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International Lawyers in Post-Soviet Eurasia: Decoding the Divisibility

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Abstract

This article examines the epistemic community of post-Soviet Eurasian international lawyers who interact, publish, teach and practise international law, predominantly in Russia and in Russian, forming a Russia-centred divisible college. By decoding the unknown group, the article presents its defining characteristics, including the link between membership in a Russia-centred epistemic community and the members' potential Russlandversteher *(Russia-apologist) behaviour. Analysing how post-Soviet Eurasian international lawyers act within different social arrangements (legal education, academic publication and practice of law), the article demonstrates how and to what extent such divisibility is symbolized in their political actorship.*

1 Introduction: The Life and Times of Lawyers in Post-Soviet Eurasian Space

Russian approaches to international law have been predominantly examined from the analytical viewpoint of how distant or close they are to Eurocentric international law.[1] Just as Western international lawyers are guilty of Western, and not national, parochialism,[2] the parochialism of international lawyers in Russia is not always national but something that transcends Russia *per se*, where legal scholars can act as

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[1] This type of analysis is not new. In 1916, Pierre Mikhailow represented how civilized Russia was compared to some European powers. See P. Mikhailow, *Le Rôle de la Russie Dans le Droit International* (1916). For more recent discussion, see L. Mälksoo, *Russian Approaches to International Law* (2015).

[2] A. Roberts, 'The Parochialism of Western Cosmopolitanism in a Competitive World Order', *EJIL: Talk!* (7 February 2018), available at www.ejiltalk.org/the-parochialism-of-western-cosmopolitanism-in-an-emerging-competitive-world-order/.

le porte-parole of Orthodox Christianity[3] or even Eurasian *superethnos.*[4] Therefore, when Western lawyers speak about 'Russian approaches', something geographically and culturally more extensive is understood – a space of illiberal thought, where Russia-apologetic (*Russlandversteher*) behaviour is about affirming not only Russia's foreign policy choices but also its opposition to West-centrism. The genesis of the term *Russlandversteher* dates back to the 18th century, reflecting the height of German Russophile attitudes.[5] In the post-1945 period, national guilt about Germany's conduct in World War II intensified the gravitation of Germans towards Russia, and '[t]he combination of idealism and business interests gave rise to an influential strain of pragmatism known as *Ostpolitik*, and to the emergence of a slew of influential experts and observers who catered to this approach'.[6] Translating juristically, Estonian jurist Lauri Mälksoo contends that the *Russlandversteher*'s attitude in international law amounts to a moral justification of Russia's foreign policy behaviour, apart from solely striving to comprehend it.[7] What is interesting is that Mälksoo, who resides in Estonia and mainly writes for a Western audience, described the term in order for it not to be regarded as one written by a *Russlandversteher.*

Following Russia's invasion of Ukraine in February 2022, the Russian International Law Association (*Rossiyskaya Assotsiatsiya Mezhdunarodnogo Prava* [RAMP]) issued a statement that defended Russia's 'special military operation'.[8] The RAMP's communiqué has been a scholarly justification of President Vladimir Putin's *Ius bellum dicendi*,[9] televised on 24 February 2022. The RAMP is a regionally spatialized transnational body whose membership reaches both Russian and other post-Soviet Eurasian academic circles.[10] The association, which has little impact on global and regional legal discourse making, is a tiny but essential empirical testimonial of the narrative this article endeavours to scrutinize. In post-Soviet Eurasia – following Anthea Roberts' scepticism about the universal nature of the transnational legal field[11] – one can observe the existence of a post-Soviet Eurasian divisible college of international lawyers under Russia's sphere of influence, where scholars and practitioners from the region

3 Mälksoo, *supra* note 1, at 195.

4 On Eurasianist discourse in Russian approaches to international law, see Simonyan, 'Regional International Law Revisited: A Eurasian International Law', 31 *Michigan State International Law Review* (2023) 283, at 342ff.

5 Sakson, 'Współczesna niemiecka geopolityka: ciągłość i zmiana', 55(4) *Myśl Ekonomiczna i Polityczna* (2016) 356, at 359.

6 Shevtsova, 'Is the Time of the Russlandversteher Over?', *The American Interest* (2016), available at www.the-american-interest.com/2016/03/16/is-the-time-of-the-russlandversteher-over/.

7 Mälksoo, 'Post-Soviet Eurasia, *Uti Possidetis* and the Clash between Universal and Russian-Led Regional Understandings of International Law', 53 *New York University Journal of International Law and Politics* (*NYUJILP*) (2021) 787, at 792.

8 Russian Association of International Law (RAMP), 'Zayavleniye Prezidiuma Rossiyskoy Assotsiatsii Mezhdunarodnogo Prava' [Statement of the Presidium of the Russian Association of International Law], 2022, available at www.ilarb.ru/html/news/2022/4032022.pdf.

9 Latin maxim for 'the right to declare war'.

10 For example, the statute of the association stipulates that it is open both for Russian scholars and counterparts from the Commonwealth of Independent States (CIS). See 'Struktura RAMP' [Structure of RAIL], available at www.ilarb.ru/html/structure.html.

11 See generally A. Roberts, *Is International Law International?* (2017).

constantly interact, publish and teach, predominantly in Russian and in Russia.[12] There are several ways of dividing this divisible college.[13] Within this article, however, a 'divisible college' is acknowledged as an epistemic community of international lawyers that practise and research international law within social arrangements that are closed, unknown or hard to access by others and where unison between members is inherently based on a common historical past, a shared knowledge of competence, including a common language, and a common style of reasoning.

Post-Soviet Eurasia, in this article, is understood as a group of states that are part of Russia-led regional organizations (the Eurasian Economic Union [EAEU] and the Collective Security Treaty Organization [CSTO]): Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan. In several instances, in order to be comprehensive, I have widened my observation by including the activity of all post-Soviet states and their lawyers, with the exception of the three Baltic states (Estonia, Latvia and Lithuania) since the legal standing of the Baltic trio in regard to several international law issues (state succession, recognition) was different compared to other post-Soviet Eurasian states after the collapse of the Soviet Union.[14] I have observed the everyday life of international lawyers residing in this region. Nevertheless, in post-Soviet Eurasia, international law as a set of different discourses is not homogenous regarding lawyers' actorship. There is a liberal versus illiberal,[15] government versus academic and emigree versus local lawyers divide across all post-Soviet Eurasian states, which ultimately reflects differing predispositions and agendas regarding international law by different groups.[16] However, I aim to focus on the group of lawyers united under social arrangements dominated by Russia.

What does being a member of a Russia-centred epistemic community of international lawyers mean? Apart from profound individual-level interactions between post-Soviet Eurasian lawyers in different social arrangements, the post-Soviet Eurasian states minimally engage with counter-Russia politics[17] yet closely cooperate with Russia within the EAEU and the CSTO. These systematic interactions may erroneously portray post-Soviet Eurasian lawyers, at least intuitively, as Russia apologists. But to prevent further generalization on this connection, this article demonstrates the defining characteristics of being a member of a Russia-centred divisible college. Therefore, the intention of this article is to enable my Western colleagues to be cognizant of lawyers' everyday lives in the post-Soviet Eurasian space.

The article is constructed as follows. In the first section, I examine the structure of the invisible college as it was propagated by Oscar Schachter in 1977,[18] concentrating

[12] See section 4.

[13] Roberts, *supra* note 11, at 2.

[14] See, e.g., J. Klabbers *et al.* (eds), *State Practice Regarding State Succession and Issues of Recognition: On Behalf of: Max Planck Institute for Comparative Public Law and International Law, Germany; T.M.C. Asser Institute, The Netherlands; Erik Castrén Institute of International Law and Human Rights, Finland* (2023).

[15] On the liberal versus liberal divide in Russian scholarship, see, e.g., Mälksoo, *supra* note 1, at 86–93.

[16] See specificities of emigree international lawyers in Butler, 'Russian International Lawyers in Emigration: The First Generation', 3 *Journal of the History of International Law* (2001) 235.

[17] See section 4.A.

[18] Schachter, 'Invisible College of International Lawyers', 72 *Northwestern University Law Review* (1977) 217.

on its inclusivity drawbacks and modalities of how different marginalized groups have been accommodated within this epistemic community in the post-1991 period. In the second section, I further elaborate on the marginalization issue that determines the everyday life of some scholars within transnational settings. Benefiting from a recent symposium organized in *Opinio Juris* about classism in the invisible college of international lawyers,[19] I spatialize the marginalization process and delineate how post-Soviet Eurasian lawyers are positioned therein. In the final section, I observe various social arrangements where the divisibility of post-Soviet international lawyers is manifested. First, I observe how the state practice of post-Soviet Eurasian countries is evolving on the question of Ukraine both in international institutions (United Nations [UN] General Assembly, UN Human Rights Council) and in regional institutions (the CSTO, the EAEU). The choice to concentrate on the events in Ukraine and not others (for example, Nagorno-Karabakh, Transnistria, South Ossetia and Abkhazia) is instrumental. The Ukraine case has gained considerable scholarly and political interest in the West and beyond. This is not the same with other cases, which in turn illustrates the dark sides of the invisible college regarding inclusivity, marginalization and hypocrisy. Further, I observe the publication patterns of post-Soviet Eurasian scholars and students' transnational flows. Instead of quantifying how much post-Soviet Eurasian scholars publish (or do not publish) in Russian, Western or national journals, I assess the content of what they publish, what sort of argumentative patterns they follow and their overall publication strategy. I have observed their publication patterns for the last five years in Russian international law journals (2018–2022) where post-Soviet lawyers generally publish and sit on editorial boards – the *Evraziisky Yuridichesky Zhurnal* (*Eurasian Law Journal* [*ELJ*]) and the *Moskovsky Zhurnal Mezhdunarodnogo Pravo* (*Moscow Journal of International Law* [*MJIL*]) – and in reputable Western publications such as the *European Journal of International Law* (*EJIL*) and the *American Journal of International Law* (*AJIL*) (especially recent symposiums on Ukraine), as well as monographs published by Cambridge University Press for the last three years. The observation of 172 articles published in 80 volumes shows that approximately 22 articles by non-Russian post-Soviet Eurasian scholars were published in the *ELJ* (12 volumes per year) and the *MJIL* (four volumes per year) on public international law and Eurasian integration law.[20] To locate institutional affiliation, I manually checked the information about the authors. The manual method may have some insignificant inaccuracy, but the selections here are for illustration rather than comprehensive and systematic engagement with existing data. I finalize this section of the article by observing general patterns of how, where and to what extent post-Soviet Eurasian lawyers practise international law to understand the relationship between marginalization, divisibility

[19] C. Carpenter and D. Kourtis, 'The Visible C of the Invisible College: Classism and the International Legal Profession – Symposium Introduction', *Opinio Juris* (19 December 2022), available at https://opiniojuris.org/2022/12/19/the-visible-c-of-the-invisible-college-classism-and-the-international-legal-profession-symposium-introduction/.

