

## THE EVERYDAY MAKERS OF INTERNATIONAL LAW

This book offers a unique insight into the inner workings of international courts and tribunals. Combining the rigour of the essay and the creativity of the novel, Tommaso Soave narrates the invisible practices and interactions that make up the dispute settlement process, from the filing of the initial complaint to the issuance of the final decision. At each step, the book unravels the myriad activities of the legal experts running the international judiciary – judges, arbitrators, agents, counsel, advisors, bureaucrats, and specialized academics – and reveals their pervasive power in the process. The cooperation and competition among these inner circles of professionals lie at the heart of international judicial decisions. By shedding light on these social dynamics, Soave takes the reader on a journey through the lives, ambitions, and preoccupations of the everyday makers of international law.

TOMMASO SOAVE is an assistant professor of law at Central European University. Previously, he practiced international law for almost a decade, first as an attorney with Sidley Austin LLP, then as a dispute settlement lawyer at the World Trade Organization. His research focuses on the socio-professional dimensions of global governance.

CAMBRIDGE STUDIES IN INTERNATIONAL  
AND COMPARATIVE LAW: 170

Established in 1946, this series produces high quality, reflective and innovative scholarship in the field of public international law. It publishes works on international law that are of a theoretical, historical, cross-disciplinary or doctrinal nature. The series also welcomes books providing insights from private international law, comparative law and transnational studies which inform international legal thought and practice more generally.

The series seeks to publish views from diverse legal traditions and perspectives, and of any geographical origin. In this respect it invites studies offering regional perspectives on core *problématiques* of international law, and in the same vein, it appreciates contrasts and debates between diverging approaches. Accordingly, books offering new or less orthodox perspectives are very much welcome. Works of a generalist character are greatly valued and the series is also open to studies on specific areas, institutions or problems. Translations of the most outstanding works published in other languages are also considered.

After seventy years, Cambridge Studies in International and Comparative Law sets the standard for international legal scholarship and will continue to define the discipline as it evolves in the years to come.

*Series Editors*

Larissa van den Herik

*Professor of Public International Law, Grotius Centre for  
International Legal Studies, Leiden University*

Jean d'Aspremont

*Professor of International Law, University of  
Manchester and Sciences Po Law School*

*A list of books in the series can be found at the end of this volume.*

# THE EVERYDAY MAKERS OF INTERNATIONAL LAW

From Great Halls to Back Rooms

TOMMASO SOAVE  
*Central European University*



Cambridge University Press & Assessment  
978-1-009-24800-6 – The Everyday Makers of International Law  
Tommaso Soave  
Frontmatter  
[More Information](#)

CAMBRIDGE  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
New Delhi – 110025, India  
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.  
It furthers the University's mission by disseminating knowledge in the pursuit of  
education, learning, and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781009248006](http://www.cambridge.org/9781009248006)  
DOI: 10.1017/9781009248013

© Tommaso Soave 2022

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without the written  
permission of Cambridge University Press.

First published 2022

*A catalogue record for this publication is available from the British Library.*

ISBN 978-1-009-24800-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of  
URLs for external or third-party internet websites referred to in this publication  
and does not guarantee that any content on such websites is, or will remain,  
accurate or appropriate.

A Irene

Cambridge University Press & Assessment  
978-1-009-24800-6 – The Everyday Makers of International Law  
Tommaso Soave  
Frontmatter  
[More Information](#)

---

By doing something a half centimetre high, you are more likely  
to get a sense of the universe than if you try to do the whole sky.  
Alberto Giacometti

## CONTENTS

<i>Preface</i>	<i>page</i>	ix
<i>List of Abbreviations</i>		xx
1	Carnegieplein 2, 10:00 AM	1
2	Coffee, Cigarettes, and International Judicial Practices	22
3	A New Generation of Litigators	54
4	Telling a Story	79
5	The Invisible Army	102
6	The Three Wise Monkeys	137
7	The Lyophilization of Life	153
8	The Memo	163
9	To Capture the World	174
10	Bricolage	185
11	The Explorer	201
12	A Four-Letter Word	224
13	What Does It Mean...	245
14	The Stage	256
15	The Moment of (Constructed) Truth	276
16	Truth Woven Together	303
17	Spijkermakersstraat 9, 8:00 PM	335
	<i>Index</i>	339

## PREFACE

*Any Resemblance Is Purely Intentional*

This book, like most books, tells a story. As it happens, a story of international law. To be more precise, this is an account of the everyday lives of the legal experts who populate international courts and tribunals; an exploration of their routine interactions and internal dynamics; and an exposé of how their tireless work, often carried out behind the scenes, steers the course of judicial proceedings and shapes the final outcomes of international disputes. In other words, this is resolutely a *law* book, written by an international lawyer for international lawyers.

