

ISSUES OF THEORY OF INTERNATIONAL LAW

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KEEPING INTERNATIONAL LAW INTERNATIONAL, A REFLECTION ON ANTHEA ROBERTS' "IS INTERNATIONAL LAW INTERNATIONAL?"

INTRODUCTION. Occasionally a book appears which has a significant impact on the scholarly community. A fine example of this is the work considered here by the Australian international lawyer, Anthea Roberts. Until very recently, comparative studies on international law were rare. However, as international law further develops and widens, so special attention will need to be paid to ensure that international law students are, to a greater extent, taught the same material and in the same way. As municipal systems of law became more mature, so doctrine and jurisprudence began to diverge. International law has now entered such a phase in its development and, in this excellent book, Dr. Roberts asks a series of very important questions: exactly what is taking place, what are the factors that are driving these processes, is such to be welcomed, is it unstoppable and where do we go from here?

MATERIALS AND METHODS. The article reflects on Anthea Roberts' book "Is International Law International?" (Oxford, Oxford University Press, 2017). The authors of the article consider the contribution of

the monograph to legal science, particularly with its interest in a revived Comparative International Law.

RESEARCH RESULTS. The view of the authors of the article is that Anthea Roberts' book is a work of profound significance, which will, hopefully, inspire additional research in the field of Comparative International Law in years to come.

DISCUSSION AND CONCLUSIONS. Comparative International Law is a relatively neglected field in International Law. Without question, the international legal academy (from the elite law schools of the permanent members of the United Nations Security Council) emphasises different things both in its scholarly writings and pedagogy. This needs to be given greater attention, even if, at least for now, it cannot be entirely arrested; so that the much-feared fragmentation of international law into not only separate fields and standards, but also in terms of agreeing on its content and application, is minimised.

KEYWORDS: international legal academy, elite law

schools, comparative international law, fragmentation of international law, scholarly work, pedagogy.

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ВОПРОСЫ ТЕОРИИ МЕЖДУНАРОДНОГО ПРАВА

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МЕЖДУНАРОДНОЕ ПРАВО ДОЛЖНО БЫТЬ МЕЖДУНАРОДНЫМ. РАЗМЫШЛЕНИЯ О КНИГЕ АНТЕИ РОБЕРТС «ЯВЛЯЕТСЯ ЛИ МЕЖДУНАРОДНОЕ ПРАВО МЕЖДУНАРОДНЫМ?»

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ВВЕДЕНИЕ. Иногда появляется книга, которая оказывает значительное влияние на научное сообщество. Прекрасным примером является цитируемая в настоящей статье работа юриста-международника австралийки Антеи Робертс. До недавнего времени компаративистика в международном праве была редкостью. Однако современная международная повестка диктует необходимость дальнейшего развития

и, что более важно, расширения сферы международного права, но при этом от исследователей требуется стремиться обеспечить единообразное толкование ключевых международно-правовых понятий с тем, чтобы студенты, где бы то ни было изучающие международное право, изучали бы все же один и тот же предмет. В то время как большинство национальных правовых систем современности в целом сформирова-

ровались, к сожалению, в правоприменении, в частности правосудии, наметилось некоторое отставание в развитии. При всем обилии научных публикаций все еще ощущается недостаток качественной правовой доктрины. Именно в такую фазу своего развития вступило сегодня международное право. В своем блестящем научном произведении д-р Робертс задает ряд очень важных вопросов: что именно происходит, каковы факторы, которые движут этими процессами, можно ли их приветствовать, можно ли их остановить и куда дальше движется развитие международного права?

МАТЕРИАЛЫ И МЕТОДЫ. В статье исследуются основные тезисы и выводы, изложенные в книге Антеи Робертс «Является ли международное право международным?» (Oxford, Oxford University Press, 2017). Авторы статьи рассматривают вклад монографии в развитие правовой науки, в частности её интерес к возрожденному методу сравнительного анализа международного права.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. Авторы статьи приходят к выводу о том, что научный труд Антеи Робертс имеет большое значение, которое, как представляется, вдохновит на дальнейшие исследования в области компаративного международного права в ближайшие годы.

ОБСУЖДЕНИЕ И ВЫВОДЫ. До последнего времени сравнительный подход в исследовании

международного права в определенной степени игнорировался исследователями. В международном научно-правовом сообществе (подробно обзревается элитные правовые школы пяти государств-постоянных членов Совета Безопасности ООН) подчеркиваются различия как в доктринальных, так и в образовательных подходах. Безусловно, этому необходимо уделять больше внимания, даже если, по крайней мере, на данный момент, оно не может быть полностью преодолено, хотя бы с тем, чтобы свести к минимуму столь опасную фрагментацию международного права, проявившуюся не только в отдельных отраслях международного права, но и в плане согласования его содержания и применения.

