THE APPLICATION OF TEACHINGS BY THE INTERNATIONAL COURT OF JUSTICE

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.

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CAMBRIDGE UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, 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 Cambridge University Press & Assessment, a department of the University of Cambridge.

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www.cambridge.org
Information on this title: www.cambridge.org/9781108928328

DOI: 10.1017/9781108933520

First published 2021
First paperback edition 2023

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

Library of Congress Cataloging-in-Publication data
Names: Helmersen, Sondre Torp, author.
Title: The application of teachings by the International Court of Justice / Sondre Torp Helmersen, University of Tromsø.
Description: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2021. | Series: Studies on international courts and tribunals | Includes bibliographical references and index.
Identifiers: LCCN 2020046695 (print) | LCCN 2020046696 (ebook) | ISBN 9781108844147 (hardback) | ISBN 9781108928328 (paperback) | ISBN 9781108933520 (ebook)
Subjects: LCSH: International Court of Justice. | International courts.
Classification: LCC KZ6277 .H45 2021 (print) | LCC KZ6277 (ebook) | DDC 341.5/52–dc23
LC record available at https://lccn.loc.gov/2020046695
LC ebook record available at https://lccn.loc.gov/2020046696

ISBN 978-1-108-84414-7 Hardback
ISBN 978-1-108-92832-8 Paperback

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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.[1] 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.[2] For such reasons, doctrine was long perceived to be a principal rather than a subsidiary source of international law.[3] In this situation, citing certain pre-eminent

[1] Article 92 of the Charter of the United Nations.
[2] Patrick Daillier, Mathias Forteau, and Alain Pellet, *Droit international public* (8th edn, L. G.D.J. 2009) 434–435.
[3] Max Sørensen, *Les sources du droit international: étude sur la jurisprudence de la cour permanente de justice internationale* (E. Munksgaard 1946) 180; André Oraison, 'L'Influence des Forces Doctrinales Académiques sur les Prononcés de la C.P.J.I. et de la C.I.J' (1999) 32 *Revue Belge de Droit International* 205, 211.

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

[4] Emer de Vattel, *Le droit des gens, ou, principes de la loi naturelle, appliqués à la conduite et aux affaires des nations et des souverains* (1758), translated i.a. by Charles G. Fenwick, *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns* (Carnegie Institute of Washington 1916).

[5] Jean d'Aspremont, *Formalism and Sources of International Law: A Theory of the Ascertainment of Legal Rules* (Oxford University Press 2011) 64.

[6] The New York Society Library, 'Historic Mount Vernon Returns Copy of Rare Book Borrowed by George Washington in 1789 to The New York Society Library' (21 May 2010) nysoclib.org/about/historic-mount-vernon-returns-copy-rare-book-borrowed-george-washington-1789-new-york-society; Kevin J Hayes, *George Washington – A Life in Books* (Oxford University Press 2017) 264.

[7] Alexander Hamilton, 'Pacificus No. I, Gazette of the United States, 29 June 1793' in Alexander Hamilton, *Writings* (The American Library 2001) 801, 802–803; Thomas Jefferson, 'Opinion on the French Treaties, 28 April 1793' in Merrill D Petterson (ed.), *The Portable Thomas Jefferson* (Penguin Viking Press 1975) 268, 275–277.

[8] See American jurisprudence and a critical analysis in Brian Richardson, 'The Use of Vattel in the American Law of Nations' (2012) 106 *American Journal of International Law* 547–571.

interest shown by Chinese leaders in the Qing state in understanding international law.[9]

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.[10] 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.[11]

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.[12]

[9] 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.

[10] See as varied references as, *inter alia,* Daillier, Forteau, and Pellet, *Droit*; Lassa Oppenheim, *International Law* (edited by Herch Lauterpacht), Volume 1 (Longmans, Green & Co. 1955) 33; G I Tunkin, *Theory of International Law* (George Allen and Unwin 1974) 186-187.

[11] 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.

[12] 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.[13] 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.'

[13] Karl L Llewellyn, *Jurisprudence; Realism in Theory and Practice* (University of Chicago Press 1962); Alf Ross, *A Textbook of International Law – General Part* (Longmans, Green and Co. 1947) 80. For a critical approach, see Martti Koskenniemi, 'Introduction: Alf Ross and Life Beyond Realism' (2003) 14 *European Journal of International Law* 653–659.

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.[14] Dissenting Opinions have traditionally been identified in continental Europe as largely stemming from a Common Law tradition.[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.[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

[14] Antoine Garapon and Ioannis Papadopoulos, *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, *Between Authority and Interpretation* (Oxford University Press 2009) 31–36 and 41–46.

[15] See, among many examples, Oraison, *Influence*, 207; A. P. Sereni, *Les opinions individuelles et dissidents des juges des tribunaux internationaux* (A. Pedone 1964) 819–857, and Ijaz Hussain, *Dissenting and Separate Opinions at the World Court* (Martinus Nijhoff Publishers 1984), both referred to by Oraison, *Influence*, footnote 6.

[16] Oraison, *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'.[17] 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'.[18] 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.[19] The same basic approach was subsequently adopted for states with adjacent coasts in the judgment in 2001 in the case of

[17] Stuart Kaye, 'Lessons Learned from the Gulf of Maine Case: The Development of Maritime Boundary Delimitation Jurisprudence Since UNCLOS III' (2008) 14 *Ocean and Coastal Law Journal* 73, 74.

[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.

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

Maritime Delimitation between Qatar and Bahrain.[20] 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.[21] 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.[22] 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'.[23]

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.[24] 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.

[21] Prosper Weil, *Perspectives du droit de la délimitation maritime* (A. Pedone 1988), translated into English: *The Law of Maritime Delimitation: Reflections* (Cambridge University Press, 1989), reviewed by Natalino Ronzitti in (1990) 84 *American Journal of International Law* 321.

[22] Ronzitti, 'Review'; Kaye, 'Lessons', 78 and 90; Vaughan Lowe, 'The Role of Equity in International Law' (1992) 12 *Australian Year Book of International Law* 54, 74.

[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.[25] The issue he highlighted was subsequently referred to in 1969 by the Court in the North Sea Continental Shelf judgment, without citations.[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).[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.[28]

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

[25] US Presidential Proclamation No. 2667, Policy of the United States with Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf, 28 September 1945. See, inter alia, *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, 33.

[26] *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 *African Yearbook of International Law* 271, 272.

[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 *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.

[28] ACJ, *Procès-Verbaux of the Proceedings of the Committee June 16th–July 24th 1920 with Annexes* (Van Langenhyusen Brothers 1920).

[29] ACJ, *Procès-Verbaux*, 295 (Lapradelle).

[30] ACJ, *Procès-Verbaux*, 295–296, 307 ff, 314, 317, 332, 338 (Hagerup).

[31] ACJ, *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 Festellung 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, Stian Øby Johansen, Wolfgang Alschner, and Zuzanna Godzimirska. 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