THE LAW AND PRACTICE OF THE INTERNATIONAL COURT, Vols. 1 and 2. By Shabtai Rosenne. [Leyden: Sijthoff. 1965. xxiii + 998 pp. Dfl. 80.].

The various writings of Dr. Rosenne on the International Court of Justice have placed him among the leading authorities on the organisation and activities of this international tribunal. His *International Court of Justice* was published in 1957 and this present work is more than a revised edition, although the basic purpose of the work — to emphasise the way in which political and legal considerations interplay on the international scene and dictate the role of the Court in Modern society — remains the same. Critics looking at the recent decision on South West Africa may

well feel that the latest manifestation of the Court at work merely serves to emphasise the learned author's fundamental thesis.

The work itself is divided into an introduction dealing with the broad aspects of pacific settlement in its judicial aspect, and five parts devoted to the Court itself. Of these, the most interesting and stimulating is, as before, the first dealing with the Court as part of the machinery of diplomacy. This is followed by a discussion of the Court's organization; two parts devoted to jurisdiction and practice and procedure in contentious cases; with the fifth section devoted to the advisory function of the Court.

There is a tendency among many lawyers and politicians alike to assume that the Court exists as an entirely distinct body functioning somewhat *in vacuo.* At the very outset, Dr. Rosenne reminds us that the Statute is part of the Charter and that the Court is a principal organ of the Organisation. It thus has a very real and intimate part in the general framework and operation of the United Nations. As he points out, in fact, it is impossible to separate the legal and political aspects of any international issue, nor is it possible to say that any particular matter is more amenable to judicial settlement than another. The decision to submit an issue to the judicial process is made by the political arm of government for political reasons conducing to a realisation that the matter involved is one that may be solved by the processes of independent examination on a non-political basis. Equally, regardless of any legal obligation that may be imposed by the Charter or the Statute, the decision as to whether a particular judgment will be observed is also a political issue and if the successful party seeks to enforce the judgment by the means laid down in the Charter and has recourse to the Security Council, that decision as well as the decision of the Council are both political and not legal. It is this particular emphasis and approach to the subject that perhaps constitutes Dr. Rosenne's most significant contribution to the entire field.

With a work of this character it is only possible to draw attention to certain matters and to see the learned author's attitude to them for the purposes of review. It is often assumed that the new Court is to a very great extent the old Court under a new name and Dr. Rosenne points out that this appears to have been the intention of the States at San Francisco. On the other hand, continuity depends upon the consent of States at large, and later reactions show there was no intention to accept any such continuity. Thus both States and international institutions have themselves taken an action to show that the Court of 1945 is a new institution which has had conferred upon it certain of the rights, competences and privileges of the Permanent Court (p. 43). Again, many writers have assumed, *faute de mieux,* that Article 38 of the Statute dealing with 'sources' impliedly indicates an hierarchy. Dr. Rosenne points out that in its practice and approach to this matter the Court has shown an independence of action which has enabled it to develop its own idea of an international equity, thus avoiding any *non liquet* and evading any limitations that might ensue from a strict approach to the Article (p. 605).

There has long been a tendency to assert that the difference between the contentious and advisory activities of the Court are more in the nature of theory than of practice, and in its own work the Court — as did its predecessor — has tended to bring the two very close together. Again, it is often pointed out that a judgment is binding, while an opinion is quite clearly advisory. But, since 'the real problem which an advisory opinion sets before the requesting organ is the political one of what action should that organ then take, it may be stated that the practical difference between the binding force of a judgment, which derives from specific provisions of the Charter and Statute apart from the *auctoritas* of the Court, and the authoritative nature of an advisory opinion possessed of that same *auctoritas,* are not significant.' (p. 747)

The South West Africa decision may lead to criticisms of the Court and indeed of the 'impartiality' of the Judges. It is therefore pleasing to have on record an explanation of some of the reasons which have led to judges declaring themselves incompetent or otherwise in specific issues — thus, Judge Basdevant did not sit in the U.N. Administrative Tribunal case since his daughter was in fact President of that Tribunal, and Judge Lauterpacht did not participate in the Nottebohm case as he had earlier advised one of the parties (p. 197). It may seem, however, that personal reasons are given more weight than such political ones as having, when in government service, dealt with the particular matter in an official capacity.

It is almost true to say that wherever one turns in these two volumes there is likely to be some point of interest, or some statement which leads to further or new thought. For those interested in any aspect of the Court or of international judicial settlement at large, the *Law and Practice of the International Court* is a must and one is led to congratulate Dr. Rosenne on the way he has analysed the material, and also on the interesting way in which he has presented that analysis.

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