BOOK REVIEWS*

Multinational Enterprises and the Law, by PETER MUCHLINSKI, Blackwell Publishers, Oxford, 1995, pp. 674 and liv, ISBN 0-631-17311-0.

There is quite a wealth of literature available on the regulation of multinational enterprises but none is as comprehensive, thorough and cohesive as this book. The ideas of host and home country control and regulation of the activities of multinational companies have long attracted many international lawyers. This was especially so in the aftermath of the introduction of the concept of a New International Economic Order in the 1970s. But this book which "seeks to give a comprehensive introduction to the regulation of multinational enterprises (MNEs) as the principal vehicles for foreign direct investment" (p. lv), is a competent analysis of the legal issues involved rather than the politico-economic issues relating to the activities of MNEs. The author provides a thorough treatment of almost all legal aspects of the operation of MNEs in different states. It is a very well documented book, providing a great deal of information about the present state of affairs on MNEs and the law.

The book is divided into three parts and 17 Chapters. The first part, in Chapters 1 to 4, deals with the conceptual framework outlining the ongoing economic and ideological debate about the nature and scope of the activities of MNEs as well the concern over such enterprises. It traces the origin and evolution of MNEs and goes on to examine the characteristics of different types of MNEs. Part II, Chapters 5 to 13, provides an extensive analysis of the regulation of MNEs by home and host States. It constitutes perhaps the hard core of the book. In this part the author deals with a broad variety of issues ranging from the jurisdictional limits of regulation through national or regional law, the control of inward investment by host states to taxation problems associated with MNEs, regulation through antitrust law, technology transfer, to labour relations and other aspects. The final Part III comprises four Chapters, i.e. Chapters 14 to 17, and presents a detailed picture of the emerging

system of international regulation of MNEs. In so doing, it covers issues such as re-negotiation and expropriation in international law, the settlement of international disputes and the efforts to codify international standards for the treatment of foreign investors. The last chapter examines the practice of states concerning regulation of foreign investment under bilateral investment treaties.

The approach taken in the book is quite 'reader-friendly'. Most chapters begin by telling the reader what to expect in that chapter and conclude by wrapping up the discussion in the concluding section. This approach can be quite useful for any reader looking to read specific sections of the book relating to specific issues concerning MNEs only, rather than the whole book which runs into more than 600 pages. The reader is helped further by tables of cases, statutes, treaties as well as a list of publications of governments and international organisations.

Chapter 1 presents a review of the origins of the post-war concern over MNEs and goes on to put them in their contemporary setting. The remainder of the book is devoted to analysing the history of the regulation of MNEs over the past thirty years or so and to presenting the current state of the law. After surveying various jurisdictional limits of regulation of MNEs, the author goes on to suggest that "the state-centred model of international business regulation can be supplanted as states agree to develop new harmonised standards of international economic regulation, and create new conflict avoidance procedures". (p. 157) Indeed, it is perhaps in this direction that the world will have to move in the years to come in order to cope with the ever expanding activities of MNEs since the widespread adoption of privatisation programmes world over has already accelerated the process of liberalisation of foreign investment regimes in many states. MUCHLINSKI also appears to argue for less regulation of the activities of MNEs and more protection for foreign investment. He appears less concerned about the negative consequences of such a policy on developing states.

* Edited by Surya P. Subedi, Book Review Editor.

If one looks at the literature available today on MNEs one will see that many market-oriented authors have spared no time and effort to reject the idea behind the New International Economic Order (NIEO) and have said that the days for such ideas are over. They are too easily influenced by the current economic and political reality of the world and appear to be under the impression that the current situation will prevail for some time to come. They do not envisage a revival of interest for ideas similar to those embodied in the NIEO nor see an alternative to the current economic policy dominated by Western states. Consequently, they are prepared to join in the populist bandwagon without questioning the long-term impact of such a policy on other states. Although MUCHLINSKI has a very well-balanced approach to the issues discussed and has done a very good job by presenting his analysis in as objective a manner as possible, many readers might be tempted to put him in the category of authors just mentioned. This is a risk that the author has not done enough to avoid in his book.

Although all chapters have their own concluding sections, it would have been better if the author had written a concluding chapter in order to present his own overarching views as to what future was held for the regulation of MNEs at the threshold of the twentieth century. A chapter such as this would have nicely woven all the chapters together to make the book a definitive word on MNEs for many years to come and would have fulfilled the promise to this extent made by the author in the introductory chapter. Apart from these suggestions of improvement, the present reviewer can find no major deficiencies in the book. It is a well-organised and neatly put together book. There is not much room for lofty ideals or sentiments: all what is written is for lawyers.

All in all, this book represents a good example of fine legal scholarship and is a welcome addition to the literature on the subject matter. No doubt that this book will remain a valuable source of reference on MNEs and the law for many years to come for teachers and students alike.

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The Law of Non-Navigational Uses of International Watercourses, by J. BRUHACS, Martinus Nijhoff

Publishers, Dordrecht/Boston/London, 1992, translated from Hungarian to English by M. ZEHERY, pp. 251, ISBN 0-7923-1822-6.

Unfortunately, not many books written by academics of Eastern Europe find their way to the Western world. Yet, those who do are normally of very high quality and this book is a good example. It is written by BRUHACS, a professor of law at Janus Pannonius University in Pecs, Hungary, and is the English translation of a revised version of the Hungarian *Nemzetközi vízjog*, which was originally published by Akadémiai Kiadó of Budapest. The book appears to have been written at a time when Slovakia (formerly Czechoslovakia) and Hungary were at loggerheads regarding the construction of two dams at Gabčíkovo and Nagymaros on the River Danube. The dispute was eventually referred to the ICJ and the judgement of the World Court and various opinions of individual judges reflect some of the very issues discussed here.

This book was written before the ILC adopted its draft articles on the Non-Navigational Uses of International Watercourses in 1994, let alone the 1997 UN Convention on the Non-Navigational Uses of International Watercourses. There is now a considerable amount of literature available on the non-navigational uses of international watercourses. This is especially true after the judgement of the ICJ on the Gabčíkovo/Nagymaros case. Even then, not much has been written on the practice of Central and Eastern European states in this area. Most of the literature on the subject focuses on the legal regimes applicable to international rivers outside Eastern Europe. From this point of view alone this book, which draws heavily on the problems and practices of Eastern European states, is a very welcome addition to the literature on the subject matter.

The book is divided into nine chapters. Chapter I outlines the development of regulations relating to the non-navigational uses of international watercourses. The very opening paragraph of the book nicely expresses the underlying idea behind the evolution of the law and practice on this subject:

"In times past, rivers (aqua profluens) were classified in Roman law as being within the group of *res extra patrimonium*, being so broad a field that their exclusive possession was beyond doubt; in fact, their utilisation was available to anybody and to any extent. This

legal thesis became, however, untenable in modern times." (p. 9)

The author then goes on to explore the evolution of the law on the non-navigational uses of international watercourses during the later part of the eighteenth as well as the nineteenth and twentieth centuries. Next is a survey of the views of writers since the time of Hugo Grotius. Chapter I also covers the efforts to develop international law on the subject matter made by international scientific bodies such as the Institute of International Law and the International Law Association.

