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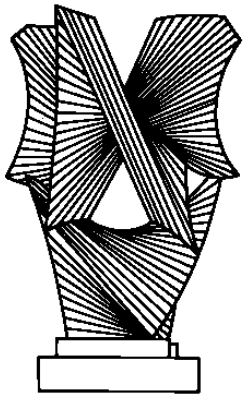

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Abstract. The International Court of Justice is the judicial organ of the United Nations and the preeminent international court, but its caseload is light and has declined over the long term relative to the number of states. This paper examines evidence of the ICJ's decline, and analyzes two possible theories for this decline. The first is that states stopped using the ICJ because the judges did not apply the law impartially but favored the interests of their home states. The second is that the ICJ has been the victim of conflicting interests among the states that use and control it.

Introduction

The International Court of Justice is the judicial organ of the United Nations, and the only international court with general subject matter jurisdiction over international legal disputes. As such, it has important symbolic value, and embodies the hopes of those who seek to advance the rule of law in interstate relations. Its actual record, however, is mixed. States frequently refuse to submit to its jurisdiction or comply with its judgments. It has not resolved any major international controversy between great powers. And although several controversies have ended with an ICJ judgment with which the loser complied, one cannot always isolate the ICJ's contribution to the resolution from that of regular diplomatic processes.

At one time, scholars could blame the ICJ's problems on the cold war, and indeed the ICJ's docket increased in the 1980s and 1990s. But this short-term increase only masked the long-term trend. Adjusted for the increase in the number of states over its sixty year history, usage of the ICJ has unmistakably declined. The decline is also visible in other kinds of evidence, such as submission to the ICJ's jurisdiction and the type of cases heard by the ICJ.

Why did the ICJ decline? After discussing the evidence, I will make two arguments. Both arguments assume that the ICJ enjoyed initial success because governments were optimistic, and hoped that by using the ICJ in good faith, they could help it achieve its mission. The first argument is that the ICJ declined because states could not trust judges to apply the law

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impartially. Instead, the judges applied the law in a way that favored the interest of their home states or reflected cultural prejudices. The second argument is that the ICJ declined because it could not please major powers, which would not allow themselves to be defied, while also maintaining the loyalty of minor powers, which always suspected that the ICJ would be a puppet of the major powers. Both arguments are speculative because the evidence is not robust enough to test them in a refined manner. They are efforts to make sense of the general long-term trend.

I. Background[2]

The ICJ derives its authority from 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 potentially been a party to litigation from the ICJ's founding. 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 can obtain jurisdiction in three main 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.

Jurisdiction by special agreement arises when the disputing states agree to submit their dispute to the ICJ. 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. In some cases, however, the parties to the special agreement have persuaded the court to appoint a limited number of judges to the case.[3]

Next we have treaty-based jurisdiction. Many treaties provide that if a dispute arises under the treaty, the ICJ will have jurisdiction. The Vienna Convention on Consular Relations is one such treaty; one of its optional protocols, because signed by the U.S. and Mexico, authorized ICJ jurisdiction in the recent Avena case, in which Mexico accused the U.S. of failing to provide proper notice of their consular rights to Mexican nationals who had been arrested by local police.

[2] This section is taken, with a few modifications, from Eric A. Posner and Miguel de Figueiredo, Is the International Court of Justice Politically Biased? (unpub. m.s. 2004).

[3] Such "ad hoc chambers" were used in cases involving Canada and the U.S. (1981); Burkino Faso and Mali (1985), El Salvador and Honduras (1986), and the U.S. and Italy (1987). See Shabtai Rosenne, The World Court: What It Is and How It Works 56-58 (Terry D. Gill ed. 2003).

Finally, we have compulsory jurisdiction. Many states have filed a declaration of compulsory jurisdiction, by which they confer jurisdiction to the ICJ in advance of any dispute. 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, many states have, through reservations, consented to compulsory jurisdiction only for a narrow range of cases. No permanent member of the security council remains subject to compulsory jurisdiction except the U.K..

In theory, any dispute involving international law can come before the ICJ; in practice, a few types of dispute have dominated its docket. Table 1 provides the details.

Table 1: Types of Cases

Type of Case[4]	**Frequency**
Aerial Incident	14
Border Dispute	33
Diplomatic Relations	8
Diplomatic Relations/Property	1
Use of Force	22
Property	14
Trusteeship/Decolonization	4
Other	9
Total	*105*

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 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 nominated by states,[5] 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.

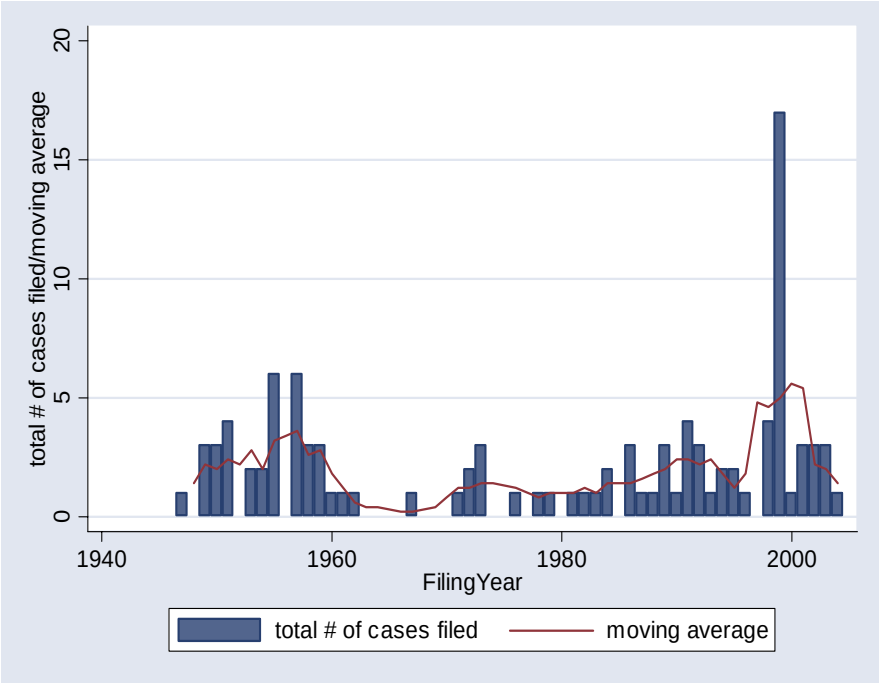
[4] From Tom Ginsburg and Richard H. McAdams, Adjudicating in Anarchy: An Expressive Theory of International Dispute Resolution, 45 William & Mary Law Review 1229 (2004). Two cases postdate their classification.
[5] The actual nomination procedure is more indirect.

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. Thus, the U.S., Russia, Britain, China, and France have always had a judge on the court;[6] other states rotate. Among the rotating states, larger states – such as Japan and Germany – have had more representation on the court over time than smaller states, many of which have not had any representation at all. 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.

II. Decline

The decline of the ICJ is best seen from its usage data. Figure 1 shows the history of filings of contentious cases.

Figure 1: Filings



[6] China did not have a judge from 1967 to 1985.

The bars show the number of filings in a given year; they range from 0 (in various years) to 17 (in 1999); the line shows the five year moving average. One can perhaps discern a gradual trend upward, driven almost entirely by the spike in 1999. What does seem true is that ICJ usage enjoyed a recovery in the 1980s and 1990s from a trough in the 1960s and 1970s. Eyeballing the graph, it's not clear whether the recovery brings us back to the earlier level or to a higher level.

