unsettled, the judges are influenced by political factors. We do not think this is likely, but the possibility must be acknowledged.

[30] We also test the democracy level in a dichotomous fashion (using 6< or 7< as democracy), following the international relations literature.

B. Description of Data

1. Some General Information

Table 3 lists the thirty largest states (in terms of economy in 2004), whether they have submitted to compulsory jurisdiction (as of 2004), the number of cases they have been involved in (as applicant, respondent, and total), the win rate (unclear outcomes are excluded), the percentage of cases in which a state's judge played a role, and the percentage of cases in which a state's judge voted in its favor.

Table 3: Usage by States with 30 Largest Economies

State	comp. juris. (2004)	proceedings (A/R/tot.)	win rate (%)(A ratio; R ratio)	judge on proceeding (%.)[31]	judge votes for state (%) (A ratio; R ratio)
USA (p)	No	2/19/21	43 (1/2; 8/19)	100	81 (2/2;15/19)
China (p)	No	0	N/A	N/A	N/A
Japan	Yes	0	N/A	N/A	N/A
India	Yes	1/3/4	67 (0/1;2/3)	100	100 (1/1; 3/3[32])
Germany	No	6/1/7	100	75 (3/6; 1/1)	100
UK (p)	Yes	8/7/15	73 (6/8; 5/7)	100	93 (7/8; 7/7)
France (p)	No	3/8/11	64 (1/3; 6/8[33])	100	91 (2/3; 8/8)
Italy	No	1/2/3	67 (0/1; 2/2)	100	67 (0/1; 2/2)
Brazil	No	0	N/A	N/A	N/A
Russia/USSR (p)	No	0[34]	N/A	N/A	N/A
Canada	Yes	1/2/3	67 (0/1; 2/2)	100	100
Mexico	Yes	2/0/2	100	50 (1/2)	100
Spain	Yes	1/3/4	50 (0/1; 2/3)	75 (1/1; 2/3)	100
South Korea	No	0	N/A	N/A	N/A
Indonesia	No	1/0/1	0	100	100
Australia	Yes	2/2/4	50 (1/2[35];1/2)	75 (2/2; 1/2)	100
Taiwan	N/A[36]	N/A	N/A	N/A	N/A
Iran	No	3/2/5	40 (1/3; 1/2)	33 (3/3; 1/2)	75 (2/3; 1/1)
Thailand	No	0/2/2	0	0	N/A
Netherlands	Yes	1/3/4	25 (0/1; 1/3)	50 (1/1; 1/3)	100
South Africa	No	0/2/2	50 (1/2)	100 (2/2)	50 (1/2)
Turkey	No	0/2/2	100	0	N/A
Argentina	No	0	N/A	N/A	N/A
Poland	Yes	0	N/A	N/A	N/A
Philippines	Yes	0	N/A	N/A	N/A
Pakistan	Yes	1/1/2	50 (0/1;1/1)	100	100
Belgium	Yes	3/2/5	60 (2/3; 1/2)	80 (2/3; 2/2)	100
Egypt	Yes	0	N/A	N/A	N/A
Saudi Arabia	No	0	N/A	N/A	N/A
All others (approx. 160)	N/A	62/42/104	42 (26/62; 18/42)	76 (50/62; 29/42)	91 (45/50; 27/29)

Notes: "p" means a permanent member of the UN security council. In special agreement cases, the designation of a state as applicant or respondent is arbitrary. The table includes all non-ministerial proceedings. Economy information taken from CIA World Factbook (web).

[31] Includes both permanent and ad hoc judges. Also, if a judge sits on the merits decision, this is considered being "on case" even if there is no national judge in a preliminary hearing, as is often the case.

[32] An Indian judge dissents in one of the cases coded as an Indian victory, but the dissenting opinion takes a position even more strongly in favor of India than the majority opinion.

[33] Two of six cases are formally French victories but seem more like French losses practically speaking. France loses in the Nuclear Testing cases on PM, but years later wins because they stop testing, and the court decides NZ/Aus cases no longer have any object.

[34] There are cases filed against USSR, but they are removed prior to adjudication.

[35] See the discussion of the France/New Zealand/Australia case, supra note __.

[36] Taiwan has never been diplomatically recognized as a separate nation by the UN.

