

## DRAFT

# TEACHING AND RESEARCH OF INTERNATIONAL LAW IN ASIA: SOME REFLECTIONS ON THE WAY FORWARD<sup>1</sup>

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I have always held the view that space matters as much as time<sup>2</sup>. Place matters. Territory matters. Nation matters. Region matters. In short there is an intimate relationship between geography and international law<sup>3</sup>. It is hard to overlook that in a discipline whose authorship is exclusively claimed by one region. It is also difficult to forget that one region colonized much of the world between 17<sup>th</sup> and the 19<sup>th</sup> centuries. It is as troubling that this region drives international law even today. It seeks to universalize international law to realize the interests of advanced capitalist states. It is therefore from this region that arguments about the end of geography emerge from time to time<sup>4</sup>. Other regions also subscribe to the idea of universal international law but one that serves to advance the welfare of peoples of all regions. The reason that other regions seek to produce truly universal international law is not because these are more virtuous: in Asia Japan was an imperial power. The inclusive vision of these regions can be traced to sheer existential compulsion (such as extreme poverty). In the event non-western regions reject the hegemony of western nations. Thus, for instance, attempts to shape a *uniform* or *homogeneous* international law by western nations in the name of *universal* international law are resisted. The former prevents the evolution of a genuine universal international law as it elides over the different levels and stages of development of regions. Instead, the idea of unity in diversity is advanced to address different histories and situations that must be dealt with before universal international law can come into being. Thus, for instance, the Special and Differential Treatment Principle proposed by the nations of Africa, Asia and Latin America seeks to promote universal international law by allowing weak nations to receive justice in the matrix of the history of colonialism.

Today there is an opportunity for the Asian region to actively promote the goals of a universal international law that does not disregard the situation of weak nations. China, India and

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<sup>1</sup> I have earlier written several essays on this broad theme. "Teaching, Research and Promotion of International Law in India: Past, Present and Future", *Singapore Journal of International and Comparative Law* No.2 (2001) pp.368-388; 'Is There an Asian Approach to International Law: Questions, Theses, and Reflections" *Asian Yearbook of International Law* vol. 14 (2008), pp. 249-265; Asian Civilizations and International Law: Some Reflections" *Asian Journal of International Law*, vol.1, Issue 1 (2011) pp.39-42; "International Law Scholarship in Post Colonial India: Coping with Dualism" *Leiden Journal of International Law* vol. 23 No.1 (2010) pp. 23-51.

<sup>2</sup> I became aware the significance of the concept of "space" after reading Edward Soja *Postmodern Geographies: The Reassertion of Space in Critical Theory* (Verso, London, 1989).

<sup>3</sup>See Anthea Roberts, *Is International Law International?* (Oxford University Press, Oxford, 2017).

<sup>4</sup> D. Bethlehem, 'The end of geography: the changing nature of the international system and the challenge to international law', (2014) 25 *European Journal of International Law*, pp. 9-24. But even Bethlehem notes that '[g]eography was and has remained to this day central to this system of law', p.13.

ASEAN nations are economic powerhouses. It is Asian economies that lend stability and dynamism to the world economy. It is their sustained growth which helped tide over the global financial and economic crisis of 2007-2008. The voices of Asian nations cannot any longer be ignored in the framing of the rules of international law. But unfortunately rather than calling for serious reform of the liberal international legal order which has done grave injustice to their subaltern groups, leading Asian nations seek a greater role in its functioning. In other words, instead of calling for a new international economic order (NIEO), as third world nations did in 1974, powerful Asian nations believe that the liberal international economic order is beneficial to their development prospects. This has led them to become part of oligarchic bodies like G-20<sup>5</sup>. It is not sufficiently recognized that the liberal order is working primarily for its elites. It is true that incidence of poverty has reduced in the last two decades but inequalities have grown. For shaping a truly universal international law we have to transcend not only the geographical divides but also the class, gender, race and caste fractures that mark nations of the region.

