How to Write a Judgment:

Creative Writing and International Adjudication

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Abstract

This article focuses on the craft of writing as an essential component of judicial practice. After explaining why writing matters and why the legal scholar can rely on creative writing to describe judicial writing, the article focuses on the sentence, the characters, and the plot as the basic units of the text. The law is made of words and basic rules of composition can reveal its deeper mechanisms. Whether to include an adverb to highlight importance, to hide the subject of a sentence to construct an objective truth, or to order the arguments in a favourable structure, writers' choices reflect the balance of the counteracting interests represented in the judicial proceeding. The article relies both on the close reading of several judgments of international courts and the distant reading of the corpus of decisions of the International Court of Justice, analyzed through computational analysis.

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1. Introduction

"It is scarcely likely that a system which, of set purpose, created a position such that, if a mandatory made use of its veto, it would thereby block what would otherwise be a decision of the Council, should simultaneously invest individual members of the League with, in effect, a legal right of complaint if this veto, to which the mandatory was entitled, was made use of."[1]

A reader can find this remarkable sentence in the second phase judgment of the South West Africa cases. The numerous critics of this decision focus on the coherence of the legal arguments, its political opportunity, and/or the scandals concerning the composition of the bench, but do not pay much attention to its writing style.[2] The use of passive voices, useless adverbs, random commas, and the intricate web of subordinates are not the usual concern of legal scrutiny.

Several decades have passed since this decision, and the writing style of the International Court of Justice (ICJ) has changed considerably. Several improvements are evident, especially concerning the readability of judgments, with well separated numbered paragraphs, more attention to highlight the change of sections, and a table of contents.[3] However, the writing style is still not a focus of debate. Even the growing scholarship on judicial storytelling, informed on law and literature analysis, does not analyze writing choices, reverting to the analysis of formalist legal arguments in their context.[4]

Other international courts and tribunals receive similar treatment.[5] A judgment is dissected in its argumentative components and its consistency proved against precedents,

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[1] *South West Africa Cases - Second phase (Ethiopia v South Africa; Liberia v South Africa)* (1966) 1966 ICJ Rep 6 (ICJ) [86].

[2] See, for the background story, Victor Kattan, 'Decolonizing the International Court of Justice: The Experience of Judge Sir Muhammad Zafrulla Khan in the *South West Africa* Cases' (2015) 5 Asian Journal of International Law 310.

[3] The first judgement including a table of content is *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (2007) 2007 ICJ Rep 43 (ICJ).

[4] Andrea Bianchi, 'International Adjudication, Rhetoric and Storytelling' (2018) 9 Journal of International Dispute Settlement 28, 36, 37.

[5] Recently, legal scholarship focused on the literary quality of national jurisdictions and individual judges, particularly in the United States. See Nina Varsava, 'Elements of Judicial Style: A Quantitative Guide to Neil Gorsuch's Opinion Writing' (21 April 2018) <https://papers.ssrn.com/abstract=3166538> accessed 13 July 2023; 'Michigan Law Review | Vol 87 | Iss 8' <https://repository.law.umich.edu/mlr/vol87/iss8/> accessed 16 August 2023.

alternative interpretations, decisions of other courts and tribunals, and other legal benchmarks to weigh the quality of the decision. Little to no attention is paid to how the legal argument is presented to the reader, whether its persuasiveness is determined by its literary quality in parallel to its legal consistency. In the legal arena, it is not a fair game to criticize a judgment because it is replete with dubious writing choices.[6] Being criticized for a lack of writing skills is not acceptable, it is like ignoring professional expertise to claim that judges should repeat primary school. Rather than accusing of a writing mistake, the blame shifts to the reader and her lack of experience or capacity to understand complex legal reasoning.

The recent order on provisional measures in the case South Africa against Israel should ignite further attention to the craft of writing:

"The State of Israel shall, in conformity with its obligations under the Convention on the Prevention and Punishment of the Crime of Genocide, and in view of the worsening conditions of life faced by civilians in the Rafah Governorate […] [i]mmediately halt its military offensive, and any other action in the Rafah Governorate, which may inflict on the Palestinian group in Gaza conditions of life that could bring about its physical destruction in whole or in part;"[7]

Different interpretations lie in a comma: does the relative clause starting with "which" refer to "military offence", to "any other action", or to both? Is it only reaffirming what the Court already stated in paragraph 47, that the military offence in Rafah entails the risk of irreparable prejudice? Is Israel obliged to halt its military offensive, or only those actions that may lead to the violation of the Genocide Convention?[8] As the discussions on the meaning of the order unfold, the unsatisfactory wording of the decision prompts a debate on the importance of stylistic choices. Unclarity may serve the purpose of finding consensus within the bench but brings the cost of impairing the judicial function.[9]

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[6] Bianchi (n 4) 29–32.

[7] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)* - Provisional measures, Order of 24 May 2024.

[8] Mischa Gureghian Hall, Assessing the Contents of the ICJ's Latest Provisional Measures Order in South Africa v. Israel (6 June 2024) *EJIL:Talk!*, available at: https://www.ejiltalk.org/assessing-the-contents-of-the-icjs-latest-provisional-measures-order-in-south-africa-v-israel/

[9] Juliette McIntyre, Consensus, at what Cost? (25 May 2024) Verfassungsblog, available at https://verfassungsblog.de/consensus-at-what-cost/

In this paper, I will contend that the elements of style are an essential component of legal argumentation and should have a more prominent role in legal studies. International law is particularly apt to this kind of analysis, due to its vicinity to imaginative literature, particularly concerning its historical origin and the relevance of literary references in the development of the law.[10] I will seek to expose the importance of writing by applying the most basic and recognized elements of the craft. I will do so by reviewing the vast literature on the subject, looking at what is relevant for the very peculiar judicial genre. From the classical 'Elements of Style' by Strunk and White,[11] to Stephen King's 'On Writing: A Memoir of the Craft',[12] I will identify certain writing conventions to study the literary identity of international adjudication. I will not treat deviations from the canon of good writing as mistakes, but rather as characteristics of judicial writing that build its literary aesthetic and constitute an essential element of judicial practice. I intend to analyze the stylistic form as it relates to the substantive law and the political and social context.[13] As the above extracts epitomise, and I will show throughout the article, hard cases, bad law, and peculiar writing choices go hand in hand.[14] To describe the characteristics of judicial writing, I will rely both on the close reading of several judgments of different international courts, and the distant reading of the ICJ corpus of decisions.[15] Some tools of computational analysis will provide data on stylistic choices such as the use of adverbs, adjectives, passive voice, etc. I rely on the Python packages nltk, textstat and SpaCy for this description.[16]

I will first introduce the relevance of the elements of style for international adjudication. Then, following a structure that is frequently employed in creative writing courses, I will start with the most basic element of the craft, the sentence, and move to discuss the characters and the plot.

[10] Christopher N Warren, *Literature and the Law of Nations, 1580-1680* (Oxford University Press 2015) 8, 18.
[11] William Strunk and EB White, *The Elements of Style* (4th ed, Allyn and Bacon 1999).
[12] Stephen King, *On Writing: A Memoir of the Craft* (Scribner 2010).
[13] Benjamin N Cardozo, 'Law and Literature' (1925) 14 Yale law review 699.
[14] Bianchi (n 4) 31.
[15] Franco Moretti, *Distant Reading* (Verso Books 2013). I use the Corpus of decisions authored by Seán Fobbe (2023). Corpus of Decisions: International Court of Justice (CD-ICJ). Version 2023-10-22. Zenodo. DOI: 10.5281/zenodo.1003064; Seán Fobbe, 'Introducing Twin Corpora of Decisions for the International Court of Justice (ICJ) and the Permanent Court of International Justice (PCIJ)' [2022] Journal of Empirical Legal Studies 1.
[16] For a general description of the methodology, see Wolfgang Alschner, 'The Computational Analysis of International Law' in Rossana Deplano and Nicholas Tsagourias (eds), *Research Methods in International Law* (Edward Elgar Publishing 2021).

2. On writing judgements

Judges and law clerks do not receive a dedicate training in creative writing. They may have personal inclinations towards literature, but, as a matter of courts' rules, they are not called to learn how to write. Even if one could read it implicitly in the job description, writing expertise is not explicitly included in the requirements to become an international judge.[17] Conversely, a vague mention of excellent writing skills is often written in law clerks' vacancies.[18] International courts do not have official guidelines that would tell the writer to follow rules of composition. For instance, the ICJ resolution concerning the internal judicial practice and the rules of the Court do not mention literary conventions,[19] and the only internal document concerns spelling rules, such as capitalize "States" and "Articles".[20] Similarly, other international courts and tribunals do not have internal documents, and the writing style is left to the sedimentation of a judicial practice. Structural differences among courts and tribunals may affect the literary style.[21] The bench that produces unanimous opinions with no dissent may have a different aesthetic than the court that employs a drafting committee, or a judge rapporteur. Beyond structural difference, the bureaucracy, rather than the judges, consolidates a peculiar judicial style, representing the continuity and stability of a Court.[22] The literary aesthetic of the judgment reflects the social dimension of the court, also characterizing different jurisdictions. The sedimentation of judicial practice creates various judicial genres that characterize the writing style of each court. Indeed, the study of literary genres describes the practice of different legal regimes as much as legal fragmentation.[23]

Despite this lack of guidance, it is fair to assume that writing judgments is about persuading the audience of the correctness of the decision.[24] Whatever the outcome, the reader should be brought to believe that the judges took the best decision. However,

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[17] Article 2 ICJ Statute: "qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law".