So why the disclaimer? Well, because the way the story is told may be a little different from what you expect. Traditional legal scholarship ‘is characterized by a pseudo-scientific neutral voice’<sup>1</sup> that speaks the language of rules, principles, procedures, and institutions. This book, by contrast, teems with people, activities, communications, and practices that cannot be tackled solely through ‘rational discourse’,<sup>2</sup> but require a bit of ‘undisciplined writing’.<sup>3</sup> Its point is precisely to show that, beneath the smooth surface of the law, international judicial processes bubble with socio-professional struggles, clashing worldviews, unpredictable contingencies, and occasional humour.

More surprising, however, may be the style of storytelling. The narrative intersperses academic analysis with frequent forays into literary fiction. Its protagonists are not real persons, but archetypal characters who exemplify the various actors in the field. Each character has a background story, occupies a specific position, is moved by certain ideals or preoccupations – but none actually exists, not even those you think you recognize. The events chronicled in the book are equally fictional, as they concern

<sup>1</sup> A. Matasar, ‘Storytelling and Legal Scholarship’ (1992) 68(1) Chi-KentLRev 353.

<sup>2</sup> Ibid.

<sup>3</sup> J. Harris, ‘Undisciplined Writing’, in K. Blake Yancey (ed.), *Delivering College Composition: The Fifth Canon* (Boynton/Cook, 2006), 155.



judicial disputes that have not (yet) arisen in real life.<sup>4</sup> At best, they closely *resemble* the real-life situations that regularly confront international courts. In fact, a lot of effort went into making the action as credible and its setting as authentic as possible.

To facilitate reading, the academic and the literary passages are clearly signposted. The former are introduced by an asterisk (\*) and the latter by a black circle (•). This typographical device enables you to exercise a fundamental right of the reader: the right to skip pages.<sup>5</sup> Be mindful, though, that the two sides of the narrative mirror each other and are meant to form a coherent whole. To every episode that moves the plot forward corresponds a description grounded in scholarly research, and vice versa. Neither side is inherently more ‘true’ than the other, and both contribute to portraying a full picture of the everyday making of international adjudication. Incidentally, the dual voice explains why the narrator refers to themselves as ‘we’.

Before you say it – yes, this is a tricky sell. Experiments in (non-)fiction may be increasingly popular among novelists<sup>6</sup> but remain an unusual approach to *academic* production. The choice to narrate legal processes and institutions in those terms constitutes a radical departure from canon and, as such, entails a measure of risk. At best, it can offer a fresh, genre-bending take on the study of international courts and tribunals. At worst, it can alienate the more orthodox reader and relegate this book to the curio shelf of international law libraries.

For instance, you may legitimately wonder about the research methodology behind the story. What source material was used to support the analysis? How was it collected? And what makes it comprehensive and reliable rather than selective and anecdotal? Or, more fundamentally, you may question the value of literary writing when it comes to informing, reporting, or commenting on real life. If the narrative blends ‘factual discourse’ with ‘fictional moves and liberties’,<sup>7</sup> how can you tell what is real from what is fantasy? How can you distinguish the rigour of the essay from the unruliness of the novel? In short, how can you *trust* the narrator?

<sup>4</sup> But sometimes reality moves faster than fiction. The trade case imagined in the book concerns Indonesia’s complaint against the European Union’s regulations on palm oil. In November 2019, Indonesia *actually* initiated proceedings, which are currently ongoing. *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS/593.

<sup>5</sup> D. Pennac, *Comme un Roman* (Gallimard, 1992), 79–80.

<sup>6</sup> See e.g. R. Langbaum, ‘Capote’s Nonfiction Novel’ (1966) 35(3) *AmSch* 570.

<sup>7</sup> L. Poggi, “‘Io So’: A Reading of Roberto Saviano’s ‘Gomorra’” (2011) 126(1) *MLN* 224, 226.

I believe some explanation is in order. Before the story kicks off and I turn into an impersonal ‘we’, let me spend a few words about the research and writing process that got me here. In this preface, I detail how I gathered information from the relevant sources, verified its completeness and accuracy, and analysed it under a unified framework. Then, I address the issue of style and discuss why I decided to present my findings in the form of plausible fiction. These clarifications do not have the ambition to question the politics of method in international legal scholarship. More modestly, they show that what could be mistaken as an act of subversion is, in fact, the result of meticulous investigation, careful reflection, and acute self-doubt. Think of it, if you will, as a making of the making of international law.

\*

My interest in the inner workings of the international judicial community arose from being part of it. From 2011 to 2019, I practiced international trade dispute settlement first as an attorney with a US law firm, then as a legal officer at the World Trade Organization (WTO). Those experiences initiated me to the myriad activities that punctuate the preparation, filing, litigation, deliberation, and resolution of international cases.