[20] See notes 161–166, 182 below. The *Eurasian Law Journal* (*ELJ*) has a broader thematic focus but differentiates articles along subject lines. Accordingly, only articles under the rubric 'public international law' and 'Eurasian integration law' were examined.

and practice. I conclude the article by offering arguments about the specifics of the divisibility of post-Soviet Eurasian international lawyers.

2 Structuring a Modern Invisible College of International Lawyers: Eternal Students or Divisible College?

In 1977, leading American international legal scholar Oscar Schachter rendered how and to what extent international lawyers form an invisible college with the professional vocation to contribute to a joint intellectual enterprise.[21] Whom did he have in mind when speaking about this invisible college? Did he also speak about Soviet international lawyers?[22] The clarification needed on the exact composition arrived later when, in 2002, Schachter avowed that the group he was talking about mainly was a bunch of liberal democrats, 'a fairly small community made up almost entirely of upper-class, European, French-speaking, male lawyers who knew or were related to each other'.[23] Within this clarification, Soviet jurist Gregory Tunkin was hardly considered a member of the invisible college, although Tunkin, in his diaries, mentioned several meetings with Schachter at least from 1961 onwards and close cooperation on several issues, most notably when Schachter helped Tunkin to secure the election of Soviet internationalist Anatoly P. Movchan (from the Soviet Institute of Law and State) to the Institute of International Law.[24] But direct contacts of this kind were random and inconsistent, especially when Soviet lawyers from other parts of the Soviet Union than the Russian Soviet Federative Socialist Republic were concerned. Direct links between socialist and capitalist international lawyers intensified only in reference to *perestroika*, thanks to W.E. Butler.[25] However, even in these direct encounters, the institutional representation of international lawyers from the Soviet Union was limited to the Soviet Institute of Law and State in Moscow.[26] Even if, with the national awakening, lawyers from the Soviet periphery (especially from Soviet

[21] Schachter, *supra* note 18, at 217.

[22] On the differences between Soviet and Western conceptions of international law, see G. Tunkin, *Theory of International Law* (1974).

[23] Clincy, 'An Interview with Oscar Schachter', 95 *Proceedings of the American Society of International Law Annual Meeting* (2001) 18, at 18.

[24] On this occasion, Gregory Tunkin noted, 'Schachter (USA) also helped and said that he would explain to the Americans who Movchan was'. See G. Tunkin, *The Tunkin Diary and Lectures: The Diary and Collected Lectures of G.I. Tunkin at the Hague Academy of International Law a Book by William E. Butler and Vladimir G. Tunkin*, 11 vols (2012).

[25] Up until the 1970s, direct contacts between Soviet and Western international lawyers were minimal, such as the 1973–1975 collaboration between the American Society of International Law and the Soviet Association of International Law. However, in 1983, thanks to William Butler, a cooperation agreement was signed between University College London and the Soviet Institute of State and Law, and contacts between socialist and capitalist international lawyers became periodic. See W.E. Butler and V.N. Kudriavetsev (eds), *Comparative Law and Legal System: Historical and Socio-Legal Perspectives* (1985), at ix–x. Close to perestroika, more intense cooperation between Socialist and Western lawyers was developed. See, e.g., R.A. Mullerson, 'Sources of International Law: New Tendencies in Soviet Thinking', 83 *American Journal of International Law* (*AJIL*) (1989) 494, at 495.

[26] In joint scholarly works, the Soviet side was mostly represented by the same institution, whereas international legal scholars from other republics of Soviet Union were less represented. See, e.g., W.E. Butler, *Perestroika and International Law* (1990); Butler and Kudriavetsev, *supra* note 25, at ix–x.

Uzbekistan) had developed outstanding contributions in comparative law,[27] their participation in the epistemic community of international lawyers was minimal.[28] An international lawyer from Soviet Yerevan, Baku or Almaty was an exotic participant in such an invisible college, primarily due to the deprivation of independent statehood during the Soviet times.

Considering the argument mentioned earlier, the inclusion of this or that scholar in an invisible college is also linked with decolonization – in this case, desovietization – because representing the genuine interest of an independent jurisdiction can make the scholar more visible. Thus, the independence of post-Soviet Eurasian states in 1991 opened the door for marginalized post-Soviet Eurasian international lawyers to enter the invisible college to raise their nation-specific concerns. Already in 2000, Schachter would claim that 'large bodies of people who felt that their own identities had been ignored or trampled on now felt that they were part of the international community and their voices were heard'.[29] The invisible college thus reached post-Soviet Eurasia,[30] but desovietization alone was not enough to revitalize the voices of the marginalized groups. Recognition of civilizational equality of these new members seemed equally important because racialization – exclusion and inclusion of different groups – has remained part of the capitalist structure of international law.[31] According to Robert Knox, in contemporary times, the standard of civilization – an inherent structure of capitalist international law – has materialized also in spatial forms through the artificially defined *uti possedetis juris* principle in a decolonized – for instance, African – space.[32]

In this form, the spatiality of exclusion and inclusion – therefore, recognition of civilizational equality – in post-Soviet space has been evidenced through a differentiated recognition of the state identities of newly independent states. When, for the 12 post-Soviet republics – despite resistance by some of them[33] – the *uti-possedetis* principle and transition to a democratic state became a precondition for the recognition of their statehood,[34] Western states recognized the state continuity doctrine

[27] Boris Mamlyuk and Ugo Mattei claim that '[m]ore recent research reveals that a distinct Soviet comparative law style emerged in the 1960s as a result of attempts by Uzbek jurists to apply a comparative method to legal systems of the fifteen Soviet republics'. See Mamlyuk and Mattei, 'Comparative International Law', 36 *Brooklyn Journal of International Law* (2011) 385, at 447–448.

[28] Close to perestroika, a number of scholars from the Soviet periphery became influential in the Soviet state. To name a few, there was Rein Müllerson, Levan Aleksidze, Yuri Barseghov and Rais Tuzmukhamedov.

[29] Quoted in Clincy, *supra* note 23, at 19.

[30] See, e.g., Kozheurov, 'Yuristy-Mezhdunarodniki Kak Professional'noye Soobshchestvo [International Lawyers as a Professional Community]', 12 *Courier of Kutafin Moscow State Law University* (2021) 182.

[31] Knox, 'International Law, Race, and Capitalism: A Marxist Perspective', 117 *AJIL Unbound* (2023) 55, at 59–60.

[32] *Ibid.*, at 59.

[33] All three South Caucasian republics in the post-1991 period linked their independence to their 1918–1920 statehood. Georgia even claimed that its independence was an act of restoration of state independence. See Armenian Declaration of Independence, 1990; Constitutional Act on the State Independence of the Republic of Azerbaijan, 1991; Act of Restoration of State Independence of Georgia, 1991.

[34] This was how the recognition of post-Soviet Eurasian states was secured by Western powers. According to the European Community's guidelines, not only should those states have had the conventional characteristic of statehood according to the Montevideo Convention, but they also should have been democratic

of the Baltic states as part of the construction of their state identity.[35] As claimed by Van Elsuwege, '[t]he memory of prewar statehood, as an essential element of Baltic national consciousness, has become fundamental to the idea of a Baltic "return to Europe" ... [and] it serves as an argument in favour of accession to major European organizations such as the EU and NATO'.[36] This was also noted in the differentiated legal policy of the European Union (EU) concerning the Baltic and other post-Soviet states.[37] Institutionally, therefore, if today the Baltic scholars are more visible in the epistemic community of international lawyers, it is to some degree thanks to the recognition of their state continuity doctrine as a legal manifestation of a 'return to Europe' or a 'return to civilization'. In contrast, in 1991, the statehood of other post-Soviet Eurasian states was constructed upon laws and practices imposed by the West that aimed to transform ex-socialist states to bourgeois ones where newly independent states ought to learn and appropriate the universals of the Western conception of the nation state.[38] In this process, these states and their elites (lawyers included) were recognized as 'learners' rather than equal partners, within the Schachterian invisible college.[39] Additionally, their marginal standing was further aggravated due to being a 'torn civilisation'.[40] As noted by Samuel Huntington, 'people of a torn country agree who they are but disagree on which civilization is properly their civilization'.[41] In 1991, post-Soviet Eurasian states were integrated into the modern *Jus Publicum Europaeum*. However, this integration came with a misunderstanding of Western universals and has incentivized estrangement and self-distancing sentiments.[42]

Apart from this spatially visible exclusion and inclusion, legal scholars have recalled their scepticism about the civilizational unity of members of an invisible college even within liberal democratic Western states by approaching differences that hinged on geopolitical, geographical and jurisprudential reasons.[43] In one respect, a clash became visible between continental lawyers and their Anglo-American common law counterparts within the Western world. At the other extreme, criticism has been constructed upon the global Westernization of international law and, against this background, the marginalization of different civilizational types in constructing a

and should have adhered to *uti possidetis* principle. See 'European Community: Declaration on Yugoslavia and on the Guidelines on the Recognition of New States', 31 *International Legal Materials* (1992) 1485; Montevideo Convention on the Rights and Duties of States 1933, 165 LNTS 19.

35 For more about the Baltic states' continuity doctrine, see L. Mälksoo, *Illegal Annexation and State Continuity: The Case of the Incorporation of the Baltic States by the USSR* (2003).

36 Elsuwege, 'State Continuity and Its Consequences: The Case of the Baltic States', 16 *Leiden Journal of International Law* (*LJIL*) (2003) 377, at 381.

37 Elsuwege, 'The Baltic States on the Road to EU Accession: Opportunities and Challenges', 2 *European Foreign Affairs Review* (2002) 171, at 171–173.

38 Chimni, 'An Outline of a Marxist Course on Public International Law', 17 *LJIL* (2004) 1, at 6.

39 On the globalization of contemporary legal consciousness in Central Asia and its shortcomings, see Rasulov, 'Central Asia and the Globalisation of the Contemporary Legal Consciousness', 25 *Law and Critique* (2014) 163.

40 S. Huntington, *The Clash of Civilizations and the Remaking of World Order* (2011), at 43–44, 171–174.

41 *Ibid.*, at 138.