Chapter II introduces and analyses the concept of international watercourses. It discusses both the traditional and modern approaches to the definition of an international watercourse. The author rightly states that the starting point for the traditional definition of international watercourses is found in Article 108 of the Final Act of the Vienna Congress of 1815. However, as stated by the author, "at the same time the criteria of a river to qualify as an international watercourse have changed several times in practice." (p. 26). Chapter III is perhaps the most interesting chapter of this book in which the author goes on to examine the problem of territorial sovereignty in international relations arising from the non-navigational uses of watercourses. Indeed, "It has been beyond doubt, both in international practice and in legal opinion in general that, irrespective of their national and international character, the watercourses belonging to the fluvial territory of a state are subject to the sovereignty of the riparian state, i.e. the state within the territory of which they are found." (p. 41) It is in this context that the author assesses the extreme concept of territorial sovereignty with reference to the Harmon doctrine.

Chapter IV is devoted to examining international law making to establish the regime of non-navigational uses of international watercourses. The author presents a useful and informative survey of both bilateral and multilateral treaties that have had some impact on the development of international watercourses law. A careful and competent attempt has been made to apply the sources of international law to argue the existence of the principles governing the activities of states concerning the utilisation of international watercourses. The water management regime of the Danube basin is the subject of detailed analysis in Chapter V. It is here that the author mentions the dispute between Hungary and Slovakia regarding the construction of two dams on the river Danube.

It is a bit disappointing that the author does not analyse in detail the developments leading up to the referral of the dispute to the ICJ. One would have liked to see a more detailed account of the background to the dispute between Hungary and Slovakia in a book of this nature.

The next three chapters, i.e. Chapters VI-VIII, deal with the international watercourses law principles governing the use of watercourses. The principles covered include the principle of reasonable and equitable use of international watercourses, the principle of no significant harm and the duty to prevent pollution of international watercourses. Chapter IX, the final chapter, assesses the application of international legal norms relating to non-navigational uses of international watercourses. Among the principal norms examined by the author is the principle of state responsibility. In summing up the analysis of this Chapter, the author concludes that "international responsibility has a very limited role in respect of the utilisation regime of international watercourses. This necessarily gives rise to the question whether it would be convenient to look for other ways and means to compensate damage, e.g., at the private international law level, while maintaining and, even more, developing international responsibility. This problem nevertheless reaches beyond the subject-matter of the present work." (p. 220) This is where other authors can come in and start adding their own building block to the body of knowledge on this subject.

Of course, many changes have taken place since the publication of this book both in terms of the development of the law on the subject and in terms of the practical situation on the ground in very many lower and upper riparian States of various international watercourses. However, this book is likely to continue attracting readership because of its beautiful combination of law, theory and practice relating to the non-navigational uses of international watercourses. After all, whatever new developments have taken place recently in this area have their roots in the past and this book provides a useful account of past practice of states and provides a fine expose of the background to the modern principles of international watercourses law. Therefore, the present reviewer can happily recommend this book to all individuals interested in the development of the law in this area.

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Precedent in the World Court, by MOHAMED SHAHABUDEEN, Grotius Publications, Cambridge University Press, 1996, pp. 245, ISBN 0-521-56310-0.

While clearly acknowledged by all, the place of decisions of the International Court of Justice in the realm of the judicial authority of the Court and of the sources of international law, as well as their role in the development of this law, is not very clearly defined. Scholars from the Common Law tradition and those from the Continental legal thinking as well, have frequently cited decisions of the Court in support of their arguments, either in their pleadings before the Court or in their academic writings. Yet, most of their writings or pleadings have not been very clear regarding the precedential value of the Court's decisions, either in terms of the specific context in which they were cited or within the doctrine of sources of international law.

It is not an exaggeration to say that most writers have tended to forget that decisions of the International Court of Justice are not formally among the sources of international law, as stipulated in Article 38(1) of the Statute of the Court. Nor do they fall within the ambit of the principle of *stare decisis*, in view of the provision of Article 59 of the Statute. This is confirmed by the fact, also expressed by ICJ Judge SHAHABUDEEN in the Preface to his book, that "the World Court was established on the Continental model, which knows no doctrine of precedent." Yet, the question has persisted and decisions of the World Court have always been a source of inspiration, and, indeed, a source of strong reliance in the fields of theory and practice, both for scholars and the Court itself. Thus, the book addresses a very challenging question.

The author has started from the premise that the absence of the rule of *stare decisis* has not prevented the Court, and the counsel appearing before the Court and publicists alike, from relying on the decisions of the Court as "precedents", if not as "binding precedents". Further, the Court, normally, "seeks guidance from its previous decisions, that it regards them as reliable expositions of the law, and that though having the power to depart from them, it will not lightly exercise that power". (pp. 2-3) This has led the author to pose and pursue the following very worthy and relevant questions in his book: do decisions of the Court

create law?; if decisions of the Court can relate in the creation of law, how and at what point is that law created?; does the phenomenon occur within the judicial process itself, or outside of it?; does the Court make a distinction *between ratio decidendi* and *obiter dictum*?; can it depart from its previous decisions, and if so, in what circumstances? (p. 2-3).

A further inquiry by the author in this book is that while "judicial decision has become so important in the development of international law, it is surprising that so little has been done to elaborate principles governing the use of precedents in international law" (p. 8). Judge SHAHABUDEEN clearly seems to hold the view that international law qualifies as a system of law in which the case law of the Court can be "the inevitable accompaniment of a body of law based on case law". When outlining the conditions for the development of a system of precedents,¹ he suggests that such conditions may be met in the case of the World Court. That is that the main rules of international law are unwritten, and further, that even in relation to codified international law the development of a system of precedents is not excluded (p. 8).

A further interesting classification developed by the author is that a system of precedents may operate in different ways. A system may authorise the judge to consider previous decisions as part of the general legal material from which the law may be ascertained; or it may oblige him to decide the case in the same way as a previous case unless he can give a good reason for not doing so; or, still, it may oblige him to decide in the same way as the previous case even if he can give a good reason for not doing so. (ibid. p. 9) The Continental systems, in view of the author, are of the first kind and Common Law courts of the last kind. In the meantime, however, at the higher courts of both systems the differences between the two systems may be relatively narrowed.

Bearing the above classification in mind and the fact that the International Court of Justice has clearly spoken of its "settled Jurisprudence", the Court's reliance on its previous decisions, in Judge SHAHABUDEEN's view, appears to represent

¹ These conditions have been identified as (1) the unwritten character of the main rules; (2) the functioning of the court as a unifying element in a legal system characterised by centrifugal forces; and (3) the necessity of resorting to principles. (p. 8)

more than acting on the *jurisprudence constante* model of the Continent. The reason for this conclusion of the author is that "even when there is no question of consolidating the previous case law, a particular decision may be relied on". The author says:

"Obviously and rightly, any Court regards its own authority, and that of its predecessor, as supreme in the field of international adjudication. Several cases may be cited, but often only as further illustrations of the principle decided in a particular case. In the presence of a clear precedent set by itself or its predecessor, the Court will not normally undertake fresh research.

