**Politics of International Law**

**POLSC-UH 2527**
**4 credits**
**Spring 2019**

No prerequisite

Counts toward:
Political Science major
International Politics elective
Legal Studies elective

Professor Barry Hashimoto
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Monday/Wednesday at 1:15—2:30 PM in A5-004

Office Hours: Monday 2:30 to 3:30, Wednesdays 6-7, by appointment in Social Sciences A5 113.

## Course Description

This course draws on readings from the disciplines of political science and international law to examine how strategic international and domestic politics influence international law, and vice versa. Core topics include treaties and custom; state responsibility; bargaining and cooperation in the enforcement of international law; commitment and compliance; and the politics and law of international adjudication, arbitration, and prosecution. Special coverage is given to law on the use of force, international criminal law, human rights law, and landmark cases from the International Court of Justice, International Criminal Court, United Nations tribunals, European Court of Justice, and World Trade Organization.

## Learning Outcomes

1. Identify and describe central actors, interests, interactions, institutions, organizations, and historical development of international law.
2. Analyze and critically assess facts, theories, and systematic empirical evidence on the sources of law, enforcement, dispute settlement, the design and efficacy of courts and tribunals, judicial politics, and the regulation of war.
3. Explain the functions and roles of international courts and tribunals such as the International Court of Justice, dispute settlement bodies of the GATT and WTO, investor-state arbitral tribunals, the International Criminal Court, the European Court of Human Rights, and other regional courts of human rights and commercial relations.
4. Analyze and interpret the political and legal considerations in cases decided by international courts and tribunals.
5. Demonstrate the capacity to synthesize knowledge and do original research on the politics of international law.

## Textbooks

Books are now available at the NYUAD bookstore. Students who anticipate writing a paper on judicial and arbitral politics should consider purchasing the recommended text by Anthea Roberts.

Required texts

1. Abram Chayes and Antonia Handler Chayes. 1998. *The New Sovereignty: Compliance With International Regulatory Agreements*. Cambridge, MA: Harvard University Press.
2. Andrew Guzman. 2008. *How International Law Works.* Oxford, UK: Oxford University Press.
3. Karen Alter. 2014. *The New Terrain of International Law*. Princeton, NJ: Princeton University Press.
4. Leslie Johns. 2015. *Strengthening International Courts: The Hidden Costs of Legalization*. Ann Arbor, MI: University of Michigan Press.
5. Krzysztof J. Pelc. 2016. *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law*. Cambridge, UK: Cambridge University Press.

Recommended text:

1. Anthea Roberts. 2017. *Is International Law International?* Oxford, UK: Oxford University Press.

## Teaching and Learning Methodology

The teaching methodology of this course is to combine lectures, seminars, and research-intensive assignments to engage students with (much recent, some classic) scholarly work by political scientists and lawyers at the intersection of political science and international law. No single textbook covers enough of the exciting new knowledge on these topics, so the required reading list has five monographs and a number of journal articles. Lectures will be used to introduce background facts and methods of study, and to situate course readings in the rest of the literature. Seminars will be used to create a setting where students will prepare for and actively participate in a structured, critical analysis of the reading assignments. Students will be required to demonstrate these skills be presenting several readings throughout the semester in class. Students will also be required to write a long research paper on one topic covered in the course to gain experience in independently approaching a significant, and focused question by identifying and synthesizing knowledge from primary and secondary sources.

## Evaluation

1. **Presentations**: 60% of the total course grade. To stimulate a productive and interactive classroom discussion of the course material, you will take charge of certain required readings with the aim of describing and analyzing their content in detail. You may make a brief set of slides giving the organization of their presentation and any important visual materials from the reading. A grading rubric will be posted focusing on three components: (i) Accuracy, clarity, and precision; (ii) organization, scholarship, and punctuality; and (iii) originality and insight. Please upload your presentations to the Assignment link provided at NYU Classes. A schedule of these presentations will be posted on NYU Classes, and

please be aware that it is subject to change based on scheduling needs and student availability. I will notify you of any changes through NYU Classes.

