To my parents, Xhemal and Fetije Zyberi


The titles published in this series are listed at the end of this volume.
Gentian Zyberi

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The author has asked me to write a foreword for his book and I have gladly honoured his request because I am of the view not only that his work is an important contribution to the already vast literature on the case law of the International Court of Justice but primarily because it is, as far as I know, the first monograph which deals in depth with the interpretation and application of norms of human rights law and international humanitarian law by the Court.

The Court is not a human rights court; its jurisdiction is both wider and more limited than that of human rights courts. It is wider in that _ratione materiae_ it covers all rules of international law, both treaty law and customary law; it is more limited in that _ratione personae_ it can only settle inter-state disputes and has no competence to decide on complaints brought by individuals which are the direct beneficiaries or _destinataires_ of the norms of human rights law and humanitarian law. But, as these norms are laid down in treaties between States and States are also bound by the rules of general customary law, the Court can in all cases, submitted to it, where the State-Parties disagree about the interpretation and application of these norms and by their consent have allowed the Court to do so, give its authoritative view on the issues in dispute and it has done so in a great number of cases.

The author has carefully analyzed all these judgments, both for human rights law and for humanitarian law, after having given first a highly useful oversight of the Court’s jurisdiction in general and the ensuing possibilities and limitations in the relevant field. He first summarizes in each case the Court’s findings and then gives his own comments in a separate paragraph called ‘concluding remarks’, a method of work which contributes to transparency and logic.

The most interesting part of the book is, in my view, the chapter dealing with the relationship between the Court and the various international criminal tribunals and human rights courts and treaty bodies. In the heading of this chapter the author uses the words: ‘Understanding the Pieces of a Puzzle’ and that certainly is not an overstatement. But he succeeds in putting these pieces together in such a way that a lucid and coherent pattern emerges. In doing so he has to deal with complex issues like the proliferation of international courts and tribunals, the lack of a formal hierarchy and the ensuing risk of a divergent case law and thus of an inconsistent judicial and legal order. He does not make revolutionary proposals to overcome these risks but points out in a persuasive way what the stumbling blocks are. In his final chapter he pleads for allowing the Court to serve as a primary organ of international law whose mission, apart from settling inter-State disputes, would also extend to that of keeping the fabric of international law together. Being the principal judicial body of the UN, being the
only international body endowed with general jurisdiction, and in view of the State-centred organization of the international community it seems that the ICJ is well-placed to play that role.

I am sure that this book, which is rich in material and in thought, will find its way to the desks of both human rights lawyers and of scholars and practitioners of international law in general.

Pieter H. Kooijmans
Former judge in the International Court of Justice
The research leading to this book was carried out by the author at the Netherlands Institute of Human Rights (SIM) as part of a PhD programme extending over a period of four years, starting in late September 2003 and finishing in early October 2007. Although it was quite long ago, I still remember that morning in May 2003 when I heard that I had been selected to carry out this research. From the beginning I considered it as a window of opportunity to deepen my knowledge on the work of such an important international judicial body as the International Court of Justice. That journey would have been difficult if I had not benefited greatly from the supervision of Professors Terry D. Gill and Cees Flinterman and their extensive knowledge of human rights and humanitarian law. Their comments, suggestions, support and mentoring over the years kept me on track and enabled me to complete the research on time. I wish to express my sincere gratitude to the members of the Reading Committee, Professors Pieter Kooijmans, Sir Nigel Rodley, William Schabas, Fred Soons and Fried van Hoof for reading and commenting on my somewhat lengthy manuscript. I was pleased and honoured that Professor Kooijmans, a former Judge of the International Court of Justice, kindly accepted to write the foreword to this book.

Obviously, special thanks go to my SIM colleagues. Their positive attitude and collegial spirit expressed in the numerous informal activities such as birthday treats, dinners, days out, Friday drinks and the academic brown-bag and ‘cases and materials’ meetings besides their social function were a school in itself. The numerous discussions with my colleagues Ineke Boerefijn, Leo Zwaak, Jenny Goldschmidt, Jeff Handmaker, Quirine Eijkman, Saima Husein, Fleur van Leeuwen, Birsen Erdogan, Masha Fedorova, Brianne McGonigle and others helped me to organize better my thoughts and ideas. I am certainly indebted to our SIM librarians, Saskia Bal and Maaike Hogenkamp, for their kind and prompt assistance. I would like to thank also the librarian of our Utrecht School of Law Library, Henk Zonneveld, for assisting me with preparing the selected bibliography for this book.

Next to my research I had the opportunity of being involved as part of several Defence teams at the legal proceedings before the International Tribunal for former Yugoslavia. That was a very useful experience which opened my eyes to the practice of international criminal law and allowed me to meet and exchange views with a considerable number of practitioners. I would like to thank especially Gregor Guy-Smith, Richard Harvey, Caroline Buisman and Bart Willemsen for their openness, thoughtful insights and collegial attitude.

I was not aware until the last stages that preparing a book for publication is a process in itself. I was both lucky and privileged to have on my side a number of
dedicated persons who helped me through that process. Thus, I would like to express my deep appreciation for their assistance to Titia Kloos and Willemien Vreekamp for the layout of the book, to Peter Morris for the English editing, and to Titia Hijman van den Bergh for translating the summary into Dutch, a language which I still have to master. Their assistance was both excellent and timely.

