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Article

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Inter-court competition in non-adjudicative activities: a case study of the International Court of Justice presidential speeches, 1991–2022

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ABSTRACT

This article draws attention to the practices of non-adjudicative activities by the International Court of Justice (ICJ) and conducts a case study on its presidential speeches before the United Nations. Inspired by organizational ecology theories, I consider that the international judicial system is equivalent to ecology, where international courts exist as rational actors. Within the ecology, each court is driven by self-interest, and its behaviours are thus designed to obtain a better position in this system. By conducting a thematic analysis, I found three patterns in the speech transcripts: frequent reference to other international courts, intention to enhance the Court's identity, and advertising for the Court's capacity to entertain environmental disputes. I argue that the patterns in ICJ presidential speeches represent evidence of an inter-court competition. This argument has important implications for research on international courts as well as for studies on inter-organizational relationships among other types of international organizations.

KEYWORDS: International Court of Justice; international courts; non-adjudicative activities; competition; organizational ecology theory

Previous studies have shown evidence that numerous international courts and tribunals (ICTs), including the European Court of Justice, the African Court of Human and People's Rights, the Caribbean Court of Justice, and the International Criminal Court, have engaged in a wide range of non-adjudicative activities.[1] While there is growing attention on the non-adjudicative activities

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[1] Theresa Squatrito, 'Judicial Diplomacy: International Courts and Legitimation' (2021) 47 Review of International Studies 64; Nicole De Silva, 'International Courts' Socialization Strategies for Actual and Perceived Performance' in Andreas Follesdal and others (eds), *The Performance of International Courts and Tribunals* (CUP 2018) 288; Christine Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law* (University Press 2021) 1–23.

conducted by international courts, very little has been devoted to the practices of the International Court of Justice (ICJ). In fact, as the principal judicial organ of the UN, the ICJ, and its judges have a long tradition of participating in non-adjudicative activities. Examples include organizing training programs,[2] hosting meetings with government officials,[3] launching films and books,[4] and delivering lectures and speeches in other institutions.[5] Studying these activities is important in three aspects: first, non-adjudicative activities are often attributable to the courts; thus, they may convey meaningful messages underlying the preferences of ICTs. Secondly, if most non-adjudicative activities do not fall under the courts' judicial mandates, we should be curious about why ICTs are invested in them and whether they raise any concerns. Third, adjudicative and non-adjudicative activities are sometimes intertwined. Finding the patterns in non-adjudicative activities may shed light on our understanding of ICTs' judicial functions. Against this backdrop, this article aims to bridge the gap between the ICJ's extensive practices of non-adjudicative activities and the academic attention to them.

Several accounts of non-adjudicative activities have been proposed. When reading them together, I find that a common approach adopted by these studies is to focus on the courts' relationship vis-à-vis member states and the general public. The modest intention of this article is to bring a new perspective of understanding non-adjudicative activities, that is, to examine these activities by reference to inter-organizational relationships (referred to hereafter as 'inter-court relationships'). As it will be explained later, this approach is by no means an invention of mine. In fact, several writings have already demonstrated its relevance in studying international courts.[6] In the words of Cesare PR Romano, the international judicial system exhibits growing connectivity: 'international courts are no longer "self-contained systems". They are gradually evolving, spontaneously and organically … into a specific type of social network, a "judicial network", where each international court is a *node*'.[7] When it comes to explaining certain behaviours conducted by international courts, this perspective is of great use, because it displays the fact that the behaviours of each court not only construct, but are also constructed by other courts. Yet, to my knowledge, the question of the extent to which inter-court relationships can be used to explain the non-adjudicative activities of international courts remains under-explored.

Theoretically, this article is the first attempt to apply organizational ecology theories to the non-adjudicative activities of international courts. Based on the assumption that actors in the ecology have the agency to pursue self-interest, it tests the ecological principle of competition in the world of international courts. Even though a few studies have adopted organizational ecology theories to study the judicial activities of international courts, none of them has been able to extend this theoretical application to non-adjudicative activities. Therefore, the originality of this article is premised on three elements: ICJ presidential speeches as a

[2] See information about the Judicial Fellowship Program <https://www.icj-cij.org/judicial-fellows-program> accessed 28 February 2025.

[3] Report of the International Court of Justice, 1 August 2013–31 July 2014, UN Doc A/69/4 (2014) 52–54 <digitallibrary.un.org/record/780476?ln=en> accessed 28 February 2025.

[4] ibid; Joan E Donoghue, Speech of H.E. Judge Joan E Donoghue, President of the International Court of Justice, on the Occasion of the Seventy-Sixth Session of the United Nations General Assembly (2021) 8.

[5] An example in this respect is the judges' participation in the Hague Academy of International Law. For other examples, see the Statements by the President <www.icj-cij.org/en/statements-by-the-president> accessed 28 February 2025.

[6] Chiara Giorgetti and Mark A Pollack, 'Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition Among International Courts and Tribunals' in Chiara Giorgetti and Mark A Pollack (eds), *Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition Among International Courts and Tribunals* (CUP 2020) 1–9; Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* (OUP 2004) 79; Fuad Zarbiyev, 'The International Court of Justice and Specialised International Adjudicative Bodies: From Indifference to Authority Trading' (2022) 65 German Yearbook of International Law 291; Theodor Meron, *The Making of International Criminal Justice: The View from the Bench: Selected Speeches* (OUP 2011) 117.

[7] Cesare PR Romano, 'Deciphering the Grammar of the International Jurisprudential Dialogue' (2008) 41 New York University Journal of International Law and Politics 755, 757 (emphasis added).

new type of research material, the inter-court perspective as a new angle of analysis, and the focus on competition in non-adjudicative activities as a new application of organizational ecology theories.

This article offers a case study of the non-adjudicative activities by looking into the ICJ presidential speeches before the United Nations General Assembly (UNGA). In applying an inductive thematic analysis to the speeches, it answers two research questions: (i) what are the recurring patterns in ICJ presidential speeches? (ii) what could these patterns tell us about international courts? Guided by the two questions, I found that ICJ presidents persistently refer to other international courts, enhance the ICJ's institutional identity vis-à-vis other courts in the judicial system, and advertise the Court's capacity to receive environmental disputes. Based on these patterns, I argue that such activities correspond to ongoing inter-court competition.

This article proceeds as follows. 'Theoretical framework and concept formation' section introduces the theoretical framework—organizational ecology theories—and how it defines the meaning of inter-court competition and non-adjudicative activities. This section reviews the previous works concerning the application of ecological theories to international organizations, and in particular, to ICTs. 'Research design' section explains the research design and why ICJ presidential speeches are selected as the case study. 'Observable patterns in ICJ presidential speeches' section reveals the patterns in the examined speeches and argues that these patterns coincide with the characteristics of inter-court competition. 'Conclusions' section discusses the implications of this article as well as its limitations.

THEORETICAL FRAMEWORK AND CONCEPT FORMATION

This article relies on organizational ecology theories to analyse the patterns in non-adjudicative activities. It rests on the assumption that international courts are ecological actors possessing the capability to interact with other actors and to pursue their own interests. It follows from this premise that competition is an indispensable part of inter-organizational relationships, which informs non-adjudicative activities among ICTs. To further clarify the theoretical framework of this article, this section briefly introduces organizational ecology theories and explains how the existing research in international relations and international law could be of great use to understand the behaviours of ICTs. This section also evaluates the existing definitions of non-adjudicative activities, and after a review of practices carried out by ICTs, it develops a working definition for the purpose of this article.

Competition as an ecological principle

The idea that competition is a basic principle of ecology has been transposed to international relations since the emergence of 'Social Darwinism'. In applying Darwinist concepts to international relations, scholars developed the so-called 'Social Darwinism', framing conflict as an inescapable outcome of humans' natural desire for survival in the ecology.[8] For them, competition is a result of the 'social selection' process, caused by scarce physical and psychological resources in human society.[9] As Max Weber famously asserted in *Economy and Society*, 'the striving for prestige pertains to all specific power structures and hence to all political structures' and 'claims to prestige have always played into the origin of wars'.[10]

[8] Paul Crook, *Darwinism, War and History: The Debate over the Biology of War from the 'Origin of Species' to the First World War* (CUP 1994) 1–5.

[9] Richard N Lebow, 'Max Weber and International Relations' in Richard Ned Lebow (ed), *Max Weber and International Relations* (CUP 2017) 10.

[10] Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press) 911.

Notably, Weber equated competition with war, in that it is a peaceful form of conflict 'to attain control over opportunities and advantages which are also desired by others'.[11] Besides the discussion about war, research also uses the same thinking to describe relationships among legal institutions. As Bruce L Benson claims, legal rules and institutions tend to evolve through a natural selection process, where those that more effectively support the purpose will replace those that are less effective.[12] This style of thought, especially the idea that competition is a basic principle of social life, later appeared in a wide range of extant literature on organizational ecology and has recently been applied to the studies of international organizations.

In organizational ecology theories, there is much about the evolution processes by which organizations arise and disappear that cannot be explained without reference to competition. In fact, one of the major trends over the past century is the 'shift from theories that emphasize symbiotic relations between social units to theories that emphasize competitive relations'.[13] It has been observed that changes in the population of organizations reflect the operation of four processes: variation, selection, competition, and retention, and that each of them plays a crucial role in the equilibrium of the ecology.[14] Similarly, based on an understanding of density and vital rates of organizational populations, Michael Hannan and Glenn Carroll consider competition as to be the dominant mechanism in ecological changes.[15] Influenced by these ideas, empirical studies soon employed them to test inter-organizational relations in various settings, including universities, corporations, and human actors, and competition was proved to be the persistent culture in all kinds of societies.[16]

In recent years, some basic ideas of organizational ecology have become an emerging strand in the study of international organizations. Informed by the ground-breaking works in organizational ecology, many writings in international organizations are now based on the Darwinist assumption that 'organizations compete for their survival'.[17] One influential paper that applied organizational ecology to inter-governmental organizations and private transnational organizations was published by Kenneth Abbott, Jessica Green, and Robert Keohane in 2013.[18] The article not only advances our understanding of international organizations but also puts forward a new research agenda for this field. To adapt organizational ecology theories to international organization studies, the authors highlight symbolic resources—autonomy, authority, and legitimacy—that are of importance to inter-organizational competition.[19] It aligns with many scholars' view that the structure of global governance is fundamentally different from national politics and law, in the sense that it does not rely on direct force to rule and that the jurisdictional boundary between governance institutions is

[11] Bruce L Benson, 'Competition among Legal Institutions: Implications for the Evolution of Law' in Lüder Gerken (ed), *Competition among Institutions* (Palgrave Macmillan UK 1995) 171.

[12] Monica Hakimi, 'Constructing an International Community' (2017) 111 American Journal of International Law 317, 320.

[13] Glenn R Carroll, 'Organizational Ecology' (1984) 10 Annual Review of Sociology 71.

