

10-1-1991

The United Nations Decade of International Law - Insights into an Asian Perspective of International Law

Jeremy A. Thomas
Ashurst Morris Crisp

Follow this and additional works at: <https://digitalcommons.schulichlaw.dal.ca/dlj>



Part of the [International Law Commons](#)

Recommended Citation

Jeremy A. Thomas, "The United Nations Decade of International Law - Insights into an Asian Perspective of International Law" (1991) 14:2 Dal LJ 266.

This Article is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.

Jeremy A. Thomas*

The United Nations Decade of
International Law — Insights into
an Asian Perspective of
International Law

I. *Introduction*

On 15th November 1990 the Sixth Committee of the General Assembly completed its deliberations on the Report of the Working Group on the United Nations Decade of International Law (the "Vukas Report"). The Vukas Report sets out the proposed programme of activities of the Decade during the period 1990-92, and represents another important step towards the implementation of resolution 44/23 of 17th November 1989¹ and the fulfilment of the aspirations of strengthening the international legal order connected with that resolution. On the 19th November 1990 the Vukas Report was formally adopted by the Sixth Committee without a vote. The Decade has at last a tangible programme of activities.

The identification of the last decade of the second millenium as the Decade of International Law reflects the growing awareness, by non-aligned states, of the importance of international law. It also reflects a lessening of their historic hostility towards international law as the creature of western states and the tool of the West in the maintenance of its continued domination of political and economic affairs.

To international lawyers, policy makers and others interested in Asia and its attitude and contribution to the norms of international law, the Decade offers almost unique opportunities. First, the opportunity to identify the norms of international law in which the states of Asia are interested. Second, the opportunity to evaluate the potential contribution of the states of Asia to the existing world legal order.

Although political and economic concerns, particularly the need to make the substance of the Decade politically acceptable to western states, means that the suggestions of the states of Asia to the proposed contents of the Decade do not exactly mirror all the changes in international law that they would like to see, their suggestions do give an indication of the

*Jeremy A. Thomas, LL.B(Lon), LL.M.(Dal), Assistant at Ashurst Morris Crisp of London, England and Research Associate at Dalhousie Law School. The views expressed in this article are those of the author and not necessarily those of Ashurst Morris Crisp.

1. A/44/L.41/Add.1.

interests and ideas that they may pursue in international legal forums in the years to come.

II. *An Overview of the Inception, Declaration of and Implementation of the Decade on International Law.*

The origins of the United Nation's Decade of International Law go back to the ministerial meeting of non-aligned countries in Nicosia, Cyprus, in September 1988. At that meeting it was decided to call an Extraordinary Ministerial Meeting of non-aligned countries on peace and the rule of law in international affairs. The proposed meeting was held in June 1989 at the Hague and was attended by representatives of over 90 states and resulted in the Hague Declaration.² The main conclusion of the Hague Declaration was that the United Nation's General Assembly should be invited to declare a "Decade of International Law" beginning in 1990 and concluding in 1999, during which nations would work towards: (i) the promotion and enhancement of peaceful methods of the settlement of disputes between states, including resort to the International Court of Justice; (ii) achieving general and complete disarmament; (iii) strengthening the respect for international legal principles against the threat or use of force, intervention, interference and other coercive measures in international relations; (iv) furthering public education for better understanding of international law; and (v) calling at the end of the decade a third peace conference to consider and adopt appropriate international instruments for the enhancement of international law and the strengthening of methods for the peaceful settlement of international disputes, including the role of the International Court of Justice.

The Hague Declaration also reaffirmed the commitment of the non-aligned nations to certain symbols of their unity: (i) the elimination of colonialism; and (ii) the need for the promotion of economic and social development in the third world.

Certain of the proposals for the Decade of International Law set out in the Hague Declaration were unacceptable to others, principally western states, either as a matter of substance or because they were considered to be more appropriately dealt with elsewhere. In the negotiations that followed the desire for consensus meant that the ambitious programme set out in the Hague Declaration was curtailed.

