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Book Review: Robert Kolb, *The International Court of Justice*

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the Panama Convention¹⁶ — comprise Annex V. A well-developed index adds to the user-friendliness of the book. All of this information, even before considering the additional sources and citations provided in the main body of the text, facilitates access to enormous amounts of pertinent background and research material and makes the book an indispensable research tool.

Although the General Bibliography at the front of the book is only two pages long, each individual article has a Specific Bibliography of works pertaining to that particular article. Some bibliographies are quite extensive, and, in the more complex articles, such as Articles II and V, there are also Specific Bibliographies for the subsections. In Article V, for example, separate bibliographies are provided for Article V (General), Article V(1)(a) and (b), Article V(1)(c), Article V(1)(d), Article V(1)(e), Article V(2)(a), and Article V(2)(b). The final articles, Articles VIII through XVI, which for the most part deal with adhering to or denouncing the Convention, share the Specific Bibliography of Article VIII.

In addition to the bibliographies and other supplemental materials, the structure of each of the annotated chapters is lucid and well organized and follows a similar format. Except for the preliminary remarks, each chapter covering one of the sixteen articles first sets forth the full text of the article and includes a Specific Bibliography and a very detailed table of contents. Each chapter then provides an overview, followed by a section on “spirit and purpose,” and a section on “drafting history,” before the annotation of the substance of the article begins. In Article V, each subsection has a separate overview, spirit and purpose, and drafting history. This common structural format provides a helpful and readily accessible context for the wealth of information and analysis that follow.

I had just a couple of quibbles with this impressive book. First, in the list of abbreviations, “*cf.*” is listed as “confer.” Although “*cf.*” is derived from the Latin word *confer*, it means

“compare,” and it would have been better to include the English meaning. It would also have been helpful to provide parenthetically or in footnotes the translation of some of the longer Latin phrases used in various sections of the book for those many lawyers worldwide, particularly in the United States, whose educations have provided little exposure to Latin. These points are, however, very minor in a most impressive, useful, and authoritative work. All of the chapters in the *Commentary* provide detailed and clear explanations of issues arising in respect to both legal and practical issues under the Convention. In my own future work as a professor, it is unlikely that I will ever teach or write anything about the Convention without first reviewing the relevant sections of the *Commentary*.

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The International Court of Justice. By Robert Kolb. Oxford, Portland OR: Hart Publishing, 2013. Pp. liii, 1307. Index. \$290, £145.

Robert Kolb's *The International Court of Justice* is a monumental tribute to the enormous historical and legal contributions of the International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice (PCIJ), as well as an excellent resource about the complex procedural provisions of both institutions. Kolb, a professor of public international law at the University of Geneva, wrote the original version in French (*La Cour internationale de justice* (published by Pedone in 2013)), and he slightly updated it for the English version reviewed here. Alan Perry, solicitor of the Senior Courts of England and Wales, translated the book into English and should be commended for the superb result that he has achieved.

This thoroughly researched and well-written book guides the reader through the complexities of the ICJ. It includes an analysis of its history and role and its contribution to the development of international law through its jurisprudence, as well as an examination of the more technical questions that explore its governing

¹⁶ Inter-American (Panama) Convention on International Commercial Arbitration, Jan. 30, 1975, OAS TS No. 42, 14 ILM 336 (1975), available at <http://www.oas.org/juridico/english/treaties/b-35.html>.

tests, explain its compositions, and evaluate its procedures both in interstate disputes and advisory opinions. Kolb, who represented Germany in the *Jurisdictional Immunities* case at the ICJ,¹ also considers the future of the ICJ as a judicial and lawmaking body.

The International Court of Justice was deservedly awarded the American Society of International Law's Certificate of Merit for High Technical Craftsmanship and Utility to Practicing Lawyers and Scholars in 2014. In its citation, the Committee highlighted the impressive breadth and depth of Kolb's study, concluding that "[t]he book's careful and detailed coverage of the Court's legal framework and operation will benefit practitioners and scholars alike. There is no doubt that Kolb's volume immediately takes a place among the authoritative references on the Court."² I agree completely: Kolb's book belongs in all the libraries of those who practice at or study the ICJ.

The book is divided into twelve chapters of remarkable scope and depth of treatment. The length of each chapter varies substantially, ranging from 20 pages (chapter IX) to 756 pages (chapter V).

