

ARTICLES

THE ASIAN CENTURY: IMPLICATIONS FOR INTERNATIONAL LAW

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Predictions that the 21st century will be the “Asian century” have sparked analytical interest from many disciplines but not international law. This article focuses on what implications “Asia rising” may have for international law in the 21st century. The article begins by looking at the 19th and 20th centuries as the European and American centuries respectively to assess the impact these centuries made on international law. The article then analyses possible meanings for an Asian century and frames such a century’s implications for international law around the concept of a “Concert of Asia”. The article argues that, through a Concert of Asia, Asian nations have the opportunity to make the region a laboratory for global governance that determines the next stage of international law’s historical development as an instrument in human governance.

I. INTRODUCTION

Predictions that the 21st century will be the “Asian century” have been made for years,¹ and such predictions have strengthened and suffered as Asia and the rest of the international system have experienced dramatic events and change. The “Asian century” debate waxed and waned, for example, before and after the Asian financial crisis of 1997. For all its ups and downs, the notion that this century will find Asia attracting more world attention has shown remarkable resilience, largely because the importance of Asia in international relations continues to grow.

The phenomenon of “Asia rising” has drawn scrutiny from experts who study the geopolitical balance of power, trends in military strength, threats to national and international security, economic growth and competition, the processes of globalisation, and even public health. Missing from the discourse on the rise of Asia’s prominence is the analysis of the implications for international law of this rise in Asia’s importance.² This article attempts

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¹ Analysis on the 21st century being the Asian century appears to have gained prominence first in the late 1980s and continued into the 1990s. See, e.g., J. Weiss, *The Asian Century: The Economic Ascent of the Pacific Rim and What It Means for the West* (New York: Facts on File, 1989); W. L. Rivers Black III, “Maritime Arbitration in the Asian Century” (1990) 14 Tul. Mar. L.J. 261; K. W. Abbott & G. W. Bowman, “Economic Integration in the Asian Century: An Early Look at New Approaches” (1994) 4 *Transnat’l L. & Contemp. Probs.* 187; C. Lingle, *The Rise & Decline of the Asian Century: False Starts on the Path to the Global Millennium* (Hong Kong: Asia 2000 Ltd., 1997); S. Sanders, ed., *The U.S. Role in the Asian Century* (Lanham, MD: University Press of America, 1997). The earliest published reference to “Asian century” I found appears in J. Romein, *The Asian Century: A History of Modern Nationalism in Asia*, trans. by R. T. Clark (Berkeley, CA: University of California Press, 1962).

² The *Singapore Journal of International & Comparative Law* sponsored a symposium in 2001 that explored “the challenges confronting the teaching and practice of international law in Asia.” (“From the Editors” (2001) 5 S.J.I.C.L. ix). The essays in this symposium did not, however, directly address the implications of the growth in the power and importance of the region for Asia’s relationship with international law that is the mainstay of

to address this gap in “Asian century” analysis by speculating—hopefully in an educated way—about what impact such a century might have on international law.

I undertake this endeavor with awareness of the pitfalls of engaging in this kind of “crystal ball” analysis. One could argue that speculating about how an Asian century might affect the theory and practice of international law is dubious on at least three fronts. First, the idea of an Asian century is itself controversial,³ meaning that even the first step in exploring this topic presents problems. Second, the various political, economic, and technological forces and trends that many believe point to an increasingly prominent Asia in international relations are complex and fluid, rendering the ground that needs to be covered in the analysis proposed in this article unstable. Third, a century is a long time, making it problematic to predict about what will happen over such an expanse of time. Fourth, asking what impact an Asian century might have on international law invites analysis to dig below surface phenomena in order to explore the forces that shape international law. Such theoretical and philosophical examination of international law is itself fraught with controversies that are decades, if not centuries, old.

The dangers of the type of analysis I undertake in this article are, however, worth risking because the evidence of Asia’s growing prominence in world affairs is too clear to ignore. Other disciplines are readily braving the difficult challenge of peering into the murky future from a vantage point that is shifting and changing rapidly. Whether we like it or not, international lawyers are being swept along by the historic shift underway in international relations that is making Asia more important to the future of global affairs. We might as well pause in the midst of all the exciting and worrying tasks international lawyers face today to contemplate where history is taking us as Asia rises.

My analysis comprises three substantive parts. First, I look back at the 19th and 20th centuries as the “European century” and “American century” respectively and consider what these centuries meant for international law. The European century and the American century both had significant impacts on international law. An understanding of these impacts will provide the background against which informed speculation about what the Asian century might mean for international law can proceed.

Second, I consider what the term “Asian century” means. How we think about an Asian century may differ from why we call the 19th century “European” and the 20th century “American”. Asia’s growing prominence in international affairs may not signal the rise of a region, or of a single great power, that will project its influence in all corners of the world, as the Europeans did in the 19th century and the United States did in the 20th century. The coming of the Asian century might not mean that Asia is the main actor; it might mean it is the main geographical location in which the reigning and rising great powers face off and in which the next stage of global governance takes shape.

Third, I frame the implications of an Asian century for international law around the concept of a “Concert of Asia”. In this article, I use the Concert of Asia idea to attempt to capture the need for Asian countries to understand that the growth in Asia’s power and prominence creates opportunities and burdens that Asian countries will only maximise and manage effectively through a strategic approach to global governance. I envision the Concert of Asia as providing a framework through which Asian countries can build on

“Asian century” analyses. Some contributions to the symposium framed the future of Asia’s relationship with international law as one of renewed resistance to outside intervention and pressure. See, e.g., M. Sornarajah, “The Asian Perspective to International Law in the Age of Globalization” (2001) 5 S.J.I.C.L 285 at 313. (“There is a need to confront them [economic liberalism and its concomitants] by maintaining vigorous opposition to the norms preferred by the powerful states. The Asian perspective that was devised in the post-colonial context must be kept alive in order to ensure that the interests of the weaker Asian states are safeguarded.”) My article argues that looking backwards at the history of Asian resistance to international legal realities in the 20th century will not suffice as a guide to Asia’s relationship with international law in a century in which the Asian region will become more important to the political and economic dynamics of international relations.

³ I. Buruma, “What Happened to the Asian Century?” *New York Times* (29 December 1999) A25 (“The idea of an Asian century is in itself absurd. ‘Asia’ is too big, too vague and too diverse to serve as a useful concept.”).

existing cooperative mechanisms to make Asia a laboratory of global governance in the 21st century. Through a Concert of Asia, Asian nations have the chance to create a new legal and governance order unlike anything seen before in international relations.