The commitment to the liberal order is unfortunate also from a disciplinary standpoint for it allows mainstream international law scholarship (MILS) to marginalize critical voices by reference to the position and practice of Asian, and more generally, third world nations. It may be recalled that a first generation of postcolonial scholarship had not only challenged the Eurocentric narrative of the history of international law but also heralded the Declaration on New International Economic Order (NIEO) and the Charter of Economic Rights and Duties of States (CERDS)<sup>6</sup>. But since the cause of NIEO was abandoned by third world nations in the early 1980s, as these were coming to grips with the commodity and debt crisis, the first generation of what is called third world approaches to international law (TWAIL I) remained at the margins of the discipline of international law. It was benevolently tolerated. The everyday discourse of international was not disrupted. The doctrines of international law continued to do the work that they were always doing, the tools of interpretation used without any self-doubt, and judgments rendered by international tribunals with certitude. There was little reason at this point for MILS to turn to TWAIL scholarship.

Since the end of the Cold War several other critical theories have joined the effort of demonstrating the partisan nature of contemporary international law. These include the Feminist Approaches to International Law (FtAIL), Marxist Approaches to International Law (MAIL), New Approaches to International Law (NAIL), and a second generation of Third World Approaches to International Law II (TWAIL II). This scholarship has questioned at a foundational level the doctrines and practices of international law that form what Jean J d'Aspremont calls the "belief system" of MILS<sup>7</sup>. But even this collective effort has compelled MILS only to make some

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<sup>5</sup> Asian members of G 20 include Australia, China, India, Indonesia, Japan and South Korea.

<sup>6</sup> See Mohammed Bedjaoui, *Towards a new international economic order* (UNESCO, Paris, 1979).

<sup>7</sup> Jean d'Aspremont, *International Law as a Belief System* (Cambridge, Cambridge University Press, 2018).

adjustments, yielding modern forms of positivism and formalism. Thus, for instance, positivist international lawyers are willing to take cognizance of the role of non-State actors in law making and enforcement<sup>8</sup>. At the normative level there is greater recognition of the rights of marginalized groups such as women and indigenous peoples. But the overall progress has been limited in terms of realizing truly universal international law. As the critical approaches point out States are unwilling to seriously address class, gender, race and caste fractures in society. A key reason is that the interests of the elites in developing nations are coming to coincide with that of their counterparts in the western world; a transnational capitalist class (TCC) is emerging consisting of fractions of capitalist classes that profit from the globalization process<sup>9</sup>. Between transnational and national spaces a regional class formation has also emerged pursuing the interests of the TCC at a regional level<sup>10</sup>. It is true that as yet the TCC segments of non-western regions may not have the density, weight, or influence of their western counterparts<sup>11</sup>. But they share a common vision as can be seen from China's recent attempts to assume leadership of the liberal economic order. Thus, transnational and regional class divides have come to inform the existing global order with marginalized groups faring badly even when there are high growth rates as in the instance of many Asian nations. The trend is in the direction of openly asserting the interests of global/regional capital as against the global/regional common good. In disciplinary terms it means that the influence of MILS will continue. Thus, despite a range of critical approaches arriving on the scene, there is no revolution or coup about to take place in the palace of international law. The world of mainstream international law is not about to be displaced. The cause of weak groups is unlikely to be taken up robustly: the transnational/regional oppressed classes (TOC) have to struggle to get their concerns addressed.

What should be the role of international law teachers and researchers of international law in Asia at this historical juncture? To begin with, judging from publications and impressions gathered over years, the dominant view among Asian international law scholars is also that the liberal order with a dose of reforms in favor of Asian and other third world nations will work well for its peoples. The complaints against MILS is principally about the Eurocentric history of international law and the refusal of developed states to inscribe sufficient concessionary norms in the body of contemporary international law rather than about class, gender and race fractures that

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<sup>8</sup> For an account of “modern positivism” see Bruno Simma and Andreas A. Paulus, ‘The Responsibility of Individual for Human Rights Abuses in Internal Conflicts: A Positivist View’ in Steve Ratner and Anne Marie Slaughter eds., *The Methods of International Law* (Washington D.C, The American Society of International Law, 2004) pp.23-47.

