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# Is the International Court of Justice Biased?

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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 defenders argue that the ICJ decides cases impartially and confers legitimacy on the international legal system. Its critics 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 bias using statistical methods. We find strong evidence that (1) judges favor the states that appoint them, and (2) judges favor states whose wealth level is close to that of the judges' own state; and weaker evidence that (3) judges favor states whose political system is similar to that of the judges' own state, and (4) (more weakly) judges favor states whose culture (language and religion) is similar to that of the judges' own state. We find weak or no 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 subject matter jurisdiction over disputes between all of the members of the United Nations, virtually every state in the world.[2]

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 other 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 [international legal] system by resolving its disputes in a principled manner."[3] Critics of the ICJ— mainly politicians and diplomats from states that have recently lost their cases—argue

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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] Franck (1995, 346). Franck describes criticisms of the ICJ as "remarkably toothless." Id.

that the ICJ's rulings are politically motivated.[4] 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."[5]

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.[6] 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 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 or she 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 or her 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 make mistakes 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

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[4] See also Robinson (2003). For some expressions of skepticism by international lawyers, see Reisman (1995), Chayes and Chayes (1995).

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

[6] See Segal & Spaeth (1993); Epstein & Knight (1998); Bergara et al. (2003).

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 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.[7] 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. (Weiss 1987, 134)

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

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[7] For example, Suh (1969, 230) 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 also Hensley (1968); Samore (1956); Weiss (1987).

To test our hypothesis, we classify states into blocs—based on region, wealth, culture, military and 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. We find substantial evidence for this hypothesis.

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 is 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.

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, so virtually every state has been, from the ICJ's founding, 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.

The ICJ 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.

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 third (not counting retirements and deaths) 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 nominated by states, 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.

If there are fifteen slots but 191 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 have, by custom, one slot each.[8] Thus, the U.S., Russia, Britain, and France nearly always have a judge on the court;[9] other states rotate. Larger and wealthier states like Germany, Japan, and Canada are more likely to have representation than smaller states. Many smaller states—Austria, Bulgaria, Finland, and Turkey, for example—have never had representation. 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.

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

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[8] The distribution is not formally recorded, but is the custom (Rosenne (1995)). 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).

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

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 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.

One hundred and four cases have been filed with the ICJ; about a quarter of these were dropped before the ICJ was able to make a substantive decision. In 76 cases, the ICJ

judges voted on substantive questions.[10] The most common type of case involved a border dispute (31), followed by use of force (22), property (14), and aerial incident (14).[11] 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.[12]

*Treatment in Hungary of Aircraft and Crew of the United States of America* (1954). This case is the first between the two superpowers; it also disappeared 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 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.

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[10] In our data analysis, we consider only these 76 cases and ignore the others. The majority of the 28 remaining cases consist of pending cases or of rulings on administrative and procedural matters, which do not reveal much about the ideological decision making of judges. In addition, we also have some cases that were dropped prior to a merits decision. 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 or a ruling on a request for provisional measures). On average, each case had a bit less than two proceedings.

[11] Ginsburg & McAdams (2004). Our numbers a slightly different from theirs because we count cases in a different way.

[12] Rosenne (1995, 44).

*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.[13] 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*.[14]

*United States Diplomatic and Consular Staff in Tehran* (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). 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.

*Breard* (1998). Paraguay brought proceedings that challenged the United States' failure to advise a Paraguayan national of his rights under the Vienna Convention on Consular Relations at 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

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[13] See McWhinney (1991, 158).
[14] The Namibia (1971) advisory opinion. Lochner era jurisprudence favored property rights and interfered with the implementation of the New Deal; it was repudiated in 1937, possibly as a result of concerns about Roosevelt's court packing plan, and New Deal legislation was allowed to proceed.

subsequent cases (LaGrand (1999), brought by Germany; Avena (2004), 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). Yugoslavia filed ten applications against the ten NATO states that participated in the military intervention in Kosovo. Two of these applications were dismissed; the others are pending.

Figure 1 shows the size of the ICJ's docket, by decade. The docket declined in the 1960s and 1970s and recovered somewhat in the late 1980s and 1990s. The reasons for these changes are complex. In part, the number of states increased; but at the same time, the court seems to have become less popular among the major western states.[15]

Figure 1: Usage of ICJ: Filings
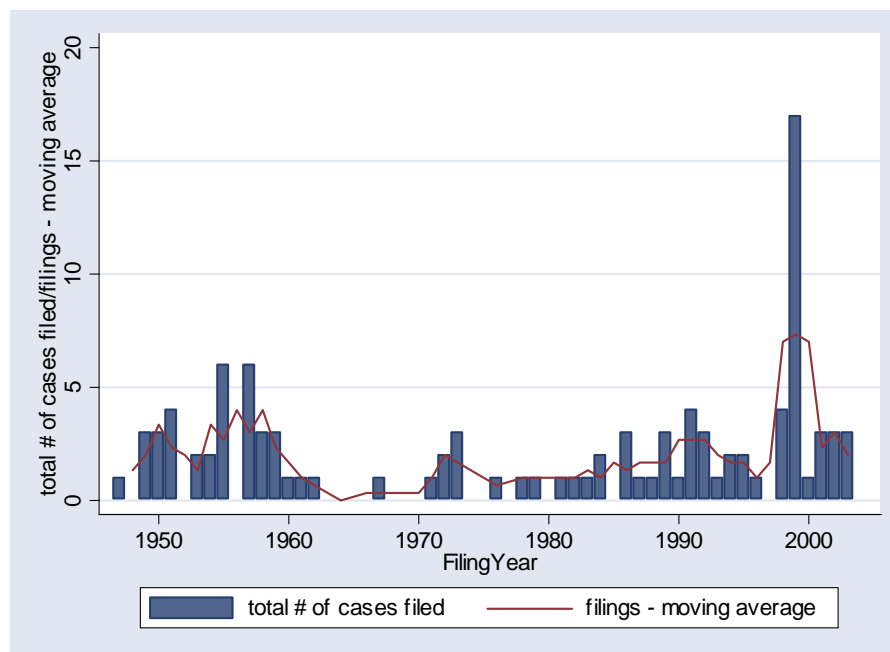


As the number of UN members has tripled over this period, it seems clear that the ICJ has become less popular, but it is not clear why.[16]

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[15] For a discussion, see Posner (2004). Part of the spike in the late 1990s is a result of Serbia's filing of 10 separate cases against the members of NATO. The cases all involved the use of force against Yugoslavia by the NATO powers.
[16] For some speculation, see Posner (2004).