КЛЮЧЕВЫЕ СЛОВА: международное научно-правовое сообщество, элитные правовые школы, сравнительное международное право, фрагментация международного права, научная работа, педагогика

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Anthea Roberts begins her books *Is International Law International?* [Roberts 2017] by reminding us of Oscar Schachter's remark that the professional community of international lawyers is an "invisible college", its members "dispersed throughout the world" yet "engaged in a continuous process of communication and collaboration" [Schachter 1977:217]. In the same paragraph, the author declares that the "book challenges the assumption that international lawyers work within a single field" [Roberts 2017:2]¹. In the first sentence of the book, Dr. Roberts writes: "We are familiar with the question: Is international law law? I want to ask

instead: Is international law international?" [Roberts 2017:1]. Two paragraphs later, she states her own position: "Not particularly, is my answer" [Roberts 2017:1]. In setting out her thesis, she wishes at the very least to revive a subfield of international law, which she terms "comparative international law". This, according to her definition, examines "cross-national similarities and differences in the way that international law is understood, interpreted, applied, and approached by actors in and from different states" [Roberts 2017:2].

In chapter one, Dr. Roberts, sensibly, admits that the "study is not comprehensive". "I do not examine",

¹ Here is an approach different and away from recent discussion and works considering the fragmentation of international law. This literature is represented well by works such as the following: [Koskeniemi 2007; The Practice of International and National Courts...2014; Webb 2016; Fragmentation vs. the Constitutionalisation... 2017].

she adds, “all of the actors and materials that play a role in the construction of international law, and one cannot assume that the patterns that hold true for academics and textbooks, necessarily hold true more generally” [Roberts 2017:5]. She lugubriously laments the absence of Africa, Latin America and the Middle East from her study, confirming that it is confined to an analysis of the permanent members of the United Nations Security Council: five elite universities from each², a representative sample of academics from each of the sampled Law Schools / Departments, as well as an analysis of their outputs, including the textbooks they write / contribute to and the journals they edit. Nevertheless, in probably the most important paragraph of the book, the author writes: “*In examining the extent to which international law is international in the academics and textbooks of these states, this book makes three arguments. First, international law academics are often subject to differences in their incoming influences and outgoing spheres of influence in ways that affect how they understand and approach international law. Second, actors, materials, and approaches from some states and regions have come to dominate certain transnational flows and forums in ways that make them disproportionately influential in constructing the “international” – a point that holds true for Western actors, materials, and approaches in general, and Anglo-American ones in particular. Third, existing understandings of the field are likely to be disrupted by factors such as changes in geopolitical power that will make it increasingly important for international lawyers to understand the perspectives and approaches of those coming from like-minded states*” [Roberts 2017:5].

International politics and law are dominated by states. One of the core principles of international law is the equality of states³. *De facto* the position is somewhat different. Each state can be imagined walking across a field covered deep in snow: some will leave a heavier footprint than others. Anthea Roberts makes a similar point when she notes: “The ideal of international law suggests that it is constructed by drawing equally on people, materials,

and ideas from all national and regional traditions. But in reality, some national and regional actors, materials, and approaches have come to dominate much of the transnational field and international lawyers’ understanding of the “international” [Roberts 2017:8-9]. Thus, mindful of the work of Jane Jenson and Boaventura de Sousa Santos [Globalizing Institutions...2000:11; de Sousa Santos 2002: 179; Jenson, de Sousa Santos 2000: 11], in her opinion, three different sets of states have emerged. These are the exporters of international law, able to define its content and, somewhat, impose their will in its application; importers of international law, being more passive recipients, told what to do, with uncomfortable consequences should any disobey / fall short; and, “[s]ome states” falling “in between”: “having enough strength to withstand some of the forces of localized globalism but not enough to affect globalized localism... though they may be influential in asserting their approach to international law within a particular region, geopolitical group, or linguistic community” [Roberts 2017:9].

In focusing on the five permanent members, and therefore its attendant reliance on “old” great powers”, Dr. Roberts acknowledges that her sample has its limitations. She cites, for example, the fact that China and Russia are the only non-Western states considered and then adds “but they are not representative of all non-Western states”. Additionally, she recognises that the study “focuses primarily on actors and materials from more powerful states rather than on those from less powerful states, and thus does not highlight certain important core-periphery dynamics” [Roberts 2017:38]. Shortly after, the author feels the need to insert her disclaimers: “I am not a social scientist”, she pleads. Because of this, she admits that her analysis will inevitably not satisfy those who are. Nevertheless, her aim is to nudge others, perhaps more expert in such, to “delve more deeply into some of the particulars, including through large multistate studies and in-depth individual country case studies, to confirm, correct, or add nuance to the story I tell” [Roberts 2017:48]. In a heartfelt section, Dr. Rob-