<sup>9</sup> I use in my work the categories “transnational capitalist class” and “transnational oppressed classes” to capture this reality. See B.S.Chimni, ‘International Institutions Today: A Global Imperial State in the Making’, *European Journal of International Law* 15 (2004) pp.1-37. See also Jeb Sprague-Silgado, ‘The Transnational Capitalist Class and Relations of Production in Asia and Oceania’, *Research in Political Economy* 32 (2017) pp.133-158.

<sup>10</sup> See William K. Carroll, ‘Rethinking the Transnational Capitalist Class’ available at [https://www.researchgate.net/publication/323666821\\_Rethinking\\_the\\_Transnational\\_Capitalist\\_Class](https://www.researchgate.net/publication/323666821_Rethinking_the_Transnational_Capitalist_Class) (accessed 10 May, 2018).

<sup>11</sup> *Ibid.*, p.195.

mark it. In this view radical critiques of international law are either irrelevant or misplaced. Those who subscribe to this view see the task of the teacher of international law as essentially to familiarize students with the existing doctrines, principles and practices so that Asia can have international lawyers who can match the skills of their western counterparts in order to realize national and regional interests. There is therefore no felt need to introduce students to critical approaches to international law. This approach in my view is short sighted for irrespective of the teachers' personal predilections there is a need to familiarize the students with all perspectives: mainstream, mild reformist, and critical. The best law schools in the world do so as alternative perspectives offer important insights into the structure and process of international law that can be used to strengthen and legitimize even mainstream narratives. It is sometimes felt that critical perspectives introduce politics into the curriculum. The role of the lawyer in this view should be confined to identifying, interpreting and enforcing rules. However, a moment's reflection will tell us that the law-politics divide is entirely contrived<sup>12</sup>. The political nature of MILS can be seen from its complicity with the colonial and neo-colonial projects<sup>13</sup>. It can afford to be positivist and formalist in its orientation because its politics is to mask the fact that it is political. On the other hand, it is important to stress that the critical approaches do not deny the relative autonomy of the law or dismiss the idea of international rule of law or the distinctive nature of international legal argumentation<sup>14</sup>. With rare exceptions they are not rejectionists or nihilists by any stretch of imagination. What critical approaches do is to understand the world of international law from the standpoints of weak groups and communities in society. These approaches therefore do not take the doctrines, principles and practices of international law at face value. These are interrogated and deconstructed using among other things a genealogical perspective. Thereafter attempts are made to reconfigure them to serve the interests of the marginalized populations. To put it differently, the critical approaches seek to question the conceptual, doctrinal, and normative infrastructure of international law to assess whether these constrain or promote the realization of the regional/global common good. They help demonstrate that the doctrinal infrastructure is not part of the natural order of things but socially constructed over time by dominant social forces and actors within the global order. In short, in view of the fact that international law and institutions are doing little to advance the welfare of the bottom half of the global/regional population it is crucial to introduce the next generation of students of international law to critical sensibilities and methods that advance their cause. How the critical perspectives are introduced, whether through integrated or supplementary readings, can be left to the individual teacher; there is of course a need for imaginatively putting together materials that allow for deep learning. Likewise, the decision

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<sup>12</sup> Even many status quo oriented western approaches to international law have rejected the law-politics divide. A good example of such an approach is the New Haven or Policy Oriented Approach to International law. See B.S.Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (Cambridge University Press, Cambridge, 2017) pp.104-178.

<sup>13</sup> See the path breaking work of Antony Anghie, *Imperialism, Sovereignty and Making of International Law* (Cambridge University Press, Cambridge, 2003).

