Central European University
Department of International Relations

Courts as Global Policy Actors

Fall term

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Room
Schedule Tues – Thurs 9.00-10.40

Course description

‘MAKE LAW, NOT WAR’

With the increased legalization of international relations and the ‘constitutionalisation’ of regional and global governance, courts have become important policy actors on the international stage. International courts, but also domestic ones, have acquired an influential role in domains as diverse as regional (economic) integration, trade, investment, environmental protection, human rights, sport, or criminal justice; they are even gaining ground in sensitive areas such as security.

Courts are nonetheless ‘strange animals’: their roles, powers, modes of decision and legitimacy and accountability frameworks differ quite significantly from those of more traditional IR or global governance institutions. It is therefore essential for anyone wishing to understand the complex dynamics of IR and global governance to get a grasp of the particular features of relevant judicial processes, at international as well as domestic levels. Indeed, the mobilisation and engagement of courts in solving international disputes or holding global governance regimes more accountable modifies the rules of the game, in a manner which can empower certain actors and weaken others. It also impacts on strategic calculations and norms of reference.

This course explores the ‘world of courts’, and examines their evolving role in international relations and global governance. It draws mainly on scholarly literature stemming from the IR and global/multilevel governance fields, but also to a more limited extent from legal studies. It also involves a direct engagement with case law and news items. Threading together theoretical elements and empirical observations, it aims to develop a grounded understanding of judicial dynamics which affect the nature and outcomes of IR and global governance processes.

The course addresses a number of key questions, such as:
- What are international courts like? What role do they play and which functions do they perform? What powers do they have? Who are their judges and how are they appointed? What is their jurisdiction? (who can bring cases to them, what kind of cases, asking what kind of questions, requesting what kind of solution, following which kind of procedure, etc)?
- Why states create international courts?
- Why states and other actors turn to international courts (why litigate)?
- Do states comply with international courts’ decisions, and if so, why?
- Are international courts effective?
- What is the impact of international courts on IR and global governance regime, and what factors determine it?
- Have national courts become global political actors?
- Does the judicialization of IR and global governance empower a new set of actors, such as NGOs or corporate?
- Is judicialization of international governance desirable? Is it compatible with democracy and state sovereignty?

Course objectives

- Familiarize the students with scholarship exploring the evolving role of courts in international relations and global governance and interactions between law and politics in multi-level governance settings;
- Develop an understanding of the particular features of judicial institutions involved in IR and global governance, and the specific dynamics of judicial processes involving a global dimension;
- Be able to relate contemporary developments and news to theoretical understandings of the judicialisation of world politics and global policy-making;
- Improve the theoretical understanding of the complex dynamics of IR and global governance, and (re)assess relevant empirics;
- Be able to read and process legal materials relevant to evaluating the role of courts in global governance;
- Offer exposure to different theoretical perspectives, methodological approaches, and empirical contexts pertinent to the judicialization of IR and global governance;
- Developing academic and policy research skills applied to the context of judicialization of IR and global governance;
- Experiment with different modes of oral contributions and writing genres, applied to the context of judicialization of IR and global governance.
Learning outcomes

At the end of the course, the students should:

Be familiar with the most important international courts and domestic courts which are influential in world politics;

Identify the basic features of international and domestic judicial institutions which matter in IR and global governance;

Understand the dynamics of judicialization of IR and global governance;

Identify the implications of judicialization for IR and global governance;

Be aware and able to present core elements of the various theoretical perspectives which assess the judicialization of IR and world governance;

Be aware of the different methodological approaches used to assess the dynamics and impact of judicialization;

Understand the policy implications of the increased role of courts in IR and global governance, and be able to devise suitable policy recommendations;

Have developed a certain familiarity with legal texts and sources, to be able to make use of them to better understand the role of courts in IR and global governance;

Have improved their policy and academic research skills;

Have developed policy or academic writing skills, through practice with different writing genres.

Course Requirements

There is no-prerequisite for the course. Students do not need to have a legal background, but should be willing to engage to some extent with legal materials and legal reasoning.

