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## Curricula for Teaching of International Law in Asia – Any Asian Perspective?

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### INTRODUCTION

THE international conference on the teaching and researching of international law in Asia, that met in Singapore on 30 and 31 July 2001 under the auspices of the Society of International Law Singapore (SILS) and the Foundation for the Development of International Law in Asia (DILA), had a session to discuss what curricula should be designed for the teaching of international law in Asia. At the session I made a brief observation from the point of view of the cultural basis of international law. My point was that the designing of curricula for the teaching of international law in Asia should take account, in one way or another, of the Western-oriented history of modern international law.

What specific curricula can be developed for the teaching of international law in Asia? Would it have, or is it desirable or even necessary for it to have, any peculiar Asian characteristics? This is a serious question for international law, since it is considered as being of a general or universal nature and applicable to all States. If one thinks there is a rationale for some characteristics peculiar to Asia, one might run the risk of denying the generality or universality of international law.<sup>1</sup> On the other hand, it is an obvious truism that international law originated in Western Europe and therefore was traditionally Euro-centric in nature.<sup>2</sup> It has nevertheless encountered

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1 See the *Asylum* case, where the alleged existence of a regional or local customary law peculiar to Latin American States was denied by the International Court of Justice. *ICJ Reports* 1950, pp 276-278. See also Verzijl, JHW, *International Law in Historical Perspective*, Vol I, (Leyden: AW Sijthoff, 1968), p 446, where the author is likewise dubious of such an alleged regional or local customary rule of law: 'a certain tendency to build up a continental American law of nations, which might be regarded as in the nature of a marginal note to the universal law, but whose exact contents and validity is, for the rest, highly problematical as seen in the light of the recent Haya de la Torre case between Peru and Colombia.'

2 See, for example, Moser, Johann Jakob, *Versuch des neusten europäischen Völkerrechts in Friedens- und Kriegezeiten*, 10 vols, Frankfurt am Main: Varrentrap Sohn & Wenner, 1777-1780, which specifically refers to 'the latest European'

numerous trials and errors, and various challenges from the other regions of the world, including some ideological ones, over the last hundred or so years.

Yet one may feel justified in thinking that it retains some Euro-centric inclination even today, in view of the fact that Western European States continue to produce massive legislation and numerous judicially settled cases in the framework of the European Union, although they are as a matter of form confined to their regional mechanism. These are *prima facie* European in their restricted framework, but can be claimed to be applicable *mutatis mutandis* in the broader context in which States from other regions are involved. One may easily find references to EU legislation or cases decided by the European Court of Justice, as well as those decided by the European Court of Human Rights, and even some domestic court decisions in the footnotes in some English or French textbooks or articles on international law.<sup>3</sup> Such references are used as testimony to their authors' arguments of international law.

These thoughts make it necessary to re-appraise the nature of international law from a broader perspective. What follows is an expanded discussion of the same thesis that I presented at the conference with some additional thoughts on it.

### I. CHALLENGES TO THE GENERALITY OF INTERNATIONAL LAW

The advent of the Marxist theory of law that came with the Soviet revolution afforded the first major challenge to traditional international law. Although it did not succeed in every way in replacing the traditional rules of international law, the Soviet interpretation of international law made the traditionalist aware and careful about possible further inroads from it. A tug-of-war, as it were, ensued between the traditional and the Soviet theories of international law over the next several decades, and there appeared a new trend of anti-colonialism and consequent claims for a new international economic order towards the end of the period. Both of these were negative towards the traditional general validity of international law for ideological and political reasons.

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international law. This may perhaps have been done with the author's scholarly conscience of confining his discussion to what he was able to find out in his research, but may at the same time bear witness to the European indifference to what was going on in other parts of the world in those days.

3 A look at the 'Table of Cases' of, for example, Brownlie's textbook will suffice to endorse this point. Brownlie, Ian, *Principles of Public International Law*, 4th ed, Oxford: Clarendon Press, 1990, pp xxxi-xlv, which, of course, includes cases decided by international tribunals besides domestic court cases.

