

Special Issue: Third World Approaches to International Law

OBITUARY	<i>In Memoriam: Ram Prakash Anand (1933-2011)</i>
EDITORIALS	Meghana Sharafudeen, <i>2010-2011: Taking the Road Less Travelled</i> B. S. Chimni, <i>The World of TWAIL: Introduction to the Special Issue</i>
ARTICLES	James Thuo Gathii, <i>TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography</i> Mohsen al Attar & Rebekah Thompson, <i>How the Multi-Level Democratisation of International Law-Making Can Effect Popular Aspirations Towards Self-Determination</i> Luis Eslava & Sundhya Pahuja, <i>Between Resistance and Reform: TWAIL and the Universality of International Law</i> Gus Van Harten, <i>TWAIL and the Dabhol Arbitration</i> Sara L. Seck, <i>Transnational Business and Environmental Harm: A TWAIL Analysis of Home State Obligations</i> M. Sornarajah, <i>Mutations of Neo-Liberalism in International Investment Law</i>
BOOK REVIEW	Gregory Bowman, <i>Of Haves and Have-Nots: A Review of Donatella Alessandrini, Developing Countries and the Multilateral Trade Regime: The Failure and Promise of the WTO's Development Mission (Hart Publishing 2010)</i>
GRAPHIC ART	<i>Education for Emancipation</i> , written by Mohsen al Attar, illustrated by Mia Koning

TL
&D

Trade, Law *and* Development

Vol. 3, No. 1

2011

PATRON

Justice N. N. Mathur

FACULTY-IN-CHARGE

Yogesh Pai

GUEST EDITOR

B. S. Chimni

EDITORS-IN-CHIEF

Manu Sanan

Meghana Sharafudeen

(ISSUE EDITOR)

EDITORS

(MANAGING)

Prateek Bhattacharya

(CONTENT)

Aditi Patanjali

(CONTENT)

Gopalakrishnan R.

ASSOCIATE EDITORS

Aman Bhattacharya

Ambika Gupta

Jayant Raghu Ram

COPYEDITORS

Meghana S. Chandra

Abhipsit Mishra

Prianka Mohan

Shreya Munoth

Lakshmi Neelakantan

Neha Reddy

Aritra Roy

Geetanjali Sharma

CONSULTING EDITOR

Shashank P. Kumar

BOARD OF ADVISORS

Raj Bhala

Glenn Wiser

Jagdish Bhagwati

Daniel Magraw

B. S. Chimni

M. Sornarajah

Ricardo Ramírez Hernández

Vaughan Lowe

W. Michael Reisman

Published by

The Registrar, National Law University, Jodhpur

ISSN : 0976-2329 | eISSN : 0975-3346

In Memoriam: Ram Prakash Anand
(1933-2011)
3(1) TRADE L. & DEV. 1 (2011)

IN MEMORIAM: RAM PRAKASH ANAND (1933-2011)

It is with great sadness that *Trade, Law and Development* notes the demise of Prof. Ram Prakash Anand. A Professor Emeritus at Jawaharlal Nehru University, New Delhi, and the President of the Indian Society of International Law, Prof. Anand was a pre-eminent scholar in the field of international law and was instrumental in laying the foundations of Third World Approaches to International Law (TWAAIL). The following tributes from Prof. Anand's friends and colleagues discuss his work, persona, and legacy.

May his soul rest in peace.

BOARD OF EDITORS
Trade, Law and Development

Ram Prakash Anand was a great scholar and leader in our field and a source of immense pride for the Yale Law School. Ram knew he was one of international law's immortals but bore himself with modesty. Wherever we met, whether at Yale, in Washington, at meetings of the *Institut de Droit International*, or for a wonderful afternoon with Ram and his wife at their apartment in New Delhi, he was always a delight to be with. I will miss his wisdom, his warm personality and his jolly company but, like everyone in our field, will continue to consult him through his work. This is a painful loss for India and the for world community.

My condolences to the members of his family and I assure them that all his friends from his days at Yale mourn his passing.