<sup>14</sup> Chimni, *International Law and World Order*, pp. 449-462.

on which perspective to choose should be left to the student; it is good arguments rather than opinions or dogmas that should be allowed to carry the day. But whether international law is taught from the mainstream or critical perspectives the student must be made familiar with both. In doing so there is also the need to systematically weave together history, theory, doctrines and empirics of international law to explore the past and present of international law; often a critical history of international law is followed by the unreflective teaching of mainstream doctrines. It is necessary that a coherent picture of international law emerges for the student of international law even if it is to stress the overall incoherence of the project of contemporary international law.

Before proceeding to schematically list out the theoretical and practical tasks before those teaching and researching international law in Asia there is a need to make another important point viz., in teaching or researching the theme of “Asia, international law and international institutions” there is a need to avoid the pitfalls of cultural essentialism, geographical determinism, and materialist reductionism for these greatly limit, if not misdirect, our efforts to understand it. As Amitav Acharya points out: ‘... (1) regions are not just material constructs but also ideational ones; (2) regions are not a given or fixed, but are socially constructed—they are made and remade through political, economic, social, and cultural interactions; and (3) just like nations states, regions may rise and wither’<sup>15</sup>. I have also elaborated elsewhere some of the reasons to avoid the indicated dangers:

On the cultural plane Asia represents a complex configuration of diverse and multiple cultures and untold interpretations of it. It is also shaped by millennia of interaction with other geographical regions of the world, lending and borrowing ideas. In fact the very idea of “Asia” is a product of that relationship. Therefore it would be erroneous to argue that cultural or geographical factors by themselves shape the attitudes of Asian States. The Asian approach is also mediated by deep material structures that include global capitalism and the sovereign state system. It has been especially impacted by colonialism whose lasting contribution includes the embrace of Westphalian logic and the transformation of the legal systems of many Asian nations. The political ecology of the times, constituted by historical developments like the October Revolution and the Cold War, have had their own role to play in shaping the response of Asian nations to international law and institutions. Besides these factors the national interests of individual Asian nations, determined by a range of internal factors, have a direct bearing on the question<sup>16</sup>.

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<sup>15</sup> Amitav Acharya, ‘Asia is Not One’, 69 (2010) *The Journal of Asian Studies* pp.1001-1013 at p.1001.

<sup>16</sup> B.S.Chimni, ‘Asia, International Law, and International Institutions: A Comment’, available at <http://opiniojuris.org/2017/01/17/asia-international-law-and-international-institutions-a-comment/>; Separate Opinion of Judge Weeramantry in Gabcikovo Nagymoros case, available at [https://www.google.com/search?ei=GqvdWqOiEcH-6ASd0aPICQ&q=Weeramantry+Gabcikov+Nagymoros+&og=Weeramantry+Gabcikov+Nagymoros+&gs\\_l=psy-ab.12..0i13i30k1.37508.40118.0.41945.2.2.0.0.0.123.226.0j2.2.0....0...1c.1j2.64.psy-ab.0.2.225...0j0i30k1.0.-](https://www.google.com/search?ei=GqvdWqOiEcH-6ASd0aPICQ&q=Weeramantry+Gabcikov+Nagymoros+&og=Weeramantry+Gabcikov+Nagymoros+&gs_l=psy-ab.12..0i13i30k1.37508.40118.0.41945.2.2.0.0.0.123.226.0j2.2.0....0...1c.1j2.64.psy-ab.0.2.225...0j0i30k1.0.-)

The situation is rendered more complex by the fact that different sub-regions have their distinct history of engagement with international law: the experience of South East Asia and East Asia is different from that of South Asia or for that matter Central Asia and West Asia. It is therefore important to keep the diversity of historical experiences in mind when talking of the theme of Asia and International Law<sup>17</sup>. Indeed, there is a strong case for writing sub-regional histories of international law in Asia. But at the least facile generalizations should not be advanced or vacuous conclusions drawn about the Asian region<sup>18</sup>. Thus, there is no single approach that can capture the attitude of Asia to international law and institutions over time<sup>19</sup>.

In the backdrop of these general remarks a number of specific tasks that confront the teacher and researcher of international law in Asia may be schematically identified.

