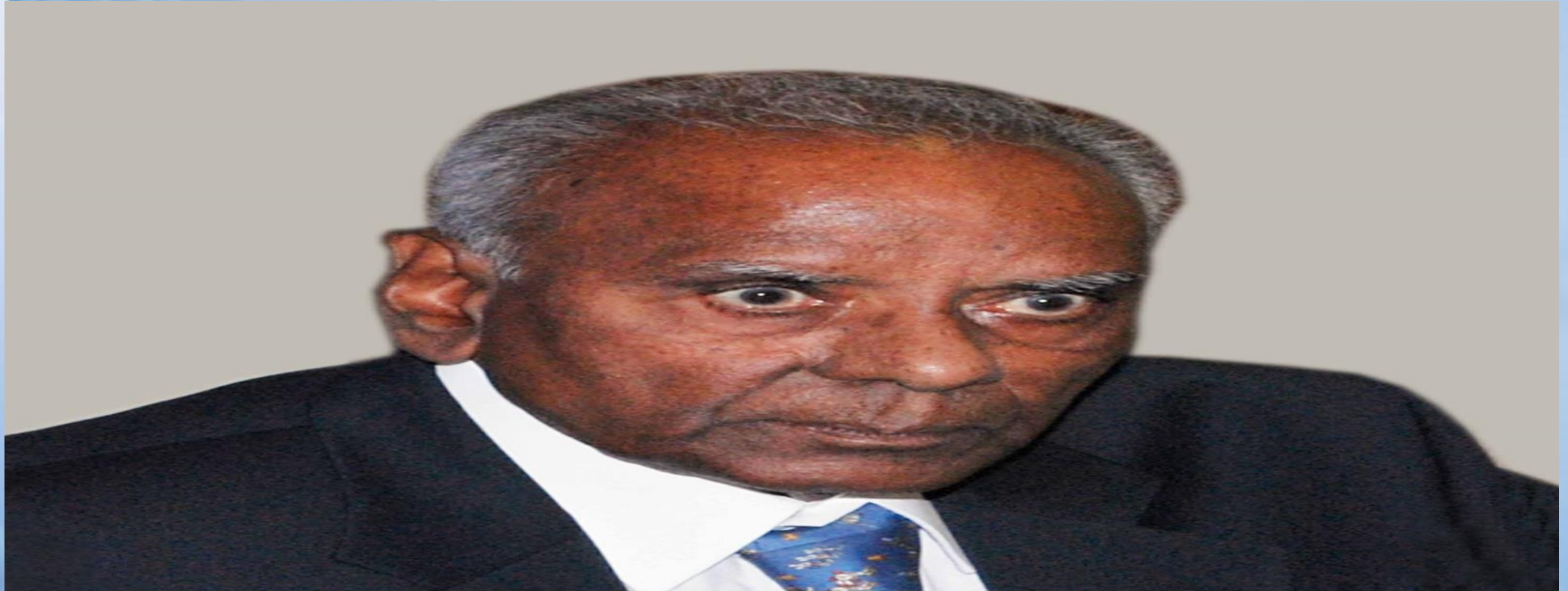


Reflections on the Law of International Organization

A Tribute of a Student to Prof. Dr. Rahmatullah Khan



Professor Dr. Rahmatullah Khan
01 July 1934–31 March 2023

By Dr. Bharat H. Desai
Professor of International Law

Chairperson, Centre for International Legal Studies, SIS, JNU

10 April 2023



Rahmatullah Khan – The Scholar



- ❑ **Alumnus of Andhra University (B.A. 1955); Osmania University (LL.B. and LL.M. 1957-61); Indian School of International Studies – now part of JNU (Ph. D. in Int. Law, 1966).**
- ❑ **Postdoctoral: Woods Hole Oceanographic Institution (1973-74); Princeton University (1974-75); Max-Planck Institute of International Law (1971, 1977, 1983, 1988, 1999-2005); Yale Law School (1980); Columbia Law School (1981); University of Hawaii (1981).**
- ❑ **ILI: Lecturer in International Law, Indian School of International Studies, 1965-69; Associate Research Professor, The Indian Law Institute, 1969-70.**
- ❑ **JNU: Associate Professor of International Law (1970-83); Nehru Chair & Professor of International Law (1983-99).**
- ❑ **Fondly remembered for carving out a niche as one of the early Global South Scholars who contributed mainly in making sense of the Law of International Organizations.**

