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International Law and International Relations in a Pluriform World

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DR. SOMPONG SUCHARITKUL

CLEVERINGA INAUGURAL LECTURE

**INTERNATIONAL LAW AND
INTERNATIONAL RELATIONS
IN A PLURIFORM WORLD**



RIJKSUNIVERSITEIT TE LEIDEN

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by

SOMPONG SUCHARITKUL

LEIDEN, 24 NOVEMBER



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It is for me a distinct honour to be invited to address this distinguished audience. The privilege of being heard on this occasion reflects the capacity and political will of the University and its honourable guests to pay greater attention to an Asian voice which could easily be drowned in a concerted overture of a mighty European symphony.

For a Dutch scholar to be appointed to the coveted "CLEVERINGA-LEERSTOEL", it is a signal honour. For a European teacher to be offered this prestigious Chair, it is a distinction of transnational repute. For an Asian to aspire for such recognition is to dream an impossible dream. My presence here today may be taken as evidence of extraordinary courage on the part of the faculties that ventured to make this joint nomination. This courage is matched by the delicate choice of topic : "International Law and International Relations in a Pluriform World".

There is a particular feeling of pride associated with the name CLEVERINGA with a resounding ring, which by any standard signifies the height of valour, fearlessness, non-violence, a keen sense of justice, an awareness of high professional responsibilities, and above all, a resolute determination to resist discrimination in all its forms and manifestations against any human person.

Professor CLEVERINGA, as Dean of the Faculty of Law, stood firm in his opposition to discrimination introduced by the Nazi occupying forces in the Netherlands in the course of World War II, requiring dismissal of a Jewish member of the Faculty. Non-discrimination in terms of current university affairs is further implemented by affirmative action in support of all minority groups regardless of their race, sex or religion, whether from Asia, Africa, Latin America, the Caribbean or elsewhere.

I. INTRODUCTION

A. International Law and International Relations

Attention will be focused on the interplays and interactions between international law and international relations as two distinct but related disciplines in the contemporary world which is admittedly pluriform.

The basic purpose of this cursory discourse is to explore the ways and means by which peace, progress and prosperity could be restored, maintained and enhanced in the relations among nations through the rule of international law for the benefit of mankind as a whole, taking into account the pluriformity of States and peoples that compose the international community.

International law is seen as a discipline and a subject which is studied by law students as well as by students of international relations. International affair and power politics are of primary interests to students of international law as well as legal advisers and practitioners who are called upon to give their views or advices on the choice of measures to be taken or on policy options to be pursued by governments. The living realities of international relations afford rich practical training grounds for students and practitioners of international law.

One of the most fertile sources of international law is clearly the practice of States. The treaty practice of States generally indicates positive trends in the progressive developments of international law as crystallized in codification conventions, while policies and principles of international relations as practised by States often ripen into time-honoured usages ultimately recognized as binding on them. For international law students, the study of international relations entails an examination of historical backgrounds and material facts to which relevant legal principles are applicable.

“International Relations”, as a discipline, endeavours to train students to identify their national interests, to assess and determine their priorities and to devise foreign policies which will best preserve and protect their vital national interests. Diplomacy serves as a connecting link between law and politics. Diplomatic practice is an important aspect of State practice indicative of international legal developments. Diplomatic law constitutes an essential part of the law relating to foreign relations. Diplomacy is an art deployed in the performance of crucial governmental functions, notably representation, negotiation including advocacy and persuasion, as well as reporting and giving of advices and recommendations. An accredited diplomat has a double loyalty in the sense that, as an actor and performer in the theatre of international relations, he is duty-bound to preserve and defend the interests of the sending State as well as those of the receiving State. Diplomacy is a tool by which

the sending State strives to maintain friendly relations and fruitful cooperation with the host country in accordance with the law of nations. In pursuit of foreign policy objectives, a diplomat has to follow instructions from his government.

Foreign policies are designed to secure for States the best protection of their national interests in various fields including security, defence, economic, social and cultural developments. International law provides the legal basis, a legitimate framework, for the conduct and execution of foreign policies. Certain foreign policies are based on political doctrines, among which may be mentioned the Monroe Doctrine of non-intervention, the Stimson Doctrine of non-recognition, and more recently the Nixon Vietnamization policy, Khrushchev's concept of peaceful coexistence, Brezhnev's concept of limited sovereignty, Gorbachev's Glasnost and Perestroika, China's anti-hegemony doctrine and ASEAN Zone of Peace, Freedom and Neutrality. The implementation of these doctrines and policy-objectives in the practice of States may entail far-reaching implications and consequences in the formation of principles of general international law, customary and conventional. An abundance of materials await further research and analyses by political theorists and publicists alike. The Latin classics of international law as represented by the works of Gentili, Hugo de Groot, a graduate of Leiden, and Bijnkershoek, another illustrious Dutch jurist, could be distinguished from the principles and practices of statescraft as advocated by Niccolo Machiavelli at the expense of morality.

The contrasts and interactions between law and politics are partially reflected in the distinctions recognized in the Sanskrit classics between “Dharmasastras” (principles of just conduct) and “Arthasastras” or “Rathasastras” (manuals of international politics or political sciences).

A proper balance need to be struck and kept between the two disciplines. An Asian jurist timely observed : “Law must become more political if politics are to become lawful”.¹

International politics have indeed to be lawful in the sense that relations among nations must be conducted on the basis of law, that is to say in accordance with the principles of international law. If relations between States were to continue to be conducted as in the past, say as in the nineteenth century, in a fashion which today must be regarded as unlawful if not altogether lawless, there would be little or no prospect for peace, neither hope for progress in any field of human endeavours nor prosperity for mankind as a whole.

¹ R. B. Pal, “The International Law in a Changing World”, 48 All India Reporter, November 1961, p. 102.

