it that is judged desirable for immediate purposes. Government is then no longer really a government of law but a government of men. Both caricatures are distortions, and indicate the danger of extremes. The basic issue is not between two opposed perspectives which in the language of the moralist are depicted as the forces of light versus the forces of darkness. We must decide afresh in each concrete instance precisely what is the right compromise between maintaining past political and legal institutions, and adapting this fund of wisdom to new urgencies and social values. This way of putting the issue undercuts any simple opposition between an official and consumer perspective.

Though I have concentrated on a few main points, I believe that similar criticism can be raised concerning most of the central theses in this book. My purpose is not to belittle what Cahn has done, but to show how much more must be done if we are to take seriously his own defense of the democratic temper. Such a temper is most needed in the discussion of the fundamental issues of democracy.

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SOME NEWLY ESTABLISHED ASIAN STATES AND THE DEVELOPMENT OF INTERNATIONAL LAW. By J. J. G. Syatauw. The Hague; Martinus Nijhoff, 1961. PP. xii, 240, Index.

WITH the emergence and participation of so many Asian-African countries, international society has become, for the first time in history, a true world society. Though most of these states are weak and underdeveloped, their importance to the maintenance of public order in the present tension-ridden bipolarized world can hardly be exaggerated. The process of authoritative decision called international law, inherited by the contemporary world-wide community of states, of course owes its genesis and earlier growth to the interactions among the nations of Western Europe during the last four centuries. This process is, however, no "longer the almost exclusive preserve of the peoples of European blood, 'by whose consent it exists and for the settlement of whose differences it is applied or at least invoked.' "[1] The demands of other peoples must be taken into account.

What has been the attitude of these "new" oriental states towards this "supposedly established international law" which, as we know, was developed among the Western Christian countries during the period of their hegemony? Do they accept the present law or do they follow a path which deviates from the "established practice"? Do they reject it in toto, since they did not and could not play any part in its development, or is their resentment merely directed toward particular parts of the system which are reminiscent of a past colonial age?

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1. 1 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION 158 (1957) (remarks of first Vice-Chairman Pal of India).

To these and other related questions the author purports to address himself in this extremely readable book and examines them on the basis of the actual state practice of some of these "new-born" Asian states.[2] *Viz.*, Burma, Ceylon, India, and Indonesia, which, according to him, are "representative" of the Asian countries, their attitudes, and their aspirations.

As the "origin of the problem (of Asian attitudes towards international law) is wrapped in history" which has often been "distorted" by the Western historians, the author examines briefly the history of the "pre-colonial" and "colonial" periods to find out the "causes and motives of the actions of Asian state". The "suspicions, distrust, resentments and preferences" of these ancient and yet "new" states can become clear only by a proper understanding of this history.[3] The great upsurge of nationalism among these countries, and their extreme insistence on the otherwise dwindling concept of sovereignty, both of which so much affect the course of decision today, can only be understood by a proper appreciation of their feelings during the past centuries of their subservience when the present system of international law was being formulated over their heads by the "civilized" Western Christian states on the basis of superior power, expediency, and competition. It is in the background of this historical exposition that the author examines the status of Burma during and after the Japanese occupation in World War II and forcefully contends, contrary to the most widely held view, that the Japanese act of creating the independent state of Burma should be considered as "not contrary to international law and that it resulted in the creation of a legitimate state".[4] He also gives an interesting historical account of the birth of the Republic of Indonesia which shows the struggle, aspirations and rebellious nature of these "new" states and their effect on international relations and law.[5]

Coming from past to the present, the author confines his examination to certain international issues which, according to him, enable one to review past, present and future practices of these newly-independent Asian states. These issues are the Burmese-Chinese boundary disputes, the Kashmir conflict, Indonesia and the law of the sea, and peaceful co-existence. Discussion of these issues constitutes the bulk of the book and it is here that the author's efforts prove insufficient in the light they shed on the larger issues which are potentially posed. After giving a detailed account of the history of Burmese-Chinese boundary disputes, the author suggests practically nothing about the settlement of such disputes except that "a reasonable solution appears to be the use of the policy instrument of diplomacy".[6] Fortunately diplomacy has been successful in this instance. But the more difficult question remains: what does international law require when this instrument fails, such as in the case of the Indo-Chinese boundary dispute? The author has no answer. After reviewing the

2. P. 25.
3. P. 27.
4. P. 92.
5. Pp. 93-113.
6. P. 134.

"complex" Kashmir dispute he finds himself in a quandary and hopelessly leaves the matter without any suggestion on his part other than a discouraging note that "the outlook for a speedy solution" is rather "bleak".[7]

In discussing Indonesia's attitude toward the law of the sea, the author, himself an Indonesian, attempts to justify her action in seeking to make all waters surrounding, between, and connecting the islands constituting the Indonesian archipelago as internal or national waters on the grounds that the "interdependence of the various parts of the archipelago" necessitates such an action and "seem[s] to justify a deviation from the traditional world prescriptions".[8] He further pleads for the extension of the territorial sea, as Indonesia has done, and rejects any assertion that the three-mile limit had been accepted in state-practice as authoritative. While regretting that no agreement could be reached about the breadth of the territorial sea during the two recent international conferences on the law of the sea in 1958 and 1960, he does not feel that the blame for the failure of the conferences could be laid on Asian-African states who, like others, "voted on the merits of the case only in so far as they could be reconciled with the national interests".[9]