42 See, e.g., Rasulov, *supra* note 39.

43 Morrison, 'German Scholars in the Invisible College of International Lawyers', 50 *German Yearbook of International Law* (2007) 445, at 448–449.

trans-civilizationally valid international law.[44] Structurally, the last-mentioned critique manifested the political agenda to raise the visibility of scholars from the global South in this patriarchalized, racialized and Westernized form of international law. Nevertheless, the visibility of this school only gained recognition after several English-language articles and manuscripts appeared in elite publishing houses – Cambridge and Oxford University Presses – by B.S. Chimni, Antony Anghie and others.[45] Akbar Rasulov notes that the institutional stabilization of marginalized voices alongside mainstream legal scholarship is almost always thanks to academic capital accumulation that is possible through West-centred funding agencies, universities and publication houses.[46]

Subject to these institutional discrepancies, the participation of others from the global South – apart from the tiny group of adherents to Third World Approaches to International Law[47] – remained minimal, always in the role of the eternal student within the Western elitist invisible college, as Anne Peters puts it.[48] The comparative international law framework propagated by Anthea Roberts and others aimed to correct this structural challenge by establishing a constructivist approach to visualizing the differences in the interpretation of international law by different national and regional actors.[49] However, in their early empirical examinations, they remained preoccupied with non-marginalized spaces.[50] This mismatch between the political agenda and the empirical reality of comparative international law has been captured by Jean d'Aspremont, who described the framework as 'thought-colonizing' based on a pre-comparative tertium 'whereby an "other" is unilaterally defined, silenced, and spoken on behalf of'.[51] Acknowledging this structural shortcoming, the comparative international law framework still allows the detection of divisibility within the epistemic community of international lawyers where 'each [group comes] with its distinct socializing forces'.[52]

[44] See Y. Ōnuma, *International Law in a Transcivilizational World* (2017).

[45] See, e.g., A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); B.S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, 2017); Mutua, 'What Is TWAIL?', 94 *Proceedings of the ASIL Annual Meeting* (2000) 31.

[46] Rasulov, 'What Is Critique?: Towards a Sociology of Disciplinary Heterodoxy in Contemporary International Law', in A. Nollkaemper *et al.* (eds), *International Law as a Profession* (2017) 189, at 219–221.

[47] For more on the development of Third World Approaches to International Law (TWAIL) scholarship, see Anghie, 'Rethinking International Law: A TWAIL Retrospective', *European Journal of International Law* (*EJIL*) (2023) 7.

[48] Peters, 'Introduction to the Series: Trialogical International Law', in C.J. Tams, D. Tladi and M.E. O'Connell (eds), *Self-Defence against Non-State Actors*, vol. 1 (2019) xi, at xix.

[49] A. Roberts *et al.* (eds), 'Conceptualizing Comparative International Law', in A. Roberts (ed), *Comparative International Law* (OUP 2018).

[50] In her earlier pioneering work on comparative international law, 'Is International Law International', for instance, Anthea Roberts observed only five permanent member states of the UN Security Council. See Roberts, *supra* note 11.

[51] D'Aspremont, 'Comparativism and Colonizing Thinking in International Law', 57 *Canadian Yearbook of International Law* (2020) 1, at 6–15.

[52] Roberts, *supra* note 11, at 8.

Language is one of the building blocks in constructing such divisibility as 'people, materials, and ideas move more easily within linguistic communities'.[53] Therefore, what is understood as 'international' is subjectivized within socialization tools employed by epistemic community members, including linguistic competence.[54] It then follows that the universality of an invisible college would mean jointly shared socialization arrangements and unrestrained verbal communication between members of that social milieu. The spatial reach of languages in constructing the epistemic community of international lawyers, however, varies from language to language. Notably, some languages – predominantly English – have reached a universal domination, while others – Russian, in post-Soviet Eurasia, for example – have reached a regional domination and finally some – such as Mandarin[55] or Hindu – have only reached a national domination.[56] In the contemporary order, due to the growing role of English as the lingua franca of international law, its spatial boundaries unbracket and subsequently collide with competitor languages. The collision, apart from being linguistic and cultural, is also reflected jurisprudentially by the gradual domination of Anglo-Americanization in international legal reasoning.[57] It is then natural that some languages oppose such universalization. For instance, as Russian legal scholar Vladislav Tolstykh claims, '[t]he Russian language, like other great languages, is a natural obstacle to the further expansion of the English language, and therefore a guarantor of cultural and political diversity'.[58]

Persistent objectors to that universalization, as termed by Martti Koskenniemi,[59] evolve within that clash and naturally attempt to securitize their traditional space of language domination[60] by also institutionalizing social arrangements between a hegemonic centre and a post-independent periphery.[61] The repercussions of these persistent objections by Russia and France have reached regions where their languages still preserve a dominant cultural and communicative role,[62] hampering the

[53] *Ibid.*, at 3.

[54] *Ibid.*, at 10.

[55] The economic expansion of China may affect the internationalization of Mandarin.

[56] Focsaneanu, 'Les langues comme moyen d'expression du droit international', 16 *Annuaire Français de Droit International* (1970) 256, at 266.

[57] See, e.g., Bohlander, 'Language, Culture, Legal Traditions, and International Criminal Justice', 12 *Journal of International Criminal Justice* (2014) 491; Vogt, 'Anglo-Internationalisation of Law and Language: English as the Language of Law', 29 *International Legal Practitioner* (2004) 112.

[58] Tolstykh, 'Yazik I Mezhdunarodnoe Pravo [Language and International Law]', 2 *Zhurnal Rossiyskiy Yuridichesky Zhurnal* (2013) 44, at 62.

[59] Martti Koskenniemi framed the persistent objectors phenomenon in the foreword written for Anthea Roberts' book 'Is International Law International?'. See Roberts, *supra* note 11, at xiv.

[60] Historically, these language domination spaces can be measured differently. Therefore, the post-1945 and post-1991 decolonization process also shapes the geographical reach of Russian and French languages.

[61] The French government founded l'Organisation Internationale de la Francophonie (International Organization of la Francophonie), while the Russian government established Russkiy Dom (Russian House) – two obvious examples of institutionalization of these socialization efforts to promote the French and Russian languages in specific peripheries, albeit the Organisation Internationale de la Francophonie aims to also have a (quasi-)universal reach.

[62] Both organizations described in note 61 above are active in these 'peripheral' states and actively promote the Russian and French languages there.

intellectual community of international lawyers. As Roberts claims about this process, '[w]hether an international lawyer's language is (or languages are) national, regional, or international, or privileged or dominant, is key to whether that lawyer can communicate across borders and, if so, with whom. These factors also govern his or her ability to access and engage with various transnational forums, such as international organizations and transnational journals'.[63] After 1991, the spatial universalization of the Schachterian invisible college seemed probable. Meanwhile, the structural shortcomings that determined the exclusivist criteria of membership therein left marginalized groups with two choices: to take the role of eternal students, as mentioned by Peters,[64] or to attempt to realize their potential in regional epistemic communities as a panacea for their ostracism in the invisible college as a way of confirming, rather than overcoming, the marginality.[65] One of the reasons to favour the latter option is classism in the institutional settings of international law.

3 Classism and International Law: Marginalized Post-Soviet Eurasians

Even if Russia and France are persistent objectors to the indiscriminate expansion of English as the lingua franca of international law, they are 'too big'[66] to be excluded from transnational discourses as the circulation of their ideas is still well diffused in different milieus.[67] The exclusive standing of a Russian and French epistemic community of lawyers has different explanations, although some patterns overlap.[68] Their belonging to structures that are unique to lawyers from the Great Power states makes them similar in transnational settings as their legal imagination traditionally has shaped international power structures.[69] In this context, states and their nationals who – for economic, political, cultural or whatever other reasons – are disadvantaged bear the effects of marginalization. This unfortunate state of affairs affirms international law's class-based structure,[70] making law an elitist profession.[71] Consequently, 'the debate on who is an international legal scholar today is, among

63 Roberts, *supra* note 11, at 47.

64 Peters, *supra* note 48, at xix.

65 For more on marginalization and the choice to become a lawyer, see D. Kennedy and M. Koskenniemi, *Of Law and the World: Critical Conversations on Power, History, and Political Economy* (2023), at 16.

66 In this regard, big is by no means only a spatial consideration but also a capitalist construct based on wealth accumulation.

67 As noted earlier, even in comparative international law frameworks, the French and Russian approaches to international law have been included more thoroughly than other marginalized actors. See, e.g., Mälksoo, 'Case Law in Russian Approaches to International Law', in A. Roberts (ed.), *Comparative International Law* (2018) 337; Cohen, 'The Continuing Impact of French Legal Culture on the International Court of Justice', in Roberts, *ibid.*, at 181.

68 Differences and similarities in Roberts, *supra* note 11.

69 For more on legal imagination and lawyers' role therein, see M. Koskenniemi, *To the Uttermost Parts of the Earth: Legal Imagination and International Power 1300–1870* (2021).

70 Chimni, 'Prolegomena to a Class Approach to International Law', 21 *EJIL* (2010) 57.

71 Jones, 'Is Law an "Elitist" Profession? Discuss', *Wall Street Journal* (22 July 2009), available at www.wsj.com/articles/BL-LB-16651.

other things, a debate about gender, race, and ethnicity, as much as class'.[72] The class problem not only affects the everyday life of an international lawyer, including the ease of participating in international law events,[73] completing unpaid internships[74] or working in international legal institutions that are predominantly based in the global North, but also institutionalizes the marginalized groups along divisible lines.

If we perceive this class discussion from a post-Soviet Eurasian regional perspective, the divisibility argument can be unfolded. In one respect, 'the economic context is not beneficial for mass international educational exchange [for post-Soviet Eurasians]. Accordingly, very few legal scholars graduate from Western universities, and most of those who do are from wealthy or middle-class families'.[75] The choice to pursue studies in international law abroad is linked to structural problems with legal training in post-Soviet Eurasian space. As claimed by Kyrgyz scholar Julia Emtseva,[76] in Kyrgyzstan – but I should also note in all post-Soviet Eurasian space – 'international law tracks in law schools are heavily marginalized, which is also reflected in the decision-making of the ministries of education when they decide on required training for law students'.[77] One reason for such marginalization is the very foundations of post-Soviet Eurasian legal education that systematically lack structures (such as competent scholars who master English as a new lingua franca or a rich legal literature) that would enhance the study and practice of international law at home.[78] Affected by these structural disadvantages, some scholars from post-Soviet Eurasia get their education from Western universities, albeit in marginal numbers.[79] Lamentably, too, most of them do not return to their country of citizenship, remaining in Western academia or workspaces and not necessarily speaking about post-Soviet Eurasian approaches to international law.[80] The small minority who do return, conditioned upon the scarcity of economic resources and even sometimes for political reasons, do not acquire visibility within

[72] Carpenter and Kourtis, *supra* note 19.

[73] S. Amin, 'Symposium on Classism and the International Legal Profession: Third Tier, Third World', *Opinio Juris* (22 December 2022), available at https://opiniojuris.org/2022/12/22/symposium-on-classism-and-the-international-legal-profession-third-tier-third-world/.

