

Democratization of Sources of International Law

Excellencies, ladies and gentlemen, I thank Amb Ruchira Kamboj and the Permanent Mission of India, Mme Uma Sekhar, Mme Kajal Bhat for 2023 Informal Meeting of the Legal Advisers. The title is reflective of both past and future, it reminds us international law is yet to be democratic to meaningfully reflective of aspirations of vast majority of people, especially the Global South but also reminds us how non-democratisation of international law which has marginalised Global South remains unable to prevent immense loss of lives and loss of opportunities for development of billions of people. And yet at the same time, inclusivity and diversity which are considered core elements of democratisation if included in the functioning of governance in a sustained and graduated manner, despite inherent challenges, a solid bright model emerges, India, a 1.4 billion civilisation is an indeed case-study and model. For security and sustainable development, two sides of the same coin, we require innovative and people-centric democratisation of norms, principles and this process requires what Prime Minister Narendra Modi calls – Sabka Sath, Sabka Vikas, Sabka Vishwas, Sabka Prayas, i.e. Support of all, development of all, trust of all and efforts of all.

Democratization of international law encompasses the efforts to make the processes, norms, and institutions of international law more inclusive, equitable, and representative. The process is of paramount significance in effectively addressing the contemporary challenges within the realm of international law. Highlighting for example of regional disparity, for instance, the Secretary-General's report (A/75/136) had exposed an unfortunate geographical imbalance in treaty registration, a technical area where developing countries continued to lag. This disparity in registration is primarily attributable to lack of capacity including challenges that many least developed countries and developing countries face in accessing information and communication technology.

Friends, this topic chosen reminds of 1945 when the halls of UN were full of hopes and aspirations, it reminds of 1970s and early 1980s, when these very halls of the UN had long-lasting debates on new international economic order, national sovereignty over natural resources, it yet again reminded in the 1990s hopes and aspirations due to end of cold war but also untold conflicts. The first two decades of this century has been a mix – economic crisis, waves of democracy, digital transformation and perhaps most importantly pandemic. But each of these episodes have given us faith in our capacity and the capacity of nation-states and the governments to meet the challenges collectively with resilience because the democratisation of international law has started taking roots. The hope and confidence in democratic international law ability to effectively and resolutely deal with menace of terrorism, challenges to bring development to every person in the world, resolve differences among nation-states for a pursuit of global peace and security, need to be explored and practiced at each and every step of international governance and by each and every institution that require international law.

Let me throw some light on specific questions and context:

- **Democratization of international law making versus democratization of sources of international law:** Is the democratization of ‘international lawmaking’ a prerequisite for the democratization of sources of international law to establish an effective rules-based international order?
- **Related to Treaty Law:** As stated earlier, regional disparity in treaty registration is an issue broadly faced by least developed countries and developing countries. In this context, I recall the capacity building seminar jointly organized by the Ministry of External Affairs of Bharat, AALCO, and RRU or National Security University of India, aimed at strengthening the treaty law and practice in the Asian-African region. During the seminar, the role of technology in promoting treaty law and practice, development of national treaty database, providing targeted technical assistance to developing countries

to enhance their treaty practice was emphasized. Also, it was reiterated that the regulations to give effect to Article 102, as amended in 2018, explicitly recognized the role of depositaries other than the United Nations Secretary General in the registration of treaties. The question is:

1. Why is the strengthening of the treaty law framework pivotal for achieving greater democratization in international lawmaking?
2. Recognizing the importance of regional organizations in promoting treaty law and practice, is there any scope for functionally developing regional organizations as depositaries of treaties that may promote public accessibility, ultimately leading to wider dissemination of information?

- **Related to Non-legally binding instruments:** Non-binding norms, often referred to as soft law, have multiple functions in international law. They may codify existing customary law, solidify emerging norms, and even contribute to new customary law. Soft law fills gaps in binding treaties and can be used to interpret them. It may also substitute formal treaties when they are impractical or politically unfeasible. Soft law significantly influences the development of international law through its diverse roles. The question is:

1. How can non-binding norms exert a significant influence on the evolution and development of international law?

- **Related to Customary international law:** Decolonization movements have played a significant role in shaping the principles and sources of international law. Consequently, there are contentions against classical international law norms, which were created during colonial time and perpetuate colonial legacy. Since customary rules develop from a general practice of the international society, CIL reflects and crystalizes past realities, and not proposed reforms.

