
Introduction

1.1 Argument and Outline

This book examines how the ICJ applies ‘the teachings of the most highly qualified publicists’, as per the ICJ Statute Article 38(1). Teachings are listed in Article 38(1) and are something that the judges ‘shall apply’.¹ The question that this book tries to answer is what role they currently play in the most authoritative international judicial institution.

This book is divided into six chapters. After this introduction, the book continues with an examination of the guidance that the ICJ Statute Article 38(1) gives on the application of teachings. Chapter 3 examines the general role that teachings apparently have in the ICJ. The examination shows that teachings seem to have limited weight. There are nonetheless variations between teachings and between judges. Those variations are explored in Chapters 4 and 5, respectively. The various chapters also present explanations for the patterns that they identify and suggest factors that can predict variations. Chapter 6 gives concluding reflections.

The book’s findings pertain to the ICJ and the ICJ Statute Article 38(1). The ICJ is an authoritative court that is respected by other courts and tribunals and other international lawyers,² and the ICJ Statute Article 38(1) reflects customary international law.³ Therefore, the book’s findings have implications for international law generally. This means that much of the book can be read as not only an examination of the ICJ’s application of teachings but also a discussion of the role and status of teachings in international law generally. Section 6.3 provides a comparison between the ICJ’s practice and those of other courts and tribunals.

The results of the book should be interesting to a number of audiences. Academics can use the results and methodology in further research, and

¹ As discussed further in Section 2.2.3.

² Section 1.2.

³ Section 2.2.2.

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they get an opportunity to see how the judges view their writings. Judges themselves may be interested in seeing an academic analysis of their practice, and they may use this in order to reflect on their approach. Practitioners who wish to convince judges, which include not only counsel but also judges themselves, should be interested in knowing how much resonance different arguments may have with judges.⁴ Chapters 3 and 4 give some guidance on which teachings to employ, how much of them to employ, and how to employ them, in order to maximise the chance of convincing judges. Chapter 5 shows which judges are most receptive to arguments based on teachings.

As part of its argument, the book is able to test some assumptions about teachings that are commonly held but rarely tested empirically. As explained in Section 2.3.6, writers are split on whether works produced by the ILC should be considered as teachings. This book finds no clear support for either proposition in the ICJ's practice. ILC works are not classified as teachings in this book. Section 3.4.2 shows that several writers assume that teachings are more important when judges are dealing with unwritten law, as opposed to when interpreting written instruments such as treaties. The book finds support for this assumption in the ICJ's practice. Section 3.5 presents various theories from other writers about why the ICJ's majority opinions rarely cite teachings. This book finds that many of them have little explanatory power. Writers assume that teachings have less weight than judicial decisions and ILC works, which is what this book also finds (Section 3.8). According to Section 3.10, some writers assume that teachings have some weight, but this book finds that the ICJ as a whole assign teachings low weight. Chapter 4 notes that writers also assume that the weight of teachings varies between works, which is what this book finds. Many writers support at least some of the factors identified by the book as determining the weight given to a work of teachings. Section 5.4 shows that writers have identified some factors that can explain the different attitudes of different judges towards teachings, and these factors are mostly confirmed by the book (the book also adds some factors of its own). Finally, Section 5.5.4 presents several writers who assume that civil law systems are more positive towards citing teachings than are common law

⁴ Similarly Nora Stappert, 'A New Influence of Legal Scholars? The Use of Academic Writings at International Criminal Courts and Tribunals' (2018) 31 *Leiden Journal of International Law* 963, 965; (in the context of US national law) John Henry Merryman, 'The Authority of Authority: What the California Supreme Court Cited in 1950' (1954) 6 *Stanford Law Review* 613, 613.

systems, although some writers doubt this. The results in this book support the doubters.

1.2 Why Study the Application of Teachings by the ICJ

Existing sources tell little about the role of teachings in international law generally or the ICJ specifically. The ICJ Statute⁵ Article 38(1) provides some simple directions, but nothing more, as explained in Chapter 2. Another question is whether the directions in Article 38(1) are observed in the ICJ's practice. This cannot be answered by the Statute itself, and it is examined in this book. Some existing books and articles discuss the role of teachings in international law,⁶ but usually without the examples, data, or examinations of the kind that are found in this book. Existing teachings therefore give limited guidance on the topic⁷ and are often limited to repeating the same common assumptions about teachings.⁸ Some authors examine the application of teachings by other institutions using empirical methods reminiscent of those that are used in this book. Their results are compared with those from this book in Section 6.3.

