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TRACING THE CIVILIZATIONAL INFLUENCES IN THE CONSTRUCTION OF CHINESE AND RUSSIAN APPROACHES TO INTERNATIONAL LAW

ABSTRACT

This article seeks to examine the rigor of civilizational values in modern international law as a crucial factor and how historically different civilizational values have inculcated different approaches to international law. While critiquing the civilizational rhetoric built by European nations in creating Eurocentric international law, this article illuminates how international law has been perceived by China and Russia following their historical complexities as unique states. The results emerging from this paper will demonstrate the diversity in international law in across different countries.

Keywords: Civilization; Colonialism; Pragmatism; Russia; China; Identity, Hegemony, International Law

1. INTRODUCTION

The key question of civilization in the realm of international law is vague and a complicated question that gives no exact clue. Yet, the phrase “civilization” has been a crucial term which has maintained its relevance in parallel to the historical development of international law. In

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tracing the most outrageous and dubious history of international law filled with biased narratives and many other inexplicable anomalies, one can easily comprehend the decisive role played by the concept of “civilization” in constructing some of the ironies of international law. The interplay between the importance of civilization and the construction of international law has been mainly imbued with the idea of glorifying one civilization or culture and vanquishing the other. This formula remains incontrovertible since the days of yore of world civilizations.

When Greeks excelled themselves after defeating Persians and even prior to that, the former perceived the latter as pessimistic, crude and darker ones as the understanding of civilization was sort of Greek-centered. Hence, outsiders were considered barbarians. When Rome began its growth from being a tiny city near river Tiber to become a world conqueror after their successful victory over Carthage in Punic wars, their attitude towards the other nations in diplomacy was predominantly based on their feeling of superiority which eventually culminated in their victory over King Antiochus IV in 164 BC resulting in Rome’s unparalleled hegemony over both Western and Eastern nations. Since then till Rome reached its ebb, the mechanism of international diplomacy between Rome and all other nations was based on Rome’s superiority over the other. As a matter of fact, these historical elucidations enhance our understanding in order to ascertain the critical importance of civilizational context in the International law from the very inception and further helps in identifying the respective fascination towards one’s civilization with a certain sense of superiority over the others.

In appreciating and critically evaluating the historiography of modern international law, it becomes an evident factor that the values standing in modern day international law are the creations of European Christian civilization. Francisco Vittoria, Alberico Gentili and Hugo Grotius are usually regarded by students of international law as the holy trinity of constructing modern European narrative of international law and it is a fact beyond dispute that all three had emerged within the Christian civilization of post-medieval Europe despite their ideological differences. From these three great stalwarts of the development of international law, Spanish Jesuit jurist Vitoria remained a champion of preserving natural rights as his opinion on native Indian tribes under Spanish expansion was driven by apotheosizing the idea of natural law as the very foundation of international legal order (Meerills, 1968, p.189).

He was known for his partial view on native Indian tribes in America as he regarded them to be a nation with their own system of governance. Prior to this revolutionary exclamation of Vitoria, it was asserted that the human affairs were governed by divine law and papal authority was held in high esteem and Christian monarchs in Europe sought papal authority to legitimize their territorial invasions beyond Christendom as a justified spread of Christianity over heathens. The religious decree played an important role in validating the acts of the sovereign. As an example, Pope Alexander VI’s papal bull divided the known world between Portuguese and Spanish empires. However, Vitoria liberated the application of international law from extreme religious dogma, yet, his reluctance to recognize native Indians as an equal state of Christian Europe clearly evidenced his civilizational standards.

The pervading picture of the historiography in international law is not different from a civilizational clash and a complex discourse having emerged from the superior civilizations that would legitimize their claims under some legal guise. Especially in the western world order that flourished after the peace of Westphalia, European picture of law of nations depended on the reception of traditional Christian values and their common civilizational

values stood as a set of constitutive norms that governed the relationship among the family of nations which was sometimes depicted as “*ius publicum Europaeum*” and it excluded non-Christian, non-European nations from the domain of law of nations.

2. MATERIALS AND METHODS

In this article we attempt to trace the civilizational roots that had shaped the understanding and reception of international law in China and Russia. In particular, we contend that the idea of Eurocentric construction of international law is no different from what both China and Russia perceived as international legal system from their civilizational perspectives. The purpose of this paper is to examine the gravity of intrinsic civilizational values of China and Russia in creating their international legal norms and the study of these roots will unveil both countries yearning to aggrandize their position in international legal order. Tracing civilizational values behind the pillars of international law would be rather audacious or perhaps an ambiguous task and consequently scholars cannot apodictically claim how many civilizations are there nowadays. Yet, understanding the civilizational perspective from these two unique states will help us to understand their world view better. Because one cannot neglect what David Kennedy wrote about the general nature of international law as he stated it is fundamentally being practiced differently in different places (Kennedy, 1999, p.9).

