

INAUGURAL CONCLAVE &
COLLOQUY REPORT
**LEARNING
INTERNATIONAL
LAW IN SOUTH**
3rd January 2017



Centre for Economy Development and Law



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INAUGURAL CONCLAVE
OF AAA INDIA, THE
HAGUE ACADEMY
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The inaugural conclave of the Indian Chapter of the Association of Attendees and Alumni of the Hague International Law Academy, hosted by CED&L, preceded by a colloquy on “Learning International law in South: The Relevance, Methodology and Prospects”, was intellectually engaging where the expert panel in dialogue with the delegate participants discussed and debated various perspectives of the “South” in the understanding of International Law.

PANEL
DISCUSSION
REPORT

RAPPORTEUR:

AMEYA M R

PANEL MEMBERS:

Dr. SRINIVAS BURRA (Assistant Professor, SAU, New Delhi)

Mr. ELAIYARAJA CHELIAH (Assistant Professor, TNDALU, Chennai)

Mr. NIZAMUDDIN AHMED SIDDIQUI (Assistant Professor, NUJS, Kolkata)

Dr. SHANNU NARAYAN (Assistant Professor, IIM, Kozhikode)

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INAUGURAL CONCLAVE OF AAA INDIA, THE HAGUE ACADEMY AND THE COLLOQUY ON “LEARNING INTERNATIONAL LAW IN SOUTH: RELEVANCE, METHODOLOGY AND PROSPECTS”

The Centre for Economy, Development and Law, Government Law College, Thrissur, hosted the inaugural ceremony of the Indian Chapter of The Association of Attendees and Alumni (AAA India) of The Hague Academy, at Kerala Institute of Local Administration (KILA) on January 3, 2017. With the genuine interest to pursue its missionary objective of “dissemination of knowledge of International Law”, AAA India associated with CED&L to enrich the programme with a colloquy on the theme “Learning International Law in South: The Relevance, Methodology and Prospects”.

Mr. Abhilash Gopinath, Director, CED&L offered welcome to the national level gathering of students, academicians and experts, by claiming the legacy of Prof. Dr. Chacko J. C., a native of Thrissur and one of the earliest Indian representatives to offer lecture at The Hague Academy of International Law. He noted the importance of learning International Law outside classrooms, pertaining to its ability to affect common people, especially of the Third World countries. Legal, political and economic relations at the international level silently reach up to a rickshaw-puller in the age of globalization. Hence, International Law is to be unlearned as a cup of tea of some elite academicians, where knowledge itself can be the first step of “resistance”, he asserted.

Inaugurating the programme, Mrs. Binu Poornamodan Cholayil, Principal, Government Law College, Thrissur, briefly described the four academic centres of the college, the activities of which expose the students to different arenas of law as well as other streams of knowledge. In her opinion, the representation of expert delegates in the programme who hail from government law colleges around Kerala itself prove their achievements outside the restricted exposure provided by syllabus. Then Mr. Arun Krishnan briefly narrated how the idea of AAA India has been nurtured by Mr. Nithin Ramakrishnan, Fellow of CED&L and an alumnus of The Hague Academy, since his meeting with the President of the Academy. He also pointed out how the Third World approach to International Law is considered as an “alternative” perspective.

Dr. Srinivas Burra chaired the ensuing academic session. He is Assistant Professor at the South Asian University, New Delhi and holds his PhD in Legal Studies from Jawaharlal Nehru University. He began by enumerating how the lecture by Dr. Chacko at The Hague Academy is distinguished. He enumerated the distinctive features of the lecture as it was predominantly in the post-colonial Indian perspective, focused on the concerns of the then newly emerging state of India. Dr. Burra was concerned about the division of International Law into “the International Law” – the mainstream – and some other perspectives like the Southern point of view. Generational aspects of International Law are also debated. Expressing the hope that the discussion will raise certain prominent questions related to these, he welcomed Mr. Elaiyaraja Cheliah, Assistant Professor at Tami Nadu Dr. Ambedkar Law University.