W. MICHAEL REISMAN*

* Myres S. McDougal Professor of International Law, Yale Law School, New Haven, USA

Finitude is a fact that makes us all coequally human; even so, the demise of Professor R. P. Anand constitutes a loss of an entire social world for his students, colleagues, readers, and friends.

He nurtured inaugurally traditions of postcolonial reconstruction of international law. In doing so, Ram always interlocuted the “Eurocentric” progress narratives. However, Ram went beyond a critique of the erstwhile eras; rather, he rigorously addressed thus the international-law-in-the-making, and the innovative normative regimes of “law” governing the UNCLOS (the United Nations Convention on the Law of the Sea).

The TWAIL (Third World Approaches to International Law) movement, while offering a more full-fledged ideological critique of contemporary international law, relations and organizations, continues to acknowledge Professor Anand’s work (especially concerning the sovereign equality of states). In an era of contemporary knowledge-production based on practices of the massacre of ancestors, this TWAIL gesture of gratitude towards Ram’s foundational work signifies a high tribute, also eminently deserved.

Professor Anand nurtured and nourished a fine tradition of Indian teaching and research in international law. Many of his students benefited from his active presence in the classrooms, conference halls and the theatres of intensive research guidance; a few among them have chosen to remain in the academia and have emerged as leading scholars in their own right and light. Some have contributed, via foreign service assignments, to the making and the conduct of India’s foreign policy. And some others have made their mark in the United Nations system. There can be no greater cause for satisfaction for a teacher than the achievement of his pupils, colleagues, and associates.

Most crucially, Ram nourished, among significant others, the Indian Society of International Law and contributed significantly to its academic presence in the world. In the last two decades, Ram, together with Professor Rahmatullah Khan, continued to lead the Society to new heights. Only a little while ago, I suggested that we rename it as “Ram-Rahmat Indian Society of International Law.” We all heard the soulful laughter of Ram—an experience that we cherish but also shall now miss forever.

Ram was a quintessential teacher. Secure in his belief that that international law must remain accessible for intelligent grasp by all, he spoke and wrote in a simple style. Knowing full well that international law is a mighty arena of power, politics, and policy, Ram believed in the relative autonomy of the discipline.

Doctrinal study/exploration remained thus for him a primary task of pedagogy and scholarship. In so doing, he displayed a virtuoso resistance to reductionist practices of teaching and researching the expanding spheres of international law as a mere handmaiden of power politics. Despite the subsidiary role accorded by the Statute of the International Court of Justice to jurists as a source of international law, professor Anand remained committed to the view that juristic expositions and enunciations play a coequal role in shaping, and at times even determining, its future itineraries. He nurtured this perspective further by his remarkable inaugural, as well as sustained association with the Indian Society of International Law and the Afro-Asian Legal Consultative Committee, amidst other fora.

For him, the scholarly tasks of understanding international law as fashioning normative restraints on the worlds of sovereign power remained very crucial. Ram was increasingly bewildered by modes of critical and postmodern approaches to international law. As an inaugural figure critiquing the Eurocentric modes of its production, he still resisted these approaches because he believed that the pursuit of “demystification” of the discipline encoded also some new forms of “re-mystification.”

Not that by any means I exemplified some postmodern narrative virtues, in many a conversational moments between us, Ram provoked me by saying in his earthy ways: “*Yaar, ye meri samaj ki babar hai!*” (“dear friend, all this remains outside my grasp!”). He affectionately reproached on many occasions by saying: “*tum sidhi bat kyon nahi kar sakte ho?*” (“why can’t you speak simply?”).

“*Sidhi bat*” (“speaking simply”) is an enormously complicated virtue, which he perfected with luminous eminence. Yet, I used to caution him, even as admiring his unflinching insistence on doctrinal narratives, that these may at best present a part of the story, as TWAIL scholarship now continues to reminds us so fully. Even as I agree that the “*bat-chit*” (“talk/discourse”) about international law ought to accord a fuller dignity to doctrinal/blackletter lineages, the question always remains about alternate constructions of international law – whether in the metaphor of Wilfred Jenks as a “common law of humankind” or with a more contemporary Rawlsian metaphor of the “law of peoples”. These frame some appropriate concerns now – as it sadly turns out – for this posthumous *festschrift* for Professor Anand.