3. DISCUSSION

3.1. PHILOSOPHICAL SPECULATION BEHIND CHINESE ATTITUDE TOWARDS AN INTERNATIONAL LEGAL ORDER

Confucian philosophy and his teachings performed a critical role in every aspect of Chinese society, while acting as a great moral force. Nevertheless, depicting Confucian philosophy as a pacifist teaching has been a major myth nowadays. On the contrary, Chinese history has vividly illuminated the fact that the rigor of imperial foreign policy grew under Confucian influence in China. Secondly, in ascertaining Chinese philosophical bent behind their civilizational approach to international law, one cannot forget the contribution made by Sun Tzu as his philosophical analysis of war always played a dominant role in Chinese attitude towards international affairs. Sun Tzu's classic work “Art of War“ was a text which Chinese imperial military generals held in high esteem as Sun Tzu's strategies in war legitimized China's long-standing quest for territorial expansion. In particular, when West was fascinated with the Malian Dialogue by Thucydides and how political realism can bring the end results at any cost, the Chinese imperial strategy opted for Sun Tzu's philosophical wisdom that unveiled the art of subduing one's enemy even without waging a war. The ethical and moral conducts invoked by Sun Tzu have illustrated the amicability in handling a warlike situation, but, his astute reading of war was not a mere text narrating meekness. The philosophical value generated by Sun Tzu always remained in Chinese psyche even after the decline of Chinese imperial order. The essence of Confucianism and Sun Tzu are vitally relevant in understanding Chinese philosophical speculation on international legal order and relations.

The imperial expansion of China and its central foreign policy towards its neighbors were inherently based on the recognition of China as the superior state. If the expansion of China was simply driven by mere cultural assimilation, it would have been a forlorn task to explain how Chinese power since *Quing* dynasty (221-206 BC) began to grow till the times of *Quing* empire (1644-1911). The historical statistics on Chinese involvement in interstate warfare are the best evidence that simply disrupt the myth of idealizing Confucian pacifism as the cardinal feature in Chinese diplomacy, because the historical references have shown that China was involved in 3131 wars from *Quin* dynasty to last *Quing* dynasty, which conclusively demonstrates that China had acted as violently as Europe did when it comes to its interstate wars (Yin, 2017). Victor Hui has stated: War, not Confucian ideals, explains how China expanded from the Yellow river valley in the Warring states era to the continental empire in the *Quing* dynasty (Tin-bor Hui, 2008, p.58).

Furthermore, Chinese emperors were well aware of the repercussions of being more pacifist in their diplomacy as they considered it an act of timidity. To illustrate, the above, during Han dynasty in the period of Emperor *Xuan*, his son (future Emperor *Yuan*) was keen on appointing many Confucian pacifists in key positions of the imperial court, which finally exasperated the emperor himself, who regarded it as a manner of weakening the statecraft. This simple story is a testimony to the fact that Chinese rulers took more interest in preserving their hegemony rather than idealizing pacifism.

The Chinese conception of considering themselves superior was always an inherent part of interstate relations, which later transformed into their vision of international law. In examining the Chinese maritime expansion in *Ming* dynasty, the salient principle acted upon by *Ming* mariners was to explore distant seas and it was further strengthened by creating commercial avenues for China. However, during one of treasure voyages of *Ming* dynasty, its famous admiral Zheng He and his fleet were attacked by the hostile Sinhalese ruler in Kotte kingdom of Sri Lanka around 1410 A.D which caused the return of Zheng with a large Chinese troop and it easily defeated Sinhalese army, which resulted in taking Kotte ruler and other Sinhalese officials as captives to China (Elleman, 2019, p.23). The historical reports have narrated that waging war against Kotte was mainly induced by the disrespectful and hostile behavior of Sinhalese towards the Chinese fleet. Even after presenting Kotte ruler as a Chinese prisoner, Chinese emperor granted him pardon after receiving the meek apology and complete obedience. This is just an example that enables us to identify the Chinese perception of small nations. As China located itself as the middle kingdom or omnipotent cultural, political authority, Chinese attitude towards less powerful states always took a paternalist bent as it was aptly portrayed in the concept of *Le*.

Gift giving has been another intrinsic feature in Chinese mode of international legal and state practices, which dates back to the original teachings of China's ethical guru Confucius, whose notion of uplifting a state was not to be essentially understood in terms of law but was rather supposed to be based on virtue. According to Confucius: Law is necessary, when virtue fails. In contrast, if a ruler leads first with law, the populace will not have a conscience and will only fear punishment (Turner, 1993, p.287). In emulating the principle of virtue, the importance given to ritual has played a rather significant one, because in the Chinese ancient book of rites, the governance and giving were linked to ritual. It was believed that gift giving as a ritual was filled with reverence and sense of generosity and also it was expected to receive blessings from the receiver. This ideal of gift giving continues even today as an important

principle in Chinese approach to interstate relations. In Chinese world view, China, being the central state of the earth, continues its influence on smaller states poignantly through gift giving. As a matter of fact, this Confucian ideal has proved to be efficient in most of the states in which China upholds its influence. Particularly, in Sri Lanka the pro-Chinese governments of Sirimavo Bandaranaike and Mahinda Rajapaksa were frequently blessed with Chinese gifts as the former's only international convention center and theater were built by Chinese government as tokens of comity (Amarasinghe & Jayawardane, 2018). It clearly indicates how persistently Chinese Confucian ideal of gift giving works in modern Chinese view on interstate relations, which has always been the phenomenon the Western world failed to grasp.

