recognized or acknowledged the rights in question, either expressly or by implication and (2) that in any controversy as to existence of the right the burden of proof lay on the person claiming against the new sovereign to show that he had recognized or acknowledged the right in question. It is submitted that the better and fuller way of setting out the position may be to incorporate the summary of the law given by Mr. Justice Rajagopala Ayyangar in the *Vora Fiddali* case.[8] As against this, the mere statement as rule (5) that "it is not within the competence of municipal courts to go into the question of the validity of an act of State"[9] may not convey the true position.

What has been stated above does not, however, in anyway detract from the undoubtedly high quality of the revised work. The present editor richly deserves the most grateful thanks of the profession for the inestimable service he has done by bringing out the present edition.

*S. Rangarajan**

INTERNATIONAL LAW — INDIAN COURTS AND LEGISLATURE. By S. K. Agrawala. Bombay: N. M. Tripathi Private Ltd. 1965. Pp. x +289+ lxxxix. Price Rs. 30/-.

THIS IS A WELCOME addition to the literature of international law in India. It is founded upon a doctoral dissertation of the Lucknow University which must be given credit for producing two doctorates in about a decade's time—"a rare distinction in India"—as the blurb claims.

As regards the form and substance of the book, first of all, it must be pointed out that the title of the book—despite the sub-title—is inappropriate and, indeed, misleading. This is not a book on international law, nor is it an exposition of the rules of international law as applied by the Indian courts and legislature. To be sure, it deals with Indian state practice in regard to three topics of international law, namely, state succession, nationality, and extradition. These three topics obviously do not constitute the whole complex of international law, nor are the applicable rules in regard to these topics to be found exclusively in the decisions of municipal courts and legislative organs. So much for the title and sub-title of the book.

In order perhaps to provide a perspective for the subject, the author explains in an introduction the value of municipal decisions as sources of international law. He is of the view that "the cumulative effect of uniform decisions of the courts of the most important states is to

8. A.I.R. 1964 S.C. 447, 462-63.
9. *Mulla* 43.
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afford evidence of international custom."[1] It is arguable whether the decisions of the national courts of a state constitute international custom. The question is an intricate one and for sure cannot be answered in a dogmatic manner. To challenge the assertion that the decisions of muncipal courts constitute international custom is, however, not to deny their value as evidence of state practice. And this raises an interesting, if complex, question of what is the relation between state practice and international customary law? The expressions "state practice" and "international custom" are different concepts with varying legal meanings, although occasionally they overlap.

The author, then, proceeds to a detailed and critical examination of questions of state succession, nationality, and extradition.

Part I of the book deals with state succession—a subject of considerable importance in contemporary international law. The author critically examines whether India's state practice in regard to treaties, contracts, property, loans, financial obligations, and pending legal proceedings, is in conformity with rules of international law. He demonstrates both imagination and independence of judgment in his criticism of Indian judicial decisions and legislation on the subject. He criticizes Indian cases on act of state doctrine, and makes a plea for the deletion of the doctrine in international law.[2] While there is no doubt justification for its non-application in the Indian context, it is questionable whether the plea of the author for its deletion is sustainable in international law. The recent decision of the Supreme Court of the United States in the ***Sabbatino*** case, points up the continuous need for the plea of act of state in international law.

The author draws his materials principally from Indian judicial decisions and legislative enactments. Nobody can, or should, find fault with this approach, for every scholar is in his right to delimit the field of inquiry in any manner he likes. But then one must point out that a study based upon only two of the relevant sources is bound to lead one to make statements at a level of high generality. To illustrate, the author, while examining state succession in regard to old treaties, says that India "remained bound by treaties contracted for it by the Crown."[3] This statement is only partially correct, for it cannot be held with certainty that India is bound by all treaties concluded by the Crown on India's behalf. India's state practice in regard to succession of old treaties does not warrant such a conclusion. At any rate, the subject calls for a more detailed investigation into all relevant sources.

1. Agrawala, *International Law—Indian Courts and Legislature* 8-9 (1965) [hereinafter cited as *Agrawala*].
2. *Id.* at 42.
3. *Id.* at 70.