Mr. Elaiyaraja Cheliah began with the question how International Law engages with the lives of any human being. He quoted Prof. Thomas Erskine Holland that, “International Law is the vanishing point of jurisprudence”. He articulated his opinion that International Law must be “soulful”, at a time when terms such as ‘human community’, ‘international life/society’, and ‘human conscience’ are missing from it. There is a stagnation of many concepts. Learning of the subject without self conviction and belongingness will be baseless. His conception is that International Law has been, not a subject, but a part of laws of nature and life since the historical time of human migration. People say that United Nations is an integral part of modern international law. There are questions whether the UN is sovereign where the purposes and principles codified under the UN Charter, articles one and two, claim that it stands for the whole human kind.

Mr. Elaiyaraja was of the view that, learning the methodology of International Law itself has acquired importance. The legal personality of the UN has been called upon for verification in the International Court of Justice under cases of reparations of injuries suffered in the services of the organisation. One of the judges, Alejandro Alvarez, used the term “New International Law”. Evolutionary patterns can be detected in International Law. Its main characteristics are people-centric approach and consideration of the contemporary developments in International Law. An original approach to understand modern International Law was set into motion by Alejandro Alvarez. Elaiyaraja was of the opinion that a multicultural understanding of International Law existed prior to the 16th century. He said an original approach is a legal thinking process, as an

example of which he particularly noted the legal scholar Christopher Gregory Weeramatry, former Chief Justice of ICJ. He argues the ancient existence of International Law existed as part of daily life and evidence attributed through theological science. Weeramatry came up with 19 reasons to prove this. He said almost all the principles of International Law like sovereignty, sovereign equality, respecting treaties, international co-existence, are all contained in the scriptures. The Universal Declaration of Human Rights, 1948, uses the term “human family”, to which Weeramatry attributes theological origins. Scriptures provide value-based definitions and mechanisms of sovereign. Mr. Elaiyaraja pointed out that UDHR does not speak about the right to self determination because of the reason that colonial regimes still existed then. On the other hand, scriptures hold people who do righteous things to be the superior ones and they provide for one of the basic human rights documents, according to Weeramatry.

Mr. Elaiyaraja suggested that a collection of bibliography for learning International Law in South is much required. Only 20% of International Law performed overseas is operated through original method. Through examples of genocide and prostitution he attempted to advocate his stand that modern International Law is to be both learned and disowned. He also questioned claims of analytical ability posed by Positive Law. Analytical ability is the ability to cherish multiple facets of a single concept which is required in the learning of law itself. The ICJ revamped after the independence of Afro-Asian countries so as to include judges from different geographical locations intend to keep up this analytical ability. Any student of International Law has to develop this ability, and also, gain international exposure in order to overcome geographical disadvantages, Mr. Elaiyaraja suggested as his words of conclusion.

“Why should you teach International Law in South?” was the first question that Mr. Nizamuddin Ahmed Siddiqui, Assistant Professor at the National University of Juridical Sciences, Kolkata, asked to himself in his research on the theme of discussion. The second question was, “what is ‘South’?” The third question is about the relevance of learning International Law in South. He remarked that International Law as perceived by Asian scholars is different from International Law perceived by European scholars. The well-built reason behind this disparity lies in history, in his opinion. The identifiable sources of International Law including the ICJ statute draw their basics from treaties and customs. He brought into notice a scholarly article defending the Australian literature on customary law; the situation that compelled him to write it was the

dominance of European literature in International Law. This justifies a specific approach to International Law while learning it from the South. The higher vulnerability of South Asia towards environmental issues to economic inequalities requires specialized approach.