[14] Joel Baum, 'Organizational Ecology' in Stewart R Clegg, Stewart Clegg and Cynthia Hardy (eds), *Studying Organization: Theory and Method* (SAGE 1999) 72; Donald T Campbell, 'Variation and Selective Retention in Socio-Cultural Evolution' in Herbert R Barringer, George I Blanksten and Raymond W Mack (eds), *Social Change in Developing Areas* (Schenkman) 26–42.

[15] Michael T Hannan and Glenn Carroll, *Dynamics of Organizational Populations* (OUP 1992) 26.

[16] Jonathan Hearn, *The Domestication of Competition: Social Evolution and Liberal Society* (CUP 2023) 229–251; Stefan Arora-Jonsson, Nils Brunsson and Raimund Hasse, 'A New Understanding of Competition' in Stefan Arora-Jonsson and others (eds), *Competition: What It Is and Why It Happens* (OUP 2021) 16–19.

[17] Florian Ries, 'Population Ecology: How the Environment Influences the Evolution of Organizations' in Joachim A Koops and Rafael Biermann (eds), *Palgrave Handbook of Inter-Organizational Relations in World Politics* (Springer) 157–168.

[18] Kenneth Abbott, Jessica Green and Robert Keohane, 'Organizational Ecology and Organizational Strategies in World Politics' (2013) <https://www.belfercenter.org/sites/default/files/pantheon_files/files/publication/dp57_abbott-green-keohane.pdf> accessed 24 May 2025, discussion paper, prepared for the Harvard Project on Climate Agreements.

[19] ibid.

often blurred, as well as the fact that international organizations struggle to gain dominance and recognition.[20] In other words, resources determine the outcome of competition and ultimately decide whose voice is heard and who gets to make rules over what.[21]

Another prominent study using organizational ecology theories is the inter-organizational analysis conducted by Susan Block-Lieb and Terence Halliday. After reviewing the practices of three global trade law organizations, the authors notice[22]:

> [A]ctors incipiently and sometimes overtly compete with each other to enter an ecology. Once inside the ecology, actors compete for recognition, for influence, and for capacities to shape and adapt to implementation of the global law. … Not least, actors compete over their respective claims to jurisdiction over the problem that brought them into the ecology at the outset.

In addition to the above theoretical developments, empirical research has also endeavoured to identify the strategies formed along with the competition process in different groups of international organizations. For instance, in the climate governance domain, organizations expand their activities to dominate the ecology and exclude rivals.[23] The 'turf war' between UNCITRAL, UNIDROIT, and UNCTAD over competing insolvency standards has led to the formulation of several meta-texts.[24] Two other studies, although ones not grounded on organizational ecology theories, also demonstrate similar evidence of inter-organizational rivalry. It has been found that, during the time of legitimacy crises, the G8 and IMF, respectively, employed communication strategies and adjusted policy priorities in order to prevail in constituency competition.[25] As an extension of the direct rivalry between the European Union and NATO, European policy entrepreneurs have pushed for strategic operations with the aim of decoupling and becoming autonomous from NATO's influence in the security sector.[26]

In sum, both theoretical and empirical developments in organizational theories have demonstrated that competition is a fundamental principle of inter-organizational relationships. This signifies great potential for its application to international organizations in general, and since ICTs are one type of international organizations, these works in fact provide preliminary evidence for inter-court competition.

Competition between ICTs

Although the idea of competition has frequently appeared in the ICT literature, it has rarely been treated from an ecological perspective. The commonly known form of competition among ICTs is jurisdictional competition, which refers to a situation where courts and

[20] Jonas Tallberg and Michael Zürn, 'The Legitimacy and Legitimation of International Organizations: Introduction and Framework' (2019) 14 Review of International Organizations 581; Julia C Morse and Robert O Keohane, 'Contested Multilateralism' (2014) 9 Review of International Organizations 385; Fariborz Zelli, 'Effects of Legitimacy Crises in Complex Global Governance' in Jonas Tallberg, Karin Bäckstrand and Jan A Scholte (eds), *Legitimacy in Global Governance: Sources, Processes, and Consequences* (OUP 2018) 169.

[21] Henning Schmidtke and Tobias Lenz, 'Expanding or Defending Legitimacy? Why International Organizations Intensify Self-Legitimation' (2024) 19 Review of International Organizations 753; David A Lake, 'The Organizational Ecology of Global Governance' 27 European Journal of International Relations 345, 351.

[22] Susan Block-Lieb and Terence C Halliday, *Global Lawmakers* (CUP 2017) 39.

[23] Abbott, Green and Keohane (n 18) 23.

[24] Block-Lieb and Halliday (n 22) 357–367.

[25] Jennifer Gronau and Henning Schmidtke, 'The Quest for Legitimacy in World Politics—International Institutions' Legitimation Strategies' (2015) 42 Review of International Studies 535, 540.

[26] Joachim A Koops, 'NATO's Influence on the Evolution of the EU' in Oriol Costa and Knud Erik Jørgensen (eds), *The Influence of International Institutionalism on the EU* (Palgrave Macmillan 2012) 174–179.

tribunals with overlapping jurisdictions have to compete for business and attract litigants.[27] There are two major debates around jurisdictional competition: first, whether competition is normatively desirable to the international legal order,[28] and secondly, depending on the answer to the first question, what the available devices to regulate or promote competition are.[29] However, the role of environment and agency remains obscure in such discussions. The use of the term 'competition' itself is predicated on the assumption that institutional interest and agency have an impact on ICTs' behaviours, but most of the discussion is focused on normative questions and overlooks why and how competition happens.

Only recently have scholars started to understand ICTs from an ecological standpoint and interpret ICTs' behaviours in relation to the broader environment in which they are embedded. Similar to scholars of organizational ecology, international lawyers adopt a spatial view of the social world and posit ICTs in an unsettled ecological environment.[30] They realize that ICTs face the challenge to 'establish their authority within a congested space of competing institutions and entrenched legal understandings', so in addition to tangible resources, they are also solicitous in order to boost their standing, prestige, and influence in the international community.[31] As Mikael R Madsen claims, in the face of such an environment, ICTs develop legitimizing measures to fight for 'structural supremacy'.[32] Informed by this theoretical change, a new wave of ICT studies dealing with legitimization and authority claims has gradually come into existence.[33] It is precisely the expanding literature on legitimization that draws our attention to the notion of competition. To take an example, Michael Barnett and Martha Finnemore find that international courts take competitive actions to encourage deference from other actors as a source of authority.[34] In a similar sense, Allan Tatham claims that the main purpose of judicial diplomacy by many international courts is 'competition for intentional influence and legitimacy'.[35]

[27] Shany (n 6); Chester Brown, 'Investment Treaty Tribunals and Human Rights Courts: Competitors or Collaborators?' (2016) 15 Law & Practice of International Courts and Tribunals 287; Makane M Mbengue, 'The Settlement of Trade Disputes: Is There a Monopoly for the WTO' (2016) 15 Law & Practice of International Courts and Tribunals 207.

[28] Jacob K Cogan, 'Competition and Control in International Adjudication' (2007) 48 Virginia Journal of International Law 411; Andrea K Bjorklund, 'Private Rights and Public International Law: Why Competition Among International Economic Law Tribunals Is Not Working' (2007) 59 Hastings Law Journal 241; Chiara Giorgetti, 'Horizontal and Vertical Relationships of International Courts and Tribunals—How Do We Address Their Competing Jurisdiction?' (2015) 30 ICSID Review—Foreign Investment Law Journal 98.

[29] Jose Magnaye and August Reinisch, 'Revisiting Res Judicata and Lis Pendens in Investor-State Arbitration' (2016) 15 Law & Practice of International Courts and Tribunals 264; Mathias Forteau, 'Regulating the Competition between International Courts and Tribunals: The Role of Ratione Materiae Jurisdiction under Part XV of UNCLOS' (2016) 15 Law & Practice of International Courts and Tribunals 190; Giorgetti ibid; Pierre-Marie Dupuy, 'Competition among International Tribunals and the Authority of the International Court of Justice' in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest* (OUP 2011) 826.

[30] Mikael Rask Madsen argues that the socio-political factors, which cause behavioural or structural changes in ICTs, are indicative of evolution. Harlan et al. Interpret ICTs as actors inside an ecosystem. Mikael Rask Madsen, 'The Legitimization Strategies of International Judges: The Case of the European Court of Human Rights' in Michal Bobek (ed), *Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts* (OUP 2015) 261–262; Harlan Grant Cohen and others, 'Legitimacy and International Courts—A Framework' in Nienke Grossman and others (eds), *Legitimacy and International Courts* (CUP 2018) 19–20.

[31] Karen J Alter, Laurence R Helfer and Mikael Rask Madsen, 'International Court Authority in a Complex World' in Mikael R Madsen, Karen J Alter and Laurence R Helfer (eds), *International Court Authority* (OUP 2018) 5.

[32] Rask Madsen (n 30) 266.

[33] Rask Madsen (n 30); Mikael Rask Madsen, 'Sociological Approaches to International Courts' in Karen Alter, Cesare PR Romano and Yuval Shany (eds), *Oxford Handbook of International Adjudication* (OUP 2014) 408–411; Ingo Venzke and Armin von Bogdandy, *In Whose Name? A Public Law Theory of International Adjudication* (OUP 2014) 207–216; De Silva (n 1); Squatrito (n 1); Theresa Squatrito, 'International Courts and the Politics of Legitimation and De-Legitimation' (2018) 33 Temple International & Comparative Law Journal 298; Zuzanna Godzimirska, 'The Legitimacy of the International Court of Justice from the Vantage Point of UN Members' (2023) 26 Max Planck Yearbook of United Nations Law Online 173; Zuzanna Godzimirska, 'The Legitimation of International Adjudication' (2024) 15 Journal of International Dispute Settlement 35.

[34] Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press 2004) 5.

[35] Allan F Tatham, '"Off the Bench but Not off Duty": The Judicial Diplomacy of the Court of Justice' [2017] European Foreign Affairs Review 303, 305.

A common analytic dimension shared by the works outlined above is that they tend to construct a two-sided relationship, either between ICTs and states or between ICTs and the general public. This way of conceiving ICT behaviours is unsurprising, as states and public audiences are indeed the direct stakeholders for ICTs. However, what has been missing from the discussion so far is the role of other ICTs in the ecological struggle. My contention is that another analytic dimension—inter-court relationships—should be added to the picture. Above all, if we acknowledge that the goal of strategic measures is to obtain 'structural supremacy' in the international judicial ecology, gaining symbolic resources alone does not guarantee this goal. Even if an ICT has more resources, but other courts have accumulated support to the same extent and at the same pace, their relative positions within the ecological structure remain unchanged. Therefore, I further contend that ICTs have to engage in inter-court competition in order to obtain 'structural supremacy'.

