The Application of Teachings by the International Court of Justice, 2016-2022

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Abstract:
This article examines the application of teachings by the International Court of Justice between 2016 and 2022. The Court did not cite teachings in its majority opinions during this period. It did cite works from the International Law Commission, which suggests that these are considered different from teachings and possibly to have more weight. Judges cited teachings in their individual opinions. Judge Cançado Trindade stands out as a judge with a particularly high citation rate. Teachings played a wide variety of functions in individual opinions, from the classical functions of aiding the interpretation of a treaty and the ascertainment of a rule of customary international law, to a range of other specialised functions such as the interpretation of other texts, in particular judicial decisions, methodological and historical points, and showing the purpose of a rule of instrument, in addition to providing reflections on the role of the international judiciary itself. The article also examines the demographics of the most-cited writers, finding that most of them are men from Western States. The article compares the judges' practice with findings from prior to 2016 and other international courts and tribunals.

Keywords:
International Court of Justice; sources of international law; the teachings of the most highly qualified publicists; International Law Commission

I. Introduction

The Statute of the International Court of Justice Article 38(1) states that the International Court of Justice (ICJ) 'shall apply … the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law'.[1] This article examines how the International Court of Justice (ICJ) and its judges have applied such teachings in decisions between 2016 and 2022. The wording of the Article 38(1) gives only limited specific guidance on how teachings are to be applied, which means that empirically grounded analyses are worthwhile.

This study follows on the book *The Application of Teachings by the International Court of Justice*, published by Cambridge University Press in 2021. The earlier study covered the Court's practice through October 2016, with the last case covered being the preliminary objection judgments in the three *Marshall Islands* cases.[2] The present study covers cases published on the Court's website before 27 October 2022.[3] The first case covered is the order on 'Fixing of the time-limit: Counter-Memorial on reparations' in *Armed Activities on the Territory of the Congo* (6 December 2016), and the final case included is the order on 'Request for the modification of the Order of 7 December 2021 indicating provisional measures' in *Armenia v. Azerbaijan* (12 October 2022).[4] The study covers orders, judgments and advisory opinions.

The International Court of Justice is an interesting object of study, as it is the only permanent international court with a general jurisdiction.[5] Its decisions carry great authority and contribute to the development of international law.[6]

The study includes individual opinions. As explained in Section II.1, ICJ judges only cite teachings in individual opinions, not in majority opinions. The study only counts the decisions that have individual opinions attached to them. This excludes many minor orders, on matters such as setting time-limits, joinder of proceedings, appointment of experts, and withdrawal of cases. Individual opinions are less authoritative than majority opinions.[7] Even so, it may be fruitful to read majority opinions together with the relevant individual opinions. The ICJ itself held in *Application for Review of Judgement No. 333 of UNAT* that 'it is both permissible and advisable to take into account' individual opinions when interpreting a

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[1] Statute of the International Court of Justice, San Francisco, 26 June 1945, in Force 24 October 1945, 33 UNTS 933.
[2] The final case being *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.
[3] The International Court of Justice, 'Judgments, Advisory Opinions and Orders', <icj-cij.org/en/decisions>.
[4] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan), Request for the modification of the Court's Order of 7 December 2021 indicating provisional measures, Order of 12 October 2022*.
[5] J. Crawford, *Chance, Order, Change: The Course of International Law* (Brill 2014) 216; M. Andenas and E. Bjorge, 'Introduction: From Fragmentation to Convergence' in International Law', in M. Andenas and E. Bjorge (eds.), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (Cambridge University Press 2015) 1, 6.
[6] E.g. Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press 1995) 202; A. Boyle and E. Chinkin, *The Making of International Law* (Oxford University Press 2007), 266–269, 310–311; R. Kolb, *The Elgar Companion to the International Court of Justice* (Edward Elgar 2014) 376.
[7] For example, M. Virally, 'The Sources of International Law', in M. Sørensen (ed.), *Manual of Public International Law* (St. Martin's Press 1968) 116, 153–154; D. Terris, C. P. R. Romano, and L. Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (Oxford University Press 2007) 126.

decision, and that individual opinions 'may contribute to the clarification of the decision'.[8] Judges have echoed the same sentiment in individual opinions and extrajudicial writings.[9] Individual opinions may reveal more of each judges' reasoning than the majority opinion, and thus better 'reflect the Court's actual methods'.[10]

What judges write in their opinions does not necessarily reflect what they think or how they reason.[11] In particular, judges probably read more teachings than they cite.[12] This article examines how judges argue in individual opinions. This may give some guidance on how judges reason, but it is not going to give a complete picture. As Sivakumaran, puts it, 'citation by courts and tribunals [. . .] a useful measure of influence' but 'not the same as influence'.[13]

This article builds on a collection and counting of citations of teachings in individual ICJ opinions. Where the same work is cited more than once in the same paragraph, this is counted as a single citation. Citations in different paragraphs in the same opinion are counted as multiple citations.[14] Co-authored opinions are included in the citation counts of every participating judge, but they are counted as one single opinion when discussing aggregate numbers for all individual opinions.[15] Citations of works produced by private organisations such as the Institut de droit international are counted as teachings in this article.[16] Works produced by official organisations such as the International Law Commission are *not* counted.[17] Teachings on points of national law are included, as long the citations are related to the legal questions at issue in the case.

[8] *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1987*, p. 18, 45.
[9] R. Jennings, 'The Collegiate Responsibility and Authority of the International Court of Justice', in Y. Dinstein (ed.), *International Law at a Time of Perplexity: Essays in Honour of Shabtai Rosenne* (Martinus Nijhoff 1989) 343, 346; M. Shahabuddeen, *Precedent in the World Court* (Cambridge University Press 1996) 178 and 196; *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, Separate Opinion of Judge Ammoun 316.
[10] E.g. J. Crawford, *Brownlie's Principles of Public International Law* (2nd edn, Oxford University Press 2019); 40; R. Kolb, *The International Court of Justice* (Hart 2013) 1014; S. Rosenne, *The Perplexities of Modern International Law* (Martinus Nijhoff 2004) 44.
[11] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 13.
[12] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 46-52.
[13] S. Sivakumaran, 'The Influence of Teachings of Publicists on the Development of International Law' (2017) 66 *International and Comparative Law Quarterly* 1, 3.
[14] As in S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 9-10.
[15] As in S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 11.
[16] As in S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 37-38.
[17] As in S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 39.

