How do the judges of the International Court of Justice, the most authoritative court in international law, use teachings when deciding cases? This work is the first book-length examination of how teachings are used in an important international institution. It uses three different methodologies: a traditional legal analysis, an empirical analysis where citations of teachings are counted and interviews with judges and staff. Three main patterns are identified: teachings have generally low weight, but this weight varies between different works and between different judges. The book suggests explanations for the patterns it identifies, in order to contribute to the understanding of not only when and how teachings are used, but also why they are used. It compares the Court’s practice with that of other international courts and tribunals. This study fills a gap in the international legal literature and will be essential reading for scholars and practicing international lawyers.

Sondre Torp Helmersen is Associate Professor and Vice Dean for Research at the Faculty of Law, UiT The Arctic University of Norway. He has published widely on the sources of international law and other topics in leading journals. Before entering academia he worked at the Norwegian Ministry of Foreign Affairs.
STUDIES ON INTERNATIONAL COURTS AND TRIBUNALS

General Editors
Andreas Føllesdal, University of Oslo
Geir Ulfstein, University of Oslo

Studies on International Courts and Tribunals contain theoretical and interdisciplinary scholarship on legal aspects as well as the legitimacy and effectiveness of international courts and tribunals.

Other books in the series:
Mads Andenas and Eirik Bjorge (eds.) A Farewell to Fragmentation: Reassertion and Convergence in International Law
Cecilia M. Bailliet and Nobuo Hayashi (eds.) The Legitimacy of International Criminal Tribunals
Amrei Müller with Hege Elisabeth Kjos (eds.) Judicial Dialogue and Human Rights
Nienke Grossman, Harlan Grant Cohen, Andreas Follesdal, and Geir Ulfstein (eds.) Legitimacy and International Courts
Robert Howse, Hélène Ruiz-Fabri, Geir Ulfstein, and Michelle Q. Zang (eds.) The Legitimacy of International Trade Courts and Tribunals
Theresa Squatrito, Oran Young, Andreas Follesdal, and Geir Ulfstein (eds.) The Performance of International Courts and Tribunals
Marlene Wind (ed.) International Courts and Domestic Politics
Christina Voigt (ed.) International Judicial Practice on the Environment: Questions of Legitimacy
Freya Baetens (ed.) Legitimacy of Unseen Actors in International Adjudication
Martin Scheinin (ed.) Human Rights Norms in ‘Other’ International Courts
Shai Dothan International Judicial Review: When Should International Courts Intervene?
Daniel Behn, Szilárd Gáspár-Szilágyi, and Malcolm Langford (eds.) Adjudicating Trade and Investment Disputes: Convergence or Divergence?
Silje Langvatn, Mattias Kumm, and Wojciech Sadurski (eds). Public Reason and Courts
Sondre Torp Helmeren The Application of Teachings by the International Court of Justice
THE APPLICATION OF TEACHINGS BY THE INTERNATIONAL COURT OF JUSTICE

SONDRE TORP HELMERSEN

UiT The Arctic University of Norway
# CONTENTS

<table>
<thead>
<tr>
<th>List of Figures</th>
<th>page xi</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of Tables</td>
<td>xii</td>
</tr>
<tr>
<td>Foreword</td>
<td>xiii</td>
</tr>
<tr>
<td>Preface</td>
<td>xxiii</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>xxv</td>
</tr>
<tr>
<td>Table of Treaties</td>
<td>xxxviii</td>
</tr>
<tr>
<td>List of Abbreviations</td>
<td>xxxix</td>
</tr>
</tbody>
</table>

## 1 Introduction

1.1 Argument and Outline 1

1.2 Why Study the Application of Teachings by the ICJ 3

1.3 Methodology 6

1.3.1 Collecting Citations 6

1.3.2 Analysing Citations 11

1.3.3 Conducting Interviews 14

1.3.4 The Concept of ‘Weight’ 16

## 2 The ICJ Statute Article 38(1) 18

2.1 Introduction 18

2.2 Guidance on the Application Teachings 20

2.2.1 The Inclusion of Teachings 20

2.2.2 ‘The Court, Whose Function Is to Decide in Accordance with International Law’ 23

2.2.3 ‘[S]hall Apply’ 24

2.2.4 ‘[J]udicial Decisions’ 25

2.2.5 ‘[T]eachings . . . of Publicists’ 25

2.2.6 ‘[T]he Most Highly Qualified 25

2.2.7 ‘[O]f the Various Nations’ 26
CONTENTS

2.2.8 ‘[S]ubsidiary Means’ 26
2.2.9 ‘[F]or the Determination of Rules of Law’ 28

2.3 Defining ‘Teachings’ 29
2.3.1 Introduction 29
2.3.2 The Definition Does Not Determine Weight 30
2.3.3 The Term ‘Teachings’ (and Its Alternatives) 31
2.3.4 Teachings Are about Law 33
2.3.5 Teachings Are Not Produced by States 35
2.3.6 Teachings Are Not Produced by Official Institutions 36

3 The General Role of Teachings in the ICJ 43
3.1 Introduction 43
3.2 Majority Opinions Almost Never Cite Teachings 43
3.3 Individual Opinions Sometimes Cite Teachings 45
3.4 Teachings Are Used More Often Than They Are Cited 46
3.4.1 Introduction 46
3.4.2 Teachings Are Useful to Judges 46
3.4.3 Statements by Judges and Staff Members 48
3.4.4 Statements in Judicial Decisions 50
3.4.5 Judges Are Exposed to Teachings Through Pleadings 51

3.5 Reasons for the Absence of Citations 52
3.5.1 Introduction 52
3.5.2 The Quality of Teachings 53
3.5.3 Jealousy between Writers 53
3.5.4 The Court’s Drafting Procedures and Style 54
3.5.5 Writers’ Objectivity 55
3.5.6 The Lack of Diversity among Writers 57
3.5.7 The Court’s Expertise 58
3.5.8 The Availability of Better Arguments 58
3.5.9 Teachings Lack Official Authority 59
3.5.10 Length and Complexity 60
3.5.11 Institutional Culture and Role 60
3.6 Other Patterns That Indicate Limited Weight
3.6.1 Few Judges Cite Teachings in Every Opinion 62
3.6.2 Judges Specify That They Agree with Teachings 62
3.6.3 Teachings Are Used to ‘Confirm’ Conclusions 64
3.6.4 A Lack of Engagement 65
3.6.5 Justifications of Authority 66

3.7 Patterns That Indicate Some Weight 67
3.7.1 Using Teachings as a Main Argument 67
3.7.2 Citing Teachings That Criticise Judicial Decisions 69
3.7.3 Criticising Insufficient Consideration of Teachings 69
3.7.4 Efforts to Clarify Teachings 70
3.7.5 References to Teachings That the Judge Disagrees With 74
3.7.6 References to Disagreements in Teachings 76
3.7.7 The Rate of Citation of Teachings Over Time 77

3.8 Teachings Have Lower Weight Than Other ‘Subsidiary Means’ 80
3.8.1 Introduction 80
3.8.2 Judicial Decisions 80
3.8.3 ILC Works 82