II. OF CENTURIES AND INTERNATIONAL LAW

Talk of an “Asian century” partakes of a tradition of associating centuries (or long periods of time) with regions or particular countries that left permanent marks during the respective eras in question.⁴ Experts often refer to the 19th century as the “European century” because, during this time, the great powers of Europe, especially Great Britain, dominated the world politically, militarily, economically, and technologically. Similarly, the rise of the United States to great power, superpower, and then hyperpower-hegemony in the 20th century made this century “American” because of the impact the United States had during this time on world affairs. In this part, I consider what marks the European century and the American century left on international law. Understanding these impacts may provide some analytical signposts for thinking about the implications of an Asian century for international law.

A. *The European Century: The Universalisation of International Law*

Towards the end of the 18th century, the philosopher-parliamentarian Edmund Burke referred to the law of nations as the “public law of Europe”.⁵ Burke’s connection of the law of nations with the geographical, historical, and cultural region called Europe was accurate because the origins of modern international law are European. Europe gave birth to what Burke called the law of nations, and Jeremy Bentham called international law, in the late 18th century. During the course of the European century, what for Burke represented a set of rules for relations among European nations became the set of rules regulating the interactions of countries around the entire world. The European century’s most distinctive mark on international law was its universalisation as an instrument of international governance.

The universalisation of international law was a by-product of European imperialism and other forms of European projection of superior power in non-European parts of the world. In essence, the global expansion of European influence, control and domination brought much of the world into the system of sovereign states—the Westphalian system—that had been the foundation for international relations in Europe since at least 1648. Once within the system, countries or regions under direct or indirect European dominion found themselves subjected to the international law that formed part of the governance machinery of the Westphalian system.

Europe’s universalisation of international law involved more than expanding the geographical reach of the law of nations. Universalisation of international law also involved a process of Europeanisation for the non-European parts of the world. Through the “standard of civilisation”, European countries applied international law in a manner that required non-European nations to conform their governments, laws and policies to European concepts, models, approaches and interests.⁶ Elsewhere, I have referred to this process as creating a global “Westphalian civilization”.⁷ The nature of the expansion of European power imbued

⁴ W. G. Grewe, *The Epochs of International Law*, trans. by M. Byers (Berlin: Walter de Gruyter, 2000) at 137–572 (analysing the international legal order in the Spanish (1494-1648), French (1648-1815), and British (1815-1919) ages.).

⁵ D. P. Fidler & J. M. Welsh, “Burke and the Theory of International Relations” in D. P. Fidler & J. M. Welsh, eds., *Empire and Community: Edmund Burke’s Writings and Speeches on International Relations* (Boulder: Westview Press, 1999) 37 at 44.

⁶ See generally G. Gong, *The Standard of “Civilization” in International Society* (Oxford: Oxford University Press, 1984).

⁷ D. P. Fidler, “Revolt Against or From Within the West? TWAIL, the Developing World, and the Future Direction of International Law” (2003) 2 Chinese J. Int’l L. 29 at 34.

international law with cultural and racial prejudices that operated as part of the international legal machinery. Burke's association of the law of nations with European culture in the late 18th century became, over the course of the 19th century, a defining feature of the system of international law that operated on a global, not just a regional, basis.

European power and civilisational ideology thus defined the scope and nature of international law in the 19th century. Neither Europe's material power nor its ideology of superiority faced serious challenges in the non-European world, which allowed the European great powers, led by Great Britain, to impose a governance structure for international relations on the rest of the world modelled on the European experience. Although Japan managed to transform itself into a European-type regional power by the end of the 19th and beginning of the 20th centuries, Japan's rise occurred within the parameters set by the universalisation of international law and did not constitute a fundamental challenge to the system.

The century of European dominance over international relations and international law ended because the balance of power within Europe did not hold, sweeping all the major players of the European century into World War I, a bloody conflict that destroyed the superiority of European power and the ideology of European superiority. The universal governance system created by the expansion of European international law lost its directing hand and its ideological animus. The 20th century witnessed power and ideological struggles that would buffet and shape international law as profoundly as had the ascendancy and expansion of Europe in the 19th century.

B. *The American Century: The Triumph of Ideology in International Law*

Many regard the 20th century as the American century, predominantly because the United States' rise to the status of lone superpower in international politics occurred during this period of time. The end of the Cold War and collapse of the Soviet Union in the late 1980s and early 1990s left the United States as the dominant country politically, economically, militarily, technologically and culturally. From the vantage point of the United States' victory in the Cold War and its resulting hegemony, the 20th century certainly takes on an American sheen.

The story of the American century is, however, different from the tale of the expansion of European power and dominance in the 19th century; and the differences are important for understanding the impressions the American century left on international law. The United States emerged as the dominant player in international relations over the course of a century marked by deep ideological controversy and conflict. The implosion of the ideology of European superiority that fueled the expansion of European influence and the system of international law was followed by successive attempts by various countries to impose an ideological imprint on national and international governance. These ideological clashes affected international law much more deeply than the European "standard of civilization" did in the 19th century.

The 20th century became a battlefield of "-isms" from which international law did not escape. In the wake of the disaster of World War I, the United States, through President Wilson's famous Fourteen Points, laid down a philosophical framework on which the nations of the world would build a post-war "structure of international justice" as the "moral climax of this culminating and final war for human liberty".⁸ This vision promoted liberalism's principles of the self-determination of peoples, transparent governance

⁸ President Woodrow Wilson's Fourteen Points, 8 January 1918, online: Brigham Young University, Harold B. Lee Library <<http://www.lib.byu.edu/~rdh/wwi/1918/14points.html>> (last visited 8 March 2005).

and diplomacy, free trade among nations, and the building of international institutions to ensure the collective security of strong and weak states.⁹

Other ideologies rose to challenge President Wilson's vision, including fascism, communism and the anti-imperialism of the non-aligned movement of developing countries. The 19th century saw European countries struggle against each other for imperial dominion around the globe, but the major players shared the common ideology of European superiority and consensus on the need to force non-European nations to become "civilised" for international law to apply fully to their foreign relations. After tensions between the states of the Holy Alliance and Great Britain at the end of the Napoleonic wars eased, ideological matters did not seriously affect relations among the great powers and their use and understanding of international law. This underlying ideological solidarity helps explain why positivism prevailed over natural law as the theoretical basis for obligations arising under international law in the 19th century.

