A visible theme in the history of international law: international or global?

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Abstract: It is widely recognised that international law is a Western construct. It is connected to the history, politics, and political domination of Western colonialism and imperialism which has created a form of order. As such, the paper will discuss the works of such scholars as Bluntschli, Lorimer, and Westlake, and will then trace the development of international law into the 20th century. Nineteenth-century international law was forged entirely in Europe; it was the expression of a shared European consciousness and culture, and was geographically located within a community of Europeans, which meant a community of Christians, and hence so called 'civilised' people. Despite this self-proclaimed superiority of European international law, the paper will also discuss the Asian contributions, the African efforts, and the Latin American developments of international law in a chronological statement through the centuries. In particular, the17th Century, 1815, 1918, and 1945 as international law changed in the post-World War II era when a larger community of nations developed Contemporary International Law.

Keywords: international law; history; global; contemporary; regional.

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"A man cannot govern a nation if he cannot govern a city; he cannot govern a city if he cannot govern a family; he cannot govern a family unless he can govern himself; and he cannot govern himself unless his passions are subject to reason." Hugo Grotius

1 Introduction

International law,[1] also called public international law or law of nations,[2] is the body of legal rules,[3] norms, and standards that apply between sovereign states and other entities that are legally recognised as international actors.[4] The term international and multicultural was coined by the English philosopher Jeremy Bentham[5] (1748–1832).[6] According to Bentham's classic definition, international law is a collection of rules governing relations between states.[7] It is a mark of how far international law has evolved throughout history.[8] The regional and global relations,[9] among empires' yesterday, are

the same in today's states; hence, states through the development of historical international law became the leading international actors.

It would be easy to study international law today,[10] and learn next to nothing about the past centuries that assisted in forming that law. The great rooted principles of international law formed in the mid-17th century,[11] with Europe's break to a state system.[12] In fact, texts about contemporary international law, rarely mention the 18th and 19th century. First and foremost, the history of international law can be discussed as a whole. Specifically, the following dates stand out, 1648,[13, 14] 1914,[15] and 1945.[16] A great deal more historical work remains to be done to recover the developments of international law in history.

International law has existed throughout all history. It began as a local phenomenon,[17] then went regional,[18] and is global today.[19] We have also noticed that international law has reshaped itself throughout history, and in the future, it will take on a different character for the reasons that follow. Today's international law is no longer practiced by only states and international organisations; the individual is considered as another actor in the practice of international law.[20] Modern history and technology have given international law a different image; we witness it today specifically in communication, in the widespread of international organisations, and in the interaction of relations among states.

Globalisation is playing a major role today in the development of international law. Networks and the information flowing on these networks on the internet are uniting states across the globe.

Although international law is mostly made between states, the modern system of international law developed in Europe from the 17th century onwards and is now accepted all around the world. The rules and principles of international law are increasingly important to the functioning of our interdependent world. This includes areas such as: telecommunications, postal services, and transportation (such as carriage of goods and passengers); international economic law (including trade, intellectual property, and foreign investment); international crimes and extradition; human rights and refugee protection; the use of armed force by states and non-state actors; and counter-terrorism. It is generally accepted that Article 38 of the Statute of the International Court of Justice is a complete statement of the sources of international law, the language of Article 38 does not explicitly support the hierarchy of sources.

The two traditional branches of the field of international law are *jus gentium*,[21] and *jus inter gentes*.[22] We can now review the wide-ranging historical events that formed international law in a general way and more detailed answers will follow by turning to the issue of whether international law is international or global.

The paper explains the histories of international law, where and when did the history of international law begin? Many scholars have argued about the definitive date and periodisation of certain dynamic developments, let alone which treaties, institutions, and figures have shaped the field's core doctrines. Indeed, many of our 'modern' notions of international law have origins stretching much farther back than generally appreciated. Hugo Grotius's publication of *De iure belli ac pacis* freed international law from some of its theological baggage. *The Déclaration du Droit des Gens* cataloged fundamental rights and duties.

This paper on the history of international law is based on the findings throughout centuries as well as the writings of the most prominent élitists in the field of international law. This history will emphasise broad trends in international law, in both the conceptual sphere and in states practices.

The discussion will move descriptively and chronologically, beginning with a cursory look at the western world, followed by a rather fuller discussion of the Asian contribution. Northeast Asia remained nearly outside the purview of international law until the mid-19th century when the region was forced to open up to the West and witnessed the emergence of a dualistic view of international law, with the law of nature and the law of nations co-existing (more or less amicably). This discussion will confine itself to a few historically-oriented comments on some of the African contributions to international law.

Today, no area of international law has been so little explored by scholars as the history of the subject of international law. Although this overview of the history of international law is short, we are still only in the earliest stages of the serious study of the history of international law. Many blank spots exist, some of which will be identified in passing in the discussion below by offering the Latin American development. This short history – inevitably very short history – can give only the most general flavour of the major periods of development of international law history. It will accordingly not be possible to give more than the most token attention to developments in the modern world and its contribution – if not always in close harmony – that made international law what it became. How well these new challenges in the history of international law will be met remains to be seen.

By the beginning of the 21st century, international law was seen as a law changing the world, to a greater extent more than it had ever seen before.

2 Western tradition

History can be written in many modes or forms.[23] Simply put, three such modes can be distinguished – the history of events, the history of concepts, and the history of individual people. All three approaches have also been used in the historiography of international law.[24] To turn to the Western development in international law, the West treated international law as wars,[25] and treaties,[26] which are the most significant events.

In the history of international law and the West, presently, there is no single chair or university institute which – to the best of our knowledge – is exclusively devoted to the study of the history of international law anywhere.[27] When reviewing the history of international law from the West's perspective, the function of the great powers[28] have to be mentioned beginning in the 19th century where the tradition of writing the history of international law began. An eminent historian of international law remarked that "one cannot learn anything from the histories of international law, at least nothing in concrete terms."[29] With regard to this statement, we find ourselves respectively disagreeing, we believe, studying the history of international law,[30] can help us to better understand the character of that particular legal order, its promise, and its limits. The West believes that there is no sovereign super national body to enforce international law;[31] some older theorists; including Thomas Hobbes[32] and John Austin[33] have denied that this is true law.

Nevertheless, international law is recognised as law in practice,[34] and the sanctions for failing to comply, although often less direct, are similar to those of municipal law;

they include the force of public opinion, self-help, intervention by third-party states, the sanctions of international organisations such as the United Nations, and, in the last resort, war. The growth of international law in the West came through treaties,[35] which first included the states of Western Europe. The USA contributed much to the laws of neutrality and aided in securing recognition of the doctrine of freedom of the seas.[36] The provisions of international law were ignored in the Napoleonic period,[37] but the Congress of Vienna[38] re-established and added much, particularly in respect to international rivers and the classification and treatment of diplomatic agents. *The Declaration of Paris*,[39] abolished privateering, drew up rules of contraband, and stipulated rules of blockade. The *Geneva Convention (1864)*,[40] provided for more humane treatment of the wounded.

The last quarter of the 19th century saw many international conventions concerning prisoners of war, communication, collision, and salvage at sea, protection of migrating bird and sea life, and suppression of prostitution. Resort to arbitration of disputes became more frequent. The lawmaking conventions of *the Hague Conferences*,[41] represent the chief development of international law before World War I. *The Declaration of London*,[42] contained a convention of prize law, which, although not ratified, is usually followed. At the Pan-American Congresses,[43] many lawmaking agreements affecting the Western Hemisphere have been signed. The nuclear age and the space age have led to new developments in international law. The basis of space law was developed in the 1960s under the auspices of the United Nations.

Treaties have been signed mandating the internationalisation of outer space (1967),[44] the moon and other celestial bodies (1979). The 1963 limited test ban treaty prohibited nuclear tests in the atmosphere, in outer space, and underwater.[45]

The Nuclear Nonproliferation Treaty (1968),[46] attempted to limit the spread of nuclear weapons.

The Agreements of the Strategic Arms Limitation Talks, signed by the USA and the USSR in 1972,[47] limited defensive and offensive weapon systems.

This was the first of many international arms treaties signed between the two nations until the dissolution of the Soviet Union. Other treaties have covered the internationalisation of Antarctica (1959),[48] narcotic interdiction (1961), satellite communications (1963), and terrorism (1973).[49] *The Law of the Sea Treaty* (1982),[50] clarified the status of territorial waters and the exploitation of the seabed.

Environmental issues have led to a number of international treaties, including agreements covering fisheries (1958), endangered species (1973), global warming and biodiversity (1992). Since the signing of the General Agreement on Tariffs and Trade (GATT) in 1947,[51] there have been numerous international trade agreements. The establishment of the International Criminal Court (ICC, 2002), with jurisdiction over war crimes, crimes against humanity, and related matters, marked a major step forward in international law. These facts and historical events show on the one hand that the West developed international law throughout history. But on the other hand, there is a theory which suggests that the history of international law written from a non-European perspective is still rare.[52]

In the West and before the 20th century, international law was often referred to as a ‘law of nations’, precisely, *public international law (rights and duties between nations)*.[53] Discussing the development of international law in the West leads us to clarify the term ‘civilised nations’. There was widespread use of the expressions *civilised nation* and *civilised world* in the 19th century in Western sources and literature.[54] German scholars

indeed used both '*Kulturstaat*' and '*zivilisierter staat*' to refer to the so-called 'civilised states'; e.g., Johann C. Bluntschli: Das moderne Völkerrecht der civilisirten Staten als Rechtsbuch dargestellt in 1878.