[74] R. Kapoor, 'Symposium on Classism and the International Legal Profession: National Inequities and International Lawyering – Putting a Spotlight on Unpaid Internships', *Opinio Juris* (19 December 2022), available at https://opiniojuris.org/2022/12/19/symposium-on-classism-and-the-international-legal-profession-national-inequities-and-international-lawyering-putting-a-spotlight-on-unpaid-internships/.

[75] A. Simonyan, 'Symposium on Classism and the International Legal Profession: The Marginality of Post-Proletarian Societies in the Processes of Reconstruction of (Their) International Law', *Opinio Juris* (20 December 2022), available at https://opiniojuris.org/2022/12/20/symposium-on-classism-and-the-international-legal-profession-the-marginality-of-post-proletarian-societies-in-the-processes-of-reconstruction-of-their-international-law/.

[76] Currently, Emtseva is based at the Max Planck Institute in Heidelberg.

[77] Emtseva, 'Practicing Reflexivity in International Law: Running a Never-Ending Race to Catch Up with the Western International Lawyers', 23 *German Law Journal* (2022) 756, at 761–762.

[78] Simonyan, *supra* note 75.

[79] About the transnational flows of post-Soviet Eurasian scholars, see section 4.B.1.

[80] Simonyan, *supra* note 75.

transnational milieus.[81] On this issue, Sergey Sayapin observes that 'it is not clear whether Central Asian academics who work outside Central Asia still subjectively associate themselves with the region, or whether they already consider themselves "foreign" scholars with Central Asian origins'.[82]

As a result, two realities are juxtaposed in post-Soviet Eurasia. Some scholars residing in this region with Western education and linguistic capacity remain marginally visible in the Schachterian invisible college of international lawyers subject to class injustices. From another perspective – possibly for reasons of self-esteem – many scholars join a 'separate epistemological community' of Russian-speaking international law pundits 'tied together by a common language, history, and geographical space in the former USSR'.[83] These self-esteem considerations are foremost linked to the fact that '[s]cholars of international law, are, just like other professional academics, called upon to demonstrate that their work has some sort of social significance or practical utility'.[84] On this psychological conundrum, David Kennedy rightly captured that sometimes the choice to become a lawyer from the peripheral place is not necessarily to overcome the marginalization but to confirm it.[85] If the choice to confirm marginalization is a proper evaluation, it remains a political choice and shapes legal scholars' value judgements.[86] Ultimately, when a group of marginalized scholars, to show the social significance of their scholarship, form a separate regional epistemic community, they remain political actors. In post-Soviet Eurasia, this epistemic community is formed under Russia's sphere of influence. The subsequent sections aim to consider if there is a link between patronage and the scholars' value judgements.

4 Post-Soviet Eurasia and the Divisible College of International Lawyers: Divisible without a Political Agenda

Donald Barry and Harold Berman have made the following claim: 'In the Soviet Union … the study and practice of law [has not been] generally a path to success in politics and in industry.'[87] The preoccupations of Soviet (international) lawyers as an elite group can be characterized two-dimensionally. First, from 1930 onwards, they synchronized the study and practice of law with Communist party politics.[88] Second, they directly attacked their colleagues to secure state support, including funding and even personal security.[89] Consequently, for a very long time, Western academia considered

81 *Ibid.*
82 Sayapin, 'International Law in Central Asia: Practices and Doctrines', 47 *Review of Central and East European Law* (2022) 322, at 330.
83 Mälksoo, *supra* note 1, at 87.
84 Peters, 'International Legal Scholarship under Challenge', in A. Nollkaemper *et al.* (eds), *International Law as a Profession* (2017) 117, at 142.
85 Kennedy and Koskenniemi, *supra* note 65, at 16.
86 Peters, *supra* note 84, at 128–129.
87 Barry and Berman, 'The Soviet Legal Profession', 82 *Harvard Law Review* (1968) 1, at 6.
88 E. Huskey, *Russian Lawyers and the Soviet State* (2016), at 5–10.
89 One can simply analyse the criticism against Pashukanis in those lines. See Hazard, 'Pashukanis Is No Traitor', 51 *AJIL* (1957) 385.

Soviet international lawyers as a marginal group within the Soviet establishment, at least regarding their role in foreign policy-making.[90] In the post-Soviet period, after the constitution of a market economy and democratic institutions, an elitization of law faculties took place in post-Soviet Eurasia; ergo, the contemporary post-Soviet lawyer is more intensely engaged in political and economic decision-making than ever before – that is, nonetheless, in a domestic context. In the transnational environment, post-Soviet Eurasian lawyers remain marginalized – under-represented in Western publishing houses, rarely participating in conferences organized in the West and barely practising public international law.[91] These circumstances incite the advent of a divisible college and the following subsections deconstruct the patterns of its metamorphosis.

A *Post-Soviet Eurasian States and the Conflict in Ukraine: State Practice in the United Nations and Regional Organizations*

The state practice of post-Soviet Eurasian states on the Russia-Ukraine conflict is persuasive as it deviates from the Western firm approach that solemnly condemns Russia's actions in Ukraine. In 2014, after the annexation of Crimea, post-Soviet Eurasian states were not engrossed in joining in political and legal condemnation of Russia's actions. Accordingly, Tajikistan, Kyrgyzstan and Turkmenistan did not vote for the UN General Assembly resolution that condemned Russia's annexation of Crimea, Uzbekistan and Kazakhstan abstained from voting for this same resolution, while Belarus and Armenia voted against it.[92] A similar practice has persisted after Russia's 2022 invasion of Ukraine. In the post-2022 period, post-Soviet Eurasian states – except for Belarus, which voted against it – have abstained from all resolutions referring to the 'humanitarian consequences of the aggression against Ukraine',[93] 'the territorial integrity of Ukraine', 'defending the principles of the Charter of the United Nations'[94] and 'furtherance of remedy and reparation for aggression against Ukraine'.[95] These voting patterns display a keen attentiveness on the part of post-Soviet Eurasian states when a resolution involves core principles of international law – namely, sovereignty, territorial integrity, intervention – or the question of reparations. On that basis, in the post-2022 period, post-Soviet states, by remaining unaligned, have tried to escape direct validation of Russia's violations. The instrumental choice not to align with Russia (with the exception of Belarus) reveals tacit resistance against possible attacks on their sovereignty and territorial integrity by Russia by also balancing their position in the Russia-West rivalry. As their further activity in the UN

[90] Butler, 'American Research on Soviet Approaches to Public International Law', 70 *Columbia Law Review* (1970) 218, at 222, 230–233.

[91] As Anthony D'Amato concludes in his famous article, when it comes to international law there is a case of market undervaluation. However, the possible solutions that he proposes are not projectable over post-Soviet space. See D'Amato, 'Public International Law as a Career', 1 *American University International Law Review* (1986) 5.

[92] GA Res. 68/262, 27 March 2014.

[93] GA Res. ES-11/2, 24 March 2022.

[94] GA Res. ES-11/4, 12 October 2022.

[95] GA Res. ES-11/5, 14 November 2022.

bodies has epitomized, human rights-centrism or humanitarian concerns – with some reservations – has played an insignificant role in their voting patterns.

Since the annexation of Crimea, post-Soviet Eurasian states have been susceptible to challenging allegations of human rights violations by Russia in the Ukrainian conflict.[96] Patterns, however, have become inconsistent in the post-2022 period.[97] More recently, in 2022, all post-Soviet Eurasian states except Armenia – which abstained – voted against Resolution ES-11/3 on the suspension of Russia's membership in the Human Rights Council.[98] Uzbekistan, Kazakhstan and Kyrgyzstan justified their vote on the basis of a lack of effective investigation by Russia of cases of human rights violations in Ukraine.[99] The representative of Kyrgyzstan claimed that the resolution was politically driven,[100] while the representative of Belarus further claimed that 'to exclude Russia is a direct contribution to destroying the Human Rights Council itself and consolidating the breakdown of the human rights system under the auspices of the United Nations, which was already reflected in the colossal rise in recent weeks of racist attitudes, xenophobia and other forms of discrimination based on language, culture, religion or other characteristics, which we are seeing in Western countries'.[101]

State practice in regional forums differs regarding the conflict in Ukraine. Within regional organizations – particularly in the CSTO – voices are more supportive towards Russia's foreign policy. Of course, the marginalized role of the CSTO, the Commonwealth of Independent States (CIS) and the EAEU in the international legal system is one pretext for the preference of the post-Soviet Eurasian states to affirm one legal agenda in a regional organization and act differently at the international level. In this regard, Viktor Kirilenko avouches that, in the regional practice of post-Soviet Eurasian states within the CIS, it is common to implement only those international treaties that fit the interest of the state, displaying continuity with the state practice of member states of the Council for Mutual Economic Assistance established by the Soviet Union.[102] In the post-Soviet period, ostensibly, these patterns are also observable in other regional organizations, such as the CSTO and the EAEU. For instance, the failure of post-Soviet Eurasian states to observe the principles of international law within their own region – in particular, *pacta sunt servanda*, seen most recently regarding Armenia's demand for military support based on Article 4 of the Collective

[96] Post-Soviet Eurasian states – Armenia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan – have almost always voted against questions of treating human rights violations in the Ukrainian conflict; only Tajikistan abstained in two cases. See GA Res. 71/205, 19 December 2016; GA Res. 72/190, 19 December 2017; GA Res. 73/262, 22 December 2018; GA Res. 75/192, 16 December 2020.

[97] In 2022, only Kazakhstan and Belarus voted against the resolution treating the situation of human rights in Crimea. Kyrgyzstan, Tajikistan and Armenia abstained. See, e.g., GA Res. 77/229, 15 December 2022.

[98] GA Res. ES-11/3, 7 April 2022.

[99] UN General Assembly, *Official Records*, 11th Emergency Special Session, 10th Plenary Meeting, Doc. A/ES-11/PV.10 (2022).

[100] *Ibid.*, at 20.

[101] *Ibid.*, at 13.

[102] Kirilenko, 'Pravo Sodruzhestva Nezavisimykh Gosudarstv v Sisteme Mezhdunarodnogo Prava [Law of the Commonwealth of Independent States in the System of International Law]', 3 *Moscow Journal of International Law* (*MJIL*) (2003) 109, at 125.

Security Treaty[103] – hinges on the assurance that whatever happens in the CSTO has greater political repercussions than a mere legal commitment.