I quickly realized that the visible part of the process, which culminates in the issuance of a judgment, was the tip of an iceberg of invisible connections, networked interactions, and recursive practices. Astonishingly, international judges seemed to play a relatively minor role, entangled as they were in a close-knit fabric of socio-professional relations. Their solemn statements of the law were not *just* theirs but rather echoed the voices of countless other actors, including the litigants’ counsel and representatives, the legal bureaucrats assisting the bench, and the academics critiquing the court’s decisions. Communication, cooperation, and competition among these experts pervaded every corner of the court, yet remained largely off the radar of scholars and commentators.

Why such silence? How could literature on international adjudication be so preoccupied with foreground phenomena and so oblivious of background routines? I was intrigued. At the time, I was fresh from my studies at Harvard, where I had had an eye-opening encounter with Critical Legal Studies. My take-home was a certain curiosity about the soft tissue of supranational institutions, the power of discourse and ideology in the construction of normative orders, and the ‘role of expertise and professional practice in the routine conflicts through which global political

and economic life takes shape'.<sup>8</sup> Meanwhile, I had enrolled in a PhD at the Graduate Institute and was looking for ways to give my dissertation a critical edge.

An idea came to me. I would combine my insider knowledge as a practitioner with my outsider perspective as a researcher to shed a new light on the mundane, the quotidian, and the unextraordinary aspects of life at the court. I would trace the mysterious and circuitous paths that lead to the formation of seemingly unassailable judicial truths. I would describe, in 'micro-level detail',<sup>9</sup> what happens in the back rooms of international justice.

There came the first challenge: how, exactly, would I go about the exercise? By using which tools? The obvious starting point was to use my eyes and ears. As a participant-observer in the WTO community, I was in a privileged position to witness the exchanges that went on around me and make sense of how they were socially and culturally organized. The deployment of ethnography – if not as a 'hard' research method, at least as a 'soft' analytical posture<sup>10</sup> – guided my initial exploration of the field. I started taking notes of the meetings I attended, the conversations I had, the documents I read, and the gossip I was told. I frequently asked my peers and supervisors about their ambitions and preoccupations, paying attention to what they said and what they left unsaid. At the end of the working day, I would review my minutes and annotate them with additional questions and observations. The more I watched my co-workers' interactions, the more fascinated I grew. A hidden social world was unfolding before me with its own structures, logics, assumptions, and exclusionary mechanisms.

For all its excitement, however, this method of inquiry soon began to show its drawbacks. Unlike other participant-observers, I was not a temporary visitor to the trade law profession but sought to make an actual *career* in it. Not only did I have to work overtime to reconcile my official duties with field observation, but also I experienced the paradox of building relationships and friendships while studying them from a certain distance. Some of my colleagues were aware of being 'test subjects', but others were not. The more responsibilities I took on, the more

<sup>8</sup> D. Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016), 2.

<sup>9</sup> G. A. Sarfaty, 'Corporate Actors as Translators in Transnational Lawmaking' (2021) 115 *AJIL Unbound* 278.

<sup>10</sup> See M. Halme-Tuomisaari, 'Toward Rejuvenated Inspiration with the Unbearable Lightness of Anthropology' (2021) 115 *AJIL Unbound* 283, 287.

people perceived me as one of them – and the guiltier I felt for spying on their reflexes and idiosyncrasies. My career progression was a problem in itself. By becoming increasingly embedded in the community, I was gradually gaining access to its innermost secrets, but also losing the ability to critically discern its invisible frameworks and ingrained presuppositions – much like David Foster Wallace’s parable of the fish that does not know what water is.<sup>11</sup>

Worse still, my vantage point was severely limited. I was discovering the backstage of WTO dispute settlement, but my confidentiality obligations prevented me from disclosing those discoveries to the public. What happened in the rooms where litigation teams discussed strategies with their clients, where WTO secretariat officials wrote internal memoranda, and where judges reached their decisions had to stay in those rooms. Besides, I had little clue about the functioning of *other* international judicial institutions, like the International Court of Justice (ICJ) or regional human rights mechanisms. My occasional involvement in investor–state dispute settlement provided some pointers, but not enough to draw a proper comparison with the trade regime. Did those other institutions have the same division of labour among counsel, bureaucracies, adjudicators, and academics? Was litigation equally concentrated in the hands of few legal entrepreneurs? Did judicial assistants play a role equivalent to the WTO secretariat in advising their respective judges and drafting their rulings? In short, was the trade field unique or could my analysis extend to international adjudication at large?

Direct observation was no longer sufficient. I had to corroborate my findings by other means. The next thing I did was dig out all the information I could find in policy papers and scholarly articles. After all, I thought, we international legal practitioners are a vain bunch, and surely someone had to have written about their professional experiences. I was right. Academic journals – especially those boasting a ‘practical’ approach – were rife with the memoirs of sitting and retired judges,<sup>12</sup> top-tier litigators,<sup>13</sup> and

<sup>11</sup> See J. Krajewski, ‘This Is Water’, *New Yorker*, 19 September 2008, [www.newyorker.com/books/page-turner/this-is-water](http://www.newyorker.com/books/page-turner/this-is-water).