3.9 Explaining the Relatively Low Weight of Teachings 83
3.9.1 Introduction 83
3.9.2 Teachings Lack Official Authority 84
3.9.3 Like Cases Should Be Treated Alike 85
3.9.4 Expertise 86
3.9.5 Quality 87
3.9.6 Collectiveness and Diversity 88

3.10 Conclusion: The General Role of Teachings in the ICJ 90

4 Variations between Works 93
4.1 Introduction 93
4.2 Variations by Frequency 94
   4.2.1 The Most-Cited Writers in ICJ Opinions 94
   4.2.2 The Demographics of the Most-Cited Writers 98
   4.2.3 Explaining the Skewed Demographics of the Most-Cited Judges 99

4.3 Variations by Substance: Factors That Influence the Weight of Teachings 106
   4.3.1 Introduction 106
   4.3.2 Expertise 107
   4.3.3 Quality 110
   4.3.4 Official Positions 114
   4.3.5 Agreement between Multiple Writers 120

4.4 Reasons for Distinguishing between Teachings 123
   4.4.1 Introduction 123
   4.4.2 Increased Authority 123
   4.4.3 Saving Time 125
   4.4.4 Compliance with the ICJ Statute Article 38 126

4.5 The Collective Nature of Authority in International Law 127

4.6 Conclusion 128

5 Variations between Judges 131
   5.1 Introduction 131
   5.2 Variations by Frequency and Substance 131
   5.3 Categorising Judges 134
      5.3.1 Introduction 134
      5.3.2 Category 1: Judges Who Never Cite Teachings 134
      5.3.3 Category 2: The Median 135
      5.3.4 Category 3: Judges Who Often Cite and Engage with Teachings 137
   5.4 Factors That May Explain Variations Between Judges 138
      5.4.1 Introduction 138
      5.4.2 Strategic Citations 138
CONTENTS

5.4.3 Philosophical Perspectives 139
5.4.4 Expertise 141
5.4.5 The Availability of Better Arguments 142
5.4.6 Practical Factors 142

5.5 Data That Correlate with Variations between Judges 146
5.5.1 Introduction 146
5.5.2 Permanent Judges and Judges Ad Hoc 146
5.5.3 Separate and Dissenting Opinions 147
5.5.4 Judges’ Nationalities 148
5.5.5 Judges’ Educations 150
5.5.6 Judges’ Professional Backgrounds 152

5.6 Conclusion 155

6 Concluding Reflections 157
6.1 Teachings and the Development of International Law 157

6.2 Potentially Beneficial Adjustments of the Court’s Practice 160
6.2.1 Introduction 160
6.2.2 Increased Diversity 162
6.2.3 Increased Transparency 164
6.2.4 Increased Regulation 166

6.3 The ICJ Compared to Other International Courts and Tribunals 168
6.3.1 Introduction 168
6.3.2 The General Role of Teachings 170
6.3.3 Variations between Teachings 175
6.3.4 Variations between Judges 177
6.3.5 Explaining Variations between Institutions 180

6.4 Avenues for Future Research 183

Appendices 185
Appendix 1 The Forty Most-Cited Writers 185
Appendix 2 Citations Per Judge 189
Appendix 3 Judges Engaging with Teachings 205
x CONTENTS

Appendix 4 Citations Per Judge (PCIJ) 207
Appendix 5 Judges’ Citations Compared to Pleadings 208
Appendix 6 Most-Cited Writers in Pleadings 209

Bibliography 210
Index 227
FIGURES

3.1 Average number of citations of teachings per opinion per year  page 78
3.2 Average number of citations of teachings per opinion per year, without the top four judges  79
4.1 Writers’ shares of all citations  95
4.2 Overrepresentation by groups of judges and writers  103
5.1 Groups of judges ranked by a total number of references to teachings  132
5.2 The ten most-citing judges  133
5.3 Individual opinions per year  144
5.4 Number of opinions per year and number of citations of teachings per year  145
5.5 Citations of teachings by judges’ nationalities  151
5.6 Citations of teachings by judges’ educations  153
5.7 Citations of teachings by judges’ professional backgrounds  154
TABLES

4.1 The ten most-cited writers page 94
4.2 Writers by number of judges citing them 97
4.3 Writers by number of ‘justifications’ of citations 97
FOREWORD

How do judges justify their rulings? To what extent do judges refer to doctrine in order to explain their judicial decisions? To what extent may they actually be influenced by it, irrespective of whether they explicitly invoke it in their decisions? Moreover, should judges include citations more frequently, or are there counterarguments against doing so? This book is about the decision-making of the International Court of Justice, the principal judicial organ of the United Nations. Specifically, it analyses the extent to which the Court explains its own judicial decisions by referring to writings of jurists in their independent capacities. The basic question addressed by the author is how and when the Court, or its individual members, makes explicit references to academic doctrine. This should command a keen interest among both academics and practitioners. Those who are interested in the inner workings of international law should pay close attention to this book’s empirical findings and incisive questions.

Early formation of international law was largely linked to the development of customary rules. As the building block for the construction of such rules, state practice required scholarly research for it to be identified and interpreted. Compounded by traditions of confidentiality regarding diplomatic practice, there was also a dearth of open sources in this field. At early stages, natural laws were also invoked. For such reasons, doctrine was long perceived to be a principal rather than a subsidiary source of international law. In this situation, citing certain pre-eminent

1 Article 92 of the Charter of the United Nations.
authors could moreover provide decisive legal authority in legal advice, pleadings and diplomatic negotiations.

In the eighteenth century, such citations were therefore also frequent in chanceries, cabinet meetings and royal courts. Emer de Vattel’s 1758 treatise on the Law of Nations (Droit des gens) constitutes a classic case in point.\(^4\) It became a privileged handbook for lawyers, diplomats and statesmen alike.\(^5\) ‘Vattel’ epitomized pedigree. Not least for newly independent states, it served as a key introduction to state practice, but also to the conduct and language of foreign relations and to persuasive legal argument. Anecdotally, a copy of ‘Law of Nations’ that had been borrowed in 1789 was returned to the New York Society Library in 2010 – and all fees were waived, even though 221 years had passed. The book had been borrowed and used by the first president of the United States of America, George Washington, and it had been returned by his estate at Mount Vernon.\(^6\) In the early history of the United States, Vattel was cited together with a handful of other authorities in key cabinet discussions, including by Alexander Hamilton and Thomas Jefferson in 1793, when interpreting a key treaty with France.\(^7\) Even recent jurisprudence of United States courts continues to cite Vattel when interpreting statutory law referring to the law of nations at the time of the adoption of the US Federal Constitution.\(^8\) Yet another significant example of his global influence, was the translation of ‘Law of Nations’ into Chinese by the 1840s, in the wake of the first Sino-British War, in keeping with the


interest shown by Chinese leaders in the Qing state in understanding international law.  

All of this was long before the twentieth century, with its vast codifications and progressive development of international law in a variety of conventions and other legal instruments, and the development of jurisprudence by standing international courts. Such instruments are now registered and publicly accessible, as is the jurisprudence of international courts. Access to potential building blocks for international legal argument has also been vastly improved by the development of collections and systematization of international legal materials. Access to evidence of State practice and jurisprudence, but also to sources of law stemming from international organisations is today further helped by digitalization and the Internet. No wonder that the relative importance of citations of individual teachings has declined not only since the days of Vattel, but also after the establishment of universal standing courts of international law in the twentieth century.