... [A]lthough the Court does not regard its previous decisions as laying down the law with binding effect, for practical purposes it "treats them as sufficient authority for the principle under consideration. It will consequently follow them unless they can be distinguished on valid grounds or shown to be clearly wrong, or, possibly, where they no longer meet the new conditions of the evolving international community". (pp. 11-12)

The book is divided into 15 chapters, including an introduction and a conclusion. Generally speaking, chapters 2 to 8 deal, in different ways, with establishing the imperatives and the bases of the system of precedent in the World Court and its main characteristics. Chapters 9 to 14, on the other hand, attempt to identify the scope and mode of operation of the system. Chapter 15 is a conclusion.

Obviously, the significance of the doctrine of precedent can only become apparent when there is a considerable body of case law developed through the years. That is why the author has found it necessary to examine the growth of the case law of the International Court of Justice, and its predecessor the Permanent Court of International Justice, and the extent to which, in practice, the Court and individual judges have relied on previous cases. (Ch. 2) The result of this examination is that, the Court has, indeed, pursued a policy of precedential consistency. (p. 31)

Further, the author has attempted to identify the range of precedential resources. (Ch. 3) Here, the notions of "accessibility" and "the range of admissible precedents" are explored. As to the first, the importance of both the judgements and the pleadings are emphasised by the author. As to the second, while the range of admissible precedential material appears to be wide, only general-

ised, as distinguished from specific, references may be made to non-World Court material. However, the Court's own decisions are specifically relied on. (p. 35-39)

Chapter 4 examines the doctrinal bases of the system of precedent. In particular, one finds persuasive the argument that the Court as the judicial organ of the United Nations shares in the responsibility of the Organisation to maintain peace, and that in order to do so, it has an implied power to ensure consistency. Moreover, the permanent institutional character of the Court equally warrants consistency in the administration of justice and continuity in its contribution to the formulation and the development of international law. In the author's view some specific statutory basis for the doctrine of precedent can even be found in Article 38 paragraph 1(d) of the ICJ Statute. That is that the Court has to consider any relevant judicial decisions, while, by contrast in a legal system in which there is no doctrine of precedent, courts do not have to consider case law.

Chapters 5 and 6 are an inquiry into the statutory bases of the system of precedent in the *travaux préparatoires* of the ICJ Statute through a thorough examination of the work of the Advisory Committee of Jurists by which the Statute of the Permanent Court of International Justice was drafted, and the view adopted by the League of Nations, respectively. The result of this inquiry is that *stare decisis* is not applicable to the Court and that judicial decisions would enable the Court to find the existing law and not to create new law. However, that historical background did not go far enough to prevent acknowledgement that decisions of the Court could at least contribute to the development of international law.

In examining the possibility of judge-made international law (Ch.7), the author rightly acknowledges a significant factor, which militates against a system of precedent in international law. That is, there is nothing to hold the international adjudicating machinery, which consists of a number of tribunals, as a coherent system. Further, the absence of a hierarchical authority to impose order is a prescription for conflicting precepts. Nevertheless, the author seems to suggest that the Court's function in developing, adapting, filling gaps and interpreting the law, and in other words, the modular nature of these activities, should not obscure the creative nature of the function. The author has made this statement, of course, while being aware that the Court itself takes care to avoid expressions suggestive of judicial law mak-

ing. A similar line of reasoning and tendency is apparent when the author has discussed the applicability of *stare decisis* to decisions of the Court. (Ch. 8) In view of Article 59 of the Statute, he accepts that this principle is not formally applicable to decisions of the Court. Again, this does not prevent the Court from regarding the law as stated in a decision as part of international law.

Further, the author has attempted very elaborately and skilfully to examine the circumstances of application and non-application of the system of precedent in the World Court, mostly from the perspective of the common law requirements of distinguishing circumstances of departure from a previous case and the distinction between *obiter dictum* and *ratio decidendi*. (Chs. 9-11) Moreover, the author has come to the conclusion that the Court makes no distinction between the precedential value of its decisions in contentious cases and advisory opinions. (Ch. 12) As to the scope and effects of the Court's case law, the author seems prepared to accept that the nature of international society, based as it is on relations between sovereign states, imposes limits on the extent to which the Court can exercise a law-making function.

Judge SHAHABUDEEN concludes his book with a favourable view of the application of the doctrine of precedent to decisions of the Court. One cannot lose sight of the reality expressed in this book that:

"The Court has not had occasion to consider whether its decisions create law. It may incline towards avoiding the question, if it has to give an answer, it would probably do so in the negative. But, on balance, it is possible to hold that the arguments, which run both ways, support the view that the Court has a power of limited creativity." (p. 238)

Indeed, the absence of a legislature may be a cause for recognising a greater role for the Court in developing international law along the lines of consensus of the international community. However, it must not be lightly overlooked that international law, as confirmed by the Court on various occasions, is essentially based on consent of sovereign states, to the exclusion of any other form of law-making, which may run counter to this basic principle.

The book is based on extensive research and is written by a highly distinguished member of the International Court of Justice as a person most

qualified to speak on the matter. It is, indeed, an excellent and most welcome contribution to the literature of international law on the topic.

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Principles of the Institutional Law of International Organizations, by C.F. AMERASINGHE, Cambridge Studies in International and Comparative Law, Cambridge University Press 1996, pp. xxx and 519 pp., ISBN 0 521 56254 6, price £ 60.00.

The book under review finds its place among the *genre* of international law literature that arose as a result of the emergence of international organizations, particularly 'public' or 'intergovernmental' ones, and that deals with that phenomenon from various perspectives, such as political science, economics, and law. In the latter category, and especially among those treating the general aspects of the matter as a whole since the Second World War, we may refer to, *inter alia*, the works by LEONARD (1951), REUTER (1st ed. 1955), BOWETT (id. 1963), MONACO (1965), SCHERMERS (id. 1972), SCHWARZENBERGER (1976), and SEIDL-HOHENVELDERN (id. 1966). The basic rationale for the genre lies in the fact that a number of sovereign states jointly set up standing organs in order to be better able to fulfil common needs or reach common aims in one or more specific areas. Their relations are thus placed within a context different from that provided by general international law, including the general law of treaties. Moreover, the common institutions may be granted the competence to act separately from the member states, giving rise to questions of their status as a separate subject of international law. Within this delimitation, there developed a tendency in the literature of perceiving the beginnings of a quasi-constitutional order in the society of states, giving rise to the presentation of 'international institutional law'.

The author of the present volume justifies his work by the perceived need for a work of "both an academic and practical nature" on the institutional law concerned. (p. xi) He is of the opinion that the existing literature "either does not

have an adequate academic orientation" or is "not sufficiently specialized". (p. xi) This raises intriguing questions which, unfortunately, are not directly answered as the author's impressions are not elaborated nor further explained. But answers might be found by determining what is in fact the author's special approach that should make the book substantively distinct from other existing books on the same subject and with the same scope.