While the role of teachings in the ICJ is not well explained by relevant sources or other teachings, the topic is important in practice. Teachings are explicitly recognised in the ICJ Statute Article 38(1) and are frequently cited by many of the Court's judges in individual opinions. It would be valuable to get a more detailed picture of the role teachings actually play in the ICJ's decision-making process. This book aims to provide such a picture.

⁵ Statute of the International Court of Justice, San Francisco, 26 June 1945, in force 24 October 1945, 33 UNTS 933.

⁶ For example, Alain Pellet, 'Article 38' in Andreas Zimmermann and others (eds.), *The Statute of the International Court of Justice: A Commentary* (2nd edn, Oxford University Press 2012) 731, 868–870; Hugh Thirlway, *The Sources of International Law* (Oxford University Press 2014) 126–128. Most international law textbooks cover teachings, but notable absences are V D Degan, *Sources of International Law* (Martinus Nijhoff 1997); Antonio Cassese, *International Law* (2nd edn, Oxford University Press 2005); Vaughan Lowe, *International Law* (Oxford University Press 2007).

⁷ Sir Michael Wood, 'Teachings of the Most Highly Qualified Publicists (Art. 38 (1) ICJ Statute)', *Max Planck Encyclopedia of Public International Law* (article last updated October 2010) <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1480>, para 16.

⁸ Jörg Kammerhofer, 'Lawmaking by scholars' in Catherine Brölmann and Yannick Radi (eds.), *Research Handbook on the Theory and Practice of International Lawmaking* (Edward Elgar 2016) 305, 307.

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This book examines how often and in what ways ICJ opinions cite teachings. Judicial decisions are a publicly available material where teachings are cited, and they are relatively authoritative.⁹ Teachings are also cited in pleadings,¹⁰ various legal advice,¹¹ and official communications,¹² but they lack either the publicity or authority of judicial decisions. Organisations such as the IDI, ILA, and ILC cite teachings in their texts,¹³ and at least the ILC is comparable to judicial decisions in terms of authority.¹⁴ This book nonetheless focuses on the ICJ.

The ICJ is chosen over other courts and tribunals because it is the only permanent judicial institution with general jurisdiction in international law.¹⁵ This gives it a unique authority,¹⁶ even though there is no formal

⁹ Gleider Hernández, 'Interpretative Authority and the International Judiciary', in Andrea Bianchi, Daniel Peat, and Matthew Windsor (eds.), *Interpretation in International Law* (Oxford University Press 2015) 166, 166; Jean d'Aspremont, 'Non-State Actors and the Social Practice of International Law', in Math Noortmann, August Reinisch, and Cedric Ryngaert (eds.), *Non-State Actors in International Law* (Hart 2015) 11, 20–21.

¹⁰ For example, Hersch Lauterpacht, *The Development of International Law by the International Court* (Stevens and Sons 1958) 25; James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 43; Thirlway, *Sources*, 127.

¹¹ For example, Bruno Simma, 'Remarks by Bruno Simma' (2000) 94 *American Society of International Law Proceedings* 319, 319 ('[f]oreign offices'); Alina Kaczorowska, *Public International Law* (4th edn, Routledge 2010) 59 ('legal advisers to states'); Malcolm N Shaw, *International Law* (7th edn, Cambridge University Press 2014) 80 ('States' and 'officials').

¹² Manfred Lachs, *The Teacher in International Law* (2nd edn, Martinus Nijhoff 1987) 195–199; Peter Malanczuk, *Akehurst's Modern International Law* (7th edn, Routledge 1997) 52; (more reservedly) Shabtai Rosenne, *Practice and Methods of International Law* (Oceana Publications 1984) 119.

¹³ Karol Wolfke, *Custom in Present International Law* (2nd edn, Martinus Nijhoff 1993) 156; Wood, 'Teachings', para 15.