Class attendance is mandatory. Students are required to prepare for each class as instructed. Preparation usually involves reading a core scholarly text, and searching the news or relevant case law database for recent rulings or litigation process (guidance provided), which will be presented and discussed in class. Students must also submit all assignments on time. Failure to do so without proper justification may result in downgrading or even failing the assignment, in case of serious and unjustified delay.

Course Structure

- Part 1: The World of Courts

A basic introduction into the world of courts, discussing their roles, membership, powers and jurisdiction, decision-making processes (sources of law, procedures, precedent, legal interpretation), independence, and legitimacy

- Part 2: International Courts, IR and Global Governance
This part of the course identifies and reviews the various species of international courts which populate the world of IR and global governance, evoking various explanations for different patterns of judicialization across world politics, and their implications for IR and global governance. The course then zooms into particular examples of international courts and examine their influence, starting with the Court of Justice of the European Union, often considered as the most powerful of all, but also looking at other important international courts, such as the WTO Dispute Settlement Mechanism, the European Court of Human Rights, the International Court of Justice, the International Criminal Court, and a few others.

- Part 3: National courts and multi-level governance

This part examines the role of domestic courts in IR and global governance, with a few illustrative comparative examples, which highlights interactions within multi-level governance frameworks.

- Part 4: Judicialization, new rules of the game and new actors in international governance?

This last part critically assesses the implications of judicialization on IR and global governance. It pays particular relevance to its impact on the role of traditional actors and new-comers, and notably states governments, NGOs, international organizations and corporate actors. It also engages with normative assessment of the desirability of judicialization, and future prospects, given the evolution of global power dynamics.

Methods of Assessment

The course offers a ‘dual-track’ assessment framework, with a Track 1 being more policy-oriented and Track 2 more theoretically focused. Students may choose which track they opt for, in line with their own degree program requirements or personal preferences. The various assignments, whilst different in nature, are building upon one another, and enable the students to integrate feedback from previous assignments into the development of later ones.

Track 1: Policy

➢ Participation (10%): regular, relevant and informed contributions to the class; pertinent questions and comments; constructive criticism on other students’ contributions.

➢ Peer-assessment of another student’s presentation (5%); use provided template; include constructive comments.

➢ Case study presentation (15%): presenting a particular international/global litigation relevant to the topic of the class in which the presentation takes place, focusing on its policy implications (10-15mins).

➢ Blog post (20%): based on the case study presentation, the blogpost, targeting an educated audience, should provide a brief presentation of the case/litigation and highlight its implications for global policy/governance
IR. It should integrate feedback received from the presentation (500-800 words).

- Policy brief (50%): Informed by research based on scholarly readings and empirical observations (including the case study), identify and evaluate a particular situation/challenge related to international litigation and offer relevant, organised and targeted policy recommendations (possibility to adopt a scenario-based approach). Sources, including academic ones, should be properly referenced, but kept to a minimum (1500-2000 words).

Track 2: Theory

- Participation (10%): regular, relevant and informed contributions to the class; pertinent questions and comments; constructive criticism on other students’ contributions.
- Peer-assessment of another student’s presentation (5%), using provided template, and including constructive comments
- Case study presentation (15%): brief introduction of a particular ruling/litigation in the light of relevant theoretical approaches, exposed in mandatory/optional readings for the relevant class (10-15 mins)
- Academic position paper (20%): present an academically informed position on a particular issue/point raised in the course, in relation to and contrasting it with the arguments/claims made in two academic articles included as mandatory or optional reading for the course. It can be presented in the format of a Blog post. It should, where possible, draw on the case study presentation and integrate feedback from the presentation (500-800 words). For example, I argue that the theoretical explanation proposed by X has more leverage in explaining the outcome/impact of a particular decision/litigation than those advanced by Z.
- Research paper/essay (50%): it should review and evaluate theoretical perspectives on a question addressing the dynamics of judicialization in IR and global governance and/or their implications, preferably in relation to a particular empirical context, including that concerning the case study (1500-2000 words, excluding footnote/references). The paper should draw on scholarly work which should be properly referenced.

