
International Jurisprudence in Domestic Courts

Dr Oktawian Kuc

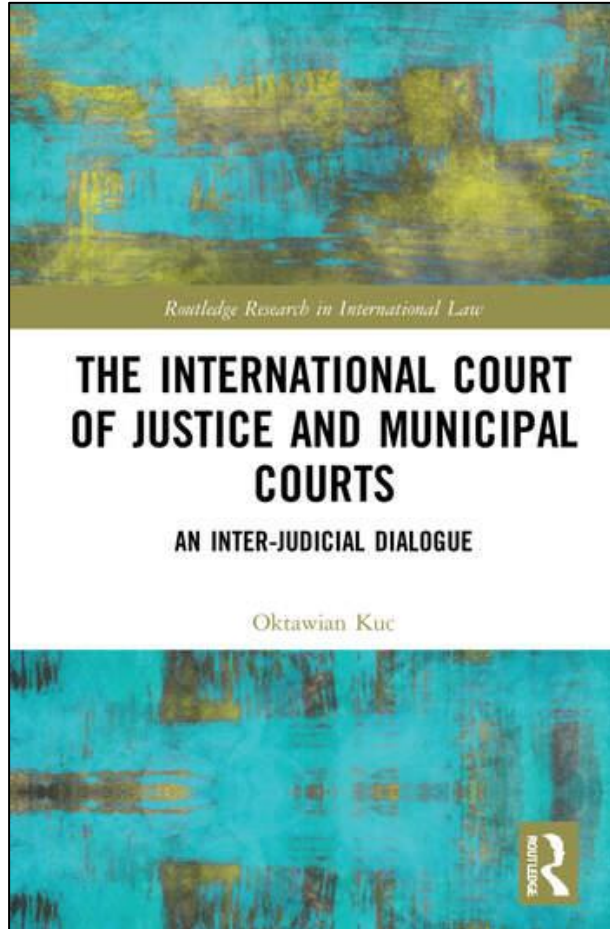
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Introduction



[i]nternational law, or the law that governs between states, has at times, like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice, till at length the imprimatur of a court attests its jural quality

New Jersey v. Delaware, 291 U.S. 361

- 1929 Lauterpacht's paradigm
- My research on the subject
- European perspective
- Reception of international jurisprudence

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Domestic Courts

International Perspective

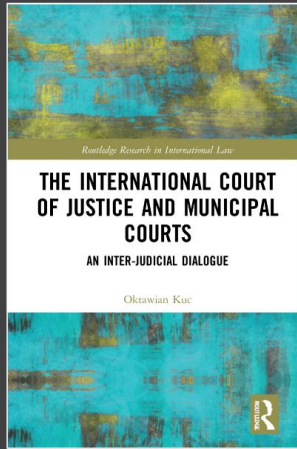
1. Binding force of international judicial decisions *inter pares*
2. Obligation to comply – e.g. Article 94(1) UN Charter
3. Exhaustion of local remedies rule
4. Article 38(1)(d) ICJ Statute – judicial decisions as subsidiary means of the determination of rules of law
5. Article 31 (3)(b) VCLT – any subsequent practice in the application of the treaty
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Internal (Constitutional) Perspective

1. General directives regarding International Law
2. Friendliness towards International Law
3. Courts as State organs and the question of private right of action
4. Sources of International Law in domestic courts
5. Utilitarian approach and a *guiding effect* of international jurisprudence
6. Issue preclusion
7. Judicial comity and persuasive authority of international courts and tribunals

Judicial Dialogue or Judicial Lawfare

1. *Avena case* and its aftermath
2. *Jurisdictional Immunities case* and a new proceedings initiated by Germany
3. Dispute Equatorial Guinea v. France and its new aspect



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