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Some Remarks on the Eurocentricism and Imperialism in the Construction of International Law

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Abstract: *The modern international law is considered an offshoot of European intellectual contributions as its basic foundation is deeply imbued with the political and social upheavals that took place in European history. As an example, the Westphalian order emerged in the culmination of thirty years war in 1648 was regarded as the most pivotal milestone in modern history of international law. Yet the European domination and its intellectual contribution to the development of international law systematically excluded non-European nations from international law and its protection, which finally paved the path to use international law in the 19th century as a tool of legitimizing the colonial expansion. This paper seeks to trace the historiography of modern international law and its dubious nature of disdaining non-Europeans and their civilizational thinking. Furthermore, this paper argues how European historical encounters carved the map of international law from a vantage point, which gave an utter prominence upon the European intellectual monopoly. The results emerge from this paper will strongly suggest the need of an alternative scholarship to unveil the history of international law.*

Key words: European History, International Law, Empire, Colonialism, Civilization

Introduction

In the legal academic discourse, the modern history of international law has been mainly written through European narratives and the culmination of Thirty Years War by Westphalia Treaty is regarded as a jubilant moment for the scholars who have written on the history of international law as a European coined story to civilize the nations. The names of scholars such as Grotius, Francisco Vitoria, Francisco Suarez have been apotheosized as founders of the modern international law, but the concern on the pre-existing norms and customs on international legal principles in Non-European world have been received a less concern in legal academia. Moreover, the traditional understanding of international law as a system that would uphold the comity of nations and peace among the states would get disrupted by tracing the origin of international law itself. An eminent jurist and former judge of ICJ Christopher Weeramanthry had aptly described International Law as the cloak

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of legality thrown over the subjugation of colonized people by the imperial powers and the substantiality of that statement can be ascertained in examining some current mechanisms in international law in its practical sphere¹. This Article seeks to identify the colonial roots in international law and how those colonial roots have carved the modern pillars of the subject in Eurocentric ground.

The idea of universality in international law as suggested by the pioneers of Salamanca School in the 16th century by reformulating the importance of natural law doctrine was scorned and reversed by the 19th-century positivists. Thus, positivists ensured the idea that people outside a national *geographical* boundary may acquire sovereignty by possessing it. However, this idea revered by European jurists based on the Westphalian notion of nationality was a peculiar form for the non-European nation paving the path for European colonial enterprises to justify the idea of a protectorate from European projection of sovereignty.

This evolving trajectory of the idea of ‘Protection’ in international law over the years got filled with jurisdictional politics and religious claims within the European political order. The 16th century Spanish and Portuguese empires clung to the Catholic Church’s special claim to protect the categories of vulnerable groups such as orphans, widows and travelers². The necessity of the principle of protection reached an important stage when the Spanish empire began to soar its growth rapidly in the 16th century. Especially, this principle was applied during Spanish colonial expansion in America, wherein the logic of protecting the vulnerable subjects was formed to remove Indians from the jurisdiction of the inquisition.

To an extent, the early assertion of the concept of a protectorate in international law owed its foundational development in the juridical thinking of some European jurists. In bolstering the Spanish claim to protect its interests in America, Francisco de Vitoria’s contention on the protection of the right to travel and commerce for Spanish people in America provided a plausible cause for Spanish to justify their colonial expansion³. Yet, the lack of explicit definition of sovereignty in compliance with European projection staved off Indians from protecting themselves, which resulted in their inevitable subjugation before Spanish. However, the dubious growth of European imperial interests in non-European spaces envisaged different legal cultures, which accelerated and improvised the early understanding of ‘protection’. In examining how British empire encompassed the newly acquired territories and remaining sovereignties under the guise of protection, the whole mechanism appears to be a little more than a prelude to fortify their colonial ambitions excused by the 19th-century international law. In writing their most astute account

¹ WEERAMANTHRY 2004: 4.

² KOSKENNIEMI 2001.

³ ANGHIE 1996.

on the issue of protection in *Rage for Order: The British Empire and the Origins of International Law, 1800-1850*, Lauren Benton and Lisa Ford stated:

British officials self-consciously described schemes to overhaul judicial administration in newly acquired imperial territories as projects to shore up the property rights and privileges of vulnerable people and/or British traders. Men, sometimes with scant legal training, found themselves charged with overhauling complex colonial legal orders to consolidate imperial power and with commenting on phenomena with an ‘international’ character⁴.