Grading

The final grade consists in the cumulation of the grades obtained for each assignments, properly weighted. Each assignment will be given both a letter and numerical grade.

Detailed Schedule and Readings
PART 1

1- Mapping international courts: proliferation and absence (Tues 19.09.2017)

Interactive seminar

Mandatory reading


- Consult the website of the project on international courts and tribunals (PICT): http://www.pict-pcti.org/

Task: Flick through the PICT project and identify which policy areas of international relations and global governance, and geographical regions, appear particularly ‘populated’ by international courts, and which areas are ‘neglected’.

2- Legalization and the judicialization of international governance, past, present and future (Thurs 21.09.2017)

Interactive seminar

Mandatory reading


Task: perusing through the week’s news, find a reference to a recent decision of an international courts, preferably one you were not familiar with, which outlines some of its implications. Be able to talk about it in class.

3- What do international courts do? Functions, roles and goals (Tues 26.09.2017)

Interactive seminar

Mandatory reading

Optional reading:


Task: identify a recent news items which highlights one of the core functions/goals of an international court.

Presentation: Select one international court, one which interests you particularly, and assess which are its most important ‘goals’, taking either a theoretical or policy oriented approach. Give a preliminary assessment as to whether it achieves those goals, based on available data, and, were possible/desirable, make suitable policy recommendations.

4- Why states create international courts? The debate – are international courts more effective than other mechanisms? (Thurs 28.09.2017)

Debate seminar

Mandatory reading


Task: having read the two articles, take a position on the debate, outlining your key argument and be ready to support it with some empirical observations.

5- Who are the international judges? Membership, representation and legitimacy (Tues 03.10.2017)

Interactive seminar

Mandatory reading


Optional reading

Task: choose an international court, and find information about how members are selected, and scrutinize its members’ profile. What are the implications of your findings for the representativeness of the court and its legitimacy? Should selection processes/membership rules be modified?

Presentation: select an international court, and assess the process of selection of its members, as well as its membership, in light of either existing theoretical perspectives on selections/membership or policy implications.

6- What kinds of issues come in front of international courts and who can bring them? Jurisdictional aspects (Tues 10.10.2017)

Interactive seminar

Mandatory reading

Task: Identify problematic admissibility or jurisdictional rules which undermine the effectiveness of a particular international court.

Presentation: Identify a case where conditions of admissibility or jurisdictional rules undermine the ability of particular actors to effectively activate it to solve a problem or global rule-makers accountable. Draw conclusions concerning the effectiveness of that particular court or policy recommendation to address shortcomings.

7- How (international) judges think and decide? Legal v political sciences approaches (Thurs 05.10.2017)

Role-play session

Mandatory reading


Optional reading


Higgins, R. (1968). Policy considerations and the international judicial process. 17(1), *The International and Comparative Law Quarterly* 58


Task: students will receive a short case scenario before the class, and be asked to decide the case as members of an international court. Students should engage in this role-play, having done the mandatory readings, so as to understand the legal, political and sociological ‘constraints’ of judicial decision-making.

**8- Studying the judicialization of international governance – confronting disciplines, trying different methods and evaluating theories (Thurs 12.10.2017)**

Interactive seminar

Background reading for those not familiar with basic IR theories:


Mandatory reading


Task: Identify an article which addresses a particular aspect of international judicialization? Read its abstract and introduction, and try to sum up the author(s’) approach, addressing, in particular, the following questions: What is the research
question? What theoretical frameworks and methods do the authors use to answer them?

Presentation: Select a particular article or book chapter which examines a particular international court, and assess it in light of other theoretical perspectives.

PART 2

9- The International Court of Justice (Tues 17.10.2017)

Interactive seminar

Mandatory reading

- Website of the ICJ http://www.icj-cij.org/en

Optional reading


Task: peruse the website of the ICJ and identify a decision involving your country; be able to speak about it in class, stressing its impact (or lack thereof).

Presentation: Find and read a recent decision of the ICJ, and assess its impact on international dispute resolution and governance? Identify, were possible, policy implications?