First, it is important to excavate different legal traditions and practices within Asia to see how they can enrich the discourse of international law. These may be embedded in secular or religious traditions and discourses. Thus, for instance, it would be worth exploring the Buddhist, Hindu, Islamic and other religious traditions to see how these can contribute to strengthening progressive strands in international law<sup>20</sup>. This is what Judge Christopher Weeramantry did in the *Nuclear Weapons* case (1996) and the *Gabcikovo Nagymoros* case (1997) by referring to practices in non-western social, cultural and religious traditions in relation to observing the norms of

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<sup>17</sup> Diane A. Desierto, 'Postcolonial International Law Discourses on Regional Developments in South and Southeast Asia', 36 (2008) *International Journal of Legal Information* pp.387-431.

<sup>18</sup> It must also be remembered, as Shaw, Grant and Cornelissen observe, the study of regionalism is '... beset by rather stark divisions. These are determined by differential approaches as well as divergent scholarly, ontological, and epistemological positions on elemental aspects such as the nature and parameters of "regionality", the relationship between globalization and regionalism, and the contrasts and significance of the formal and informal sources of regions'. Timothy M. Shaw, J. Andrew Grant, and Scarlett Cornelissen 'Introduction and Overview: The Study of New Regionalism(s) at the start of the Second Decade of the Twenty-First Century', in Shaw et al eds., *The Ashgate Research Companion to regionalism* (Ashgate, UK, 2011) pp.3-31 at p.4.

<sup>19</sup> Simon Chesterman, 'Asia's Ambivalence About International Law & Institutions: Past, Present and Futures', 27 (2016) *European Journal of International Law* pp.945-978.

<sup>20</sup> See generally, H. Patrick Glenn, *Legal Traditions in the World: Sustainable Diversity in Law* (Oxford University Press, Oxford, 2014) Fifth edition. It needs to be emphasized that the idea of "tradition" is multivalent and complex and particular traditions are both internally and externally contested. There are no singular interpretations that capture the course or essence of any tradition. Each tradition can harbor problematic and progressive elements.

international humanitarian law and the protection of environment respectively<sup>21</sup>. Such efforts help evolve a truly multi-civilizational and thereby a universal approach to international law<sup>22</sup>.

Second, an urgent task confronting researchers is to extensively document the state practice of Asian nations so that these begin to count in the shaping of international law, especially customary international law<sup>23</sup>. A serious effort has to be made in this direction as hitherto the state practice of many nations has not been systematically collated and classified. It is essentially the duty of individual states to undertake this exercise but the academia can complement the effort. A case can also be made out for assigning a part of the task to a suitable regional body such as the Asian African Legal Consultative Organization (AALCO). It could for instance help prepare digests of international law cases decided by domestic courts in the region. But it would have to be given the necessary financial resources to take up this task. Finally, it is important from a critical perspective to explore the possibility that the “practice” of civil societies can also be brought to bear on the making of customary international law<sup>24</sup>.

Third, it is crucial to produce textbooks that include and reflect on the thinking and practices of Asian States and peoples. The overall objective is to decolonize international law. At present either western textbooks are being used which rarely make a reference to the practice of Asian States, and more generally third world nations, or local textbooks which (with honorable exceptions) mimic these texts and are often of a poor quality. It is important to remember that only a handful of students who take a basic law degree pursue higher studies in the field of international law. Consequently there are few opportunities at a later stage to correct or enhance the knowledge they have received. In the event they continue to use the partial or flawed knowledge gained at the undergraduate level to address issues of international law in their professional lives. It is therefore crucial to use textbooks that impart national, regional and critical knowledge at the undergraduate level so that the appropriate knowledge can reach the widest section of law professionals. Ideally, the textbook should offer a glimpse into the practice of all regions of the world.

