

INTERNATIONAL LAWYER

A Dialogue with Judicial Wisdom



Professor A F M Maniruzzaman

INTRODUCTION

Professor A. F. M. Maniruzzaman is the Chair in International Law and International Business Law, University of Portsmouth, United Kingdom (2004 -) and is the founding Professor of Law and Director of Research & Postgraduate Research Degrees, Portsmouth School of Law. He is also Honorary Professorial Fellow at the Centre of Energy, Petroleum and Mineral Law & Policy (“CEPMLP”), University of Dundee, Scotland and Visiting Professor of International Law at the Faculty of International Law, China University of Political Science and Law, Beijing. Professor Maniruzzaman has practiced law in Bangladesh as a member of the Bangladesh Bar Council and an Advocate of the Supreme Court of Bangladesh.

Professor Maniruzzaman received his Ph.D. in international law from the University of Cambridge. Before then, he was awarded LL.B. and LL.M. (Honors) at the University of Dhaka and Master of International Law (Distinction) from the Australian National University. He also attended public & private international law courses at The Hague Academy of International Law.

Professor Maniruzzaman has carried out research as a visiting professor, visiting scholar or research fellow in various academic institutions of Europe, the United States, Canada and Asia. Moreover, he has served for many learned societies including the International Law Association as a member or a council member. As a leading expert of arbitrations, he has also served as member or a consultant in many international arbitrations council or chambers such as ICSID and ICC.

He has been editorial or advisory board member for a number of reputable international legal periodicals as well as extensively published academic articles in the areas of International Law, International Business Law, International Energy Law, International Investment Law and International Commercial Arbitration & Dispute Resolution.

He is listed in some of the world’s well-known and prestigious biographies such as Marquis Who’s Who in the World 2011 (28th Edition), Dictionary of International Biography 2011 (36th Edition), published by International Biographical Centre (Cambridge, England) as well as Who’s Who in Public International Law (founded by Sir Elihu Lauterpacht, Cambridge University), published in the International Year Book and Statesmen’s Who’s Who, 2011 (58th Edition).

QUESTIONS & ANSWERS

1. Dear Sir! I am Eric Lee, editor-in-chief of the Journal of East Asia and International Law. Thank you so much for having interview with us! I am deeply honored to talk to such a highly renowned international lawyer like you. As is often the case with opening the interview, the first question would be on your personal background as a scholar. Born in Bangladesh, you studied law in England and have been teaching in Portsmouth, a hometown of famous writer, Charles Dickens. Would you please mind to share about your family, parents and your education? How was your childhood?

Many thanks for having me. I was born in Bangladesh and grew up there in a beautiful and idyllic village full of natural bounties, serenity and with two big rivers flowing by its two sides. My early education started in a village school (established by my grandfather and named after him) and I completed up to class six there before my family moved to a nearby town called Pirojpur. I was admitted to class seven in Pirojpur Government High School and completed my secondary education there in due course. Then, I completed my intermediate (higher secondary education) at Government Broja Mohan College, Barisal and later on got myself admitted to LL.B. LL.M. (Honours) in the University of Dhaka. Thereafter, various foreign scholarships and fellowships followed enabling me to pursue my higher studies in international law in Australia, the United Kingdom, the Netherlands and Switzerland.

Although my parents were not highly educated, they valued education most highly and encouraged me and my seven siblings to be better educated. My father was a renowned social worker and philanthropist in his locality. He established many schools and various other educational institutions to expand education in remote rural areas where people had no access to education and opportunities. He had a great reputation as a mediator of local people's disputes of various types: personal, business and property related, etc. His honesty, benevolence, kindness and great sense of justice in his social activities earned him towering respect from the people who knew him or came in touch with him and also who heard about him. His versatile qualities attracted and inspired me from my early age. Unfortunately, he did not survive to see us grow up. He died by an accident in his early forties when I was a mere school boy aged only fifteen. It was the saddest day of my life when my father died. I still remember that day: I felt completely helpless and could see my uncertain future ahead. Thank God, I received love and affections from many of my relatives

and other well wishers and I had also my mother's blessings with me. As the eldest child in the family many family responsibilities inevitably befell on me at that early age. I had to grow fast in terms of maturity so that I could manage my siblings and their education along with my own. Besides my mother, I had to be their guardian as a male member of the family. Now looking back at all those bygone years, I must say that although my childhood was not an easy one because of tons of responsibilities that automatically came to my way, my efforts to help my siblings' early-life journeys proved worthwhile in their lives.

