THE PENNSYLVANIA STATE UNIVERSITY
SCHREYER HONORS COLLEGE

DEPARTMENT OF POLITICAL SCIENCE

IMPLEMENTATION OF INTERNATIONAL COURT OF JUSTICE DECISIONS

JENNIFER VILLARROEL VARGAS
Spring 2012

A thesis
submitted in partial fulfillment
of the requirements
for a baccalaureate degree
in Political Science
with honors in Political Science

Reviewed and approved* by the following:

Christopher Zorn
Liberal Arts Research Professor
Thesis Supervisor

Michael B. Berkman
Professor and Director of Undergraduate Studies
Honors Adviser

* Signatures are on file in the Schreyer Honors College.

Abstract

Over the past few decades, the International Court of Justice (ICJ) has captured the attention of many political scientists due to its increased role in the international field as the principal judicial organ of the United Nations. For the following study, I researched twenty-nine ICJ cases since 1946 and examined whether the participating parties have implemented the final decision based on the standards stated on the Charter of the United Nations. I hypothesize the year the case was introduced to the ICJ, jurisdiction, major party involvement, issue, and government type, mutually exclusive independent variables, are associated with high or low compliance. The overarching theoretical focus is on institutionalization. The theory predicts the ICJ is experiencing higher compliance today versus when it first established in 1946 because over time the institution has receiving more prestige in the international field, contrary to the general belief on the effectiveness of the ICJ today.

Table of Contents

Acknowledgments

I would like to extend my sincerest gratitude to my thesis advisor, Liberal Arts Research Professor Christopher Zorn for all his help and direction. Although his schedule was extremely busy this past year, he was willing to spend valuable time meeting and guiding me through this long and stressful process. I would not have had appreciated what I learned from this project without such a great teacher along the way. I will also like to thank my advisor, Professor and Director of Undergraduate Studies Michael Berkman for his help throughout this year in and out the classroom. I also appreciate the start-up help I received from Professor Gretchen Casper my junior year. I am also grateful for the support I have received from my family, all these years. I dedicate this thesis to them.

Introduction

Contrary to previous evidence demonstrating a decline of the International Court of Justice (ICJ), specifically the 2004 Posner study, I will show the Court as an effective and important international institution in today's political sphere. One explanation for the Court's developing influence is a process of institutionalization. I find the ICJ has acquired value and stability throughout the decades from results gathered about jurisdiction, cases per year, and autonomy. As a result, I then hypothesize institutionalization will lead to higher compliance by states because of the Court's growing reputation in settling international disputes.

In addition, research is conducted on compliance with it defined using the exact wording found in the ICJ Statute with special attention dedicated to final results. I predicted that jurisdiction, issue, government type, major party participation, and year initiated would demonstrate individual relationships to compliance rates. Each independent variable reveals unique results, without relating to each other, designed to explain why some final judgments get implemented and others not. Surprisingly, only jurisdiction, issue, and major party participation appear to show some associations with compliance by participating parties. Cases involving territorial/maritime issues, under special agreement jurisdiction, or with no major party involvement have the highest compliance percentage. In summary, results point to an institutionalized ICJ, since overall compliance has been the most apparent outcome over the decades.

Theories

Studies have been done on the process of institutionalization on the House of Representatives (Polsby 1968), state legislators (Squire 1992), and the judiciary (Schmidhauser 1973) to name a few. The definition for institutionalization alters according to the political entity but the connection "between institutionalization and institutions affords an intuitive

understanding what when an organization becomes institutionalization, it is an institution" (Ragsdale and Theis 1283). The greater the institutionalization, the more resources it utilizes and the greater the impact it has on its environment thought the environment shock necessary to create change to the institution itself must be relatively large according to Ragsdale and Theis (1283).

Broadly defined by Huntington, institutionalization is the "process by which an organization acquires value and stability as an end in itself" (12). Value signifies "the prizing of the [organization] for its own sake" (Selznick 17) where the developed distinctive identity gains importance for its established tasks. Stability means an entity can no longer be easily altered or eliminated and consequently will survive international challenges and achieve self-maintenance (Ragsdale and Theis 1282). Value and stability work together in order to create an ordinary organization into a respectable institution. Organizations' capabilities, liabilities, and structures are more likely to function effectively the longer an organization can exist (Ragsdale and Theis 1282). Organizations have basic responsibilities, such as mediating disputes between states (in the case of the ICJ) and as stated above institutionalization can only occur once these written duties are valuable and legitimate in the eyes of outsiders. In the end, institutionalization will result a high compliance rates.

Although each case is distinctive in nature, I believe there are specific factors that allow researchers to predict the likelihood of compliance on a broader basis. Therefore, I selected five independent variables, coded for each case, which should demonstrate relationships to compliance. Collecting the data can later then allow researchers to predict the probability of full implementation for pending and future cases by participating parties by just studying these variables.

Hypotheses and Data

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It officially succeeded the Permanent Court of International Justice (PCIJ) in 1946, following the formation of the Charter of the United Nations in 1945. The establishment of the ICJ was set as an idealistic solution in a globalizing society destined to encounter conflict. Scholar Aloysius P. Llamzon writes, "International lawyers envisaged judicial settlement under the ICJ's auspices as a fundamental mode of international dispute settlement, and potentially among the strongest mechanisms for the effective enforcement of international law" (815-816). Official statutes affirming the Court's newly founded powers placed high expectations from the very beginning. According to Article 2 of the Charter, all members of the United Nations are obliged to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". Thus, it is the Court's responsibility to settle legal disputes brought before it by states (UN members and non-members included) and to provide advisory opinions on legal questions given to it by United Nations organs and specialized agencies.