3.2. DIRECTION OF INTERNATIONAL LAW AFTER THE FORMATION OF PEOPLE'S REPUBLIC OF CHINA

The disbandment of Chinese imperial order and the definitive end of traditional Chinese social order through the Communist upheaval raised a new question of seeking a new legal identity as it wiped out the Confucian influences which prevailed in pre-revolutionary China. The entire revolutionary discourse in China was not akin to the Bolshevik idea of revolution in Russia although China was heavily influenced by Marxist –Leninist thought. Nevertheless, the revolutionary efforts in China were predominantly mixed with Chinese nationalism that persisted even after the establishment of People's Republic of China. After the demise of Stalin and after Khrushchev's ascending into power as a general secretary of CPSC, a certain tendency for the *detente* was pursued internationally, which means courting the West at the international level while the process of de-Stalinization was unleashed at the domestic one. These two policies created an unavoidable cleavage amongst the Communist bloc. Mao Zedong emerged as a champion of authentic Communist doctrine and took up China as an alternative Communist bastion against Moscow.

China's ambition of locating itself in her destined unique position in the world became the paramount feature of Chinese attitude towards international law since 1949. As I stated above, Chinese nationalism appeared to be the overarching principle of this broad project and by all means it could be then easily comprehended why nationalism became a greater concern for Chinese vision of international law through tracing its colonial encounters with West and its decay of power at the hands of European nations.

The inconsistent and self-serving usage of international law by European powers serving to expand their respective influences by, say, forcing imperial China to enter into unequal treaties paved the path to create a suspicion among Chinese elites towards international law. For them, it was still China that held the helm in civilized world and European international law was nothing more than an oppressive tool. The skepticism towards universalized international law continued to exist in post-revolutionary China and Communist party's astute mechanism of placing China in its unique place was very much aligned with its nationalism. Secondly, these bitter experiences China got from its past encounters with Western nations enabled China to believe in its physical strength rather than to believe in an international legal order. In fact, it was not just an expression when chairman Mao stated "power grows out of the barrel of a gun" (Zedong, 1927). He meant – among other things – that China had to face the fact that any political and legal authority presupposes international physical power. In an article written by an American attorney named Daniel J. Hoffheimer titled "China and the International Legal Order; An Historical Introduction", he states:

pragmatism is the most important theme that parameters China's ever changing practice of international law. It possesses a dialectical capacity to turn adversity to advantage and weakness to strength. Despite the continuities in the past and China's bitter distrust of Western international legal rules and ideals, China has, in some important ways, become a zealous believer in some of the basic assumptions of the Western legal order (Hoffheimer, 1979, p.264).

However, the changes primarily occurred in Chinese legal academia in post-revolutionary China which has treated international law as a unique system which should not conflict with domestic law. As an example, Wang Tang China's premier jurist in post-revolutionary era advocated the mutual harmony and the robust separation of international law from domestic law. The academic discourse that intensively grew in China caused some profound changes in their attitude towards international law and most of Chinese scholars were enthusiastically applying Confucian philosophy to modern international legal disputes. In particular, the reluctance of Chinese government to approach International Court of Justice as a method of settling international disputes could be perhaps understood as an issue arising from China's civilizational attitude towards *Li*. In its Confucian culture the prevalence of *Li* always encouraged the disputants to solve their problems through mutual dialogue rather than seeking justice by litigation, because in Confucian philosophy, minimum order was characterized by the absence of litigation.

Chinese pragmatic view on international legal order took a massive shift in 1978 when the Chinese government decided to open China to the world and to shift the priority from class struggle to economic development. The rapid changes that took places in China for past few decades in transforming itself to a modernized economic boomer affected its systematic adoption of international law as a realist project. Chinese scholars primarily accepted and affirmed the priority of states in this paradigm shift of their attitude towards international law. Especially, Wang Tang was one of key proponents who put a crucial emphasis upon states. He states that: the sum total of principles, rules, regulations and systems which are binding and which mainly regulate interstate relations, while states are subject to the binding force of international law, they are also the makers of international law. Therefore, the basis for the legal effect of international law can only be attributed to states themselves, that is, the will of states (Wang & Wei, 1981, p.1).

The bottom line of any inquiry exploring the civilizational features of Chinese attitude towards international law would be based on understanding China's political changes of transforming itself from a decadent imperial feudal state to a revolutionary state. Also it requires to understand how the Chinese citizens have assimilated Confucian construal of the international law and relations as their civilizational legacy. It is true that certain changes like pragmatism and flexibility entered Chinese perception on international law, yet the core element of Chinese legal thought (*Li*) still plays a paramount role in shaping China's global vision of international law as a factor exerting influence upon the Chinese value system. Regarding the civilizational legacy predominantly appearing to be important in China, Prof. Pan Juwu states:

In the Chinese mind, international law and international Li are generally inseparable and before the establishment of international Li, international law cannot be called a real law. In that case, priority should be given to the work of establishing or revisiting Li at the international level (Junwu, 2011, p.238).