Sondre Torp Helmersen’s analysis is centred on the citation practice in judicial decisions between 1923 and 2016, covering successively the Permanent Court of International Justice and its successor, the International Court of Justice. Hard evidence is provided on the basis of a thorough quantitative study. Simply put, the study confirms that majority opinions of the Court almost never cite teachings, while separate and dissenting opinions, particularly of a small and identifiable number of individual judges, sometimes do include such citations. Incidentally, this also confirms a degree of constancy in the PCIJ and the ICJ.

Odd Arne Westad, Restless Empire – China and the World since 1750 (Basic Books 2012) 81. On the reception of Henry Weaton’s Elements of International Law (1836) translated into Chinese in 1864, see Rune Svarverud, International Law as World Order in Late Imperial China: Translation, Reception and Discourse, 1847–1911 (Brill 2007) 90–91.


Oraison, Influence, 210–214, speaks even of an indisputable hegemony (‘l'hégémonie incontestable’) of doctrine up to the middle of the nineteenth century and its manifestation in the work of the first international arbitral tribunals.

Manley O Hudson, The Permanent Court of International Justice 1920–1942: A Treatise (Macmillan 1943) 615: ‘The teachings of publicists are treated less favorably at the hands of the Court. No treatise or doctrinal writing has been cited by the Court. In connection with its conclusion in the Lotus Case that the existence of a restrictive rule of international law had not been conclusively proved, it referred to the ‘teachings of publicists’ without attempting to assess their value, but it failed to find in them any useful indication. Individual judges have not been so restrained in their references to the teachings of
This empirical basis constitutes, in turn, an Archimedes’ lever for asking a number of incisive questions as to the actual role of teachings. The author supplements the collection and analysis of citations with interviews, which also contribute to fleshing out possible hypotheses. On this basis, the author puts forward personal reflections that will undoubtedly pave the way for future debate. The further analysis of these trends deserves careful reading, together with the questions asked by the author to map out their possible explanations. The author provides several leads, also referring to anonymized interviews with two judges and a number of drafters. Interestingly, the answers differ somewhat, while general tendencies are clear.

The book is structured and written in an accessible style and with an intelligible presentation that eases swift comprehension of quantitative methods, and key distinguishing features and trends among the various findings. This is combined with humility as to possible interpretations, with an invitation to further research in the future. The book also describes the close relationship that exists between practitioners and theoreticians of international law (we should incidentally not forget that neither Grotius nor Vattel, among others, were academic writers, they were practitioners).

Judicial behaviouralists, American realists and certain Scandinavian realists, first among whom Alf Ross (1899–1979), have exercised influence not least in the Nordic countries and provided strong arguments to pay particular attention to what judges say is law. Studying the latter as a particular social phenomenon, and considering law from the perspective of what judges will do and decide, has paved the way for debatable ‘predictive’ or ‘prognosis’ theories. However, a careful study of judicial activity should, in any case, inform legal analysis. In doing so, Sondre Torp Helmersen has entered the ‘engine room’ of international law, by considering whether and to what extent judges refer to particular teachings.

This reader would be inclined to caution against equating frequency of ‘citations’ with actual influence. The judges of the International Court of Justice draft and negotiate judicial decisions, whose function it is to transcend academic debates and contribute to effective peaceful

publicists; they have not hesitated to cite living authors, and even the published works of members of the Court itself.”

settlement of international disputes, in accordance with the stated aims and means of the Charter of the United Nations (Articles 2 and 33). The Court is constituted of judges who are experts in their own right and have themselves a lengthy experience in drafting legal opinions or advice in practice and/or academia. While united by the common legal system of international law, international judges stem from different domestic traditions and legal cultures.\textsuperscript{14} Dissenting Opinions have traditionally been identified in continental Europe as largely stemming from a Common Law tradition.\textsuperscript{15} French authors refer to various kinds of doctrine, and may also distinguish subtly between the English notion of ‘teachings’ (in the plural) and the French ‘doctrine’ (in the singular), with a possible emphasis on identification of concurrent doctrinal opinions. A distinction is also suggested between purely ‘academic doctrine’ and more ‘targeted doctrine’, since independent opinions may take different forms depending on whether they have been engaged in specific procedures, be they normative, diplomatic, arbitral or judicial.\textsuperscript{16} May the negotiation and formulation of broad-based majority opinions, in fact, ultimately require applying ‘Ockham’s razor’, or a ‘lex parcimoniae’, i.e. a law of briefness, with regard to references to individual authors? Could such parsimony actually facilitate consensus building? Aren’t there reasons for judges to concentrate instead on the fine-tuning of a common understanding of the relevant facts of the case, and on the other means at their disposal to contribute to the peaceful resolution of the dispute before them? And, to use yet another metaphor: may doctrine sometimes rather be part of legal ‘scaffolding’ in early argumentation, awaiting eventually removal in the final stages of construction?

This reader would also venture questions as to whether there may be a discrete continuous ‘dialogue’ between the Court and doctrine, if one considers the actual patterns and channels of indirect communication that are part of the broader discourse of international law. International courts do not receive ‘feedback’ from any central legislative body, as

\textsuperscript{14} Antoine Garapon and Ioannis Papadopoulos, \textit{Juger en Amérique et en France} (Odile Jacob 2003) 198–203. On the difficulties in bridging obstacles to understanding alien legal cultures, as concepts emerge within a culture at a particular juncture, see Joseph Raz, \textit{Between Authority and Interpretation} (Oxford University Press 2009) 31–36 and 41–46.


\textsuperscript{16} Oraison, \textit{Influence}, 207.
opposed to what may happen in domestic legal systems. It may, nevertheless, not be entirely far-fetched to consider various ‘feedback’ possibilities through academic and other arenas, which contribute to a continuous conversation that may, in turn, influence the future jurisprudence of the court.

A possible illustration may be provided by adjudication in the field of maritime delimitation of the continental shelf and exclusive economic zones. The International Court of Justice has over the years undoubtedly contributed decisively to developing substantive law in this regard. According to Kaye in 2008, it has indeed been ‘difficult to think of another area of international law since World War II where international adjudication has had such a clear field in which to operate’. It may be easy today to forget major academic discussions and controversies over a number of years in this field. They were related to debates concerning the methods that might best lead to an ‘equitable result’ in delimitation of continental shelf or exclusive economic zones pursuant to Articles 74 and 83 of the United Nations Convention on the Law of the Sea. Without entering into the history and content of these divergences, a lively debate had arisen, which included warnings against any future methodological lack of coherence by the Court. In 2001, the Court’s President, Gilbert Guillaume, noted, however, that a breakthrough had been achieved. The law of maritime delimitation had ‘reached a new level of unity and certainty, whilst conserving the necessary flexibility’.