II. The overall picture

II.1 Citations in majority and individual opinions

Between 2016 and 2022, the Court did not cite teachings in its majority opinions. This mirrors the practice before 2016, where the Court cited teachings in only five decisions.[18] The teachings of publicists are still not considered a source fit for inclusion in the Court's majority opinions, despite being expressly mentioned in Article 38(1) ICJ Statute. Not citing teachings seems to be an aspect of the Court's institutional culture, which dictates how judges are expected to write majority opinions.[19] It may also be motivated by an effort to make the decisions look more authoritative,[20] to make them shorter and more manageable,[21] and to hide the skewed demographics of the most-consulted writers.[22]

The Court's majority opinions did, however, cite texts from the ILC.[23] The Court has thus maintained an apparent distinction between the teachings of publicists and texts produced the by ILC. This distinction was evident prior to 2016 as well.[24] The same distinction is found the International Tribunal for the Law of the Sea's (ITLOS) practice.[25] It is probably explained by the official authority that the ILC has by virtue of its status of an organ of the United Nations and the involvement of the State representatives in its drafting process.[26] An illustration of the weight judges assign to ILC texts can be found in an opinion by Judge Gevorgian in *Equatorial Guinea v. France*, where he cited the ILC's *Draft Articles on Immunity of State Officials from Foreign Criminal Jurisdiction* as the basis for his conclusion, and, apparently as a supporting argument, added that the ICJ itself had made a 'similar finding' in a previous decision.[27]

Judges have nonetheless cited teachings in their individual opinions. This article covers 166 individual opinions. They contain a total of 809 citations of teachings, but these are unevenly distributed. Of the 166 opinions, 112 opinions have no citations. This is 67 %, or around two thirds. This is notably similar to the share prior to 2016, when 849 of 1256 opinions had no citations (68 %). One judge, Cançado Trindade, is alone responsible for 651 of the 809

[18] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 45.
[19] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 60-61.
[20] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 59-60.
[21] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 60.
[22] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 57-58.
[23] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, 58; *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, 440-441; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 558, 605-606; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, para 152, 180, 184, and 191.
[24] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 82.
[25] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 26.
[26] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 84-85.
[27] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016*, p. 1148, Declaration of Judge Gevorgian 1176.

citations recorded in individual opinions between 2016 and 2022, which is 80 % of the total. The other 34 judges are responsible for the remaining 20 % of citations. This means that they have an average of one citation of teachings per opinion. Despite this relatively low number, of the 34 judges (permanent and *ad hoc*) who have written individual opinions between 2016 and 2022, only ten have never cited teachings.[28] In other words, more than two thirds of the judges (71 %) have cited teachings at least once. This is a somewhat higher share than prior to 2016, when the number was 68 % (112 of 165 judges).[29] The equivalent numbers are 91 % for WTO Appellate Reports and 55 % for individual ITLOS opinions.[30]

Before 2016, ICJ judges cited teachings on average 3.4 times in individual opinions, but that number includes four 'outlier' judges (Judge Cançado Trindade, Judge Shahabuddeen, Judge Weeramantry, and Judge *ad hoc* Kreća). Without these outliers, the average number of citations per individual opinion prior to 2016 was 1.5,[31] which is somewhat higher than the number after 2016. If Judge Cançado Trindade is included in the study after 2016, the average per opinion rises to 4.8.

As for other international courts and tribunals, the average of one citation per opinion is the same as that in the WTO Appellate Body up to 2013.[32] The ITLOS has a slightly higher average in individual opinions, at 1.7.[33] The International Criminal Tribunal for the Former Yugoslavia's (ICTY) decisions up to 2003 had an even higher number, at 7.2 majority opinions and 4 in individual opinions.[34] A study of international criminal tribunals from 2018 reported 7.4 citations on average per decision.[35] In arbitral decisions from International Centre for Settlement of Investment Disputes (ICSID) tribunals between 1998 and 2006, 74 % of decisions between cited teachings, which is significantly higher than the 33 % of individual ICJ opinions that cited teachings between 2016 and 2022.

These variances may be influenced by differences in composition, where different institutions may attract judges from systematically different professional backgrounds and with different judicial philosophies.[36] Additionally, some institutions could attract cases where there are more opportunities to cite teachings.[37] For example, areas where there is less precedent

[28] Hilary Charlesworth in the only judge who has served at any point between 2016 and 2022 without writing an individual opinion.
[29] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 45.
[30] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 347; S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 39.
[31] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 45 lists 2613 of 4370 citations coming from the outlier judges. The total number of opinions was 1256, with 110 of them written by the outlier judges.
[32] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 317 gives an average number of 1.4 citations, but 30 per cent of these are ILC works.
[33] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 25.
[34] M. Bohlander, 'The Influence of Academic Research on the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia – A First Overview' (2003) 3 The Global Community Yearbook of International Law & Jurisprudence 195, 198–20.
[35] N. 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, 964 and 973.
[36] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 180.
[37] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 180.

should allow for a greater role for teachings.[38] Different levels of legal and administrative support may be available in different institutions, and this could also influence the citations numbers.[39] The amount of work for each judge may also play a role.[40] It is easier for a judge with large library, multiple research assistants and lots of time for each case to cite copious amounts of teachings.

II.2 Engagement with teachings

This section discusses examples of judges who appear to have assigned some weight to teachings by 'engaging' with them in various ways.

This is perhaps clearest where judges acknowledge that an idea that they apply in their views come from teachings. This was the case in Judge *ad hoc* Daudet's opinion in *Bolivia v. Chile*. He referred to the concept of a 'fixed obligation', which he apparently thought the Court should have recognised, and which would entail 'an obligation whose object was to hold negotiations with [a] clearly defined objective'.[41] He acknowledged that the term was borrowed from a book by Paul Reuter. Two other examples come from Judge *ad hoc* Kress' opinion in *Gambia v. Myanmar*, where he first referred to 'G. Scelle's early idea of a dédoublement fonctionnel of the State organ in charge'.[42] Later in the opinion he wrote that 'Henri Rolin spoke of obligations erga omnes as early as 1956',[43] a concept that was only later taken up by the ICJ, in its 1970 *Barcelona Traction* decision.[44] When a judge openly shows that an idea is taken from teachings, they give one of the clearest indications possible that they have been influenced by teachings.