"The judgments of the Court are binding in law, but do they, in fact, resolve the matter?" A concern expressed by Judge Jennings himself though constantly echoed by many academics. Since its inception, a total of 152 cases have entered the Court's General List addressing a diverse range of topics, including land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of states, diplomatic relations, hostage-taking, the right of asylum, nationality, and economic rights but doubt remains over the Court's real influence. Emilia Powell points to past studies which have focused on the ICJ's faults by emphasizing its "under-utilization, flawed internal organization, declining influence

over time, and external factors, such as power disparities that undermine its authority" (Elkind 1984; Eyffinger 1996; Goldsmith and Posner 2005; Janis 1987; McWhinney 1991; Oduntan 1999; Posner 2004; Scott and Carr 1987; Scott and Csajko 1988) (397). My study will uncover a different impression of the ICJ.

If the Court has successfully turned into a respected international institution, the chances for compliance should increase greatly. Participating parties would be reluctant to comply with an organization that holds no true value in the international community because the consequences for noncompliance may be insignificant compared to the property (territorial/maritime possessions) or respect lost if it did. However, explicitly ignoring or alternating a final decision from an institutionalized ICJ can harm a state's relationship and legitimacy in the eyes of other states. Collaborating states may refuse to engage in negotiations and treaties with a state frowned upon by an influential international entity.

The ICJ can demonstrate its value by displaying autonomy when reaching final decisions. Outside actors such as the Security Council should not dictate ICJ final decisions and the best indicator, according to Perry, is the Court's ability to construct its own agenda (132). Although the ICJ has a different method for establishing jurisdiction since states must agree to appear before it, it does not take into consideration if the Security Council or other international organizations want the dispute in Court. The main question considered when the ICJ receives an application from a state is whether it has appropriate jurisdiction over an issue. For this reason, this study considers autonomy established and true for the ICJ.

Therefore, with autonomy not requiring coding I decided on two additional independent variables to reveal if the ICJ has institutionalized since 1946. First, I predict the number of cases initiated per year will demonstrate an increased belief among states regarding the power the ICJ

has obtained over the decades. A rise in caseload in recent decades versus when the Court was first established illustrates a sense of stability. An increase in the Court's docket signifies a belief held by the states regarding its permanency and significance. Settling a dispute in court is a long and expensive procedure, which is why it is usually the last step in the conflict settlement process, meaning states are not going to appear before the Court if they did not believe in its influence. A steady increase of cases would show the ICJ as a stable and valuable institution for dispute settlement.

Second, the type of jurisdiction utilized by states can show a wider acceptance for the ICJ and its role in settling international disputes. For instance, members of the United Nations usually appear before the ICJ under a compulsory jurisdiction, an agreement normally made years before a conflict arises. In these circumstances, states seem to understand the value of the ICJ by agreeing that if a dispute were to occur in the future they will appear before the Court regardless of specific details. Compromissory clauses and special agreements also show the willingness of states to appear before the Court but place more restrictions. Parties agreeing to have their case heard by the ICJ under a special agreement choose the Court on a specific issue with strict guidelines. The parties do display considerate understanding for the ICJ's value but it is limited. The acceptance for the ICJ is conditional and therefore a weaker sign of institutionalization.

The legal framework adopted concerning enforcement of final decisions reflects the primary reason why the Court has difficulty requiring compliance. Provisions relevant to compliance are evident in both the Charter and the ICJ Statute but duties for enforcement only appear in the Charter. Articles 59 through 61 of the Statute, found in Appendix A, demonstrate

the expected implementation of ICJ decisions. However, the Security Council maintains the responsibility for ensuring compliance occurs. Article 94 reads,

> If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

This approach "reflects the separation between the adjudicative and post-adjudicative phase in international relations" (Schulte 19). In simpler terms, although the Court is 'guaranteed' compliance by the participating states, it cannot itself enforce its ruling and must rely on other institutions to follow-up on a state's progress.

I consider five independent variables, and predict each variable will affect the level of compliance, the dependent variable, without relating to each other. First, I predict that recent cases will comply at higher rates due to the effect of institutionalization. The closer the initiation year is to the present, the greater the willingness of a state to comply with an ICJ decision because of the value the Court has obtained throughout the decades. With years also comes experience, which I predict will help the ICJ when having to decide on issues.

Second, the basis of the Court's jurisdiction is hypothesized to influence the parties' willingness to comply with final decisions. The Court hears cases based on a consent given to it by the participating states usually in one of the three forms (See Appendix B). I predict that special agreement cases will lead to more compliance by the parties, since each side must personally agree beforehand to allow the ICJ to settle their dispute based on the guidelines provided for in their submitted paperwork. The Court is prohibited from hearing and deciding on merits or issues not explicitly written in the agreement. Therefore, the limited scope of jurisdiction given to the ICJ and 'good faith' under which the states usually appear before the Court should indicate a positive compliance outcome, regardless of the decision. Many modern treaties today contain a compromissory clause, granting the ICJ jurisdiction over future disputes

through a separate treaty or convention in which both states are members. The compromissory clause would not guarantee as high of a compliance level as a special agreement since a party may not want the send their dispute before the ICJ but I predict it will score higher than the compulsory jurisdiction. Under compulsory jurisdiction, the Court has fewer guidelines about what types of issues it may receive and many times obligates states to appear to court due to their membership to the United Nations. States agree to the Court's compulsory jurisdiction in order to be a UN member (no other court is considered) and might not approve to the understood ICJ power when a conflict occurs. However, under compromissory clauses states choose to incorporate the ICJ in other treaties for dispute settlements, which may come to reveal a more positive outcome for implementation of ICJ judgments. This voluntary act of explicitly choosing the ICJ indicates an understanding for the Court's value in the international field.

Another variable included in the study is whether one or both of the parties to the case are a "Major Party." A major party would be any of the five permanent members of the Security Council: China, France, Russian Federation, the United Kingdom and the United States.[1] The Security Council held its first session on 1946 with the same five countries from the beginning (temporary members changing throughout the years) providing a constant variable in the study. The relationship hypothesized is that those cases with at least one major party involved will show a higher compliance rate than the cases without a major party because the permanent members of Security Council should understand the significance and importance of furthering the efforts of the ICJ. Predicting the Security Council and the ICJ both want to make the United Nations a powerful international organization, I believe they will work together in order to show unity.

