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Assessing Bias in the International Court of Justice

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Abstract
The International Court of Justice is the primary judicial organ of the United Nations. Therefore, it’s responsible for deciding cases that are brought between countries and by international organizations. As with most courts, there is an assumption that the ICJ acts in a fair and impartial manner and decides cases based on international law. Our project plans to test this assumption to determine whether the Court is truly impartial, or whether it decides cases on some other factor or factors. Building on previous work (e.g. Alter and Helfer, 2010; Posner and de Figuerdo 2005; Voeten 2007) our goal is to collect information on ICJ cases and ICJ judges, which will allow us to create an ideological scale and place the judges on that continuum. We then examine each of the 160 cases from 1946-2014 to determine how a particular judge voted on case and whether or not that vote deviates from the ideological ranking. The key first step in this process was summarizing and coding each of the cases. We have developed a case brief format that allows us to capture the background of the case, the questions put to the Court, the judge’s names and their votes on a case, as well as other general case information. Based on that information, we determine a “winner” for each case, which we record in our dataset. We can then create ideal points for the Court and the judges to determine whether or not bias is present.

Methodology
In this study, our definition of bias follows Posner and de Figuerdo’s definition, that 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” (Posner and de Figuerdo 2005, 600). There are two main phases to this project. In the first phase, a group of coders must review and summarize each case that has been decided by the ICJ. To do this, we rely on self-published summaries of ICJ opinions, annual Court records, as well as Court judgments and case pleadings. Each case is briefed, meaning the relevant and important details from each case are recorded. Then the coding team will determine a “winner” of each case based on which party achieved the most favorable result. The final section of each case brief captures how a particular judge voted: this is the crucial data that will drive the second phase.

Discussion
Currently our research is focusing on phase one of our methodology. In this phase we have focused on standardizing the case brief template as well as training researchers on how to accurately read and summarize a case. To date we have developed a training manual that all researchers on this project will use going forward. This phase will ultimately allow future researchers to replicate our process as well as our final results. In order to ensure that our research is replicable, we will make the case briefs, created in phase one, available to researchers. We will also make the training manual with step-by-step instructions on how to conduct our research available. This will give researchers access to a useful reference of each case that the ICJ has seen, allowing them to view the winner of each case, and the judge’s rulings for each case. Along with a compilation of case briefs, we will also make a codebook available. This codebook will define the variables used in our research along with a detailed explanation of our data. The next step in the project will be completing all of the case briefs for cases seen by the ICJ.

Background on the Court
After the failure of the Permanent Court of International Justice, the PCIJ, the United Nations created the ICJ in the 1940s. By referencing the PCIJ in the UN Charter, the UN hoped to establish a strong and respected Court and gave it broad authority to remain independent. It is also important that the Court be a representative body, therefore, the 15 permanent judges are allotted per region, similar to the UN Security Council. Each judge has a nine year term and no two judges are from the same country. These judges also rotate out a third of the members every three years so the terms are tiered. Africa has three members; Latin America has two; Asia has three; Western Europe, United States, Western Europe, United States, Canada, New Zealand, Australia share five and Eastern Europe has two. In the event that a party comes before the Court, and there is no judge of that nationality, the party may select an ad hoc judge from their country to serve as a permanent judge (Posner and de Figuerdo 2005, 602-03).

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References