What had indeed happened? In 1993, the Court reached an almost unanimous decision (14–1) in the case of Maritime Delimitation in the area between Greenland and Jan Mayen (Denmark v. Norway), that contributed to legal certainty as to key issues of method in cases of coastal states with opposite coasts. The same basic approach was subsequently adopted for states with adjacent coasts in the judgment in 2001 in the case of

18 Statement of the President of the International Court of Justice, Judge Gilbert Guillaume, on 31 October 2001 to the Sixth Committee of the United Nations General Assembly, Official Records of the General Assembly, Fifty-sixth session, Sixth Committee, 12th meeting [summary record]. These observations were included in Gilbert Guillaume, La cour internationale de Justice à l’aube du XXIème siècle: Le regard d’un juge (A. Pedone 2003) 287–301.
Maritime Delimitation between Qatar and Bahrain. This unified methodology has largely characterized the jurisprudence since, in keeping with President Guillaume’s observations. That the Court played such a decisive role does not mean that academic doctrine did not contribute to these advances. This reader would not fail to acknowledge the teachings, among others, of Prosper Weil (1926–2018), including his landmark contribution to doctrine in a seminal analysis of jurisprudence of maritime delimitation, at a crucial juncture, in 1988. His ‘feedback’ as to the Court’s previous case-law and his analysis with a view to promoting cogent methodological ways forward have been noted. It is only fair to assume that his contributions also had an influence, in spite of lack of explicit references to them in judgments. This may, incidentally, also have to do with the fact that Prosper Weil was himself inter alia co-arbitrator in the Arbitral Tribunal between Canada and France in the Saint Pierre and Miquelon case, and, counsel of Norway in the Greenland/Jan Mayen case. In Oraison’s parlance, he could therefore easily also have been categorized as a contributor to ‘targeted doctrine’.

Moreover, international law does not live in a vacuum. Societal developments, technological paradigm shifts and leaps in scientific knowledge speak in favour of understanding the role of doctrine as a privileged semiconductor or avenue for interdisciplinary cross-fertilization influencing international law. Thus, a pioneering international lawyer who cogently expounded the importance of cooperation as regards transboundary hydrocarbon deposits on the continental shelf and indicated a future methodology, was Professor Juraj Andrassy (1896–1977) of the university of Zagreb, in his 1951 course at the Hague Academy of International Law. This prescient ‘teaching’ was held shortly after the 1945 Truman

---

20 Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001, 40. See Guillaume, La cour, 294.
23 Case concerning the delimitation of maritime areas between Canada and France, Decision of 10 June 1992, R.I.A.A. vol. XXI (UN 2006) 265.
24 Juraj Andrassy, 'Les Relations internationales de voisinage' (1951) 79 Recueil des Cours 215.
Proclamation on the Continental Shelf.\textsuperscript{25} The issue he highlighted was subsequently referred to in 1969 by the Court in the North Sea Continental Shelf judgment, without citations.\textsuperscript{26} The contributions of Professor Andrassy may also reflect the interdisciplinary strengths of the academic community in Zagreb, which was also famous for its geophysicists, including in particular Andrija Mohorovičić (1857–1936).\textsuperscript{27}

There should thus not be any doubt about the real influence of teachings, ranging from the role of transmitters, go-betweens or interconnectors between a wealth of legal raw material and the ultimate determination of rules of law.

Going back to the negotiation of article 38 of the PCIJ and then the ICJ Statute, it may also be worthwhile to carefully study its negotiating history in the Advisory Committee that in the summer of 1920 considered key elements of the future Statute.\textsuperscript{28}

There was basic agreement among the ten Committee members that the Court must not act as a legislator.\textsuperscript{29} Moreover, the Norwegian member, Hagerup, stated, that an overarching requirement was to ‘avoid the possibility of the Court declaring itself incompetent (\textit{non-\textit{liquet}}) through lack of applicable rules’.\textsuperscript{30} Furthermore, ‘if there is a rule of international law, the Court must apply it’.\textsuperscript{31}

Lord Phillimore, referred to serious differences of opinion that ‘arose from the continental idea of justice; at the outset strict limitations are imposed on the judges, then through fear of restricting them too much they are given complete freedom within these limits. The English system


\textsuperscript{26} \textit{North Sea Continental Shelf}, 51. See also Maurice K Kamga, ‘L’affermissement des principes juridiques applicables à l’exploitation des gisements pétroliers ou gaziers transfrontaliers en mer’ (2017) 22 \textit{African Yearbook of International Law} 271, 272.

\textsuperscript{27} On Andrija Mohorovičić and the phenomenon of discontinuity coined the ‘Moho’ after him, together with other synergies between Earth sciences and the formation of international law, see Rolf Einar Fife, ‘The Limits in the Seas: The Need to Establish Secure Maritime Boundaries; Some Thoughts on the Contributions of Earth Scientists to Legal Determinacy with Regard to the Extent of the Continental Shelf Beyond 200 Miles’ in \textit{Proceedings of the Twentieth Anniversary Commemoration of the opening for Signature of the United Nations Convention on the Law of the Sea} (UN 2002) 81, 92.

\textsuperscript{28} ACJ, \textit{Procès-Verbaux of the Proceedings of the Committee June 16th–July 24th 1920 with Annexes} (Van Langenhuyzen Brothers 1920).

\textsuperscript{29} ACJ, \textit{Procès-Verbaux}, 295 (Lapradelle).


\textsuperscript{31} ACJ, \textit{Procès-Verbaux}, 295.
is different: the judge takes an oath ‘to do justice according to law’.32 This led the Committee’s chair, Baron Descamps of Belgium, to agree that one should avoid pronouncing a non-liquet, but the judge ‘must be saved from applying [general principles of law] as he pleased’. For this reason he urged that ‘the judge render decisions in keeping with the dictates of the legal conscience of civilised peoples and for this same purpose make use of the doctrines of publicists carrying authority’.33 Descamps here introduced the reference to doctrine, in order to counter arbitrariness. The reference to doctrine was, however, far from uncontroversial, as the Italian member, Foreign Office legal adviser Arturo Ricci-Busatti ‘denied most emphatically that the opinion of the authors could be considered as a source of law, to be applied by the court’.34 This is where Descamps explained the ‘auxiliary character’ of these elements of interpretation.35 He stressed that doctrine as an element of interpretation ‘could only be of a subsidiary nature; the judge could only use it in a supplementary way to clarify the rules of international law’. Moreover, ‘[d]octrine and jurisprudence no doubt do not create law; but they assist in determining rules that exist’.36 The American member of the Committee, Root, put on record that he was opposed to ‘granting the judges – in addition to their ordinary task of applying international law – the power to some extent to create it’.37 In this context, he referred to the risk otherwise of major challenges in having great powers, or other states, not agreeing to the proposed system and thus refusing to sign on.

In terms of parsimony of citations, this reader has the opinion that a sound of silence may, in fact, conceal the depth of prior research and use of doctrine. It may also mask solid legal scaffolding, sometimes better revealed in individual opinions. At the same time, the debate among the key drafters of the provisions of the Statute of the PCIJ, may also provide

32 ACJ, Procès-Verbaux, 315 (Phillimore).
33 ACJ, Procès-Verbaux, 318–9 (Descamps).
34 ACJ, Procès-Verbaux, 332 (Ricci-Busatti).
35 ACJ, Procès-Verbaux, 334 (Descamps). The reference to doctrine being an ‘auxiliary’ and therefore helpful support, but not a primary source is clearly reflected in the French authentic version of the provision in Article 38 of the Statute (auxiliaire). This concurs today with the Spanish version in the Statute of the ICJ (auxiliar). Although German is not an authentic language version of the Statute, its translation expresses the same nuance ‘als Hilfsmittel zur Feststellung von Rechtsnormen’, see inter alia Matthias Herdegen, Völkerrecht)16th ed., C. H. Beck 2017) 171–172.
36 ACJ, Procès-Verbaux, 336 (Descamps).
37 ACJ, Procès-Verbaux, 339 (Root).
some indication as to reasons for the exercise of caution in the use of citations in majority opinions.