The table makes clear that the ICJ is not used by most countries. Only about a third of all states have ever appeared before the ICJ. Among these states, only the US, UK, and France are frequent litigants.

2. Party Judges

By "party judges," we mean either (1) judges who are nationals of one of the state parties; and (2) ad hoc judges appointed by one of the state parties because it does not have a national already on the court. Several earlier studies investigate whether party judges are biased. Most of these studies have concluded that they are somewhat but not very biased, based on an issue by issue comparison of their votes to the votes of nonparty judges. Table 4 provides our data.

Table 4: Votes of Party and Nonparty Judges in Proceedings

Judge	Vote in favor of applicant		Vote in favor of respondent	
	ratio	percentage	ratio	percentage
Party – national	15/18	83.3	34/38	89.5
Party – ad hoc	57/63	90.5	37/41	90.2
Party – total	72/81	88.9	71/79	89.9
Nonparty	656/1356	48.4	638/1358	47.0

Judges appear to favor their home state. They vote for non-home parties 47 to 48 percent of the time; they vote for home states about 90 percent of the time.

One other small clue suggests that the judges are self-conscious about their biased voting and attempt to mask it. The cases usually involve multiple issues, and judges must vote on each of the issues. A judge who seeks to hold for the applicant must (usually) favor the applicant on all issues if the applicant is to win. By contrast, a judge who seeks to hold for the respondent must favor the respondent on only one issue – say, jurisdiction. One might hypothesize that judges, in order to minimize the visibility of bias, vote in favor of a party on the minimum number of issues necessary to obtain a victory.

To test this idea, we looked at only those cases based on treaties or compulsory jurisdiction – as special agreement cases don't have a designated applicant and respondent. Let's focus on judges whose home states are litigants or not. Among those whose home states are not litigants, they are slightly more likely to favor the applicant by issue than by case – 57 percent rather than 54 percent. We take this as a baseline. Now consider judges whose home state is the applicant. They favor the applicant by case at the 77 percent level, by issue at 85 percent. By contrast, the judge whose home state is the respondent goes in the opposite direction. He favors the respondent by case at the 85 percent level but by issue at the 80 percent level. The evidence is consistent with the claim that judges try to mask their biases by voting in favor of a party on the minimum number of issues necessary to obtain victory.

There is thus substantial evidence that party judges vote in favor of their home state. However, defenders of the ICJ are correct that this evidence has limited

significance. The votes of party judges cancel each other out, and it is possible that the nonparty judges are unbiased, and therefore render impartial decisions.

3. Nonparty Judges

We attempt to measure the biases of nonparty judges by looking for links between their state and the state parties. We hypothesize that nonparty judges are more likely to vote in favor of states that belong to a geopolitical bloc shared by their own state. Table 5 reports results for voting by bloc.

Table 5: Propensity to Vote by Bloc

Panel A: Region

Applicant-Judge Region	Respondent-Judge Region	
	No Match	Match
No Match	830 0.54	157 0.36
Match	123 0.51	331 0.50

Panel B: Nato

Applicant-Judge Nato	Respondent-Judge Nato	
	No Match	Match
No Match	1,102 0.54	171 0.31
Match	54 0.57	105 0.48

Panel C: EU

Applicant-Judge EU	Respondent-Judge EU	
	No Match	Match
No Match	1,325 0.52	65 0.17
Match	44 0.59	3 0.33

Panel D: OECD

Applicant-Judge OECD	Respondent-Judge OECD	
	No Match	Match
No Match	1,101 0.54	171 0.25
Match	12 0.67	153 0.57

Panel E: Security Council

Applicant-Judge Security Council	Respondent-Judge Security Council	
	No Match	Match
No Match	1,216 0.50	107 0.45
Match	41 0.63	8 0.38

Note: the first figure in each cell is the number of observations; the second figure is the percentage of votes in favor of applicant

The tables provide support for the hypothesis of bloc voting. The off-diagonals should reflect unbiased voting –neither side matches or both sides match – and thus be around 40-50 percent. The diagonals should reflect biased voting – only one side matches – with the SW corner high (the pro-applicant judge favors the applicant) and the NE corner low (the pro-respondent judge disfavors the applicant). The tables provide some support for these hypotheses, albeit less so for region than for NATO, EU, OECD, and security council membership.