<sup>12</sup> See e.g. the interviews contained in D. Terris, C. P. R. Romano, and L. Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World’s Cases* (Oxford University Press, 2007), 39–48 (Navi Pillay), 92–101 (Thomas Buergenthal), 131–46 (Georges Abi-Saab), 180–90 (Cecilia Medina Quiroga), and 212–20 (John Hedigan).

<sup>13</sup> See e.g. A. Pellet, ‘The Role of the International Lawyer in International Litigation’, in C. Wickremasinghe (ed.), *The International Lawyer as a Practitioner* (British Institute of International and Comparative Law, 2000), 147.

senior registry officials,<sup>14</sup> who took stock of their time at court and shared juicy details about their day-to-day business. These writings offered a window into the secret workings of various tribunals, including the modes of appointment of adjudicators, the internal preparation of case files, and the basic features of deliberations. More importantly, they made it easier for me to avoid confidentiality issues and rely on statements published by others. In fact, a good portion of the material contained in this book comes from publicly available sources.

The question was how to *read* those sources. By their nature, the accounts of embedded practitioners tended to be selective, uncritical, and self-congratulatory. Their hints on the life of judicial communities were often buried under layers of coded language and professional affectation. Few bothered to mention the duller moments of their daily grind. Even fewer questioned the image of international justice as an emancipatory project, lest they be seen as biting the hand that fed them. The goal then became to see past the rose-tinted glasses and take a closer look at the underlying realities. My first-hand exposure to practice helped me separate the wheat from the chaff, but I needed additional data to complete my record.

Thus, I set out to conduct a series of semi-structured interviews with professionals working for international courts and tribunals. It took months to identify people with the right profiles and qualifications. The ideal candidates would not only have direct knowledge of the inner processes of adjudication but also be willing to talk about them openly. I expected judges, arbitrators, and government representatives to be tight-lipped, so I focused my search on private attorneys, clerks, and court bureaucrats. Thanks to my network, I eventually reached out to four lawyers affiliated with the ICJ registry, three employed at the registry of the European Court of Human Rights (ECtHR), two serving at the secretariat of the Inter-American Court of Human Rights (IACtHR), three assisting investment arbitrators as tribunal secretaries, and five acting as counsel in state-to-state and investor–state proceedings. About two-thirds of my prospective interviewees were in the early to mid stages of their careers, while the rest were senior practitioners. Ten were men and seven were women.

Preparing the questions was a delicate task. On the one hand, I wanted to give my interlocutors a safe space to share their views freely and

<sup>14</sup> See e.g. H. Thirlway, 'The Drafting of ICJ Decisions: Some Personal Recollections and Observations' (2006) 5(1) CJIL 15.

without withholding crucial bits of information. On the other hand, I was mindful that much of that information was covered by confidentiality, the breach of which could entail serious disciplinary consequences.<sup>15</sup> To balance these concerns, I negotiated the terms of each interview and incorporated them into a signed agreement. I undertook to protect the anonymity of my sources and not to make them directly or indirectly identifiable by name, title, specific tasks performed, gender, nationality, or other similar qualification. The interviewees would be entitled, upon request, to check the relevant parts of the manuscript. Three of them have asked to see the draft, and none has raised any objections.

With these precautions in place, my informants felt more comfortable speaking up. Intriguingly, their degree of openness seemed to vary by affiliation. For instance, IACtHR secretariat officers were quite relaxed and forthcoming, whereas ICJ clerks and ECtHR registry lawyers sounded more tense and circumspect. Every personality was unique and required a tailored approach. Sometimes I would offer breadcrumbs about my own experiences and see whether they resonated with the interviewee's. Other times I would express my guesses as statements of knowledge and check whether the interviewee confirmed or denied them. Often, I would simply try to establish a connection, a sense of camaraderie: 'Judge so-and-so wrote that deliberations happen this way. Now let's be serious: how do things *really* work?'

As I compared and cross-checked the testimonies, the puzzle finally started to come together. Yes, the sample size paled in comparison to the almost 300 interviews conducted by Yves Dezalay and Bryant Garth for *Dealing in Virtue*.<sup>16</sup> And yes, one had to account for institutional differences across judicial regimes. However, the answers I collected presented striking commonalities. They pointed to similar social structures, patterns of practice, perceptions of competence, and standards of legal argument. They seemed to validate rather than refute the dynamics I had observed in the WTO community. They demonstrated, beyond any doubt, that there is more to international judicial processes than first meets the eye. By the end of the talks, I knew this was a story worth telling.

\*

All I had to do was organize the information, take a deep breath, and... get stuck. Suddenly, putting my findings in writing looked like an

<sup>15</sup> See *infra*, Chapter 6.