Is traditional international law then truly general and free from any bias or policy considerations? There is no doubt that modern international law originated in Western Europe and expanded to the other parts of the world, first across the Atlantic Ocean to the Western Hemisphere in the eighteenth and nineteenth centuries and then to the East in the nineteenth century and eventually to the South in the twentieth century. In this process of expansion, it encountered a variety of challenges but it has nevertheless successfully built up a detailed system with which to lead the entire world. It has a carefully worked-out and solid structure, all the more because it has come through numerous tests in the process of its development.

It is true that there are differences not only in general legal thinking but also in the philosophy of international law between the Anglo-American countries and the Continental countries, and arguably even between the Anglo-American philosophies of international law.<sup>4</sup> But the traditional theory of international law as a whole, which has been applied in all such developed countries, has had a *prima facie* consistent system.

Recently another category of criticism of the generality of international law is criticism from a cultural point of view. It may be seen, for example, in the symposium on 'Judicial Settlement of International Disputes' sponsored by the Max-Planck Institut für ausländisches öffentliches Recht und Völkerrecht in Heidelberg, Germany in 1972.<sup>5</sup> In this symposium some of the salient differences in national or regional attitudes towards dispute settlement were pointed out by participants. Some of them advocated the conciliatory way to settlement as practised in Afro-Asian countries in lieu of the traditional adversarial adjudication in the Euro-American countries.<sup>6</sup> Also in the workshop on 'The Future of International

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4 See, for example, 'Diverging Anglo-American Attitudes to International Law,' (1972) 2 *Georgia Journal of International and Comparative Law*, Suppl 2.

5 Mosler, Hermann & Bernhardt, Rudolf (eds), *Judicial Settlement of International Disputes: International Court of Justice, Other Courts and Tribunals, Arbitration and Conciliation - An International Symposium*, Berlin/Heidelberg/New York: Springer Verlag, 1974, XII + 572 pp.

6 See, for example, the statement made at the 'Discussion' session by Shabtai Rosenne: 'The Chinese concept of a civilized society placed far greater importance on conciliation than on judicial settlement. This conception was increasingly in evidence the further one went eastwards from the Mediterranean. And if the International Court was to be a truly international court, it must absorb into its intellectual reservoir some of these other ideas about how a court fitted into different mechanisms or formulae for the settlement of disputes.' *Ibid*, p 157. See also, for a similar argument, Jean Salmon's intervention, *ibid*, p 167. The 'Final Remarks' by Rudolf Bernhardt, acknowledges the tenor of these statements. *Ibid*, p 189.

Law in a Multicultural World,' co-sponsored by the Hague Academy of International Law and the United Nations University in 1983,<sup>7</sup> extensive discussion was made of cultural differences and the general validity of international law, including methods of dispute settlement.<sup>8</sup>

Some cultural discussions may perhaps be quoted here from the 1983 workshop in The Hague, as this deals with cultural aspects in more general terms than the 1972 symposium in Heidelberg which focuses on dispute settlement. According to Adda B Bozeman, 'the world's law-related customs and values are too diverse to be homogenized into one body of authoritative international law.'<sup>9</sup> H Sanson asserts that 'whether it be State or individual, the way in which one's interest is appreciated is always made by a cultural judgment.' 'As the economy is never neutral, the way to organize it is always influenced by culture.'<sup>10</sup> B Johnson Theutenberg, when discussing rights to territories, air space, the sea, *etc* in modern occidental international law, traces them to the ownership-oriented trend in Roman private law, and says that it is 'actually an idea that has survived until now in Euro-centric law, internal as well as external.'<sup>11</sup>

H Saba, former Under Secretary-General of UNESCO, clarifies the Western orientation of the Universal Declaration of Human Rights of 1948. This was made even clearer at an Oxford Round-Table sponsored by UNESCO in November, 1965, and attended by Westerners, Marxists, Buddhists, Hindus, Confucians, Islamists, and Africans. Its mandate was to see 'si, dans les sociétés différentes dont les valeurs semblent divergentes et même opposés, il n'existe pas cependant une base commune à toute pensée ou du moins des équivalences susceptibles

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7 Dupuy, René (ed), *The Future of International Law in a Multicultural World*, The Hague/Boston/London: Martinus Nijhoff, 1984, XVIII + 491 pp.