The tracing the concept of protectorate and its applicability is akin to the history of imperialism. As a matter of fact, any endeavor of tracing the idea of protectorates in international law will envisage how imperialism had carved the antecedent events that paved the path for notion of protectorate. Since the publication of *Orientalism* by Edward Said, the interests of exploring the traces of imperialism in many subjects have been drastically increased and Said illuminatingly reminded the importance of retrospection of imperialism when he wrote:

To believe that politics in the form of imperialism bears upon the production of literature, scholarship, social theory, and history writing is by no means equivalent to saying that culture is therefore a demeaned or denigrated thing. Quite the contrary: my whole point is to say that we can better understand the persistence and the durability of saturating hegemonic systems like culture when we realize that their internal constraints upon writers and thinkers were productive, not unilaterally inhibiting⁵.

Unequal Treaties as an Integral Part of the Colonial History

The notion of ‘unequal treaties’ is heavily attributed to the rise of European colonialism in Asia, Africa and Latin America. Nevertheless, the conceptual origin of the term has derived from the so-called father of modern international law Hugo Grotius and Grotius distinguished equal treaties with unequal treaties based on balancing the advantages obtained by contracting parties. In a situation where a superior party has much indispensable power to cull the roots of treaty wherein the inferior party has left no option except embracing the conditions imposed upon them. Such unequal treaties became a common feature during 19th-century colonial expansion as the European colonial powers sought the native governing systems to be primitive or they could not comprehend them under their Westphalian idea

⁴ BENTON, FORD 2018: 29.

⁵ SAID 1995: 14.

of a sovereign equal. This mental trajectory created the path to formulate different kaleidoscope on colonies. The history of British and French colonial activities in Asia indicate the unjust methods used by both colonial powers in reaching their objectives and to establish their political hegemony, much humiliating, bias form of unequal treaties was executed. As an example, the treaties concluded after defeating China by Western powers in 1842 such as Treaty of Nanking (1842) and the Treaty of Tientsin (1858) arose as entirely unequal grounds whereas Western powers had had the complete authority to decide the terms and conditions in favour of them. As Marxist historian Eric Hobsbawm pointed out 19th century was marked by European lust for colonial expansion in non-European societies as an ‘Age of Empires’ and this was bolstered by imposing European oriented laws upon colonized nations in Asia, Africa and Latin America and this new legal ideology stood as an alien concept as it was primarily set up in Europe through European ideological standards⁶.

The situation in the Kandyan kingdom in Ceylon before British power depicts how the British used phase protection. After the occupation of maritime provinces from Dutch in 1796, British regarded the existence of Kandyan kingdom as independent sovereignty as a considerable threat for them and British governor Thomas Maitland appealed to London to increase the executive power of the governor’s position, which he regarded as an inevitable necessity because according to Maitland’s assessment the code of customary laws prevailed in Kandyan territories would underpin the extension of British authority throughout the island. However, Maitland’s intended project of annexing Kandy to British rule was finally carried out by his successor Sir Robert Brownrigg. The vulnerable political situation existed in Kandyan kingdom as an offshoot of king’s conflict with Sinhalese local chieftains provided the ideal *casus belli* for Brownrigg to wage war against Kandy and at outset of the expedition, he promised the former status of the local chieftains and also to preserve the Sinhalese religion and the customs. The convention signed between British and Kandyan Sinhalese chieftains in 1815 illustrated as a form of a treaty focused on the protection of the native people who sought assistance from the British against the oppressive King. The first three articles of the convention have verified that Malabar king Sri Wickrma Rajasinghe or his relatives have any claim for the throne in Kandy. These three Articles emphasized the invalidity of King and his dynasty over the throne, but the fourth article has explicitly mentioned British claim over the whole island of Ceylon. This content of the convention exposes how cleverly British managed to reach their colonial interests in the kingdom of Kandy through using a tactful phrase ‘Protection’. People in Kandy lost its territorial sovereignty as it fell into British hands by the convention for the sake of ensuring their protection. The fall of the Kandyan kingdom in Ceylon is one historical illustration that shows the bogusness of colonial international law in the 19th century.