3.3. MODERNITY OF PETER THE GREAT AND RUSSIA'S ENTRY INTO INTERNATIONAL LAW

Russian position on international law prior to Peter the Great's Herculean task of modernizing Russia remained fairly obscure. But, this does not imply that Russia was totally alienated from understating international legal practices during its initial stage as a community of principalities of which the Rus tribe consisted in 10th century. Rus nobility was known to medieval Europe and their relations were extended to Germany and Poland, with Byzantium having been considered to be their spiritual shrine. Nevertheless, Russian geopolitical space became completely obsolete and deviated from Western Europe when Kiev Russ principalities were crushed by Mongol invaders. Even so, after Moscow Grand Duchy upheld its power over Mongol Tartars, the consequences of the isolation from Latinized Western Europe continued to be noticeable in the Russian state apparatus (Taube, 1905, p.26).

In ascertaining the intrinsic civilizational position of Russia on international law, one has to obviously look at its medieval dark political anarchism filled with catastrophic events. Russia's alienation from Western European states had the biggest impact on the former's entire history. From an international legal point of view, its effects were visible in XVIII-century Russian diplomacy, even after Russia embraced Western modernity under Peter the Great.

Peter's victory over Swedish empire in Battle of Poltava was an iconic moment in Russian history in many ways. Politically, it cemented Russia's position as a newly awakened giant from a long slumber as Peter's victory was followed by Russian entry into the Baltic region resulting in the Swedish decline. But, Peter's victory over Swedes became more decisive in Russian ideological history as the reforms implemented by Peter the Great in the aftermath of Poltava opened a vast new area for Russia in Western geopolitical map to operate on. A prominent scholar in Western academia on Russian approach to international law William E Butler states:

Peter the Great's reign sharply accelerated what theretofore had been a gradual reception of European ideas. His keen interest in tapping Russia's natural resources, securing its frontiers, strengthening its military power, and reforming its antiquated institutions meant that western technology and learning were sought actively rather than tolerated passively. Agents were dispatched abroad to purchase libraries and recruit personnel. Facilitated by the introduction of a new civil script in 1708, the translation of European books into the Russian language increased, and young Russians were sent to study in European centres of learning (Butler, 2002, p.6).

As Peter accelerated the process of modernizing Russia as a European state, the attitude towards international legal practice became more coherent than its previous form. Moreover, under Peter's supervision European international law literature written by scholars like Grotius and Pufendorf was translated into Russian. However, the attempt to assimilate Russia into Christian European nations which conformed to international law was attributed to Peter Shafirov who served as a minister in the Court of Peter the Great.

Shafirov and his role in creating international law scholarship in Russia in a systematic way have been considered from a different angle in the modern academia. The view expressed by Butler towards Peter Shafirov has portrayed Shafirov as a less significant jurist, who cannot be compared with the 17th century canonical jurists in international law such as Grotius, because Butler regarded Shafirov's effort as a mere panegyric attempt to glorify Peter the Great

and his victory over Swedes. But, I argue Shafirov's attempt of introducing international law to Tsarist Russia was more than an act of a panegyrist or rewriting the existing international legal practice. Because, he explicitly claimed that Russia is a civilized country on par with Western European states even though Russia stumbled upon *ius publicum europaeum* as a latecomer. By the time Peter started his modernizing process in Russia, international law in Europe was in a relatively stable and advanced position. Especially, the reception of international law in Western Europe was considered a privilege and it was never regarded as a universalized law applicable to all the nations equally. The notion of "Civility" was the main yardstick that opened the gate for international law and civilized status was only confined to Latinized Europe, whereas the Ottomans, Africans and other nations outside Europe were excluded from this prestigious club.

The situation with Russia was rather peculiar and indeed, its Western Europe-related egacy did not allow Russia to be completely isolated from Christian Europe, yet its domination under Mongol yoke for a longer period and the great schism with Rome made Russia's position incompatible with Western European nations. Also, the rift between Moscow and Latin Europe was not exclusively attributed to Western arrogance: rather, it was mutual (Malksoo, 2008, p.216).

In such a historical context, the attempt of Shafirov in his scholarly work was akin to an act of yielding to gain acceptance in the European club of international law. However, the trajectory developed in Pre Peterite Russia had disdained Latinized Europe as a heretic civilization which persisted in the wrong faith. On the other hand, Constantinople, being the paragon example – in Moscow's eyes – of a sort of Second Rome, fell into the hands of Ottomans in 1453. Moreover, it's union with Latinized Florence before its decline had already displeased Russians. Orthodox monk Filofei's letter to Moscow grand prince Vassilij III and Ivan the Terrible in 16th century had appealed both of Tsars to accept Moscow as Third Rome. The "Third Rome doctrine" developed by Filofei in 16th century seemed to have emboldened Russian Tsars to consider Russia's position eligible for Christianity and their attitude towards Latin nations took a skeptical turn (Klimenko & Yurtaev, 2019, p.235). In the backdrop of such a grim historical background, Peter Shafirov made his contribution of vitalizing international law in conformity with Western European standards. It is quite interesting how Shafirov was lamenting about that Western ambivalence towards Russia and he struggled to prove Russia as a civilized, normal, European country. In writing his magisterial work that happened to be the first Russian text on international legal practice, Shafirov stated

For several decades the Russian people and state have been discussed and written about in other European States as are the Indians and the Persians and other peoples which have no communication with Europe except some trade. Russia was not seen as participant in European matters of peace and war and was even rarely counted among the European nations (Shafirov, 1973, p.2).