It is acknowledged that each organization has in fact its own law ('proper law' after the terminology of C.W. JENKS) and that, consequently, there is, by way of starting point, no such thing as a general 'law of international organization'. However, the author refers to evidence that "there have come into existence ... certain general principles ... for certain purposes and in certain areas ...". Such principles have evolved as a result of interpretation and the fact of existing similarities between the constitutions of the various organizations. (pp. 15-16) Similarity "does not necessarily establish principles", "the purpose [of the examination of constitutional texts] being generally to establish a pattern or an absence of pattern". (p. 21) Understandably, to the extent general principles have evolved "stricter juridical analysis and exposition become possible" whereas "[i]n other areas what is called for is description and comparison". (p. 19) In putting forward his preferred methodology the author clarifies that "[t]he interest in this work is mainly in the analysis, elucidation and discussion of principles" which are "naturally" found in case decisions to the extent available, but may also be established "where appropriate, in other ways too, e.g., by reference to general principles of law or reasoned inferences". There are areas, meanwhile, "where results are dependent more on provisions of individual constitutions". (p. 20)

After a first introductory chapter, a second chapter deals with the problem of interpretation of texts, doubtlessly most relevant in view of the essential role of the constitutional documents of the organizations. The following chapters deal with the familiar topics of the *genre*, such as legal personality, membership and representation, organs, acts of organs (legal effects, acts *ultra vires*), responsibility toward and of the organizations, the liability of member states, financing, employment relations, privileges and immunities, amendment of constitutions, settlement of disputes, and dissolution and succession. Within

the limits of this review no more than a haphazard commentary will be made.

Against the backdrop of the *opus magnus* of the International Law Commission in the field of responsibility of states it would have been most welcome had the author set up an outline of the parallel issue of the ('secondary rules' of the) (international) law on responsibility for that second major category of subjects of international law, the international organizations (with international legal personality). Unfortunately such endeavour has not been undertaken, possibly because it might have, even in the form of an outline, exceeded the parameters of the book. Yet, in the introductory part of the relevant chapter the author quite rightly emphasized the danger of obfuscation and inconsistency in the legal discourse concerning responsibility resulting from confusion in terminology: "What is important in any context is that it be made clear in what sense terms are being used. Uniformity is not an end in itself but consistency is a virtue that cannot be overemphasized and, if possible, avoidance of variance in the same context is desirable in order that clarity may be achieved". (p. 225 n. 5)

In the relevant sub-chapter on "Substantive obligations" (p. 240 et seq.) the author acknowledges the possibility of liability for breach of obligations under treaty as well as international customary law "for the acts of their servants or agents, when they are acting in the performance of their functions, or of persons or groups acting under the control of the organizations, such as armed forces in the case of the UN". This appears similar to Articles 5-8 of the ILC draft articles on state responsibility. It is not quite clear whether the author adheres to the doctrine of responsibility by the mere breach of an obligation (as in the system of the ILC draft), or whether resulting damage is supposed to be an inherent requirement ("Generally, organizations have been found to be at fault in connection with damage resulting from conduct ..."). Remarkably, he suggests that, for the determination of responsibility, "analogies should ... be borrowed from the principles of imputability applied in the ... law of state responsibility".

In view of the fact that this is the first book on the subject written by an Asian scholar, some curiosity as to specific remarks relating to the region or the existing regional organizations seems justified. The regional scope does not, or hardly seems to, have any impact on the institutional features of an organization, as no special

comment is devoted to this phenomenon except its closed nature. Among the Asian regional organizations of, admittedly, diverse character (ASEAN, SAARC, ESCAP, ADB) the Asian Development Bank is the only one which have merited a reference.

As to the relevance of views and practices of Asian countries for the subject as a whole, India, Pakistan and Sri Lanka are mentioned in the context of the question of succession of membership, India and the Philippines in regard to recognition of immunity of international organizations, China in regard to the question of representation and regular contributions to the UN (see above), Cambodia in regard to representation, North Korea in regard to suspension of withdrawal.

A perusal of the volume under review alone does not, of course, offer an answer to the question whether the author has, after all, succeeded in writing a book that has a more 'adequate academic orientation' and is more 'specialized' than the existing literature on the subject. What can be said is that he has undoubtedly succeeded in producing a conveniently sized, clearly written volume on a subject that has grown so much in substance as to render it difficult to be included in a general manual on international law. The book should be warmly recommended to all those, both very and less academic, who seek to obtain either specialized or more general knowledge and understanding of the subject.

KO SWAN SIK

Public International Law – a Malaysian Perspective, by Tunku SOFIAH JEWLA, with Foreword by Tun MOHAMED SUFFIAN, and Introduction by Tan Sri Datuk AHMAD IBRAHIM, Pacifica Publications, Kuala Lumpur (Suite 22A, Bangunan Dato Zainal, 23 Jalan Melaka, 50100 Kuala Lumpur), 1996, pp.1628 (two vols.), ISBN (pbk) 983-99100-0-0 and 983-99100-1-9, (hbk) 983-991900-2-7 and 983-99100-3-5.

In many, though by no means all, of the 'new' states of Asia international law is still at a relatively early stage of development as a subject of academic pursuit. It is, therefore, a matter of great satisfaction and gratitude to be able to an-

nounce the present work, which is, according to Tun SUFFIAN's foreword, "the first book of its kind – stating the Malaysian experience and views on international law". This qualification invites a clarification in light of similar schemes elsewhere.

For a horizontal legal order whose membership basically consists of sovereign legal subjects, as is still the case with present-day international law, the recording of the practice of states is of utmost importance, both for the determination of their attitude toward the existing law, and, wherever relevant, for the determination of elements relevant in the process of crystallization of international customary law. While this approach to international law with its special reference to one specific state may paradoxically result in national 'versions' of international law, its usefulness and importance are beyond doubt.

Books aiming at the presentation of the practice of a specific state in international law have taken different formats. For its origins we have to turn to the US and go back to 1877, when JOHN L. CADWALADER published his *Digest of the Published Opinions of the Attorneys-General, and of the Leading Decisions of the Federal Courts, with Reference to International Law, Treaties and Kindred Subjects*. This initiative has given rise to a proud US tradition, including F. WHARTON's three-volume *International Law Digest* (1886), the eight volumes under the same title by J.B. MOORE (1906), the eight-volume *Digest of International Law* by G.H. HACKWORTH (1940-1944), the fifteen volumes under the same title by M.M. WHITEMAN (1963-1970), and, from 1973 on, the annual volumes under the title *Digest of United States Practice in International Law* by different authors from the US Department of State. Despite the fact that, presumably for practical reasons, the nature of their contents changed somewhat in the course of time (note the inclusion of reproductions from current academic writing in WHITEMAN's and the later annual digests), all these digests essentially aim at the recording of 'raw materials' of the official, legally relevant, behaviour of the United States of America in its international relations.

The American example has been followed by several other countries which had the necessary funds and human resources for such time-consuming, tedious and relatively unglamorous pro-

jects. Reference may be made to the unfinished British Digest (planned coverage: 1860-1914, 1914-1960) by CLIVE PARRY, the French *Répertoire* (coverage 1800-1960) by A.C. KISS, the *Prassi Italiana* (coverage 1861-1945), and the Swiss *Répertoire* (coverage 1914-1939) by P. GUGGENHEIM. Apart from the above comprehensive volumes of state practice materials covering rather long periods of time (except the yearly periods of the US digests since 1973), various periodicals for international law regularly contain current materials. For example, every Volume of this *Yearbook* endeavours to present 'legal materials' concerning Asian states. (cf. Vol. 1 of the book under review, p. 42)

The views and practices of a state in the field of international law are sometimes presented in a different format. A fine example is C.C. HYDE's three-volume *International Law, Chiefly as Applied and Interpreted by the United States* (2nd ed. 1945), later followed by, *inter alia*, J.G. CASTEL (1965) and R.ST.J. MACDONALD et al. for Canada, D.P. O'CONNELL's *International Law in Australia*, and *International Law in the Netherlands* by H.F. VAN PANHUY et al. These are descriptive and analytical manuals of international law which approach the subject from the perspective of a specific state.