Figure 3 shows the relationship between wealth alignment and voting.[37] The y-axis shows the probability of voting for the applicant. The x-axis shows the extent of the match between the wealth of the judge's state and the wealth of a party's state. Higher values mean that the judge's state is closer to the applicant's; lower values mean that the judge's state is closer to the respondent's.

Figure 3: Relationship Between Judges' Votes and Matching Economies

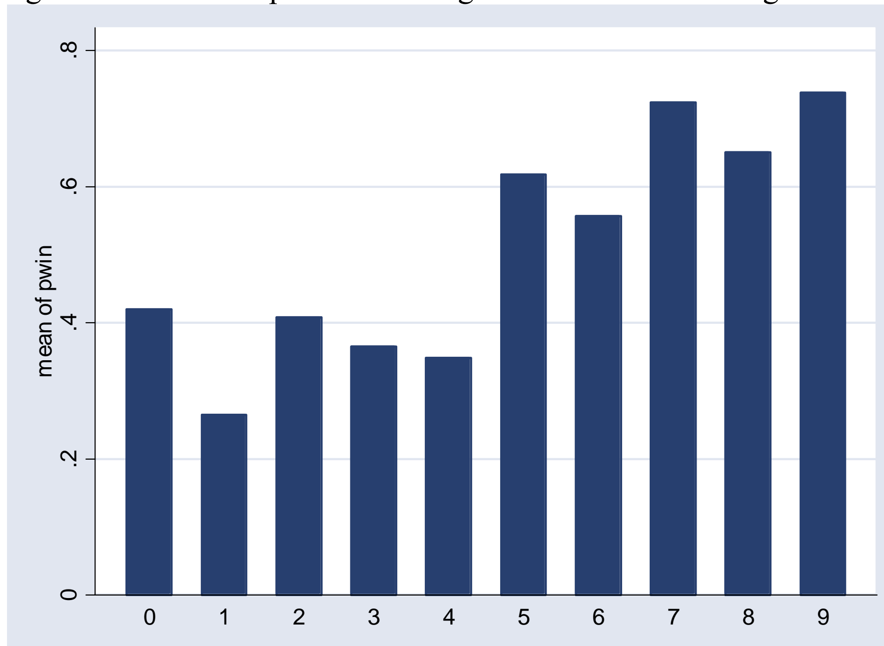

Figure 3 shows the predicted relationship. A judge is more likely to vote in favor of wealthy states (per capita GDP) when the judge's state is wealthy, than when the judge's state is poor. A judge is more likely to vote in favor of a poor state when the judge's state is poor, than when the judge's state is wealthy.

