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## КРЫМ И ЮЖНО-КИТАЙСКОЕ МОРЕ: СВЯЗИ И РАЗНОГЛАСИЯ СРЕДИ КИТАЙСКИХ И РОССИЙСКИХ ЮРИСТОВ-МЕЖДУНАРОДНИКОВ

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**Аннотация.** Цель: цель статьи заключается в исследовании связей и разногласий между китайскими и российскими юристами-международниками относительно двух актуальных международно-правовых проблем – ситуации вокруг полуострова Крым и споров по поводу Южно-Китайского моря.

**Методы:** для достижения поставленной цели авторы используют методы комплексного анализа международных договоров, юридической доктрины, официальных заявлений и публикаций представителей юридического сообщества в России и Китае.

**Результаты:** были выявлены сходства и различия в правовых подходах обеих сторон, а также основные принципы, которые они придерживаются в контексте данных конфликтов.

**Выводы:** в заключении статьи делаются выводы на основе представленного анализа. Отмечается, что китайские и российские юристы-международники имеют различные точки зрения на проблемы, связанные с Крымом и Южно-Китайским морем, что может отражать различия в культуре, истории и восприятии правовых норм. Эти разногласия могут требовать дальнейшего изучения и диалога между сторонами для поиска конструктивных решений данных международно-правовых вопросов.

**Ключевые слова:** международное право, юридическое сообщество, национальное законодательство, Крым, Россия, Южно-Китайское Море.

## CRIMEA AND THE SOUTH CHINA SEA: CONNECTIONS AND DISAGREEMENTS AMONG CHINESE AND RUSSIAN INTERNATIONAL LAWYERS

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**Abstract.** Purpose: the purpose of the article is to study the connections and disagreements between Chinese and Russian international lawyers regarding two pressing international legal issues - the situation around the Crimean Peninsula and disputes over the South China Sea.

**Methods:** to achieve this goal, the authors use methods of comprehensive analysis of international treaties, legal doctrine, official statements and publications of representatives of the legal community in Russia and China.

**Results:** similarities and differences in the legal approaches of both sides were identified, as well as the basic principles that they adhere to in the context of these conflicts.

**Conclusions:** the article concludes with conclusions based on the presented analysis. It is noted that Chinese and Russian international lawyers have different points of view on issues related to Crimea and the South China Sea, which may reflect differences in culture, history and perception of legal norms. These disagreements may require further study and dialogue between the parties to find constructive solutions to these international legal issues.

**Key words:** international law, legal community, national legislation, Crimea, Russia, South China Sea.

### Introduction.

When asked to reflect on the professional community of international lawyers, Oskar Schachter memorably described it as an "invisible college"

whose members are "scattered all over the world" but "involved in a continuous process of communication and cooperation." However, it is perhaps better to understand international lawyers as a "divided panel",

whose members come from different countries and regions and often form separate, although sometimes overlapping, communities with their own understanding and approaches, as well as their own views and approaches [1].

The "divided board" of international lawyers is vividly illustrated by the different reactions of Western and Russian international lawyers to the reunification of Crimea with Russia in 2014. As a rule, these two groups accepted different versions of the facts, put forward different understandings of the law and came to diametrically opposite conclusions about both the legality and legitimacy of what happened. While Western international lawyers generally condemned the "illegal annexation of Crimea by Russia," Russian international lawyers generally welcomed Crimea's exercise of self-determination and the legitimate decision to reunite with Russia.

### **Results.**

Russian international lawyers mostly publish in Russian in Russian journals, quoting other Russian scientists, whereas Western international lawyers mostly publish in English in Western publications, quoting other Western scientists. These two communities of international lawyers have found very few points of contact and common ground. They often did not communicate with each other, and even when they did, they rarely found a common language. Instead, they basically existed in two separate communities with their own understanding of law and facts. To understand how these divisions arise, it is useful to know how these different communities work [2].

Russian international lawyers often receive all their legal education in Russia, mainly using Russian-language materials. They have their own textbooks on international law, they publish the vast majority of scientific papers in Russian in Russian journals, and most of the authoritative sources they refer to are Russian. Disagreements can also be difficult, especially on issues that affect core national interests, such as Russia's relations with the near abroad. Although their subject matter is "international", this community of international lawyers is mainly national. On the other hand, only a few Western international lawyers speak Russian or study in Russia.

Western international lawyers have their own textbooks, the vast majority of their articles are published in Western publications in Western languages and primarily quote other Western scientists. Although many of these Western scholars go beyond their national communities, the broader transnational community of which they are a part tends to be dominated by figures from other Western States, or at

least educated in them. These international lawyers may not have fallen into the national bubble in the same way as their Russian counterparts, but they mostly operate in a Western context that transcends the national but is not entirely international.

A slightly different picture emerges if you look at the reaction of Chinese and Western international lawyers to the arbitration decision on the South China Sea rendered by the tribunal established in accordance with the UN Convention on the Law of the Sea (UNCLOS) in 2016 [3].