In the 20th century, however, ideologies affected international politics at every level: imperialists versus anti-imperialists, communists versus fascists, liberals versus fascists, capitalists versus communists, and the search by some countries for a "third way" between the dominant ideologies represented by the United States and the Soviet Union. The like-mindedness of the European great powers in the 19th century is not a feature of 20th century relations among the most important states in the international system. Ideological pluralism in the 20th century forced virtually every feature of international law to undergo theoretical and practical scrutiny from multiple angles (*e.g.*, Western, Soviet, Third World), creating a disconcerting kaleidoscope effect that gave international law an alluring but gossamer presence in international relations.

For international law, the 20th century became an "ideological inquisition" that affected not only the substantive content of the law but also the way in which states and international lawyers approached the law. The triumph of ideology in international law in the 20th century occurred largely through the impact of this inquisition on the nature of international legal analysis. The century began with ambitions for the development of the "science" of international law,¹⁰ which reflected the continued momentum of 19th century thinking.¹¹ Instead, in the 20th century, international law became "political science", a discipline with certain technical aspects (*e.g.*, treaties, customary international law) integrated into competing systems of political thought and practice.¹²

The United States was not solely responsible for the ideological inquisition of international law in the 20th century; but it was, by virtue of its status as a key great power and its approach to international relations, a leading inquisitor. With Wilson's Fourteen Points, the United States set the tone for the rest of the century in terms of embedding international law and its development into a larger philosophical construct for international affairs. The Wilsonian project both required international law and demanded its radical transformation, echoing the 18th century criticisms of existing international law (*e.g.*, Grotius and Vattel as "miserable comforters") and the alternative liberal vision of the philosopher, Immanuel Kant.¹³

The ideological inquisition of international law in the 20th century involved not only battles between the big "-isms" but also controversies about the "ideology of international law".

⁹ *Ibid.*

¹⁰ See, *e.g.*, Lassa Oppenheim, "The Science of International Law: Its Task and Method" (1908) 2 A.J.I.L. 313.

¹¹ M. Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of Modern International Law 1870-1960* (Cambridge: Cambridge University Press, 2001) at 40-41 (noting the ambitions of the founders of the *Institut de droit international* to create an institution for "collective scientific activity in international law").

¹² The increased use of international relations theory as part of the analytical tool set of international lawyers illustrates the extent to which international law became embedded in larger systems of political thought and practice during the 20th century.

¹³ On Kant's thinking, see H. Williams & K. Booth, "Kant: Theorist Beyond Limits" in I. Clark & I. B. Neumann, eds., *Classical Theories of International Relations* (New York: St. Martin's Press, 1996) at 71.

One intriguing consequence of the constant framing of international law through political ideologies was the emergence of international law as an ideology itself. This phenomenon is seen in the backlash against international law and international legalism mounted by realist thinkers in the inter-war and post-World War II periods.¹⁴ The backlash was particularly prominent concerning debates about American post-World War II foreign policy as diplomats and scholars tried to steer the United States away from the legalism that many believe prevailed in the inter-war years to the detriment of security and order in the international system.

As a nation, in Abraham Lincoln's words, "dedicated to the proposition that all men are created equal",¹⁵ the United States lacked the ability to divorce ideology from power politics, which meant that the American approach to international law flowed from its commitment to *ideepolitik*. Fittingly, the Soviet Union was, in many respects, a state dedicated to its own philosophical propositions, such as the "dictatorship of the proletariat",¹⁶ that made it a formidable opponent to the United States in the ideological inquisition of international law. Developing countries emerging from colonisation attempted, to varying degrees of success, to construct their own worldviews and to use them to challenge and, if possible, change international law.¹⁷

What I call the "triumph of ideology" in international law in the 20th century is not, therefore, a product of any one country or bloc of states. *Ideepolitik* grooved international legal analysis to accommodate international law's integration into larger, competing ideological constructs. This grooving meant that international law became not only relevant but also critical to ideological expositions on the relationships among citizens within a state, between citizens and their government, between citizens of different states, and between governments. *Ideepolitik* made international law conceptually and practically instrumental not only to the traditional concerns of horizontal governance among sovereign states but also the previously off-limits issues involving vertical governance within such states.

Specifically, the triumph of ideology in international law riddled the conventional principle against non-intervention in the domestic affairs of other states with holes, through which poured new concepts and rules of international law directly connected with different ideological concepts of good governance. Although often the source of intense frustration (and sometimes despair) for international lawyers, the ideological inquisition actually vastly increased the governance terrain on which international law could and did operate. This dynamic connects to the post-World War II rise in international law of issues involving self-determination of peoples under colonial oppression, the protection of human rights, liberalised and non-discriminatory trade among nations, and redistributive equity and justice among the rich and poor (*e.g.*, the New International Economic Order).

Again, not all this ferment in international law flowed from the behaviour of the United States. The triumph of ideology in international law in the 20th century is a development produced by the entire international system engaging in the ideological inquisition of the law of nations. The 20th century is, nevertheless, the American century because the United States proved superior at engaging in *ideepolitik*. By the last decade of the century, all major ideological challenges to the United States' world view during the 20th century lay scattered on the ash heap of history—the racial, civilisational and imperial prejudices of the

¹⁴ Two well-known and influential critiques of legalism in international politics are E. H. Carr, *The Twenty-Years' Crisis 1919-1939: An Introduction to the Study of International Relations* (London: Macmillan and Company, 1939) and H. J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 5th ed. rev. (New York: Alfred A. Knopf, 1978).

¹⁵ Abraham Lincoln, "Address at Gettysburg, Pennsylvania" in *Abraham Lincoln: Speeches and Writings 1859-1865* (Washington, D.C.: Library of America, 1989) at 536.

¹⁶ V. Lenin, "State and Revolution" in A. P. Mendel, ed., *Essential Works of Marxism* (New York: Bantam, 1979) at 101, 171.

¹⁷ Sornarajah, *supra* note 2 at 291-294 (analysing the developing world's "phase of resistance" against prevailing international law).

European great powers; fascism; communism; and the various “-isms” that emerged from the developing world during the period of decolonisation.