<sup>16</sup> Y. Dezalay and B. G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996), 9.

insurmountable challenge. The material I had gathered through ethnographic fieldwork, desk research, and interviews was rich and fascinating, but lacked the force of hard data. The secrecy surrounding courts and tribunals prevented me from offering conclusive evidence in support of my claims without giving out the identities of my sources. Hence, no matter how I turned the narrative, I would be unable to produce the measurable empirics<sup>17</sup> and actionable indicators<sup>18</sup> that contemporary scholarship values so highly.

*Quoi faire?* I turned to the classics for inspiration. Seminal essays like *Dealing in Virtue* and John Flood's *Barristers' Clerks*<sup>19</sup> relied heavily on the input of interviewees. To protect confidentiality, all quotes were anonymized and each source was referred to by a number (e.g. 'interviewee 17') or by a generic identifier (e.g. 'one clerk', 'another clerk', etc.). In *La Fabrique du Droit*, Bruno Latour took a slightly different approach to describe the judicial function of the French Conseil d'État: he redacted the case file numbers and modified names of the lawyers handling them, such that his chronicles read like '*des fictions vraisemblables*'.<sup>20</sup>

Going through these works assuaged my concerns. Other authors, faced with the same dilemmas, had traded off the verifiability of data for greater access to restricted material. In one way or another, all invited the reader to suspend disbelief and place their confidence in the narrator. Even more reassuring was the authors' composure. They did not bend over backwards to justify their choices, did not claim to remove 'all the messy juxtapositions and color combinations',<sup>21</sup> did not scramble to 'achieve relevance'<sup>22</sup> with the audience – but serenely stood by their 'hazy methodology'<sup>23</sup> in the face of critics.<sup>24</sup> There it was, my inspiration. I would follow their example. If I could not demonstrate my hypotheses by solid proof, I would come up

<sup>17</sup> See e.g. G. Shaffer and T. Ginsburg, 'The Empirical Turn in International Legal Scholarship' (2012) 106(1) AJIL 1.

<sup>18</sup> See M. Halme-Tuomisaari, 'Toward a Lasting Anthropology of International Law/Governance' (2016) 27(1) EJIL 235, 242.

<sup>19</sup> J. Flood, *Barristers' Clerks: The Law's Middlemen* (Manchester University Press, 1983).

<sup>20</sup> B. Latour, *La Fabrique du Droit: Une Ethnographie du Conseil d'État* (La Découverte, 2002), 9.

<sup>21</sup> Dezalay and Garth, *Dealing in Virtue*, 14.

<sup>22</sup> G. Simpson, 'The Sentimental Life of International Law' (2015) 3(1) LondRevIntlL 3, 28.

<sup>23</sup> Halme-Tuomisaari, 'Rejuvenated Inspiration', 287.

<sup>24</sup> And criticism there was indeed. See e.g. E. A. Schwartz, 'Book Review of "*Dealing in Virtue*"' (1997) 12(1) ICSID Rev/FILJ 229, 230 (lamenting that Dezalay and Garth's 'anecdotal' approach painted a 'misleading portrait of the world of international

with another solution, however ‘*boiteuse et bricolée*’,<sup>25</sup> to gain the trust of my readers. Incidentally, wasn’t that precisely what international courts do? Don’t they ask the public to trust a process of truth production without knowing too much about it?

My doubts gone, I laid the foundations of the narrative. I knew what I wanted to write, but the how was still vague. Finding a credible voice as a storyteller was as crucial as the content of the story to be told. The “‘feel” of professional competence is the outcome of style, more particularly of linguistic style’.<sup>26</sup> For several weeks I wondered about possible ways of representing the judicial backstage, the reactions they would elicit, and the imaginations they would engender.

The socio-legal classics I had consulted were masterful but somehow burdened by their own weight. The gaze of the social scientist was driven (and constrained) by the availability of empirics, their prose set on orderly patterns and structured phenomena. The rendering I had in mind was something else. I wished the audience to share my sense of discovery, my ‘culture shock’<sup>27</sup> at the beliefs and behaviour of legal professionals. I needed a vocabulary that would capture the passions and the fears, the enthusiasm and the disillusionment, and the ideals and the cynicism that agitate international courts. I wanted to pepper the action with a bit of irony and *souplesse*.

Then, one day, it dawned on me. Why not replace the abstractions of academic discourse with the ‘radically personalizing language’<sup>28</sup> of literary fiction? If confidentiality kept me from writing about real actors, why not imagine my own characters and let them take centre stage? Why not take the notion of *emplotment*, which is proper to any form of legal reasoning, and push it to its limits? The more I toyed with the idea, the more a nov-  
 elesque approach seemed to fit my purpose. The appeal of that approach was twofold. First, it would add explanatory force and critical bite to the analysis. By focusing on what my characters did, said, and thought in their daily routines, I could weave together their material practices and inner

commercial arbitration’); S. Landsman, ‘The Servants’ (1985) 83(4) MichLRev 1105, 1112 (noting that Flood’s ‘[c]oncentration on detail and anecdote’ prevented his study from being ‘systematic’).