The General Assembly resolution that resulted from these negotiations was resolution 44/23 adopted on 17th November 1989 unanimously. This resolution declared "the period 1990-1999 as the United Nations

2. NAM/CONF.8/PRL/MM/2/REV.1.

Decade of International Law” and went on to affirm that the main purposes of the Decade should be, *inter alia*: (i) to promote acceptance of and respect for the principles of international law; (ii) to promote means and methods for peaceful settlement of disputes between states, including resort to and full acceptance for the International Court of Justice; (iii) to encourage the progressive development of international law and its codification; and (iv) to encourage the teaching, study, dissemination and wider appreciation of international law. It concluded with a request that the Secretary General should seek the views of member states and others as to the possibility of holding a third international peace conference or other suitable international conference at the end of the Decade.

Resolution 44/23 was strongly supported by members of Asia. The draft circulated to members of the General Assembly on 15th November 1989 included Afghanistan, India, Malaysia, Mongolia, Nepal, Pakistan, the Philippines and Sri Lanka among its forty four sponsors³. By the time the draft resolution was before the General Assembly for debate China and Vietnam from Asia had also been added to its by then seventy-two sponsors. By that date, many of the western states that originally treated the proposed Decade with some caution had accepted it, so support at such time was not necessarily indicative of enthusiasm for the Decade although, as we will see, China has appeared to develop a real desire to promote the aims of the Decade.⁴

In the form of Resolution 44/23, the purposes of the Decade as set out in the Hague Declaration have been heavily emasculated. The emphasis on the promotion of the peaceful settlement of disputes and the teaching of international law indeed remains. However, the emphasis on disarmament and the use of force and the underlying concerns of the Hague Declaration of eradicating colonialism and encouraging the renaissance of the New International Economic Order have been lost. Instead, a more general emphasis on the acceptance of the principles of international law and the codification of international law has emerged with the possibility of a general peace conference at the end of the Decade.

Having established the framework for the Decade of International Law the next stage was for the Secretary General to seek the views of member states and international bodies as well as of non-governmental organisations on the programme for and on appropriate action during the

3. A/44/L.41.

4. *Supra*, note 1.

Decade. The Secretary General reported on 12th September 1990.⁵ Of the twenty states who replied to the Secretary General within the time limits only two replied from Asia (China and Afghanistan) and a reply was also received from the Asian-African Legal Consultative Committee. Later replies were, however, received from Mongolia and a further reply from China.⁶ Very late on a reply was also received from Japan.⁷ This aggregate response from Asian states was, however, only a little less than that of other states and international organisations from other areas of the world.

Meanwhile, a working group of the Sixth Committee had been set up with a view to preparing generally acceptable recommendations for the programme of activities of the Decade under the chairmanship of Budislav Vukas of Yugoslavia (the "Vukas Committee"). In its deliberations the Vukas Committee had before it the report of the Secretary General which incorporated the replies that had been received from states and international bodies (the Japanese response was received too late for its comments to influence the response of the Vukas Committee) and it held eleven meetings between 5th October and 8th November 1990, together with extra private consultations with delegations. On 8th November 1990 it reported.⁸ The Vukas Report was debated by the Sixth Committee of the General Assembly on 13th to 15th November 1990 and eight of the state delegates to speak were from Asia, being those from the states of India, China, Singapore, Pakistan, Thailand, Japan, Mongolia and Nepal.

The Vukas Report sets out the proposed activities of the Decade of International Law for the first term of the Decade, being the years 1990 to 1992. It was generally accepted by both Asian and non-Asian states alike, although with differing degrees of emphasis, and will form the basis of the programme of activities of the first period of the Decade.

The draft programme for the activities to be commenced during the first term of the United National Decade of International Law is set out in Annex 1 of the Vukas Report; it follows the four purposes set out by resolution 44/23 although greater emphasis was given to certain of the purposes of the resolution than others. Annex 2 sets out a comprehensive list of the suggestions made by states to the Secretary General and the Vukas Committee in its consultations with delegations. In the words of Professor Vukas this "comprehensive list should remain a source of

5. A/45/430.

6. A/45/430/Add.2.

7. A/45/430/Add.3.

8. A/C.6/45/L.5.

inspiration during the preparations for the following programmes of the Decade".⁹

In connection with the promotion of the acceptance of and respect for the principles of international law the emphasis of the Vukas Report is on better implementation of existing multi-lateral treaties. In particular, it submitted that research should be undertaken into the level of ratifications achieved by multi-lateral treaties and also why multi-lateral treaties generally do not achieve wider participation. It also proposed that states and international organisation should provide technical assistance and advice to developing states so that they could pay a greater part in the process of and implementation of multi-lateral treaties.

