## Summary of Contents

Preface	7
Acknowledgments	
Table of Abbreviations	23
Chapter § 1 Introduction	25
A. Structure	29
B. Methodology	30
C. Scope of the study	34
Part I The 'international' amicus curiae	41
Chapter § 2 Great expectations? Presumed functions and	
drawbacks of amicus curiae participation	43
A. Presumed functions of amicus curiae	43
B. Presumed drawbacks	64
C. Conclusion	72
Chapter § 3 An international instrument	73
A. Amicus curiae before national courts	74
B. Emergence and rise of <i>amicus curiae</i> before international courts	
and tribunals	91
C. Conclusion	121
Chapter § 4 Characteristics, status and function of <i>amicus curiae</i>	
before international courts	123
A. Characteristics of the international amicus curiae	123
B. Functions of the international amicus curiae	132
C. Amicus curiae and other forms of non-party participation	157
D. Conclusion	172

Summary of Contents

Pa	rt II Commonalities and divergences: the procedural laws of	
	amicus curiae participation	175
Ch	apter § 5 Admission of <i>amicus curiae</i> to the proceedings	177
A.	Legal bases for amicus curiae participation	177
В.	Conditions concerning the person of amicus curiae	228
C.	Request for leave procedures	266
D.	Conclusion	314
Ch	apter § 6 Amici curiae in the proceedings	317
A.	Oral and written participation	318
В.	Recorded participation	332
C.	Formalization of participation	334
D.	Substantive requirements and the content of submissions	345
E.	Submission of evidence	404
F.	Access to documents	408
G.	Conclusion	425
Par	rt III The added value of the international amicus curiae	429
Ch	apter § 7 Does content matter? Substantive effectiveness of	
	amicus curiae submissions	431
A.	An obligation to consider?	433
B.	International Court of Justice	435
C.	International Tribunal for the Law of the Sea	440
D.	European Court of Human Rights	443
E.	Inter-American Court of Human Rights	450
F.	African Court on Human and Peoples' Rights	459
G.	WTO Appellate Body and panels	459
H.	Investor-state arbitration	469
I.	Comparative analysis	479
J.	Conclusion	487

Chapter § 8 Effects on the international dispute settlement system		489	
A.	parties an	the relationship between the court, the disputing ad the member states: <i>amici curiae</i> as evidence of an international judiciary?	490
B.		terest: <i>amicus curiae</i> as motor and evidence of an gjudicial function?	504
C.		uriae as a tool to increase the legitimacy of onal adjudication?	525
D.	Increased	coherence? Impact on international law	535
E.	-	ency: demise of confidentiality and access to the ngs and case documents?	538
F.	Impact of	n locus standi: amicus curiae as a precursor to	
	internatio	onal legal standing?	542
G.	And the c	irawbacks?	546
H.	Conclusio	on	567
Ch	apter § 9	Conclusion	569
Α.	What is in	t?	569
B.	Added va dispute so	alue of <i>amicus curiae</i> participation in international ettlement	571
An	nex I: Cas	es with amicus curiae involvement	575
An	nex II		705
Bit	oliography		707

Preface	7
Acknowledgments	9
Table of Abbreviations	23
Chapter § 1 Introduction	25
A. Structure	29
B. Methodology	30
C. Scope of the study	34
Part I The 'international' amicus curiae	41
Chapter § 2 Great expectations? Presumed functions and	
drawbacks of amicus curiae participation	43
A. Presumed functions of amicus curiae	43
I. Broader access to information	43
II. Representation of 'the' public interest	47
III. Legitimacy and democratization	53
IV. Contribution to the coherence of international law	59
V. Increased transparency	62
B. Presumed drawbacks	64
I. Practical burdens	65
II. Compromising the parties' rights	65
III. Politicization of disputes, de-legitimization and lobbyism	67
IV. Overwhelming developing countries	70