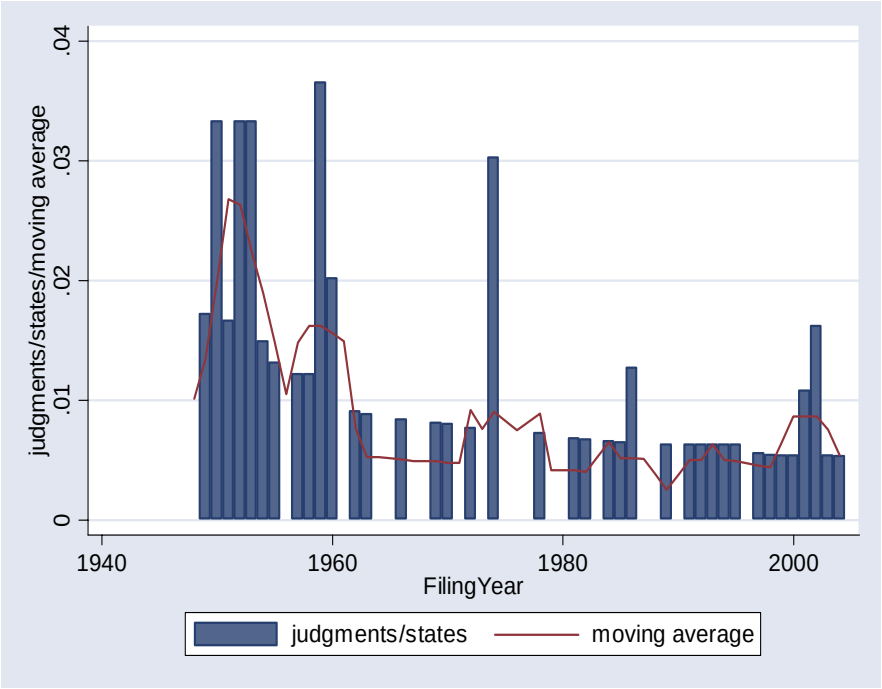
But the raw data in Figure 1 are misleading for several reasons.

1. They do not take account of the large increase in the number of states that can benefit from ICJ dispute resolution. In 1946, there were only 55 UN members; today there are 191.[7] Adjusting for the increase in the number of states, the U shape of the curve remains, but the decline is more precipitous, the recovery more gradual, and the initial usage level is never matched.
2. We have counted many cases that never progressed beyond the filing stage and required the ICJ to make a non-ministerial decision. These cases only add noise because the ICJ does not actually perform any function.
3. The final decade of the ICJ's existence contained one anomalous case. In 1999, Yugoslavia filed proceedings against all the Nato countries for violating international law during the intervention in Kosovo. Thus, we count 10 cases for what is essentially a single case with multiple respondents.

When the figures are adjusted, a new pattern emerges. We see a decline in usage of the ICJ with, at best, a very gradual recovery during the 1990s, but not to the levels seen in the 1950s. Figure 2 provides a slightly different perspective, focusing on judgments rather than filings, though a graph of the filings would be quite similar.[8]

[7] Available at <http://www.un.org/Overview/growth.htm>.
[8] I divide by number of states, and we use only cases in which a judgment is rendered – thus eliminating filings that never reach the judges, or are subject only to scheduling orders and the like. I don't adjust for the Yugoslavia case.

Figure 2: Judgments/States



The conclusion that the popularity of the ICJ has declined is bolstered by several factors.

First, the ICJ is being abandoned by the major powers. Consider the countries that currently have the ten largest economies: USA, China, Japan, India, Germany, U.K., France, Italy, Brazil, and Russia. Four of these states – China, Japan, Brazil, and Russia (U.S.S.R.) – have never brought a proceeding, and never been a respondent beyond the filing stage. Table 2 lists cases involving the other major parties, excepting special agreement cases.

Table 2: Cases Involving Major Powers

Applicant	Respondent	Filing Year
1946–1965		
United Kingdom	Albania	1947
United Kingdom	Norway	1949
France	USA	1950
United Kingdom	Iran	1951
Greece	United Kingdom	1951
Italy	France	1953
France	Norway	1955
Portugal	India	1955

Applicant	Respondent	Filing Year
Switzerland	USA	1957
Cameroon	United Kingdom	1961
1966–1985		
India	Pakistan	1971
Germany	Iceland	1972
United Kingdom	Iceland	1972
Australia	France	1973
New Zealand	France	1973
USA	Iran	1979
Nicaragua	USA	1984
1986–2004		
USA	Italy	1987
Libya	USA	1992
Libya	United Kingdom	1992
Iran	USA	1992
New Zealand	France	1995
Paraguay	USA	1998
Yugoslavia	France	1999
Yugoslavia	Germany	1999
Yugoslavia	Italy	1999
Yugoslavia	USA	1999
Yugoslavia	United Kingdom	1999
Pakistan	India	1999
Germany	USA	1999
Congo, Republic of	France	2003
Mexico	USA	2003

In the first twenty year period, a major power was an applicant in 60 percent of the cases, and a respondent in 60 percent of the cases. In the second period, a major power was an applicant a little under 50 percent of the time, and a respondent a little under 50 percent of the time (depending on how one counts India). In the last period, a major power was an applicant in only 13 percent of the cases; a major power was a defendant in *100 percent* of the cases.[9]

This trend is suggestive. Increasingly, major powers are not applicants that drag other states into courts; they are respondents being dragged by other, usually weaker, states into court. It thus would not be surprising if major powers have begun to sour on the court. I will discuss the possible reasons for this trend in Part IV.

[9] The trend holds up regardless of whether one counts the Yugoslavia v. Nato case as one or many.

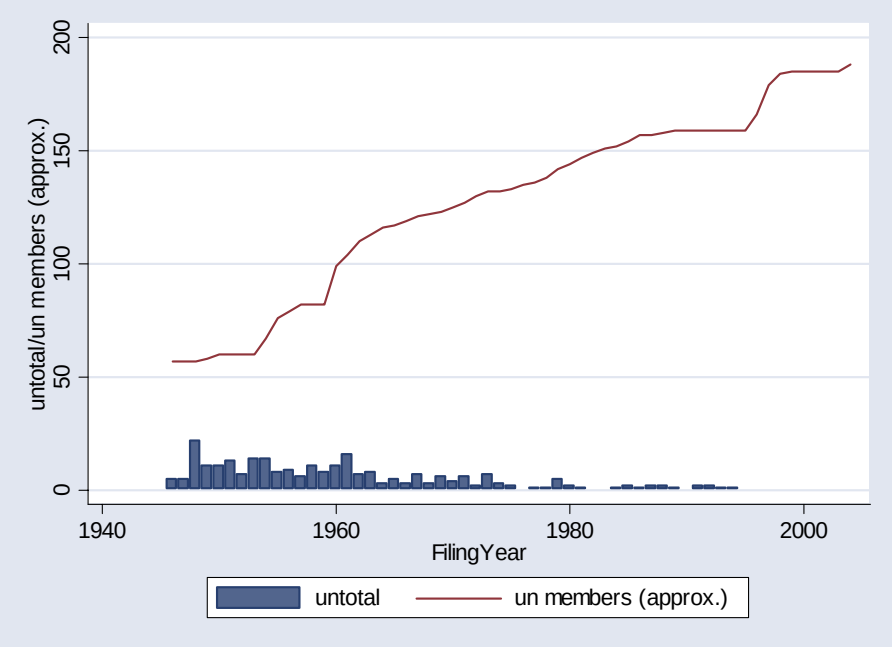
The decline of major power interest in ICJ adjudication is reflected not only in these usage statistics; also recall that with the United States' withdrawal from compulsory jurisdiction in 1985,[10] France's in 1974,[11] and China's in 1972,[12] only the U.K., among permanent security council members, is subject to this form of jurisdiction. Among the top thirty states (measured by current GDP), only Japan, the U.K., India, Canada, Mexico, Spain, Australia, the Netherlands, Poland, the Philippines, Pakistan, Belgium, and Egypt have submitted to compulsory jurisdiction; and, among these states, Japan, Poland, the Philippines, and Egypt have never appeared before the ICJ – as respondent *or* applicant – under any head of jurisdiction. The ICJ has historically been dominated by the U.S., the U.K., and France. In the last twenty years, these states, as a group, brought a case only once.

Second, although the number of states that have filed under the optional clause has roughly doubled since 1946, the fraction of states that has filed has declined, and so has its practical value in providing the ICJ with jurisdiction. In 1950, 60 percent of the states were subject to compulsory jurisdiction; today, this fraction has declined to 34 percent. And, of these states, few have been involved in ICJ litigation. Focusing on cases where the applicant successfully invoked compulsory jurisdiction and then prevailed on the merits,[13] we count four instances from 1946 to 1965, eleven instances from 1966 to 1985, and three instances from 1986 to 2004. Thus, the doubling of states subject to compulsory jurisdiction has had no impact on its usage.[14] This may be due in part to states' use of reservations to limit their consent to ICJ jurisdiction even when they submit to compulsory jurisdiction.[15]

[10] Bernard Weintraub, U.S. Limits its Role at Court in Hague, N.Y. Times, Oct. 8, 1985, at A5.
[11] Ernst-Ulrich Petersmann, Constitutionalism and International Adjudication, 31 N.Y.U. J. Int'l L. & Pol. 753, 756 (1999).
[12] 27 International Court of Justice Yearbook 52 (1972-1973).
[13] I limit myself to these cases because in many instances, the invocation of compulsory jurisdiction is clearly spurious (for example, when Yugoslavia filed a proceeding against the U.S. in 1999, which had withdrawn from compulsory jurisdiction fourteen years earlier).
[14] An account of optional clause litigation, published in 1987, argued that there was only one case after 1951 in which the optional clause alone clearly provided the basis for jurisdiction, the applicant prevailed, and the respondent complied with the judgment (Temple of Preah Vihear). Two other cases provided weak evidence that compulsory jurisdiction mattered, but no case after 1961. See Gary L. Scott and Craig L. Carr, The ICJ and Compulsory Jurisdiction: The Case for Closing the Clause, 81 Amer. J. Int'l L. 57 (1987). My review of post-1987 cases reveals none in which the optional clause was successfully invoked, the respondent lost the case, and the respondent complied with the judgment.
[15] Id.

