



3. The Authority of the Decisions of International Judicial or Quasi-judicial Bodies in the Case Law of the International Court of Justice: Dialogue or Competition?

*Paolo Palchetti**

It is frequently observed that the International Court of Justice occupies a special position among international courts and tribunals because of the authority generally recognized to its decisions. This observation is recurrent in the views expressed by individual judges of the Court, and particularly in speeches delivered over the time by different Presidents.¹ Most recently, this view has found explicit recognition in the work of the International Law Commission on the identification of customary international law. Draft conclusion 13, adopted on first reading in 2016, provides that “[d]ecisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of rules of customary international law are a subsidiary means for the determination of such rules”. As

* Professor of International Law, University of Macerata.

¹ In a speech delivered in 2000, President Guillaume stated: “the International Court of Justice remains the ‘principal judicial organ of the United Nations’ and, as a result, occupies a privileged position in the international judicial hierarchy. Moreover, it is the only court with a universal general jurisdiction. Lastly, its age endows it with special authority”. In a speech delivered in 2006, President Higgins came back to the question of the relationship between the Court and other tribunal, stressing that “[t]he authoritative nature of ICJ judgments is widely acknowledged”. Both statements are available at the Court’s website (www.icj-cij.org).

the draft commentary makes clear, “[e]xpress mention is made of the International Court of Justice, the principal judicial organ of the United Nations [...], in recognition of the significance of its case law and its particular authority as the only standing international court of general jurisdiction”.²

The Court’s awareness of its special role in the determination of international law has not prevented it from lending significant weight to the decisions of other international courts and tribunals. The most tangible evidence of the Court’s attitude in this respect is its reliance on these decisions to support its arguments on points of law. It is a fact that the recent case law of the Court frequently contains references and citations from decisions of other courts and tribunals.³

The use of external precedents by the Court is the object of this brief work. Its focus is less on the broader systemic implications of this communicative practice between courts and tribunals than on the Court’s specific approach to it.⁴ In particular, it is submitted that a notable feature of this approach lies in the fact that the Court does not limit itself to make use of external precedents; the Court seems also interested in establishing criteria for assessing the different weight and significance to be attached to these precedents. To put it otherwise, the Court does not simply engage in a dialogue; it also seeks to establish the “rules of this dialogue”. This attitude may be assessed in different ways: it may be commended as a laudable attempt to put some order in the dialogue between international courts; but it may also be seen as a disguised way by which the Court seeks to reserve for itself a special role in the determination of the law. As it will be shown, the criteria emerging from the Court’s case law does not appear entirely immune from criticism.

² See the Commentary to the Draft Conclusions on the identification of customary international law, adopted by the ILC in 2016, UN Doc. A/71/10, 110.

³ For a general overview see Pellet, *Article 38*; De Brabandere, *The Use of Precedent and External Case Law by the International Court of Justice and the International Tribunal for the Law of the Sea*; Sienho, *Article 38 of the ICJ Statute and Applicable Law: selected issues in recent cases*.

⁴ For a recent and exhaustive examination of the systemic implications of this communicative practice, see Boisson de Chazournes, *Plurality in the Fabric of International Courts and Tribunals: The Threads of a Managerial Approach*.

Before entering into the analysis of the Court's case law, two remarks have to be made in order to better clarify and delimit the scope of the present work. In the first place, a distinction is to be made between findings of other courts and tribunals on questions of fact and findings on questions of law. While the Court frequently referred to findings of fact made by other tribunals as evidence which may be relied upon to prove facts relevant to the case before it, the present work will only address the use of external precedents on questions of law, on the assumption that different criteria preside over, and justify, the possibility of referring to decisions of other courts and tribunals in these two cases.⁵ Secondly, reference to other international courts and tribunals is to be regarded as including quasi-judicial bodies, particularly monitoring bodies established by human rights treaties. This appears to be justified in the light of the Court's attitude. Not only did the Court rely in several cases on the judicial practice of these bodies; it always treated the precedents of these bodies in substantially the same manner as the precedents from other international courts and tribunals.⁶

1. Setting the context: the evolution of the Court's attitude

Under Article 38(1)(d), the International Court of Justice, in deciding disputes submitted to it, may rely on judicial decisions as "subsidiary means for the determination of rules of law". Until recently, however, the Court has rarely availed itself of this possibility. It has constantly cited its own precedents but only exceptionally the decisions of other courts.⁷

The importance of establishing a communicative practice between international courts only became an issue as a consequence of the growing awareness of the risks associated to the proliferation of international courts. In a

⁵ On the difficulties of separating issues of law and issues of fact in the Court's reliance on external precedent, see however, Gattini, Cortesi, *Some New Evidence on the ICJ's Treatment of Evidence: The Second Genocide Case*.