A different example is where a judge disagrees with the teachings they cite. In *Nicaragua v. Colombia*, Judge Robinson cited a number of scholarly works that interpreted Article 58(1) UNCLOS, but contradicted them by stating that '[i]t was never the intention in the negotiations of the Convention to address the relationship between the sovereign rights of the coastal State in its EEZ and the rights and duties of other States in that zone in anything as stark and categorical as a "subject to" formulation'.[45] In *Gambia v. Myanmar* Judge *ad hoc* Kress contrasted two opposing views in teachings, by referring to 'a negative answer' and 'a more positive view'.[46] In these cases the judges took the trouble to cite teachings that they did not necessarily agree with, which implies that those teachings had some weight and should not be overlooked simply because one disagrees with them. Judges could limit their citations to teachings that they agree with, disregarding teachings they disagree with. The examples discussed here show that at least some of the judges do not follow this approach.

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[38] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 181.
[39] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 180.
[40] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 182.
[41] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Judgment, I.C.J. Reports 2018*, p. 507, Dissenting opinion of Judge *ad hoc* Daudet 619.
[42] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress, 5.
[43] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress, 10.
[44] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, 32.
[45] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, Separate opinion of Judge Robinson 2.
[46] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 13.

The citation of teachings that the judge disagrees with is a pattern that can be seen in individual ICJ opinions prior to 2016 as well.[47]

A related example is where a judge agrees with a writer but disagrees with the Court, as happened in Judge Jillani's opinion in *Jadhav*. He cited what a scholar 'rightly' had written and added that the Court '[r]egrettably' had 'ignored' the provision that the writer discussed.[48] Judicial decisions generally have more weight than teachings. That teachings may nonetheless be important enough to reduce the weight of a judicial decision, implies that teachings nonetheless have some weight.[49]

Judge Robinson in *Somalia v. Kenya* cited the *Virginia Commentary* and five other scholarly works, but he held that these could not 'reasonably be read as meaning that any and every set of acceptances of the Court's jurisdiction by optional clause declarations with reservations constitutes an agreement that falls within the scope of Article 282' of the UNCLOS.[50] Here Judge Robinson engaged with teachings by interpreting their meaning and stating what they did *not* say. There are several similar examples in individual opinions before 2016.[51] This shows that the judge has read the teachings closely, and has not disregarded them simply because their content was not immediately clear.[52] This is another approach that implicitly accords teachings some weight. A less clear-cut example of apparently giving weight to teachings is where judges add their own emphasis to a quote.[53] This means at least that they have read the teachings carefully and are conscious about which part they wish to highlight. This approach may also be taken to reveal a close reading by the judge.

In other opinions judges have cited teachings alongside and even before ICJ opinions. In *Chagos*, Judge Sebutinde cited a separate ICJ opinion by Judge Ammoun alongside scholarly works by James Crawford, M. Bedjaoui, and John Dugard, designating all of them '[e]minent jurists, including former and current Members of this Court'.[54] Judge Jullani's opinion in *Jadhav* discussed teachings in the main text of the opinion, on the same level as and before individual ICJ and PCIJ opinions.[55] This approach implicitly equates the status of teachings with that of individual opinions in judicial decisions. This again implies that teachings have a certain weight.

In short, there are examples of judges engaging with teachings, but the examples are few and far between. They do not change the overall impression that teachings were assigned relatively low weight by the ICJ and its judges between 2016 and 2022. The same conclusion

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[47] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 74-76.
[48] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 539.
[49] Book p. 69
[50] *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3, Dissenting Opinion of Judge Robinson 70.
[51] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 70-74.
[52] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 71.
[53] E.g. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 4-5; *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment of 12 October 2021*, Separate opinion of Judge Yusuf 13.
[54] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Sebutinde 285.
[55] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 534.

has been drawn regarding the practice of the ICJ and its judges prior to 2016.[56] It has also been drawn about the ITLOS,[57] in part based on a lack of engagement from judges.[58] The same conclusion has been drawn regarding the ICTY as well, where the 'influence' of teachings was 'marginal',[59] and the WTO Appellate Body, which has been 'careful' in its application of teachings.[60] By contrast a study of ICSID tribunals found that teachings were used as 'an essential interpretive argument',[61] and an examination of international criminal courts and tribunals concludes that they 'seem to play a more influential role' than the 'characterization as a subsidiary means indicates'.[62]

II.3 The functions of teachings

Teachings have served a wide variety of functions in individual opinions between 2016 and 2022. The most conventional functions of teachings are to aid the interpretation of a treaty[63] or the ascertainment of a rule of customary international law.[64] Teachings have also been used to find the *elements* of customary rules; either state practice,[65] opinio juris,[66] or both.[67] More rarely teachings were used to show the content of a principle of international law, such as '[t]he principle of sovereign equality'.[68] They have helped summarise treaty practice, as in Judge Jillani's opinion in the *Jadhav* case, where teachings were used to document the content of '[a]t least fifty post-VCCR bilateral consular treaties'.[69]

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[56] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 65-66.
[57] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 32.
[58] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 29.
[59] M. Bohlander, 'The Influence of Academic Research on the Jurisprudence of the International Criminal Tribunal for the Former Yugoslavia – A First Overview' (2003) 3 The Global Community Yearbook of International Law & Jurisprudence 195, 195.
[60] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 332.
[61] Ole Kristian Fauchald, 'The Legal Reasoning of ICSID Tribunals – An Empirical Analysis' (2008) 19 European Journal of International Law 301, 352.
[62] N. 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, 975, 976, and 979.
[63] E.g. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139, Declaration of Judge *ad hoc* Simma 269.
[64] E.g. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 306-307; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Judgment, I.C.J. Reports 2018*, p. 507, Dissenting opinion of Judge Salam 599.
[65] E.g. *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, Separate opinion of Judge Robinson 6; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge Robinson 428.
[66] E.g. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Sebutinde 275; Separate opinion of Judge Robinson 305; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, Dissenting opinion of Judge *ad hoc* McRae 17
[67] E.g. *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Judgment of 12 October 2021*, Separate opinion of Judge *ad hoc* Guillaume 6.
[68] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge Bhandari 395.
[69] Judgment of 17 July 2019, *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 537-538.