The triumph of ideology in international law that characterised the 20th century does not mean that international law now aligns, or will always align, with American perspectives or that the United States will always prevail in *ideepolitik*. Indeed, many controversies arising in the American-led “war on terrorism” involve American actions, such as the treatment of detained persons, which many perceive to be in tension with the bodies of international law the United States had championed in the 20th century. The universalisation of international law achieved by European hegemony in the 19th century continued undiminished when that hegemony collapsed during and after World War I. The ideological inquisition has not, in other words, reached the “end of history” because this inquisition has become, like universalisation, part of the DNA of international law, the genetic code transmitted to the generation of international law that will develop in the 21st century.

III. THE ASIAN CENTURY: POSSIBLE MEANINGS

When commentators talk about the 21st century being the “Asian century”, they use this moniker in diverse and often rather loose ways, making it difficult to determine whether any consensus exists as to what an Asian century would be. The common ground for most, if not all, of the Asian century discourse is the perception and prediction that Asia’s importance in international relations will grow significantly in the 21st century.¹⁸ These predictions build on the rise in Asia’s importance in global affairs as seen in the last decade of the 20th century. To speculate on what implications an Asian century would have on international law, we need to spend some time thinking about the potential meanings of an Asian century. This part explores ways of interpreting what an Asian century might involve.

A. *What is “Asia”?*

Literature on the growing significance of Asia in international politics does not always refer to the same “Asia”. For some, Asia means East Asia, especially China, Japan, Taiwan, and the Korean peninsula. Others talk of Asia more broadly, as encompassing East and Southeast Asia, stretching from Burma in the west to Japan in the east, and Russia in the north to Australia in the south. A third perspective stretches Asia from India in the west to Japan in the east and everything in between.

Plotting the exact geographical parameters of “Asia” is not, however, critical for purposes of an Asian century analysis. The term “European” in the European century was loosely used as well and referred not comprehensively to the geographical area of Europe but to the geographical location of states that dominated international relations politically, militarily, technological and economically. Likewise, Asia is a term of art for the potential for countries in the broadly defined Asian region to transform global affairs. The most important countries in this potential transformation are China and India, with many experts predicting that, of these two, China will be the more significant actor in the 21st century.

B. *Asia as a Hegemonic Region?*

One possible interpretation of the Asian century is to see it as mirroring the European century in that certain countries in Asia, such as China and India, will rise so prominently in power

¹⁸ *Report of the National Intelligence Council’s 2020 Project—Mapping the Global Future* (Washington, D.C.: National Intelligence Council, 2004) at 48-51 analyses the rise of Asia.

and influence that they can impose their will on the rest of the international system. Instead of Europeanisation, the world would experience an unprecedented Asianisation, as defined by the great Asian powers. This interpretation is, however, neither realistic nor desirable.

First, to believe that China and India would approach the kind of domination European states had in the 19th century would require predicting that (1) the current hegemony exercised by the United States utterly vanishes; (2) the power and influence still retained by Europe (as evidenced by the continued expansion eastward of the European Union) also dissipates to the point where the political units of this region are deeply vulnerable to Chinese and Indian power; and (3) that China and India both resolve their significant internal political and economic problems to allow for global political adventurism on the scale undertaken by the European great powers in the 19th century.

At most, the literature debating the rise of Asia contains predictions that the power of the United States and Europe decreases relative to the growing power of China and India; but I have not seen any expert argue that the enormous influence that the United States and the European countries still possess will evaporate in the 21st century to the point of creating a political vacuum for Chinese and Indian power to fill. The universalisation of international law during the European century depended on an imbalance of power between Europe and non-European regions that will not, in all likelihood, be a characteristic of an Asian century.

Second, the idea that “the sun will never set” on Chinese and Indian dominion over international affairs ignores or evades the reality that China and India would only be able to achieve such dominion through significant levels of diplomatic, economic, political and military conflict. In the 19th century, European countries rarely hesitated to present the standard of civilisation to non-European peoples at the point of a bayonet. Nothing in the current development of China and India suggests that these rising powers would desire to project their power globally through the strong-arm tactics used in the Europeanisation of international relations in the 19th century.

For these reasons, the Asian century will not mirror the European century in terms of its impact on international politics. China and India will not make the Asian region hegemonic in the way Europe was in the 19th century.

C. *An Asian Hegemon à la Uncle Sam?*

The second model, based on the American century, is for one Asian power to prevail against all competitors to become the dominant global political, economic, cultural and military force. Talk of an Asian century, not a Chinese or Indian century, already suggests that few, if any, experts believe that the American century model provides insight for 21st century international politics—except in the sense that the United States continues throughout this century to be hegemonic. The lack of predictions concerning a Chinese or Indian century indicates that geopolitical forecasters do not believe that either China or India will evolve over the course of the next century into the kind of hyper-power the United States became at the end of the 20th century.

One reason why experts do not predict that China or India will replace the United States as the dominant great power in the 21st century is that they do not believe that the United States’ power and influence will wither to the point that the United States is clearly subordinate to either Asian country. This outcome is not impossible—recall Britain’s precipitous fall from the zenith of its global imperial power at the beginning of the 20th century to its status as a “poodle power” of the United States at the end.

Scholars have in the past included the United States in analyses of the “rise and fall of the great powers”,¹⁹ indicating that the decline of the United States from its current position

¹⁹ See, e.g., P. Kennedy, *The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000* (London: Unwin Hyman, 1988) at 514-535.

of power could indeed happen. But scrutiny of whether the United States' power declines typically goes no farther than discussing how much US influence will decline relative to the increase in the power of other countries, such as China. For China or India to emerge as the global hegemon, as the United States did at the end of the 20th century, the decline in US power would have to be more dramatic, even cataclysmic. Britain suffered cataclysmic events that gutted its global influence—two world wars within the space of twenty years. Again, this possibility could unfold for the United States. However, the probability of such an absolute decline in US power in the 21st century remains extremely low, particularly in light of the fact that experts do not believe that serious armed conflict between the great powers is likely in the 21st century.²⁰

Another reason why the American century model does not fit trends in Asia concerns the triumph of ideology in international law that occurred in the 20th century. This triumph flowed from international relations becoming *ideepolitik*—competition among the great powers in both ideas and material power. Neither China nor India appears poised to provide the world with ideological contributions that fundamentally challenge the triumph of liberal ideology in the wake of the end of the Cold War. India is the world's largest democracy and is increasingly integrating its economy into global markets for goods and services, hardly the platform for rejecting the dominant liberal template and presenting radically different alternative bases for *ideepolitik*. In addition, India faces many internal problems in trying to make its giant democracy and increasingly globalised economy function in an orderly and effective manner. Such internal issues may force the Indian government to expend much energy and resources at home rather than on projecting Indian influence abroad.