	V. Unmanageable quantities of submissions	71
	VI. Denaturing of the judicial function	72
С.	Conclusion	72
Ch	apter § 3 An international instrument	73
A.	Amicus curiae before national courts	74
	I. The origins of amicus curiae	74
	II. Amicus curiae before the English courts	76
	III. Amicus curiae before the United States Federal Courts	
	and the Supreme Court	81
	IV. Internationalization: amicus curiae in civil law systems	
	and in inter- and supranational legal instruments	86
	V. Comparative analysis	90
B.	Emergence and rise of amicus curiae before international courts	
	and tribunals	91
	I. International Court of Justice	91
	II. International Tribunal for the Law of the Sea	100
	III. European Court of Human Rights	103
	IV. Inter-American Court of Human Rights	106
	V. African Court on Human and Peoples' Rights	108
	VI. WTO Appellate Body and panels	109
	VII. Investor-state arbitration	115
C.	Conclusion	121
Ch	apter § 4 Characteristics, status and function of amicus curiae	
	before international courts	123
A.	Characteristics of the international amicus curiae	123
	I. A procedural instrument	124
	II. A non-party and a non-party instrument	126
	III. Transmission of information	129
	IV. An interested participant	130
	V. An instrument of non-state actors?	132
В.	Functions of the international amicus curiae	132

I. Information-based amicus curiae	133
II. Interest-based amicus curiae	138
1. International Court of Justice and International	
Tribunal for the Law of the Sea	139
2. European Court of Human Rights	140
3. Inter-American Court of Human Rights	144
4. WTO Appellate Body and panels	146
5. Investor-state arbitration	148
6. Comparative analysis	152
III. Systemic amicus curiae	152
IV. Analysis	154
1. The myth of 'the' international amicus curiae	155
2. An evolving concept	156
3. Are there limits to the functions amici curiae may	
assume?	156
C. Amicus curiae and other forms of non-party participation	157
I. International Court of Justice and International Tribunal	
for the Law of the Sea	159
II. WTO Appellate Body and panels	164
III. Investor-state arbitration	168
IV. Comparative analysis	171
D. Conclusion	172
D. Conclusion	1/2
Part II Commonalities and divergences: the procedural laws of	
amicus curiae participation	175
1 1	
Objective C.C. A device in a firm in a section of the section of the	177
Chapter § 5 Admission of <i>amicus curiae</i> to the proceedings	177
A. Legal bases for amicus curiae participation	177
I. International Court of Justice	180
II. International Tribunal for the Law of the Sea	191
III. European Court of Human Rights	195
IV. Inter-American Court of Human Rights	197
V. African Court on Human and Peoples' Rights	200
VI. WTO Appellate Body and panels	202
1. Panels	202

2. Appellate Body	207
VII. Investor-state arbitration	213
1. Clauses in investment treaties	213
2. Clauses in institutional procedural rules	215
3. Implied powers	222
4. Ad hoc agreements	224
VIII. Comparative analysis	225
1. Codification and informal doctrine precedent?	226
2. Common regulatory approaches	227
B. Conditions concerning the person of amicus curiae	228
I. International Court of Justice	229
II. International Tribunal for the Law of the Sea	231
III. European Court of Human Rights	235
IV. Inter-American Court of Human Rights	241
V. African Court on Human and Peoples' Rights	246
VI. WTO Appellate Body and panels	247
VII. Investor-state arbitration	250
1. Legal standards	250
2. Application	253
VIII. Comparative analysis	261
C. Request for leave procedures	266
I. Formal requirements	269
1. Timing	269
2. Form and length	283
II. Substantive requirements concerning the application	284
1. International Court of Justice	284
2. European Court on Human Rights	284
3. African Court on Human and Peoples' Rights	286
4. WTO Appellate Body and panels	286
5. Investor-state arbitration	287
III. Full discretion: decision on admissibility	304
IV. Comparative analysis	312
D. Conclusion	314
Chapter § 6 Amici curiae in the proceedings	317
A. Oral and written participation	318