Teachings may show not only the *existence* of a customary rule, but also its *absence*. An example is Judge Xue's opinion in *Costa Rica v. Nicaragua*, where she cited teachings to support her holding that '[t]here is no established rule of customary international law governing the legal impact of watercourse change on boundaries'.[70]

Another common function of teachings has been to aid the interpretation of judicial decisions, especially the Court's own decisions. Teachings have helped to interpret specific terms in a specific decision,[71] as well as to extract general conclusions from multiple decisions.[72] Teachings have also been cited for their criticism of the Court's decisions, as an argument for doing this differently in the case at hand.[73] Teachings have been used to interpret other texts besides treaties and judicial decisions. This includes non-binding resolutions, such as the 1992 Rio Declaration on Environment and Development[74] and United Nations (UN) General Assembly resolutions.[75] Teachings have moreover been used to interpret documents that are part of a treaty's drafting history,[76] official statements by States,[77] as well as texts from the International Law Commission[78] and the Institut de droit international.[79]

Teachings can also help a judge ascertain the purpose of a rule or instrument. This may be the purpose of a treaty, as in Judge Bhandari's opinion in *Equatorial Guinea v. France*, where he cited teachings when discussing the purpose of the Vienna Convention on Diplomatic Relations.[80] President Yusuf's opinion in the same case cited teachings when pointing out that 'the definition of the crime of "genocide" forms the "heart" of the [Genocide

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[70] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139, Separate opinion of Judge Xue 234.
[71] E.g. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139, Separate opinion of Judge Robinson 257; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress, 10; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 311.
[72] E.g. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, Dissenting opinion of Judge *ad hoc* Dugard 134-135; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Provisional Measures, Order of 23 January 2020, I.C.J. Reports 2020*, p. 3, Declaration of Judge *ad hoc* Kress 65.
[73] E.g. *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, Dissenting opinion of Judge *ad hoc* Dugard 126-127.
[74] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, Separate opinion of Judge Cançado Trindade 76-77 and 80.
[75] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Cançado Trindade 165.
[76] *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2018*, p. 139, Separate opinion of Judge Robinson 251; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018,* p. 292, Joint dissenting opinion of Vice-President Xue, Judges Sebutinde and Robinson and Judge *ad hoc* Kateka 347.
[77] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 311.
[78] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, Separate opinion of Judge Cançado Trindade 130.
[79] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge Bhandari 392.
[80] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge Bhandari 394 and 396.

Convention]'.[81] Teachings have also been used to find the purpose of non-treaty rules, in particular the Court's Rules of Court.[82] In *Nicaragua v. Colombia*, Judge *ad hoc* McRae cited teachings when explaining that the establishment of the contiguous zone in the law of the sea was motivated by '[d]rug trafficking' and 'the smuggling of alcohol'.[83]

Occasionally teachings are used to support methodological points. Judges have used teachings to find the weight of UN General Assembly resolutions,[84] 'bilateral consular treaties',[85] and of preambles in treaty interpretation.[86] They have also supplied a definition of reciprocal treaties.[87] Some methodological points are more abstract, such as a rule being 'quasi-constitutional',[88] or explaining the jurisprudential concept 'jusnaturalism'.[89] Teachings may also be used to show historical points. These include the fact that '[d]iplomatic law was among the first 14 topics selected for codification' in the ILC,[90] the details of a 1972 amendment to the ICJ Rules of Court,[91] that counterclaims had an 'autonomous legal nature' already in the 1930s,[92] and the 'historical' impact of a judicial decision.[93]

A peculiar function of teachings is to support judges' arguments about the role of the international judiciary itself. President Yusuf in *Bolivia v. Chile* cited a statement by Hersch Lauterpacht about the influence of judicial decisions on the development of international law.[94] Judge *ad hoc* Momtaz in *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* cited Robert Kolb on the purpose of the original establishment of the PCIJ.[95] In *Jadhav* Judge Cançado Trindade cited his own judicial

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[81] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Separate opinion of President Yusuf 349.
[82] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018,* p. 292, Declaration of Judge Owada 369-370; *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7, Joint separate opinion of Judges Tomka and Crawford 48.
[83] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, Dissenting opinion of Judge *ad hoc* McRae 9.
[84] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Cançado Trindade 165.
[85] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 539.
[86] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge *ad hoc* Kateka 445.
[87] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 540.
[88] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 321.
[89] E.g. *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Separate opinion of Judge Cançado Trindade 487.
[90] *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge Bhandari 393.
[91] *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7, Joint separate opinion of Judges Tomka and Crawford 47.
[92] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017*, p. 289, Declaration of Judge Cançado Trindade 331.
[93] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Separate opinion of Judge Cançado Trindade 466.
[94] *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile), Judgment, I.C.J. Reports 2018*, p. 507, Declaration of President Yusuf 567.
[95] *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018*, p. 623, Declaration of Judge *ad hoc* Momtaz 697.

memoirs in order to reinforce 'the importance of compliance with provisional measures'.[96] In a joint opinion in *Nicaragua v. Colombia*, five judges used teachings to explain that the parties in a dispute are 'at liberty to present their case in a different light or to base it upon new arguments' during oral arguments, which calls for '[g]reat caution' on the part of judges.[97] Teachings have been used to define what is and is not an international court. Judge Bhandari in *Qatar v. United Arab Emirates* cited teachings when arguing that the CERD Committee 'sought to act judicially',[98] which made it akin to an international court. By contrast, Judge Gevorgian in *Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar* pointed out that the members of the ICAO Council 'act on instructions from their Governments', which makes the Council different from the International Court of Justice.[99] The role of the international judiciary is not dealt with or regulated in other sources. Teachings is the only source that is able to say something substantial about it. This goes some way towards explaining why there are multiple examples of judges citing teachings when discussing the role of the international judiciary.

The original PCIJ Statute Article 38, whose section 4 mirrors the ICJ Statute Article 38(1)(d), was drafted by the Advisory Committee of Jurists, an expert body set up by the Council of the League of Nations. The Advisory Committee envisaged an important function of teachings to be the avoidance of a *non-liquet*, where the Court would be unable to decide a case due to a gap in the law.[100] This has not been a function that has been highlighted by the ICJ's judges. The Advisory Committee moreover made it clear that teachings could not create law.[101] This can be said to be implicit in the judges' application of teachings, but it is not a point that is discussed openly. Teachings could nonetheless *contribute to the development* of the law.[102] Contributions to the development of the law are not incompatible with the functions of teachings described in this section, but this function too is not discussed openly. The Court's judges have invoked a far wider range of functions of teachings than the Advisory Committee envisaged.

[96] *Jadhav (India v. Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017,* p. 231, Concurring opinion of Judge Cançado Trindade 255.
[97] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia), Order of 4 October 2022, Decision on the organization of the public hearings*, Joint declaration of Judges Tomka, Xue, Robinson, Nolte and Judge *ad hoc* Skotnikov 3.
[98] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 71 Dissenting opinion of Judge Bhandari 142.
[99] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, Declaration of Judge Gevorgian 161.
[100] Advisory Committee of Jurists, *Procès-Verbaux* (1920) 318–319.
[101] Advisory Committee of Jurists, *Procès-Verbaux* (1920) 306, 322, 333–334, 336, 338, 344, 620, and 680.
[102] Advisory Committee of Jurists, *Procès-Verbaux* (1920) 344.