I’d like to pay tribute to all my friends, whose jovial company, advice, funny jokes, and life stories have so much enriched mine. I’d like to thank in particular my girlfriend, Lila Zotou, who through her art work and radiant energy injected much life into what would otherwise have turned out to be a somewhat dry and solitary entrepreneurship. Finally, I’d like to thank my parents Xhemal and Fetiye Zyberi, my brothers Klodi and Ermir, as well as Peter Spinnler and Judith Mündwiller, and Jan Weerdenburg and Maria Hijman for their unwavering and unconditional support throughout all these years. Indeed, their love and support have carried me through difficult times.

Gentian Zyberi

February 2008
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Selected Bibliography

List of Cases

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About the author
LIST OF ABBREVIATIONS

Journals and other academic publications

AFDI Annuaire Français de Droit International
AJIL American Journal of International Law
AJPIL Austrian Journal of Public and International Law
ALC Annotated Leading Cases of International Criminal Tribunals
AYbIL Australian Yearbook of International Law
BYbIL British Yearbook of International Law
CJIL Chinese Journal of International Law
CJTL Columbia Journal of Transnational Law
CWILJ California Western International Law Journal
CYbIL Canadian Yearbook of International Law
DJIL Dickinson Journal of International Law
DJCIL Duke Journal of Comparative and International Law
DJILP Denver Journal of International Law and Policy
EJIL European Journal of International Law
FILJ Fordham International Law Journal
GLJ German Law Journal
GYbIL German Yearbook of International Law
HILJ Harvard International Law Journal
HRJ Human Rights Journal
HYbIL Hague Yearbook of International Law
ICJ Reports Reports of Judgments, Advisory Opinions and Orders
ICLQ International and Comparative Law Quarterly
IJIL Indian Journal of International Law
IL International Lawyer
ILC Yearbook Yearbook of the International Law Commission
ILP International Law and Politics
IRRC International Review of the Red Cross
IYbIL Israel Yearbook of International Law
JCSL Journal of Conflict and Security Law
LJIL Leiden Journal of International Law
MJIL Melbourne Journal of International Law
MLLWR Military Law and Law of War Review
NILR Netherlands International Law Review
NJIL Nordic Journal of International Law
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>NQHR</td>
<td>Netherlands Quarterly of Human Rights</td>
</tr>
<tr>
<td>NYbIL</td>
<td>Netherlands Yearbook of International Law</td>
</tr>
<tr>
<td>NYUJILP</td>
<td>New York University Journal of International Law and Politics</td>
</tr>
<tr>
<td>RdC</td>
<td>Recueil des Cours de l'Académie de Droit International</td>
</tr>
<tr>
<td>RECIEL</td>
<td>Review of European Community and International Environmental Law</td>
</tr>
<tr>
<td>SJIL</td>
<td>Stanford Journal of International Law</td>
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<tr>
<td>TILJ</td>
<td>Texas International Law Journal</td>
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<tr>
<td>VJIL</td>
<td>Virginia Journal of International Law</td>
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<tr>
<td>VJTL</td>
<td>Vanderbilt Journal of Transnational Law</td>
</tr>
<tr>
<td>WA</td>
<td>World Affairs (Journal)</td>
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<tr>
<td>YJIL</td>
<td>Yale Journal of International Law</td>
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### Institutions, organs, other bodies

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<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACABQ</td>
<td>UN Advisory Committee for Administrative and Budgetary Matters</td>
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<tr>
<td>ASIL</td>
<td>American Society of International Law</td>
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<tr>
<td>CHR</td>
<td>United Nations Human Rights Commission</td>
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<tr>
<td>CmAT</td>
<td>Committee against Torture</td>
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<tr>
<td>CmEDAW</td>
<td>Committee on Elimination of Discrimination against Women</td>
</tr>
<tr>
<td>CmERD</td>
<td>Committee on Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>CmESCR</td>
<td>Committee on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>CmRC</td>
<td>Committee on the Rights of the Child</td>
</tr>
<tr>
<td>CmRMW</td>
<td>Committee on the Rights of Migrant Workers</td>
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<tr>
<td>ECOSOC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>GA (UNGA)</td>
<td>General Assembly</td>
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<tr>
<td>HRCm</td>
<td>United Nations Human Rights Committee</td>
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<tr>
<td>HRCn</td>
<td>Human Rights Council</td>
</tr>
<tr>
<td>I-ACtHR</td>
<td>Inter-American Court of Human Rights</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<tr>
<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>ICTs</td>
<td>International Courts and Tribunals</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for former Yugoslavia</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<tr>
<td>IQJBs</td>
<td>International Quasi-Judicial Bodies</td>
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<tr>
<td>ITLOS</td>
<td>International Tribunal on the Law of the Sea</td>
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<tr>
<td>MONUC</td>
<td>United Nations Mission in the Democratic Republic of Congo</td>
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<td>OAS</td>
<td>Organization of American States</td>
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<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<td>PICT</td>
<td>Project on International Courts and Tribunals</td>
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<tr>
<td>SC (UNSC)</td>
<td>Security Council</td>
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### List of Abbreviations

<table>
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<th>Abbreviation</th>
<th>Full Form</th>
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<td>UN</td>
<td>United Nations</td>
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<td>SG (UNSG)</td>
<td>Secretary-General of the UN</td>
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<td>WHO</td>
<td>World Health Organization</td>
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### International Treaties

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<tr>
<td>CAT</td>
<td>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women (1979)</td>
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<tr>
<td>CERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</td>
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<tr>
<td>CMW</td>
<td>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights (1966)</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights (1966)</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights (1948)</td>
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### Miscellaneous

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<tr>
<td>MDGs</td>
<td>Millennium Development Goals</td>
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<tr>
<td>WWII</td>
<td>Second World War</td>
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