2. **Research Paper Assignment**: 30% of the total course grade. Students will write a paper limited to 20 pages (double-spaced, 12-point font) due in May. Conduct a critical literature review of one topic of the syllabus, using the required readings for that topic as a starting point for a deeper engagement with secondary and primary sources. These sources may include judgments, judges' opinions, documents of international organizations, legal scholarship, scholarship from the social sciences, quantitative data, and archival resources. The papers will provide students with the opportunity for reflection on parts of the course that are particularly interesting to them and give them practice in synthesizing and producing original scholarship. The primary research question in each student's literature review will be, "What should we know, what do we know, and what don't we know enough about the chosen topic?" Subsidiary research questions leading to the development of original theory are permitted and encouraged. Alternatively, a student may propose to conduct a focused empirical analysis of data-collection project in consultation with the professor. The aim of such a paper will be to develop and/or test a theory related to the subject matter of the course.

3. **Examination**: 10% of the total course grade. There will be an open-book final examination with a choice of one essay out of several during the scheduled final examination period testing understanding, interpretation, analysis, and critical thinking based on a selection of readings from the list of required and recommended texts.

## Grading scale

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|---|---|---|---|
| A: 93%-100% | B: 83%-86.9% | C: 73%-76.9% | D: 60%-66.9% |
| A-: 90%-92.9% | B-: 80%-82.9% | C-: 70%-72.9% | F: < 59.9% |
| B+: 87%-89.9% | C+: 77%-79.9% | D+: 67%-69.9% | |

## Course Policies

- Email: I will usually answer your emails within 24 hours, but please do not leave important questions to the last minute.
- Late submissions: work turned-in past deadline may be penalized.

## Academic integrity

You are expected to adhere to the highest standards of scholarship and academic integrity. Violations of NYU AD's policy on these matters may subject you to review and the imposition of penalties in accordance with NYU AD's procedures. Please read thoroughly and understand NYU Abu Dhabi's statement on academic integrity, and contact me if you have any questions as you complete your assignments.

https://students.nyuad.nyu.edu/campus-life/student-policies/community-standards-policies/academic-integrity/.

**Weekly course schedule with required readings**

Readings are indicated as either required or as recommended. Please complete required readings in full by the class day indicated below. You are encouraged to read the recommended readings, although doing so is optional, and the list is mainly intended to give you a sense of what else to read on a subject as you think about your papers. Required journal articles will be linked to in NYU Classes. The schedule below is subject to adjustment based on the content and length of classroom discussions.

**Week 1, Jan 30: Introduction, history, and sources of law: treaties, custom, general principles, and subsidiary sources**

Required reading to do over the weekend after our first meeting.

- Curtis A. Bradley and Mitu Gulati. 2010. "Withdrawing from International Custom." *The Yale Law Journal* 120(2), pp. 202-241 (you may want to skim the remainder of the article).

Recommended:

- Hugh Thirlway. 2010. "The Sources of International Law" in *International Law* (ed. Malcolm Evans). Oxford, UK: Oxford University Press, pp. 91-117.
- Giorgio Gaja. 2013. "General Principles of Law." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e1410?rskey=AHCs18&result=1&prd=EPIL
- Stephen Neff. 2010. "A Short History of International Law" in *International Law* (ed. Malcolm Evans). Oxford, UK: Oxford University Press, pp. 3-28.
- Kenneth Abbott, Robert Keohane, Andrew Moravcsik, and Anne-Marie Slaughter. 2000. "The Concept of Legalization." *International Organization*, pp. 401-419.

**Week 2, Feb 4/6: Strategic politics in treaty-making**

Required Monday: pages 18-92 of Krzysztof J. Pelc. 2016. *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law*. Cambridge, UK: Cambridge University Press.

Required Wednesday: pages 93-136 of Pelc.

Recommended:

- Malgosia Fitzmaurice. 2010. "The Practical Workings of the Law of Treaties" in *International Law* (ed. Malcolm Evans). Oxford, UK: Oxford University Press, pp. 166-200.
- James Fearon. 1998. "Bargaining, Enforcement, and International Cooperation." *International Organization* 52(2), pp. 269—305.
- B. Peter Rosendorff and Helen V. Milner. 2001. "The Optimal Design of International Trade Institutions: Uncertainty and Escape." *International Organization* 55(4), pp. 829-857.