Third, states have showed less and less enthusiasm for treaty-based jurisdiction.[16] From 1946 to 1965, states entered (on an annual basis) 9.7 multilateral or bilateral treaties that contained clauses that granted jurisdiction to the ICJ. This number dropped to 2.8 per year for the period from 1966 to 1985, and to 1.3 per year from 1986 to 2004.[17] These numbers are absolute; recall again the number of states tripled during this period. Figure 3 provides the trend; the line shows the number of states. The U.S., which was an enthusiastic user of ICJ treaty clauses in the 1950s and 1960s, apparently has not used this type of clause a single time since the early 1970s.[18]

Figure 3: ICJ Treaty-Based Jurisdiction



Fourth, the only positive trend for the ICJ has involved special agreement cases. The ICJ had only four such cases during the first half of its existence; it has had ten during its second half. But in special agreement cases, the ICJ is just a glorified arbitration panel; indeed, states

[16] My source for this information are the ICJ yearbooks and the ICJ website. These sources provide no information after 1994, and it's not clear whether that is because there have been on treaties with ICJ clauses since then, or because the ICJ stopped collecting and reporting this information. Note that the treaties under consideration are limited to those registered with the UN.

[17] Focusing just on multilateral treaties, the numbers are 2.8, 2.0, and 1.3. One might argue that reason for this annual decline is that the earlier treaties were more important and the later treaties were less important, but this seems unlikely, especially given the large number of new states from the 1960s on.

[18] Based on my search of the Westlaw U.S. treaty data base.

now routinely exclude most of the ICJ judges from the panel that hears the case. While the ICJ may serve a useful function as an arbitration panel, this was not its purpose.

Fifth, during the period of the ICJ's existence, global interaction has expanded dramatically. There are far more opportunities for (say) aerial incidents today than in the past because there is far more crossborder air traffic, even holding the number of states constant. Thus, in determining relative usage, using the number of states as the denominator probably exaggerates the ICJ's importance.[19] At the same time, it must be acknowledged that there are many more international courts than in the past – the ECJ, for example, may have taken much of the business of the ICJ – but many of these have business that the ICJ has never had (the WTO), and many others have not had much business so far (ITLOS). So although it is probably impossible to measure the ICJ workload correctly adjusted for the expansion of global interaction, it seems likely that it has lagged globalization.

A note on compliance. One might ask whether usage of the ICJ has declined because states have failed to comply with its judgments. This question just begs the further question why states would not comply with the ICJ's judgments, but the data may be interesting nonetheless.

Measuring compliance with ICJ judgments is difficult for various reasons: many states comply but only years after the judgment was rendered; other states comply but only partially; and so forth. I largely defer to the work of others. Ginsburg and McAdams provide the most complete data.[20] They examined the post-judgment behavior of states, and classified it as either compliance or noncompliance. I depart from their coding in one respect: I drop contentious cases in which the respondent prevailed. The reason is that if the respondent prevails, it is not clear whether the applicant "complies": it might pursue its claim diplomatically, for example. Indeed, an applicant could do this consistently with international law, for an adverse judgment based on jurisdiction or prudential grounds does not negate a claim under international law. By contrast, it seems reasonably clear that a respondent who loses a case either complies with it by giving the

[19] Many new treaties since the ICJ's founding have conferred jurisdiction on it in the case of disputes (often through optional protocols), thus increasing the number of international legal disputes that could be potentially resolved by the ICJ without the consent of one party, but apparently not having this effect.

[20] Ginsburg and McAdams, supra. There are two other partial sources (Jonathan I. Charney, Disputes Implicating the Institutional Credibility of the Court: Problems of Non-Appearance, Non-Participation, and Non-Performance, in The International Court of Justice at a Crossroads 288 (Lori Fisler Damrosch ed., 1987); Colter Paulson, Compliance with Final Judgments of the International Court of Justice Since 1987, 98 A.J.I.L. 434 (2004)), which are roughly but not fully consistent with Ginsburg and McAdams.

applicant what it sought, or violates it by refusing to change its behavior.[21] (I include all special agreement cases, which do not technically have an applicant and respondent.)

I divide the cases into twenty year periods, and compute the mean compliance rate. I provide separate figures for all cases and for compulsory jurisdiction and treaty-based cases, as special agreement cases are more like arbitration than like judicial cases. The results are in Table 3.

Table 3: Compliance Trends[22]

	All Cases		**Excluding Special Agreement Cases**	
	N	Mean	N	Mean
1946–1965	6	0.83	5	0.80
1966–1985	5	0.20	4	0.00
1986–2004	7	0.29	6	0.17
Total period	18	0.44	15	0.33

The table shows that the compliance rate – whether including or excluding special agreement cases – was much higher in the ICJ's first twenty years than in its last twenty years. This is consistent with the conjecture that states have lost confidence in the ICJ after an initial honeymoon period. There has been a slight recovery in the last few years, however. In any event, there are too few observations to have much confidence in the statistics.

***

The usage data (and also the compliance data) are vulnerable to the objection that they result from selection effects. It is theoretically possible that usage of the ICJ has declined because with every judgment international law has become clearer, and thus more and more states are able to settle their disputes without resort to adjudication. Similarly, one might argue that compliance rates have declined because states have brought harder and harder cases to the ICJ in response to its earlier successes. Both of these claims are implausible. Hundreds of treaties are ratified every year, and every new treaty creates new legal issues. We need only compare the ICJ with the European Court of Justice, which has enjoyed steadily increasing usage, to see how

[21] Even here, however, one might argue that simultaneous diplomatic pressures, rather than the ICJ judgment itself, drives compliance. However, I will assume otherwise.

[22] Limited to cases for which we have compliance data and either the applicant prevailed or jurisdiction was based on special agreement.

implausible they are, for on this account the ECJ's increasing usage statistics would suggest that it has been a failure.

In sum, substantial evidence shows that the ICJ has been declining over its history, though it enjoyed a small shot of adrenaline when the cold war ended. Some scholars may disagree with me,[23] and no doubt there is room for disagreement, but I want to turn now to the question of why. I will suggest below two possible explanations. The first is a theory of institutional failure; the second is a theory of geopolitical conflict.

III. An Institutional Theory of Decline

A first hypothesis for the decline of the ICJ is that its judges have not applied international law in an impartial manner. The logic of this argument is simple. Suppose that two states enter a treaty, and, anticipating that ambiguities may arise in the future, also agree that the ICJ will resolve those ambiguities. Suppose further that it turns out that the ICJ is biased in favor of a certain type of state – rich or poor, northern or southern, eastern or western, or whatever. The ICJ's biases may initially be hidden, but as they become clear, whichever states are disfavored by the bias will be reluctant to agree to grant the ICJ jurisdiction by treaty. Similarly, disfavored states will withdraw from compulsory jurisdiction, or narrow it with reservations, or not submit to compulsory jurisdiction in the first place. Or states will submit cases by special agreement only when they can eliminate certain judges from the panel that hears the case. We have seen that all these things have been happening. But is there evidence of judicial bias – where bias means failure to apply international law in an impartial manner?

A. Voting Behavior

In another paper, I and a coauthor, Miguel de Figueiredo, looked at the voting patterns of ICJ judges.[24] We tested the hypothesis that ICJ judges vote the interest of their home states. Our first test was to look at whether judges voted in favor of their home states when their home states were parties. Table 4 provides the raw data.

[23] E.g., Edward McWhinney, Judicial Settlement of International Disputes (1991); Rosenne, supra. Skeptics about the ICJ include Abram Chayes & Antonia Handler Chayes, The New Sovereignty: Compliance With International Regulatory Agreements (1995); Michael Reisman, Metamorphoses: Judge Shigeru Oda and the International Court of Justice, The Canadian Yearbook of International Law 185 (1995).
[24] Posner and Miguel de Figueiredo, supra.