In connection with the promotion of means and methods of peaceful settlement of disputes, the Vukas Report encourages states and international organisations to make proposals to strengthen dispute resolution mechanisms and, in particular, resort to full acceptance of and respect for the International Court of Justice. After receiving these proposals, there is to be further consideration by the Sixth Committee of the means of peacefully settling disputes by United Nations organisations, the International Court of Justice, regional organisations and by the establishment of certain procedures for the peaceful settlement of disputes arising in specific areas of international law.

In connection with the encouragement of the progressive development of international law and its codification, the suggestions of the Vukas Report are primarily to identify the means of identifying areas of international law which might be ripe for progressive development or codification. The proposed mechanism is to invite international organisations to submit their suggestions as to subject and forum to the Secretary General. The Secretary General will then produce a report for consideration by states as to areas of international law ripe for codification. More tangibly it also suggests that a manual defining specified legal terms be drawn up to ensure consistent use of legal terminology in international instruments for adoption by the General Assembly.

The suggestions in connection with the encouragement of the teaching, study, dissemination and wider appreciation of international law are perhaps the most complete. The Vukas Report, *inter alia*, affirms that developed nations should assist developing nations in the provision of facilities for the study of international law, but that all states should consider the possibility of introducing topics of international law in the curriculum of schools at the primary and secondary levels. It also suggests

9. A/C.6/45/SR.39, p.12.

the preparation of model curricula and materials for courses of international law, that states and the United Nations should undertake special training courses for legal personnel and that publicity of the doctrines and judgements of international courts and substance of international law be encouraged.

In conclusion with respect to the debate on the Vukas Report in the Sixth Committee the speeches of delegates seem to suggest that the proposals in connection with international dispute settlement and education have the most likelihood of achieving something tangible. The Vukas Report was adopted without a vote as the programme for the first period of the Decade on 19th November 1990.¹⁰

III. *The Views of the States of Asia on the United Nations Decade of International Law*

1. *The Reports of the Secretary General and the Vukas Committee*

The replies to the Secretary General from the States of Asia generally reflect a positive approach to international law, even from the developing states. Mongolia, for instance, affirms that the “rule of law in international relations has now come to the forefront as one of the decisive factors in the universal safeguard of collective security for all states and the right of peoples to peaceful development”¹¹ and Afghanistan declared itself to be “a country loyal to the Charter and other norms of international law”.¹² Nevertheless, one can still detect in certain parts a lingering suspicion of international law. China, for instance, although observing that “the third world countries positively affirm and highly value it [international law]” noted that it was still necessary to reject “some outmoded norms in international law”.¹³

With regard to the specific purposes of the Decade identified by resolution 44/23 concerning: (i) peaceful settlement of disputes between states and resort to the International Court of Justice; and (ii) the encouragement of the teaching of international law there was, as elsewhere, general support throughout Asia.

China after its somewhat perfunctory initial response to the Secretary General to the means of strengthening the International Court of Justice later expanded its reply to suggest that the Decade should include consideration of: (i) fulfilling the existing potential of the International Court of Justice; (ii) encouraging acceptance of para.2, Article 36 of the

10. A/C.6/45.L.16 and A/C.6/43/SR.44.

11. *Supra*, note 6, p.8.

12. *Supra*, note 5, p.14.

13. *Supra*, note 6, p.5.

