

Practice and Methods of International Law, by Shabtai Rosenne

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PRACTICE AND METHODS OF INTERNATIONAL LAW. By Shabtai Rosenne. New York, N.Y.: Oceana Publications, Inc., 1984, 168 pp., \$25.00.

Ambassador Rosenne's most recent book is intended to be "a *Where-to-find-your-law-and-how-to-read-it* book" [sic]. As such it does not fall neatly into the niche of textbook or treatise or even bibliography. Its purpose apparently is to address the concerns of those persons who are required to deal with issues of public international law, but who lack the essential familiarity with the subject matter to feel confident in their research techniques or in their analysis of the materials uncovered. This is a strange point of departure for a legal text. The book presupposes little or no knowledge of international law, starting with an introductory chapter which reviews such basic topics as "Public International Organizations" and "The 'Sources' or Components of International Law." This approach, which might be equally appropriate, or inappropriate, as an introduction to constitutional law or tort law, lays the classic trap of a little knowledge. For while Ambassador Rosenne deftly highlights many of the issues and controversies in public international law today, the necessarily brief nature of the discussion and the absence of a theoretical or factual underpinning leave the uninitiated reader to either flounder in the sea of international legal literature or set forth with the illusory confidence that he or she has been given an introduction to international law sufficient to any task.

This is not to say that *Practice and Methods of International Law* cannot be a useful book. In fact, it could be a handy reference tool, but only for the *advanced* student or practitioner of public international law. While the book often takes a simplistic approach because it is directed at persons without a fundamental knowledge of international law, the text could act as a helpful guide to an unfamiliar area for a person otherwise conversant with the basics of international law.

The heart of the book is broken down into five substantive chapters dealing, respectively, with treaties, custom, judicial decisions, resolutions of international organizations, and the teachings of publicists. These chapters range in length from twenty-eight to three pages, so that the treatment of any subsidiary subject is of necessity short and superficial. Nonetheless, each subsection points the way to sources for further research, while indicating the main areas of controversy or concern. The subsidiary topics are consecutively numbered, allowing ease of access and reference. A number of illustrative appendices provide examples of documents discussed in the text and other appendices reprint documents related to the classification and citation of international legal materials. The complete absence of an index is an important failing of the book, although the comprehensive Table

of Contents partially compensates. A review of the substantive subjects treated follows to provide the prospective reader with an appreciation of the coverage of the text.

Treaties are, as Ambassador Rosenne observes, "the primary manifestation of positive international law." As such, a thorough understanding of the nature of treaties, their genesis, and the means by which they may be interpreted is fundamental to any analysis of international law. The chapter on treaties begins by distinguishing between the international and internal law of treaties. This is followed by a discussion of the Vienna Convention on the Law of Treaties.¹ The Vienna Convention is, of course, the primary modern source for the law of treaties. The major divisions of the Vienna Convention are analyzed thoroughly. Negotiation, being the process whereby a treaty is brought into existence, is discussed next, with a distinction drawn between bilateral and multilateral negotiation. It is indicative of the level at which the text is pitched that there is no discussion of the sort of give and take which may occur during negotiation, or the various tactics which may be employed during a negotiating session. The Final Act is next reviewed, along with *travaux préparatoires* and conference reports, to constitute the essential background necessary to understand fully the genesis and scope of a modern treaty. The physical division of a treaty into preamble, operative text and final clauses is reviewed. Ambassador Rosenne merely touches upon the various structures that can be used to constitute a treaty, e.g., exchange of notes, and then explains entry into force as a unique international legal phenomenon. The role of the treaty depositary in international law and practice, with special emphasis on the mechanical aspects of treaty structure, e.g., alphabetical ordering of states' signature pages and engrossure of bilingual treaties in the alternat, is handled next. How and where to find the various authentic texts of a treaty is a particularly important issue for a book such as this, and Ambassador Rosenne dwells rather briefly on it. This issue leads naturally to the question of the language of treaties, a rapidly evolving subject which is not without complexity and confusion, viz., the many official languages of the European Community. The author's discussion of treaty citation, which one will undoubtedly follow closely in interest after the subject of the search for the treaty itself, in the eyes of this reviewer, is too short and is substantially less helpful than the admittedly more ambitious treatment given the subject in *A Uniform System of Citation*, to which the author himself directs his reader.

With treaties, custom is the other primary component of international

1. Vienna Convention on the Law of Treaties, Jan. 27, 1980, U.N. Doc. A/CONF. 39/27, reprinted in 8 I.L.M. 679 (1969).

law and is recognized as such in Article 38 of the Statute of the International Court of Justice. The evolution of custom and the true role it plays are among the more problematic areas of international law, especially for a person who is new to the field. The chapter on customary law alerts the reader to these problems without providing more than the most general guidance as to how to deal with them.

