



## BOOK REVIEWS

*The Indian Advocate*, Vol. 1, No. 1, April-June, 1961, Quarterly Journal of the Bar Association of India, Supreme Court Building, New Delhi, pp. 86. Price Rs. 3.00. Annual subscription Rs. 10.00.

We heartily welcome the first number of *The Indian Advocate*, the official organ of the recently formed Bar Association of India.

This number deals with a variety of subjects, viz., the position of the President in the Indian constitutional scheme. The implications of the Bombay Governor's action in suspending the sentence on Nanavati, the propriety of appointment of a member of the Madras State Subordinate judicial service as the government pleader, the judicial power in the protection of fundamental rights, and the laws and Constitution of Iraq.

It is heartening to see that these subjects are of live interest to the profession and if this feature of looking to the present and the future in contrast to nostalgically reminiscing over the past is maintained *The Indian Advocate* would be an eagerly awaited legal periodical by its constituents. Our hope in this matter is strengthened by the words of its learned editor that "articles and matters of everyday interest to the lawyer in the course of his functions as an Advocate" will be found increasingly in future in the *Indian Advocate*. And when live issues are chiselled out through its vibrant columns sparks might fly as the esteemed President's Page and some others indicate. We do not express any opinion here on the views found in the pages of the *Indian Advocate*. For example, we have no comments on the point whether more consideration could have been bestowed on the exact context of the learned Chief Justice's apparently general observations referred to in the President's Page. What we say is only that if law has to be part of life in a democracy, democracy has to live up to law. It is said that democracy believes in accepting compromises. Nevertheless when the main principle of a compromise is the difference between the present moment and the next criticism may have to be forthright. For, the stake is justice, faith in which binds society.

*The Indian Advocate* is a useful addition to the legal periodicals in the country and we wish good luck to this contemporary.

*Anglo-Iranian Oil Dispute* By Sunil Kanti Ghosh. (Firma K. L. Mukhopadhyay, Calcutta), 1960, pp. xvii and 340 incl. Appendices and index.

The Anglo-Iranian Oil Dispute originated in the Iranian Nationalisation legislation of oil industry, March-April, 1951. The legislation



nullified the D'Arcy Concessions of 1901 as modified by the 1933 Agreement. After some unsuccessful diplomatic negotiations, the British Government referred the dispute to the International Court of Justice. The court ordered for provisional measures on July 5, 1951. Iran, however, refused to abide by the said order. While the matter was pending before the court, the British Government brought the dispute before the Security Council, especially drawing the attention of the Council to the failure of Iran to comply with the provisional measures ordered by the court. After a protracted discussion, the Security Council deferred consideration of the dispute until the matter had been finally disposed of by the court. The court held on July 22, 1952, by nine to five, that it had no jurisdiction in the dispute. In view of this decision of the court, the Security Council made no further deliberation on the dispute. This, in short, is the subject-matter of the book under review. Dr. Ghosh, it must be stated at the outset, vividly described all these transactions in their fulness.

If the "Introduction" were not to be counted, the book consists of seven chapters altogether. The author sets out the 'Purpose and Scope of Investigation' in the Introduction. In the second chapter, the history of the Concession given in 1901 to one William D'Arcy, a British national, is neatly narrated. One striking fact that is revealed in this part of the study is that as early as in 1932, the Iranian Government "announced the cancellation of the D'Arcy Concession" for reasons not dissimilar to those that prompted the Iranian Nationalisation programme of 1951. The hitch of those times was however hushed up by the Agreement of 1933.

In the third chapter, the author describes the financial implications of the dispute, and sums up the Iranian viewpoint by observing that the dispute "stemmed from the mounting resentment felt in Iran over the sheer disparity between the revenue derived from the exploitation of Iran's most valuable natural resources and the benefits which accrued to Iranian people therefrom". (pp. 19-20)

Under the caption 'Sources of the Dispute', the author describes a variety of subjects in the fourth chapter—history of Iran, its social structure, education, public health, political structure, diplomatic history, economy, agriculture and irrigation, land tenures, industry and mining, transportation and communications, legal matters, history of oil concessions, Nationalism, National debt and the impact of the two World Wars. The chapter does not seem to have been happily organised. And perhaps much of the description could have been easily avoided with the least sacrifice to the main theme of the study. In



fairness to the author it must, however, be admitted that without this background, it might not have been possible for the author to feed with substance observations such as "Present political trends with all their emphasis on nationalism tend to obscure the need for social policies. To try to evade moral responsibilities is a common human failing. Instead of putting into anvil some of the urgently needed reforming laws, the politicians, mostly belonging to aristocracy, thought it more convenient to make the British as the scapegoat for all evils in Iran" and "The feeling of loyalty should be sublimated into a form of patriotism which combines the most intense love of country with the desire to do justice to other nations. These are tasks enough for men to do without wasting their emotions of evil feelings against the citizens of a foreign nation" (pp. 71-72). The expression of these sentiments may likely be interpreted to be wide off the mark. But they are there and they must be substantiated.