Any state that disagrees with a particular customary rule is bound to comply with it, since deviations will be treated as unlawful acts unless and until they become accepted as a new custom, in a process that is just as indefinite as it is contradictory. The question is:

1. Is there any need to work on alternative paths to develop international law, such as the possibility of legal reform through multilateral treaties seemed like a more prosperous course of action to promote the reforms desired by the less represented countries from global south?
 2. What are the key challenges faced by global South in the identification and consolidation of state practice? Does the current situation necessitate an in-depth study that could be conducted under the auspices of a regional organization?
- **Related to General principles of international law:** The draft conclusion 5 of the ILC on the topic General principles of law, prepared by my colleague Marcelo Vasquez-Bermudez, states that to determine the existence of a principle common to the various legal systems of the world, a comparative analysis of national legal systems is required. The comparative analysis must be wide and representative, including the different regions of the world. The comparative analysis includes an assessment of national laws and decisions of national courts, and other relevant materials.” The question is:
 1. What role do regional organizations play in recognizing and contributing to the development of general principles in international law? Whether regional organizations can take lead role in conducting such legal assessment?
 - **Regarding subsidiary means for the determination of international law:**

1. How does transnational judicial dialogue contribute to the democratization of international law, particularly in terms of subsidiary means for the determination of international law? We are working together with Mr Charles Jalloh, Special Rapporteur to find proper answer.

Having discussed the notion of ‘democratization of sources of international law’, the ‘challenges faced by the countries in global south’, let us briefly address the ‘means to achieve democratization’. To foster broader comprehension of international law, at regional level or domestic level, it is necessary to disseminate information more widely. I request the panel members to briefly elicit their view on the role of **‘various methods of democratization of sources of international law’** including:

1. The utilization of Information and Communication Technology (ICT).
2. The promotion of multilateral trust funds, providing scholarships and grants to ‘persons of recognized competence’ within the region.
3. Strengthening the regional organizations, with an aim to facilitate the incorporation of non-traditional legal systems into the international legal framework and promote their active contribution to the ongoing progressive development and codification of international law.

Therefore, I am so happy to chair the panel discussion which will centre on three pivotal themes. Firstly, it will scrutinize the challenges faced by ‘global south’ in ‘international law making’. Second, in light of the growing recognition of the need to explore legal models (non-traditional legal models) beyond the traditional scope of public international law, how can innovative approaches and perspectives from the Global South be integrated into the international legal framework without undermining relevant and feasible existing norms and principles? Third, the panel will also delve into the critical role of regional organizations in contributing to the progressive development and codification of international law in the region.

Having explained the themes broadly, let me introduce the distinguished panel members and request the members to give their opening remarks. As my dear colleague Mr Paparinskis mentioned yesterday the google search engine will give you more information about the panelists, suffice to say that the scholarly and practical work of each of them is uniquely suitable for today's topic. Thus, I am pleased to introduce the panel and thank them for their valuable time with us.

- **Prof. Antony Anghie**, Professor of Law at the University of Utah. He earned an S.J.D. from Harvard Law School.
- **Dr. Kamalinee Pinitpuvadol**, Secretary-General of the Asian-African Legal Consultative Organization.
- **Dr. (Ms.) Danae Azaria**: Associate Professor of International Law, University College London, Faculty of Laws; Senior Global Hauser Fellow, NYU Law School.

Possible Questions for Discussion:

- How the legal traditions of global south influenced contemporary international law and its development?
- What role did the de-colonization movements play in shaping the principles and sources of international law?
- In what ways the global south contributed to the establishment and development of regional legal frameworks?
- Identify specific cases or judgements from courts in global south that have had a significant impact on international law?
- Trace the global south's contribution to the codification and progressive development of international law, including on human rights, environmental protection, climate change, law of the sea issues, etc.

I thank the panel members, the attentive audience and the permanent mission of India for timely bringing this topic to the close attention of the international community. The informal meeting of the legal advisers has been enabling us to

discuss and even propose solutions and we are indeed grateful to Canada, India, Mexico, Poland and Sweden and UN Office for Legal Affairs for sustaining this initiative for the last 34 years. As we celebrate the UN Day today with the renewed hope and aspiration, this debate makes us rich with the ideal and work for **One Earth, One Family, one Future / Vasudhev Kutumbkam.**