Table 4: Votes of Party and Nonparty Judges in Proceedings[25]

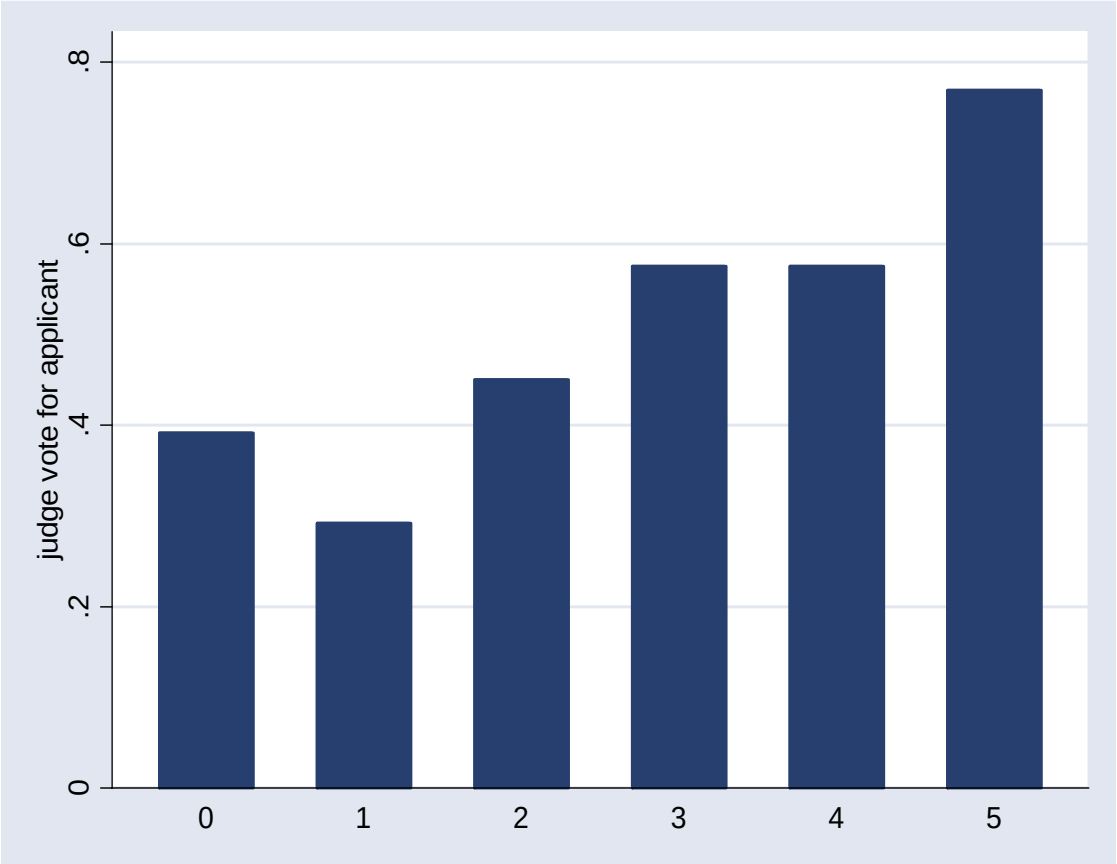
Judge	**Vote in Favor of Applicant**		**Vote in Favor of Respondent**	
	ratio	percentage	ratio	percentage
Party—national	15/18	83.3	34/38	89.5
Party—ad hoc	57/63	90.5	37/41	90.2
Party—total	72/81	88.9	71/79	89.9
Nonparty	656/1356	48.4	638/1358	47.0

Clearly, the answer is yes. Judges vote in favor of the state that appointed them (in the case of ad hoc judges) or the state of which they are a national (in the case of permanent judges) about 90 percent of the time.

What about the judges whose home states are not parties of the dispute? One might think that they would vote impartially. However, we hypothesized that these judges would vote in favor of the state with closer political or economic links to their home states. We looked at a variety of measures – including membership in OECD or Nato, regional blocs, and so forth. Our best predictors of judicial votes were the following. First, judges voted in favor of the state party whose economy was closer in size to the economy of the judge's home state. Judges from wealthy states vote in favor of wealthy states; judges from poor states vote in favor of poor states. Second, judges voted in favor of the state whose political system was closer to that of the judge's home state – measured by the extent of democracy. Judges from democratic states vote in favor of democratic states; judges from authoritarian states vote in favor of authoritarian states. Figures 1 and 2 illustrate these relationships.

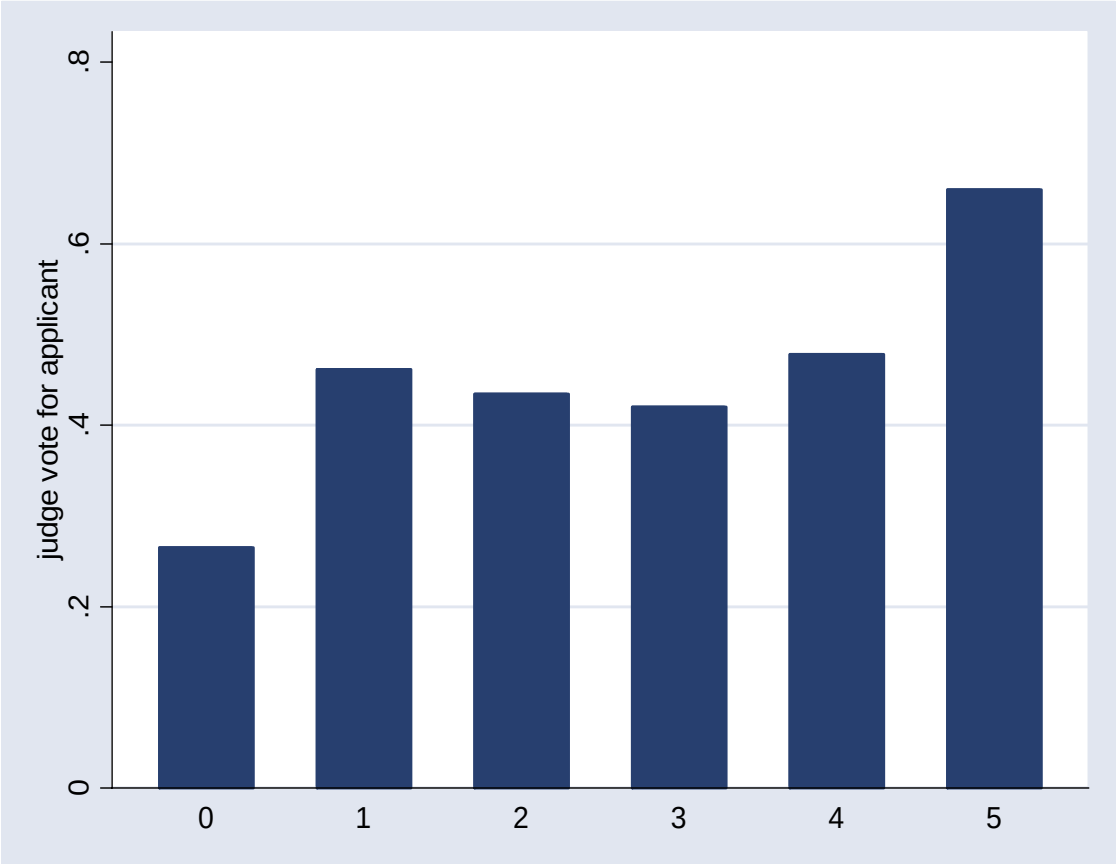
[25] Posner and de Figueiredo, supra.

Figure 1: Relationship between Judges' Votes and Matching Economies[26]



[26] Posner and de Figueiredo, supra. The numbers on the x-axis are a measure of closeness, where the higher number means that the per capita GDP of the judge's state is closer to the per capita GDP of the applicant than to that of the respondent. "Pwin" is the probability that the judge votes in favor of the applicant. See id., for details.