In the post-2022 period, the CSTO has adopted several declarations that have aligned with Russia's argumentation behind the invasion of Ukraine. In one resolution, the post-Soviet Eurasian states affirmed the Russian line on the indivisibility of security.[104] Accordingly, post-Soviet Eurasian states adopted declarations on acting together to pass UN resolutions against neo-Nazism and its glorification[105] and on the disagreement of the CSTO member states with the Organization for Security and Co-operation in Europe's decision not to invite Russia to the ministerial summit.[106] However, in all these cases, the declarations omitted direct reference to the conflict in Ukraine. With respect to the EAEU, although Russia strove to counter international sanctions through the legal channels of the EAEU,[107] so far no measure has been

[103] In September 2022, Azerbaijan violated the territorial integrity of the Republic of Armenia by shelling civilian infrastructures in Armenia and occupying several territories. The violation by Azerbaijan was noted by several actors, including France, the USA and the European Union (EU) to varying degrees. In the same month, Armenia applied to the Collective Security Treaty Organization (CSTO) by invoking Article 4 of the Collective Security Treaty to get military support to counter the Azerbaijani invasion. With no or partial explanation, the CSTO member states rejected Armenia's demand, failing to honour their international obligations. See Collective, Security Treaty, signed in Tashkent, 15 May 1992, last amended in 2010, Art. 4. For international response to the Armenia-Azerbaijan border conflicts, see Ministère de l'Europe et des Affaires étrangères, 'Armenia – Azerbaijan', *France Diplomacy: Ministry for Europe and Foreign Affairs* (13 September 2022), available at www.diplomatie.gouv.fr/en/country-files/armenia/news/article/armenia-azerbaijan-13-september-2022; 'Calling for the Immediate Cessation of Hostilities between Armenia and Azerbaijan', *United States Department of State* (12 September 2022), available at www.state.gov/calling-for-the-immediate-cessation-of-hostilities-between-armenia-and-azerbaijan/; H. Buniatian, 'EU Official Accuses Azerbaijan of Aggression against Armenia', *Azatutyun* (12:59:36Z) (5 October 2022), available at www.azatutyun.am/a/32066652.html; 'Pashinyan: Azerbaijan Has Established Control over a Certain Territory' (14 September 2022), available at https://news.am/eng/news/720173.html; D. Boffey, 'Putin's Grip on Regional Allies Loosens Again after Armenia Snub', *The Guardian* (25 November 2022), available at www.theguardian.com/world/2022/nov/25/putinsgrip-regional-allies-loosen-again-after-armenia-snub-csto-summit.

[104] CSTO, 'Zayavleniye Ministrov Inostrannykh D'el Gosudarstv – Chlenov Organizatsii Dogovora O Kollektivnoy Bezopasnosti Po Voprosam Mezhdunarodnoy Bezopasnosti' [Statement by the Ministers of Foreign Affairs of the Member States of the Collective Security Treaty Organization on Matters of International Security], odkb-csto.org (10 June 2022), available at https://odkb-csto.org/documents/statements/zayavlenie-ministrov-inostrannykh-del%20ODKB/#loaded.

[105] CSTO, 'Sovmestnoye Zayavleniye Gosudarstv – Chlenov Odkb Pri Prinyatii Proyekta Rezolyutsii Tret'yego Komiteta 77-Y Sessii General'noy Assamblei Oon 'Bor'ba S Geroizatsiyey Natsizma I Neonatsizma' [Joint Statement of the CSTO Member States during Adoption of the Draft Resolution of the Third Committee of the 77th Session of the UN General Assembly 'Combating the Glorification of Nazism and Neo-Nazism'] odkb-csto.org (9 November 2022), available at https://odkb-csto.org/documents/statements/sovmestnoe-zayavlenie-gosudarstv-chlenov-odkb-pri-prinyatii-proekta-rezolyutsii-tretego-komiteta-77-/#loaded.

[106] CSTO, 'Zayavleniye Ministrov Inostrannykh Del Respubliki Armeniya, Respubliki Belarus, Respubliki Kazakhstan, Kyrgyzskoy Respubliki, Rossiyskoy Federatsii, Respubliki Tadzhikistan' [Statement by the Ministers of Foreign Affairs of the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan], odkb-csto.org (24 November 2022), available at https://odkb-csto.org/documents/statements/zayavlenie-ministrov%20inostrannykh-del-respubliki-armeniya-respubliki-belarus-respubliki-kazakhstan-k/#loaded.

[107] In his Eurasian Economic Union (EAEU) Supreme Council speech, President Vladimir Putin observed: 'Our close integration has become a worthy response to such global problems as poverty, climate change,

legally adopted at the supranational level that would allow Russia or Belarus to bypass the sanctions.[108]

What is the relevance of state practice for the discussion of divisibility? It is claimed that 'state practice varies even in similar international law fora because of differences in legal culture, language, and mentality'.[109] However, the legal culture or validity of this or that norm therein is not self-evident but passes through social validation channels.[110] In that process, the choices of legal scholars 'are influenced by their social context, including their particular professional role'.[111] If divisibility characterizes the professional role of a post-Soviet Eurasian international lawyer, then diverging state practice of post-Soviet Eurasian states should be reflected in social arrangements (legal education, law reviews and place of practice) that institutionalize that divisibility.[112] Therefore, through an examination of the functional milieus where post-Soviet Eurasian scholars carry out their activity, the causation between state practice and divisibility can be elucidated. This approach does not mean that the works of legal scholars are 'juris-generative' but reaffirms legal scholars' structural and systematic role in identifying the norms of international law.[113]

B *Formation of Divisible College in Post-Soviet Eurasian Academia and Publications*

The following subsections define the general characteristics of divisibility. However, a significant reservation should be made before examining general patterns. Even if structural considerations and historical legacy may incentivize post-Soviet Eurasian divisibility, the states and peoples of post-Soviet Eurasia differ in multiple facets. Central Asian states and Azerbaijan have Muslim-majority populations, their language is Turkic[114]

shortage of resources, including the most important of them – food, water, energy – which have become aggravated due to the pandemic and the application of illegitimate sanctions by a number of countries.' See Putin, 'Obrashcheniye Predsedatelya Vysshego Yevraziyskogo Ekonomicheskogo Soveta, Prezidenta Rossiyskoy Federatsii Vladimira Putina K Glavam Gosudarstv – Chlenov Yeaes Po Sluchayu Predsedatel'stva Rossii V Organakh Soyuza V 2023 Godu' [Address of the Chairman of the Supreme Eurasian Economic Council, President of the Russian Federation Vladimir Putin to the Heads of the EAEU Member States on the Occasion of Russia's Presidency in the Bodies of the Union in 2023], (23 January 2023), available at https://eec.eaeunion.org/news/obrashchenie-prezidenta-rossiyskoy-federatsii-vladimira-putina-k-glavam-gosudarstv-chlenov-eaes-po-s/.

108 Belarusian President Lukashenko suggested such a policy move within the EAEU. See 'Lukashenko Suggests Discussing Ways to Overcome Sanctions within CSTO, EAEU', *Interfax* (11 March 2022), available at https://interfax.com/newsroom/top-stories/76427/.

109 Mamlyuk and Mattei, *supra* note 27, at 393.

110 J. d'Aspremont, *Epistemic Forces in International Law: Foundational Doctrines and Techniques of International Legal Argumentation* (2016), at 23–27.

111 J. d'Aspremont *et al.* (eds), *International Law as a Profession* (2017), at 2.

112 On social arrangements in d'Aspremont, see *supra* note 110, at 5–10.

113 Besson, 'International Legal Theory qua Practice of International Law', in Nollkaemper *et al.*, *supra* note 84, 268, at 280.

114 For instance, in Central Asia, cooperation between lawyers was institutionalized also under the Organisation of Turkic States, where the dominant power is Turkey. See, e.g., 'Project Director Zamin Aliyev Participated in the 1st Regular General Assembly of the Union of Lawyers' Organizations of

and they are deeply authoritarian.[115] South Caucasian and Eastern European states, in their turn, try to balance culturally and politically between Europe and Russia. Equally, a number of factors unites international lawyers from these states. To name a few, there is a lack of higher academic freedom,[116] and they must work under authoritarian or semi-consolidates regimes[117] and the soviet legacy that shapes legal consciousness.[118] Even if these differing characteristics as independent variables suffice to examine how legal discourse finds its social validation, I engage minimally with these considerations, focusing on the actual social arrangements (legal education, law reviews and practice) that bond Russia and other post-Soviet Eurasian states. Cindy Wittke and Maryna Rabinovych perceived both similarity and divergence arguments when claiming that, while 'international law doctrines, discourses, policies, and practices in the region will become increasingly fragmented, … the scholarship and practice of domestic and international law in many post-Soviet countries will continue to be shaped by shared continuities inherited from the Soviet past'.[119]

1 Russian Language and Legal Education

In Soviet times, the study of international law in the socialist republics of the Soviet periphery started as early as the 1920s and 1930s,[120] but, as duly spotted by Sergey Sayapin from KIMEP University in Kazakhstan, the foundation of independent schools of international law in post-Soviet Eurasian states is predominantly a post-1991 phenomenon.[121] This proclamation does not mean that, during the Soviet era, lawyers from the Soviet republics did not engage in discussions of international law, though they did so, conceivably, to a lesser degree than Soviet Russian scholars such as Tunkin, Fyodor Kozhevnikov, Nikolai Ushakov, Sergei Krylov and others.[122] Moreover,

Turkic Speaking and Relative Countries (TURK-AV)', *Türk Devletleri Teşkilatı* 9 March 2017), available at www.turkicstates.org/en/haberler/project-director-zamin-aliyev-participated-in-the-1st-regular-general-assembly-of-the-union-of-lawyers-organizations-of-turkic-speaking-and-relative-countries-turk-av_1198.

[115] Z. Csaky and N. Schenkkan, 'Confronting Illiberalism', *Freedom House* 2018), available at https://freedomhouse.org/report/nations-transit/2018/confronting-illiberalism.

[116] Oleksiyenko, 'Is Academic Freedom Feasible in the Post-Soviet Space of Higher Education?', 53 *Educational Philosophy and Theory* (2021) 1116; 'Academic Freedom Index', *Academic Freedom Index*, available at https://academic-freedom-index.net/.

[117] Which also defines their approach to international law, which Tom Ginsburg represents as being authoritarian. See Ginsburg, 'Authoritarian International Law?', 114 *AJIL* (2020) 221.

[118] See, e.g., Kurkchiyan, 'The Illegitimacy of Law in Post-Soviet Societies', in D.J. Galligan and M. Kurkchiyan (eds), *Law and Informal Practices: The Post-Communist Experience* (2003) 24.

[119] Wittke and Rabinovych, 'Troubled Nexuses between International and Domestic Law in the Post-Soviet Space', 47 *Review of Central and East European Law* (2022) 249, at 267.

[120] It is documented that international law courses were included in the legal curriculum of Baku State University from 1928. See 'Preobrazovaniye Yuridicheskogo Otdeleniya V Yuridicheskiy Fakul'tet' [Transformation of the Department of Law into the Faculty of Law], 10 April 2023, available at http://bsu.edu.az/en/welcome_to_baku_state_university.

[121] Sayapin, *supra* note 82, at 323.