Furthermore, there is a German equivalent for the French term *nation civilisée* and the English *civilised nation*; these expressions are closer instead to the German *Kulturstaat*. The French,[55] adjective *civilisée* and its English equivalent, *civilised*, coincide with the German *zivilisiert*.[56] From the 16th to the 18th century, what most international jurists in the West called international law was actually the European system of law as it existed alongside a number of other systems.[57] The 19th century brought in the international law of the international global society.

But this happened only towards the end of the century, when the Ottoman Empire,[58] China, and Japan found themselves forced to enter into the regional international society revolving around Europe.[59] Having come to the conclusion, the West developed international law, in three historical spheres, the customary international law (CIL), modern international law, and most essentiality the establishment of the international courts that have shaped the evolution of international law.

3 Asian contributions

When talking about civilisations,[60] and the contribution to international law, there are no pure Asian or non-Asian ideas, 'Asian civilisation' or rather 'Asian civilisations',[61] like all other civilisations, are very complex and diverse,[62] both culturally and in contributing to international law. Asian states have made a great contribution to the evolution and growth of international law theories and principle rules as part of global justice, peace, and harmony.

Two areas of international law may be mentioned to illustrate the contribution of Asia to the growth of international law.[63] Anand has importantly pointed out that we must be "aware of the long tradition of freedom of navigation in the Indian Ocean." As this has helped Asian states and people to practice freedom of commerce and trade.

Indeed, according to Anand,[64] freedom of the seas "is one principle which Europe acquired from Asia through Grotius…" Judge Weeramantry sought to reinforce the universality of international humanitarian laws.[65] As he observed: "it greatly strengthens the concept of humanitarian laws of war to note that this is not a recent invention..." "it is deeply rooted in many cultures – Hindu, Buddhist, Chinese, Christian, Islamic, and traditional African..." Many examples of the Asian contribution to international law sets the true goal of the law and shows its universality to the evolution and growth of its principles.

Asian participation in the international legal system also shows both vertical and horizontal legalisation,[66] as well as deepening and widening commitments, of the state and non-state actors, especially international organisations in the region.[67]

The overall pattern of these many circumstances of Asian engagement of international law would evoke critical questions on the traditional dominance of (Euro-American) canons and methods of positivist international law.[68] Uniquely, Indian scholars point to the fundamental international law concept of universal applicability of rules as ancient India's central contribution to the modern law of nations.[69]

Indian perspectives on contributions to international law have been traced across four chronological periods:

1 the ancient period (up to 711 AD)

2 the middle ages (711 to 1600 AD)

3 the colonial period (1600 to 1947)

4 the modern period (1947 onwards).[70]

As a result of the imperial policy mandating respect for religious diversity, Islamic rule under the Mughal Empire,[71] was, by and large, peaceable. There is, however, still a long way to go in advancing the contribution of Asians to international law. An essential point is to have a stable and consistent international institution, and more generally, the willingness of Asian states learning to resolve disputes in accordance with the principles of international law.

Thus, among the participants in the early modern law-making and conferences, 26 states at *The Hague Peace Conference of 1899*,[72] and 43 states at its sequel in 1907,[73] only four states were from Asia: China, Iran, Japan, and Siam. Significantly, none of them had been colonised.

Four Asian states were among the 27 'Original Members' of the League of Nations,[74] (China, Hedjaz, Japan, Siam) (1920), and eight states were among the 51 'Original Members' of the United Nations,[75] and its Charter (China, India, Iran, Iraq, Lebanon, Philippine Commonwealth, Saudi Arabia, Syria) (1945).[76]

It was not until the program of decolonisation initiated by the United Nations had been substantially completed that the great majority of Asian states were able to participate fully as sovereign states in the formulation of the laws that were to govern their conduct internationally. While the number of states in the Asian Group,[77] at the United Nations varies slightly depending on the purpose for which it convenes, the current overall total number of states in the group is 43 out of a total of some 165 members.[78] In the light of the achievements to date and the work that remains to be done, the Asian states should start a new process aimed at improving the principles of international law.

4 African efforts

The law in Africa is diverse;[79] it is a mix of common law, customary law, civil law, and religious law systems.[80] Africa is the second largest continent[81] and has 54 countries contained in it.[82] In response to the international challenges,[83] the African Union[84] was formed and it consists of 54 countries in Africa. Today, the problems facing the continent, as a whole, are numerous and complex for the reason that the continent is characterised by 'underdevelopment'.

International law primarily governed European inter-state relations[85] and was founded on European values and beliefs, a phenomenon that is collectively summed up as Eurocentrism.[86]

The law then did not equally extend to non-European countries, which were labelled 'uncivilised' and were objects,[87] rather than subjects,[88] of international law.

After 1945,[89] a number of African states emerged as independent nations and became subjects of international law. Africa since then tried to adopt and promote international law in many fields, but some of the rules and principles of international law are seen as

obstacles toward the promotion of their interests, the African states use international law as a strategy,[90] for their protection and development. But, the question remains whether they deliver any efforts to the development of International law or not?

Several African states adopted international law,[91] in their municipal laws,[92] and accepted the principles of the UN. Through their participation, African states expanded the norms of international law to strengthen and develop their states, and their acceptance of the norms of international law, but not the traditional norms; they also encouraged a just system of international law. In 1970, the *Declaration of International Law concerning Friendly Relations and Co-operation among States*,[93] in accordance with the Charter of the UN entered the scene and African states participated. Agreeing with Chinua Achebe, who stated that: "Africa is not only a geographical expression; it is also a metaphysical landscape; it is, in fact, a view of the world and of the whole cosmos perceived from a particular position."[94]

The contribution to international law by the African states is noticeable, for the reason that Africa was and always has been a participant in the international community. The African states have contributed to the development of modern international law in various ways and as follows: the concept of the exclusive economic zone in the law of the sea; the principle of *uti possidetis*;[95] the concept of 'peoples' rights', as distinguished from that of 'human rights'; the very expansion of the traditional categorisation of human rights to embrace the so-called third generation rights, such as the right to development; the *Nyerere Doctrine*,[96] of state succession;[97] and, in general, certain principles in the area of international fluvial law,[98] concerning the common management and utilisation of shared watercourses.

Moreover, since the establishment of the ICC, the relationship between the African states and the Court evolved very considerably.

With this in mind, many African states went into *the Rome Conference* supporting the ICC.

Similarly, the most essential contribution of Africa to the development of international law was its input in the Law of the Sea. Also, the most noteworthy of the African states is the highly valuable contribution in the development of the concept of Exclusive Economic Zone.[99] The contribution of Africa in the field of international criminal law, specifically in defining the crime of aggression,[100] and its contributions made in the course of the activities of the international law commission, i.e., AUCIL.[101]

The most notable and recent efforts by the African states in the development of international law are the crime of unconstitutional change of government, the fight against apartheid, colonialism, discrimination, self-determination,[102] improvement of the refugee law, and the drafting of several instruments promoting mediation and pacific settlement of disputes recommendations.

On the regional level, the efforts of the African states were various from the identification of African specificities in human rights law, refugee law, to the remarkable development of governance law. When comparing the efforts of the African states to the other group of states such as the European states, for instance, we find that the African states still undergoing certain challenges.

A few suggestions may assist the African states to participate in forming more of the international law norms are as follows:

1 there is need for enhancing and practicing the implementation and compliance with the rules of international law by the African states

2 there is a need to increase the exchange of practices regarding international law between African states and other states in the international community

3 there is a need to improve the drafting of treaties and agreements among the African states

4 the harmonisation of the AU treaties which lack the quality of being logical and consistent

5 there should be participation of African experts and specialists in the meetings of the United Nations for their proper input and advice as representatives of their continent

6 the need to strengthen the partnerships between Africa and the rest of the states in matters of international law

7 there is need to work towards the promotion of peace, regional and international security, through the involvement of African representatives in international negotiations.

In summary, African states have contributed to the norms of contemporary international law, but the chief interest of African states is the desire to preserve the rules of CIL that are consistent with their interest, they also want to resolve the existing rules of international law that are preventing their national interests as these states are fairly newly independent states. The African states while contributing to the rules of international law, have asserted in different places, the need to participate in the creation of new rules for the best interest of their national needs from the international system.