**Week 3, Feb 11/13: Treaty-making: case studies in monetary relations, investment, and trade**

Required Monday:

- Tim Büthe and Helen V. Milner. 2014. "Foreign Direct Investment and Institutional Diversity in Trade Agreements: Credibility, Commitment, and Economic Flows in the Developing World, 1971–2007." *World Politics* 66(1), pp. 88-122.

Required Wednesday:

- Ian Osgood. 2018. "Globalizing the Supply Chain: Firm and Industrial Support for US Trade Agreements." *International Organization* 72(2), pp. 455-484.

Recommended:

- Beth Simmons. 2000. "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs." *American Political Science Review*, pp. 819-835.
- Zachary Elkins, Andrew Guzman, and Beth Simmons. 2006. "Competing for Capital: The Diffusion of Bilateral Investment Treaties, 1960–2000." *American Political Science Review*, pp. 811-846.

**Week 4, Feb 18/20: Custom-making: the case of the customary law of state responsibility**

Required Monday:

- Philip Allott. 1988. "State Responsibility and the Unmaking of International Law." *Harvard International Law Journal* 29(1), pp. 1-26.
- Andrew Guzman. 2008. *How International Law Works.* Oxford, UK: Oxford University Press. Introduction (pp. 3-24) and Chapter 5 (pp. 183-209).

Required Wednesday:

- James Crawford. 2002. "The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect." *American Journal of International Law*, pp. 874-890.
- David Caron. 2002. "The ILC Articles on State Responsibility: The Paradoxical Relationship Between Form and Authority." *American Journal of International Law*, pp. 857-873.

Recommended:

- Tullio Treves. 2006. "Customary International Law." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e517?rskey=eUwCIA&result=1&prd=EPIL

**Week 5, Feb 25/27: Enforcement of international law: views from academic international lawyers**

Required Monday:

- Thomas M. Franck. 1988. "Legitimacy in the International System." *American Journal of International Law* 82(4), pp. 705-759.

Required Wednesday:

- Oona Hathaway and Scott J. Shapiro. 2012. "Outcasting: Enforcement in Domestic and International Law." *The Yale Law Journal*, pp. 252-439.

**Week 6, March 4/6: Enforcement of international law: a view from practicing international lawyers**

Required Monday: Pages 1-67 of Abram Chayes and Antonia Handler Chayes. 1998. *The New Sovereignty: Compliance With International Regulatory Agreements*. Cambridge, MA: Harvard University Press.

Required Wednesday: Pages 68-108 and 272-285 of Chayes and Chayes.

**Week 7, March 11/13: Enforcement of international law: views from social scientists**

Required Monday:

- George Downs, David Rocke and Peter Barsoom. 1996. "Is the Good News About Compliance Good News About Cooperation?" *International Organization* 50(3), pp. 379—399.

Required Wednesday:

- Andrew Guzman. 2008. *How International Law Works.* Oxford, UK: Oxford University Press, Chapters 1-3.

Recommended:

- Xinyuan Dai. 2005. "Why Comply? The Domestic Constituency Mechanism." *International Organization* 59(2), pp. 363-398.
- Federica I. Paddeu. 2015. "Countermeasures." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e1020?rskey=3yxWC3&result=1&prd=EPIL
- Chilton, Adam and Dustin Tingley. 2013. "Why the Study of International Law Needs Experiments." *Columbia Journal of Transnational Law* 52, 173-236.

**Week 8, March 18: The International Court of Justice as the primary judicial organ of the United Nations**

Required Monday:

- Hugh Thirlway. 2010. "The International Court of Justice" in *International Law* (ed. Malcolm Evans). Oxford, UK: Oxford University Press, pp. 589-617.