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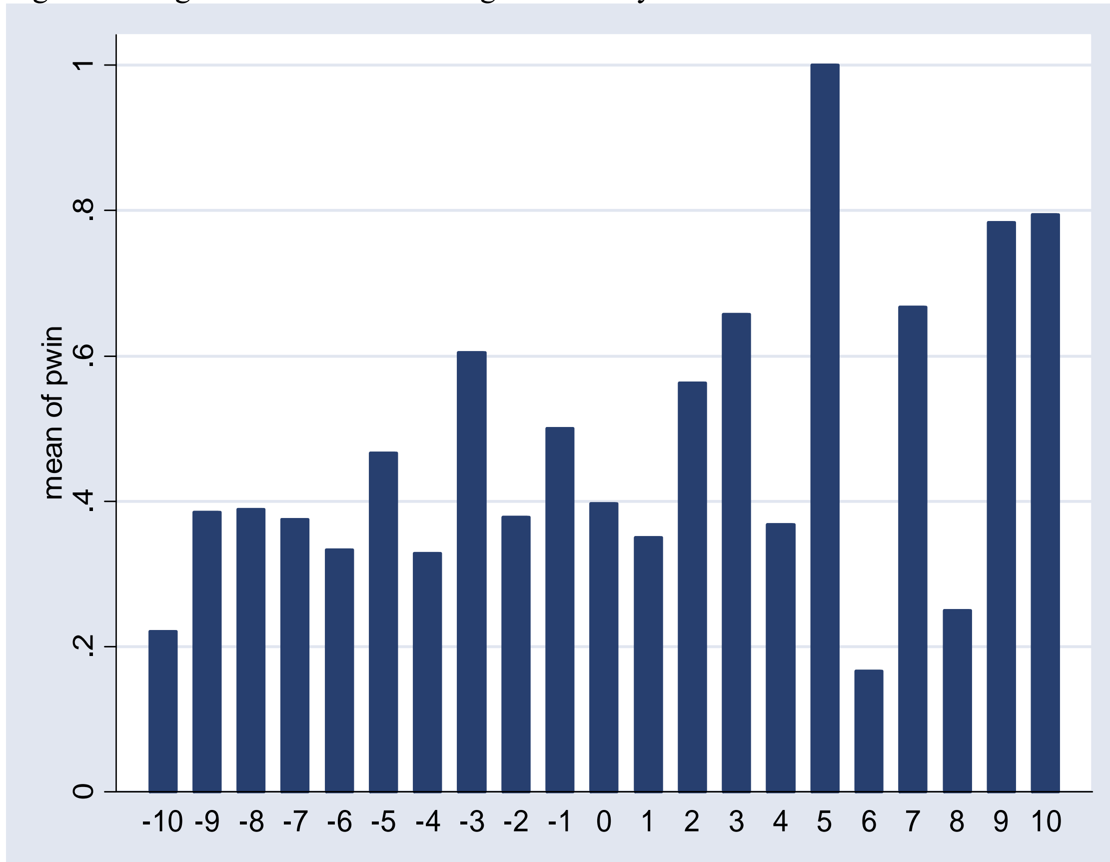
[37] We used purchasing power parity-adjusted GDP figures; see Alan Heston, Robert Summers and Bettina Aten, Penn World Table Version 6.1, Center for International Comparisons at the University of Pennsylvania (CICUP), October 2002; available at: http://pwt.econ.upenn.edu/php_site/pwt_index.php.

Figure 4 shows a similar relationship between voting and democracy. A low value on the x-axis means that the democracy score for the judge's state (whether high or low) is close to the democracy score of the respondent.[38] A high value means that the democracy score for the judge's state is close to the democracy score of the applicant.

Figure 4: Judges' Votes and Matching Political Systems



The figure shows the predicted relationship. Judges from democratic states favor democracies over nondemocracies, and that judges from nondemocratic states favor nondemocracies over democracies.

C. Results

So far we have limited ourselves to the raw data. The raw data are highly suggestive but of limited value. In this section, we report several regressions. The main obstacle for our regressions is multicollinearity: wealth, democracy, and the various regional groupings are all, to some extent, related.[39] To address this problem, we run several regressions with different groups of independent variables.

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[38] We use data from Polity IV.

[39] Another problem is that we run probit regressions and almost all of our independent variables are categorical variables. This creates statistical problems that we acknowledge but have no remedy for. We

Tables 6-9 report probit estimates. The dependent variable is 1 if the judge votes in favor of granting the applicant relief. Typically, this means that the judge joined the majority or filed a concurrence. The first set of probit regressions is without fixed effects. In the second set of regressions, judge fixed effects control for variation in individual judges by creating a dummy variable for each judge; judges with only one vote (in this case, primarily ad hoc judges) are dropped from the sample (Table 7). We include judge fixed effects to control for the possibility that some judges are idiosyncratic. Table 8 reports probit estimates with case fixed effects, which control for variation in individual cases; the concern here is that some cases that are politically salient or otherwise noteworthy may bias the results. We combine judge and case fixed effects in Table 9. All four sets of regressions yield similar results.[40]

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do note that one of our independent variables – the wealth measure – is continuous and significant in most of the regressions.

[40] We also run a series of regressions at the issue level. We find that the results are similar to those presented here.

