

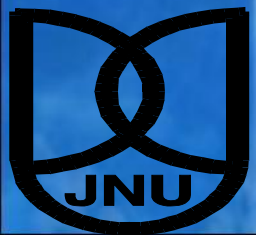
Reflections on International Law on Adjudication

A Tribute to Professor R. P. Anand



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Ram Prakash Anand –The Scholar



- ❑ **Alumnus of Delhi Uni. [B.A.; LL.B.; LL.M.] and Yale Law School [LL.M.; J.S.D.].**
- ❑ **Intellectually influenced by renowned scholars such as Myres S. MacDougal as well as Quincy Wright and Percy E. Corbett who were visiting professors at the Indian School of International Studies [predecessor of SIS, JNU].**
- ❑ **Served as Professor of International Law at Indian School of International Studies and (its successor) SIS [until 1998] as well as Professor Emeritus [until 2011] at Centre for International Legal Studies, SIS, JNU, New Delhi.**
- ❑ **Fondly remembered for carving out a niche as one of the early third-world scholars who propounded the Asian-African Approach to International Law.**

The Context



- Early work on ‘adjudication’ –as a non-diplomatic legal mode for pacific settlement of disputes –laid the basis for his scholarship.
- Very few works have provided the context for lack of ‘compulsory’ jurisdiction since international law *per se* does not require that the states *should* ‘settle’ disputes. But if they do wish to settle their disputes, it must be done in a *peaceful* manner. Sought to ‘make sense’ of existence, access, fairness and contribution of ICJ.
- ‘Compulsory Jurisdiction’ carved out a niche for itself in the midst of works by other established scholars. It was literally akin to ‘gate-crashing’ into the charmed circle. Book reviews allude to hesitant welcome to such unexpected entry.
- Early work published 55 years ago provides a perch to position/contextuate Prof.R.P.Anand’s contribution in the field – much before his full-throated articulation of the “new” Asian-African countries’ perspective.
- Notwithstanding passage of time, ‘compulsory jurisdiction’ still remains an enigma in the quest to search *means* for definitive settlement of international disputes.
- Early study of international adjudication stands apart amidst larger corpus of Prof.Anand’s work.
- Hence the focus of this modest presentation – as a tribute to his contribution in the field – is on his ‘trilogy’ of international adjudication that sets a benchmark of scholarship for his students and others.

Compulsory Jurisdiction of the International Court of Justice

[Asia Publishing House, New York, London, Bombay, 1961; revised 2nd ed.2008], pp.342.

HIGHLIGHTS

- ❑ Makes an honest attempt to unveil the trappings of so called 'compulsory jurisdiction' conferred on the International Court and how far it has been successful in bringing world peace.
- ❑ It laid down in detail the jurisdiction of the Court under Article 36 (1) & (2) of the Statute.
- ❑ It critically addresses the reservations in the declarations accepting the compulsory jurisdiction.
- ❑ It also traces down changing perception of the ICJ in the eyes of new Asiann-African states (in the 2nd ed.) through ICJ judgments –e.g., *Namibia case* (1971), *Western Sahara* (1975) and *Nicaragua case* (1986).

SCHOLARLY CONTRIBUTION-I



Compulsory Jurisdiction – Book Review

□ This is a very useful study of what must be regarded as one of the central problems in international law. Mr. Anand deals with the meaning and development of compulsory jurisdiction, the general objections to compulsory jurisdiction, the operation of article 36 (1) and (2) of the Statute of the International Court of Justice, the effect of reservations, the attitude of states towards the Court and compulsory jurisdiction under other provisions of the Statute. In confining his study to the Permanent Court and its successor the International Court of Justice the author does not, admittedly, cover the entire field of compulsory jurisdiction, but within his self-imposed limits the treatment is a comprehensive one”.

□“Mr. Anand is handicapped by having to follow in the path of writers like the late Sir Hersch Lauterpacht, Sir Humphrey Waldock and His Excellency Shabtai Rosenne; the important things have already been said ... The comprehensive treatment of the whole problem is, however, a useful addition to the existing literature, especially for the student.”

➤ D.W. Bowett, *The Cambridge Law Journal*, vol, 21, no.1, 1963, pp. 159-160.

SCHOLARLY CONTRIBUTION-II



Studies in International Adjudication

[Vikas Publications, Delhi: Oceana Publications, Dobbs Ferry, N.Y. 1969], pp. 298.

HIGHLIGHTS

- ❑ A collection of essays written with a conviction about the “usefulness, even indispensability, of international adjudication in the settlement of international conflicts”
- ❑ The book examines important aspects of international adjudication, such as, the effects of international politics and public opinion in the U.S. in the history or prospects of the ICJ (pp.1-35), attitude of the “new” Asian-African countries towards the ICJ (pp.53-72), the ICJ and impartiality between nations (pp.73-118), the contribution of the Court to the development of international law (pp.152-190), and the role of separate and dissenting opinions in global adjudication (pp.191-217).
- ❑ Central theme: Though most major disputes cannot be settled by judicial procedures and law is not a cure-all or panacea, neither is it entirely helpless and a mere slave of politics. Law has a statecraft of its own. By settling even some of the “minor” disputes, courts can help create a law-habit among States and bring about an atmosphere of peace. such procedures, in relation to minor disputes, can help to create a “law habit” as a conditioning element in international politics.

SCHOLARLY CONTRIBUTION-II

Studies ... SEMINAL BOOK REVIEWS



□ “(T)his book is very useful—not as a definitive study on the Court and adjudication (Rosenne and Jenks will still be used for that) but as a pertinent and very honest study of some of the most pressing problems in this area of the law...Professor Anand has written before (and, to this reviewer, convincingly) that there is very little in the fashionable Western argument that third party settlement goes against Buddhist and Hindu culture. He is surely right that one must look, when trying to identify the unenthusiasm for the Court, to substantive reasons of politics, and not to Northrop's philosophical anthropology.”