10- Regional economic integration courts 1: the influence of the Court of Justice of the European Union (CJEU) on European integration (Thurs 19.10.2017)

Interactive seminar

Mandatory reading


Optional reading


Task: peruse recent news to identify a reference to a decision of the CJEU and discuss its impact on regional/global governance.

Presentation: select a recent decision/series of decision of the CJEU and assess its/their impact on European integration or governance, in the light of existing theoretical perspectives on the role of the CJEU, and drawing possible policy implications.

11- Regional economic integration courts 2: The autonomy of the European Court of Justice 2 (date TBC)

Interactive seminar

Mandatory reading


Optional reading


Task: Identify a recent CJEU decision which either clearly goes against the wishes/preferences of (some/important) member states, or on the contrary, that seems to defer to them. Try to provide some tentative explanations, based on
existing scholarly works, and draw implications for CSO wishing to mobilize EU law against member states.

Presentation: Identify (recent) attempts to ‘curb’ the CJEU, and assess their impact in the light of theoretical perspective on political constraints on the Court

12- Reading class – preparation for mid-term assignment (no class)

13- Regional economic integration courts 3: the case of Central America and the Caribbean courts (Tues 31.10.2017)

Interactive seminar

Mandatory reading

- Court and Tribunal of Regional Economic Communities http://www.ijrcenter.org/regional-communities/

Optional reading


Task: identify a recent decision of a regional integration court other than the one addressed in the mandatory reading (eg African, Asia), and analyze it in terms of its impact on regional integration/governance.

Presentation: Present a regional (economic) integration framework, and assess the relevance of the presence/absence/features of judicial institutions on regional integration. Provide a set of tentative explanations, derived from existing scholarship, and formulated policy recommendations, where possible.

14- Human rights courts 1: the European Court of Human Rights (ECHR) (Thurs 02.11.2017)

Interactive seminar

Mandatory reading


Optional reading


Task: Identify a recent decision of the ECHR which has been particularly controversial and check whether it has had any impact on state policies/practices.
Presentation: Identify a recent controversial decision of the ECHR and assess the possible motivations for the decision (legal reasoning + political factors) in the light of relevant theoretical perspectives and policy implications, engaging with compliance aspects.

15- Human rights courts 2: (Tues 07.11.2017)
Interactive seminar
Mandatory reading


Optional reading


Task: Identify a recent threats on the legitimacy on regional human rights courts and be ready to discuss their potential impact on that court’s decisions.

Presentation: Identify a recent controversial decision of a regional human right courts and assess the possible motivations for the decision (legal reasoning + political factors) in the light of relevant theoretical perspectives and policy implications, engaging with compliance aspects.

16- International criminal courts (Thurs 09.11.2017)
Debate session
Mandatory reading
Video: Nuremberg Trial – key moments: 
https://www.youtube.com/watch?v=kWR2I5Q9d9U

The International Criminal Tribunal data website: 
http://www.psci.unl.edu/~meernik/International%20Criminal%20Tribunals%20Website.htm


Optional reading


Task: review recent decisions by certain countries to quit the international criminal court, and assess their motivations. Is the ICC biased? Is it an instrument of ‘colonial justice’? Be ready to discuss and bring empirical elements in support of your argument.

Presentation: present a particular case before an international criminal tribunal and its relevance, in light of existing theoretical approaches and where possible, engage in policy considerations.

Interactive seminar

Mandatory reading

- Read on the WTO website: How does the WTO resolve dispute: an introduction, at https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm
- Check the WTO’s own’s Evaluation of the WTO dispute settlement system: results to date’, at https://www.wto.org/english/tratop_e/dispu_e/dispu_settlement_cbt_e/c12s3p1_e.htm

Read either


OR


Optional reading


Task: use the WTO case search tool (https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm) to find an interesting decision of the WTO DSM, depending on what your own interests are? What kind of dispute did it solve? Did third parties (eg. NGOs) participated? Did the parties comply?
Presentation: Identify a particular litigation before the WTO DS bodies, using the WTO case search tool (https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm), as well as media reports. Try to relate the litigation to existing explanations of why states bring dispute to the WTO DS bodies. Evaluate the role of third parties, in particular NGOs, prior to, during and after the WTO litigation. Was the litigation effective?