The Scholarly Legacy



- ❑ **Research supervision:** Ph.D. (30) and M.Phil (40) degrees.
- ❑ **Publications of books (6), monographs (4), edited volumes (3) and research articles (50).**
- ❑ **Contributions in the final years** include a book, co-edited with ITLOS Judge P. C. Rao, on the **International Tribunal on the Law of the Sea** and research articles: (i) on **federalism** in a book published in Switzerland; (ii) **U.S. military commissions**, and (iii) **anti-globalisation protests** in the *Heidelberg Journal of International Law*; (iv) on **U.N. peace-keeping in internal conflicts** in the *Max-Planck Yearbook of United Nations Law*; and (v) on **the War on Terrorism** in the *Indian Journal of International Law*.
- ❑ This modest presentation seeks to cull out Prof. Rahmatullah Khan's scholarly imprint and legacy especially on the Law of International Organizations out of the larger corpus of his work.

SCHOLARLY CONTRIBUTION-I



Kashmir and the United Nations (Vikas Pub., Delhi, 1969), pp. xii+ 199.

“**The Kashmir Problem : Its Handling In The United Nations**”, *Journal of the ILI*, Vol. 11, No. 3 (July-September 1969), pp. 273-292; [007 The Kashmir Problem Its Handling in the United Nations.pdf](#)

HIGHLIGHTS

- ❑ Examined the armed infiltration by Pakistan in 1947-1948 as well as in 1965. Were they in conformity with international law?
- ❑ Took the view that the UN was not designed as a dispute-settlement agency in the sense of municipal court.
- ❑ Considered the UN having significance as a forum for conflict-resolution through debate and deliberation.
- ❑ Viewed the UNSC pledge that India is alleged to have made on the question of plebiscite as: (i) it was never a binding one and (ii) the 1965 war released India from any legal commitment in this regard.

SCHOLARLY CONTRIBUTION–II



Kashmir and the UN... Book Reviews

“The learned author has performed a valuable service in presenting his case with sincerity and conviction. In this slim but scholarly book, he has given us a competent and useful account of the Security Council’s handling of the Kashmir problem as a case study in the competence of the United Nations in the settlement of international disputes. This book will no doubt attract widespread attention in the West and his lucid, graceful and attractive survey of the Security Council’s handling of the Kashmir problem is at once readable, accurate and detailed. It is superbly documented, lucidly written, and brilliantly analysed with sophistication and insight. The learned author has handled complex material with unique skill and amply fulfilled the task he had set himself. A sense of drama is present throughout. This is an outstanding achievement which merits high praise and appreciation”.

➤ **M. V. Subbarao, *Indian Journal of International Law*, vol. 10 (1970), 387-388.**

“The book is a very competent and thorough exercise in unreality. Its carefully researched and argued thesis, that the United Nations organs involved in the Kashmir question failed in their duty to suppress aggression, is convincing only if one accepts the essential validity of the Indian position.”