Finally, mention should be made of yet another *genre*, originating in the US common law sphere and aiming at non-binding 'restatements' of rules abstracted from the US state practice. This has resulted, as far as international law is concerned, in the *Restatement of the Law: Foreign Relations Law of the United States*, now in its third edition.

The question is how the volumes under review must in fact be classified. This proves to be more complicated than one would expect, since the book seems to include the WHITEMAN and HYDE approaches, and appears to aim at several purposes simultaneously. This impression is to some extent confirmed by the author's preface, where she defines her main objective as "to set forth the Malaysian views on international law in the areas where both its state practice and judicial decisions assert its position", but adds a secondary objective, being "to serve as a basic textbook ... for the country's law schools". According to the author the format chosen 'accomplishes both objectives', but it may be asked whether this is indeed the case, and whether different purposes can in fact be put into a book with impunity. It is difficult to ima-

gine that Malaysian law students would be required to obtain their basic knowledge of international law from a book of 1628 pages, unless it were presented as a 'collection of cases and materials'.

Another set of diverse purposes, which can be suspected from the book's contents, is, however, of a different order. The volumes may be generally characterized by the abundance of primary texts. This is, of course, quite suitable for a presentation of state practice, yet requires a careful selection of more and less relevant materials. Here, it is suggested, the book suffers from an excessive generosity. For example, it includes reproductions of complete texts of some multilateral treaties, even in cases where these are not yet in force. Such texts are undoubtedly most useful, even necessary, for anybody, both student and scholar, to have at one's immediate disposal, but are not really relevant for the presentation of Malaysian state practice in the field of international law. Speculating on a reason why the author has decided to accept such imbalances, one suspects that she found herself caught in the trap familiar to many authors addressing themselves to a readership in the 'developing' (or: poor) world. Aware of the scarcity of materials available to their readers, they feel tempted to include more information than is strictly necessary for the treatment of the subject at hand. A separate volume of international law documents in general, or 'with particular relevance for Malaysia/Asia' would have been preferable.

The profusion of information also refers to an insufficient, though admittedly difficult, distinction between legally relevant and irrelevant materials of international relations and foreign policy, resulting in overflow to these non-legal areas in some cases, such as the reproduction of complete texts of political speeches of Malaysian officials. An extreme case of profusion of unnecessary (though useful) information is a list (17 pp.) of addresses of Malaysian diplomatic and consular missions abroad.

We shall try to present a glimpse of the numerous items dealt with by browsing through the two volumes, as follows: the relevance of doctrine in Malaysian court decisions (p.51), recognition of states and governments (p.56), claim to, and application of, Malaysian jurisdiction (p.97), state immunity (p.104), diplomatic immunity (p.124), jurisdiction over foreign military forces (p.114), treaty-making, interpretation

of treaties, *pacta sunt servanda*, status of multi-lateral treaties (p.148), piracy and individual liability (p.249), nationality (p.257), extradition (p.274), refugees (p.348), acquisition of territory (p.363), territorial disputes (p.388), state succession (p.392), human rights (not limited to human rights under international law, p.507), law of the sea (p.644), air law (p.989), international organization (p.1067), United Nations (p.1120), pacific settlement of disputes (p.1142), international commercial arbitration (p.1231), humanitarian law in armed conflict (p.1258), diplomacy (p.1482), diplomatic privileges (p.1594).

The above remarks dealing with some less fortunate features of the book could easily be joined by other ones. Among other things, one might note the unsharp distinction between 'Asian' and 'Malaysian' matters now and then. However, for the present reviewer they merely serve as an overture to the emphasis on the satisfaction with which the volumes concerned should be received by the Asian international law community. Admittedly, there have been a number of endeavours in Asia in the field of state practice presentation. From India we know AGRAWALA's book *International Law - Indian Courts and Legislature* (1965), from Singapore and Malaysia JAYAKUMAR's collection *Public International Law Cases from Malaysia and Singapore* (1971) and from Japan reference can be made to ODA and OWADA'S *The Practice of Japan in International Law*, the project on practice in the field of specific topics under the auspices of the Kokusai Ho Jirei Kenkyu-kai, and the current multi-volume project in preparation under the auspices of the Kokusai Ho Gak-kai (Japanese Association of International Law, to be distinguished from the Japanese branch of the International Law Association). Yet, this is the first time that one of us has taken the trouble, the time, the energy and the patience to collect the materials available concerning all forms of the state practice of his or her own Asian country in the field of international law. It may be that the author concerned has not been able to do it quite comprehensively, and the book might suffer from some imbalances, but now and so far Malaysia is one of the very few, if not the only, Asian state of which we have a great deal of state practice materials readily available on our bookshelf.

It may be concluded that Tun SUFFIAN's qualification of the book under review as "the first book of its kind" does not only refer to Malaysia, but indeed to the whole of Asia. Tunku SOFIAH's book should, both in its seminal features and its shortages, serve as an indispensable beacon and guide on our way toward an improved presentation of international law as approached from an Asian perspective.

KO SWAN SIK

Report [of the] People's Commission on GATT - on the constitutional implications of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, Centre for Study of Global Trade System and Development, New Delhi (A 388, Sarita Vihar, New Delhi 110 044), 1996, pp. 220, price Rs. 250.

The Commission, being a non-official panel of judges consisting of Justices KHRISHNA IYER, CHINNAPPA REDDY and DESAI (retired Judges of the Supreme Court of India) and Justice RAJINDER SACHAR (retired Chief Justice of the Delhi High Court), was constituted by the National Working Group on Patent Laws and the Independent Initiative in New Delhi, to examine the above constitutional implications. The initiative arose from the conviction that the Final Act, which was authenticated in Marrakesh on 15 April 1994, in fact dealt not only with interborder trade issues but also with the internal functioning of domestic economics and their accessibility to foreign corporations in terms of financing, productive infrastructure and as market outlets. The rules contained in the Final Act were allegedly designed to allow the maximum freedom for corporate decision-making and minimize the interference of national governments into the economy. This raised concern over the impact of the Final Act on India's sovereignty and democracy and the Indian constitution, which then led to the initiative. The Commission was requested to take written and oral evidence from a cross-section of scientists, economists, jurists, political scientists, social activists, governments representatives and political personages.