Part II of the book deals with nationality. The first comprehensive enactment on citizenship law in India was passed in 1956, and until then questions of citizenship were determined by articles 5 to 11 of the Constitution of India, 1950. One of the articles dealing with questions of migration from India to Pakistan gave rise to acute controversy. The controversy centred on the meaning of the term "migrated" in article 7 of the Constitution, which, in effect, lays down that persons who migrate from India to Pakistan after March 1, 1947, shall forfeit their Indian citizenship. Some Indian courts construed the expression "migration" as "departure from India to Pakistan for the purpose of residence, employment or labour."[4] The author rightly criticizes[6] this narrow construction of the term "migrated," for it cannot be assumed in the absence of clear intent to the contrary that migration means the same thing as change of residence. Even the political turmoil that came in the wake of partition of India cannot warrant such a narrow construction.

The author is also right when he challenges the validity of rule 3 of schedule III of the Citizenship Rules of 1956, which says: "The fact that a citizen of India has obtained on any date a passport from the government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of that country before that date." Under international law as also under the laws of several countries a passport is only a prima facie (and not conclusive) evidence of the national status of the holder. It is also doubtful whether rule 3 is consistent with section 9(2) of the Citizenship Act of 1956. Mr. Chief Justice Subba Rao held in *Mohammad Khan* v. *Government of Andhra Pradesh*,[5] that the rule was ultra vires of section 9 of the Citizenship Act. True, the decision of Subba Rao, C.J., was overruled, at least by implication, in *Izhar Ahmad* v. *Union of India*,[6] by a majority 3 to 2 Judges of the Supreme Court. But one wonders whether the majority decision of the Supreme Court is sound in law. It appears that the majority Judges did not squarely face the issues in the case. This reviewer, therefore, agrees with the author's suggestion[7] that rule 3 of schedule III of the Citizenship Rules of 1956 should be suitably amended.

Part III of the book deals with the law of extradition in India. The author in this part carefully analyzes the Extradition Act of 1962, which is, incidentally, one of the most comprehensive pieces of legislation passed by India in recent times in the field of international law. The Extradition Act of 1962, among other things, provides for the rules

4. *Id.* at 129.
5. A.I.R. 1957 A.P. 1047.
6. A.I.R. 1962 S.C. 1052.
7. *Agrawala* 136.

of double criminality, speciality and non-extradition of political offenders, but it does not contain any prohibition in regard to the extradition of nationals. The author is of the view that the basis of the rule of double criminality needs re-examination, and that the rule of speciality is "rationally indefensible." The analysis of this part is marked by wide knowledge of the author in Anglo-American as well as Continental jurisprudence. What is more, the author points out at appropriate places the impact of international conventions and standards on the law of extradition. Not only that: he even points out in what respects Indian legislation is deficient. While all may not agree with the author's criticisms of Indian law of extradition, all are bound to applaud the author for his zeal of internationalism.

The author rounds up his study by a concluding chapter in which he sets forth certain recommendations: first, that special benches must be constituted in the courts of India, and more especially in the Supreme Court, to decide cases involving transnational issues; second, that greater use should be made of the decisions of the diverse legal systems of the world, and lastly, a Five Yearly Digest of international law cases must be prepared to assist the work of practitioners and courts dealing with international law issues. They no doubt reflect the enthusiasm of the author for changing certain of the prevalent practices, but it cannot be said that all the recommendations, especially the first one, are practicable.

The book contains a bibliography—qualified as "select" by the author. Certainly it is select, but the selection of the author is not altogether free from objection. On the subjects dealt with by the author there are several articles and comments of considerable significance in the *Journal of the Indian Law Institute* and the *Indian Year Book of International Affairs* which should have been consulted by the author. The book would have gained greater value, if the author had consulted the various Indian writings on the subject.

Finally, a word to the writer as well as the publishers. The publication suffers from various kinds of errors. First, there are many printing errors: indeed, too numerous to list them here. Second, consistency in regard to spelling—one of the cardinal rules of the publishing industry—has been violated (see, for example, "domicile"[8] and "domicil"[9]). And lastly, there occur stylistic and grammatical errors at several places (see, for example, "one of the important criterion,"[10] "section 9 or rule 30 do not,"[11] and "a fool-proof media"[12]). These elementary mistakes could have been easily avoided by careful proofreading and editing.

*M. K. Nawaz**

8. *Id.* at 122.
9. *Id.* at 125.
10. *Id.* at 99.
11. *Id.* at 169.
12. *Id.* at 270.

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