The abortive diplomatic negotiations between the Governments of Great Britain and Iran consequent upon the nationalisation of the Iranian oil industry are described in the fifth chapter. The good offices tendered by the United States of America and the World Bank are also referred to therein.

The sixth chapter is devoted for the discussion of the U. N. action in the matter. The discussion proceeds under two broad heads, namely, action by the International Court of Justice and action by the Security Council. At the request of the British Government and after notice being duly given to the Iranian Government, the International Court of Justice ordered for provisional measures under article 41 of the Statute. The Iranian Government, as stated earlier, refused to abide by the order of the court. It may, perhaps, be convenient at this place to refer to the seventh chapter wherein the author discussed *inter alia* various instances when the Permanent Court of International Justice, the predecessor to the present court, ordered, and refused to order, provisional measures. It is rather regrettable to note that virtually there is no discussion at all on the specific question whether Iran was within its rights in refusing to comply with the provisional measures directed by the court. True, the author did observe during his general discussion on the scope of article 41 of the Statute that "the parties remain free to observe such indication or not as they choose" (p. 186). But the learned author has not substantiated as to why the provisional measures indicated by the court are only directory.

After the court ordered for provisional measures, it considered the question whether it had jurisdiction in the dispute. The court came



to the negative conclusion because the dispute was not covered by the terms of the Iranian Declaration of 1932, acceding to the jurisdiction of the court. With regard to the further action by the Security Council, the author concludes that "in view of this decision [of the court] further debate in the Security Council did not take place" (p. 166). What, however, remains unintelligible is how the decision of the court which was mainly based on its competency under the Iranian Declaration of 1933 should be a bar for the Security Council to proceed with the dispute. Surely the jurisdictional scopes of the Council and the court are not co-extensive. The learned author could have taken up issues with the inconclusive nature of the discussions in the Security Council on the Anglo-Iranian Oil Dispute.

The last chapter is by far the most interesting one for the students of international law. The author therein makes a learned discourse on the problem whether there is any existing rule of international law making it obligatory on the States to pay just compensation promptly where they expropriate the properties of the foreigners situated in their territorial jurisdictions. After ably presenting the opposite view-points, Dr. Ghosh comes to the conclusion that there is such an obligation under international law. Stated as an abstract principle of international law, there may not be much dispute with his conclusion. Only when he accuses the court for not appreciating the existence of such a norm, the learned author misses the real point decided by the court. "Settlement of the dispute", Dr. Ghosh observes, "was not prevented by a 'lack' of law or of available legal procedures. Instead, it was prevented by a lack of faith in and willingness to submit to those procedures on the part of Iran, and a failure to direct bold solution on the part of the International Court of Justice and the Security Council" (p. 264). The author makes a similar uncharitable comment on the court in connection with the problem of domestic jurisdiction by observing that "Neither the International Court of Justice nor the Security Council adequately revealed why they considered the matter before them not to be exclusively a matter of domestic jurisdiction" (p. 167). The court had not disposed of the dispute on either of these counts. The court declined to exercise jurisdiction in the case on the simple ground that the dispute was not covered by the terms of the Iranian Declaration of 1932 conferring compulsory jurisdiction on the court.

The book was submitted by the author as a doctoral thesis in the year 1956 to the University of Illinois. Though a sizable content of the book was of topical interest at the time of the writing, it contains



certain interesting areas which are of significance to the Law of Nations, including the Law of the United Nations. The book is well documented, accompanied with an impressive list of appendices, valuable bibliography, chronology of events and an index. Coming from an Indian author, the book is highly welcome as it manifests the growing awareness of the Indian scholars to the problems of international law.

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*Rivers in International Law* By F. J. Berber. [London: Stevens & Sons Ltd., 1959, XI pp. 282 and index pp. 14. £2 5s. net].

The advancement of science has thrown up many new problems into the international field. International law must of necessity extend its boundary line to meet new situations as they arise. Formerly international rivers had only non-consumptive value, but with the advent of electricity and other scientific inventions the rivers have attained consumptive value. Naturally, therefore, the diversion of water of international rivers for irrigating arid zones and other purposes often creates disputes between riparian States. These disputes, if they are not settled politically, await solution within the bounds of international law.

This book by Professor Berber, one of the legal advisers to the Government of India in the Indus Water dispute, is in the main a translation of the German edition published in 1955. The author examines some of the important problems in the development of international water rights in the background of international treaties, arbitral awards, municipal legislation, theoretical treaties and State practice. Having analysed in the first chapter the new problem that has risen in the past one or two decades due to the consumptive uses of international rivers, he enters in the subsequent chapters into the realms of international law in search of a legal solution to the problem. But, before embarking on the solution—searching expedition, the author gives vent to his scepticism regarding the search in the first chapter itself in the following words: “It is simply premature at the present time to wish to offer a system of international water law as this would inevitably lead to half true generalisations and to dangerous superficialities” (pp. 9-10)

In the second chapter the author discusses the basic theoretical problems. He examines in this connection four principles, namely, the principle of absolute territorial sovereignty, the principle of absolute territorial integrity, the principle of a community of property in water

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