



## ***Erga Omnes***

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### **Why Should International Law of Tomorrow be Different from Today?**



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*The following blog-post is a backgrounder to the yearlong Extended Lecture Series beginning October 2020 on 'Alternative Approaches to International Law'. The Lecture Series is jointly organised by Weeramantry Centre for Peace, Justice and International Law, and Chinmaya Vishwavidyapeeth, Kerala. The first talk will be delivered by Dr. Celine Tan, University of Warwick, UK on the topic – Towards A New Architecture of International Public Finance in the COVID-19 Era on 30 October 2020. In case you find this blog-post relevant and further wish to attend the lecture, please register by clicking [here](#).*

### **Pandemic Grips the World**

The onset of the Corona Pandemic since December 2019 has taken the world by surprise. The way the virus spread and the manner in which it impacted the lives of the people is known to everyone. The infection, which started to spread in China soon engulfed the whole world, and by March 2020, the Indian government had to announce a major lockdown throughout the country (see [here](#)). While the Coronavirus cases continue to soar and the world engages in finding a cure for it, the lives of people on the ground have been affected much more than we could have imagined. In India alone, the number of cases has drastically gone up and the no. of reported deaths stand more than 114,276 (with more than 7.5 million cases, as of October 18, 2020. See [here](#)). The loss of jobs in the informal sector is estimated to be around 119 million while the overall rate of unemployment rose from 8.4% to 23.8% (see [here](#)). According to the World Bank estimates, the lockdown from initial phases impacted around 40 million internal migrants in India (see [here](#) and [here](#)). The UN Secretary-General recently has identified the pandemic as a

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‘generational catastrophe’ affecting more than a billion students in 160 countries; with over 300 million school students in India alone (see [here](#)). Meanwhile, the Indian government has announced a 20 lakh crore rupee stimulus package for the economy, which comes close to 10% of the GDP (see [here](#) and [here](#)).

As the pandemic of COVID-19 grips the world there is a huge economic fallout of this *White Swan* event (and not *Black Swan*, see [here](#) and [here](#)). COVID-19 seems to have not only impacted the economy in the short run; its repercussions are expected to be more pronounced in long run as well. The problems highlighted by *Harvard Business Review* demonstrate that the COVID-19 pandemic has disrupted the entire *supply chain*; shrunk consumer demand; has led to a large number of job losses; and, has put a heavy burden on medical infrastructure (see [here](#) and [here](#)). The impact it has made over millions of daily workers, ending them jobless, and triggering their migration across the cities, has been vividly on display across all media sources in India. It seems that the pandemic will impact the small and medium scale industries the most; and, we do not know how much, yet (see [here](#) and [here](#)).

### **Gaps in International Law**

The COVID-19 pandemic has exposed the existing gaps within the development process. It has posed a loud question that cannot be anymore ignored. In developing countries, where the development is concentrated in city hubs, COVID-19 has proved that the distance between a nearby village to its town is more than the difference between geographically distant cities. It has proved that the call for an ‘internal globalisation’ is long due (see [here](#)). Internal migrants walking their homes hundreds of miles away; being arranged in groups with sanitizer sprayed at them from a distance; and of thousands of people gathered on bus stations only to be taken away, remained a normal sight for everyone sitting at home and watching news on television channels (see [here](#), [here](#) and [here](#)). In a large country like India, by geography and demography, this is not unpredictable. The diffusion of development is a long-drawn process that requires the luxury of time. COVID-19 has delivered the lesson to the global south that it remains a rather unaffordable luxury.

International Law has a big role to play in this context. While it seems that the World Health Organization (WHO) or even the UN General Assembly, much like EU and other agencies have been unable to contain any of these implications, it also remains true that International Law remains our only hope (see Jouannet

[here](#); see Koskenniemi's earlier disagreement [here](#)). It is only through the agency of International Law that we could eradicate poverty, apply stringent health regulations, more accessible knowledge systems and above all, better lives and better means of livelihood (see [here](#)). However, that does not seem possible in the current state of affairs, especially the way International Law has been structured and applied in its formal make-up. The language in which International Law finds its construction remains contested both in its literary style (see [here](#)) as well as in its core constituents (see [here](#) and [here](#)).

It has also been debated that International Law is hegemonic. It is argued that the inherent core of International Law, i.e., its very sources, remains contested in the language of cultural, ethical and moral domination (see the chapter by Reut Yael Paz [here](#)). Moreover, it is also argued that International Law has to a greater extent being hijacked by entities for their interests; having the ability to coerce the system to perform to its tunes through the emergent transnational capitalism (see [here](#)). The problematic institutionalization of International Law can also be fathomed from its treatment of subjects like migration and refugee protection from the European context; while tales from the South, specifically the developing world, including South Asia, remain largely unheard (see chapter by B.S. Chimni [here](#)).

### **Utopia of Moving Forward**

Indeed, International Law cannot perform to its full potential unless it also incorporates interests and knowledge from the developing part of the world. COVID-19 pandemic is a glaring example of that. Therefore, what has led the WHO (or any other international organization) to underperform does not merely stem from the deeply flawed argumentative structure of the international legal system but also from its systemic flaw and institutional design, and ill-appreciation of the realities about ground-level situations in countries like India. It is also due to self-righteous hypocrisy of the euro-centric knowledge of law and development, assuming altogether that the other parts of the world have nothing to contribute to the normative enrichment of the international law and global order. The British response to the India-South Africa TRIPS waiver request in the context of COVID-19 response at the WTO's TRIPS Council is the latest example of this difference in the normative systems (See [here](#) and [here](#)).

It is here that Judge Christopher Gregory Weeramantry's call in the preface to his treatise *Universalizing International Law*, becomes ineluctably relevant.

It [International Law] urgently needs to be universalised in regard to its constituency, for it needs the active support of a far wider group than its immediate votaries. It requires a vision that takes in the vast panorama of global cultures, as a source of enrichment of its principal concepts and underlying philosophies. It needs to take in the wisdom of the past and attune itself to the problems of the future. (see [here](#))

International Law cannot fathom the diversity of the societies of the world, nor can it provide access to the promise of global peace and security (with the topping of justice), unless it also incorporates the regional aspirations and imbibes the local necessities of human existence. The diversity of this planet has not merely provided fodder for conflict but also food for prosperity for many centuries now. However, that has been made possible only with the vision of a prosperous future in times of crises such as the present one.

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