⁶ However, for the view that "Court's policy of precedent essentially aims to assure a constructive dialogue with arbitration tribunals dealing with interstate disputes, primarily in border dispute", see Guillaume, *The Use of Precedent by International Judges and Arbitrators*, 20.

⁷ See Guillaume, *supra* note 5, 19.

speech delivered to the Sixth Committee of the General Assembly in 2000, President Guillaume observed that “the International Court of Justice keeps careful track of the judgments rendered by other courts and tends increasingly to make reference to them”. He “noted, in all, some 15 Judgments of the Court containing such references”.⁸ In President Guillaume’s speech, cross-citation was clearly regarded as a possible antidote against systemic concerns about coherence in determining the law. Yet, if one considers the Court’s case law at the time of the speech, it seems an overstatement to say that the Court was giving relevance to external precedents. References to such precedents were only occasional and in most cases related to questions which had marginal importance in the Court’s overall reasoning.

The Court’s change in attitude only occurred in the immediately following years. Symbolically, the turning point is frequently identified in the advisory opinion in the *Wall* case, where the Court, *inter alia*, gave ample relevance to the practice of the Human Rights Committee in addressing the question of the extraterritorial scope of application of the International Covenant on Civil and Political Rights.⁹ Be that as it may as to the identification of the starting point, reference to external precedents has since become a recurrent feature of the Court’s case law.

In many respect, this new practice appears to reflect a change in attitude within the Court itself towards the phenomenon of the proliferation of international law. As it appears from the views expressed by individual judges, for many years there was a growing feeling that the proliferation of international tribunals could have implied less work for the Court and, at the same time, undermined its leading role, thereby increasing the risk of a fragmentation of international law. This concern, which also emerged from the abovementioned speech of President Guillaume in 2000, may have guided the Court’s decision, in 1993, to establish a Chamber for Environmental Matters. As noted by Judge Oda, “the proposed establishment of a World Court

⁸ See *supra* note 1.

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports (2004) 69, para. 109. See Andenas, Leiss, *Article 38(1)(d) ICJ Statute and the Principle of Systemic Institutional Integration*, 4, note 6.

for Environmental Questions might have encouraged the parallel establishment of a Special Chamber for environmental questions in the ICJ itself, in order to prevent proliferation of jurisprudence concerning environmental questions and to invite more cases of this nature".¹⁰ After the turn of the millennium, the scenario appears to have considerably changed. The fear of a risk of "fragmentation" seems to have been attenuated. Significantly, in a speech to the General Assembly delivered in 2006, the then President, Higgins, remarked that the concerns generated by the growth in the number of new courts about the potential for a lack of consistency in the enunciation of legal norms and the attendant risk of fragmentation "have not proved significant". She then stressed the importance of establishing a communicative practice as a systemic tool for tackling with the risk of lack of consistency in case law. She noted in this respect that "newer courts and tribunals have regularly referred, often in a manner essential to their legal reasoning, to judgments of the ICJ with respect to questions of international law and procedure", and that "[t]he International Court, for its part, has been following the work of these other international bodies closely".¹¹

2. The different uses of the decisions of international judicial or quasi-judicial bodies by the International Court of Justice

A brief overview of the last fifteen years of Court's case law shows that external precedents have been taken into account for a variety of purposes. In several cases, the question at stake concerned the interpretation of treaties. Thus, for instance, in addition the abovementioned opinion in the *Wall* case, the judgment on the merits in the *Diallo* case provides another example of the Court relying on the practice of the Human Rights Committee for the purpose of interpreting the 1966 Covenant;¹² in the same case it referred to

¹⁰ Oda, *The International Court of Justice Viewed from the Bench*, 55.

¹¹ See *supra* note 1. According to Murphy, *What a Difference a Year Makes: The International Court of Justice's 2012 Jurisprudence*, 540: "the Court's reliance on such a wide range of jurisprudence from other tribunals might be viewed as a counter-argument to concerns about the 'fragmentation' of international law".