⁶ HOBSBAWM 2014: 156.

In the case of Ceylon, the kingdom of Kandy was at stake after going through three centuries of European colonial invasions and the convention that occurred in 1815 under evasive terms of the British was just an investable result, but it would be rather a surprise to observe that even a powerful and independent state like Japan could not stand before Western powers equally in the 19th century. Japan had opted for a secluded policy in its international affairs since 1630 and which was challenged when American fleet appeared at the mouth of the Bay of Tokyo in 1853 and 1854 after these incidents Japanese were forced to enter into diplomatic relations with the United States⁷. Interestingly the treaty signed between Japan and the USA in 1857 disillusioned the Japanese as a treaty signed between two sovereign equals, but in its substance, they were grounded on unequal terms.

In studying the history of international law in the age of colonialism, invading nations had always wanted to exclude other European forces in their territories as a matter of principle in their negotiations with natives⁸. When European entered into treaties with the native chieftains or rulers, a specific clause was included in the treaty that would impede locals from having any relationship with foreign powers. As an example, the elimination of Portuguese rule from Ceylon in 17th century by the support of Dutch shows how strongly Dutch East India Company wanted to impede the King Rajasinghe II of the kingdom of Kandy in Ceylon from entering into any negotiation with other European powers. The treaty concluded in 1638 between Dutch and Rajasinghe II explicitly states King should not maintain any relationship with other European powers. According to the treaty, the Dutch India Company was promised the delivery of all the cinnamon to the exclusion of all other nations in return for our help and protection⁹. In understating the nature of this treaty it is visible that Dutch had attempted to make equal terms with the native ruler in Ceylon. Dutch governor J. Simons wrote in his memorials and instructions: The chief points that demand attention are the following viz.: (1) Friendly relations with the king of Kandy (2) prevention of the intrusion of all other European nations into Ceylon (3) strict observance and watchful guard over the entire navigation of Ceylon. However, the status adopted by Dutch to deal with the Kandyan kingdom in Ceylon began to change in the latter part of the 18th century as it took up a more dominating position over Ceylon. In 1766 after defeating the king of Kandy, Dutch East Company compelled him to enter into another treaty which was consisted of many discriminatory clauses. The sovereignty of the island was mutually defined but the king was cut off from controlling the harbours and other waterways of the island and it further isolated the king from having foreign relations with other nations. According to Article X of the treaty, the Company undertook to pay for the goods acquired in Ceylon, i.e.

⁷ CRAVEN 2005: 335-382.

⁸ GATHII 2007.

⁹ GOONEWARDENA 1958: 134.

ivory, pepper, coffee, etc., and its purchases were to take place to the exclusion of all other nations. This clause was followed by the more specific provision in article XXI which forbade the King and the Officers of the Court to maintain any correspondence with other European nations or to conclude treaties with them, a clause which frequently appeared in treaties between the English East India Company and Indian rulers¹⁰. The King and the Court undertook to deliver to the Company all Europeans (foreigners) who would enter the country unlawfully and not entertain with Indian Princes any connections to the prejudice of the Company. On the other hand, the Company undertook according to article XXII not to conclude any treaty with a foreign power against the king of Kandy. Mutual relations were to be maintained according to article XXIII by the exchange of Ambassadors. Dutch rule in Ceylon lasted until the end of the eighteenth century when it was ousted by the English East India Company in 1796.

Scramble for Africa

European quest to acquire territorial powers in the African continent was another illustration to comprehend the despicable nature of 19th-century international law. When the decision on the African continent was made out in the Berlin Conference in 1885, an interesting article was formulated as Article 34. It states that “any power which takes a position of territory on the coast of the African continent or establishes a protectorate there must notify the other signatory parties”¹¹. But in this whole conference European powers had ignored existing sovereigns such as tribal kingdoms in the mainland of Africa. At the conference, British wanted to extend the authority of given article to the interior of the African continent, but it was denied by the European powers like many of the African territories remained as uncovered territories characterized, as it was, by the rapidity of transfer of power of dimensions unprecedented in the history of mankind. Prima facie, it might seem that such a kaleidoscopic change would be affected by the most rapid ways and means which international law had at its disposal for transfer of sovereignty, i.e., unilateral action followed by occupation or conquest¹².

