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INTERNATIONAL LAW IN TRANSITION: ESSAYS IN MEMORY OF JUDGE NAGENDRA SINGH; Edited by R.S. Pathak and R.P. Dhokalia; with Foreword by R.Y. Jennings, President of the International Court of Justice; Martinus Nijhoff Publishers, Boston (1992); ISBN 0-7923-1715-7; 415 pp.

International Law in Transition brings together articles from twenty-one leading international jurists in tribute to the late Dr. Nagendra Singh, distinguished Judge of the International Court of Justice, who served as its Vice-President (1976-1979) and President (1985-1988). Throughout his illustrious career Judge Singh was involved in various diplomatic conferences as delegate to the Second Geneva Conference on the Law of the Sea, Indian delegate to the U.N. General Assembly, Chairman and delegate to numerous U.N. commissions and conferences on such diverse areas as trade and development, shipping and maritime matters, and uses of atomic energy, among many others.

Judge Singh's scholarly accomplishments are reflected in his extensive academic writings. His more notable works are *Nuclear Weapons in International Law* (London, Stevens, 1959); treatises and published lectures on merchant shipping: *The International Law Problems of Merchant Shipping* in Recueil des Cours, 107 (1962-II), *International Conventions on Merchant Shipping* (British Shipping Law Series Vol. 8, London, Stevens, 1963); and books on the relation of international law and the law of India: *India and International Law: Ancient and Medieval* (State Practice of India, Series Vol. 1 Part A, New Delhi: Chand, 1973), *The Theory of Force and Organization of Defence in Indian Constitutional History* (Bombay: Asia Publishing House, 1969), and *Commercial Law of India* (Delhi: Thomson Press, 1975). Perhaps his last work, *The Role and Record of the International Court of Justice* (Dordrecht: Martinus Nijhoff Publishers 1989), will prove to be his most famous.

That international law is presently in danger of being overtaken by the events of the day is a recurrent theme in *International Law in Transition*. Dissolution of the Cold War order has brought greater political instability with attendant new dangers to international peace and security. Gross violations of international humanitarian law per-

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petrated in the territory of the former Yugoslavia exemplify the horrors wrought by increased instability and political uncertainty in the post-Cold War world. Increasing political violence in many of the former Soviet Socialist Republics such as Georgia, Azerbaijan, and Armenia, if left unchecked, also carry the potential for a devastating rupture in international peace and security. These new threats to world peace have arisen when chronic open sores on the international body politic, such as the gross denial of human rights of the people of East Timor, have yet to be treated effectively, let alone cured. However, new opportunities for international cooperation to solve these problems have appeared as East-West tension has diminished. The U.N. Security Council's unequivocal condemnation of Iraqi aggression against Kuwait and the extensive United Nations humanitarian involvement in Somalia indicate that with the reduction of East-West political tension, the U.N. can operate as an effective institutional means to restore international law and order.

The book is split into two parts: the first, entitled "Contemporary Issues," focuses on problems presently facing the global community; the second, entitled "Perspectives," focuses on emerging trends in international law.

In "Internal Conflicts and International Law," Oscar Schachter summarizes, in remarkably succinct fashion, the international law relating to internal conflicts. He states straightaway that internal conflicts, as a general rule, lie beyond the application of international law. There are two categories of exceptions to this general rule. These exceptions flow from (a) the application of international humanitarian law and of international human rights law to certain kinds of internal armed conflict; and (b) cases of intervention by a foreign State in the internal affairs of another, contrary to principles of non-intervention in international law. Following a clear treatment of the international legal norms applicable in each of these two categories, Schachter deals with two other related cases not generally considered: intervention of a non-forcible character and United Nations intervention in international conflicts. Schachter's concise analysis brings an accurate perspective to the international law on internal conflicts.

Ian Brownlie's "Politics and Principle in Major International Settlements" studies the "interplay of political principle, policy decision . . . in relation to major settlements of the kind which followed the two world wars." Brownlie reminds the reader of the sweeping impact of general multilateral settlements of European territory in the nineteenth century, those affecting Europe and parts of Africa put in place by the 1919 Peace Treaty of Versailles following World War I, and peace settlements concluded after World War II relative to Europe, Asia, and Africa. He argues persuasively that the political machinery that brought these momentous changes have been by and large neglected by international law scholars. Brownlie argues that principles

of openness, fairness, and impartiality were well served in the peace treaty conclusion process, especially following World War II, lending them a much more juridical character than is commonly assumed. Following a brief survey of the process and effect of postwar settlements on the legal status of territory, Brownlie concludes that "[w]hat is remarkable about the settlement machinery created by the United Nations after 1942 is not the dominance of politics but, given the scale of the political operation, the extent to which considerations of international policy, matters of principle, and decision by consensus entered into the procedures of settlement."