Figure 4: Judges' Votes and Matching Political Systems[27]



We also found that judges tended to vote for states whose religion and language were the same as those of the judges' home states. Regressions using various specifications confirm these results.[28]

There are various possible interpretations of these results. The first is that judges vote the interests of home states, and home states tend to share interests with other states that are like them, economically and politically. Thus, we have long seen divisions between wealthier countries (the OECD) and poorer countries, for example, in international trade. In addition, during the cold war the states tended to divide into democratic and authoritarian blocs, though of course there were important exceptions. A second possibility is that judges just happen to feel

[27] Posner and de Figueiredo, supra. The numbers on the x-axis are a measure of closeness, where the higher number means that the democracy score of the judge's state is closer to the democracy score of the applicant than to that of the respondent. See id., for details.

[28] See Posner and de Figueiredo, supra. We ran numerous regressions, and tried to control for all plausible variables, with and without judge and case fixed effects. The relationships described in the text are fairly robust but because of severe multicollinearity, some of the variables would lose statistical significance when tested with the others. Among the variables mentioned, the wealth variable was the most robust against alternative specifications.

more sympathy to states that are like their own. The power of the linguistic and religious variables are consistent with this claim, although they could also reflect postcolonial political and economic ties. But whatever the truth, it is hard to believe that governments would be pleased to learn that economic, political, or linguistic affinities affect judicial interpretation and enforcement of the treaties that they negotiate and the customary international law to which they submit.

B. Selection and Discipline of Judges

Although it requires a slight digression from the main topic of this paper, I want to say a few words about a question left unanswered in the previous discussion – namely, whether judges vote in the way they do because of psychological or cultural or moral pressures (they feel obliged to support their home state and/or they sympathize with states like their home states) or because they hope that their government will reward them for favorable votes or fear that their government will punish them for unfavorable votes.[29] The reward might be support for renewal of the judge's term, or some other prestigious position in government or in an international organization.

The first answer is consistent with the attitudinal model in the political science literature on (domestic) judicial voting, which assumes that judges have ideological convictions, and decide cases on the basis of them.[30] The second answer is more consistent with agency models in economics, which imply that judges' decisions would diverge from the interests of their governments unless the governments employ rewards and sanctions.[31] It's not clear, however, *how* the decisions would diverge. Would judges take advantage of agency slack by (1) being lazy and producing sloppy opinions, or (2) choosing outcomes that they prefer on political or ideological grounds? And if (2), isn't this consistent with internationalist judges defying their governments by deciding cases in a principled fashion, at least when they can get away with it?

[29] Another possibility is that judges may be principled, but have varying or even idiosyncratic jurisprudential convictions, and those whose convictions happen to be close to a government's interests are more likely to be nominated and elected than those whose convictions differ from a government's interests. But it is hard to imagine that serious judges could have sincere jurisprudential convictions that lead them to vote for their home state ninety percent of the time. Not only do they vote in favor of their home state; they must (in many cases) write an opinion that provides a legal justification (or rationalization) for their vote.

[30] See, e.g., Jeffrey A. Segal et al., The Supreme Court and the Attitudinal Model (1993).

[31] In the context of international courts, see Eric A. Posner and John C. Yoo, Judicial Independence and International Adjudication, Calif. L. Rev. (forthcoming 2005).

There are two sets of data that could shed light on these questions. First, the ICJ published the biographies of all the judges, and this is a potentially valuable mine of information.[32] A quick survey of the biographies shows (not surprisingly) that the judges have long records of service on behalf of the government of their home country, often in a diplomatic capacity. Thus, we know that the governments would have a track record from which they could infer the extent to which individuals would remain loyal as judges on the ICJ. Of course, the data are also consistent with the hypothesis that judges are selected on the basis of their expertise and integrity, as a track record is necessary for evaluating these characteristics as well.

It would be interesting to see if the biographical data could be used in a more refined way. We might distinguish – on the basis of their voting record – between judges who are more loyal to their home state, and those who are less loyal to their home state, and see if loyalty is correlated with some observable factor in the biography. Suppose, for example, that the biographies allow us to distinguish between judges who are relatively "independent" – say, those who have spent most of their career in academia – and judges who are not, such as those who have spent their careers in government. If independent judges turn out to be less loyal than dependent judges are, this would suggest that the relative importance of selection effects, and the relative unimportance of incentives.

The problem – aside from the very low number of observations where judges vote against their home state – is that the biographies are hard to compare. Every country has its own norms, career paths, expectations about government service, and so forth, and it would be hard to interpret the biographies without knowing something about how these factors vary across countries. I do not have the expertise to do this; perhaps others do, or can find other ways to take advantage of the biographies.

The second data set I have in mind concerns length of tenure. The rough question here is, do judges who serve the interests of their states get used again? In the case of ad hoc judges, the question is whether states are more likely to reuse ad hoc judges who have voted in favor of the state that appointed them? In the case of permanent judges, the question is whether states are more likely to renominate judges who have voted in favor of the home state? If these questions have affirmative answers, then it seems likely that states discipline uncooperative judges by depriving them of a further chance to sit on the court.

[32] Available from the ICJ's website, supra.

Answering these questions turns out to be harder than it might seem. The main problem is the paucity of observations. In only 8 cases did a judge vote against a home-state applicant, and in only 7 cases did a judge vote against a home-state respondent. Table 5 provides the details.

Table 5: Judges Who Voted Against Home or Appointing State

Judge	Judge's Nation	Applicant	Respondent	Filing Year	Judge Type
Basdevant	France	France	U.K.	1951	perm
McNair	U.K.	U.K.	Iran	1951	perm
Morelli	Italy	Italy	France	1953	perm
Chagla	India	Portugal	India	1955	ad hoc[33]
Fernandes	Portugal	Portugal	India	1955	ad hoc
Carry	Switzerland	Switzerland	USA	1957	ad hoc[34]
van Wyk	South Africa	Ethiopia	South Africa	1960	ad hoc
Bastid	Tunisia	Tunisia	Libya	1984	ad hoc
Valticos	Bahrain	Qatar	Bahrain	1991	ad hoc
Rigaux	Iran	Iran	USA	1992	ad hoc
Skubiszewski	Slovak Republic	Hungary	Slovak Republic	1994	ad hoc
Schwebel	USA	Paraguay	USA	1998	perm
Kreca	Yugoslavia	Yugoslavia	Spain	1999	ad hoc
Schwebel	USA	Germany	USA	1999	perm
Buergenthal	USA	Mexico	USA	2003	perm

I will discuss ad hoc and permanent judges separately.

Ad Hoc Judges

Are ad hoc judges who vote against the appointing state ever used again? If states discipline judges, then one would predict that ad hoc judges who vote against the appointing state ("disloyal ad hocs") would not be reused by that state. If states do not discipline judges, then one would predict the opposite. The problem with testing this prediction (aside from the low number of observations) is that an ad hoc judge could be replaced for any number of reasons: he or she becomes old or ill, decides to pursue other opportunities, and so forth. Table 6 provides the data.

[33] It is not clear whether this row should be included; Chagla dissented in this case, which India won; however, in his dissent he took a more pro-Indian stance than the majority did.
[34] In two proceedings within one case.

Table 6: Replacement Rate of "Disloyal" Ad Hoc Judges

State	"Disloyal" Vote Year	Result	Result (10 yr)	Result (Case)	Result (10 Yr, Case)
Bahrain	1994	NR	NR	R (2001)	R (2001)
India	1960	R (1972)		R (1972)	
Portugal	1957	NR	NR		
South Africa	1962	NR	NR		
Switzerland	1957	NR	NR		
Yugoslavia	1999	R (2003)	R (2003)	R (2003)	R (2003)
Ratio		33% (2/6)	20% (1/5)	100% (3/3)	100% (2/2)
Base Ratio		39% (25/64)	19% (9/48)	64% (21/33)	42% (8/19)

Note: R = replacement; NR = no replacement. Empty boxes indicate no observations.

The first column lists the states that both have been involved in a case in which their ad hoc judge voted against them and had a subsequent case before the ICJ. (We exclude three cases in which the state never appeared before the ICJ after suffering the disloyal vote, as we don't know whether these states would have retaliated against the ad hoc judge or not.) The second column provides the year in which the disloyal vote occurred. The remaining columns tell us whether the state "replaced" (R) the ad hoc judge – in the sense of not reusing him, and appointing someone else instead – under various conditions. The first of these two columns include any proceeding. The second two columns are limited to cases. If an ad hoc judge votes against the appointing state during a preliminary hearing, is retained for the merits, but is replaced for the next case, then this counts as a replacement in the "case" columns, and not in the other two.[35] The reason for making this distinction is that a state may find it impractical to replace an ad hoc judge midway through a case (but also may not). The second column in each pair limits our consideration to situations in which the second case occurs within ten years – on the theory that the failure to reuse a judge after ten years is more likely due to reasons other than retaliation or lack of confidence.