Paradoxically, there appear to have been parallel developments in international relations and international law. As international law has undergone drastic changes and at times traumatic upheavals, discarding primitive rules of force in favour of the current rule of law transforming the lawless character of the primitive international society of the nineteenth century into respect for law and order, renunciation of the use of force and outlawing of wars as well as other forms of intervention. The diplomatic practices and foreign policies of nations have forsaken the Machiavellian pursuits in favour of observance of the more respectable body of contemporary rules of international law.

Progressive developments appear to have occurred in international law, which have been inspired by concurrent developments in the attitudes of governments or in their approaches and policies in the conduct of inter-governmental relations. The relative weakness and strength of a rule of international law are visibly reflected in the behaviour of States during a particular period of time, in a particular context and area of its application and observance by governments.

Endeavours will here be made to illustrate some of the weaknesses in certain rules of international law, based on untenable premises and erroneous beliefs, and on prejudices unsupported by scientific evidences. These rules have had to be modified to make room for progress and to allow a more balanced body of norms of contemporary international law to play a more useful part in the regulation of peaceful relations among nations and in the enhancement of their mutual cooperation. Certain basic assumptions will need to be clarified. Their acceptance will serve to ensure wider appreciation and dissemination of an updated and enlightened *corpus juris inter gentes*, more consonant with the pluriformity of the current world.

B. Pluriformity of the Present World

That the contemporary world is pluriform cannot be gainsaid by any student of international law, nor by anyone seriously studying international politics. It should be reasserted nonetheless that the world, as we find it today, has in reality been constantly pluriform in every sense of the term.

Apparently, the world in its total global perspective has to comprehend its various geographical portions with their respective civilizations that compose it. Popular parlance may have tended to confine the geographical and cultural dimensions of the world to the immediate neighbourhood with which a particular individual is familiar or to the intimate surroundings in which a particular person has been brought up. This unilateral and subjective vision has considerably constrained the true perspective of the integrated world. It is in this restricted and distorted perspective of a fractional "world" that current international law has developed in the

past few centuries since the publication of "De jure belli ac pacis libri tres" by Grotius,² which has posthumously earned him the title "Father of International Law".

It is thus only in a shrunken world of today that we inevitably come face to face with the living realities of its pre-existing pluriformity. In the past, the world is more often seen from a narrow perspective with restricted vision with the result that the whole wide world with its different dimensions has rarely come into view. From the dawn of history, the world which was largely unknown, undiscovered and unexplored, was already divided into several geographical and temporal dimensions, each of which in turn has followed its own separate course of cultural, social, political and economic evolution and developments.

Each world was virtually unknown to the other, being thus independent of one another. There was scarcely any likelihood of regular contacts between the known and the unknown world. Today, the entire world has been much better known, more thoroughly explored with tightly-knitted networks of telecommunications in operation. History of various peoples in the most distant lands is available for studies to understand the past and to project the future for the present and later generations. Pluriformity is accepted without any cry or crave for uniformity. Each civilization is as good as another. It has taken humanity a great many millennia to come to terms with this basic truth. All States and peoples are here to stay with or without peaceful relations in this integrated and interdependent world.

Long before the succession of civilizations began to superimpose around the Mediterranean basin, before the Etruscans, the Greeks and the Romans, other parts of the world beyond the Mediterranean confines had known of much older and more advanced civilizations.

By way of illustrations, the "new world" of the Americas was no novelty regardless of the belated discoveries by European explorers. The Americas had long provided shelters for the seats of government for the cities and homes for a great many races such as the Mayans, the Aztecs, the Incas and the various brave American Indian tribes as well as the wandering Eskimos who roamed distant lands and sailed uncharted seas in the Pacific and other oceans in Asia and yonder.

The vast continent of exotic Asia had witnessed the glories of still more ancient civilizations of the Persians, the Arabians, the Mesopotamians, the Indians, the Mongolians, the Thais, the Chinese, the Koreans, the Malays, the Polynesians, and last but not least the Japanese.

² First published in 1625 in Paris, dedicated to King Louis XIII of France.

The dark continent of Africa also has its own native ancient civilizations, notably the Egyptians, the Abyssinians or Ethiopians, the nomadic inhabitants of the Sahara, the Sudanese, the Zulus and other indigenous African tribes.

Australia before its discovery along with other Pacific islands were by no means uninhabited. The native inhabitants albeit aboriginal were nonetheless human entitled to be treated with the respect due to the dignity of the human person.³

C. Asia as Cradle of World Civilizations

It is not inaccurate to state that the principal religions of the world today including those professed by Caucasians or white Europeans have invariably originated from Asia, hence the expression "Asian Wisdom". Starting with Hindu which gave birth to the Code Manu and Hindu Law, and followed in the Sixth Century B.C. by the enlightenment of Lord Buddha whose teachings and the Wheel of Dharma spread throughout the Asian continent and beyond in the Pacific. Judaism, Christianity and Muslim have each proclaimed significant religious tenets and principles, leading to the adoption of Hebrew Code, Canon Law and Mohammedan Law.

The Process of diversification of the ethnic and cultural world has resulted from the spread of the principal religions which also entailed the expansion of the principal legal systems of the world.

Since Buddha was born a Hindu prince, peaceful relations between Buddhists and Hindus on the Indian sub-continent appeared to be a logical consequence of their coexistence. According to Hindu belief, Buddha was one of the many reincarnations of a Hindu God. Hindu literature and Buddha's teachings were recorded in linguistically common classical languages, namely, Sanskrit and Pali. Buddha, the Enlightened One, was a teacher, a man, whose teachings (the Dharma) and disciples (the Sankha) provided guidance for human behaviour in an organized society.