² They are: (China) Chinese University of Political Science and Law, Peking University, Renmin University, Tsinghua University, Wuhan University; (France) Aix-Marseilles Paul Cézanne, Paris I Panthéon Sorbonne, Paris II Assas, Paris Ouest Nanterre La Défense, Sciences Po Paris Law School; (Russia) Higher School of Economics, Kutafin Moscow State University of Law, Lomonosov Moscow State University, Moscow State Institute of International Relations, Saint Petersburg State University; (United Kingdom) London School of Economics, University College London, University of Cambridge, University of Oxford, Kings College London; (United States) University of Chicago, Columbia University, Harvard University, Stanford University, Yale University.

³ Article 2 of the United Nations Charter [Principles of the United Nations] begins: “The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. (1) The Organization is based on the principle of the sovereign equality of all its Members”.

erts sets out her own limitations shaped by her own personal experience: essentially an Anglo-phonetic and centric one. She then concludes the paragraph by noting: “Some people have queried whether I should disclose these facts, but being aware of and open about one’s limitations is a crucial part of this sort of analysis” [Roberts 2017:48-49]. Anthea has been quite correct to do this. What is most disappointing, in this regard, is the attitude of those who advised against such sincerity; but maybe this is more generally representative of the intellectual dishonesty of some scholarly work (and of some scholars). So, in this regard, the author’s openness is to be applauded.

Despite such honesty, the weakest chapter in the book is chapter 3, titled: “Comparing International Law Academics”. The first section (titled: “The Global Flow of Students and Ideas”) is unlikely ever to take us very far. Dr. Roberts asks: “what are the patterns that shape whether individuals from certain states are likely to cross borders to undertake tertiary studies and, if so, where they go? And how might these patterns influence the construction of international law as a transnational legal field?” [Roberts 2017:52] The pages and tables which follow appear to suggest that there is an insufficient migration, at least in terms of the five countries studied (Chinese students perhaps being the exception), that there is a continued flow from periphery to core, being in significant accord with historic links between states and usually consequent language connections (for example, students opting for overseas tertiary education from Cameroon favouring France). Not surprisingly, the flow (of students) from core to periphery is minimal. Interestingly, though, the author notes that this may be because “doing so is not associated with enhanced symbolic capital and heightened career prospects” [Roberts 2017:67].

The second section of the chapter compares the educational profiles of professors at elite law schools. However, the section, sadly, turns, somewhat, into a *non sequitur*, with remarks reflecting the fact that most of the international law academics at the elite schools in the United Kingdom had completed degrees in two or more states, when, as the author later illustrates, a significant proportion of such academics hail originally from another state [Roberts 2017:73]. Nevertheless, Dr. Roberts makes a strong point when she suggests that an education solely in one’s country of origin may render the professor, as a consequence, “less apt to have had the sorts of dislocating experiences that would make them aware of their own national assumptions, lenses and biases when ap-

proaching international law” [Roberts 2017:83-84] (and to this nationalising effect, there is, of course, the inevitable contrasting denationalising effect for those who have “studied law in multiple countries”). The third section of the chapter compares where international lawyers publish their work. It is surely to be expected that they will gravitate towards journals publishing exclusively (or at least mainly) in their native language, with an attention also to submission to journals within the core, whether that core is a national or transnational one. What should be of greater concern, however, is the point made by Giorgio Sacerdoti (an Italian international lawyer) who the author quotes [Roberts 2017:101]: namely, that “[m] any authors use only sources in their own language. For example, citations in the American Journal of International Law are almost exclusively to articles that are written in English and predominantly to articles that are authored by American writers. For me, this reveals [says Sacerdoti] a certain parochial approach and provincialism”. If, as a consequence, this encourages the development of essentially nationalised (not necessarily by language alone, but by publication placement tradition: for example, French international lawyers publishing in either French or western international law journals, even in English), then the danger is, as Kenneth Anderson has suggested (albeit in the context of U.S. international law academics), that (mindful of recent divergences on issues such as Crimea, while speaking loquaciously in the western academies of the “international community” and of the need for more international law, because it is good) the discipline “tends to march itself off a cliff, attuned only to its own song; it becomes ever more internally ‘pure’, but ever more disconnected from the world of international politics where, ultimately, it must live” [Anderson 2013]. And, as the experience of the UK international lawyer David Bethlehem demonstrates, in light of his time as a legal adviser of the UK Foreign and Commonwealth Office, such internationalised approaches may not always fit squarely with the public servants who have to, on a daily basis, work much more directly in making international law, where “states are often more driven by domestic law considerations than international law ones” [Bethlehem 2012:35].