The penultimate row provides the replacement ratio for the disloyal ad hoc judges, and the last row provides the replacement ratio for the loyal ad hoc judges. For the first two columns (proceedings), the ratios are about the same. For the second two columns (cases), the ratios are higher for the disloyal ad hoc judges, consistent with the prediction. However, the number of observations is too low for statistical significance, and our difficulties in finding a satisfactory

[35] I also count a midstream replacement as a replacement in the case columns.

definition for "disloyalty" and in arriving at a reasonable replacement time further cast doubt on the value of the exercise. There are also alternative explanations for the replacement of judges; for example, domestic political changes such as party turnover. For these reasons, one can conclude little from the data.

Permanent Judges

Table 5, above, had one interesting feature: among the permanent judges, all those who voted against their home state came from western nations with traditions of judicial independence. No permanent judge from Africa, Latin America, or Asia has voted against his home state. Although the evidence is not statistically significant, it suggests that judicial independence is related to domestic norms or institutions.

But do states tolerate permanent judges who vote against them?

For permanent judges who do not vote against their home state, the median tenure is 9 years, and the mean is a bit longer. Compared to this, our results for "disloyal" judges are mixed. McNair and Morelli each lasted one term. Schwebel's tenure lasted 20 years, but his votes against the U.S. occurred only a couple years before he left office. We don't know why he left office only two years into his third term. Buergenthal voted against the U.S. only a year ago, and early in his term, so we don't know what will happen to him, if anything. The only clear evidence against the hypothesis that governments discipline wayward judges is Basdevant's tenure; he remained in office for thirteen years after he voted against France in 1951. In any event, we don't have enough data to conduct tests for statistical significance.

One last piece of indirect evidence is age. If governments mean to discipline wayward judges by depriving them of future appointments, then they would initially appoint only judges who are relatively young. Judges who would retire after the end of their term could not be deprived of future positions. On the current bench, the average age of each judge at the time of his or her initial appointment was 59.5, ranging from 41 to 71. A 59.5 year old could certainly expect to be reappointed at the age of 68.5, but it is unlikely that a 70 year old would expect to be reappointed at the age of 79.[36] For most of the judges, then, a future appointment is a realistic possibility. Still, the evidence is not especially strong.

[36] Many of them were appointed to finish off the term of a judge who retired or died, so any future reappointment could be earlier than nine years. Information on ages is available on the ICJ website, supra.

In sum, although some of the evidence is suggestive, it is not strong enough to evaluate the hypothesis that states discipline judges who vote against them.

IV. A Geopolitical Theory of Decline

Another possible explanation for the ICJ's decline is that it was a victim of geopolitics. The ICJ could flourish only if a sufficient number of states were willing to use it and comply with its judgments. To attract this sufficient number, whatever it was, the ICJ had to decide cases in a way that persuaded these states that using the ICJ served their interests. But the ICJ failed to persuade this critical mass of states that it could and would act consistently with all their interests. It failed because the states' interests diverged so greatly that there was no moral and legal consensus on which the ICJ could base its decisions.

To understand this problem, one can usefully begin with a comparison of the security council and the ICJ. The United Nations was never intended to be a parliament of nations. The five countries that were believed to be the major powers at the time that the UN was founded – the U.S., the U.S.S.R., China, France, and the U.K. – were given permanent seats in the security council, and the veto right. This meant that the United Nations could not act in any significant way without the consent of a major power.

The International Court of Justice was not so explicitly under the thumb of the major powers, although the influence of these states has always been such that they have enjoyed representation on the court.[37] The ICJ operates by majority rule, and this means that a major power can always be outvoted – unlike in the security council.

The immediate consequence of this was that the Soviet Union refused to submit to the jurisdiction of the ICJ, and never appeared before it in any capacity. Nor did any of the Soviet satellites. The reason is clear. The states represented on the first court were Belgium, Brazil, Canada, Chile, China, Egypt, El Salvador, France, Mexico, Norway, Poland, Russia, USA, United Kingdom, and Yugoslavia. Of these states, a clear majority (1) belonged to the bloc of major western powers (Belgium, Canada, France, Norway, USA, and U.K.); or (2) were dominated by them either because of their regional or postcolonial status (Brazil, Egypt, El Salvador, and Mexico). At the time, the United States and the U.K. could have believed that China, their wartime ally, would generally take their side in disputes. With a large majority

[37] Except for China; see supra note.

arrayed against it, the Soviet Union could expect to be outvoted in any case in which its interests were pitted against those of the west.

With the eastern bloc absent, the advanced western states dominated the docket until the 1960s, with occasionally participation by developing countries. In the beginning of that decade the participation of developing countries increased somewhat. In 1966, the ICJ held in the South West Africa case that it did not have jurisdiction to hear a dispute over a UN Trust territory controlled by South Africa. The ruling was a great disappointment to the emerging bloc of new states, which loathed the racist South African regime and blamed the outcome on western domination of the ICJ's bench. The developing nations stopped bringing cases to the ICJ. Apparently in response to the outcry, the court reversed itself in its Namibia advisory opinion of 1971, but – with the exception of some disputes between India and Pakistan – developing nations refrained from using the ICJ until the late 1970s and early 1980s.[38]

The South West Africa brouhaha hastened reform. It had long been realized that representation on the security council and the ICJ no longer reflected geopolitical realities. In 1965 the security council was expanded from 11 to 15 members, and greater representation was given to the postcolonial states. Meanwhile, the general assembly had almost doubled since world war 2, and the new states were all developing countries. These changes mattered for the composition of the ICJ because election of ICJ judges required majorities in both the security council and the general assembly. And, indeed, the 1966 election of ICJ judges resulted in greater representation for new states from Africa and Asia.[39]

This change in representation alone suggests that the ICJ would subsequently tilt in favor of developing nations. It might also have been the case that even western judges realized that the ICJ needed both legitimacy and users, and that as long as it decided cases in a manner that pleased western powers but outraged developing nations, it would have little global legitimacy – it would be seen as a puppet of powerful states. And although the handful of western powers might continue to use it, it would lose the business of the dozens of nations that came into existence in the period of decolonization after world war 2. In short, the ICJ had to develop a jurisprudence friendlier to the weaker states. How did it accomplish this task? It did so by softening its commitment to positivism – which meant enforcing treaty structures largely

[38] For some of the history, see McWhinney, supra, at 16-23, 92-93.
[39] Rosenne, supra, at 45-46.

developed by the western powers – and developing a "progressive" jurisprudence, one based more on the judges' notions of global fairness.[40]

The turning point came in the Nicaragua v. U.S. case (1984). This was the first major case in which a developing country challenged a major power. Nicaragua argued that the U.S. had violated international law by mining its harbors; the U.S. responded that the ICJ did not have jurisdiction over the case, and in any event that the U.S. was acting legally by participating in the collective security of Honduras and El Salvador in response to Nicaragua-supported rebellions in both countries. The American defense was reasonably strong,[41] but the ICJ found in favor of Nicaragua.

Rosenne suggests that this case may have encouraged nonaligned, developing states to bring proceedings before the ICJ;[42] what he does not mention is that it appears to have seriously dampened the enthusiasm of western states for the ICJ. As I noted above, these states have all but stopped using the ICJ.

We can think of the United States and the other western states as being in a position analogous to that of the Soviet Union and its satellites in the late 1940s and 1950s. The western states no longer can expect that a majority will favor them on the court. And, in some respects, the western states are in a worse position today than the Soviet Union was, because there are many cleavages among them as well. Like the Soviet Union, the western states are withdrawing from the court, although gradually. As the developing states came to dominate the membership of the court, they used it more often, but their many conflicting interests are likely to put a limit on usage.

Today, the states represented on the court are China, Madagascar, France, Sierra Leone, Russia, U.K., Venezuela, the Netherlands, Brazil, Jordan, USA, Egypt, Japan, Germany, and Slovakia. The court reflects complex cleavages: north versus south; east versus west; wealthy versus poor; and so forth. It is more likely today than in the 1950s that the major western nations that used to be the court's most frequent users – the U.S., France, and the U.K. – will find an unfriendly audience in the judges. But it is also not clear that developing nations can expect a sympathetic hearing. The problem for the ICJ is just that there are too many cleavages, and so states cannot expect the ICJ judges to take account of their interests. By contrast, the early court

[40] See McWhinney, supra, who celebrates this development. A more critical view is expressed by Reisman, supra.
[41] Rosenne, supra, at 117.
[42] Id.

was a club dominated by a handful of western powers that shared powerful strategic and economic commitments. It might be that a court of general jurisdiction like the ICJ cannot exist in the current international environment, where interests are fragmented. On this view, the best hope for international adjudication lies with regional courts (like the European Court of justice) and courts that have a narrow jurisdiction over an area of international law in which interests substantially converge (like the WTO dispute settlement mechanism).