Mr. Nizamuddin remembered listening to an interview of the Third World scholar Antony Anghie who argued that the justice that International Law ensures in documents is not objective in practice. Whether judicial process is a justice dispensation process? Not always. Judicial process has two phases: first, settlement of dispute and second, delivery of justice. International tribunals perform the former alone. The decision of ICJ on the threat of use of nuclear weapons, where it overlooked the chances to disapprove of their use, is put forth as example. So, justice is not too much of a concern in the practice of International Law. Justice as an objective has not been inherent in International Law but was slowly included later on. Criminalization of violation of human rights can explain this. But in his observation, International Law still does not give proper inclusion to the South. Hence, International Law is to be re-invented from the point of view of the South, rather than uselessly challenging the existing. Mr. Nizamuddin told about a letter written by many scholars to *The Guardian* in 2004 at a time when the US and UK were about to attack Iraq, warning of the imminent violation of International Law. And, after the war, another set of scholars wrote a letter as if in reply to the first, pointing out that International Law can have many interpretations and a single one of them cannot dominate others. The reply of the first set of scholars to this in an article shows that, challenging the International Law will only result in making it irrelevant whereas reforming it with own ideas and tools can be render International Law relevant for the Third World.

Mr. Nizamuddin further raised his question if International Law is bearing too much promises of resolving issues in the international level. But in the absence of an alternative, it has to be reformed and depended upon. Narratives of countries like Russia, Iran and Saudi Arabia, different from that of the international law should reach students as well as media. International Law has to be taken to the masses because people also have their own perceptions and ideas on international happenings. He was clear in articulating that international law and international politics are to be disseminated as separate entities. Like Mr. Elaiyaraja, Mr. Nizamuddin also suggested that the AAA India can develop a repository of resources for learning International Law, in line with various law associations around the world.

Dr. Srinivas Burra elaborated on how International Law is relevant to the last person in any society. Narrating the experience of a prominent international lawyer from Finland who travelled to some interior part of Brazil at the time of the Iraq war and found the wall-writing saying 'war is illegal', he stressed on the use of the technical terminology "illegal". War is 'illegal' under some international law or charter and the knowledge of this technicality has pervaded to common man. But a clear understanding of how International Law affects us is necessary. Most of the times, it affects us through national legislations that happen in response to or by being forced by international law developments.

Dr. Burra moved on to discuss why "The International Law" is to be looked at from different perspectives. The 'mainstream' International Law, since its inception till the moment, is troubling at least some nations or individuals or their groups. The fundamental principles it developed over a period of time is being utilised by some groups against certain others for exploitation and discrimination. Most of the things that happen around us happen in the name of law. Even an international resolution passed through political process will come to hold legal value once sanctioned. Something taking the shape of law begins to act as an obligatory factor for both the individual and the state. Briefly referring to the historical development of International Law, Dr. Burra brought out its instrumental role in the colonial expansion. The idea of 'sovereignty' as propounded by International Law also has evolved through these periods when discriminatory approach towards the colonies was very much part of international legal discourses as Dr. Burra exemplified. The scenario slightly changed post-1945. The newly independent countries like India were, to an extent, undoing what was done in the name of International Law. The concept of 'permanent sovereignty over natural resources' dates back in origin to the time when some of these countries argued that, through political independence they have regained the sovereignty they had enjoyed before the colonial occupation and hence the sovereignty over natural resources as well. At this point, international and national laws came face to face in argument of who can decide over the use of natural resources by companies licensed in the colonies by the colonists. This was happening within the United Nations system.

He juxtaposed the Hague lectures by Indian scholars including Dr. Chacko, to illustrate how they have challenged a particular notion of international law which is inconvenient to the Third World/the South/the post-colonial nations. Dr. Srinivas Burra further said that, borrowing from

South Asian scholars like Weeramathy with all its limitations, the early generations of Third World international lawyers were challenging the European hegemony in the international law and accusing them of using international law for colonial profits whereas the other countries of the world are also part of it with their own understanding of international law. At the same time, international law was also seen as an emancipator for the Third World, which some scholars described as 'dualism'. Later on, the nature of international law which is essentially state-centric and not always people-oriented was brought under critique.

