Exposé

Double Standards in International Law

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1. Introduction

"quod licet Jovi, non licet bovi!" [1]

-What is permissible for Jupiter, is not permissible for a bull–

Every State possesses a unique set of rights and obligations. In a horizontal order where law is generated by consent, some States may do what others may not. The norms of international law do not necessarily require that every State be held to the same standard. Where homogenous obligations are shared, some breaches are tolerated while others aren't. These distinctions mean that subjects of international law sometimes exempt themselves or others in the creation and application of rules.

This reality has led to grievances being raised by subjects, their representatives and scholars as manifestations of "double standards" in international law. Definitions of the concept share the essential feature of like cases not being treated alike, implying that it is not acts but actors lying at the fore of assessment. While the term has been invoked in a variety of contexts relevant to international law, only few instances have been the object of comprehensive analysis.

Each of these individual instances has produced insights of limited scope. Some studies are devoted to particular subjects of international law; certain States, International Organizations, their organs or other bodies. Others deal with the creation of rules; parties to a given (type of) treaty, substantive standards or exceptions. Others again focus on selective or substantively incoherent implementation. Thus, individual subjects, rules and applications of particular double standards have been identified, evidencing factual and legal problems.

Yet, none of these studies have drawn upon the available extensive but fragmented practice and scholarship to understand the matter as a single problem. This thesis is an effort to devise a typology of double standards in international law and reveal underlying problems.

[1] Joseph von Eichendorff, *Aus dem Leben eines Taugenichts und das Marmorbild* (Berlin: Vereinsbuchhandlung, 1826), 112. Although the original source of the quote remains obscure, variations have been attributed to the works of Terence, Cicero and Seneca (Heauton timorumenos, 797 (163 B.C.); De finibus bonorum et malorum, 5, 9, 26 (45 B.C.); Hercules furens, 489 (54 C.E.)). The adage refers to the Greco-Roman legend describing the abduction of Europa. As a bull, Jupiter (Zeus) is able to succeed in an otherwise impossible endeavor. Though the myth illustrates that a bull may act as a deity may not, the roles have been inverted by the proverb, revealing its essence: "*Aliis si licet, tibi non licet.*" – What is permitted to others may not be permitted to you (Terence, Heauton timorumenos, 797).

2. Research Questions

The core question to be answered may be summarized as:

How can double standards in international law be categorized?

An answer presupposes the following set of preliminary and sub- questions:

A. Identification

- Which significant perceptions of double standards in international law have been expressed?
- Whom are these criticisms expressed by and directed towards?

B. Comprehension

- What have scientific attempts to prove or disprove factual validity revealed?
- Which legal problems have been identified?
- Which conceptual implications have been detected?
- What is at stake when double standards are (perceived to be) applied?
- Which solutions have been proposed?

C. Categorization

- What are the common and distinguishing features of the analyzed cases studies?

3. Methodology

The principal method applied to answer the core research question, will be the performance and subsequent qualitative analysis of a set of case studies, primarily selected based on converging foundation in international practice and legal scholarship.

A. Identification

The point of departure will be a set of relevant case studies. Given that the aim of this thesis is to gain a better understanding of an overarching problem based on existing analyses of individual instances, preference will be given to perceptions of double standards that have received some validation by being both expressed by a significant subject in a significant context and evidenced in scholarly consideration subsequent to literature review.

Significant subjects shall refer to (representatives of) States and International Organizations, including their organs or other bodies, but not (representatives of) nongovernmental organizations. Significant contexts are such where statements are delivered in an official capacity, such as within International Organizations during various sessions, debates, speeches, in official correspondence, at conferences, or via the texts of resolutions, but not within interviews or other news items.

Scholarly consideration shall focus on analyses performed by scholars of international law and published in sources such as appropriate books, journals and reports. The findings of scholars of other disciplines may be relied upon as supplementary sources for such purposes as the identification of factual circumstances or quantitative analyses.

The set of case studies will thus be primarily devised based on quotes of official statements using the term “double standard”, preferably in a context including an explicit reference to “international law”, which have been identified in collections of official documents of International Organizations and the subject matter of which has been discussed in scholarly publications. Supplementary case studies may include instances where one of these two elements is lacking and will be designated as such.