8 Discussing 'Western European Influence on the Foundation of International Law,' JHW Verzijl has this to say: 'International law as it now stands is essentially the product of the European mind and has practically been 'received,' as was Roman law in an earlier era, lock, stock and barrel by American and Asian States. This historic manifestation is accentuated by the fact that we see the new constellations of Asian States operating with legal concepts extracted from, or lying at the basis of, modern international law without having first duly mentally digested them, which necessarily results in the distortion and misunderstanding of elementary legal issues such as the limitations of national sovereignty and the sphere of domestic jurisdiction.' Verzijl, *supra* note 1, pp 442-443.

9 Bozeman, Adda B, 'An Introduction to Various Cultural Traditions of International Law - A Preliminary Assessment,' in Dupuy, *supra* note 7, p 103.

10 Sanson, H, intervention, *ibid*, p 204.

11 Johnson Theutenberg, B, 'Different Trends of the International Legal System of Today,' *ibid*, p 267.

à être analysées.' Its conclusion states, in part: 'la Déclaration universelle a été fortement influencée par la tradition occidentale des droits de l'homme et notamment par les Déclarations des droits qui furent proclamées en Europe occidentale et aux Etats-Unies. La forme et la terminologie de la Déclaration universelle, la place accordée en son sein aux droits civils et politiques et aussi aux garanties de ces droits témoignent de cette influence.'<sup>12</sup> In his intervention, SE Nahlik stresses the need for cultural, rather than economic, discussions.<sup>13</sup>

Finally René-Jean Dupuy, in his summary, contrasts the Western and non-Western approaches to dispute settlement: 'In the West, the settlement of disputes supposes the ambition to find a definitive solution, and recourse to the judge seems to be the best method, whereas Asian traditions show some reluctance for this method which proceeds from that felt against the law, considered as 'regrettable make-shift'. In this field, African attitudes are similar – preferring a settlement reached by means of conciliation, even if the solution must not be definitive. The same thing applies to the notion of contract, which is fundamentally more rigid in modern Western conceptions than in the Far-East, where the search for harmony must prevail over rigorous respect for the contract, or in the Islamic and African systems, where considerations of equity adapt the contract to circumstances.'<sup>14</sup>

These statements, though picked up at random, show the significance of the hidden cultural background to the rules of international law. The point may be made from another angle, as was done by Sompong Sucharitkul when he distinguished 'tolerance' and 'acceptance' in his presentation at the same workshop. 'Tolérer ne veut pas dire accepter,' he says, 'ni acquiescer. En réalité, la tolérance pacifiste ne peut être interprétée que comme une forme de politesse d'une expression de désapprobation tacite, et en nulle manière ne pourrait être considérée comme acquiescement ou acceptation d'une telle ou telle règle ou d'une telle ou telle pratique ou usage coutumier.'<sup>15</sup> Indeed, the argument that tolerance is not acceptance was presented in the *Temple of Preah Vihear*

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12 Saba, Hanna, 'La Charte Internationale des Droits de l'Homme, Son Élaboration et Son Application dans un Monde Multiculturel,' *ibid*, pp 332, 333. For further elaboration on this point, with reference to the supremacy of collectivism over individualism in Hinduism and Confucianism, and in China and Japan, see *ibid*, pp 333-335.