Fourth, given the fact that international law has exponentially expanded in the last three decades it is also important to produce textbooks in emerging fields that are slowly turning into separate sub-disciplines. These include International Environmental Law (IEnL), International Economic Law (IEL), International Human Rights Law (IHRL), International Humanitarian Law (IHL), International Criminal Law (ICL) and International Air and Space Law (IASL). These

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<sup>21</sup>Dissenting Opinion of Judge Weeramantry, Nuclear Weapons Advisory Opinion is available at <http://www.icj-cij.org/files/case-related/95/095-19960708-ADV-01-12-EN.pdf>

<sup>22</sup> See ONUMA, Yasuaki, *A Transnational Perspective on International Law* (Martinus Nijhoff Publishers, Leiden, 2010).

<sup>23</sup> See generally, B.S.Chimni, “Customary International Law: A Third World Perspective” *American Journal of International Law* (2018) pp.1-45.

<sup>24</sup> *Ibid.*, pp.42-43.

fields deserve sustained attention of Asian scholars to bring out the perspective of Asian nations and scholars. It is crucial in this regard that law schools in the region develop expertise in the areas by recruiting specialized faculty. Unfortunately, at present the law schools in the region, to the best of my knowledge, take even the teaching of basic international law casually. The subject is assigned to almost anybody whether or not the concerned faculty member has the requisite competence. This situation has to change.

Fifth, there is a need to foster the study of international organizations (IOs) as these are not only proliferating but coming to occupy a significant position in structures of global governance. While currently many IOs such as WTO are facing rough weather because of the attitude of US their role is unlikely to reduce in the near future. It cannot be otherwise in a world in which the activities of nearly 200 states have to be coordinated in any area. The role of regional organizations such as Association of South East Asian Nations (ASEAN) and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) is also steadily growing. To understand the role of IOs in the global order formalist studies do not suffice. As in the case of international law new approaches to IOs have been articulated centering inter alia on class, gender, and race that are critical of liberal internationalism as well. The students need to be introduced to them<sup>25</sup>.

Sixth, it is important to teach and research issues that are of particular importance to the Asian region. These include the ongoing disputes between states in the Asian region; the working of Asian institutions such as ASEAN and SAARC; the ways in which cooperation among Asian nations can be enhanced; the contribution of Asia and Asian jurists to international law; the role of Asian and national societies of International Law; and of course the history of international law teaching in Asia. There are a range of common problems that confront Asian nations that include poverty, climate change, cyber threats, disaster management, maritime issues and terrorism. These need to be researched from the perspective of identifying adequate responses. New initiatives such as the Comprehensive and Progressive Agreement for Transnational Pacific Partnership (CPTPP), Regional Comprehensive Cooperation Agreement (RCEP), One Belt One Road (OBOR) and the BRICS Institutions such as the New Development Bank (NDB) and the Asian Infrastructure Investment Fund (AIIF) also call for intensive studies. It is fortunate that the numbers of journals on international law in Asia in which research can be published have increased in recent times, albeit more are required<sup>26</sup>.

Seventh, the world of international law is facing many challenges flowing from new scientific and technological developments. There is an urgent need to adopt suitable regulatory

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<sup>25</sup> B.S.Chimni, 'History of International Organizations: 1945-2013', in Ian Hurd et al eds., *The Oxford Handbook on International Organizations* (Oxford University Press, New York, 2016) pp.113-130.

<sup>26</sup> The *Asian Journal of International Law* and *Chinese journal of International Law* have joined older journals such as the *Indian Journal of International Law* to increase space for publishing articles that pertain to the Asian region. Indeed, every nation in the region has a journal on international law, and some more than one.



regimes so that these not only benefit ordinary citizens but also respect their fundamental human rights. It is therefore important to introduce the student to, and to research, the social and legal issues arising from technologies such as nanotechnology, digital technology, artificial intelligence etc. The international regimes in the area are in their infancy. It is important that Asian states and scholars actively participate in the ongoing debates to safeguard the interests of weak states, peoples, and groups. It is greatly more difficult to have their interests safeguarded once the legal regimes congeal. For instance, international law experts from NATO nations have developed a manual on international law applicable to cyber operations to safeguard their individual and collective interests<sup>27</sup>. A similar exercise should have also been undertaken by Asian and third world nations to avoid being perpetual norm followers.

