

comparisons and explanations of the differences between Islamic and international legal rules, one would like to know Baderin's suggestions as to how, for instance, Article 6 of the OIC's charter of human rights (the so-called Cairo Declaration of 1990), which states that 'Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform', can be accommodated with or made complementary to the equality of men and women as mentioned in the international human rights treaties.

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Biman N. Patel (ed.), *India and International Law*, Leiden: Martinus Nijhoff, 2005, ISBN 9004145192, 380 pp., €130.00 (hb).
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I. INTRODUCTION

India and International Law brings together a variety of perspectives and topics which reflects both the traditional Indian scholarly approach to 'India and international law' and the new zeal in the 'Indian perspective' on international law.

The collective effort of the authors reflects the traditional approach to India and international law, in that the historical greatness and contribution of India to the development of international law is still repeatedly recited. As such the publication fits in the tradition of Chacko's 1958 *Recueil des Cours* article, 'India's Contribution to the Field of International Law Concepts',¹ Nagendra Singh's *India and International Law*,² and, more recently, R. P. Anand's monograph, *Development of Modern International Law and India*.³ That descriptive and uncritical tradition is found in most of the contributions. The 'new' zeal – on the other hand – is especially found in the choice and multitude of topics. India and international law is presented as a subject that is not (any longer) restricted to developmental issues, human rights, and the environment. Modern India and modern international law is also about trade in services, patents, satellite systems, and commercial arbitration. It is that multitude of topics and the connection with India's emerging status as an economic and political power that sets this publication apart from previous accounts of India and international law. As such *India and International Law* fits the new influx of all kinds of legal, political, economic, and cultural (semi-)academic publications which seek to grasp the 'new' India. The publication of *India and International Law* could not have been timelier in that respect.

Hereunder, I shall (i) present an overview and summary of the book's content, (ii) provide a critique of its rather descriptive and uncritical character, and (iii) comment on some technical aspects such as the lack of an index and a bibliography.

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1. J. Chacko, 'India's Contribution to the Field of International Law Concepts', (1958-I) 93 *Recueil des Cours* 121.

2. N. Singh, *India and International Law* (1973).

3. R. P. Anand, *Development of Modern International Law and India* (2005).

2. CONTENT

India and International law is a compilation of twelve chapters which can be subsumed under the headings ‘general’, ‘economic and trade’, ‘human rights’, ‘environment’, and ‘dispute settlement’, and three annexes. The link between the different topics is unclear, which is reinforced by the lack of a substantial introduction. The introduction by the editor, Bimal N. Patel, serves as a summary of the different contributions rather than as a proper, functional introduction to the publication’s subject. As – from an editorial point of view – one might expect that not every reader is familiar with ‘India and international law’, a proper introduction is called for. Furthermore, an explanation of the structure, choices, and/or concepts would further assist the reader. A proper introduction could also have reduced the number of repetitions (compare, for example, pp. 15, 144, and 176).

The contributions by Subhash C. Kashyap on ‘The Constitution of India and International Law’ (pp. 9–32) and Pemmaraju Sreenivasa Rao (the Indian member of the International Law Commission) on ‘The Indian Position on Some General Principles of International Law’ (pp. 33–65) can be considered as the opening chapters, which address respectively the constitutional fundamentals and the wider international institutional context of India and international law. These articles represent the differences in the character of the individual contributions. Kashyap’s article is an – often point-by-point – summary of the Indian Constitution, with (almost) exclusive reference to jurisprudence and little analytical quality. By contrast, Rao’s article is a reflective account of international developments and contemporary issues, which are illustrated by reference to treaties, jurisprudence, practice, and scholarly writings, in short, all the possible sources of international law. Rao’s article holds the balance between comment and description, which both inform the reader and keep him or her alert. Rao’s opinion, for example, that ‘it is better not to overemphasize “the particular structure of modern Euro-centric international law”’ (p. 34) can from a critical point of view be questioned. Why should India in the twenty-first century still adhere to what Mani called the ‘the Nehruvian perception of international law’.⁴