B. Comprehension

Evaluative analysis of the above-mentioned sources (primarily based on literature review), will focus on producing an assessment of five core aspects per case study: (1) Factual validity, (2) Legal issues, (3) Conceptual implications, (4) Stakes and (5) Solutions.

C. Categorization

Any categorization of the findings produced by the evaluative case study analysis is premised upon its results and cannot be performed until the first two stages have been concluded. Based on the parameters applied to the identification and categorization stages, the following tentative typology criteria are proposed: fact pattern, author, subject, comparator, creation/implementation of law, legal issues, conceptual implications, practical stakes and proposed solutions.

4. Current State of Research

A. Identified Case Studies

Perhaps most prominently, the term "double standard" was employed in a resolution passed by the African Union, condemning disproportionate prosecution of African nationals by the International Criminal Court.[2] The perception is founded in investigations having been exclusively directed at African States for an extended period of time.[3] Amid allegations that this phenomenon was prompted by "neo-colonialism"[4] and "white justice"[5], African States have considered[6], notified[7] and effected[8] withdrawal from the Rome Statute[9].

[2] African Union (Assembly of the Union), 'Decision on International Jurisdiction, Justice and the International Criminal Court (ICC)', 26-27 May, 2013 (Assembly/AU/Dec.482(XXI)): "The Assembly […] 5. STRESSES the need for international justice to be conducted in a transparent and fair manner, in order to avoid any perception of double standard, in conformity with the principles of international law, and EXPRESSES CONCERN at the threat […] to […] the rule of law".

[3] From the establishment of the Court in 2002 until January 2016 all investigations involved African States, joined by Georgia on 27 January 2016 (https://www.icc-cpi.int/Pages/Situations.aspx, accessed 22 May, 2018).

[4] "During the campaign for Kenya's 2013 presidential election, Uhuru Kenyatta and William Ruto, two candidates who were charged by the I.C.C. for their alleged role in postelection violence in 2008, denounced the court as a tool of Western neocolonialism" Thierry Cruvellier, 'The ICC, Out of Africa', The New York Times, 7 November 2016 (https://www.nytimes.com/2016/11/07/opinion/the-icc-out-of-africa.html, accessed 22 May, 2018); Kai Ambos, 'Expanding the focus of the "African Criminal Court"', in William A. Schabas, Yvonne McDermott and Niamh Hayes (eds.), *The Ashgate research companion to international criminal law: critical perspectives* (2013), 499.

[5] Jean-Baptiste J. Vilmer, 'The African Union and the International Criminal Court: Counteracting the Crisis', 92 International Affairs (2016), 1319.

[6] African Union (Assembly of the Union), 'Decision on the International Criminal Court', 30-31 January, 2017 (Assembly/AU/Dec.622(XXVIII)): "The Assembly […] 8. ADOPTS the ICC

The terms and implementation of the Treaty on the Non-Proliferation of Nuclear Weapons[10] represent a further case in point. As phrased by then Director General of the International Atomic Energy Agency, "[t]he most fundamental problem with the nuclear nonproliferation regime is, in itself, a double standard: the inherent asymmetry, or inequality, between the nuclear haves and have-nots",[11] thus deeming weapons "reprehensible for some countries [...] yet [...] acceptable for others"[12]. States have shared similar views.[13]

Withdrawal Strategy along with its Annexes[2] and CALLSON Member States to consider implementing its recommendations".

[7] Burundi, Gambia, the Philippines and South Africa have notified their withdrawal from the Rome Statute, while Gambia and South Africa have since rescinded their withdrawal and that of the Philippines will become effective on 17 March, 2019 (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en, accessed 22 May, 2018).

[8] Ibid. The withdrawal of Burundi has been effective since 27 October 2017.

[9] Rome Statute of the International Criminal Court (adopted 17 July, 1998, entered into force 1 July, 2002), 2187 UNTS 90 (Rome Statute).

[10] Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July, 1968, entered into force 5 March, 1970), 729 UNTS 169 (NPT).

[11] Mohamed ElBaradei, *The Age of Deception: Nuclear Diplomacy in Treacherous Times* (Picador, 2012), 236.

[12] Mohamed ElBaradei, 'Saving Ourselves from Self-Destruction', IAEA Director General Statement, 12 February 2004 (https://www.iaea.org/newscenter/statements/saving-ourselves-self-destruction, accessed 18 May 2018).

