modern Asia was therefore insignificant, serving chiefly as testimony to the hubris of the colonial powers and the pitfalls of international criminal justice.

That said, the trial did play a significant role in the construction of modern Japan, albeit not so great a role as is generally assumed. Those defendants who had been convicted but not hanged were temporarily removed from the political scene (although not for long: they were all released by the mid-1950s and a few, including Shigemitsu Mamoru, would re-enter politics shortly after). Furthermore, by criminalizing only a small number of individuals, MacArthur's occupation authorities were able to reorganize Japanese society around precisely the people it had declined to indict: Hirohito, recast as an obliging constitutional monarch, and the heads of the *zaibatsu*, who would take Japan to new industrial heights on the back of MacArthur's next war in Korea. As for the tribunal's legacy, Japan's conservatives have long used it as a negative talisman, denouncing the 'Tokyo trial view of history' – of which, in their eyes, Bass's book would be just the latest manifestation.

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Carlos Espósito and Kate Parlett, eds. ***The Cambridge Companion to the International Court of Justice***. Cambridge: Cambridge University Press, 2023. Pp. 400. Price £29.99. ISBN: 9781108487252.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN).[1] While all UN member states are parties to the Statute of the International Court of Justice, which is annexed to the UN Charter, its jurisdiction is consent based.[2] The role of the Court, according to the Charter and its Statute, is to settle disputes between states and provide its opinion on legal questions to organs and agencies of the UN when asked.[3] The Court's judgments are not precedents, and Article 59 of its Statute limits the bindingness of its judgments to the parties to a given dispute. Despite this humble textual basis, the Court is much more than a dispute settlement body, and this *Cambridge Companion*, edited by Carlos Espósito and Kate Parlett, demonstrates this masterfully.

The *Companion* is dedicated to the memory of James Crawford. During his illustrious career, Crawford wrote extensively about the Court, was a member of the International Law Commission (ILC), appeared as advocate before the Court on numerous occasions and served as an ICJ judge. For a book that focuses on the role and contribution of the ICJ to the development of international law, and features chapters on the role both the ICJ judge and of advocates before the Court, there could not be a more fitting individual.

1 Charter of the United Nations (UN Charter) 1945, 1 UNTS 15, Art. 92.
2 Statute of the International Court of Justice (ICJ Statute) 1945, 33 UNTS 993, Arts 34–36.
3 *Ibid.*, Arts 38.1; UN Charter, *supra* note 1, Art. 96.

Before passing away, Crawford – together with Freya Baetens and Rose Cameron – wrote the first chapter of the *Companion*, on the 'functions of the ICJ'. The three authors provide an overview of the functions of the Court, which serves as a basis for considering the Court, in the words of Crawford, as a 'center of gravity' in international law (at 10). Real or perceived, the centrality of the Court to the international legal community is without question. States, practitioners and scholars alike look to the Court and its jurisprudence to ascertain the law on various legal questions. Much as with other books on international law, it is hard to read through the book's various chapters without gaining an appreciation for the Court's significance as an institution, both as an arbitrator of interstate disputes and as an epicentre for the development of many substantive legal issues. The centrality of the ICJ within the international legal system is exemplified by the fact that this is the first in the Cambridge Companion to Law Series dedicated to an institution rather than to a field of law.

The *Companion* is comprised of 22 chapters and divided into three parts. The first part focuses on the role of the ICJ within the wider international legal system. The chapters of the second are, for the most part, focused on specific aspects of the practice of dispute settlement before the Court. The last part looks at the impact of the jurisprudence of the Court on the development of several substantive fields of international law. A common theme in the different chapters of the *Companion* is the role of the Court in the development of international law, notwithstanding that its only 'official' role is the settlement of disputes between consenting parties and providing advisory opinions to the UN's organs and authorized specialized agencies. Accordingly, while ostensibly only comprising one of three parts, the Court's contribution to the development of international law is at the heart of the *Companion*, addressed in nearly all chapters, including those in the first and second parts.