**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 the ideology or party affiliation of the judge, but these studies are vulnerable to methodological objections.[17]

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. 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.[18] Even with the best 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.

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

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[17] See supra note __.

[18] 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). Some of the judges were former professors, albeit ones who have been heavily involved in international legal affairs on behalf of their country.

pool of officials who have shown reliability and the appropriate attitudes. There is evidence that the appointment of judges is a highly political process.[19] States may try to appoint judges who are already inclined to advance the national interest.

It is not the purpose of this paper to decide which of these explanations, if any, are true.[20] We are concerned with the question whether these factors or some other factors cause judges to vote in favor of the interests of the state that appoints them.[21] The contrary view—the null hypothesis—is that judges take their legal 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 or she is 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:

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[19] See Rosenne (1995).

[20] Our data set is not rich enough to allow us to do this; for some speculation about these issues, see Posner (2004).

[21] 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 strengthen and legitimate the court, and for that reason would sometimes vote against the interests of their own states. A stream of literature on the European Court of Justice (see Alter 1998, Gibson & Caldeira 1995) argues that judges of the ECJ vote impartially in order to strengthen the legitimacy of the court. Unfortunately, ECJ votes are not public, so we cannot test this hypothesis using the method advanced in this paper.

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).[22]

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.[23] 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. Culture. Judges might be biased in favor of states for which they have a cultural affinity. As proxies for culture, we use majority language and religion: judges are more likely to vote for states with the same language and religion as the judge's home state. Note that these variables might, in fact, be better proxies for political alignments, especially postcolonial alignments.

6. UN organization. We look at whether judges from states that are permanent members of the security council are more likely to vote for permanent members of the security council.

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[22] The regional representation on the ICJ is not quite the same, but alternative coding does not produce results that are appreciably different.

[23] For examples, see Bueno de Mesquita et al. (1999); Lipson (2003); Lake (1992); and Schweller (1992).

## III. Data

*A. Approach*

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.[24] The issue-by-issue test asks whether a judge voted in favor of an applicant or a respondent for a particular issue. We used both approaches, but only report our analysis and results for the case-by-case approach.[25]

Let $V_{cj} = 1$ if the vote (V) by a particular judge (j) from a particular state is in favor of the applicant in a particular case (c); otherwise $V_{cj} = 0$. The regression equation is:

$V_{cj}$ = $\beta_1$ + $\beta_{2i}$[applicant-judge nationality match] + $\beta_{3i}$[respondent-judge nationality match] + $\beta_{4i}$[applicant-judge region match] + $\beta_{5i}$[respondent-judge region match] + $\beta_{6i}$[region interaction term ($\beta_{4i}$ x $\beta_{5i}$)] + $\beta_{7i}$[applicant-judge NATO match] + $\beta_{8i}$[respondent-judge NATO match] + $\beta_{9i}$[NATO interaction term ($\beta_{7i}$ x $\beta_{8i}$)] + $\beta_{10i}$[democracy measure] + $\beta_{11i}$[wealth measure] + $\beta_{12i}$[applicant-judge language match] + $\beta_{13i}$[respondent-judge language match] + $\beta_{14i}$[language interaction term ($\beta_{12i}$ x $\beta_{13i}$)]

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[24] 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.

[25] The results are similar. 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.

$\beta_{15i}$[applicant-judge religion match] + $\beta_{16i}$[respondent-judge religion match] + $\beta_{17i}$[religion interaction term ($\beta_{15i}$ x $\beta_{16i}$)] + $u_i$

The first variable—*applicant-judge nationality 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. *Respondent-judge nationality 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 U.S. 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 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 region, the OECD, EU, and Warsaw Pact;[26] and also of language and religion. The language and religion match variables equal 1 if the applicant (or respondent) has the same majority language or religion as the judge's home state; 0 otherwise.

In the case of democracy and wealth, we can use a single variable for each. The formula for the democracy measure is: |(judge's state's democracy score—respondent's democracy score)| - |(judge's state's democracy score—applicant's democracy score)|, where the democracy score ranges from 0 (authoritarian) to 10 (democracy).[27] The

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[26] We eventually decided not to include these variables in the reported regressions because of multicollinearity problems; but we provide some data related to them below.
[27] We also test the democracy level in a dichotomous fashion, following the international relations literature.

formula for the wealth measure is: |(judge's state's logged per capita GDP—respondent's logged per capita GDP)| - |(judge's state's logged per capita GDP—applicant's state's logged per capita GDP)|. In each case, the variable takes a positive value when the judge's state and the applicant state are similar along the relevant dimension, and the respondent state's is different. The variable takes a negative value when the judge's state and the applicant are different, and the judge's state is closer to the respondent.

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.[28] Most important, we use fixed effects for cases and judges, in order to ensure that case-specific and judge-specific factors do not bias the results.[29] 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. A similar point can be made about judge-specific factors.

Before we turn to the data, we should discuss selection effects. We already mentioned one kind of selection effect: governments might appoint judges who are impartial—in the sense that they vote according to legal principles—but happen to hold an idiosyncratic view of the world that favors the legal principles that will end up helping the appointing state in any ICJ litigation. On this view, the ICJ may be biased as an institution even though the individual judges are unbiased. Because we are interested in the institution as a whole, and less interested in the motivations of the judges, this selection effect does not undermine our empirical analysis. We do note, however, that it is unlikely that jurisprudence could be so elastic that a judge could always vote in good faith in favor of his own country.