5 Latin American developments

The main factors that play a great role in Latin American states are related to geography, economy, cultural values, social sphere, and a common historical background.[103]

The term 'Latin America' dates back to the 1850s,[104] with some precedents as early as 1836. Since then, it has referred to 19 Spanish-speaking and Portuguese-speaking countries of North America, Central America, South America, and the West Indies.[105] Even before the Latin American states became separate entities and independent states, there was some indication that specific international law rules should be applied to them.[106] An example is the *Madrid Treaty* signed in 1750,[107] which established that, in the case of war between the Crowns of Spain and Portugal,[108] "the peace should remain between their subjects in South America"; the Treaty is one of the earliest developments of international law in the Latin American states.' After the Battle of Ayacucho in December 1824,[109] which marked the triumph of the revolution in Latin America, Simón Bolívar,[110] expanded his vision of a united American nation by calling, as President at that time of Nueva Granada (Colombia), a conference of all new states in Panama the 'Panama Congress', 22 June–15 July 1826.[111]

In the 19th century, a few attempts for conventions as the *Mexican convocations* and *the Conference of Lima* in 1848,[112] both of the conventions and conferences did not succeed. On the theoretical level, the contribution of Latin Americans was very helpful to the development of international law, the writing of Diego García de Palacio y Arce: *Dialogos Militares, de la formación e información de personas, instrumentos y cosas*

necesarias para el buen uso de la guerra, published in Mexico in 1583[113] was considered a major contribution to these developments. However, after the independence of Latin American states, the first relevant book on international law was published in Santiago de Chile, dated 1832, *Principios de Derecho de Jentes*.[114] Also, the Peruvian José Maria Pando published in Madrid in 1843 *Elementos de Derecho International*.[115] Two years later in Brazil, Alcântara Bellegarde published *Noções Elementares do Direito de Gentes*. In short, great doctrines of international law have been delivered by Latin American Jurists.

Considering the development of international law in Latin America, it suggests that common principles derived from *The Calvo Doctrine*,[116] which became a customary set of rules in Latin America,[117] such as those of the prohibition of intervention; non-recognition of territory acquired by force; territorial integrity and political independence; the sovereign equality of states, the abolition of slavery and privateering; human rights; equality between citizens and foreigners in the acquiring and enjoyment of civil rights; judicial settlement of international disputes; the *uti possidetis* doctrine;[118] diplomatic asylum,[119] the non-existence of *res nullius*,[120] and territories in Latin America.[121]

Latin American states participated in both, *The First Hague Peace Conference 1899*,[122] and *The Second Hague Peace Conference 1907*,[123] with regard to the latter, *the Drago Doctrine*,[124] was introduced to the Conference and a large number of Latin American states participated in this conference.

The League of Nations,[125] period set the first global international political organisation through the formation of its Covenant. Among the League's original members were Bolivia, Brazil, Cuba, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Uruguay. In addition, Argentina, Chile, Colombia, Paraguay, El Salvador, and Venezuela were invited to accede to the League Covenant. Among the states admitted to membership were Costa Rica, Dominican Republic, Ecuador, and Mexico.

After the collapse of the League of Nations, the *United Nations Declaration* was signed in January 1, 1942, in Washington,[126] by most of the Latin American States: Costa Rica, Cuba, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, and Panama. Others followed: Mexico, Brazil, Bolivia, Colombia, Ecuador, Peru, Chile, Paraguay, Venezuela, and Uruguay.

In accordance with *the Chapultepec resolutions*,[127] and with the UN Charter, which entered into force on 24 October 1945, *the Inter-American Treaty of Reciprocal Assistance*,[128] was signed in Rio de Janeiro two years later on 2 September 1947, the new treaty was mostly inspired by Chapter VIII and Art, 51of the UN Charter.[129] On the regional level, the Latin American States as former colonies – developing states today – concurred in certain regional groups particularly within the Group of 77 (G77) context,[130] to the approval of the UN General Assembly resolutions such as those "on Principles of International Law concerning Friendly Relations and Cooperation among States";[131] *the Declaration on the Granting of Independence to Colonial Countries and Peoples*;[132] and *the Charter of Economic Rights and Duties of States (1974)*.[133]

The Latin American states had approved *the American Declaration of the Rights and Duties of Man 1948*,[134] *the Universal Declaration of Human Rights (1948)*,[135] *the American Convention on Human Rights (1969)*,[136] *the 1988 Additional Protocol to the American Convention on Economics, Social and Cultural Matters (Protocol of San Salvador)*,[137] and *the establishment of the Inter-American Commission on Human Rights*.[138]

After the Cuban Missile Crisis of October 1962,[139] and in response to that fear, a joint declaration,[140] was signed by five Latin American states – Bolivia, Brazil, Chile, Ecuador, and Mexico – on 29 April 1963 in favour of a denuclearised zone in the region. Also, the American Latin states participated in the Law of the Sea,[141] since it is a part of a continent surrounded by oceans. These states contributed to what is known today as *res communis*.[142]

Within the scope of *the UN Economic and Social Council*,[143] *the Economic Commission for Latin America ('ECLA'),*[144] was established in 1948 with headquarters in Santiago de Chile.

Today, international law in Latin America is applied even with all the complexities that the content is going through. As of now, the practices of international law in the Latin American states are for the most part, in compliance with the primary norms of international law, specifically in the prohibition against torture, the prohibition against enforced disappearance, and the right to democratic governance. Although, the norms of international law in the Latin American states vary in their degree of obligation, precision, and delegation, these states have improved their practices in all these norms.

6 The modern world

Every two hundred years, it seems the jurisprudence of CIL changes.[145] Beginning in the 17th century, natural law[146] was said to be the source of CIL. Early 19th century, positivism,[147] was in the ascendancy.[148]

Today, we live in an age of codification,[149] and international law has expanded to pre-modern,[150] and non-Western societies. These facts have brought forth the type of globalism/universalism in the historical study of international law. We suggest that universality of international law existed from pre-modern times,[151] specifically (European international law). So, changes in international law have placed individuals, governments, and non-governmental organisations under new systems of legal regulation that, in principle, are different from what is within state boundaries. However, that is not all.

Modern international law also seeks to control states by inhibiting or directing their conduct. Both in their relations with other states (e.g., the law prohibiting the use of armed force to settle disputes),[152] and in relation to individuals, both individuals of other states (e.g., issues concerning the exercise of criminal jurisdiction),[153] and its own nationals (e.g., the law of human rights).

It is the evolution of international law from a system that was concerned primarily with facilitating international cooperation among its subjects (states), to a system that is now much more engaged in the control of its subjects. That is the pre-eminent feature of the history of international law in the last 70 years.

It is also important to realise that the practice of modern international law is intrinsically bound up with diplomacy, politics, and the conduct of foreign relations. It has already been suggested that the great majority of the rules of international law are followed consistently,[154] every day as a matter of course. In short, international conventions and treaties[155] are amongst the most essential formal sources of modern international law, also termed as conventional sources.

The Global Era in the history of international law begins at the end of 1945 by the formation of the United Nations, that era brought about profound changes in the context

in which international law treaties were negotiated. In the 21st century, developed and developing states abounded the hostility in their relations and seeking openly to have norms of modern international law that were more effective and open to the new era of this century.

It seems that modern international law and its very purpose is shifting relations while in the Post-Colonial Era,[156] international law norms are primarily protecting states from interfering with each other's relations. Modern international law is characterised by the number of states that are now part of its framework, *i.e.*, 193 states are now members to the United Nations, that itself makes modern international law a truly global one. The modern international law has raised several issues; one issue is whether modern international law norms are effective?

In short, history has led us to an increasingly universal international norms regime that seeks to integrate national politics through the removal of barriers between them.

Today, in the new millennium, globalisation draws nations and peoples closer, despite recent economic setbacks. The World Trade Organization is a powerful international force that influences decisions of the leading economic powers, including the USA.[157] International labour organisations demand basic standards and benefits for workers and workplaces. These trends undermine sovereignty and reflect a tightly structured international environment that constrains even the strongest states to behave in ways that promote international order.

International law in the 21st century is playing an important role in addressing issues and trends likely to persist for decades to come. The most important of these includes a globalised economy; urbanisation; intrastate conflict; clash of cultures; unequal distribution of wealth; environmental degradation; transnational crime; collective security; multilateralism; and humanitarian intervention. Global problems require global solutions; sovereign states in the modern world cannot solve them, although they can address symptoms within their borders. Most, eventually, will require international cooperation.

The current world situation encourages debate over the scope and authority of international law. The modern world can maintain the security and prosperity.

To date, therefore, the modern world is facing challenges in international law in two major areas: the response to terrorism and the 'friction' of sovereignty.

The final lesson we can draw from this analysis of the history of international law is that the international system, as it exists (and as it was designed), reflects the superpowers values and visions. When the states in the modern world have mutual respect, cooperation, and responsible behaviour, then, international law will have the greatest responsibility.

In conclusion, modern international law with its evolution in political, economic, and international relations, will determine the shape of the norms of international law of the next era. At this writing, challenges to modern international law come from many directions: the role of state actors in a globalising world politics, unilateralism of the super powers, environmental degradation, the persistence of massive conflicts, and underdevelopment in the Third World, to name just a few.