Indeed, the Court's jurisprudence since the *Companion* was concluded further demonstrates the centrality of the Court within the international community and its role in the development of international law. Moreover, these subsequent developments show the acute relevance of many of the chapters, and the astuteness of various authors, having identified the role of the Court with respect to such matters. For example, Nilüfer Oral's chapter on the contribution of the Court to the law of the sea discusses the ICJ's critical role in the development of the law on maritime delimitation. The Court's recent judgment in *Nicaragua v. Colombia* provides further proof of the author's assessment.[4]

The Court's conclusion that a 200-nautical-mile entitlement prevails over an overlapping entitlement to an extended continental shelf under customary international law will likely be viewed as representing a correct statement of the law moving forward. But *Nicaragua v. Colombia* is interesting also because, in its arrangements for the oral proceedings on the merits in the case, the Court made use of Article 61(1) of the ICJ Statute and decided – without prior consultation with the parties – that the parties shall focus their oral arguments on two legal questions exclusively.[5] The Court's order

[4] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Judgment, 13 July 2023, ICJ Reports (2023) 413.

was not without controversy and was criticized by six of the judges in separate declarations.[6] Callista Harris in her chapter noted the Court's lack of use of Article 61(1) to maximize the effectiveness of oral proceedings and pondered whether the Court was willing to be more assertive *vis-à-vis* states appearing before it (at 240). The more recent jurisprudence suggests that it is.

The judgment in *Nicaragua v. Colombia* also demonstrated the continuing evolution of the Court's jurisprudence on the identification of customary international law. In his chapter on the role of the Court in the development of international law, Dire Tladi (now an ICJ judge himself) argues that the Court is responsible 'in large part' for cementing the two-pronged methodology of state practice and *opinio juris*, even though it has been inconsistent in its application (at 75). He adds that the ILC's draft conclusions on the identification of customary international law have closely followed this methodology,[7] basing themselves, first and foremost, on the jurisprudence of the Court. Indeed, Conclusion 13 is explicit in elevating the role of the ICJ above all other courts in identifying 'the existence and content of rules of customary international law' as 'a subsidiary means for the determination of such rules'. Of course, one can argue that states themselves (as well as other actors including scholars) are equally inconsistent in applying the two-pronged methodology in practice so the Court may not be unique in this regard.

Interestingly, Jean D'Aspremont in his chapter on the ICJ as 'the master of the sources of international law' argues that the ICJ essentially invented the *opinio juris* element of customary international law (at 176). In *Nicaragua v. Colombia*, however, the Court seemed to have gone in the opposite direction, 'playing down' the role of *opinio juris*, asserting that extensive practice in itself is sufficient evidence of *opinio juris* 'by induction'.[8] Whether one understands this judgment as undermining D'Aspremont's analysis or as the ICJ changing course, the discourse about the Court and its jurisprudence continues to shape our own understanding of customary international law.

In some instances, the law 'originated' within the jurisprudence of the Court, such as when it famously (and unnecessarily) referred to obligations *erga omnes* in the *Barcelona Traction* case,[9] as pointed out by Tladi. Tladi – and Roger O'Keefe in his chapter on jurisdictional immunities – also asserts that the Court 'made up' the law on personal immunities of certain state officials and the lack of exceptions to such immunity. This assertion is not without question,[10] but it is undeniable that the Court's finding in the *Arrest Warrant* case was pivotal in cementing this position as reflecting customary international law. On the other hand, the Court's jurisprudence is not always as influential. The Court's assertion that the right to self-defence only applies between states and not to non-state actors is an example in point, addressed by a number

5 *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Order, 4 October 2022, ICJ Reports (2022) 563.

6 *Ibid.*, Joint Declaration of Judges Tomka, Xue, Robinson, Nolte and Judge Ad Hoc Skotnikov; Declaration of Judge Abraham.

7 International Law Commission, *Draft Conclusions on Identification of Customary International Law*, 2(2) *ILC Yearbook* (2018) 89.

8 *Continental Shelf between Nicaragua and Colombia*, *supra* note 4, para. 77.

9 *Barcelona Traction, Light and Power Company, Limited*, Judgment, 5 February 1970, ICJ Reports (1970) 3

of contributors. Tladi asserts that, on this issue, the Court is 'warding off attempts to amend the existing rule' against rogue states (at 84).

Alejandro Chehtman, in contrast, considers the Court's influence on this issue to be 'fading', not least because of its strategic reluctance to take a clear position on this and other contemporary use-of-force issues (at 466–468). In this respect, Chehtman notes the prevailing influence of other actors, such as the UN Security Council, on the development of the law in this field. This reading is problematic, though, as the Court has taken a clear position on the right of self-defence, which in its view cannot be invoked against attacks by non-state actors.[11] And, yet, despite the Court's attempt to 'ward off attempts' to change the law, a considerable number of states in their rhetoric and practice, as well as the Security Council, have taken an opposing view. Why they have done so is an open question and may relate to the importance of the subject matter to the most vital interests of states, the incompatibility of the Court's position with modern security threats in the post 9/11 world in the view of some or the view that the Security Council is better positioned to shape international law on contemporary matters of use of force, given its primary responsibility for the maintenance of international peace and security. Or it may be that some states are simply not convinced by the Court's reasoning. Whatever the reasons, the Court's influence on the law of self-defence is (as noted by Chehtman) 'fading', but not because of its dithering.