A more troublesome possible selection effect could occur at the filing stage rather than the appointment stage. Suppose that states file cases with the ICJ only when they predict that the judges will favor them. As a result, the pool of observations does not contain those cases where (say) a judge votes against his home state, and our regression results will exaggerate the extent of the bias. However, we do not think that this is a

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[28] We do not report regressions using these controls either because they make no difference or because they eliminate too many degrees of freedom.

[29] Greene (1993, 466-469).

serious problem. Respondents do not have any control over whether they will be pulled into court, so there ought to be no selection bias with respect to judges whose home states are respondents. Yet judges who are nationals of respondents vote in favor of respondents at roughly the same rate that judges who are nationals of applicants vote in favor of their home state.[30]

A final type of selection bias is related to the type of cases that the ICJ is hearing. Suppose that states tend to settle easy cases and litigate hard cases, with the result that only hard cases make it into our data set. It is possible that the ICJ judges would resolve the easy cases in an impartial way (and thus the cases are settled against the expectation of impartial adjudication), and their biases affect results only when the proper legal outcome is ambiguous. If so, then our results may exaggerate the overall bias of the ICJ.

This problem is more troubling than the others. To address it properly, we would need to have data about the entire universe of cases where the possibility of litigation in the ICJ existed. This is clearly impossible, and thus our results demonstrate only bias in the cases that actually reach judgment. We should note, however, that it seems unlikely that governments would believe that the ICJ would resolve easy cases impartially if it doesn't appear to resolve hard cases impartially. If governments observe that hard cases are being resolved in a biased fashion, then one would expect that some government would find it in its interest to try bringing a somewhat easier case to the ICJ when it expects that the ICJ judges would be heavily biased in the government's favor, as would sometimes be the case. If the ICJ resolves cases like these impartially, then this would be reflected in our results; if not, then there is no reason to doubt our results.

*B. Description of Data*

1. Who Litigates?

Although ICJ judges come from all regions, litigants do not. The main litigants have been the United States (21 cases), Britain (15), France (11), German (7), Belgium (5), Iran (5), India (4), Spain (4), Australia (4), and the Netherlands (4). Two thirds of

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[30] We do find that for some variables (language, religion), the coefficients and level of statistical significance are higher for applicant matches than for respondent matches, suggesting that this selection effect may exist to some extent.

states have never appeared before the ICJ, including China, Japan, Russia/USSR, South Korea, Brazil, Argentina, and Poland. During the Cold War, no Soviet satellite appeared before the ICJ. And, until recently, most cases have pitted Western nations against each other, or else developing countries against each other. Thus, it is immediately clear that we are unlikely to have enough variation to test our hypothesis that general regional and military alignments predict voting patterns.

## 2. Party Judges

By "party judges," we mean (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.[31] Table 1 provides our data.

Table 1: 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[32] |

Judges 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.

There is thus substantial evidence that party judges vote in favor of their home state. However, the votes of party judges may cancel each other out, and it is possible that the nonparty judges are unbiased, and therefore the ICJ as a whole renders impartial decisions.

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[31] See Weiss (1987).

[32] Percentages do not add up to 100 either because of decisions that do not clearly favor the applicant or respondent, missing data, or multiple litigants in a case.

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 2 reports results for voting by bloc or alignment.

Table 2: Bloc Voting When Judge's State Is Not a Party

| | Judge-Applicant Match | Judge-Respondent Match | t Test of Difference |
|---|---|---|---|
| Region | 0.38 86 | 0.38 66 | 0.06 |
| NATO | 0.52 44 | 0.36 139 | 1.93 |
| EU | 0.43 28 | 0.23 48 | 1.84 |
| OECD | 0.60 10 | 0.28 148 | 2.18 |
| Security council | 0.54 31 | 0.57 79 | 0.20 |
| Language | 0.75 76 | 0.41 103 | 4.81 |
| Religion | 0.66 149 | 0.37 147 | 5.07 |
| No match | 0.54 699 | | |
| All observations | 0.50 1194 | | |

Note: cells provide percentage of votes for applicant by a judge from a state that matches the applicant or respondent along the relevant dimension, and number of observations. We exclude cases where the applicant and the respondent share the characteristic in question (except in the last row), and cases where the judge's home state is a party (or the judge is an ad hoc).

The table provides support for the hypothesis of bloc voting. When the judge's state and one party match—both are members of NATO, EU, OECD, or they share language or religion—and the other party does not, the judge is more likely to vote for the matching state that the nonmatching state. For example, judges vote for the applicant 60 percent of the time when the judge's state and the applicant are members of OECD (and the respondent is not), and judges vote for the applicant 28 percent of the time when the judge's state and the respondent are members of the OECD (and the applicant is not). These results are especially strong for language and religion. Regional alignments and

security council membership seem to be irrelevant, however. The last two rows provide a basis for comparison. They show that for observations in which the judge does not match with either state along any of these dimensions, and for all observations (except when the judge's home state is a party), the percentage of votes for the applicant is around 50, as one would expect. It is odd that the percentage of votes for the applicant when the applicant and the judge both belong to the EU is less than 50 percent, but this may be attributable to factors not controlled for.

Figure 2 shows the relationship between wealth alignment and the probability of a judge favoring the applicant.[33] 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 the applicant: 5 means that the judge's state and the applicant have high GDPs while the respondent has a low GDP, or that the judge's state and the applicant have low GDPs while the respondent has a high GDP. Lower numbers mean that the judge's state's GDP is closer to the respondent's (whether high or low) and farther from the applicant's. In short, 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. The observations are divided evenly among each value on the x-axis (about 120 per value).

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[33] We used purchasing power parity-adjusted GDP figures; see Heston et al. (2002); available at: http://pwt.econ.upenn.edu/php_site/pwt_index.php.