This book will undoubtedly trigger many further and possibly entirely different reflections. The author’s underlying precise analysis, supplemented with his useful comparisons with the practice of certain other jurisdictions, provides solid food-for-thought in this regard.

Rolf Einar Fife
September 2020
PREFACE

This book is based on the PhD thesis with the same title that I submitted at the University of Oslo in January 2018. I owe great thanks to my supervisors, Geir Ulfstein and Michael Waibel. Their contributions to the thesis have been invaluable, both on the abstract level of big ideas and on the concrete level of small (but important) details. The assessment committee, with Ole Kristian Fauchald, Sir Michael Wood, and Christine Chinkin, gave much important advice on how the thesis could be improved and made more suitable for publication as a book. I am also grateful to the three anonymous reviewers solicited by Cambridge University Press, whose comments contributed to many significant improvements to the text. Joost Pauwelyn was the external commentator at my midway assessment in Oslo in January 2016. He also gave a number of useful comments. Lorand Bartels supervised my LLM thesis at the University of Cambridge, on the application of teachings by the WTO Appellate Body, which served as a prototype for the thesis project. His comments were important in the early stages of the thesis.

Many others have provided valuable thoughts and discussions. They include Alice Ruzza, Andreas L Paulus, Anna Andersson, Avidan Kent, Bård Sverre Tuseth, Carola Lingaas, Christoffer Conrad Eriksen, Dag Michalsen, Damien Charlotin, Eyal Benvenisti, Gentian Zyberi, Hilde K Ellingsen, Inger Johanne Sand, Jamie Trinidad, Johann Ruben Leiss, Jon Christian F Nordrum, Karen Alter, Lee Epstein, Letizia Lo Giacco, Love Rönnelid, Luíza Leão Soares Pereira, Mads Andenæs, Martti Koskenniemi, Malcolm Langford, Martin Ratcovich, Massimo Fabio Lando, Matthew William Saul, Michael A Becker, Niccolò Ridi, Odile Ammann, Ola Mestad, Omri Sender, Pål Wrange, Rabia Akbulut, Ran Guo, Sergio Puig, Sofie AE Høgestøl, Stan Øby Johansen, Wolfgang Alschner, and Zuzanna Godzimirksa. I am particularly grateful to the five anonymous judges and employees at the International Court of Justice (ICJ) who agreed to give the interviews that are cited throughout the thesis. At Cambridge University Press, Tom Randall deftly steered the
project through the editorial process and Gemma Smith provided excellent editorial assistance. Above all, Gaiane Nuridzhanian has supported, inspired, and motivated me from start to finish.

Three texts partly based on the thesis have been published elsewhere: ‘Finding “the Most Highly Qualified Publicists”: Lessons from the International Court of Justice’ (2019) 30 European Journal of International Law 509 is based on Sections 4.3 to 4.5 of this book. ‘Scholarly-Judicial Dialogue in International Law’ (2017) 16 The Law & Practice of International Courts and Tribunals 464 is partly based on some of the findings presented in Chapter 3 of this book. ‘How the application of teachings can affect the legitimacy of the International Court of Justice’ in Avidan Kent, Nikos Skoutaris, and Jamie Trinidad (eds.), The Future of International Courts: Regional, Institutional and Procedural Challenges (Routledge 2019) 181 is similar to Section 6.2 of this book.

The thesis includes six appendices, most of which contain data from an examination of the ICJ’s decisions and opinions. The full background document that contains these data was too big to be included in the printed book. I am happy to provide it on request.

The cover painting is by my grandfather Odd Helmersen (1922-2012). It depicts the archipelago of Lofoten, where he spent most of his life.

Sondre Torp Helmersen
Tromsø
September 2020
# TABLE OF CASES

## International Court of Justice

**Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J Reports 2017, p. 100**
- Declaration of Judge Robinson
- Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016, p. 833
- Dissenting Opinion of Judge Cançado Trindade
- Dissenting Opinion of Judge Crawford
- Separate Opinion of Judge Tomka

- Declaration of Judge Cançado Trindade

**Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3**
- Dissenting Opinion of Judge Ad Hoc Caron

**Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015, p. 592**
- Declaration of Judge Bennouna
- Separate Opinion of Judge Cançado Trindade
- Declaration of Judge Gaja

- Separate Opinion of Judge Cançado Trindade

- Dissenting Opinion of Judge Cançado Trindade
- Separate Opinion of Judge Ad Hoc Kreća
- Separate Opinion of Judge Owada

xxv
## Table of Cases

Dissenting Opinion of Judge Ad Hoc Vukas  
*Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia), Provisional Measures, Order of 3 March 2014, I.C.J. Reports 2014, p. 147*

Separate Opinion of Judge Cançado Trindade  
*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Provisional Measures, Order of 22 November 2013, I.C.J. Reports 2013, p. 354*

Separate Opinion of Judge Cançado Trindade  
*Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Judgment, I.C.J. Reports 2013, p. 281*

Separate Opinion of Judge Cançado Trindade  
*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Order of 16 July 2013, Provisional Measures, I.C.J. Reports 2013, p. 230*

Dissenting Opinion of Judge Cançado Trindade  
*Frontier Dispute (Burkina Faso/Niger), Judgment, I.C.J. Reports 2013, p. 44*

Separate Opinion of Judge Cançado Trindade  
*Separate Opinion of Judge Yusuf  
*Whaling in the Antarctic (Australia v. Japan), Declaration of Intervention of New Zealand, Order of 6 February 2013, I.C.J. Reports 2013, p. 3*

Separate Opinion of Judge Cançado Trindade  
*Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012, p. 624*

Declaration of Judge Keith  
*Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, p. 422*

Separate Opinion of Judge Cançado Trindade  
*Dissenting Opinion of Judge Ad Hoc Sur  

Separate Opinion of Judge Cançado Trindade  
*Declaraton of Judge Greenwood  
*Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment, I.C.J. Reports 2012, p. 99*

Dissenting Opinion of Judge Cançado Trindade  
*Separate Opinion of Judge Keith  
*Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, I.C.J. Reports 2012, p. 10*