[1] Despite the controversy revolving the importance of the five countries in today's international world compared to decades ago, I decided to keep the countries constant.

As stated earlier, the ICJ has heard an array of issues, but in order to gain insightful results I have divided them into three distinct groups: territorial/maritime disputes, human rights, and miscellaneous. My predictions are that territorial/maritime disputes will demonstrate higher compliance since it is the biggest group with the most cases heard by the Court. On the other hand, those issues grouped under miscellaneous are so uncommon that the Court would be learning throughout the decision making process and may end with unfavorable decisions resulting in non-compliance. The ICJ would not have history to help it research what decisions are favorable to the participating parties.

The last independent variable predicted to influence whether a state complies with a final ICJ decision is the type of government. Each state has a Polity score (Marshall) for its government on the year the ICJ made its final decision. Considered for the study is the year of the final judgment since it is only after the merits are decided that implementation can occur. The scale ranges from 10 being the most democratic to -10 as autocratic. “The Polity scheme consists of six component measures that record key qualities of executive recruitment, constraints on executive authority, and political competition. It also records changes in the institutionalized qualities of governing authority” (Marshall). For the study, the Polity score average for both governments is the ultimate number considered, since complying with an ICJ decision is usually a collaborative effort. Keeping the Polity score in mind, I predict the higher the score (with 10 as maximum) the more likely the case will be complied with by the participating parties because democratic governments usually demonstrate an appreciation for effective and fair institutions and consider the value of complying to a final judgment important.

Article 93 of the United Nations Charter states,

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

It is clear from the wording above that all parties to a case must comply to the operative part of a judgment regardless of language ambiguity or personal objections. For this study, the standards created by the UN Charter for compliance is adopted for our definition. For instance, both parties must have followed all of the Court's merits without exception. "Partial-compliance" is coded as non-compliance. However, in cases such as the *Corfu Case* where Albania took over five decades to pay off their obligation, the focus remains on the result with a positive for compliance. The time variable is flexible primarily due to the many constraints states may face in the international world such as losing revenue after a major war. In certain cases, states undergo additional negotiations in order to implement a judgment and therefore add difficultly to setting a standardized time limit for compliance. In addition, results would be skewed towards noncompliance and mistakenly characterize the ICJ as a weak institution if a standard time limit of six months through one year is used for the compliance definition. States must also oblige in their entirety. A state is allowed to decide the domestic means it will utilize to implement a decision and must require action at a provincial level, if necessary, requiring a focus beyond a federal government's verbal response to a final judgment.

The total number of cases analyzed for compliance is twenty-nine, with five cases purposely excluded because of the lack of information on the post-adjudicative phase due on their recent decision year. There are an additional fifteen cases pending before the Court that have not yet been decided on jurisdiction or merits and therefore not included in the compliance section. Multiple reasons such as completed without a judgment on the merits, cases without any jurisdictional basis, lack of jurisdiction or admissibility, and discontinuation exclude the other cases from the study. Using the Charter's definition a 'decision' is a formal judicial measure

aimed at creating immediate legal effects; advisory opinions due to their nonbinding nature are excluded.

Analysis

Institutionalization

Figure 1: Year of Initiation

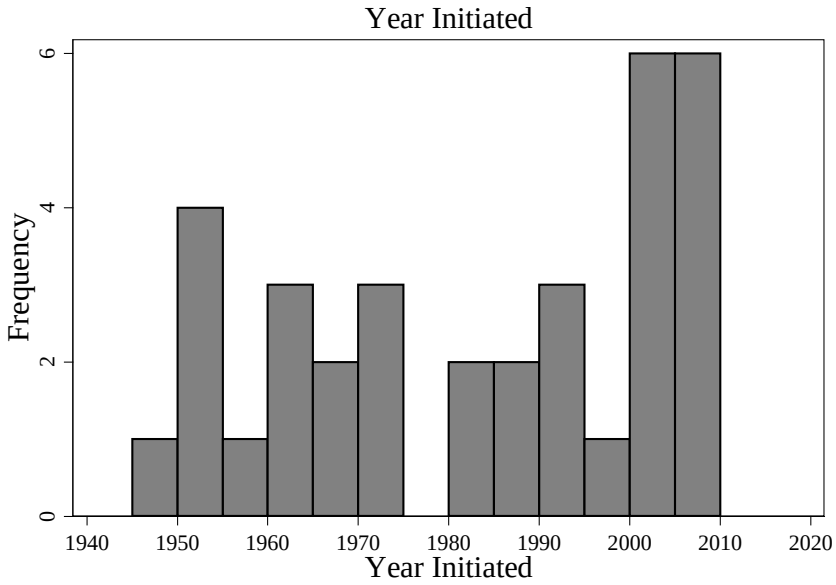


Figure 1 illustrates an overall increase in the number of cases initiated by the ICJ over the past six decades. In the past decade, there are twelve cases whereas in the 1950s there were only six cases. The total number of cases recorded above is forty-nine, meaning 'pending' and 'no information' cases are included in this specific analysis. However, as I mentioned earlier the Court officially records 152 cases on its online website, which would demonstrate stronger evidence for an overall increase in the number of cases heard throughout the years. After analyzing the data it is evident the ICJ has been experiencing changes to its institution. More states are agreeing to appear before the Court in recent years signifying a willingness by states to have their disputes settled by this international organization. States are capable of settling

disputes utilizing many different methods, but it appears recognition for the ICJ and its value is occurring recently.