My wife Samia Parveen is a freelance artist. She studied fine arts in the University. Her father was the Chief Justice (1990-1995) and twice the President of the People's Republic of Bangladesh (1990-1991, 1996-2001). We have two teen-aged daughters: Monisha Promi Zaman and Alisha Jenni Zaman. They are still in school.

2. *You went to Cambridge for the advanced study of international law. Who was your mentor for Ph.D. program there? What was your research topic for doctoral dissertation?*

While I was doing my Master of International Law at the Australian National University ("ANU"), I applied for admission to Ph.D. in international law at the University of Cambridge. I was duly offered a place, but was in need of scholarship to go up to Cambridge. It needs to be said that I was also offered a place for Ph.D. at the University of Sydney, but no scholarship was available there to enable me to accept the offer. After completing my studies for an LL.M. at ANU, I went back to Bangladesh and joined the University of Dhaka as a lecturer in law. Before long, however, I was offered a full scholarship by the Cambridge Commonwealth Trust. I went up to Darwin College, Cambridge for the Ph.D. program.

My doctoral dissertation title was, "*Arbitral Process and Protection of Foreign Investment in Contemporary International Law.*" I had two supervisors at two different points of time during my study at Cambridge: Professor Christopher Greenwood (now a judge of the International Court of Justice) and Dr. Geoffrey Marston. I had also occasional interactions with the then Whewell Professor of International Law at Cambridge Professor Derek W. Bowett with whom I used to discuss and debate many international law issues. Professor Derek was also kind enough to award me a grant for research from the Cambridge Law Faculty Humanitarian Trust Studentship in International Law fund of which he was in charge. In my days at Cambridge the newly established Lauterpacht Research Centre for International Law was flourishing with its regular weekly Friday lunch seminars given by many invited luminaries of

international law including some distinguished judges of the World Court. I hardly missed any of those seminars as they enlightened my learning and widened my horizon of international law. While studying at Cambridge I received the scholarships from The Hague Academy of International Law to attend its summer programs on public and private international law and from the United Nations International Law Commission, Geneva, its international law seminar program. Having completed my Ph.D. at Cambridge, I also did my postdoctoral studies at the Centre of International Studies, Cambridge.

My Cambridge professors encouraged and supported me to join the British Academia and here I am today. My first full-time and permanent job (as a lecturer in law) started with the University of Kent.

3. Let me ask you something about the future of climate change. Due to the negative results of the 18th UN Climate Change Conference held in Doha in 2012, the Kyoto Protocol is in a shaking state; it would be a nominal treaty without comprehensive binding force. Would you evaluate the Doha Conference? How will you evaluate the future of climate change monitoring system from a global perspective?

There is a mixed reaction to the outcome of the Doha Climate Summit 2012. On a positive note it should be acknowledged that the Doha summit has attained certain objectives under the leadership of the EU and it has paved the way for progress in the future. The important achievement is that the EU has succeeded in getting the extension of the present Kyoto Protocol up to 2020 until a new global climate deal can be struck. However, the treaty is now a very limited agreement, with the US remaining apart and other countries, including Japan, Russia, and Canada, withdrawing. Only the European Union, several non-EU European States, Australia and three former Soviet republics signed on, covering countries responsible for an estimated 15 percent of global carbon emissions. It is at least better to be regulated (though in a minimal way) by the existing treaty given the situation than not at all until the new regime kicks in. There is, however, a feeling that the extension of the Kyoto Protocol will do little to reduce carbon pollution significantly. The main reason for extension is said to be the continuation of the European Emissions Trading Scheme ("ETS"), legally underpinned in the Kyoto Protocol, which has benefitted the extension-supporting countries.