Eighth, there is a need to explore areas of international law where the Asian response or practice has been different from other regions: the two areas that immediately spring to mind are that of international refugee law and international human rights law. In both instances Asia does not have a regional instrument, albeit, there is a human rights instrument at the sub-regional level viz. the ASEAN Declaration on Human Rights (2012)<sup>28</sup>. Instruments such as the Bangkok Declaration on Human Rights (1993) also deserve to be analyzed. In the instance of refugee law only six Asian states are party to the 1951 UN Convention on the Status of Refugees viz., Afghanistan, Cambodia China, Japan, Philippines, and South Korea. Among the questions that need to be addressed are the social and cultural factors that shape existing responses of Asian nations. Among the hypotheses that can be explored are whether Asian cultures place less emphasis on law in achieving social objectives or whether Asian nations are of the view that refugee and human rights regimes facilitate the pursuit of western interests.

Ninth, there is a need for popular dissemination of international law. This is a significant task as contemporary international law has a deep impact on everyday life. Every section of the people, from the peasant to the patient, is affected by its norms and institutions. It is therefore extremely critical to make the ordinary citizen aware of the functioning of the international legal system and their rights under domestic and international laws, and the ways in which, to contest both the process of arriving at and the outcomes of particular regimes. We need to use all means including street theatre and audio-visual programs to promote awareness of the significance of international law to quotidian life. It would help in this regard to publish articles in local languages to explain the workings of international law and institutions.

Tenth, the teaching and research of international law needs to be informed by the story of resistance to particular regimes or institutions. Its telling should be an integral part of the pedagogic and research exercise. The vision of ordinary peoples of Asia, as reflected in their opposition to

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<sup>27</sup> *Tallinn Manual 2.0 on the International Law Applicable to Cyber Nations* (Cambridge University Press, Cambridge, 2017) Second edition.

<sup>28</sup> ASEAN Human Rights Declaration (2012) is available at <http://asean.org/asean-human-rights-declaration/>

particular norms, regimes and institutions, must be made a part of the teaching and research of international law<sup>29</sup>. It can often mean violating protocols of established scholarship traditionally bound to methodological positivism. It is good to remember that the rich and dominant sections have professional bodies and law firms to voice their views and concerns. In the case of weaker groups or the transnational or regional oppressed classes it is the academia that has a responsibility of capturing their voices so that these can inform the process of international law.

Eleventh, there is a need to commemorate and bring to the notice of the students and ordinary citizens landmark developments in the region. Thus, for instance, it is important that we commemorate historic events like the Asian Relations Conference (1947) and Bandung Conference (1955) which retain their relevance even six decades later<sup>30</sup>. These conferences were about, among other things, opposing all forms of hegemony and facilitating greater interaction and cooperation between Asian peoples and nations. In this context it is important to reject the idea that ‘primitive is local, the modern global’, i.e., there is a need ‘to break the “local=past/global=present” lockstep of space and time’ that is generally assumed in discussing relations among Asian peoples and nations<sup>31</sup>. The relationship between Asian peoples was intensive for over a millennia and only came to be interrupted briefly in the colonial era. Their interactions were also governed by rules of international law, however rudimentary. What was also remarkable is the absence of pervasive violence and wars witnessed in Europe. This history also deserves to be written.

Lastly, there is a need to articulate alternative visions of the future of the global order and the role of international law in it. Asian traditions need to be brought to bear on the ongoing conversation on alternative futures. In the instance of India Sri Aurobindo produced a vision for the future of world order that deserves study<sup>32</sup>. To take another example, in the famous Quit India Resolution adopted by the All-India Congress Committee led by Mahatma Gandhi on 8<sup>th</sup> August 1942 calling for ‘the immediate ending of British rule in India’ there is the following passage:

...the Committee is of opinion that the future peace, security and ordered progress of the world demand a world federation of free nations, and on no other basis can the problems of the modern world be solved. Such a world federation would ensure the freedom of its

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<sup>29</sup> B.S.Chimni, ‘Third World Approaches to International Law: A Manifesto’ in Antony Anghie, Bhupinder Chimni, Obiora Okafor and Karen Mickelson eds., *The Third World and International Order: Law, Politics and Globalization* (Martinus Nijhoff, Leiden, 2003) pp. 47-75 at pp.65-68.