The process of treaty-making or negotiations with African tribal kingdoms was a much harder task for European powers than how they envisaged the negotiation process in Indian sub-continent where the rulers followed a code of interstate conduct which had first been conceived systematically by ancient Indian lawgiver Kautilya and embodied in the *Arthashastra*, a Hindu classic of the 4th century B.C. The Kautilya tradition prevailed, subject to changes, for centuries in the Indian subcontinent

¹⁰ ALEXANDROWICZ 2017: 65.

¹¹ GASSAMA 2018: 557.

¹² GASSAMA 2018: 557.

and further India: The European agencies which arrived there in the 16th century had to face Hindu or Islamic negotiators acting either on Hindu or Koranic tradition or a combination of both. In the light of this tradition, the conduct of interstate relations in the East Indies was to some extent homogeneous and even predictable in its effects. But the inter-state negotiation system used by African societies was ambiguous and Portuguese being the first modern European nation who entered Africa in the 16th century went on to carve the treaties under their preferences. The treaty signed between the king of Congo and Portugal was mainly based on how Congo should allow Portuguese missionaries to conduct their religious activities in the territory of Congo without any hindrance, in addition to that it insisted Portuguese can utilize the harbours of Congo for military purposes¹³.

In the 19th century, the phase called ‘protocreate’ was introduced by the European nation to justify the expansion in Africa. Many territories were assimilated into European hegemony and local rulers were given the promise of protection from external powers. But in the treaties compiled by Westerners included many discriminatory provisions such as those local rulers were thwarted from having any other foreign relation. The treaties created by National African Company which happened to be a mercantile company chartered by the British government in the 19th century to establish trade in Africa always urged the local rulers to seek protection only from the British. The preamble of each treaty signed by National African Company with any African kingdom consisted of the following clause:

We bind ourselves not to have any intercourse with any strangers or foreigners except through the said National African Company and we give ... the company full power to exclude all other strangers or foreigners from territory at their discretion.¹⁴

French, Belgian and other European powers opted for the same method as British did in their treaty-making with the local African rulers. In some circumstances, discriminatory provisions were excluded and the treaty was drafted as an equal one if the other counterpart was a powerful kingdom in Africa. For instance, the Fulani ruler of Fouta Djallon (Guinea region) made treaties of protection with the French (1881, 1888) which did not impose any restrictions on the sovereignty of the ruler’s confederation.

The concept of ‘protectorate’ was transformed into a defence of acquiring African territories in the late 19th century. After the conclusion of the Berlin

¹³ COMAROFF, COMAROFF 2008: 93.

¹⁴ COMAROFF, COMAROFF 2008: 112.

Conference in 1885, European international lawyers often relied on the term 'protectorate' for the legal justification of the expansion.

Question of Civility and Backwardness

The quest for acquiring territories in Africa, Latin America and far corners of Asia reached its culmination by the end of 20th century as new nation-states began to emerge in Europe such as Italy and Germany, which decisively changed the political map of Europe. After having established the internal political stability both Germany and Italy stumbled upon the race for colonial expansion and there was nothing left for them at the beginning of the 20th century except some territories in Africa. The gradual growth of rivalry among the European states eventually bolstered the path for Great War in 1914 and a large number of soldiers from European colonies in Africa and Asia fought for their masters albeit the war they involved was not originally their war. As an example, India was given a sanguine hope of self-rule like other British dominion states to obtain its manpower to the war and 74,187 Indian soldiers died in the Western Front, but British promise on a self – rule in India remained unfulfilled as British grip over Indian sub-continent was tightened by the end of Great War.

British justified their reluctance to grant self-rule to India and other Eastern colonies based on their backwardness and they believed those colonies would get better benefits under colonial rule. This attitude was manifested in the 1919 Paris peace conference where imperial powers such as Great Britain and France vehemently opposed to the participation of the delegates from their colonies and their access to the conference negotiations was denied. Nevertheless, some delegates from African and Asian colonies managed to barge into Paris conference with some expectations to raise their voices on right to self-determination. As an example, a delegation headed by African lawyers Elizer Cadet and Du Bois marked some significant upheavals against all odds and their concern over self-determination¹⁵.

