ESSAYS IN HONOUR OF LORD MCNAIR. [London: Stevens & Sons. 1965. x + 186 pp.].

This is a collection of essays written by seven public international lawyers from Cambridge to honour Lord McNair on the occasion of his eightieth birthday. While the contributions do not focus on any one single subject, the majority of them deal with some aspects of international organization.

Mr. D. W. Bowett's essay, "The International Disarmament Organization, the United Nations and the Veto: Some Observations on Problems of Relationship and Functioning," outlines some important considerations which, in turn, emphasize the necessity for an exhaustive and careful assessment of all possible alternatives in order to ensure a workable and meaningful relationship between the United Nations and any disarmament organization which may be set up.

The essay by Sir Gerald Fitzmaurice, Judge of the International Court of Justice, on "Judicial Innovation — its Uses and its Perils — as exemplified in Some of the Work of the International Court of Justice during Lord McNair's period of Office" is especially welcome not only because it is rare to find a judge of the Court writing, while in office, on matters concerning cases decided by the Court but also because it contains stimulating and sometimes debatable views of the role of the Court. He does not, in this essay, adequately clarify his usage of the term "judicial innovation" but the term itself is a key to understanding his approach which

recognizes only a very limited competence and duty of the international judge to actively participate in developing international law. He examines six case decided by the International Court of Justice during Lord McNair's period of office — the *Reparations for Injuries to United Nations Servants, Corfu Channel* (Merits), *Anglo-Iranian Oil Company* (Interim Measures), *Reservations to the Genocide Convention, South-West Africa* (1950) and *Norwegian Fisheries* cases. His discussion of these cases leads to the main point (which he actually attributes to Lord McNair adding that it is one which will "surely have the support of all the contributors") that "judicial innovation . . . however desirable it might be from other standpoints, is too dearly purchased if it is made at the sacrifice of the integrity of the law" (p. 47). While one is not certain what is meant by "integrity of the law" it appears that this, again, is an indication of the extreme caution he would like international judges to observe when they contemplate a departure from (or an "innovation" of) established rules of international law. It is significant, though, to note that Sir Gerald Fitzmaurice, in his discussion of the six cases, does not really disagree with the process of "innovation" but is more concerned with the substantive result or decision which was the outcome of each case.

Those who have read the disappointing judgment of the International Court of Justice on the *South-West Africa cases* (Second Phase) 1966 (in which Sir Gerald Fitzmaurice was among the 'majority'), will observe with more than casual interest his statement in the essay that "... the parties must be able to feel that a court of law will not go off at a tangent and decide a case on some wholly new footing thought up by itself and not discussed in the course of the argument" (p. 26). One could probably inquire, with some justification, whether he was completely faithful to this proposition *apropos* the 1966 *South-West Africa* decision for, as Rosalyn Higgins has pointed out "The question remains however — why were the parties given no warning in 1962 that an antecedent question remained to be answered, and why did the Court proceed to assume, without full argument, the propriety of its action in raising the point at this juncture?" ("The International Court and South-West Africa" 42 *International Affairs,* 573 at 579 (1966)).

In his contribution entitled "Unanimity, The Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organizations" Mr. C. Wilfred Jenks surveys the adequacy of those modalities as bases for arriving at important decisions in international organizations "which will command general respect and which will give such decisions the weight necessary to make them effective in practice" (p. 48). He observes an increasing reliance upon consensus and, after discussing the infirmities inherent in the other alternatives, he makes a guarded conclusion that "A wider acceptance of the principles of consensus represents the only realistic approach to many of our difficulties." (pp. 61-62).

One of the chief advantages of "consensus" is that the avoidance of the formal act of voting often enables States to support proposals which, had there been voting, they might have been compelled (for a variety of political or other motives or obligations) to vote against. While "consensus" has usually been identified with the process whereby customary international law developed, Mr. Jenks clearly illustrates that the concept, in one form or another, is gaining recognition in certain international organizations including some United Nations bodies.

Mr. Jenks does not, and it would be unreasonable to expect him in this brief study to, inquire into all the variables in the concept of "consensus" that distinguish it from the alternatives. He does not indicate whether he feels it can by itself be a more workable basis for effective decision-making nor does he indicate the differences between "consensus" reached after formal debate in the conference room and that achieved after informal consultations outside the conference chamber. These and related questions raised in the mind of the reader by Mr. Jenks' essay lead one to anticipate this area to be the subject of considerable attention in the future and one hopes that Mr. Jenks with his valuable experience as Deputy Director-General of ILO will continue to be among those to shed more light on this important development.

The essays by Professor R. Y. Jennings ("Nullity and Effectiveness in International Law") and by Mr. E. Lauterpacht ("The Legal Effect of Illegal Acts of International Organizations"), although related, pursue separate inquiries. Professor Jennings is more concerned with the concept of nullity in international law and challenges the notion that in international law an international act "is either an

absolute nullity or it is valid" — a notion which he considers to be a simple solution "too stark to be made to fit the facts of international society" (p. 68). Mr. Lauterpacht, on the other hand, deals with the consequences of illegal acts of international organizations.

The essay by Mr. Clive Parry is on the subject of "British Consular Conventions" and the topice which he examines include consular immunity, the history of negotiations for consular conventions and the pattern of the new conventions.

It is not easy to agree with most of what Sir Francis Vallat says in his essay "The Peaceful Settlement of Disputes." Generally, he calls for greater usage of the judicial and arbitral modes of settlement: in particular, his is a plea for more frequent reliance on the International Court of Justice for "whatever its shortcomings or defects, the Court is the best institution that we have for the application of international law on the world plane" (p. 174). He is more forceful in his discussion of the actual and potential contributions of judicial settlement than in his discussion of settlement through other methods. Inasmuch as his essay does contain criticisms of the Court or suggestions relating to its image, it avoids becoming an unrealistic or over-enthusiastic statement of the case for the Court.

That the essays are well-written and thought provoking comes as no surprise when one considers the competence and qualifications of the various contributors. The collection is an appropriate tribute to Lord McNair.

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