

## INTERNATIONAL LAWYER

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# A Dialogue with Judicial Wisdom

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Professor Surya Subedi

## INTRODUCTION

It is a great honor for the Journal of East Asia & International Law to have an interview with Professor Surya Subedi of the University of Leeds, who is one of the most actively working and highly respected international lawyers of our time. Professor Subedi was born in Nepal and grew up in a beautiful valley of the Himalayan mountains. A member of an academic Brahmin family whose father was a Sanskrit scholar, he was well disciplined and educated during his childhood. After graduating from Tribhuvan University of his country, he began practicing law as a prosecutor and then international law officer for the Government of Nepal. During his service, Professor Subedi soon realized that he should study international law in order to handle the complicated foreign issues that his country was facing. He finally went to the United Kingdom and completed his postgraduate LL.M. program with Distinction at the University of Hull. Then, Professor Subedi continued to study international law at the University of Oxford where he got his DPhil. degree under the supervision of Professor Christine Gray. His doctoral dissertation, titled "LAND AND MARITIME ZONES OF PEACE IN INTERNATIONAL LAW," was awarded the Dasturzada Pavry Memorial Prize of the University of Oxford and subsequently published as a prestigious Oxford Monograph Series in International Law.

As a prolific writer, Professor Subedi has published high quality, agenda-setting and award-winning books and articles in international law. His academic interests spread extensively over human rights, watercourses, the environment, investment, trade and economics, with many publications. These achievements enabled him to rise rapidly from a lecturer to a full professor in seven years with the highest reputation as a publicist. In addition to his pure legal research, Professor Subedi has been serving the international community in various fields. In 2009, he was unanimously appointed the UN Special Rapporteur for Human Rights in Cambodia by the UN Human Rights Council. His dedication has been truly outstanding.

No one can deny that Professor Subedi is a truly distinguished scholar for whom one might expect a different sort of personality from laymen. My first experience with him, however, totally changed these expectations. He is a true friend of everyone's with a warm heart. Peace, wisdom, humbleness, harmony, endurance, generosity: these words may represent who he is. Professor Subedi is just in his mid-fifties; he is expected to go further in the future than he came so far. His vision and devotion to the lofty mission of humankind will be the beacon for the 21<sup>st</sup> century's international society searching for a more peaceful world to live.

The following is an edited transcript of the interview with Professor Subedi held in November 18, 2010 in Seoul Plaza Hotel. A video of this interview may be viewed at the official website of the YIJUN Institute of International Law: <http://www.yiil.org>.

## QUESTIONS & ANSWERS

*1. You were born in Nepal, the land of holy mountains, and studied law there before moving to the United Kingdom. Would you briefly introduce your family? How did your parents' education influence your worldview and ambition?*

Thank you very much for your kind words about my native country. It is indeed the land of holy mountains where Lord Buddha was born and is the home of Mount Everest. I was brought up in a beautiful valley in the foothills of the Himalayas and could see the views from my bedroom window every morning. I was born into an academic Brahmin family where education, discipline and duty to others were highly valued. My father was a scholar of Sanskrit himself and was a universalist in his approach to life. These values were highly influential in the formative years of my life.

*2. After practicing law for the government of Nepal, you came to England to study public international law. What brought you to England? Who was your mentor in the Ph.D. program in Oxford and could you describe his/her teaching style?*

After serving first as the District Public Prosecutor in the Office of the Attorney-General, I was posted to the International Law Office of the Government of Nepal. I soon realized that I needed to develop my expertise in international law to be able to serve the country better in dealing with complex international legal issues facing a small and progressive country. I was fortunate to win a British Council Scholarship to study for an LL.M. in International Law in England and decided to go to the University of Hull which had recently introduced a good LL.M. program in international law. I passed the LL.M. degree with Distinction and was awarded the Josephine Onoh Memorial Prize as best LL.M. student of the year. That encouraged me to apply to Oxford University to carry out a doctoral research in international law and I was once again fortunate to win a British Foreign and Commonwealth Office Scholarship to go to Oxford for my doctorate.

At Oxford, I luckily had Professor Christine Gray as my academic supervisor. I also

was taught by Professor Ian Brownlie who was a source of inspiration for all aspiring international law students at Oxford. My Oxford years were the most challenging ones as both of our children were born during my studies there!

Oxford provided me a superb environment for an in-depth study and research in international law. Different people have different styles of supervising doctoral students. One such approach is to read thoroughly what your students have written and provide constructive comments on their work. My supervisor, Professor Christine Gray, was better at providing me with her thorough academic comments rather than giving me ideas as to how my work should be developed. She gave me enough independence to develop my ideas while making sure that I was not deviating from the rigorous academic standards and the enquiry that was conducting into the area of my research.

Professor Ian Brownlie of Oxford and Professor Vaughan Lowe, who was at Cambridge University at the time, were the examiners of my doctoral thesis. I passed the examination without having to make any corrections to my thesis and it subsequently was published in the Oxford Monographs in International Law Series. My thesis was also awarded the prestigious Dasturzada Pavry Memorial Prize by the University for an outstanding thesis of the year.