In the final section of chapter 3 (titled: “Comparing links between Academia and Practice”), Dr. Roberts examines the possible effects those academics have on international law who are also “advisers to governments, counsel in disputes, judges and arbitrators, and members of bodies charged with developing and codifying international law, such as the In-

ternational Law Commission” [Roberts 2017:110]⁴. Unfortunately, this interesting analysis is weakened by imperfect methodology. Dr. Roberts tells us: “*As there is no easy way to track connections between academic and practice, I adopted a threefold approach. First, I looked for evidence of professional experience listed on a scholar’s academic or professional web page or curriculum vitae... [this is hardly scientific] Second, I was able to work backward to some extent by looking at the prevalence of academics from different states within discrete areas of legal practice. Thus, academics who have served as counsel before the International Court of Justice (ICJ) can be identified by searching ICJ pleadings, for example. This approach can yield some information about which academics are active in certain types of legal practice, but it cannot prove how widespread that practice is within those academics. Finally, I engaged in discussions with international law academics from the states studied to understand what forms of practice were common in those states and whether any recent shifts were occurring that might not be obvious from examining publicly available sources*” [Roberts 2017:111].

Such varied methods of analysis can do no more than indicate certain patterns, but, having established these patterns the reader is left wondering what any of this proves.

Chapter 4 compares international law textbooks and casebooks. Sensibly, Dr. Roberts limits her review to works covering public international law. International lawyers in western countries will be more familiar with a distinction between public international law and its counterpart private international law. Difficulty lies in the field of international economic law, for which some parts tend to be included in western texts on public international law (such as investment law), but others (such as international commercial arbitration) tend to be excluded [Roberts 2017:130]. Although the author does not say it, she appears to have relied on works which would, substantially, be identified as being textbooks / casebooks on public international law from a western perspective. Whilst this approach may not be entirely satisfactory to all, she acknowledges the disparity and it, of course, does not exclude a slightly different presentation (from counterparts in the east) from being made. At the end, it is no more than an edito-

rial judgement, necessary in order for the chapter to proceed.

In her analysis of textbooks and casebooks, one of the fascinating items revealed is the varied reliance on cases, both those before international courts and tribunals and those before domestic courts. The U.S. and UK works leave considerable space for consideration of cases, whereas the Russian and Chinese works give much less emphasis. Indeed, the author informs us that “none of the Chinese books cite a single domestic case” [Roberts 2017:136]. Instead, the Russian and Chinese works rely much more on an enunciation of the positive law and the discipline’s theory. It is a pity that the obvious question which this poses, namely, to what extent this emphasis (in Russian and Chinese works) is the consequence of a recent history framed much more generally on ideological grounds, is never answered. It is important that the author suggests that deeper study of these works by way of “cross-temporal analysis” is necessary, in order to identify any possible “changes over time” [Roberts 2017:139]. Later in the chapter, Dr. Roberts also addresses the general paucity of attention given to foreign cases on international law in the works reviewed. Reliance on reference to U.S. and UK case law is noted and the author suggests that, more generally, the possible reasons for omission of foreign cases “include language, core-periphery dynamics, reasoning style, and availability” [Roberts 2017:168]. Of course, other reasons may include inattention and organisational shortcomings. This failure to be comparative, or being comparative without being diverse (for example: UK works emphasising foreign cases from US courts) is, as she correctly notes, in danger of giving “the mistaken impression that the featured approach is universally adopted or relatively uncontroversial” [Roberts 2017:179]. A fine example of this is the law relating to sovereign immunity in the western literature, which charts (almost seamlessly) adherence away from the absolute to the restrictive approach, whilst giving scant attention to the fact that some noteworthy states still rely on the absolute approach (without explaining why)⁵.

Doctrinal differences are highlighted. However, for states in a process of economic transition, it is in-

⁴ Article 13(1)(a) of the UN Charter provides: “(1) The General Assembly shall initiate studies and make recommendations for the purpose of: (a) promoting international co-operation in the political field and encouraging the progressive development of international law and its codification;” Further to this, the International Law Commission was established by the General Assembly (adopting its Statute), on 21 November 1947 (under resolution 174(II)).

⁵ For example, China and Brazil.

teresting to observe the different conclusions reached, in the Russian works for example, on the status of the individual under international law: a broad spectrum of opinion is represented, from those authors who acknowledge that individuals have become subjects of international law to those who deny it. It is a pity, though, in such type of discussion that differences in western works are not indicated, as a point of comparison: for example, on matters such as the right to self-determination. The danger, therefore, is that such examples (the individual) suggest that the trajectory, in terms of the opinion of scholars, inevitably flows from west to east, rather than there being any possibility of eastern opinion (Russia and China, for example) influencing that in the west to any extent.