The permutations of the law of self-defence reflect a broader insight into the Court's role in the development of international law. It illustrates the need to look at the fate of the Court's judicial pronouncements. Put differently, the acceptance of its pronouncements on the law (both in contentious cases and in advisory opinions) is a matter for states' appreciation and may depend on the quality of the reasoning of the Court. As such, when the Court's pronouncements are not followed, it is worth considering if this relates in any way to the quality of the pronouncements themselves. Whether or not this is the case, critique and even disagreement with the Court's pronouncement should be seen as part of a healthy legal discourse. Rotem Giladi and Yuval Shany observe that, at times, 'what the Court in fact does turns into what it ought to be doing' (at 119).

But given that the ICJ is truly a 'center of gravity' in international law, as artfully demonstrated throughout the *Companion*, it is imperative that its jurisprudence be the subject of critical and rigorous debate. The *Companion*'s 22 chapters do not always offer such a debate. While many examples of the Court's ability to create or affect the development of the law are discussed throughout the *Companion*, there is less attention paid to the factors that have made the Court's jurisprudence less influential in other cases. The *Companion*'s various chapters leave no doubt that the Court has proven to be highly influential in our understanding of international law and its development.

at 32, para. 33.

[10] *Cf.* H. Fox and P. Webb, *The Law of State Immunity* (3rd edn, 2015) at 544–50 (demonstrating that personal immunities find their origin in the well-established rules on state immunity).

[11] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Reports (2004) 136 at 194, para. 139; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 19 December 2005, ICJ Reports (2005)168 at 221–223, paras 142–147.

In fact, the existing chapters are so successful in conveying the centrality of the Court within the international legal system that, at the same time, the reader may wonder if there are additional areas where the Court's role could have been further explored for a more complete picture.

For one, while the Companion rightly has a chapter concerned with the Court and the law of treaties, the discussion of customary international law in the Court's jurisprudence demonstrates that a chapter focused specifically on the Court's treatment and development of custom as a source of international law would have been beneficial. Similarly, while Philippa Webb discusses the relationship of the ICJ with other international courts and tribunals, a chapter analysing the close and intricate relations between the ICJ and the ILC, and their influence on each other, may have been insightful.[12] This relationship seems pertinent not only with respect to customary international law, as mentioned above, but also in other fields of international law – for example, on the law of state responsibility, as Federica Paddeu discusses in her chapter.

Webb's chapter identifies the institutional context as a relevant factor to assessing the interaction between the ICJ and other courts and tribunals on a given legal issue. Given the institutional framework within which the Court operates, a chapter dedicated to the relationship between the Court and other UN organs and bodies could have been a useful addition to the book. Indeed, Giladi and Shany observe that the Court's 'success' is strongly dependent on the institution of which it is a part. In Webb's chapter as well as the chapter by Espósito on the ICJ and human rights, it is anecdotally mentioned that certain ICJ judges were also members of other institutions, such as human rights courts and the ILC, with which the Court interacts. The role of the individual judge would have been another avenue worth exploring in the institutional relationships of the Court, particularly in light of the fact that judges are chosen by political organs and their professional qualifications are not always the dominant factor in their election, as former Judge Kenneth Kieth notes in his chapter.

Though such chapters may have been useful, this does not detract from the picture that emerges from the *Companion*'s various chapters, with respect to the importance and centrality of the Court within the international legal community. As noted above, the Court's Statute grants it the authority to settle contentious disputes between states and to issue advisory opinions to certain UN organs and agencies.[13] The various contributions of the *Companion* speak to the central role of the Court within the international legal system, which, in practice, goes well beyond the Statute's text.

On a technical level, this gap between the role of the Court, as reflected in its Statute, and its function in practice is inevitable, given that the provisions of the Statute provide, at times, very limited guidance as to how they are to be applied in a given case. Moreover, the prospects of seeking clarification through amendments to the Statute – a process subject to the rules governing the amendment of the Charter – are slim. It has been for the Court, therefore, to fill in this gap in its practice and jurisprudence.

[12] For an exploration of this relationship, see O. Sender, *International Law-Making by the International Court of Justice and International Law Commission Partnership for Purpose in a Decentralized Legal Order* (2024).

[13] ICJ Statute, *supra* note 2, Arts 34–36; UN Charter, *supra* note 1, Art. 96.