7 Final reflections

Broadly speaking, it is possible to identify the relationship between international law and history through the way international law has been engaged or involved in the creation of history. Reading the history of international law through the analysis of customary and contemporary international law explains the value of international treaties. However, during the last decade, the interest in the history of international law has suddenly risen.[158] Never before have so many scholars been publishing or lecturing on the history of international law as today.[159]

Randall Lesaffer suggested that the story of international law and its history can be read as a love story, albeit a sad one.[160] Historians of international law, be they lawyers or historians, tried to widen the gap between what is global and modern when it comes to understanding the history of international law.

History proves that in the course of the 20th century, new areas of international law emerged; these new areas regulate the activity of states unlike the traditional areas of international law in the past. The nature and magnitude of the history of international law is leading us today, more than ever before, to present global challenges which require better thinking in the sphere of international law at a level whereby creativity and innovation need to be implemented into the norms of new international law effectively.

Simply put, the 'idealist'[161] and the 'realist',[162] may have different views in their thinking with regards to the history of international law; however, there is a view that there is a single 'universal' history of international law. Having come to the conclusion that states do observe international law and will usually only violate it on an issue regarded as vital to their interests, the question arises as to the basis of this sense of obligation.[163]

Scholars and practitioners of international law should incorporate the traditional views of international law; the academic field of international law and should also no longer be limited to one historical era.

Furthermore, and perhaps most essentially, states should support the rationalisation and consolidation of international law. Almost with-out exception, international law has been developed and driven by the featured human civilisations as mentioned in this paper. The same holds true today, the 'constitutionalisation',[164] of international law has empowered the majority states to relay in the classical philosophy of international law throughout written history.

At the opposite pole from the Western tradition of international law, Asians, Africans, and Latin Americans had always been in the lead in viewing international law as a beneficial law for their self-interest. This perspective, which I have spelled out, is not of mere historical events of international law. It bears directly also to the contribution of theories in international law by different and diverse human civilisations.

With the rise of international law practice, we find that it plays a negligible role in the international arena, specifically in the last ten years, it has undergone a massive transformation to set the stage in the international arena for the next era. It is left to the theorists to suggest in the second decade of this century if international law global or mere international, but it seems it is quite different in various regions of the world. There could be Middle Eastern, Latin American, Asian, or even African. Thus, it has been said once before that 'every epoch remakes the study of the history of international law in its own image.'

This paper questioned the conventional histories of international law, which view international law as the heir to a long continuum of codes of warfare, peace, and relations among (Nations, to States, and then the World).

As such, the paper concludes that international law is not simply a historical code, managed by states and promoted by international organisations. Rather, it is a relatively new and historically contingent field that has been created, shaped, and dramatically reinterpreted by a variety of actors, both traditional such as the states and unconventional such as the individuals. In due course, the history of international law will change world practices to a greater extent more than it ever has before, and perhaps the most interesting chapters of our history remain to be written.

Notes

1 International law is the set of rules generally regarded and accepted as binding in relations between states and between nations. It serves as a framework for the practice of stable and organised international relations. The term was first used by Bentham (1789) in his 'Introduction to the Principles of Morals and Legislation' in 1780. Bentham, J. (1789) *An Introduction to the Principles of Morals and Legislation*, p.6, T. Payne, London; practice of stable and organised international relations. The term was first used by Bentham (1789).

2 Slomanson, W. (2011) *Fundamental Perspectives on International Law*, pp.4–5, Wadsworth, Boston, USA. Also, *The Law of Nations* (French: *Le droit des gens*) is a work of political philosophy by Emerich de Vattel, published in 1758. *Emer de Vattel (1916)*. Ghequiere, C. (1758) *Le droit des gens*, Carnegie Institution of Washington.

3 Peacock, A. (2010) *Freedom and the Rule of Law*, p.24.

4 The opposite term is the non-states actors, which are entities that participate or act in international relations. They are organisations with sufficient power to influence and cause a change even though they do not belong to any established institution of a state, such as non-governmental organisations (NGOs), multinational corporations (MNCs). But, one of the international actors is the state which is one of the oldest and universally acknowledged actors on the modern world stage. Also there are other international actors such as international organisations (IOs), rebel groups and national liberation movements as well as the individuals.

5 Honderich, T. (1995) *The Oxford Companion to Philosophy*, pp.85–88, Oxford University Press.

6 It was Jeremy Bentham who first coined the word *international* in a book published in 1789. Bentham fathered the term *international law* which was eventually to replace the older phrase *law of nations*. Bentham explains in his text why he preferred to invent a new word. Burns, J.H. and H.L.A et al. (1970) *An Introduction to the Principles of Morals and Legislation*, pp.44–46, London.

7 Bentham's background presented in this paper is based on Bentham's biographical information published in Stanford Encyclopedia of Philosophy. For further reading see David, A. (2011) *Globalizing Jeremy Bentham: History of Political Thought*, p.63.

8 International law has evolved throughout history from Empires, Nations, States, to global level. Bentham, J. (1848) 'Conversation', in Bowring (Ed.): *Jeremy Bentham's Collected Works*, p.584.

9 Nye (1968) defined an international region "as a limited number of states linked by a geographical relationship and by a degree of mutual interdependence", and (international) regionalism as "the formation of interstate associations or groupings on the basis of regions." Nye, J. (1968) *International Regionalism*, pp.23–24, Harvard University, Center for International Affairs, Boston, Little Brown.

10 International law is cast in a heroic role: capable of providing the necessary tools or the language or, even, the substantive goals, if only politicians would get out of the way. Bassiouni, M.C. (1997) *International Criminal Law Conventions and Their Penal Provisions*, pp.67–86, Transnational Publishers, Inc., New York.

11 To adopt a rough periodisation, running from Westphalian sovereignty through European colonialism to late-modem global capitalism, it could be argued that international law, at every step of the way, has established, legitimised and structured the defining relationships of the era. Simpson, G. (2012) 'International law in diplomatic history', in Crawford, J. and Koskenniemi, M. (Eds.): *The Cambridge Companion to International Law*. We notice also that classical international law comes of age at Westphalia in the mid-19th century with the transition from empire to sovereignty. These sovereigns then become empires as international law enters its colonial phase from the 17th to the mid-20th century.

12 A more contemporary definition expands the traditional notions of international law to confer rights and obligations on intergovernmental international organisations and even on individuals. August, R. (1995) *Public International Law: Text, Cases*, Prentice-Hall, Readings, Englewood Cliffs, NJ. Janis, M. (1998) *An Introduction to International Law*, Little, Brown, Boston.

13 The Westphalian treaties of 1648 were a turning point in establishing the principle of state sovereignty as a cornerstone of the international order. However, the first attempts at formulating autonomous theories of international law occurred before this, in Spain, in the 16th century. Sonnino, P. (2009) *Mazarin's Quest: The Congress of Westphalia and the Coming of the Fronde*, p.44, Harvard University Press. And Gross, L. (1948) 'The peace of Westphalia, 1648–1948', *American Journal of International Law*, Vol. 42, No. 1, p.25.

14 In the 17th and 18th centuries, the idea of natural law as a basis for international law remained influential, and was further expressed in the works of Samuel von Pufendorf and Christian Wolff. For further reading in the history of international law see Fassbender, B. and Peters, A. et al. (2012) *The Oxford Handbook of the History of International Law*.

15 In this era international law is the only legal discipline treated as a separate legal system, In principle, international law could also be seen as a number of uncoordinated legal systems, all of which are separate from national legal systems: "the system of international law consists of erratic parts and elements which are differently structured so that one can hardly speak of a homogeneous nature of international law." Report of the International Law Commission: Fifty-second session, UN Doc. A/55/10 (2000).

16 In this era international law took a further step to recognise three main legal principles which are not required, but are based chiefly on courtesy and respect: *Principle of Comity, Act of State Doctrine and Doctrine of Sovereign Immunity.*

17 Lagash and Umma of Mesopotamia, in 2100 BC a Border agreement between the rulers of the city-states of Lagash and Umma in Mesopotamia, inscribed on a stone block, setting a proscribed boundary between their two states. Nussbaum, A. (1954) *A Concise History of the Law of Nations*, pp.1–2.

18 The Treaty of York in 1273 A feudal agreements between Henry III of England and Alexander III of Scotland. Truman, W. (1897) 'The reign of Alexander II', *Feudal Relations Between the Kings of England and Scotland Under the Early Plantagenets*, p.120, University of Chicago, Chicago.

19 The Minsk II treaty is a treaty between Ukraine, Russia, France, and Germany.

20 Traditionally, international law dealt only with the relations between states, and states were the only creators and subjects of international law. Today that has changed, with new actors joining states such as individuals as both creators and subjects.

21 The *ius gentium* was regarded as an aspect of natural law (*ius naturale*), as distinguished from civil law (*ius civile*). The jurist Gaius defined the *ius gentium* as what "natural reason has established among all peoples". Tierney, B. (2002) *The Idea of Natural Rights*, Wm. B. Eerdman. Originally was published by Scholars Press for Emory University, pp.66–67; Dyson, B. (1997) *Natural Law and Political Realism*, p.236.