If Russian and Chinese works (and UK and French works, also) are highly internationalised (having great reliance on the case law and/or positive law), Dr. Roberts notes that U.S. textbooks are highly nationalised. They strongly emphasise, claims the author, “domestic case law, US executive practice, US academics and publications, and international cases and controversies involving the United States” [Roberts 2017:146]. On this point, she draws a very interesting comparison with UK works which “seem to orbit around the International Court of Justice, whereas the US ones often seem to orbit around the US Supreme Court” [Roberts 2017:148]. The author suggests that one of the reasons for this emphasis, in the U.S. works, may be due to greater reliance within the United States on foreign relations law, than within its western allies. This may be true, but it may also be because Washington (and therefore the U.S. academy) still regards itself, including in the field of international law, as special.

One may agree with Dr Roberts that International law, like any field of law is a living thing. In its modern form, from UN Charter of 1945, International law is a young discipline in comparison with national laws (for example, Russian ‘Pravda Yaroslava’ of 1054 or English ‘Magna Carta, 1215’) [Vylegzhanin, Potier 2017:17].

The developing world, including the regional powers (at least) of the future, appear to lack their own textbooks. The absence of Indian textbooks and casebooks on international law, where reliance remains with UK works, is striking. Dr. Roberts informs us: “*Their key texts do not include collections of Indian Supreme Court cases dealing with international law, even though that court has rendered numerous decisions concerning international law. Nor do their books highlight Indian*

positions on key international law debates, such as the use of force or the legitimacy and consequences of expropriation. Nor do these books spend much time exploring India’s particular experience of international law through the experience of colonization and the process of decolonization” [Roberts 2017:153-154].

Dr Roberts’ discussion on India helps to inspire her recommendation for works on international law to be published which are tailored for a particular region, such as Africa or Asia [Roberts 2017:156]. It would appear that major publishing houses are losing a trick here. To facilitate such a development they could encourage existing textbook writers from western countries to adapt their works for a regional market with the addition of a co-author. Such, in time, could develop with the emergence of a generalist literature having a distinctly regional focus. Nevertheless, on a continent such as Africa’s, it is hard to see how, for example, former colonial spheres of influence wouldn’t be perpetuated in Anglophone and Francophone Africa. Still, life, society and all its consequences shall remain, always, a work in progress.

Chapter 4 draws to a conclusion by comparing divisions between the western and non-western books (there is also a section on divisions between western books: using the 2003 Iraq War and approaches to jurisdiction as examples). To indicate differences in emphasis, Dr. Roberts uses outer space law as her example. This “usually receives its own chapter in the Russian and Chinese books but is barely mentioned in the US books and is somewhere in between in the UK and French books”. The Russian people remain justly proud for their achievement in sending the first man into space. Consequently, it is an area of international law that captures considerable attention in the country. What is interesting, and remains to be considered, is why the considerable achievements of the United States in this sector have led to the subject being, it would seem, ignored in the works. It is a pity that Dr. Roberts doesn’t tender her own view. For differences in ideology, unilateral humanitarian intervention is relied upon. This is a topic in which non-western states have been much more negative in recent decades. It can perhaps be explained by the hope and opportunity unleashed, in the West, immediately following the end of the Cold War, reflected in a range of interventions, culminating perhaps in the Iraq war and accompanied with the emergence of “responsibility to protect”. However, the author does suggest that “Russia sought to rely on humanitarian intervention to justify its actions in Georgia in 2008”

[Roberts 2017:195]⁶, which only goes to show that western governments may, increasingly, need to be more careful in what they wish for.

Thus, in a rather worrying conclusion (to the section), Dr. Roberts writes: “As these examples demonstrate, the Western and non-Western books often plainly differ in emphasis and underlying ideology. Students learning international law from these books would be likely to receive very different accounts about which issues were important, what the law was, which actions were legitimate, which actors were peace loving and progressive, and how international law might develop” [Roberts 2017:199].

The pain suffered by the United Kingdom’s decision to leave the European Union, following its referendum of 2016, is rendered all the more tragic, in chapter 5 (titled: “Patterns of Difference and Dominance”) by Dr. Roberts’ acknowledgement that, of the five countries studied, the United Kingdom’s international legal academy is, by some margin, the most international. The true success of UK academy, in this regard, is graphically described in her book. “Around 74 percent of UK international law academics at the elite schools received their first law degree from another country”, compared with 32% in the United States, 5% in France, 4% in China and 0% in Russia. Of course, with the admission of one of the authors of this essay into one of the elite schools of Russia, that figure is no longer zero. Some may indeed argue that a figure such as 74% is too high, and perhaps it is, but in maintaining such one is reminded of the argument presented (also) by soccer commentators in the United Kingdom who bemoan the lack of English players in the Premier League. If elite law schools at UK universities wish to maintain their dominance (one of the words used in the title to the chapter) and influence, then they will be required to continue to hire the best, from wherever they may originally hail: the cream will continue to rise to the top [Roberts 2017:212].