My most recent memories of Ram relate to his presiding over my 2010 Krishna Menon Memorial Lecture at the Indian Society of International Law, the Society-sponsored “refresher course” for international law teachers, and the December 9 Jawaharlal Nehru University celebration of the Human Rights Day. On each occasion, Ram was seen by all as “taking notes”. For me, at the very

least, this recall exemplifies his ceaseless attention to whatever others may have to say—a full testimonial to scholarly life and modes of being.

Beloved Ram, I shall continue to miss your down-to-earth ways of understanding the life of international law. Yet, in what may still remain of my own individual life, I shall stand guided by your friendly and robust critical accent and voice. So will remain other friends touched by the gift of your earthly presence amidst us.

A reluctant *alvida/ adieu*, dearest Ram.

UPENDRA BAXI†

Professor Ram Prakash Anand will always remain a doyen of Third World international lawyers. The admiration with which he is held will not diminish as long as the arduous struggle for justice against a power-based international law remains. It was he who, among Asian international lawyers, first identified international law as based on European power and saw the need to rearticulate it to reflect the interests of the newly independent peoples of Asia and Africa. A school of thought he initiated has now established itself well and has gained recognition around the world.

He completed his doctorate at Yale and would have found it more rewarding, from the point of view of his career, to have tied in with the Yale-New Haven approach. Instead, Professor Anand chose a different path of addressing the power imbalances that lay at the heart of Eurocentric international law and showed that other peoples had conceived of international law in fairer terms while practicing within their own regions. He thus laid the foundations for the study of approaches to international law which would take into account the unique contributions that Africans and Asians had made to the structuring of a law within their own regions and ensured that the interests of the non-European peoples are reflected in bringing about a more just basis for international law.

His early work on Asian States and International Law served as the manifesto for later scholars, both in Asia and Africa. It vigorously criticizes the Eurocentric origins of international law and exposes the fact that the basic tenets of law being centered on high-sounding natural law principles such as the brotherhood of mankind, or the civilizing mission, hid perfidious goals of colonial expansion,

† Professor of Law, Warwick School of Law, Coventry, United Kingdom.

penetration of regions through international trade and access to the increasingly powerful navies of the European states. The critique made generations of students of international law skeptical of the Western textbooks on the subject and helped them develop a critical acumen in considering the principles in these texts. Researchers carried on this approach which resulted in the founding of a Third World Approach to International Law (TWAAIL) by a group of African and Asian international lawyers. His more direct influence was on a group of brilliant, younger Indian international lawyers who will surely keep the fire that Professor Anand lit within the discipline, burning brightly.

Professor Anand's initial studies were on the Law of the Sea. It was at a time when the law was in ferment and change was reflected between the European inspired Geneva Conventions on the Law of the Sea and the claims that the developing countries were making when a new Law of the Sea Convention was being considered. He made a great mark by demonstrating that there was an Asian practice on the Law of the Sea and that many doctrines existed in such practice that could be accommodated within a global law. His pioneering work both in the history of the Asian practice, as well as in demonstrating its relevance to the fashioning of the future law not only had an immediate impact on the discussions of the Law of the Sea Convention but laid the foundations of a new approach to the study of international law. Many have gained plaudits for the work on the United Nations Law of the Sea Convention, but those in the discipline know that the work of Professor Anand was the foundation for the success of the case that the Third World made in securing its interests.

As in the case of other great scholars, Professor Anand worked in other areas, principally in United Nations law on which, besides publishing a noted work, he wrote several leading articles. In the more active field outside research, Professor Anand was a leading figure in the establishment of the Indian Society of International Law and guided its existence for a long period of time. The Society's Journal ranks among the leading journals of the discipline today.

The laughter and light that surrounded Professor Anand will always remain in the memory of those whose paths in scholarship he did so much to guide.

M. SORNARAJAH[‡]

[‡] C.J. Koh Professor, Faculty of Law, National University of Singapore, Singapore.