Inter-court competition means that ICTs employ strategic measures not only oriented towards states and the general public but also towards other ICTs. It is an ecological process, which consists of a continuous struggle among courts over resources, both tangible and intangible, that ultimately leads to a social hierarchy within the ICTs community. The form of competition can be both direct and indirect. As shown by Stefan Arora-Jonsson and others, competition happens when 'a focal actor desires something that this actor perceives as scarce, because of a belief that other actors have the same desire'.[36] In this sense, competition does not necessarily induce direct interaction among actors; rather, it may induce unilateral actions intended for third parties who control desirable objects.[37] Financial resources, reputation, authority, legitimacy, social status, etc can all become objects of competition.[38] For ICTs, competitive actions can range from direct interactions, for example, communications between the two courts, to less direct interactions, for example conflicting interpretations of the same legal issue, and to indirect interactions, for example, demonstrating superiority over other ICTs in front of third-party stakeholders. Additionally, since ICTs in this article are broadly understood as international dispute settlement mechanisms that are established to interpret law and render decisions,[39] inter-court competition happens not necessarily among permanent courts but rather among other dispute settlement fora.

My definition of inter-court competition also allows an analytic distinction between this article and the existing studies on ICTs. The observable implications of inter-court competition are different from those of legitimization. Legitimization literature assumes that 'structural supremacy' can be achieved through accumulating resources, such as legitimacy and authority, whereas inter-court competition suggests that this goal is achievable via establishing superiority, which is based on the presupposition that one's gain implies someone else's loss. In analysing the authority of ICTs, Fuad Zarbiyev observes that the ICJ has adopted an 'authority trading' strategy to retain and strengthen its own authority over specialized international courts.[40] To my knowledge, his article has been the only work that utilizes a perspective of inter-court relationships to understand ICTs' authority. My article extends his idea of authority competition to a broader range of resources and tries to generalize competition as an inextricable part of the international judicial ecology. Moreover, this article is distinct from the rest of the literature because of the materials it intends to analyse. While the legitimization literature has found evidence of ICJ's strategic measures in judicial

[36] Arora-Jonsson, Brunsson and Hasse (n 16) 12.
[37] ibid 10.
[38] ibid 12.
[39] Cesare PR Romano, Karen J Alter and Yuval Shany, 'Mapping International Adjudicative Bodies, the Issues, and Players' in Cesare PR Romano, Karen J Alter and Yuval Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2014) 5.
[40] Zarbiyev (n 6).

activities,[41] whether non-adjudicative activities have the same strategic purpose is yet to be thoroughly examined.

To summarize, this article subscribes to the rich theoretical and conceptual materials offered by organizational ecology theories. In applying ecological theories to international courts, this article shares with political scientists the proposition that international courts are rational actors who have the capacity to mobilize resources in pursuit of self-interest. More importantly, this article affirms the conclusion reached by recent research on ICT authority and legitimization that international courts accumulate social resources in relation to key environments, but highlights the fact that because of the varied resource possession, ICTs are situated at different positions within the ecological structure. By building upon these theoretical developments, this article reveals another dimension of the analysis, that is to examine the ICT dynamics through an inter-court perspective. In empirically investigating ICJ presidential speeches, this article draws attention to the patterns and practices of inter-court competition that have been overlooked.

Before proceeding, a few caveats should be mentioned. Even in the original Darwinian theory, individuals are not necessarily antagonistic and competitive with each other.[42] There are alternative ways to construe the social world.[43] For some ecologists, 'the community was not conceived primarily in terms of competition, but in terms of adaptation and interrelated mutual dependence'.[44] Similar doubts have been raised by scholars studying international relations. 'Natural selection, the mechanism of evolution, is inapplicable to international relations because states do not reproduce and few states that fail to adapt are swallowed up by competitors', Richard Ned Lebow critically questions the applicability of Darwinism to international relations.[45] I acknowledge that competition is one of the many ways to interpret non-adjudicative activities. Yet, the purpose of this article is not to claim that competition flawlessly captures all the ICJ practices. What I intend to say is that analysing non-adjudicative practices through inter-court competition gives us a plausible explanation about the courts' behaviours that have been largely neglected before. Regarding the applicability of organizational ecology theories to the world of ICTs, I agree with Ned Lebow that the international community is not always a 'live or die' situation, but disagree with him on the grounds that the outcomes of competition are not as simple as he understands. Competition leads to various results. It may cause a monopoly structure where other competitors disappear from the ecology; equally, it may also re-organize the social structure of the ecology, in which some actors move to privileged positions while others relocate to lower ranks due to competition. The latter is more likely to be the case for inter-court competition.

What are non-adjudicative activities?

As many scholars succinctly put it, dispute settlement is by no means the only function of ICTs.[46] Precisely on this multi-facet role, questions have been raised, such as how we divide

[41] Zarbiyev (n 6); Godzimirska, 'The Legitimation of International Adjudication' (n 33).

[42] Crook (n 8) 1–5.

[43] ibid.

[44] Ludwig Trepl, 'Competition and Coexistence: On the Historical Background in Ecology and the Influence of Economy and Social Sciences' (1994) 75–76 Ecological Modelling 99.

[45] Ned Lebow (n 9) 26.

[46] Gleider I Hernández, The International Court of Justice and the Judicial Function (OUP 2014) 1–9; José E Alvarez, 'What Are International Judges for? The Main Functions of International Adjudication' in Cesare PR Romano, Karen J Alter and Yuval Shany (eds), *The Oxford Handbook of International Adjudication* (OUP 2013) 158; Armin von Bogdandy and Ingo Venzke, 'On the Functions of International Courts: An Appraisal in Light of Their Burgeoning Public Authority' (2013) 26 Leiden Journal of International Law 49. For a detailed summary of this point, see David D Caron, 'Fifth Annual Charles N. Brower Lecture on International Dispute Resolution: The Multiple Functions of International Courts and the Singular Task of the Adjudicator' (2017) 111 Proceedings of the Annual Meeting 231, 232.

judicial and non-adjudicative activities, why ICTs increasingly engage in such activities, whether they really correspond to the ICTs' mandate, etc. Despite more open acknowledgement of their importance, the definition of non-adjudicative activities remains unclear in scholarship. Scholars have previously used several terms as equivalent to 'non-adjudicative activities', including 'extra-judicial activities',[47] 'non-judicial activities',[48] and 'off-the-bench' events,[49] but these terms are often used without clear explanations about their meanings.

On the other hand, by using these terms to describe the practices, some features of non-adjudicative activities have already crystallized. For instance, in defining judicial diplomacy, Theresa Squatrito identifies four features of non-adjudicative activities: (i) they are institutional activities, planned and organized by ICTs to represent the courts instead of judges themselves; (ii) the purpose of non-adjudicative activities is to claim authority and build relationships with external actors; (iii) they encompass a variety of practices carried out by ICTs; and (iv) this type of activity is different from the process of adjudication or legal interpretation.[50] For other scholars, the decisive factor of the definition is that non-adjudicative activities are exercised by a judge outside of the courtroom in their professional capacity.[51] This definition, with its focus on outside of courtroom activities, aligns with the meaning given in the dictionary.[52] While identification of non-adjudicative activities is traditionally rooted in its separation from courtroom activities, with the growing diversity of these activities, this description no longer captures the reality.

Indeed, the purpose and practices of non-adjudicative activities are becoming increasingly diverse. As Nicole De Silva noted, international courts often 'move beyond adjudication and their mandated activities to adopt policies and practices aimed at socializing actors in their legal regimes'.[53] In the early years of the African Court on Human and Peoples' Rights, the court launched a series of sensitization activities with governmental officials, national judges, civil societies, and the media, to increase its visibility in the region.[54] For the purpose of boosting institutional legitimacy, the Caribbean Court of Justice, for example, frequently organizes public events to highlight their commitment to the widely accepted values of the region, adherence to the mandates, and respect for transparent and fair processes.[55] By the same token, international criminal courts devised non-adjudicative activities in their struggle for state cooperation. The second chief prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) was able to bargain support for arrest plans through favourable media coverage.[56] Not surprisingly, then, the officials of the ICTY and the International Criminal Tribunal for Rwanda resorted to the techniques of persuasion in their statements and speeches on international fora, primarily to increase the prospects of state compliance.[57] Also through off-the-bench events, the International Criminal Court deliberately de-politicalized itself to gain popularity from the public.[58]

[47] De Silva (n 1) 295; Nicole De Silva, *How International Courts Promote Compliance: Strategies Beyond Adjudication* (OUP 2016) 93.

[48] Squatrito (n 1) 67.

[49] ibid.

[50] Squatrito (n 1) 66.

[51] Tom Ginsburg and Nuno Garoupa, 'Judicial Roles in Nonjudicial Functions' (2013) 12 Washington University Global Studies Law Review 755, 758.

[52] In Oxford English Dictionary 'extrajudicial' means activities 'lying outside the proceedings in court'.

[53] De Silva (n 1) 313.

[54] De Silva (n 1) 289.

[55] Squatrito (n 1).

[56] John Hagan, *Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal* (University of Chicago Press 2003) 109–116.

[57] Victor Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (CUP 2008) 10.

[58] Schwöbel-Patel (n 1) 1–5.

Consequently, diversity in practices and purposes calls for a more overarching definition of non-adjudicative activities. As we can see, authority and legitimacy claims do not necessarily dominate non-adjudicative activities; instead, other purposes, for example, visibility and media coverage, are evident enough in the practices. To take a more comprehensive view, they all point to the fact that non-adjudicative activities are utilized by ICTs to acquire diverse resources. Therefore, the definition should be adapted to reflect that fact.

Based on this understanding, non-adjudicative activities in this article are defined as a wide range of activities that are organized by ICTs but operate beyond the process of adjudication and legal interpretation. This definition, by and large, shares the features as described by Theresa Squatrito, while expanding her proposition on the purpose of non-adjudicative activities. She suggests that non-adjudicative activities are conducted to legitimize ICTs, especially given the fact that they are oriented towards the public.[59] Yet, if the legitimization purpose is kept in the definition, it will not be well-equipped to examine those non-adjudicative activities that are not necessarily directed at public audiences or for the purpose of cultivating legitimacy. Therefore, the definition proposed in this article does not limit non-adjudicative activities to one specific type of purpose, and by doing so, it intends to leave open the question of which purpose non-adjudicative activities serve and hence avoid the exclusion of other possible explanations.