Statute of the International Court of Justice; (iii) encouraging special agreements or dispute settlement clauses in treaties; (iv) expanding the advisory jurisdiction of the International Court of Justice; (v) expanding the use of ad hoc chambers; and (vi) encouraging states to take practical steps to submit disputes to the International Court of Justice.¹⁴

A number of these suggestions appear to be the same or similar. For instance, suggestions (i) and (vi) above appear to be the same and suggestions (ii) and (iii) to be sub-species respectively of (i) and (vi). Nevertheless, these suggestions do indicate a revised attitude to the Court. This is a very substantial step forward for the Peoples Republic of China. It has always been highly suspicious of the International Court and has often made reservations in international treaties to clauses providing for disputes arising under such treaties to be submitted to the International Court.

Indeed, it may have been this historic conduct of the Chinese that prompted Mongolia in her submission to the Secretary General to suggest that "specific measures might be taken directed towards the full development of the potential of the Charter of the United Nations and the Statute of the International Court of Justice, including, for example, measures for the withdrawal of reservations made by states on acceding to various international conventions and aimed at limiting possibilities for resort to the Court in the settlement of disputes".¹⁵

Japan was the most enthusiastic supporter from Asia in respect of the encouragement of teaching and publicity of international law. The reason for this support was her view that states would not better observe international law unless their respective nationals were able to scrutinise their acts from the perspective of compliance with international law. As international law, unlike municipal law, was not encountered by citizens in their everyday affairs, it was necessary to include international law in national education curriculums and the Decade should be used to encourage this. Further, Japan suggested that the United Nations produce a manual on international law and a programme to systematically set out the principle treaties in each of the major fields of international law. China also vigorously supported the idea of research into international law, although she characteristically emphasised the need for research into the relationship between international law and third world states.

Perhaps Mongolia has the widest aspiration for the Decade. In her submission to the Secretary General she affirmed her continuing regard for the Hague Declaration as "defining" the priority areas for action

14. *Ibid*, pp.7-8.

15. *Ibid*, p.10.

during the Decade of International Law and affirmed the urgency of creating “a system of norms for the transfer and application of the achievements of scientific and technological progress to the purpose of the development of the developing countries.”¹⁶

China also appears to regard the Decade as offering the possibility of a means of achieving substantial developments in the aspirations of third world countries in the economic legal sphere. In her first submission to the Secretary General China suggested, *inter alia*: (i) research into the position and role of the third world countries in the development of contemporary international law and their contribution thereto; and (ii) study of the subject of “developing countries and the international legislation on the environment”.

In its second response to the Secretary General China considerably expanded these ideas. In the field of environmental law it was noted that “the developed countries should assume the main responsibility for environmental protection” and that “international legislative instruments on the environment should provide for developed countries providing additional funds to developing countries as well as developed countries transferring safe and harmless technologies to developing countries on preferential and non-commercial terms”.¹⁷ It may be that China is about to take up a leading role in the promotion of third world interests, a role to date that it has not sought to fill.

2. *The Debate on the Vukas Report*

Those Asian delegates speaking on the debate in connection with the Vukas Report in the Sixth Committee generally welcomed it, noting as other delegations did, that it perhaps represented the best possible compromise between the views of developed and developing states as the programme for the Decade. As the delegate for Singapore noted, it was “certainly not perfect from the point of view of many member states, it is objectively one we can all live with the document is a viable masterplan for the U.N. Decade of International Law”.

The states of Asia particularly supported the suggestions set out in the Vukas Report relating to education. There was particular emphasis on the need for developed countries to support and fund courses, scholarships and symposiums for members of the third world and also for similar educational matters to be funded by the United Nations.

Perhaps the only Asian exception to this suggestion for the funding of the Decade came from the delegate of Japan. In her view the educational

16. *Ibid*, pp.9-10.

17. *Ibid*, pp.3-5.

programme should be funded out of existing resources and should require no more governmental money. Japan was also out of step with the other states of Asia by considering it premature at this stage to discuss the programme for the conclusion of the Decade, particularly the subject matter of any great peace conference at the end of the Decade. In the context of the proposed peace conference at the end of the Decade China considered drafting a "Declaration on Principles of International Law Concerning Peace and Development". This appears to suggest that China may be in the process of trying to breath new life into the principles of peaceful co-existence given prominence by the Bandung Conference.