The Report begins with a detailed chronology of events, from the commencement of the Uruguay Round Negotiations in 1986 till the accession by India to the WTO in 1994 and the passing of the Patents (Amendment) Bill, 1995 by the Lok Sabha in 1995. After a brief history of GATT follows a summary of the far-reaching issues on the agenda of the Uruguay Round and the failed resistance against them by developing countries like India and Brazil. The Commission then presents a critical examination of the handling of the Uruguay Round negotiations by the Indian government. The Report follows with an extensive "Summary of the critical sections of the Final Act and their implications" which forms a major part of the Report. After a 'Summary of written submissions' the Report finally formulates its findings on the 'Constitutionality of the Final Act' in respect of: constitutional basics, judicial review, treaty-making power, federalism, fundamental rights, democracy, and sovereignty.

The Report is a fine example of an investigation, by a non-governmental organization, of practices of its government in regard to international issues which have an important impact on the international rights and obligations of the state concerned.

KO SWAN SIK

Land and Maritime Zones of Peace in International Law, by SURYA P. SUBEDI, published in the series Oxford Monographs in International Law by Oxford University Press, 1996, pp. xlvii and 271, ISBN 0-19-826096-2.

In his preface the Editor of the *Oxford Monographs* reminds us that the topic of regional zones of peace has its origins in the *Pancha Shila* principles which first found expression in Indian diplomacy in 1954. Thus, the work under review, which is a revised version of a thesis submitted in 1993 for the doctoral degree at Oxford, provides a significant contribution to the history of Asian diplomacy and international law in the post-colonial era. The author, citizen of Nepal, on his part traces the origin of the concept to the Lusaka Declaration of the 1970 Non-Aligned Summit, and identifies the phenomenon of zones of peace (ZOPs) as "one of the most innovative developments in the post-World War II period" in meeting the challenge

of militarization, modern weapons technology, and interference. On the other hand, he rightly refers to other earlier known concepts of international law and relations for similar purposes, such as neutralization and demilitarization (p. xlii). He also correctly reminds us of the eventual linkage between the political phenomenon of efforts towards the establishment of ZOPs and the legal doctrine of so-called 'objective regimes' of territories with its implied question of feasibility of obligations of 'third' parties.

Apart from an Introduction and Conclusion, the book consists of 7 chapters. Chapter 1 deals with "The UN declarations on maritime zones of peace". It emphasizes the distinction between maritime and land ZOPs and assumes that different processes are followed in endeavouring and, as the case may be, bringing about the creation of such zones. The first mentioned distinction is justified by the different legal norms governing inter-state relationships on land and at sea. The 'different processes' refer to both the different organizational framework of creation (UN, other international organizations, outside any standing organization) and the legal transaction used for their legal creation (the author lists: treaty, resolution of international organizations or conferences, unilateral declarations, estoppel, acquiescence, recognition, see p. 206).

These various aspects of the topic and related questions are further elaborated and analysed in the next chapters. Chapter 2 analyses the compatibility of maritime ZOPs with existing principles of the law of the sea, while Chapter 3 investigates their compatibility with norms and principles of general international law. Chapter 4 proceeds with a discussion of the issue of land ZOPs. The next Chapter then turns to another aspect, referred to above: the "relationship of the doctrine of zones of peace with other doctrines of similar character" such as permanent neutrality, demilitarization and what we could call 'denuclearization', but also the 1954 *Pancha Shila* principles, the 1955 Bandung Declaration, and the principles of the Non-Aligned Movement. The author rightly devotes a separate Chapter 6 to the question whether and to what extent states not directly involved in the establishment of a ZOP are bound by it, and thereby discusses the doctrine of objective regimes. Finally, in Chapter 7, the author reverts to the question of the kinds of legal transactions used to create ZOPs. In discussing the role of UN General Assembly resolutions in the creation of

ZOPs the author (in an earlier chapter) rightly refers to their role in the making of international customary law and, as such, to their indirect role in creating a ZOP. It remains doubtful, however, whether such resolutions could in themselves be a direct source of rights and obligations of states, in spite of the abundant references made by the author to existing literature on the subject. On the other hand, this must be distinguished from the question of their binding force for the United Nations as a separate subject of international law.

In his Conclusion the author recapitulates that the maritime ZOP, while being a "synthesis of already existing and emerging principles" of the international law of the sea, was "brought into existence" as "a new concept" in international law through UN General Assembly Declarations. The corresponding regimes are chiefly based on principles of the UN Charter, especially those embodied in Article 2(4) and the right of self-defence. He then finds a legal base for the UN Declarations in the "present legal order of the seas and oceans" proscribing "non-peaceful activities". Thus the concept of ZOP "as such can be considered as *lex lata*" although the "methods prescribed for [their] realization" are still *de lege ferenda* as "they are still in the process of international negotiation and deliberation". Yet, since the prescribed measures "seem broadly consistent with the principles of international law, they too appear eligible to enter into the body of international law". Consequently the author regards the concept of maritime ZOP "as an emerging rule of international law".

It remains useful to restate the truism that law, including international law, is by its nature in a permanent state of flux and development. Its law-creating and law-enforcing agencies constantly try to adapt it to, and the latter also to interpret it in accordance with, the changing needs and *desiderata* of the society concerned, as they see them. The emergence of the concept of ZOP is a fine example of a development where the law, apart from treaty law, has not quite crystallized yet, with opposite actors still busy with their endeavours to have the law accord with their preferred state of international relations.

The author of the volume under review, at present professor at the University of Hull Law School, has obliged us by presenting a clear and

highly organized analysis of the many issues involved in the subject and of the various factors which play an important role in defining the relevant questions and finding the answers. Accordingly, apart from being the first legal monograph on the topic of ZOPs, the book constitutes, contrary to its limited title, a rich source of information on the discussion of various fundamental issues of international law. Lastly, a review in the present *Yearbook* should not fail to observe the special effort made by the author to include the most valuable references to Asian state practice wherever available. The book, which was awarded the 1997 Prize for Outstanding Legal Scholarship by the British Association of University Teachers of Law, can unhesitatingly be recommended as a seminal work and an excellent reference tool on the subject.

KO SWAN SIK

Cornelius van Bynkershoek: His role in the history of international law, by KINJI AKASHI, International Law in Japanese Perspective Series (SHIGERU ODA ed.), Vol. 4, Kluwer Law International, 1998, pp. xii and 199, ISBN 90-411-0599-9.

This is a thoroughly revised version of a doctoral dissertation defended at the University of Utrecht, The Netherlands, in June 1996. The author (whose name is presented on the cover in a westernized way but should correctly and customarily be referred to as AKASHI KINJI (just as the editor of the series is named ODA SHIGERU rather than the reverse) belongs to the surprisingly large number of Japanese international law scholars with a special interest in the history of the (Western) doctrine of international law. The book is, paradoxically, published in a series on 'International Law in Japanese Perspective', despite the fact that the author has had no intention whatsoever to approach and analyse the subject matter from a specifically Japanese angle, nor has he claimed that BYNKERSHOEK was of Japanese descent. In fact, the 'Japanese perspective' in this case consists solely of the author's Japanese nationality.