RESEARCH DESIGN

Data and case selection

For this article, I use a data set of 54 speech transcripts available online, covering the ICJ presidential speeches from 1991 to 2022.[60] The first ICJ presidential speech to the UNGA was delivered by Judge Nagendra Singh in 1985,[61] and since 1991, it has become an established tradition that the ICJ president takes the floor in a plenary meeting during the General Assembly annual session.[62] Normally, the president addresses the General Assembly after the Court introduces its annual report, a document summarizing the activities of the Court over the past calendar year. According to one of the inaugurators of ICJ presidential speeches, Judge Robert Jennings, the reason for giving a speech to the General Assembly is that the 'UNGA had little knowledge or appreciation of the work of the Court' and there was a need to update the member states on the Court's latest work by offering a report and a speech every year.[63] As a custom, usually on the next day of his or her speech at the UNGA plenary meetings, the ICJ president also gives a speech to the General Assembly Sixth Committee. The audience of the Sixth Committee consists of legal advisors from foreign ministries, who are normally familiar with the activities of the Court; therefore, instead of introducing the work of the Court, the president chooses one specific topic on international law and initiates in-depth discussions with them. From 1991 to 2022, 32 speeches were delivered by ICJ presidents to the UNGA during the plenary meetings, and 22 speeches were delivered to the UNGA Sixth Committee.[64] Each speech lasts between 30

[59] Squatrito (n 1)

[60] For the sake of efficiency, this article only covers digitalised documents. The transcript of the ICJ presidential speech to the Sixth Committee of the UNGA in 2003 is not publicly available; therefore, this transcript is not included in the data set.

[61] Provisional Verbatim Record of the 50th Meeting: General Assembly, 40th Session, UN Doc. A/40/PV.50 (1985) 2–15.

[62] Provisional Verbatim Record of the 44th Meeting: General Assembly, 46th Session, UN Doc. A/46/PV.44 (1991).

[63] Christine Jennings, *Robbie: The Life of Sir Robert Jennings, 1913-2004* (Troubador Publishing 2019) 410.

[64] ICJ presidential speeches became a tradition before the UNGA since 1991, whereas the first ICJ presidential speech before the Sixth Committee of the UNGA was delivered in 2000.

min to an hour, and it is usually followed by an exchange of comments and questions between the audience and the president.[65]

My choice of ICJ presidential speeches as research materials is based on two considerations. First, ICJ presidential speeches are a typical institutional activity that may produce great influence. Since the goal of this article is to examine the Court's institutional behaviours, it is important to ensure that the research materials are of an institutional nature. As Judge Bedjaoui once acknowledged, he acts as the 'intermediary' for the Court when speaking before the General Assembly.[66] While we cannot be certain whether the speeches are always prepared by the presidents themselves or if there are other staff members involved in the drafting process, Judge Jennings' words suggest that presidential speeches are carefully drafted statements that aim to win appreciation for the Court.[67] In either case, delivering a speech before the UNGA is an activity that judges conduct in their official capacity; thus, it should be attributed to the Court rather than the judges themselves. Furthermore, as a matter of fact, the views expressed by the presidents during the speech have been treated with extra authority. In the Report of the International Law Commission 2023, the Special Rapporteur cited a remark by the ICJ president to support his proposition that the general principles of international law contribute to the coherence of the international legal system.[68] Notwithstanding the question of whether statements delivered by judges beyond their judicial capacity should be credited with such authority, the citation itself is a symbol of influence over the work of the International Law Commission. Secondly, the UNGA is a unique site for observing the interaction between the ICJ and other actors.[69] For the ICJ, this is an annual opportunity to address its key stakeholders. The UNGA is tasked to debate the ICJ annual report, approve the budget of the Court, elect judges, and request advisory opinions.[70] Therefore, the presidents may have incentives to lobby for institutional benefits during the UNGA meetings. For instance, it has been a recurrent topic of their speeches to justify an increased budget or invite more states to accept the jurisdiction of the Court.[71] Additionally, other international courts also present their annual reports and give speeches to the UNGA around the same time of the year.[72] In a broader sense, the presidential

[65] According to the official record of the plenary meetings, the presidential speeches were most of the time followed by comments and questions. However, since the meeting agenda varies from one year to another, sometimes, the comments may not start immediately after the speech.

[66] Mohammed Bedjaoui, The International Court of Justice: What Will Its Future Be? Statement by H.E. Judge Mohammed Bedjaoui, President of the International Court of Justice (General Assembly Fiftieth Session Plenary, 12 October 1995) 2, 3.

[67] Hugh Thirlway, 'The Drafting of ICJ Decisions: Some Personal Recollections and Observations' (2006) 5 Chinese Journal of International Law 15, 21; Jennings (n 63) 410.

[68] 'Report of the International Law Commission, Seventy-Eighth Session', (2023) Supplement No 10 (A/78/10) at footnote 52.

[69] The benefits of using the statements before the UNGA has been discussed by Kentikelenis and Voeten. See Alexander Kentikelenis and Erik Voeten, 'Legitimacy Challenges to the Liberal World Order: Evidence from United Nations Speeches, 1970–2018' (2020) 16 Review of International Organizations 721, 725.

[70] Godzimirska, 'The Legitimacy of the International Court of Justice from the Vantage Point of UN Members' (n 33) 182.

[71] On the request for increased budget, see Mohammed Bedjaoui, Statement by Judge Mohammed Bedjaoui, President of the International Court of Justice, Made in Plenary Meeting of the General Assembly at Its 51st Session (1996) 9; Gilbert Guillaume, Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly (2000) 3; Ronny Abraham, Speech by H.E. Ronny Abraham, President of the International Court of Justice, on the Occasion of the Seventy-second session of the United Nations General Assembly (2017) 7. On the call for acceptance of jurisdiction, see Hisashi Owada, Speech by H.E. Judge Hisashi Owada, President of the International Court of Justice, to the Sixty-fourth Session of the General Assembly of the United Nations (2009) 6; Abdulqawi A Yusuf, Speech by H.E. Mr. Abdulqawi A. Yusuf, President of the International Court of Justice, on the Occasion of the Seventy-fourth Session of the United Nations General Assembly (2019) 10.

[72] An example is that the presidential speech and the introduction of annual reports of the ICC also happen around the same time of the year. See Report of the Secretary-General: Revitalization of the work of the General Assembly, UNGA A/77/900 (2023) 4; Report of the Secretary-General: Revitalization of the work of the General Assembly, UNGA A/76/903 (2022) 4; Schedule of General Assembly Plenary and Related Meetings 76th Session <https://www.un.org/en/ga/info/meet

speeches reach out to not only those present in the UNGA meetings, but also the groups that are not present in the room, such as officials from other international organizations and civil society, academics, and domestic audiences.[73] They constitute a shared audience for all international courts, and it has been observed that their views play a part in the perceived legitimacy of the courts.[74] In other words, the perceptions of a shared audience contribute to a court's social position in the ecology. The high-stakes nature of the UNGA meetings may prompt the presidents to be strategic in their speeches, especially for the purpose of pursuing a better social position. As such, ICJ presidential speeches offer important research materials for analysing the Court's behaviours from an inter-organizational perspective.

Note, however, that any case study is limited in the range of objects to which the conclusions can be applied, so choosing the ICJ case has its drawbacks. The ICJ's generalist nature makes it more endangered by proliferation than specialized or regional courts; thus, one may doubt the generalizability of this article's conclusions. Nevertheless, the objects of competition, as mentioned above, are not limited to cases but extend to other material resources (eg funding) and social capital (eg influence, recognition, publicity). Competition over the latter is not necessarily created by overlapping jurisdictions. For example, as will be shown later in 'The first pattern: frequent reference to other international judicial bodies' section, ICJ presidents repeatedly compared the Court's budget with other ICTs, even if their jurisdictions do not overlap. Additionally, as acknowledged at the beginning, there are many other fora where ICTs conduct non-adjudicative activities, so presidential speeches cannot represent the whole picture of non-adjudicative activities. Still, the goal of this article is to showcase at least part of the picture through presidential speeches, and more importantly, to serve as an invitation for future studies on non-adjudicative activities.

Thematic analysis

In searching for recurring features in the speech transcripts, this article employs thematic analysis, a method designed for inductively identifying themes from texts.[75] The thematic analysis in this article follows a six-stage process suggested by Braun and Clarke.[76] First, I familiarized myself with the data by undertaking a sample review of ten randomly selected transcripts from the corpus. During the sample review, I took notes of the essence-capturing words and sentences. Then, I read all the transcripts and generated the first list of codes. From the 24 initial codes, I highlighted several repetitions and collated the codes associated with similar ideas. Once the data were coded, I started to search for themes and provisionally identified five themes that allowed the codes to be organized in a logical manner.[77] Given that they are provisional and subject to change at a later stage, I began another round of reading to revise and refine the themes. At this point, I realized that the provisional themes come together to form a higher theme that captures the central idea—inter-court competition. As a result, the themes are organized hierarchically, with three subthemes supporting

ings/76schedule.shtml> accessed 28 February 2025; Schedule of General Assembly Plenary and Related Meetings 75th Session <https://www.un.org/en/ga/info/meetings/75schedule.shtml> accessed 28 February 2025; Schedule of General Assembly Plenary and Related Meetings 74th Session <https://www.un.org/en/ga/info/meetings/74schedule.shtml> accessed 28 February 2025.

[73] For a discussion on different audiences that pay attention to the UNGA debates, see Godzimirska, 'The Legitimacy of the International Court of Justice from the Vantage Point of UN Members' (n 33) 185; Kentikelenis and Voeten (n 69) 726.

[74] Godzimirska, 'The Legitimacy of the International Court of Justice from the Vantage Point of UN Members' (n 33).

[75] Stephanie Riger and Riger Sigurvinsdottir, 'Thematic Analysis' in Leonard A Jason and David S Glenwick (eds), *Handbook of Methodological Approaches to Community-Based Research: Qualitative, Quantitative, and Mixed Methods* (OUP 2015) 33.

[76] Virginia Braun and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (SAGE 2013) 201–273.

[77] The five provisional themes are: budget request, reference to other courts, criticisms against proposals of establishing new courts, call for acceptance of the jurisdiction of the Court, and identity claims.

one higher theme. To make sure that the codes in each subtheme fit together and that they concisely capture the dimensions of the theme, I read the transcripts again and sketched a thematic map that describes the relationship between the theme and subthemes (Table 1).[78] After the theme and subthemes were identified, I started to interpret each subtheme and explained how they fit into the idea of competition. For this stage, I mainly used the qualitative data to explain both the subthemes and overall theme; however, as the next section shows, I also used quantitative information to expand on my qualitative findings.[79] For example, I calculated how many times certain terms and phrases appeared over this 31-year period. Upon completion of the analysis, I carried out the last round of reading to double-check whether the analyses are clearly supported by data, and I subsequently corrected a few minor errors.

I view thematic analysis as valuable to this article in two ways: rich access to meanings and flexibility. Like other qualitative methods, thematic analysis is 'more able to look at nuances and contradictions'.[80] It is particularly useful for investigating behavioural and linguistic data, because the value of the data set often stems from its meanings, conditions, and contexts. This is the case for ICJ presidential speeches. The phrases that they use and the ways that they communicate are so diverse that we cannot get a rich interpretation without relating the transcripts to other factors, for example, the ICJ judicial proceedings, the history of the Court, and the audience at the UNGA. Another reason for the use of thematic analysis is flexibility in generating hypotheses. Thematic analysis does not formulate hypotheses beforehand, as is often the case in other research methods. The strength of this method is that it is not bound by pre-existing theories, thereby permitting exploratory work in under-theorized areas.[81] After familiarizing myself with the data, I noticed that several features in the transcripts cannot be soundly explained by the existing theories of non-adjudicative activities. Consequently, I decided to use thematic analysis to inductively develop a new explanation of the observable patterns in ICJ presidential speeches.

