



INSTITUT
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ESTUDIS
INTERNACIONALS

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International Courts and the Success of International Agreements

Instructor: Prof. Matthew Gabel (Washington University)

Date: June 26 - 30

Time: 9.00 am - 11.00 am

Room: 24.224 - Mercè Rodoreda Building 24 (Floor 2)

Most major international agreements—and many smaller ones as well—provide for dispute resolution through a court. For example, courts are active in agreements covering human rights and international trade. These courts typically lack any independent power of enforcement and yet are expected to ensure member-states comply with the agreement. In this course, we consider why such courts are formed and, based on that, examine arguments for why and under what conditions they will contribute to the performance of the international agreement. We will pay specific attention to one particularly successful international court—the European Court of Justice (ECJ). The ECJ has played an important role in the development and management of the European Union. It provides a valuable setting in which to understand how international courts matter and, perhaps, advance an agenda independent of the signatories of the agreement.

Session 1. Some basics on international courts, international agreements, and effectiveness

Not all international courts are the same. They vary in how judges are appointed, which parties can bring suit, and how their rulings are implemented, among other things. The readings highlight several key features of institutional design and describe how they affect the impact of the Court.

Required reading:

Romano, Cesare et al (editors). Oxford Handbook of International Adjudication. 2013. chapter 1 (pp. 1-24); Chapter 21.

Keohane, Robert, Andrew Moravscik, and Anne-Marie Slaughter. 2000. Legalized Dispute Resolution. *International Organization* 54(3): 457-488.

Stone Sweet, Alec and Thomas Brunell. 1998. Constructing a Supranational Constitution: Dispute Resolution and Governance in the European Community. *American Political Science Review* 92(1): 63-81.

Gabel, Matthew et al. 2012. Of Courts and Commerce. *Journal of Politics* 74(4): 1125-1137.

Further reading:

Davis, Christina. 2012. Why Adjudicate? Princeton: Princeton University Press. Chapter 1.

Session 2. International courts and collective action problems

A common purpose of international courts is to help members overcome collective action problems. The readings specify how courts can facilitate cooperation among member states, even when the courts lack any power of enforcement.

Required reading:

Carrubba, Clifford. 2005. Courts and Compliance in International Regulatory Regimes. *Journal of Politics* 67(3): 669-689.

Carrubba, Clifford and Matthew Gabel. 2014. *International Courts and the Performance of International Agreements*. Cambridge: Cambridge University Press. Chapters 1 and 6.

Session 3. International courts and credible commitments

Another way that Courts can shape the value of an international agreement is by providing signatories to the agreement with a venue for signaling their resolve or their commitment. Filing a case and aggressively pursuing it, for example, can require a significant political and economic investment. Also, by committing to honor the rules of an agreement, a government can create costs to defection that make the agreement more stable.

Required reading:

Davis, Christina. 2012. *Why Adjudicate?* Princeton: Princeton University Press. Chapters 2 and 6.

Simmons, Beth and Allison Danner. 2010. Credible Commitments and the International Criminal Court. *International Organization* 64(2): 225-256.

Session 4. How domestic politics affect the influence of international courts

One way that international court rulings can change state behavior is by engaging national political actors and institutions. This mode of influence can happen through domestic courts that formally appeal to an international court, but it can also happen through less formal channels. The readings describe both the potential and the limitations of these channels for the international court to influence policy.

Required reading:

Lutz, Ellen and Kathryn Sikkink. 2001. The Justice Cascade: the evolution and impact of foreign human rights trials in Latin America. *Chicago Journal of International Law* 2: 1-33.

Burley, Ann-Marie and Walter Mattli. 1993. Europe Before the Court. *International Organization* 47(1): 41-76.

Conant, Lisa. 2002. *Justice Contained*. Ithaca: Cornell University Press. Chapters 1-3.

Further reading:

Helfer, Laurence and Erik Voeten. 2014. International Courts as Agents of Legal Change. *International Organization* 68(1): 77-110.

Session 5. How judges rule: understanding judicial behavior on international courts

The accounts reviewed above for how and when international courts matter depend on claims about how the judges on these courts behave. Do judges communicate their rulings and justifications so as to develop a new body of law? Are the judges faithful agents of their appointing governments? Or, are they legal entrepreneurs focused on an expansive interpretation of international law? Are the judges sensitive to their

institutional environment? Answering these questions will help us understand the relevance of these prominent accounts to contemporary international courts.

Required reading:

Posner, Eric and Miguel de Figueiredo. 2005. Is the International Court of Justice Biased? *Journal of Legal Studies* 34(2): 599-630.

Pelc, Krzysztof. 2014. The Politics of Precedent in International Law: A Social Network Application. *American Political Science Review* 108(3): 547-564.

Carrubba, Clifford and Matthew Gabel. 2014. International Courts and the Performance of International Agreements. Cambridge: Cambridge University Press. Chapter 5.

Further reading:

Voeten, Erik. 2008. The Impartiality of International Judges: Evidence from the European Court of Human Rights. *American Political Science Review* 102(4): 417-433.