

Asian Civilizations and International Law: Some Reflections

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The formation of the Asian Society of International Law (AsianSIL) leads us to ask the question of whether there are unique features of Asian civilizations (Chinese, Indian, Japanese, etc.) that shape the approach of Asian peoples and states to international law. Does each of the civilizations offer a distinct outlook on international law? What kind of surplus meaning can be generated by a civilizational approach that is, insofar as Asian developing countries are concerned, not already articulated by the Third World approaches to international law (TWAIL)?¹ Is any talk of civilizational influences on the approach to international law productive and helpful?

These are complex questions. Any response to them requires us to consider the meaning of the term “civilization”. Civilizations are products of centuries of evolution. The features of each civilization, their meaning and content, are also the subject of diverse and multifarious interpretation.² Moreover, as each civilization evolves in interaction with other civilizations, exchanging ideas and practices, it is difficult to identify features that are absolutely unique to a particular civilization. As Amartya Sen succinctly puts it, “the origin of ideas is not the kind of thing to which ‘purity’ happens easily”.³ It is therefore crucial to avoid the trap of cultural essentialism in characterizing and discussing the features of different civilizations. The denunciation of cultural essentialism helps ensure that the idea of Asian civilization(s) is not

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1. For a summary discussion of the five decades of Third World scholarship, see B.S. CHIMNI, “Towards a Radical Third World Approach to Contemporary International Law” (2002) 5 *International Centre for Comparative Law and Politics Review* 16; Antony ANGHIE and B.S. CHIMNI, “Third World Approaches to International Law and Individual Responsibility in Internal Conflicts” (2005) 2 *Chinese Journal of International Law* 77.
2. Fred DALLMAYR, “Dialogue Among Civilizations: A Hermeneutical Perspective” in Sura P. RATH, K. Nirupa RANI, and V.C. SUDHEER, eds., *Dialogues of Cultural Encounters: Nations and Nationalities in Periods of Conflict* (Delhi: Pencraft International, 2006) at 25.
3. Amartya SEN, *The Argumentative Indian* (London: Allen Lane, 2005) at 132. Sen tells the story of the spice chilli, which is a basic ingredient in Indian cooking. It was brought to India from the “New World” by the Portuguese. But, as he notes, this does not make Indian cooking any less Indian. Indeed, chilli has now become an Indian spice. See also Jan N. PIETERSE, *Empire and Emancipation: Power and Liberation on a World Scale* (London: Pluto, 1989) at 22–3.

appropriated and manipulated by the advocates of narrow cultural nationalism. Such is the notion of “post-colonial revenge” that calls for the rejection of all Western thought. This proposition is deeply problematic, for there is no easy way of stepping outside Western thought, especially after the colonial era. It is the intermeshing of Western and Asian thinking that accounts for the fact that often the very act of retrieval of pre-colonial non-Western ideas is “tainted” with Western ideas.⁴

What is perhaps of critical import here is the conceptual world in which the borrowings from other civilizations find a home. That is to say, do the borrowings advance the cause of a peaceful, democratic, and just world order? Gandhiji, for instance, adapted “Western” ideas of nationalism and imbued them with local interpretation and symbolism to give it a deeply humane content, in the process undermining the very idea of imperialism. As Ashis Nandy has noted, Gandhiji gave the struggle for national liberation a completely new meaning when he talked of the need to save the oppressors from themselves and their narrow and distorted interpretations of ideas that are Western. Gandhiji recognized that “once the hegemony of a theory of imperialism without winners and losers was established, imperialism had lost out on cognitive, in addition to ethical, grounds”.⁵ In other words, Gandhiji did not see the colonizers as mere “objects”. He greatly respected the dignity of the Other, i.e. the colonizers. This move to critical inclusiveness, endorsed and later practised by Nelson Mandela, is the principal foundation on which a peaceful and just world order can be created.

While a cultural essentialist position on the idea of civilization needs to be rejected, any form of crude materialism that entirely neglects multiple life forms and distinct social and political ontologies that can be traced to reasons of geography and history, is equally problematic. Each civilization has its “sources of the self” that produce varied notions of cosmos, time, society, state, and law.⁶ It would be unhelpful to be dismissive of these differences as they enrich international life by showing how diverse civilizations have addressed social, political, legal, and ecological problems over time.

Regional or national cultures can play an important role in how different civilizations approach international law and international institutions. Thus a civilizational explanation for Asian exceptionalism (there are material explanations as well) in the area of refugee protection (with only five states becoming party to the 1951 United Nations Convention Relating to the Status of Refugees) is that law is not perceived as the principal response and solution to safeguarding the dignity of strangers.⁷ Asian cultures arguably tend to rely instead on societal values and traditional practices to ensure protection for them. Yet, in the absence of a law on the status of refugees, it

4. Rajeev BHARGAVA, “How Should We Respond to the Cultural Injustices of Colonialism?” in Jon MILLER and Rahul KUMAR, eds., *Reparations: Interdisciplinary Inquiries* (Oxford: Oxford University Press, 2007) 215 at 246.

5. Ashis NANDY, *Exiled at Home: Comprising at the Edge of Psychology, the Intimate Enemy and Creating a Nationality* (Oxford: Oxford University Press, 1998) at 87.

6. Charles TAYLOR, *Sources of the Self* (Cambridge: Cambridge University Press, 1995).

7. For a “materialist” explanation, see generally Sara E. DAVIS, “The Asian Rejection?: International Refugee Law in Asia” (2006) 52 *Australian Journal of Politics and History* 562.

may be difficult to effectively protect the rights of refugees. What a multi-civilizational dialogue can do in this context is to encourage a conversation on the ideal and optimal mix of legal and societal values and practices that would help safeguard the interests and rights of refugees.