OBSERVABLE PATTERNS IN ICJ PRESIDENTIAL SPEECHES

As shown in the thematic map (Table 1), inter-court competition is a conclusion drawn inductively from three observable patterns in ICJ presidential speeches. In the first pattern, ICJ presidents are found to have made frequent references to other ICTs, and the content of these references serves multiple institutional purposes of the Court. This pattern coincides with one key characteristic of inter-court competition outlined in 'Competition between ICTs' section: the fact that one focal court targets other courts in the ecology. In particular, the presidents' efforts to deter the creation of new competitors and to combine pleas for resources with inter-court referential narratives demonstrate strong evidence of inter-court competition. The second pattern points to the evidence of continuous efforts to portray the Court's superior identity. The findings that the ICJ intends to borrow authority from its parent organization as well as from moral principles concur with the existing theories on legitimization and claims to authority, but the point is that the ICJ claims superiority over other ICTs along with its legitimacy and authority claims. The latter cannot be explained without

[78] Riger and Sigurvinsdottir (n 75) 35.

[79] It has been argued that the distinction between quantitative and qualitative is arguably a blurred line. See notes in Kimberly A Neuendorf, 'Content Analysis and Thematic Analysis' in Paula Brough (ed), *Advanced Research Methods for Applied Psychology* (Routledge 2019) 213–223.

[80] Nancy Pistrang and Chris Barker, 'Varieties of Qualitative Research: A Pragmatic Approach to Selecting Methods' in H Cooper, PM Camic, DL Long, AT Panter, D Rindskopf and KJ Sher (eds), *APA Handbook of Research Methods in Psychology*, vol 2 (American Psychological Association 2012) 6.

[81] ibid.

Table 1. Thematic map.

Theme	⟵ Subthemes ⟵	Examples of codes under the subthemes
Inter-court competition	Frequent reference to other ICTs	• There is of course room for some more specialized or regional tribunals. But let it not be forgotten that, exactly as in domestic court hierarchies, the principal judicial organ has jurisdiction in all matters; for in the end, the fabric of an effective law must be seen to be one and undivided, and universal in its application.[a] • No new international court should be created without first questioning whether the duties which the international legislator intends to confer on it could not be better performed by an existing court.[b]
	Enhancing the Court's identity	• In performing its dispute resolution function, the Court, which embodies the principle of equality of all before the law, acts as guardian of international law, and ensures the maintenance of a coherent international legal order.[c] • The authoritative nature of ICJ judgments is widely acknowledged.[d]
	Advertising for environmental disputes	• The Court's practice is equally forward-looking as regards the introduction of new modes of producing evidence, thereby embracing new technology and innovative ways of establishing factual records.[e] • These are the major contributions of the Court's jurisprudence to the field of international environmental law. Undoubtedly, there are still questions that remain unanswered. … For now, however, I believe that the Court's contribution has already significantly clarified the regime applicable to inter State relations in the field.[f]

[a] Provisional Verbatim Record of the 44th Meeting: General Assembly, 46th Session, UN Doc. A/46/PV.44 (1991).
[b] Gilbert Guillaume, Speech by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the General Assembly of the United Nations (2001) 7.
[c] Jiuyong Shi, Speech by Judge Shi Jiuyong, President of the International Court of Justice, to the General Assembly of the United Nations (2003) 5.
[d] Rosalyn Higgins, Speech by H.E. Judge Rosalyn Higgins, President of the International Court of Justice to the General Assembly of the United Nations (2006) 7.
[e] Peter Tomka, Speech by H.E. Judge Peter Tomka, President of the International Court of Justice, to the Sixth Committee of the General Assembly (2014) 7.
[f] Ronny Abraham, Speech by H.E. Mr. Ronny Abraham, President of the International Court of Justice, to the Sixth Committee of the United Nations General Assembly (2016) 8.

adding inter-court competition to the picture. Finally, the third pattern that the Court advertises for environmental disputes again constitutes a typical competitive action. It illustrates not only the ICJ's intention to establish itself as the key player in environmental disputes but also the tension between the ICJ and other specialist courts over this new battlefield.

Overall, despite divergence in form and targets, all three patterns correspond to the characteristics of inter-court competition. The rest of this section will substantiate this argument with detailed evidence and further elaborate on its connection with inter-court competition.

An early episode of inter-court competition

In October 2000, ICJ President Judge Gilbert Guillaume devoted his entire speech before the Sixth Committee of the UNGA to the issue of proliferation of international courts and tribunals.[82] In the speech, he named a few newly established ICTs and warned member states that continued proliferation of international courts could lead to 'unfortunate consequences'.[83] In particular, he noted: 'The proliferation of courts has created a whole range of other possibilities, and in a sense opened a way to a form of inter-institutional "*competition*".'[84] While at this time many international lawyers started to caution against judicial proliferation, the term 'competition' itself had not been widely used to describe the relationships between international courts. What makes his speech remarkable is that he envisaged that the ICJ could engage in competition with other international courts in the event that proliferation should continue in the future. In this speech, he did not directly claim that there was ongoing competition among international courts but merely predicted the possibility. As anyone could imagine, standing on the rostrum of the world's foremost forum and speaking on behalf of the principal judicial organ of the UN, it was not politically prudent for him to boldly situate the most consecrated place of global justice in competition with other organizations.

The successors of Judge Guillaume did not use the term 'competition' in later presidential speeches, but the evidence of inter-court competition can be traced on numerous occasions. Indeed, after a thorough analysis of the transcripts, it can be seen that inter-court competition informs the tone of ICJ presidential speeches. Three patterns derived from the presidential speeches coincide with the characteristics of competition, particularly in terms of referential framework, targets of competition, and competing strategies.

The first pattern: frequent reference to other international judicial bodies

Competition relationships exist when 'a focal actor envisions competitors and utilizes a personal understanding of these competitors as a frame of reference when making choices about social action'.[85] Despite a lack of any formal working relationship between the ICJ and other ICTs, ICJ presidents have frequently referred to other international judicial bodies during their annual speeches. Figure 1 illustrates the percentage of speeches that mentioned other ICTs. Among the 54 surveyed transcripts, 31 (57 per cent) of them explicitly mentioned at least one of the ICJ's counterparts, and 10 (19 per cent) of them discussed the proposal to establish new international courts and the phenomenon of proliferation. In previous studies, scholars found that the references made by the ICJ to other ICTs in judgments are scarce.[86] My findings regarding ICJ presidential speeches contrast with these observable patterns in judicial activities. Moreover, considering the fact that each time the president has only

[82] Gilbert Guillaume, Speech by Judge Gilbert Guillaume to the Sixth Committee of the General Assembly of the United Nations (2000).

[83] ibid 2.

[84] ibid 3 (emphasis added).

[85] Arora-Jonsson, Brunsson and Hasse (n 16) 11.

[86] Paula W Almeida, 'The Asymmetric Judicial Dialogue Between the ICJ and the IACtHR: An Empirical Analysis' (2020) 11 Journal of International Dispute Settlement 1; Erik Voeten, 'Borrowing and Nonborrowing among International Courts' (2010) 39 Journal of Legal Studies 547, 569; Nathan Miller, 'An International Jurisprudence? The Operation of "Precedent" Across International Tribunals' (2002) 15 Leiden Journal of International Law 483, 489; Gilbert Guillaume, 'The Use of Precedent by International Judges and Arbitrators' (2011) 2 Journal of International Dispute Settlement 5, 19.

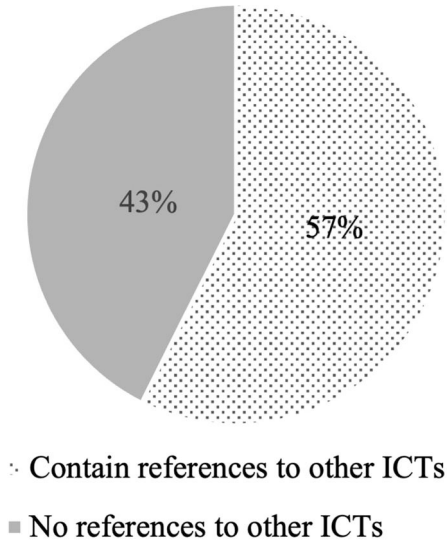

Figure 1. The percentage of speeches that contain or do not contain references to other ICTs.

approximately 30 min to speak before the UNGA, the high frequency of mentioning other international judicial bodies is striking.

This raises an important question: what is the attitude of the ICJ towards its counterparts? The sentiment included in the comments on the proposal to establish new international courts illustrates two features (Fig. 2). First, there is a mixed picture regarding the attitude towards the rise of new ICTs. Among the 10 statements that discussed the proposal to establish new international courts, seven statements expressed clear disapproval, two statements were partially positive, and one statement did not contain any sentiment either way. Secondly, the attitude of the ICJ towards newly established courts corresponds to the broader developments in the international judicial system. It is noticeable that ICJ presidents paid considerable attention to judicial proliferation between 1991 and 2009, though this focus gradually disappeared afterwards. In parallel, during this period there were criticisms directed at the unsuitability of the ICJ to address different types of disputes, thereby fostering political desire to establish specialized courts.[87] From 2010 onwards, however, we have seen a decline in enthusiasm to create new ICTs, not only because many envisioned ICTs had already come into existence, removing the need for further discussion on this topic, but also due to the challenges and scepticism facing ICTs in general.[88] This seems to further reveal that the ICJ does not operate in isolation but is informed by the changes in the international judicial ecology.

[87] For the criticisms directed at the ICJ, see Shany (n 6) 3–4. Regarding the proliferation of ICTs, see Joost Pauwelyn and Rebecca J Hamilton, 'Exit from International Tribunals' (2018) 9 Journal of International Dispute Settlement 679, 679; Thomas Buergenthal, 'Proliferation of International Courts and Tribunals: Is It Good or Bad?' (2001) 14 Leiden Journal of International Law 267, 267; Mikael Rask Madsen, 'Judicial Globalization: The Proliferation of International Courts' in Sabino Cassese (ed), *Research Handbook on Global Administrative Law* (Edward Elgar Publishing 2016) 282; also generally, Cesare PR Romano, 'The Proliferation of International Judicial Bodies: The Pieces of the Puzzle' (1998) 31 New York University Journal of International Law and Politics 709.