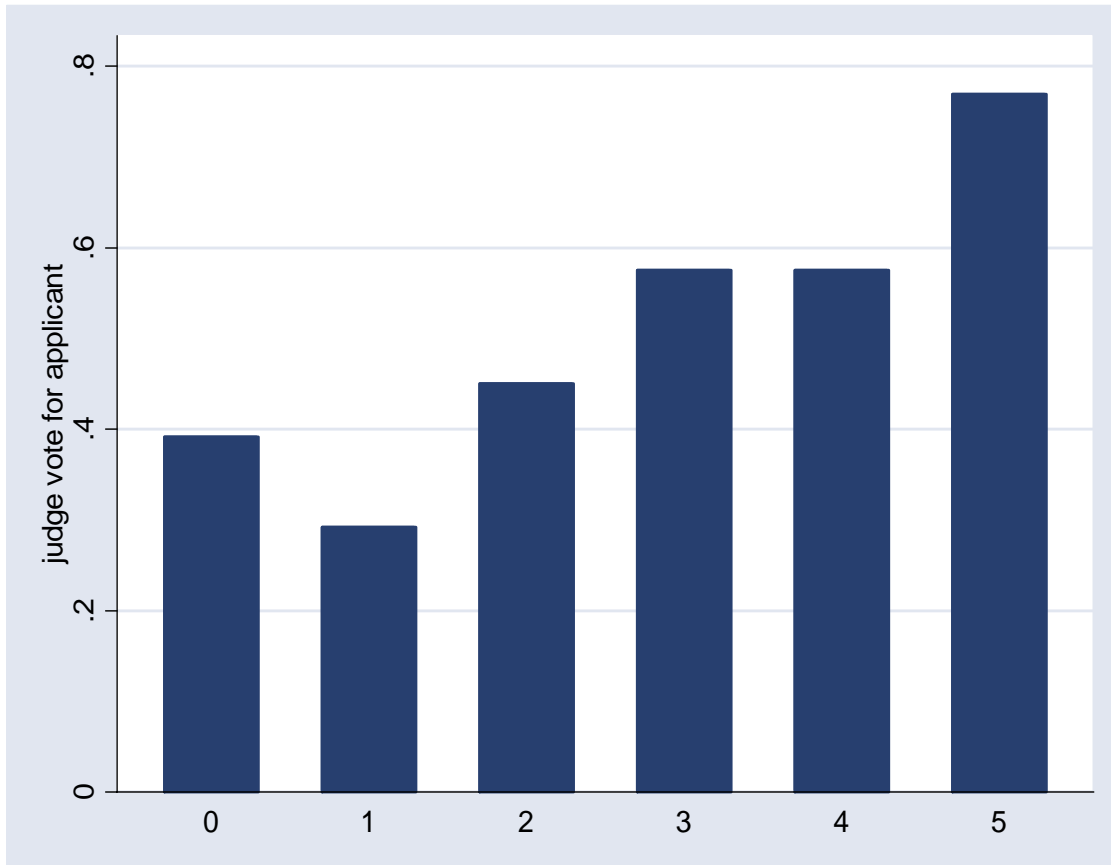Figure 2: Relationship Between Judges' Votes and Matching Economies



Figure 2 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.

Figure 3 shows a similar relationship between regime type and the likelihood of a judge favoring the applicant. 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.[34] Again, the observations are divided evenly among values (about 182 per value). A high value means that the democracy score for the judge's state is close to the democracy score of the applicant.

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[34] We use data from Polity IV.

Figure 3: Judges' Votes and Matching Political Systems
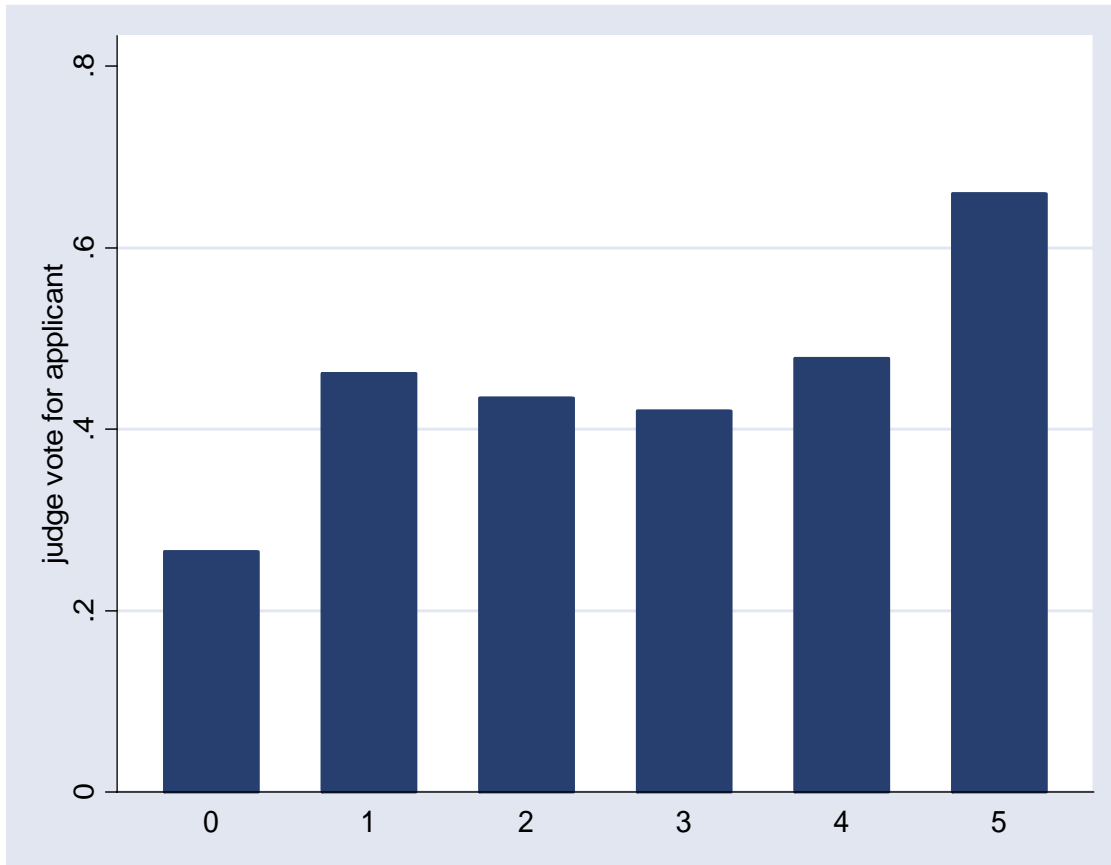


The figure shows the predicted relationship. Judges from democratic states favor democracies over nondemocracies, and judges from nondemocratic states favor nondemocracies over democracies.