Figure 2: Compulsory Jurisdiction by Year

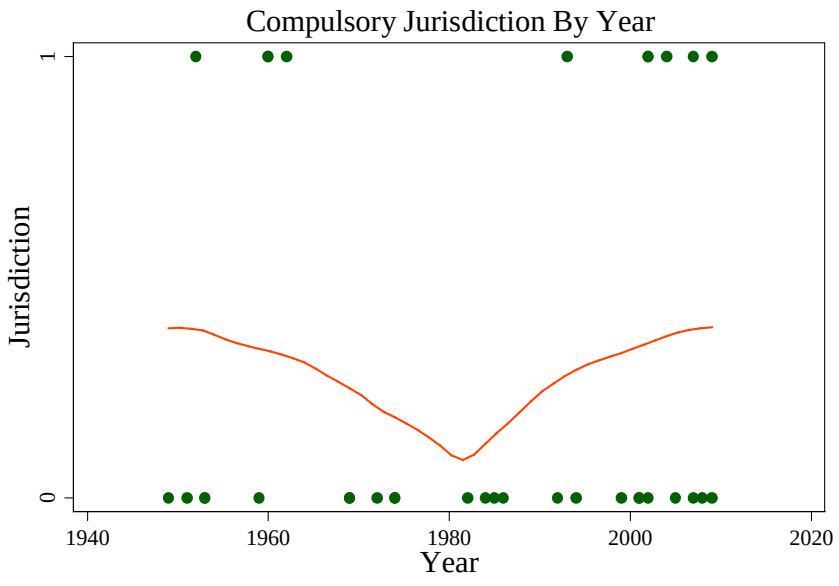


Figure 2 illustrates the incidence of cases where the ICJ took the case via compulsory jurisdiction over the decades.

Figure 3: Special Agreements by Year

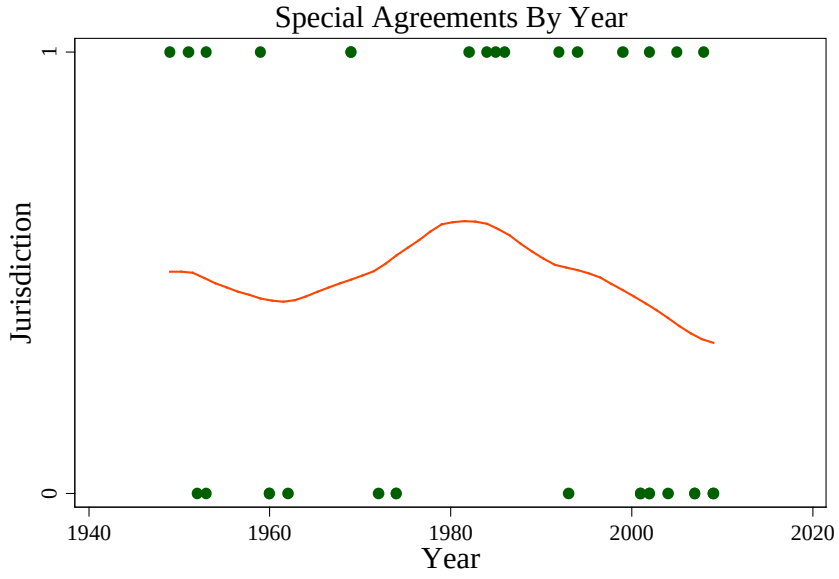


Figure 3 shows the same data for cases heard Special Agreements.

Figure 4: Compromissory Clause by Year

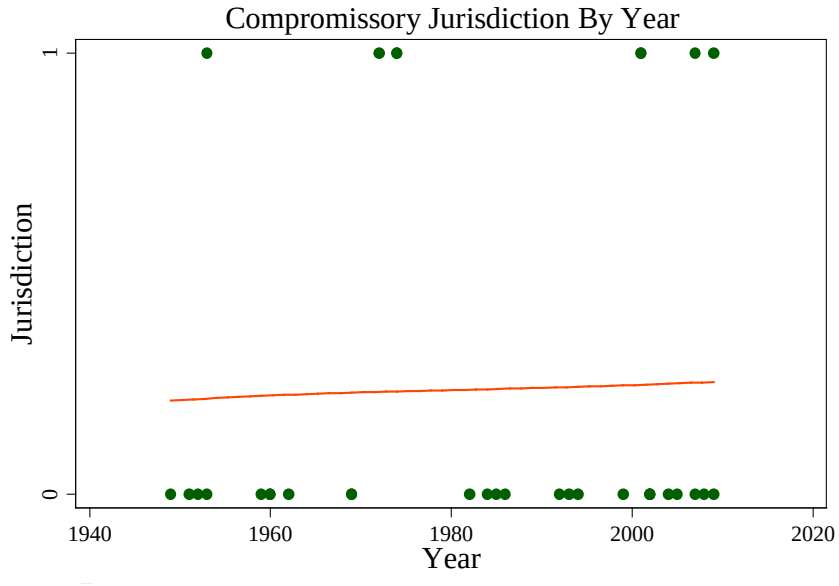


Figure 4 illustrates the same data for cases appearing by the ICJ utilizing a compromissory jurisdiction.

Figures 2-4 illustrate trends the ICJ has experienced with respect to the jurisdiction used by participating states throughout the decades. When the ICJ was first established, it heard compulsory jurisdiction cases at a high level of frequency, but as demonstrated in the graph, the level decreased from the 1970s to at least 1990. At the same time, cases taken under compulsory jurisdiction have recently risen to its initial level seen in the 1960's. On the other hand, special agreements do not show a steady pattern throughout the years, with fluctuations in the 1960's and in the 1980's. However, the rate for special agreements today is lower than when the ICJ first started hearing cases in 1946. Compromissory clause cases indicate an overall increase to its use but the difference is not as significant since its creation and function is new in the international sphere.

Although the ICJ experienced a time with no compulsory jurisdiction cases in its docket, it is important to note their sudden increase in the past decade. With compulsory jurisdiction back to its original level and special agreements at an all-time low (with the number of total cases still higher than before) states are showing their acceptance for the ICJ's scope of influence. As stated previously, compulsory jurisdiction is the best indicator of institutionalization because it implies states are consciously allowing the ICJ to settle future disputes with the least amount of restrictions. Interestingly enough the two definite non-compliance cases (*Fisheries Jurisdiction cases*) were not compulsory jurisdiction cases meaning there is a possibility for a 100% compliance rate under compulsory jurisdiction in the near future.