22 The *Jus inter gentes* is the body of treaties, UN conventions, and other international agreements. Originally, a Roman law concept, it later became a major part of public international law. Forest, F. (2011) *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*, p.724, Cambridge University Press.

23 Written or recorded history begins with the account of the ancient world, also a major trend of historical methodology in the 20th century was a tendency to treat history more as a social science rather than as an art, which traditionally had been the case.

24 Nussbaum, A. (1947) *A Concise History of the Law of Nations*, 1st ed., p.93, Macmillan, New York.

25 "The law of war is a body of international law governing the conduct of armed conflicts between states. This law also referred to as the law of armed conflict or international humanitarian law has mushroomed over the last 150 years. The initial Geneva Convention on the treatment of the sick and wounded in war, concluded in 1864, had only 10 articles. Its contemporary counterparts, the four 1949 Geneva Conventions, contain a total of 427 articles, and the two 1977 Additional Protocols to those Conventions add another 130 articles." Friedman, L. (1972) *The Law of War: A Documentary History*, Vol. 2, p.922, Random House, New York.

26 Malgosia, F. (2010) 'The practical working of the law of treaties', in Evans, M.D. (Ed.): *International Law*, 3rd ed., pp.172–183.

27 Neff, S.C. (2010) 'A short history of international law', in Evans, M.D. (Ed.): *International Law*, 3rd ed., p.27, OUP, Oxford. "If there is one lesson that the history of international law teaches, it is that the world at large – the "outside world" if you will – has done far more to mould international law than vice versa."

28 "Historically, there have been tacit preconditions to great power status: a readiness to use force whenever it was advantageous to do so and an acceptance of the resulting combat casualties with equanimity, as long as the number was not disproportionate." Luttwak, E. (1994) *Where Are the Great Powers? At Home with the Kids, Foreign Affairs, War and Military Strategy*.

29 Appel, I. and Schönberger, S. et al. (2011) *Öffentliches Recht im offenen Staat: Festschrift für Rainer Wahl zum 70, Geburtstag*, pp.211–223, Duncker & Humblot, Berlin.

30 "The empires of our time were short lived, but they have altered the world forever; their passing away is their least significant feature." Naipaul, V.S. (1980) *The Mimic Men*, p.12, Penguin Books, Harmondsworth.

31 "We can always draw the argument to strengthen, not abandon, international law and supranational institutions, and to foster a global rule of law that protects both the sovereign equality of states, based on a revised conception of sovereignty, and human rights. Once we reach this task then we can create a supernational body to enforce international law." Stout, T.G. (xxxx) 'Leading figures in international law', *Samuel von Pufendorf*, Reporter, International Judicial Monitor [online] http://www.judicialmonitor.org/archive_fall2010/leadingfigures.html. Also see, Cohen, J. (2004) 'Whose sovereignty? Empire versus international law', *Ethics & International Affairs*, Vol. 18, No. 3, p.22.

32 Perhaps the most influential passage on the rule of law in international law comes from chapter 13 of Hobbes's Leviathan. Hobbes, T. (1651) *The English Works of Thomas Hobbes*, Vol. 3, p.33, London.

33 Austin held that IL lacks a definite sovereign law-creator, courts with compulsory jurisdiction, and overwhelming sanctions to punish transgressions. Austin, J. (1977) *Lectures on Jurisprudence and the Philosophy of Positive Law*, p.111, Scholarly Press, St. Clair Shores, MI.

34 Patterson, D. (1999) *A Companion to Philosophy of Law and Legal Theory*, pp.244–246, Willey-Blackwell.

35 International law has also been criticised as fundamentally Western. Certainly, most international law is based on Western notions. One sign of this might be that the Western Countries are more compliant with the international laws on human rights. Henkin, L. (1990) *The Age of Rights*, Columbia University Press, New York.

36 Scott, J.B. (1911) *Classics of International Law*, Vol. 12, p.27. See also Lauterpacht, H. (1970) *International Law: The Law of Peace*, Vol. 4. And D'Amato, A. (1978) *International Law*; Henkin, L. et al. (1987) *International Law*, 2nd ed.; Falk, R.A. (1989) *Revitalizing International Law*; Moynihan, D.P. (1990) *The Law of Nations.*

37 Christopher, J. (2002) 'International law', *Encyclopedia of American Foreign Policy*.

38 Congress of Vienna, Sept. 1814–June 1815 one of the most important international conferences in European history, called to remake Europe after the downfall of Napoleon, I. (2015) 'Vienna congress', *The Columbia Encyclopedia*, 6th ed.

39 The Declaration of Paris, 1856, (1907) *The American Journal of International Law*, Vol. 1, No. 2, Supplement: Official Documents, p.98.

40 Geneva Convention was being drafted contemporaneously and which was issued on August 22, 1864. (1866) *The American Association for the Relief of the Misery of Battle Fields, Its Constitution*, p.10, Washington Brothers Printers.

41 Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 29 July 1899.

42 London, Declaration of, international code of maritime law, especially as related to war, proposed in 1909. The declaration grew largely out of the attempt at the second of the Hague Conferences to set up an international prize court. The Declaration of London of February 26, 1909. James, S. (1914) *The American Journal of International Law*, Vol. 8, No. 2, p.329.

43 According to Joseph B. Lockey, the closest student of Pan-Americanism's early days, the adjective 'Pan-American' was first employed by the New York Evening Post in 1882, and the noun 'Pan-Americanism' was coined by that same journal in 1888. Burr, R. and Roland, H. (1955) *Documents on Inter-American Cooperation*, Vol. 2, Philadelphia.

44 Treaty on Principles Governing the Activities of states in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, is a treaty that forms the basis of international space law. The treaty was opened for signature in the USA, the UK, and the Soviet Union on 27 January 1967.

45 This international agreement reflected diplomatic attempts to stabilise international relations in the early 1960s as well as public fears of radioactive fallout. Gaddis, L. (1987) *The Long Peace: Inquiries into the History of the Cold War*, p.13, Oxford University Press, New York.

46 The USA submitted a simple draft treaty based on this resolution to the Soviet Union when a new 18-nation Disarmament Conference opened in Geneva in 1962. The Soviet response was to insist on a treaty that would prohibit the arrangements that the USA then had with NATO allies. Weiss, L. (2003) 'Atoms for peace', *Bulletin of the Atomic Scientists*, pp.34–37.

47 The SALT I a common name for the Strategic Arms Limitation Talks Agreement, also known as the Strategic Arms Limitation Treaty was signed on May 26, 1972. SALT I froze the number of strategic ballistic missile launchers at existing levels and provided for the addition of new submarine-launched ballistic missile (SLBM) launchers only after the same number of older intercontinental ballistic missile (ICBM) and SLBM launchers had been dismantled. Calvo-Goller, K.C. (1987) *The SALT Agreements: Content, Application, Verification, Brill*, p.428.

48 Hanessian, J. (1960) *The Antarctic Treaty 1959*, Vol. 9, pp.436–480, International and Comparative Law Quarterly.

49 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

50 Law of the Sea, branch of international law concerned with public order at sea. Much of this law is codified in the 'United Nations Convention on the Law of the Sea, signed Dec. 10, 1982'. Vidas, D. and Freestone, D. et al. (2015) 'International law and sea level rise: the new ILA committee', *ILSA Journal of International and Comparative Law*, Vol. 21, No. 2, pp.397–408. It is also worth to mention that certain aspects of the law of the sea had been governed by international treaties well before the adoption of the 1982 United Nations Convention on the Law of the Sea, e.g., 1958 Geneva Conventions on the Law of the Sea.

51 The General Agreement on Tariffs and Trade came into force on 1 January 1948.

52 There are a few writing on the history of international law from Asian perspective including the work of Taslim Olawale Elias, Slim Laghmani, and Ram Prakash Anand.

53 Bradley, C. and Goldsmith, J. (1989) 'Customary international law as federal common law: a critique of the modern position', *Harv. L. Rev*., Vol. 110, pp.815–822; Stewart, J. (1989) 'The status of the law of nations in early American law', *VAND. L. Rev*., Vol. 42, No. 4, p.819, pp.821–822.

54 Kunz, J.L. (1927) 'Zum Begriff der 'nation civilisée' im modernen Völkerrecht', *Zeitschrift für Õffentliches Recht*, Vol. 7, No. 28, p.18.

55 "The modern history of international law, according to Whihelm Grewe, began at the time of the French invasion of Italy under Charles VIII of France in 1494. Since then, there has been a modern system of states, an 'intensive interrelationship' characterized by the principle of the balance of power and the 'infrastructure' of a permanent diplomacy." Wilhelm, G. (2000) *The Epochs of International Law*, Trans, and Rev by M. Byers, p.13.