In "Complexities of the Distinction between *Old* and *New* International Law: Empirical Question Marks," the late George Schwarzenberger examines the distinction between "old" and "new" international law from four angles: 1) pitfalls of reasoning; 2) comparabilities; 3) relativities; and 4) implications. The paper attempts to promote a clearer understanding of international law as a normative system that mirrors its social environment. He advocates conscientious attention be paid to the origins and infrastructures of contemporary international law to reduce distortions in the image of international law. Schwarzenberger's paper is replete with headings and subheadings that appear to add little of explanatory value to the treatment of the distinction between "old" and "new" international law and is overly analytical. Nonetheless, Schwarzenberger properly lays emphasis on the use of inductive and empirical methodology in the study of international law. His arguments provide a much needed corrective to traditional doctrinal approaches that try to deduce principles of international law from general abstractions, glossing over inconvenient complexities in the law.

Gillian White's "Structural Adjustment with a Human Face and Human Rights in Development: New Approaches in the Fourth Lomé Convention" draws attention to certain innovative and important provisions of the most recent Lomé Convention concluded between the European Community (with its twelve member States) and sixty-nine developing States of Africa, the Caribbean, and the Pacific. She analyzes provisions on financial support from the EC and the effect this support has on structural adjustment and the populations of recipient countries. She looks also at provisions designed to incorporate human rights as a fundamental factor of development. White's treatment of the subject provides readers with a useful background on structural adjustment policy in the Convention and on pertinent policies and practices of the International Monetary Fund and World Bank, before turning to consideration of clauses relating specifically to human rights and development. White examines Article 5 — the non-discrimination clause — with respect to the issue of ensuring that living and studying conditions of developing country nationals in E.C. countries are accorded legal protection no less favorable to that of other foreigners in Europe. Article 5 links international cooperation, structural

adjustment development policy, and human rights, but it recognizes development only as a principle, not as a right. The author concludes that "[o]nly time will tell whether the approaches taken in Lomé IV to both human rights as such and to structural adjustment 'with a human face' are well founded politically and psychologically and whether they can be said to have contributed positively to the development, in its fullest sense, of the [African, Caribbean, and Pacific] countries and their peoples."

"The New Law of the Sea and Navigation: A View From the Mediterranean," by Budislav Vukas, discusses solutions to problems on international navigation adopted in the Third United Nations Conference on the Law of the Sea (UNCLOS) of special relevance to Mediterranean countries. The author focuses on new developments brought by UNCLOS concerning the right of innocent passage in the territorial sea, straits used for international navigation, the Exclusive Economic Zone, and settlement of disputes concerning navigation.

In "The Concept of International Law at the End of the Twentieth Century," Milan Sahovic raises critical questions on the changing nature of inter-State relations against the backdrop of a panoramic view of international law. He observes that in the past three centuries, the imperative of mutual cooperation between States gave rise to expectations that the effective functioning of the international legal system would find support in the municipal law of each State. However, due to the highly decentralized nature of law-making at the international level and the lack of a super-State to enforce and implement international legal norms, these expectations were never fulfilled.

Instead, the creation of international law became subject to the individual consent of the States — a situation that remains fundamentally unchanged today. Limits to the effectiveness of international law derive chiefly from the inability of the international community to enforce compliance where a State refuses to honor its international legal obligations. Nevertheless, unprecedented change in international relations since 1945 has altered the structure and character of international law.

A new era of increased international cooperation and institutionalized interdependence has been heralded in with the emergence of the U.N. and other international organizations, the emergence of newly independent States from colonialism, revolutions in science and technology, and the blossoming of international human rights law. Sahovic maintains that evolution in the modern system of international law "... is going in the direction of the construction of one united, integrated and coherent system of law." He cites two trends in particular to support his thesis: the emergence of a hierarchy of norms and the "foundation of one objective international legal order independent of the subjective wills of States."

Further, the monist approach to international law appears to be gaining ground as States increasingly adopt constitutional provisions that accord formal recognition to norms of international law. Institutionalization in the codification and progressive development of international law through the International Law Commission continues to represent an active "legislative" approach to international norms. One would have hoped that Sahovic's treatment of these important structural changes would not have been so brief — his article is a mere six pages — because his arguments raise some of the most critical issues in contemporary international law in a most coherent fashion.