A summary review of the nature and contents of the book could best be started with a reference to the author's Introduction. He recalls

that in the early stages of the development of the modern law of nations, scholarly writings were much more influential than nowadays, and that the doctrinal bases of that law have been established to a large extent by texts which are now considered as belonging to the "classics of international law". Against this backdrop, the author justifies his venture: "It is therefore vitally important to approach any of the modern doctrines of international law from their historical aspects if we are to ... understand them correctly". The study of the 'classics' can be undertaken per se, or for the establishment of any doctrinal relations among them, or for the purpose of a critical analysis "in light of contemporary state practices", in other words, the impact of one upon the other. The book under review is intended to present a study from all three perspectives, witness its sub-division: Part One: "Theory per se: Bynkershoek's theory of *Jus Gentium*", Part Two: "Bynkershoek's opinion and the Dutch practice", and Part Three: "Genealogy: Bynkershoek's works in the stream of legal thoughts of the law of nations". As to this third Part the author rightly remarks that it is "no easy task to prove a 'certain relation' and 'influence' among writers", and this review will not deal with this part any further.

The author's conclusion regarding the first sub-topic is that BYNKERSHOEK's writings are unsystematic and of a fragmentary nature, and do not contain a specific, visible, system of *jus gentium*. Besides, the claim of modernity, as far as his *jus gentium* is concerned, may well be considered to be of a dubious nature. Yet the author recognizes that BYNKERSHOEK has, after all, made a distinctive contribution to the development of the positive and modern law of nations. In order to determine whether this is indeed the case, BYNKERSHOEK's writings are put to a treble test of positivist international law theory: his attitude toward natural law and toward the applicability of Roman law to international relations, and his acknowledgement of positive, distinctive, sources of international law. Through comparison, especially with GROTIUS and PUFENDORF, it appears that BYNKERSHOEK had indeed renounced adherence to natural law as well as the applicability of Roman law in international relations.

As to the third test the author compares BYNKERSHOEK's teachings with a number of aspects of the contemporary state practice, viz. the Dutch general policy on neutral commerce and

the Dutch policy on contraband in the 17th century. The result is a feeling of ambiguity in respect to BYNKERSHOEK's positivist reputation. This applies, first, to his lack of consistency in citing practice and, secondly, to his emphasis on *ratio*. As to the former, BYNKERSHOEK appears to confuse *lex lata* and *lex ferenda*, which the author demonstrates on the basis of the famous cannon-shot rule. As to the latter, the author notes its incompatibility with the argument based on precedent. Furthermore, BYNKERSHOEK's reliance on the notion of 'public utility' (or the present-day "public policy") appears to jeopardize his "self-proclaimed objectivity" in dealing with legal issues. Consequently, "it is only partially correct to consider [BYNKERSHOEK] a positivist".

Finally, the author reminds us of another feature of BYNKERSHOEK's teachings which is not quite rare in the field of international law and relations, and which is, for that matter, quite 'modernistic': BYNKERSHOEK's conclusions were advantageous for the Dutch Republic in his days 'regardless of his real intent'. With that the author leads the reader back from the often idealized world of the past to the realities of human nature and the political present.

The author, who now teaches international law at Keio University in Tokyo, has, by presenting his study to us, rightly reminded us of the unceasing need for Asian scholars of international law to study and analyse the historical, Western, roots of present-day international law.

KO SWAN SIK

Cursos Euromediterráneos Bancaja de Derecho Internacional, Vol. 1 - 1997, Editorial Aranzadi, Pamplona, 1998, 456 pp., ISBN 84-8193-920-X.

This is a collection of the lectures delivered in 1997 at the "Bancaja Euromediterranean Courses of International Law" which are annually held under the auspices of the *Centro Internacional Bancaja para la Paz y el Desarrollo* [Bancaja International Centre for Peace and Development]. The annual courses consist of a course on fundamental problems and a number of other ones on particular topics (here six). They are given within a period of about two weeks at the University of Castellón ('Universitat Jaume'), Spain, and are facilitated by simul-

taneous translation into Spanish, French, English and Arabic. The faculty consists mainly of teachers from the mediterranean region. Further information and application forms may be obtained from the aforementioned Centro, Fundación Caja Castellón c/ Enmedio, No.82, 12001 Castellón, Spain, or via e-mail <eboix@guest.uji.es>.

The present collection, which appears to be the first of a series, comprises the following lectures: ALAIN PELLET, *Le droit international à l'aube du XXIème siècle (La société internationale contemporaine-permanence et tendances nouvelles)*; PAZ ANDRÉS SÁENZ DE SANTA MARIA, *La libre determinación de los pueblos en la nueva sociedad internacional*; MOHAMED BENNOUNA, *L'embargo dans la pratique des Nations-Unies (Radioscopie d'un moyen de pression)*; LUIGI CONDORELLI, *Le Tribunal Pénal pour l'Ex-Yougoslavie et sa jurisprudence*; FRANCISCO ORREGO VICUNA, *La responsabilidad por dano al medio ambiente en el derecho internacional*; MANUEL PÉREZ GONZÁLEZ, *Las relaciones entre el derecho internacional de los derechos humanos y el derecho internacional humanitario*; TULLIO TREVES, *Recent trends in the settlement of international disputes*.

KO SWAN SIK

International law and development – Some Asian perspectives, by M.M. KENIG-WITKOWSKA, published by the author at Bangkok, 1996, pp. 140, ISBN 97489760.

The author of this slim book is professor of international law at the Institute of Developing Countries of the University of Warsaw, who joined her husband at Bangkok during the latter's affiliation with the UN Economic and Social Commission for Asia and the Pacific (ESCAP). Her purpose is "to present some of the international legal instruments originated and operating in [the] service of development in the Asian region". Noting the dominating role of development issues in contemporary international relations, she finds it surprising that the legal mechanisms of development in the (then) leading region of economic growth has drawn relatively little attention.

The book consists of eight chapters, on the following diverse topics: (1) "Asian states' perspectives on international law" (pp. 5-18), (2) "Asia-Pacific region's perspective on human rights" (pp. 19-34), (3) "ASEAN – An Asian concept of a regional organization" (pp. 35-52), (4) "Agreement on the ASEAN Free Trade Area (AFTA) – a legal outline" (pp.53-67), (5) "ASEAN countries' foreign investment promotion law (with special emphasis on Thailand's legislation)" (pp. 69-86), (6) "South Asian Association of Regional Cooperation (SAARC) – an attempt in seeking answer for imperative of cooperation within the South" (pp. 87-99), (7) "Asian Development Bank – a regional grassroots financial institution for development. Selected issues of structure and mechanism" (pp.101-124), (8) "The Economic and Social Commission for Asia and the Pacific (ESCAP) – the very first international institution for development in the Asia-Pacific region" (pp. 125-140). It should be clear from the size of the volume that the items covered are treated very concisely, maybe too concise in view of the vast scope of the subject matter.

Yet a number of remarks may be in order. In respect of her first chapter the author notes, rightly, that an enquiry into the Asian perspectives of international law is confronted with, among other things, the 'general problem' of scarcity of relevant materials and documentation. As we know, this scarcity refers to several, unhappy, circumstances: *first*, the constraint which the Asian states observe in, or their lack of defining international behaviour in legal terms; *second*, the inadequate availability of materials on their relevant state practice; *third*, the inadequate accessibility of available materials.

The book was written before the monetary and economic crash of 1997 and thus still represents the optimistic atmosphere of that time. Much of the optimism has proved to be over-optimism. In light of the confusing and un-transparent explications of the real causes of the crash one might almost wish that the author had written her book three years later. The chance is, of course, that she would not have written the book at all.