56 Gozzi, G, (2007) 'History of international law and western civilization', *International Community Law Review*, Vol. 9, No. 4, p.353.

57 Steiger, H. (2001) 'From the international law of Christianity to the international law of the world citizen: reflections on the formation of the epochs of the history of international law', *Journal of the History of International Law*, Vol. 3, No. 2, p.182.

58 The Ottoman Empire was recognised as a member of the civilised society of nations in the 1856 Treaty of Paris, though in practice it did not become fully equal with Western states. See article 7 of the Treaty of Paris and for overview of the Ottoman Empire when entered in the European Concert and it was not equal to the other members see Alphons, R. (1899) *lehrbucg des volkerrechts*, 2nd ed., p.5, Enke.

59 Yasuaki, O. (2000) 'When was the law of international society born – an inquiry of the history of international law from an intercivilizational perspective', *J. Hist. Int'l L*., Vol. 2, No. 1, p.64.

60 The meaning of the term 'civilisation' in *The New Oxford Dictionary of English* is given as 'the society, culture, and way of life of a particular area, and of 'culture' as "the customs, arts, and social institutions of a particular nation, people, or other social group".

61 Asia is notable for not only overall large size and population, but unusually dense and large settlements as well as vast barely populated regions within the continent of 4.4 billion people. Asia has exhibited economic dynamism (particularly East Asia) as well as robust population growth during the 20th century, but overall population growth has since fallen to world average levels. Reid, T.R. (1999) *Confucius Lives Next Door: What Living in the East Teaches us about Living in the West*, Vintage Books, London, UK.

62 Despite Asia's rich ethnic and cultural diversity, there are shared values throughout the region. Many of these shared values inform family life, marriage, and divorce.

63 Yet, Northeast Asia remained nearly outside the purview of international law until the mid-19th century when the region was forced to open up to the West. It is very interesting to note many comparative studies show how Asia received international law in the context of their modernisation drives during the 19th century. Lee, S. (1976) *Northeast Asian Perspective on International Law: Contemporary Issues and Challenges*, p.14, Koninklijke.

64 Anand, R.P. (1986) 'Equality of states in an unequal world: a historical perspective', *Sovereign Equality of States, Recueil de Cours*, Vol. 197, No. 1, p.52.

65 Benvenist, E. (2008) 'Asian tradition and contemporary international law on the management of natural resources', *Chinese Journal of International Law*, Vol. 7, No. 2, p.237.

66 Alexandrowicz, C.H. (1968) 'The Afro-Asian states and international law', *Recueil deCours*, Winter, Vol. 123, No. 3, p.124.

67 Alvarez, J. (2007) 'Institutionalized legalisation and the Asia-Pacific 'Region'', *N.Z.J. Pub. & Int'l L.*, Vol. 5, 1st issue, p.9.

68 Falk, R. (1966) "Is the international legal order eurocentric?', *The New States and the International Legal Order, Recueil de Cours*, Vol. 118, No. 2, p.43.

69 Singh, N. (1972) 'India and international law', in Anand, R.P. (Ed.): *Asian States and the Development of Universal International Law*, Vikas Publications, Delhi, India.

70 "Asian contributions to international law and membership in international institutions have been as numerous, diverse and widespread as the region's composite states. Among many contemporary international law doctrines, Asia has proposed and/or authored concepts such as the Exclusive Economic Zone, the establishment of international machinery to govern sea-bed regimes beyond national jurisdiction, principles on decolonization and the right to self-determination, the rights of indigenous peoples and other socio-economic rights, among others." Elias, T.O. (1992) *New Horizons in International Law*, pp.29–43, Martinus Nijhoff Publishers. Also see Alexandrowicz, C.H. (1967) *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th, and 18th Centuries)*, Clarendon Press, Oxford. And Mani, V.S. (2009) 'An Indian perspective on the evolution of international law on the threshold of the third millennium', *Asian Y.B. Int'l L.*, Vol. 9, No. 3, p.31.

71 The Mughal Empire did not try to intervene in the local societies during most of its existence, but rather balanced and pacified them through new administrative practices and diverse and inclusive ruling elites. Richard, J. (1993) *The Mughal Empire*, Part 5, Vol. 1, of the New Cambridge History of India, Cambridge University Press, Cambridge. And Habib, I. (1963) *The Agrarian System of Mughal India*, (1556–1707), Vol. 9, No. 2, p.453, Asia Publishing House, London, UK.

72 The Hague Conventions were international treaties negotiated at the First and Second Peace Conferences at The Hague (1899 and 1907). Along with the Geneva Convention, famous convention known for prisoners of war, Den Haag (The Hague Conference) is among the first formal statements of the laws of war and war crimes in the nascent body of secular international law. Huussen, A. (1998) *Historical Dictionary of the Netherlands*, The Scarecrow Press, Maryland, USA.

73 During the months June through October 1907, the national representatives meeting at The Hague worked in a conference structure that included substantial subcommittee dialog, plenary session deliberations, and voting. They reached unanimous agreement on 13 resolutions. Manley, H. (1931) 'Present status of the Hague conventions of 1899 and 1907', *Am. J. Int'l L.*, Vol. 114, No. 25, pp.115–116. (Itemizing the 13 conventions). The Hague Conventions & Declarations of 1899 and 1907, James Brown Scott (Ed.) (1915).

74 David Kennedy, a professor at Harvard Law School, examined the League through the scholarly texts surrounding it, the establishing treaties, and voting sessions of the plenary. Kennedy suggests the League is a unique moment when international affairs was 'institutionalised', as opposed to the pre-World War I methods of law and politics. *The Essential Facts about the League of Nations*, 1938, Information Section, Geneva.

75 The United Nations was formulated and negotiated among the delegations from the Soviet Union, the UK, the USA and China in Dumbarton Oaks Conference. After months of planning, the UN Conference on International Organization opened in San Francisco, 25 April 1945, attended by 50 governments and a number of non-governmental organizations involved in drafting the United Nations Charter, Bohlen, C. (1973) *Witness to History, 1929–1969*, p.159, New York, W. W. Norton & Co., New York.

76 Ko, S., Pinto, M.C.W. and Syatauw, J.J.G. (1991) 'Asia & international law 'introduction by the general editors', *Asian Y.B. Int'l L*, Vol. 1, No. 1, p11.

77 As of May 2015, the 193 UN member states are divided into five regional groups.

78 *Asian Yearbook of International Law*, Vol. 2, published under the auspices of the Foundation of the Development of International law in Asia (2000).

79 After independence, African countries by and large continued the limitations imposed on the application of customary laws. Judicature Act of 1967, § 3, 9 Laws of Kenya, Cap., 8 (2009).

80 Customary laws and institutions continue to play a significant role in the lives of large segments of the population in African countries. This is because the limited subject matter areas they govern (including matters of personal status, property, and traditional authority) are those that impact greatly the day-to-day lives of the people. Fenrich, J. et al. (2011) 'Introduction', *Future of African Customary Law*, pp.1–2.

81 Africa is the world's second-largest and second-most-populous continent. At about 30.2 million km^2 (11.7 million sq mi) including adjacent islands, it covers 6% of Earth's total surface area and 20.4%t of its total land area. Sayre, A, (1999) *Africa, Twenty-First Century Books*.

82 Lipinski, E. (2000) *Itineraria Phoenicia*, p.200, Peeters Publishers, Leuven, Belgium.

83 There are challenges facing the continent of Africa such as the awareness of the need to 'sharpen the role of government' and a new dedication to reform and political stability which reflects its connectivity to fostering growth and strengthening individual states inside the cotenant. Further reading Yeats, A. (1997) 'Open economies work better! Did Africa's protectionist policies cause its marginalization in World Trade?', *The World Development*. Also, Zeleza, P.T. (1998) *African Labor and Intellectual Migrants to the North: Building New Transatlantic Bridges Urbana*, Center for the Studies of African Studies, University of Illinois, IL.

84 The African Union (AU), founded in 2002, represents the 53 nations on the African continent. It is the successor to the Organization of African Unity (OAU), which was founded in 1963 and worked to bring African nations together to gain and strengthen their independence from the European nations that has ruled over them, often by force, for many decades. Diedre, L. (2008) *The African Union*, University of Michigan, Chelea House Publisher.

85 Rembe, N. (1980) *Africa and the International Law of the Sea: A Study of the Contribution of the African States to the Third United Nations Conference on the Law of the Sea*, p.3, Sijthoff & Noordhoff Publishers, Michigan, USA.

86 Eurocentrism is the practice, conscious or otherwise, of placing emphasis on European (and, generally, Western) concerns, culture and values at the expense of those of other cultures. Eurocentrism often involved claiming cultures that were not white or European as being such, or denying their existence at all. Ashcroft, B., Gareth, G. and Tiffin, H. (2002) *The Empire Writes Back*, Routledge, London.

87 By the end of the 19th century and onwards, it was only later that the individual was generally recognised as a subject. Manner, G. (1952) 'The object theory of the individual in international law', *American Journal of International Law*, Vol. 46, No. 3, p.445.