Two articles on the global refugee problem appear in the book. The first, entitled "Problems of Refugees in the Developing Countries and the Need for International Burden-Sharing," by J.N. Saxena, sketches the dimensions of the current refugee crisis, discusses the definition of "refugee," and reviews the principles of non-refoulement, asylum, international solidarity, and burden-sharing. The definition of "refugee," codified in the 1951 Convention relating to the Status of Refugees, has become sorely outdated as both the volume and complexity of the world refugee problem has exploded. The author argues that rather than calling into question the mandate of the U.N. High Commissioner of Refugees or the principles set forth in the 1951 Convention or 1967 Protocol relating to the Status of Refugees (the latter broadened the definition of "refugee"), these instruments should be rendered more effective through expansive interpretation.

In the other article on the refugee problem, "Progressive Development of Refugee Law and Its Codification," Luke Lee discusses the need for a systematic codification of refugee law. Lee also draws attention to the work and considerable influence of Judge Singh in the progressive development of refugee law in connection with the International Law Association, located in Brussels.

In "The Human Rights Committee in 1990," P.R. Gandhi highlights precisely and succinctly recent developments in the Committee's practice and procedure. He examines the more significant developments in recent cases on procedural questions (such as admissibility) as well as on substantive aspects. Gandhi remarks accurately that while the volume of work of the Committee and of human rights organs in the United Nations Centre for Human Rights has increased greatly, funding, staffing, and administrative support for the Centre remains terribly inadequate.

In "Nuclear Weapons and International Law: Some Reflections," B.S. Chimni considers the argument sometimes put forward that the threat or use of nuclear weapons is not a violation of international law because there is an absence of express prohibitions in treaty law. Nagendra Singh countered that existing conventional law already prohibits nuclear weapons by way of the de Martens Preamble to Hague Convention No. IV concerning the Law and Customs of War on

Land, which codified customary law. In the context of international humanitarian law the question is whether nuclear weapons can possibly figure in the balance between military necessity and humanitarian considerations, since the distinction between combatants and non-combatants — basic principles of international humanitarian law — would likely be rendered irrelevant in the event of nuclear attack.

International legal norms on the environment have shown perhaps the most rapid development in recent years. In "The Greenhouse Effect - Need for Legal Control," Gurdip Singh relates the greenhouse effect to depletion of the ozone layer and then briefly chronicles landmarks in the emergence of legal norms on the problem, albeit in a rather superficial way.

The changing role of the World Court and the International Law Commission's role in the codification and progressive development of international law are examined in "Perspectives of the New Trends in Contemporary International Law" by T.O. Elias, late Judge of the International Court of Justice. Elias surveys trends in international law mentioning important developments in U.N. codification, the United Nations operations in the Congo as a watershed in contemporary international law, and the upsurge in human rights and international humanitarian law.

In "A New Political Thinking and International Law," Grigory Tunkin argues that international law must attain primacy over the narrow political self-interests of States such that common interests can prevail over national egoism. However, Tunkin contends that for this to occur, international mechanisms for international dispute settlement, control mechanisms, and mechanisms of law enforcement must be improved.

G.H. Guttal's "Sources of International Law: Contemporary Trends," considers law-making at the international level. It begins with an arid and somewhat disjointed discussion of the question as to whether "international law" is "law" before discussing the law-making significance of Resolutions of the United Nations General Assembly.

R.P. Dhokalia's "Reflections on International Law-Making and its Progressive Development in the Contemporary Era of Transition," is perhaps the heart of *International Law in Transition*. The author brings the outmoded character of international law — a set of norms that continues to represent a crumbling status quo — into disturbingly sharp contrast with irrepressible and momentous world change. Dhokalia focuses on social revolutions that currently undermine the legitimacy and authority of the modern nation-State. Contemporary international law, premised on the classical foundation of inter-State relations, is also suffering through a crisis of identity and legitimacy. Many countries object to the blatant double standard whereby the more powerful States flout international law when convenient for them

to do so yet insist that weaker States accord international law scrupulous observance. Against the backdrop of a world undergoing tumultuous change, effective codification and progressive development of international law becomes all the more imperative. As Dhokalia observes, the International Law Commission, hampered by problematic working methods, has achieved only limited success.

The final six articles in *International Law in Transition* explore the operation, function, and legitimacy of the International Court of Justice and prospects for a greater role in future — issues to which Dr. Singh devoted much of his attention and energy.

Yogesh Tyagi, in "The World Court after the Cold War," observes that the end of the Cold War and the breakdown of superpower rivalry enhances prospects in the peaceful settlement of disputes and that these developments have raised expectations that judicial organs such as the International Court of Justice (I.C.J.) will be allowed to be more effective. The author critically examines various initiatives that have been put forward to strengthen the World Court relative to psychological, jurisdictional, and functional aspects of international adjudication.