Like Hinduism and Buddhism, Judaism, Christianity and Islam preached tolerance, and none advocated any slightest form of prejudices or racial discrimination. Not unlike Buddha who was born a Hindu, Jesus was born a Jew, of an Asian mother on Asian soil. Yet among Caucasians, racism flourishes at the expense of Asia whose natives are now crudely classified as "Asiatics" among the non-whites. A regime which practises apartheid, at its worst, made an exception for nationals of an

³ See, e.g., Victoria, *De Indis I*, N.4-7, 19, referring to the East Indians as being neither stupid nor unthinking; on the contrary, they are intelligent and shrewd, so that the prospect of subduing them on the ground of their character could not be sustained.

Asian nation, on the belief without foundation that, not unlike Christ, the Japanese are "Whites" and not Asian.

In spite of the teachings of Asian sages and prophets, human nature, being as it is and has always been, if unharnessed, is likely to yield to various temptations, be it greed, hatred, fear, anger, ignorance or love, thus giving rise to individual sufferings internally and possible external conflicts with others.

II. REMINISCENCES OF THE PAST

A. Lagacy of Bygone Centuries

International relations which had existed from time immemorial were tainted with human imperfections, motivated by lust for power and economic domination. The conduct of relations between nations, near and far, was guided by common usages tolerated by primitive societies.

International law in its rudimentary form had been in existence since the advent of national frontiers. General principles of international law, as practised by ancient civilizations, were not unknown.

Minister Boutros Ghali, President of the Institute of International Law at Cairo Session, 1987, aptly recalled the treaty practice of Egypt three millennia back. Ramses II concluded a treaty with Hattousilis in 1278 B.C., providing for mutual military assistance upon request for collective defence as well as for suppression of internal riots. Extradition of political offenders following denial of asylum was also envisaged.⁴

Judge Nagendra Singh⁵ also reminded us, as retold in the Sanskrit Classics, the Mahabarata Yudha, of the exchange of prisoners and of the bodies of war victims as practised in the war between Hindus and Muslims. No desecration of the dead was permitted as the state of war ended with death. The Ramayana also illustrated the prevalence of humanitarian considerations. The use of weapons of mass destruction was not authorized on the ground that it would indiscriminately destroy civilians who

⁴ Discours inaugural de S. E. Boutros Boutros Ghali, Vol. 62-II-1987, *Annuaire de l'Institut de Droit International*, pp. 26-29.

⁵ Nagendra Singh, *The Basic Concept of Universality and the Development of International Law*, Hague Academy of International Law, "The Future of International Law in a Multicultural World", 1984, pp. 239-257.

took no part in combat. The institution of envoys and emissaries and the use of the white flag of truce were not uncommon in the laws of war and the laws of peace in Asia. Trade agreements and commercial transactions as well as overland and maritime transports were carried on between Asian nations. The relations of intermittent war and peace continued throughout the various periods of Asian history. Civil wars recurred within each national boundary. Different bodies of principles of international law have been in active operation at one time or another with local variations in the customs of war.

Sooner or later contacts between the Western world and Asia were inevitable. Thailand was the first and the only Asian nation that established diplomatic relations with the West in the early seventeenth century. The first Siamese mission was willing to leave for the Netherlands as early as 1601⁶ under King Naresuan. His brother, King Ekatosros had his letters presented to the Prince of Orange by Thai Ambassadors from Ayudhya in 1608. A trade agreement was concluded in 1617⁷ followed by a further treaty two decades later. Ambassadors were also exchanged between Thailand and France during the reign of Louis XIV and King Narai in the 1680's. The presentation of credentials took place at Versailles where an interesting painting can be seen today depicting the astonishment of the French court looking on at the delegation of Thai envoys. The Siamese King in turn received Chevalier de Chaumont in audience at the Summer Palace in Lopburi.⁸

Thus, early contacts between one Asian and a few European kingdoms may be characterized as friendly and cordial. Exchange of Eurasian missions took place on an equal footing without incident. The merchants and missionaries from the West were welcomed in East Asia with varying degrees of enthusiasm. No real problem arose as long as trade was mutually beneficial and the acceptance of different religions from the West was voluntary. As long as the West still lacked the military strength and naval support to fare far into the East, peace remained relatively undisturbed.

This golden era was exceptional and did not extend throughout Asia. It came to an abrupt end when the waves of western colonial expansion swept across the oceans over Asian shores. One by one, with a very few exceptions, Asian nations and people fell victims to European domination and exploitation. A handful of nations in

⁶ See Sumet Jumsai, "The First Siamese Embassy to Europe", in the Voice of the Nations, Bangkok, 17 February 1975, p. 5. "Siamese" is used interchangeably with "Thai", and "Siam" with "Thailand".

⁷ See G.V. Smith, The Dutch in Seventeenth-Century Thailand, (Centre for Southeast Asian Studies, Northern Illinois University, Special Report No. 16, 1977), p. 12 et seq. See also Han ten Brummelhuis, a History of the Contacts between the Netherlands and Thailand, Gent, 1987.

⁸ See D. K. Wyatt, Thailand : A Short History (New Haven, Yale), 1982, p. 122 et seq.

East and South-East Asia, namely, China, Japan and Thailand managed to retain their political independence, weathering the storm of Western expansionism at considerable costs. Afghanistan and Iran in West Asia narrowly escaped Western domination after giving in to various forms of concessions and exploitation. The Ottoman Empire suffered similar humiliations if not outright domination.

The rest of Asia including territories on the Indian sub-continent as well as in the Pacific were subjected to colonial domination and exploitation at a very early stage. Many already succumbed to the West in the seventeenth century and most did not attain independent status until long after the end of World War II.