Required Wednesday:

- Bruno Simma. 2012. "Mainstreaming Human Rights: The Contribution of the International Court of Justice." *Journal of International Dispute Settlement* 3(1), pp. 7-29.
- Christian J. Tams and Antonios Tzanakopoulous. 2010. "*Barcelona Traction* at 40: the ICJ as an Agent of Legal Development." *Leiden Journal of International Law* 23(4), pp. 781-800.

Recommended:

- Richard A. Falk. 1967. "The South West Africa Cases: an Appraisal." *International Organization* 21(1), pp. 1-23.

**Week 9 April 1/3: Weak and strong international courts in the roles of dispute resolution, enforcement, administrative review, and constitutional review**

*Note: professor will be traveling on university business the week after spring break.*

Required Monday: Chapters 2, 3, and 4 of Karen Alter. 2014. *The New Terrain of International Law*. Princeton, NJ: Princeton University Press.

Required Wednesday: Chapters 7 and 8 of Alter.

Recommended:

- Karin Oellers-Frahm. 2013. "International Courts and Tribunals, Judges and Arbitrators." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e45?rskey=BZBM9X&result=7&prd=EPIL

**Week 10, April 8/10: When are weak courts better than strong courts? A view from political science**

Required Monday: pages 13-40 and 64-77 of Leslie Johns. 2015. *Strengthening International Courts: The Hidden Costs of Legalization*. Ann Arbor, MI: University of Michigan Press.

Required Wednesday: pages 78-123 of Johns.

**Week 11, April 15/17: Legal design in dispute resolution: bilateral investment treaties and investor-state dispute settlement**

Required Monday:

- Todd Allee and Clint Peinhardt. 2014. "Evaluating Three Explanations for the Design of Bilateral Investment Treaties." *World Politics*, 66(1), pp. 47-87.

Required Wednesday:

- Charles N. Brower and Sadie Blanchard. 2016. "What's in a Meme—The Truth about Investor-State Arbitration: Why It Need Not, and Must Not, Be Repossessed by States." *Columbia Journal of Transnational Law* 52.

Recommended:

- Beth Simmons. 2014. "Bargaining over BITs, Arbitrating Awards: The Regime for Protection and Promotion of International Investment." *World Politics* 66(1), pp. 12-46.
- Todd Allee and Clint Peinhardt. 2011. "Contingent Credibility: The Impact of Investment Treaty Violations on Foreign Direct Investment." *International Organization* 65(3), pp. 401-432.
- Charles Schreuer. 2013. "Investment Disputes." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e517?rskey=eUwCIA&result=1&prd=EPIL

**Week 12, April 22/24: Judicial politics in Europe**

Required Monday:

- Erik Voeten. 2007. "The Politics of International Judicial Appointments: Evidence from the European Court of Human Rights." *International Organization*, pp. 669-701.

Required Wednesday:

- Erik Voeten. 2008. "The Impartiality of International Judges: Evidence from the European Court of Human Rights." *International Organization*, pp. 417-433.

Recommended:

- Andrew Moravcsik. 2000. "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe." *International Organization* 54(2), pp. 217-252.

**Week 13, April 29/May 1: Politics inside the judicial and arbitral processes for trade and investment**

Required Monday:

- Marc L. Busch. 2007. "Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade." *International Organization* 61(4), pp. 745-761.

Required Wednesday:

- Marc L. Busch and Krzysztof Pelc. 2010 "The Politics of Judicial Economy at the World Trade Organization." *International Organization*, pp. 257-279.

Recommended:

- Emilie M. Hafner-Burton, Zachary C. Steinert-Threlkeld and David G. Victor. 2016. "Predictability Versus Flexibility: Secrecy in International Investment Arbitration." *World Politics* 68(3), pp. 413-453.
- Krzysztof Pelc. 2017. What Explains the Low Success Rate of Investor-State Disputes?" *International Organization*, 71(3), pp. 559-583.
- Charles H. Brower II. 2007. "Arbitration." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law.

http://opil.ouplaw.com/abstract/10.1093/law:epil/9780199231690/law-9780199231690-e11?rskey=cU8ITJ&result=1&prd=EPIL

**Week 14 May 6/8: Precedent in adjudication and arbitration**

Required Monday:

- Yonatan Lupu and Erik Voeten. 2012. "Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights." *British Journal of Political Science*, 42(2), pp. 413-439.