¹² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment, 30 November 2010, ICJ Reports (2010) 66, para 66.

the case law of the African Commission on Human and Peoples' Rights to support its interpretation of Article 12 of the African Charter.¹³ In other cases, external precedents were taken into account to support the Court's determination of customary international law. Thus, in its judgment in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* case, it stressed that "the applicable law in the present case is customary international law reflected in the case law of this Court, the International Tribunal for the Law of the Sea (ITLOS) and international arbitral courts and tribunals".¹⁴ In *Jurisdictional Immunities of a State*, due relevance was given to the fact that "[t]he European Court of Human Rights has not accepted the proposition that States are no longer entitled to immunity in cases regarding serious violations of international humanitarian law or human rights law".¹⁵ External precedents have also been used to determine the content of general principles. In its Judgment on compensation in *Diallo*, the Court widely relied on the practice of other tribunals, courts and commissions "which have applied general principles governing compensation".¹⁶ In the 2012 advisory opinion in the *IFAD* case, two General Comments of the Human Rights Committee were referred to in order to show the development of the content of the principle of equality of access to courts and tribunals.¹⁷

Different views have been put forward in legal literature about the possible legal basis which can support and explain judicial dialogue in the determination of the law. Some authors made reference to the rules of interpretation, and in particular to the principle of systemic integration set out in Article 31(3)(c) of the Vienna Convention on the Law of Treaties.¹⁸ According to a different view, Article 38(1)(d) of the Statute is to be interpreted to the

¹³ *Ibid.*, 67, para 67.

¹⁴ *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, 19 November 2012, ICJ Reports (2012) 666, para. 114.

¹⁵ *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, 3 February 2012, ICJ Reports (2012) 139, para. 90.

¹⁶ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation, ICJ Reports (2012) 331, para. 13.

¹⁷ *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, 1 February 2012, ICJ Reports (2012) 27, para. 39.

¹⁸ Brown, *A Common Law of International Adjudication*, 52–55.

effect that it imposes on international courts an obligation to take into account the case law of other courts when determining international rules; in this sense it is suggested that Article 38(1)(d) is to be regarded as a “positive codification” of the use of other judicial decisions.¹⁹ On a different perspective, it has been held that the relevance of judicial findings of a court in judicial proceedings before another judicial body could be explained by treating decisions previously rendered by one court as rules of international law in force between the parties to a case.²⁰ In contrast to the richness of the scientific debate on this point, it is hard to find in the Court’s case law an attempt to explain in legal terms the use of external precedents in the determination of the law. The most that this case law seems to offer by way of explicit explanation can be found in the judgment on the merits in the *Diallo* case. Here the Court justified the weight accorded to the practice of the Human Rights Committee by referring to the need “to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled”.²¹ For the rest, the Court has been careful not to convey the message that it was under some form of duty to take external precedents into account. It has also avoided to accord to them a decisive weight in justifying a finding of law. With the possible exception of the judgment on compensation in the *Diallo* case, where decisions of other courts appear frequently as the only element providing support to the Court’s findings, in general the Court has made use of external precedents simply to confirm its own conclusions as to the interpretation to be given to a treaty or to the content of a customary rule. Taking all these elements into account, the overall impression is that the Court’s attitude in respect to the use of external precedents have been mainly dictated by practical considerations based on the need to enhance the persuasiveness of its decisions, on the one hand, and

¹⁹ Andenas, Leiss, *supra* note 9.

²⁰ Cannizzaro, *Interconnecting International Jurisdictions: A Contribution from the Genocide Decision of the ICJ*.

²¹ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *cit.*, para. 66.

on the willingness to coordinate its own activity with that of other judicial bodies in order to counteract the risk of inconsistency, on the other.²²

3. Establishing the ‘rules of the dialogue’: the different authority accorded to decisions of other judicial bodies

As it has already been noted, in some cases the Court did not limit itself to simply citing findings of law made by other courts or tribunals. The Court found also appropriate to make it clear the weight to be accorded to these precedents in the determination of the law, as well as the reasons for treating these precedents differently from other precedents. On the basis of these statements, it is therefore possible to identify some general criteria that could potentially be applied by the Court also in future cases.