[88] Erik Voeten, 'Populism and Backlashes against International Courts' (2020) 18 Perspectives on Politics 407, 407; Laurence R Helfer and Anne E Showalter, 'Opposing International Justice: Kenya's Integrated Backlash Strategy against the ICC' (2017) 17 International Criminal Law Review 1; Karen J Alter, James T Gathii and Laurence R Helfer, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences' (2016) 27 European Journal of International Law 293; Pauwelyn and Hamilton (n 93) 679–680.

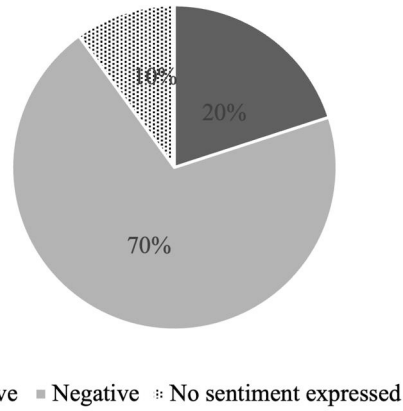

Figure 2. The percentage of speeches that express a particular sentiment towards the proposal to establish new ICTs.

As early as 1993, Judge Robert Jennings cautioned against the political willingness to proliferate specialized international courts and warned the audience that this tendency can raise 'interesting and difficult questions'.[89] Similar sentiments continued to appear in the subsequent speeches, but were interrupted in 1998 and 1999, at a time when the president of the ICJ seemed to have a more welcoming attitude to the newly established courts. However, in October 2000, when Judge Gilbert Guillaume was elected as the ICJ president, the attitude towards new courts changed again. He expressed strong criticism against the proliferation of international courts, and described the phenomenon as 'profoundly damaging to international justice', 'risks to the cohesiveness of international law', and that it could 'give rise to serious uncertainty'.[90] The sharp change of attitude seems unusual at first glance, but it is not difficult to understand if we relate it to the incidents that happened in the international judicial system at that time. In July 1999, the ICTY explicitly rejected the use of the ICJ's jurisprudence regarding the attribution test of state responsibility.[91] In theory, the ICTY is not obliged to follow the precedents of the ICJ; however, in the view of many international lawyers, this incident poses a threat to the authority of the World Court.[92] What likely concerned the ICJ was the existence from that moment on of two competing theories of attributing state responsibility. Therefore, when other courts adjudicate the same subject matter, ICJ precedents may not be treated as authoritative. In this context, it is natural for the ICJ to disapprove potential competitors so as to protect its own privileged position in the ecology.

Moreover, it is important to note that even though in two statements, ICJ presidents seemed positive about creating new international courts, their 'friendship with new courts' was conditional. For instance, in 1998, Judge Stephen Schwebel stressed that new actors should be welcomed to join the family of international adjudication 'in so far as their jurisdiction does not duplicate that of pre-existing courts'.[93] The underlying message is that the

[89] Provisional Verbatim Record of the 31st Meeting: General Assembly, 48th Session UN Doc. A/48/PV.31 (1993) 4.

[90] Guillaume, Speech by Judge Gilbert Guillaume to the Sixth Committee of the General Assembly of the United Nations (n 88); Gilbert Guillaume, Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly (n 71).

[91] *Prosecutor v Tadić*, Judgement, Case No IT-94-1-A, Appeals Chamber, 15 July 1999.

[92] Zarbiyev (n 6) 293, footnotes 10 and 11.

[93] Stephen M Schwebel, Address by H. E. Judge Stephen M. Schwebel, President of the International Court of Justice, to the General Assembly of the United Nations (1998) 1.

ICJ supports the idea of setting up new courts only if they do not act as competitors of the ICJ itself.

Competitive strategies not only rest on the measures to prevent potential competitors from entering the ecology, but also on the actions to catch up with competitors possessing advantageous resources. When ICJ presidents made pleas for financial support, the reasoning was frequently rooted in the fact that the ICJ did not receive the same amount of funding as its counterparts. From 2000 to 2022, 15 appeals for a budget increase were made during the speeches, and notably, nine of these requests were based on the fact that other ICTs were better financed than the ICJ.

> Example 1: The Court's annual budget is now slightly over 10 million US dollars. That is less than 1 percent of the Organization's budget, which is lower than the comparable percentage in 1946. *The budget should be compared with that of the criminal Tribunal for the former Yugoslavia*, nearly 100 million dollars for the year 2000, or roughly 10 times the Court's budget.[94]

> Example 2: The absence of clerks is judicially inefficient and this seems everywhere recognized. It is, in reality, astounding that *the International Court of Justice is the only senior international court without this form of assistance.* Each judge at the European Court of Justice is assisted by three law clerks. Each of the 16 judges at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda has one law clerk assigned to him or her … The International Criminal Court has provided one law clerk for each of its 18 judges.[95]

> Example 3: This is why the Court has proposed the institution of clerks assigned to individual judges, as is the case with national supreme courts in many countries, as well as *in many international judicial institutions* like the International Tribunal for the Law of the Sea (ITLOS), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Court (ICC).[96]

Needless to say, inter-court competition is not confined to financial resources, but rather extends to intangible resources, such as expertise, judicial techniques, and institutional recognition.[97] In this respect, the ICJ's attempt to obtain the power of issuing binding provisional measures is an illustration. The background is that soon after the ITLOS became operational and issued provisional measures in the cases *Saint Vincent and the Grenadines v Guinea* and *Southern Bluefin Tuna*,[98] the ICJ president realized that 'the main reason the applicant proceeded before the Law of the Sea Tribunal was the ready enforceability of the measures which it sought'.[99] In his view, provisional measures are the appealing factor that drives states to choose the Tribunal instead of the ICJ. Just one year later, the ICJ concluded in the *LaGrand case* that, in light of the object and purpose of the ICJ Statute, orders on

[94] Guillaume, Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly (n 71) 4 (emphasis added).

[95] Higgins (n 85) 6 (emphasis added).

[96] Hishashi Owada, Speech by H.E. Hishashi Owada, President of the International Court of Justice, to the Sixth Committee of the General Assembly (2009) 3 (emphasis added).

[97] Block-Lieb and Halliday (n 22) 36.

[98] *MIV 'SAIGA' (No 2) (Saint Vincent and the Grenadines v Guinea)*, Provisional Measures, Order of 11 March 1998, [1998] ITLOS Rep. 24; *Southern Bluefin Tuna (New Zealand v Japan; Australia v Japan)*, Provisional Measures, Order of 27 August 1999, [1999] ITLOS Rep. 280.

[99] Guillaume, Speech by Judge Gilbert Guillaume to the Sixth Committee of the General Assembly of the United Nations (n 88) 3.

provisional measures under Article 41 should have a binding effect.[100] At the General Assembly that same year, the president took an entire page of his speech to justify that the provisional measures at the ICJ are binding in nature, notwithstanding the fact that the legal effect of provisional measures was not explicitly clarified in its Statute.[101] The timing suggests that these events are hardly a mere coincidence. With ongoing inter-court competition in mind, it was reasonable for ICJ presidents to promote the Court as 'an attractive forum for cases involving requests for provisional measures'.[102] The binding nature of provisional measures was mentioned four times in the following years. In 2016, provisional measures were highlighted as a tool to settle environmental disputes,[103] and in 2021, the president disclosed that the Court had established an ad hoc committee to monitor the implementation of provisional measures.[104] Again, their carefully worded statements indicate that the Court has always been aware of the advantages of other courts and was anxious about outdoing its competitors.

The second pattern: enhancing the Court's identity

'Status derives not only from how well an organization performs, but also, fundamentally, from who or what an organization is.'[105] As developed in other competition studies, affiliation affects the actors' success in markets, because audiences evaluate an organization's actions differently depending on its identity as a member of a particular category.[106] Actors in competition may therefore strategically form a tie with high-status organizations to maintain or elevate their social status.[107] The second finding of this article is consistent with this observation. By searching for the terms associated with organizational status (eg agent, organ, interpreter, guardian), I find that ICJ presidents have repeatedly claimed special identity through affiliation with normative origins and moral principles.[108] Figure 3 illustrates the number of references to the ICJ's formal mandate prescribed in UN Charter Article 92—'the principal judicial organ of the United Nations'. In total, Article 92 was invoked 85 times, spread out in 37 transcripts. Over the past three decades, there were only 5 years when the presidents did not mention the formal mandate.

How the formal mandate was cited in the speeches is noteworthy. The first feature is that the ICJ has used the formal mandate as a bond between the Court and the audience. Linguistic studies suggest that establishing connections with the audience enhances comprehension and increases persuasiveness.[109] Like any other types of live presentations, ICJ presidential speeches are structured to evoke affinity and engagement with the audience. Given that the speeches are delivered to UN officials, by showing the bond between the Court and the UN, the speaker creates a sense of sharedness, where the Court is not speaking for itself

[100] *LaGrand Case (Germany v United States of America)*, Merits, Judgment of 27 June 2001, [2001] ICJ Rep. 466, paras 101–12.

[101] Guillaume, Speech by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the General Assembly of the United Nations (n 83) 3.

[102] Chester Brown, 'The Cross-Fertilization of Principles Relating to Procedure and Remedies in the Jurisprudence of International Courts and Tribunals' (2008) 30 Loyola of Los Angeles International and Comparative Law Review 219, 236.

[103] Abraham (n 87) 9.

[104] Donoghue (n 4) 6.

[105] Amanda J Sharkey, 'Categories and Organizational Status: The Role of Industry Status in the Response to Organizational Deviance' (2014) 119 American Journal of Sociology 1380, 1425.

[106] ibid.

[107] Michael Jensen, 'The Role of Network Resources in Market Entry: Commercial Banks' Entry into Investment Banking, 1991–1997' (2003) 48 Administrative Science Quarterly 466, 471.

[108] In this paper, the terms associated with organisational status are the phrases that describe the Court's position in a social system. See Michael Sauder, Freda Lynn and Joel M Podolny, 'Status: Insights from Organizational Sociology' 38 Annual Review of Sociology 267, 268.

[109] Hang Zou and Ken Hyland, 'A Tale of Two Genres: Engaging Audiences in Academic Blogs and Three Minute Thesis Presentations' (2021) 41 Australian Journal of Linguistics 131, 136.