To illustrate how a multi-civilizational approach that draws on the best practices of all civilizations can help realize a peaceful, democratic, and just world order, three attributes of Indian civilization may be mentioned.⁸ These are, first, the idea and practice of non-violence; second, an inclusive vision of cosmopolitanism; and third, the stress on spiritualism.⁹ Given the constraints of space, the point may be exemplified with reference to the principle of inclusive cosmopolitanism. Historically, elements of Indian culture, as in the case of the Sanskrit language and culture, to mention one important historical episode, spread unaccompanied by violence. This inclusive, or what is also termed “Sanskrit Cosmopolitanism”, can be described as a unique feature of the Asian region. Sanskrit culture was not spread through, to quote a leading authority, “the actions of a conquest state” but “by the circulation of traders, literati, religious professionals, and freelance adventurers”.¹⁰ There was no sign of “coercion, cooptation, juridical control, and even persuasion”.¹¹ Rather “those who participated in Sanskrit cosmopolitan culture chose to do so, and could choose to do so”.¹² Thus Sanskrit cosmopolitanism presents a model of trans-civilizational relationships that is benign and productive and projects a global future in which all civilizations can peacefully co-exist and contribute to the growth of the others. This vision diverges from the clash of civilizations thesis that implicitly sees the answer lying in the triumph of one or another vision of cosmopolitanism.

In assessing the possible contribution of Asian civilizations to a multi-civilizational international law, a distinction needs to be made between the values embedded in the life, world, and struggles of Asian peoples from the thinking and practices of Asian states. Such a distinction helps to put in perspective the whole debate on Asian values and human rights. Among other things, it helps distance the culture of Asian peoples from the horrific acts committed by Asian states against their own people or other peoples. To be sure, the culture of peoples is not always democratic or progressive. But they do not have a monolithic and official character and are therefore more easily made the subject of critique.

8. One must here also bear in mind the problems and dangers of cultural essentialism and materialist reductionism, and the distinction between values of peoples and of states.

9. These values are mentioned here in the same general way that it is said that co-operation through international institutions is a contribution of the culture of United States: “one hallmark of American Hegemony is its organization around international institutions”: See John IKENBERRY and Michael MASTANDUNO, “Introduction: International Relations Theory and the Search for Regional Stability” in John IKENBERRY and Michael MASTANDUNO, eds., *International Relations Theory and the Asia-Pacific* (New York: Columbia University Press, 2003), 1 at 9. After all, co-operation through international institutions pre-dates American hegemony. But there is little doubt that it has gathered momentum in the era of US domination. It contrasts with Asia, where there is “the lack of international institutions”: see David KANG, “Hierarchy and Stability in Asian International Relations” in Ikenberry and Mastanduno, eds., at 163.

10. Sheldon POLLOCK, “Cosmopolitan and Vernacular in History” (2000) 12 *Public Culture* 591 at 603.

11. *Ibid.*

12. *Ibid.*

Second, a multi-civilizational approach to international law must rely on a “cognitive and evaluative framework based on the deliberate recognition of plurality of civilizations that have long existed in human history”.¹³ The dialogue between civilizations should be “open-ended and hospitable to multiple and expanding horizons”. It should, in particular, eschew the tradition of “orientalism” which was an “effort to dominate and ‘talk down’ the other, in such a manner that the ‘Occident’ was never called into question (or never allowed to be questioned)”.¹⁴ What we instead need to do, following the call of Dipesh Chakrabarty, is to provincialize Europe.¹⁵

Such a move requires in the world of international law, among other things, the recognition of the distinct contribution of Asian states to the evolution and growth of international law doctrines and practices. The principle of recognition, as Nancy Fraser has persuasively argued, is critical to any idea of global justice.¹⁶ No idea of global justice is legitimate if it does not respect cognitive reciprocity between different civilizations. The areas in which Asian states have historically made a substantial contribution to the development of international law include the law of the sea, international humanitarian law, and international environmental law. These have been amply recorded in the writings of both Asian and Western scholars. For instance, R.P. Anand has pointed out that in formulating his thesis on the freedom of the seas, Grotius was “aware of the long tradition of freedom of navigation in the Indian Ocean” and got a “helpful cue from the Asian state practice of freedom of commerce and trade between various countries and peoples without any let or hindrance”.¹⁷ Indeed, according to Anand, freedom of the seas “is one principle which Europe acquired from Asia through Grotius”.¹⁸

In the end it may be stressed that insofar as developing countries in the Asian region are concerned, the core of their approach to international law is in its main features articulated by at least two generations of TWAIL scholars. The essence of TWAIL scholarship is anti-imperialism, the need for the democratization of international relations, and the imperative of peaceful dialogue based on the principle of equality between all civilizations in the world. Given the fact that a dominant majority of Asian countries are developing countries, TWAIL should be at the centre of elaborating an Asian and multi-civilizational approach to international law.

13. ONUMA Yasuaki, “The Hague Lectures” (2007) at 10. On file with the author.

14. Dallmayr, *supra* note 2 at 35–6.

15. Dipesh CHAKRABARTY, *Provincializing Europe: Post Colonial Thought and Historical Difference*, 2nd ed. (New Jersey: Princeton University Press, 2007).

16. Nancy FRASER, *Scales of Justice: Reimagining Political Space in a Globalizing World* (New York: Columbia University Press, 2009); B.S. CHIMNI, “A Just World Under Law: A View from the South” (2007) 22 *American University International Law Review* 199.

17. R.P. ANAND, *International Law and the Developing Countries’ Confrontation or Cooperation* (New Dehli: Banyan Publications, 1984) at 56.

18. *Ibid.*, at 61.