<sup>25</sup> Latour, *La Fabrique du Droit*, 9.

<sup>26</sup> M. Koskenniemi, ‘Letter to the Editors of the Symposium’ (1999) 93(2) AJIL 351, 357.

<sup>27</sup> A. Riles, ‘Introduction to the Symposium on the Anthropology of International Law’ (2021) 115 AJIL Unbound 268, 269.

<sup>28</sup> Koskenniemi, Symposium, 361.



processes, thus grasping nuances that would get lost in aggregate data. Second, it would make my arcane topic accessible to a wider readership, bridging the language barriers that separate law, social studies, and political theory.

I just needed the courage to take the plunge. I was not – I am not – a novelist, especially not in a language other than my native tongue. Concepts like *mise-en-scène* and *dramatis personae* were completely foreign to me. I had little guidance from existing scholarship, no comfort zone to fall back on. A warning echoed in my head: ‘[t]he pseudo-poet who writes his thesis in poetry is a pitiful writer (and probably a bad poet)’.<sup>29</sup> This could end up in a disaster. And yet, I was drawn to the prospect of pushing my thoughts in this direction, of continuing the line of “critical” inventions which belong to literature while deforming its limits’.<sup>30</sup>

It has been four years since I decided to follow those instincts, and I do not regret a moment of it. Sure, the writing was tough slogging and faced me with new obstacles almost every day. A vignette was superfluous, another underdeveloped. This line of dialogue sounded stilted, that scene did not go anywhere. The most daunting issue was my own relationship with the story’s protagonists. In order to be credible, each character would be *situated* in the narrative, that is, be endowed with a distinct personality and agenda, but also with blind spots and epistemic limitations. Only I, the narrator, would have the advantage of *distance* – the detachment necessary to see the ties that bound the characters together, imparted meaning and direction to their actions, and informed their experiences consciously and unconsciously.

Yet, it turned out, not even the narrator could be truly objective. For one thing, I was very much part of the community under scrutiny and, as such, carried my own assumptions and presuppositions. For another, my ‘outside’ perspective was still, by all purposes, a *chosen* perspective that modified the object of the narrative. The very act of taking up a point of view on the action, withdrawing from it to observe it from a distance, *constitutes* the action as a ‘*representation*’.<sup>31</sup> Hence, all I could do was to straddle the line between pure phenomenology – the primary and unmediated experience

<sup>29</sup> U. Eco, *How to Write a Thesis*, trans. C. Mongiat Farina and G. Farina (MIT Press, 2015), 150.

<sup>30</sup> J. Derrida, cit. in S. Muecke, ‘The Fall: Fictocritical Writing’ (2002) 8(4) *Parallax* 108.

<sup>31</sup> P. Bourdieu, *Outline of a Theory of Practice*, trans. R. Nice (Cambridge University Press, 1977), 2.

of the actors – and pure objectivism – the ‘hyostatize[d] systems’<sup>32</sup> to which the actors respond. Hopefully, this ‘middle ground’ approach does justice to the complexity of each character, revealing them as *both* a player and an observer, an agent and a reagent, and a speaker and a listener.

Likewise, I was unsure what to make of the intersectional identities of my protagonists. At first, I thought that aspects like nationality, ethnicity, gender, sexuality, social status, education, and political beliefs should feature prominently as drivers of action and communication. As I progressed, however, I started to worry that too much emphasis on personal traits would end up obscuring the *collective* traits of the international judicial world. Indeed, this world perpetuates its cohesiveness precisely by depotentiating the individual and diluting personal positions to a pastiche of habits and conditioned reflexes.<sup>33</sup> Eventually, I stayed true to my focus on community dynamics, and left the baggage of privilege and oppression of each character at the door of courts and tribunals.

Despite these insecurities, the labour was made more joyful by the support of those around me. My doctoral supervisor, Andrea Bianchi, provided constant guidance and advice. The more I tinkered with narrative solutions, the more he encouraged me to press ahead. Thomas Schultz and Jean d’Aspremont, who read multiple iterations of the draft, believed in the project and offered valuable suggestions to improve its quality. The three anonymous readers who reviewed the book proposal delivered a thorough and constructive critique. To each of them does my deepest gratitude. I was also delighted to see many friends and colleagues eager to share insights and perspectives, some of which stand out as true eye-openers. Heartfelt thanks to Anne Coulon, Brian McGarry, Fuad Zarbiyev, Josef Ostránský, Klara Polackova van der Ploeg, León Castellanos-Jankiewicz, Luca Pasquet, María de la Colina, Michele Potestà, Miguel Villamizar, Mikael Rask Madsen, and Shashank Kumar. Finally, I would be remiss not to mention my wife Federica, my parents Fedela and Roberto, my brother Filippo, and my sister Camilla. Without their unwavering love and care, perhaps this work would still have come about – but it would be a different work, for the author would be a different man.