In sum, the ICJ was the victim of conflicts among states. A realist might argue that the ICJ was doomed from the start, but it is hard to know how one could prove this claim. The better view is that with the cold war, decolonization, and the rise of new powers like India and Brazil, the ICJ could not find an international legal or moral consensus on which it could make judgments that states would respect. This may have reflected the nature of geopolitics, or it may just have been the result of a failure by the ICJ judges to act with sufficient political sensitivity.

Conclusion

The two hypotheses for the ICJ's long-term decline are in tension with each other. The institutional hypothesis blames the decline on wayward judges who vote their home states' interests rather than the requirements of international law. The geopolitical hypothesis suggests, or at least leaves open the possibility, that if the judges had been more sensitive to the interests of the major powers, the ICJ may have resisted decline. Thus, the first hypothesis suggests that the judges should have applied international law impartially, while the second suggests that the judges should have applied international law with greater sensitivity to political realities. How could they both be true?

The answer is that a slightly more complex version of the institutional hypothesis may explain why the judges did not take account of geopolitical realities. As I presented the institutional hypothesis, I claimed that states would use the ICJ as long as the ICJ enforced treaties impartially. But international law is complex and states will not necessarily be pleased if treaties are interpreted in an impartial fashion. The problem is that states enter bilateral and multilateral treaties without having a clear view of their obligations and needs decades later, and enforcing these treaties (not to mention customary international law) in a manner that satisfies states is not simply a matter of enforcing them impartially, but of enforcing them in a way that reflects the interests of states as they have developed over time.

Thus, a successful international court must be alert to political realities. This is a proposition that no one has ever denied, not even the ICJ. The question is whether the judges have had the right incentives to respect the interests of the powerful states without at the same time reducing international law to the whims of these states. This brings us to the institutional question. One conjectures that because the judges felt themselves beholden to their home states, they felt pressured to vote their home state's interests rather than to vote in a way that would maintain the long-term viability of the ICJ. If so, the choices they made would not have reflected geopolitical realities.

Appendix

Table A1: ICJ Cases[43]

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
1	1	T	Use of Force	Preliminary Objection	1947	1948	United Kingdom	Albania	Applicant	No
	2	T	Use of Force	Merits		1949	United Kingdom	Albania	Applicant	No
	3	T	Use of Force	Other		1949	United Kingdom	Albania	Applicant	No
2	1	SA	Diplomatic or Consular Relations	Merits	1949	1950	Colombia	Peru	Respondent	No
3	None	T	Property Rights		1949		France	Egypt		
4	1	T	Border/Maritime Delimitation	Merits	1949	1951	United Kingdom	Norway	Respondent	
5	1	T	Diplomatic or Consular Relations	Merits	1950	1950	Colombia	Peru	Respondent	
	2	T	Diplomatic or Consular Relations	Interpretation		1950	Colombia	Peru	Respondent	
6	1	OC	Diplomatic or Consular Relations	Other	1950	1951	Colombia	Peru	Unclear	Yes
7	1	T/OC	Diplomatic/Property	Merits	1950	1952	France	USA	Applicant	Yes
8	1	OC	Property Rights	Merits	1951	1955	Liechtenstein	Guatemala	Respondent	
9	1	SA	Border/Maritime Delimitation	Merits	1951	1953	France	United Kingdom	Respondent	Yes
10	1	T	Property Rights	Preliminary Objection	1951	1952	United Kingdom	Iran	Respondent	
11	1	T	Property Rights	Preliminary Objection	1951	1952	Greece	United Kingdom	Unclear	Yes
	2	T	Property Rights	Merits		1953	Greece	United Kingdom	Applicant	Yes
12	None	T	Property Rights		1953		France	Lebanon		
13	1	T	Property Rights	Preliminary Objection	1953	1954	Italy	France	Respondent	
14	None	N	Aerial Incident		1954		USA	Hungary		
15	None	N	Aerial Incident		1954		USA	Russia		
16	1	T	Other	Preliminary Objection	1955	1957	Portugal	India	Applicant	Yes

[43] For jurisdiction, OC = Optional Clause; SA = Special Agreement; T = Treaty; and N = None Asserted. Where a dispute is before the court by Special Agreement the Applicant and Respondent labels are determined by the order of the country names in the court's official documents. For compliance, we use the coding from Ginsburg and McAdams, supra, with the following adjustment. We drop all cases in which the applicant prevailed except those in which jurisdiction is based on special agreement (in which case the party is not really an applicant). The reason is that we are skeptical that one can determine that a state that loses its legal claim really "complies" with the adverse judgment by ceasing efforts to press it diplomatically. However, in special agreement cases one can usually determine compliance; usually, it's just a matter of seeing whether each state accepts the new border, as they are mostly border disputes. The table includes all cases through December 1, 2004.

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
	2	T	Other	Merits		1960	Portugal	India	Respondent	
17	1	T	Property Rights	Preliminary Objection	1955	1957	France	Norway	Respondent	
18	None	N	Aerial Incident		1955		USA	Russia		
19	None	N	Border/Maritime Delimitation		1955		United Kingdom	Chile		
20	None	N	Border/Maritime Delimitation		1955		United Kingdom	Argentina		
21	None	N	Aerial Incident		1955		USA	Czechoslovakia		
22	None	N	Aerial Incident		1957		USA	Bulgaria		
23	None	N	Aerial Incident		1957		United Kingdom	Bulgaria		
24	1	SA	Border/Maritime Delimitation	Merits	1957	1959	Belgium	Netherlands	Applicant	Yes
25	1	OC	Aerial Incident	Preliminary Objection	1957	1959	Israel	Bulgaria	Respondent	
26	1	T	Property Rights	Provisional Measures	1957	1957	Switzerland	USA	Respondent	
	2	T	Property Rights	Preliminary Objection		1959	Switzerland	USA	Respondent	
27	1	T	Other	Merits	1957	1958	Netherlands	Sweden	Respondent	
28	None	OC	Property Rights		1958		Belgium	Spain		
29	None	N	Aerial Incident		1958		USA	Russia		
30	1	T/OC	Border/Maritime Delimitation	Merits	1958	1960	Honduras	Nicaragua	Applicant	Yes
31	1	T	Border/Maritime Delimitation	Preliminary Objection	1959	1961	Cambodia	Thailand	Applicant	Yes
	2	T	Border/Maritime Delimitation	Merits	1959	1962	Cambodia	Thailand	Applicant	Yes
32	None	N	Aerial Incident		1959		USA	Russia		
33	None	T	Property Rights		1959		France	Lebanon		
34	1	OC	Trusteeship/Decolonization	Preliminary Objection	1960	1962	Ethiopia	South Africa	Applicant	
	2	OC	Trusteeship/Decolonization	Merits		1966	Ethiopia	South Africa	Respondent	
35	1	OC	Trusteeship/Decolonization	Preliminary Objection	1961	1963	Cameroon	United Kingdom	Respondent	
36	1	OC	Property Rights	Preliminary Objection	1962	1964	Belgium	Spain	Applicant	
	2	OC	Property Rights	Merits		1970	Belgium	Spain	Respondent	
37	1	SA	Border/Maritime Delimitation	Merits	1967	1969	Germany	Denmark	Applicant	Yes
38	1	OC	Aerial Incident	Merits	1971	1972	India	Pakistan	Respondent	
39	1	OC	Border/Maritime Delimitation	Provisional Measures	1972	1972	United Kingdom	Iceland	Applicant	No
	2	OC	Border/Maritime Delimitation	Preliminary Objection		1973	United Kingdom	Iceland	Applicant	No
	3	OC	Border/Maritime Delimitation	Merits		1974	United Kingdom	Iceland	Applicant	No