Separate Opinion of Judge Cançado Trindade
**Table of Cases**

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Volume and Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissenting Opinion of Judge Ad Hoc Roucounas</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Shahabuddeen</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Simma</td>
<td></td>
</tr>
<tr>
<td>Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), Provisional Measures, Order of 18 July 2011</td>
<td>I.C.J. Reports 2011, p. 537</td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Jurisdictional Immunities of the State (Germany v. Italy), Application for Permission to Intervene, Order of 4 July 2011</td>
<td>I.C.J. Reports 2011, p. 494</td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment</td>
<td>I.C.J. Reports 2011, p. 70</td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Joint Declaration of Judges Keith and Greenwood</td>
<td></td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Ad Hoc Mahiou</td>
<td></td>
</tr>
<tr>
<td>Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion</td>
<td>I.C.J. Reports 2010, p. 403</td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Declaration of Judge Tomka, Vice President</td>
<td></td>
</tr>
<tr>
<td>Jurisdictional Immunities of the State (Germany v. Italy), Counter-Claim, Order of 6 July 2010</td>
<td>I.C.J. Reports 2010, p. 310</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Joint Dissenting Opinion Judges Al-Khasawneh and Simma</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Cançado Trindade</td>
<td></td>
</tr>
<tr>
<td>Declaration of Judge Ad Hoc Guillaume</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Abraham</td>
<td></td>
</tr>
<tr>
<td>Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment</td>
<td>I.C.J. Reports 2008, p. 12</td>
</tr>
<tr>
<td>Declaration of Judge Bennouna</td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Ad Hoc Sreenivasa Rao</td>
<td></td>
</tr>
</tbody>
</table>
**xxviii**

**TABLE OF CASES**

Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment, I.C.J. Reports 2007, p. 659  
Dissenting Opinion of Judge Ad Hoc Torres Bernaldez

Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo),  
Preliminary Objections, Judgment, I.C.J. Reports 2007, p. 582  
Declaration of Judge Ad Hoc Mahiou

Separate Opinion of Judge Ad Hoc Mampuya

Separate Opinion of Judge Ad Hoc Kreća

Dissenting Opinion of Judge Ad Hoc Mahiou

Separate Opinion of Judge Tomka

Dissenting Opinion of Judge Ad Hoc Kateka

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,  
Advisory Opinion, I.C.J. Reports 2004, p. 136  
Separate Opinion of Judge Elaraby

Declaration of Vice-President Ranjeva

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,  
Dissenting Opinion of Judge Buergenthal

Dissenting Opinion of Judge Ad Hoc Paolillo

Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003, p. 161  
Separate Opinion of Judge Ad Hoc Rigaux

Dissenting Opinion of Judge Elaraby

Separate Opinion of Judge Ad Hoc Mahiou

Declaration of Judge Oda

<table>
<thead>
<tr>
<th>TABLE OF CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissenting Opinion of Judge Ad Hoc Ajibola</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Koroma</td>
</tr>
<tr>
<td>Separate Opinion of Judge Ad Hoc Mbaye</td>
</tr>
<tr>
<td>Declaration by Judge Elaraby</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Al-Khasawneh</td>
</tr>
<tr>
<td>Dissenting Opinion by Judge Ad Hoc Bula-Bula</td>
</tr>
<tr>
<td>Separate Opinion of President Guillaume</td>
</tr>
<tr>
<td>Joint Separate Opinion of Judges Higgins, Kooijmans, and Buergenthal</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Ad Hoc Van den Wyngaert</td>
</tr>
<tr>
<td>Sovereignty over Pulau Ligitan und Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001, p. 575</td>
</tr>
<tr>
<td>Separate Opinion of Judge Ad Hoc Weeramantry</td>
</tr>
<tr>
<td>LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466</td>
</tr>
<tr>
<td>Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Merits, Judgment, I.C.J. Reports 2001, p. 40</td>
</tr>
<tr>
<td>Joint Dissenting Opinion of Judges Bedjaoui, Ranjeva, and Koroma</td>
</tr>
<tr>
<td>Separate Opinion of Judge Fortier</td>
</tr>
<tr>
<td>Declaration by Judge Ad Hoc Van den Wyngaert</td>
</tr>
<tr>
<td>Dissenting Opinion by Judge Ad Hoc Bula-Bula</td>
</tr>
<tr>
<td>Aerial Incident of 10 August 1999 (Pakistan v. India), Jurisdiction of the Court, Judgment, I.C.J. Reports 2000, p. 12</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Ad Hoc Pirzada</td>
</tr>
<tr>
<td>Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Report 1999, p. 1045</td>
</tr>
<tr>
<td>Dissenting Opinion of Vice-President Weeramantry</td>
</tr>
<tr>
<td>Dissenting Opinion of Vice-President Weeramantry</td>
</tr>
<tr>
<td>LaGrand (Germany v. United States of America), Provisional Measures, Order of 3 March 1999, I.C.J. Reports 1999, p. 9</td>
</tr>
<tr>
<td>Separate Opinion of President Schwebel</td>
</tr>
<tr>
<td>Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998, p. 432</td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Torres-Bernárdez, Judge Ad Hoc</td>
</tr>
<tr>
<td>Dissenting Opinion of Vice-President Weeramantry</td>
</tr>
<tr>
<td>Dissenting Opinion of Vice-President Weeramantry</td>
</tr>
</tbody>
</table>
## Table of Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate Opinion of Judge Shahabuddeen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Joint Declaration of Judge Shi and Judge Vereshchetin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Koroma</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Shahabuddeen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Declaration of Judge Vereshchetin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Weeramantry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion</td>
<td>I.C.J. Reports 1996, p. 66</td>
<td>Dissenting Opinion of Judge Weeramantry</td>
</tr>
<tr>
<td>Dissenting opinion by Judge Weeramantry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate Opinion of Judge Shahabuddeen</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dissenting Opinion of Judge Skubiszewski</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Jurisdiction and Admissibility</td>
<td>Judgment, I.C.J. Reports 1995, p. 6</td>
<td>Dissenting Opinion of Vice-President Schwebel</td>
</tr>
</tbody>
</table>
**TABLE OF CASES**

- Separate Opinion of Judge Ajibola
- Separate Opinion of Judge Ad Hoc Lauterpacht
- Separate Opinion of Judge Shahabuddeen
- Separate Opinion of Vice-President Weeramantry

**Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports** 1993, p. 38
- Separate Opinion of Judge Ajibola
- Separate Opinion of Judge Shahabuddeen
- Separate Opinion of Judge Weeramantry

**Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua Intervening), Judgment, I.C.J. Reports** 1992, p. 351
- Dissenting Opinion of Judge Oda
- Separate Opinion of Judge Torres-Bernárdez

**Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports** 1992, p. 240
- Separate Opinion of Judge Shahabuddeen

- Dissenting Opinion by Judge Weeramantry

**Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), Provisional Measures, Order of 14 April 1992, I.C.J. Reports** 1992, p. 3
- Dissenting Opinion by Judge Weeramantry

**Arbitral Award of 31 July 1989, Judgment, I.C.J. Reports** 1991, p. 53
- Declaration of Judge Mbaye
- Separate Opinion of Judge Ni
- Separate Opinion of Judge Shahabuddeen
- Dissenting Opinion of Judge Weeramantry

**Passage through the Great Belt (Finland v. Denmark), Provisional Measures, Order of 29 July 1991, I.C.J. Reports** 1991, p. 12
- Separate Opinion of Judge Shahabuddeen

**Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Judgment, I.C.J. Reports** 1990, p. 92

**Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene, Order of 28 February 1990, I.C.J. Reports** 1990, p. 3
- Dissenting Opinion of Judge Shahabuddeen

**Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports** 1989, p. 177
- Separate Opinion of Judge Shahabuddeen
### Table of Cases

**Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Composition of Chamber, Order of 13 December 1989, I.C.J. Reports 1989, p. 162**
- Separate Opinion Judge Shahabuddeen