[18] See, for instance, the eligibility requirements for the ICJ Judicial Fellowship Programme, available here: https://www.icj-cij.org/judicial-fellows-program.

[19] Available here: https://www.icj-cij.org/other-texts and here: https://www.icj-cij.org/rules.

[20] To my knowledge, editing rules are not public, but informal discussions with ICJ law clerks confirm this is the only document concerning rules of writing.

[21] Mitchel de S.-O.-l'E. Lasser, *Judicial Deliberations: A Comparative Analysis of Judicial Transparency and Legitimacy* (Oxford University Press 2004)

[22] See, in general Tommaso Soave, *The Everyday Makers of International Law* (Cambridge University Press 2022).

[23] Warren (n 10) 1–10, 18ss.

[24] Bianchi (n 4).

persuasion, per se, does not tell us much about the characteristics of judicial writing. Focusing on persuasion abstractly involves the risk of confusing the different reasons to write a judgment and to ignore the specificities of the judicial genre. Contrary to what Stanley Fish contended, it makes little sense to compare persuasion in the courtroom and persuasion in an electoral contest.[25] Beyond the pacific settlement of the dispute, the judgment may aim at establishing authority, marking a political goal, achieving personal success, and other less obvious or legal aims.[26] Authority may originate from obscure formula and arcane complexity; winning the competition might mean to privilege the solution that is politically convenient despite a convolute argumentation; personal success (even if just among the bench) might imply the will to expose pedantic erudition. Thus, persuasion, per se, is a vague concept that does not say much concerning the writer's specific choice.

In order to analyse the literary practice of writing judgements, I will focus on the rules developed in creative writing courses because they provide a concrete guidance aimed at writing well, which is different from persuasion. Again, I do not intend to determine whether a judgment is well-written or not, but to analyze the text based on rules of writing. Whether the goal is to provoke emotions, pleasure, realism, or selling more copies, there are a few rules of composition that determine the success of the writing effort fostering the main value of clarity, which is an essential component of the right of access to justice.[27] I contend that the same rules can be used to study judicial writing. Judgements are nothing but words organized in sentences based on the rules of grammar and syntax, but authors make (conscious and less conscious) choices.[28] Whether to include an adverb to highlight importance, to hide the subject of a sentence to construct an objective truth, or to order the arguments in a favourable structure, writers' choices reflect the balance of the counteracting interests represented in the judicial proceeding. To focus on writing means to reveal all the stylistic choices made by the author and the complexities lying beneath the text.

The style of judicial writing has social determinants and effects. Writing is determined by the internal struggle of the drafting process, composed by institutional and personal

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[25] Stanley Fish, *Winning Arguments: What Works and Doesn't Work in Politics, the Bedroom, the Courtroom, and the Classroom* (HarperCollins 2016).
[26] Hugh Thirlway, 'The Drafting of ICJ Decisions: Some Personal Recollections and Observations' (2006) 5 Chinese Journal of International Law 15, 23.
[27] Bianchi (n 4) 31.
[28] Thirlway (n 26) 21.

elements. The jurisdiction and the characteristics of the court are relevant as much as the academic and personal background of the authors. The judge's authorial intent is informed by authority, success, political and moral sensibility. Regarding effects, the judicial style affects the relationship between a court and its audience. The style empowers the readers, depending on to who the judges are speaking. A court may enhance its social legitimacy by employing a plain legal style, avoiding legal jargons and directly facing the issues that are more relevant for the public at large. Or, a court may privilege its clients, delivering the decision with the style that fits better their interests. Good or bad judicial style depends on the social dynamics of the court and may also vary in different cases. Rules of creative writing can show us the decision taken by the writer and provide a useful standard to study international adjudication.

Even though the literary product of a judgment is the outcome of a complex process involving several writers and a bureaucratic procedure, the outcome is "just" text. Once the text is released, all the professional contests of human writers that in their daily routines push for the inclusion of one argument or another disappear before the simplicity of the legal/illegal opposition. It is the privilege and the limit of law, reducing complex social interactions to a win/lose solution that hides the complexity of the concept of victory in international relations. Stylistic analysis brings back to the forefront the internal struggles.

3. The Sentence

In 'How to Write a Sentence and How to Read it' Stanley Fish contends that the sentence is the fundamental unity of the text.[29] Words are "discrete items, pointing everywhere and nowhere", while sentences order them in their places based on the "inexorable logic of syntactic structures".[30] His short book is an ode to formal structure and to the capacity of extrapolating forms that can be replicated and possessed by any meaning.

Preliminary, Stanley Fish defines sentences as (1) an organization of items in the world and (2) a structure of logical relationships.[31] Then, he distinguishes between two kinds of sentences. The subordinating style is what judges and law clerks should employ by organizing

[29] Stanley Fish, *How to Write a Sentence* (Harper 2011).
[30] Ibid., 2.
[31] Ibid., 35.

its components in logical relationship that could be based on causality, temporality, hierarchy.[32] Consider this sentence establishing causality:

"The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968".[33]

And compare it with this one:

"Looked at in another way moreover, the argument amounts to a plea that the Court should allow the equivalent of an "actio popularis", or right resident in any member of a community to take legal action in vindication of a public interest".[34]

This last sentence gives the reader a different feeling, one of "spontaneity, haphazardness, and chance".[35] This is what Stanly Fish calls the additive style, which could mark the appearance of artlessness to provoke the sense of disorder. It is difficult to think that a court may ever want to make the reader believe it is providing disorder, but this might be the effect of not providing a clear relationship between the elements of the sentence. It might reveal a different argumentative strategy, a lack of interest towards the audience, a lack of accountability of the writer and authority of the court.

The short essay by George Orwell, 'Politics and the English Language', contains a few rules of writing that subsequent followers adapted and elaborated in lengthy textbooks.[36] The main rule concerns economy: "never use a long word where a short one would do" and "if it is possible to cut a word, always cut it out".[37] Strunk and White repeated it under rule 17: "Omit needless words".[38] Stephen King expresses this principle with the formula: "2nd draft = 1st draft – 10%".[39]

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[32] Ibid., 45.
[33] ICJ, 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' [2019] Advisory Opinion para 174.
[34] *South West Africa Cases - Second phase (Ethiopia v. South Africa; Liberia v. South Africa)* (n 1) 88.
[35] Fish (n 29) 61.
[36] George Orwell, 'Politics and the English Language' (1946) 13 Horizon 252.
[37] ibid.
[38] Strunk and White (n 11) 32.
[39] King (n 12) 222.

In judicial terms, it applies to all those expressions that make a decision longer than needed, but that characterize the genre: 'It is, therefore, necessary', 'the question as to whether', 'there is no doubt that', 'this is a question that', 'the fact that', etc. Judicial language is replete with expressions that characterize the readability of the text without providing information. For instance, extracting a random passage from a random judgment, in the decision *The Gambia v. Myanmar*, the ICJ said:

"On the question of fact, Myanmar submits that, whilst The Gambia is the nominal Applicant in these proceedings, the record makes it clear that The Gambia has acted as an "organ, agent or proxy" of the OIC, which is the "true applicant" in this case."[40]

The elimination of superfluous words would translate it into:

'Myanmar submits that, whilst The Gambia is the nominal Applicant, it has acted as an "organ, agent or proxy" of the OIC, which is the "true applicant".'

I think this sentence still requires a final tweak to the syntax:

'Myanmar submits that the OIC is the "true applicant", and The Gambia has acted as its "organ, agent or proxy"'.

The omission of superfluous words may make the text more effective, but it may also impair the persuasion based on the creation of authority, and the need to guide the audience towards a certain argumentative path to tackle their concerns. This is particularly relevant for specialized jurisdictions in which the audience coalesces around agreed values. For instance, in an apparently innocuous passage of the ICC Appellate Chamber decision in the Al Bashir case (Jordan Referreal), the Court summarizes the issues at stake with this single sentence:

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[40] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v Myanmar)* (2022) Preliminary Objections (ICJ) [36].

'Thus, at issue under the first two grounds of appeal is primarily the question of whether Head of State immunity finds application in a situation where the Court requests a State Party of the Rome Statute to arrest and surrender the Head of State of another State (in this instance, Sudan), which, while not being party to the Rome Statute, is the subject of a referral to the Court by the UN Security Council and, in terms of Resolution 1593, obliged to fully cooperate with the Court.'[41]

The legal issue is certainly very complex, but the judicial style does not contribute to its clarity. The need to include as much information as possible in one sentence does not help readability. Alternative formulations may include:

'The issue is whether a state party must respect the immunity of a Head of State of a non-state party in a situation referred by the UN Security Council.'

The stylistic choices made by the writer imply the need to lead the reader towards the answer given to the legal question. The need to overcharge a sentence to highlight the request to arrest and the obligation to fully cooperate reveals the inclination of the Court to privilege institutional obligations over bilateral obligations. The stylistic choice is not separate from the substance of the law and the social implications of the decision.