In its Judgment on the merit in the *Diallo* case, the Court acknowledged the importance of the practice of the Human Rights Committee in the following terms: “Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty”.²³ By this statement the Court, first, recognizes that ‘great weight’ must be accorded to the practice of the Human Rights Committee. Secondly, it specified that great weight must be assigned to the “interpretation of the Covenant” adopted by the Committee, and not on any question of law addressed by this body in its practice. Finally, it justified the importance assigned to that practice by relying on the fact that that body “was established specifically to supervise the application of that treaty”. In other words, in the Court’s view the weight to be ascribed to that

²² According to de Brabandere, *supra* note 3, p. 44, “while external case law is used as material support for the Court’s argumentation, the wording used hints towards a form of search for consistency with external case law”. See also Ulfstein, *Awarding Compensation in a Fragmented Legal System: The Diallo Case*, 479. According to Boisson des Chazournes, *supra* note 3, 77, “these trends are scarcely grounded in principles of international law. Their development is mainly due to the attitude of international courts and tribunals”.

²³ See *supra* note 12.

practice appears to be strictly linked to the functions and competences assigned to the Human Rights Committee by the States party to the Covenant.

A similar statement was then made by the Court as regards the importance to be attached to the practice of the African Commission on Human and Peoples' Rights for the purposes of interpreting the African Charter: "Likewise, when the Court is called upon, as in these proceedings, to apply a regional instrument for the protection of human rights, it must take due account of the interpretation of that instrument adopted by the independent bodies which have been specifically created, if such has been the case, to monitor the sound application of the treaty in question".²⁴ It is notable that in this statement the Court used the expression "must take due account", instead of "should ascribe great weight". It is not clear whether, by using this expression, the Court's intention was that of downplaying the importance to be attached to the practice of regional bodies, as compared to that of bodies set up by universal treaties. This would be hardly justifiable. For the purposes of weighing the practice of a judicial or quasi-judicial body, what seems to count is not the regional or the universal nature of the body in question; it is the fact that this body has been specifically set up by the parties to supervise the application of the treaty. Be that as it may, it is significant that here again the Court relied on the competences and functions assigned to a quasi-judicial body to explain the importance attached to the practice of that body.

The link between the value of an external precedent and the competence of the body which adopted that precedent also emerges from the Court's judgment in the *Bosnian Genocide* case. This time, however, the Court relied on this criterion to justify its departure from the precedent.²⁵ When considering the threshold of control which is required under customary international law to attribute the conduct of a de facto organ to a State – whether the "overall control" set out by the International Criminal Tribunal for the Former Yugoslavia in the *Tadić* case or the "effective control" employed by the Court in the Nicaragua judgment – the Court first observed that "the ICTY

²⁴ See *supra* note 13.

²⁵ For the Court's approach towards the possibility of using the case law of the ICTY, see De Brabandere, *supra* note 3, p. 47.

was not called in the *Tadić* case, nor is it in general called upon, to rule on questions of State responsibility, since its jurisdiction is criminal; and extends over persons only". It then noted that while it accorded the "utmost importance to the factual and legal findings made by the ICTY in ruling on the criminal liability of the accused before it", "[t]he situation is not the same for positions adopted by the ICTY on issues of general international law which do not lie within the specific purview of its jurisdiction and, moreover, the resolution of which is not always necessary for deciding the criminal cases before it".²⁶

It is apparent that two different tests are at work here. The first test centers around the question of whether a finding of law is necessary for deciding the case. This test is a rather traditional one, based as it is on the idea that, in principle, obiter dicta should be given less weight than that accorded to findings of law that are essential for the decision of the case. The second test is more innovative. It relies on the question of whether the position of a tribunal on issues of international law lies within the purview of the jurisdiction of that tribunal. This test is substantially the same employed by the Court in *Diallo*. However, the use of this test to justify the departure from an external precedent, as the Court did in the *Bosnian Genocide* case, shows the problematic side of it. In particular, it raises two delicate questions: how to determine whether an issue of international law lies within the purview of a tribunal's jurisdiction? And above all, who should decide upon such question?