Discussing the problem of peaceful co-existence, the author explains its relation to the Asian concept of *Panch Shila* or what are called the Five Principles of Peaceful Co-existence: mutual respect for territorial integrity and sovereignty, non-aggression, non-intervention in each other's internal affairs, equality and mutual benefit, and peaceful co-existence. He differentiates the Asians views from Communist ideology.[10]

In conclusion, Dr. Syatauw urges the need for a "new, less biased, and more enlightened study of history and its impact on the development of international law,"[11] and notes that nationalism occupies, and shall continue to occupy, for some time, a prominent place in the policies of the "new" Asian states.[12] Though there are good reasons for these states to resent traditional international law, they have not arbitrarily rejected it as such. On the contrary, their practices show that they accept a large part of it and wish to modify only those parts which, they feel, lead to unfair practices and which give too little attention to their particular claims and interests. The best way to find a reasonable solution would be, so the author argues, not only to judge their claims "with the yardstick of so-called established international law, but also with a willingness to balance their exclusive claims against the inclusive claims of other nations and the world community as a whole."[13] In the present shrunken world when interdependence has become a mere truism, he in the end advises both the Eastern and Western countries to realize "that they

7. P. 167.
8. Pp. 188-89.
9. P. 203.
10. Pp. 206-19.
11. P. 224.
12. P. 222.
13. P. 233.

have a common interest in the establishment of a legal system which would provide them with prescriptions for their continual and renewed interactions".[14]

This book is indeed a pioneering attempt on the part of an Asian scholar to allay the misconception that is prevalent, especially in the western part of the world, that the "new" Asian-African countries reject arbitrarily the present system of international law simply because they had no part in developing it. As the author says, nobody knows Asians feelings better than Asians themselves and this is not their position. It is, therefore, the duty of Asian scholars to explain the attitudes of their countries to the world; a better understanding is essential for the orderly development of international law.

In the relative absence of much published material on the subject, especially from the Asian standpoint, the author is to be congratulated on his effort. In his enthusiasm, however, to generalize the attitudes of all the Asian states, with their different cultural, social and legal backgrounds, he makes some statements which, while they may be true about some countries, are not applicable to others. Thus a statement that the peoples in these countries prefer conciliation rather than application of legal rules in the settlement of their disputes [15] may be true about China, Burma or Indonesia; it is not true about others, such as India. He offers as proof a few cases such as the refusal of India to settle the Kashmir dispute by arbitration or her challenge of the International Court's jurisdiction in the case of *Right of Passage over Indian Territory;* but isolated examples do not conclusively prove that Asian states prefer to settle their disputes through non-legal means, unless a similar conclusion is to be drawn from the number of disputes among the Western countries which they do not wish to submit to international adjudication. Whatever the reasons for the reluctance of states, including of course Asian-African states, to settle their disputes through international arbitration or judicial settlement, the impression that the reluctance of Asian-African countries to settle their disputes by judicial means is due to their cultural, social, religious or philosophical backgrounds, is certainly not true.[16] Moreover, while the author generally refers to the protests of the "new" members of the international community against some parts of the present system of international law depicting injustices of the past colonial age, he draws on only one, Indonesia's objections to the law of the sea, and leaves the story incomplete.

More important, he leaves most of the questions that he posed in the beginning unanswered. The book must, in fact, be viewed as only a beginning in the great task of finding a solution to the problem of the establishment of an

14. P. 240.

15. Pp. 228-29.

16. See Anand, *Role of the "New" Asian-African Countries in the Present International Legal Order,* 56 AM. J. INT'L L. 383 (1962) and *Attitude of the "New" Asian-African Countries toward the International Court of Justice,* 4 INTERNATIONAL STUDIES 119 (1962).

acceptable legal order in the present heterogeneous world community.[17] The problem is not a new one, nor are the demands for the change of law and modification of legal rights confined to Asian and African countries. A perusal of the debates in the United Nations organs makes it clear that most of the underdeveloped states of Asia, Africa, Latin America and even those of Europe have joined in demanding that international law be responsive to the needs of the factual situations to which it is being applied. It is at least possible to hope that the present international atmosphere has created a situation in which the balance of conflicting interests is favorable to the development of international law, and that adjustment registered in agreed law will result.

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17. See, *e.g.*, *Symposium: International Law Standards in an Era of Rapid Historical Change*, 8 How. L. Rev. 75 (1962); Guha Roy, *Is the Law of Responsibility of States for Injuries to Aliens a Part of Universal International Law;* 55 Am. J. Int'l L. 863 (1961); J. Castaneda, *The Underdeveloped Nations and the Development of International Law*, 15 International Organization 38 (1961); Roling, International Law in an Expanded World (1960); Q. Wright, *Asian Experience and International Law*, 1 International Studies 71 (1959); Wright, *The Influence of the New Nations of Asia and Africa upon International Law*, 7 Foreign Affairs Reports 38 (1958); Jenks, Common Law of Mankind (1958); Anand, *supra* note 16.

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