Dr. Srinivas Burra observed that international law is being discussed in classrooms in the form of trade laws, IPR, investment laws and so on. The implications of the developments in international law to the common people are to be noticed. What was happening during the colonial age would probably be happening today also affecting us in terms of gender or social relation or caste. Dr. Burra put forth the question that why India should become a permanent member in the UN Security Council which once we accused of being an undemocratic institution? He also explained how the persistent activities of feminist scholars resulted in better inclusion of women judges and representation in higher posts of the International Criminal Court. All these situations necessitate conscious political stand. There are several 'Souths' within the South; certain dominant voices overshadow others and represent 'the global South'. Dr. Burra illustrated this very well by pointing out that questions of dalit and indigenous are not at all addressed by any of the progressive international lawyers from the South. International Law directly operates on the ground around us. Dr. Srinivas Burra stated that it is possible to develop counter narratives of international law, which can be one of the ways of doing justice to our understandings and perspectives from the Global South and several other souths within the South.

Further deliberation over the subject was left to the discussant in the panel, Dr. Shannu Narayan who is faculty at IIM, Kozhikode. She made a comprehensive summary of the panelists' words. Marking her disagreement with Holland, she said International Law is not a vanishing point of, but rich of, jurisprudence. She also opined that the influence of religion can be seen in different laws such as law of diplomacy, human rights and disarmament. Multi-civilizational approaches vary one another. Dr. Shannu then underlined the critical role of media in dissemination of knowledge of international law, as pointed out by Mr. Nizamudin. She added to it the examples

of Syria and other South Asian countries and stated that this part of the world is prone to multiple disasters which will least affect developed nations. While discussing the points made by Dr. Burra, she mentioned lobbying behind every legislation. Concerning the dissemination of international law, connecting locally is inevitable. In her opinion, language rather than religion is the better tool for that. Another method of dissemination is through curriculum at school and graduate levels: the basics can be introduced through social sciences in the former and practical international moot court experiences can be gained in the latter periods. International law institutions are to be associated with such ventures. Dr. Shannu was keen to note that international law is underutilized due to its containing colonialism and capitalism. While reading International Law, one must be very careful of the dominant existing social classes. In response to the hegemonic approach of International Law, we must differ from the original practices, resist and try to reform. She concluded with the remark that, to ensure democratic participation in the international legal system, it is essential to ensure that not only the global south, but also the national south must be accommodated so that their voices could be heard while drafting international law.

Dr. Pramod, faculty of Political Science and International Relations at Sree Kerala Varma College, Thrissur, was of the opinion that, to overcome the lack of enthusiasm in learning international law, the wider area of international political relations is to be integrated with it. International law is part of global political order and there ought to be a realistic connection between the two. The dominant paradigm that tries to explain the functioning of international world order in the absence of a global government does not accept the prominence of certain power centre. When the global power politics redraws international world order, the operation of international law becomes problematic. He also enquired if regional groupings can be institutionalized as alternative ways of engaging with international law. Regional political perspectives are basically required for that to be an actuality. In the bilateral level, domestic laws are to be raised to the level of acceptability of an international law. Dr. Pramod suggested looking at international law from the point of view of international relations.

The interactive session stimulated longer discussions. Concerns were raised regarding concepts of justice as delivered through international law, informal dissemination of knowledge of international law and the interface between natural law/divine law and constitutional law. In

response to a comment, Dr. Shannu Narayan deliberated the nature of international treaties that advocate peace, as ultimately more lenient towards war, which contributes to the existing capitalist market system around war. She referred to Carolyn Nordstrom and Eric Hobsbawm to substantiate it. Dr. Srinivas Burra said Indian scholars of law are generally not well equipped with methodology and theoretical aspects. Afterwards, Mr. Nithin Ramakrishnan delivered the vote of thanks.

After the colloquy came to a conclusion for the time being, the first meeting of the Association of Attendees and Alumni (AAA India) of The Hague Academy of International Law was convened, outlining the framework for future actions.