4. Dialogue or competition?

As the inter-judicial dialogue reflected in the use of the external precedents is mainly conducted in an informal way and depends on the discretion and sensibility of each court, the identification of some general criteria for assessing the weight to be given to such precedents may be regarded as a positive development. It introduces a measure of predictability and transparency in the case law of a court, thereby reducing the risk of that court being

²⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007, ICJ Reports (2007) 43, para. 403.

perceived as selective, or even arbitrary, in its reliance on external precedents. At the same time, however, determining the “rules of the dialogue” is a delicate exercise that may affect the very possibility of a meaningful dialogue between courts. In this respect, it is one thing for a court to ascribe great weights to the decisions rendered by another court because of the competence assigned to that court on a specific issue of law. This form of deference, which amounts to a recognition of the authority of the other courts, may stimulate reciprocation and facilitate a genuine dialogue between courts.²⁷ It is an entirely different situation when a court downplays the importance to be attached to a finding of law made by another court by relying on the argument that the issue of law in question does not fall within the other court’s jurisdiction. While a court remains free to disregard the precedent of another court, moving the confrontation to the terrain of the respective competences of different courts and tribunals is a dangerous shift. It raises the question of the authority of one tribunal to determine the limits of the competence of another tribunal.²⁸ This shift is even more dangerous since in most cases it will be difficult to say which issues of law fall within the specific purview of the jurisdiction of a court and which do not. In sum, such an approach risks to generate a competition between courts as to the scope of their respective competences, rather than favouring the coordination of their activity.

The Court’s assessment of the “overall control” criterion in the *Bosnian Genocide* case illustrates the limits inherent in an approach of this kind. Admittedly, in its reasoning the Court did not rely exclusively on the “competence” test to justify its departure from the finding of law made by ICTY in

²⁷ Sometimes, the Court’s deference may stem from its awareness that “where an area of international law possesses specialized mechanisms that regularly engage in the interpretation and application of the law, the ICJ’s impact is likely to be felt less”. On this issue see Tams, *The Development of International Law by the International Court of Justice*, in this volume.

²⁸ As noted by Treves, *Fragmentation of International Law: The Judicial Perspective*, 253: “the assessment of whether a statement of law is necessary for a certain decision and whether it is within a court or tribunal’s jurisdiction is undoubtedly delicate if made by another court or tribunal. It would seem that this is a ground on which prudence is of the utmost importance and that only the most evident cases of lack of necessity or lack of jurisdiction should be relevant”.

Tadić. Moreover, the Court did not use the test to deny any authority to that finding; it simply denied to such finding the same authority that it attached to findings of law made by the ICTY in ruling on the criminal liability of the accused before it.²⁹ It remains, however, that the Court's attempt to diminish the importance to be attached to the ICTY's finding by relying on that tribunal's competence is unpersuasive. While it is true that the jurisdiction of the ICTY is criminal and extends over persons only, this does not mean that the ICTY, in the exercise of its jurisdiction, may not be called upon to apply rules of State responsibility or to determine the validity of the resolution of the Security Council establishing it, if this is necessary as a preliminary matter for addressing questions of criminal responsibility falling within its competence. Likewise, while the competence of human rights tribunals or monitoring bodies relates to the interpretation and application of the treaties establishing them, they are frequently called upon to make findings on issues of general international law relating to questions as varied as the validity of treaty reservations or the exceptions to State immunity. In its judgment, the Court took care to show that there was no need for the ICTY to address the question of the attribution of State conduct in order to solve the question of the nature of the conflict. However, it is one thing for the Court to express its disagreement with the reasoning followed by the Tribunal; it is a different matter to say that the Tribunal, when addressing the preliminary question concerning the content of the rule of attribution, was acting outside the scope of its jurisdiction, a conclusion that the Court itself refrained from drawing. The Court also emphasized that the ICTY is not in general called upon to rule on questions of State responsibility.³⁰ It is not clear, however, what implications one should draw from this. Admittedly, a tribunal's specific "expertise" may be an element to be taken into account when weighing the relevance of its precedent. At the same time, however, issues of general international law such as those relating to the law of international responsibility or the law of

²⁹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *cit.*, para. 403.

³⁰ *Ibid.*

treaties appear to fall naturally into the expertise of any international tribunal applying international law, including international criminal tribunals.³¹

There is another reason why the Court's assessment of the precedent of the ICTY appears far from being satisfactory. While it insisted on the question of the ICTY's specific competence, the Court said little about the legal argument developed by the ICTY to support its conclusion that overall control is the threshold of control required under customary international law for the purposes of attributing to a State the conduct of a group of individuals. This is particularly surprising since in *Tadić* the ICTY had conducted a wide examination of the relevant practice to support its conclusion about the content of the customary rule in question. Irrespective of whether one agrees or not with the conclusion drawn by the ICTY,³² one would have expected from the Court greater attention to the assessment of the practice. Instead, on this point the Court simply reaffirmed the continuing validity of the "effective" control test set out in the *Nicaragua* case, without taking care to support its conclusion by an examination of the practice highlighted by the Tribunal.