¹⁴ Section 3.8.

¹⁵ James Crawford, *Chance, Order, Change: The Course of International Law* (Brill 2014) 216; Mads Andenas and Eirik Bjorge, 'Introduction: From Fragmentation to Convergence' in International Law', in Mads Andenas and Eirik Bjorge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (Cambridge University Press 2015) 1, 6.

¹⁶ For example, Maurice Mendelson, 'The International Court of Justice and the Sources of International Law' in Vaughan Lowe and Malgosia Fitzmaurice (eds.), *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings* (Cambridge University Press 1996) 63, 83; Pierre-Marie Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice' (1998) 31 *NYU Journal of International Law and Politics* 791, 791; ILC, *First report on formation and evidence of customary international law by Michael Wood, Special Rapporteur (A/CN.4/663)* (UN 2013) 28.

hierarchy among international courts.¹⁷ The ICJ's predecessor, the PCIJ, is also covered. Statistics and findings from the PCIJ are presented alongside those from the ICJ in several places in this book. Numbers, figures, and graphs refer only to the ICJ, unless anything else is explicitly stated. National courts also cite teachings when applying international law,¹⁸ possibly at a greater rate than many international courts and tribunals.¹⁹ However, national courts have 'less weight' than international courts and tribunals in international law²⁰ and are not systematically examined in this book.

The book covers separate and dissenting ICJ opinions as well as declarations,²¹ using the term 'individual' opinions.²² Since only five of the ICJ's majority opinions have cited teachings,²³ examining individual opinions is necessary in order to get a fuller picture of the role that teachings play in the ICJ. One ICJ judge explains that 'references [...] may even be in the draft judgment but get taken out before the final judgment is issued'.²⁴ Therefore, as sources of what actually happens in practice in international courts and tribunals, individual opinions are probably more accurate than majority opinions.²⁵ This is true regardless of the fact that individual opinions are generally seen as less authoritative

¹⁷ For example, Crawford, *Chance*, 216; D J Harris, *Cases and Materials on International Law* (8th edn, Sweet & Maxwell 2015) 42; Kenneth Keith, 'Challenges to the Independence of the International Judiciary: Reflections on the International Court of Justice' (2017) 30 *Leiden Journal of International Law* 137, 153.

¹⁸ Wood, 'Teachings', para 14; Shaw, *International Law*, 80; Sandesh Sivakumaran, 'The Influence of Teachings of Publicists on the Development of International Law' (2017) 66 *International and Comparative Law Quarterly* 1, 27.

¹⁹ For example, Lauterpacht, *Development*, 25; Crawford, *Brownlie's*, 43; L C Green, *International Law: A Canadian Perspective* (2nd edn, The Carswell Company 1988) 70.

²⁰ Georg Schwarzenberger, *International Law, Volume 1: International Law as Applied by International Courts and Tribunals: I* (3rd edn, Stevens and Sons 1957) 32; John H Currie, *Public International Law* (2nd edn, Irwin Law 2008) 109.

²¹ As in, for example, Stewart Manley, 'Citation Practices of the International Criminal Court: The Situation in Darfur, Sudan' (2017) 30 *Leiden Journal of International Law* 1003, 1004.

²² For example, *South West Africa, Second Phase, Judgment, I.C.J. Reports 1966*, p. 6, Declaration of President Spender 54–57; Gleider I Hernández, *The International Court of Justice and the Judicial Function* (Oxford University Press 2014) 98.

²³ As discussed in Section 3.2.

²⁴ ICJ Judge 1.