Computational analysis supports the study of judicial style by enlarging the description from a single sentence to the entire corpus of decisions of a court. The Python library 'textstat' calculates statistics from texts and it helps to determine readability and complexity. At the basic level of readability, the Flesch-Kincaid Grade Level provides a good starting reference, indicating how difficult an English text is by analyzing sentence lengths and word complexity.[42] After a surge of complexity until 1960, the data deriving from the ICJ corpus of decisions shows its gradual reduction throughout the years:

[41] *Judgment in the Jordan Referral re Al-Bashir Appeal* [2019] ICC-02/05-01/09-397 (International Criminal Court) [96].

[42] The Flesch-Kincaid grade level employs the formula: 0.39×(total sentences/total words)+11.8×(total words/total syllables)−15.59. It is widely used in education to determine the suitability of the text for a determined audience.I tested the results with the Gunning Fox and SMOG Index, obtaining comparable results.

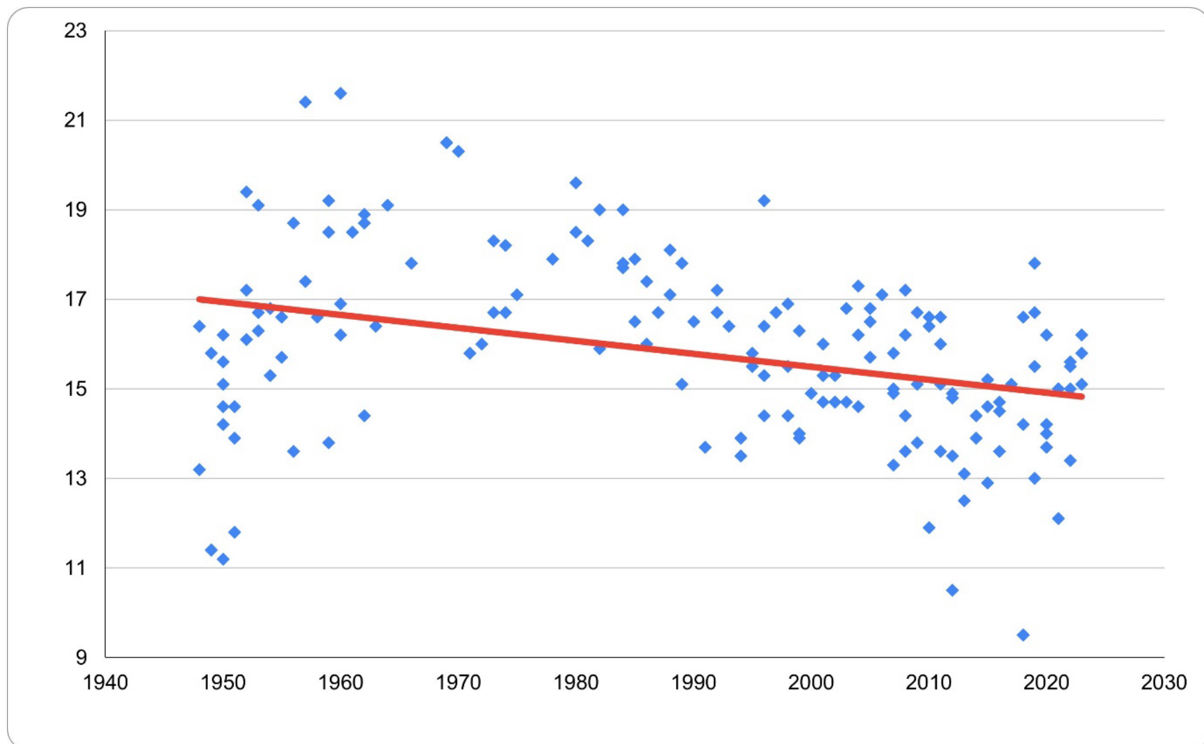

Figure 1: Readability of ICJ majority opinions on the Flesch-Kincaid Grade Level per year, with linear tendency in red.

The ten most difficult judgments go back to the first years of ICJ activity, while the majority of the most readable judgments are written after 2010.

PassageIndianTerritory_PRT_IND_ME	1960	21.6
PassageIndianTerritory_PRT_IND_PO	1957	21.4
NorthSeaContinentalShelf_DEU_DNK_ME	1969	20.5
NorthSeaContinentalShelf_DEU_NLD_ME	1969	20.5
BarcelonaTraction1962_BEL_ESP_ME	1970	20.3
USDiplomaticStaffTehran_USA_IRN_ME	1980	19.6
Ambatielos_GRC_GBR_PO	1952	19.4
AerialIndicent1955_ISR_BGR_PO	1959	19.2
ApplicationGenocideConvention_BIH_SCG_PO	1996	19.2
Nottebohm_LIE_GTM_PO	1953	19.1

MaritimeDelimitation-CaribbeanPacific_CRI_NIC_CO	2018	9.5
IslaPortillos_CRI_NIC_CO	2018	9.5
Diallo_GIN_COD_CO	2012	10.5
StatusSouthWestAfrica_UNGA_ADV	1950	11.2

CorfuChannel_GBR_ALB_ME	1949	11.4
CorfuChannel_GBR_ALB_CO	1949	11.4
ReservationsGenocideConvention_ADV	1951	11.8
Diallo_GIN_COD_ME	2010	11.9
MaritimeDelimitation-IndianOcean_SOM_KEN_ME	2021	12.1
FrontierDispute_BFA_NER_ME	2013	12.5

Readability indexes can provide a general picture of the complexity of a text, but do not take into consideration the genre and the characteristics of judicial writing. However, there are other characteristics that can be used to describe judicial writing, such as lexical diversity and lexical density. Lexical diversity represents the variety of words used in a text, while lexical density refers to the proportion of content words (nouns, verbs, adjectives, and adverbs) to the total number of words in a text. Density grows and diversity diminishes throughout the years, largely confirming the trend of the readability index.

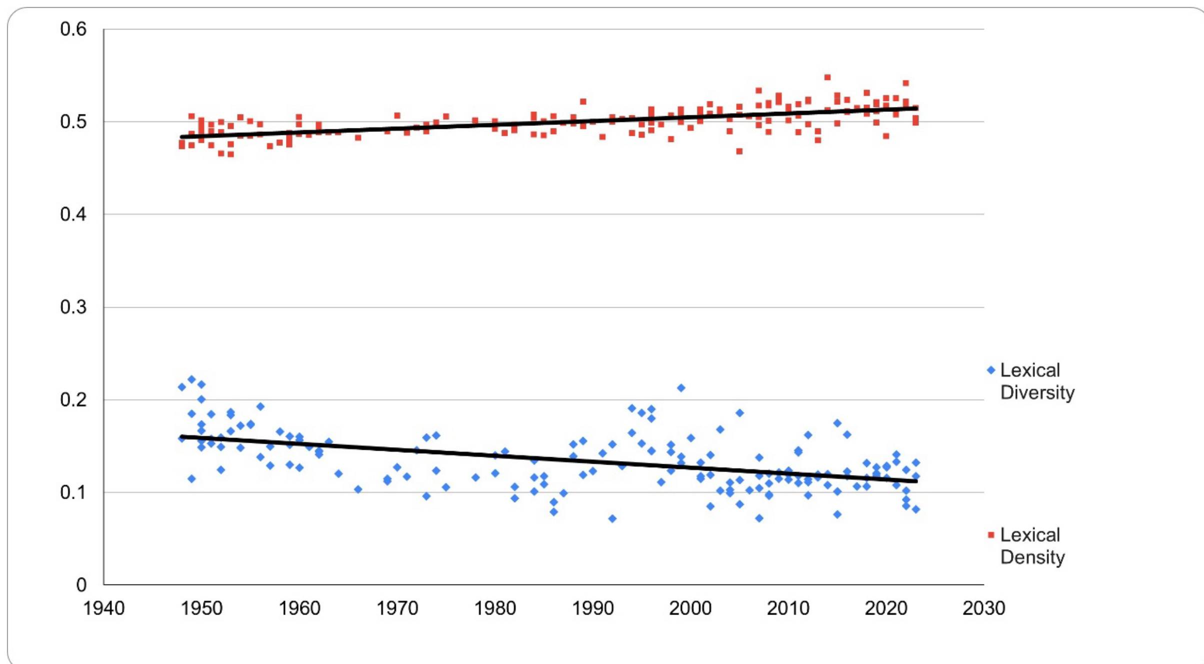

Figure 2: Lexical diversity and lexical density of ICJ majority opinions, per year and with linear tendency

ICJ decisions reveal a low lexical diversity, with an average of 0.158. This means that only the 16% of words in each judgment are unique. This is a characteristic of judicial writing that facilitates comprehension in a technical text. ICJ decisions also show a balanced lexical density, with an average of 0.5. This means that half of the words in each ICJ judgment carry

the main semantic content of the text (nouns, verbs, adjectives, and adverbs), while the other half are functional words (such as articles, prepositions, conjunctions, and auxiliary verbs). The growing attention to judicial style and readability is confirmed by a lower lexical diversity in each judgment, pointing at a more focused and cohesive text. The growth of lexical density also reflects this trend, with less functional words with impact on the length and readability of sentences.

Moving from a general overview of the judgment in its entirety, to a more detailed analysis of the construction of sentences, creative writing courses point at a few basic rules that are interesting also for studying the social determinants of judicial writing: avoid the passive voice, adverbs, adjectives, and negatives.

