

***The Cambridge Companion to the International Court of Justice*, by Carlos Espósito (Editor) and Kate Parlett (Editor), Cambridge University Press 2023**

The editors are Carlos Espósito, Professor of Public International Law at the Universidad Autónoma de Madrid, and Dr Kate Parlett, a barrister specialising in public international law and international arbitration.

This recent volume is the most recent contribution to Cambridge Companions, a series intended to bring a wide variety of topics across academic fields such as theatre, politics and philosophy as well as law. It is an edited edition that brings together a number of prominent international lawyers as contributors and, as with other volumes in the series, such as *The Cambridge Companion to International Law*,¹ it is an affordable and comprehensive assessment for its size, with a wide scope. The book brings a focus onto a court whose role in international law is always controversial, and which has a contemporary value in addressing conflicts between states and of its value in current conflicts. It fills a gap in scholarly assessment not recently available to those interested in this area.

I found the book of particular interest as it was published shortly after the recent death of the American lawyer Benjamin Ferencz in April 2023. Ferencz was the last surviving prosecutor of the Nuremberg Military Tribunals, a professor of international law in the US and a strong advocate of the creation of an international criminal court, now the ICC. Courts such as the ICC and the ICJ have had the mandate and ability since their creation in the post-war period to interpret international law, and in the case of the ICJ to act as the principal judicial organ of the United Nations.

The editors here have sought to provide a “thorough, reflective and critical study of the role of the ICJ”.² Contributors to the volume include former judges of the ICJ, practicing barristers in international law who have been before that Court, and a number of distinguished academics. In order to do so the editors have divided the contributions into three parts to address both developments and critical perspectives.

Part I addresses the historical development and contemporary nature of the ICJ, Part II examines the role of the ICJ in settling international disputes and Part III, how the ICJ has itself contributed to the development of international law since it was created.

The articles within are illustrative of the changing nature and scope of the Court. Whereas its ‘function is to decide in accordance with international law such disputes as are submitted to it’, the distribution of states submitting cases has broadened from primarily European states, to ‘states from the Asia-Pacific region and from the Middle East, and especially from Central and South America’.³ Having said that, Tom Ginsburg qualifies the scope, observing that ‘it is helpful to understand that the ICJ is profoundly limited by its institutional design and the international system. Without coercive powers, and dependent on State consent for cases, the [ICJ] was destined to play a limited role from the outset, in a world in which States were not actively seeking to adjudicate disputes’ noting that ‘its most important contributions have been in the development of the law, a task not formally assigned to the Court at all’.⁴ Although these assessments suggest that the ICJ has grown and matured beyond its modest beginnings, some see that its effectiveness has been limited.

Yet despite its limitations, the ICJ has carved its niche. For example, Marcelo Cohen and Mamadou Hébié have noted that, in the context of territorial disputes, the law in this area is primarily the law as

¹ James Crawford and Martti Koskenniemi, (Eds), Cambridge University Press 2015.

² Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 2.

³ Judge James Crawford, Freya Baetens and Rose Cameron, ‘Functions of the International Court of Justice’ in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 44.

⁴ Tom Ginsburg, ‘The Institutional Context of the ICJ’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 99.

specified by the ICJ. It has brought clarity and predictability by “choosing to focus on law, in a field where disputing parties make all kind of political, historical, religious and sociological arguments.” As a result, “the Court was able to bring some welcome rationality”⁵ Similarly, the ICJ has contributed to the Law of the Sea, but primarily its cases have been in the area of maritime boundary delimitation. Notably “since the 1969 *North Sea Continental Shelf* cases the Court has consistently declined to recognise any one method of delimitation as representing a rule of customary international law.”⁶ In both these areas, the contributors have demonstrated that the ICJ has had to draft new methodologies in order to solve novel cases.

Rotem Giladi and Yuval Shany argue that notwithstanding ‘the Court has made some, albeit modest, contribution to international peace and security ... its jurisdictional limits, resource constraints and never-utilised enforcement capacities... the potential impact of the Court on its international environment is likely to remain modest’.⁷ Indeed, in some circumstances its impact is barely measurable. Regarding international environmental law, Daniel Bodansky states clearly “[t]he most important potential impact of the Court would be on the actual behaviour of States. But this impact is, at present, difficult to assess.” He finds at best that these are to be found in the citations by courts and scholars.⁸

Additionally, the ICJ’s brief to take cases based on the consent of the parties has been by Jean-Marc Thouvenin to be outdated. Thouvenin cites the example of Judge Cançado Trindade, a Brazilian judge of the ICJ for two terms up until his death in 2022. Cançado Trindade considered this consent to be an “anachronism of reliance upon the will of States and on their consent as a precondition of access to justice”, citing his dissenting opinion in *Georgia v Russia*⁹ as a “brilliant and convincing plea for compulsory jurisdiction.”¹⁰

In summary, this volume is not just a collection lauding the successes of the ICJ in helping shape modern international law by settling disputes between states. Rather, the anthology explores the ideals of the ICJ (and whether they have been met), its working practices and procedures, the extent of its jurisdiction, and its impact on international law. The contributors are clearly free to critique and highlight failings of the ICJ. For example, Alejandro Chehtman, while highlighting that the ICJ has played an important part in developing the UN framework on the use of force, he equally notes that the court has received criticism in this area.¹¹

This *Companion* is a valuable resource in a critical study of the ICJ and has much to recommend it. It provides biographies of its contributors to put their submissions into context, and provides links to further reading in each chapter. Although the editors acknowledge that the manuscript was completed before the Russian Invasion of Ukraine, it does mention the ICJ made provisional measures in March 2022. This book’s contents should be a valuable guide to understanding the complex nature of the role of the ICJ in this and other diverse matters that come under its wide scope.

Tony Meacham, Assistant Professor, Coventry University.

⁵ Marcelo Cohen and Mamadou Hébié, ‘Territorial Disputes’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 362.

⁶ Nilüfer Oral, ‘The Law of the Sea’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 386.

⁷ Rotem Giladi and Yuval Shany, ‘Assessing the Effectiveness of the ICJ’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 119.

⁸ Daniel Bodansky, ‘The Institutional Context of the ICJ’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 99.

⁹ Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v Russian Federation*) 1 April 2011. <<https://www.icj-cij.org/case/140>> accessed 21 June 2023.

¹⁰ Jean-Marc Thouvenin, ‘The Jurisdiction of the Court’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 145.

¹¹ Alejandro Chehtman, ‘Use of Force’, in Carlos Espósito and Kate Parlett (Eds), *The Cambridge Companion to the International Court of Justice*, Cambridge University Press 2023, 1468.