## C. Results

So far we have limited ourselves to the raw data. The raw data are suggestive but of limited value. In this section, we report the results of several regressions. The main obstacle for our regressions is multicollinearity: wealth, democracy, language, religion, and the various regional groupings are all, to some extent, related—in some cases, with correlations as high as 0.5. [35] To address this problem, we run several regressions with different groups of independent variables.

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

We use a series of probit models with and without fixed effects.[36] Tables 3 and 4 report two sets of these regressions. Table 3 contains the results of regressions without fixed effects; Table 4 contains the results of regressions with judge and case fixed effects. The tables contain the standardized coefficients (the marginal probability calculated at the mean), the standard errors (in parenthesis), and the value of the z-statistic for each of the variables. 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. We do not report the results of regressions with judge fixed effects only and with case fixed effects only. These results are largely consistent with the reported results.[37]

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[36] For examples of papers that have relied on variations of this model or that justify its use, see Hausman and Wise (1978); Beck et al. (1998); Laisney and Lechter (2002). Wooldridge (2002) suggests that the fixed effects probit model has attractive features, but that its main practical drawbacks include obtaining maximum likelihood for more than about five alternatives and the difficulty in obtaining partial effects on the response probabilities, which involve complex calculation. Chamberlain suggests that a probit with two-way fixed effects can present a number of statistical irregularities. To address these concerns, we test our data with conditional logit models, and find that the results do not have any substantive impact. These results are available from the authors.

[37] We also run a series of regressions at the issue level. We find that the results are similar to those presented here. And we reran our regressions holding the sample constant and find consistent results.

Table 3: Probit Estimates with No Fixed Effects

| | (1) pwin | (2) pwin | (3) pwin | (4) pwin | (5) pwin | (6) pwin | (7) pwin | (8) pwin |
|---|---|---|---|---|---|---|---|---|
| applicant | 0.40 (6.40)*** | 0.43 (7.03)*** | 0.38 (5.98)*** | 0.38 (5.07)*** | 0.40 (6.30)*** | 0.31 (4.20)*** | 0.34 (4.80)*** | 0.27 (2.88)*** |
| respondent | -0.42 (6.63)*** | -0.40 (5.88)*** | -0.40 (5.93)*** | -0.35 (4.77)*** | -0.39 (5.85)*** | -0.40 (5.76)*** | -0.37 (5.11)*** | -0.27 (2.94)*** |
| app-region | | -0.17 (3.15)*** | | | | | | -0.12 (1.89)* |
| resp-region | | -0.10 (2.19)** | | | | | | -0.16 (2.56)** |
| inter-region | | 0.22 (3.10)*** | | | | | | 0.22 (2.52)** |
| app-religion | | | | | | 0.15 (3.43)*** | | 0.11 (2.22)** |
| resp-religion | | | | | | -0.13 (2.98)*** | | 0.02 (0.35) |
| inter-religion | | | | | | -0.04 (0.55) | | -0.15 (1.71)* |
| app-language | | | | | | | 0.24 (4.48)*** | 0.27 (4.13)*** |
| resp-language | | | | | | | -0.06 (1.35) | -0.01 (0.15) |
| inter-language | | | | | | | -0.11 (1.03) | -0.09 (0.64) |
| app-nato | | | | | -0.03 (0.42) | | | -0.13 (1.56) |
| resp-nato | | | | | -0.16 (3.72)*** | | | -0.07 (1.16) |
| inter-nato | | | | | 0.11 (1.16) | | | 0.10 (0.86) |
| democracy | | | | 0.02 (5.95)*** | | | | 0.01 (3.55)*** |
| ln per capita gdp | | | 0.11 (4.12)*** | | | | | 0.08 (2.72)*** |
| missing gdp data | | | 0.00 (0.07) | | | | | -0.01 (0.29) |
| Observations | 1437 | 1437 | 1437 | 1090 | 1437 | 1437 | 1437 | 1090 |
| Pseudo R-squared | 0.06 | 0.06 | 0.07 | 0.09 | 0.06 | 0.07 | 0.07 | 0.12 |

Robust z statistics in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%

Table 4: Probit Estimates with Judge-Case Fixed Effects

| | (1) pwin | (2) pwin | (3) pwin | (4) pwin | (5) pwin | (6) pwin | (7) pwin | (8) pwin |
|---|---|---|---|---|---|---|---|---|
| applicant | 0.52 (4.67)*** | 0.52 (4.68)*** | 0.52 (4.47)*** | 0.57 (3.73)*** | 0.52 (4.60)*** | 0.51 (3.46)*** | 0.50 (3.44)*** | 0.40 (1.65)* |
| respondent | -0.55 (4.22)*** | -0.55 (4.19)*** | -0.55 (3.87)*** | -0.48 (3.91)*** | -0.55 (3.94)*** | -0.56 (3.89)*** | -0.55 (3.93)*** | -0.45 (2.57)** |
| app-region | | -0.12 (1.15) | | | | | | -0.12 (0.83) |
| resp-region | | -0.10 (1.21) | | | | | | -0.18 (1.62) |
| inter-region | | 0.24 (1.67)* | | | | | | 0.35 (1.90)* |
| app-religion | | | | | | | 0.33 (4.40)*** | 0.27 (2.67)*** |
| resp-religion | | | | | | | -0.16 (2.40)** | -0.02 (0.21) |
| inter-religion | | | | | | | -0.11 (0.84) | -0.20 (1.21) |
| app-language | | | | | | 0.39 (3.93)*** | | 0.49 (3.93)*** |
| resp-language | | | | | | -0.10 (1.04) | | -0.12 (1.09) |
| inter-language | | | | | | -0.45 (2.65)*** | | -0.38 (1.44) |
| app-nato | | | | | -0.14 (1.08) | | | -0.32 (2.23)** |
| resp-nato | | | | | -0.18 (1.70)* | | | -0.09 (0.65) |
| inter-nato | | | | | 0.13 (0.72) | | | 0.35 (1.77)* |
| democracy | | | | 0.02 (3.22)*** | | | | 0.01 (1.72)* |
| ln per capita gdp | | | 0.13 (2.86)*** | | | | | 0.11 (1.99)** |
| missing gdp data | | | 0.07 (0.59) | | | | | 0.02 (0.09) |
| Observations | 1157 | 1157 | 1157 | 836 | 1157 | 1157 | 1157 | 836 |
| Pseudo R-squared | 0.48 | 0.48 | 0.48 | 0.46 | 0.48 | 0.49 | 0.49 | 0.49 |