*3. Universal human rights are fundamental to human society, but may be often misunderstood in the international community due to cultural and historical differences. Would you tell us about the Asian concept of human rights from the viewpoint of Hinduism?*

Secularism in the conduct of the domestic affairs of the State, universalism in the human approach to the outside world, and adherence to the principle of peaceful co-existence when dealing with foreign Powers of different faiths and beliefs are some of the key elements deeply rooted in the ancient Hindu thinking. Hinduism is based on a concept known as *dharma*. The essence of *dharma* is the distinction between good, supporting the cosmic order, and evil, which poses a threat to this order. The concept of *dharma* in its original sense means the maintenance of peace and security through the law and order within the larger cosmic order by following one's duties. The western concept of human rights is mainly about proclaiming rights and providing for mechanisms to protect them. The approach in Hinduism is to define one's duties. It is the sense of duty to others defined in Hindu religious scriptures that makes it possible for others to enjoy their human rights.

*4. Since 2009, you have been working as the UN Special Rapporteur for Human Rights in Cambodia. How do you expect to improve the human rights situation in Cambodia?*

There is no doubt that Cambodia has made great strides in recent years. It is a progressive and forward looking country. However, in spite of the many positive achievements made in the country, the overall situation of human rights is far from satisfaction. The rule of law is weak. The judiciary is not as independent as it should be. I also am concerned that the issue of impunity remains a painful matter which has not been addressed as sincerely as it should be and land evictions have continued at the expense of the people – especially the urban and rural poor as well as those belonging to the indigenous communities.

Another area of concern is the separation of power at the heart of the Government. Although the Constitution has laid down the foundations for the separation of power between the three main branches of governance, the principle of checks and balances among these institutions is not working as effectively as it should be since the legislative body and the judiciary are not able to exercise their powers to check the executive in an effective and meaningful manner.

I have been working on these issues in a constructive manner and the Government have responded positively to many of the recommendations that I have made to them. I have enjoyed good working relations with the Government of Cambodia. They also have accepted all of the recommendations of the Human Rights Council as part of the Universal Periodic Review taken. Therefore, I am encouraged by the progress made thus far and shall do my utmost to make sure that the rule of law, democracy and human rights become stronger in Cambodia.

*5. The UN Human Rights Council is seriously concerned about the human rights violation of North Korea. To what extent has the Human Rights Council confirmed the facts of North Korea's human rights violation? Have they instituted any measures to address those violations?*

Since my mandate does not include North Korean affairs, I am not the best person to comment on the situation of human rights in the country. I have to maintain my own independence, objectivity, and impartiality when commenting on these matters. However, on the basis of my experience in Cambodia what I can say is that the time has come for the Government of North Korea to engage in a dialogue in a constructive manner with the UN human rights bodies, including the UN Special Rapporteur for the

country. I thought the North Korean Government would benefit a great deal by working with the UN to improve the situation of human rights there. The latest report by UN Special Rapporteur for North Korea was submitted to the Human Rights Council in March 2010 which highlights the human rights issues in the country.

*6. Since the 9.11 attack, terrorism has been a core concept of international law. In particular, the United States, recognizing that terrorism is the gravest threat to its peace and security, is trying to restructure international society. This sudden change, however, would create another threat to peaceful coexistence in international society not only because this perspective divides the world into good and evil too simply, but also because it is used to ignore the basic principles of international law. Who are real terrorists in international law? What do you think of the current trend of international law towards terrorism?*

Since September 11, 2001, terrorism has been very high on the international political agenda. However, today, the definition of the term 'terrorism' remains as controversial in international law as it was prior to these events. The old adage that one man's freedom fighter is another man's terrorist may appear superfluous, but the idea behind this adage is at the heart of the ongoing attempt by the UN to adopt a comprehensive convention on international terrorism. The need to adopt a generally agreed international definition of terrorism is becoming an unavoidable imperative. Powerful States will impose their own definition of the term on others; lesser ones will attempt to identify and punish terrorism as they deem fit, possibly undermining human rights and humanitarian law. The campaign to control terrorism has even been used either in certain countries to suppress political opposition, or by oppressive regimes or foreign domination. These are some of the reasons why the UN is attempting to adopt a comprehensive convention on international terrorism with an agreed definition of the term 'terrorism.' By having an internationally negotiated treaty on the subject-matter the world would be able to take a uniform and consistent approach to the problems created by terrorism.

*7. In the post-Cold War period, the role of the United Nations is getting more limited, especially when it comes to maintaining peace and security. It is now focusing on the 'sustainable development.' What should the United Nations do in the age of globalization?*

In my view, the activities of the UN on political matters are getting more limited.

However, the activities in other areas have increased. For instance, the UN human rights bodies are now more engaged with more countries around the globe. The UN has also seen its activities increased in the area of economy and in resolving the issues raised by the international financial crisis.

The UN should focus more on reducing poverty in Africa and helping the countries in this region to accelerate economic development and working to resolve political issues in Asia which is a continent with a host of some of the most complex problems of our time affecting the lives of nearly half of the world's population within itself alone and beyond. The competition and the possible clash for energy seem to be greater in Asia than anywhere else.

