Changing Dimensions of International Law: An Asian Perspective

Towards a New International Legal Order

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Universality of Internaional Law

- Though International Law is called universal now, actually universality is a recent phenomenon of modern International Law.
- International Law from 17th to 19th Centuries applicable only to European States.
- As late as the First World War, we are told, “the position of such states as Persia, Siam, China, Abyssinia, and the like was to some extent anomalous”.

International Law Historical perspective:

- When Europeans arrived in Asia to trade with Asians, there must have been some rules applicable between them. What happened to those rules?
- Asian practices altogether ignored.

Asian States Ignored

- Defeat of Asian rulers and British victory over them in India.
- But it took three centuries.
- The history of European-Asian relations during 17th to early 19th centuries ignored.

India becomes British India and a colony of England

- New relations developed between Asian states and Europe after Asians states were defeated and colonized.
- After India, England expanded in other parts of Asia and encouraged other Europeans to expand to Southeast and East Asia.
- Exploitation of Asian states and its effects
- Commercial and Industrial revolutions in Europe

Developments during 19th Century

- Real development of modern International Law only after 1815, after the defeat of Napolean.
- Congress of Vienna and Concert of Europe.
- Austria, Great Britain, Prussia, Russia and France. For about fifty years the political affairs of Europe remained nearly completely in the hands of the Great Powers
- Pentarchy claimed all the right to take decisions.
- They admitted new states and decided disputes among states.
- Asian states, who for centuries had been considered members of the family of nations found themselves in an *ad hoc* created legal vacuum

Big Powers rule in Europe and Beyond

- Phenomenal development of Intrernational Law between 1814 and 1914/
- Family of “civilized” states
- Civilized, Uncivilized and Barbarian or savage States
- Natural Law and classical jurists discarded and replaced with positivism. Eurocentrism in International Law.
- Almost any conduct towards non-European peoples was permitted and accepted as valid.
- Standard of “civilization” in International Law
- Capitulations in India and the East Indies and East Asia.

League of Nations 1919.

- Clash of Aspirations & European Conflicts
- European Civil War or World War I
- International Organizations to avoid war.
- League of Nations established sponsored by President Woodrow Wilson of the United States.
- United States declined to become member of the League.
- Domination of the big powers in the League.
- Intrigues continued. Japan attacked China, Italy Ethiopia
- Failure of the League.

European Conflicts lead to World War II

- The Second Holocaust.
- Terrible Destruction and Loss of Life.
- Another attempt to banish war.
- San Francisco Conference 1945 dominated by the big Powers which included now and Asian state as well.
- Collapse of colonialism

Asian Perspective…

- Independence movements in Asia
- Post World War Society – a new world
- Emergence of numerous independent States in Asia and later Africa. The United Nations expanded from 51 members to 192 members.
- International law expanded from European states to Christian states to civilized states to now all “peace-loving” states. (Article 4 of the UN Charter)
- Asian States accept International Law
- Changing International Law

Universality of International Law -a recent phenomenon