[13] These include the DPRK, South Africa, Egypt, Iran and Argentina (Statement by Mr. Ri Yong Ho on behalf of the Democratic People's Republic of Korea, General Assembly of the United Nations, 23 September 2017 (UN Doc A/72/PV.20); Statement by Ms. Mxakato-Diseko on behalf of South Africa, Conference on Disarmament, 2 August 2016 (UN Doc CD/PV.1395); Statement by Mr. Aboulatta on behalf of Egypt, United Nations Security Council, 15 December 2017 (UN Doc S/PV.8137); Statement of Mr. Asayeh Talab Tousi on behalf of the Islamic Republic of Iran, United Nations Conference on Disarmament, 5 March 2014, (UN Doc CD/PV.1311); Statement by Mr. Timerman, on behalf of Argentina, United Nations Conference on Disarmament, 3 March 2014, (UN Doc CD/PV.1308)).

States have also contended that Nuclear Weapon States have failed to uphold their disarmament obligations under the NPT (ICJ, Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Preliminary Objections, Judgment (5 October 2016)). At the same time, Non-Nuclear Weapon States have upheld their own, refraining from proliferation under pressure by and in exchange for unfulfilled guarantees by Nuclear Weapon States (George Bunn, 'The Nuclear Nonproliferation Regime and Its History' in George Bunn, Christopher F. Chyba and William J. Perry (eds.), *U.S. Nuclear Weapons Policy: Confronting Today's Threats* (Brookings Institution Press, 2006; Michael McCgwire, 'The Rise and Fall of the NPT: An Opportunity for Britain', 81 International Affairs (2005), 115, 121). In the context of the issue Director General

Treatment of detainees by the United States throughout the "war on terror" has given rise to pertinent accusations as well. One matter is the rendition of persons for the purposes of interrogation abroad where domestic standards do not apply.[14] Another is the prosecution of individuals as enemy combatants before military tribunals for breaches of international humanitarian law which were considered inapplicable to the pertinent conflict specifically and the United States in general.[15]

Offense has also been taken with United Nations Security Council measures. States and scholars alike have cited "double standards" as a source of concern both in terms of selecting which situations are addressed and how they are dealt with. A recurring subject in this regard has been the sanctions regime[16]. Others have included membership[17], the interpretation of the

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ElBaradei has stated: "If we do not stop applying double standards, we will end up with more nuclear weapons" (Reuters, 26 August 2003).

[14] "If they are transferred to countries where very few due process requirements are likely to stand in the way of prolonged detention, illegal interrogations or unfair trials, then we should be clear about our endorsement of such double standards: we are not willing, or not able, to dilute our domestic legal protections in the name or counter-terrorism, but we will happily resort to the methods used by others that we otherwise overtly denounce and deplore." (Louise Arbour, 'In Our Name and On Our Behalf', 55 The International Comparative Law Quarterly, 511).

[15] Sean D. Murphy, 'Contemporary Practice of the United States', 98 American Journal of International Law (2004), 820, reviews several legal memoranda describing the practice, including the Memorandum from Assistant Attorney General Jay S. Bybee to White House Counsel Alberto R. Gonzales and Dept. of Defense General Counsel William J. Haynes II (22 January, 2002) ("Application of Treaties and Laws to al Qaeda and Taliban Detainees"); Draft Memorandum from White House Counsel Alberto R. Gonzales to President George W. Bush (25 January, 2002) ("Decision re Application of the Geneva Convention on Prisoners of War to the Conflict with al Qaeda and the Taliban"); Working Group Report on Detainee Interrogations in the Global War on Terrorism: Assessment of Legal, Historical, Policy, and Operational Considerations (4 April 2003). Professor Harold Koh, as Dean of Yale Law School, later the Legal Adviser of the State Department, noted that "the administration opposes judicial efforts to incorporate international and foreign law into domestic legal review so as to insulate the U.S. government from charges that it is violating universal human rights norms in favor of double standards." (Harold H. Koh, 'Setting the World Right', 115 The Yale Law Journal (2006), 2350, 2355).