III. Different approaches by different judges

Different judges have taken different approaches to teachings in their individual opinions. Judge Cançado Trindade stands out from the other judges as an extreme outlier, as noted in Section II.1. He has an average of 41 citations per opinion in individual opinions after 2016. The rest of the judges have an average citation rate one per opinion in the same period. Judge Cançado Trindade was identified as an outlier prior to 2016 as well, along with three other judges that left the Court before 2016.[103] These were Judge Weeramantry, who left the Court in 2000, Judge Shahabuddeen, who left the Court in 1997, and Judge *ad hoc* Kreća, who participated in his last case in 2015. Judge Laing has been identified as a similar outlier in the ITLOS' practice.[104] Between 2016 and 2022, Judge Cançado Trindade is unique as an extreme outlier in the Court's practice. Judge Cançado Trindade's unique citation practice seem to have been connected with his general judicial philosophy, which relied heavily on what he called 'jus gentium', where he put great reliance on what he considered the 'common interests of mankind'.[105] This left him freer to rely on teachings than judges who adhered to a more traditional judicial approach.

As noted in Section II.1, only around a fourth of the judges who wrote individual opinions between 2016 and 2022 never cited teachings between 2016 and 2022. These are: Greenwood, Bennouna, Abraham, Gaja, Donoghue, Pocar*, Al-Khasawneh*, Berman*, Keith*, and Cot*. Judges *ad hoc* are denoted by an asterix(*).

The other judges can be grouped according to their average citation rates per opinion. Their average citations number is in parentheses. The 12 judges who have more than one citations per opinion on average are: Cançado Trindade (41), Kress* (23), McRae* (7), Jillani (6), Caron* (5), Simma* (5), Bhandari (1.9), Sebutinde (1.5), Brower* (1.5), Robinson (1.4) and Kateka* (1.3). The 13 remaining judges have an average of one citation per opinion or less: Nolte (1), Crawford (0.6), Skotnikov* (0.6), Owada (0.5), Xue (0.5), Momtaz* (0.5), Yusuf (0.4), Tomka (0.4), Guillaume* (0.3), Iwasawa (0.2), Salam (0.2), Daudet* (0.2), and Gevorgian (0.1). These three groups of judges are of roughly equal size. This is similar to the results prior to 2016, where 'slightly more than a third' of judges had more than 1 teachings citations per opinion on average and 'around 33 per cent' never cited teachings.[106]

Judges *ad hoc* cite noticeably more teachings than permanent judges, as long as Cançado Trindade is removed from the equation. Judges *ad hoc* have an average of 2.3 citiations per opinion, compared with 0.7 for permanent judges minus Cançado Trindade. A majority of the judges with more than one citation per opinion on average are judges *ad hoc* (6 vs. 5), while a significant majority of the judges with less than one citation on average are permanent judges (9 vs. 4). This mirrors the results from prior to 2016, identified in the 2021 book, where judges *ad hoc* cited teachings more often than permanent judges.[107] The same is the case in

[103] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 137-138.
[104] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 44.
[105] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 140.
[106] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 132.
[107] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 146.

the ITLOS if Judge Laing, a permanent judge an significant outlier, is removed.[108] A possible explanation for these results is that judges *ad hoc* tend to argue for legal positions that have less support in more authoritative sources.[109] Judges *ad hoc* are not meant to be advocates for the appointing State, but in practice they do overwhelmingly tend to vote in its favour.[110] As a consequence judges *ad* hoc may, more often than other judges, find themselves with limited support from other sources than teachings. That may make them more inclined to cite teachings in their opinions.[111] Another possible explanation is that judges *ad hoc* are appointed by a single State instead of being voted on by all UN members. This may lead to judges *ad hoc* being systematically 'more creative or combative', since States face fewer external constrains when appointing *ad hoc* judges.[112]

Judges from Western States seem to cite teachings less often than other judges. A judge's home State's OECD membership may be used as a (rough and imperfect) proxy.[113] Twenty out of the thirty-four judges who have written individual opinions are from OECD member States (59 %). Of the judges who have never cited teachings, 8 of 10 are from an OECD member State (80 %). The share for judges with less than one citation per opinion on average is 53 %, while the share is 45 % for judges with more than one citation on average. In short, the more teachings a group of judges cite, the fewer of them are from an OECD member State. A similar result was evident before 2016, as explained in the 2021 book, where judges from OECD member States cited teachings on average 1.5 times per opinion, compared to 4.7 for the rest, and in 26 % of opinions compared to 35 %.[114] It is more difficult to say whether these differences are caused by systematic differences between legal cultures or something else. A similar difference can be observed in the ITLOS, but it disappears if Jugde Laing is removed from the equation.[115] There no such difference in the WTO Appellate Body.[116]

Judges can also be classified based on their professional background. A simple distinction is between former academics and former practitioners.[117] Of the 34 judges who have written individual opinions, 16 have been academics and the remaining 18 were practitioners.[118]

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[108] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 43-44.
[109] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 146.
[110] E.g. Shabtai Rosenne and Yaël Ronen, *The Law and Practice of the International Court 1920–2005, Vol. III* (4th edn, Martinus Nijhoff 2006) 1081-1083.
[111] . T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 147-148.
[112] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 147.
[113] As in S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 148.
[114] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 148.
[115] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 42.
[116] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 341.
[117] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 153-154 contains a more fine-grained division, with 7 different professions.
[118] Greenwood, Gaja, Pocar*, Keith*, Bennouna, Nolte, Crawford, Daudet*, Momtaz*, Iwasawa, Salam, Kress*, McRae*, Caron*, Simma*, and Cançado Trindade are counted as academics. Abraham, Donoghue, Berman*, Cot*, Al-Khasawneh*, Guillaume*, Skotnikov*, Owada, Xue, Yusuf, Tomka, Gevorgian, Brower*, Jillani, Bhandari, Sebutinde, Robinson, and Kateka* are counted as practitioners.

There is no significant difference between them when it comes to the citation of teachings. The judges can again be divided into three groups, with those who never cite teachings, those who cite teachings on average less than once per opinion, and those who cite teachings more than once per opinion. All three groups have an almost equal share of former academics and former practitioners. The first group, the 10 judges who have not cited teachings, contains 5 of each. The next, with less than one citation, has 6 former academics and 7 former practitioners. The final group, with more than one citation on average, has 5 former academics and 6 former practitioners.