China maintains a precarious balance between remnants of communist rule in political governance and an economy increasingly dancing to the tune of global capitalism. Images from Tiananmen Square still haunt Chinese domestic and foreign policy. Like India, China will have its hands full internally with ideology and will not be in a position to act as ideological exemplar for the global village of the 21st century. This context makes it very unlikely China will produce transformative ideological contributions of universal appeal in international politics in the 21st century.

Further, one ideological fault line commentators on future global trends identify—that between radical Islam and Americanised globalisation—may adversely affect Asia in the 21st century. Growth in radical Islamic sentiment among Asia's significant Muslim populations could produce tension and conflict, particularly as Asian economies increasingly benefit from and help advance globalisation. Asia could, thus, suffer "ideological drag" as opposed to being a leader in 21st century *ideepolitik*.

D. *An Asian Way to an Asian Century?*

A third possible template for the Asian century would be for Asia as a region to develop its own path to having transformative influence on international relations. This approach might appeal to those who advocate the importance of "Asian values" and finding the "Asian way" in contemporary world affairs. A number of problems arise, however, in thinking about the development of a distinctive Asian spin on 21st century international politics.

First, the "Asian way" intimates agreement among countries in "Asia" of the right "way" to approach the challenges of the 21st century. As explored earlier, what "Asia" means geographically is itself controversial. The controversy expands when more nebulous and culturally bound concepts of "values" feature in the debate. Are the "Asian values" promoted in East Asia the same values India promotes? Do all roads to the "Asian way" lead through Delhi or Beijing? The "Asian way" implies deep ideological and cultural solidarity in Asia that does not in fact exist.

²⁰ *Supra* note 18 at 98.

However geographically defined, Asia does not share the kind of common political, economic and cultural heritage that enabled Europe to establish a likemindedness it imposed on the non-European world in the 19th century. Nor do Asian countries nations appear fiercely dedicated to philosophical propositions in the way the United States and the Soviet Union were in the 20th century. These observations do not mean that Asian countries and cultures do not have characteristics that the rise of Asia may express more prominently in globalisation, but they do mean that such characteristics are more likely to operate tactically in reaction to events rather than strategically to proactively shape future developments. An “Asian way” to an Asian century can only be strategic.

Even if conceivable, a strategic “Asian way” concept might contain seeds of darker forces that have appeared in previous historical eras in other regions and countries. Conceptualising an Asian way involves, to some extent, a process of inclusion and exclusion, of differentiation, that takes place through the exercise of superior power. The standard of civilisation in international law represented a European process of inclusion and exclusion that operated on the dynamics provided by the disequilibrium of power between European and non-European countries. The peculiar nature of the US relationship with international politics has led to assertions of “American exceptionalism”, a kind of global manifest destiny for the unique American “empire of liberty”. Or, to paraphrase President Bush, you’re either for us or against us.

The danger in Asia of a strategic “Asian way” is not perhaps the development of a universalisable inclusion/exclusion process (as the Europeans and Americans developed in their respective centuries) but of the increase in nationalism in respective Asian countries that could complicate regional and global diplomacy. Some experts have observed with concern growing nationalism in China and Japan as China continues to rise as a regional and international political and economic power.²¹ Such tensions in Sino-Japanese relations not only diminish prospects for a more unified Asian perspective but also threaten to undermine the political and economic conditions that might make the 21st century an Asian century.

E. Asia Among Others? Competitors for Century Naming Rights

Although many focus on Asia as the “next big thing” in global politics, some brief words on the existence of other possible scenarios for the 21st century are in order. The foremost competitor for naming-rights concerning the 21st century will be the United States. The 21st century could be the Second American Century given the influence the United States will retain, and perhaps augment, as the 21st century unfolds. The bold, but dangerous, attempt by the United States to transform the Middle East into a region receptive to, and adept at, democracy and free markets could prevail, enhancing both the United States’ material and ideological power. The continued expansion of the principles of liberalised trade, whether through the growth of membership in the World Trade Organization or the crafting of regional and bilateral trade agreements, could further entrench American predominance in structuring the global economy. Further, at present, the United States appears to be the only great power able and willing to throw its weight around in international politics to achieve policy objectives, no matter how much such behaviour exasperates other countries. The US ability to project its power in this way may increase over the course of the 21st century.

The growth in the membership of the European Union witnessed in 2004 potentially makes it a competitor for 21st century naming-rights. Solidification of this growth, and its continuance, could make the European Union and its member states more influential on the world stage. Such influence would arise not only from the size of its economic market

²¹ See, e.g., D. J. Lynch, “Animosity Toward Japan is Again the Rage in China: Past Brutality, Modern Disputes Feeding Nationalist Movement” *USA Today* (24 February 2005) 08A. The large anti-Japanese protests in China during April 2005 underscore concerns about the rise of nationalism in both China and Japan.

but also the type of quasi-federal governance dynamic EU member states have painstakingly developed. The EU governance approach may offer more traction for global problems experienced by other regions in the 21st century than traditional, state-centric forms of international governance.

A final possibility is that the 21st century will be the century of the non-state actor—multi-national companies, non-governmental organisations, technological entrepreneurs, organised criminal gangs, drug and sex-trade traffickers and terrorists. The European and American centuries were, without question, state-centric centuries. Although non-state actors were active participants in international affairs, the great powers still ran the show in conventional command-and-control ways. The phenomenon of globalisation has heightened the attention paid to the importance and impact of non-state actors on global politics, and most predictions about the 21st century foresee the acceleration of globalisation. This dynamic may produce a situation in which states are constantly struggling to catch up with, and clean up after, non-state actors' exploitation of globalised identities and interests, technologies, and transportation networks.

The governance problem of security illustrates the potential for the 21st century to be the non-state actor century. International and national security in the 19th and 20th centuries revolved almost exclusively around states and their relative military, political and economic power. Many so-called “new security threats”, such as terrorism, environmental degradation, malevolent misappropriation of technologies (*e.g.*, biotechnology), and infectious diseases, are largely non-state actor driven and fall outside the traditional military calculations of old-style *realpolitik*. The architecture for international and national security built in the 20th century (*e.g.*, military alliances and the UN Security Council) does not adequately accommodate the nature of the security threats emerging in the 21st century. Recommendations by the UN Secretary-General's High-Level Panel on Threats, Challenges, and Change that “comprehensive collective security” has to address not only traditional conflict between states but also poverty, infectious disease, environmental degradation, terrorism and transnational organised crime²² provide some indication of how non-state actors may drive the global agenda in the 21st century more than any one state or region.