The Americas including North America were discovered and taken by European Powers as if the new world was uninhabited *terra nullius*, whereas in the Americas, from North to South, older civilizations had long preceded western discovery. In turn, each and every land was taken as a colony of an European Power. The United States was the first to emerge as independent nation in the last quarter of the eighteenth century, followed by Haiti and a host of Latin American States, which became independent in the nineteenth century. Indeed most Latin American States attended the second Hague Peace Conference in 1907. The process of decolonization in the Americas had begun much earlier than in Asia and Africa. However, the legacy of colonialism lingered on in the Caribbean until today. Not all peoples and nations are yet fully self-governing, let alone sovereign and independent.

The greatest sufferings had yet to be told in the Continent of Africa. To top it all, the Act of Berlin 1885 was no more than an organized procedure for annexation of African territories by the European Powers without having to go to war with each other, a gentlemen's agreement to legitimize the "Grab for Africa". Practically, no African nation escaped the hordes of Western colonialism. Colonization proceeded in accordance with the Act of Berlin 1885 in strict conformity with the doctrine "Pacta sunt servanda". That is why today in that context as well as in several others, the maxim "Pacta sunt servanda", if uttered by someone from the West claiming performance of an unequal and illegal treaty, would sound more like a "dirty word", the clearest answer to which is "jus cogens", thanks to Sir Humphrey Waldock and the Vienna Convention on the Law of Treaties 1969.

B. Liberation of Asian Nations from Anachronisms and Iniquities of Unequal Treaties

The humiliations to which independent Asian nations, notably China, Japan and Thailand, were subjected during the latter half of the nineteenth century resulted from the establishment of a régime of extraterritoriality for nationals of European countries resident in Asian lands. These westerners remained under the law and

extraterritorial jurisdiction of their respective consular or mixed courts. The fiction of extraterritoriality became intolerable at the close of the nineteenth century when fellow Asians, colonial subjects of a Western Power, could also claim entitlement to the benefits of "extraterritoriality", thereby exempt from otherwise applicable local laws, being outside otherwise competent jurisdiction of the territorial forum.

Today, no one disputes the injustices, inequalities and iniquities of the régime of extraterritoriality imposed on Asian States by a series of "unequal treaties" with several countries from the West. At the pre-dawn of the twentieth century, Japan was the first to free itself successfully from western extraterritorial jurisdiction.⁹ Crossing the line, Japan did not hesitate to join the ranks and files of the Western Powers by claiming "extraterritoriality" for Japanese nationals residing in China and in Thailand. It was not without bitter experience that Asian nations like Japan and Thailand had had to reform, restructure and adapt their legal systems to the western style of codification for their civil, commercial and penal codes in order to accelerate the removal of "unequal treaties". In addition to securing expert legal services of neutral advisers from Belgium, Switzerland and the United States, Thailand had to make territorial sacrifices in exchange for the abolition of the extraterritorial régime by renouncing Thai sovereignty over outlying provinces in favour of France and the United Kingdom, and by despatching two expeditionary forces to assist Europe in World War I on the side of the Allies. As a signatory to the Treaty of Versailles, Thailand was able to negotiate with greater success the final removal of inequalities with the West, a process which had earlier begun with Japan and the United States.

In this connection, China appeared to be relatively slow in the uptake. Codification efforts were lagging and modernization relented in the wake of successive Chinese revolutions. It was not until after Pearl Harbour that the United Kingdom and other Allies agreed to release China from the bondage of extraterritoriality and the inequalities and iniquities that accompanied the régime.

C. Modernization of International Law

That international law has come a long way in theory as well as in practice since the last hundred and fifty years is an understatement of the century. Gunboat diplomacy was fashionable among the Western Powers in Asia following the defeat of Napoleon and the Congress of Vienna, 1815. Slavery and slave trade were legal and persisted well into the twentieth century. Africa provided a fertile hunting ground

⁹ See Edwin O. Reischauer, *The Japanese*, Harvard 1977, pp. 87-102 : the Constitutional System. By 1899, the British, impressed by Japan's modernization, agreed to relinquish their extra territorial privileges, and other western nations followed.

for slave traders. In America, it took a bloody civil war to put an end to an internal conflict regarding slavery.

Narcotics furnished another source of steady revenues which enriched the treasury in several western capitals. Prior to the 1839 Opium War¹⁰ and the 1842 Treaty of Nanking,¹¹ Lin Tse-hsu, China's Imperial Commissioner in charge of the opium suppression campaign in Canton, requested the American missionary, Dr. Peter Parker, for a translation of three paragraphs of a book written by a Swiss publicist, Emerich Vattel, entitled "The Law of Nations" - *Le droit des gens*. The passages acknowledged that every State had the right to stop foreign nationals from importing noxious products into its territory by declaring those products as contraband. But Vattel prescribed, a State had first to notify the sovereign and request that he restrain his subjects. Accordingly, Commissioner Lin sent a letter to Queen Victoria indicating the deleterious effects of opium on the local Chinese population and urging her to stop the trade. His letter was never acknowledged. On the contrary, the British and other Western Powers resorted to the show of force, the threat and actual use of force which finally put an end to hostilities in 1842. Since then, Chinese interest in the law of nations diminished. Disenchanted by the injustices resulting from the primitive rules of international law which was then the exclusive product of European concoction, China continued to suffer for another hundred years to come before she could finally rid herself of the anachronisms entailed by a series of "unequal treaties".

At the time when the use of force was considered lawful for the protection of European nationals and interests in Asia and the traffic of narcotics by European nationals in China was supported by European Powers, there was very little by way of legal actions that China could do to protect her own vital security interests. The rule of law among nations was no different from the rule of force in Eurasian relations. Might was right! But today, exactly a hundred and fifty years after the Opium War, there emerges a dawn of a new international legal order under which States have openly and unequivocally renounced war as an instrument of national policy, and the use of force has been outlawed under a new peremptory norm which admits of no derogation. No State could consent to the use of force against itself by another State, or to the traffic of narcotics or slaves within its territory.