Difference can, of course, lead to comparative advantage. Dr. Roberts notes German concentration in doctrinalism (particularly their academies’ concentration on vast commentaries on international law,

including the *Max Planck Encyclopedia of International Law*). It is a pity that the author fails to note the possible influence of the reception of Roman Law during the Middle Ages⁷, the nature of the field and the extent to which Roman legal jurisprudence encourages such an approach to legal science. The comparative advantage for U.S. international lawyers in terms of an interdisciplinary awareness on account of educational paths into academe are compared with the position in the UK where a student is very likely, by the time of completion of his/her third law degree (the PhD), to have studied only law. Finally, Chinese emphasis in the fields of international economic law and the law of the sea (at the apparent expense of subjects such as human rights and the laws of war) is perhaps natural in light of the country’s march towards its own economic development (if not also dominance) and desire to cement its maritime claims in the South China Sea.

In a long section to chapter 5 (titled: “Identifying Scholarly Silos and Attempts to Connect”), the author considers two cases studies: (i) debates about Crimea’s annexation by, or reunification with, Russia; and, (ii) debates about the South China Sea arbitration⁸. Naturally, it comes as no surprise when Dr. Roberts confirms that west-east (Russia/China) scholarly opinion on these two issues has divided. What is most refreshing, however, is her willingness to acknowledge the sound bases for such opposing positions. No attempt, therefore, should be made to echo the excellent point she makes at the conclusion of the South China Sea arbitration (points which could be replicated for Crimea, also), it is enough to cite her argument in full. She writes: “*The attempts to bridge these scholarly communities and perspectives do not guarantee agreement, but reaching common ground is not necessarily the point. Western scholars need to understand the perspective of Chinese scholars on the arbitration and vice versa, if they are to gain a full appreciation of how this case is seen in different communities. It may also encourage them to reconsider some of the assumptions, arguments and narratives that are often taken for granted in Western circles. Ultimately, this dialogue is likely to lead to more serious*

⁶ For instance, on 8 August 2008, Vladimir Putin, then Russian Prime Minister, stated that the Georgian attack on the South Ossetian town of Tskhinvali and surrounding areas was “an act of aggression”, and added that Russia’s involvement was an act of providing assistance to defend against the attacking Georgian troops. See, for example: Russia accuses Georgia of Aggression as EU sends Mediators. – *Deutsche Welle*. August 9, 2008. URL: <https://www.dw.com/en/russia-accuses-georgia-of-aggression-as-eu-sends-mediators/a-3550338> (accessed date: 18.08.2019).

⁷ Reference here to three works, in particular, would have been beneficial. They are: [Kelly 1992; Robinson, Fergus, Gordon 2005; Lesaffer 2009].

⁸ The Republic of Philippines v. The People’s Republic of China. PCA Case No.2013-19. Award. 2016. URL: <https://www.pcacases.com/web/view/7> (accessed date: 18.08.2019).

critical engagement with China's jurisdictional arguments than would have happened if Chinese officials and scholars had largely developed their objections in Chinese and directed them to a Chinese audience. And the need to justify their positions to foreign audiences should make Chinese scholars more aware of how their arguments are perceived outside China and the damage to their credibility if they are viewed as mere hand-maidens of their government" [Roberts 2017:254].

The final section of chapter 5 (titled: "Identifying Patterns of Dominance") leads on the pre-eminent role that the English language has assumed in recent decades, aided by two centuries of political and economic dominance of the English-speaking world (Great Britain in the 19th century, the United States of America in the 20th), and the impact this is not only having on publishing (ever more so in the English language), but also the extent to which the common law system, traditionally having played a less dominant role than the civil, is having in the development of international legal norms and discourse. At the end of the chapter, Dr. Roberts illustrates such change (of discourse) by considering, of all things, the Jessup Moot Competition. Styled, in any instance, on a hypothetical case before the International Court of Justice, apart from the fact that the bilingual court (English and French) is rendered by its international rounds, exclusively, into the English language (it being Jessup's official language), other transformations (from reality) have been noted [Roberts 2017:274]. The author draws attention to the criticism of a French international lawyer, "who had considerable ICJ advocacy experience", who protested that Jessup is not at all 'ICJ-oriented', but, rather, is conducted as a trial before a common law court. "The judges constantly interrupt the parties' pleadings" and the international lawyer felt that "giving recommendations based on his ICJ practice seemed to be completely unhelpful to the Jessup participants, at least with respect to their oral pleadings, because they were not sufficiently common-law in style"⁹.