The following three chapters deal with economic and trade issues. Surindar Kaur Verma’s chapter, ‘Trade in Services, the World Trade Organization and India’ (pp. 67–91), is a general account of the General Agreement on Trade in Services (GATS) and the WTO. India appears somewhat as an afterthought (pp. 89–90), which hardly justifies the title. In ‘Sovereign Economic Freedom and Interests of Other States’ (pp. 117–39), Ravindra Patrap investigates ‘States’ freedom to take economic measures in detriment of other States’ interest under modern international law’ (p. 117). India, however, is completely excluded from this investigation, something which can be neither understood nor justified. In contrast, V. G. Hegde’s ‘India and the International Patent System’ (pp. 93–116) is exemplary, in that it is a well-narrated and analytical account of India’s changing role and position in the international

4. V. S. Mani, ‘An Indian Perspective on the Evolution of International Law on the Threshold of the Third Millennium’, in B. S. Chimni, M. Masahiro, and S. P. Subedi (eds.), *Asian Yearbook of International Law* (2000), Vol. 9, 31, at 65. See also V. S. Mani, ‘Six Decades of the United Nations: An Indian Perception’, (2000) 44(1) *Indian Journal of International Law* 1.

patent regime, which is nicely portrayed in the author's own words at the beginning and the end of the chapter: 'caution' (p. 93) and 'moving forward' (p. 117).

The next set of chapters, on human-rights-related issues, shows the same unevenness in their quality. Manoj Kumar Sinha's 'Laws of Human Rights and the Indian Constitution' (pp. 141–74) resembles Kashyap's contribution in that it descriptively enumerates (draft) articles and criminal law principles, without a clear analytical aim. B. C. Nirmal's 'The Legal Status of Refugees in India' (pp. 175–88) is one of the exceptions, since it is clearly structured, well documented, and . . . about India. The next chapter, 'International Criminal Law: Crime Prevention and Punishment' (pp. 189–222), by Vishu Dutt Sharma, is once again totally not about India. It is just one among many descriptive accounts of international criminal law.

The next two chapters deal with international environmental law. M. Gandhi concentrates on 'State Responsibility and International Environmental Law' (pp. 223–47), whereas A. David Ambrose focuses specifically on 'International Environmental Law and India' (pp. 249–64). Gandhi's essay deals exclusively with state responsibility in the first seven paragraphs and then commits only one paragraph to the 'Indian View on State Responsibility and International Environmental Law' (pp. 240–5). It is unclear why the reader is not informed of the Indian legal position on those international cases which involved questions of the international responsibility of states for environmental damage. Paragraph 8 deals with 'Stockholm', 'Agenda 21' and the Indian Supreme Court, hardly examples of state responsibility. Ambrose's contribution is definitely on India, but only partly on international environmental law. A large part of the chapter is devoted to the role of the Indian judiciary.

Last but not least, we get to read the chapters by C. Jayraj on 'The Law of Outer Space and India' (pp. 265–88), Bimal N. Patel on 'The International Court of Justice and India' (pp. 289–318), and Amal K. Ganguli on 'International Commercial Arbitration and Enforcement of Foreign Awards in India' (pp. 319–43). All three essays stand out and provide the reader with the enlightenment that he or she might expect on the basis of the title of the book. Jayraj is still slightly inclined to provide the reader with a general introduction to international space law, but he quickly moves on to 'India's Space Policies, Institutions and Role in Law-Making' (p. 276), which basically provides the reader with a state-of-the-art overview of contemporary Indian developments. Patel's contribution is definitely the exception in that it immediately links India and the International Court of Justice (ICJ). The author clearly presupposes existing (basic) knowledge, by the reader, of the ICJ; I believe that, considering the purpose of the publication, that presupposition should also have guided the other authors. Unfortunately, the editor was apparently unable to convince his fellow authors to follow his approach. Patel indeed covers those ICJ jurisdictional issues, cases, and advisory opinions which can be related to India and where the reader gains new insights and information. Ganguli adopts a similar approach, in that he integrates the general discussion on specific conventions (the New York Convention, the Geneva Convention) and issues, and India's position.

