

Deciding on Customary International Law: The ICJ's Approach Using Induction, Deduction, and Assertion

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Abstract : The International Court of Justice, as well as international law in general, may not excel in methodology. In contrast to how it interprets treaties, the Court rarely explains how it determines the existence, content, and scope of customary international law rules it uses. The Court's jurisprudence only mentions the inductive and deductive methods of law determination sporadically. Both the Court and legal literature have not extensively discussed their approach to determining customary international law. Surprisingly, the question of the Court's methodology has not garnered much attention despite the fact that interpreting and shaping the law have always been intertwined. This article seeks to redirect focus to the method used by the Court in deciding the customs of international law it enforces, emphasizing the importance of methodology in the evolution of customary international law. The text begins by giving explanations for the concepts of 'induction' and 'deduction' and explores how the Court utilizes them. It later examines when the Court employs inductive and deductive reasoning, the varied types and purposes of deduction, and the connection between the two approaches. The text questions the different concepts of inductive and deductive tradition and proves that the primary approach utilized by the Court is not induction or deduction but instead, assertion.

Keywords : ICJ, law, international, induction, deduction, assertion

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