Table 6: Standard Probit Estimates (No Fixed Effects)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
applicant	0.40	0.43	0.36	0.38	0.40	0.43	0.46
	(6.40)***	(7.03)***	(4.09)***	(5.07)***	(6.30)***	(5.62)***	(4.69)***
respondent	-0.42	-0.40	-0.35	-0.35	-0.39	-0.30	-0.26
	(6.63)***	(5.88)***	(3.69)***	(4.77)***	(5.85)***	(3.83)***	(2.27)**
app-region		-0.17				-0.10	-0.10
		(3.15)***				(1.68)*	(1.18)
res-region		-0.10				-0.11	-0.18
		(2.19)**				(1.86)*	(2.31)**
inter-region		0.22				0.17	0.27
		(3.10)***				(1.93)*	(2.22)**
app-nato					-0.03	-0.07	-0.22
					(0.42)	(0.82)	(2.32)**
res-nato					-0.16	-0.06	0.27
					(3.72)***	(1.09)	(3.33)***
inter-nato					0.11	0.02	-0.22
					(1.16)	(0.23)	(1.69)*
democracy				0.02		0.02	0.00
				(5.95)***		(4.87)***	(0.34)
ln gdp per cap.			0.11				0.15
			(4.32)***				(4.75)***
Observations	1437	1437	721	1090	1437	1090	592
Pseudo R-squared	0.06	0.06	0.08	0.09	0.06	0.10	0.12

Robust z statistics in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%
Note: observed and predicted P approximately 0.51 each in Regressions 1-3 and Regression 5, and approximately 0.45-0.46 in Regressions 4, 6, and 7. Dependent variable equals 1 if judge votes for applicant; zero otherwise. All regressions are RSE.

Table 7: Probit Estimates with Judge Fixed Effects

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
applicant	0.44	0.45	0.48	0.43	0.46	0.47	0.54
	(3.97)***	(4.01)***	(3.28)***	(3.06)***	(4.08)***	(3.29)***	(3.05)***
respondent	-0.40	-0.37	-0.40	-0.35	-0.34	-0.30	-0.33
	(4.27)***	(3.76)***	(3.17)***	(3.14)***	(3.39)***	(2.35)**	(2.22)**
app-region		-0.14				-0.10	-0.05
		(2.23)**				(1.38)	(0.54)
res-region		-0.09				-0.12	-0.23
		(1.71)*				(1.62)	(2.36)**
inter-region		0.18				0.15	0.28
		(2.25)**				(1.56)	(1.90)*
app-nato					0.01	-0.05	-0.14
					(0.10)	(0.53)	(1.02)
res-nato					-0.18	-0.07	0.37
					(3.03)***	(0.89)	(3.12)***
inter-nato					0.05	0.01	-0.31
					(0.48)	(0.06)	(1.92)*
democracy				0.02		0.02	0.00
				(4.89)***		(4.28)***	(0.64)
ln gdp per cap.			0.13				0.17
			(4.07)***				(4.55)***
Observations	1352	1352	650	1013	1352	1013	514
Pseudo R-squared	0.09	0.09	0.12	0.13	0.09	0.13	0.14

Robust z statistics in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%
Note: observed and predicted P approximately 0.50 each in Regressions 1-3 and Regression 5, and approximately 0.43-0.45 in Regressions 4, 6, and 7. Dependent variable equals 1 if judge votes for applicant; zero otherwise. All regressions are RSE.

Table 8: Probit Estimates with Case Fixed Effects

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
applicant	0.54	0.56	0.54	0.56	0.55	0.58	0.62
	(7.72)***	(8.16)***	(5.21)***	(6.00)***	(7.61)***	(6.45)***	(5.78)***
respondent	-0.49	-0.48	-0.40	-0.42	-0.48	-0.41	-0.36
	(5.88)***	(5.53)***	(3.03)***	(4.69)***	(5.53)***	(4.27)***	(2.82)***
app-region		-0.17				-0.15	-0.16
		(2.17)**				(1.70)*	(1.43)
res-region		-0.13				-0.12	-0.12
		(1.92)*				(1.64)	(1.23)
inter-region		0.29				0.27	0.27
		(2.41)**				(1.94)*	(1.42)
app-nato					-0.08	-0.15	-0.27
					(0.84)	(1.48)	(2.05)**
res-nato					-0.18	-0.08	0.30
					(2.92)***	(1.11)	(2.77)***
inter-nato					0.22	0.22	-0.06
					(1.60)	(1.39)	(0.31)
democracy				0.02		0.02	0.00
				(5.51)***		(4.67)***	(0.18)
ln gdp per cap.			0.14				0.18
			(3.73)***				(3.80)***
Observations	1338	1338	669	1036	1338	1036	541
Pseudo R-squared	0.39	0.40	0.39	0.38	0.40	0.39	0.38

Robust z statistics in parentheses

* significant at 10%; ** significant at 5%; *** significant at 1%

Note: observed and predicted P approximately 0.47-0.49 each in Regressions 1-3 and Regression 5, and approximately 0.43-0.45 in Regression 4 and 6, and approximately 0.40-0.43 in Regression 7. Dependent variable equals 1 if judge votes for applicant; zero otherwise. All regressions are RSE.