The final substantive chapter (6) (titled: "Disruptions Leading to a Competitive World Order") seeks to identify how existing patterns of difference and dominance may be disrupted in the future due to, amongst other things, technological innovation,

changes in domestic political preferences and shifts in geopolitical power. It is Dr. Roberts' thesis that: "As these patterns shift, so too will movement occur in the way in which communities of international lawyers are constructed and interact, and how they conceive of the field" [Roberts 2017:277]. This is an important issue. Nevertheless, it is doubtful that it warranted 42 pages, not least when, in some instances, familiar ground, at least in the field of international relations, is covered (at undue length). Similarly, familiar points (from earlier chapters in the book) are reiterated: concerning the importance for international lawyers "to develop an understanding of the international law approaches of a variety of "unlike-minded" states, as power will be disaggregated among a more diverse group of states than previously" [Roberts 2017:279]. This will thus, it is ventured, fuel "renewed interest in comparative international law" [Roberts 2017:289]: a remark which, whilst surely correct, might have been better made in the Conclusion (to the work).

To illustrate the potential rise of China and Russia in the field, their Joint Declaration of International Law (2016) is given prominence and (by point) attention¹⁰. This neatly takes the author to the second section of chapter 6: the reflection of disagreements not only in words (the Joint Declaration), but also in practice. To illustrate such, Dr. Roberts considers both China and Russia's position on unilateral humanitarian intervention (including in Syria), their joint attempts to take the lead in fields such as cybersecurity and information security, and in respect of China's interpretation of the principle of freedom of the seas. Unfortunately, the chapter then ends rather suddenly, at this point, which is a weakness.

Before drawing to a close, one additional point warrants attention. The author refers to Russia and China as "non-Western authoritarian states", in light of this classification by the Economist Intelligence Unit [Roberts 2017:5]¹¹. It would be appropriate to regard these two states as non-Western. Nevertheless, it should be acknowledged that Russia remains in a period of transition, having had to cope with the intense socio-economic changes associated with the collapse of the Socialist system, in order to establish market institutions. Dr. Roberts proves this by

⁹ The international lawyer concerned is unnamed, having communicated with the author by e-mail [Roberts 2017:274].

¹⁰ The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law. – *Ministry of Foreign Affairs of the Russian Federation*. June 25, 2016. See: http://www.mid.ru/en/foreign_policy/position_word_order/asset_publisher/6S4RuXfeYlKr/content/id/2331698 (accessed date: 18.08.2019).

¹¹ Democracy Index 2015: Democracy in an Age of Anxiety. 2016. P. 4-8. Table 2. URL: <https://www.yabiladi.com/img/content/EIU-Democracy-Index-2015.pdf> (18.08.2019).

mentioning Russia's accession to the WTO in 2012. Therefore, it might have been more accurate to describe Russia as a state in the process of moving away from authoritarianism.

The academic Adam Przeworski [Przeworski et al. 2000] defined a democracy as a system in which the ruling party usually lost the election [Sakwa 2010:52]. When a society is undergoing such structural change, a certain level of political stability is required, ad interim, in order to guarantee success for the processes of transition being undertaken. In these conditions, it becomes imperative to address the problem of political stability. This can be achieved through formation of a more "commanded" democracy. According to Yegor Gaidar, the prominent Russian liberal and former Prime Minister of Russia during the early years of Boris Yeltsin's Presidency, this type of democracy has the same main attributions as the liberal one: the opposition sits in parliament, not in prison; elections are held regularly; no mass repressions exist; the media is relatively free; and, the government can be criticised not only in private kitchens, but also in parliament, media and on the streets. There is no lifelong dictator, the political elite has agreed on mechanisms for the regular transfer of power. Examples of such regimes are well known in world history. Mexico had such a system for decades after its revolution; as did Japan after the Second World War [Gaidar 2015:726]. Even Eastern European new democracies have relied, at least to a degree, on "commanded democracy". The Baltic States, the Czech Republic and Poland are good examples. The conviction of the main participants in the political process in those states that the Communist party, which has not abandoned its past, should be excluded as a possible partner in the formation of the government, has given rise, in recent years, to strange coalitions of parties seriously differing in their political priorities [Gaidar 2015:727].

The development of events in Russia over the past two decades suggests that a significant part of the political elite considers such an organisation of the political process to be suitable and effective at least for the coming period. It is the preservation of political competition, free elections and the constitutional regime that separates "commanded" democracies from outright authoritarian regimes. The "commanded" democracy regime allows political stability to be maintained for a long time, but it may tend to become highly corrupted and not sufficiently flexible for further economic breakthroughs; whereas authoritarian regimes as well as liberal democracies may, more swiftly, be capable of carrying out deep

structural reforms. The economic reforms in Chile under Augusto Pinochet and in the UK under Margaret Thatcher appear to be obvious examples, from opposite ends of this spectrum [Gaidar 2015:728-729].

