BOOK REVIEWS*

Quasi-States: Sovereignty, International Relations and the Third World by ROBERT H. JACKSON (Cambridge Studies in International Relations: 12), Cambridge University Press, 1990, pp. 225; ISBN 0521447836, UK£ 14.95/US\$ 18.95.

The author purports to contribute some empirical and sociological theoretical support for change to the citizenries of many Third World States whose adverse circumstances are the result of the institution of 'negative sovereignty', i.e. the international moral and legal normative framework that upholds the sovereign statehood of the new and weak Third World States that have been recognised by the international community since about 1960. The author observes that equal sovereignty and the principle of non-intervention for all states have the unintended consequence of making it impossible to address the problems of some states by international means without the consent of their governments for fear of being accused of paternalism, neocolonialism, and even racism. The author argues that the fundamental causes of many adverse circumstances in Third World 'quasi-states' is due to their premature and unnecessary legal recognition which has failed to take into account the huge societal and cultural differences and, at the same time, prevented others from intervening into their 'domestic affairs', such as human rights and socio-economic development. The author suggests that alternative arrangements such as a more intrusive form of the international trusteeship providing for international supervision might have been better suited to the different circumstances and needs of particular situations and could have prevented or reduced the adversity.

The author investigates the various aspects of 'negative sovereignty', including its contents, historical development, consequences in terms of international politics and domestic conditions. He then assesses its implications for international relations theory and finally draws his conclusions on the prospects of 'quasi-states' under such an institution. The author demonstrates, mainly from the socio-political perspective, that many 'quasi-states', which are limited in their capacity or desire to provide civil and socio-economic good for their citizens, do not satisfy many of the characteristics of empirical statehood of the older 'positive sovereignty' structure. The author considers the 'positive sovereignty' regime a crucial and overlooked institution which involves a fundamental change of assumptions about how the international system should operate. He also discusses related issues regarding decolonization, self-determination, human rights and development.

---

* Edited by Surya P. Subedi.

The author observes that Third World states are judicial rather than empirical entities as their emergence is mainly due to the development of international law on decolonisation and self-determination. He thinks that decolonisation has brought 'inequality' since newly independent 'quasi-states' demand and create an unprecedented form of international non-reciprocity. He further remarks that such an artificial legal levelling of a highly unequal empirical world is not only irrational but also inequitable. The author explains that the institutional rules and practices of sovereign statehood by nature work in favour of developing states and against the developed. The end result is a prevalence of the sovereign right of non-intervention over human rights, and a quest for the right of development of the Third World on a non-reciprocal basis. The author concludes that the institution of 'negative sovereignty' is a mixed blessing. To exercise the right of self-determination is not intrinsically good or bad, it all depends on the circumstances. In case of problems with the government of 'quasi-states', it is up to the populations of these states to change them. He speculates that some ex-colonial peoples may choose a reduced international status having experienced the bitterness of independence.

The institutional approach taken by the author is based on human will and not on a structural-functional analysis, nor on class analysis or any other methodology which disputes choices and their consequences. The style of the author, who is a political scientist, is sufficiently plain and the text is easy to read. The targeted group of readers are those interested in a conceptual analysis of the political theories on statehood and the inconsequential political implications on international relations. The book is useful to lawyers and students of international law as the legal concept of sovereign statehood can only be properly understood by examining not only the international legal rules, but also the international politics that helped establish them.

The readers may find chapters 3 and 4 most interesting as these survey the emergence of new sovereign states during the episode of colonization. The exposition, to some extent, reveals the social, economic and political factors that affect *opinion juris* and state practice regarding the evolution of the legal concept of statehood, and demonstrates the existence of a tacit international legal policy on international economic law and international development. The book demonstrates how politicised an international legal institution such as sovereign statehood can be.

International lawyers who are attracted by the title of the book may be disappointed as the book is not a jurisprudential study of the, eventually changing, norms of international law on international personality. The book is not a study of legal norms and practices concerning less-than-sovereign international personalities, e.g. territories like Hong Kong, either. On the contrary the author attempts to provide empirical and sociological theoretical arguments for citizens of legally sovereign 'quasi-states', in calling for a non-sovereign status. The term 'quasi-state', therefore, is to be understood in a non-legal sense.