This paragraph indicates Shafirov's infatuation with the system of civilized nations and notion of sovereign equality, which emerged after Westphalian order. However, more importantly, his text indicates how ardently he was determined to place Russia in the elite club of "law of nations", which was exclusively limited to the set of civilized nations in Europe. However, the irony of Shafirov's greatest desire of admitting Russia to this elite club was not compatible with what Russian state interests stood for. In fact, this anomaly was one key feature that illustrated the conspicuous civilizational difference from Europeans. For instance,

sovereign equality was one of the enshrined principles of the law of nations that Shafirov reverently cherished. Yet, it was not a mere principle having come out of the blue as the acceptance of civilized Christian nations in Europe was rooted in the legacy of Thirty Years War, which affirmed the system of *ius publicum europaeum*. But, this was not the system that Russia had adhered to in practice. Filofei's "Third Rome" doctrine was imbued with Russian consciousness that urged Tsars and citizens to see Russia as a universalist state rather than another equal sovereign with Latinized Europe. Peter the Great and his reforms could largely sweep off the archaic state apparatus in Russia, but it could not completely obliterate Russian cultural and ideological difference from Latin Europe regardless how fervently Peter urged to Europeanize Russia.

In such a context the attempt made by Peter Shafirov to depict Russia as a normal civilized state that could be on par with Latin states in Europe was an act against odds. Although he portrayed Russia as a state accustomed to international law, obligated to preserve sovereign equality, Peter the Great himself still regarded Russia as an imperial power. Shafirov being a panegyric to Peter legitimized Russian victory over Swedes and the legality of the disputed territory as a province under Russia's domination from the ancient time. The conclusion of Shafirov's "Discourse" was written by Peter himself, wherein Tsar made some remarks completely contrary to Shafirov's idealistic vision of locating Russia in the family of international law. In conclusion, Peter states

By the assistance of almighty God, Russia has now become formidable that we now see a nation who were the terror of almost of all Europe, vanquished by Russians. And I dare say, thanks to God alone. They dread no power whatsoever so much as Russia (Butler, 1973, p.349).

Peter Shafirov's work significantly contributed to ascertaining Russia's civilizational value. However, Russia's regime still remained sort of incompatible with the model of international law, as conceived of by Europeans. On the one hand, it was an effort of a Russian jurist to justify the eligibility of his country to be a part of international law practised by Latinized Europe, but on the other hand, his claim that Russia's modernization should turn it into a normal Western state maintaining the required standards on preserving sovereign equality principle was refuted by Shafirov's arguments that affirmed the omnipotence of Russian imperial policy. In particular, the relevant passages in "The Discourse" show that previous treaties Russia concluded with Sweden were interpreted from his disdainful perspective towards Sweden and he dismissed the validity of them as he thought them to be unjust to Moscow.

In fact, his position of dismaying the previous treaties with Sweden was another telling factor which discloses civilizational legacy Russia stuck to because the yardstick to determine a treaty in Russia had been of completely different nature from the normal practice in the West. In Latin Europe the concept of a contract was based on reciprocity and the international legal maxim "*Pacta sunt servanda*" derives from European practice. At the same time, the place of a treaty in Russia was approached traditionally, with this approach regarding entering into a contract as merely a humane matter. The disrespect for contracts as humane matters continued till the modernization of Peter, but even after Peter unveiled international law and European style statehood to Russia, it's old medieval attitude towards treaties and interstate relations remained prevalent.

3.4. TWISTED IDENTITY

After the publication of Discourse by Shafirov, the next turning point of the Russian approach to international law appeared in the second half of the 19th century with the works of Fyodor Fyodorovich Martens. As Lauri Malksoo aptly described “Martens’ ideas were strongly influenced by who he was: a man from the border” (Malksoo, 2008, p.221). Being an ethnic Estonian, his legal acumen was sharpened by the Germanic influence which was nothing out of the ordinary at that time as Baltic region and St. Petersburg were under the Germanic intellectual influence. In the case of Martens, his obsession of westernizing Russia’s international law discourse was a project that he persisted with the solid faith that international law would play a role a “gentle civilizer of Russia“ from its archaic roots. Indeed, Martens presented himself as a strong proponent of the idea of international law as an elite tool that applies only to civilized nations. But, his position cannot be merely regarded as a racist tendency. It was rather based on the sincere conviction of Mar regarding the liberality of Western attitude to international law as a more coherent and organized system that may grant more rights to its subjects. In his vision, old Russia before Peter I was seen as an uncivilized country, whereas his approach to revitalizing international law under Europeanization was sort of a civilizing project. He argued:

It would be erroneous to consider Muscovy as member of international exchange and to maintain that the Russian people and its government already at that time understood the necessity of international communication with Western powers. The foreign relations of Russia of that time were factual: in terms of its cultural conditions, social and political structure. Muscovy could not possibly have entertained steady legal relationships on the basis of equality and reciprocity. Such relations started only in the time of Tsar Peter the Great and only in the time of Catherine II received a firm basis (Malksoo, 2008, p.221).