Kolb begins with some initial observations related to the peaceful resolution of international disputes. The function of this introductory chapter is to contextualize the significance of international-dispute-resolution provisions both in the historical record and within the United Nations Charter, particularly those of Chapter VI relating to the pacific settlement of disputes. A second *amuse-bouche* is found in chapter II, which explores the origins of the ICJ, starting with a brief overview of arbitration and international justice and then highlighting the core differences between the two domains. A good portion of the chapter is dedicated to the PCIJ and to the transition from the PCIJ to the ICJ. Indeed, throughout the volume, Kolb often references the PCIJ, whose jurisprudence constitutes, in his view, a necessary and constant companion to the ICJ. In

this way, this book is really much more than a study of the ICJ: it includes not only a thorough analysis of the ICJ but also a comprehensive comparison to the PCIJ. This chapter also discusses the ICJ as the principal judicial organ of the United Nations and as an organ of public international law.

Chapter III brings us a step closer to the ICJ, the main subject of the study, and examines the texts governing its activities. Importantly, this chapter analyzes the two constitutive texts—the ICJ Statute and the UN Charter—and considers the peremptory character of the Statute as interpreted by ICJ and PCIJ jurisprudence. It also has a similarly in-depth analysis of other relevant instruments: the Rules of Procedure, as derivative and subordinate rules, and Practice Directions, as subordinate texts, which the ICJ has been issuing since 2001 to manage its increased workload.

The ICJ's composition is the focus of chapter IV. Kolb explains the basic provisions of composition and then approaches the more delicate questions related to nationality requirements, election of judges, ad hoc judges, and resignation and incompatibility of judges. Each of these issues could be the subject of its own treatise, and, though Kolb refers to the main debates and offers his conclusions, this reviewer would have wished for more information on the debates. For example, Kolb writes about the failed reelection of some qualified judges for what he calls "a desire to punish them for the 'unsatisfactory' decision" in the 1966 *South West Africa* cases³ (p. 112). Similarly, he addresses the issue of political positions expressed by certain judges and the resulting tensions, especially in the context of challenge procedures (p. 136). Referring again to the *South West Africa* cases, Kolb asserts that the ICJ refused to uphold South Africa's repeated objections to certain judges, "no doubt from fear of opening a Pandora's box" (*id.*). Both assertions are quite thought-provoking, meriting a more detailed discussion. With the growth of international adjudication, the perceived legitimacy of the ICJ and other international courts has become paramount. Elections and challenges of judges are control

¹ *Jurisdictional Immunities of the State* (Ger. v. It.; Greece Intervening), 2012 ICJ REP. 99 (Feb. 3).

² Elizabeth Andersen, *2014 ASIL Book Awards Announced!*, AJIL UNBOUND (Feb. 7, 2014), at <http://www.asil.org/blogs/2014-asil-book-awards-announced>.

³ *South West Africa* (Eth. v. S. Afr.; Liber. v. S. Afr.), Second Phase, 1966 ICJ REP. 6 (July 18).

mechanisms of growing importance that still need to be addressed comprehensively. Kolb discusses these issues but leaves us wanting a more thorough examination. The last parts of this chapter discuss the important yet decreasingly relevant issue of Chambers and provide a welcome description of the functions and composition of the Registry, a key part of the ICJ's composition, whose important role is often overlooked.

The real *pièce de résistance* is chapter V, which describes in remarkable detail the ICJ's contentious practice in interstate disputes, essentially from a procedural viewpoint. Kolb begins by outlining the first steps taken by the parties to seize the ICJ and then assesses their validity. He provides a very useful analysis of specific aspects of the ICJ's jurisprudence. For example, when discussing its nonformalistic attitude to the requirements for starting a case, Kolb reviews some of the ICJ's recent decisions, including the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* case on the issue of mere defect of form,⁴ and the *Border and Transborder Armed Actions* case on issues of interpretation in favor of validity,⁵ drawing interesting parallels with the practice of the PCIJ. These analyses are particularly helpful for practitioners researching specific issues in preparation of a case. The chapter also assesses preliminary objections and jurisdictional requirements, from the classic ones related to personal, subject-matter, consensual, and compulsory jurisdiction; to the more technical issues related to concurrent titles of jurisdiction and transitional (i.e., deriving from the PCIJ) jurisdiction. In the discussion of compulsory jurisdiction, the section analyzing optional declarations and reservations attached to such declarations is particularly helpful. Indeed, given the importance of the issue of reservations to counsel and the need to understand the ICJ's practice and the high occurrence of reservations, Kolb's systematic approach is particularly useful. He dis-