It has been agreed, unlike in the old climate regime where only developed countries were legally obliged to reduce emissions, that in the prospective new regime

all countries - developed and developing alike - will have to share the burden of reduction of emissions and make legal commitments for the first time under the new agreement. This was necessary in view of the fact that many major developing countries are increasingly turning to be big emitters. For example, China is the biggest emitter and has recently surpassed America, though the per capita emissions in China still remain many times lower than in America.

The Doha summit has now made a common negotiation platform for all countries whether developed and developing and it has got rid of different working groups based on the distinction between developed and developing countries. Despite the current financial difficulties in the EU zone several EU member States and the European Commission have been able to fork out some Euro 7 billions in climate funds in Doha for 2013 and 2014, which represents an increase from the past two years. The final communiqué adopted in Doha committed to finalizing a post-Kyoto treaty governing greenhouse gas emissions by a conference to be held in Paris in 2015, with the new treaty to take effect in 2020. In fact, these are no less an achievement of the Doha Climate Summit given the diversity of positions on the issues of climate change.

On the issue of the future of climate change monitoring system, all countries, developed and developing, should cooperate for a successful and orderly regime. There must be genuine political will of all countries to address the climate change issues. This is urgent!

4. Considering the current situation of global warming, will you please shed focus on the significance of 'sustainable development' in the 21st century?

It is now universally recognised that the recent inconsistent weather patterns, rising sea levels, mega storms, extreme droughts, massive crop failures, diseases and melting glaciers in the poles are the direct effects of global warming. There is no doubt that the threat of global warming is very real and increasingly so. Various factors contribute to global warming. The United Nations Framework Convention on Climate Change ("UNFCCC"), which was entered into force in 1994, recognizes that "human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, thereby enhancing the natural greenhouse effect." The global carbon dioxide level reached 389 parts per million in 2010 and, absent significant shifts in policy, is on track to exceed 450 parts per million over the coming decades. The world added roughly 100 billion tonnes of carbon to the atmosphere between 2000 and 2010. That is about a quarter of all the CO₂ put there by humanity since 1750.

In the UNEP's estimate with the current level of emissions the temperature may increase between 2.5 and 5 degrees Celsius by the end of the twenty-first century causing a great catastrophe to this planet. In order to avoid such catastrophe the challenge lies ahead to limit global temperature increase to 2 degrees Celsius since pre-industrial times.

'Sustainable development' is considered to be one of the means to control global warming. The first pronouncement of the concept was made in the UN Brundland Report (1987), which declared: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." Ever since the concept has appeared in numerous international and national forums as a policy issue it has been perceived in diverse ways in different cultures, societies and even in professions as it has no universally fixed content. This has led the concept to be oxymoron. In the judicial and arbitral decision making process the tendency often seems to use the concept as an interpretative tool. However, I do not wish to engage in a conceptual debate here. In the UN process the concept has evolved over the years and it has now been established on three pillars as follows: (1) economic development; (2) social development (human rights considerations); and (3) the environmental protection - the so-called triple bottom line test of sustainable development. For the realization of the objective of sustainable development there is a need to integrate and balance all these three as they often can be competing. As far as global warming is concerned the concept of sustainable development points to economic development and environmental issues. Global energy use for economic development or growth contributes to 63% of current global warming which is a significant environmental threat.

The role of sustainable development to reduce greenhouse gases has been reiterated in various Multilateral Environmental Agreements ("MEAs"). The UNFCCC has the objective of the "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Towards this goal, it requires the State parties to promote sustainable development and sustainable economic growth in the implementation of climate change mitigation policies. Although the UNFCCC does not include mandatory emissions reduction targets or individual timetables, the Kyoto Protocol does it. The purpose of its three designated mechanisms, known as the "Kyoto Flexibility Mechanisms" ("KFM") is for countries to limit their emissions. The KFM are as follows: (1) Joint Implementation; (2) the Clean Development Mechanism; and (3) Emissions Trading. These are some of the means to achieve sustainable development. More specific rules and principles need to be designed for sustainable development in

order to curb global warming and it should be done soon before it is too late. It is worth mentioning here that the 2012 Report of the UN Secretary-General's High-level Panel on Global Sustainability made the following poignant Recommendation no 20:

Governments should work in concert with appropriate stakeholders to ensure universal access to affordable sustainable energy by 2030, as well as seek to double the rate of improvement in energy efficiency and the share of renewable energy in the global energy mix. Governments and international organizations should promote energy-saving technologies and renewable energy through the incentivization of research and development and investment in them.