3.1 Avoid passive voices

Stephen King refers to the passive voice as the sin of timid writers.[43] The active voice is assertive, informing that the subject is doing something: "The Court contends". With a passive voice, something is being done to the subject: "The view has been expressed". Passive verbs may have a purpose in specific circumstances, but the reader may perceive the fragility of the writer that conceals the subject of the action. It shows a certain unclarity concerning the capacity of the writer of mastering the story, by making things being done to the subject rather than making the subject do things.

The ICJ employs the passive voice profusely. I collected data on its uses with the Python package SpaCy, revealing an average of 38 uses of the passive voice every 100 sentences. Chronologically, passive voices are diminishing, which reveals a growing attention to readability.

[43] King (n 12) 123.

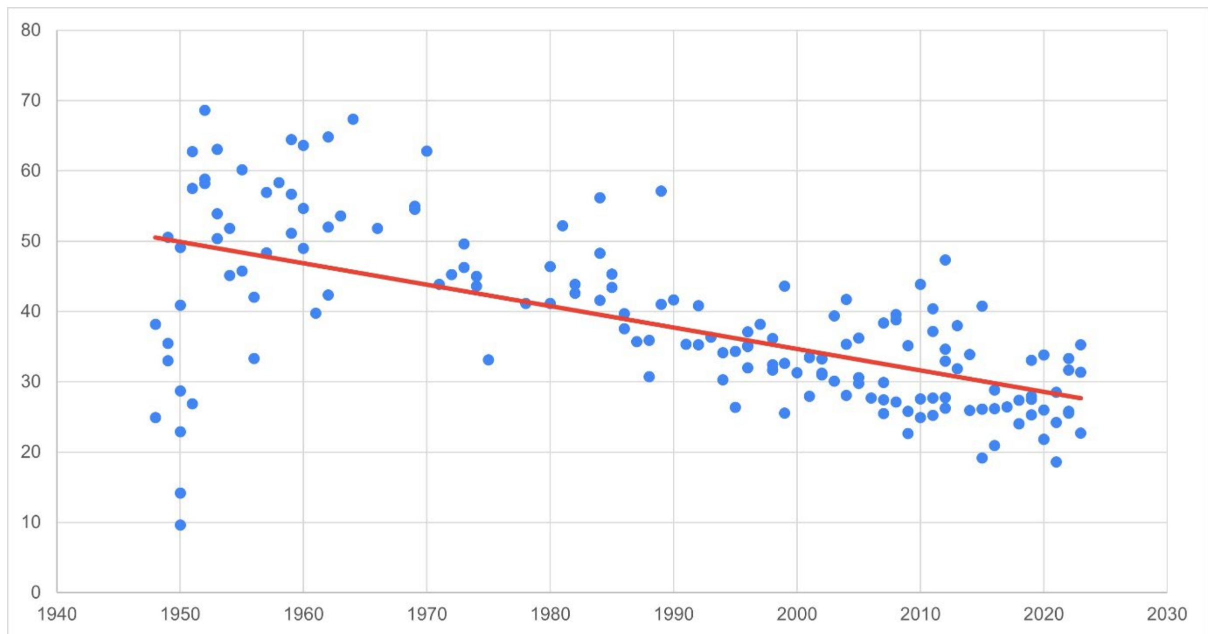

Figure 3: Number of passive voices every 100 sentences in ICJ majority opinions, per year and with linear tendency

The 10 judgments that employ the passive voice the most are:

judgment	year	passive voice count	sentence count	passive voice every 100 sentences
USNationalsMorocco_FRA_USA_ME	1952	321	468	68.58974359
BarcelonaTraction1962_BEL_ESP_PO	1964	283	420	67.38095238
CertainExpensesUN_UNGA_ADV	1962	212	327	64.83180428
AerialIndicent1955_ISR_BGR_PO	1959	125	194	64.43298969
PassageIndianTerritory_PRT_IND_ME	1960	252	396	63.63636364
MinquiersEcrehos_FRA_GBR_ME	1953	205	325	63.07692308
BarcelonaTraction1962_BEL_ESP_ME	1970	343	546	62.82051282
HayaDeLaTorre_COL_PER_ME	1951	96	153	62.74509804
Nottebohm_LIE_GTM_ME	1955	133	221	60.18099548
AngloIranianOil_GBR_IRN_PO	1952	150	255	58.82352941

Conversely, the 10 judgments that employ the passive voice the less are:

judgment	year	passive voice count	sentence count	passive voice every 100 sentences
CompetenceAdmissionGA_UNGA_ADV	1950	33	344	9.593023256

StatusSouthWestAfrica_UNGA_ADV	1950	108	761	14.19185283
ApplicationCERD_QAT_ARE_PO	2021	85	457	18.59956236
AccessPacificOcean_BOL_CHL_PO	2015	51	266	19.17293233
NuclearDisarmament_MHL_IND_PO	2016	67	320	20.9375
ICAOCouncil-IASTA_BHR-EGY-ARE_QAT_ME	2020	112	514	21.78988327
ICAOCouncil-CICA_BHR-EGY-SAU-ARE_QAT_ME	2020	108	495	21.81818182
Avena-Interpretation_MEX_USA_ME	2009	164	725	22.62068966
ArbitralAward1899_GUY_VEN_PO	2023	91	401	22.69326683

The consistent use of passive voice is a characteristic of judicial writing that, in some cases, reflects a taste for solemnity:

'the International Court of Justice*,* like the Permanent Court of International Justice, has always been guided by the principle that'.[44]

This sentence resounds in the Great Hall of Justice of the Peace Palace, seeking the authority of the judicial style. The intention is to reassure the reader about the importance of this principle and the deference of the Court to the law. The law is guiding the judges, and not the judges establishing the law. Still, the subject of the sentence is the Court and not the principle, which makes the reader unsure about the relationship between the two. The alternatives 'the Court has always affirmed the principle', or 'the principle has always guided the Court', are easier to read, but leave a completely different feeling.

In other cases, the passive voice reveals the predispositions of the Court towards a certain subject:

'At the time of its colonization by Spain, the area of this desert with which the Court is concerned was being exploited, because of its low and spasmodic rainfall, almost exclusively

[44] *Western Sahara Advisory Opinion* [1975] 1975 ICJ Rep 12 para 12.

by nomads, pasturing their animals or growing crops as and where conditions were favourable.'[45]

It is not the nomads that are exploiting the lands, but the lands being exploited by them. The subject of the sentence and the object of interest is territory, not the people inhabiting it. States are the primary audience of the judgment, with considerably less relevance attributed to individuals.

Another use of the passive voice is to construct an objective truth by hiding the source of information. The above-mentioned paragraph continues with:

'It may be said that the territory, at the time of its colonization, had a sparse population that, for the most part, consisted of nomadic tribes the members of which traversed the desert on more or less regular routes dictated by the seasons and the wells or water-holes available to them. In general, the Court was informed, the right of pasture was enjoyed in common by these tribes; some areas suitable for cultivation, on the other hand, were subject to a greater degree to separate rights. Perennial water-holes were in principle considered the property of the tribe which put them into commission, though their use also was open to all, subject to certain customs as to priorities and the amount of water taken. Similarly, many tribes were said to have their recognized burial grounds, which constituted a rallying point for themselves and for allied tribes.'[46]

The reader does not know what the source of the Court's knowledge is. Passive voices avoid the trouble of indicating the subject of the information, creating an objective historical fact that is not undermined by the partial perspective of a pleading or an expert. The Court is not accountable for its lack of referencing or for explaining its source of knowledge, and the writing style reflects its authority for constructing the facts of the case.[47]

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[45] ibid para 87.
[46] *ibid.*
[47] Ana Luísa Bernardino, 'The Discursive Construction of Facts in International Adjudication' (2020) 11 Journal of International Dispute Settlement 175

Finally, the passive voice is a subtle way to conceal the subject of the sentence to avoid a contested issue. For instance, this sentence appears in the 1950 Advisory Opinion on the International Status of South West Africa:

‘A "tutelage" was to be established for these peoples, and this tutelage was to be entrusted to certain advanced nations and exercised by them "as mandatories on behalf of the League".’[48]

Repeated with some changes in the 1971 Advisory Opinion on the Legal Consequences of the Continuous Presence of South Africa in Namibia:

‘Within the framework of the United Nations an international trusteeship system was established and it was clearly contemplated that mandated territories considered as not yet ready for independence would be converted into trust territories under the United Nations international trusteeship system’[49]

The lack of a subject conceals that “advanced nations” entrust other “advanced nations” with the tutelage (1950) and the international trusteeship system (1971). Again, the judicial style reflects the social dimension of the court, its values and priorities.

3.2 Avoid Adjectives

The second rule that all textbooks of creative writing mention is to “write with nouns and verbs, not with adjectives and adverbs. The adjective hasn't been built that can pull a weak or inaccurate noun out of a tight place […] it is nouns and verbs, not their assistants, that give good writing its toughness and color”.[50] It certainly depends on the literary genre, but the bias against adjectives derives from long and empty descriptions that are there just to make

[48]*International Status of South West Africa* [1950] 1950 ICJ Rep 128 7.
[49] *Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* [1971] 1971 ICJ Rep 16 para 56.
[50] Strunk and White (n 11) 68.

an effect, like showing how clever the writer is.[51] Adjectives might be indispensable, but it really depends on their purpose.