The main protagonist of Paris peace accord Woodrow Wilson included self-determination into his highly idealistic resolutions of the conference and Du Bois was in a strong position that right to self-determination should be extended to the people of Africa since the historical claim of the land is vested with them. Moreover, Du Bois gave a special emphasis for the consent of the governed people in respect of choosing their political future. He states:

The international peace Congress that is to decide whether or not peoples shall have the right to dispose of themselves will find in its midst delegates from a nation which champions the principles of the 'consent of the governed' ... that

¹⁵ ANGHIE 2002.

nation ... includes in itself more than twelve million souls whose consent to be governed is never asked.¹⁶

One of the major contentions raised by imperial powers happened to be concentrating on the civilizational standards of colonies, that whether they would seriously have potentials to govern themselves. As it was stated earlier in this article the state of governance practiced by the African and Asian people was strange for European Westphalian mind to comprehend, which enabled them to scorn and trample the those systems of governances as uncivilized. This was frequently pointed out by pro imperial British international law scholars in 19th century and early 20th century, especially after the taming the Indian *Sepoy* mutiny in an unimaginable brutal way in 1857, British applied a harsh policy on Indian demands despite there was a rise of liberal democratic values in Victorian England. Marti Koskenniemi's magisterial work *The gentle civilizer of nations: the rise and fall of international law, 1870-1960* gives a vivid description on the emergence of 19th century liberal international legal sensibility all underpinned by practicality of the age and political will of the empire. Koskenniemi states:

The founding conception of 19th century international law, was not sovereignty but a collective European conscience-understood always as ambivalently either consciousness or conscience, that is in alternatively rationalistic or ethical ways. Even in the absence of a common sovereign, Europe was a political society and international law an inextricable part of its organization.¹⁷

The Austinian notion on sovereignty appeared to be an indispensable factor in Victorian age among British international lawyers that mainly neglected the naturalism from their legal views and as the sovereignty of the colonies was vested with British empire, they considered the utter validity of British laws upon the colonial administration to be just regardless how unfit they would be to the subjects¹⁸. In fact 19th century international law became the beneficent gift of the civilized Europe. However the antipathy of colonized people for being scorned as uncivilized to be treated equally before international law sprang severely at Paris conference as many Asian delegates began to unveil the rich political and cultural unity they had in the past before the European powers arrived. For instance the missive sent by Korean delegation to Clemenceau of France clearly indicates the following sentence:

¹⁶ SENARATNE 2013: 319.

¹⁷ KOSKENNIEMI 2001.

¹⁸ KOSKENNIEMI 2001: 231.

The Korean people forms today a homogeneous nation, having their own civilization and culture, and having constituted one of the historical states in the Far East for more than four thousand and two hundred years. During those forty-two centuries Korea has always enjoyed national independence.¹⁹

Lala Lajpath Rai was another Indian lawyer who played a pivotal role in striking European understanding of Asian and African countries as barbaric at Paris conference. He opposed to British unwillingness for granting self-determination rights to Indian people due to the backwardness. He states:

India is not an infant nation, not a primitive people, but the eldest brother in the family of man, noted for her philosophy and for being the home of religions that console half of mankind.²⁰

The predilection of colonized people to be recognized in international legal order of 1919 Paris conference did not reach its expected end, because the delegates from India, Africa and other Asian colonies were thwarted from attending the conference activities, even being the champion for European idealism, Woodrow Wilson paid no concern for the rights of suppressed colonies and his believe was firmly confined to a position that Western states should assist backward states to govern themselves.

Post-Colonial Dilemmas in International Law

Identifying the post coloniality in international law lies in an ambiguous zone as the modern form of international law itself is postcolonial, because many of international organs and the current mechanisms in international law had emerged in post-world war period parallel to the decolonization. International Lawyers from Third World, especially the scholars who are engaging with TWAIL movement (Third World Approach to International Law) had found many real paradoxes in international law which they found to be Eurocentric and created from the perspective of West. Mainly the modern idea of human rights has become subjected to many criticisms from the point of view of international legal scholars from third world countries as a pertinent issue in post-colonial international law. In questioning the so-called universality of international law, it is rather ironic to look at the status of universality defined by Western human rights and international law scholars. Universality illustrated in Western Orientation towards human right has taken more individualist approach and the deep rotted influence of Christianity in West seemed

¹⁹ SENARATNE 2013: 319.