Despite the author's denial that colonialism and paternalism is the underlying value premise, the theme implicitly recurs throughout the book. Readers may not agree with the author's interference that domestic subjugation will necessarily happen after independence. Persons from Third World countries and colonies may find it unfair, premature or even offensive for the author to conclude the pros and cons of independence after just one generation of adjustment. Theoretically speaking, sovereign statehood may well be the best way of guaranteeing the national freedom that is necessary to secure and protect the diverse cultures and societies of the world. The author's proposed alternative arrangement is

tantamount to reviving an obsolete practice by allowing outsiders to interfere with and impose their values on 'quasi-states' and colonial peoples. The proposal may be dismissed as another form of subjugation in disguise. From the legal perspective, the international community must operate within the framework of international law. The author has not mentioned the significance of international legal policy on sovereign statehood and the rule of law at the international level. As a matter of practical consideration, the international trusteeship system has been tried before and has now been largely discarded. Few would consider revisiting the obsolete option in present circumstances. It is, therefore, unlikely that the recommended option would have any impact on the practices, norms and rules of international relations. The so-called 'quasi-states' should be given the same opportunity as their former colonial powers to develop themselves. Nothing is really clear from the post-colonial experience. If there is international political will, the adverse circumstance of 'quasi-states' may be reconciled by the right of development with the full support from developed countries.

PETER K.F. CHEUNG
Hong Kong Shue Yan College

Fundamental Rights in Sri Lanka: A Commentary by S. SHARVANANDA, B20 Stanmore Crescent, Colombo 07, 1993, pp. 447; ISBN 9559557505, Rs. 1500; US\$ 40.

"When they arrested my neighbour I did not protest. When they arrested the men and women in the opposite house I did not protest and when they finally came for me, there was nobody left to protest." This very lucid expression of Pastor NEEMOLLER quoted in the introductory remarks goes very well with the subject matter of this book: the application and interpretation of fundamental rights available to the people of Sri Lanka under their Constitution of 1978. It is written by a leading jurist of Sri Lanka, who is a former Chief Justice of the Supreme Court of Sri Lanka.

The book has 12 Chapters dealing with all major aspects of fundamental rights and freedoms. It seeks to examine whether the Constitutional provisions are able to maintain a proper balance between the rights of the individual and the responsibilities of the state or society. The author rightly states that since we do not and cannot live in a world of absolute rights, from time to time the rights of the individual have to yield to a wider public interest or to the higher claim of social justice. However, he contends that the architects of the Constitution desired at the same time to prevent the abuse of executive power by providing for constitutional remedy against any infringement of the rights of the individuals by the state.

In an effort to explain this delicate balance, the author presents an analytical study of the concept of fundamental rights and of the nature and scope of various freedoms, including freedom of thought, conscience and religion, freedom from torture, freedom from discrimination, freedom from arbitrary arrest and detention, freedom of speech and association and freedom of trade and occupation. Since the Constitution of Sri Lanka seems to follow, as explained by the author, "the American and Indian models in adopting

guarantees of Fundamental Rights and providing for their enforcement by the Supreme Court" (page v), the author draws very heavily upon the case law of Indian, American and British courts in explaining the concept and nature of fundamental rights of freedoms.

The book evinces how the powers of the Supreme Court of Sri Lanka differ from and are more limited than those enjoyed or asserted by the Supreme Courts of India and the United States. It is interesting to note that the Sri Lankan Constitution does not invest the Supreme Court with a power to declare *ultra vires* a law passed by the legislature if the law is inconsistent with the provisions of the Constitution. This limitation could be regarded as a serious handicap given the history of Sri Lankan politics where several decisions of parliament have at times made a mockery of democracy. For instance, it was not long ago that the parliamentarians decided to extend their term of office by a law when the time had come for them to face the electorate. If the Supreme Court of the country is helpless even when parliament exceeds its authority and politicians use parliament to abuse their power, one has to wonder whether it is a proper democracy or whether there is a proper rule of law in the country. This is especially so in a civil-war ridden country such as Sri Lanka where the oppressed need the best judicial protection against governmental abuses of power.

In a country where the judiciary is weak, oppressed people show a tendency to resort to other forms of self-help including taking up of arms. Perhaps, this is one reason why law and order has become a far-fetched thing for many Sri Lankans for far too long. Although Justice SHARVANANDA appears critical of the provisions of the Sri Lankan Constitution under which it is parliament rather than the Supreme Court which is actually supreme in the country, he too fails to present a critical analysis of the plight of minorities and especially the inability of the Supreme Court to assert authority as the guardian of the constitution, and restrain both the executive and the legislature when they exceed their boundary. In a book which is, in fashionable terms, a human rights book, it would be quite normal to expect a critical analysis of the weaknesses of the existing constitutional framework of the country, especially if the author is a seasoned senior judicial officer who was once at the apex of the Sri Lankan judiciary. In this sense, a reader has a reason to be disappointed to a certain extent.