tinguishes among reservations *ratione materiae*, *ratione temporis*, *ratione personae*, and *ratione loci*, as well as reservations as to recognition. Reservations *ratione materiae* include reservations of other dispute-resolution mechanisms, reservations of questions belonging exclusively to internal jurisdiction, reservations for multilateral treaties, military reservations, reservations regarding the national territory, reservations regarding maritime delimitation, and questions relating to resources and the environment. All these elements are well analyzed and usefully footnoted.

The chapter then describes other procedural aspects of contentious cases, such as counterclaims, default procedures, intervention by third states, judgments and their effects, interpretation, revision, and implementation. The section on counterclaims is particularly noteworthy: it contains a thorough analysis both of the ICJ's jurisdiction over counterclaims and of the other conditions for acceptance of counterclaims, such as direct connection. In its final part, the chapter assesses the ICJ's supervisory jurisdiction as well as its jurisdiction to review the legality of acts of other UN organs, including the Security Council, and the more theoretical question of the competence of the Security Council to order a party not to seize the ICJ.

In chapter VI, Kolb reviews general principles of law applicable to contentious proceedings. This section is a broad yet concise discussion of general principles. Its consideration of issues related to evidence is particularly compelling, especially on the fundamental question of burden of proof. Kolb convincingly argues that each party must bear the burden of proof related to particular factual claims, irrespective of its position in the case. More interestingly, he then addresses the limitation of the general principle on the burden of proof for facts, while stating that the ICJ's role is to know the law. Kolb also discusses presumptions, negative facts, and facts established in prior ICJ judgments or opinions. The issue of the standard of proof is dealt with more succinctly. Kolb agrees with the ICJ that no single standard of proof exists and that it depends on the type of proceedings and the

⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.)*, Preliminary Objections, 1996 ICJ REP. 595, para. 26 (July 11).

⁵ *Border and Transborder Armed Actions (Nicar. v. Hond.)*, Jurisdiction and Admissibility, 1988 ICJ REP. 69, paras. 19, 40 (Dec. 20).

alleged legal facts of the case. By and large, issues of state responsibility require a high degree of certainty, while the indication of provisional measures requires a lower degree of certainty. This assessment is reasonable and intuitive, though not fully satisfying, as one wishes for further detail. Kolb calls for a monograph to be written on these topics, which would be welcomed. Indeed, in many cases, the issue of the standard of proof is key to understanding the ICJ's reasoning. ICJ President Rosalyn Higgins addressed the specific issue of standard of proof in her eminent speech to the Sixth Committee of the UN General Assembly in November 2007. She suggested that part of the reluctance to provide specific criteria is due to the gap between the explicit standard-setting approach found in the common law and the intimate conviction-of-the-judge approach used in civil law.⁶ Given that the ICJ judges and cases encompass all legal systems of the world, her perspective may not be surprising. Indeed, as the issue is important to the resolution of each case, it is important to examine further.

The next three chapters cover procedural matters. Chapter VII addresses procedural aspects of contentious cases, including an overview of the various stages of the procedure and of judges' deliberations. This chapter is a companion to chapter V and fills in some of the ICJ's procedures in interstate cases. The procedure applicable to advisory opinions is discussed in chapter VIII. Chapter IX focuses on the general principles governing the ICJ's contentious and advisory procedures, the fundamental principle of equality between the parties, and the proper administration of justice.

The final three chapters complete the volume with a discussion of the ICJ's current jurisprudence and current trends (chapter X), miscellaneous questions (chapter XI), and final conclusions (chapter XII). The section in chapter X that summarizes the periods of the ICJ's jurisprudence is particularly intriguing. It identifies three phases

in its history and for each includes a snapshot of the most relevant ICJ decisions. The first phase (1947–62) is characterized by dynamism and internationalism. It begins with the *Corfu Channel* decision,⁷ and it ends with the "fatal" decision on *South West Africa*⁸ (p. 1152). The second phase (1966–86) counterbalances the first and is dominated by a proceduralist jurisprudence and a trend towards stagnation. The present third phase, which began in 1986 with the *Military and Paramilitary Activities in and Against Nicaragua* case,⁹ shows the end of the period of crisis of the ICJ and the beginning of a period of renaissance and hyperactivity. A key characteristic of this phase is also the variety of the cases at the ICJ, including issues of immunity and use of force.¹⁰ The possible challenges brought by the existence of competing forums for international dispute resolution are

⁷ *Corfu Channel* (UK v. Alb.), 1949 ICJ REP. 4 (Apr. 9).

⁸ *South West Africa*, *supra* note 3.

⁹ *Military and Paramilitary Activities in and Against Nicaragua* (Nicar. v. U.S.), 1986 ICJ REP. 14 (June 27).

¹⁰ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosn. & Herz. v. Serb. & Montenegro), 2007 ICJ REP. 43 (Feb. 26); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, *supra* note 4; *Armed Activities on the Territory of the Congo* (Dem. Rep. Congo v. Uganda), 2005 ICJ REP. 168 (Dec. 19); *Jurisdictional Immunities of the State*, *supra* note 1; *Arrest Warrant of 11 April 2000* (Dem. Rep. Congo v. Belg.), 2002 ICJ REP. 3 (Feb. 14); *Legality of Use of Force* (Serb. & Montenegro v. Belg.), Preliminary Objections, 2004 ICJ REP. 279 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. Can.), Preliminary Objections, 2004 ICJ REP. 429 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. Fr.), Preliminary Objections, 2004 ICJ REP. 575 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. Ger.), Preliminary Objections, 2004 ICJ REP. 720 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. It.), Preliminary Objections, 2004 ICJ REP. 865 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. Neth.), Preliminary Objections, 2004 ICJ REP. 1011 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. Port.), Preliminary Objections, 2004 ICJ REP. 1160 (Dec. 15); *Legality of Use of Force* (Serb. & Montenegro v. UK), Preliminary Objections, 2004 ICJ REP. 1307 (Dec. 15); *see also* *Legality of Use of Force* (Yugo. v. Spain), Provisional Measures, 1999 ICJ REP. 761 (June 2); *Legality of Use of Force* (Yugo. v. UK), Provisional Measures, 1999 ICJ REP. 826 (June 2); *Legality of Use of Force* (Yugo. v. U.S.), Provisional Measures, 1999 ICJ REP. 916 (June 2).

⁶ Rosalyn Higgins, ICJ President, Speech to the Sixth Committee of the General Assembly 5 (Nov. 2, 2007), available at <http://www.icj-cij.org/presscom/files/3/14123.pdf>.

also worth mentioning as a key feature of this phase. The book concludes with a brief discourse on the ICJ's future. The ICJ Statute, Rules, and Practice Directions are annexed to the book.

Irrespective of its price, *International Court of Justice* is certainly a good deal. It provides a unique examination of the ICJ's practice and procedure. Indeed, one of the key strengths of this book is the depth of the analysis of a wide range of procedural issues, which can be of an immense help for practitioners and others studying the ICJ's jurisprudence. The cases are thoroughly analyzed, and their relevance across multiple issues is highlighted.

Not many readers will read this book from cover to cover, as this faithful reviewer did. If they did, however, they would find that, as Kolb announced in the introduction, the book can be a bit repetitive at times. For example, the issue of *forum prorogatum* is analyzed in four different places. For this and other issues, the very good twenty-five-page index will be an invaluable tool for swift research in such circumstances. The book also includes a useful and detailed table of all the cases cited in the book, with specific page references, should a reader be interested only in the analysis pertaining to a particular case.

As a side note, Kolb could at times sail a tighter ship. For example, chapter II ends with a narrative on other international tribunals based in The Hague and a digression on the definition of international tribunals. Though these sections are interesting, they take away from a consistent reading of the book. Indeed, Kolb shares important parts of his encyclopedic knowledge on the ICJ, but to the detriment of a more structured argument. Also, the varying lengths of the sections at times encumber the smooth reading of the book. This may be due in part to the fact that the author wrote the original in French (which, as noted, has been translated to English), following the French writing tradition (which is very different from the American one).

In thinking of a new edition, the author may consider splitting the content in two volumes to allow more footnotes and using a more reader-friendly font. That said, the book is a real pleasure to read, it is excellent and extremely informative,

and it has already taken a prominent place in my library.

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