

Robert Kolb, *The International Court of Justice*, Hart Publishing,
Oxford: 2013, pp. 1362

ISBN 978-18-49-46263-1

Drawing on his own experience as an advocate before the Court, Professor Robert Kolb has written extensively on the International Court of Justice (the ICJ or the Court). The book under review is the translated and updated version of the French original (*La Cour internationale de justice*) published with Pedone in 2013. In addition, Professor Kolb also released *The Elgar Companion to the International Court of Justice* with Edward Elgar Publishing in 2014, addressed firstly to non-lawyers. The narrative of the latter book is therefore different from the one being reviewed. The *International Court of Justice* is both rich and demanding reading, aimed at a target audience with a legal background, which Professor Kolb himself frankly designated as “lawyers (or those aiming to become lawyers), especially international lawyers” (at p. vii). Definitely the readership is rightly defined, although the level of expertise expected of a reader differs from one part to another. In most cases the book’s perspective seems aimed first and foremost at experienced lawyers. From time to time, however, the author delves into an elementary reasoning designated more for students of law who, as noted, are also mentioned among the target readership. This may constitute a kind of inconsistency, although such a technique might as well prove very efficient in terms of accommodating different categories of readers.

The present book provides a careful, meticulous examination of the main judicial organ of the United Nations, relying of course on its Statute and procedures, but confronting them with the practice of States, that of the United Nations and – last but not least – that of the very Court itself. Definitely, the book might be compared to and is certain to occupy a position similar to the most valuable traditional treatises on the ICJ, including the seminal masterpieces on the Permanent Court of International Justice (PCIJ) by Bustamante or Hudson and the classic multi-volume piece by the late Shabtai Rosenne (latest edition with the assistance of Yaël Ronen). Frequent reference is also made in the book to the *Commentary on the Statute of the Court*, edited jointly by Andreas Zimmermann, Christian Tomuschat, and Karin Oellers-Frahm, with a considerable contribution on the general principles of procedural law by Kolb himself.

Against this background a reader might be confused when confronted with the observations, mentioned in the initial paragraph of the book’s Preface, that “hardly any monographs have been published in recent times” and to “the dearth of comprehensive texts”. Luckily however, such a diagnosis, whether correct or not, led the author to undertake – with success – a project in which the book under review is the outcome. In the same breath one must also mention the impressive collection of essays *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* by Hugh Thirlway, comprised of his contributions previously published in the British Yearbook of

International Law and released as a two-volume-set by Oxford University Press (OUP) in 2013, i.e. in parallel with the book under review. Taken together with a series of recent specific books on the ICJ (including, *inter alia*, a dissertation by Gleider I. Hernández *The International Court of Justice and the Judicial Function*, also published by OUP), one can legitimately wonder whether the evaluation provided by author in the opening part of the Preface still holds true.

This book covers probably the widest possible spectrum of issues connected with the ICJ. It starts with “Initial Observations on the Peaceful Resolution of International Disputes”, giving the reader a broad point of reference and a more general starting point for the subsequent analyses. Then it discusses the origins of the ICJ. Attention is of course paid to the establishment of the ICJ’s predecessor, the PCIJ, and the roots in the arbitration of international justice. The dissolving of the PCIJ is scrutinized particularly from the perspective of the transition to the ICJ. From an organisational point of view the main development consisted in integrating the Court into the United Nations machinery. Nevertheless, after examining the formal function of the ICJ as the principal judicial organ of the United Nations, Kolb also considers it from the perspective of an organ of public international law. Perhaps unexpectedly, the reader then encounters a kind of introduction to the other international jurisdictions based at The Hague, which in turn leads to elaboration of a definition of “international tribunal”, demonstrating different approaches and advocating for a not-too-rigid application of the identified criteria.

Chapter III is devoted to the legal instruments governing the operation of the Court. The starting point of this analysis is of course the constitutional document, namely the Court’s Statute. Subsequently attention is drawn to the procedural rules and then to practical considerations. They constitute an indispensable reference for any further examination.

In Chapter IV Kolb analyses the composition of the ICJ. When discussing the bench, his thoughts on *ad hoc* judges are especially worth mentioning. Some additional light is then shed on the questions surrounding the chambers, which particularly merit attention.

The central part of the treatise is the study of the contentious procedure. Inter-state disputes are scrutinized in Chapter V which – extending to over 500 pages – dominates over the other parts of the book. In a systematic manner the author considers seizing the Court, admissibility issues and jurisdiction, pronouncements of the Court (including the thoughtful consideration on the possibility of declaring *non liquet*), effects of the Court’s judgments, their interpretation and revision. Somewhat surprisingly one then finds considerations on the implementation of the judgment. Of course the measures taken by the Security Council to enforce compliance with ICJ judgments are a fascinating issue, nevertheless this is a completely separate subject, going well beyond the adjudicative phase. Perhaps the reason for including the issue in the book was to tackle various other aspects of the relationship between the Court and the Council together. The last subchapters of Chapter V deal with the possibility of judicial review by the ICJ

over the acts of the Council and the reverse mechanism of influence, i.e. the power of the Security Council to dis-seize the Court of a case in which it has jurisdiction and its possible competence to limit the freedom of the parties to have recourse to the Court.

In addition to Chapter V on the contentious procedure, there are also separate chapters on general principles applicable to contentious proceedings (Chapter VI) and on procedural aspects of contentious cases (Chapter VII). The former chapter gives insight into three issues: the scope and the application of a maxim *ne eat iudex ultra petita partium*, questions of evidence (in particular the burden of proof), and the specific injection of the principle of good faith into the realm of international dispute settlement by the Court, i.e. the duty of loyalty between the parties. With respect to the latter question Kolb derives extensively from his previous works on good faith, considering it also from different angles (including the ban on the abuse of process, the principle of estoppel, or the rule prohibiting profits from one's wrongdoing).