➤ **Alfred P. Rubin, *American Journal of Inter. Law*, vol. 64, no. 5 (1970), 987-988**

SCHOLARLY CONTRIBUTION – III



Implied Powers of the United Nations (Vikas Publications, Delhi, 1970), xii+236

- ❑ **THE CONTEXT:** In the 1949 *Reparation for injuries case*, the ICJ held that “the organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties”.
- ❑ It seems this decision reversed the understanding provided by PCIJ in the *S.S. Lotus case* that “the rules of law binding upon States...emanate from their own free will”. It means that “restrictions upon the independence of States cannot therefore be presumed”.
- ❑ In the 1949 ICJ reparation case, attempts to balance between liberal interpretation of the function and powers of international organization and a restrictive interpretation of the duties and obligations of sovereign states.
- ❑ The theory of implied power is tested against practice in a number of ways.
- ❑ This book reviews doctrine and practice, and the several relevant judgements and opinions of the ICJ
 - to examine the nature and extent of Implied powers
 - Legal controls of the exercise of implied powers
 - Examination of the practice of the UN in the areas of peace-keeping; treaty making; suspension, expulsion, forced withdrawal, and admissions and subsidiary organs
- ❑ The author identified two areas, viz., peace keeping and treaty-making where expansive scope of powers by implication in the Organization. The author analysed the activities of the Organization:
 - ❖ (i) in the sense in which implied powers and institutional effectiveness have augmented its authority.
 - ❖ (ii) in the way in which they have reduced the strict application of its express authority (the issue of expulsion, forced withdrawal etc);
 - ❖ (iii) in the dual manner in which they have expanded and limited its power (admission).

SCHOLARLY CONTRIBUTION-IV



IMPLIED POWERS OF THE UNITED NATIONS: Book Reviews

- Gillian White, *International & Comparative Law Quarterly*, vol. 20 no. 1 (1971), pp. 163-164. "Dr. Khan has nevertheless performed a valuable service to the study of the law of international organisations by bringing together these different aspects of implied powers. The chapters on treaty-making and on subsidiary organs are especially useful."
- Guenter Weissberg, *American Journal of International Law*, vol. 65, no. 3 (1971), pp. 650-651. "Such criticism does not really detract from the value of the book, for Dr. Khan has shown considerable insight...Finally, in discussing the limitations on implied powers, a number of pertinent questions, such as the legal effects of unconstitutional acts and the recourse available to an aggrieved state, are raised."
- Subhash C. Jain, *Indian Journal of International Law*, vol. 11 (1971), pp. 134-136. The author has made a useful doctrinal assessment of the treaty-making capacity of the international organizations... Dr. Khan has chosen only limited fields for the study of implied powers of the United Nations, he has done a good job of it. The work is well written, lucid and a contribution of value.
- P. Vilayutham, *India Quarterly*, vol. 27, Issue 3 (1971), pp. 246-247.

SCHOLARLY CONTRIBUTION–V



Law of International Trade Transactions (N. M. Tripathi: Bombay, 1973),
xx+ pp. 211.

- ❑ The authors discuss four major topics: international shipping legislation; international sale of goods; international payments; and international commercial arbitration.
- ❑ Under each of these major headings there is a review of the reports of the United Nations Commission on International Trade Law (UNCITRAL) and a summary of the related Indian law.
- ❑ The international portions of this book are principally a rehash of UNCITRAL papers, with a modest amount of extra- legal research.

SCHOLARLY CONTRIBUTION-VI



The Iran-United States Claims Tribunal: Controversies, Cases and Contribution (Martinus Nijhoff Publishers, Dordrecht, 1990), xv+343.

HIGHLIGHTS

- ❑ The book dealt with issue of state responsibility and evaluate the contribution of the Tribunal.
- ❑ Examined the validity of the *Algiers Accords* under the US law and concluded that the US claimants received a better deal than they could have attained through a lump-sum settlement.
- ❑ Reviewed both the relevant provisions of the Claims Settlement Declaration, together with the Tribunal's Rules, as well as precedents in international arbitral practice, the author arrived at the conclusion that once an arbitral tribunal has been formed and commenced with its business, it acquires an autonomous status which is independent of the states which established it.
- ❑ Consequently, any awards delivered by less than a full Tribunal as a result of the illegal absence of one or more of its members are legally valid. The Tribunal's practice and constitution is of an "essentially judicial nature". The Tribunal's status is that of an international arbitral court.
- ❑ Argued that the Algiers Accords and related instruments are a tripartite international undertaking between three governments – Algeria, Iran and the US – governed by public international law.
- ❑ Agreed with the Tribunal's pronouncements that revolutionary disorder and the resulting breakdown of administrative processes and financial stability are part of the risks which any investor incurs when he chooses to do business abroad, and do not in themselves constitute a deprivation of property.
- ❑ The work deals with the important question of the standard of compensation for expropriation or nationalization of foreign owned property.