The ICJ employs 6 adjectives every 100 words, and their number gradually grows in time:

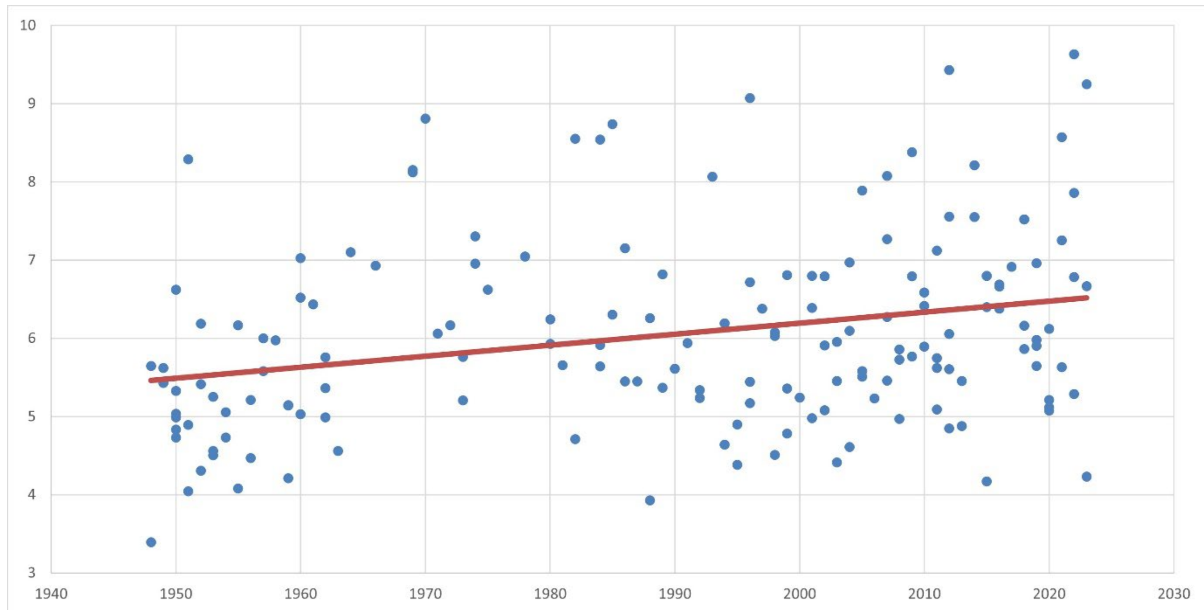

Figure 4: Number of adjectives every 100 sentences in ICJ majority opinions, per year and with linear tendency

The great majority are descriptive adjectives (94.7%), followed by quantitative adjectives (3.5%), superlative (1.1%), and comparative (0.7%). The most used adjectives are:

descriptive	**quantitative**	**superlative**	**comparative**
other (6036)	first (1884)	least (376)	more (720)
international (5361)	second (1246)	most (239)	less (233)
such (4363)	third (1122)	largest (108)	earlier (221)
present (4138)	several (488)	nearest (75)	greater (169)
legal (4021)	many (441)	best (70)	wider (88)

Adjectives are used the most in the following judgments:

Judgment	Year	Adjectives Count	Words Count	Adjectives every 100 words
SovereignRightsCaribbeanSea_NIC_COL_ME	2022	3982	41339	9.632550376
TerritorialDispute_NIC_COL_ME	2012	3436	36440	9.429198683

[51] Sarah Burton and Jem Poster, *The Book You Need to Read to Write the Book You Want to Write* (Cambridge University Press 2022) 186.

DelimitationContinentalShelf_NIC_COL_ME	2023	1235	13351	9.250243427
LegalityThreatUseNuclearWeapons_UNGA_ADV	1996	1640	18081	9.070294785
BarcelonaTraction1962_BEL_ESP_ME	1970	2015	22881	8.806433285
ContinentalShelf_LBY_MLT_ME	1985	1776	20331	8.735428656
MaritimeDelimitation-IndianOcean_SOM_KEN_ME	2021	2288	26700	8.56928839
ContinentalShelf_TUN_LBY_ME	1982	3047	35634	8.550822248
GulfOfMaine_CAN_USA_ME	1984	4022	47096	8.540003397
MaritimeDelimitation-BlackSea_ROU_UKR_ME	2009	2192	26158	8.379845554

Unsurprisingly, the judgments that contain more adjectives concern geographical features and effects of weapons. Conversely, the judgments that employ less adjectives are concerned with more legalistic issues, or they are older:

Judgment	**Year**	**Adjectives Count**	**Words Count**	**adjectives every 100 words**
CorfuChannel_GBR_ALB_PO	1948	251	7396	3.393726339
ArbitrationUNHQAgreement_UNGA_ADV	1988	402	10230	3.929618768
HayaDeLaTorre_COL_PER_ME	1951	214	5290	4.04536862
VotingProcedureSouthWestAfrica_UNGA_ADV	1955	198	4853	4.079950546
AccessPacificOcean_BOL_CHL_PO	2015	309	7413	4.168352894
SovereigntyFrontierLand_BEL_NLD_ME	1959	404	9591	4.212282348
ArbitralAward1899_GUY_VEN_PO	2023	500	11820	4.230118443
Ambatielos_GRC_GBR_PO	1952	331	7686	4.306531356
EastTimor_PRT_AUS_PO	1995	313	7142	4.382525903
ApplicationGenocideConvention-Revision_BIH_YUG_ME	2003	459	10407	4.410492937

The analysis of adjectives might be useful to reveal certain literary features of specific judgments, highlighting the struggles of the Court. For instance, in the controversial Advisory Opinion ‘Legality of the Threat or Use of Nuclear Weapons’ (UNGA request) one of the most used adjectives is “political” (repeated 13 times), revealing the struggles of a decision that has been considered as a declaration of *non-liquet*.[52]

[52] Legality of the Threat or Use of Nuclear Weapons (request by the General Assembly), advisory opinion of 8 July 1996, ICJ Reports, 1996, p. 226; Dapo Akande, ‘Nuclear Weapons, Unclear Law? Deciphering the Nuclear Weapons Advisory Opinion of the International Court’ (1998) 68 British Yearbook of International Law 165

3.3 Avoid Adverbs

The ICJ makes ample use of adverbs such as "undoubtedly", "clearly", "properly", "inevitably", "usually", "briefly", "accordingly", "likely", "similarly", "normally", "persistently", "hardly", "intimately". Creative writing rules contend that the reader may perceive unclarity and insecurity:[53]

'The attribution of territorial sovereignty, it [Spain] argues, *usually* centres on material acts involving the exercise of that sovereignty, and the consideration of such acts and of the respective titles *inevitably* involves an exhaustive determination of facts. In advisory proceedings there are *properly* speaking no parties obliged to furnish the necessary evidence, and the ordinary rules concerning the burden of proof can *hardly* be applied (emphasis added).'[54]

The ICJ is summarizing the preliminary objections of Spain, and the repetition of adverbs undermines the party's claims: "usually" implies exceptions, "inevitably" shows that it might be evitable, "properly" means that there is an unproper way of speaking that might be equally valid, and, finally, "hardly" signifies that it can be applied. Behind adverbs, the writer hides her fear of not being understood or taken seriously. The extensive use of adverbs might reveal the sceptic attitude of the Court towards parties' submissions. However, it undermines readability, because instead of stating something, the Court employs a more indirect style.

Adverbs may have specific purposes. Words such as "however", "notwithstanding", "nonetheless", often have the specific function of introducing a change in the argumentation of the court, even reverting a precedent. Andrea Bianchi makes the example of Goodwin v. UK, in which the European Court of Human Rights changed its interpretation of Article 8 of the Convention.[55] Here, the Court first described its consolidated approach to the question of right of transsexual in the United Kingdom. Then, it marked a distinction by employing the adverb 'however', to stress the need to depart from its precedent despite legal certainty.

The ICJ uses an average of 2,36 adverbs every 100 words, constantly through time:

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[53] King (n 12) 124.
[54] *Western Sahara Advisory Opinion* (n 44) para 44.
[55] Andrea Bianchi, Daniel Peat and Matthew Windsor (eds), *Interpretation in International Law* (First edition, Oxford University Press 2015) 50. Goodwin v United Kingdom (2002) 35 EHRR 18, 74.