¹⁰ The Opium War would have been considered in a different light today when the "civilized" West finally accepted the validity of the Chinese argument against the traffic of narcotics.

¹¹ See, e.g., Gerrit W. Gong, *The Standard of "Civilization" in International Society*, Oxford 1984, pp. 136-138. This Treaty cost China US\$ 21 million in indemnity, abolition of the monopolistic Cohong trading system, opening of five ports of trade, cession of Hong Kong and fixed tariff.

III. CURRENT TRENDS

Several important trends have emerged in the process of modernization of international law, especially in the UNIVERSALITY of international law and the growing recognition of humanity as well as in the new techniques in the making of international law.

A. Universality of International law

No question was raised in the seventeenth century when one Asian Kingdom exchanged embassies with European Kingdoms. The same rules of diplomatic law and practice applied without undue discomfort to either side. The laws of peace were relatively simple to readjust to the particular need of international relations between Europe and Asia, be it commercial or cultural exchanges. But the laws of war and conquest had seen some discrepancies. For instance, in the Crusade war, certain weapons such as the cross-bows were not to be used against fellow Christians, but their use was permissible against Muslim enemies.¹² The Muslims in turn would spare the lives of their Christian captives who agreed to become Muslims.

Before the nineteenth century was out, it became apparent that the relations between European and non-European nations had to be based on one and the same set of standards. Hesitations lingered on for decades in the standardization of the level of civilizations required for membership of the prevailing international community which might wish to become global and therefore universal, rather than an exclusive inward-looking club for Europe.

Gustave Rolin Jacquemyns, a Belgian-born jurist of international repute, co-founder of the Institut de Droit International in 1873, knighted by the King of Siam as Chao Phya Aphay Raja, saw the need to westernize the legal systems of Asian nations to render them more understandable and therefore more readily acceptable by a European standard of civilization.¹³ Japan underwent that reform during the Meiji Restoration which coincided with Thailand's modernization under the reign of King Chulalongkorn.

Thus the world at the Congress of Vienna in 1815 consisted exclusively of European nations and with the exception of Turkey in the Balkans in 1856 remained virtually unchanged at the Berlin Congress in 1885. A more positive turn was taken

¹² See P. P. Anand : *New States and International Law*, New Delhi 1972, pp. 51-52.

¹³ See *Journal of Siam Society*, Vol. LIII, Part 2, 2 July 1965; *Revue de Droit Internationala et de législation comparée*, 1876, pp. 293-380.

at the first Hague Peace Conference in 1899 when China, Japan, Mexico, Persia and Thailand were invited to the Conference. Invitation was extended on the basis of a formal criterion set by the European standard of civilization, namely, the establishment of an embassy in Moscow.¹⁴ By the second Hague Peace Conference in 1907, practically all Latin American States were also invited.

Membership of the international community continued to grow by leaps and bounds from around thirty in 1899 to over forty by 1907. By the close of World War II, the United Nations counted over fifty nations. It took more than a decade before former enemies of some U.N. member countries were admitted as new members of the World Organization.

The Asian African Conference at Bandung in 1955¹⁵ contributed to the immediate increase of membership of the U.N. by fifteen in a package deal. Resolution 1514 on the Granting of Independence in 1960,¹⁶ following the Bandung Communiqué, did much to accelerate the process of decolonization. Today, membership of the United Nations has more than trippled its original number and far exceeded 160.

The principle of UNIVERSALITY for membership in the international community took several decades to gain complete acceptance within the United Nations, notwithstanding vigorous opposition from reactionary quarters in the West.¹⁷

A similar problem was also encountered in the application of international law, and later in the universalization or internationalization of the contents of the law, which were Christian and European in origin and designed to serve the interests of Europe.

¹⁴ See, e.g., Gerrit W. Gong, cited in Note 11 above.

¹⁵ See Final Communiqué of the Asian-African (Bandung) Conference, 24 April 1955, D. Problems of Dependent Peoples and F. Promotion of World Peace and Co-operation, para 1. calling for universality of the U.N. and admission of Cambodia, Ceylon, Japan, Jordan, Libya, Nepal and a United Vietnam. With the exception of Vietnam which was still divided, the States participating at Bandung were admitted to the U.N. in 1955.

¹⁶ Resolution 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960.

¹⁷ See, e.g., A.V. Freeman, "Professor McDougal's Law and Minimum Public Order", 58 A.J.I.L. (1964), p. 712.

The acceptance or acquiescence in practice of the principle of UNIVERSALITY for the application of the same rules of international law to European and non-European States alike constituted a significant milestone in the standardization of international law. The process of codification and progressive development of international law requires the participation of all States, regardless of their social structure, ideology, religion or geographical location. It is inevitable that international law has to undergo substantial changes in its progressive development so as to respond more closely to the need of a universal community of nations. The pluriform world is now regulated by global international law which has grown from the narrow confines of traditional international law. Objective and balanced approaches have brought about welcomed improvements in the law and will enhance its respect and observance by States generally.

In practice, the absence of an authentic definition of "State" in current international law has not presented an insuperable obstacle. Once peoples and territories attained independence and autonomous self-governing status, their admission to the international community was only a matter of formality. No power today dares to oppose or veto the admission of a newly independent State on the ground that it lacks one of the required qualifications.

Universality as a principle is here to stay and further universalization of the modern law of nations continues unabated.

B. Humanity in International Law

The second trend in the progressive development of the global law of nations is clearly discernible in the growing recognition of "humanity" in the formation and application of contemporary international law. "Humanity" or "mankind as a whole" at the outset played no part in the making of international law. No mention was made anywhere in earlier literature or in the classics of international law about the relevance of mankind, except in the context of piracy *jure gentium* in which pirates were regarded as "hostes generis humani" or "enemies of mankind". After all, international law was primarily concerned with the regulation of relations among independent sovereign States.