Many Asian countries seem poised to join the nuclear race. Both the Caspian Sea and the South China Sea are emerging as foci in terms of not only the exploration and exploitation of natural resources, but also their volatility and vulnerability to potential conflict over natural resources. Competition for fresh water resources is also likely to become more acute in this region where the rate of population growth is still high. Most of the political hot spots of the world are also in Asia. Iraq, Afghanistan, Iran and North Korea are examples. The emergence of North Korea as a nuclear-weapon State has already tipped the strategic balance in the region.

Unlike Europe, the Americas and Africa, however, the Asian continent does not have any regional organization or mechanism which could address these problems affecting the lives of hundreds of millions of people. The people of Asia who are living under oppressive regimes, trapped in poverty and suffering from an increasingly deteriorating environment are entitled to expect some leadership, dynamism and vision in addressing some of these problems from the UN.

The current Secretary-General of the UN, Mr. Ban Ki-moon, can use his good offices and the diplomatic skills to bring together the Asian states to agree on the adoption of certain key principles of human rights, democracy, good governance, sustainable development, and non-proliferation of nuclear weapons and other weapons of mass destruction and create a pan-Asian institution or institutions designed to implement these principles in practice through some enforcement, monitoring and supervision mechanisms. Such an institution or institutions could ensure that the exercise of power remains within the boundaries of law, whether regional or international, and create awareness of both the impending problems and the solutions to such problems.

*8. Nepal and India do not always have harmonious relations as neighboring countries. What causes the disputes between them? Are there any disputes relating to the watercourses?*

India and Nepal are probably the closest neighbours on the face of the earth with the greatest number of differences between them. Although they appear to have so much in common, they tend to have difficulties in resolving many vital issues, including border disputes, trade and transit issues and matters relating to co-operation in the water sector. With co-operation and mutual understanding both stand to gain a great deal for the benefit of their respective peoples. Unfortunately, successions of political leaders in both countries have been unable to demonstrate the degree of farsightedness and wisdom required to cultivate and nurture a relationship that does not actually call for much hard work or a major sacrifice to make it flourish. However, the problems persist; a small problem becomes a large and then apparently intractable one. In other words, they have not been able to manage successfully the process of change taking place in their relations since 1950.

While the spirit of co-operation between neighbours has brought about a great deal of prosperity in many parts of the world, Indo-Nepal relations are still as not in tune with time as is the state of economic development of each of these two countries. India has a rather old-fashioned patronising attitude towards Nepal. In turn, Nepal suffers from the syndromes of a small country, unable to move forward in her relations with India. This regrettable state of affairs has hindered Nepal's attempts at modernization and economic development and has also undermined India's image as a large democratic nation capable of coming to terms with reality in the conduct of her relations with her smaller neighbour in a prudent manner. Owing to her location in the southern flanks of the Himalayas, Nepal is virtually an India-locked country. Hence, there is a tendency in New Delhi to regard Nepal as its own backyard. As a result, Nepal is sensitive about her geographical 'handicap.'

*9. The South Asian countries are trying to establish a Nuclear Weapons-Free Zone ("NWFZ"). It would be an appropriate option for the complete nuclear disarmament overcoming the paradox lying in the non-proliferation system inherently. Another region where the NWFZ is considered is the Korean peninsula. What would be the basic conditions for the NWFZ?*

The first and foremost, is to have confidence building measures and dispel the degree of mistrust that exists at the moment. The second step would be to have a firm commitment from all sides to abide by the principles of Panch Sheel, which is very much an Asian concept, in the conduct of international relations. The third one would perhaps be to develop a sub-regional mechanism for economic cooperation so that the people across the borders can benefit from the prosperity that exists on the other side.



Once these measures start to bring the people and governments together the UN can facilitate a dialogue for the conclusion of a sub-regional treaty designed to create an NWFZ which should include provisions designed to guarantee the sovereignty, territorial integrity and independence of the nations concerned and the non-use of nuclear weapons under any circumstances against these states by other nuclear weapon States.

*10. You are now just in your mid-fifties and will have many things to do in the future. What do you hope to do as an international lawyer? Finally, would you give your message for making a more peaceful world to the international community?*

I must say that I still have a long time to go to make my own contribution to make the world a fairer and safer place for all of us to live in. International law has come a long way in advancing human civilization, whether in the conduct of relations between States or in the interaction between fellow human beings on an individual level. But the international legal regime is still imperfect. There still are no rules governing various human and State activities. It is still lopsided in many areas and there is a great deal that all international lawyers can do to make sure that the world becomes a more peaceful one, where not only sustainable, but also equitable development can take place. For this, something that our generation can do is to champion the reform of the UN and other international institutions such as the World Bank and the International Monetary Fund in order to make them more democratic, accountable and responsive to the wishes of the people around the globe, to work for the democratization of relations between bigger and smaller nations or economically more advanced and less advanced countries, to make international law fairer for all in order to create a global community in the real sense of the term with its own values respected by all. This is where people like me will have a contribution to make. I will continue my endeavors in this direction through my academic, legal and diplomatic activities in the years to come.

## RECENT PUBLICATIONS

### Books

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