18- International arbitration (Thurs 16.11.2017)

Mandatory reading


Optional reading


Task: identify a decision by an international arbitration body in a field that particularly interest you. Be ready to expose the ‘story’ of the case (dispute, steps taken, arbitral procedure, final decision, compliance, etc.) to the class.

Presentation: present a particularly controversial arbitration procedure, and discuss its dynamics and implications in a manner informed by mandatory and relevant optional readings.
19- National courts as new international relations actors (Tues 21.11.2017)

Interactive seminar

Mandatory reading


Optional reading


Task: identify a case in which a national court, controversially, adopted a decision based on international law which went against the wishes of that state’s political organs. Be ready to discuss it in the light of the reading.

Presentation – identify decision(s) by national courts which either contributed to the development of international law, the accountability of global governance regime, or the enforcement of international law; discuss in the light of the course readings and envisage policy implications.


Interactive seminar

Mandatory reading


Optional reading

Task: identify a domestic court decision which address failings in global governance regimes and be ready to present and discuss it in light of the readings.

Presentation: select a case in which a national court was asked to hold global regulatory regimes accountable and to offer redress against the wrongdoings of a global regulatory regimes. Present and discuss it in the light of the readings, and discussion policy implications/suggesting reforms of global regulatory regimes.

21- Is judicialized governance elitist? The role of legal elites and democratic considerations (Tues 28.11.2017)

Interactive seminar
Mandatory reading

Optional

Task: through reviewing recent news, try to identify a decision by an international or domestic courts which illustrate the elitist dimension of judicialization.

Presentation: find an example of international litigation which reveals the elitist side of judicialization, assess it in the light of theoretical perspectives and discuss its implications for policy-making and governance.

22- Do states comply with their decisions, and if so, why? - National executives and legislatures in judicialized international governance (Thurs 30.11.2017)

Interactive seminar
Mandatory reading

OR
Optional reading


Task – identify in the news an illustration of state complying with an international judicial decision despite initial resistance, or on the contrary, of a state refusing to comply with an international court decision. Advance possible explanations informed by the reading.

Presentation – identify case which represents particular compliance challenges, and track the evolution of the situation, in light of theoretical approaches. Think about possible policy implications for international litigation strategy,

23- New players: civil society and international adjudication (Tues 05.12.2017)

Interactive seminar

Mandatory reading


Task: identify a ‘legal entrepreneur’ or NGO’s litigation attempts/strategies aimed at holding global actors accountable? How did it fare?

Presentation: present a case or series of cases which affected international governance, by either holding global regulators to account, or ensure compliance with international (eg human rights) norms?

24- Do courts rule the world? Should they? (Thurs 07.12.2017)

Debate session

Task: students must be prepared to debate these two questions using readings and empirical illustrations

Bibliographical references

Key resource text:

Books


**Articles and book chapters**


Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in west, east and southern Africa: causes and consequences. 27(2) European Journal of International Law 293.


Jacobs, F. (2011) ‘European Union: Court of Justicen and General Court’ in Max Planck Encyclopedia of Public International Law [MPEPIL]


Larsson, Olof, and Daniel Naurin (2016) ‘Judicial independence and political uncertainty: how the risk of override affects the Court of Justice of the EU.’ 70(2) International Organization 377.


Wilson, B. (2007). Compliance by WTO members with adverse WTO dispute settlement rulings: the record to date. 10(2) Journal of International Economic Law, 397


Others


Online resources
Project on international courts and tribunals (PICT): http://www.pict-pcti.org/
Icourt; The Danish National Research Foundation’s Center of Excellence for International Courts: http://jura.ku.dk/icourts/
International Justice in the News (Brandeis University): http://www.brandeis.edu/ethics/internationaljustice/internationaljusticeinthenews.html
International courts data: http://faculty.georgetown.edu/ev42/ICdata.htm
The International Criminal Tribunal data website: http://www.psci.unt.edu/~meernik/International%20Criminal%20Tribunals%20Website.htm