Required Wednesday:

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

Recommended:

- Anthea Roberts. 2017. *Is International Law International?* Oxford, UK: Oxford University Press.
- Steven Callander and Tom S. Clark. 2017. "Precedent and Doctrine in a Complicated World." *American Political Science Review* 111(1): pp. 184-203.

**Week 15, May 13/15: Law as a constraint on the incidence of war and the forms of violence**

Required Monday:

- Eric Voeten. 2005. "The Political Origins of the UN Security Council's Ability to Legitimize the Use of Force." *International Organization* 59(3), pp. 527—557.
- Christopher Greenwood. 2011. "Self-Defence." *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e401?prd=EPIL

Required Wednesday:

- Barry Hashimoto. 2019. "Why Do Autocrats Accept the Jurisdiction of the International Criminal Court? Theory and Evidence." Forthcoming at *International Organization.*
- Allison M. Danner and Jennifer S. Martinez. 2005. "Guilty Associations: Joint Criminal Enterprise, Command Responsibility and the Development of International Criminal Law." *California Law Review* 93(1), pp. 75—169.

Recommended:

- Nigel Lo, Barry Hashimoto and Dan Reiter. 2008. "Ensuring Peace: Foreign-Imposed Regime Change and Postwar Peace Duration, 1914-2001." *International Organization* 62(4), pp. 717-736.
- Virginia Page Fortna. "Scraps of Paper? Agreements and the Durability of Peace." *International Organization* 57(2), pp. 337-372.
- James Morrow. 2007. "Why Do States Follow the Laws of War?" *American Political Science Review*, pp. 559-572.

- Dapo Akande and Thomas Lieflander. 2013. “Clarifying Necessity, Imminence, and Proportionality in the Law of Self-Defense.” *American Journal of International Law* 107(3), pp. 563-570.
- Dapo Akande. 2004. “International Law Immunities and the International Criminal Court.” *American Journal of International Law* 98(3), pp. 407-433.
- Oliver Dörr. 2015. “Use of Force, Prohibition of.” *Max Planck Encyclopedia of Public International Law*. Oxford Public International Law. http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e427?prd=EPIL

**Suggestions for your final paper topics**

Suggestion 1: "Making Precedent on "Dispute Existence" at the ICJ: the Formality Criterion." When political scientists study precedent, they tend to assume that precedent—a legal rule established by a court that may be applied in future cases with similar fact patterns—is obviously evident in the court's jurisprudence. Reality is not as neat. Judges may disagree on whether precedent exists in the first place, and engage in inter-judge negotiations over whether precedent in fact exists in new cases where such as candidate precedent might apply. The reasons why judges disagree on the existence of precedent is an under-explored topic. This paper examines patterns of disagreement over the existence of precedent in a salient example from the International Court of Justice. The ICJ's "dispute existence" rule requires that the court only exercise its jurisdiction over a question when the court can determine that a legal dispute existed between the applicant and defendant prior to some critical date. Beyond this general statement, the views of judges diverge on, *inter alia*, (i) what the critical date is, (ii) whether the respondent must be "aware" of the existence of the dispute and what awareness entails, (iii) the meaning of "legal dispute," (iv) what evidence is necessary or sufficient for proving the existence of a legal dispute, and (v) the level of "formality" the court is required to use in assessing these questions. This paper focuses on the question of the degree of "formality" that judges at the court believed the court should impose in determining dispute existence. Starting with the Marshall Islands cases and working backward through the 19 cases where a dispute existence objection was raised by a party at the ICJ or PCICJ it uses the primary case material to describe the views of the parties and judges on this question as expressed in judgements, opinions, and written submissions. The goal of the paper is mainly descriptive: to describe which judges and states advanced which views. It also attempts to identify coalitions within the court which answer questions similarly. A conclusion speculates about motives.

