

THE INDIAN YEAR BOOK OF INTERNATIONAL AFFAIRS 1964, Vol. XIII.  
Ed. T. S. Rama Rao. [Madras: University of Madras. 1965.  
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The 1964 volume of the *Indian Year Book of International Affairs* has been issued in two parts to enable publication of a collection of papers written in 1961 by members of the Grotian Society (of which Professor Alexandrowicz, formerly of

Madras and now of Sydney, is the leading light) to be published within one pair of covers. These papers are devoted to historical aspects of international law, and in the past the group responsible for them have contributed isolated essays, particularly concerning the history of international law in Asia, to individual volumes of the *Year Book*.

Among the historical articles, Professor O'Connell and Dr. Tammelo have written papers which may be described as contributions to the history of the philosophy of international law. The former contemplates rationalism and voluntarism in the fathers of international law, and makes a statement which will probably meet with much opposition, and is in fact somewhat out of line with his own recent writings on *International Law and International Law in Australia*: "The 'practice' of States is largely, except perhaps in a negative sense, an illusion, and the attempt to found a legal system on what States do and have agreed to is to a great extent profitless. For one thing, until the historians have thoroughly worked over the materials of practice, and until the geography of the practice is sufficiently extended, the implications of particular acts, assertions and protestations of States are questionable. If customary international law were really limited to what the bulk of States have assented to there would be precious little of it. In fact, most international law is to be found in writings and in decisions of tribunals [ — described in the Statute of the World Court as subsidiary means for determining the rules of law — ], and it is the cogency of the juristic or judicial reasoning, and not the agreement of State officers, that compels intellectual assent" (p. 37). Equally stimulating is Dr. Tammelo's discussion of the law of nations and the rhetorical tradition of legal reasoning, in which he reminds us that "when Grotius was actively writing his *opus maior*, there was no reason to assume that the antagonists of the Thirty Years War, or any other States would welcome his service. [In the same way], what scholars who seek to be humanly-minded may now do in response to the human situation, may still come to serve some later, more propitious age" (p. 258).

Although these historical papers have been published under the auspices of the Grotian Society, the 'father' whose contribution to international law is specifically recognized is Gentili. Professor van der Molen writes on Gentili and the universality of international law, while Dr. Simmonds discusses his views of the qualities of the ideal ambassador.

There are four papers which may be grouped together as contributions to an historical study of the development of international organisation. Professor Paradisi considers international law and the social structure of the Middle Ages, a paper which is logically followed by Professor Berber's comments on international aspects of the Holy Roman Empire. The third phase is to be found in Mr. Strakosch's description of the place of the Congress of Vienna in the growth of international law and organisation, and the story is rounded off by Dr. Starke's account of the contribution of the League of Nations to international law.

Professor Alexandrowicz will shortly be bringing out his study of the history of international law in Asia and has contributed a paper here on the attitude of G. F. Martens to Asian treaty practice. He points out that "the continuity of the Family of Nations and its law has a reality of its own which does not permit international lawyers to confine their attention to selected periods and problems but for the exploration of all the relevant antecedents of law making, at least in the five centuries" (p. 77). In view of his own work in the field, Professor Alexandrowicz might also have emphasised the importance of the widening of geographical frontiers as well.

The remaining two articles are subscribed by Quincy Wright on the history of the concept of war, which is based on his much larger *Study of War*, and by Dr. O'Higgins who deals with extradition in British practice from 1174-1794, an article which has added interest in view of recent criticisms of English extradition practice and the general assumption that extradition is a nineteenth century idea.

The articles in Part I of the *Year Book* for the main part deal with international and comparative law, although there are two published under the heading 'International Affairs', one on interstate relations among the ancient Tamils (Dr. Subramanian), and the other on Indian minorities in Ceylon, Burma and Malaysia, which is more factual and descriptive than analytical or critical (Mr. Muhammad Khuni).

As to the legal articles, that by Mr. Strakosch on natural law and the law of

nations might more readily have been published as one of the Grotian Society Papers in Part I, while Dr. Nawaz's paper on the outlawry of war doctrine might have appeared as a follow-up to the historical study by Quincy Wright. Dr. Nawaz discusses the Indian attack on Goa to point out that this demonstrates a difference in approach between the East and the West, with many of the new States supporting the Indian view that 'colonial powers do not have a valid legal title in regard to colonial territories' (p. 102). Unfortunately, he does not follow this up to examine how far, if this view is justified, any of the new States have any right to exist within their present frontiers. Of associated interest is Dr. Rahl's paper on harmony and disharmony of basic Charter concepts, with particular reference to Goa. This paper is primarily descriptive, but in so far as it involves legal analysis it tends to accept the Indian point of view somewhat uncritically, and comes down heavily in favour of the principle of 'democratic legitimacy'. In view of the Indian attitude to the colonial nature of the Goa regime it is of interest to read the documents that passed between India and China in connection with their border dispute as published in the various Indian White Papers. Dr. Rama Rao's analysis of these papers, however, is not so concerned with the territorial dispute or with the politics involved. He is more interested in the manner in which the two sides treated individuals, trading agencies, consular and diplomatic buildings and personnel when things began to quieten down. He also emphasises the intemperate and undiplomatic language indulged in by the Chinese when writing diplomatic Notes, which at times resemble the outbursts of the Red Guards in China and the mobs in Macao and Hong Kong.

Dr. Tiwari is interested in the activities of international organizations in the field of human rights, and provides an interesting paragraph or two on the way in which members of the United Nations have voted on issues affecting South Africa, drawing attention to the extent to which they have participated in the economic boycott of that country (p. 58). Another paper related to human rights is that by Mr. Venkatavaradan on Southern Rhodesia, but delays in publishing have allowed this to become completely overrun by events.

The remaining papers are chiefly concerned with issues of domestic law, while the sections on judicial decisions on private international and constitutional law help to enhance the value of the *Year Book*. Many of the articles throw new light on specific issues, but one would be happier if more of them were critically analytical rather than historically descriptive.