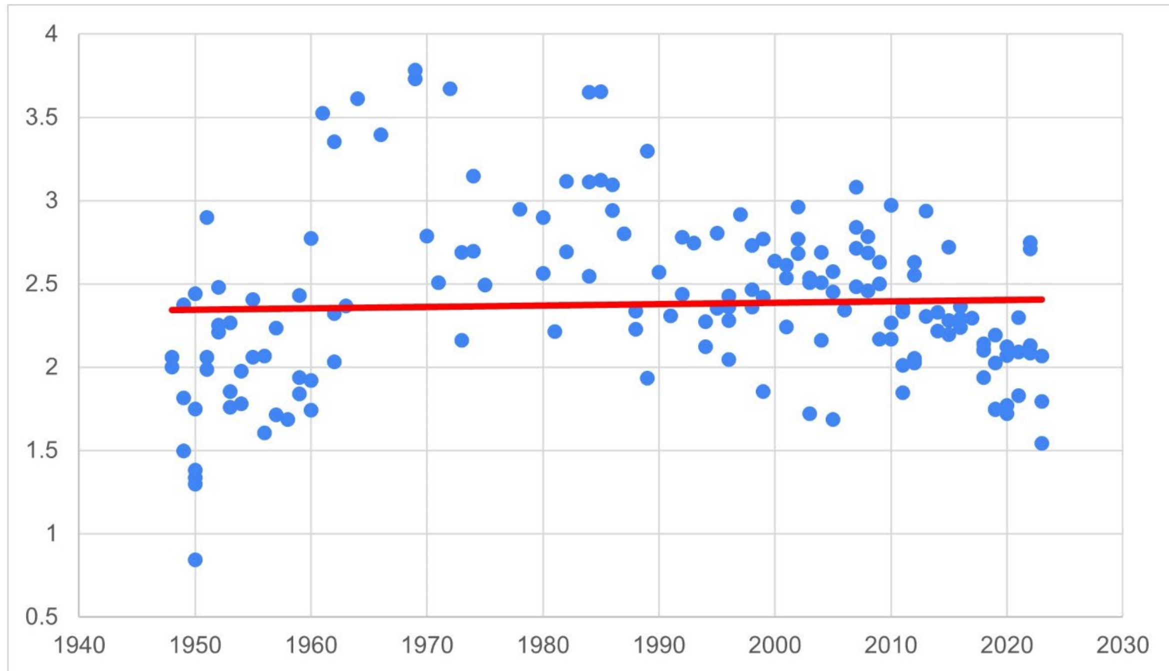

Figure 5: Number of adverbs every 100 sentences in ICJ majority opinions, per year and with linear tendency

Judgment	Year	Word Count	Adverb Count	Adverbs every 100 words
NorthSeaContinentalShelf_DEU_DNK_ME	1969	23735	898	3.783442174
NorthSeaContinentalShelf_DEU_NLD_ME	1969	24202	903	3.731096604
ICAOCouncil_IND_PAK_ME	1972	13287	488	3.672762851
ContinentalShelf-InterpretationRevision_TUN_LBY_ME	1985	18612	680	3.653556845
GulfOfMaine_CAN_USA_ME	1984	47096	1719	3.649991507
BarcelonaTraction1962_BEL_ESP_PO	1964	19100	690	3.612565445
TemplePreahVihear_KHM_THA_PO	1961	8736	308	3.525641026
SouthWestAfrica_ETH_ZAF_ME	1966	25404	863	3.397102818
TemplePreahVihear_KHM_THA_ME	1962	13950	468	3.35483871
ELSI_GBR_ITA_ME	1989	29510	973	3.297187394

Judgment	Year	Word Count	Adverb Count	Adverbs every 100 words
CompetenceAdmissionGA_UNGA_ADV	1950	6405	54	0.8430913349
PeaceTreaties_UNGA_ADV	1950	5008	65	1.297923323
PeaceTreaties_UNGA_ADV	1950	6217	83	1.335049059
StatusSouthWestAfrica_UNGA_ADV	1950	11873	164	1.381285269
ReparationUN_UNGA_ADV	1949	6211	93	1.497343423

DelimitationContinentalShelf_NIC_COL_ME	2023	13351	206	1.542955584
PetitionersComitteeSouthWestAfrica_UNGA_ADV	1956	4799	77	1.604500938
GuardianshipInfantsConvention_NLD_SWE_ME	1958	7717	130	1.684592458
CertainProperty_LIE_DEU_PO	2005	8477	143	1.686917542

Distinguishing between different types, the most used adverbs are:

Degree	**Conjunctive**	**Frequency**	**Time**	**Place**	**Manner**
very (585)	however (2894)	never (520)	now (1390)	here (423)	carefully (62)
rather (564)	therefore (2304)	always (260)	then (1354)	there (384)	easily (55)
quite (179)	moreover (870)	often (133)	soon (147)	nowhere (359	quickly (19)
too (160)	consequently (653)	rarely (8)		somewhere (7)	slowly (6)
enough (41)	furthermore (473)	seldom (1)		everywhere (3)	

3.4 Avoid Negatives

Negative sentences express denial and the rules of creative writing state that they should not be used to evade assertion.[56] For instance, the ICJ uses expressions such as “it would not be inconsistent”, which express uncertainty as to the consistency of its views. Double negatives are also frequent, with great unclarity for the reader: “it [the General Assembly] could not, in the exercise of its supervisory functions, do anything which the Council had not actually done, even if it had authority to do it”,[57] which translate into “the General Assembly can only do what the Council had done to give effects to its competences”.

In average, the ICJ employs 26.3 negative expressions and 5.7 double negatives every 100 words, with a chronological distribution similar to the previous data:

[56] Strunk and White (n 11) 19.

[57] *Admissibility of hearings of petitioners by the Committee on South West Africa* [1956] 1956 ICJ Rep 23 (International Court of Justice) 23.

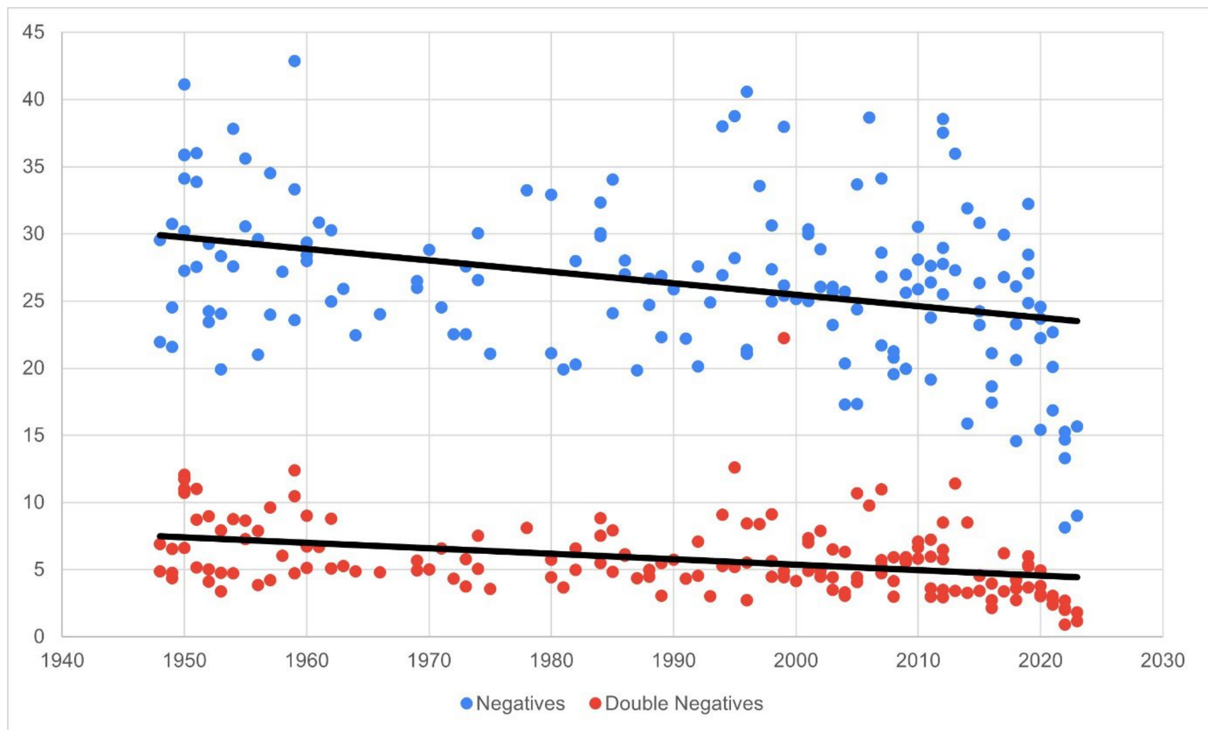

Figure 6: Number of negatives and double negatives every 100 sentences in ICJ majority opinions, per year and with linear tendency

These are the judgments with the highest number of negative sentences:

Judgment	Year	Sentence Count	Negative Sentence Count	Negative sentence for every 100 sentences
BarcelonaTraction1962_BEL_ESP_PO	1964	420	180	42.85714286
ReviewJudgment333UNAT_ADV	1987	722	297	41.13573407
ContinentalShelf_LBY_MLT_IN	1984	308	125	40.58441558
TemplePreahVihear_KHM_THA_PO	1961	214	83	38.78504673
AerialIndicent1955_ISR_BGR_PO	1959	194	75	38.65979381
HayaDeLaTorre_COL_PER_ME	1951	153	59	38.5620915
NorthernCameroons_CMR_GBR_PO	1963	308	117	37.98701299
ApplicationGenocideConvention-Revision_BIH_YUG_ME	2003	108	41	37.96296296
SouthWestAfrica_ETH_ZAF_ME	1966	685	259	37.81021898
Asylum_COL_PER_ME	1950	477	179	37.52620545

And double negatives:

Judgment	Year	Sentence Count	Negative Sentence Count	Negative sentence for every 100 sentences	double_negatives	Double Negative for every 100 sentences
LandIslandMaritimeFrontier_SLV_HND_ME	1992	3156	932	29.53105196	218	6.90747782
ApplicationGenocideConvention_BIH_SCG_ME	2007	3075	675	21.95121951	150	4.87804878
MilitaryParamilitaryActivitiesNicaragua_NIC_USA_ME	1986	1943	597	30.72568194	127	6.536284097
ApplicationGenocideConvention_HRV_SRB_ME	2015	2220	479	21.57657658	106	4.774774775
LandMaritimeBoundary_CMR_NGA_ME	2002	2039	500	24.52182442	89	4.364884747
ReviewJudgment333UNAT_ADV	1987	722	297	41.13573407	87	12.0498615
JurisdictionalImmunities2008_DEU_IT_ME	2012	680	232	34.11764706	73	10.73529412
UseOfForce_SCG_BEL_PO	2004	662	200	30.21148036	73	11.02719033
NorthSeaContinentalShelf_DEU_NLD_ME	1969	613	220	35.88907015	72	11.74551387
WesternSahara_UNGA_ADV	1975	1075	293	27.25581395	71	6.604651163

4. The Characters

Characters are the living materials that make the story move and the plot unfold. In the context of judgments, the element that performs the same function is the legal argument.[58] Judgments' characters could be the fair and equitable treatment, effective control, universal jurisdiction, and all legal notions that courts employ to solve the dispute. In judicial writing there is not an infinite variety of characters, and the limits imposed by the legal genre are strict. The submission of the parties and the proceeding should help identify the main protagonists, but courts are free to play with new characters as they please.[59] Writers have

[58] Lorenzo Gasbarri, 'Courtspeak: A Method to Read the Argumentative Structure Employed by the International Court of Justice in its Judgments and Advisory Opinions' in Armin von Bogdandy, Helene Ruiz Fabri, Ingo Venzke, André Nunes (eds), International Judicial Legitimacy. New Voices and Approaches (NOMOS Verlag, 2020)

[59] Soave (n 22) 207ss.

the freedom of shaping their development and deciding which should perish or survive. In the famous chain novel analogy, legal arguments have a life that goes beyond the single judgment and the reader can recognize them throughout the case law.[60] Characters are the main element that creates the judicial genre, also by regulating external influences and crossovers. A legal argument that is discarded in one case might be the winning card of another. A secondary character in one jurisdiction might become the protagonist in another.

Legal scholars versed in computational analysis have examined in depth the case law of the ICJ and other international courts and tribunals to unravel citation networks and provide an empirical description of legal precedent.[61] Network analysis assists the legal scholar to track the growing complexity of courts and jurisdictions and can also be used to describe the development of legal arguments as characters of the chain novel. For instance, Ridi compared the average age of citations of ICJ, European Court of Human Rights, Interamerican Court of Human Rights, WTO adjudication cases and investments tribunals, revealing the growing age of legal precedents.[62]

Creative writing posits that there are two main ways in which a writer can introduce and develop a character: she can describe its qualities and characteristics in a plain and direct way, or she can show how the character plays a role in the context.[63] In fiction, doing rather than saying is the traditional rule. To present a character and entertain the reader, it is more effective to write what she does instead of what she is. For instance, to introduce a character who is particularly dirty and untidy, it is more effective to describe that the first thing she does in the morning is to check which is the cleanest mug in a pile of dirty dishes in her kitchen, than to say: "she is dirty".[64]

Nina Varsava claimed that the judgment should maintain an entertainment value in which storytelling plays an essential role.[65] As such, the presentation of legal arguments should take place in their context, slowly discovering step by step what they are and the function they will have in the story. For instance, the presentation of the character 'immunity

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[60] Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 228.
[61] Niccolò Ridi, '"Mirages of an Intellectual Dreamland"? Ratio, Obiter and the Textualization of International Precedent' (2019) 10 Journal of International Dispute Settlement 361; Wolfgang Alschner and Damien Charlotin, 'The Growing Complexity of the International Court of Justice's Self-Citation Network' (2018) 29 European Journal of International Law 83.
[62] Ridi (n 61) 370.
[63] Burton and Poster (n 51) 20.
[64] Burton and Poster (n 51).
[65] Varsava (n 5) 82.

is essentially procedural in nature' in the ICJ case on jurisdictional immunities is one of the examples of good storytelling usually mentioned.[66] The Court subtly introduces this argument at paragraph 58 as a fact of nature and then uses it at paragraph 93 to solve the plot.[67]

Conversely, other courts do not employ this style and prefer to present the legal arguments at the outset, immediately after the description of the facts. For instance, the European Court of Human Rights presents the characters of the judgment outside their context and detached from the dispute. In Banković, just to mention one example, the Court presents 'relevant international legal materials' from paragraph 14 to 27, in which it presents the main legal arguments before playing with them in the unfolding of the plot.[68] Similarly, until mid-2010s WTO Appellate Body reports distinguished between a 'front part', containing a summary of the positions of the parties, and a 'back part', containing adjudicators' views.[69] This first approach was abandoned, towards a more narrative presentations of the characters during the unfolding of the plot.

These two very different ways of constructing the legal argument characterize the judicial practice of a court. The presentation of legal arguments during the unfolding of the judgment may appease the reader by providing a structure more in line with storytelling and more entertaining. However, it may complicate the solution of the plot and create uncertainty as to the status of the law. One may claim that clarity derives from a description of the legal argument at the outset. If a court says: in this section we are dealing with the argument called "The Territorial Tort Principle",[70] which presents the following feature, the reader is ready to see how the parties and the judges play with it. A description may entail the meaning of the argument and its employment in previous cases.

For instance, in *The Gambia v. Myanmar* the Court proceeds to discuss the last preliminary objection by jumping in the middle of the contest and describing Myanmar argument, before The Gambia's counterargument, and, finally, the Court's finding.[71] Without the title "The Gambia's Standing to bring the case before the Court" one would not even know

[66] Bianchi (n 4) 37.
[67] Gasbarri (n 58).
[68] *Banković and ors v Belgium and ors* [2001] App no 52207/99 (ECtHR).
[69] I own this example to the anonymous reviewer.
[70] *Jurisdictional Immunities of the State (Germany v Italy: Greece intervening)* [2012] 2012 ICJ Rep 99 (ICJ) paras 62-79.
[71] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (n 39) paras 93-114.

what the preliminary objection is about. The reader might benefit from a description of the characters employed, for instance what an *erga omnes* obligation is and how the Court has employed it in the past. Something similar to what the reader can find in a theatre script, that helps the reader and the performer to always know at which point of the play they are and what to expect. The ICJ tradition of including a short description of the decision at the outset with its key findings goes in this direction, but it is often too schematic to be of help.

Perhaps, this way of constructing the characters imposes an additional burden to the writer, who must follow a strict structure and cannot play with an essential element of storytelling. There is no doubt that presenting legal arguments at the outset affects the capacity to tell a story and drives away the judgement from the rules of creative writing. However, it fosters a transparent motivation in which the reader knows what to expect. It might be boring, but one should wonder whether the purpose of a judgment is to entertain the reader. There is not a single path towards the judicial aim of writing well, but knowing the different effects produced by writing techniques is an essential step to analyze judicial practice.

5. The Plot

Narratology is the structuralist analysis of plots that focuses on what narratives have in common and what makes a story different from another.[72] In one of its classical study, Vladimir Propp categorized folktales into 7 seven "spheres of action" and 31 "functions" of narrative.[73] Tzvetan Todorov theorized the shift from one equilibrium to the other as an essential element of the plot: Equilibrium, disruption of equilibrium, recognition of equilibrium, attempts to restore equilibrium, re-establishment of equilibrium.[74]

At a basic level, narratology identifies the constrains deriving from the literary genre and it is entirely applicable to legal studies. It can be applied to the judicial genre to reveal the importance of fixed structure and clearly identifiable plots.[75] In one of the earlier studies on law and literature, Cardozo distinguished between six types of methods to write

[72] Tzvetan Todorov, *Grammaire du Décaméron* (1969)
[73] Vladimir Propp, *Morphology of the Folk Tales* (1928)
[74] Tzvetan Todorov, 'Structural Analysis of Narrative' (1969) 3 NOVEL: A Forum on Fiction 70.
[75] Matthew Windsor, 'Narrative Kill or Capture: Unreliable Narration in International Law' (2015) 28 Leiden Journal of International Law 743, 745.

judgments: magisterial or imperative; laconic or sententious; conversational or homely; refined or artificial; demonstrative or persuasive; tonsorial or agglutinative".[76] The dynamic of equilibrium identified by Todorov is relevant also for the judge, who should describe the situation, the opposing view of the parties, and provide a synthesis. The judgment is an 'event-plot story', in which the legal arguments go through several hurdles to defeat or be defeated.[77] It is a traditional and basic way of writing stories, modeled over classical mythology in which characters are fictitious representations of certain individual traits, such as avarice, wisdom, justice, jealousy, and the like. Rather than the evolution of characters, the core machinery of event-plot story is "what is revealed, at what stage and by whom".[78] The writer plays with the differences between what she knows, what/when/by whom she makes the character knowing, and what/when/by whom she makes the reader knowing. The judgment is nothing different. Writers have an almost absolute freedom in deciding what/when/by whom revealing legal arguments. The only constrains are determined by the judicial genre that sets certain limits to what can be accepted.