Robust z statistics in parentheses
* significant at 10%; ** significant at 5%; *** significant at 1%

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The first two rows in both tables show the results for the applicant-judge match and respondent-judge match variables. The coefficients are consistent with our hypothesis, and highly significant across almost all of the regressions.

The results for wealth are as predicted and significant, and robust against alternative specifications.[38] The results for democracy are also as predicted and significant at the 99% level of confidence when tested alone with the judge-party matches; democracy maintains its statistical significance, and is positively signed in accordance with our hypothesis when controls are introduced into the regression.[39]

The results for religion and language are more mixed but still strong. When a judge's home state and the applicant have a common religion, the judge is biased toward the applicant at the 99 percent level; same, when the judge's home state and the respondent have a common religion (Table 4, regression (7)). But the latter result loses significance when all the variables are included. We have a similar result for language. When the two variables are tested jointly, they are significant at the 99 percent level for applicants although not significant for respondents.

The results for regional matches and NATO matches are weak. In many regressions, we do not get significant results, and in some regressions the signs are the opposite of what was predicted. The problems here are lack of variation (as explained before); high levels of multicollinearity;[40] and, in a few cases, not enough observations.

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[38] Because we have a significant amount of missing data for GDP, we follow a technique suggested by Cohen and Cohen (1983) where we code all missing GDP data with a 0. We then create a dichotomous missing GDP variable where missing data is coded 0, and all other values are coded with a 1. The justification for the technique is described in detail by David C. Howell at
< http://www.uvm.edu/~dhowell/StatPages/More_Stuff/Missing_Data/Missing.html>.

[39] We also test democracy scores dichotomously at a democracy score of 6, and a democracy score of 7. The results (unreported) further are consistent with 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.

[40] When tested jointly, they are significant at the 95 percent level for applicants but not significant for respondents.

We think the safest conclusion is that we cannot reject the null hypothesis that judges are not biased by NATO and regional matches.[41]

There are a number of other possible control variables that one might want to use. (1) Cold War: perhaps judges were more biased during the Cold War when the world was more polarized than it is today. (2) Jurisdiction: perhaps judges are less biased when the parties appear voluntarily (special agreement) than when one party is a respondent. (3) Type of case: perhaps certain types of cases like border disputes are less polarizing than others (like use of force), and judges are less biased in the former types of cases. (4) Judge country: perhaps judges from certain countries (for example, liberal democracies) are less biased than judges from other countries. (5) Applicant and respondent countries: perhaps some countries are more or less likely to be the subject of bias because they are generally considered good (Sweden) or bad (Libya) world citizens.

We tested all these possibilities and will not burden the reader with our results.[42] It is sufficient to say that our main results—for applicant and respondent match, for democracy, for wealth, and (somewhat weaker) for language and religion—are robust. The controls themselves do not appear to be important.[43]

What do these numbers mean? Are the biases we identify trivial or important?

As we have seen, a judge whose home state does not share a relevant characteristic with either the applicant or respondent votes in favor of the applicant with a

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[41]Another possible measure of strategic alignment is trade: it is possible that a judge from a state with good trading relations with a party would be more likely to vote for that party. We tried to test this hypothesis using data on trade flows, but because the data are relatively recent (post-1962) and partial (excluding many states), we don't have much confidence in regressions. Simple correlations suggest a positive relationship between a vote for the applicant and variables that measure the relative strength of the trading relationship between the judge's state and the applicant. There is a positive relationship, for example, between the probability of voting for the applicant and the sum of exports and imports between the judge's state and the applicant; a negative relationship between the probability of voting for the applicant and the sum of exports and imports between the judge's state and the respondent; and a positive relationship between the probability of voting for the applicant and the ratio of exports and imports with applicant over exports and imports with respondent (both weighted for judge's state's GDP and not). Most of these relationships are significant at the 10 percent level but not all of them are.

[42] Available from authors. We did not use case or judge fixed effects because of data limitations. We also reran the regressions after dropping all cases involving interveners, multiple applicants, and multiple respondents; doing this changes our results only trivially.

[43] Except that the results are somewhat stronger for the Cold War. But there are not enough post-Cold War cases for us to determine whether bias has significantly weakened since then. As Voeten (2000, 213) found that post-Cold War voting in the General Assembly shows an East-West cleavage similar to that which prevailed during the Cold War, we should be cautious about assuming that the ICJ voting would be different.

probability of around 0.5. Holding all of the other independent variables at their means, the probability of a judge voting in favor of the applicant increases by 27 percentage points when the judge and applicant are from the same country; when the judge's country matches the respondent's country, the likelihood of his voting for the applicant decreases by the about same amount. As the democracy variable increases from its minimum to its maximum, the likelihood of a judge favoring the applicant increases by 25 percentage points. As it increases one standard deviation around the median, the likelihood of favoring the applicant increases by 7 percentage points. As the GDP per capita variable increases from its minimum to its maximum, the probability that the judge favors the applicant increases by 32 percentage points. As it increases one standard deviation around the median, the likelihood increases by 5 percentage points. The probability of a judge voting in favor of the applicant increases by 24 percentage points when the judge's home state's language is the same as the applicant, compared to the case of no match. But the probability is virtually unchanged when the language match is with the respondent.