IV. THE ASIAN CENTURY'S CALLING: TOWARD A CONCERT OF ASIA

A. *Rise of Asia as a Governance Challenge*

As explored above, an Asian century is not likely to involve Asia emerging as a hegemonic region, nor does it appear that China or India will supplant the United States as the world's hyperpower. The importance of an Asian century may be more diffuse and complex than the stark characteristics of the European and American centuries. The rise of Asia makes this region important to international politics because what happens in Asia in the 21st century will have global implications. The region has already become an economic engine for globalisation, and this role for Asia does not look likely to diminish in the next decades. In addition, the growth of Indian, and in particular Chinese power, makes Asia the scene for the next round of competition among the great powers.

These developments in Asia mean that the Asian century idea can be interpreted through the lens of governance. Asia and the rest of the world face the task of successfully governing Asia's rise in political, economic, technological, cultural and military importance in global politics. How states in Asia and beyond handle this governance challenge will determine

²² *Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility* (New York: United Nations, 2004). See also *Report of the Secretary-General—In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/ 2005, 21 March 2005.

the Asian century's implications for international law. Failure to manage Asia's rise in power and prominence in an orderly and peaceful manner will produce state and non-state behaviour that does not conform to international law. Effective governance of Asia's emergence will produce political conditions in which compliance with, and utilisation of, international law proves fruitful.

Arguing that an Asian century presents a governance challenge reflects lessons learned from previous centuries in international relations. The European and American centuries ultimately concerned how international politics were governed. The universalisation of international law in the 19th century reflected the European effort to impose a Westphalian-style governance template on non-European parts of the world. The American century involved intense ideological and power struggles over which governance template would determine the nature of politics and relations among states and peoples. These struggles ended with the triumph of the American-led liberal approach, which the United States continued to promote vigorously when its moment of hegemony arrived.

Although liberalism embraces and promotes globalisation, fifteen years of American hegemony have revealed many governance challenges for which recitation and application of tenets of liberal ideology (or any ideology for that matter) have not proved sufficient. Globalisation creates increasingly complex and difficult contexts with respect to key governance functions any society faces: security, economic prosperity, political and economic development, and the protection of human dignity. The 21st century confronts all states with the hard challenges of applied ideology—the governance nuts-and-bolts of making the liberal framework work effectively inside and among states in an environment of accelerating, hard-to-control globalisation. Countries unable or unwilling to confront the difficult governance tasks the 21st century presents may find themselves approaching a state of endemic crisis, increasing dependency, and vulnerability to the wrath of disenchanting and disenfranchising people who can use globalisation themselves as a multiplier of their anger and desperation.²³ The transition from this unfortunate condition to the category of “failed state” may represent an increasingly small step in the 21st century.

The 21st century may well be remembered as the Asian century because Asia may become the most important laboratory of the next phase of governance in world affairs. Unlike the United States and most of the European Union, Asia has not reached the kind of economic and political integration that provides the United States and the European Union with deeply grounded foundations for their continental-wide politics, economics and cultures. The American and European levels of economic and political integration provide them with robust (if not always adequate) capabilities with which to confront the forces globalisation unleashes. Transformative changes in the nature of governance undertaken by the United States and the European Union are not, therefore, likely to characterise international relations in the 21st century. Instead, the 21st century may well tell the tale of how Asian countries individually and collectively address entrenched and emerging political, economic, technological and social problems through existing or newly created governance mechanisms. How Asia governs its problems will be of urgent concern for the world given Asia's rise in importance in world politics. Governance in Asia has become a “global public good”.

Unlike the Middle East and Africa, Asia has reached a level of connectivity with the processes of globalisation such that this region is on the cutting edge of, and now often leading, the whirlwind economic and technological changes buffeting all states, governments and peoples. Most countries in the Middle East and Africa lag behind Asian states in their abilities to govern effectively in the globalised world of the early 21st century. Experts

²³ Al-Qaida, the global terrorist network, perhaps serves as a precursor of what may develop more frequently in the 21st century if hard governance challenges are not successfully managed.

on the Arab world have lamented the backwardness of their societies,²⁴ and the US effort to democratise the Middle East constitutes an “ideological inquisition” of countries in the region. Africa’s future remains bleak despite renewed efforts to focus on African poverty and problems.²⁵ This depressing situation means that Africa is unlikely to be on the cutting edge of governance in world affairs in the 21st century.

Unlike South America, the speed, scale, and nature of Asia’s integration with globalisation place this region at the forefront of geopolitical developments shaping the 21st century world order. Although commentary sometimes identifies Brazil as a rising power,²⁶ nothing like the interest in and concern about China or India accompanies discussions of Brazil’s 21st century prospects. Discussion of a “South American century” is non-existent.

Asia represents, thus, a unique environment in which the next phase of governance in international relations will unfold. Asia will be the laboratory for global governance mechanisms in the 21st century because, of all the regions of the world, it alone combines in ample proportions the most cutting-edge qualities of the First World and the grinding despair of the worst of the Third World—and all conditions in between. The Asian century will not be remembered because countries in Asia lay down the law to the rest of the world, or because China or India becomes a hyperpower. If the 21st century is the Asian century, it will be because Asia will host the next great challenges for, and experiments in, the governance of human affairs.

B. *The Concept of a “Concert of Asia”*

Framing the Asian century in terms of a governance challenge for world politics creates the need to discuss how governance of Asia’s continued rise in power and prominence will be managed. Are existing governance mechanisms sufficient for the task, or will states in Asia and beyond need to create new institutions and arrangements to govern the power shifts taking place? Will the creation of new institutions require an expanded use of international law or other forms of law by Asian nations as they move to govern more effectively relations among themselves and with non-Asian states? These, and similar, questions can only be answered at a very general level; but even such general answers can be instructive in terms of how an Asian century might affect the role of international law in the governance of international relations.

I argue that the governance challenges faced in Asia’s rise in international relations should be handled strategically within a “Concert of Asia”. Clearly, this idea echoes the famous Concert of Europe that existed in the first half of the 19th century and also borrows from those who previously have advocated a Concert of Asia with respect to security threats the region might face, for example, from China’s continued rise to great power status. The Concert of Asia I have in mind, however, does not track either the Concert of Europe or earlier proposals for a Concert of Asia.