Given the autonomy, increase in caseload, and higher compulsory jurisdiction enjoyed by the ICJ throughout the years, I conclude the ICJ has slowly become an influential international institution. Posner's study regarding the weak powers of the ICJ is called into question after analyzing results for institutional and compliance rates (1). Not only is the Court experiencing a high case load with favorable jurisdiction but states usually follow an ICJ final decision. Out of the nine cases currently labeled a "No" for compliance, seven are pending and showing progress towards full compliance.

Before analyzing the specific results, it is important to reiterate the unusual definition used for non-compliance in the study. Compliance is defined as total implementation by both parties regardless of the timeframe between the year the case was decided and the year the states complied. Therefore, cases in which progresses towards compliance is visible and yet not complete are labeled with a "No". For instance, the *Libya/Chad* trial was decided in February 1994 with the ICJ awarding the entire Aouzou Strip to Chad and despite Libya's formal recognition of the Court's final decision to the UN Secretary-General conflict remains. Great

progress is evident in the area but "full good faith compliance may not have been achieved, given the evidence that Libya has not fully relinquished political and military dominion over the area." As a result, the database indicates the *Libya/Chad* case as non-compliance although the future may soon indicate complete implementation. Out of the nine cases with a "No" under compliance, only two have been clear instances of defiance. These trials are usually grouped together as *The Fisheries Jurisdiction cases* regarding the exclusive fishery zone (EFZ) between Iceland versus the United Kingdom and the Federal Republic of Germany. Although Iceland did reach separate agreements for each state during the post-adjudicative phrase it is evident the arrangements were not designed to implement the judgment from 1974.

Compliance

Figure 5: Compliance by Year

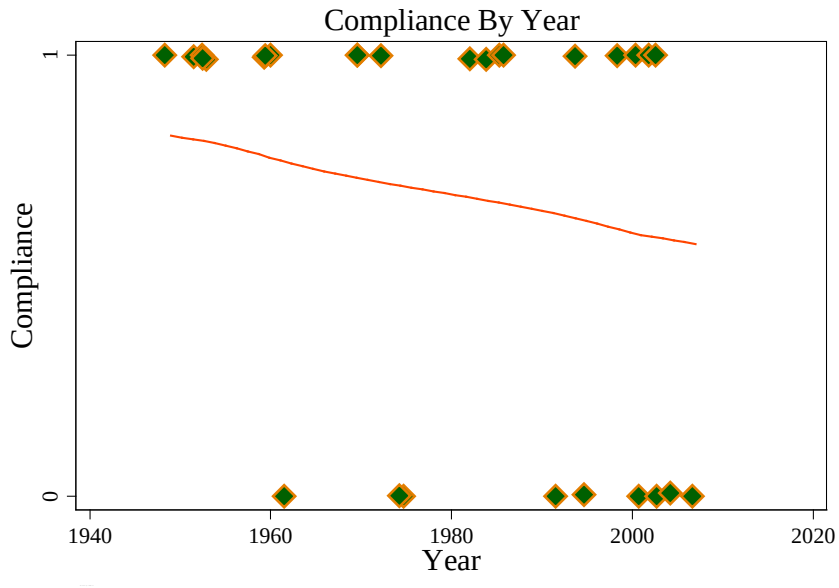
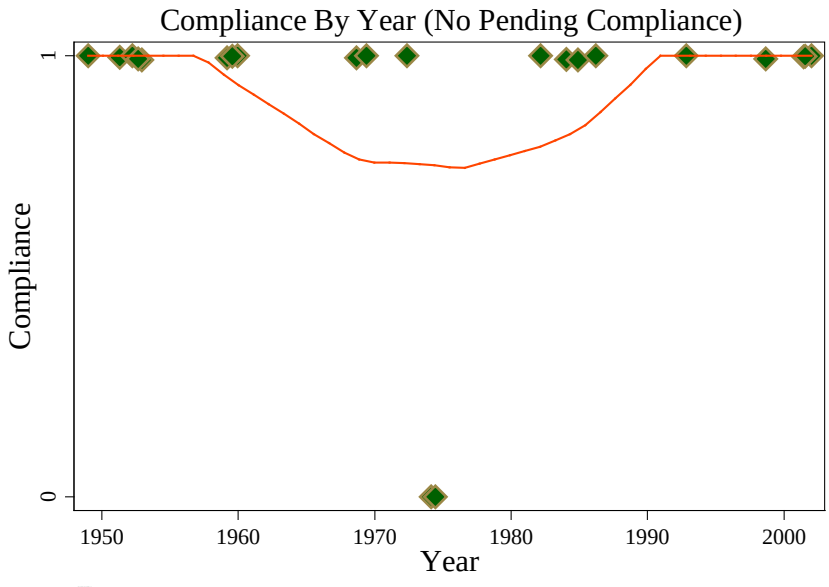


Figure 6: Compliance by Year (No Pending Compliance)



Figures 5 and 6 are local polynomial smoothing graphs demonstrating the general trend of compliance by calculating the mean of the compliance dummy over the year initiated. Compliance (on the y-axis) is on a dichotomous scale with zero for non-compliance and one for compliance. Figure 5 includes all 29 cases regardless of the pending status of some cases that have been coded a negative for compliance due to the lack of complete compliance required for the study. A downward trend is evident in Figure 5 where compliance seems to be steady decreasing over the years. The Figure seems to indicate a lower chance of compliance in more recent cases but Figure 6 illustrates otherwise by removing all cases where compliance is still pending. With seven of the nine non-compliant cases removed, a different trend appears to be occurring in the ICJ. Figure 6 displays high compliance throughout the ICJ's existence, with only a minor dip around 1975.

A clear difference is visible when considering compliance illustrated in Figures 5 and 6. Figure 5 includes all twenty-nine ICJ cases and at a surface analysis, my hypothesis is considered wrong due to the downward trend seen on the plot. However, these results depict a different relationship than what seems to be true in Figure 6. Compliance is not experiencing a steady decrease as the years go. Removing the pending compliance cases from the analysis it is evident that the ICJ has not seen a true compliance increase or decrease throughout the decades besides the minor bump around 1975 due to the *Fisheries Jurisdiction cases*. As a result, my hypothesis is still not supported since the trend remains the same, with a high compliance rate, regardless of how recent the cases were initiated. Though Figure 6 still does not support my hypothesis with today's results, a different dilemma may occur once the ICJ adds more cases into its completed docket.