[16] The issue has been gauged for its justiciability in Jose E. Alvarez, 'Judging the Security Council', 90 American Journal of International Law (1996), 1, 20 and more recently addressed by States such as the DPRK, Venezuela and Iran (Statement by Mr. Ja Song Nam on behalf of the Democratic People's Republic of Korea, United Nations Security Council, 15 December 2017 (UN Doc S/PV.8137); Statement by Mr. Ju Yong-chol on behalf of the Democratic People's Republic of Korea, United Nations Conference on Disarmament, 30 May 2017 (UN Doc CD/PV.1419); Statement by Mr. Ramírez Carreño on behalf of the Bolivarian Republic of Venezuela, United Nations Security Council, 10 November 2016 (UN Doc S/PV.7807); Statement of Mr. Ali Mousavi on behalf of the Islamic Republic of Iran, United Nations General Assembly, 14 October 2016 (UN Doc A/C.6/71/SR.15).

mandate of the Council[18], veto,[19] referrals to the International Criminal Court,[20] military exercises,[21] or the launch of missiles/satellites[22].

Possibly the only body of the United Nations to be even more consistently inculpated for practicing double standards has been the Human Rights Council. Legal experts and former Secretary General Kofi Annan cited the issue meriting reform of the preceding Commission, as the "litmus test" of overcoming a "credibility deficit" facing the entire Organization.[23] As evidenced by recent remarks of Secretary General António Guterres before the Council[24] and a resolution of the General Assembly[25], respective concerns persist.

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[17] Sabine Hassler, *Reforming the UN Security Council Membership: The Illusion of Representativeness* (Routledge, 2012), 186.

[18] Statement by Mr. Zagaynov on behalf of the Russian Federation, United Nations Security Council, 11 December 2017 (S/PV.8130).

[19] David D. Caron, 'The Legitimacy of the Collective Authority of the Security Council', 87 American Journal of International Law (1993), 552, 566.

[20] Statements by Mr. Mohamed on behalf of Sudan and Mr. Pino Rivero on behalf of Cuba, United Nations General Assembly, 31 October 2016 (UN Doc A/71/PV.37).

[21] Statement by Mr. Wang Yi on behalf of China, United Nations Security Council, 28 April 2017 (UN Doc S/PV.7932); Letter dated 22 March 2017 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations, Mr. Ja Song-nam, addressed to the Secretary-General (UN Doc A/71/848–S/2017/243).

[22] Statements by Mr. So Se Pyong on behalf of the Democratic People's Republic of Korea and Mr. Kim Young-moo on behalf of the Republic of Korea, United Nations Conference on Disarmament, 9 February 2016 (UN Doc CD/PV.1373).

[23] United Nations General Assembly, 'A More Secure World: Our Shared Responsibility, Report of the Secretary-General's High-Level Panel on Threats, Challenges, and Change', 2 December 2004 (UN Doc A/59/565) 283: "We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns"; Paul G. Lauren, '"To Preserve and Build on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council', 29 Human Rights Quarterly (2007), 307, 308-309.

[24] Remarks delivered by United Nations Secretary General António Guterres to the United Nations Human Rights Council on 26 February, 2018: "Mr. President, To make human rights a reality for everyone, we need far more determined and coherent action. We must speak up for human rights in an impartial way without double standards." (https://www.un.org/sg/en/content/sg/speeches/2018-02-26/remarks-human-rights-council, accessed 21 May, 2018).

[25] United Nations General Assembly Resolution 72/171 adopted on 19 December 2017 (UN Doc A/RES/72/171): "Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and

Other, often exclusively scholarly and less comprehensive studies and statements have examined "double standards" across a range of further topics. In a human rights context these include reservations to human rights treaties[26] and the margin of appreciation afforded to States by the European Court of Human Rights[27]. Extending from common but differentiated responsibilities[28], to the practice of binational NAFTA panels[29] and terms of the Oslo Convention on Cluster Munitions[30] they cross environmental, trade and humanitarian law.[31]

B. Evaluation

Illustrating the state of research in terms of the (1) Factual validity, (2) Legal issues, (3) Conceptual implications, (4) Stakes and (5) Solutions, of all described above-mentioned case studies constitutes one of the main endeavors of the thesis. At this stage, only illustrative examples for each category are provided.

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objectivity" […] "Reaffirming the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues, as affirmed in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993, and the elimination of double standards […]".