KO SWAN SIK

One country, two international personalities – the case of Hong Kong, by RODA MUSHKAT, Hong Kong University Press, 1996, with foreword by JEROME A. COHEN, xii and 220 pp., incl. two appendices and index, ISBN 962 209 427 9.

The book purports to analyse the status of Hong Kong from a constitutional and international law perspective, as resulting from the reversion of the British Crown Colony of Hong Kong *cum annexis* to China, the state which, in a time of weakness and almost disintegration, ceded one part and leased another part of the territory concerned to Great Britain in the nineteenth century.

Among the meanings of the word 'case' according to Webster's Dictionary we find, *inter alia*, a "set of circumstances or conditions, a state of affairs", but also "a matter for trial". The sub-title of the volume under review refers, in my opinion, to both. The subject matter of the book is treated by the author as a "matter for trial": she endeavours to construe, with all arguments available, legal as well as otherwise, that Hong Kong be defined and treated as separate as possible from China, and, consequently, as independent as possible of Chinese jurisdiction. The volume can thus be taken as a powerful plea for Hong Kong as a separate subject of international law for all practical purposes, or "global player" (p. x). The author, a most distinguished Israeli scholar who has taught at the University of Hong Kong for many years (see her article in Volume 1 of this *Yearbook*), has accomplished her endeavour as accurately as one could possibly expect from her, and has not failed to underpin her theses with an abundance of references to the rich body of available literature on the various topics.

Understandably, some amount of bias has been difficult to avoid but, subjective approach being inherent to our perception of the law, and particularly international law, that bias need not necessarily lessen our appreciation of the legal reasonings offered in the book on the various issues with respect to Hong Kong. In fact, it appears useful to take the volume as a striking illustration of what may be referred to as an aspect of the political dimension of the present international legal order.

The basic factual difference between the municipal and international legal order consists of the ultimate presence of constitutionally, legally

and physically authoritative central community organs in the former, and their absence in the latter. As a result there is in international law, as compared with municipal law, an infinitely larger 'freedom' (or: free space) for factional understanding of the 'applicable' rules by each of those involved in the determination of the meaning, role and impact of the applicable rule in concrete cases, or, for that matter, in the determination of the existence or non-existence of a relevant rule. Consequently, it is quite possible to reach conclusions different from those presented in the book under review by choosing a perspective different from that of the author, even if one does not intend to deal with the topic of Hong Kong as a 'matter for trial'. Paradoxically, the truth of the above contention seems to be confirmed by the following characterization by the author of her approach: "The approach is grounded in a broad normative framework, which transcends constraints imposed by narrowly-based shifting political configurations". (Epilogue, p. 189) The book aims to serve a very broad readership, namely "the academic and non-academic, commercial and non-commercial, specialized and general, market segments" (p. x) but purports to be selective and not to serve as a "comprehensive introduction to the international law of Hong Kong".

The first chapter, drawing upon an earlier paper by the author in the *Emory International Law Review*, deals with the matter of Hong Kong's international personality, or, in other words, the extent of its competence under international law. In logical sequence, the following three chapters – which also include parts of the author's earlier writings – focus on the territory's jurisdiction *vis-à-vis* the outside world, and *vis-à-vis* China as a consequence of its special status. The next chapter (5) deals with aspects of treaty law and, *inter alia*, with the notion of unequal treaties which lie at the origin of the colonial status of Hong Kong. The sixth and last chapter deals with the interrelationship between international law and Hong Kong domestic law.

It is generally acknowledged at present that the international legal order knows of a rich variety of 'levels' of subjects in accordance with the different quantity and substance of their rights and obligations. If the author had this meaning of legal subject in mind when referring to 'international legal personality', it should not have been necessary for Chapter One, in assessing that quality with respect to Hong Kong, to

refer to 'factual stately attributes' (p. 3) and other factors which usually play a role in determining the quality of a state, i.e. the most comprehensive category of subject of international law, vested with sovereignty. By doing as it does, Chapter One in fact endeavours to argue that Hong Kong is actually something similar to a state, rather than solely prove it to be a (partial) international legal personality *sui generis*. The conclusion of similarity with a state is then taken as a starting point and test for further analysis.

After having concluded that Hong Kong is indeed endowed with international legal personality in the sense of something similar to (though less than) a state, Chapter Two pursues the determination of Hong Kong's jurisdictional competence from an international law perspective. It does so, not exclusively by reference to the Sino-British Joint Declaration and the Basic Law but, assuming Hong Kong's "international legal personality" in the sense referred to earlier, to international law in general and, wherever possible, by analogy with a state.

Chapter Three is entitled "Hong Kong's international legal obligations", referring to the items regarding to which Hong Kong has been assigned specific obligations under international law and granted specific international rights as a separate (partial) subject of international law. It is presumed by the author that "[i]nternational obligations are also imposed on Hong Kong under rules of customary or general international law, which apply to all members of the international community regardless of participation in specific conventions". This is certainly correct but only, it is suggested, if it is taken in relation with the specific obligations concerned.

Chapter 4, entitled "Hong Kong and Human rights" covers a broader field than one would expect from its title. A substantial part of the chapter deals with the complex consequences that resulted from the change of sovereignty over the territory in the field of the nationality status of those having more or less 'genuine links' with Hong Kong. Another sub-chapter under the subtitle of "Access to international remedies" deals with the hot issue of the law on human rights against the backdrop of the well-known but enigmatic wording of section XIII paragraph 4 of the 'Elaboration' by China in Annex I to the Joint Declaration, according to

which "[t]he provisions of" the UN Covenants "as applied to Hong Kong shall remain in force".

Chapter 5, on the law on treaties, deals, *inter alia*, briefly with the issue of "unequal treaties" which, irrespective of one's views about its general relevance, has in any case lost any specific relevance for Hong Kong after June 1997. Another sub-chapter deals with "implementation and breach" of treaties. Here again a clear distinction should be made between the municipal and the international legal order, as well as between treaty obligations of China (including Hong Kong) and specific obligations borne by Hong Kong as a partial subject of international law. The author rightly examines to what extent the 'Basic Law' of Hong Kong is a correct implementation of the Sino-British Joint Declaration. Other issues covered in the chapter are, whether the electoral changes of 1994, the Bill of Rights Ordinance, and the (bilateral) arrangement concerning the 'Court of Final Appeal' were consistent with the Joint Declaration.

Finally, the last chapter of the book deals with the "interrelationship between international and domestic law" in Hong Kong. Unsurprisingly, the British model has been followed in Hong Kong practice although, as characterized by the author, in a 'conservative' way in the sense of a high degree of deference accorded by the judiciary to government acts and affirmations. As to the post-1997 era "it may be tentatively stated that current principles governing the relationship between international law and Hong Kong law should continue to apply".

This brief survey may suffice to indicate the various aspects of the volume under review. Irrespective of whether one agrees or disagrees with the author's perspective, the book offers a clearly written, thought-provoking treatise on a number of very topical matters which far surpassed the issue of Hong Kong. It deserves close attention of all those especially interested in Asian aspects of international law.

KO SWAN SIK