Iran-US Claims Tribunal... BOOK REVIEWS

- ❑ “Professor Rahmatullah Khan is highly critical of the Tribunal's decisions on compensation and does not feel that it has provided any noteworthy contribution to the law. Describing the decisions on this topic as “a can of worms from which every academic angler can pick up baits [sic] of any kind to catch all manner of doctrinal fish”, he strongly disapproves of what he feels are the Tribunal's lack of doctrinal clarity and consistency in determining the applicable level of compensation. In conclusion, the book is well worth reading and provides a useful addition to the already substantial literature on the Tribunal, although it should be read with the proverbial grain of salt in mind.”
- **Terry D. Gill, *Leiden Journal of Inter. Law*, vol. 4, no. 2 (1991), 323-331.**
- ❑ “The author's views are useful in the dialectic process as, hitherto, the Iranian point of view has not been given all the attention in English language publications to which this view, too, appears entitled.”
- **Ignaz Seidl-Hohenveldern, *German Yearbook of International Law*, vol. 34 (1991), 591-593.**

SCHOLARLY CONTRIBUTION–VIII



The International Tribunal for the Law of the Sea: Law and Practice
(Kluwer Law: The Hague, London, Boston, 2001), ix+238 (with P.C.Rao)

□“This work examines the constitution, jurisdiction and procedure of the ITLOS on the basis of its Statute and Rules, as well as the Resolution on the Internal Judicial Practice and the Guidelines concerning the Preparation and Presentation of Cases. It gives a critical analysis of the role of Tribunal in the settlement of law of the sea disputes.

➤ Book Review: E. Franckx, *Netherlands International Law Review*, vol. 50, no. 2 (2003), pp. 202-208.

SCHOLARLY CONTRIBUTION–IX – IDEAS



“Centre for International Legal Studies: A Proposal”

“The study of international law in Indian universities warrants a careful evaluation with a view to its adaptation to modern trends in the field. Compared with the phenomenal strides that some American and European universities have made in this regard the progress made by Indian Universities has been slow and hesitant...It is sad reflection upon the present state of affairs in our country that only one academic centre in the whole country engage itself in research and teaching activities, namely the Indian Society of International Law. Again, there is only one Department dealing exclusively with the teaching and research of international law in the seventy odd universities in the country, namely, the Department of International Law, in the School of International Studies, Jawaharlal Nehru University, New Delhi. The Department of Constitutional Law and International Law in the University of Madras is divided in its interest.”

SCHOLARLY CONTRIBUTION–X – IDEAS



“National Law School: A Proposal”

- ❑ “Most of the research done in India in the field of law is exegetical in nature based on textual criticism. Our legal periodicals are full of scholarly expositions on important decisions of the courts...not intended to belittle the efforts made in the above direction by scholars of great eminence. We need them...The cardinal object of all legal research is the satisfaction of the felt needs of society through the law...”
- ❑ If the above view of the law as a tool of social engineering is accepted, the proposed national school of law will have to structure its programmes on two levels. First, select a cadre of researchers drawn from different disciplines, say, law, sociology, political science, economics, etc. and...interact with those that interpret and enforce the law, and with those that the law aims to benefit...”
- ❑ The two models presented...are not mutually exclusive. In fact the school could be structured on both.
- ❑ Any of the bigger universities in India could establish such a national school of law. With some reorientation and shift in direction the Indian Law Institute could be organized into such a national school. The Jawaharlal Nehru university also is ideally equipped to do so.