This prompts a last consideration. While ultimately international courts remain free to depart from an external precedent, when doing so they should justify their move by seeking to demonstrate that their determination of the law is based on a more rigorous and systematic approach than that of the other court. Persuasiveness, rather than competence, should be the key for determining the authority of a finding of law.³³

³¹ As noted by Kohen, "*Considerations about what is common: the ICJ and specialised bodies*, 477: "questions of interpretation of treaties or matters of international responsibility are two largely codified matters that any judicial or quasi-judicial body is in a position to address".

³² On this issue see Palchetti, *L'organo di fatto nell'illecito internazionale*, 163-171.

³³ See, on this point, Abi-Saab G., *La métamorphose de la fonction juridictionnelle internationale*, 391.

Bibliography

- ABI-SAAB, G. "La métamorphose de la fonction juridictionnelle internationale". In *Unity and Diversity of International Law. Essays in Honour of Pierre-Marie Dupuy*, 265-287. Leiden: Brill, 2014. ISBN: 9789004262386.
- ANDENAS, M. and LEISS, J.R. "Article 38(1)(d) ICJ Statute and the Principle of Systemic Institutional Integration". Legal Studies Research Paper Series No. 2016-20, 1-68. University of Oslo, Faculty of Law.
- BOISSON DE CHAZOURNES, L. "Plurality in the Fabric of International Courts and Tribunals: The Threads of a Managerial Approach". In *European Journal of International Law* 28, 2017, 13–72. ISSN: 0938-5428.
- BROWN, C. *A Common Law of International Adjudication*. Oxford: Oxford University Press, 2007. ISBN: 9780199206506.
- CANNIZZARO, E. "Interconnecting International Jurisdictions: A Contribution from the Genocide Decision of the ICJ". In *European Journal of Legal Studies* 1, 2007, 1-19. ISSN: 1973-2937.
- DE BRABANDERE, E. "The Use of Precedent and External Case Law by the International Court of Justice and the International Tribunal for the Law of the Sea". In *Law and Practice of International Law and Tribunals* 15, 2016, 24-55. ISSN: 1569-1853.
- GATTINI, A. and CORTESI, G. "Some New Evidence on the ICJ's Treatment of Evidence: The Second Genocide Case". In *Leiden Journal of International Law* 28, 2015, 899–913. ISSN: 0922-1565.
- GUILLAUME, G. "The Use of Precedent by International Judges and Arbitrators". In *Journal of International Dispute Settlement* 2, 2011, 5–23. ISSN: 2040-3585.
- KOHEN, M. "'Considerations about what is common': the ICJ and specialised bodies". In *Les limites du droit international: essais en l'honneur de Joe Verhoeven*, 473-485. Bruxelles: Bruylant, 2015. ISBN: 9782802742913.
- MURPHY, S. "What a Difference a Year Makes: The International Court of Justice's 2012 Jurisprudence". In *Journal of International Dispute Settlement* 4, 2013, 539–552. ISSN: 2040-3585.

- ODA, S. "The International Court of Justice Viewed from the Bench". In *Revue des cours* 244, 1993, 9-190. ISSN: 0169-5436.
- PALCHETTI, P. *L'organo di fatto nell'illecito internazionale*. Milano: Giuffé, 2007. ISBN: 8814135428, 9788814135422.
- PELLET, A. "Article 38". In ZIMMERMANN, A., TOMUSCHAT, C., OELLERS-FRAHM K. and TAMS, C. (eds). *The Statute of the International Court of Justice*, 677-792. Oxford: Oxford University Press, 2012. ISBN: 9780199692996.
- SIENHO, Y. "Article 38 of the ICJ Statute and Applicable Law: selected issues in recent cases". In *Journal of international dispute settlement* 7, 2016, 472-498. ISSN: 2040-3585.
- TAMS, C. "The Development of International Law by the International Court of Justice", in this volume.
- TREVES, T. "Fragmentation of International Law: The Judicial Perspective". In *Agenda Internacional* 16, 2009, 214-253. ISSN: 2311-5718.
- ULFSTEIN, G. "Awarding Compensation in a Fragmented Legal System: The Diallo Case". In *Journal of International Dispute Settlement* 4, 2013, 477-485. ISSN: 2040-3585.