A plausible assumption would be that judges who are former academics cited teachings more often than former practitioners. Former academics may be more used to citing teachings than are former practitioners, since academic works generally contain more citations than briefs written by practitioners.[119] This may give judges who are former academics a more academically oriented writing style. Former academics may also be more familiar with available scholarly texts, since they and their former colleagues have produced them.[120] It is also possible that lawyers who choose to become academics and practitioners respectively, may have systematically different legal and judicial philosophies and styles.[121] This is difficult to measure, however. Judges who were former academics cited more teachings than former practitioners in individual ICJ opinions before 2016,[122] as shown in the 2021 book, and in individual ITLOS opinions.[123] This result is not replicated in individual ICJ opinions after 2016, nor in WTO Appellate Body Reports or international criminal courts and tribunals.[124]

[119] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 155.
[120] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 155.
[121] Book p. 155
[122] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 153.
[123] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 39.
[124] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 341-342; N. 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, 975.

IV. Different approaches to different teachings

IV.1 Some writers are cited more than others

Judges seem to take different approaches to different teachings in their individual opinions. One conspicuous fact is that certain writers are cited more than others. The most-cited writer is Augosto A. Cançado Trindade, who has been cited no less than 300 times between 2016 and 2022, but only by himself. A number of other writers have been cited only by Judge Cançado Trindade, who, as noted in Section II.1, is an outlier compared to his colleagues.

Only eight writers, plus the Institut de droit international, have been cited more than three times and by at least two judges. The most cited among them are Shabtai Rosenne, with 13 citations by 4 judges plus a co-authored opinion. He was the most-cited writer in individual ICJ opinions prior to 2016 as well, and he is the most-cited writer in individual ITLOS opinions.[125] Before 2016 the second most-cited writer in individual ICJ opinions was Hersch Lauterpacht. He is not among the top eight after 2016. Instead, James Crawford follows Rosenne, at 9 citations by 4 judges. Bruno Simma has 7 citations from two judges (one of whom is Cançado Trindade) and a co-authored opinion. Then comes Satya N. Nandan, Rosalyn Higgins, and Eileen Denza, both at 5 citations. Denza is cited by 4 judges, Higgins by 3, and Nandan by 2. Robert Kolb is cited 4 times by 4 judges, and Eduardo Jiménez de Aréchaga rounds out the field with 3 citations in two co-authored opinions. The Institut de droit international is cited 5 times by 3 judges (one of whom is Cançado Trindade). Nandan is in a joint 7th place in the ITLOS list.[126] Jiménez de Aréchaga is among the most-cited writers in WTO Appellate Body reports.[127] In individual ICJ opinions prior to 2016, as identified in the 2021 book, Higgins (12th) and Jiménez de Aréchaga (14th) appear among the top 20 most-cited writers.[128] Otherwise there is no overlap between the ICJ before and after 2016 or with the ITLOS and the WTO Appellate Body. The lack of similarity before and after 2016 in the ICJ means that the turnover among writers has been significant. This may in part be caused by coincidences, for example that the cases after 2016 have involved different areas of law requiring different teachings. It may also reflect the fact that much of the teachings that are produced gradually become outdated due to developments in the law and are supplanted by newer works.

Half of the aforementioned top eight writers in individual ICJ opinions after 2016 are affiliated with the United Kingdom. Higgins and Denza are British. Crawford was Australian but spent much of his career in Britain. Rosenne was born and educated in Britain, but he later moved to Israel and spent most his career there. Two of the eight are from non-Western countries: Nandan is Fijian and Jiménez de Aréchaga is Uruguayan. Before 2016, an even larger share, 13 of the top 20, were UK-affiliated (as outlined in the 2021 book). Only one of the top 20, Jiménez de Aréchaga again, was from a non-Western country. There is still a preponderance of UK and Western writers cited in individual opinions between 2016 and 2022, but it is smaller than before 2016. Two of the eight writers, Higgins and Denza, are women. In the individual opinions prior to 2016, only two of the top 20 were women. In short, the most-cited writers have become more diverse after 2016. An even more extreme

[125] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 33.
[126] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 33.
[127] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 333.
[128] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 186-187.

pattern is found the ITLOS, where fourteen out of the top nineteen were UK or US nationals and all were men.[129] The writers most cited the WTO Appellate Body were also all men, but three of the top ten were from non-Western States.[130]

Most of the most-cited writers have been cited a range of judges: by judges from both OECD member states and non-OECD member states, and by judges from common law and civil law countries.[131] For example, Rosenne has been cited judges from Somalia, Jamaica and Tanzania, but also the US, Australia, and Slovakia. These are both OECD and non-OECD states, and they represent both common law and civil law systems. The same is true for Crawford, as another example, has been cited by judges from Germany, South Africa, Uganda, and Jamaica. The third most-cited writer, Simma has been cited by judges from Germany, China, Uganda, Jamaica, Tanzania, and Brazil. Three of the eight most-cited writers have been cited only by non-OECD judges: Denza (Uganda, India, Jamaica, and Tanzania), Higgins (Uganda, Jamaica, and South Africa), and Nandan (Jamaica and Somalia). Of these, only Nandan is himself from a non-OECD state. Of the eight writers, only Denza has been cited only by judges from common law countries (Uganda, India, Jamaica, Tanzania). Denza is from a common law country (England). It is difficult to see any strong patterns regarding OECD members or legal systems in the judges' citation of writers. It seems that different judges cite a range of writers. The 2021 book concluded that up to 2016, judges 'judges cite teachings in their own language and from their own culture somewhat more often than they cite other teachings'. There was a slight overrepresentation of common law judges citing common law teachings and vice versa for civil law, and for non-OECD judges citing non-OECD writers.

