

# REVIEW

## *Comments from A Peace Studies Scholar*

### *New Great Powers and International Law in the 21<sup>st</sup> Century*

by Congyan Cai

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With *New Great Powers and International Law in the 21<sup>st</sup> Century*, Professor Congyan Cai has drawn attention to an important and thus far neglected topic. In this substantial and comprehensive exposition, informed by an impressive survey of the background literature, he examines how the rise of new great powers (mainly the BRICS: Brazil, Russia, India, China and South Africa) during the past decade or so may impact on international law. It is perhaps not surprising that the need for such an inquiry was keenly felt by a scholar of international law hailing from China, the most important of the new great powers ("GPs"). Indeed, the longest (and last) part of his article is a case study of China's international legal policy and practice in three areas, *viz.* intervention, investment treaties, and human rights.

The invitation to the present writer to submit a brief comment on Cai's pioneering study provides an opportunity to recall a similarly important work on an analogous issue that was published over half a century earlier. I am referring to a volume whose size is inversely related to its significance: *INTERNATIONAL LAW IN AN EXPANDED WORLD*, by Bernard V. A. Röling.<sup>1</sup> The book appeared in a series entitled "Contributions to the Progressive Development of International Law," under the

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<sup>1</sup> B. Röling, *INTERNATIONAL LAW IN AN EXPANDED WORLD* (Amsterdam: Djambatan, 1960).

joint editorship of Bert Røling and Radhabinod Pal. Although Cai does not mention this book, it is likely that it is referred to by at least one of the authors of the books and articles mentioned in the numerous footnotes.

To be sure, while Cai and Røling are both addressing the question of the likely impact on international law of major changes in the international system of States – and are both advocating the development of international law to reflect those changes – the latter are similar but not identical. Cai is writing at a time when new great powers are emerging, while Røling was writing when old great powers were declining. Specifically, in the 1960s and 1970s, decolonisation was taking place, especially in Africa, and resulted in many new countries becoming members of the international system consisting of sovereign States. In these two decades alone, the number of newly independent countries joining the UN exceeded the number of its original members. To the extent that many of these new countries had previously been colonies of Great Britain and France – the latter two now being “Old Great Powers” in Cai’s terminology – their gaining independence could be regarded as resulting in a diminution of the power and reach of the former colonial ruler. This, however, was not Røling’s concern. He focussed instead on the attitudes and interests of the new States and argued that they were poorly served by existing international law. In order for it to remain relevant in the new context, it had to be ‘de-westernized,’ to use again an expression mentioned by Cai. (p. 767)

Røling was well aware of the Euro-centric origins of international law and of the urgent need for its progressive development so as to reflect the emerging new international system in which the majority of States were from the developing South, with different priorities from those that had prevailed up to that time in a system dominated by the rich and industrialised North. The ‘underdogs’ and ‘have-nots’ were concerned with issues of economic development, fair trade, protection of natural resources, and protection against the overbearing power of the ‘top-dogs’ and ‘haves’ (expressions frequently used by Røling). He drew interesting parallels between the development of domestic law and international law, pointing out that with the growth of democracy in the 19<sup>th</sup> and 20<sup>th</sup> centuries, domestic societies in the West had increasingly started to legislate for social welfare, thus reflecting the interests and needs of the majority of the population rather than those of the traditional ruling elites. Likewise, international law had to evolve in order to reflect the concerns and interests of the majority of the world’s States. Progressive development of law, in the domestic sphere as in the international one, necessarily implied its expansion to cover both new actors and new concerns.

The increasing need for both global cooperation and the peaceful resolution