However, looking at it from another perspective, it is not fair to expect discussions of a politico-legal nature in a purely 'technical' legal work. The author is quite successful in achieving what he sets out to achieve in this book: it is a very competent analysis of the nature and scope of fundamental rights and freedoms available under the present Constitution and their application and interpretation by the Supreme Court of Sri Lanka within the limits of that Constitution. The book is all the more interesting by the comparison made not only of the provisions of the Sri Lankan Constitution with those of other countries, but also of the practices of the Sri Lankan courts of law with those of other democracies, mainly of India, the United Kingdom and the United States.

In sum, the book is a very useful reading for those interested in the situation of fundamental rights and freedoms in Sri Lanka as well as for those keen to get a clear comparative and analytical view on the concept of fundamental rights and freedoms and their interpretation and application in a given situation. It is rare for any retired chief justice of any small Third World country to write a comprehensive book such as the present one at his/her advanced stage both in terms of age and experience. We have plenty of books available in the market on fundamental rights and freedoms written by academics for

students of law. But there are very few books written by well-experienced judges. In this respect, the book is a welcome addition to the body of literature in this area of law.

SURYA SUBEDI

University of Hull Law School

International Law and World Order - A Critique of Contemporary Approaches by B.S. CHIMNI, Sage, New Delhi, 1993, pp 318, ISBN 8170363306 (India) and 0803994710 (US), Price Rs. 295.

A critique of the theory of international law is an important though somewhat neglected area of research and scholarship. In this regard, Dr. Chimni's book *International Law and World Order - A Critique of Contemporary Approaches* appears to have made considerable advance in filling a significant gap. The anti-theoretical approach of international law and its possible drawbacks to which Dr. CHIMNI draws our attention in his introductory remarks are indeed extremely pertinent and need a careful re-examination.

The author sets out to present a critique of a number of Western non-Marxist theories and then goes on to deal with his other task, namely that of the development of a Marxist theory of international law. His exposition of the Marxist model, particularly in the light of the hitherto rather scant attention provided to it as an alternative theoretical approach to international law is particularly welcome. In light of the apparent demise of support for Marxist ideologies, an advocacy and elaboration of Marxist tradition, although being a matter of some surprise, nonetheless present the reader with an interesting and innovative challenge.

The theories which Dr. CHIMNI has analyzed in his work are those propounded by MORGENTHAU, MC DOUGAL-LASWELL, FALK and TUNKIN. The selection of theories is a valid one for they present the most significant and influential theoretical expositions on the subject (page 17). As CHIMNI's criticism of MORGENTHAU's realist theory with its emphasis on the decentralised nature of international law and viewed through the spectrum of power politics and national interests of individual States is no doubt valid. On the other hand, it seems to be the case that in challenging MORGENTHAU's assertions, the author may have gone too far in belittling the existing political realities behind the operation of international law.

There is much to be said for the policy oriented approach as expounded by MCDUGAL and LASWELL, with its emphasis on the inextricable relationship between law and policy. The MCDUGAL-LASWELL approach to international law has had considerable following although, as CHIMNI's analysis reveals, it is also not immune from serious criticism. A particular source of concern with this theory has been its rather extravagant and mythical stance towards the indeterminacy of norms. This, as CHIMNI puts it, leads to the anachronistic scenario "where instead of seeking to know whether the facts or events are in accord with or in violation of a rule, the attempt is to discover the rule in the light of the contexts, both of the rule and the facts under consideration" (page 88).

A substantial portion of the book is spent on the elaboration and critique of Richard Falk's intermediate legal theory. The theory itself seems attractive since it attempts to

provide an alternative to legal formalism and policy-oriented reductionism (page 207). However, as CHIMNI's critique reveals, FALK's theory also fails to provide any comprehensive or thorough methodology for theorising international law.

Perhaps the most interesting element of the book relates to the exposition of the Marxist theory of international law. Considerable effort is made on the elaboration of the theory itself; and this exercise is an enlightening one although, at times, the author may appear to be unnecessarily descriptive. Having said that, the usage of TUNKIN's theory of international law used as a vehicle for analyzing the Marxist epistemology is intriguing. The exposition, while highlighting the inherent tensions and difficulties in the views presented by TUNKIN, nonetheless advocates the view "that the Marxist methodology and its sociological insights must be made the foundation on which to build a rational theory of international law and world order" (p. 298).

The work as a whole must be regarded as a very welcome addition to the debate surrounding the jurisprudence and critique of the theoretical precepts of international law; the volume will appeal both to international lawyers as well as to other inquisitive readers.