The review of digests of state practice and collections of diplomatic papers provides the neophyte researcher with an excellent summary of the most useful sources in this frustrating area. The opinions of legal advisers are treated separately for reasons that are not clear. While theoretically different from the actual *practice* of states, such opinions, whether of national or international legal advisers, inevitably arise out of and are part and parcel of state practice. Internal legislation affecting matters of international law has been regarded as evidentiary of customary international law. The numerous attempts to compile such legislation are mentioned, with particular reference to the United Nations *Legislative Series*, although the gross omissions contained in that publication are specifically indicated. The author discusses the growth in the last century and a half of the phenomenon of a state, especially a newly independent state, asserting an ability to pick and choose among the customary law which will be binding upon it and the impact of this phenomenon on the development of treaties codifying customary international law. The existence of particular, as opposed to general, custom is discussed.

"General principles of law" have faded somewhat from the forefront of theoretical discussions in international legal circles, but "equitable principles" are certainly *au courant*. The discussion of equitable principles barely scratches the surface but does at least raise the flag of caution.

A substantial section of the chapter on customary law is devoted to the codification of customary international law, both on a multilateral and a regional basis. This trend certainly is one of the most important phenomena of the United Nations era, along with the growth of multilateral treaty-making as such. Ambassador Rosenne distinguishes between codification and progressive development of international law, as carried out by the International Law Commission. The chapter includes a very useful list of treaties which have codified aspects of the international law of peace. The reader is alerted to the work of UNIDROIT in harmonizing the internal laws of states.

Judicial decisions provide auxiliary means of determining international law. They do not constitute international law as such, but rather provide evidence of the law. This is in contrast to the common law system, where the courts' decisions are as much a source of law as the legislature's enactments. Ambassador Rosenne provides a brief review of the place of the International Court of Justice in the determination of international law and a

typology of international tribunals. He distinguishes between standing and *ad hoc* courts, universal and specific jurisdiction, arbitral, claims, and administrative tribunals. Some of the differences between proceedings instituted by special agreement and those instituted by unilateral application are discussed. Although *stare decisis* is unknown in theory in international law, in fact the opinions of the International Court of Justice are often given great deference. One of the more difficult issues in modern international law is the role of the Court's opinions and the true weight to be given them. Ambassador Rosenne touches on this problem, without providing any guidance to the reader. The components of a judgment and of an advisory opinion from the Rules of the International Court are set forth. The order and content of written and oral pleadings, especially before the International Court, are briefly discussed.

The longest portion of the third substantive chapter is devoted to the style and content of judgments, both of the majority and of separate opinions. The "dogmatic-syllogistic" style and the "discursive" style are contrasted, providing the reader with only a common law background and introduction to the style used by, among others, the Court of Justice of the European Communities. The author takes an interesting detour to discuss the problem of the relative authority to be assigned to separate opinions of judges of the International Court of Justice. He makes a statement which expresses the usually unspoken feelings of so many international lawyers—that "it is a regrettable fact that not every person elected to be a member of the Court has met" the qualifications set forth in the Statute of the Court.

In the realm of international jurisprudence, *the* most difficult question arises out of the absence of an automatic enforcement mechanism for international judicial decisions. Indeed the most common objection to the very existence of international law *qua* law is this absence of sanctions for non-compliance. The absence, however, is only relative. Enforcement measures are available; they simply are rarely used. Moreover, in most cases there is no need for enforcement since the participants make a political decision to comply with the decision or arbitral award in question. Here, Ambassador Rosenne is clear: "Political considerations dominate the post-adjudicative phase." On the reading of international judgments he is also clear: "[I]n international case-law there is an unbreakable connection between all the parts of a judicial pronouncement, and to overlook that link may easily lead to misunderstanding the real purport of the decision." The section on citation of international cases is quite helpful. Internal case law is also reviewed both for its impact on the development of international law and its utility to international lawyers in demonstrating the diversity of situations that can develop in the day-to-day world.

An area of much interest these days for any student of international

law is the place to be given to resolutions of intergovernmental organizations. On the one hand, such resolutions, by their nature, are indicative of state practice. On the other hand, states may attach little importance to that type of practice thereby detracting from the importance that others can attach to it. Ambassador Rosenne provides the usual *caveat* on this subject. He addresses the methods of voting in intergovernmental organizations, including the non-voting of "consensus." While the styling of a resolution as a "Declaration" hardly seems like the most pressing issue facing international law today, the author correctly examines the multifaceted nature of the problem of nomenclature connected with the use of that term. While the little time that is spent on resolutions of intergovernmental organizations in this book is otherwise well spent, the author's sole reference to citation of such resolutions is to say that "[m]ost international organizations have produced adequate guides to their records." This is hardly sufficient.

The last chapter is devoted to the teachings of publicists, in particular "the most highly qualified publicists of the various nations" whose writings make up a subsidiary means for determining international law. Ambassador Rosenne says little more than that it is often a difficult task to determine who indeed is "the most highly qualified" among the many publicists and that the International Court rarely cites to publicists in its judgments, as opposed to the practice in separate opinions. The author provides guidelines for the citation of doctrine which can be useful, especially if one heeds his warning to be mindful of "the international character of the readership," many of whom may have to puzzle out a citation that appears completely comprehensible to the person composing the citation.

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