



FUNDAMENTALS OF INTERNATIONAL LAW (1st ed. 1990). By S.L. Bhalla, Docta Shelf, Delhi. Pp. 257. Price Rs. 120 (Hard cover). Rs. 70 (Paperback).

BOOKS ON international law published in India can be counted on the finger-tips. Although we have excellent journals on the subject and also some institutions are actively devoted to the cultivation of learning and advancement of knowledge in this field, the fact remains, that public international law has not yet attracted the attention of publishers and others in a sufficient measure. It is easy to put forth reasons for the situation, but it is not easy to accept those reasons. The political dependence of India before 1947, if it is a factor accounting for paucity of literature on the subject in India, is of no relevance now. It is also not an accurate statement of the position to say that international law, as such, was not known to Indian lawyers and judges before independence. Some point or other, of public international law did arise occasionally, even before independence. Historically, the rulers who ruled various parts of India, did have occasions for dealing with problems of international law. Diplomatic immunity and proper behaviour towards visiting rulers were, for example, matters arising not infrequently in ancient and medieval India. The position should have been much better after independence, looking to the numerous treaties and conventions, in the discussion whereof Indian representatives have been participating. These are all factors which should really nourish studies and publications in public international law. Only last year, one of the High Courts, had to deal with the question whether a corporation incorporated in the public sector in Sri Lanka can claim immunity from the jurisdiction of Indian civil courts. As expected, the question was answered in the negative, because, at least according to section 86 of the Code of Civil Procedure, there is no immunity conferred on corporations as such.¹ It is only ruling sovereigns and foreign states who can claim such immunity. Similarly, on this very topic, the point arose a few years ago as to how far the principles of natural justice apply when the Central Government grants or refuses permission to sue a foreign state in a civil court in India.² Litigation apart, such points do arise occasionally in Indian legal practice also.

Again, coming to criminal jurisdiction, one of the topics of international law that does come up before Indian courts with noticeable frequency is that of extradition. In fact, some of the very dependable books on extradition in the Indian perspective were pre-independence publications. These are now difficult to obtain, but they are extremely valuable in their treatment of some of the basic concepts in this field. It is immaterial that many

1. *Capstan Shipping v. Ceylon Shipping Lines*, A.I.R. 1989 NOC 175 (Cal).
2. *Harbhajan Singh v. Union of India*, A.I.R. 1987 S.C. 9.



of the reported decisions dealt with in such book arose out of the question of extradition between (erstwhile) native states or between British India and the native states. Again, after independence, several matters of public international law relevant to criminal jurisdiction have remained of practical importance, such as, hijacking of aircraft, various maritime zones, the right of asylum and the like. Because of political changes on the borders of India, the question of citizenship may also be regarded as a matter of immediate and direct practical importance for India. On this subject also, incidentally, there is no upto date Indian study that covers the various dimensions of the subject, (constitutional, statutory, political and international), with an accent on international law.

There is yet another topic of international law which should be regarded as of practical interest for India. That is the question of minorities. Our Constitution spells out a number of rights for minorities and there is a rich crop of case law on their educational rights. This case law, for obvious reasons, is linked with the constitutional provisions, but it is obvious that academic thinking and mature deliberations on the subject in India would considerably benefit from a familiarity with the manner in which the treatment of minorities has received attention in treaties as well as court judgments in the international sphere.

It is not as if the field is completely uncultivated in India. That could not be so, because, whether or not academic lawyers take interest in the subject, nice points of diplomatic law, law of treaties and effect of participation in international conferences do occupy the time and attention of officers and dignitaries who deal with such matters in the Central Government. The international law of rivers and river basins has also been a topic appearing on the Indian horizon rather frequently. As is well known, even before independence, disputes between two or more native states did arise regarding rivers, and more than once, *ad hoc* tribunals were constituted by the British rulers, in exercise of their paramountcy jurisdiction, to adjudicate upon such matters. What needs to be mentioned is, that the learning and expertise generated within the corridors of the secretariat or diplomatic missions and embassies seem to have remained confined to those corridors. The political acumen that exhibited itself before independence while dealing with river disputes did not become known to a very wide world. The legal professional wisdom and forensic talent that have been employed on behalf of India at international disputes of a justiciable character, adjudicated upon by tribunals also remain confined to the records of the Government and none outside the government would be able to enrich his knowledge unless he makes very special efforts to ferret out, analyse and expand the information available on the subject. Thus, the challenge before one who writes on international law in India is tremendous. It is a vast field, but the journey should prove to be very exciting and the landscape, sometimes familiar, sometimes new, at other times hazy, would seem to promise hours



of pleasure. It is against this background that one can approach a study of the subject and it is also against this background that books on the subject, such as the one under review, can be evaluated with profit.

Bhalla's book is not a manual for officers or a comprehensive encyclopaedia. In the preface, he has described his "humble endeavour" as a quick recapitulation of the entire gamut of international law within a compass of few pages. Bearing this mathematically limited compass in mind, he has given us a very useful book. The chief merit of the book is the constant awareness of the author that international law offers (as has been also mentioned in this review) quite a promising field for study from the Indian perspective. Most of the major topics of international law have received attention. There are 17 chapters trying to tackle the usual topics. The nature and expanse of international law, as also its relationship with national law, occupy the first five chapters. Topics which are focussed on the position of states (including their recognition and jurisdiction) embrace the next five chapters. Territorial sovereignty and state succession appear thereafter in one chapter, followed by a discussion of nationality, extradition and asylum. Then begins a number of chapters of direct interest to diplomats and lawyers, concerned with treaties, diplomatic relations and dispute settlement. The last two chapters deal with war and neutrality.

The author has tried to maintain a balance between too much discussion and too little, and has succeeded to a large measure. But some of the topics, such as (i) extradition, (ii) treaties and national law and (iii) the position of foreign states in Indian courts justify, in the opinion of the reviewer, a more detailed treatment. Particularly, the subject of immunity of foreign states and public entities has come up frequently in the last decades before the Indian courts. Some years ago the German Democratic Republic was one of the parties in a civil suit.³ A few years ago, as already mentioned, the question arose whether the sanction under section 86 is subject to principles of administrative law.⁴ The question has also arisen whether the immunity applies where the suit is for recovery of arrears of rent from foreign dignitaries.⁵

These are controversies which need to be dealt with in an Indian book on international law. Even at the international level, there is an important judgment in *United States v Iran* (1980) on the subject. The point is mentioned here because in our increasing international commerce, such controversies may be expected to occur frequently in future. As to treaties and international law, a more detailed discussion would be helpful, because there is rich comparative material on the subject. That apart, it has a practical bearing in view of the fact that gradually many conventions on various subjects are being implemented by national legislation in India.

3. *German Democratic Republic v. D.Y. Undertakings*, A.I.R. 1972 Bom. 27.

4. *Harbhajan Singh*, *supra* note 2.

5. *Century Twenty One Pvt. Ltd. v. Union of India*, A.I.R. 1987 Del. 124.



Lawyers and beginners would naturally look to a book of the kind under the review, for a detailed discussion on these matters.

Printing and get up of the book are both pleasant and fortunately, there are not too many printing mistakes. However, the index could have been more detailed. Without a comprehensive index, a good book fails to achieve its optimum utilisation.

*P.M. Bakshi**

*Member, Law Commission of India.