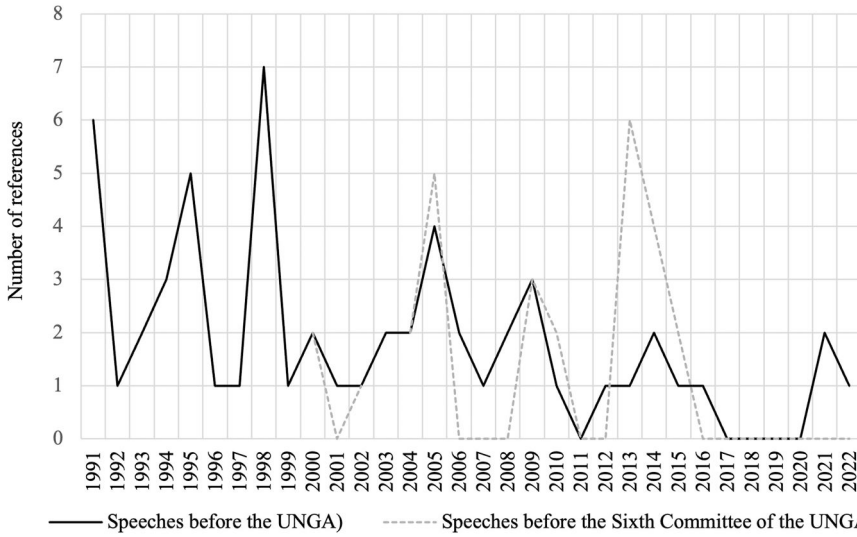

Figure 3. The number of references made by ICJ presidents to the Court's formal mandate prescribed in UN Charter Article 92.

but for the Court and the UN altogether. As indicated in the examples below, ICJ presidents conjured up an image where 'my' position is covertly translated to 'our' position.

> Example 4: To have the principal judicial organ of the United Nations more often employed with respect to the legal components of situations with which the United Nations is concerned would … also do immense good for international law. … *Such a development must be good not only for the Court but also for the United Nations* and for the authority and awareness of international law itself.[110]

> Example 5: When performing its role as the principal judicial organ of the United Nations, *the Court is always conscious of the purposes and principles of the Organization*, and is particularly aware of its responsibility to contribute to the maintenance of peace and security in every region of the world.[111]

> Example 6: The International Court is *the embodiment of the United Nations*, being its principal judicial organ: this authority accorded to the Court *has served the United Nations well over the years*.[112]

> Example 7: It is not the Court of any region, or any personalities. *It is the Court of the United Nations.*[113]

In recent years, while the number of references to the formal mandate has slightly dropped, the Court has more frequently tied its identity to some widely recognized principles of the

[110] Provisional Verbatim Record of the 44th Meeting: General Assembly, 46th Session. (n 60) 19–20 (emphasis added).
[111] Jiuyong Shi, Speech by H.E. Judge Shi Jiuyong, President of the International Court of Justice, to the General Assembly of the United Nations (2004) 7 (emphasis added).
[112] Higgins (n 85) 7 (emphasis added).
[113] ibid (emphasis added).

international community. For instance, the Court depicted itself as the 'agent for strengthening and upholding the rule of law',[114] 'an important agent of the rule of law at an international level'[115], the 'guardian of international law',[116] and 'entrusted with the peaceful settlement of disputes and the promotion of the international rule of law'.[117] As has been noted elsewhere, moral values are very common tools by which an actor seeking to govern a field can gain authority.[118] Resort to the rule of law and the concomitant use of the peaceful settlement of disputes are almost universally supported maxims in international society.[119] Therefore, the ICJ's intention to enhance its identity is also manifested in casting itself as the agent of these maxims.

The second feature appearing in the way that the Court portrays itself is that the Court employs comparative and superlative phrases to highlight its superior social position in the judicial community. In the same paragraph where the presidents claimed the Court to be the 'principal organ of the United Nations', comparative or superlative positioning was used 25 times to describe the Court's institutional status, which accounts for 29.1 per cent of the total uses of its formal mandate. Such comparative phrases bring competitive advantages concerning differentiation among competitors and quality of performance.[120] The message sent to the audience is that the ICJ is more worthy of social standing than others within the international judicial system and that other ICTs are not able to perform the same function as the ICJ. Along with the claim of superiority, ICJ presidents also provided justifications for their claims, such as the Court's comparatively long history, wide-ranging jurisprudence, and diverse representation of the world's legal systems.

> Example 8: The Court has thus been endowed with a special, and *the most senior, judicial position* within the United Nations system. As domestic legal systems have a supreme court, the international community has its principal judicial organ.[121]

> Example 9: To turn to the second way in which the Court acts as the principal judicial organ of the United Nations—and of the world community as a whole—it is *the most authoritative interpreter* of the legal obligations of States in disputes between them.[122]

In addition to comparative and superlative language, ICJ presidents also advocated a working relationship that recognizes the de facto superiority of the Court vis-à-vis other

[114] Peter Tomka, Speech by H.E. Judge Peter Tomka, President of the International Court of Justice, to the Sixth Committee of the General Assembly (2013) 6.

[115] Hisashi Owada, Speech by Judge Hisashi Owada, President of the International Court of Justice, to the Sixth Committee of the General Assembly (2010) 1.

[116] Jiuyong Shi, Speech by Judge Shi Jiuyong, President of the International Court of Justice, to the General Assembly of the United Nations (2003) 5.

[117] Peter Tomka, Speech by H.E. Judge Peter Tomka, President of the International Court of Justice, to the Sixth Committee of the General Assembly (n 118) 2.

[118] Deborah D Avant, Martha Finnemore and Susan K Sell, 'Who Governs the Globe?' in Deborah D Avant, Martha Finnemore and Susan K Sell (eds), *Who Governs the Globe?* (CUP 2010) 1, 13.

[119] Simon Chesterman, 'An International Rule of Law?' (2008) 56 American Journal of Comparative Law 331, 331, 343; Thomas Buergenthal, 'The Proliferation of Disputes, Dispute Settlement Procedures and Respect for the Rule of Law' (2006) 22 Arbitration International 495, 495; Cesare PR Romano, 'A Taxonomy of International Rule of Law Institutions' (2011) 2 Journal of International Dispute Settlement 241, 251; Jennifer Hillman, 'An Emerging International Rule of Law—The WTO Dispute Settlement System's Role in Its Evolution Commentaries' (2010) 42 Ottawa Law Review 269, 272; August Reinisch, 'The Rule of Law in International Investment Arbitration' in Photini Pazartzis and Maria Gavouneli (eds), *Reconceptualising the Rule of Law in Global Governance, Resources, Investment and Trade* (Bloomsbury Publishing Plc 2016) 291–295.

[120] Paul W Miniard and others, 'A Further Assessment of Indirect Comparative Advertising Claims of Superiority over All Competitors' (2006) 35 Journal of Advertising 53; William T Neese and Ronald D Taylor, 'Verbal Strategies for Indirect Comparative Advertising' (1994) 34 Journal of Advertising Research 56.

[121] Schwebel (n 99) 2 (emphasis added).

[122] ibid 3 (emphasis added).

competitors. Soon after the specialized courts came into being, the ICJ suggested a plan to institutionalize a working relationship with them. At first, the president suggested to the UNGA that this relationship should resemble the one between the Supreme Court and local courts in domestic judicial systems.[123] Having seen that this suggestion gathered no political support at that time, the Court proposed an alternative approach, in which specialized courts would be required to seek advisory opinions from the ICJ whenever their decisions had the possibility of conflicting with the jurisprudence of the Court.[124] The president envisaged that if this proposal was put into place, the ICJ would keep careful track of the judgments rendered by other courts, and in return, other courts would rely on the Court's jurisprudence to a substantial extent.[125] Although none of the above proposals materialized in the end, the intention behind them is telling: the president adamantly called on Member States to confer the Court a de facto supreme status in the system.

Taken together, the above examples show how the ICJ has built up a unique identity by portraying itself as a representative of a much stronger intergovernmental organization—the UN. Looking into the details, it is clear that the Court has strategically used its formal mandate to establish affinity with its constituencies and to manifest its superiority in the international judicial ecology. Moreover, it is noticeable that the trend over the recent years has gradually moved from reference to the Court's formal mandate to adherence to popular legal values.

The third pattern: advertising for environmental disputes

Competition may force existing actors to explore new opportunities for retaining their market share.[126] With the rise of multilateral legislation on environmental issues, environmental litigation provides a fertile soil for adjudicative bodies to expand their business, especially given the fact that currently there does not exist a specialized environmental court, nor has any court claimed dominance or monopoly in the field of international environmental law.[127] This renders environmental litigation a new battleground for international courts.[128] The third pattern uncovered from ICJ presidential speeches suggests that the Court has increasingly advocated its capability in tackling environmental issues. So far, environmental issues have been mentioned 109 times in the speeches. On average, the presidents mentioned this subject matter less than once each year in the first decade (1991–2000), while the number grew to 2.7 times in the second decade (2001–2010) and to 7.2 times in the third decade (2011–2020).

Two detailed discussions on the topic occurred in the speeches of 2002 and 2016. The major message of the 2002 speech was that even though the ICJ is regarded as a court of

[123] Provisional Verbatim Record of the 44th Meeting: General Assembly, 46th Session (n 62) 22; Provisional Verbatim Record of the 31st Meeting: General Assembly, 48th Session (n 93).

[124] Provisional Verbatim Record of the 39th Meeting: General Assembly, 54th Session (1999) A/54/PV.39 3; Guillaume, Address by H.E. Judge Gilbert Guillaume, President of the International Court of Justice, to the United Nations General Assembly (n 71) 6; Guillaume, Speech by Judge Gilbert Guillaume to the Sixth Committee of the General Assembly of the United Nations (n 88) 7.

[125] Guillaume, Speech by Judge Gilbert Guillaume to the Sixth Committee of the General Assembly of the United Nations (n 88) 4–5.

[126] Maria Bengtsson, Jessica Eriksson and Sören Kock, 'The Importance of Competition and Cooperation for the Exploration of Innovation Opportunities' in Pervez Ghauri, Amjad Hadjikhani and Jan Johanson (eds), *Managing Opportunity Development in Business Networks* (Palgrave Macmillan 2005) 49.

[127] Jorge E Viñuales, 'Second Thoughts? The International Adjudication of Environmental Disputes 30 Years Later' (2023) 3 Italian Review of International and Comparative Law 227; Pierre-Marie Dupuy, 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice Symposium Issue: The Proliferation of International Tribunals: Piecing Together the Puzzle' (1998) 31 New York University Journal of International Law and Politics 791, 795; Shany (n 6) 1.

[128] Alan Boyle, 'The Environmental Jurisprudence of the International Tribunal for the Law of the Sea' (2007) 22 International Journal of Marine and Coastal Law 369, 372.

general international law, it is nevertheless capable of adjudicating disputes related to specialized legal areas, especially environmental law. Judge Gilbert Guillaume first acknowledged that environmental law is a 'more recent area of the law' with the rapid emergence of new norms and standards, and meanwhile, it is associated with an enormous impact on human being, which deserves special expertise and extra attention by adjudicators.[129] He then contested the view that environmental law belongs to the 'province of specialists' and insisted that general concepts and judicial tools developed by the ICJ make itself a unique fit for adjudicating environmental disputes.[130] Notably, by concluding the speech, he underlined the role of the ICJ in the context of the proliferation of specialized courts[131]:

> [T]he International Court of Justice, principal organ of the United Nations, *retains an essential role. It alone can address all areas of the law* and accord them their proper place within an overall scheme. Its jurisprudence in the fields of human rights and environmental law seems to me to show that it has so far achieved this.