Table 9: Probit Estimates with Judge and Case Fixed Effects

	(1)	(2)	(3)	(4)	(5)	(6)	(7)[41]
applicant	0.52	0.52	0.69	0.57	0.52	0.57	0.78
	(4.67)***	(4.68)***	(7.86)***	(3.73)***	(4.60)***	(3.72)***	(9.67)***
respondent	-0.55	-0.55	-0.57	-0.48	-0.55	-0.48	-0.51
	(4.22)***	(4.19)***	(5.38)***	(3.91)***	(3.94)***	(3.70)***	(6.49)***
app-region		-0.12				-0.13	-0.05
		(1.15)				(1.03)	(0.34)
res-region		-0.10				-0.09	-0.10
		(1.21)				(0.87)	(0.76)
inter-region		0.24				0.26	0.18
					(1.67)*	(1.48)	(0.71)
app-nato					-0.14	-0.16	-0.05
					(1.08)	(1.09)	(0.25)
res-nato					-0.18	-0.11	0.59
					(1.70)*	(0.85)	(2.95)***
inter-nato					0.13	0.22	-0.28
					(0.72)	(1.10)	(1.48)
democracy				0.02		0.02	0.00
				(3.22)***		(2.96)***	(0.10)
ln gdp per cap.			0.15				0.21
			(3.09)***				(3.41)***
Observations	1157	1157	474	836	1157	836	385
Pseudo R-squared	0.48	0.48	0.39	0.46	0.48	0.46	0.41

Robust z statistics in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%
Note: observed and predicted P approximately 0.51 each in Regressions 1-3 and Regression 5, and approximately 0.45-0.46 in Regressions 4, 6, and approximately 0.30-0.43 in Regression 7. Dependent variable equals 1 if judge votes for applicant; zero otherwise. All regressions are RSE.

[41] [Note to readers: this regression has given us some trouble, and we have not yet resolved the problems; so take it with a grain of salt.]

Let's begin with the estimates with judge fixed effects (Table 7). The first two rows show the results for the applicant-judge match and respondent-judge match variables. The coefficients are consistent with our hypothesis, and roughly the same and highly significant across the regressions. They tell us that a judge is 90 percent likely to vote for his home state, regardless of whether his home state is the applicant or respondent. This remains true whether we test these variables alone (regression (1) in each table) or control for other variables (regressions (2)-(7)).

The second, third, and fourth regressions test region, wealth, democracy, and Nato membership respectively. The results for region and Nato matches are mixed. The results for the respondent-region match variable are as predicted and significant at the 90% level of confidence when tested alone with the judge-party match variables; the results are also as predicted, but significant at the 95% level of confidence when region is included with all of the control variables in the final regression. The results for the applicant-region match variable are less clear. When tested alone with the judge-party match variables, the result counters the hypothesis at the 95% level of confidence; however the applicant-region match loses statistical significance when all of the controls are introduced in the final regression

The results for Nato are even more mixed. The applicant-judge Nato match results are statistically insignificant, although the coefficients are positively signed as we would predict. The respondent-judge Nato match variable is as predicted and statistically significant at the 99% level of confidence when the variable is tested with the party-match variables. Although when other controls are introduced in the final regression, the variable changes direction at the 99% level of confidence, this result is probably spurious. We do not have many observations when we include GDP data; and it turns out – for reasons that we do not understand – that Nato judges are much more likely to vote against Nato respondents in the cases where GDP data are missing than in cases where GDP data are not missing. The first group of cases is much larger also, increasing the bias in the results.