JAVAID REHMAN

University of Hull Law School

United Nations and the Gulf Crisis by R.P. ANAND (International Legal Studies Monograph Series: 1, published under the auspices of International Legal Studies Division of Jawaharlal Nehru University), Banyan Publications, New Delhi, 1994, pp. 110 (including appendices); Rs. 125.

Much has been written on the legal aspects of the Gulf Crisis created by the Iraqi invasion of Kuwait in 1990, the military operation that followed to expel Iraq from Kuwait and the ensuing events. However, this book is of particular interest because it attempts to present all episodes relating to the invasion and its aftermath as seen from a Third World perspective. This short monograph of four chapters, apparently based on an article published earlier by the author in the *Indian Journal of International Law* (vol. 31, 1991, pp. 1-38), is not a detailed account of the events that took place before and after the Gulf crisis but a short and succinct analysis of all major legal issues raised by the decisions of the Security Council and the military operation led by the United States.

The author queries the adequacy, wisdom, and legality of several decisions of the Security Council concerning the Gulf crisis and points out the inconsistencies of such decisions with international law. The book begins with a historical background to the dispute between Iraq and Kuwait and then goes on to narrate the nature and scope of the powers of the Security Council under the Charter of the United Nations. Next is a critical analysis of various resolutions of the Council. Perhaps, this is the most interesting part of the book where the author comes up with very original arguments for and against the rationality of certain decisions of the Security Council. This also happens to be the place where the author puts himself at times in a very controversial situation. For instance, he asserts that the validity of Resolution 678 "is seriously questionable and cannot be accepted" (p. 20). Furthermore, the author who appears to dismiss all of Iraq's claims made prior to and

during the crisis, ends up supporting the position taken by Yemen and Cuba which opposed many measures taken by the Security Council against Iraq, the aggressor State (see the author's views on p. 21).

Professor ANAND argues that the Security Council did not wait long enough for the sanctions to produce the desired effects. Given the stubbornness shown by the Iraqi regime to this date in the face of the UN sanctions in spite of the hardship suffered by the innocent ordinary Iraqi people, it is difficult to agree with the argument that sanctions could have forced Iraq to withdraw from Kuwait. Since sanctions imposed by the UN did not work for the first six months of the crisis they may not have worked for another one or two more years or even for a longer period than that. The author states that "Diplomacy to prevent war was never seriously pursued" (p. 28). It might have been proper to allow diplomacy to take its full course if there had not been a clear, serious and flagrant violation of international law by Iraq: it was a clear-cut case of aggression by a member of the UN against another, small, member and the aggressor State was not listening to the international community.

The author criticises the views of DOUGLAS HURD, the then British Foreign Secretary, who seems to have said that it was wrong to negotiate with a burglar. Even if one were to agree with the view that it is better to negotiate with a burglar when he is heavily armed and poses a grave danger, 'the burglar' in this case had been given enough time to surrender before he was attacked with overwhelming firepower. Other arguments of the author appear more convincing. For instance, he states that under the guise of the UN-authorized action the United States and its coalition partners waged a relentless and ruthless war against Iraq to the bitter end. This assertion can be supported if seen in the light of the merciless attacks by allied powers on the fleeing and even withdrawing forces of Iraq inside Iraqi territory. But we should also remember that wars are by their very nature ruthless. If the allied powers had been ruthless against Iraq and not cared about the objectives of Security Council resolutions they could have gone up to Baghdad to bring SADDAM HUSSAIN out of his military bunker. The newspaper reports suggest that the allied powers were not aiming at complete devastation of the Iraqi war machine. In fact, much of Iraq's military hardware seems to have survived the allied offensive.

All in all, this book tries to present a more impartial analysis of the events than many other works of similar nature that have appeared in the aftermath of the Gulf crisis. It is very informative, pleasant to read and convincing on many accounts. A useful collection of all major resolutions of the Security Council on the subject is included. This is a book that can be recommended to anyone interested in understanding the essentials of the Gulf crisis. It presents by and large a fair analysis of all the major legal issues raised by the crisis without going into too much detail of various aspects of the crisis.

SURYA SUBEDI
University of Hull Law School

The Law of the Sea in the Asian Pacific Region - Developments and Prospects, by J. CRAWFORD and D.R. ROTHWELL, Martinus Nijhoff Publishers, 1995, pp. 282; ISBN 079232742X, price Dfl. 195/ US\$ 122/UK£ 78.