Of the other matters proposed by the Vukas Report, the states of Asia had little to add although on the issue of codification Nepal and China, *inter alia*, considered the question of the environment as perhaps the most ripe for legal development. Only Nepal affirmed the need for a closer examination of the reasons why states do not ratify multilateral treaties although few states from any region of the world gave much emphasis to this suggestion.

The speeches of delegates from Asia affirmed the continuing desire to ensure that the Decade includes matters originally envisaged by the Hague Declaration. Both Pakistan and India emphasised the need for the Decade to consider disarmament and India and China the economic side of international law. On a less controversial issue, Thailand raised the issue of consideration by the International Law Commission of the position in international law of objections to reservations.

IV. Conclusion

The United Nations Decade of International Law has started rather modestly. Sweeping aims for a transformation of the international legal order as envisaged by the Hague Declaration, have not come to fruition. The main avenues for success, certainly for the first period, appear to be on an axis based on the promotion of education and the peaceful settlement of disputes. Generally speaking, the states of Asia have also emphasised this axis, although probably more on the grounds of realism than on grounds of desire.

However, as the Brazilian delegate noted in the debate on the Vukas Report, that if the Vukas Report was implemented the results will not have "been negligent but significant". This conclusion is probably just as applicable if only the suggestions of the Vukas Committee in respect of the peaceful settlement of disputes and the encouragement of education are implemented.

An analysis of the Asian involvement in the United Nations Decade of International Law for the purpose of determining the interests of Asia in

international law in the third millenium is, with certain reservations, encouraging.

The states of Asia appear to have universally welcomed the declaration of the last decade of the millenium as the Decade for international law. Much of the rhetoric that characterised the utterances of such states in the 1960's and 70's when international law was very much seen by them as the creature of western states has departed. There is now a much more positive attitude to international law which is encouraging at a time when super power unity may facilitate substantial development in the subject.

For the development of international law the most striking view to emerge from Asia, but one which was common to many other developing states, was a willingness to look at the International Court of Justice as a mechanism for furthering the peaceful resolution of disputes between states. In particular the perceived goodwill of China towards the International Court suggests that there may be substantial scope for development in the role played by the Court in international law.

The Chinese interest in the Court is also indicative of what appears to be a much wider willingness on her part to be involved in international legal institutions and law making. In the 1970's and early 80's China played a very low key role in international legal affairs, much to the disadvantage of the Asian contribution to international law. China's apparent willingness to take a leading role, given her size, population and position in the Security Council will undoubtedly, if it continues, benefit the participation of Asia in the creation of international law.

The contributions to the Decade suggest, however, that Japan and some of the more materially successful Asian states continue to be separated from the aspirations of their neighbours. Japan, for instance, appears to have taken the stance adopted by many western states, which was to emphasise the opportunities for teaching and dissemination of information presented by the Decade, rather than considering the Decade as presenting the opportunity to make any substantive reform in the existing structure of international law. Also, with an eagle eye on costs, she affirms the need to ensure that programmes established by the Decade should come from existing resources. Nevertheless, perhaps this is the opportunity for one of the large Japanese Foundations to make a contribution to the development of public international law in the way that the Carnegie Foundation did in the early years of this century and the Ford Foundation today. With regard to the proposed conference at the end of the millenium, she preferred to wait until nearer the time to determine the most appropriate subjects of the conference. Singapore also adopted a conservative line reasonably affirming the need not to create more law but to make it more effective.

With regard to the long term contribution of the states of Asia to the Decade of International Law it is perhaps too early to reach any specific conclusions. The Decade has to date been characteried by a lack of consensus about concrete action, particularly action which has a cost and this also permeates the Asian contribution. Certainly there is the desire to extend the scope of the Decade into the subject matter embraced by the Hague Declaration but excluded from resolution 44/23. However, whether this aim is achieved depends much on policies of other states in the economic and political spheres. As to principles of international law unique or originating in Asia, the Decade appears to have thrown up little that was new but it has affirmed the principles connected with the Bandung Conference and it may be that under vigorous analysis of China's scholars the principles may be developed more fully. The expectation of some scholars in the 1950s and 1960s that the states of Asia would through their own distinct philosophies and cultures make a unique contribution to international law has yet to emerge.