[26] Eric Neumayer, 'Qualified Ratification: Explaining Reservations to International Human Rights Treaties', 36 The Journal of Legal Studies (2007), 397.

[27] Ernest A. Young, 'Institutional Settlement in a Globalizing Judicial System', 54 Duke Law Journal (2005), 1143; Eyal Benvenisti, 'Margin of Appreciation, Consensus, and Universal Standards', 31 New York University Journal of international Law and Politics (1999), 843.

[28] Yoshiru Matsui, 'Common but Differentiated Responsibilities', 2 International Environmental Agreements: Politics, Law and Economics (2002), 151.

[29] North American Free Trade Agreement (adopted 17 December, 1993, entered into force 1 January, 1994) 32 ILM 289, 605 (1993) (NAFTA); Juscelino F. Colares, 'NAFTA's Double Standard of Review', 42 Wake Forest Law Review (2007), 199.

[30] Convention on Cluster Munitions (adopted 30 May, 2008, entered into force 1 August 2010) 2688 UNTS 39; Statement by Mr. Yermakov on behalf of the Russian Federation, United Nations General Assembly, 20 October 2016 (UN Doc A/C.1/71/PV.16).

[31] Some additional examples of note: The charge advanced by Special Rapporteur Alston in the context of peacekeeping operations that the United Nations exhibits "double standards" by insisting "that Member States respect human rights, while rejecting any such responsibility for itself" (Report by Mr. Alston, Special Rapporteur on extreme poverty and human rights, United Nations General Assembly, 25 November 2016 (UN Doc A/C.3/71/SR.29); The operation of interjurisdictional rules within the United States and between domestic and international tribunals (Young, note 27); Acts conducted in an effort to maintain jurisdiction at sea beyond three miles from its coasts, during a period when Great Britain and the United States favored and enforced the three-mile limitation rule (Jack L. Goldsmith and Eric A. Posner, 'A Theory of Customary International Law', 66 The University of Chicago Law Review (1999), 1113).

Some of the above-mentioned instances have been *factually validated*. For instance, the geographical concentration on African States of the International Criminal Court is a fact. Yet, scholars have revealed that a dominant corresponding preponderance of relevant crimes, scale and gravity, the large number of African parties to the Rome Statute, primary capacity and self-referral by States in all but three cases as well as other factors render the theory of "white justice" unlikely.[32] The Court has also widened its geographic scope.[33]

A preliminary survey of literature on the cited case studies has indicated that correlating *issues of law* include such topics as the principle of reciprocity in international law[34], the relationship between complementary treaty norms (Articles 2 and 6 of the NPT),[35] the content of the obligation to negotiate,[36] the principle of equal rights and sovereign equality[37] as codified in Articles 1 (2), 2 (1) and 55 of the United Nations Charter and consistency as an element of State practice in the emergence of customary rules of international law[38].

One recurring *conceptual implication* mentioned across various sources relates to the rule of law[39]. Other frequent theoretical underpinnings address questions of universalism[40],

[32] Vilmer, note 5, 1328-1333.

[33] Out of 21 cases (all preliminary examinations and investigations), 11 have been conducted with a nexus to 13 non-African States: Afghanistan, Cambodia, Colombia, Georgia, Greece, Honduras, Iraq, Korea, Palestine, the Philippines, Ukraine, the United Kingdom and Venezuela (https://www.icc-cpi.int/pages/pe.aspx and https://www.icc-cpi.int/Pages/Situations.aspx, accessed 22 May, 2018).

[34] James D. Morrow, 'Laws of War, Common Conjectures, and Legal Systems in International Politics', 31 Journal of Legal Studies (2002), 41.

[35] Jeffrey W. Knopf, 'Nuclear Disarmament and Nonproliferation: Examining the Linkage Argument', 37 International Security (2012), 92, 119.

[36] Ibid, see also Hisashi Owada, 'Pactum de contrahendo, pactum de negotiando' in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford Online Edition: Oxford University Press, 2008).

[37] Alvarez, note 16, 18 and 20; Geoffrey R. Watson, 'Constitutionalism, Judicial Review, and the World Court', 34 Harvard International Law Journal (1993), 1, 35; Young, note 27, 1237; Anne-Marie Slaughter Burley, 'International Law and International Relations Theory: A Dual Agenda', 87 American Journal of International Law (1993), 205, 226.