The bottom line on the regressions is clear. Judges are biased in favor of their own countries, and in favor of countries that match the economic, political, and (somewhat more weakly) cultural attributes of their own. As for regional and military groupings—whether economic or strategic—we are hampered by multicollinearity and lack of variation.[44]

## IV. Conclusion

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, culture, and political regime. 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.

We have not shown in a straightforward way that judges are consciously biased. All that we have shown is that the judges, on the margin, don't vote impartially in the

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[44] As an additional test of our results, we did an in-sample prediction on our probit regression that included every variable. We found that our regression coefficients accurately predicted case outcomes 69 percent of the time.

manner prescribed by the null hypothesis. The motivation for their vote may be psychological or cultural; the judges do not necessarily consciously choose to favor a state that is strategically aligned with the judges' own state.

The evidence also does not prove that the ICJ is dysfunctional, though it gives one pause. 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 in an unbiased manner. 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 in 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. According to one study, compliance with ICJ judgments hovers around the 60 percent level.[45] 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 use the Court and comply with judgments when they believe that the judgments are not biased. When a state's own judge votes against his home state, or when judges from a given bloc vote against a party from that bloc, 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.

The founders of the ICJ did anticipate the problem of judicial bias. Some people thought that judges should not be allowed to hear cases involving their home states, precisely because they feared that such judges could not decide the cases impartially; for the same reason, the ad hoc system was anathema. Our evidence vindicates the premise

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[45] But for doubts, see Posner (2004).

of these critics but not their remedy. For our evidence suggests that even nonparty judges would be influenced by legally irrelevant factors.

The designers themselves appeared to think that party judges would ensure that each state would get a fair hearing during deliberations. It is certainly possible that judges could not be made to understand the claims of a state whose perspective they do not share, unless one of their number was a national or representative of that state. Our evidence does not reveal whether the cases were decided more impartially than they would have been if party judges had been prohibited.

**Appendix: Variable Definitions and Sources**

Our data set consists of all cases for which there was an opinion on a preliminary objection, the merits, or a similarly substantive issue, from the beginning of the ICJ's operations in 1946, through March 1, 2004. For each case, we determine the vote of each judge on each issue; whether the judge ultimately sided with one party or the other; and whether the judge was a part of the majority, concurrence, or dissent. Records improve over time; in a few earlier cases, we could not always answer these questions for a particular judge in a particular case, in which case the observation was dropped.

Some cases involved multiple proceedings with separate votes (for example, on a preliminary objection and then on the merits). In the reported regressions, we generally used the latest proceeding unless it seemed minor (like an interpretive case); but we reran our regressions using all the proceedings, and the results differ only trivially.

Table A1 contains our main variables with coding and sources.

## Table A1: Variable Coding and Sources

| Variables | Coding and Sources |
|---|---|
| pwin | The dependent variable. Equal to 1 if the judge rules in favor of the applicant; equal to 0 if otherwise. |
| applicant | Equal to 1 if the applicant's country and judge's country match; equal to 0 if otherwise. |
| respondent | Equal to 1 if the respondent's country and judge's country match; equal to 0 if otherwise. |
| app-region | Equal to 1 if the region of the applicant's country and the judge's country are the same. Equal to 0 if otherwise. Regions are defined by individual continents. |
| res-region | Equal to 1 if the region of the respondent's country and the judge's country are the same. Equal to 0 if otherwise. Regions are defined by individual continents. |
| inter-region | App-region multiplied by res-region. |
| app-nato | Equal to 1 if the respondent's country and the judge's country are both members of NATO; equal to 0 if otherwise. |
| res-nato | Equal to 1 if the respondent's country and the judge's country are both members of NATO; equal to 0 if otherwise. |
| inter-nato | app-nato multiplied by res-nato |
| app-language | Equal to 1 if applicant and judge's state have same majority language; equal to 0 otherwise. |
| res-language | Equal to 1 if respondent and judge's state have same majority language; equal to 0 otherwise. |
| inter-language | App-language multiplied by res-language |
| app-religion | Equal to 1 if applicant and judge's state have same majority religion; equal to 0 otherwise. |
| res-religion | Equal to 1 if respondent and judge's state have same majority religion; equal to 0 otherwise. |
| inter-religion | app-religion multiplied by res-religion. |
| democracy | Absolute value of the difference between the judge's state's democracy score and the applicant's democracy score minus the difference between the judge's state's democracy score and the respondent's democracy score. Democracy scores are from Polity IV. |
| ln per capita gdp | Absolute value of the difference between the judge's state's logged per capita GDP and the applicant state's logged per capita GDP minus the difference between the judge's state's logged per capita GDP and the respondent's logged per capita GDP. Equal to 0 is data is missing. Data comes from the Penn World Tables. The figures are adjusted to a 1996 base year and adjust for purchasing power parity. |
| missing gdp data | Equal to 1 if applicant, respondent, or judge country does not have missing GDP data. Equal to 0 if the applicant, respondent, or judge country has missing GDP data. |

Table A2: Summary Statistics for Variables Used in Regression Analysis

| Variable | Observations | Mean | Std. Dev. | Min | Max |
|---|---|---|---|---|---|
| pwin | 1437 | 0.51 | 0.50 | 0 | 1 |
| applicant | 1560 | 0.06 | 0.23 | 0 | 1 |
| respondent | 1560 | 0.06 | 0.23 | 0 | 1 |
| app-region | 1560 | 0.31 | 0.46 | 0 | 1 |
| resp-region | 1560 | 0.34 | 0.47 | 0 | 1 |
| iregion | 1560 | 0.23 | 0.42 | 0 | 1 |
| ln gdp per cap. | 1560 | 0.02 | 0.56 | -2 | 2 |
| missing gdp data | 1560 | 0.49 | 0.50 | 0 | 1 |
| democracy | 1160 | -0.89 | 5.35 | -10 | 10 |
| app-nato | 1560 | 0.11 | 0.31 | 0 | 1 |
| resp-nato | 1560 | 0.19 | 0.39 | 0 | 1 |
| inato | 1560 | 0.07 | 0.26 | 0 | 1 |
| app-language | 1560 | 0.13 | 0.33 | 0 | 1 |
| resp-language | 1560 | 0.15 | 0.36 | 0 | 1 |
| ilang | 1560 | 0.04 | 0.19 | 0 | 1 |
| app-religion | 1560 | 0.26 | 0.44 | 0 | 1 |
| resp-religion | 1560 | 0.27 | 0.44 | 0 | 1 |
| ireligion | 1560 | 0.12 | 0.33 | 0 | 1 |