In "The World Court on Trial," R.P. Anand praises the Court for its demonstrated impartiality and for excellence in the quality of its decisions. He then draws attention to the hostile attitude shown by the United States toward the jurisdiction of the Court, despite the major role of the United States in the Court's establishment. Anand places particular emphasis on the U.S. Government's disastrous withdrawal from the Court's compulsory jurisdiction in the *Nicaragua Case*.

Stephen Schwebel surveys questions of human rights that have arisen before the Court in "Human Rights in the World Court." As Schwebel points out, few cases or advisory opinions in the World Court have centered on human rights questions. He reviews the human rights jurisprudence of the Permanent Court of International Justice, centered primarily on interpretation of minority rights guarantees in peace treaties concluded after World War I. Turning to jurisprudence involving human rights in the I.C.J., Schwebel provides a useful synopsis of a number of advisory opinions and contentious cases from the human rights angle.

A distinctly Indian perspective is brought by V.C. Govindaraj to "Law, Human Rights and Socio-Economic Justice — An Indian Experiment." In this piece, Govindaraj examines Indian jurisprudence on the protection and promotion of civil and political rights on the one hand, social and economic human rights on the other, and then discusses the Indian approach to integration of the two in relation to the rise of the welfare State in India. He first outlines provisions of the Constitution of India relative to the protection of human rights. Under the Indian Constitution an individual has a right to challenge a law or government action where an abridgement of fundamental rights is alleged by

invoking the original jurisdiction of the Supreme Court of India directly, rather than having to petition the High Court first. The author surveys landmark Supreme Court of India cases on basic human rights, highlighting constitutional provisions designed to advance socio-economic reform, and then focuses on international human rights as interpreted and applied by Indian courts.

In "Selected Recommendations to Enhance the Effectiveness of the International Court of Justice: Perfection and Application of Confidence Building Measures," W. Paul Gormley looks incisively into the way the I.C.J. actually functions. The Court's jurisdiction in each case depends upon the consent of parties to the dispute. The author explores the United States policy in the *Nicaragua Case* and the U.S. objections to the filing of the memorial by Iran in the *Aerial Incident Case*. In a number of other cases, respondent States have chosen to ignore the I.C.J., rather than to defend their position. This trend undermines the legitimacy of the Court.

On the other hand, the Court has earned the confidence of the international community for consistently producing work of excellent quality. Gormley takes note of short and long range innovations in the Court such as revision in the rules of the Court and the novel use of special Chambers.

Finally, the author examines some far-reaching recommendations for improving the operation of the Court, including widening the *locus standi* of the Court to include individuals and non-governmental entities, using the I.C.J. as an appellate tribunal rather than as a court of first instance, widening the Court's advisory jurisdiction, developing "evocation procedures" (which authorize the Court or perhaps a Chamber of the Court to clarify a particular point of law in a case or dispute pending in another forum), and improving the Court's investigatory and fact-finding powers.

In the last article, "The International Court of Justice: The Integrity of an Idea," I.C.J. Judge M. Shahabuddeen considers the balance that must be maintained between the judicial character of the International Court of Justice, on the one hand, and the fact that its jurisdiction is based on the voluntary consent of States on the other. The author considers whether the I.C.J. is truly a court of justice. Shahabuddeen contends that in practice States *accept* the jurisdiction of the I.C.J. or not, but this is not the same as saying that States *confer* jurisdiction upon it. He argues the difference is not merely terminological but relates to the fact "that the International Court of Justice is a court of justice independently of the voluntary acceptance of its jurisdiction in any particular case, with the consequence that its claim to be considered a real court is not affected by the voluntary nature of that jurisdiction." The author then emphasizes differences between arbitration and judicial settlement and argues that the use of Chambers is likely to undermine the judicial character of the Court because

the process whereby parties may indicate which Judges they prefer to preside militates against universal, impartial, and independent adjudication.

Unless international legal norms keep pace with rapid change in the contemporary human condition, they will fail to serve interests vital to the international community and be judged anachronistic, outmoded, and irrelevant. *International Law in Transition* affords rich insight into the perplexing transformations presently under way in international law and politics, especially on current problems and prospects facing the International Court of Justice. By bringing together views of a number of eminent authors on pressing problems of our time, the book offers clear-eyed vision on prospects for a more responsive international legal system. *International Law in Transition* will undoubtedly be of interest to both generalists and specialists in international law and relations.