- Separate Opinion by Judge Schwebel
- Separate Opinion by Judge Shahabuddeen

- Dissenting Opinion of Judge Schwebel

**Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988, p. 69**
- Separate Opinion of Judge Shahabuddeen

**Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14**
- Dissenting Opinion of Judge Sir Robert Jennings
- Separate Opinion of Judge Lachs
- Dissenting Opinion of Judge Oda
- Dissenting Opinion of Judge Schwebel

**Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 13**
- Separate Opinion of Judge Oda
- Separate Opinion of Judges Ruda, Bedjaoui, and Jiménez de Aréchaga
- Dissenting Opinion of Judge Schwebel

**Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392**
- Separate Opinion of Judge Sir Robert Jennings
- Dissenting Opinion of Judge Schwebel

**Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment, I.C.J. Reports 1984, p. 246**
- Dissenting Opinion of Judge Schwebel

**Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Declaration of Intervention, Order of 4 October 1984, I.C.J. Reports 1984, p. 215**
- Dissenting Opinion of Judge Schwebel

**Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984, p. 169**
- Dissenting Opinion of Judge Schwebel

**Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene, Judgment, I.C.J. Reports 1984, p. 3**
- Dissenting Opinion of Judge Ago
- Separate Opinion of Judge Jiménez de Aréchaga
- Dissenting Opinion of Judge Schwebel
- Dissenting Opinion of Vice-President Sette-Camara
<table>
<thead>
<tr>
<th>Case</th>
<th>Year</th>
<th>Pages</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment</td>
<td>1982</td>
<td>18</td>
<td>Ago</td>
</tr>
<tr>
<td>Aeqean Sea Continental Shelf, Judgment</td>
<td>1978</td>
<td>3</td>
<td>Oda, Tarazi, de Castro</td>
</tr>
<tr>
<td>Western Sahara, Advisory Opinion</td>
<td>1975</td>
<td>12</td>
<td>Oda, de Castro, Dillard</td>
</tr>
<tr>
<td>Nuclear Tests (Australia v. France), Judgment</td>
<td>1974</td>
<td>253</td>
<td>de Castro</td>
</tr>
<tr>
<td>Fisheries Jurisdiction (United Kingdom v. Iceland), Merits</td>
<td>1974</td>
<td>3</td>
<td>de Castro, Dillard</td>
</tr>
<tr>
<td>Tribunal, Advisory Opinion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Appeal Relating to the Jurisdiction of the ICAO Council, Judgment</td>
<td>1972</td>
<td>46</td>
<td>Dillard</td>
</tr>
<tr>
<td>Legal Consequences for States of the Continued Presence of South</td>
<td>1971</td>
<td>16</td>
<td>De Castro, Dillard, Sir Humphrey Waldock</td>
</tr>
<tr>
<td>Africa in Namibia (South West Africa) Notwithstanding Security Council</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Resolution 276 (1970), Advisory Opinion</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Barcelona Traction, Light and Power Company, Limited</td>
<td>1970</td>
<td>3</td>
<td>Ammoun, Fitzmaurice, Jessup, Padilla Nervo,</td>
</tr>
<tr>
<td>Declaration by Judge Ignacio-Pinto, Dillard</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Sea Continental Shelf, Judgment</td>
<td>1969</td>
<td>3</td>
<td>Fouad Ammoun, Koretsky, Jessup, Padilla Nervo,</td>
</tr>
<tr>
<td>South West Africa, Second Phase, Judgment</td>
<td>1966</td>
<td>6</td>
<td>Koretsky, Sorensen, Jessup</td>
</tr>
</tbody>
</table>

Table of Cases
xxxiv  Table of Cases

Dissenting Opinion of Judge Koretsky
Declaration of President Spender
Separate Opinion of Judge van Wyk
Barcelona Traction, Light and Power Company, Limited, Preliminary Objections, Judgment, I.C.J. Reports 1964, p. 6
Dissenting Opinion of Judge Armand-Ugon
Declaration by Judge Koretsky
Dissenting Opinion of Judge Morelli
Separate Opinion of Judge Jessup
Dissenting Opinion of Judge van Wyk
Dissenting Opinion of President Winiarski
Dissenting Opinion of President Winiarski
Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), Merits, Judgment of 15 June 1962: I.C.J. Reports 1962, p. 6
Separate Opinion of Vice-President Alfaro
Separate Opinion of Sir Gerald Fitzmaurice
Case concerning the Arbitral Award made by the King of Spain on 23 December 1906, Judgment of 18 November 1960: I.C.J. Reports 1960, p. 192
Dissenting Opinion of Judge Urrutia Holguin
Case concerning Right of Passage over Indian Territory (Merits), Judgment of 12 April 1960: I.C.J. Reports 1960, p. 6
Dissenting Opinion of Judge Fernandes
Joint Dissenting Opinion by Judges Sir Hersch Lauterpacht, Wellington Koo and Sir Percy Spender
Separate Opinion of Judge Sir Hersch Lauterpacht
Separate Opinion of Sir Percy Spender
Separate Opinion of Judge Sir Hersch Lauterpacht
Separate Opinion of Judge Lauterpacht
Nottebohm Case (Second Phase), Judgment of April 6th, 1955: I.C.J. Reports 1955, p. 4
Dissenting Opinion by Judge Levi Carneiro
<table>
<thead>
<tr>
<th>TABLE OF CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Permanent Court of International Justice</strong></td>
</tr>
</tbody>
</table>

The Minquiers and Ecrehos Case, Judgment of November 17th, 1953: I.C.J. Reports 1953, p. 47
Individual Opinion of Judge Levi Carneiro

Dissenting Opinion of Judge Levi Carneiro

Ambatielos case (jurisdiction), Judgment of July 1st, 1952: I.C.J. Reports 1952, p. 28
Dissenting Opinion of President McNair

Fisheries case, Judgment of December 18th, 1951: I.C.J. Reports 1951, p. 116
Dissenting Opinion of Sir Arnold McNair

Anglo-Iranian Oil Co. Case, Order of July 5th, 1951: I.C.J. Reports 1951, p. 89
Dissenting Opinion of Judge Levi Carneiro

Colombian-Peruvian Asylum Case, Judgment of November 20th 1950: I.C.J. Reports 1950, p. 266
Dissenting Opinion by Judge Azevedo
Dissenting Opinion by M Caicedo Castilla

Interpretation of Peace Treaties, Advisory Opinion: I.C.J. Reports 1950, p. 65
Dissenting Opinion by Judge Zoričić

Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4
Dissenting Opinion by Judge Azevedo
Dissenting Opinion by Judge Winiański

Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion: I.C.J. Reports 1948, p. 57
Individual Opinion by M Azevedo
Dissenting Opinion by M Krylov
Dissenting Opinion by M Zoričić

Electricity Company of Sofia and Bulgaria, Order, 26 February 1940, P.C.I.J. Series A/B No. 80, p. 4

The Panevezys-Saldutiskis Railway Case, Judgment 28 February 1939, P.C.I.J. Reports Series A/B No. 76, p. 4
Dissenting Opinion by Jonkheer van Eysinga

The Diversion of Water from the Meuse, Judgment 28 June 1937, P.C.I.J. Reports Series A/B No. 70, p. 4
Individual Opinion by Mr Hudson