88 States have long been the main actors on the international scene, firmly embedded in the Westphalia peace treaty in 1648. It was then the notion of the 'nation state' as the main player emerged. Shaw, M. (2008) *International Law*, p.1, Cambridge University Press, Cambridge.

89 The newly independent nations that emerged in the 1950s and the 1960s became an important factor in changing the balance of power within the United Nations. Decolonization of Asia and Africa in 1945–1960, Office of the Historian, the US Department of State.

90 In Africa today, the policy maker are trying to provide social protection, once thought of as exclusive to rich and middle-income countries, is being increasingly employed in low-income countries in Africa, they are recognising its potential as a powerful tool to reduce poverty, vulnerability, and social inequality.

91 International law is largely but not altogether concerned with relation among states; whereas municipal law controls relations between individuals within a state and between individuals and the state. Also, they differ altogether in their judicial processes. Both are usually applied by national court, which results in complete decentralisation of the judicial function in international law and effective centralisation in municipal law. Palmer, D.N.C. and Perkins, H. (2007) *International Relations: The World Community in Transiting*, 3rd Revised ed., p.274, A.I.T.B.S Publishers & Distributors, India.

92 'Municipal Law' is the technical name given by international lawyers to the national or internal law of a state. Akehurst, M. (1990) *A Modern Introduction to International Law*, p.43, George Allen & Unwin Publishers Ltd., New Delhi.

93 The General Assembly, Recalling its resolutions 1815 (XVII) of 18 December 1962, 1966 (XVIII) of 16 December 1963, 2103 (XX) of 20 December 1965, 2181 (XXI) of 12 December 1966, 2327 (XXII) of 18 December 1967, 2463 (XXIII) of 20 December 1968 and 2533 (XXIV) of 8 December 1969, in which it affirmed the importance of the progressive development and codification of the principles of international law concerning friendly relations and cooperation among states.

94 Thoughts on the African Novel in Chinua, A. (1990) *Hopes and Impediments: Selected Essays*, p.92, Anchor Books, NY, USA.

95 The term *uti possidetis* was first applied by Roman magistrates in private municipal law. Moore 1913 clarifies use of *uti possidetis* during the Roman era as a principle that preserved possession of an immovable property of individuals who had possession, even if they could not show an original title. Moore, J.B. (1913) *Costa Rica Panama Arbitration: Memorandum on Uti Possidetis*, Commonwealth, Rosslyn, VA.

96 The Nyerere Doctrine of State Succession was founded by the first President of Tanzania and says that a new nation should not be bound to the same agreements it made in earlier times.

97 Tabula rasa or Clean Slate in connection with state succession is a rule by which a successor state generally does not inherit the prior treaty rights or obligations of a predecessor state. See Smith, W. and Cornish, F. (Eds.) (1898) *A Concise Dictionary of Greek and Roman Antiquities*, pp.608–609, Spottiswoode and Co., London.

98 The law of international watercourse is the law governing the use and utilisation of rivers, lakes and other surface and underground waters hydrographically constituting a unitary system parts of which are situated in different states. Boczek, B. (2005) *International Law: A Dictionary*, No. 2, p.45.

99 In June of 1972, almost concurrently with the Santo Domingo meeting of Caribbean states, 16 African states met at a regional seminar on the Law of the Sea in Yaoundé, Cameroon. The 'Conclusions' adopted unanimously by the 16 participating states are comparable to the proposals of the Lima Declaration. Conclusions in the General Report of the African States Regional Seminar on the Law of the Sea, held at Yaoundé, 20–30 June 1972. *United Nations Legislative Series*, ST/LEG/SER.B/16, p.60 (1974).

100 The ICC has often found itself in situations in which it had to defend itself against accusations of being politicised. What does politicisation of the Court mean? A politicised court is one that bases its decisions on states' national interests and follows political decisions. Proponents of this argument claim that the crime of aggression is 'of clearly marked political character' because it cannot be committed by an individual without the state, also committing an act of aggression and the decision by states to use force is itself political. Simpson, G. (2004) *Politics, Sovereignty, Remembrance, in the Permanent International Criminal Court: Legal and Policy Issues*, p.471. Also, Creegan, E. (2012) 'Justified uses of force and the crime of aggression', *J. Int'l Crim. Just.*, Vol. 10, No. 1, p.59.

101 The purpose of The African Union Commission on International Law is to enhance the progressive development of international law in Africa. In addition to other objectives, the AUCIL is established to encourage the "teaching, study, publication and dissemination of literature on international law, in particular laws of the Union with a view to promoting acceptance of and respect for the principles of international law …"

102 "After decolonisation, the issue of self-determination still persists in Africa Attracting sentiments and implication well exemplified by the conflicts over Biafra and Katanga in the 1960s." Blay, K. (1985) 'Changing African perspectives on the right of self-determination in the wake of the Banjul charter on human and peoples' rights', *Journal of African Law*, Vol. 29, No. 2, p.147.

103 Nussbaum, A. (1954) *A Concise History of the Law of the Nations*, Macmillan, New York.

104 Vicuña, O. (1973) 'Contemporary International Law in the Economic integration of Latin America', *Academie de droit international, colloque de 1971, Les aspects juridiques de l'integration economique*, p.86, Sijthoff Leyden.

105 Nordhoff, S. et al. (2013) *Standard, Leipzig*, Max Planck Institute for Evolutionary Anthropology, Glottolog.

106 Caminos, H. (1981) 'The Latin American contribution to international law', *ASIL Proceedings of the 80th Annual Meeting*, p.157.

107 The Treaty of Madrid was a document signed by Ferdinand VI of Spain and John V of Portugal on January 13, 1750, concerning their empires and status of their territories in what is now Brazil. Anderson, A. and Combe, W. (1801) *An Historical and Chronological Deduction of the Origin of Commerce, from the Earliest Accounts*.

108 Art. XXI of The Treaty of Madrid.

109 There is a debate regarding the numbers of troops fighting on both sides, but it must be recognised that both armies started with similar forces (8,500 independents vs. 9,310 royalists), but these were diminished during the next weeks until the day of the battle itself, at which point there were perhaps 5,780 independentists vs. 6,906 royalists. Hughes, B. (2010) *Conquer or Die! British Volunteers in Bolivar's War of Extermination 1817–21*, Osprey Publishing, Oxford, UK.

110 A Venezuelan military and political leader who played an instrumental role in the establishment of Venezuela, Ecuador, Bolivia, Peru and Colombia as sovereign states, independent of Spanish rule. Bushnell, D. (1970) *The Liberator, Simón Bolívar*, Alfred A. Knopf Print, New York.

111 Camargo, V. (1998) 'Regional integration and protection of the environment: the case of Mercosul', *International Economic Law with a Human Face*, Kluwer, The Hague.

112 Lima Conference, 1847–1848, in Thomas M. (Ed.) (2012) *Encyclopedia of US-Latin American Relations*, p.562, CQ Press, Washington, DC.

113 Garcia, D. and de Palacio, A. (1944) *Dialogos Militares*, Pedro de Ocharte, 1583, Mexico; reper. p.16, Ediciones Culturea Hispanica, Madrid.

114 In his book, he acknowledged that states must apply their laws to aliens in a just manner, and protect them against abuses at the hands of indigenous people. Paulsson, J. (2005) *Denial of Justice in International Law*, p.15, CUP, New York.

115 Which opened to subscriptions in 1838, and was published posthumously in 1843, it was also the first book to contain in its title the term derecho internacional [international law].

116 The Calvo Doctrine emerged as the expression of the resistance of Latin American states to the abuse of diplomatic protection and other forms of intervention by European powers and the USA, having implications in three spheres: national treatment, diplomatic protection, and the exhaustion of local remedies. Invoking the principle of the sovereign equality of states and the principle of equality of nationals and aliens, the Calvo Doctrine required that foreigners not be afforded greater rights than locals and those domestic laws apply to, and local courts adjudicate, investment disputes. As Carlos Calvo, a distinguished jurist from Argentina declared in 1896. Dugard, J. (2002) *Special Rapporteur, International Law Commission*, Third Report on Diplomatic Protection, Addendum, A/CN.4/523/Add.1, 16, p.3.

117 Vervaele, J. (2005) 'Mercosul and regional integration in South America', *ICLQ*, pp.387–410. L.54. Obregon, C. (2006) 'Consciousness and international law in nineteenth-century Latin America', in Orford, A. (Ed.): *International Law and Its Others*, p.247, CUP Cague, Cambridge.

118 A general principle, which is logically connected with the phenomenon of the obtaining of independence wherever it occurs. International Court of Justice reports of judgements, advisory opinions and orders case concerning the Frontier Dispute (Burkina Faso/Republic of Mali) judgement of 22 December 1986.