Unfortunately, the results do not depict clear conclusions for compliance as I had predicted. Time has not affected compliance levels since the ICJ has only experienced true non-compliance in two cases in the 1970s. Despite this unfortunate chapter in the history of the ICJ, obedience is the norm. Therefore, I cannot assume a case will more likely be complied with today versus a case existing five decades ago solely based on the initiation year. The time variable is possibility influential in future studies with a larger period.

Figure 7: Jurisdiction Chart

Jurisdiction	Compliance (Y/N) No	Yes	Total
Compromissory Clause	4 57.14	3 42.86	7 100.00
Compulsory Jurisdicti	3 37.50	5 62.50	8 100.00
Special Agreement	2 14.29	12 85.71	14 100.00
Total	9 31.03	20 68.97	29 100.00

The completed twenty-nine cases are considered for jurisdiction with ‘Special Agreements’ holding the majority of jurisdiction basis accepted by the ICJ. Only two of the fourteen cases under ‘Special Agreement’ jurisdiction are coded as non-compliance instances resulting in a percentage rate of 85.71 for compliance. Compulsory jurisdiction held eight cases with five or 62.50% resulting in compliance. Lastly, the ICJ heard seven cases under a compromissory clause where three resulting in compliance, a percentage of 42.86. Once again, cases without complete compliance are regarded as a “No” and must be taken into consideration while analyzing the data.

On the other hand, jurisdiction does demonstrate some data I originally hypothesized would occur. Special Agreements compose fourteen of the twenty-nine cases in the database with an 85.71 compliance percentage. The two cases classified under non-compliance are some of the pending compliance cases meaning a change to their label may occur in the future. Compromissory clause and compulsory jurisdiction cases are not in the order I predicted but the difference is not as significant. In a general sense, a case seems to more likely to be complied with if it appears before the ICJ under a Special Agreement jurisdiction. States exhibit a

willingness to comply with final decisions in cases where the ICJ is heavily restricted in the subject matter.

Figure 8: Major Party Compliance

Major Party?	Compliance (Y/N) No	Yes	Total
No	6	15	21
	28.57	71.43	100.00
Yes	3	5	8
	37.50	62.50	100.00
Total	9	20	29
	31.03	68.97	100.00

Out of the 29 completed cases, only nine cases involved a major party with three complying with the ICJ decision and six currently labeled as a "No." Once again, many of the cases labeled as non-compliance are still pending for compliance and may change in the near future. Regardless, cases involving a major party demonstrate a 62.50% chance for compliance while cases without a major party have a slight increase for compliance at 71.43%.

According to my analysis, I found the major party variable to be the least significant independent variable in the study. Cases involved with one or two major parties only compose eight ICJ cases in this study. The group size is small and outweighed by the range of cases with no major party. Compliance rate of cases with a major party is 62% compared to a 71% for cases with no major party. However, one interesting observation not shown by the numbers is how the *Fisheries Jurisdiction cases* do involve the UK and the Federal Republic of Germany (major parties) and may soon be the only cases with clear defiance. Therefore, if we consider the additional information it appears having a major party as a participating state in a trial does not

necessary lead to compliance. This hypothetical conclusion cannot be supported until the current seven pending compliance cases are indefinitely finalized in regards to their implementation process.

Figure 9: Compliance by Issue

Issue	Compliance (Y/N) No	Yes	Total
Human Rights	3 50.00	3 50.00	6 100.00
Miscellaneous	0 0.00	3 100.00	3 100.00
Territorial/Maritime	6 30.00	14 70.00	20 100.00
Total	9 31.03	20 68.97	29 100.00

As illustrated above, the ICJ has the most experience dealing with territorial/maritime disputes over the years. Out of the twenty cases involved, fourteen cases were successfully complied with resulting in a 70% compliance rate. The human rights and miscellaneous group are not as large but do demonstrate different rates of compliance. For instance, three of the six human rights cases show non-compliance while miscellaneous cases experience a 100% compliance rate.

The issue variable shows the similar problem in regards to the grouping size. The territorial/maritime dispute group is the largest by far with twenty of the twenty-nine cases. My prediction was consistent with a 70% compliance rate with territorial/maritime disputes, the subject matter the ICJ appears to have more experience. Conversely, the second largest group, human rights is at a 50% compliance rate with six cases while the miscellaneous group has seen 100% compliance with all three cases. The groups are disproportional and may be too small in order to be considered significant but interesting explanations can be produced as to why the

miscellaneous group holds a 100% compliance rate. For instance, future scholars may look at the relationship of complexity of issues with compliance instead of the frequency. The *Corfu Channel* case is grouped under the miscellaneous group since its specific issue involves Albania pay compensation to the United Kingdom. The logistics behind paying debt is not as complicated and therefore easier to comply compared to determining property rights. The *Temple of Preach Vihear* case between Cambodia and Thailand reveals some of the common complications incorporated in territorial disputes. In June of 1962, the Court granted Cambodia sovereignty over the temple area and required Thailand to withdraw from the premises along with returning any objects removed from the Temple since 1954. Even though Thailand announced it would honor the decision, controversy remains and compliance is pending as the ICJ is now considering a request for interpretation filed by Cambodia in 2011. Cambodia claims the Thai government has yet to withdraw all its military forces from the Temple premises. Territorial disputes can require a longer procedure (especially if inhabitants are involved) and may lead to economic and political lost on a greater scale. Paying off debt is easier than leaving a territory with historical significance to a state.