Lighthouses Case between France and Greece, Judgment 17 March 1934, P.C.I.J. Series A/B No. 62, p. 4
Separate Opinion by M Séfériades

Dissenting Opinion by M Vogt

Free Zones of Upper Savoy and the District of Gex (second phase), Order made on 6 December 1930, P.C.I.J. Series A No. 24, p. 4
# Table of Cases

Observations by M Kellogg
Opinion by M Dreyfus

**Case Concerning the Payment in Gold of Brazilian Federal Loans Contracted in France**
(France v. United States of America), Judgment No. 15, 12 July 1929, P.C.I.J.
Reports Series A No. 21, p. 93

Dissenting Opinion by M Pessôa
Dissenting Opinion by M de Bustamante

**Case Concerning the Payment of Various Serbian Loans in France**
(France v. Kingdom of the Serbs, Croats and Slovenes), Judgment No. 14, 12 July 1929, P.C.I.J. Reports Series A No. 20, p. 5

Dissenting Opinion by M Pessôa

**The Case of the S.S. ‘Lotus’ (France v. Turkey),** Judgment No. 9, 7 September 1927, P.C.I.J.
Reports Series A No. 10, p. 4

Dissenting Opinion by Lord Finlay
Dissenting Opinion by M Moore

**Case Concerning Certain German Interests in Polish Upper Silesia (The Merits)**
(Germany v. Poland), Judgment No. 7, 25 May 1926, P.C.I.J. Reports Series A No. 7, p. 4

**Case Concerning Certain German Interests in Polish Upper Silesia, Judgment No. 6,**
25 August 1925, P.C.I.J. Reports Series A No. 6, p. 3

**The Mavrommatis Palestine Concessions, Judgment No. 2,** 30 August 1924, P.C.I.J.
Reports Series A No. 2, p. 6

Dissenting Opinion by M Moore

**Advisory Opinion Given by the Court on September 10th 1923 on Certain Questions Relating to Settlers of German Origin in the Territory Ceded by Germany to Poland,**
Advisory Opinion No. 6, 10 September 1923, P.C.I.J. Reports Series B No. 6, p. 5

**Questions of Jaworzina (Polish–Czechoslovakian Frontier),** Advisory Opinion No. 8,
6 December 1923, P.C.I.J Reports Series B No. 8, p. 5

**Case of the S.S. ‘Wimbledon’, Judgment, 17 August 1923,** P.C.I.J. Reports Series A No. 1, p. 15
Dissenting Opinion by M Schücking 47

**Case of the S.S. ‘Wimbledon’, Judgment, 28 June 1923,** P.C.I.J. Reports Series A No. 1, p. 11

---

**WTO Appellate Body**

**United States – Final Anti-Dumping Measures on Stainless Steel from Mexico,**
WT/DS344/AB/R, 30 April 2008

**Japan – Taxes on Alcoholic Beverages,** WT/DS8/AB/R, WT/DS10/AB/R,
WT/DS11/AB/R, 4 October 1996

---

**Special Court for Sierra Leone**

**Prosecutor v. Charles Ghankay Taylor,** Judgment, SCSL-03–01-T, 18 May 2012
TABLE OF CASES

International Centre for Settlement of Investment Disputes

Guardian Fiduciary Trust Ltd f/k/a Capital Conservator Savings & Loan Ltd v. Former Yugoslav Republic of Macedonia, ICSID Case No. ARB/12/31, Award, 22 September 2015

OPIC Karimum Corporation v. The Bolivarian Republic of Venezuela, ICSID Case No. ARB/10/14, Award, 28 May 2013

Tidewater Inc. and Others v. The Bolivarian Republic of Venezuela, ICSID Case No. ARB/10/5, Decision on Jurisdiction, 8 February 2013

Hussein Nuaman Soufraki v. The United Arab Emirates, ICSID Case No. ARB/02/7, Decision of the Ad Hoc Committee on the Application for Annulment of Mr Soufraki, 5 June 2007

Other Arbitral Awards


UNCITRAL, AWG Group Ltd v. The Argentine Republic, Decision on Liability (30 July 2010) 73

Affaire des Biens Britanniques au Maroc Espagnol (Espagne contre Royaume-Uni), (1924) 2 RIAA 615

United Kingdom National Courts

Supreme Court, R v. Secretary of State for Exiting the European Union [2017] UKSC 5

Court of Appeals, Serdar Mohammed and Others v. Secretary of State for Defence [2015]

EWCA Civ 843


High Court of Justice, Bastin v. Davies [1950] 1 All ER 1095

Privy Council, re: Piracy jure gentium [1934] AC 586

High Court of Justice, R v. Sussex Justices, Ex parte McCarthy [1923] 1 KB 256

Privy Council, Kronprinsessan Margreta [1921] AC 486

English High Court of Justice, West Rand Central Gold Mining Co. v. R [1905] 2 KB 391

Court for Crown Cases Reserved, R v. Keyn [1876] 2 Ex D 63

Court of Admiralty, The ‘Renard’ [1778] 165 All ER 51

United States National Courts

Court of Appeals for the Second Circuit, Flores v. Southern Peru Copper Corp. 343 F 3d 140 (2nd Cir. 2003)

Supreme Court, The Paquete Habana 175 US 677 (1900)
<table>
<thead>
<tr>
<th>Table of Treaties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covenant of the League of Nations, Paris, 28 June 1919, in Force 10 January 1920, 225 CTS 195</td>
</tr>
<tr>
<td>Statute of the Permanent Court of International Justice, Geneva, 13 December 1920, in Force 8 October 1921, 6 LNTS 390</td>
</tr>
<tr>
<td>Statute of the International Court of Justice, San Francisco, 26 June 1945, in Force 24 October 1945, 33 UNTS 933</td>
</tr>
<tr>
<td>Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, 18 March 1965, in Force 14 October 1966, 575 UNTS 159</td>
</tr>
<tr>
<td>Annex VI: Statute of the International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>Marrakesh Agreement Establishing the World Trade Organization, Marrakesh, 15 April 1994, in Force 1 January 1995, 1869 UNTS 401</td>
</tr>
<tr>
<td>Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes</td>
</tr>
</tbody>
</table>
**ABBREVIATIONS**

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACJ</td>
<td>Advisory Committee of Jurists</td>
</tr>
<tr>
<td>ALI</td>
<td>American Law Institute</td>
</tr>
<tr>
<td>CTS</td>
<td>Consolidated Treaty Series</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>HRC</td>
<td>UN Human Rights Committee</td>
</tr>
<tr>
<td>IACtHR</td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>ICSID</td>
<td>International Centre for Settlement of Investment Disputes</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
</tr>
<tr>
<td>IDI</td>
<td>Institute of International Law</td>
</tr>
<tr>
<td>ILA</td>
<td>International Law Association</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>LNTS</td>
<td>League of Nations Treaty Series</td>
</tr>
<tr>
<td>NGO</td>
<td>Nongovernmental Organisation</td>
</tr>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PCA</td>
<td>Permanent Court of Arbitration</td>
</tr>
<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
</tr>
<tr>
<td>RIAA</td>
<td>Reports of International Arbitral Awards</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>UN Commission on International Trade Law</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational, Scientific, and Cultural Organization</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>