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
40	1	OC	Border/Maritime Delimitation	Provisional Measures	1972	1972	Germany	Iceland	Applicant	No
	2	OC	Border/Maritime Delimitation	Preliminary Objection		1973	Germany	Iceland	Applicant	No
	3	OC	Border/Maritime Delimitation	Merits		1974	Germany	Iceland	Applicant	No
41	None	T	Use of Force		1973		Pakistan	India		
42	1	T/OC	Other	Provisional Measures	1973	1973	Australia	France	Applicant	No
	2	T/OC	Other	Merits		1974	Australia	France	Respondent	
43	1	T/OC	Other	Provisional Measures	1973	1973	New Zealand	France	Applicant	No
	2	T/OC	Other	Merits		1974	New Zealand	France	Respondent	
44	1	OC	Border/Maritime Delimitation	Provisional Measures	1976	1976	Greece	Turkey	Respondent	
	2	OC	Border/Maritime Delimitation	Preliminary Objection		1978	Greece	Turkey	Respondent	
45	1	SA	Border/Maritime Delimitation	Merits	1978	1982	Tunisia	Libya	Respondent	Yes
46	1	OC	Diplomatic or Consular Relations	Merits	1979	1981	USA	Iran	Applicant	No
47	1	SA	Border/Maritime Delimitation	Merits	1981	1984	Canada	USA	Respondent	Yes
48	1	SA	Border/Maritime Delimitation	Merits	1982	1985	Libya	Malta	Unclear	Yes
49	1	SA	Border/Maritime Delimitation	Merits	1983	1986	Burkina Faso	Mali	Unclear	Yes
50	1	T	Border/Maritime Delimitation	Other	1984	1985	Tunisia	Libya	Respondent	
51	1	T/OC	Use of Force	Provisional Measures	1984	1984	Nicaragua	USA	Applicant	No
	2	T/OC	Use of Force	Preliminary Objection		1984	Nicaragua	USA	Applicant	No
	3	T/OC	Use of Force	Merits		1986	Nicaragua	USA	Applicant	No
52	None	T/OC	Use of Force		1986		Nicaragua	Costa Rica		
53	1	T/OC	Use of Force	Preliminary Objection	1986	1988	Nicaragua	Honduras	Applicant	
54	1	SA	Border/Maritime Delimitation	Merits	1986	1992	El Salvador	Honduras	Unclear	Yes
55	1	T	Property Rights	Merits	1987	1989	USA	Italy	Respondent	
56	1	T	Border/Maritime Delimitation	Merits	1988	1993	Denmark	Norway	Respondent	
57	None	T	Aerial Incident		1989		Iran	USA		
58	1	T	Other	Preliminary Objection	1989	1993	Nauru	Australia	Applicant	
59	1	T	Border/Maritime Delimitation	Merits	1989	1991	Guinea-Bissau	Senegal	Respondent	
	2	T	Border/Maritime Delimitation	Provisional Measures		1990	Guinea-Bissau	Senegal	Respondent	
60	1	SA	Border/Maritime Delimitation	Merits	1990	1994	Libya	Chad	Respondent	Yes

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
61	1	T	Trusteeship/Decolonization	Preliminary Objection	1991	1995	Portugal	Australia	Respondent	
62	None	OC	Border/Maritime Delimitation		1991		Guinea-Bissau	Senegal		
63	None	T/OC	Other		1991		Finland	Denmark		
64	1	SA/T	Border/Maritime Delimitation	Preliminary Objection	1991	1995	Qatar	Bahrain	Applicant	Yes
	2	SA/T	Border/Maritime Delimitation	Preliminary Objection		1994	Qatar	Bahrain	Applicant	Yes
	3	SA/T	Border/Maritime Delimitation	Merits		2001	Qatar	Bahrain	Unclear	Yes
65	1	T	Aerial Incident	Provisional Measures	1992	1992	Libya	USA	Respondent	
	2	T	Aerial Incident	Preliminary Objection	1992	1998	Libya	USA	Applicant	
66	1	T	Aerial Incident	Provisional Measures	1992	1992	Libya	United Kingdom	Respondent	
	2	T	Aerial Incident	Preliminary Objection	1992	1998	Libya	United Kingdom	Applicant	
67	1	T	Use of Force	Preliminary Objection	1992	1996	Iran	USA	Applicant	Yes
	2	T	Use of Force	Order		1998	Iran	USA	Respondent	
	3	T	Use of Force	Merits		2003	Iran	USA	Respondent	
68	1	T	Use of Force	Provisional Measures	1993	1993	Bosnia	Yugoslavia	Applicant	No
	2	T	Use of Force	Provisional Measures		1993	Bosnia	Yugoslavia	Applicant	No
	3	T	Use of Force	Preliminary Objection		1996	Bosnia	Yugoslavia	Applicant	No
69	1	SA	Other	Merits	1994	1997	Hungary	Slovak Republic	Respondent	No
70	1	OC	Border/Maritime Delimitation	Provisional Measures	1994	1996	Cameroon	Nigeria	Unclear	No
	2	OC	Border/Maritime Delimitation	Preliminary Objection		1998	Cameroon	Nigeria	Applicant	No
	3	OC	Border/Maritime Delimitation	Merits		2002	Cameroon	Nigeria	Applicant	No
71	1	T	Other	Preliminary Objection	1995	1998	Spain	Canada	Respondent	
72	1	T	Other	Other	1995	1995	New Zealand	France	Respondent	
73	1	SA	Border/Maritime Delimitation	Merits	1996	1999	Botswana	Namibia	Applicant	Yes
74	1	T	Diplomatic or Consular Relations	Provisional Measures	1998	1998	Paraguay	USA	Applicant	No
75	1	T	Border/Maritime Delimitation	Preliminary Objection	1998	1999	Cameroon	Nigeria	Applicant	
76	1	SA	Border/Maritime Delimitation	Merits	1998	2002	Indonesia	Malaysia	Respondent	Yes
77	None	OC	Property Rights		1998		Guinea	Congo, Dem. Rep.		

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
78	1	T	Diplomatic or Consular Relations	Provisional Measures	1999	1999	Germany	USA	Applicant	No
	2	T	Diplomatic or Consular Relations	Merits		2001	Germany	USA	Applicant	No
79	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	USA	Respondent	
80	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	United Kingdom	Respondent	
81	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Spain	Respondent	
82	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Portugal	Respondent	
83	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Netherlands	Respondent	
84	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Italy	Respondent	
85	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Germany	Respondent	
86	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	France	Respondent	
87	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Canada	Respondent	
88	1	T/OC	Use of Force	Provisional Measures	1999	1999	Yugoslavia	Belgium	Respondent	
89	1	T	Use of Force	Provisional Measures	1999	2000	Congo, Dem. Rep.	Uganda	Applicant	
90	None	T	Use of Force		1999		Congo, Dem. Rep.	Rwanda		
91	None	T	Use of Force		1999		Congo, Dem. Rep.	Burundi		
92	None	T	Use of Force		1999		Croatia	Yugoslavia		
93	1	T	Aerial Incident	Preliminary Objection	1999	2000	Pakistan	India	Respondent	
94	None	T/OC	Border/Maritime Delimitation		1999		Nicaragua	Honduras		
95	1	T	Diplomatic or Consular Relations	Provisional Measures	2000	2000	Congo, Dem. Rep.	Belgium	Unclear	Yes
	2	T	Diplomatic or Consular Relations	Merits		2002	Congo, Dem. Rep.	Belgium	Applicant	Yes
96	1	T/OC	Use of Force	Other	2001	2003	Yugoslavia	Bosnia	Respondent	
97	None	N	Property Rights		2001		Liechtenstein	Germany		
98	None	T	Border/Maritime Delimitation		2001		Nicaragua	Colombia		
99	None	SA	Border/Maritime Delimitation		2002		Benin	Niger		
100	1	T	Use of Force	Provisional Measures	2002	2002	Congo, Dem. Rep.	Rwanda	Unclear	
101	1	SA	Border/Maritime Delimitation	Other	2002	2003	El Salvador	Honduras	Respondent	

Case Num.	Proc. Num.	Juris. Basis	Subject	Type	Filing Year	Decision Year	Applicant	Respondent	Winner	Compliance
102	1	T	Diplomatic or Consular Relations	Provisional Measures	2003	2003	Mexico	USA	Applicant	No
	2	T	Diplomatic or Consular Relations	Merits		2004	Mexico	USA	Applicant	No[44]
103	1	T	Trusteeship/Decolonization	Provisional Measures	2003	2003	Congo, Republic of	France	Respondent	
104	None	SA	Border/Maritime Delimitation		2003		Malaysia	Singapore		
105	None	T	Maritime Delimitation		2004		Romania	Ukraine		

Readers with comments should address them to:

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[44] However, the U.S. has not yet officially responded to the decision.

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