The publication 'concludes' with three annexes on (i) India's position on (162) multilateral treaties deposited with the UN Secretary-General, status as of 31 December 2004 (162); (ii) (25) human rights provisions in UN documents and the constitution and laws of India; and (iii) a list of court cases (137) relating to environmental

matters. The reason for including these specific data is unclear. One could equally expect for that matter a list of court cases in human rights matters, a list of cases involving India in WTO disputes, or a list of bilateral treaties.

More important to note is the lack of a concluding chapter, which – considering the great differences in outlook and structures – could have brought some unity to the book.

3. *INDIA AND INTERNATIONAL LAW: A CRITICAL ASSESSMENT?*

As indicated above, the contributions differ considerably in structure and focus. A distinction can also be made with respect to the critical nature of the articles.

One of the explicit objectives of *India and International Law* is to ‘critically assess the contribution of India to the codification and development of various faculties of international law’ (p. 1, emphasis added). Unfortunately, however, that critical reflection is compromised as it is understood ‘against *the hallmark*’ of India’s contribution ‘in enhancing the ideals and idealism of international law’. The foreword by R. N. Mirdha sets the extremely laudable tenor of the story to be told, the story of an India which is ‘constitutionally ordained to foster international law’ (p. xvi); the story of an India which is ‘the torchbearer’ and has ‘taken [the] lead’ (Patel, ‘Introduction’, p. 1) and which has ‘actively contributed to a world order based on equity and justice for all’ (Rao, p. 64); a story in which India is ‘a noble democracy which ensures freedom under the law and the dignity of the individual’ (Sinha, p. 142). Even in contributions concerning such technical areas as the law of outer space, India is heralded as ‘a democratic Republic which believes in the rule of law’ (Jayraj, p. 288). Notable in this respect also are the efforts many authors make to embed ‘international law’ in India’s history (see Rao, p. 32; Nirmal, p. 175; Ganguli, p. 319); Kashyap, for example, dates India’s ‘consciousness of human rights as a *universal value* . . . back to centuries before the Christian era’ (p. 9, emphasis added). Cohen observes a similar phenomenon in a different setting:

Whether a realist or an idealist, almost every member of the Indian strategic community thinks that India’s inherent greatness as a power is itself a valuable diplomatic asset. India’s ambassadors are expected to persuade foreign officials of the wisdom and moral correctness of the Indian position, say, by stating the Indian case and supplementing political arguments with information about India’s great civilization and economic accomplishments and its democratic orientation.⁵

Moderate criticism is only to be found in the contributions by Hegde (on p. 93), Nirmal (p. 175), and Patel (p. 289). These accounts reflect on India’s official statements, laws, or international commitments. Hegde’s contribution stands out as it naturally interlinks India’s position on issues of international patent law and India’s position as a nation seeking to protect its infant economic development. It perfectly reflects both the tension and the dynamics of India’s current position on the world stage. Patel likewise observes that India’s ‘position and attitude’ towards the

5. S. P. Cohen, *India: Emerging Power* (2001), at 62.

International Court of Justice is 'guided by considerations of national interest' and that 'there is more scope for India in line with her overall influence in international relations' (p. 313).

What is equally beyond criticism is 'international law' as such, especially the values it represents and its historically embedded construction. If 'states are still the most fundamental actors in formulating international law' (p. 1), then international law is what states make of it. If Rao's account of 'the Indian position on some general principles of international law' is a reflection of India's version of international law, then India adheres to the traditional liberal version of international law. Since this version is a Western version, it is understandable that it is 'better not to over-emphasize the particular structure of modern Euro-centric international law' (p. 33), for this version of international law also justified and supported colonialism and imperialism and continues to justify and support the 'neo' versions of it. Rao's opinion, that 'states belonging to different regions of the world, irrespective of the cultural traditions they symbolize, subscribe to the same basic principles of international law' and 'our common values in international law' (pp. 33, 34), is questionable from many critical (legal) perspectives, but understandable if understood as an effort to defuse the historical conflict between North and South.