5. In recent years, the overall situation as prevailed in the Bay of Bengal has been being more complicated in relation to natural resources, especially relating to oil and gas. Sharing us some background of the issue, as an expert in this area, what would be your suggestion for the three neighboring countries i.e. India, Myanmar and Bangladesh towards peaceful maintenance of friendly relationship among themselves in this issue?

Bangladesh shares the coast of the Bay of Bengal with its neighbors, India and Myanmar on her both sides - East and West. Since its independence in 1971, Bangladesh, as a newly born State, made several attempts to delimit its maritime boundaries with its neighbors. But no efforts and negotiations came to any fruition. The delimitation issue became ever more pressing with the prospect of huge deposit of natural gas in the Bay. Several incidents in turn created tensions amongst the neighbors in the recent past. In 2006, when India and Myanmar invited an international tender for offshore exploration in the Bay, Bangladesh objected to it on the ground that these countries had encroached Bangladesh's supposed territory. Again later in 2008 when four drilling ships from Myanmar started exploration for oil and gas reserves within 50 nm southwest of St. Martin, an island territory of Bangladesh, the government of Bangladesh protested to such unilateral action of Myanmar in the disputed waters as being a violation of the United Nations Convention on Law of the Sea ("UNCLOS") of 1982. There is an anecdote that at the invitation of Myanmar a South Korean oil company deployed a drilling rig in the disputed waters on the guard of three Myanmar warships. In response to that Bangladesh deployed five of its own warships as a showdown creating a tense situation which led to diplomatic negotiations among Bangladesh, Myanmar and South Korea and the rig was finally withdrawn. Again, not long ago when Bangladesh leased to US and Irish companies three hydrocarbon-rich blocks in the Bay, India and Myanmar claimed that the blocks

overlapped their maritime zones and they reportedly notified the companies concerned not to proceed with their exploration plans. What a tit for tat!

In light of these developments and its pressing need to have access to natural resources in the Bay, Bangladesh eventually decided to resort to a third-party dispute resolution mechanism in order to have definitive maritime boundaries with its neighbors established. According to UNCLOS, State parties can unilaterally initiate proceedings leading to a binding third-party settlement where disputes relating to the Convention cannot be settled through agreed means. Although all the three States - India, Myanmar and Bangladesh - became parties to UNCLOS by 2009, none had made a declaration selecting a preferred means for the settlement of disputes as per Article 287 of UNCLOS. Under the circumstances, Bangladesh decided to go for arbitration under Annex VII of UNCLOS. It instituted arbitral proceedings against India and Myanmar on October 8, 2009, in each case requesting the arbitral tribunal to delimit the territorial sea, EEZ and continental shelf boundaries between the two states concerned. In late 2009 Bangladesh and Myanmar transferred the case between them to the International Tribunal for the Law of the Sea ("ITLOS") having mutually fulfilled the requirement (declaration) under Article 287 of UNCLOS. The ITLOS gave its judgment (in the case concerning *Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal*) on March 14, 2012. However, the case between Bangladesh and India remained before an Annex VII arbitral tribunal and is still continuing. It is expected that the decision of the tribunal may be available sometime in 2014. The tribunal will, of course, have the benefit of how the ITLOS decided the issues concerned in the *Bangladesh/Myanmar* case.

Hopefully, once this remaining case between Bangladesh and India is finally decided by the tribunal, the trio (Bangladesh, India and Myanmar) will have peaceful co-existence in respect of the Bay of Bengal. Let's hope for the best!

6. One of the most critical questions in the contemporary global society is the severe economic disparity between rich and poor countries. More than a fifth of world population manages their daily lives under extreme poverty. What are the reasons for this hardship of some parts of the world? What should international organizations including United Nations or World Bank do for them more fundamentally than just an aid?