	I. International Court of Justice	318
	II. International Tribunal for the Law of the Sea	319
	III. European Court of Human Rights	320
	IV. Inter-American Court of Human Rights	323
	V. African Court on Human and Peoples' Rights	325
	VI. WTO Appellate Body and panels	326
	VII. Investor-state arbitration	328
	VIII. Comparative Analysis	330
	1. Confidential and/or private nature of the dispute	
	settlement mechanism	331
	2. Regulatory reasons	332
	3. Efficiency, costs and control	332
	4. Personal views of judges	332
B.	Recorded participation	332
C.	Formalization of participation	334
	I. Form of written submissions	335
	1. Length	335
	2. Language	336
	3. Authentification	339
	4. Failure to comply	342
	II. Comparative analysis	343
D.	Substantive requirements and the content of submissions	345
	I. International Court of Justice and International Tribunal	
	for the Law of the Sea	346
	II. European Court of Human Rights	350
	III. Inter-American Court of Human Rights	362
	IV. African Court on Human and Peoples' Rights	369
	V. WTO Appellate Body and panels	370
	VI. Investor-state arbitration	381
	1. Legal standards	381
	2. Particular knowledge or perspective: human rights and	
	EU law?	382
	3. Within the scope of the dispute	388
	4. Applicable law and its limits	393
	VII. Comparative analysis	401
E.	Submission of evidence	404
F.	Access to documents	408

I. International Court of Justice and International Tribunal	400
for the Law of the Sea II. European Court of Human Rights, Inter-American Court	409
of Human Rights and African Court on Human and	
Peoples' Rights	411
III. WTO Appellate Body and panels	412
IV. Investor-state arbitration	417
V. Comparative analysis	425
G. Conclusion	425
Part III The added value of the international amicus curiae	429
Chapter § 7 Does content matter? Substantive effectiveness of <i>amicus curiae</i> submissions	431
A. An obligation to consider?	433
B. International Court of Justice	435
C. International Tribunal for the Law of the Sea	440
D. European Court of Human Rights	443
E. Inter-American Court of Human Rights	450
F. African Court on Human and Peoples' Rights	459
G. WTO Appellate Body and panels	459
H. Investor-state arbitration	469
I. Comparative analysis	479
I. Why the hesitation?	482
II. Elements of successful briefs	484
III. Limits to the consideration of briefs	484
J. Conclusion	487

Cha	apter § 8 Effects on the international dispute settlement system	489
A.	Effect on the relationship between the court, the disputing parties and the member states: <i>amici curiae</i> as evidence of an	
	assertive international judiciary?	490
	I. International Court of Justice	491
	II. International Tribunal for the Law of the Sea	493
	III. European Court of Human Rights and African Court on	
	Human and Peoples' Rights	493
	IV. Inter-American Court of Human Rights	493
	V. WTO Appellate Body and panels VI. Investor-state arbitration	494 499
	VII. Comparative analysis	499 504
р	· ·	JQT
B.	Public interest: <i>amicus curiae</i> as motor and evidence of an expanding judicial function?	504
	I. International Court of Justice	507
	II. International Tribunal for the Law of the Sea	510
	III. European Court of Human Rights	511
	IV. Inter-American Court of Human Rights	512
	V. WTO Appellate Body and panels	513
	VI. Investor-state arbitration	517
	VII. Comparative Analysis	521
	1. The right agent?	522
	2. Denaturation of judicial proceedings?	523
C.	Amicus curiae as a tool to increase the legitimacy of	
	international adjudication?	525
	I. Procedural legitimacy	526
	II. Substantive legitimacy	529
	III. Conditions: representativity and accountability	531
D.	Increased coherence? Impact on international law	535
E.	Transparency: demise of confidentiality and access to the proceedings and case documents?	538
F.	Impact on locus standi: amicus curiae as a precursor to	
	international legal standing?	542
G.	And the drawbacks?	546

I. Parties' rights 1. Due process	547 548
2. Procedural fairness and equality between the parties	557
II. Practical burdens	561
1. Right to a speedy trial and undue delay?	561
2. Exploding costs?	562
H. Conclusion	567
Chapter § 9 Conclusion	569
A. What is it?	569
B. Added value of <i>amicus curiae</i> participation in international dispute settlement	571
Annex I: Cases with amicus curiae involvement	575
Annex II	705
Bibliography	707