Interestingly, following the examination of the advisory jurisdiction of the Court (Chapter VIII), another chapter (IX) again deals with general principles, this time governing both functions of the ICJ. In particular, attention is drawn first to principle of equality between the parties, tackled from different perspectives: as a constitutional principle, as a synonym for reciprocity, and finally as a purely procedural principle. Then the reader is exposed to a splendid and innovative consideration of the proper administration of justice, a topic which until now has not received adequate examination in the scholarly literature.

Chapter X is devoted to the Court's jurisprudence and its general contribution to the development of international law. Kolb traces the trends by identifying specific features of the ICJ's judicial activity. The whole period of its operation is divided in several phases: after paying due regard to the PCIJ more light is shed on the development of jurisprudence by the ICJ. This eloquent and relatively concise overview is then accompanied by considerations concerning the precedential value of ICJ judgments, and subsequently by the Court's attempts to strike a balance between the two opposite poles of judicial policy, namely judicial activism and judicial restraint.

The following chapter deals with miscellaneous questions, which include such remote issues as publications, finances, immunities and privileges, extra-judicial activities and then the public's perception of the Court. The two last parts of this chapter merit special attention. For some (unknown) reasons the relations between the ICJ and other courts and tribunals attracted only minor, even cursory, attention in this otherwise elaborate analysis. One may of course claim that this is a separate issue that has already been sufficiently discussed elsewhere, but given the crucial importance of these issues, as evidenced also in the concluding chapter, it is hard to consider the mere identification of the problem in this chapter as satisfactory. The ICJ may, or perhaps even should, play a more active role in addressing the conflicts of jurisdictions or inconsistencies in jurisprudence. Whether appropriate or not, it is hard to conceive of any reaction towards the proliferation of international judiciary without ascribing at least some role to be carried out by the principal judicial organ of the United Nations.

The other problematical question concerns reform of the Court. This issue takes up merely six pages of the book, which seems like a very modest number, especially when juxtaposed with the other issues tackled by Kolb in previous parts. While the illustrative listing of different proposals offers a comprehensive overview of the issues perhaps in need of amendment, specific commentary (albeit short) has been provided only to the ideas to privatize the contentious procedure and to the attempts to broaden the circle of entities empowered to request an advisory opinion from the Court.

The book ends with a concluding chapter entitled: “The Future of International Justice”. After assessing the Court as “one of the twentieth-century’s great contributions to dispute resolution and to the emergence of institutionalised justice that can put flesh on the bones of a progressively consolidating corpus of international law” (at p. 1211), Kolb points to the limited (marginal) contribution of the Court to this general objective. Despite all the enthusiasm towards the International Court of Justice, he resists the temptation to use condescending language to suggest all too easy solutions. Instead, Kolb identifies several external and internal factors influencing the restoration of the role of law. Given the vagueness of some of the postulated changes (improvements in international law or strengthening both peace and the role of global organization), it is the internal level factors that are worth considering. Within the latter group Kolb mentions some of the obvious ones, like the quality of the Court’s jurisprudence and services or its contribution in the diplomatic field, but he would also consider the “Court’s activities as one element in the overall panoply of dispute settlement mechanisms.” In this regard it is worth noting that *mode* shopping is now very often a question of *forum* shopping. Certainly it is also, as rightly observed by Kolb, the Court’s capacity for innovation (including both the development of its constitutional function or acting as a court to which preliminary questions might be addressed) that could play a vital role in this regard. Most readers would probably subscribe to his assessment that such improvements are unlikely to occur in the nearest future, but this should not detract us from analysing these issues.

Annexed to the substantive part of the book are the Statute, the Rules and Practice directions. A Selected Bibliography is also provided, offering a concise list of monographs and articles separately for the ICJ and its predecessor. Hence the reader gets a full package for consideration of the role and operation of the Court. The comprehensive index provided at the end proves indispensable, especially for such an elaborate book.

In general, one should consider the treatise by Kolb as an authoritative source of reference, contributing much to the understanding of the International Court of Justice. Some questions of terminology may nevertheless arise. For example, the heading “Provisional measures of protection” does not find any basis in the Statute or the Rules of the Court. Sometimes the adjective “optional”, when referring to the Court’s jurisdiction, might cause some discomfort for those used to the optional clause providing for compulsory jurisdiction under Art. 36(2) of the Statute, an issue so perfectly analysed by Professor Renata Szafarz.

Several repetitions, albeit announced in the Preface, may confuse the reader, be they necessary or not. And despite the initial intention not to overwhelm the reader with too many footnotes, their number is indeed very large. As a result the extensive, over-reaching analysis is well-documented, but as a consequence the reader's determination to carry on with a full reading may decrease (as acknowledged by the author himself in the preface). Kolb is probably right in envisioning that his masterpiece (not his word) will be used mainly as a reference work, useful to consult for specific issues. This is not, however, the only possible option. The present reviewer happily belongs to the "hardy souls prepared to read the whole of the treatise" and can only recommend it.

The book under review delights the reader with its comprehensiveness and depth of legal analysis. One is impressed not so much by the wealth of information, but by the strict, meticulous way of analyzing different theoretical threads, always illustrated using the most accurate reference to the jurisprudence. Kolb's treatise combines theoretical expertise with practical sense. Therefore it will be of tremendous help for both academics and practitioners, not only those working in the field of public international law. This is definitely a "must have" for any legal library!

*Bartłomiej Krzan**

DOI 10.7420/pyil2014p

* Associate Professor of Public International Law at the University of Wrocław, Faculty of Law, Administration and Economics.