²⁵ For example, Crawford, *Brownlie's*, 43; Mendelson, 'Sources', 84; Robert Kolb, *The International Court of Justice* (Hart 2013) 1014; D W Greig, *International Law* (2nd edn, Butterworths 1976) 48. Similarly Shabtai Rosenne, *The Perplexities of Modern International Law* (Martinus Nijhoff 2004) 44.

than majority opinions.²⁶ Judge Ammoun in *Barcelona Traction* holds that the ‘authority’ of the Court’s decisions ‘derives, *inter alia*, from the very fact that their judgments include the dissenting or separate opinions.’²⁷ Therefore, majority and individual opinions should be read together – a point other ICJ judges have also made in their extra-judicial writings.²⁸

A caveat when examining individual opinions is that some may reflect the Court’s practices more accurately than others, depending on how close they are to the Court’s median approach.²⁹ Two international judges mention that certain colleagues are ‘far reaching’ or ‘dissenters’.³⁰ This book alleviates this problem by examining every individual opinion. The more opinions that underlie the conclusions that are drawn, the better the chance that these conclusions are not based on the opinions of outlier judges. The book also identifies a ‘median’ approach among the judges in Section 5.3.3 and identifies four outliers (Cançado Trindade, Weeramantry, Shahabuddeen, and Kreća). When relevant, statistics are presented with and without the outliers.

1.3 Methodology

1.3.1 Collecting Citations

This book covers all decisions made by the Court from its beginning to 5 October 2016, the final decisions being the judgments on preliminary objections in the three *Marshall Islands* cases.³¹ The ICJ gave its first

²⁶ For example, Michel Virally, ‘The Sources of International Law’, in Max Sørensen (ed.), *Manual of Public International Law* (St. Martin’s Press 1968) 116, 153–154; Daniel Terris, Cesare P R Romano, and Leigh Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World’s Cases* (Oxford University Press 2007) 126.

²⁷ *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, Separate Opinion of Judge Ammoun 316.

²⁸ Sir Robert Jennings, ‘The Collegiate Responsibility and Authority of the International Court of Justice’, in Yoram Dinstein (ed.), *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne* (Martinus Nijhoff 1989) 343, 346; Mohamed Shahabuddeen, *Precedent in the World Court* (Cambridge University Press 1996) 178 and 196.

²⁹ Rosenne, *Methods*, 99, argues that this affects the weight of each opinion.

³⁰ Quoted in Terris, Romano, and Swigart, *International Judge*, 66–67.

³¹ Of the three, the one published last in the ICJ reports is *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.

opinion, in *Admission of a State to the UN*, in 1948.³² The book also covers all PCIJ's decisions, from *Wimbledon* (1923) to *Electricity Company of Sofia and Bulgaria* (1940).³³

The Court distinguishes between three types of decisions and opinions: orders, judgments, and advisory opinions.³⁴ No distinction is made between them here in terms of weight, in line with the Court's own practice.³⁵

The Court is normally composed of fifteen permanent judges, plus up to two judges ad hoc. Six of the ICJ's cases were decided by 'chambers', composed of fewer than the normal fifteen to seventeen judges, under the ICJ Statute Article 26.³⁶ Chamber decisions should perhaps have less weight than regular decisions, due the lower number of judges involved and the resultant reduction of geographical diversity.³⁷ In practice, however, chambers decisions seem to be given the same weight as regular decisions, at least by the ICJ itself.³⁸ Chambers decisions are therefore treated the same as regular decisions in this book.

This book is based on a reading of decisions and opinions. The decisions and opinions were downloaded as PDF files from the Court's official website in English-language versions, but in French if no English version was available.³⁹ All citations of teachings were collected, copied into a separate document, and then manually counted and analysed.⁴⁰

³² *Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion: I.C.J. Reports 1948*, p. 57.

³³ *Case of the S.S. "Wimbledon", Judgment, 28 June 1923, P.C.I.J. Reports Series A No. 1*, p. 11; *Electricity Company of Sofia and Bulgaria, Order, 26 February 1940, P.C.I.J. Series A/B No. 80*, p. 4.

³⁴ ICJ, 'Judgments, Advisory Opinions and Orders' (2017) www.icj-cij.org/en/decisions.

³⁵ *Interpretation of Peace Treaties, Advisory Opinion: I.C.J. Reports 1950*, p. 65, Dissenting Opinion by Judge Zoričić 101. Similarly, for example, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, Separate Opinion of Judge De Castro 173–174; Shahabuddeen, *Precedent*, 165–171.

³⁶ ICJ, 'Chambers and Committees' (2017) www.icj-cij.org/en/chambers-and-committees.

³⁷ Section 4.6.

