

International Court of Justice And Regional Bias

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Do ICJ Judges vote with regard to nationality?

Introduction

- The International Court of Justice (ICJ) is the primary judicial organ of the United Nations (UN) established through the UN Charter. It issues rulings in contentious cases and delivers advisory opinion to authorized UN bodies. This court is important because all UN member states are obligated to become parties to the court statute as stated in article 93, Chapter XIV of UN Charter. Court decisions not only affect the relationship between states in the international community but they also set a precedent for future cases within the ICJ and for international law. States may appear before the court through compulsory jurisdiction, treaty agreements or special agreements. They may also add reservations to the court's jurisdiction.

Bias in Judging

- Current literature regarding bias within the ICJ centers on the voting pattern of the judges, historical incidents that surround the formation of the court, and the court's behavior towards particular cases (Hernandez 2013). The question of bias erodes the court's legitimacy, similarly bringing into question the court's diligence to uphold international law rather than international affairs. Concerns for the court's bias undertones reflect a greater trend within political scholarship that explores how apolitical institutions are influenced by world politics (Hernandez 2013, Morton 1997, Suh 1969). Thus far, the literature emphasizes how nationality plays a role in the judge's decision, but there is a lack of statistical information that demonstrates whether state's relations with each other also plays a role in this ensemble (Posner 2004, Hernandez 2013). Scholars correctively label this occurrence, of states voting based on relations with each other, the act of creating *regional blocs* (Morton 1997).
- H1: ICJ judges rules with regards to their nationality
- H0: ICJ judges do not rule in regards to nationality

Methods

- Time frame selected to review cases was 1980-2000. During this period there were 18 ICJ cases to which the following data was collected for each case:
 - nationality of judges in contentious cases
 - states party to a case
 - states' regions
 - case subject
- Regions for states and judges were divided as follows:
 - Africa
 - Asia
 - Eastern Europe
 - Latin America & the Caribbean
 - Western Europe & Other Groups (WEOG)



3 Types of Cases

Three types of relationships that exist between judges and the party's to the case:

- The judge may share the same region with both parties of a case
- The judge may share the same region with only 1 party of a case
- The judge does not share a region with neither party of a case

Case Studies – ICJ Cases where Regional Bias Could Occur

	2000	1999	1996	
Case details	Congo v. Belgium <ul style="list-style-type: none"> Case regarding an arrest warrant against Congo's Minister of Foreign Affairs Case contained 6 number of rulings Winner of Case: Congo 	Serbia and Montenegro v. United Kingdom <ul style="list-style-type: none"> Case regarding UK international actions Case contained 1 ruling Winner of Case: UK 	Iran v. United States <ul style="list-style-type: none"> Case regarding Oil Platforms Case contained 2 rulings Winner of case: United States 	Nicaragua v. United States <ul style="list-style-type: none"> Case regarding US support of military rebels Case contained 16 rulings Winner of case: Nicaragua
Votes by judges who do not share region	<ul style="list-style-type: none"> Congo – 87.03% Belgium – 12.96% 	<ul style="list-style-type: none"> Serbia – 0% U.K. – 100% 	<ul style="list-style-type: none"> Iran – 87.5% USA – 12.5% 	<ul style="list-style-type: none"> Nicar – 80.67% U.S. – 19.32%
Votes by judges who share region	<ul style="list-style-type: none"> Congo – 85.71% Belgium – 14.28% 	<ul style="list-style-type: none"> Serbia – 0% U.K. – 100% 	<ul style="list-style-type: none"> Iran – 93.75% USA – 6.25% 	<ul style="list-style-type: none"> Nicar – 74.26% U.S. – 25.73%

Results

- There are **NO DIFFERENCES** overall between judges that share a region in common with a party in a case and those who do not.
- Judges rarely make rulings between parties with whom they share a region in common and those who they do not

Discussion

- The structure of the court, which only permits one nationality to be represented on the judge panel at a time, has created limited space for regional bias to occur within the court setting. Which means that the nature of the court makes it difficult for regional bias to occur.
- The low number of cases where judges share the same region as only one of the parties to a case make the hypothesis testing difficult. Future avenues for research can include an in-depth look at the voting patterns of ad-hoc judges.
- These findings for the ICJ offer evidence that even if a judge shares the same region of a state that is a party to a case, it does not suggest that he/she will vote in favor of that state. Suggesting there is no regional bias.

References

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