Writing a story is a difficult business, and it is only for you, the reader, to decide if this book comes any close to success. If you are willing to give it a chance, you might perhaps find some truth in it. Even better – but this would really go beyond expectations – you might have some fun.

<sup>32</sup> Bourdieu, *Theory of Practice*, 72.

<sup>33</sup> See *infra*, Chapter 13.

## ABBREVIATIONS

### Abbreviations in the Book

ABS	Appellate Body Secretariat
ACHR	Organization of American States, <i>American Convention on Human Rights</i> (22 November 1969), UNTS 1144, 123
ACWL	Advisory Centre on WTO Law
BIT	Bilateral investment treaty
CJEU	Court of Justice of the European Union
DLM	Department of Legal Matters
DSU	<i>Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes</i> , Marrakesh Agreement Establishing the World Trade Organization, Annex 2 (15 April 1994), UNTS 1869, 401
ECHR	Council of Europe, <i>European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14</i> (4 November 1950), ETS 5
ECtHR	European Court of Human Rights
FTA	Free-trade agreement
GATS	<i>General Agreement on Trade in Services</i> , Marrakesh Agreement Establishing the World Trade Organization, Annex 1B (15 April 1994), UNTS 1869, 183
GATT	<i>General Agreement on Tariffs and Trade</i> (30 October 1947), UNTS 55, 194
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTY	International Criminal Tribunal for Former Yugoslavia
ILC	International Law Commission
ILO	International Labour Organization
ISDS	Investor–state dispute settlement
ITLOS	International Tribunal for the Law of the Sea
LCIA	London Court of International Arbitration
MPIA	Multi-Party Interim Appeal Arbitration Arrangement

## LIST OF ABBREVIATIONS

xxi

MSEN	Multi-sourced equivalent norm
NGO	Non-governmental organization
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PJP	Pilot judgment procedure
QC	Queen's Counsel
RSPO	Roundtable on Sustainable Palm Oil
TBT	<i>Agreement Agreement on Technical Barriers to Trade</i> , Marrakesh Agreement Establishing the World Trade Organization, Annex 1 (15 April 1994), UNTS 1868, 120
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
VCCR	United Nations, <i>Vienna Convention on Consular Relations</i> (24 April 1963), UNTS 500, 95
VCLT	United Nations, <i>Vienna Convention on the Law of Treaties</i> (23 May 1969), UNTS 1155, 331
WTO	World Trade Organization

**Academic Journals**

AJIL	American Journal of International Law
AJIL Unbound	American Journal of International Law Unbound
AmJJurisprud	American Journal of Jurisprudence
AmJPolSci	American Journal of Political Science
AmPolSciRev	American Political Science Review
AmSch	The American Scholar
AmUIntlLRev	American University International Law Review
AnnuRevAnthropol	Annual Review of Anthropology
ArbIntl	Arbitration International
ASILPROC	American Society of International Law Proceedings
AustYBIL	Australian Yearbook of International Law
BaltYIL	Baltic Yearbook of International Law
BerkeleyJIntlL	Berkeley Journal of International Law
BrJPolSci	British Journal of Political Science
BrJSociol	British Journal of Sociology
BrookLRev	Brooklyn Law Review
BYBIL	British Yearbook of International Law
CAAJ	Contemporary Asian Arbitration Journal
CalLRev	California Law Review
CILJ	Cambridge Journal of International and Comparative Law

xxii

## LIST OF ABBREVIATIONS

CardozoLRev	Cardozo Law Review
CaseWResLRev	Case Western Reserve Law Review
ChiJIntlL	Chicago Journal of International Law
Chi-KentLRev	Chicago-Kent Law Review
CJIL	Chinese Journal of International Law
ColumJTransnatL	Columbia Journal of Transnational Law
CompPolStud	Comparative Political Studies
CornellIntlLJ	Cornell International Law Journal
CLP	Current Legal Problems
CritInq	Critical Inquiry
DenvJIntlL&Pol	Denver Journal of International Law and Policy
DispResIntl	Dispute Resolution International
DispResJ	Dispute Resolution Journal
DukeLJ	Duke Law Journal
EHRLR	European Human Rights Law Review
EJST	European Journal of Social Theory
ELJ	European Law Journal
EmoryJIntlDispRes	Emory Journal of International Dispute Resolution
Ethics&IntlAff	Ethics and International Affairs
EurJIntlRel	European Journal of International Relations
EurJLegStud	European Journal of Legal Studies
FlaLRev	Florida Law Review
FordhamIntlLJ	Fordham International Law Journal
FordhamLR	Fordham Law Review
GeogrZ	Geographische Zeitschrift
GeoJIntlL	Georgetown Journal of International Law
GeoLJ	Georgetown Law Journal
GTCJ	Global Trade and Customs Journal
HarvIntlLJ	Harvard International Law Journal
HarvLRev	Harvard Law Review
HastingsIntl&CompLRev	Hastings International and Comparative Law Review
HastingsLJ	Hastings Law Journal
HRLRev	Human Rights Law Review
HumRtsQ	Human Rights Quarterly
ICLQ	International and Comparative Law Quarterly
ICLR	International Community Law Review
ICON	International Journal of Constitutional Law
ICSID Rev/FILJ	ICSID Review/Foreign Investment Law Journal
IJHR	International Journal of Human Rights