³⁸ Shahabuddeen, *Precedent*, 176; Paolo Palchetti, 'Article 27', in Andreas Zimmermann and others (eds.), *The Statute of the International Court of Justice: A Commentary* (2nd edn, Oxford University Press 2012) 502, 504–505.

³⁹ ICJ, 'List of All Cases' (2017) www.icj-cij.org/en/list-of-all-cases.

⁴⁰ The methodology is thus similar to, for example, Ole Kristian Fauchald, 'The Legal Reasoning of ICSID Tribunals – An Empirical Analysis' (2008) 19 *European Journal of International Law* 301, 302; Michael Peil, 'Scholarly Writings as a Source of Law: A Survey of the Use of Doctrine by the International Court of Justice' (2012) 1 *Cambridge Journal of International and Comparative Law* 136, 147–148; Manley, 'Citation', 1004.

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Citations of teachings have also been collected from pleadings in some ICJ cases. The ICJ cases in question are the three with the most citations of teachings in individual opinions: *Jan Mayen*,⁴¹ *Pulp Mills*,⁴² and the merits phase of *Bosnia Genocide*.⁴³ All oral and written pleadings are included.

Citations of teachings that concern national law rather than international law are counted when those teachings are used to find the content of international law. National law can also be used as a fact,⁴⁴ and teachings can be applied as part of that process, but that is not counted in this book.

An international court or tribunal may also refer to another tribunal's or a counsel's reference to teachings. Such 'indirect' references are counted in this book.⁴⁵ Courts and tribunals do not repeat every reference to teachings made by other tribunals or counsel. This may be taken to mean that 'indirect' references do have some significance. At the same time, an 'indirect' reference may be seen as less significant than one that a court or tribunal makes purely on its own initiative.

International courts and tribunals sometimes preface references to teachings with the phrase 'see generally' (or something similar). Such references are presumably intended mainly to give background to the topic under discussion rather than provide support for specific legal conclusions. However, the teachings may still have affected the judge's writings and decisions. These 'general' references are therefore counted in this book.⁴⁶

The traditional way of applying teachings is to use their substance as support for a conclusion on the content of international law. However,

⁴¹ *Maritime Delimitation in the Area between Greenland and Jan Mayen, Judgment, I.C.J. Reports 1993*, p. 38.

⁴² *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14.

⁴³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43.

⁴⁴ *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, 19; James Crawford, *International Law as an Open System: Selected Essays* (Cameron May 2002) 22.

⁴⁵ As in Stappert, 'Influence', 969. By contrast, some studies of national law exclude such citations, for example, Blake Rohrbacher, 'Decline: Twenty-Five Years of Student Scholarship in Judicial Opinions' (2006) 80 *American Bankruptcy Law Journal* 553, 555; Brent E Newton, 'Law Review Scholarship in the Eyes of the Twenty-First-Century Supreme Court Justices: An Empirical Analysis' (2012) 4 *Drexel Law Review* 399, 402.

⁴⁶ They are excluded by Fauchald, 'Legal Reasoning', 351.

a tribunal can also make an inference about the content of international law from the fact that something is *not* stated in relevant teachings. Such applications of teachings are counted in this book. An example can be found in an opinion by Judge Krylov in *Corfu Channel*, where he noted that the island of Corfu had ‘not been found worthy of special attention’ by a Greek international law textbook.⁴⁷ Judge Lauterpacht in the *Voting Procedure* case noted the lack of ‘disposition among authors who commented in detail upon’ the various rules he was discussing to ‘question their propriety in any way’.⁴⁸ In *Land, Island and Maritime Frontier Dispute*, when discussing the legal status of the Gulf of Fonseca, Judge Oda found it significant that ‘[t]here was no mention of the Gulf in two specific works on international law’.⁴⁹

Some citations of teachings are imprecise. They are references in which a judge gives the name of one or more authors without naming any specific work.⁵⁰ An imprecise reference may even be more significant than a precise one, if the implication is that the judge considers it so seminal and obvious that every reader should know the details without the judge having to state them. However, counting such references is difficult. It can be difficult to know whether the judge is referring to an individual as writer or in another capacity. An illustration is Vice-President Alfaro in the *Temple* case, who referred to the views of ‘Spanish jurists’.⁵¹ It is, moreover, not possible to know how many works of teachings the judge may have had in mind for each writer. In some cases, it is not even clear how many individuals the judge has in mind. Because of these difficulties, ‘imprecise’ references are not counted in this book.