Nevertheless, Martens’ effort was not adequate to liberate Russia from its permanent “otherness” and its different notion of international law. Russia’s legal identity was always imbued with its discontent with Western Europe and Russian understanding of the world has derived its legitimacy through Byzantium. It is not an exaggeration that tracing Russia’s historical ties with Byzantium church illuminates her approach to international law. Martens’ student Barron Michael Taube disrupted Martens’ school and its ardour on Europeanizing the international law academia in Russia. Being Prof. Martens’ own student, he further looked into the historiography of international law in Russia and argued for the paramount of role of Byzantium ideology in Russian history as an epoch-making factor. To illustrate, Taube has traced the way *bellum justum* doctrine developed in the West in parallel to the separation of powers of the Pope and King which further declared that waging a war against another Christian state was essentially evil. But this was not the doctrine professed by Byzantium, which – when it comes to war – stressed that it was the will of the ruler that decided upon it (Malksoo, 2017, p.123).

In Taube’s account, this civilizational difference between Latin Europe and Byzantium played a crucial role in filtering international law and diplomacy to Russia. Historically Russia was a confederation of an alliance of many independent principalities before the rise of Muscovy grand duchy in the 15th century. Taube thought that those principalities such as Kiev, Vladimir and Moscow upheld their own medieval system akin to regional international law. Taube ignored Martin’s argument of describing Russia as an uncivilized country prior to

Peter the Great's reforms and his narrative on Russian history shows that Russia continued its own standards in interstate relations and international law despite its antagonism with the West. However, Russia's relations with the West essentially began to wane after Mongol-Tatar invasion. He pointed out the main cause that contributed to the separation of Russia from *Repubblica Christiana* was the two hundred years' domination of Mongol-Tatar rule in Russia and this rule left a despotic legacy in Russian state system even after Mongol-Tartar rule was defeated in 1481. Taube states:

The old confederation of Russian principalities and republics with more or less internationalist tendencies were absorbed in a new Empire with Moscow as political center, in a unitary and despotic state, oriental in foundation and half way Tartar, half way Byzantium, with orthodox mysticism and an arrogant and aggressive nationalism. It is evident that these political changes in the political structure of Eastern Europe did not remain without influence in the domain of international law and results could only be negative" (Malksoo, 2017, p.123).

The Tatar legacy transformed into a military state with a rigid vision determined to lead Russia as a true Christian guardian. In fact, a letter written by papal delegate to Moscow during the rule of Ivan IV had stated "These people think that the whole world is subordinated to their sovereign and that all people are but his slaves".

Perhaps, Taube's view can create a certain uproar for international law theorists today as his views on the scope of international law apotheosized its European superiority and he lamented that Russia lost its greater opportunity to be a part of *Repubblica Christiana* as a result of Tartar domination which resulted in exposing Russia to oriental despotism and Asiatic practices. At a lecture in Kiel University in 1927, Taube stated:

There were two Russia's. The pro-European upper class and the enormous half-Asiatic Slavic-Finnish-Tatar mass of the people that was unfortunately also very barbarian (Malksoo, 2017, p.126).

Byzantium upbringing upon Russia's national consciousness as a paramount factor continued despite Russia's exposition to Western Europe. The authority of Tsar as divine representative on earth and Russia's persistent claim for the authenticity of its Christian heritage further distanced Russia from its putative affinity with Europe. The reforms carried out by Peter the Great and his successors in modernizing Russia in accordance with Western European traditions could not completely abandon Russia's Byzantium heritage and to examining its role in international law one needs to understand that Russian imperial policy at that time was much eager to preserve its distinctness from Latin Europe. It's part of European concert in Vienna in 1815, its cultural fascination towards France such as a speaking French as a language of elegance or its intellectual debt to Germany in academia played less significant roles in pushing Russia exclusively towards Western international law.

The civilizational difference of considering themselves unique was not entirely diminished when Russia was engulfed by a massive chain of events in early 20th century which finally produced the world first socialist state, USSR, based on Communist ideology. International legal scholarship existent prior to 1917 revolution was strongly affected by the Bolshevik regime as Marxian ideology inherently loathed law as an oppressive tool. Lenin's own position depicted in *State and Revolution* was similarly applicable towards international law and also in a rather disdainful way, but gradually Soviet Union began to realize the inevitability of

dealing with international law despite their ideological abhorrence on it (Amarasinghe, 2019, p.73). In particular, the international legal scholarship having bloomed after 1917 distanced itself from considering universality of international law in accordance with any international legal thought, instead their concern on state sovereignty as a cardinal argument took an adamant approach.

Even though the state was rejected by Marxian doctrine, the Soviet jurists secured state centrism as they opposed individual-centrism. The greatest dilemma looming before Soviet jurists was to locate international law following Communist ideology, in doing so they placed international law's validity under the guise of Soviet state interests. Prominent early generation Soviet jurist Yevgeni Korovin initially argued that the Soviet Union should create their own discourse on international law and denied the universality principle, but later he modified his coarse criticism on international law by replacing it with the following phrase: "International law in a time of transition" (Snyder & Bracht, 1958, p.62). Having consolidated such a pretext, the Soviet Union continued to promote the concept of socialist international law as an intrinsic form of international law applicable between the USSR and other socialist states. On the other hand, it is important to note that the Soviet attitude to international law throughout the Cold War era was based on the foreign policy of Moscow. The intensity of changes that took place in Kremlin always made its impacts upon the changes in Soviet interpretation of international law. Maliksoo has provided a vivid picture on the susceptibility of Soviet international law doctrine to their changing political principles. He states:

To the extent that Soviet foreign policy changed from Stalin to Khrushchev, for instance-international legal doctrine changed as well, and instead of the more hostile Korovin, the more conciliatory Tunkin became more prominent (Malksoo, 2016, p.260).