It is true that there are at least one billion people in the world who live in extreme poverty today. The reasons for such disparity in the world are multifarious at both national and international levels. Poverty is not prevalent only in the developing

world there could be pockets of people in the lower strata of society in many developed countries who suffer from poverty of some kind. According to the World Bank classification, three degrees of poverty can be distinguished: (1) extreme poverty (income of USD1 per day per person measured at purchasing power parity); (2) moderate poverty (income between USD1 per day and USD2 per day); and (3) relative poverty (construed as a household income level below a given proportion of average national income). The poverty categories (2) and (3) can be found in many developed countries. In international debates on poverty, attention is mainly drawn to poverty in the developing world. The 'extreme poverty' signifies that households cannot meet basic needs for survival such as hunger, inability to access health care, lack of education, lack of sanitation and safe drinking water, poor dwelling conditions or lack of shelter and proper clothing, etc. are the common features in this category.

Extreme poverty may be caused by multifarious factors (temporary and permanent) at the national level (depending on the situations of the country concerned) such as poor governance, corruption, resource curse, gender discrimination (*e.g.* women are not allowed to equal right to work with men), economic stagnation, illiteracy and inaccessibility to medicine, treatment and technological innovations including internet, etc. At the international level there are some identified factors that contribute to extreme poverty in many developing countries. Among such factors may be counted: unfair international trade, transnational corporations' tax evasion / avoidance by having recourse to tax havens, structural adjustment policies prescribed by the International Monetary Fund ("IMF") and the World Bank as conditions for loans and repayment by developing countries and unbalanced effects of globalization, etc. The list at national and international levels could be endless. However, it is now well recognized that freedom from poverty is a fundamental human right. The notion of eradication of poverty is now considered to be a well established principle of 'sustainable development.'

International aid may not always be the answer to the reduction of poverty as it may come with many strings attached to it which may turn out to be a further factor for poverty. Yes, certainly international aid must be given in the real sense for the eradication of poverty and not with any other ulterior motive. It is worth mentioning that the United Nations Millennium Development Goals ("MDGs") project aims to end extreme poverty by 2025 and to cut poverty in half by 2015, compared with a base-line of 1990. The UN has recently undertaken another project called Sustainable Development Goals ("SDGs") with the lofty aims to alleviate poverty. There are also other various innovative measures such as micro-finance and social business, pioneered by Nobel laureate Professor Muhammad Yunus of Bangladesh, which have

contributed enormously to the reduction of poverty in many developing countries. It is pleasing to note, however, that a recent UN report (March 2013) mentions that the global poverty is shrinking.

For international lawyers the question remains whether the world community expects them to develop international law of alleviation of poverty. There are many matters such as entitlements of the global poor which can be dealt with by a set of binding rules. The present “international aid voluntarism” (unfortunately many developed countries are repeatedly failing to pay their promised 0.7% GDP for international aid) should not have any place in international law of alleviation of poverty, nor will have multinationals’ tax evasions. There are matters concerning sustainable development which can contribute to the alleviation of poverty and they may be governed by this body of law. It is true that MDGs are not a set of binding legal rules, but rather a set of moral commitments as are many prescriptions of sustainable development. Legal bindingness, however, may be the preferred ultimate goal of the majority of the world community.

Now the time has come to take stock of the successes and failures of the non-binding principles or moral commitments for the alleviation of poverty and the new generation of international lawyers may do well to endeavor to develop this new branch of international law regarding alleviation of poverty in a meaningful way. Different stakeholders such as international organizations, NGOs, governments, donor countries and aid organizations can make valuable contributions to the development of this binding set of rules and pave the way for poverty to reach museums and relegate to history.

7. You have been arbitrating many disputes including nuclear energy disputes. Currently, the international community is worried about the North Korea’s nuclear weapons development. For the past few months, especially, North Korea launched rocket and experimented nuclear bomb; the United States and South Korea have been maintaining hard-line policy. As a leading arbitrator, would you please suggest the key to coming out of this deadlock?

The current crisis concerning North Korea is not unique. Certainly, the possession of nuclear weapons by North Korea is a worrying prospect for the international community. The key to defuse this crisis remains with China as its principal ally. As it is an international political issue, effective international diplomacy rather than law can address the crisis in the circumstances. As the time passes the crisis is unfolding increasingly complex. The hard-line policy taken by the United States and South

Korea does not seem to have worked so far. The international community including China as the principal negotiator (because of its significant influence on North Korea) should step up their efforts in resolving this mounting crisis before it is too late, given the fact that Pyongyang is now under a new leadership which is untested, untried and unknown in fact.