The list of subjects of international law has steadily grown to embrace not only the increasing number of States and international organizations which are capable of enjoyment of rights and performance of obligations under international law, but also individuals. Individuals are responsible directly under international law, for instance, for war crimes and other crimes of international law. They are directly bound by international law. They could be held criminally liable and are punishable directly under the laws of war. While humanity or mankind as such is not yet included

in the list of subjects of international law, it is receiving increasing recognition and exercises mounting influence in the current law of nations.

Mankind is protected not only in the form of prevention and suppression of offences against peace and offences against mankind, but also in the different aspects of the new humanitarian law. Humanitarian considerations prevail in a number of situations including, notably, the granting of humanitarian aids and assistance to refugees, humanitarian or humane treatment of civilians and prisoners of war in time of armed conflicts and in the exercise and enjoyment of human rights, be it political, civil, economic, social or cultural rights, individual or collective, and the right to peace or to sane and serene environment.

Thus, international law has begun to take cognizance of the legal status of mankind and to take into account the relevance of humanity or the human kind as a whole. It will not be too long before mankind is treated as a "subject of international law". The concept of the common heritage of mankind is not in dispute. Its application in regard to the right to explore and exploit resources in the area of the common heritage remains to be worked out in greater detail by a competent international organization, so as to ensure equitable distribution of the common benefits to all mankind.¹⁸

Humanization of international law forms part and parcel of the modernization process of the law of nations. The first important step in this direction is the recognition of the status of every living person as holder of human rights, thereby avoiding any use of term "man" other than a "homo sapiens". It is dangerously misleading to speak of "human rights" while excluding the overwhelming multitude from the list of beneficiaries of human rights. Human rights are the rights enjoyed by every person. Their enjoyment is not confined to noblemen, gentiles, Romans or citizens.

Controversies may continue to rage in domestic systems regarding the beginning and the end of a human life. Whether a foetus or an embryo is to be considered a human being or whether a person who is brain-dead is still regarded as living or deceased will continue to have some bearing in a number of connections including human rights. This should not detract from the need to eliminate racism and racial discrimination in all its forms and manifestations and to avoid at all costs the use of term "man" which deprives most men of their basic human rights.¹⁹

¹⁸ See, e.g., S. Sucharitkul, *L'Humanité en tant qu'élément contribuant au développement progressif du droit international contemporain*, in *The Future of International Law in a Multicultural World*, Hague Academy of International Law, colloquium, 1984, Nijhoff, Hague, pp. 415-429.

¹⁹ See, e.g., S. Sucharitkul, "A Multi-Dimensional Concept of Human Rights in International Law", *Notre Dame Law Review*, Vol 62, Issue 3, 1987, pp. 305-317.

C. Updating the Law-Making Process

Another significant trend which deserves very close attention may be observed in the current process of law-making, both in conventional and in customary law of nations.

A number of questions have been raised in connection with the universalization of international law and its acceptance by old and newly independent nations.

Starting from the premise that the existing law continues to apply to all States including especially newly independent States, it follows that new States must enter the community of nations as they find it complete with existing rules and regulations. New members cannot pick and choose, accepting only rules to their advantage and rejecting those not to their liking. Thus, the United States joined the international society when it achieved independence without any complaint. It did not reject any of the existing rules of customary international law. On the contrary, it sought to reinforce and strengthen the laws of war and neutrality which served to protect its interests.

Other newly independent States had to do likewise when joining the international community regardless of the nature and contents of the law, good or bad, cruel or kind, just or unjust. This does not preclude the new members once admitted to the international community from seeking to improve the law by revising its contents, or by a process of modernization, humanization or internationalization of existing rules, substantive as well as procedural.

True it is that when a change in ideology or social structure occurred in a given country, certain rules of customary international law may suddenly become out of place or appear devoid of any meaning or purpose. To some extent, this accounts for the attitude of socialist countries which expressed clear preference for Treaty laws as opposed to customs. Traditional customs were cruel and unjust in the past, and clearly needed modification.

In this connection, the plight of socialist countries was in no way comforted by the predicament in which newly independent developing nations found themselves at the threshold of the world community. Whatever the contents of the law, they were neither static nor immutable. The practice of new States could generate new customs and amend existing customs by the available process of law-making.

Today, the process of international law-making has been considerably streamlined. The practice of States may be evidenced in a relatively short time at a general diplomatic conference. General acceptance by States of new rules can be ascertained with relative ease and with far greater facilities than ever before with

countless new techniques in telecommunications and recording of views presented by governments.

The growing number of States members of the world community has rendered the review process of international law much more accessible to all States. Save in certain reserved domain of maintenance of international peace and security, no single State or group of powerful States, European, Socialist or others, could resist or oppose the current trends in the universalization and humanization of international law.

A multilateral treaty-making process for codification conventions has been adopted.²⁰ Existing machineries within the United Nations afford equal opportunities for most if not all principal legal systems to be represented on the body of experts, such as the International Law Commission, responsible for the preparation of draft articles on selected topics for the codification and progressive development of international law.²¹

Several such drafts have graduated into conventions which have been signed and ratified by increasing numbers of States. Other methods of identifying principles of international law short of the formal codification convention have become increasingly popular. Resolutions, communiqués and declarations have been adopted by States which either reaffirm existing rules of customary law or crystallize them or else generate new customary rules for future adherence by States.

With wider participation of new States, international law cannot but continue to improve in the quality of its contents and in the quantities of the ever-growing areas of human endeavours.

IV. A CODE OF CONDUCT FOR INTERNATIONAL RELATIONS

The future of our pluriform world depends, to an appreciable extent, on the success of international law, especially in the current process of its codification and progressive developments. The rules of conduct to be formulated and recognized by the community of States should comprehend a set of treaties and conventions that would encourage States to establish and maintain mutual relations of friendship, cooperation and good-neighbourliness.