1. *Concert of Europe v. Concert of Asia*

The Concert of Europe was a diplomatic mechanism through which the European great powers attempted to manage order in Europe in the aftermath of the Napoleonic wars.²⁷ The origins and nature of the Concert of Europe make it an inappropriate model for the

²⁴ United Nations Development Programme, *Arab Human Development Report 2002: Creating Opportunities for Future Generations* (New York: United Nations, 2002).

²⁵ The Group of 8 plans, for example, to focus on the plight of Africa at its 2005 summit in Scotland.

²⁶ *Supra* note 18 at 54.

²⁷ F. H. Hinsley, *Power and the Pursuit of Peace: Theory and Practice in the History of Relations Between States* (Cambridge: Cambridge University Press, 1967) at 213-237.

Asian century. The Concert of Europe involved the *status quo* powers deciding to work together to prevent another eruption in European affairs of the kind experienced in the French Revolution and the subsequent Napoleonic wars. This goal involved not only maintaining a balance of power among the great powers but also suppressing domestic political changes that states perceived could upset order and stability in Europe.

This early 19th century mechanism for governance in Europe has little relevance for the Asia of the 21st century. To begin with, the governance challenges prompted by Asia's rise do not come in the aftermath of cataclysmic armed conflict of the kind that shook Europe to its foundations after the French Revolution. Asia's increased prominence, especially in the economic sphere, has occurred in a relatively orderly and peaceful manner, making unnecessary a mechanism built on intense fear of another continent-wide conflict. In addition, the Concert of Europe was international governance by great powers only, an approach not likely to work in the globalised and more democratic age of the 21st century. The only relevance of the Concert of Europe to Asia's future is that any Concert of Asia will have to pay systematic attention to regional security issues and how regional security affects peace and security outside Asia.

2. *Concert(s) of Asia*

The idea of developing a "Concert of Asia" has, in the past, focused on the need to manage security concerns in Asia through closer and perhaps more institutionalised cooperation and collaboration among the major powers of the region, such as China, the United States, Japan, Russia, and South Korea.²⁸ These notions of a Concert of Asia echo the "top down" *realpolitik* of the Concert of Europe—get the great powers around a table, find a mutually agreeable solution, and impose it through the exercise of superior power. This approach requires a likemindedness among great powers that may have existed among 19th century European monarchies emerging from the trauma of the Napoleonic wars but does not exist among the great powers affected by developments in Asia.

Further, China and India might perceive such a concert as an attempt by *status quo* powers, especially the United States, worried about their relative declines in influence to curtail the emergence of these Asian countries as great powers. India's and China's incentive to concert only increases as their relative power increases, a development which a security-focused Concert of Asia might oppose because it really seeks to contain and balance the growth of Indian and/or Chinese power.

3. *Concert of Asia as laboratory for global governance*

My vision of a Concert of Asia is broader and looser than the historical example of the Concert of Europe or the various proposals for a security-focused Concert of Asia. My concept of the Concert of Asia involves interdependent governance initiatives and arrangements that handle a wide range of problems facing the Asian region. This concert would address traditional security issues but in a manner that is more "bottom up" than "top down". The concert should also address transnational economic, social, environmental, technological and health issues that affect the quality of life and stability of governments in the region.

Countries in Asia have developed cooperation mechanisms that would provide foundations on which to build the Concert of Asia. Important among these regional efforts are the cooperative ventures under the umbrella of the Association of Southeast Asian Nations (ASEAN) and the Asia-Pacific Economic Cooperation (APEC) forum. These organisations

²⁸ See N. Khoo & M. L. R. Smith, "A 'Concert of Asia'?" (2001) *Policy Review* (No. 108), online: < http://www.policyreview.org/AUG01/khoo_print.html > (last visited 12 March 2005); and F. Fukuyama, "Re-Envisioning Asia" (2005) 1 *Foreign Affairs* 75.

have significant track records, particularly in terms of economic relations, that demonstrate the willingness and ability of many Asian states to engage in pragmatic, results-oriented multilateral cooperation. The Concert of Asia needs to build on what Asian countries have already developed rather than just creating entirely new mechanisms alien to the patterns of cooperation established in the region over many years.²⁹

At the same time, what Asian countries have built and refined to date will not be sufficient to meet the challenges and responsibilities the Asian century portends. Experts often note that modes of multilateral cooperation in Asia are more informal and non-binding than other approaches to regional collaboration and integration (*e.g.*, the highly formalised and law-bound European Union). The “Asian way” concerning regional cooperative mechanisms has reflected significant sensitivity about the principles of sovereignty and non-intervention in the domestic affairs of other states. Such an approach to cooperation may have served Asian countries well in the past, but as Asia continues to grow in political, economic, technological, cultural and security importance, the conventional approach may not be adequate. The Concert of Asia invites, then, the countries of this region to re-think their traditional assumptions about regional and international cooperation given the importance this region now has in world affairs.

The Concert of Asia idea is not a plea for Asian states simply to generate more international law through the creation of more formal international institutions and adoption of more binding treaties. More international law does not necessarily indicate that countries are making progress in addressing their responsibilities and problems. The legal importance of the Concert of Asia idea involves envisioning this concert producing a new governance order for Asia that involves rules that may not always fit existing definitions of domestic, international or transnational law.

In *Van Gend en Loos*, the European Court of Justice famously opined that the Treaty of Rome had created a “new legal order in international law”.³⁰ The governance experiment launched with the Treaty of Rome in Europe peacefully integrated the economies and societies of countries that had fought savage wars against each other over the course of centuries. The European “bottom up” approach began with the integration of coal and steel industries and developed into the grand, still expanding European Union, which now stands on the verge of having its own constitution³¹—a fitting capstone to a peace project built meticulously through formal law and institutions.

Seeing the Concert of Asia as a laboratory of global governance in the 21st century involves believing that Asian nations have an opportunity to create their own new legal order unlike anything seen before, that has regional effectiveness and universal value and appeal as a model for other countries and regions. A successful Concert of Asia will not necessarily require creation and implementation of the kind of transnational law that characterises the European Union. Nor would a successful Concert of Asia have to involve the adoption of formal treaty law at every step. As a laboratory, the Concert of Asia can experiment with legal and non-legal approaches to the hard governance tasks of applied ideology required in the complex environment of 21st century globalisation. To believe, however, that *status quo* assumptions and approaches can meet the burdens and challenges that will be Asia’s in the 21st century would constitute unwarranted, and irresponsible, complacency.