²⁰ SENARATNE 2013: 325.

to have provided its foundation. In questioning this approach TWAIL scholars like Ram Prakash Anand and Weeramanthry have always pointed out the existed values in the East that preserved human dignity²¹. Especially being a champion of propagating TWAIL ideas in ICJ Weeramanthry had a knack on quoting teachings of Buddha in his opinions and judgments at ICJ²². For instance in his opinion at the case of Hungary vs Slovakia, Weeramanthry elucidated the purity given by ancient Indians on Water and his opinion in the judgment was a palpable reflection of the Asian values and beliefs over human rights that always went beyond mere individual consuming scope.

Apart from the narratives on human rights, the postcoloniality of international law can be traced in many ways in the present context. Mainly the phases such as ‘Third World’ emerged in the post-colonial period to marginalize the ‘Other’ from Western perspectives. In looking at the tools and mechanisms used to continue the otherness in international law, it becomes evident that the notion of ‘Otherness’ was imbued with the phases such as Backwardness, Trusteeship, International Monetary Fund, World Bank etc. Introduction of such a mechanism in the post-colonial era by West simply demonstrated the fact that underdeveloped peoples of the world were re-constituted as ‘other’ to the West. As a matter of fact, the universalization of international law after the decolonization process and many more approaches have proven impossibility of post-colonial dilemmas to comprehend in modern international law. The following paragraph by critical international legal theorist Sundhya Pahuja reflects the ambiguity of post-colonial dilemmas in modern international law.

The “post” in postcolonial designates a state neither clearly beyond nor after the colonial. Instead it denotes a “continuation of colonialism in the consciousness of the formerly colonized people, and in the institutions which were imposed in the process of colonization”. Key amongst those institutions is international law, which in some senses was formed out of the exigencies of imperialism. But if international law was the child of imperialism “it is not only . . . a dutiful child but also . . . a child with oedipal inclinations”²³

Unseen Legacy of the Practice of International Law in Oriental Antiquity

This paper has unveiled the exact routines which nourished the modern foundation of international law from the perspectives of European nations. The customs and practices existed Among Asian African nations on international legal systems have been given the least concern in the legal academia today.

²¹ ANAND 1966: 123.

²² WEERAMANTRY 1992.

²³ PAHUJA 2005: 469.

For the curriculum of public international law at universities including the higher educational institutes located in Asia and Africa, the tendency always has been to venerating figures like Grotius and Vattel as modern pioneers of international law. It is really pathetic that they have forgotten the legacy they had in past on international law. It was thousands of years ago that India adopted natural law as the very basis of international law. Ancient Hindu jurisprudential texts such as Law of Manu, *Dharmasastras* admitted the principles of morality as the basis of international legal rules²⁴.

Chanakya or commonly known as Kautilya who happened to be the prime minister of the court of Indian Emperor Chandragupta Maurya had written some various treaties on the international legal practices. More interestingly his innovative idea called 'Circle of States' or *Mandala* has practised in Mauryan court in India around 3rd century BC as an accepted norm to deal with neighbouring states. Apart from that prime minister Chanakya's masterwork called *Arthaśāstra* is a palpable illustration on the Asiatic wisdom on international law. Rules of international law drawn from principles of expediency broad-based upon 'political considerations' find their suitable place in the *Arthaśāstra*. Almost the same rules relating to the circle of states, intercourse between them and rules relating to the six-fold policy, sandhi (peace), *vigraha* (war), *asana* (Observance of Neutrality), *yana* (Marching), *samsraya* (Alliance) and *dvaidhibhava* (making peace with one and waging war with other)²⁵.