*interaction terms are omitted

# References

Alter, Karen J.. 1998. Who are the 'Masters of the Treaty'?: European Governments and the European Court of Justice. *International Organization*. 52: 121-147.

Beck, Nathaniel, Jonathan N. Katz, and Richard Tucker. 1998. Taking Time Seriously: Time-Series-Cross Section Analysis with a Binary Dependent Variable. *American Journal of Political Science* 42: 1260-1288.

Bergara, Mario, Barak D. Richman, and Pablo T. Spiller. 2003. Modeling Supreme Court Strategic Decision Making: The Congressional Constraint. *Legislative Studies Quarterly* 28: 247-280.

Bueno de Mesquita, Bruce, James D. Morrow, Randolph M. Siverson, and Alastair Smith. 1999. An Institutional Explanation of the Democratic Peace. *American Political Science Review* 93: 791-807.

Chayes, Abram and Antonia Handler Chayes. 1995. *The New Sovereignty: Compliance With International Regulatory Agreements*.

Cohen, J. and P. Cohen. 1983. *Applied Multiple Regression/Correlation Analysis for the Behavioral Sciences*. 2nd ed. Hillsdale, NJ: Erlbaum Press.

Epstein, Lee, and Jack Knight. 1997. *The Choices Justices Make*. Washington, DC: Congressional Quarterly Press.

Feenstra, Robert C. 2002. U.S. Import Data. http://data.econ.ucdavis.edu/international/index.html.

Franck, Thomas. 1995. *Fairness in International Law and Institutions*. New York: Oxford University Press.

Gibson, James L. and Gregory A. Caldeira. 1995. "The Legitimacy of the Court of Justice in the European Union: Models of Institutional Support." *American Political Science Review* 89: 356-376.

Ginsburg, Tom and Richard H. McAdams. 2004. Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution. *William & Mary Law Review* 45: 1229-1339.

Greene, William. 1993. *Econometric Analysis*. 2nd ed. New York: Macmillan Publishing Company.

Hausman, Jerry A. and David A. Wise. 1978. A Conditional Probit Model for Qualitative Choice: Discrete Decisions Recognizing Interdependence and Heterogeneous Preferences. *Econometrica* 46: 403-426

Hensley, Thomas R.. 1968. National Bias and the International Court of Justice. *Midwest Journal of Political Science* 12: 568-586.

Heston, Alan, Robert Summers and Bettina Aten. 2002. *Penn World Table Version 6.1*. Philadelphia: Center for International Comparisons, University of Pennsylvania. Laisney, Francois and Michael Lechter. 2002. Almost Consistent Estimation of Panel Probit Models with "Small" Fixed Effects. *ZEW Discussion Paper* 02-64.

Lake, David. 1992. Powerful Pacifists: Democratic States and War. *American Political Science Review* 86: 24-37.

Lipson, Charles. 2003. *Reliable Partners: How Democracies Have Made a Separate Peace*. Princeton, NJ: Princeton University Press.

Marshall, Monty G. and Keith Jaggers. 2002. *Polity IV Dataset*. College Park, MD: Center for International Development and Conflict Management, University of Maryland.

McWhinney, Edward, Douglas Ross, Grigory Tunkin, Vladen Vereshchetin (eds.). 1991. *From Coexistence to Cooperation: International Law and Organization in the Post-Cold War Era*. Boston: Martinus Nijhoff.

Posner, Eric A. 2004. The Politics of the International Court of Justice. Unpublished m.s.

Reisman, Michael. 1995.  Metamorphoses: Judge Shigeru Oda and the International Court of Justice, *The Canadian Yearbook of International Law* 185.

Religion Statistics by Country. 2004. *World Facts and Figures*. http://www.worldfactsandfigures.com/complete_list.php

Robertson, Raymond. 2004. International Language Data. http://www.macalester.edu/research/economics/PAGE/HAVEMAN/Trade.Resources/Data/Gravity/language.txt

Robinson, Davis R.. 2003. The Role of Politics in the Election and the Work of Judges of the International Court of Justice. *Proceedings of the American Society of International Law*.

Rosenne, Shabtai. 1995. *The World Court: What It Is and How It Works*. Boston: Martinus Nijhoff.

Samore, William. 1956. National Origins v. Impartial Decisions: A Study of World Court Holding. *Chicago-Kent Law Review* 34: 193-221.

Schweller, Randall. 1992. Domestic Structure and Preventive War: Are Democracies More Pacific? *World Politics* 44: 235-269.

Segal, Jeffrey A. and Harold J. Spaeth. 1993. *The Supreme Court and the Attitudinal Model*. New York: Cambridge University Press.

Suh, Il Ro. 1969. Voting Behavior of National Judges in International Courts. *American Journal of International Law* 63: 224-236.

Voeten, Erik. 2000. Clashes in the Assembly. *International Organization* 54: 185-215.

Weiss, Edith Brown. 1987. Judicial Independence and Impartiality: A Preliminary Inquiry. pp. 123-154 in *The International Court of Justice at a Crossroads*, edited by Lori F. Damrosch. Dobbs Ferry, NY: Transnational Publishers, Inc.

Wooldridge, Jeffrey M. 2003. *Econometric Analysis of Cross-Section and Panel Data*. Cambridge, MA: MIT Press.

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