In the absence of a comprehensive code of conduct for international relations, the present state of international law appears to be progressing in the right

²⁰ See, e.g., Review of the Multilateral Treaty-Making Process, Report of the Working Group by Sompong Sucharitkul, Chairman, A/C.6/39/L.12, 27 November 1984.

²¹ See the work of the International Law Commission, third Edition 1980, U.N. New York.

direction at a reasonable pace. Diplomatic and consular relations have been placed on rational basis in a series of Vienna Conventions.²² The Law of Treaties is now much clarified, thanks to the Conventions of 1969²³ and 1986,²⁴ governing also relations between international organizations and States. Other fields of international law are in the ripening process of codification, including the Law of the Sea,²⁵ which now awaits the required number of ratifications to enter into force.²⁶ The laws of war as incorporated in the Geneva Conventions of 1949²⁷ are generally regarded as declaratory of customary rules of international law.

While other topics, such as State Responsibility and Draft Code of Offences against the Peace and Security of Mankind, remain to be codified and progressively developed, the current codification efforts may be said to have reached a sufficiently advanced stage with many important areas of inter-state relations adequately covered.

The principles of international law directly governing inter-governmental relations of friendship, cooperation and good-neighbourliness have also been crystallized or projected in a number of international instruments or reports.

A. Principles of Friendly Relations and Cooperation (Peaceful Coexistence)

The principles of international law embodied in the United Nations General Assembly Resolution 2625 were adopted by consensus in 1970 after several years of study by the Special Committee on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of

²² See, e.g., The Conventions on Diplomatic Relations 1961, and on Consular Relations 1963; see also the Convention on Special Missions, New York, 1969.

²³ See The Work of the International Law Commission, Third Edition, 1980, pp. 236 et seq.

²⁴ See Document A/CONF.129/15, 20 March 1986.

²⁵ See The Law of the Sea, Official Text of the U.N. Convention on the Law of the Sea with Annexes and Index, U.N. New York, 1983.

²⁶ As of today, 24 November 1989, the number of ratifications has reached 41. Article 308 provides that the "Convention shall enter into force 12 months after the date of deposit of the sixtieth instrument of ratification or accession".

²⁷ Geneva, 12 August 1949, 75 UNTS 31; 75 UNTS 85; 75 UNTS 135; and 75 UNTS 287. See also Protocols of 1977 (No. 1), 8 June 1987, 16 I.L.M. 1391; (No.2) 16 I.L.M. 1442.

the United Nations, and after mature consideration by governments and thorough debates in the Sixth Committee. Their adoption reflected a compromise reached by representatives of States of different social structures.

For present purposes, we may refer to this set of principles as the SATTASILA (Seven Principles - 1970) after the Bandung DASA SILA (Ten Principles - 1955), and the Sino-Indian Treaty of Peaceful Coexistence, PANCHASILA (Five Principles - 1954). The Chinese PANCHASILA (1. Mutual respect for territorial integrity and sovereignty; 2. Non-aggression; (3) Non-interference; 4. Equality and mutual benefits; and 5. Peaceful coexistence) is homonymous but not conterminous with Buddha's PANCHASILA, five precepts for model code of human conduct, accepted by Buddhists two thousand six hundred years ago, (five abstentions are : 1. No taking of life; 2. No taking of property; 3. No wrongful sex practice; 4. No untruth or abusive language; and 5. No intoxicants), nor with Sukarno's PANCHASILA - 1945 (Motto for Indonesian State, namely, nationalism, internationalism, democracy, social justice and belief in a unified supreme being). Furthest from the Chinese PANCHASILA was the Khrushchev-sponsored doctrine of "Peaceful Coexistence - 1960", which was conceived as a respite designed to buy time during which for the Soviet Union to catch up with the West in military strength and technology before launching another world revolution for class struggle.

The SATTASILA or Seven Principles of Friendly Relations and Cooperation constitute fundamental pillars in support of peaceful relations among nations, large and small, rich and poor, capitalist and socialist or aligned and non-aligned. The Seven Principles may or may not be viewed as peremptory norms²⁸ which admit of no derogation, nor may they be regarded as exhaustive or comprehensive of all the rules that need to be codified²⁹ to ensure happy and constructive relations among States, they nevertheless constitute significant cornerstones for the building of good will and good order among nations. Some may consider some of the Seven Principles as "jus cogens", while others may treat them as basic norms of conduct for States or merely as guidance. Whatever the varying weight attached to each principle, it is submitted that each one is binding on States. They are :

- (1) Non-Use of Force, or the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations;

²⁸ See, e.g., Milan Sahovic, Codification des principes du droit international des relations amicales et de la coopération des Etats, Recueil des Cours, Hague, 1972-III, Vol. 137.

²⁹ See, e.g., Robert Rosenstock, The Declaration of Principles of International Law concerning Friendly Relations : A Survey, 65 A.J.I.L. 1971, pp. 713-735.

- (2) Pacific Settlement of Disputes, or the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered;
- (3) Non-Intervention, or the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter;
- (4) Cooperation, or the duty to cooperate with one another in accordance with the Charter;
- (5) Self-Determination, or the principle of equal rights and self determination of peoples;
- (6) Equality of States, or the principle of sovereign equality of States; and
- (7) Good Faith, or the principle that States shall fulfill in good faith the obligation assumed by them in accordance with the Charter.

Each of the seven principles deserves to be closely examined in the light of recent State practice. Most of these principles have received further endorsement and support in subsequent instruments, such as the Helsinki Accords (1975) containing Declaration on Principles Guiding Relations between Participating States.³⁰ The Declaration on Friendly Relations and Cooperation or Peaceful Coexistence, as it is better known in certain quarters, are not contested by any State as principles of customary international law. Many such principles have received clear judicial approbation and application in concrete cases.³¹ They are therefore clear principles for the States to observe in their mutual relations.