Chinese scholars were almost unanimous in saying that the tribunal had no jurisdiction, although some disagreed on whether the Chinese Government had done the right thing by refusing to appear before the tribunal. Western international lawyers were divided on whether the tribunal was right to assume jurisdiction, but were inclined to criticize China's refusal to participate in arbitration and reject China's claim that it was not bound by the decision.

### **Discussion.**

As in the case of Crimea, the divergences in the approaches of Chinese and Western international lawyers reflect many differences in their socialization processes and incentive structures. In both cases, the two international law communities faced completely different government and media coverage of the case and enjoyed different levels of academic freedom. However, one striking difference when comparing the two cases was how many Chinese international lawyers wrote about arbitration in the South China Sea in English-language publications published both in China and abroad, thereby facilitating the consideration of different points of view in a single discussion. However, there was less evidence that critical voices, whether Chinese or Western, appeared in the Chinese media.

The ability and motivation of Chinese international lawyers to bridge this gap is largely due to their language skills, education, and incentive structures. High-ranking Chinese international lawyers usually receive a second or third law degree abroad, usually in a Western state, thereby developing their language skills and transnational connections. They are given incentives to publish in foreign journals and in foreign languages. Their externally oriented propaganda was consistent with the Chinese government's worldwide public relations campaign aimed at popularizing its point of view on the South China Sea. At the same time, explicit and implicit censorship has played a role in limiting the representation of different points of view in the internal Chinese debate.

### **Conclusion.**

It is not surprising that international lawyers in different states and geopolitical regional groupings can form different epistemic communities with their own doxes and opinions. In any given community, international lawyers are likely to have been similarly influenced, for example, by where they studied, what they read, where they publish, and what professional experience they acquired. These socialization factors and incentive structures often differ from State to State in a way that reflects and reinforces disagreements within a divided college of international lawyers. The resulting relatively autonomous communities are most obvious in relation to Russia.

Myalksoo noted that international scholars in Russia are often primarily Russian international scholars in the sense that they are, as a rule, "linguistically and networkingly relatively distinct and separate from international scholars in the West" [4]. To the extent that Russian international lawyers engaged in a relatively closed debate about Crimea, they did not expose themselves to various points of view that could challenge their assumptions and arguments. They also limited their ability to effectively interact and try to influence those who hold opposing views in the West. However, similar criticism could be leveled at Western international lawyers for being heavily involved in relatively autonomous Western debates. Some commentators have expressed concern about the lack of interaction between the two scientific communities and how this disagreement could distort understanding of the debate. For example, discussing the Oxford University Press "Debate Map" on Ukraine and blogs such as *Opinio Juris*, Boris Mamluk (an American professor of international law who is a specialist on Russia) complained that they practically do not contain an analysis of the arguments of international law from the point of view of Russian lawyers and politicians, even though the Russian The blogosphere was delighted with the coverage of Crimea by international law [5].

Koo acknowledged complaints about the "pro-Western bias" of *Opinio Juris*, but explained that "the main problem is the lack of international law" [6].

He does not claim that scientists should completely separate, they should make a conscious effort to assimilate the points of view of their own and "others". "The importance of trying to look at international law and disputes through other eyes is extremely important, since awareness of the framework of others helps to relativize one's own point of view" [6].

One should not expect that participation in a general dialogue will necessarily lead to an agreement. The symposium of the Heidelberg Journal of International Law is a good example of how scientists from different traditions came together in a common forum, but could not come to an agreement. But these kinds of exchanges are still very valuable because they improve understanding of each other's positions and thus can also encourage international lawyers to challenge and perhaps revise some of their own views in a way that may not happen in their immediate communities. According to Mamluk: "In order to start this dialogue, overcoming language barriers, professional jargon and political obligations, individual scientists will need a space for cooperation so that we do not return to the positions of the cold War, when international law occupies a difficult place next to ideology and propaganda" [5].

International lawyers inevitably find themselves in such a situation. No one can understand all aspects of this field from all points of view. The best thing international lawyers can do is to better understand some of the frameworks that shape their understanding and approaches to this area, and to realize how they may be similar and different from the frameworks of others. To this end, it is important to find connections and overcome differences between different communities of international lawyers, as well as to read about international legal disputes from numerous and diverse media sources. The importance of considering international law and international disputes from different perspectives will only increase as the era of Western-led international law gives way to a period of greater competition and an increased need for cooperation between various Western and non-Western States.

#### Конфликт интересов

Не указан.

#### Рецензия

Все статьи проходят рецензирование в формате double-blind peer review (рецензенту неизвестны имя и должность автора, автору неизвестны имя и должность рецензента). Рецензия может быть предоставлена заинтересованным лицам по запросу.

#### Conflict of Interest

None declared.

#### Review

All articles are reviewed in the double-blind peer review format (the reviewer does not know the name and position of the author, the author does not know the name and position of the reviewer).

The review can be provided to interested persons upon request.

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