13 Nahlik, SE, intervention, *ibid*, pp 378-379.

14 Dupuy, René-Jean, 'Conclusions of the Workshop', *ibid*, p 475.

15 Sucharitkul, Sompong, 'L'Humanité en tant qu'Élément contribuant au Développement progressif du Droit international contemporain,' *ibid*, p 418.

case (Merits) of 1962 before the International Court of Justice. A crucial point was whether Thailand's absence of protest against the occupation of the Temple by the French troops on behalf of Cambodia, the French colony, constituted acquiescence in the Cambodian claim to sovereignty over the Temple. It concerned the incident of a visit of the Thai Prince Damrong to the Temple in 1930 in the presence of the French Resident of a neighbouring Cambodian province on the scene in his official uniform with decorations and the appearance of the French flag on a pole in front of his pavilion. The Thai Prince did not make a protest on the spot nor ask his Government to lodge one in Bangkok, although in the affidavit of one of his daughters who accompanied him it was stated that he privately considered the hoisting of the French flag and the French officer's uniform to be 'impudent'. The Prince even sent a letter of thanks and some photographs taken by him during his visit to the Temple to the French Minister for transmission to the French authorities in Indo-China. This incident was interpreted by Judge Wellington Koo, in his dissenting opinion, to mean 'no more than a customary act of Oriental courtesy',<sup>16</sup> in other words an instance of tolerance, rather than acceptance or recognition of the Cambodian claim to sovereignty.

The whole picture of our discussion is not complete, however, without referring to contrary views. Although not altogether denying cultural influence in the rules of international law in the past, RP Anand quotes Wolfgang Friedmann in asserting that what may look like cultural challenges to traditional international law are quite often in fact challenges from national interests.<sup>17</sup> Manohar L Sarin, mainly discussing the legislative work of the Asian-African Legal Consultative Committee, stresses the superiority of needs and interests in development over cultural or religious influences. He states: '... the cultural factors and values have hardly any impact on the attitudes taken by the developing countries on many questions of modern international law. The majority of the States of Latin America, Asia and Africa, despite having completely different historical, religious and cultural backgrounds respectively,

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16 *ICJ Reports* 1962, p 90, para 33. On the failure to ask the Government to lodge a protest, a further point may be made from a historical perspective: as one of Prince Damrong's daughters stated, 'It was generally known at the time that we only give the French an excuse to seize more territory by protesting. Things had been like that since they came into the river Chao Phrya with their gunboats and their seizure of Chanthaburi.' *Ibid*, p 91, para 34.

17 Anand, RP, 'The Role of Asian States in the Development of International Law', in Dupuy, *supra* note 7, pp 112-113.

have an identical attitude towards most of the questions of international law. The main link between the developing countries is definitely one of common interests in their contemporary situation.<sup>18</sup> It is not hard to accede to this view since the newly independent States in Asia and Africa would have had understandably stronger political or economic motivations for their participation in formulating new rules of international law. But if legislative work of those States is done in this way, it is rightly or wrongly another matter for them to interpret and apply it in a given context, as some participants in the 1983 workshop testified.

## II. WHAT IS DISTINCTLY ASIAN CULTURE?

If the teaching of or research in international law in *Asia* is to be discussed, it may be assumed that some cultural aspects of Asia as a region of the world should be taken up. Are there then any common cultural traits in Asia that are distinct from cultural traits in other parts of the world? A Japanese master of art, Okakura Kakuzo (or Tenshin) once said, 'Asia is one.'<sup>19</sup> This was not an objective description but rather a rhetorical statement with ideological connotation. If there is nothing like oneness of Asia as Okakura says, then, are there any cultural factors or values, if not identical but with some diversity, peculiar to Asia? This question is the same thing as asking if there are any peculiar cultural values to be taken into account in, for example, the Caribbean or Scandinavian countries in the application of international law. These thoughts lead one to conclude, if temporarily, that there cannot officially be regional interpretation or application of international law.<sup>20</sup>

Only if one can find a cultural value or values which does or do indeed affect the interpretation or application of international law, thus making it deviate from its generality, can one say with certainty that there is or are peculiarly regional cultural value or values. Is there in reality any such value or values in Asia which can absolve Asian States from responsibility in the event of their non-observance of a treaty based on their special interpretation of it? It is rather doubtful that there are any such cultural characteristics peculiar to Asia only.