## LIST OF ABBREVIATIONS

xxiii

IntlJLContext	International Journal of Law in Context
IntlLawyer	The International Lawyer
IntlOrg	International Organization
IntlOrgLRev	International Organization Law Review
IntlPolSciRev	International Political Science Review
IntlStudQ	International Studies Quarterly
IntlTheory	International Theory
IsLR	Israel Law Review
ItYBIL	Italian Yearbook of International Law
JapanYBIL	Japanese Yearbook of International Law
JEP	Journal of Economic Perspectives
JIDS	Journal of International Dispute Settlement
JIEL	Journal of International Economic Law
JIntlArb	Journal of International Arbitration
JIntlL&Econ	Journal of International Law and Economics
JITLP	Journal of International Trade Law and Policy
JL&Society	Journal of Law and Society
JLegEduc	Journal of Legal Education
JTransnatLawPol	Journal of Transnational Law and Policy
JWIT	Journal of World Investment and Trade
L&ContempProbs	Law and Contemporary Problems
L&Crit	Law and Critique
L&Phil	Law and Philosophy
L&SocRev	Law and Society Review
LegTheory	Legal Theory
LJIL	Leiden Journal of International Law
LondRevIntlL	London Review of International Law
LoyLAIntl&CompLRev	Loyola of Los Angeles International and Comparative Law Review
LP ICT	The Law and Practice of International Courts and Tribunals
MarqueeLRev	Marquee Law Review
MJECL	Maastricht Journal of European and Comparative Law
MichJIntlL	Michigan Journal of International Law
MichLRev	Michigan Law Review
MLN	Modern Language Notes
MLR	Modern Law Review
NILR	Netherlands International Law Review
NQHR	Netherlands Quarterly of Human Rights

xxiv

## LIST OF ABBREVIATIONS

NWULR	Northwestern University Law Review
NYIL	Netherlands Yearbook of International Law
NYUJILP	New York University Journal of International Law and Politics
NYULRev	New York University Law Review
NYURevL&SocChange	New York University Review of Law and Social Change
OhioNULRev	Ohio Northern University Law Review
Oñati Socio-Leg Ser	Oñati Socio-Legal Series
OrLRev	Oregon Law Review
OttawaLRev	Ottawa Law Review
PaceYBIntlL	Pace Yearbook of International Law
PeenYBArb&Med	Penn Yearbook on Arbitration and Mediation
PennStIntlLRev	Penn State International Law Review
PeppDispResLJ	Pepperdine Dispute Resolution Law Journal
PerspPolitics	Perspective on Politics
Phil&PubAff	Philosophy and Public Affairs
QJPolSci	Quarterly Journal of Political Science
RAE	Review of Artistic Education
RBDI	Revue Belge de Droit International
RegentJL&PubPol	Regent Journal of Law and Public Policy
ResL&Soc	Research in Law and Sociology
RevIntlStud	Review of International Studies
RevIntPolitEcon	Review of International Political Economy
RGDIP	Revue Générale de Droit International Public
RIEJ	Revue Interdisciplinaire d'Études Juridiques
RMUE	Revue du Marché Unique Européen
SCalLRev	Southern California Law Review
Signs	Signs: Journal of Women in Culture and Society
SociolTheory	Sociological Theory
SocSciInf	Social Science Information
StanLRev	Stanford Law Review
SydLRev	Sydney Law Review
TDR	The Drama Review
TexIntlJ	Texas International Law Journal
Theory&Soc'y	Theory and Society
TL&D	Trade Law and Development
TransAmPhilSoc	Transactions of the American Philosophical Society
TransnatL&ContempProbs	Transnational Law and Contemporary Problems
TulJIntl&CompL	Tulane Journal of International and Comparative Law

## LIST OF ABBREVIATIONS

XXV

UCinLRev	University of Cincinnati Law Review
UNYB	Max Planck Yearbook of United Nations Law
UPaLRev	University of Pennsylvania Law Review
URichLRev	University of Richmond Law Review
USFLRev	University of San Francisco Law Review
VaJIntL	Virginia Journal of International Law
VandJTransnatL	Vanderbilt Journal of Transnational Law
VillanovaLRev	Villanova Law Review
WashUJurRev	Washington University Jurisprudence Review
WorldEcon	The World Economy
YaleJIntL	Yale Journal of International Law
YaleLJ	Yale Law Journal
YaleRev	Yale Review
YaleStudWorldPubOrd	Yale Studies in World Public Order
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht