

Review Article

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Critical Analysis on Intercivilizational Perspective of International Law

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ABSTRACT

The intercivilizational perspective of international law prefers the diversified civilizations. However, it believes that the 1895 Treaty of Maguan or Shimonoseki between China and Japan had a tremendous significance in world history to end the Sinocentric tribute system, and resulted in the birth of global international law. This article points out that the 1895 Treaty was actually the beginning of Japanese colonies in Asia and to be an imperialistic country until defeated in the second world war. Underlying this perspective, we may find the misunderstandings on some issues such as the evolutionary Chinese civilization with the tribute system, the very beginning of modern international law with the dualistic aspects, and the Chinese attitude towards the contemporary international law. Considering the necessary reflection on the historical events and promotion of further discussion on the intercivilizational perspective of international law, this article intends to make a critical analysis on these issues accordingly.

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Introduction

The year of 2025 marks the 80th anniversary of the United Nations (UN) and the victory of the Alliance of states against the Axis powers, mainly, Nazi Germany and Imperialistic Japan. The historical review of the causes of war, in particular the World War II (WWII) is indispensable “to save succeeding generations from the scourge of war” as the UN Charter declares [1]. The head of Chinese delegation to attend the UN Conference said that “China, perhaps more than any other nation, understands the necessity for the success of this Conference; for it is universally recognized that a second world war had started when the Japanese invaded Manchuria in 1931, thus depriving China of 30,000,000 of her people and of the rich natural resources so essential to her national existence [2]. This invasion was the Japanese aggressive expansion begun in 1894 when Japan precipitated the Sino-Japanese War. By the Treaty of Maguan or Shimonoseki of 1895, Japan occupied the Chinese Taiwan as “the territories Japan has stolen from the Chinese” including Manchuria in 1931, which “shall be restored to” China in accordance with the Cairo Declaration of November, 1943 [3].

However, professor ONUMA Yasuaki (1946-2018), “a great international legal scholar” [4] believes that “The Treaty of Peace between China and Japan of 17 April 1895 (Treaty of Shimonoseki) had a tremendous significance in world history surpassing that peace settlement between two individual countries, Japan and China [4]. China not only lost the war with Japan, which had been as a member of West centric international system. Mostly importance, China had to recognize that Korea would definitely secede from the Sinocentric tribute system, a system of long-established Sinocentric world ordering. This fact had a critical importance in the establishment of international society, global society and the birth of international law as the law of such international society [5]. It seems as the core of ONUMA’s

theory of international law from an intercivilizational perspective. Professor ONUMA affirmed this viewpoint by his last work before passing away in 2018 that “the Peace Treaty between Japan and China symbolized a fundamental, even revolutionary, change in human history [6]. He added the European colonization of Africa in the late 19th century as another event of “the birth of international law as the law of global international society in the geographical sense of the term [7]. However, he does not explain what is the African civilization in the term of intercivilization between Africa and Europe.

The core of ONUMA’s intercivilizational perspective of international law takes the historical event of 1895 Sino-Japanese treaty as a landmark of birth of the global international law instead of the turning point for Japan to be an imperialistic country with colonizing the Chinese Taiwan as the first step following the European colonization, and finally to wage more aggressive wars. It was one of the root causes of the WWII. Based on this historical review, this article will make a critical analysis on the intercivilizational perspective of international law. It does not intend to cover all aspects of ONUMA’s theory. It focuses on three underlying issues: first, an evolutionary construction of the Chinese civilization; secondly, a dualistic understanding of the general international law; thirdly, the Chinese attitude towards the contemporary international law rationa of the focus is that professor ONUMA mistakes the 1895 event, which implies not only his disregard of the Japanese colonization in Asia resulted from this event, but also lack of an evolutionary construction of Chinese civilization. It is hardly disputable that the modern international law was originated from the intercourses of the European nation-states. However, it appears that professor ONUMA does not distinguish clearly the colonization brought by the Eurocentric law of nations from the equal relations under the general international law having developed since the early 17th

century in Europe to be the cornerstone of the UN. China has arisen as the second largest economy in the world and faces the challenge for her attitude towards the contemporary international law [8]. Professor ONUMA provides the readers with somehow ambiguous comments in this regard. It must be clarified. The critical analysis would be beneficial for the international legal scholars to promote the further discussion on the intercivilizational perspective of international law.

Evolutionary Construction of Chinese Civilization

Logically, for our understanding of the intercivilization in particular the encounter between the European civilization and Chinese civilization, it is one of the preconditions to know what is the Chinese civilization. Chinese civilization emerged 5000 years ago as one of the major ancient civilizations. There were five ancient civilizations of Eurasia in the time of 3500-1000 B.C.: Mesopotamia, Egypt, Crete, Indus and Shang (China). In addition, there were three major civilizations in America: the Mayan, in present-day Yucatan, Guatemala, and Honduras; the Aztec, in present-day Mexico; and Inca, stretching for 3000 miles from mid-Ecuador to mid-Chile [9]. Since then, the civilizations have been diversified without a single global center.

The Xia (Hsia) Dynasty (2100-1600 B.C.) was the first ancient Chinese dynasty followed by the Shang Dynasty (1600-1100 B.C.) [10]. Recently, Chinese archaeologists discovered more evidences of the earlier Chinese civilization traced back 3000 B.C.. In ancient time, the peoples were living separately in different areas. Their kings or emperors claimed the universal jurisdiction. For an example, Hammurabi (1704-1662 B.C.), the well-known emperor of the Babylonian Empire, by the Hammurabi Code of Law stated that “the gods of old had predestined Babylon to be supreme in the world, and predestined him to cause justice to shine in the land, to destroy the wicked and the evil, that the strong might not oppress the weak [11]. Similarly, it was a traditional idea in the ancient China that “all the world under Heaven is the realm of the emperor [12]. It reflected the power of kingship in Western Zhou (Chou) Dynasty (1100-771 B.C.). In fact, there was no intercourse between the Babylonian Empire and the Western Zhou Dynasty. These claims about “the world” were obviously limited in their territories of the empire or the dynasty.

Chinese civilization has developed without interruption. In the term of geographical evolution, it was mainly originated from the central area of Yellow River valley (in present-day, the city of Zhengzhou, Henan Province). There were more than a dozen of the primitive society sites in the north, south and west areas before Xia Dynasty [13]. It was gradually extended to the surrounded areas during the dynasties of Xia, Shang and Zhou until the Qin (Ch'in) Dynasty (221-206 B.C.) as the first centralized empire replacing the previous feudal system. The Qin Dynasty “left a deep and permanent imprint on China. ... It is only appropriate that the accidental name for China is derived from the Ch'in [14]. The territory under the Qin Empire included the North China with the Great Wall as the defensive boundary, the East China with the coast line ended at her northern and southern frontiers with Korea and Vietnam respectively, and the West China located in the original Qin domain. Chinese territory was enlarged to the minorities' areas in the west, south-west and north (in present-day, Xinjiang Weiwei Autonomous Region, Xizang Autonomous Region and Inner Mongolia Autonomous Region respectively) during the dynasties mainly of Han (206 B.C.-220), Tang (618-907), Song (960-1279), Yuan (1271-1368), Ming (1368-1644) and Qing (1644-1911). An inclusive Chinese civilization was resulted from the historical evolution with the Han majority and 55 minorities.

In the term of cultural evolution, Chinese civilization contributes the world her unique philosophy. It was coincident that Confucius (551-479 B.C.), an ancient Chinese philosopher-teacher as “the most outstanding of the “Hundred of Schools” in the Spring and Autumn Period (770-476 B.C.), left his Analects (Collected Sayings) in comparison with Plato (427-374 B.C.) in Classical Greece “as one of the shapers of the whole intellectual tradition of the West who wrote over twenty philosophical dialogues. Both great thinkers concentrated on the domestic governance, which partially demonstrated the isolated ancient civilizations. Confucius said: “Govern the people by regulations, keep order among them by chastisements, and they will flee from you, and lose all self-respect. Govern them by moral force, keep order among them by ritual and they will keep their self-respect and comes to you of their own accord [15,16]. It was the basic idea of Confucianism and the general principle of the Chinese traditional legal culture: governance by moral force and ritual as priority with supplemental penal punishment [17]. Confucianism had evolutionary developments after being adopted as the official dogma based on the suggestions of TUNG Chun-shu (179-104 B.C.), the most important thinker of Confucianism of that time. He suggested to the seventh Emperor of Western Han Dynasty (141-87 B.C.): that all those which have nothing to do with the Six Classics or the doctrine of Confucius, be abolished in order to stop their contest [17-20]. It means that the Hundred of Schools shall be abolished while authorizing Confucianism only as the official dogma in order to unify the thoughts for the unity of the central dynasty. He also emphasized the natural and social order that “within the home, he has the family relationships of father and son, elder and younger brother. Outside, he has the social relationships of ruler and subject, superior and inferior. It was codified by the Criminal Code of Tang Dynasty as a death penalty for anyone disobeying this order. Another evolutionary development was promoted by CHU Hsi (1130-1200) whose “influence in the Confucian world was comparable to that of Thomas Aquinas in Western Christendom [21]. He prioritized the rites of benevolence and reverence, saying that: “If you are a ruler, you should investigate until know benevolence. If you are a subject, you should investigate until you know reverence [22]. In summary of the evolutionary Confucianism, it was the philosophy of domestic governance about the vertical relation between the king or emperor and subjects. The Confucianism per se was not relevant to the Sinocentric tribute system.

A question arises: where did the Sinocentric tribute system come from against the above background of the evolutionary Chinese civilization? Professor ONUMA explains his theory of international law from intercivilizational perspective, saying that there was a regional “system” in East Asia: “the Sino-centric sphere of civilization existed until the nineteenth century. ... Thus, there should be no relationship based on equality between the (Chinese) emperor and other rulers, even if the latter was not actually subordinated to the former [23]. He says that “In East Asia, which today approximately covers China, Mongolia, the Korean peninsula, Japan, Taiwan and Vietnam, the Sino-centric sphere of civilization existed until the nineteenth century.” It must be noted that Taiwan is a part of China. It appears that the Sinocentric tribute system came from Chinese dealings with the foreign relations. The further questions arise: when did China treat the foreign countries in the Sinocentric way and how?

The ancient Chinese had no idea of “foreign relations” or “foreign countries” before Qin Dynasty. The word “China” (Zhongguo) in the Chinese character might be originated from the works of Chuang Tzu (369-286 B.C.), the most representative figure

of Taoist School in the period of Warring States (475-221 B.C.), referring “the Middle State” (the feudal states in the central area of Yellow River valley) [24]. It was also interpreted as “the location of royalty”. [25] At that time, the Han majority in “China” regarded the minorities of surrounded areas as “Yi” i.e., the barbarian. Those minorities incorporated with Qin Dynasty [26]. After unifying the ancient Chinese territory as described above, Qin and Han dynasties treated the peoples beyond their boundaries with the particular names such as “Hiung-nu” (Xiongnu). The Hiung-nu was the nomadic people of the north-west Asia (in present-day, Mongolia). They frequently attacked China. China had to build the Great Wall for the purpose of military defense against them. The Western Han Dynasty carried out the policy for peace through the royal marriage with Hiung-nu by the equal agreement. The historical record described that “the first Western Han Emperor, Gao Ti (256-195 B.C.) ordered his minister LIU Jin arrange the loyal marriage between a Han princess and the King of Hiung-nu [27]. This policy remained for more than 150 years (198-33 B.C.). The Sinocentric tribute system did not exist during that period of time.

Probably, the practice of “tribute” came from the commercial contacts between the Roman and Han empires by the ancient Silk Road through the overland trade routes or across Indian Ocean from Arab world to China via India and the Southeast Asia. The Roman traders in the second and third centuries A.D. reached Ch’ang-an (Sian), the capital city of Han Dynasty. “They represented themselves as official Roman envoys in order to further their ends. The Han court doubtless detected the fraud, since the imperial ‘gifts’ were mere products of nearby Southeast Asia that had been bought by the merchants. Nevertheless, the Chinese were flattered by the proffered ‘tribute’ and probably allowed the Westerners to load profitable cargoes of silk [28]. The tribute system was not an official ritual in the tradition of Chinese civilization. However, it might reflect the customs in Han Dynasty dealing with the peoples outside her boundary. The historical record described that: “If the Hiung-nu pays respect our sanctity with tributes, these goods shall be accepted with the equivalents given for them [29]. The tribute was apparently symbolic for something of good relationship in its early practices.

Song (Sung) Dynasty began to name some “foreign countries” such as Korea (Gao-li), Japan, India (Tian-zu), and also left more details about tributes. The North Korea (in-present day, a part of the Democratic People’s Republic of Korea) originally was a feudal state under the Western Zhou Dynasty in ancient China and became a part of Han and Tang dynasties again. Korea got independent status due to the chaos of the late Tang Dynasty. The Korean king (Gao) sent the envoy to China paying the tributes. The record described that “Gao-li originated as Gao-juli was a part of Ji Zhou (one of nine Zhou in Xia Dynasty, in-present day, which includes the Chinese provisions of Liaoning and Hebei). It was a feudal state of Ji Zi in Zhou Dynasty.” It did show that Korea wanted to keep the vassal relationship with China [30]. Japan paid the tributes to China, which could be traced back the Eastern Han Dynasty (25-220) [31]. It had more respects for Chinese culture instead of obedience of subject. Professor SHIN Kawashima, a distinguished scholar in East Asia study, said that “the tribute system (chaogong or jingong) meant that the ‘kings’ from the surrounding countries yearned for the emperor’s virtue, which then indicated that the rule of virtue (jiaohua) was indeed being realized. Also, as long as the rules were being observed, the dynasty did not interfere in these countries’ domestic affairs [32]. India had a good relation with the ancient China, in particular from the Han to Tang dynasties when Chinese pilgrims traveled there to learn Buddhism. Indians came to pay tributes in Tang Dynasty as the evidence of friendship with China.

A conclusion might be reached on the Sinocentric tribute system from an evolutionary examination of the historical records that there was no such system with foreign countries (it must be distinguished from Yi) in China before Song Dynasty. The Korean tribute was paid to China because of the historical linkage for 2000 years (from the dynasties of Zhou to Tang, 1100 B.C.- 907). However, it was not applied for Japan. In East Asia, the so-called Sinocentric tribute system did not exist as a single model in the term of bilateral relation between Korea and China.

Dualistic Understanding of the General International Law

For the purpose of a critical analysis on the intercivilizational perspective of international law, it is necessary to discuss what is the general international law. Professor ONUMA believes that the 1895 event was the landmark of the birth of global international law in the geographical sense of the term. It could be understood that the global or general international law is the non-regional international law. The modern international law was originated from Europe. However, it had dualistic aspects from the very beginning: the positive one as the legal instrument regulating the equal relationship between or among the sovereign nations not only in Europe but also other non-European nations; the negative one as the justification for the European colonization. Professor ONUMA remarks that the mainstream of the study on the history of international law ignored the meaning of colonization in relation to international law. “Moreover, it understood the emergence of the European sovereign states system as an event of worldwide significance from the very beginning. Lying behind such an understanding is Eurocentrism, which holds what is important for Europe should be important for the world [33]. It might be his idea of intercivilizational perspective to take the 1895 event as “a fundamental, even revolutionary, change in human history” because of its “critical importance in the establishment of international society, global society and the birth of international law as the law of such international society.” It is incorrect not only for ignorance of the 1895 event as the turning point for Japan to be an imperialistic country with colonizing the Chinese Taiwan as the first step following the European colonization, but also for the confuse of “the very beginning” about the modern international law [34].

First, the modern international law emerged with the global nature. Hugo Grotius (1583-1645) prepared his arguments for the case of Catharine in 1604, which created his book *De Iure Praedae* (On the Law of Prize). Although this was first published in its entirety only in 1864, one chapter was published in 1609, entitled *Mare Liberum* (The Freedom of Seas), at the request of the Dutch East India Company [35]. It did address “to the rulers and to the free and independent nations of Christendom”, not to the world as a whole. However, the subject matter was not limited to the intercourse between or among the European nations [36]. The sea is global by nature; the freedom of seas refers to the world as a whole. Grotius said that “I shall base my argument on the following most specific and unimpeachable axiom of the Law of Nations, called a primary rule or first principle, the spirit of which is self-evident and immutable, to wit: Every nation is free to travel to every other nation, and to trade with it.” In fact, he talked about “the Law of Nations (juris gentium)” in the global sense. Grotius resorted to “Pliny’s description of the route to the East from the ancient Roman to the islands in the Indian Ocean via the Cape of Good Hope [36]. “These island of which we speak, now have and always have had their own kings, their own government, their own laws, and their own legal systems [37]. It is believed that: “Throughout *Mare Liberum*, Grotius showed awareness of an independent political and legal system and society in Asia

with their own rules of inter-state conduct. He was particularly mindful of the long traditions of free navigation and trade in the Indian Ocean from Roman times and even earlier which had been 'uninterrupted for centuries' [38,39]. "The Grotius concept of freedom of seas gradually attracted general support, including that of Great Britain, and became a principle of customary international law [40,41]. It has been codified by the UN Convention on Law of Seas as the Article 87 "Freedom of the high seas [42]. It was no doubt that from "the very beginning" of the modern international law, for which Grotius as one of the founders. "Grotius is generally venerated as one of the fathers of International Law even if he is no longer believed to be the sole founder of this branch of jurisprudence [43]. His *Mare Liberum* implied the global nature of the general international law. As professor H. Lauterpacht comments on the Grotian contributions, "His share in the evolution of the principle the freedom of the seas needs no elaboration. In all these matters his teaching became part of international practices, wholly or in part [44]. Interestingly, professor ONUMA mentions neither *Mare Liberum* in his article nor relation to the intercivilizational perspective in his book [45,46].

Secondly, it is more important that Grotius argued the sovereign equality not only for the European nations but also for the non-European nations. He said that "The Portuguese are not sovereigns of those parts of the East Indies to which the Dutch sail, that is to say, Java, Ceylon, and many of the Moluccas. ... The inhabitants (of these islands) allow the Portuguese to trade with them, just as they allow other nations the same privilege [47]. The reason was that those islands "have had their own kings, their own government, their own laws, and their own legal systems [48]. In a word, they were sovereign nations as the European nations. The primary purpose of *Mare Liberum* was a defense for the Dutch as a de facto independent nation which would have the equal right to take part in the East Indian trade as same of other European nations such as the Portuguese. Meanwhile, Grotius treated other non-European nations as the equal trade partners [49]. It implied the sovereign equality from "the very beginning" of the modern international law as Grotius argued for.

Whether this implication is correct requires further explorations on *Mare Liberum* and *De Iure Belli ac Pacis* (On the Law of War and Peace), which also needs a discussion on *De Iure Praedae*. It is recognized that "Grotius revised and expanded the theoretical part of *De Iure Praedae* which became *De Iure Belli ac Pacis* [50]. The main theme of *De Iure Praedae* including the chapter 12 published separately with some modifications as *Mare Liberum* was the justification of the war against Portugal. The opening words of *De Iure Praedae* referred that "A situation has arisen that is truly novel, and scarcely credible to foreign observers, namely: that those men who have been so long at war with Spaniards and who have furthermore suffered the most grievous personal injuries, are debating as to whether or not, in a just war and public authorization, they can rightly despoil an exceedingly cruel enemy who has already violated the rules of international commerce [51]. It determined that Grotius created his theory of international law primarily to settle disputes with the European nations. It would be a principle of equality that "Access to all nations is open to all, not merely by the permission but by the command of the law of nations." The Dedication of *De Iure Belli ac Pacis* was written to the King of France as "the most Christian King", which indicated what was the book saying to the Christian world first. However, Grotius actually wanted to give this for the mankind as a whole [52]. The subject was the law of nations "not of particular states, but of the great society of states. And this is what called the law of nations, whenever we distinguish that term from the law of nature

[53,54]. He also made it clear that: "The law of nature, again, is unchangeable even in the sense that it cannot be changed by God. ... The law which is broader in scope than municipal law is the law of nations; that is the law which has received its obligatory force from the will of all nations, or of many nations [55]. He argued for the just war with an idea of peace. "War itself will finally conduct us to peace as its ultimate goal [56]. "Grotius paved the way for a consensual and secular concept of international law [57]. That was the "very beginning of" the modern and general international law existed already globally at the time of 1895 event [58].

The critical issues must be taken to distinguish the positive aspect of modern international law from "the very beginning" of the negative one. As the analysis developed above, Grotius contributed his theory with the positive aspect of international law as the legal instrument generally regulating the equal relationship between or among the sovereign nations not only in Europe but also other non-European nations. Grotius did not touch even the words "colony" or "colonization" in his three publications on international law, i.e., *Mare Liberum*, *De Iure Praedae* and *De Iure Belli ac Pacis*. Based on mainly the Roman laws "to regulate the relations of men among themselves", Grotius intended to create his theory of international law "in a comprehensive and systematic manner" exclusively related to the intercourse of different nations "who are not held together by a common bond of municipal law" in the time of war or peace [58-61]. They were the sovereign powers in the sense that "whose actions are not subject to the legal control of another [55]. Partially influenced by the Grotius' theory, the Treaty of Westphalia was concluded under the principle of sovereign equality. The words "sovereign equality" did not appear in this Treaty. However, the contracting parties including the Electors of Roman Empire, the other Princes and States were invited to participate "an Assembly of Plenipotentiary Ambassadors", which indicated that the participants were equal as the parties of this Treaty [62]. The plenipotentiary ambassadors or plenipotentiaries had been the representatives of sovereignty since the Treaty of Westphalia. "Only in 1648 when the Treaty of Westphalia which concluded the Thirty Years War had established a new order of relationships, however precarious at first, could the age of classical European diplomacy (the direct origin of all diplomacy) be said to have begun [63]. In regard of the system set up by the Treaty of Westphalia, "by the same token it recorded the birth of an international system based on a plurality of independent states, recognizing no superior authority over them [64]. It has been developed as the basic principle of sovereign equality as the cornerstone of the UN [65].

In contrast, one of Grotius' predecessors, Franciscus de Victoria (Francois de Vitoria, 1480-1546) "as one of the founders of International Law" presented his lectures on *De Indis* (On the Indians) and *De Iure Belli* (On the Law of War) in 1532, "in which he examined the titled which the Spaniards might allege to justify their domination in the New World [66-67]. He described that "The whole of this controversy and discussion was started on account of the aborigines of the New World, commonly called Indians, who came forty years ago into the power of Spaniards, not having been previously known to our world [68]. In the view of Victoria, the issue arisen from the Spanish discovery of the New World was the power of the Spaniards over the Indians. Whether the Spanish power or sovereignty would be extended to the New World depended on the answer "concerning the lawfulness or unlawfulness of which men were doubtful [69]. What would be the applicable law? As a professor of theology, Victoria said that "I accordingly assert that in doubtful matters a man is bound to seek the advice of those whom the Church has appointed

for that purpose, such as prelates, preachers, and confessors, who are people skilled in divine and human law [70]. Victoria provided his advices like those people. After supporting that “the Indian aborigines are or were true owners” of the New World and rejecting seven titles by which “the Spaniards could have come into possession” of the New World, Victoria developed his arguments for “the lawful titles whereby the aborigines of America could have come into the power of Spain [71-73]. Primarily, Victoria believed that “The Spaniards have a right to travel into the lands in question and to sojourn there, provided they do not harm to the natives, and the natives may not prevent them. Proof of this may in the first place be derived from the law of nations (*jus gentium*), ... Therefore it is lawful [74]. Victoria further argued that : “But when the Indians deny the Spaniards their right under the law of nations they do them a wrong. Therefore, if it be necessary, in order to preserve their right, that they should go to war, they may lawfully do so [75]. That was “the very beginning” of the European colonies overseas under *jus gentium* by discovering the New World and staying there with necessary using the force. This negative aspect of the modern international law was developed by many international legal scholars in West. For an example, Emmerich de Vattel, a great Swiss jurist in 18th century, explained that the in the New World, the aborigines’ “uncertain occupancy of these vast regions cannot be held as a real and lawful taking of possession; and when the Nations of Europe, which are too confined at home, come upon lands which the savages have no special need of and are making no present and continuous use of, they may lawful take possession of them and establish colonies in them [76]. This European perspective of “lawfulness” was the Eurocentric international law which “has proven wrong because it is incomplete. Not only does it generally ignore the violence, ruthlessness, and arrogance which accompanied the dissemination of Western rules, and the destruction of other legal cultures in which that dissemination resulted [77]. It must be distinguished from the positive aspect of the modern international law as discussed above.

Apparently, professor ONUMA recognizes that “In any event, the very question whether Grotius, Vitoria or Vattel should be regarded as the father of international law assumes that international law was born in modern Europe, and is confined within the perspective of Eurocentric modernity [78]. However, it seems that he dismisses the positive aspect of the modern international law originated in Europe, in particular by Grotius’ contributions of *Mare Liberum*, *De Iure Praedae* and *De Iure Belli ac Pacis*. It is true that Victoria as one of fathers of modern international made his theory to justify the European colonization overseas. It was definitively the negative aspect of Eurocentric perspective. It might be a conclusion that the modern international law emerged from the very beginning inherently as the global system mainly regulating the intercourse of European nations but also applying for non-European nations such as Java, Ceylon, and many of the Moluccas with “their own kings, their own government, their own laws, and their own legal systems [79]. This positive aspect finally became the principle of sovereign equality for the general international law under the UN Charter. Meanwhile, the European colonization was also resulted from the very beginning of the geographical discovery globally. Thus, the 1895 event was not the birth of global international law as professor ONUMA argues for, instead of the first step of Japan following the European colonization in Asia.

The Chinese Attitude Towards the Contemporary International Law

Primarily, the critical analysis of the intercivilizational perspective

of international law is limited on the historical review of the evolutionary Chinese civilization and the dualistic aspects of general international law. However, professor ONUMA comments on the Chinese attitude towards the contemporary international law, which is related to so called the “resorting to the idea of Sino-centric system of world ordering [80]. It must be clarified with a necessary review of the modern Chinese history and a response for such ambiguous comments.

The term of international law did not appear in any Chinese official documents or literatures before the first Opium War when LIN Zexu (LIU Tse-hsu, 1785-1850), as the Special Imperial Commissioner of Qing Dynasty to deal with the issues of the “foreign opium” in 1839 [81]. In accordance with the historical record of Qing Dynasty, LIN Zexu ordered to translate some passages of E. de Vattel’s *Le Droit des gens* (1758, the Law of Nations or the Principles of Natural Law) entitled *Geguo Luli* (the Illustrations of Law in Different Nations) for foreign affairs. WEI Yuan (1749-1857), a famous scholar of Qing Dynasty, edited a multiple volumes of book *Haiguo Tuzhi* in 1847, which including a translation of some passages from Vattel’s *Le Droit des gens* [82]. It was the first using of the Chinese words with the essential meanings of international law. It is generally acknowledged that Marting’s translation of Wheaton’s *Elements of International Law* under the title *Wangguo Gongfa* was published in 1864 as the first systematic introduction of modern international law into China [83]. It was the time for China facing the unprejudicial challenges from the European expansion and colonization or semi-colonization. As Judge OWADA Hisashi, the first President of the Asian Society of International Law, said that in many cases, the European expansion “took the form of colonial domination, to which many of the Asian nations fell victim. Thus, the Philippines became a colony of the Spaniards; Indonesia was also colonized by the Dutch; India, Malaya, and Burma came under British rule; and Indochina fell under French domination. China also became a target of the colonial appetite [84]. It is true.

The history demonstrates that China had to know what was the international law in the late Qing Dynasty. Actually, it was the negative aspect of international law for the European colonization expanded to Asia. China held an unwilling attitude towards it from the very beginning of her encounter with such international law. Taking the first unequal treaty *Treaty of Nanjing* of 1842 as an example, by its provisions, China was required to pay Britain a large indemnity, cede Hong Kong Island to the British, and increase number of treaty ports where the British could trade and reside from one (Canton) to five including Shanghai [85]. More unequal treaties were followed including *Treaty of Maguan* (Shimonoseki) of 1895.

Chinese attitude towards the international law was changed by the WWII which began when the Japanese invaded Manchuria in 1931. Chinese fighting against the Japanese invasion was supported by the states of the Anti-Axis powers Coalition. China was invited to participate the Moscow Conference with the United States, United Kingdom and the Soviet Union, which issued the Declaration of Four Nations on General Security (Moscow Declaration) on 30 October 1943 [86]. The Moscow Declaration expressly declared that a general international organization would be “based on the principle of the sovereign equality of all peace-loving states”. [87]It reflected the positive aspect of general international law as Hans Kelsen had commented that “the solution of the problem of a durable peace can be sought only within the framework of international law that is to say, by an organization

[88]. China actively evolved the drafting of the UN Charter by two contributions: the Tentative Chinese Proposals for a General International Organization submitted to the Dumbarton Oaks Conversation and the Chinese Proposals on Dumbarton Oaks Proposals for the UN Conference on behalf of four sponsoring nations [89,90].

The People's Republic of China (PRC, China) was established on 1 October 1949 with a Proclamation of the PRC Central Government by Chairman MAO Zedong (MAO Tse-tung) who declared that "the said government is the only legitimate government representing all peoples of the PRC. The said government is willing to establish the diplomatic relations with any foreign governments who are willing to comply with the principles of equality, mutual benefits and mutual respect of territorial sovereignty [91]. It was the attitude of the PRC towards the international law under the UN Charter after the change of her previous central government even though the PRC "as the only legitimate representatives of China to the United Nations" restored her seat in the UN on 25 October 1971 [92].

China wants to coexist peacefully with any foreign countries, that is the basic attitude towards the contemporary international law [93]. In June of 1954, China jointly enunciated the Five Principles of Coexistence (the Five Principles) with India and Myanmar, i.e., (i) mutual respect for each other's territorial integrity and sovereignty, (ii) mutual non-aggression, (iii) mutual non-interference in each other's internal affairs, (iv) equality and cooperation for mutual benefit, and (v) peaceful co-existence [94]. The Five Principles were constitutionalized in China as the basic foreign policy. The preamble of the PRC Constitution adopted on 20 September 1954 included a statement that "China is holding the policy to establish and develop the diplomatic relations with any countries in accordance with the principles of equality, mutual benefits, mutual respect the sovereignty and territorial integrity [95]. It also incorporated subsequently in the Ten Principles of Bandung at the historical Asian-African Conference in 1955 and the UN Declaration on Principles of International Law in 1970 [96]. China has developed as the second largest economy in the world in particular after implementing the open-door policy since later 1970s. However, China continues her foreign policy based on the Five Principles. In addition, China put forward her idea of peaceful rise "as a part of its role in fostering peace and development of the world", and promotes the building a human community with a shared future "which essentially derived from the contemporary international law [97-99].

The historical review above could be a basis to clarify professor ONUMA's ambiguous comments on Chinese attitude towards the contemporary international law. He said that: "After having become the second largest economic power in the early twenty-first century, China has been making strong claims, some of which seem to be difficult to legitimize under current international law. The claim over the area within what China calls 'nine-dash (or dotted) lines' in the South China Sea is an example. ... Has China begun to seek to revise the current West-centric international legal order by resorting to the idea of Sino-centric system of world ordering, which prevailed in East Asia during the pre-modern period? Chinese dynasties were so prominent and influential for a long time and Sino-centric is deeply rooted in the Chinese mind [100]. Arguably, in the opinion of professor ONUMA, China has arisen economically, and is seeking to revive a Sino-centric world. It is a misunderstanding of Chinese development. It might be traced back the year of 1974 when the Chinese leader DENG Xiaoping addressed at the Sixth Special Session of the UN General Assembly on Chinese foreign policy. It was a historical event

after restoration of China's seat for the PRC as the only legitimate representatives of China to the UN. Mr. DENG reaffirmed the Five Principles and emphasized that "China is a developing country belonging the third world. China has no intention to be a superpower and seek the hegemony in the world." After a half century passed, it remains unchanged nowadays [101].

Referring the particular issue of the South China Sea, China has the territorial sovereignty over the islands within the nine-dash (or dotted) lines. It is widely recognized that the dotted lines were drawn in an official map by the Chinese government in 1947 when all territories stolen by Japan from the Chinese including the South China Sea islands were restored to China after the WWII. The Ministry of Interior of Chinese government published the Location Map of the South China Sea Islands with eleven "dotted line" started at the land boundary between China and Vietnam to the coast area of eastern Taiwan including a list of 172 geographical names, in both Chinese and English, for the islands in the South China Sea [102]. There was no disputes arisen between China and any foreign countries in the time of Chinese claims of territorial sovereignty over the islands within the dotted lines in the South China Sea. It is irrelevant to "the idea of Sino-centric system of world ordering" as professor ONUMA comments. The evolutionary construction of Chinese civilization shows that the inclusive Chinese civilization was resulted from the historical evolution with the Han majority and 55 minorities living in the Chinese territories including Taiwan and the South China Sea islands. The Chinese sovereignty over the South China Sea islands is fully consistent with the current international law. Some principles and rules of international law might be drawn from the international adjudication. For an example, the Island of Palmas Case ruled that "The title of discovery, ... under the most favorable and most extensive interpretation, exist only as an inchoate title, as a claim to establish sovereignty by effective occupation. An inchoate title however cannot prevail over a definite title founded on continuous and peaceful display of sovereignty. The title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law [103]. It may be controversial on who discovered the South China Sea islands, which depends on historical evidences of capability to reach those islands in ancient time and to carry out the occupation effectively. However, it is undisputable that Chinese claim of sovereignty over those islands in 1947 was not challenged by any foreign countries until 1970s. It must be noted that "the land dominates the sea" as a rule of international law shall be applicable to settle any disputes of maritime boundaries between China and any foreign countries in the South China Sea [104]. In 2006, China made a reservation on the disputes settlement under the UN Convention on the Law of the Sea: "The Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention [105]. It excludes any judicial or arbitral jurisdiction over the disputes of territory, maritime boundary with China as a party. China prefers the bilateral negotiation to settle those disputes with any foreign countries under the Article 33 of the UN Charter, which provides that "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice[106]. Overall, the Chinese position on the South China Sea reflects her positive attitude towards the contemporary international law [107].

Conclusion

The intercivilizational perspective of international law appears to argue for the diversified civilizations and to criticize the Eurocentric domination of international law. However, the core of the argument depends on the significance of the 1895 event as the landmark “in the establishment of international society as a global society and the birth of international law as the law of such international society [107]. It implies that the 1895 event contributed positively to promote an intercivilizational legal system globally. In fact, it was the negative turning point of Japan following the European colonization in Asia, and finally going to the WWII. Judge OWADA said that “It cannot be denied that this attempt on the part of Japan led her later into disillusionment and eventually into a blind alley which contributed to the subsequent course of history of Japan with tragic results [108]. It was tragic not only for Japanese, but also for Asian peoples and human being as a whole. Considering the necessity to reflect the historical lesson, this article makes a critical analysis. It has focused on three issues underlying professor ONUMA’s misinterpretation of the 1895 event with the following conclusions.

First, it traces back the historical evolution of the Chinese civilization from the ancient time to the later 19th century. During the period of pre-Qin Dynasty (3000-221 B.C.), Chinese civilization was emerged from the central area of Yellow River valley, and developed as a unified state with a central government, a multinationals society and a unique culture of “Hundred of Schools” including Confucianism as the philosophy of domestic governance about the vertical relation between the king or emperor and subjects. There was no Sinocentric tribute system in Qin Dynasty. The practice of “tribute” probably came from the commercial contacts due to the ancient Silk Road, and gradually got the cultural and political senses after Han Dynasty. Korea had the relation with China by paying tribute because of the historical linkage for 2000 years, but no such relation with Japan. By the Treaty of Maguan or Shimonoseki of 1895, Korea had to stop the traditional relation with China. The Japanese colonization was implemented subsequently. It was not the birth of international law in the sense of intercivilization, but the first step of Japanese colonization in Asia as the European colonization already did in Asia and other areas in the world.

Secondly, it distinguishes two aspects of the modern international law originated in European continent: the positive one based on Grotius’ theory of international law and the Peace of Westphalia under the principle of sovereign equality and the negative one created by Victoria’s justification of European colonization in the New World with the Eurocentrism. The UN was established by the Alliance of states against the Axis powers eighty years ago on behalf of human being as a whole for justice. The UN Charter provides the basic principle of equal sovereignty. The international law of the post-WWII was developed from the Grotius tradition and the Westphalia model. It is not reasonable to ignore the merits of positive aspect of the modern international law while criticizing the Eurocentric colonization. The intercivilizational perspective of international law does not make such distinction. Assuming the 1895 event to end the Sinocentric tribute system in East Asia with the significance of interncivilizational law of nations established globally, it disregards the positive aspect of Grotius tradition on international law from the very beginning with the principle of sovereign equality not only for the intercourse of European nations, but also applying for the non-European nations, at least for the nations in the South East Asia when Dutch wanted to do business with them in early 17th century as *Mare Liberum* argued

for. This dismissal might be one of reasons for professor ONUMA mistakes the 1895 event which begun with “the subsequent course of history of Japan with tragic results [109].

Thirdly, Chinese attitude towards the international law has been changed fundamentally since China became one of the four sponsoring nations to establish the UN. Chinese had to know what was the international law before the first Opium War (1839-1842) [98]. It was the negative aspect of Eurocentric international law with colonization. China had to accepted many unequal treaties resulted in foreign aggressions until the WWII in which Chinese fighting against the Japanese invasion was a part of the global Alliance of states against the Axis powers. China actively participated the drafting of the UN Charter based on the principle of sovereign equality. China respects the contemporary international law under the UN Charter even though the PRC as the only legitimate representatives of China to the UN restored her seat in 1971 [99]. Chinese attitude towards the contemporary international law has been mostly reflected by her foreign policy of the Five Principles since early 1950s and reaffirmed by her idea to build a human community with a shared future more recently [100]. China has no intention to revive a Sino-centric world as professor ONUMA comments. Chinese position on the South China Sea stands firmly with the general international law. It includes the Cairo Declaration on restoration of “the territories Japan has stolen from the Chinese”. After the WWII, China published the location map of the islands within the dotted line of the South China Sea indicating that those islands are Chinese territory [101-102]. Any disputes related to maritime boundary shall be settled in accordance with the customary rule—“the land dominates the sea” through the peaceful means including bilateral negotiation under the Article 33 of the UN Charter. It is not an example as professor ONUMA comments “to be difficult to legitimize under current international law [109,110].

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