Provisional measures are a prime example. The ICJ Statute refers to this power in a single general article,[14] and, thus, it was inevitable that the Court develop the procedures and rules governing provisional measures through its jurisprudence and in its Rules of Court, as demonstrated in Robert Kolb's chapter. The same development can be seen with respect to the Court's jurisdiction, fact finding, as well as its procedures and working practices more generally, as shown in several chapters in the second part of the *Companion*. But the gap between the Court's envisioned role and reality may not only be a matter of necessity. Rather, it may also be part of a wider phenomenon, identified by Julian Arato, with respect to the evolution of international organizations over time: '[I]nterpretive practices have enhanced the material power and autonomy of the organizations to which they belong *vis-à-vis* the states parties. What appears as expansive treaty interpretation from one point of view thus appears as dramatic constitutional transformation from another.'[15]

It is quite possible that the ICJ has simultaneously expanded its understanding of its own mandate beyond what is absolutely necessary. Thus, while it was a matter of necessity that the ICJ provide content and establish requirements to trigger its powers to issue provisional measures, deciding that such measures are binding on parties to a dispute is a matter of policy, not absolute necessity.[16] The wide acceptance of the Court's view that its provisional measures are binding is but one example of the role of the ICJ effectively shaping, changing and guiding a state's understanding of its own powers and international law more broadly.

The *Companion*'s convincing portrayal of the Court as a 'center of gravity' in international law raises the broader question: how effective has the Court been more generally? As Giladi and Shany discuss in their chapter, assessing the effectiveness of the Court is, first and foremost, dependent on the yardstick used. While states on the whole remain reluctant to resort to the Court, and when presented with a choice between the Court and arbitration, as is offered in the UN Convention on the Law of the Sea, they generally opt for the latter, the Court's effectiveness goes beyond compliance.[17] It can also be measured by how the Court's pronouncements affect state behaviour and a state's views on the content of the law more broadly. One only needs to look at the recent announcement by Mauritius and the United Kingdom on their negotiated agreement to return the Chagos Archipelago to Mauritius,[18] a development to which the ICJ's advisory opinion surely contributed,[19] despite its non-binding nature.[20]

Indeed, an underlying message in the various chapters is that the views of the Court on any question of international law are integral to any serious legal analysis. The *Companion*'s chapters in this respect successfully illuminate not only the Court's contemporary role as an arbitrator of disputes but also the law more generally with its pronouncements. In the author's view, this is an accurate depiction of the legal

[14] ICJ Statute, *supra* note 2, Art. 41.

[15] Arato, 'Treaty Interpretation and Constitutional Transformation: Informal Change in International Organizations', 38 *Yale Journal of International Law* (2013) 289 at 352.

[16] *LaGrand (Germany v. United States of America)*, Judgment, 27 June 2001, ICJ Reports (2001) 466 at 526, para. 109.

[17] United Nations Convention on the Law of the Sea 1982, 1833 UNTS 3.

profession, where the Court's jurisprudence is often a starting point – and, at times, an end point – for understanding and determining a legal issue. In this light, the *Companion*'s organization into three parts can be understood as a necessary progression of understanding the role of the Court: the role of the ICJ within the wider international legal system (part 1) is ultimately reflected and intertwined with the impact of its jurisprudence on the development of the substance of international law (part 3). The various practices of the Court (part 2) are the tools through which these linkages are achieved. At the same time, most chapters say less about whether the Court's centrality to the legal system and the development of the law has had positive or negative effects; about the reasons that the Court has been less influential in some areas of the law as opposed to others; and whether the quality of the Court's legal analysis justifies the role it has been given by the international legal community over time.

With this wider understanding of what effectiveness means within the international legal system and the role of the Court, the *Companion* provides a useful resource in this never-ending discussion among legal practitioners and academics on the effectiveness of the Court and its wider contribution to the development of international law.

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[18] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, ICJ Reports (2019) 95.

[19] 'UK and Mauritius Joint Statement,' press release, *Gov.UK* (3 October 2024), available at www.gov.uk/government/news/joint-statement-between-uk-and-mauritius-3-october-2024.

[20] For more on implementation of advisory opinions, see Sthoeger, 'How Do States React to Advisory Opinions? Rejection, Implementation, and What Lies in Between', 117 *American Journal of International Law Unbound* (2023) 292, available at www.cambridge.org/core/journals/american-journal-of-international-law/article/how-do-states-react-to-advisory-opinions-rejection-implementation-and-what-lies-in-between/4AF4CED5401C7C89B2F4FB2EC327D2DA.