[122] Many international legal scholars wrote on the national context. See, e.g., A. Yesayan, *Hayastani Mijazgayin-Iravakan Drut'yuny (1920–1922 t't'.)* [The International Legal Status of Armenia (1920–1922)] (1968); J. Kirakosyan, *Hayastany Mijazgayin Divanagitut'yan Yev Sovetakan Artak'in k'aghak'akanut'yan*

contributions by non-Russian, but Soviet-trained, international legal scholars – for instance, Levan Aleksidze and Yuri Barsegov (Barseghyan) from the Georgian Soviet Socialist Republic and Armenian Soviet Socialist Republic, respectively – to shape the Soviet approach to international law have always been in evidence internationally.[123] And, indeed, in the post-Soviet period, these scholars turned into pivotal figures in (re)launching their national schools of international law in independent Georgia and Armenia.[124]

The language factor has been indispensable in this reconstruction and systematization of national schools. Whereas, throughout the whole Soviet period, national languages were used, to varying extents, in tertiary education, the Russian language was still the lingua franca of international law, and, thus, curriculums of international law were full of Russian-language sources.[125] Russian's status as the lingua franca has preserved its dominant status and marked the transition from Soviet to post-Soviet schools of international law in post-Soviet Eurasian states, although the transition has faced considerable obstacles too. In the post-Soviet period, the shrinking demise of Russian-speaking populations in Russia's periphery and a gradual erosion of the status of Russian in language policies of post-Soviet Eurasian states has been a natural development of their nation state-building process.[126] Nevertheless, Russian has gained official language status in Kazakhstan and Kyrgyzstan at the constitutional level,[127] while the Constitution of Tajikistan has recognized Russian as the language of communication between ethnic groups.[128] In states where Russian has not obtained legal status within domestic law, the Russian Federation has intervened through bilateral conventions to promote the Russian language. For instance, the Agreement with Armenia stipulates '[t]aking into account the historically formed role of the Russian language in relations between the Armenian and Russian peoples, the Armenian side will create conditions for the in-depth study of Russian in the educational system of the Republic of

p'astat'ght'erum: (1828–1923) [Armenia in Documents of International Diplomacy and Soviet Foreign *Policy* (1828–1923)] (1972); M. Ələsgərov, *Otnosheniya SSSR S Molodymi Nezavisimymi Gosudarstvami Azii I Afriki v Sfere Mezhdunarodnogo Prava* [Relations of the USSR with the Young Independent States of Asia and Africa in the Field of International Law] (1968).

123 To name a few, Levan Aleksidze from Soviet Georgia and Yuri Barseghov from Soviet Armenia were engaged in international legal science and practice. Both scholars worked at the United Nations during Soviet times, though in different roles. Barseghov, for instance, was even elected as a member of the International Law Commission from 1987 to 1992. In the post-Soviet period, both scholars continued their work in international law. While Aleksidze, along with his academic work at Tbilisi State University (TSU), was also an adviser to President Shevarnadze on international legal matters, Barseghov mainly continued an academic path in the post-Soviet Eurasian period, concentrating on national issues concerning independent Armenia-Nagorno Karabakh and the Armenian genocide.

124 For example, Aleksidze at TSU. Currently, the TSU institute of international law is named after Barseghov, who was active at the Academy of Sciences of the Republic of Armenia and founded the Armenian Institute of International Law in Moscow.

125 A.S. Shabanov, 'Osnovnyye Printsipy Yuridicheskogo Vysshego Obrazovaniya V SSSR' [Basic Principles of Higher Legal Education in the USSR], 18 *Istorko-pravovie problemi: noviy rakurs* (2016) 5.

126 Sergei Abashin, 'Nation-Construction in Post-Soviet Central Asia', in M. Bassin and C. Kelly (eds), *Soviet and Post-Soviet Identities* (2012) 150, at 157–159.

127 Constitution of Kazakhstan, 2022, Art. 7(2); Constitution of Kyrgyzstan, 2021, Art. 5(2).

128 Constitution of Tajikistan, 2003, Art. 2.

Armenia'.[129] A more recent development is cooperation in bolstering the role of the Russian language at the multilateral level: in September 2022, Kassym-Jomart Tokayev, the president of Kazakhstan, proposed the establishment of an international organization for promoting the Russian language under the auspices of the CIS.[130]

In parallel, at the level of higher education, Russia has vigorously fostered Russian-language education by establishing institutions in post-Soviet Eurasian states such as the Russian-Armenian Slavonic University in 1997, the Russian-Kyrgyz Slavonic University in 1992 and the Russian-Tajik Slavonic University in 1996 and has opened branches of Russia-based universities.[131] All these universities are considered to be of an elite tier in their home countries and have law faculties with a nationwide reputation.[132] The international law curriculums of these universities are predominantly taught through either Russian international law textbooks or local textbooks that represent international law through the teachings of both Soviet and post-Soviet Russian legal scholars such as Gregory Tunkin, Fyodor Kozhevnikov, Stanislav Chernichenko, Igor Lukashuk, Bakhtiyar Tuzmukhamedov, Aslan Abashidze, Yuri Barseghov and even those considered hardliners in Soviet international legal science such as Lidia Madzhorian.[133] In fact, the usage of Russian-language international law textbooks is a prevalent phenomenon not only in universities founded by Russia but also in other state-funded universities across post-Soviet Eurasia, such as Yerevan State University, the Al-Farabi Kazakh National University, Kyrgyzstan National University and the Tajik National University.[134] In recent years, however, despite the gradual use of

[129] Paymanagir Hayastani Hanrapetutyan Ev Rusastani Dashnutyan Mijev Barekamutyan, Hamagorcakcutyan Ev Poxaradz Ognutyan [Treaty between Republic of Armenia and Russian Federation about Friendship, Cooperation, and Mutual Assistance], 1997, Art. 16.

[130] 'Pod egidoy SNG poyavitsya mezhdunarodnaya organizatsiya po podderzhke russkogo yazyka' [Under the Auspices of the CIS, an International Organization Will Appear to Support the Russian Language], *Vedomosti* (14 October 2022), available at www.vedomosti.ru/politics/news/2022/10/14/945579-pod-egidoi-sng-poyavitsya-mezhdunarodnaya.

[131] For example, the highly prestigious Lomonosov Moscow State University has branches in Armenia, Azerbaijan, Kazakhstan, Uzbekistan and Tajikistan. Moscow State Institute of International Relations (MGIMO) has a branch in Uzbekistan.

[132] Academic reputation is more an informal appreciation based on my conversations with post-Soviet Eurasian scholars, as no law school from post-Soviet Eurasia is ranked by internationally reputable rankings.

[133] See, e.g., R. Azizpur, *Pravo Mezhdunarodnykh Dogovorov Uchebno-Metodicheskoye Posobiye* [The Law of International Treaties Teaching Aid] (2022); B.I. Borubashova (ed.), *Mezhdunarodnoye Pravo Obshchaya Chast' Uchebnik* [International Law General Part Textbook] (2018); *Rossiysko Armyanskiy Universitet - Uchebnaya Programma Aktual'nyye Problemy Mezhdunarodnogo Prava* [Russian Armenian University - Curriculum Actual Problems of International Law] (2022); *Rossiysko – Tadzhikskiy (Slavyanskiy) Universitet - Mezhdunarodnoye Pravo Metodicheskiye Rekomendatsii Po Vypolneniyu Kursovykh Rabot Dlya Studentov 3-4 Kursov Napravleniya Podgotovki 'Yurisprudentsiya'* [International Law Guidelines for the Implementation of Term Papers for Students of 3-4 Courses of the Training Direction 'Jurisprudence'] (2022). The textbook widely used in Armenian universities is written by Vigen Kocharyan. As a style, the textbook does not refer to the sources it uses. However, the author in an informal discussion claimed that, alongside Russian sources, he also observed other English-language literature. See V. Kocharyan, *Mijazgayin Iravunq Usumnakan Dzernark* [International Law Textbook] (2002).

[134] See the course syllabus of some of these universities: Yerevan State university and Al-Farbi Kazakh University. *Mijazgayin Iravunk'- Dasynt'ats'i Tsragir* [International Law: Course Syllabus] (2022); *Programma GAK 2021–2022* [GAK Program 2021–2022] (2022).

international law textbooks in national languages, especially in Central Asia, most of these textbooks are still in Russian.[135]

The academic staff at post-Soviet Eurasian universities predominantly use the Russian language to communicate internationally. Although there is a gradual transformation in law faculties with the arrival of younger generation scholars who are relatively more competent in English and sometimes hold degrees from Western universities, the field remains controlled by senior international legal scholars trained during Soviet times, for whom 'international' is predominantly signified through socialization in Russian and mainly in Russia. This legalized hegemonic role of the Russian language in the educational system of post-Soviet Eurasian states incentivizes transnational educational flows in post-Soviet Eurasia, as the UN Educational, Scientific and Cultural Organization's (UNESCO) dataset on the 'Global Flows of Tertiary-level Students' has indicated.[136] This UNESCO dataset does not differentiate educational flows alongside subject lines. Therefore, detecting the percentage of students studying international law in Russian universities is complicated. However, geography, demographic landscape, language, low tuition fees and cost of living and cultural similarities, which determine the choice of study destination generally, remain valid preconditions for studying international law in Russian universities and not in the West, although those students that get the chance to study international law would favour the former. For Armenian, Belarusian, Kazakh, Tajik, Kyrgyz and Turkmen students, Russia is the preferred country of destination for studies.[137] Russia is still the second most-chosen country of destination for Azerbaijani and Uzbek students.[138] Conversely, Russian students are less interested in receiving an education in post-Soviet Eurasian states.[139] As for their second choice, Central Asian students favour Turkey, while for students from Azerbaijan, Turkey ranks first.[140] Another compulsory measure in observing the transnational flows of Central Asian students is regional connectivity. Kazakhstan is the third most-favoured destination country for Uzbek and Kyrgyz students and accommodates many students from Tajikistan and Turkmenistan.[141] In this matrix, Kyrgyzstan is the second and third most-favoured country destination for Tajik and Kazakh students respectively, while it is the most-chosen country for students from Uzbekistan.[142] Transnational flows in post-Soviet Eurasia prove that circulation of ideas – including on international law – occurs predominantly within the territory of the former Soviet Union, whereas the so-called Westernizing effect reaches the region only marginally.[143]

[135] In his recent article, Sayapin provides several contributions by Central Asian scholars; the majority of sources he refers to are in the Russian language. See, e.g., Sayapin, *supra* note 82, at 329–330.

[136] 'Global Flow of Tertiary-Level Students', *UNESCO* (2022), available at https://uis.unesco.org/en/uis-student-flow.

[137] *Ibid.*

[138] *Ibid.*

[139] Roberts, *supra* note 11, at 74.

[140] 'Global Flow of Tertiary-Level Students', *supra* note 136.

[141] *Ibid.*

[142] *Ibid.*

[143] Roberts, *supra* note 11, at 43–45.

But to what extent do these flows shape and influence the approaches of post-Soviet Eurasian international lawyers in terms of analysing, understanding, applying and criticizing international law?[144] D'Aspremont rightly notes that 'training and education constitute the main instrument through which international lawyers are socialised'.[145] Assessing this claim empirically, Rima Tkatova thinks that '[b]eing at the core of the Eurasian civilization, [Central Asian] countries could develop the Eurasian or Central Asian conception of international law'.[146] Mälksoo, however, claims that Eurasian international law is only Russia's geopolitical vision of its post-imperial regional integration law.[147] Legal education, therefore, can be one building block to develop a regional conception of international law, especially if international law taught at Russian universities follows clear illiberal tenets, as Mälksoo depicted.[148] To observe the existence of regional international law, however, it is vital to scrutinize how shared legal knowledge is reflected in other social arrangements (academia and practice) centred in Russia.

2 Post-Soviet Eurasian Lawyers and International Legal Journals

In May 2022, the *AJIL Unbound* published seven articles on 'Ukraine and the International Order'.[149] None of the authors was from post-Soviet Eurasia. When, later that year, the *AJIL* published an agora symposium on 'The War in Ukraine and the Future of the International Legal Order',[150] only Anastasiya Kotova[151] and Anton Moiseienko[152] were from the wider region. Though both were from Ukraine, they were doing their research at Western universities. Participation of post-Soviet Eurasians in these debates could have bolstered the overall argument as the war in Ukraine touches the identity of post-Soviet statehood – notably, the *uti possidetis* enshrined in the CIS Charter.[153] Nevertheless, the voices of post-Soviet Eurasian scholars remained unheard.

Broadly perceived, the marginal visibility of post-Soviet Eurasian scholars is even more obvious when dealing with their record of publications in Western elite publishing houses. For instance, Cambridge University Press, between 2020 and 2023, has almost no publications by post-Soviet Eurasian scholars or dealing exclusively with post-Soviet Eurasian approaches to international law,[154] the only significant

[144] Roberts *et al.*, *supra* note 49, at 6.
[145] D'Aspremont, 'Thinking of International Law as a Professional Practice', in Nollkaemper *et al.*, *supra* note 84, 17, at 34.
[146] R. Tkatova, 'Central Asian States and International Law: Between Post-Soviet Culture and Eurasian Civilization', 9 *Chinese Journal of International Law* (2010) 205, at 211.
[147] Mälksoo, *supra* note 7, at 796.
[148] Mälksoo, *supra* note 1, at 86–96.
[149] Chachko and Linos, 'International Law after Ukraine: Introduction to the Symposium', 116 *AJIL* (2022) 124.
[150] Brunk and Hakimi, 'Russia, Ukraine, and the Future World Order', 116 *AJIL* (2022) 687.
[151] Kotova and Tzouvala, 'In Defense of Comparisons: Russia and the Transmutations of Imperialism in International Law', 116 *AJIL* (2022) 710.
[152] Moiseienko, 'Trading with a Friend's Enemy', 116 *AJIL* (2022) 720.
[153] Charter of the Commonwealth of Independent States (with Declaration and Decisions), signed in Minsk, 22 January 1993, Art. 3.
[154] See https://www.cambridge.org/core/browse-subjects/law/public-international-law.

exception being a publication by Belarusian scholar Maksim Karliuk in 2023 entitled *The Emerging Autonomous Legal Order of the Eurasian Economic Union*.[155] Similarly, since 2018, only three authors who received their initial education at post-Soviet Eurasian universities have published in the *EJIL*, and out of these three, only Yuri Rovnov[156] is based in the post-Soviet Eurasian region.[157]

Conversely, post-Soviet Eurasian legal scholars are comparatively more visible in Russian legal periodicals and sit on the editorial boards of these journals.[158] In recent years, post-Soviet Eurasian scholars have published numerous articles in the *MJIL* and the *EJL*, both being famous legal periodicals in Russia. The *EJL* even scientifically backs the agenda of the regional integration process in post-Soviet Eurasian space.[159] Of course, one reason for post-Soviet Eurasian authors to publish in the *MJIL*, the *EJL* and other legal periodicals in Russia is the relatively burden-free process compared to Western elite journals, which also helps to fulfil internal academic requirements on publishing abroad.[160] The publications cover a variety of topics such as international energy law,[161] human rights law,[162] the question of neutrality – especially in the Belarussian context[163] – international criminal law,[164] cyber security[165]

[155] M. Karliuk, *The Emerging Autonomous Legal Order of the Eurasian Economic Union* (2023). In an informal discussion with Maksim Karliuk, who is currently based in Paris, the author of the book clarified that, since the book was written in different places and in different conditions, the identity of the writer is a blended one, acting as both a post-Soviet Eurasian and a Western scholar of the invisible college.

[156] Yuri Rovnov currently holds a position in Higher Schools of Economics in Russia. See Rovnov, 'Appropriate Level of Protection: The Most Misconceived Notion of WTO Law', 31 *EJIL* (2020) 1343.

[157] Akbar Rasulov, who received his initial legal training in Uzbekistan, currently holds a position at the University of Glasgow, while Fuad Zarbiyev, who received his initial legal education at Baku State University, is currently an associate professor at the Graduate Institute in Geneva.

[158] For example, *Yevraziysky yuridicheskiy zhurnal* not only publishes articles by post-Soviet Eurasian scholars but also has an Armenian and a Tajik scholar in their editorial boards. 'Redaktsionnyy sovet | Yevraziyskiy yuridicheskiy zhurnal' [Editorial Board], *ELJ*, available at https://eurasialaw-journal.ru/redaktsionnyj-sovet.html.

[159] Mälksoo, *supra* note 1, at 86.

[160] Many doctoral students in post-Soviet Eurasia should publish several academic articles in foreign journals to be able to graduate, and these Russian journals are an easy choice for that.

[161] Efendiev, 'Truboprovodnyy Transport v Kontekste Mezhdunarodnogo Prava' [Pipeline Transport in the Context of International Law], 1 *MJIL* (2016) 93.

[162] See, e.g., Abgarian, 'Aktual'nyye Voprosy Zashchity Prav Predprinimateley V Mezhdunarodnom I Natsional'nom Prave' [Current Issues of Protection of Entrepreneurs' Rights in International and National Law], 3 *MJIL* (2018) 30; Bukharbaeva, 'Mezhdunarodno-Pravovoye Regulirovaniye Provedeniya Biomeditsinskikh Issledovaniy S Uchastiyem Cheloveka' [International Legal Regulation of Biomedical Research with Human Participation], 2 (141) *Evraziyskii Yuridicheskii Zhurnal* (*EYZ*) (2020) 37.

[163] Chupris and Smirnova, 'Neytralitet Respubliki Belarus' Kak Yuridicheskaya Norma' [Neutrality of the Republic of Belarus as a Legal Norm], 4 *MJIL* (2017) 107; Smirnova, 'Molodyye reformatory i staryye generaly o neytralitete Belarusi: novyye initsiativy po oslableniyu gosudarstva v Yevrope?' [Young Reformers and Old Generals About the Neutrality of Belarus: New Initiatives to Weaken the State in Europe?], 6 (145) *EYZ* (2020) 30.

[164] Safarov, 'Pravosudiye ot imeni shesti millionov obviniteley: delo "The Attorney General of the Government of Israel v. Adolf Eichmann" v kontekste mezhdunarodnogo prava' [Justice in the Name of Six Million Accusers: The Case of the Attorney General of the Government of Israel v. Adolf Eichmann in the Context of International Law], 4 *MJIL* (2021) 70; Safarov, Mehtiyeva and Safarov, 'Mezhdunarodnyye Prestupleniya i Zakonodatel'stvo Niderlandov: Strategiya Implementatsii' [International Crimes and the Netherland's Law: Strategy of Implementation], 2 *MJIL* (2018) 6.

[165] Yeremyan and Yeremyan, 'International Law Issues of Cyber Defense', 2 *MJIL* (2022) 85.

and international humanitarian law.[166] Several articles discuss Eurasian integration, which is dealt with separately later in this section.

Additionally, a proportionately significant share of articles are published in national journals, yet no law review is indexed by Scopus or the Web of Science or published by leading publication houses such as Brill, Cambridge University Press and Oxford University Press. To raise their visibility in Western academia, legal scholars sometimes publish in locally based journals of adjacent fields published by elite publishing houses or journals indexed in Scopus or the Web of Science. For instance, it is common for Armenian legal scholars to publish in the Yerevan-based Web of Science-indexed journal *Imastutyun* (*Wisdom*), which deals with matters of philosophy,[167] or in the *Iran and the Caucasus Journal*, which is published by Brill.[168] One promising English-language annual publication in international law – the *Central Asian Yearbook of International Law and International Relations* – was initiated by Central Asian legal scholars in 2022.[169]

One observation of the publication patterns of post-Soviet Eurasian scholars in leading Russian-language international law journals reveals that they marginally engage in international legal debates about Russia's invasion of Ukraine or any topic that prevails in the agenda of West-Russia rivalry. Contributions by post-Soviet Eurasian scholars from peripheral post-Soviet Eurasian states that back the Russian narrative on the question of Ukraine are an exception when their engagement within Russian law journals is concerned. For instance, Tajik legal scholar Rustam Jakhongir Khaydarov claims: 'The success of the Russian special operation in Eastern Europe will contribute to strengthening security in all of Eurasia and will become a guarantor of strengthening the state sovereignty of many CIS countries.'[170] Yet research of this type is a rarity and does not form part of the activity by the divisible college of international lawyers in post-Soviet Eurasia, at least when it comes to publishing.

[166] Beglaryan, 'Spetsifika Roli Gosudarstva I Mezhdunarodnogo Soobshchestva V Profilaktike Prestupleniy Protiv Chelovechestva' [The Specifics of the Role of the State and the International Community in the Prevention of Crimes against Humanity], 1(140) *EYZ* (2020) 22; Ladut'ko, 'Realizatsiya Printsipa Provedeniya Razlichiya Mezhdu Kombatantami I Grazhdanskim Naseleniyem V Usloviyakh Sovremennykh Vooruzhennykh Konfliktov' [Implementing the Difference between Combatants and Civilians in Contemporary Armed Conflicts], 6(169) *EYZ* (2022) 42.

[167] See, e.g., Harutyunyan, 'International Methodological Basics of Electoral Law (From Antiquity to Modern Times: Philosophy-Legal Dimension)', 18 *Wisdom* (2021) 103; Kazanchian, 'The Legal Status of an Individual in Russian Scientific, Political and Legal Doctrines', 1 *Wisdom* (2021) 82.