Echoing Judge Guillaume's advocacy was Judge Ronny Abraham's speech in 2016, which followed the conclusion of the case between Nicaragua and Costa Rica.[132] In the judgment, the Court offered an examination regarding the circumstances where states were required by general international law to carry out an environmental impact assessment and to consult the potentially affected states.[133] In front of the UNGA Sixth Committee, Judge Ronny Abraham used the judgment as a prelude to introduce the Court's contribution to environmental law, and subsequently devoted his entire speech to the subject matter.[134] In comparison to the speech in 2002, his speech ramped up the level of advertisement for the Court. It communicated two messages to the audience: first, the ICJ has been a pioneer in the progress of developing environmental law; secondly, the Court has sufficient judicial resources to hear more cases of an environmental character.[135] Judge Abraham emphasized that the Court has clarified substantive as well as procedural obligations in relation to environmental law in the judgment of Nicaragua and Costa Rica case. What is telling is that he also envisaged that the rules clarified by the Court 'will certainly *be relied upon*' in future environmental disputes.[136] This statement portrayed the Court as a pioneer in international environmental adjudication, implying that other judicial bodies will look up to the ICJ when they deal with similar environmental matters. Although he framed this part of the speech as an analysis of the Court's contribution to environmental law, his real impact was to brand the ICJ's role in developing environmental law. The remainder of his speech stands out as advertising the Court's readiness and competence to entertain environmental disputes. According to him, 'the Court has always shown itself to be willing to adapt its methods of work in order better to fulfil its role in connection with such disputes'.[137] The speech listed an array of tools in the hands of the Court to deal with environmental claims, including

[129] Gilbert Guillaume, Speech by Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations (2002).
[130] ibid.
[131] ibid (emphasis added).
[132] Abraham (n 87).
[133] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v Nicaragua) and Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v Costa Rica)*, Merits, Judgment of 16 December 2015, [2015] ICJ Rep 665, paras 100–20.
[134] Abraham (n 87).
[135] ibid 1.
[136] ibid 5 (emphasis added).
[137] ibid 8.

appointing experts, conducting site visits, and issuing provisional measures.[138] Interestingly, he also mentioned the Chamber for Environmental Matters, which was dissolved in 2006 due to a lack of cases, but claimed that even though this chamber was never used, the creation of the chamber itself is the very evidence of the Court's commitment to environment protection.[139]

In other speeches, environmental issues were discussed in a discursive manner, but they signalled similar ideas. For instance, after the first case on compensation for environmental damages was concluded, Judge Abdulqawi Yusuf underlined the Court's role as a pioneering institution that is always readily accessible with respect to environmental disputes. He pointed out: 'The Court therefore laid down, for the first time in a judgment by an international court, the principles and parameters to be applied in cases on compensation for environmental damages.'[140] Reading their statements closely, the language reminds us of advertising phrases in marketing practices, a strategy designed 'to inform and/or persuade members of a particular target market or audience about their products, services, organizations, or ideas'.[141] One might wonder whether this observation is still valid given the Court's hectic schedule today. It is true that at the present time the Court has a rather heavy caseload, particularly in comparison to the quiet period in the 1970s,[142] but that does not mean that the Court has less interest in environmental disputes. As Jorge Viñuales rightly points out, the broad and indeterminate character featuring environmental norms gives ICTs a major role to play in environmental issues.[143] In other words, adjudicating environmental disputes constitutes a means to expand governing capacity in the sector, and in the context of inter-court competition, the ICJ likely does not want to miss this opportunity.

CONCLUSIONS

The examination of ICJ presidential speeches has allowed us to look at the Court's non-adjudicative activities from an ecological perspective. This perspective is different from the conventional way of understanding international courts' behaviours, for it has shifted the focus from state–court or judges–court relationships to inter-court relationships. By doing so, this article maps three patterns in the speeches and argues that competition with other international judicial bodies is an important theme across ICJ presidential speeches.

Methodologically, this article is distinct from the extant literature in two respects. First, normative questions around competition are not the focus of this article, and instead, it tries to explain why and how competition happens through an empirical lens. Secondly, it differentiates from the current work on ICTs' legitimacy by situating courts in a dynamic and relative world. This article highlights the fact that the ICJ intentionally manifests itself as a *better* judicial institution than the others to obtain a privileged position in the ecology. Even though legitimization strategies have already been discussed in the existing scholarship, the

[138] ibid 8–10.

[139] ibid 8–9.

[140] Abdulqawi A Yusuf, The UN@75: International Law and the Future We Want, Speech of H.E. Mr Abdulqawi A Yusuf, President of the International Court of Justice, to the Sixth Committee (2020) 3.

[141] The three definitions of 'advertising' offered by the American Marketing Association all include the purpose of persuading the audience about their service. See Jef I Richards and Catherine M Curran, 'Oracles on "Advertising": Searching for a Definition' (2002) 31 Journal of Advertising 67.

[142] Gary L Scott and Karen D Csajko, 'Compulsory Jurisdiction and Defiance in the World Court: A Comparison of the PCIJ and the ICJ' (1988) 16 Denver Journal of International Law and Policy 377, 392; Eric A Posner, 'The Decline of the International Court of Justice' in Max Albert, Dieter Schmidtchen and Stefan Voigt (eds), *International Conflict Resolution* (Springer 2006) 114.

[143] Viñuales (n 133).

impact of demonstrating superiority as a means of engaging in competition has not yet been examined.

As for generalizability, the findings of this article demonstrate the potential of how inter-organizational dynamics can produce fruitful research outcomes in studies for other ICTs. As indicated in 'The second pattern: enhancing the Court's identity' section, ICJ presidents made use of comparative language to depict the Court's superior identity. In fact, this practice is not unique to the ICJ but is prevalent in the broader universe of ICTs. The ITLOS president once stated that, in comparison to the ICJ, the Tribunal is 'a more specialized legal body' of special expertise and is better equipped for the 'complex technical issues in the law of the sea'.[144] Just last year, in the 79th session of the UNGA, the vice president of the ITLOS devoted a significant portion of her speech to briefing the State Parties about the Tribunal's advisory opinion on climate change.[145] As she states, '[t]his is the first time that an international judicial body has identified States Parties' obligations to combat climate change within the framework of the United Nations Convention on the Law of the Sea', and more specifically, 'the Advisory Opinion of the Tribunal has already been hailed as a landmark ruling'.[146] Her statement again confirms what we have found in ICJ presidential speeches, namely that ICTs are now competing for leadership in environmental disputes. Furthermore, these examples leave room for expanding the empirical investigation beyond the courts and tribunals to other dispute settlement mechanisms. For instance, the WTO Agreement and regional trade agreements provide similar dispute settlement proceedings. A hypothetical case is that the dispute settlement mechanisms under the USMCA and the WTO may develop a competing relationship over their attractiveness. Thus, whether there are examples of one mechanism outdoing the other is a question worth asking.

In addition to competition, the theoretical framework of this article can be applied to analyse other types of inter-court relationships, such as cooperation and collaboration. A recent book by Giorgetti and Pollack sheds light on the practices of international courts from this angle.[147] It finds that international courts learn and borrow from each other on both procedural law and substantive law.[148] Surprisingly, little has been written on how international courts cooperate via non-adjudicative activities. There are abundant practices of this form of cooperation. For instance, it is a long-existing custom that the judges of the ICJ and the ITLOS pay visits to each other every year.[149] Another relevant example is the informal system of communications among judges at the ICJ, the ICTY, and the ICC since 2006.[150] Research on international courts is used to concentrate on what judges do on the bench, but it might be time to realize the importance of off-the-bench activities.

The conclusions of this article are based on a thematic analysis of the speech transcripts. As Braun and Clarke once mentioned, no qualitative analysis can represent the entire data

[144] Tomas Heidar, Introductory Remarks by H.E. Judge Tomas Heidar, President of the International Tribunal for the Law of the Sea (Eighth International Conference on the Law of the Sea, Seoul Korea, 20 November 2023) 3 <https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/Heidar/Statement_of_President_TH_20231120_EN.pdf> accessed 28 February 2025.

[145] Neeru Chadha, Statement by H.E. Judge Neeru Chadha, Vice-President of the International Tribunal for the Law of the Sea, on Agenda Item 75(a) 'Oceans and the Law of the Sea' for the Plenary of the Seventy-Ninth Session of the United Nations General Assembly (New York, 10 December 2024) 2–5 <https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/Heidar/UNGA_STATEMENT_ITLOS_10.12.2024_ENG-1.pdf> accessed 28 February 2025.

[146] ibid 2–5.

[147] Giorgetti and Pollack (n 6).

[148] ibid 2–3.

[149] Jin-Hyun Paik, Statement by the President of the International Tribunal for the Law of the Sea, H.E. Judge Jin-Hyun Paik, at the 30th Annual Informal Meeting of Legal Advisers in New York (2019) 8 < https://www.itlos.org/fileadmin/itlos/documents/statements_of_president/paik/20191029_Paik_UN_Judicial_dialogue_en.pdf> accessed 28 February 2025.

[150] Higgins (n 85) 7.

set.[151] The conclusions cannot provide a full picture of ICJ presidential speeches, nor can they exclude the possibility of other inter-court relationships. As stated earlier, it is not the intention of this article to claim that competition is the only interaction in play. What it has shown is that competition co-exists with other types of inter-institutional relationships and has significantly affected the behaviours of the ICJ.

Another limitation of this article is that it does not connect the patterns in the speeches to each president's personal style. It is true that ICJ presidential speeches are an institutional activity, but we are also aware of the fact that in reality every speech is drafted and delivered by the president, and she or he has certain discretion over the content and style of the speeches. This article has noticed that a few patterns are subject to personal preferences. For example, over the 3-year presidency of Judge Yusuf, the speeches did not make any reference to the Court's formal mandate. Similarly, during the speeches by Judge Donoghue, she consistently appealed for greater participation of women and developing countries in the work of the ICJ.[152] Given that personal styles do not normally determine the theme of ICJ presidential speeches, and that it does not seem to make a difference in the aforementioned conclusions, this article did not explore the impact of personal styles. Nevertheless, I would like to draw attention to personal influence in institutional activities, as it raises important questions about how ICTs are represented by their staff. Reflections on whether it is necessary to impose an oversight mechanism on personal discretion in non-adjudicative activities are also needed.

Conflict of interest. None declared.

[151] Braun and Clarke (n 76) 224–232.

[152] Donoghue (n 4) 7; Joan E Donoghue, Speech by H.E. Judge Joan E Donoghue, President of the International Court of Justice, on the Occasion of the Seventh Session of the United Nations General Assembly (2022) 11; Joan E Donoghue, Speech of H.E. Judge Joan E Donoghue, President of the International Court of Justice, to the Sixth Committee of the General Assembly (2022) 4.

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