South Asian University: Towards a ‘South-Asian’ Approach to International Law - Part I

By:

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Part I

Introduction

Participants at the 2018 TRILA Conference had emphasized the need to develop an Asian perspective on international law (para 42 of the Report). The key to this would be to uncover material on International Law (IL) practice and development from Asia. However, mainstream textbooks on international law have failed to provide an Asian account of IL (para 44 of the Report).

Through this post, we have attempted to examine the contribution of the South Asian University (SAU) to the development of a similar account, i.e., a South Asian one. To put it differently, we have tried to determine whether SAU has

made any meaningful contribution to uncovering material providing a South Asian account of IL.

SAU is an international university, established by the eight member countries of the South Asian Association for Regional Cooperation (SAARC). The University has five different faculties and the Faculty of Legal Studies (FLS) is one of them. The other four are the Faculty of Mathematics and Computer Science, the Faculty of Life Sciences and Biotechnology, the Faculty of Economics and the Faculty of Social Sciences. FLS offers LL.M. and M.Phil/PhD programs 'with an emphasis on International Law'. As part of its LL.M. programme, nine compulsory subjects are taught at SAU.

In order to determine SAU's contribution, we have analysed the course outline designed for all the nine compulsory subjects taught to LL.M students. We have chosen four parameters for the analysis: (i) whether a particular week in a course is dedicated exclusively to the study of international issues relevant to South Asia, (ii) whether a specific topic of significance to South Asia is part of the general discussions during the week, (iii) whether scholarly works on issues relevant to South Asian countries are a part of the reading list, and lastly, (iv) whether the contribution of South Asian authors to scholarship in international law has been duly acknowledged. We have answered these questions for each of the compulsory subjects and have concluded with the general observations from our analysis.

Analysis

Jurisprudence One of the basic readings for week 2 (Law and Modernity) of the course is '*Decolonising International Law*' by Sundhya Pahuja, which is undeniably of relevance to South Asian states. The reading list also comprises several works of the prominent TWAIL scholar B. S. Chimni; these are: '*Legitimating the International Rule of Law*', '*The Past, Present and Future of International Law: A Critical Third World Approach*', '*An Outline of a Marxist Course on Public International Law*' and '*International Law and World Order*' and provide a critical account of international law.

Research Methods The readings for week 6 (Marxist and Third World Approaches to International Law) are undoubtedly of relevance to South Asian

states, and include the works of some of the leading scholars writing on TWAIL. These include: '*International Institutions Today: An Imperial Global State in the Making*' and '*Third World Approaches to International Law: A Manifesto*' by B. S. Chimni, '*TWAIL: Past and Future*' by Antony Anghie, '*Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*' by Antony Anghie and B. S. Chimni, and '*What may the 'Third World' Expect from International Law*' by Upendra Baxi. The readings enable young researchers to adopt a critical lens in their analysis of international law.

Public International Law It is worthy of note that the outline for this course was designed by Dr. Ravindra Pratap, one of the participants at the 2018 TRILA Conference. Weeks 13-14 of the course are dedicated to a comprehensive study of international law issues in South Asia. Students are introduced to select international law issues in South Asia, such as water-sharing, water resource management, use of force, and terrorism, during these two weeks. There are a considerable number of readings on South Asia, many of which have been authored by South Asian scholars. Some have been included below.

The reading list for the first week (The Nature and Functions of International Law) includes '*Asian States and the Development of a Universal International Law: Report of a Seminar*' by R. P. Anand, one of the pioneers of TWAIL. Other readings include '*Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries*' by C. H. Alexandrowicz and '*Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*' by Antony Anghie. During weeks 5-7, the discussion revolves around the relation of international law and municipal law, and the readings include the decisions of South Asian courts in landmark cases such as *Sunil Babu Pant*, *Vishaka v. State of Rajasthan* to name a few . Scholarly articles on the topic include '*Indian Courts and International Law*' by V. G. Hegde, '*International Law and Pakistan's Domestic Legal Order*' by Jamshed A. Hamid, among others. Weeks 8-10 (Principles of International Law) include readings such as '*Self-determination in International Law: The Tragic Tale of Two Cities – Islamabad (West Pakistan) and Dacca (East Pakistan)*' by V. P. Nanda, which focus on principles of international law vis-à-vis South Asian states. For weeks 13-14, the reading list comprises works that address international law issues in South Asia. Some of these are '*Conflict and*

Cooperation on South Asia's International Rivers: A Legal Perspective' by S. M. A. Salman and K Uprety and '*Building Peace over Water in South Asia: The Watercourses Convention and SAARC*' by Ravindra Pratap.

International Environmental Law One of the highlights of the discussion during the introductory week is the North-South divide in international environmental law, a topic evidently of interest to all South Asian states. Similarly, weeks 6 and 7 (Law of Climate Change) incorporate a discussion on the role of SAARC in climate change negotiations. Major North-South disagreements on biodiversity protection are a component of the discussion during weeks 10 and 11. During week 12, which deals with fresh water resources, there is a particular focus on water sharing arrangements in South Asia, and the Kishenganga arbitration between India and Pakistan. Readings on issues of significance to South Asian states include '*Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement*' by Adil Najam, '*Bridging the North-South Divide: International Environmental Law in the Anthropocene*' by Carman Gonzalez, and '*The Kishenganga Arbitration – Transboundary Water Resources Governance*' by Balraj Sidhu. The writings of South Asian scholars on international environmental law include '*Mapping the Future of International Environmental Governance*' by Bharat H Desai, '*International Liability for Transboundary Harm'* by P S Rao*, 'Addressing Loss and Damage from Climate Change Impacts*' by Lavanya Rajamani to name a few.