The skewed demographics of the most-cited writers does not have be due to bias on the part of the judges.[132] It may rather reflect imbalances in the production of international law scholarship, access to research funding and academic freedom.[133] A relative dominance of Western actors and materials seems to be a general pattern in much of international law.[134]Who is cited in judges' individual opinions may be influenced by who States and their counsel cite in pleadings.[135] All of Eileen Denza's citations came in *Equatorial Guinea v. France*, where she was cited in four of the case's seven individual opinions. Her works were copiously cited in the pleadings, by both parties. Denza's work was cited in nearly every part of both the written and oral proceedings.[136] Denza's citations in *Equatorial Guinea v. France*

[129] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 34.
[130] S. T. Helmersen, 'The Use of Scholarship by the WTO Appellate Body' (2016) 7 Goettingen Journal of International Law 309, 333-334.
[131] The classification into civil law and common law systems in this article follow the University of Ottawa's 'Juriglobe' project: University of Ottawa, 'Alphabetical Index of the 192 United Nations Member States and Corresponding Legal Systems' (undated) www.juriglobe.ca/eng/syst-onu/index-alpha.php.
[132] But see e.g. M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (2nd edn, Cambridge University Press 2006) 607; A. Bianchi, 'Choice and (the Awareness of) its Consequences: The ICJ's "Structural Bias" Strikes Again in the Marshall Islands Case' (2017) 111 AJIL Unbound 81, 84.
[133] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 99-100.
[134] A. Roberts, *Is International Law International?* (Oxford University Press 2017) 5; S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 176.
[135] Merryman, 'Theory', 414; S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 102.
[136] Memorial of the Republic of Equatorial Guinea 93, 98, 99, 107; Preliminary Objections of the French Republic 43, 45, 47; Written Statement of the Observations and Submissions of the Republic of Equatorial

is where one writer was cited by the most judges in a single case, and in that same case her works were cited continuously throughout the written and oral proceedings. This suggests some connection between citations in pleadings and in individual opinions, but this article does not contain any comprehensive study of this connection.

Judges sometimes highlight certain aspects of the teachings they cite, in an apparent effort to justify their citations. These factors are set out below, in separate subsections. Judges have emphasised the quality of works, the official positions of writers, and the fact that multiple writers agree on a point.

IV.2 The quality of works and the expertise of their authors

Judges have emphasised the quality of specific works when citing them. This mirrors the practice before 2016, as shown in the 2021 book,[137] and in individual ITLOS opinions.[138] For example, Judge Cançado Trindade has called teachings 'thoughtful',[139] and 'expert',[140] which refers to their inherent quality. He has also used terms that refer to a work's reception and fame, such as 'well-acclaimed',[141] 'celebrated',[142] and 'well-known'.[143] Yet others have been have praised for their historical significance, through terms such as 'pioneering',[144] 'classic',[145] and 'forward-looking'.[146] However, as explained in Section II.1, Judge Cançado

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Guinea on the Preliminary Objections Raised by the French Republic 44; Counter-Memorial of the French Republic 26, 27, 32, 34, 40, 41; Reply of the Republic of Equatorial Guinea 16, 17, 22, 29, 31; Rejoinder of the French Republic 18; Public sitting held on Tuesday 18 February 2020 28, 32; Public sitting held on Monday 19 February 2018 36; Public sitting held on Wednesday 21 February 2018 32; Public sitting held on Wednesday 19 February 2020 22; Public sitting held on Friday 23 February 2018 29-30.

[137] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 110-114; S. T. Helmersen, Finding 'the Most Highly Qualified Publicists': Lessons from the International Court of Justice (2019) 30 European Journal of International Law 509, 517-520.

[138] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 36-37.

[139] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 6 December 2016, I.C.J. Reports 2016*, p. 1135, Separate opinion of Judge Cançado Trindade 1141; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 8 September 2020, I.C.J. Reports 2020*, p. 264, Separate opinion of Judge Cançado Trindade 278-279.

[140] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 104, Separate opinion of Judge Cançado Trindade 158.

[141] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, Separate opinion of Judge Cançado Trindade 139-140.

[142] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 8 September 2020, I.C.J. Reports 2020*, p. 264, Separate opinion of Judge Cançado Trindade 277.

[143] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 8 September 2020, I.C.J. Reports 2020*, p. 264, Separate opinion of Judge Cançado Trindade 278. The same page also contains the similar term 'best-known'.

[144] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 558, Separate opinion of Judge Cançado Trindade 640; *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, Separate opinion of Judge Cançado Trindade 153-154.

[145] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 8 September 2020, I.C.J. Reports 2020*, p. 264, Separate opinion of Judge Cançado Trindade 273.

[146] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 8 September 2020, I.C.J. Reports 2020*, p. 264, Separate opinion of Judge Cançado Trindade 282.

Trindade is an extreme outlier compared to the other judges. His opinions should not be seen as representative of the Court's or other judges' practice.

There are nonetheless examples of other judges who have emphasised the quality of specific works, albeit less often than Judge Cançado Trindade. Two judges have referred to what teachings 'rightly' have stated,[147] and Judge *ad hoc* Kress has also used the term 'astutely'.[148] This at least means that the judge considered the teachings to have been correct on a legal point. Judge *ad hoc* Kress has referred to teachings being 'helpful' and 'useful',[149] which means they helped him draft his opinion. Other qualifications have referred to a work's reception or status, such as 'authoritative'[150] and 'famous'.[151] Such terms also hint at the broader nature of authority in international law, which is gradually shaped through to a collective process.[152] Some qualifications have referred simply to the inherent quality of a work, such as 'careful',[153] 'detailed',[154] 'thoughtful',[155] and 'magnificent'.[156] In individual opinions before 2016, judges frequently referred to an author's expertise when citing teachings.[157] This was much less common in opinions between 2016 and 2022. There are only two examples from a single opinion by Judge *ad hoc* Kress, where he refers to 'learned' authors.[158]

IV.3 The official positions of the authors

Judges have referred to an author's official positions when citing their works. This was the case prior to 2016 as well (as shown in the 2021 book).[159] The most common reference is to an author having been an ICJ president or judge.[160] Here it seems that the writings gain more

[147] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 539; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Dissenting opinion of Judge *ad hoc* Kateka 444.
[148] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 10.
[149] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 4, 6, 8, and 12.
[150] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 540.
[151] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Judgment of 21 April 2022*, Separate opinion of Judge Robinson 4.
[152] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 127.
[153] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, Dissenting opinion of Judge *ad hoc* Dugard 136.
[154] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 12.
[155] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 14.
[156] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 15.
[157] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 107-110; S. T. Helmersen, Finding 'the Most Highly Qualified Publicists': Lessons from the International Court of Justice (2019) 30 European Journal of International Law 509, 515-517.
[158] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 6 and 14.
[159] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 114-119; S. T. Helmersen, Finding 'the Most Highly Qualified Publicists': Lessons from the International Court of Justice (2019) 30 European Journal of International Law 509, 520-524.
[160] *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7, Joint separate opinion of Judges Tomka and Crawford 48; Separate opinion of Judge *ad hoc* Brower 66; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius*

weight from having been written by an author with an important official position. Judge *ad hoc* Kress has cited writings by ICJ judges writing in their 'scholarly capacity', which may be taken to mean the same thing.[161]