In the idea of state responsibility and statehood, the practice prevailed in Ancient India. It is an interesting fact that unlike European monarch in the time of the nation-states in the 16th century, the state in Ancient India was not identified with the king. An Indian monarch could not like Louis XIV exclaim '*L'etat c'est Moi*' (I am the State). From the earliest time monarchs in India looked at himself merely as a custodian of the interests of people. Which has been mentioned in one of the oldest Indian epics called *Mahabaratha*? It describes the king as the highest servant of the community. Moreover, the Indian king was expected to maintain the same level of humanity towards the fellow sovereign states. Indeed, the idea of the family of nations was a strange phase for the Western Civilization as the hostility among neighbouring states was a feature of the political geography of Europe. Greeks, the most polished nation in antiquity that left a hallmark legacy on the modern foundations of European Civilization looked upon all Non-Hellenes as mere Barbarians beyond the frontiers of Greece. The Greek idea of Asia was finally reversed when Alexander led his campaign beyond Persia and his presence in India eventually convinced a message to Greeks about the political, legal and philosophical grandeur in Ancient India. The fragments left behind by Megasthenes who served as the Greek envoy in Maurya Chandragupta court vividly points out the customs adopted

²⁴ DAVIS 2004.

²⁵ BANDYOPADHYAY 1920.

by Indians regarding treating the diplomats. The given statements from Kausalya's *Arthaśāstra* portrays the basis etiquettes that diplomats were expected to follow. In ancient Greece and Rome right to send ambassadors were not regarded as an absolute right. It rested either on treaty stipulations or on express permission obtained from the state which the ambassador was to be sent²⁶. Likewise in ancient India ambassadors always represented the might of the state. Besides the legacy of Indian in international law in the antiquity, it is important to examine how ancient Chinese dealt with international law in their statecraft. China's first contact with contemporary international law came through William Martin's 1865 translation of Henry Wheaton's book *Elements of International Law*, 30 years after the book was first published. Some years later Martin wrote another book called *Traces of International Law in Ancient China*, this is a portrayal of the Chinese notion on how they perceived and practised international law. In his writing, Martin argued that two conditions are required to prove the existence of international law. Firstly it is mandatory to have the existence of independent states. Secondly, that those states should be so related as to conduct their intercourse on a basis of equality.

Martin has pointed out the historical period lasted from approximately 771 BC until 476 BC fulfilled the given condition with the hundreds of states. Under contemporary international law, a state can be regarded as a 'legal person' only if it possesses the four following qualifications: 1) a permanent population; 2) a defined territory; 3) a government, and 4) a capacity to enter into relations with other states. Zhou dynasty which was one of the powerful dynasties in ancient China envisaged a period of decline between 349 BC to 229 BC, that inevitably caused to the creation of new independent small states. Those newly independent states had a functioning government, could control territory as well as a population and could exercise their sovereignty effectively both domestically and internationally. The Prince of each fiefdom became de facto King and the fiefdoms became actual Princedoms²⁷. As a consequence of the increasing powers of the Princes, a new political situation emerged, in which the ritual, music and military campaigns [were] initiated by the Princes. In terms of organizing the external affairs those newly established small states in ancient China, it was regarded a normal practice for those states to hold summit meetings and international conferences to exchange ambassadors and envoys to conclude treaties and agreements, to discuss the common norms of society and to establish rules of war with a humanitarian perspective. The ancient sources such as *Chunquiu* reveal that this period nearly 500 hundred international conferences were held. Princes from each state regularly met in order to ensure their mutual protection against any foreign force. More than 140 treaties are recorded in *Chunquiu*, including both bilateral and multilateral agreements, mainly for good relationships between

²⁶ MCCRINDLE 2019.

²⁷ YUANZHEN 2018: 116.

states, joint defence, international trade and marriage alliances. This shows that the states dealt with each other on an equal footing. Normally, those agreements included three parts: the statement of purpose, substantive contents and an oath invoking the wrath of the most important deities upon anyone who transgressed the agreements. As states were small in their geographical territories, their concern over security always stood at prime level. Especially creating a collective league system was adopted by all those independent states as an appropriate manner to uphold regional solidarity. Prince Qi who happened to be the ruler of his state had a wider recognition among the other states too as a powerful political figure. With this eminent recognition, he formed a system of alliance which was essentially based on the idea of a collective security system-more or less this was akin to modern-day North Atlantic Treaty Organization Structure.²⁸

The above mentioned historical sources from both ancient India and China provide a clear account on the historical structure on international law existed in great two Asian civilizations and it further demonstrates the conceptual routine of the international legal system cannot be solely attributed to what took place in 1648 at Westphalia. The Westphalian notion of nation-states system may have given emergence to the creation of modern Europe, but in tracing the Asiatic heritage, the idea of international law traces back to the antiquity. Moreover, it is an important factor to consider how those ancient Indian and Chinese systems of international law conducted based on civility and natural law in the antiquity whereas European nations were reluctant to accept Asians as civilized nations till 20th century.