International Humanitarian Law The penultimate week (IHL in South Asia) is dedicated to the discussion of the contribution that South Asia has made to the development of IHL principles. The final week in the course involves a critical appraisal of IHL. While the discussions during this week are of a general nature, there are many topics which are of particular interest for the South Asian region. An example of this is the exclusion of colonial occupation from the law of occupation, and its implications for South Asian countries. There are a number of readings relevant to South Asia, such as '*Handbook of International Humanitarian Law in South Asia*' by V. S. Mani, '*Enemy Status and Military Detention in the War Against Al-Qaeda*' by K Chang, '*International humanitarian law: An Indo-Asian Perspective*' by V. S. Mani and '*Hinduism and International Humanitarian Law*' by Manoj Kumar Sinha, '*Preoccupied with Occupation: Critical Examinations of the Historical Development of the Law of Occupation*'

by Yutaka Arai-Takahashi.

International Trade Law Important components of the discussions during week 5 (Trade in Services) and weeks 7 and 8 (Preferential Trade Agreements) are the SAARC Agreement on Trade in Services and the South Asian Free Trade Area (SAFTA). Various readings relevant to South Asia have been included and cover diverse areas including non-tariff barriers ('*Non-tariff Barriers in South Asia: Nature and Modalities to Address the Attendant Issues*' by Mustafizur Rahman and M. A. Razzaque), agriculture ('*WTO Agriculture Negotiations and South Asian Countries: Concerns, View Points and Consensus*' by Ramesh Chand and Seema Bathla), trade in services ('*Trade in Services in South Asia: Opportunities and Risks of Liberalization*' by Saman Kelegama), the TRIPS Agreement ('*GATT/WTO and the TRIPS Agreement: A South Asian Perspective*' by Suman Sahai), and labour standards ('*Labor Standards and WTO Rules: Survey of the Issues with Reference to Child Labor in South Asia*' by Kishor Sharma). The works of South Asian scholars on international trade law include (but are not limited to) '*The Road from Doha: The Issues for the Development Round of the WTO and the Future of International Trade*' by Surya P. Subedi and '*Protectionism*' by Jagdish N. Bhagwati.

Law of International Organisations The penultimate week in the course is dedicated entirely to the study of the SAARC. In addition to this, topics of relevance to South Asia, such as the powers of the South Asian University, are a part of the general discussion on the express and implied powers of international organizations, during week 4. And there is a special focus on the situation in Afghanistan during week 9 (The UN and Regional Organizations in the Field of International Peace and Security: The UN and NATO). Readings such as '*The Decision-making in the WTO and South Asian Countries*' by Sumitra Chisti address significant issues related to South Asia. The contribution of South Asian scholars to the study of international organizations include '*International Organisations, 1945-Present*' by B. S. Chimni and '*The Role of General Assembly Resolutions as Trend-Setters of State Practice*' by S. K. Agrawala.

International Human Rights Law During week 3 (International Human Rights Law and Global South Perspectives), the focus is on the third world vis-à-vis

human rights. The TWAIL approach to human rights is an important component of the discussion. Further, week 10 of the course (Human Rights in SAARC Nations) is dedicated to the study of human rights in the members countries of the SAARC. The readings include '*Human Rights and Asian Values*' by Amartya Sen, '*International Law From Below: Development, Social Movements, and Third World Resistance*' by B. Rajagopal, '*A Just World under Law: A View from the South*' by B. S. Chimni, '*Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?* ' by Upendra Baxi and '*The UN Human Rights Committee: Practice and Procedure*' by Yogesh Tyagi.

Intellectual Property Rights Three modules in the course are South Asia centric. These three modules discuss Hierarchy and Justifications for IPRs: South Asian Perspectives, National Policies on IPRs and South Asia, TRIPS Agreement and South Asia. The readings which are of particular importance for South Asia include '*Developing Countries' Pursuit of an Intellectual Property Law Balance under the WTO TRIPS Agreement*' by Juan He, '*Patent and Trade Disparities in Developing Countries*' by Srividhya Ragavan, '*IPRs and African-Asian States*' by V. G. Hegde, '*Intellectual Property Rights in the WTO and Developing Countries*' by Jayashree Watal.

Conclusion

Through our analysis of the course outlines of the above subjects, we have arrived at the conclusion that the LL.M program at SAU has the potential to make a significant contribution to the development of South Asian perspective of IL. All the compulsory courses taught at SAU address issues of international law relevant to South Asia, scholarly works focussing on South-Asian issues have been given due consideration, as have the works of South Asian and TWAIL scholars. This facilitates the uncovering of material on IL practice and development in South Asia to a great extent and thus, contributes to the development of a South Asian perspective of IL. Most of the eight South Asian states were once colonies and have had first-hand experience of being on, what Antony Anghie has called, the 'periphery of IL'. An attempt is being made through the LL.M program at SAU to provide a post-colonial account of IL practice and development in South Asia.

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