To discuss narratology, it is useful to distinguish between two levels of analysis that reveal a peculiar characteristic of the judgment. First, at a macro level, the object of analysis is the structure of the judgment in its main sections, such as admissibility, jurisdiction, questions addressed to the court. Second, at a micro level, the object of analysis is the structure of each reasoning, whether to include a description of the submission of the parties, when to present the applicable law, when to provide the solution.

5.1 The structure of the judgment

Different jurisdictions have different constrains concerning the structure of judgments. Based on the nature of the dispute, the ICJ enjoys a considerable freedom. Especially in early judgments, we cannot identify a canonic structure and the plots give a sense of spontaneity and haphazardness. For instance, in the first contentious case, the Corfu Channel, we can find a basic plot that distinguishes between two questions addressed to the Court, whether Albania is responsible for the explosions, and whether the United Kingdom violated the

[76] Cardozo (n 13).
[77] Burton and Poster (n 51) 35.
[78] ibid 43.

sovereignty of Albania.[79] We do not have a section on facts, which are reported in the middle of the judgment when the occasion arises, at pp. 12-15, 27-28, and 32-33. A section on the competence of the Court only appears in the middle of the judgment at pp. 23-26.

The freedom of selecting which arguments to include in the judgment and in which order is absolute, limited only by the stratification of a practice based on the nature of the dispute. For instance, in a case concerning maritime delimitation the reader can expect to find the three steps structure (provisional delimitation; relevant circumstances; disproportionality test), even the Court makes it clear that it maintains its freedom to adopt a different plot if the case so requires.[80] The liberty of the ICJ is often recognized mentioning the Arrest Warrant case, in which the Court went against a logical construction of the plot to discuss immunity before addressing universal jurisdiction.[81]

Writers often use judicial economy to pick and choose which questions to address and in which order. In other cases, other considerations overthrown economy, and the judgment lasts more pages than needed. For instance, in Georgia v. Russia the Court finds it lacked jurisdiction after 75 pages and rejects the first preliminary objection.[82] Writers of judgments are experts in the rule "tell all the truth but tell it slant" to deliver a solution that might be less appealing to the reader.[83] In Georgia v. Russia, the Court found it lacked jurisdiction only after a formally useless lengthy review of the evidence submitted by the parties, and, in particular, Georgia. Paras 50-105 include in-dept discussions of materials recording the brutality of the Russian invasion, all ending with the phrase "The Court accordingly cannot give them any legal significance for the purposes of the present case", or similar formulations. Only in paragraphs 106-113 it finally found that a dispute did occur, only to move to upholding Russia's second preliminary objection on procedural conditions established in the Convention on the Elimination of all Forms of Racial Discrimination.[84] Applying judicial economy, the decision would have lasted little more than 70 paragraphs instead of 187.

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[79] *Corfu Channel Case (United Kingdom v Albania)* (1949) 1949 ICJ Rep 4 (ICJ).

[80] Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, ICJ Reports 2012, 624, 695, para. 190-194.

[81] Bianchi (n 4) 34.

[82] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation)* (2011) Preliminary Objections (ICJ).

[83] Burton and Poster (n 51) 48.

[84] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* (n 82).

5.2 The structure of the reasoning

The presentation of the characters and their unfolding in the story is inextricably linked to the development of the plot.[85] At the micro-level of deciding the structure of the reasoning, one of the essential choices that writers have to take is whether to present the winning character at the outset, or to unfold the story before the reader's eyes.[86] Judges and law clerk usually prefer the second option. Very few judgments reveal the winning character at the beginning and then engage in reasoning. This writing choice is very peculiar, because we can safely assume that the reader of judgments knows who won the case before downloading the pdf. If the reader is interested in the reasoning and there is no risk of spoiling the story, why do writers put the dispositive at the end and the solution of the case only a few paragraphs before?

This decision follows a basic rule of creative writing we already mentioned, under which showing is better than telling.[87] The writer should guide the reader towards the conclusion, which will appear more consequential and inevitably inferred from the description of the law. However, the literary choice of postponing the solution of the case to the moment in which the reader is more prepared to accept the solution is in apparent contrast with transparency and clarity of the text. There is some level of bad faith in pretending that the reader does not know the solution of the case before reading the judgment and s/he needs to be guided towards the solution. It is more difficult to convince the reader of the rightness of a decision if the writer will have to go backwards and justify a reasoning, but it helps the reader to criticize, to weight the decision based on his/her own reasoning, revealing which choices the court made and why it did not follow another path. In a way, reveling the solution at the outset let the reader imagine all the possible paths to get there.

For instance, one of the few examples in which the ICJ presents the finding before rejecting alternative solutions is the second phase decision of the South West Africa case.[88] The plot of this judgment unfolds with no apparent order. It starts by explaining why it is necessary to go back to the issue of *locus standi* (paras. 1-7), it then moves to discuss the nature of the Mandate (paras. 9-15), and to present the finding that Ethiopia and Liberia do

[85] Burton and Poster (n 51) 35.
[86] Varsava (n 5).
[87] Supra, n. 63.
[88] *South West Africa Cases - Second phase (Ethiopia v. South Africa; Liberia v. South Africa)* (n 1).

not have a legal interest (paras. 16-40). The rest of the judgment (paras. 41-98) is a rejection of possible objections and an attempt to strengthen the argument "*postmortem*". The writer does not guide the reader towards the decision but assumes a defensive position by imagining shortfalls of the reasoning. No writer would voluntary put herself in the position of stating an opinion and then trying to defend it imagining objections and alternatives.

However, stating the decision at the beginning may have the merit of enhancing readability and transparency. The judgment is not a thriller novel in which the author seeks the attention of the reader by cliffhangers at the end of each chapter. The audience already knows that the decision is taken and there is no need to play the fiction that it is developing in front of her eyes. Exposing the decision at the outset and justifying it means that the writer is not guiding the reader towards her aim, but she is exposing the decision.

The structure of the reasoning involves other decisions on how to play with fundamental units of the text. Usually, a legal reasoning should include a review of the positions of the parties, the description of the law, and the application of the law. There is ample freedom on what goes first. For instance, in the Marshall Islands case the ICJ ruled that there was no dispute between the parties at the date of the application, thus finding it had no jurisdiction to proceed to the merit of the case.[89] It reached the solution in only 32 paragraphs (26-58), so structured: 26-29 respondent claim; 30-35 applicant claim; 36-43 the meaning of a dispute and how to determine its existence; 44-58 the solution of the case. Other courts adopt a different plot characterizing the judicial genre. As we have already seen, the European Court of Human Rights tends to align the legal material at the outset, before getting to the submissions of the parties and the decision of the court.

Writers also decide how to deal with each question selecting a privileged point of view. It would be logical to expect that a court takes the position of the applicant and discuss whether to sustain its claims. However, it may also decide to revert this logic and take the position of the respondent to decide whether to sustain its defenses. For instance, in the Corfu Channel case, the ICJ takes the point of view of the United Kingdom in both questions (claim by the United Kingdom and counterclaim by Albania): under the first question it puts to test the UK claims and under the second question it puts to test UK defences.[90]

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[89] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v United Kingdom), Preliminary Objections* (2016) 2016 ICJ Rep 883 (ICJ).
[90] *Corfu Channel Case (United Kingdom v Albania)* (n 79).

6. Conclusion

Creative writing courses might not figure as a requisite for the judicial practice in international fora, but writing is an inherent activity of the judge that deserve an attentive analysis next to the study of the law. In this paper, I sought to apply the most basic rules of creative writing to describe the judgment and provide a law and literature description of the craft. I first explained why writing matters and why the legal scholar can turn to creative writing to describe judicial writing. Then, I focused on three main themes: the sentence, the characters, and the plot. Concerning the sentence, I applied four main rules to the judgment: avoid the passive voice, avoid adjectives, avoid adverbs, and avoid negatives. These rules are all directed at the main objective of clarity and effectiveness of writing. Afterwards, I moved the analogy between literary works and judicial works to the construction of the character as the legal argument of the judgment. I distinguished between two different approaches employed by different courts, characterized by presenting all legal arguments before the reasoning, or during the unfolding of the plot. Finally, I described the construction of the plot as a fundamental freedom of the writer, limited only by the genre. Here I distinguished between different literary forms, presenting how this analysis can assist the legal scholar for deciphering an essential component of the judicial practice and analyse the law. The qualitative analysis was accompanied by empirical data obtained through computational tools, to provide a description of judicial writing in its aggregate dimension.

To conclude, this paper calls for attention towards an understudied aspect of judicial work. Writing constitutes the main effort of courts, and it should find proper consideration in all analysis, legal as well as social. The subject still lacks a defined research agenda recognized in international legal studies, with several questions that remain unanswered: how writing style varies through different courts, also in the context of legal fragmentation; the relationship between writing style and the indeterminacy thesis, also concerning the theory of the sources; the stylistic determinants of the human right of access to justice; the relationship between writing style and legal formalism (to mention a few). Computational analysis is a promising tool to reveal patterns and provide an empirical description of the craft of writing. Beyond a research agenda informed by law and literature, all case notes and scholarship that extensively rely on judgments as primary research materials would benefit from the literary analysis of judicial style through computational tools.