²⁹ One Japanese scholar has observed that the work of ASEAN and APEC is not widely known or studied by most international lawyers. See Kazuhiro Nakatani, “Developing a Realistic International Law Curricula for the New Asia: A Personal View” (2001) 5 S.J.I.C.L. 405 at 409. He argues that “there are few, if any, writings by international lawyers on these crucially important entities [ASEAN and APEC]. This is in contrast with the huge number of publications on the European Union. I do not consider that the EU presents the only model for regional integration. ASEAN and APEC are alternative models and they can influence the study and development of the law of international organizations”.

³⁰ *Van Gend en Loos v. Nederlandse Belastingadministratie* (26/62) [1963] C.M.R. 105 at 129.

³¹ See *Treaty Establishing a Constitution for Europe*, 47 O. J. C310 (16 December 2004).

D. *The Concert of Asia and Core Governance Functions*

The dangers of complacency in Asia can be illustrated by looking at the magnitude of the governance challenges confronting countries in Asia. In the 21st century, Asian countries will have to address at least four core governance functions for the region: (1) the provision of security, (2) the continuation of economic growth, (3) the political and economic development of underdeveloped and vulnerable populations and countries and (4) the protection and promotion of human dignity. Although existing mechanisms of multilateral cooperation may relate to these functions currently, the growth in the importance of Asia in international politics magnifies both the scope and the difficulty of these governance functions.

In terms of security, the earlier discussion of proposals for a security-based Concert of Asia or a permanent multilateral organisation for regional peace and security revealed disquiet that exists among experts about the security problems brewing in Asia and the inadequacy of existing security arrangements and mechanisms to address them. These problems include long-standing security issues, such as the status of Taiwan, North Korea's nuclear ambitions, Japanese interest in increasing its military capabilities, and the continued military presence of the United States in the region. The continued growth in Chinese political, economic and military power adds a new and potentially troubling dimension to these traditional security concerns, as well as creating new security worries among countries inside and outside Asia. In addition to managing China's rise as a great power, Asian security tasks include addressing the threats of terrorism and organised crime. Whether Asia's existing security arrangements, such as the ASEAN Regional Forum and various bilateral and regional arrangements or agreements, provide suitable governance platforms for managing the power shift underway in the region would be a question of high priority for the Concert of Asia.

Predictions that globalisation will increasingly be less Americanised and more Asianised because of Asia's economic prowess suggest that the Concert of Asia would inherit a vibrant regional economic dynamic that is increasingly making its importance felt around the world. Regional governance mechanisms, such as ASEAN and APEC, combined with the region's participation in multilateral economic ventures, such as the World Trade Organization, and the embracing of bilateral strategies would provide the Concert of Asia with robust levels of intergovernmental cooperation on economic matters. Memories of the painful Asian financial crisis in 1997, worries about the economic transformations being wrought by China's and India's respective emergences as global economic engines, economic setbacks caused by outbreaks of infectious diseases (SARS in 2003 and avian influenza in 2004-05) and energy supply vulnerabilities leave little room for complacency about governance of economic growth in Asia in the 21st century.

Although Asia is increasingly home to some of the most cutting-edge technological developments in globalisation, the region remains home to high levels of poverty and economic inequality, both within countries and among Asian states. The Concert of Asia would have to concern itself systematically with governance issues involving the political and economic development of impoverished and vulnerable populations and countries. Poverty, neglect, and despair are breeding grounds for violence that may coalesce around alternative, radical ideologies that could challenge the stability of individual governments or the region itself. Echoes of the Concert of Europe's fears about radical domestic changes upsetting the European balance of power can be heard, but the Concert of Asia's approach to these problems should be proactive and preventive instead of fearful and reactionary. Asia's increasing wealth garnered by its economic success will also increase demands by other parts of the world for Asia to contribute to their political and economic development.

Finally, the triumph of ideology in international law in the 20th century has placed human dignity at the forefront in terms of international governance. Other regions, such as Europe, the Americas and Africa, have developed, with different levels of success, regional human rights systems. The development of a regional human rights approach in Asia has been slow,

reflecting the preference of Asian nations not to interfere in each other's domestic affairs. The protection and promotion of human dignity would be an important governance function of the Concert of Asia, although the Concert does not necessarily have to respond by constructing a regional human rights treaty-system for Asia modelled on existing international human rights approaches. Continued subordination of the human dignity agenda to the interests of 19th century concepts of sovereignty will not, however, advance Asia's ability to shoulder the governance burdens its growing wealth, status and power create.

This brief discussion of the Concert of Asia concept and the core governance functions important to the region provides a glimpse of the seriousness and magnitude of the challenges facing Asia in the 21st century. How Asian countries respond to these challenges will have significant implications for international law because effective responses will require increasing use of traditional international law and innovative approaches to governance that may not fit conventional categories of domestic and international law. The Concert of Asia could well be the cutting-edge laboratory for the next generation of international law, which would carry forward the universalisation of the 19th century and the triumph of ideology in the 20th century but would evolve its own unique characteristics reflecting the exigencies and hopes of an interconnected 21st century humanity.

V. CONCLUSION

In terms of time, centuries happen. In terms of history, centuries are made. The mere passage of time will not make the 21st century the Asian century in the history of international relations and international law. Enough indicators now point to "Asia rising", such that one can sense a historical moment for this region dawning. Such moments are simultaneously opportunities and burdens because those thrust into these "tipping points" of history cannot escape the responsibilities created and must, for better or worse, shape the future. At these moments, what futures are imaginable and possible?

Europe and the United States have variously confronted their moments at tipping points in history. In the 19th century, Europe universalised international law as a governance mechanism and created the Westphalian civilisation; and this governance breakthrough remains the basic architecture of human affairs to this day. In the 20th century, the United States launched the "ideological inquisition" of international law and ultimately prevailed in it, giving Westphalian civilisation an over-arching ideology through which to govern itself. Europe and the United States seized their historical moments and imagined and built governance constructs that previously did not exist but that survived the tumult of the previous century.

The rise of Asia presents the countries of this region with their "tipping point" test of governance imagination and skill. The test for the 21st century is whether the liberal, Westphalian civilisation can effectively and justly manage globalisation in a world burdened by entrenched inequalities and transnational threats to human well-being and environmental sustainability. How countries approach and respond to this governance test will determine the next stage of the historical development of international law as an instrument in human governance. As argued earlier, Asia constitutes the region where this test now finds its most important application. This test is now Asia's burden and opportunity.