All in all, the central tenets of Soviet reception of international law was akin to its political principles, yet, the traditional Muscovy's routine of state centrism remained static as a Tsarist ghost from Imperial Russia and it was rather paradoxical as Soviets conceived of the state as the incarnation of evil.

3.5. CIVILIZATIONAL THINKING IN POST-SOVIET INTERNATIONAL LAW

The value diffusion has continued to seep through the ages both in the Czarist and Post Czarist Russia. Later on, the societal transition of the Post-Soviet space underwent a series of experimentation and adjustments. Nowhere it could be seen more clearly than in the great struggle to become a normal country in the eyes of their erstwhile adversary. This intrinsic Eurasianism had the unavoidable dyad with the Europhiles in the jurisprudence where the nostalgia of the yore has to be restrained with the stark reality of the 90s.

Many anticipated with some sanguine hopes Russia would return to Europe after the collapse of their communist empire and this hope was fueled by a sense of optimism shown by Boris Yeltsin when Russia officially joined European Court of Human Rights in 1998. Many pundits described it as an act symbolizing Russia's yearn to embrace European values as she did under Peter the Great in the 18th century. Nevertheless, the Russian position of international law in Post-Soviet space did not entirely transform it into a passive and pacifist one. For instance, Russia's denial of admitting individuals as a subject of international law stands as a pivotal feature in post-Soviet confrontation with western international law. The abundant attention upon state sovereignty over any other rights has not been forsaken in the

post-Soviet era. President Putin's remarks at Federal Assembly in 2002 on upholding its state supremacy can be regarded as Russia's state policy on maintaining their vastness as it was preserved under Tsars and Communists. Putin stated:

All our historical experience testifies: such a country as Russia many live and develop in the existing borders only if it is a powerful state. Maintenance of the state in a vast space, preservation of the unique community of the people while keeping strong positions of the country in the world-that is not only enormous work (Malksoo, 2016, p.271).

Despite becoming the enthusiastic new member of the ECHR and COE, the selective amnesia of the violation of the human rights (in particular in the blood-shedding struggle in Chechnya) made many a scholar dumbfounded. Yet in the parlance of the international legal system, the last straw on the proverbial camel was Crimea.

In particular, the Crimean crisis erupted and the constant reports on human rights abuses in other places of Russia have raised doubts about international legal practice in contemporary Russia. It seems to indicate that Russia's historical uniqueness of being away from Latin Europe still shapes its legal thinking. And it is clearly noticeable in Russia's role in the aftermath of Crimean crisis that one Russia has constantly deviated from the European liberal values.

The above-mentioned statement of the Russian leader indicates why Russia eagerly strives for protecting territorial sovereignty while keeping low enthusiasm over issues such as individual rights, human rights and non-state actors. The civilizational difference between Russia and the West has become a double-edged sword as Russia's real civilizational position in international law appears ambiguous.

In fact, we cannot entirely exclude Russia from European civilization and its intellectual influences. This twisted dilemma has perhaps sharpened Russia as a unique and hybrid civilization and the *sui generis* practice that Russia upholds in international law can be regarded as an offshoot of this civilizational uniqueness. The argument we adduced above regarding the reluctance of Russia throughout its history to accept individuals as subjects of international law shows the country's skeptical views inevitably clashing with Western European values and ironically this position has undergone fewer changes in the annals of history since Tsarist regime till present-day Russian federation. While toying with the idea of Europeanizing its legal realm, the emphasis was always put on solidifying its uniqueness from the position of strength.

Under the Soviet Union regime, any effort to enforce individual rights or to recognize individuals as subjects of international law got nipped in the bud with vehement opposition of Soviet jurists. Soviet opposition pointed out that brining individuals as a subject of international law would lead to undermine state sovereignty and propagate western liberal values. However, the staunch state centrism prevails in Russian international law scholarship and even after the fall of communism, we can witness the continuity of Soviet tradition as an inherent part of modern Russian international law. A distinguished Russian Jurist Prof Yuri M Kolovos once affirmed that removal of Marxist Leninist ideology has not completely changed the main features of Russian international legal theory and it remained essentially the same as it was in the USSR with strong emphasis on state sovereignty and legal positivism (Fabri, Jouannet & Tomkiewicz, 2008, p.169).