Suggestion 2: Another suggestion for Kirk: It is generally assumed that international agreements concluded under internationally unlawful coercive circumstances were void even before the creation of the UN Charter and Vienna Convention on the Law of Treaties dispelled any doubt on this question. Identifying which international agreements terminating interstate conflict were concluded under such circumstances is therefore important if we are to know which of those agreements were ever valid in the first place. Identifying valid and invalid war-terminating agreements, in turn, is essential to testing institutionalist theories of international security that propose that a smarter design of agreements can preclude belligerents from returning to war. This paper devises a set of criteria for deciding whether those such agreements are valid or invalid, reviews the circumstances of conclusion for highly suspect war-terminating agreements (1914-2010) using the treaty list assembled by Hashimoto and colleagues (2008) and classifies the agreements as valid or invalid.

Suggestion 3: "Making Precedent on "Dispute Existence" at the ICJ: the Diplomatic Channel Criterion." When political scientists study precedent, they tend to assume that precedent—a legal rule established by a court that may be applied in future cases with similar fact patterns—is obviously evident in the court's jurisprudence. Reality is not as neat. Judges may disagree on whether precedent exists in the first place, and engage in inter-judge negotiations over whether precedent in fact exists in new cases where such as candidate precedent might apply. The reasons why judges disagree on the existence of precedent is an under-explored topic. This paper examines patterns of disagreement over the existence of precedent in a salient example from the

International Court of Justice. The ICJ's "dispute existence" rule requires that the court only exercise its jurisdiction over a question when the court can determine that a legal dispute existed between the applicant and defendant prior to some critical date. Beyond this general statement, the views of judges diverge on, *inter alia*, (i) what the critical date is, (ii) whether the respondent must be "aware" of the existence of the dispute and what awareness entails, (iii) the meaning of "legal dispute," (iv) what evidence is necessary or sufficient for proving the existence of a legal dispute, and (v) the level of "formality" the court is required to use in assessing these questions. This paper focuses on the question of whether evidence of a dispute in direct diplomatic-channel communications is a necessary condition for the existence of a dispute. Starting with the Marshall Islands cases and working backward through *Southwest Africa* 1962 and 1966 and all 19 cases where a dispute existence objection was raised by a party at the ICJ or PCICJ, it uses the primary case material to describe the views of the parties and judges on this question as expressed in judgements, opinions, and written submissions. The goal of the paper is mainly descriptive: to describe which judges and states advanced which views. It also attempts to identify coalitions within the court which answer questions similarly. A conclusion speculates about motives.

Suggestion 4: The logic of hands-tying suggests that states seeking the gains from cooperation will perform actions that raise the costs of acting inconsistently with their promises, rendering commitments credible. These costs arise from the decentralized enforcement mechanisms of international law—namley, reputational, reciprocal, and retaliatory punishments performed by a variety of actors. Yet institutionalists in the rational design tradition have also recognized that the drawback to excessively rigid enforcement is to reduce "stability"—to deter states from hands-tying. In situations where punishing agents are difficult to coordinate and likely to inflict excessive punishment upon states—such as firms engaged in sovereign lending and investment—states ought to be reluctant to tie hands. This paper investigates the plausibility of two conjectures: first, that competition for such capital forces states to tie their hands despite excessive rigidity, and second, that actions that appear to be hands-tying may in fact be hands-loosening. With respect to each, this paper studies Argentina's sovereign debt default crisis, the country's delegation of dispute settlement to arbitral tribunals, and the jurisprudence of those tribunals concerning the question of "necessity" as a defense of Argentina's actions surrounding the defaults.

Suggestion 5: International refugee law's Achilles Heel is the absence of general obligatory standards on national administrative review of individuals' asylum petitions. Such gaps in international law are often filled-in through the general rule of treaty interpretation recognized in the VCLT, or the development of customary international law, especially where judicial institutions are available. This paper studies (i) the extent to which Latin American and European states have created and recognized custom governing the review of individual asylum applications through state practice, and (ii) the international and domestic-political causes of variation in this state practice across country and over time. The goals of the paper are therefore descriptive ("what is the law?") and explanatory ("why have states [courts?] made the law what it is?"). Finally, the paper briefly considers the mechanisms by which regional custom may transform into universally binding custom, in light of the ILC's recent report on the identification of custom by Sir Michael Wood.