[38] Goldsmith, note 31, 1163.

[39] United Nations General Assembly, 'Strengthening and coordinating United Nations rule of law activities: Addendum to the Report of the Secretary-General, 11th July 2014 (UN Doc A/68/213/Add.1), 90; Alvarez, note 16, 19-20; Koh, note 15, 2363.

[40] David P. Forsythe, 'The UN Security Council Response to Atrocities: International Criminal Law and the P-5', 34 Human Rights Quarterly (2012), 840, 863; Bruno Simma, 'Universality of International Law from the Perspective of a Practitioner', 20 European Journal of International

unilateralism[41] and exceptionalism[42]. Further implications include wider legal policy objectives such as legitimacy[43] and credibility[44], notions of morality such as hypocrisy[45], and policy, such as condemnation shielding[46].

Withdrawal of States from functioning institutions of international law, such as the International Criminal Court[47], and treaties, such as the NPT[48], constitute examples of some, partially realized, *practical stakes*. Threats to the universalism of human rights, posed by condemnation shielding within the Human Rights Council,[49] reduction of financial contributions to relevant institutions and increased reservations to human rights treaties[50] have been cited in the context of grievances relating to double standards as well.

Law (2009), 265; Emanuelle Jouannet, 'Universalism and Imperialism: The True-False Paradox of International Law?', 18 European Journal of International Law (2007), 379; Anne Bayefsky, *The UN Human Rights Treaty System—Universality at the Crossroads* (Kluwer Law International, 2001); Benvenisti, note 27; Aryeh Neier, 'The New Double Standard', 105 Foreign Policy (1996), 91; Jonathan Charney, 'Universal International Law', 87 American Journal of International Law (1993), 529.

[41] Jed Rubenfeld, 'Unilateralism and Constitutionalism', 79 New York University Law Review (2004), 1971, 1973-1974; Koh, note 15, 2353; George Perkovich et al., *Universal Compliance: A Strategy for Nuclear Security* (Carnegie Endowment for International Peace, 2007).

[42] Safrin, Sabrina, 'The Un-Exceptionalism of U.S. Exceptionalism', 41 Vanderbilt Journal of Transnational Law (2008), 1307; Michael Ignatieff (ed.), *Introduction: American Exceptionalism and Human Rights* (Princeton University Press, 2005); Harold H. Koh, 'On American Exceptionalism', 55 Stanford Law Review (2003), 1479.

[43] UN Doc A/68/213/Add.1, note 39; Ian Johnstone, 'Legislation and Adjudication in the UN Security Council: Bringing down the Deliberative Deficit', 102 The American Journal of International Law (2008), 275.

[44] UN Doc A/59/565, note 23; Noam Lubell, 'Still waiting for the goods to arrive: The delivery of human rights to the Israeli-Palestinian Conflict' in Geoff Gilbert, Françoise Hampson and Clara Sandoval (eds.), *The Delivery of Human Rights* (Routledge, 2011), 198.

[45] Statement by Mr. Hassani Nejad Pirkouhi on behalf of the Islamic Republic of Iran, United Nations General Assembly, 19 December 2017 (UN Doc A/72/439/Add.3).

[46] UN Doc A/59/565, note 23; Forsythe, note 40,843; Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law', 54 Duke Law Journal (2004), 621, 699.

[47] See notes 6, 7 and 8.

[48] The withdrawal of the DPRK in 2003 might be followed by other States (George Bunn, 'The Nuclear Nonproliferation Treaty: History and Current Problems', Arms Control Today, 1 December, 2003, 2, 4 and 5).

[49] UN Doc A/59/565, note 23; Goodman, note 46, 699.

[50] Neumayer, note 26, 404.

Aside from obvious *proposed solutions*, such as further ratification of the Rome Statute, and unlikely modifications to the membership structure and voting modalities of the Security Council, more attainable measures such as more inclusive consultations, providing public justifications for acts and omissions, and independent review of decisions have been proposed.[51]

[51] Martin Binder and Monika Heupel, 'The Legitimacy of the Un Security Council: Evidence from Recent General Assembly Debates', 59 International Studies Quarterly (2015), 238.

5. Tentative Structure

I. Introduction

II. Case Studies

1. Afrocentrism of the International Criminal Court
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6. Preliminary Bibliography

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