119 "Latin American states have traditionally allocated a more significant position to diplomatic asylum than that existing in other regions of the world. However, even in this area, the existence of a rule of customary law allowing for shelter on mission premises has been doubted. Jeffery for instance expressed the view that opinio juris as a required element of customary law is missing, and bases this view on the ICJ judgment in the Asylum Case." Anthea J. (1985) 'Diplomatic Asylum: its problems and potential as a means of protecting human rights', *S. AFR. J. on HUM. RTS*., Vol. 1, No. 10, p.16. Also see Sinha, S. (1971) *Asylum and International Law*, p.238.

120 This term means anything that has no owner or a thing which has been abandoned by its owner is as much *res nullius* as if it had never belonged to anyone.

121 Jennings, R. (1963) *The Acquisition of Territory in International Law*, Manchester University Press, Manchester.

122 The First Conference at the Hague in 1899 adopted conventions on investigation and arbitration of conflicts, 16 delegations signed a protocol; providing that all American republics that had not subscribed to the Hague convention (that is, all except Mexico and the USA) should do so and recognise them as a part of inter-American law. The peace conference was proposed on 24 August 1898 by Russian Tsar Nicholas II. Klein, R. (1974) *Sovereign Equality among States: The History of an Idea*, p.61, University of Toronto Press, Toronto.

123 All of the Latin American states received invitations and 19 attended: Honduras and Costa Rica responded to the invitation by appointing delegates and reserved seats, but neither country took the seats. Lapradelle, A. and Stowell, E. (1908) 'Latin America at the Hague conference', *The Yale Law Journal*, Vol. 17, No. 4, pp.270–280.

124 "A political principle formulated in a note dispatched by the Argentine foreign minister L.M. Drago (1859–1921) on December 29 to the State Department of the USA regarding the Venezuelan crisis of 1902–03. The Drago Doctrine proposed that states not use armed intervention against other states to collect debts arising from government loans." *The Great Soviet Encyclopedia*, 3rd ed., S.v. 'Drago Doctrine 1902'.

125 Nine Latin American nations became charter members of the League of Nations when it was founded in 1919. The number grew to fifteen states by the time the first League Assembly met in 1920 and later, several others joined in the decade that followed." Atkins, P. (1999) *Latin America and the Caribbean in the International System*, p.37, Westview, Boulder, Colo.

126 A Joint Declaration by the USA, the UK, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa, and Yugoslavia.

127 A resolution approved by the Inter-American Conference on Problems of War and Peace at Mexico in March 6, 1945, 60 Stat. 1831; Treaties and Other International Acts Series 1543.

128 Also known as the Rio Treaty or Rio Pact, this agreement between American states contained as its principle idea that aggression against one American state was tantamount to an attack on them all. The treaty formalised the *1945 Act of Chapultepec* and entered into force in 1948.

129 Article 51 of the Charter provides an exception to the prohibition of the use of force as stipulated in Article 2 (4) of the Charter.

130 The Group of 77 (G-77) was established on 15 June 1964 by 77 developing countries signatories of the 'Joint Declaration of the Seventy-Seven Developing Countries' issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva.

131 UNGA Res 2625 [XXV] 24 October (1970).

132 UNGA Res 1514 [XV] 14 December (1960).

133 UNGA Res 3281 [XXIX] 12 December (1974).

134 *The American Declaration of The Rights and Duties of Man* (Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948).

135 All of the Central and Latin American states were among the 48 voting in favour of the Declaration.

136 According to its preamble, the purpose of the Convention is "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."

137 The Declaration was adopted by the Organization of American States (OAS) in 1948. This instrument set forth a series of fundamental human rights with no distinction between civil and political rights, and ESC rights. The Convention was adopted in 1969, in San Jose, Costa Rica. So far, 23 of 35 OAS Member States have ratified it.

138 The Inter-American Commission on Human Rights (IACHR) was created by a resolution of the Fifth Meeting of Consultation of Ministers of Foreign Affairs in Santiago, Chile, in 1959. It was formally established in 1960 when the Permanent Council of the Organization approved its Statute. Its Rules of Procedure, first adopted in 1980, were amended several times thereafter, most recently in 2013.

139 "On October 14, a Strategic Air Command U2 aircraft over flying Western Cuba took photos that revealed that bases were being readied and missiles prepared. These conclusive facts were provided to the president's advisers and President Kennedy was shown the "hard photographic evidence" at 8:45 am on Tuesday October 16, 1962." Mikoyan, S. (2012) *The Soviet Cuban Missile Crisis, Svetlana Savranskaya*, Woodrow Wilson Center Press, Washington, DC; Stanford University Press, Stanford, CA.

140 On April 29, 1963, at the initiative of the President of Mexico, the Presidents of five Latin American countries -Bolivia, Brazil, Chile, Ecuador, and Mexico – announced that they were prepared to sign a multilateral agreement that would make Latin America a nuclear-weapon-free zone. On November 27, 1963, this declaration received the support of the UN General Assembly, with the USA voting in the affirmative.

141 For further reading on the Latin American states contribution in the law of the Sea, see Szekely, A. (1976) *Latin-America and the Development of the Law of the Sea, Regional Documents and National Legislation*, Vol. 1, Oceana Publications, Dobbs Ferry.

142 Res communis is a Latin term derived from Roman law that preceded today's concepts of public domain and common heritage of humankind. It has relevance in international law and common law. Baslar, K, (1987) The Concept of the Common Heritage of Mankind in International Law.

143 Art. 68 UN Charter.

144 "The Economic Commission for Latin America and the Caribbean (ECLAC) was founded in 1948 by ECOSOC res. 106 (VI) to coordinate policies for the promotion of sustainable Latin American economic development and to foster regional and international trade." Briceño, R. and José, Q. et al. (2013) 'The ECLASC'S structuralist thinking on development and latin american integration: reflections on the contemporary relevance', *Aportes para la Integración Latinoamericana*, in Spanish, Vol. 19, No. 28, pp.1–324.

145 Nussbaum, A. (1958) *A Concise History of the Law of Nations.* See Edwin, D. (1932) 'Changing concepts and the doctrine of incorporation', *AM. J. Int'l L.*, Vol. 26, p.239. See Douglas, S. (1999) 'International law as sword or shield?: Early American foreign policy and the law of nations', *N.Y.U. J. Int'l L. & Pol.*, Vol. 32, No. 1, p.1.

146 Nussbaum, A. (1954) *A Concise History of International Law*, 2nd ed., p.34, Macmillan Publisher, NY, USA.

147 Rubin, A. (1997) *Ethics and Authority in International Law.*

148 Sylvester, D. (1999) 'International law as sword or shield? Early American foreign policy and the law of nations', *N.Y.U. J. Int'l L. & Pol.*, Vol. 1, No. 32, p.32.

149 Bederman, D. and Simpson, B. (2002) *International Law in Antiquity, Human Rights and the End of Empire*.

150 Existing or coming before a modern period of time, *The Pre Modern American Heritage Dictionary of the English Language*, 5th ed. 2011. Houghton Mifflin Harcourt Publishing Company (2015).

151 Onuma, Y. (1993) *A Normative approach to War: Peace, War and Justice in Hugo Grotius*.

152 In order to achieve this aim, Article 2(4) contains a prohibition on the use of force. A system of collective sanctions against any offending state that resorts to the use of force protects this prohibition. These sanctions are found in Articles 39–51 of the UN Charter.

153 The exercise of universal jurisdiction in cases involving crimes under international law remains highly debated and underlines a certain number of legal and political issues in its implementation.

154 For further readings see Carter, B. and Trimble, P. et al. (2003) *A Casenote Legal Briefs: International Law*, 4th ed., Aspen Law & Business.

155 They are termed as conventional sources.

156 Post colonialism is the critical destabilisation of the theories (intellectual and linguistic, social and economic) that support the ways of Western thought – deductive reasoning, rule of law and monotheism – by means of which colonialists 'perceive', 'understand', and 'know' the world. Johnston, R.J. and Gregory, D. et al. (2007) *Dictionary of Human Geography*, p.561, 4th ed., Blackwell, Oxford, UK.

157 McShane, T. (2010) 'International law and the new world order: redefining sovereignty', *The US Army War College Guide to National Security Issues*, Vol. 2, p.2.

158 Hueck, I. (2001) 'The discipline of the history of international law', *Journal of the History of International Law*, Vol. 3, No. 2, p.149.

159 To name a few, Humphrey Waldock, Ken Watkin, Arthur Watts, Ruth Wedgwood, Allen Weiner, John Westlake, George Grafton, and Rudiger Wolfrum.

160 Lesaffer, R. (1953) *International Law and its History: The Story of an Unrequested Love*, p.16, Academy's Mededelingon, Letterkunde, NS.

161 The main root of idealist is 'ideal', which comes from the Latin word idea. As an idealist, you think everyone should act in the best interest of the group.

162 Practical or pragmatic (as opposed to idealistic or visionary) orientation that relies on 'hard facts,' and considers things as they are and not on what they might or should be.

163 Friedmann, W. (1967) *Legal Theory*, 5th ed., p.573, London. Also see the Lotus case, PCIJ, Series A, No. 10, p.18.

164 An attempt to exercise legal control over politics within the international legal order itself.