It is also clear that the catching-up countries, many of which belong to the group of young, unstable, "commanded" democracies, are facing a historic challenge today. They may well be able to use to their advantage the weakness of political lobbies representing interest groups, as well as the full breadth of political manoeuvre in order to implement the structural reforms needed to adapt to post-industrial conditions in the early stages of development; in comparison to the problems facing the leading countries, having escalated and become intractable.

It would be unfair to expect too much of a book such as this. The sub-field is still in its early days, as the author herself (on more than one occasion acknowledges). Certainly, as indicated above, too much space was dedicated to some things: where the discussion truthfully either really leads nowhere or can be easily located elsewhere. It is hard criticising a work such as this, because a tremendous amount of effort has gone into compiling it. Nevertheless, at times, a little more editorial control / supervision should have been employed. There are moments (South China Sea arbitration, for example) where the book becomes a little repetitive. Most important of all, an academic lawyer should be extremely careful before dipping his or her toe into social science. Sometimes it is better to ask the experts to chew on the data: which, in itself, would count as a success, on account of the interdisciplinarity that this emerging sub-field would therefore foster.

In light of the above paragraph, the following recommendations aim to set out not so much what the book could (also) have included, but where research should be directed next.

More emphasis needs to be placed on the extent to which undergraduate students study international law. It would be good to know if it is on the curriculum (as a separate module) and, if so, whether as a compulsory or optional subject. Information on whether additional opportunities to study the subject in more detail, with modules (most likely optional) in sub-fields of the discipline (such as international human rights law) are offered. An analysis of the curriculum of any general public international law course should then be undertaken: which topics are emphasised, which given little attention / even overlooked. Some nice charts to indicate the class contact time devoted to each topic would be useful. The same exercise can

be undertaken for Master's courses in international law. However, here emphasis should be placed on the type of courses offered (in which fields / sub-fields) and, within such courses, which modules are compulsory, optional and absent (with suggestions as to why this might be the case). Within the classroom itself, breakdown of the class contact is significant. Perhaps instruction is not confined to lectures only, but with seminars / tutorials added-in (and on what topics), plus other activities (role-playing, for example: even extra-curricular, participation in international law Moot Court competitions / Model United Nations). This may indicate, also, actually or potentially, whether class discussion is encouraged or the teaching (of international law) is more directive.

In the context of journal articles, it would be good to select a given number from each country studied and, over a period of time, to establish what subjects have been emphasised and which ignored; including whether some subjects have received a spike in interest, only to disappear once the issue has faded from the media's eye (certain patterns may be identified here across the countries studied). Such research may identify certain points of commonality (where certain issues, etc.) have been given prominence, but maybe for different reasons, in light of the conclusions reached. An additional step (reflected for monographs and edited volumes, also) is to what extent international lawyers across countries (and continents) are collaborating with each other: for example, via co-authored journal articles / monographs, and the geographical spread of the contributors of edited volumes (for example, an edited book on Ukraine, written in English and published by a western publishing house, in the context of the number of contributors from both Ukraine and Russia). Such information will provide clues as to how the (international legal) academy can be facilitated: via

the employment of foreign faculty (particularly in those countries where this is not yet so established / commonplace), visiting fellowships, the delivery of short courses (analysis of the subjects taught would itself be revealing), research projects (*ad hoc*) and the establishment of research centres (even on a virtual level). In addition, to encourage internationalisation, study on the make-up of editorial boards of prestigious international law journals needs to be conducted (including the possibility of submitting articles in foreign languages: this being especially important in English-language journals).

Dr. Roberts skillfully presents the obvious differences between international lawyers (from the permanent five) in relation to such matters as responsibility to protect / humanitarian intervention, Crimea and the South China Sea (to provide three of the more obvious examples). Next, more attention should be dedicated to less headline subjects¹². Her analysis on sovereign immunity is highly revealing. However, it would be good to observe how human rights, the sources of international law, recognition of states and governments (including the right to self-determination), and state responsibility are appraised. It may be that certain events have prompted a certain re-evaluation of these in recent years.

To conclude, Dr. Roberts deserves congratulation for what is an extremely important book. It is hard being a pioneer (not least charting the direction of future study in a sub-field). It is even harder to gain mastery of a range of matters (including in the social sciences) largely overlooked by international lawyers, to date. Perhaps, though, one thing is missing from the Conclusion. If international law were international, what would it look like, and how would we arrive there? She does not tell us. Or maybe this is not her aim, or, more fundamentally, perhaps international law need never have such an ambition.

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