India and International Law displays an interesting mix of references to both (i) the values of 'Third-Worldism', and (ii) such (neo)liberal ideas as 'the rule of law', 'democracy', and 'human rights', as well as (iii) the key concepts of Realism such as 'security strategy', 'power', and 'national interest'. The first question to be asked is, indeed,

is the language of Third Worldism and southern solidarity simply a hangover from the past? Or is it an interest-driven strategy that reflects a particular set of contingent interests (as on trade issues within the WTO)? Or is it reflective of a deeper set of beliefs, interests and commitments? If so, what happens if that 'developing country identity' comes into conflict with the 'aspiring great power identity'?⁶

Third-Worldism language is particularly prominent in the economic-/trade-oriented contributions of Verma, Ravindra Pratap ('Sovereign Economic Freedom and Interests of Other States'), and Hegde, as well as the environmental-law-oriented contributions of Gandhi (p. 223) and Ambrose.

While there is little doubt that these two foreign policy issues have in the past been perceived by India in terms of North–South relations, which has contributed to India's image as a 'defensive . . . tough, inflexible and . . . ideological negotiator', that image is, according to Hurrell, 'unlikely to serve India's purpose' as an emerging power.⁷ That purpose would be served by a more (neo)liberal approach to the international economic order. That is precisely what Verma's and Hegde's description of India's position in the GATS and IPS indicates. While India's policy is still described by them as 'cautious' and 'common with other developing countries in the WTO' (pp. 90 and 93 respectively), India at the same time adopts competition legislation

6. A. Hurrell, 'Hegemony, Liberalism and Global Order: What Space for Would-be Great Powers', *International Affairs*, 82 (1), 1–19, at 19.

7. *Ibid.*, at 11.

and more generally ‘moves forward with the changes as envisaged under the WTO regime’ (p. 116).

Unfortunately, *India and International Law* also refrains from discussing more recent (political) developments involving India, such as the proliferation of nuclear weapons, the international use of force, terrorism, the restructuring of the UN Security Council, and developments in the Indian Ocean regime.

4. QUALITY OF PUBLICATION

The book is clearly poorly produced and edited. In the introduction I noted the absence of a proper introduction and a conclusion. The additional lack of an index, a bibliography, tables of statutes, legislative instruments, and jurisprudence, and a list of abbreviations, is the more striking as the publication aims at pursuing ‘further research for academic and policy purposes’ and becoming ‘a useful reference tool’ (p. vii). These omissions and small technical flaws such as the failure to give the list of court cases in environmental matters in the table of contents, and wrong and misleading running heads seem to be characteristic of – what I consider to be – a lack of attention with respect to both content and production. A select bibliography on India and international law would, for example, be helpful in directing and facilitating further research.

5. CONCLUSION

More than 25 years after the publication of Nagendra Singh’s *India and International Law*, India’s international position is no longer dictated by the ‘reality’ of the bipolar system. India is an ‘emerging power’⁸ in a post-1990 international world. That new international (political) reality has a legal dimension which is not, however, adequately reflected in this *India and International Law*.

This *India and International Law* is incomplete in terms of issues and outlook. It is first of all a construction of India’s perspective on international law rather than a (critical) reflection on India’s perspective. The structure of the publication does not provide the reader with an understanding of India and international law.

According to the editor, Bimal N. Patel, the contributors intend to ‘enable the readers to see how India has acted or reacted with the changing global affairs and what one can reasonably expect in the future based on their analysis’ (p. vii). It must be doubted whether *India and International Law* does the job.

Another publication on India and international law is called for – perhaps a second volume which would complete the overview both with respect to content and with respect to the technical means which are necessary to turn both volumes into a ‘useful reference tool’.

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8. Cohen, *supra* note 5; S. Ganguly (ed.), *India as an Emerging Power* (2003). E. Luce, *In Spite of the Gods: The Strange Rise of Modern India* (2006).

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