This, however, is not the end of the matter. What counts in fact is whether any complaint may not be felt in the formation of new rules

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18 Sarin, Manohar L, 'The Asian-African States and the Development of International Law', *ibid*, p 137.

19 Okakura, Kakuzo, *The Ideals of the East*, Tokyo: Kenkyusha, 1941, p 1.

20 Cf *supra* note 1.

of international law. Experience shows that if one participates in the formation of rules applicable to oneself, one is likely to refrain from complaining of their application. Have the Asian countries participated fully in the formation of rules of international law in the past, and are they doing so today? Since one cannot turn back the clock to reverse the history of the Asian countries having had to see rules of international law formed by the Euro-American Powers during the nineteenth and early twentieth centuries, practically one could only hope that they will be well aware of the importance of active participation in the process of international law-making from now on.

The Statute of the International Court of Justice, Article 9, lays down that among the members of the Court 'the representation of the main forms of civilization and of the principal legal systems of the world should be assured.' This is admittedly a fair consideration to ensure a balance of cultural backgrounds among the fifteen elected judges. Strictly speaking, however, the whole idea is based on the assumption that the 'main forms of civilization' and the 'principal legal systems' of the world are established. But are civilisations and legal systems completely established and therefore incapable of any more evolution? What if some particular civilisation or legal system evolves faster than others? Take, for example, the ever-increasing legislative work in the framework of the European Union – laws and regulations as well as directives – and the equally growing jurisprudence of the European Court of Justice and the European Court of Human Rights. As a matter of form, these are the product of those concerned applicable to them only, to be sure. But as matter of fact these are often quoted or cited in the context of international law arguments by practitioners and academics, making them seemingly applicable, and even sanctioned, in one way or another outside the realm of the European Union. Should such a process of virtual application of the European product continue, it could make a generally applicable rule of international law. What if the States in the other parts of the world stay idle or dormant while such a process is going on?

Cultural considerations play a certain role in the application of international law.<sup>21</sup> Typically they can affect the interpretation of a certain word or words not only in a multilateral treaty but also in a bilateral treaty. But as Guy de Lacharrière rightly pointed out in

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21 See, for example, René David's intervention in the 1983 workshop in which he argues that the interpretation of a term or clause varies under different legal systems. Dupuy, *supra* note 7, pp 352-355.

his presentation at the 1983 workshop,<sup>22</sup> the influence of cultural factors, if implicit, would be more important in the phase of production of the treaty than in its phase of application. Once a wording is adopted and later authenticated by the parties to the treaty, it constitutes a part of the authentic text from which no derogation is permitted. This is the reason why States have placed increasing importance on the work of the International Law Commission of the United Nations, which 'shall have for its object the promotion of the *progressive development* of international law and its codification.'<sup>23</sup> (Emphasis added) In view of the usage of the terms of 'progressive development' and 'codification' under Article 15 of the Statute,<sup>24</sup> the Commission's function of promoting the *progressive development* of international law means the more positive power including the function of creating law, rather than merely putting in written form the already existing unwritten norm.

The importance of positive action in the process of legislative work is afforded by the fact that the 'right to freedom of thought, conscience and religion' which under the Universal Declaration of Human Rights of 1948 includes 'freedom to change his religion or belief' is not included in the International Covenant on Civil and Political Rights of 1966.<sup>25</sup>

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22 Ladreit de Lacharrière, Guy, 'Le Point de Vue du Juriste: La Production et l'Application du Droit International dans un Monde Multiculturel,' *ibid*, p 74. From his long experience at the French Foreign Ministry he discussed the application phase of treaties abundantly.