Suggestion 6: International courts play an important role in applying legal expertise to developing law, analyzing facts, and disposing of cases. This role is one in the chain of enforcement and in the

drawing-room of rules. Just as states may empower courts, they may disempower them. This paper briefly reviews the literature on "court-curbing" in the context of the European Court of Justice and the GATT/WTO, and then turns to an analysis of recent American efforts to disempower the dispute settlement system at the WTO, answering important "who," "how," and "why" questions in explaining the case, and then discussing the implications for theories on the creation and enforcement of international law.

Suggestion 7: Voeten (2008) is almost unique in its attempt to assess whether international judges are "biased" in some sense (partiality, dependence, policy-seeking, etc.), but what he in fact does is show that there are state-level and individual-level correlates of whether a ECHR judge rules against the state. The equation of this fact with the existence of judicial bias is tendentious. This literature review distinguishes various manners in which judges might be biased using primary and secondary sources on the annulment of arbitral awards due to forms of judicial corruption. It then proposes whether and how a research design might be able to identify the existence of various biases in judicial reasoning using observational or experimental designs.

Suggestion 8: The question whether ICJ judges reason in ways that may be characterized as biased was inspired in part by the controversial judgements in *Southwest Africa about* the standing of Liberia and Ethiopia to bring claims of treaty breach against South Africa. The case serves as an interesting instance for examining this question, since judicial biases among the regular judges would be based on considerations other than national origin. This paper reviews sources written in retrospect on the judges and their judgements to identify hypotheses on possible sources of biases, including considerations of race, prerogatives of decolonization, security concerns related to Cold War alignments, and status considerations related to the training and background of judges.

Suggestion 9: Voeten (2007) identifies latent dimension of activism-restraint using a data set of judicial dissents to ECHR cases and a model derived from Item Response Theory, first proposed and used in identifying latent qualities like aptitude and question difficulty with data sets of student performance on standardized tests. This paper presents a literature review of this class of models with an objective of understanding the variations of such models, their assumptions, and their "degrees of researcher freedom"---i.e. the pre-interpretation model specification choices that determine the estimates derived from them. Models that specify a larger number of latent dimensions, additional sources of data (i.e. text plus votes), and cross-validation are considered. The question of appropriate "windows" of time or issue blocks in which distinct sets of cases are analyzed is considered.

Suggestion 10: Customary and conventional treaty law since at least 1945 has considered treaties concluded under threat of unlawful forcible coercion to be null and void. The pre-1945 rule is less clear, having existed only in customary form, although available commentary suggests that it was almost certainly no more stringent than in the post-1945 period. The question of the validity of peace treaties is especially relevant here, since continued or renewed forcible coercion through war is the fallback for each belligerent state. In certain cases, such coercion might be unlawful---e.g. the case where belligerent A re-initiates war against belligerent B due to its refusal to accept proposed peace terms after the cessation of hostilities, which describes a scenario that nearly occurred in 1919 between France and Germany. How did pre-1945 and how does post-1945 international law treat the legality of the use of force in such situations? This paper examines the secondary literature to propose possible answers to this question.

Suggestion 11: Efforts to reform ICSID are apace, years after the incisive defense of the system by Brower, Blanchard and others. This paper examines the record of these recent negotiations to see whether state advocacy is (in)consistent with the power-and-preferences theory proposed by the International Political Economy literature.

Suggestion 12: Unsupervised topic models relying on automatic translation tools by Microsoft and Google are believed to yield valid inferences, yet this belief is rarely tested in more specialized contexts like legal writing or from temporal-cultural contexts different from those in which the automated translation software tools were created. This paper reviews the literature supporting the default validity view. It discusses problems that arise in its application to these alternative contexts. Using a small sample of expert-translated documents from cases in (Turkish, Spanish, Tagalog) from contemporary and more distant historical periods, it subjects the default validity view to a limited empirical test, and proposes a research design for a more comprehensive test.