<sup>30</sup> See Luis Eslava, Michael Fakhri and Vasuki Nesiah eds., *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge University Press, Cambridge, 2017).

<sup>31</sup> Engseong Ho, ‘Inter-Asian Concepts for Mobile Societies’, *The Journal of Asian Studies* 76 (2017) pp.907-929 at p. 908.

<sup>32</sup>B.S.Chimni, ‘Retrieving ‘Other’ Visions of the Future: Sri Aurobindo and the Ideal of Human Unity’, in Branwen Gruffyd Jones ed., *Decolonizing International Relations* (Rowman and Littlefield, Lanham, 2006) pp.197-219

constituent nations, the prevention of aggression and exploitation by one nation over another the protection of national minorities, the advancement of all backward areas and peoples, and the pooling of the world's resources for the common good of all. On the establishment of such a world federation, disarmament would be practicable in all countries, national armies, navies and air forces would no longer be necessary, and a world federal defense force would keep the world peace and prevent aggression<sup>33</sup>.

There is little doubt that alternative visions are part of the inheritance of all Asian countries. There is a need to explore them in order to enrich the options for alternative futures<sup>34</sup>. There is also a need in this light to articulate an alternative practice of international law. Thus, for instance, in relation to dispute settlement in international law through international tribunals there is a need to rethink the process of nominating and electing judges, the evidences that need to be presented and considered (including amicus curiae briefs), the capacity of third parties to intervene, and institutionalizing some form of public interest litigation. In other words, there is vast room for improving access to and quality of the functioning of international tribunals.

In conclusion I wish to stress the need for ‘the formation of democratic research [and pedagogic] communities’ of international law to ensure cognitive reciprocity and justice between and inside regions<sup>35</sup>. In order to fulfil the tasks before international law teachers and researchers in the Asian region there needs to be much greater interaction between them. But ironically time-space compression in the era of globalization has often meant that the ‘the faraway has been brought closer, what was nearby has become distant’<sup>36</sup>. There is often greater interaction with international lawyers afar than those in the region. The formation of pedagogic and research communities in the region is thus an urgent necessity. These communities can help produce counter-narratives to MILS and in the process render international law truly universal. The pedagogic and research communities can through their critical interventions also help in democratizing relations between Asian nations; hegemony inside the region has to be rejected as firmly as hegemony between regions. The Asian Society of International Law (AsSIL) and Society for the Development of International Law in Asia (DILA) provide two regional forums for achieving these ends. What we need are more conferences and workshops organized by law schools in the region. I hope that this excellent conference organized by the National University of Singapore (NUS) is followed by many others. For we need ceaseless effort to advance and realize an Asian vision of international law that promotes the goals of regional/global democracy

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<sup>33</sup> Cited in Priya Chacko, *Indian foreign policy: the politics of postcolonial identity from 1947-2004* (Routledge, New York, 2012) p.65.

<sup>34</sup> See Pracha Hutauwatr and Ramu Manivannan eds., *The Asian future: Dialogues for Change* (Zed Books, London, 2005) vols. 1 and 2

<sup>35</sup> Appadurai, Arjun (1999) "Globalization and the research imagination", *International Social Science Journal*, no.160 pp.229-238.

<sup>36</sup> Marco D'ramo, 'Geographies of Ignorance', *New Left Review* 108 Nov/Dec 2017 pp.43-45 at p.43.

and regional/global justice. In the final analysis the destiny of all nations and peoples are inextricably linked.

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