➤ Rosalyn Higgins, *International Affairs*, Vol.46, no.2, 1970, pp. 338-339.

□ “The topics of this collection are well selected for introducing the student to both sanguine and gloomy prospects for this mode of settlement of international disputes...This book...affords ample evidence of author's stature as an international lawyer and his widening interests in the field of international adjudication. Coming as it does from a leading Asian scholar, it is to be welcomed with particular warmth...augurs well also for the progress of the study of international law at Indian School of International Studies in New Delhi, of which the author is professor”

➤ Julius Stone, *The American Journal of International Law*, Vol. 64, no.3, 1970, pp. 725-726.

SCHOLARLY CONTRIBUTION-II



Studies ... SEMINAL BOOK REVIEWS

□““Constant employment of the Court” has been an elusive goal...Dr. Anand, of the Indian School of International Studies, has established his reputation as a keen student of the Court with his book, "Compulsory Jurisdiction of the International Court of Justice" (1961), and with the series of essays that comprise the book under review. Its appearance is most timely, since many of the problems he selected for analysis are central to any discussion of the future role of the Court in "the advancement of the rule of law and the promotion of justice among nations"... Dr. Anand's scholarship is impressive. He thoroughly explores the literature and fairly considers different views, leaning generally to a middle-of-the-road position that recognizes some merits on both sides of the argument...(since) the Court by itself can neither prevent war nor ensure peace, but it can make a useful contribution to the development of a stable international legal order ”

➤ Leo Gross, *The American Political Science Review*, vol.65, no.3,1971,pp.865-866.

SCHOLARLY CONTRIBUTION-III



International Courts and Contemporary Conflicts

[Asia Publishing House, New York, London, Bombay 1974], pp. 479.

HIGHLIGHTS

- ❑ The book is a revised version of the doctoral thesis submitted (1964) to the Yale Law School.
- ❑ The work sought to engage in a re-examination of the International Court's role and function, on the utility, authority, and importance of the role of international courts in international life in view of graphic realization that “most ubiquitous approaches to peace has been the pacific settlement of international disputes on the basis of law.”
- ❑ The work analyzed various facets of international courts i.e. review of historical background, organization, composition, jurisdiction, factors affecting past practices, applicable law, etc.
- ❑ It shows that the role that the courts can play in the settlement of international disputes and bring peace to troubled world notwithstanding the ground reality that “Constant employment of the permanent international courts has always been an elusive' goal.”

International Courts and Contemporary Conflicts

□ “He presents the history of efforts to settle international disputes by adjudication, the reasons for the slow progress of such efforts in the past, the reasons in the contemporary world for the reluctance of states to accept obligations to submit cases either to arbitration or to the International Court of Justice, the possibilities of developing the instruments and procedures of adjudication to meet these objections, and the prospects for the future. There have been compilations and histories of international arbitrations and judicial settlements; there have been commentaries on the World Court; and the problem of international adjudication has been dealt with in books on international law; but I am not aware of any treatise on the subject of international adjudication as comprehensive and judgmatical as this book”.

□ “Dr Anand is an Indian well-schooled in legal analysis, familiar with the history and civilization of his country, and capable of utilizing the experience of the West in the system of international law and politics developed in the last four centuries. He is thus in an exceptional position to contribute to the synthesis suggested by Arnold Toynbee and to the establishment of what President John F. Kennedy called a “world safe for diversity”. He takes a broad view of his subject, examines all positions with tolerance, and analyses them with conceptual acuteness. Students of international law, advocates of peace, and national decision-makers will find much of interest and some encouragement from this important book”.

SCHOLARLY CONTRIBUTION-III



International Courts...Book Review

□ “This book on international arbitration and adjudication covers ground covers ground familiar from the writings of such writers as Ralston, Moore, Simpson, Fox, Hudson, Rosenne, Jenks and others...there are frequent references to the attitudes of ex-colonial states toward international law...treatment is more broad-minded than is usual for this genre...but compared to some other writings by international lawyers from poor countries this book has refreshing candor about it. The author steers pleasantly clear of the accusatory tone of other writers on this topic, and he does not indulge in self-righteous lectures on the moral superiority of international politics among poor countries...this is a sensible book, well researched, well organized, and well written...It is a statement of what one distinguished scholar finds most interesting about international courts and tribunals.”

➤ Peter H Rohn, *American Journal of International Law*, vol.70, no.1, 1976, pp.160-161,

THE RELEVANCE OF CONTRIBUTION



- The trilogy of Prof. Anand's work, carried out during the period of 1959-64, provides significant scholarly churning to make sense of the quest for international adjudication.
- It firmly carved out a niche for the work amidst that of other established scholars. It, in turn, stands apart and provides a beacon of hope to his other compatriots to engage in serious research without any fear or favor.
- The corpus of work underscores passion and commitment for the permanent court to settle international disputes through instrumentality of international law.
- The work shows that personalities, actors and institutions have 'shades of grey' even as the quest continues to make full use of the ICJ.
- The underlying mission to 'swear by the court' and rule of law in a deeply divided 'one world' provides inspiration to stay the course and persist in the un-ending quest for peaceful settlement of disputes.
- The utility and relevance of the 'trilogy' is vindicated by more cases flowing to the ICJ, as well as quality of jurisprudence (both in contentious and advisory cases) notwithstanding the realization that the international court, as a human institution, is not infallible.
- The 'story' of international adjudication, told to us by Prof. Anand through the trilogy, provides inspiration to those who wish to grapple with the challenge of understanding the technique as well as art and craft of 'adjudicatory engineering' resorted to by the ICJ in a rapidly changing global order.