23 Art 1 of the Statute of the International Law Commission.

24 Art 15 of the same Statute provides: 'In the following articles the expression 'progressive development of international law' is used for convenience as meaning the preparation of draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States. Similarly, the expression 'codification of international law' is used for convenience as meaning the more precise formulation and systematization of rules of international law in fields where there already has been extensive state practice, precedent and doctrine.'

25 Art 18 of the Universal Declaration on Human Rights provides: 'Everyone has the right to freedom of thought, conscience and religion; this right includes *freedom to change his religion or belief*, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.' (Emphasis added) Art 18 of the International Covenant on Civil and Political rights reads: '1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include *freedom to have or to adopt a religion or belief of his choice*, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.' (Emphasis added)

This change was made at the demand of Islamic countries.<sup>26</sup> In other words, the strong opposition of Islamic countries to the idea of any possible change of faith against the will of the individual concerned contributed to redrafting the relevant article in the legislative process. Indeed, as the sphere of application of international law extends in the world today of diverse cultural backgrounds, States ought to have corresponding opportunities to participate in the production of international law.<sup>27</sup>

### III. WHAT ARE THE IMPLICATIONS FOR DESIGNING CURRICULA OF INTERNATIONAL LAW FOR ASIA?

What lesson, if any, could be drawn from the preceding discussions for designing curricula of international law for Asia? It is well in the first instance to confirm the obvious truism: modern international law originated in Western Europe and expanded its sphere of application to the Western Hemisphere in the late eighteenth century, towards the East in the mid-nineteenth century and to Africa in the twentieth century, enriching itself with new factors added to it from the new participants with different cultural and historical backgrounds while retaining its traditional principles intact at its centre during the process.

A second point that may be taken into account in developing curricula of international law is the fact that one and the same expression in a treaty may often turn out capable of plural or diverse interpretations in its application according to the different cultural backgrounds of the interpreters. Different interpretations have often been the cause of international disputes brought before international arbitral or judicial tribunals. They may not be based on cultural differences but rather on conflicting economic interests. However that may be, students must be taught that one's interpretation may possibly be made quite unconsciously of one's cultural background and may not be the correct one: other interpreters with different points of view, cultural or otherwise, may not agree with one's interpretation. As international law is not

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26 Saba, *supra* note 12, pp 336-337, where he says: 'Quoi qu'il en soit un certain nombre de droits proclamés en 1948 ne sont pas repris dans les instruments de 1966. Il en est notamment ainsi du droit à la propriété, du droit d'asile, du droit à une nationalité. *A la demande des pays musulmans*, l'article du pacte relatif aux droits civils et politiques consacré à la liberté de pensée ne se réfère expressément plus au droit de changer de religion.' (Emphasis added)

27 Sucharitkul, Sompong, *supra* note 15, p 426, where he says: 'Au fur et à mesure que le droit international étend son application dans le monde toujours multiculturel, de plus en plus les voies s'ouvrent pour la participation de tous les groupes humains à la rédaction et à l'adoption des règles de droit international.'

'value-free' in the sense that physics or chemistry is, says Oscar Schachter,<sup>28</sup> it is important to keep in mind the 'malentendus' based on different cultural values in the interpretation of facts and law. An extremely instructive comment on the working of the International Court of Justice was recently made by Judge Sir Robert Jennings. While discussing its collegiate character, he refers to a Judge's individual opinion based on his cultural value judgment: '... in a Court which is supposed by Article 9 of its Statute to represent 'the main forms of civilization and ... the principal legal systems of the world', it is right and proper that a Judge should be able to comment on the Court's decision in terms of the form of civilization and of the legal system that he represents. He can, so to speak, both interpret it for that part of the world, and even lend an additional and peculiar authority to it. Certainly a dissenting opinion may also weaken rather than add to the strength of a judgment. This possibility is the price that has to be paid.'<sup>29</sup>