In seeking the civilizational roots of Russian approach to international law, we need to further investigate the puzzling dispute that remains unresolved about Russia's destined

position in civilizational order. Contemporary Russia keeps one foot in European space and its institutional legacies reminiscent of Peter's Europeanization, but simultaneously it keeps the other foot in its own unique civilization as a critique of European liberal values. The long-standing antagonism between Orthodox Russia and Latin Europe seems to have resurged anyway as Russia still adheres to its Muscovy tradition of orthodoxy while Europe "reciprocates" with a sense of skepticism. It is a fact (and not a mere conjecture) that the notion of civilization exerted some strong influence on Russia's attitude to international law. The argument developed by Russian scholar Safronova proves the crucial importance of civilizational difference in ascertaining some of the features that Russia is determined to abide by in its approach international law. She states

Values that have primary importance in Europe and American civilization, are less important to other people. Thus, many Western ideas such as individualism, liberalism, democracy and separation of church and state and so on are not reflected in Orthodox, Muslim, Buddhist and Confucian cultures. The nature of the categories of freedom, justice and equality is understood differently. Different civilizations, for example do not reject human rights or human freedom, but understand and evaluate it differently. Unfortunately, current legal standardization takes place based on West European legal culture (Safronova, 2013, p.43).

4. RESULTS

As we stated earlier, the evaluating process of civilizational values and its contributions to international law is a horrendous task that opens for us unexpected outcomes. Yet, the unique two civilizations of China and Russia mentioned above have proven the importance of their respective civilizational values system while embracing and adjusting to the International Legal Space. The Confucian model and its deeper influence upon Chinese history set the cause of transforming Chinese psyche into a mind of a recluse which shared nothing except the contempt for other civilizational values. The Chinese notion of the middle kingdom and their lack of understanding of equal treaties never came out of the blue as those principles were completely excluded from Chinese civilizational thinking. Also, the intrinsic political and cultural legacy in Russia has galvanized its own system of international law with a little bit of an exposition to European intellectual influences. The civilizational distance of Russia from Europe has always shown Russia's own heritage in many spheres and we attempted to illustrate the anomaly born out of Muscovy tradition and its constant clash with Latin Europe. This confrontation has stood throughout the history regardless of Russia's internal changes and it still stands firm today.

Nevertheless, the fact that we need to understand is that the concept of "civilization" in international law should not be conceived of Europocentrically (as European colonizers understood it back in 19th century while drawing a distinction between Europe and rest of the world. Mainly, the general scope of modern international law deals with states and not with different civilizations. But, analyzing the civilizational values in particular countries raises our consciousness and enables us to appreciate their stances properly regarding some of the key issues in international law.

5. CONCLUSION

In this paper in assessing the historical approaches maintained by China and Russia towards international law, we tried to explain how both states showed a certain noncompliance and skepticism towards those certain features of international law which otherwise are taken for granted by the western space. In tracing their passive and resisting positions over the issues on the grounds of principle of sovereign equality and admittance of the individual rights, the paper tried to underscore the concrete civilizational influences that are intrinsically woven in the respective statehood and their engagements both at the domestic and at the interstate level. The given example of Russian Orthodox ideology nourished by Byzantium heritage of admitting the authority of ruler's supremacy and its deep influence upon state centrism of Russian attitude to international law further proves some connection between civilizational values and international law in modern Russia.

The saga of modern international law has been deeply rooted in modern European history and its contributions. The desire of Europeans to seek unity of their civilizational values in the political-legal sphere was escalated after the defeat of Napoleon and their ardent motivation to uplift social, political and cultural values common to all European nations became the fundamental inspiration for the great creation of international law. Author Guizot states

Civilization is a sort of ocean, constituting the wealth of the people, and on whose bosom all the elements of the life of that people, all the powers supporting its existence, assemble and unite. It is evident that there is a European civilization; that a certain unity pervades the civilization of the various European states (Guizot, 1997, p.11).

The civilizational values Europeans cherished became arch pillars of their standards of international law and their claim over its legitimacy was frequently boasted by this civilizational rhetoric. The 19th century European international law scholars could not imagine universalizing international law beyond European geopolitical space as their concept of international law was a unique product of the special civilization of modern Europe. This created the dilemma of extending international law to the nations outside Europe as Europeans hesitated whether its potential recipients were privileged to be a part of this elite club. Some Victorian commentators believed that states that did not fall under European civility will be admitted to international law gradually, in particular when a given state improves civilization-wise within the realm of law. Their civilizational superiority often excluded non-European states from entering into the shrine of international law. Even Ottoman empire and its legal practice were seen by European scholars as semi-civilized despite the fact that European states had been signing treaties with Ottoman sultans since the 16th century. The humiliation envisaged by Chinese at European hands in accepting unequal treaties was more or less a part of this civilizational haughtiness.

Nevertheless, the two historical approaches of two unique countries towards international law that we discussed here have clearly shown the notion of civilizational self-esteem and pride were not only an aggrandizement confined to Europe. On the contrary, Chinese pride of their position as the middle kingdom or only civilization in the word and Russia's ambivalence of accepting Latin Europe and its values with its Orthodox belief system show us the importance of civilizational role in the practices by the states in the observance / non-observance of the international law. A plethora of historical, religious and philosophical roots pervasive in both Chinese and Russian societies played a vast role in emboldening them to

consider themselves unique. It becomes easy to see that those roots played a dominant role in encouraging their modern-day practices such as a strict sense of state centrism.

The duty incumbent upon modern international law historians or scholars is not to persist in the retrospection of the civilizational rhetoric as 19th century European scholars did. But understating the regional difference based on civilizational legacies in different places is a vitally important fact to fathom how international law functions. The entire saga of international law may stand as a quest to seek the universality and unity for all the states. But it will never get rid of the civilizational differences that endowed the history of international law with all its shades and varieties.

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