Having been an ICJ president may be taken as a proxy for the authors being legal experts, as in Judge Sebutinde's opinion in *Chagos*, where she refers to '[e]minent jurists, including former and current Members of this Court'.[162] Members of the ICJ may in addition have a more specialised expertise that is pertinent in the case at hand. Judges Tomka and Crawford referred '[m]ost importantly' to what 'one member of the Court wrote extracurially'. They added that the judge and author in question, Eduardo Jiménez de Aréchaga, 'was a member of the Committee for the Revision of the Rules of Court from February 1970 until February 1976, including at the time of adoption in 1972 of amendments to the Rules of Court'.[163] This amendment played a significant part in the judges' reasoning. Tomka and Crawford thus referred not only to Jiménez de Aréchaga's general legal expertise, but also to his specific expertise on the rules that were at issue in the case.

Other citations have been to writings by members of the International Law Commission. In *Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar*, Judge Cançado Trindade referred to a book by James Crawford detailing the negotiations behind the International Law Commission's 2001 articles on state responsibility. Judge Cançado Trindade pointed out that Crawford was 'the Rapporteur' for the articles, which apparently gave his insights added weight.[164] Judge Robinson in the *Chagos* case discussed the concept of *jus cogens*, and cited older and new works by the International Law Commission, including its commentaries to the 2001 articles state responsibility, as well as the 2003 edition of James Crawford's book *The Creation of States in International Law*.[165] Judge Robinson referred to Crawford as 'James Crawford, as he then was', but failed to specify that Crawford was the Special Rapporteur for the ILC work he cited.

A final reference, from Judge Jilliani in *Jadhav*, is a to a writer 'who was the Honorary Legal Adviser to India's Ministry of External Affairs', in a case involving India.[166] Judge Jilliani did not elaborate on the significance of the writer's official position to the case, but it may have seemed relevant that the author held an official position in the very government that was a party to the case. It may have appeared somewhat more difficult for the Indian government to refute a statement by one of their own representatives than if the statement had been written by a writer with no governmental position.

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in 1965, Advisory Opinion, I.C.J. Reports 2019, p. 95, Separate opinion of Judge Sebutinde 285; Separate opinion of Judge Robinson 305.

[161] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 6 and 14.

[162] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Sebutinde 285.

[163] *Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019*, p. 7, Joint separate opinion of Judges Tomka and Crawford 48.

[164] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar), Judgment, I.C.J. Reports 2020*, p. 81, Separate opinion of Judge Cançado Trindade 130.

[165] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 320-321.

[166] *Jadhav (India v. Pakistan), Judgment, I.C.J. Reports 2019*, p. 418, Dissenting opinion of Judge Jillani 541-542.

IV.4 Agreement between multiple authors

Some judges have apparently considered it significant that multiple writers have agreed on a point. This was also evident in individual opinions before 2016, as outlined in the 2021 book,[167] and in individual opinions from the ITLOS.[168] In some cases judges have simply pointed out that more than one writer supports a conclusion, for example by referring to 'several observers',[169] or 'jurists'[170] or 'scholarly works' in plural.[171] Judge *ad hoc* Dugard in *Costa Rica v. Nicaragua* referred to 'considerable criticism' of the Court's approach on a specific point.[172] In some cases judges have referred to 'many scholars' or 'authors', but cited only one.[173] A different example comes from Judge *ad hoc* Kress' opinion *Gambia v. Myanmar*, where he referred 'just a few examples' of 'academic writers', but actually cited five different texts.[174]

[167] S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 120-123; S. T. Helmersen, *The Application of Teachings by the International Court of Justice* (Cambridge University Press 2021) 110-114; S. T. Helmersen, Finding 'the Most Highly Qualified Publicists': Lessons from the International Court of Justice (2019) 30 European Journal of International Law 509, 524-526.
[168] S. T. Helmersen, 'The Application of Teachings by the International Tribunal for the Law of the Sea' (2020) 11 Journal of International Dispute Settlement 20, 37-38.
[169] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia), Counter-Claims, Order of 15 November 2017, I.C.J. Reports 2017*, p. 289, Dissenting opinion of Judge *ad hoc* Caron 352.
[170] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Sebutinde.
[171] *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3, Dissenting Opinion of Judge Robinson, 69.
[172] *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018*, p. 15, Dissenting opinion of Judge *ad hoc* Dugard 126-127.
[173] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, Separate opinion of Judge Robinson 311; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, Separate opinion of Judge Sebutinde 383-384.
[174] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections, Judgment of 22 July 2022*, Declaration of Judge *ad hoc* Kress 13.

V. Conclusion

This article has examined ICJ judges' citations of teachings between 2016 and 2022. Teachings are still not cited in majority opinions, but judges do cite them in individual opinions, at almost the same rate as before. After 2016 Judge Cançado Trindade stands out a significant outlier compared to his colleagues, as he was prior to 2016 along with three other judges. After 2016 there are some notable but scattered examples of judges engaging with teachings, but this is not enough to change the overall impression that teachings rarely play a significant role in the written legal reasoning in judges' individual opinions.

Judges *ad hoc* cite teachings more often than do permanent judges, and non-Western judges cite more than those Western States. These findings replicate those from before 2016. A finding that is *not* replicated is that former academics cited more teachings than former practitioners prior to 2016. The list of most-cited writers is still dominated by UK-affiliated and otherwise Western writers and men, but less so than before 2016. As they did before 2016, judges seem to assess the weight of teachings based on the quality of the works, the official positions of writers, whether multiple writers agree, and, to a lesser extent than before, the expertise of writers.

This article has also shown the wide variety of functions teachings have served in ICJ judges' individual opinions. This ranges from the classical functions of treaty interpretation and the ascertainment of customary international law to a variety of more specialised functions, such as the interpretation of other texts, in particular judicial decisions, methodological and historical points, and showing the purpose of a rule of instrument, in addition to providing reflections on the role of the international judiciary itself.

All this means that the ICJ and the judges' practice between 2016 and 2022 is remarkably similar to what it was prior to 2016. The fundamental aspects of the Court's institutional culture and composition does not seem have changed. Even though teachings still seem to have low weight in the ICJ, they are probably still used and read more than often than they are cited. This would mean that teachings continue to influence the ICJ, and the Court in turn does much to shape the development of international law.