For the purpose of counting references, where a single work of teachings is cited more than once in the same paragraph (in the text or the footnotes), it is considered a single citation for statistical purposes.⁵²

⁴⁷ *Corfu Channel case, Judgment of April 9th, 1949: I.C.J. Reports 1949*, p. 4, Dissenting Opinion by Judge Krylov 74.

⁴⁸ *South-West Africa–Voting Procedure, Advisory Opinion of June 7th, 1955: I.C.J. Reports 1955*, p. 67, Separate Opinion of Judge Lauterpacht 111.

⁴⁹ *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening), Judgment of 11 September 1992, I.C.J. Reports 1992*, p. 351, Dissenting Opinion of Judge Oda 747.

⁵⁰ For example, *Admission of a State to the UN*, Individual Opinion by M. Azevedo 73.

⁵¹ *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 39.

⁵² As in Wes Daniels, “Far Beyond the Law Reports”: Secondary Source Citations in the United States Supreme Court Opinions October Terms 1900, 1940, and 1978 (1983) 76 *Law Library Journal* 1, 3; Russell Smyth, ‘Citing Outside the Law Reports: Citations of

Multiple citations to the same work in different paragraphs in the same opinion are counted as multiple citations.⁵³ References of multiple editions or volumes of the same work in the same paragraph are counted as distinct citations.⁵⁴ Examples include Judge ad hoc Van den Wyngaert in *Arrest Warrant*, who cited different versions of *Oppenheim's International Law*.⁵⁵ The judge's choice of whether to split something into multiple paragraphs or not is a matter of style. The approach taken in this book may therefore seem arbitrary, but there is no alternative that seems less arbitrary.

Different judicial decisions and opinions have different lengths. For statistical purposes in this book, they are still counted as a single decision or opinion, without any adjustment for length. Regardless of length, every opinion may involve a contested legal question and may cite teachings. This is illustrated by the fact that even the shortest individual opinions can cite teachings⁵⁶ and that one judge (Cançado Trindade) in one opinion managed to include forty-three references to teachings on a single page.⁵⁷ It would have been possible to count references to teachings per page of judicial decision,⁵⁸ but this would have been problematic since some decisions include more factual discussions or summaries of the parties' submissions.

Secondary Authorities on the Australian State Supreme Courts Over the Twentieth Century' (2009) 18 *Griffith Law Review* 692, 704.

⁵³ These are counted as a single citation by Vaughan Black and Nicholas Richter, 'Did She Mention My Name?: Citation of Academic Authority by the Supreme Court of Canada, 1985–1990' (1993) 16 *Dalhousie Law Journal* 377, 381; Tony Cole, 'Non-Binding Documents and Literature', in Tarcisio Gazzini and Eric De Brabandere (eds.), *International Investment Law: The Sources of Rights and Obligations* (Martinus Nijhoff 2012) 289, 304.

⁵⁴ These are counted as a single citation by Black and Richter, 'My Name', 380.

⁵⁵ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, *I.C.J. Reports 2002*, p. 3, Dissenting Opinion of Judge ad hoc Van den Wyngaert 149, where the different versions have different editors.

⁵⁶ For example, *Arbitral Award of 31 July 1989*, Judgment, *I.C.J. Reports 1991*, p. 53, Declaration of Judge Mbaye 80 and *Frontier Dispute (Benin/Niger)*, Formation of Chamber, Order of 27 November 2002. *I.C.J. Reports 2002*, p. 613, Declaration of Judge Oda 616 are only one page long.

⁵⁷ *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection, Judgment, *I.C.J. Reports 2015*, p. 592, Separate Opinion of Judge Cançado Trindade 8.

⁵⁸ P Lee Petherbridge and David L Schwartz, 'An Empirical Assessment of the Supreme Court's Use of Legal Scholarship' (2012) 106 *Northwestern University Law Review* 995, 1005.