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ARTICLES

Editors' Introduction: India and International Law in the Periphery Series

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This is the third issue of the Periphery Series of the *Leiden Journal of International Law*. The first two were dedicated to the works of the Chilean jurist Alejandro Álvarez and the Nigerian international lawyer Taslim Olawale Elias – two scholars from regions conventionally cast as 'peripheral' to the discipline's metropolitan 'centre'.[1] This issue takes a somewhat different perspective by focusing on a country (or subcontinent) as a whole. Its primary questions concern the way in which Indian scholars have imagined, shaped, and reshaped international law; the manner in which India's domestic system has received international law; and the ways in which India has been projected by the international legal system.

In terms of the centre–periphery dichotomy, India presents an interesting and paradoxical example. After the First World War, India entered international law as an 'anomalous legal person' and even as 'an anomaly among anomalies'.[2] After it gained independence and was recognised as a sovereign state, India itself 'consistently argued that it essentially remained at the periphery of the international legal system'.[3] In the 1950s, however, India took the lead in the Non-Aligned Movement, presenting itself, so to speak, as one of the core players in the international arena by virtue of its special peripheral status. India's attitude towards international law was not free from ambiguities either: while consistently pointing out the structural biases and injustices of the international legal system, India also advocated the use of international law to foster the cause of non-Western countries. India's international legal scholarly communities showed a similar duality, positioning themselves at the heart of Third World scholarship and including among their number some of the main spokespersons for international legal reform. In the words of Chimni, 'Indian international law scholarship has, since the middle of the last century, been at the forefront of articulating a Third World approach to international law and made seminal contributions to different branches of international law'.[4] As the contributions to this volume make clear, Indian scholarship has tried to prove two things

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1 See (2006) 19 LJIL 875; (2008) 21 LJIL 289.

2 See R. P. Anand, 'The Formation of International Organizations and India: A Historical Study', in this issue.

3 See V. G. Hegde, 'Indian Courts and International Law', in this issue.

4 B. S. Chimni, 'International Law Scholarship in Post-colonial India: Coping with Dualism', in this issue, at 49.

at the same time: first, that there is a distinct Indian tradition of international legal thinking that stands apart from dominant, Western modes of thinking and, second, that some foundational categories of European international law were actually borrowed from pre-existing Indian (or Asian) state practice and doctrine. In this sense, Indian scholarship has imagined its relations towards the 'centre' in terms of difference and identity in ways that bear strong resemblances to the vocabulary found in the work of Álvarez and Elias to which the first two issues of this series were dedicated. The questions regarding India's position vis-à-vis centre and periphery have gained renewed importance in view of the new role it has lately assumed in the international arena. The rise of India as a military and economic power, its closer ties with the United States, and its change from 'non-alignment' to 'un-alignment' (in other words, its turn to a more pragmatic foreign policy) raise new questions as to India's role as spokesperson for the periphery and its stance towards international law.

As was noted above, this issue focuses on three main topics regarding the relation between India and international law. The first concerns the way in which international law has been imagined, conceptualized, and re-conceptualized in Indian scholarship.

Chimni's article, 'International Law Scholarship in Post-colonial India: Coping with Dualism', identifies four overlapping periods of Indian international legal thinking. The 1950s–60s, he argues, were dominated by the perceived need to (re)assert India's unity and the existence of inter-state practices and rules in pre-colonial India. Prominent in this period were historical studies and the rediscovery of ancient Indian concepts such as *dharma* and *danda*. The 1960s and 1970s were a period of optimism, in which attention was focused on international institutions and international legal reform, especially in the field of the law of the sea. This optimism was followed by dissolution in the 1980s–90s, combined with the rise of critical Third World thinking under the banner of TWAIL (Third World approaches to international law). At the same time, economic globalization pushed international lawyers out of academia to law firms, while some key figures of Indian scholarship retired, signalling the end of an era. The last part of the article deals with the possible implications of India's new role on the world stage. Here Chimni advocates a critical engagement with international law, in order to promote a vision of inclusive cosmopolitanism.

Singh's article, 'Indian International Law: From a Colonized Apologist to a Subaltern Protagonist', also deals with Indian international legal scholarship. Singh's emphasis is on the transformation from the first generation of critical Third World thinking (TWAIL I) to the second (TWAIL II). According to Singh, TWAIL I scholars offered historical analyses to reveal India's contribution to the formation and possible reform of international law. TWAIL II scholars included insights from various disciplines to analyse and critique the biases and structural injustices of the international legal system. Singh seeks to build on this tradition to voice resistance to what he regards as elitist readings of law and colonization.

The second topic of focus in this issue is the way in which international law has been perceived and used to settle disputes within India. In order to assess

this, Hegde's contribution, 'Indian Courts and International Law', focuses on the invocation of international legal provisions by the Indian Supreme Court. Hegde distinguishes three phases immediately preceding and subsequent to the Supreme Court's establishment in 1950: 1947–70, 1971–90, and 1991 and after. In the first phase India struggled with a series of territorial and boundary issues, as well as with general questions as to the status of international law in the domestic order. In order to settle these disputes, the Indian Supreme Court relied on international legal rules, such as those in the field of the acquisition of territory and the law of occupation. Environmental issues and human rights gained prominence in the second phase described by Hegde. Faced with problems resulting from India's development policy, the Court had recourse to international human rights law and sought to attach greater importance to international law in relation to municipal law generally. In the third phase, the Court was called on to deal with cases flowing from India's new economic agenda. In order to decide these cases, the Court relied on several branches of international law, including human rights law, economic law, investment law, and environmental law. Hegde concludes that, all in all, the Court's approach over the past decades has been rather conservative and cautious. For the future, Hegde argues, the Court should invent new approaches to deal with the complexities of an ever-changing international and domestic order.

Two articles in the special issue deal with questions concerning how international law has been imagined, critiqued, and used by Indian scholars and judges. The second article inverses the perspective by focusing on the way in which India has been imagined and conceptualised by international law. Anand takes up the question in his contribution, 'The Formation of International Organizations and India: A Historical Study'. Anand takes the reader on a historical journey that starts with India's exclusion from nineteenth- and early twentieth-century international law, which distinguished civilized from non-civilized, barbaric nations. India's exclusion was followed by a strange intermediate period of inclusion and exclusion that started after the First World War. During the *interbellum*, Britain sought formal recognition for India in order to strengthen its own position in the 1919 Peace Conference as well as the League of Nations. The result was that a colony unable to determine its own internal affairs was now treated as if it had autonomous status. India's lack of self-determination was underlined by the fact that it was automatically drawn into the Second World War by Britain's declaration of war in 1939. Still, because of its formal status under the League, India became one of the founding members of the United Nations. Anand shows how India's simultaneous inclusion and exclusion in international law spurred domestic resistance, especially in nationalist circles, where India was criticized for playing along with the game set up by the colonial powers.

Taken together, the articles contribute to the main goals of the Periphery Series: to foster engagement with the discursive function of centre–periphery oppositions in public international law in their various iterations, and through this to confront questions of resource allocation, dependency, geography, and power.