A cultural gap in expertise in the handling of international legal proceedings is another point worthy of consideration in respect of the application of international law. A glimpse of just a few recent cases of maritime boundary delimitation suffices to show how many foreign lawyers, British and French among them, have worked as counsel for one or both parties before the International Court of Justice and a couple of arbitral tribunals. In discussing cultural influence, Lyndell Pratt has this to say: 'The strong influence of the British and French legal systems on the practice of the International Court generally is plainly evident. The law to be applied was of course early influenced by the concepts native to those systems.... Their long diplomatic and arbitral experience (*cf* Britain's pioneering participation through the Jay Treaty of 1794 and the Alabama Arbitration of 1872) led to a similarly strong influence on matters of procedure and evidence. The use of French and English by history and tradition, as the languages of most international tribunals, led of course to the introduction of certain legal concepts of these systems such as those of 'equity' and 'ordre public' quite early in the history of international jurisprudence.'<sup>30</sup>

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28 Schachter, Oscar, 'The Role of the Institute of International Law and Its Method of Work – Today and Tomorrow: Special Report', Institut de Droit International, *Livre du Centenaire 1873-1973: Evolution et perspectives du droit international*, Basel: S Karger, 1973, p 412.

29 Jennings, Robert Y, 'The Collegiate Responsibility and Authority of the International Court of Justice,' in Dinstein, Y (ed), *International Law at a Time of Perplexity,* Dordrecht/Boston: M Nijhoff, 1989, p 350.

30 Prott, Lyndell V, *The Latent Power of Culture and the International Judge*, Abingdon, Oxon: Professional Books, 1979, p 203.

If that is an aspect of the application of international law that may be borne in mind, one would do well to be fully aware of the crucial importance of the participation in the process of international law-making, which the majority of States in Asia missed out on doing before their achievement of independence. This point should also be taught to students. It must be warned with haste, however, that such a suggestion is not meant for instigating the young heart to possible rebellion against the traditional rules of international law. It is only meant to teach them the objective historical fact and make them aware of the need to participate in the process of formulating common international legal rules and principles in the future, if they are to discuss issues of international law in a fair and balanced manner. As has been seen above, the European Union members are continuing to produce new rules and principles in their framework of legal application. On the other hand, the United States is known sometimes to attempt to make extra-territorial applications of its trade or anti-trust laws, *ie*, its domestic law. These are not immediately turned into generally applicable rules of international law, but may possibly be incorporated into the corpus of international law in due course of time if these are acquiesced in by virtue of tolerance or lack of protest on the part of other States.<sup>31</sup> If in the meantime other States in other parts of the world likewise contribute to law-making, the Euro-American law-making would be balanced, or offset, by this legislative work. As it is, however, the latter work is very scarce in comparison with the former. Consequently, the fair criterion of ensuring 'representation of the main forms of civilization and the principal legal systems of the world' in the composition of the members of the International Court of Justice or the International Law Commission might in fact end up in some of them evolving faster, while the others remain as they are or make little progress, with the gap between them widening even further.

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31 It is needless to say that such domestic law, when extra-territorially applied, does not automatically change into international law. The possibility of such municipal legislation subsequently turning into international law, however, is in the fact that some external-directed domestic measures of a unilateral nature can have the effect of correcting, or filling the gap in, the existing rules of international law. These measures include the demand for market access for the solution of a trade or economic friction (as in the case of the United States demand for the opening of the Japanese market), the regulation of narcotic or other drug traffickings, the control over crimes related to international terrorism, the expanding jurisdiction of the coastal State in the marine environment, *etc.* See Yamamoto, Sohji, 'The Function of Unilateral Measures by a State in the International Law-Making Process' (in Japanese), (1991) 33 *Johchi University Law Review* Nos 2/3 at 47.

Such facts and phenomena as have been expounded above could be included as background information in some form in curricula and teaching materials of international law, in addition to the description of specifically Asian factors or values as may be proper for the same purpose.