This collection of essays, which were originally presented at two conferences held in Australia in October 1991, is in the series of *Studies on the International Legal, Legal, Institutional and Policy Aspects of Ocean Development*, under the general editorship of H.E. Judge SHIGERU ODA. The contributions come from international lawyers, political scientists, and practitioners from foreign ministries of various Asian countries.

The volume contains five parts. Part I, "Regional Perspectives", includes four essays examining the practice of East Asian countries and of the South Pacific states. Part II, with two essays, deals with the question of the marine environment with regard to the South Pacific and the Southern Ocean. Part III examines the new regime of fisheries in the South Pacific, following the conclusion of the United Nations Law of the Sea Convention 1982 (the 1982 LOS Convention hereafter), and the problem of driftnet-fishing. However, the third essay of this part, oddly, reviews the 1978 Torres Strait Treaty. Part IV consists of three essays on the topics of freedom of the high seas, navigation and of confidence-building measures. Part V concludes the volume with an essay on the settlement of disputes, and a general essay summarising a number of outstanding issues in the South Pacific region.

There is little doubt as to the value for a study focused on the Asian Pacific region, as states in that area are to a varying degree reliant upon seafaring for their way of life. They have since 1945 contributed immensely to the development of the law of the sea. The concept of archipelagic state, for instance, had been practised by Indonesia and the Philippines decades before entering the 1982 LOS Convention (pp. 205-207, 273-274). Further, the practice of the South Pacific island states presents an interesting case study with regard to the effects of the 1982 LOS Convention upon their decision-making process and dealings with former colonial powers, throwing light upon the role of international law in the ordering of relations between states of unequal size and stature. The value of the study can also be seen through the thorny dispute between China (including Taiwan), Vietnam, the Philippines and Malaysia, over the ownership of the Spratley Islands (pp. 25-40). Indeed events in the region have since 1973 tested almost every aspect of the law of the sea.

By tackling significant issues in relation to the region, such as, *inter alia*, delimitation of maritime areas, navigation and coastal jurisdiction, the freedom of fisheries on the high seas and its impact upon the EEZ regime, the optional management of straddling or highly migratory fish stocks, the environmental conventions and the existing machinery for dispute settlement, the volume offers students of international relations and of the law of the sea useful insights into the way the law of the sea works in tandem with the political will, as well as the wanting in the law of exact prescription and enforcement measures. Further, it shows that the growing number of regional treaties has reflected the increasingly mature approach of the island states to maritime law. Moreover, it cannot fail in impressing upon them the contrast between the cooperation within the South Pacific Forum and the discord among the North Asian Pacific states.

There are, however, some questions. First, the overlap of contents. The theme of the volume is the regional approach (Chapter 15), which has been addressed largely in Part I. However, the issue-oriented set-up dictates that issues treated in Part I be re-examined in

the subsequent parts assigned to specific aspects of the law. Secondly, it seems puzzling to find Chapter 10, which reviews the Torres Strait Treaty, in Part III which deals with the question of fisheries, for, the chapter has little bearing upon fisheries. Similarly the Antarctica Treaty, albeit declared to be out of the scope of the book, has been given solid treatment in Chapter 7. This Chapter has very little to do with the South Pacific island states, and any convention in this connection cannot be analyzed without reference to the 1959 Treaty and the regime it embodies. Thirdly, it would have been more convenient if a list of the South Pacific island states were provided in the introduction. A list containing 11 states can indeed be found at p. 123, but Chapter 6 mentions 22 (at p. 67). Fourthly, the reason why the island states are indifferent towards the 1982 LOS Convention is probably the existence of fisheries agreements and understandings with distant-water fishing nations, rather than political inertia or the like (pp. 43, 131). For the former have regulated the main concern for the states parties as far as the South Pacific region is concerned. Fifthly, the very damaging effect of driftnet fishing may be less true as far as tuna is concerned (p. 158), many stocks of which are underexploited, and more than half of the annual catch of which is taken within the EEZ where the coastal state has full jurisdiction in fisheries matters. Sixthly, the assertion of a 12-mile territorial sea as part of customary law by 1973 may be bolder than is warranted by evidence (p. 201). Some other deficiencies are mainly due to the timing of the conferences, which were soon overtaken by subsequent developments (p. 3).

Nevertheless, the essays constitute a quite comprehensive survey of law of the sea problems relating to the Asian Pacific region. The expert expositions on fisheries (Chapter 8) and deep seabed mining (Chapter 11) are particularly welcome. The volume will certainly enrich the existing literature concerning the region.

BING BING JIA
Wolfson College, Oxford, OX2 6 UD