B. Principles of Good-Neighbourliness and Friendly Cooperation

Principles of international law concerning good-neighbourliness and friendly cooperation among States have not acquired the same advanced status as those of friendly relations and cooperation, although conceived in the same vintage of international instruments. Thus, the Charter (1945) affirms the determination of the United Nations "to practice tolerance and live together in peace with one another as good neighbours". The Bandung Communiqué (1955) further recommends that

³⁰ August 1975, 14 I.L.M. (1975) 1295; Department of State Publication 8826, General, Foreign Policy Series 298.

³¹ See, e.g., *Nicaragua v. U.S.A.* (1986), I.C.J. Report 1986.

"Nations should practice tolerance and live together as good neighbours and develop friendly cooperation" on the basis of the DASA SILA, "free from mistrust and fear and with confidence and good will towards each other".

Principles of good-neighbourliness and friendly cooperation await elaboration in the light of current developments in technology and ecological science. The contents of good-neighbourliness have not been fully explored. The task of identifying and clarifying basic elements of good-neighbourliness has only recently begun.³² This will principally entail progressive developments as distinguished from pure codification as we enter the realm of soft law rather than hard and fast rules of international law.

Two important elements may be emphasized, viz., the growing importance of good-neighbourliness and the widening concept of "neighbourhood".

First, the political importance of good-neighbourly relations deserves closer attention, especially when the neighbouring States share common resources such as minerals, water-courses and the resources of the sea, seabed and subsoil. Neighbours may share common destinies and common dangers, including natural calamities. Thus, closer cooperation is imperative for the survival of all States in the neighbourhood.

Secondly, the concept of neighbourhood is no longer confined to geographical proximity. Hence, the principles of good-neighbourly relations apply also to countries that may be geographically separated by a vast expanse of water such as the open sea and ocean. The application of good-neighbourliness is not restricted to frontier regions. The practice of good-neighbourliness should extend far beyond border areas.

Geographical proximity offers a convenient start. But the world is so integrated today that an event in one country may well affect conditions on the other side of the globe. It is a unified world in which existing resources have to be equitably shared and the delicate balance of ecology carefully sustained. Pollution need to be abated and problems of ozone depletion contained if not quickly resolved.

Principles of international law have not yet concretized as legal developments seem to be lagging far behind current occurrences requiring immediate attention and cautionary measures. States have become neighbours by virtue of the new law of the sea, having discovered that their continental shelves and exclusive

³² See, e.g., Documents A/36/376 and A/38/448 submitted by Romania to the Secretary-General of the United Nations in 1981 and 1983 and Resolution 39/78 of 13 December 1984.

economic zones have to be mutually delimited and possibly demarcated for various purposes, political, economic and administrative. Good-neighbourliness assumes increasing significance as the concept of neighbourhood has grown to cover a larger segment of territories in all dimensions, the sea, the ocean-floor, the water column and the superjacent airspace. The earth is exposed to pollution from various fixtures and moving objects, such as sea-going vessels, transcontinental trains or pipelines, and aircraft or space-craft as well as petrochemicals or nuclear fallouts and exploration activities in remote polar sectors. The green-house effect may cause untold damage to mankind if no effective means are employed to arrest the rising temperature.

A sane and balanced approach must be adopted to resolve existing global problems of ecology. Advanced countries which had long polluted the atmosphere should stop emissions of acid rains, while developing countries should learn from the costly lessons of their developed neighbours.

Legal principles are to be formulated which fairly regulate human activities not only on earth or in the air space but also in the outerspace, on the moon and other celestial bodies as well as in the depth of ocean floors. Technologically advanced States should set better examples for other less fortunate countries to follow, considering that every nation will be on the receiving end of the hazardous and harmful activities of industrial enterprises.

V. CONCLUDING OBSERVATIONS

The preceding review of international relations in a pluriform world and their regulation by international law appears to suggest a path of reason and moderation for States to follow in the conduct of their mutual intercourses.

Modern international law has forsaken much of its primitive character with the result that in reality it is in the common interest of mankind that the rule of law and therefore of international law be preferred to the rule of force or even international force.

Mutual tolerance, understanding and display of good faith are prerequisites of friendly relations and cooperation among nations. Peace, progress and prosperity may be ensured, preserved and strengthened only by the demonstration of the political will on the part of States to live together in peace as good neighbours, regardless of where they are and notwithstanding their sizes and social structures.

The exercise of fundamental human rights and the enjoyment of freedoms and liberties are the common heritage of mankind which should be denied to no one and equitably shared by every person, by every people and by every nation alike.

States are obligated to cooperate with one another in all fields of human endeavours. International organizations have a constructive role to play in the coordination of cooperative efforts of States, so as to obtain optimum results.

Improvements in the substantive rules of international law and betterment of the quality of international justice may incur displeasure on the part of States that used to reap the benefits of the primitive and unjust law. The expression of such displeasure is often superficial and transitory, as enlightened governments can readily appreciate the long-term benefits of respect for a body of international law which is free of iniquities and is acceptable to all States or the overwhelming majority of the community of nations.

A final word of caution may be sounded. As international law becomes more universal, a community which once initiated the law of nations for its members might be tempted to recycle another international legal system to be known as the community law. This system may possess the ambivalence of being international as well as domestic. It may serve to unify domestic laws while extending its international application to non-community States by an unceasing process of ever-widening membership. The process of universalisation will have to be reiterated, for history may repeat itself. Hopefully it has taught us to avoid the mistakes and injustices of the past, so as to be better prepared for the future.

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RESUME

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