Figure 10: Compliance by Polity Average, Government types

PolityAverage	Compliance (Y/N) No	Yes	Total
-9	0	1	1
-8	1	0	1
-7.5	0	1	1
-7	0	1	1
-5.5	1	0	1
-4.5	0	1	1
-3.5	0	1	1
0	1	1	2
.5	0	1	1
4.5	0	1	1
5	0	1	1
6.5	1	1	2
7	0	2	2
9	1	0	1
10	3	7	10
Total	8	19	27

Figure 10 only includes twenty-seven ICJ cases because Malta and Serbia and Montenegro were dropped due to their lack of a Polity score in the original database. No significant information can be deducted from the chart above besides demonstrating the most common Polity average to be 10. Therefore, cases will usually involve states in which both parties follow a democratic government although it does not always guarantee compliance. Cases with a Polity average of 10 have a 70% compliance rate.

The Polity average scores are not as predictive as I had expected since 10 is the only score with more than one case. Ten cases with an average Polity score of 10 are evident meaning both states follow a democratic government on the date the case was decided. Compliance rate for this group is 70% meaning cases in which there is no difference in the high democratic score will most likely comply with an ICJ decision.

The government type independent variable is as insightful since there are not enough cases in each category (besides 10) to compare results. Results indicate democratic governments with a Polity score of 10 more likely to comply with the Court's final decision at a 70% but no other statistical information can be used. There are not enough cases in each category to assume patterns exist. For instance, there is one case with a Polity average score of -5.5 at a 100% non-compliance rate and it would be incorrect to predict all future -5.5 score cases will result with the same outcomes. There is not enough evidence to rightfully indicate this relationship. If and when more cases are heard by the ICJ, a relationship may possibly appear.

Conclusion

The ICJ is a relatively new institution, with a short history of sixty-six years. However, even with its short existence it has successfully become an influential institution in the area of international affairs. Regardless of Llamzon mentioning the Court's lack of enforcement powers during the implementation process (815), it has demonstrated value and stability through the independent variables chosen above. The Court's "rise in status, prestige, and influence can be explained, to a great degree, by the development of a clear institutional identity within" the international system (McGuire 140). As a result, the main theory continues to be supported, institutionalization fosters high compliance.

The results for institutionalization indicate the ICJ holds a very important role when dealing with international disputes. It is apparent the Court is only increasing in its role throughout the decades as more states are agreeing to its jurisdiction and in most cases with very broad guidelines (compulsory jurisdiction) set to its deciding powers. Globalization has led to a world of partnerships and negotiations in which can and has led to conflict at international levels.

The expansion of international affairs then provides the ICJ a wider playing field, an ideal situation for an institutionalized organization.

On the other hand, the compliance relationships I originally predicted are not all supported. Interestingly, only three of the five independent variables indicated meaningful relationships with compliance levels, the dependent variable. First, from the twenty-nine cases only eight involve a major party. Although the group number is small, the *Fisheries Jurisdiction* cases do account for two of the three non-compliance instances. Therefore, my hypothesis is not consistent with the results since cases with no major party have a 10% increase for compliance compared to cases with a major party. Cases pending compliance are included meaning numbers may change but the results will continue to show higher non-compliance for cases with a major party involved. My prediction was wrong but it is important to consider that non-compliance for the *Fisheries Jurisdiction* cases is mostly due to Iceland's actions (not a major party).

Stronger correlations are evident when considering jurisdiction and issues. My initial hypotheses are supported by the results and appear to demonstrate these two independent variables influential in the post-adjudicative phrase. According to the findings, a future case brought before the ICJ under a Special Agreement jurisdiction will have a greater chance to implement a final decision, especially if the subject matter in question concerns territorial and/or maritime disputes.

The ultimate goal for coding all the independent variables above was to provide researchers a transparent method to determine whether a case would be complied with, without having to wait for the post-adjudicative phase to unfold. Unfortunately, only two variables (maybe major party included) demonstrate significant correlations with the current data but

future studies may demonstrate additional relationships. As the ICJ continues to grow, the number of cases resolved will increase the database and allow a wider case range.

A major concern discovered throughout the study relates to the time lapse between the final judgment date and total compliance. For this study, compliance was defined with a specific emphasize on the result without a time limit although interesting information may be uncovered in future studies when considered. Many scholars see the large period allowed between the final judgment date and full compliance time as a sign of weakness for the ICJ since it cannot enforce specific dates without overstepping its power. Future research may emphasize on different factors that may possibility influence immediate full compliance versus prolonged full compliance.

Regardless of the limited caseload and strict compliance definition used for this study, essential information allows academics to view the ICJ through a different perspective. Compliance is the norm followed by participating states involved in ICJ procedures. States appear to understand and respect the ICJ's standing in the international political sphere; a practice I hypothesize will only grow as the years continue to go by.

References

Elkind, Jerome B. *Non-Appearance Before the International Court of Justice: Functional and Comparative Analysis*" The Hague, The Netherlands: Martinus Nijhoff Publishers, 1984. Print

Eyffinger, Arthur. *The International Court of Justice, 1946–1996*. The Hague, The Netherlands: Kluwer Law International, 1996. Print.

Goldsmith, Jack L., and Eric A. Posner. *The Limits of International Law*. Oxford: Oxford University Press, 2005. Print.

Huntington, Samuel. *Political Order in Changing Societies.* New Haven: Yale University Press, 1968. Print.

Llamzon, Aloysius P. "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice" *European Journal of International Law* (2007): 18(5): 815-852. Print. (Connie Peck & Roy S. Lee eds., 1997)

Marshall, Monty G. and Keith Jaggers. 2010. *Polity IV Project: Political Regime Characteristics and Transitions, 1800-2010.* < http://www.systemicpeace.org/polity/polity4.htm>

McGuire, Kevin. "The Institutionalization of the U.S. Supreme Court." *Political Analysis* (2004) 12(2):128-142. Print

McWhinney, Edward. *Judicial Settlement of International Disputes: Jurisdiction, Justiciability, and Judicial Lawmaking on the Contemporary International Court*. The Hugue, The Netherlands: Martinuss Nijhoff Publishers, 1991. Print

Oduntan, Gbenga. *The Law and Practice of the International Court of Justice (1946–1996*). Enugu, Nigeria: Fourth Dimension Publishers, 1999. Print.