The problem here is that Nato and region are highly correlated – with each other, and also with our other variables. To address this problem, we tested the Nato and regional variables for joint significance in the most complete judge and case fixed effects regression (Table 9, regression 7). They were jointly significant at the 10 percent level (prob > chi2 = 0.0919).[42]

The results for wealth are as predicted and significant, and robust against alternative specifications, as the subsequent regressions show. One problem with the regressions involving per capita GDP data is, as we noted, the lack of data for many observations. The results for democracy are as predicted and significant at the 99% level of confidence when tested alone with the judge-party matches; democracy maintains its

[42] Similar or stronger results for the other specifications.

statistical significance, and is positively signed in accordance with our hypothesis when controls are introduced into the regression.[43]

As noted above, these results are roughly the same when using case fixed effects, no fixed effects, and judge and case fixed effects. The bottom line on the regressions is clear. Judges are highly biased in favor of their own countries, and of countries that match the wealth and political regime of their own. As for regional groupings – whether economic or strategic – we are hampered by multicollinearity. These groups probably matter in the aggregate, but we have insufficient variation to sort out the effects of the different variables.

D. Some Predictions

[Note to readers: this is a tentative attempt to predict votes in a pending case, based on earlier results. This section is to be revised and rewritten.]

Yugoslavia v. France

Buergenthal	USA	.4812163	no
Higgins	UK	.4742376	no
Parra-Aranguren	Venezuela	.5261022	yes
Kooijmans	Netherlands	.5772449	yes
Shi	China	.3915334	no
[ad hoc]	Yugoslavia	.9355829	yes
Guillaume	France	.2735365	no
Ranjeva	Madagascar	.5423539	yes
Vereshchetin	Russia	.398279	no
Koroma	Sierra Leone	.5354005	yes
Rezek	Brazil	.3744763	no
Al-Khasawneh	Jordan	.5354005	yes
Elaraby	Egypt	.5062385	yes
Owada	Japan	.3481943	no
Simma	Germany	.4742346	no
Tomka	Slovakia	.612675	yes

Tie, 8-8. President (China) breaks tie: therefore, France wins.

IV. Conclusion

[43] Our democracy scores come from the Polity IV data set. We also test democracy scores dichotomously at a democracy score of 6, and a democracy score of 7. The results (unreported) further confirm our hypothesis: when democracy is tested at a score of 6 or higher, the respondent-judge democracy match achieves statistical significance at the 99% level of confidence, while the applicant-judge democracy match is statistically insignificant; when controls are introduced, the same variable achieves statistical significance at the 95% level of confidence for both democracy matches. When democracy is tested at a score of 7 or higher, it yields the same overall result as when tested at 6 in the base regression; when controls are introduced, the respondent-judge match is significant at the 95% level of confidence, while the applicant-judge democracy match is statistically insignificant.

The data suggest that national bias has an important influence on the decisionmaking of the ICJ. Judges vote for their home states about 90 percent of the time. When their home states are not involved, judges vote for states that are similar to their home states – along the dimensions of wealth and political regime – about 70 to 80 percent of the time. Judges also may favor the strategic partners of their home states, but here the evidence is weaker because of multicollinearity; if they do, the magnitude of the bias is probably low.

The evidence does not prove that the ICJ is dysfunctional. For one thing, judges may vote dispassionately when the applicant and respondent are both very similar to their own state; they may also vote dispassionately when the applicant and respondent are both very different from their own state. In these cases, there is no reason for the judges to be biased, although they may be outvoted by judges who are biased. How often such cases arise is hard to say.

In addition, even biased judges may sometimes swallow their biases and vote the right way. Judges who vote 90 percent in favor of their home state vote 10 percent against their home state, and so in this small fraction of cases they may be voting sincerely. It is also possible that they are voting strategically, of course – they may vote against their own state on occasion in order to help maintain the appearance of impartiality. But the possibility of sincere voting for some cases cannot be dismissed on the basis of our data set.

Whether this level of bias matters depends on what the ICJ is supposed to accomplish. As we noted above, compliance with ICJ judgments hovers around the 60 percent level. It may be that states are aware that the ICJ judges are sometimes but not always biased, and that the states are more likely to comply with judgments when they believe that the judgments are not biased. When a state's own judge votes against it, or when judges from its bloc vote against it, it may take the judgment more seriously than otherwise, and be more inclined to comply with it. If so, the ICJ may play a useful role, albeit under narrow conditions and for limited purposes.