It is, however, necessary to understand that China does not want to see the US dominance in its backyard nor North Korea's genuflecting to South Korea in the interest of its own national security. It is clear that China will not abandon its "little communist brother" no matter how it shows its disgust in public as it has done lately against Pyongyang's troublemaking on its doorstep. However, diplomacy can play a significant role to normalize the situation and the international community should strive to achieve peace by that means.

8. In Asia, there are some regional organizations like SAARC, ASEAN, Arab League, etc. Do you expect that an umbrella union like European Union, Organization of African Unity and Organization of American States etc. would be set up in Asia in the near future and how will you evaluate the importance of having such a union?

There is no doubt that the twenty-first century is the Asian century. Several of the Asian countries such as China and India will be increasingly influential economic powerhouses in the near future. There are already some regional organizations such as SAARC and ASEAN which are gaining momentum for their futuristic strategic planning for economic cooperation in trade and investment. Since 1989 APEC, consisting of 21 countries bordering the Pacific Ocean, has been playing its role for greater economic cooperation including trade and investment liberalization, business facilitation and economic and technical cooperation. And recently several more Asian countries such as India, Pakistan, Bangladesh and Sri Lanka among a dozen others have sought memberships of APEC. It has both Asian and non-Asian memberships (such as the United States, Canada, Australia, New Zealand, etc). At best, APEC can be described as an organization with a philosophy which is still in process. Although most Asian countries are developing countries and they need a concerted voice as a group on the world stage, there are cultural, religious, social and economic divergences which stand in their way to be harmonious and integrated. Perhaps, once China and India have managed to have the mantle of economic leadership on the world stage in the twenty-first century they will look for such an organization like the European Union, etc. in Asia as a power block for their dominance to counterbalance

the US and European hegemony. That time may not be far away!

9. You are one of the very successful and influential Asians based in Europe for around three decades. Would you kindly propose some common values harmonizing Asia, Europe and other regions?

The world is becoming increasingly interdependent in the age of globalization. With rapid technological innovations in the last two decades, internet connectivity, growing networks of social media and interactions in various other modes the world has shrunk to a great extent. Distance is no factor now. The world is now better informed than was the case even a decade ago. Even in the political sphere, social media has been used to accelerate peoples' revolution to topple autocratic regimes in some Arab countries in recent years. The world is increasingly turning to be a borderless society with the exchange of more knowledge and understanding of societal differences and values. Such interactions have brought home the understanding of common values on the global level paving the way for a common platform for all.

10. Asian international lawyers are working for the progressive development of international law in the twenty-first century. What should they keep in mind to more actively contribute in this course and how should they formulate their strategies to this end?

Asian international lawyers have a grave responsibility to themselves to establish global justice for the betterment of the lives of the bottom billions of the world population. There are areas of international law which are concerned with economic development of a country such as international trade and investment law, WTO law, international sustainable development law, international energy and natural resources law, international climate change law and international economic law where international lawyers from developing countries can contribute enormously to keep the balance between the interests of developing countries and developed countries right for a just world order. The traditional public international law has not been universal, rather Eurocentric, and it has served mainly the interests of developed countries, many of which were former colonial masters, hence an unbalanced world legal order. With the tide of delocalization process in the developing world since the Second World War the issues of inequalities and injustice reflected in the traditional international law had been debated in various international forums including the United Nations General Assembly and other UN organs. This led to the adoption of

many UN resolutions including the landmark ones such as the Permanent Sovereignty over Natural Resources (1962) and the Charter of Economic Rights and Duties of States (1974) reflecting the concerns of developing countries as soft-law prescriptions. A just world order is still a long way off. Asian international lawyers must strive to exercise their intellectual power and prowess to develop ideas and disseminate them and strongly participate in debates in formulating principles and rules in international forums and actively take initiatives and influence their governments and world public opinion towards creating a just world order based on global justice. The new generation of international lawyers should work towards a better world than the one we are in today!

Interview by Eric Yong Joong Lee and Md. Ershadul Karim

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