Conclusion

The conventional approach to understand the colonial origin of international law may accept that the story of colonialism as an imbued factor to international law ended with the decolonization, but the concluding remark of this article proposes that civilizing mission adopted by West through the veil of international law continues today as a post-imperial project. The advent of newly independent states led the path to form a strong alliance among themselves in the post-colonial period as the world was witnessing the cold war trauma. The Non-Aligned Movement established by the leaders from Global South was initially intended to maintain neutrality without getting attached to either Soviet Union or the United States in any time of crisis, but gradually its objectives were swindled and the apathy of newly independent states before the new imperial order was quite pertinent.

Especially when newly independent states realized that their natural resources were exploited by their former colonial masters, their only available remedy was to nationalize those natural resources which were located in their states but governed

²⁸ RUSKOLA 2013: 110.

by few foreign companies. In the movement adopted by nationalist governments in the countries in Global South always envisaged setbacks in their efforts in dealing with foreign powers within their national sovereignty. It was evident that European reluctance to accept the sovereign status of the newly independent states as their equal companions led them to undermine the nationalization projects in the Global South.

The military actions were taken by British-French forces aligned with Israel when Egyptian president Nasser took over Suez Canal and serious of international pressure faced by SWRD Bandaranayke's government in Ceylon after nationalizing British owned companies showed the gravity of Neo-Imperial outlook of the post-colonial international law. Especially in dealing with recovering their national resources from the position of colonial powers, newly independent states had to grapple with the demanded compensation from those foreign investors or companies belonged to former colonial powers. In terms of assessing the compensation, the contention brought by Western powers was based on what they preserved as compensation from an international legal perspective. Anghie states:

To further their argument, they asserted that it was a principle of customary international law that compensation was to be based on international law rather than national standard.²⁹

The pivotal question to concern is whether being oppressed colonized how would the states of Global South uphold those customs because they were not partners in creating such customs in international law. In examining the modern form of the old civilizing mission of the colonial powers in the name of international law, it yet remains in a different trajectory as the phases like Civilized and Uncivilized societies are replaced by the unending division between Developing Countries and Developed. The mechanism regarding the development assessment introduced by the Bretton Wood system in post-world war period provided an institutionalized framework in imposing certain restriction over newly emerging economies. In terms of assisting newly independent post-colonial countries, Bretton Wood institutes relied on certain yardsticks like human rights and good governance, when such expectations were likely to be fulfilled their next concern was to introduce Neo-Liberal reforms to those states, which have often resulted in the further impoverishment in the poorest in the Global South. David Harvey in his classic work *A brief history of neoliberalism* has aptly described the real intents of the US invasion of Iraq in 2003 was hidden behind American interest in oil and the Neo-Liberal policies adopted by the interim government of Iraq in 2004 simply cleared the path to wealth accumulation³⁰.

²⁹ ANGHIE 2014: 140.

³⁰ HARVEY 2005: 3.

However, the emergence of new world order from the Global South such as rapid economic growth in China and India have challenged the notion of coloniality in international law as it existed thus far. The central thesis carved by this article has demonstrated how international law was created based on colonial interests of the West and the tactful way it was used for the colonial expansion in history. The given examples from the existed norms and practices among ancient Asiatic states provide strong evidence on how differently international legal norms were followed and respected in antiquity albeit that narrative was not acknowledged by the West. Nevertheless, it is important to remember being critical on the colonial origin of international law does not mean that modern scholars should completely disband the existed norms and practices of international law. The answer provided by Indian legal scholar Upendra Baxi states:

Nationalization of learning is no answer to Eurocentrism. Nor does a reckless deification and exaltation of intellectual traditions serve the interests of the knowledge.³¹

Having understood the colonial foundation of international law and how it has been always narrated from Europe, scholars from Global South should continue to reconstruct the present-day narratives of the international legal scholarship, because international law is not solely attributed to the states as its liveliness is very much affiliated with scholars, judges and practitioners as real stakeholders who give the meaning to international law.

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³¹ BAXI 2014: 34.

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