Polsy, Nelson. "The Institutionalization of the U.S. House of Representatives." *American Political Science Review* (1968) 62(144): 68. Print

Posner, Eric A. "The Decline of the International Court of Justice." *John M. Olin Law and Economics Working Paper No.233*. Chicago: University of Chicago Law and Economics, (2004). Print.

Powell, Emilia and Sara Mitchell. "The International Court of Justice and the World's Three Legal Systems." *The Journal of Politics* (2007) 69(2): 397-415. Print.

Robert Jennings, Presentation, in INCREASING THE EFFECTIVENESS OF THE INTERNATIONAL COURT OF JUSTICE: PROCEEDINGS OF THE ICJ/UNITAR COLLOQUIUM TO CELEBRATE THE 50TH ANNIVERSARY OF THE COURT 78

Schimdhauser, John. “An Exploratory Analysis of the Institutionalization of Legislatures and Judiciaries.” *Legislatures in Comparative Perspective.* New York: David McKay, 1973. Print

Schulte, Constanze. *Compliance With Decisions of the International Court of Justice.* New York: Oxford University Press, 2004. Print.

Scott, Gary L., and Karen D. Csajko. “Compulsory Jurisdiction and Defiance in the World Court: A Comparison of the PCIJ and the ICJ.” *Journal of International Law and Policy (*1988) 16(2–3): 377–92. Print.

Selznick, Philip. *Leadership in Administration.* Evanston, II: Row, Peterson, 1957. Print.

Squire, Peverill. “The Theory of Legislative Institutionalization and the California Assembly.” *Journal of Politics* (1992) 54(1026):54. Print.

Ragsdale, Lyn, and John J. Theis, III. “The Institutionalization of the American Presidency, 1924-92.” *American Journal of Political Science* (1997) 41(4): 1280 1318. Print.

United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI. <http://www.unhcr.org/refworld/docid/3ae6b3930.html>

United Nations, *Statute of the International Court of Justice*, 18 April 1946. <http://www.unhcr.org/refworld/docid/3deb4b9c0.html>

Appendix A

Article 59: The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60: The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61: 1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Appendix B

(a) *Special agreement*

Article 36, paragraph 1, of the Statute provides that the jurisdiction of the Court comprises all cases which the parties refer to it. Such cases normally come before the Court by notification to the Registry of an agreement known as a *special agreement* and concluded by the parties specially for this purpose. The subject of the dispute and the parties must be indicated.

(b) *Cases provided for in treaties and conventions*

Article 36, paragraph 1, of the Statute provides also that the jurisdiction of the Court comprises all matters specially provided for in treaties and conventions in force. In such cases a matter is normally brought before the Court by means of a written *application instituting proceedings*; this is a unilateral document which must indicate the subject of the dispute and the parties (Statute, Art. 40, para. 1) and, as far as possible, specify the provision on which the applicant founds the jurisdiction of the Court (Rules, Art. 38).

(c) *Compulsory jurisdiction in legal disputes*

The Statute provides that a State may recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in legal disputes. These cases are brought before the Court by means of written applications. The conditions on which such compulsory jurisdiction may be recognized are stated in paragraphs 2-5 of Article 36 of the Statute, which read as follows:

> "2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
>
> > *(a)* the interpretation of a treaty;
> >
> > *(b)* any question of international law;
> >
> > *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
> >
> > *(d)* the nature or extent of the reparation to be made for the breach of an international obligation.
>
> 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.
>
> 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
>
> 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms."

Academic Vita

Jennifer Villarroel Vargas
15826 SW 65th Terrace, Miami, FL 33193; jov5021@gmail.com; 786-238-1968

EDUCATION:

Pennsylvania State University, The Behrend College — Fall 2008 -Spring 2010
Pennsylvania State University — Fall 2010-Present
Major: Political Science Minor: Psychology

Expected Graduation Date: Spring 2012

ACADEMIC EXPERIENCE:

Undergraduate Honors Thesis Research — Fall 2010-Present

- Conducting an extensive analysis of the International Court of Justice (ICJ) and its decisions since the 1940s.
- Incorporating institutionalization and compliance concepts to the ICJ decisions.

The Comprehensive Statistical Database of Multilateral — Fall 2009-Spring 2010

- Researched with Professor John K. Gamble for the use of customs (non-written source of law) in treaties to determine if they could be added to the data coding.
- Presented weekly progress reports and new ideas for the dataset to the research team.

International Law and Organization — Spring 2009

- Studied major topics and issues of international law.
- Analyzed *Nicaragua v. Honduras* in depth to determine its relevance in the international community today.

WORK EXPERIENCE:

CASA Immigration Law Intern, Miami, FL — Summer 2010

- Worked with the Head Counsel, participated during client meetings, prepared and organized legal forms.

Seasonal Athletic I/Sales Associate — Summer 2010, Summer 2011

- Assist customers with the selection, product information, and purchase of products.

Blogger for the Admissions Office at Penn State University — Spring 2009-Spring 2010

- Created an online blog oriented toward freshmen who might want insight from a college student's perspective.

Tour Guide for the Admissions Office at Penn State University — Spring 2009-Spring 2010

- Direct small groups of prospective students around campus.

LEADERSHIP EXPERIENCE:

Teacher's Assistant, Intro. to Comparative Politics, Penn State. — Fall 2009

- Presented speeches from the perspectives of political figures around the world today.
- Held study group sessions for interested students.

HONORS/AWARDS:

Recipient of the Bunton Waller Undergraduate Fellows — Fall 2008-Present

- Program Scholarship
- Full tuition all four years of college.

Schreyer Honors College — Fall 2009-Present
Dean's List — 2008-2009, 2009-2010, 2010-2011, Fall 2011
Behrend Honors College — Fall 2008-Spring 2010

ACTIVITIES/COMMUNITY SERVICE:

THON — Spring 2011, Spring 2012
Alternative Spring Break – New Orleans — Spring 2010
Miami Work Camp/ Habitat For Humanity — Summer 2009