[168] Papian, 'The Arbitral Award on Turkish-Armenian Boundary by Woodrow Wilson (Historical Background, Legal Aspects, and International Dimensions)', 11 *Iran and the Caucasus* (2007) 255.

[169] 'Central Asian Yearbook of International Law and International Relations', *Eleven Journals*, available at www.elevenjournals.com/tijdschrift/CAYILIR/detail#:~:text=The%20Central%20Asian%20Yearbook%20of,international%20relations%20in%20Central%20Asia.

[170] Khaydarov, 'Novyye Geopoliticheskiye Tendentsii V Yevraziyskom Prostranstve V Kontekste Formirovaniya Trekhpolyarnogo Mira' [New Geopolitical Trends in the Eurasian Space in the Context of the Formation of the Tripolar World], 5 *Postsovetskie issledovaniya* (2022) 659, at 674; see also Khaydarov, 'Formirovaniye Trekhpolyarnogo Mira I Perspektivy Obespecheniya Bezopasnosti V Yevrazii:Vzglyad Iz Tadzhikistana' [The Formation of a Tripolar World and the Prospects for Ensuring Security in Eurasia: A View from Tajikistan], 4 *ELJ* 16, at 17.

Instead, publication patterns reveal scholars' strategy to represent nationally essential topics in their contributions to Russian legal journals. Within such topics, scholars especially analyse conundrums that are politically vital for bilateral relations with Russia. In this regard, these scholars sometimes have a clear political agenda in their publications that is supported by their respective governments. For instance, because of the civil war in Tajikistan in the 1990s, many political figures from Tajikistan in the post-civil war and later period have sought and been granted political asylum in Russia.[171] From 2008 on, Russian authorities extradited some of these people to Tajikistan, which Western states considered a 'misuse of international law enforcement tools'.[172] As a result, the European Court of Human Rights (ECtHR) recognized such practice as a violation by Russia in *Iskandarov v. Russia*.[173] The Tajik government opposed these Western condemnations. Locally based Tajik scholars have therefore been vocal in Russian journals by stressing that extradition questions should be considered in relation to international instruments that were effective between the parties and conducted based on the reciprocity principle,[174] purporting to counter the ECtHR's intervention. Even Tajikistan's president appeared in the *ELJ* and represented Tajikistan's achievements in constitutional law, stressing that individuals' freedoms and rights are respected in Tajikistan.[175]

Similarly, Azerbaijani scholars have been keen to stress the importance of the principles of territorial integrity and *uti possedetis juris* as fundamental for international law.[176] While they do not give a legal opinion on whether Russia's intervention in 2014 Crimea constituted an annexation or not, they are more open to discussing and marginally criticizing the Russian interventions in Abkhazia and South Ossetia.[177] Even if Armenian scholars are less active in publishing on the question of self-determination in the *EJL* and the *MJIL*, scholars from both countries remain active in publishing in Western journals on this subject matter, analysing the Nagorno-Karabakh (Artsakh)

[171] Gretsky, 'Civil War in Tajikistan and Its International Repercussions', 4 *Critique: Critical Middle Eastern Studies* (1995) 3, at 4–13.

[172] 'Tajikistan 2022 Human Rights Report' (2022), available at www.state.gov/reports/2022-country-reports-on-human-rights-practices/tajikistan/.

[173] ECtHR, *Iskandarov v. Russia*, Appl. no. 17185/05, Judgement of 23 September 2010.

[174] See, e.g., Abduloyev, 'Osnovaniya Peredachi Lits v Inostrannoye Gosudarstvo Dlya Otbyvaniya Nakazaniya v Ramkakh Mezhdunarodnogo Sotrudnichestva Postsovetskikh Stran' [Grounds for the Transfer of Persons to a Foreign State to Serve a Sentence in the Framework of International Cooperation of Post-Soviet Countries], 4 *ELJ* (2020) 56.

[175] Rahmon, 'Tadzhikistan Na Poroge Tridtsatiletiya Nezavisimosti: Problemy, Resheniya i Perspektivy' [Tajikistan on the Threshold of the Thirtieth Anniversary of Independence: Problems, Solutions and Prospects], 7 *ELJ* (2021) 2.

[176] See, e.g., Mirzayev, 'Primeneniye Printsipa Uti Possidetis Na Afrikanskom Kontinente' [Application of the Principle of Uti Possidetis on the African Continent], 4 *MJIL* (2016) 73; Mirzayev, 'Praktika Primeneniya Printsipa Uti Possidetis so Storony Mezhdunarodnykh Sudebnykh Organov, Arbitrazhnykh Tribunalov i Mezhdunarodnykh Organizatsiy' [The Practice of Applying the Principle of *Uti Possidetis* by International Judicial Bodies, Arbitration Tribunals and International Organizations], 10 *ELJ* (2020) 22.

[177] Mirzayev, 'Sootnosheniye Printsipa Uti Possidetis i Prava Narodov Na Samoopredeleniye v Mezhdunarodnom Prave' [Correlation between the Principle of *Uti Possidetis* and the Right of Peoples to Self-Determination in International Law], 9 *ELJ* (2020) 22.

conflict.[178] Conversely, when publishing on Eurasian integration law, many post-Soviet scholars act as depoliticized agents by summarizing existing norms in their articles and then textually analysing them without critical engagement. This approach can be understood as a continuity of the Soviet methodology of researching the law, which hinges on Andrey Vyshinky's conceptualization of positivism.[179] When the law of the EAEU is perceived more critically in Western academia – including in contributions by post-Soviet Eurasian scholars[180] – the EAEU law discussed by post-Soviet Eurasian scholars in Russian law journals is more doctrinal in both form and content, if doctrinal is the right term to capture this style.[181] In particular, the analytical patterns within some of these articles do not stray far from reciting the existing law and the scarcely available judicial practice of the EAEU Court.

D'Aspremont considers that the '[c]onsumption of scholarship (as a reader) and the production of scholarship (as an author) contribute to the rise of a shared consciousness or disciplinary sensitivity'.[182] The publication patterns that I have examined prove this assertion, especially when it comes to the methodology used and the political message that scholars disseminate.[183] However, it is clear that, even if it is

[178] See, e.g., Sarvarian, 'The Artsakh Question: An Analysis of Territorial Dispute Resolution in International Law – University of Western Australia (UWA)', 9 *Melbourne Journal of International Law* (2008) 190; Sarvarian, '*Uti Possidetis Iuris* in the Twenty-First Century: Consensual or Customary?', 22 *International Journal on Minority and Group Rights* (2015) 511; Bagheri, 'Exploring the Legality of the Constitutional and Independence Referendums in Nagorno-Karabakh under International Law', 90 *Nordic Journal of International Law* (2020) 1; H. Yavuz and M. Gunter, *The Nagorno-Karabakh Conflict: Historical and Political Perspectives* (2022); G. Petrossian, S. Babaian and A. Zakarian (eds), *Berg-Karabach: Eine Völkerrechtliche Analyse Des Konflikts Um Arzach* (2022).

[179] A. Vyshinsky, *Osnovnyye Zadachi Nauki Sovetskogo Sotsialisticheskogo Prava: Doklad Na I Soveshchanii Po Voprosam Nauki Sovetskogo Gosudarstva i Prava (16–19 Iyulya 1938 g.)* [The Main Tasks of the Science of Soviet Socialist Law: Report at the First Conference on the Science of the Soviet State and Law (July 16–19, 1938)] (1938).

[180] This is especially visible in assessing the topicality of articles written in the English language in Western journals regarding the EAEU law. While in Western journals, the topic predominantly touches questions of a general nature – such as the *acquis*, the question of supranationalism, judicial bodies – in Russian legal journals the topics are more concentrated on the substantive law of the EAEU. See, e.g., Kembayev, 'The Court of the Eurasian Economic Union: An Adequate Body for Facilitating Eurasian Integration?', 41 *Review of Central and East European Law* (2016) 342; Petrov and Kalinichenko, 'On Similarities and Differences of the European Union and Eurasian Economic Union Legal Orders: Is There the Eurasian Economic Union *Acquis*?', 43 *Legal Issues of Economic Integration* (2016) 295; Simonyan, 'Eurasian Supranationalism: From Academic Discourse to the Eurasian Economic Union', 20 *Baltic Yearbook of International Law* (2022) 45.

[181] The doctrinal style of writing is a widely accepted form of publication in post-Soviet Eurasian space, and assessments of EAEU law from that standpoint are not entirely against accepted practices. See, e.g., Pavlova, 'Vnutrenniye Prepyatstviya Na Rynke Tekhnicheskogo Regulirovaniya Yevraziyskogo Ekonomicheskogo Soyuza' [Internal Obstacles in the Technical Regulation Market of the Eurasian Economic Union], 4 *EYZ* (2020) 24; Kovalyov, 'Ustoychivoye Razvitiye i Klimaticheskaya Povestka Kak Instrumenty Ukrepleniya Integratsii v YEAES' [Sustainable Development and the Climate Agenda as Tools for Strengthening Integration in the EAEU], 11 *EYZ* (2021) 36; Meliksetyan, 'Aktual'nyye Problemy Svobody Peredvizheniya Trudyashchikhsya v YEAES' [Actual Problems of Freedom of Movement of Workers in the EAEU], 11 *EYZ* (2021) 40.

[182] D'Aspremont, *supra* note 145, at 35.

[183] On dissemination of opinions and its transformation into a legal knowledge, see d'Aspremont, *supra* note 110, at 237–245.

visible in Russian international law journals, post-Soviet Eurasian lawyers predominantly engage with nationally pressing issues rather than serving Russia's interests, which is itself a political choice. Divisibility, even if it is evident, does not always reflect a justification of Russia's actions within this social arrangement.

C *Where Do Post-Soviet Eurasian International Lawyers Practise International Law?*

Practising public international law in post-Soviet Eurasia is seldom the preferred path by young graduates.[184] No national citizen from post-Soviet Eurasian states, apart from Russia, has ever been appointed as a member of the International Law Commission or an elected judge at the International Court of Justice.[185] Equally, no member from post-Soviet Eurasia has ever been elected to the World Trade Organization's Dispute Settlement Appellate Body. No post-Soviet Eurasian states, except Belarus and Russia, are contracting parties of the Hague Conventions, and, thus, these states have no national representation in the Permanent Court of Arbitration. Such poor representation in institutions practising international law is also a geographic matter because, unlike Armenia, Azerbaijan, Georgia, Moldova and Ukraine, which are member states of the Council of Europe (CoE) and signatories of the European Convention on Human Rights, the Central Asian Republics and Belarus – not for geographical reasons in the latter case – lack membership therein and a seat in the ECtHR. Although they signed and ratified the alternative CIS Convention on Human Rights and Fundamental Freedoms in the 1990s, this mechanism of human rights protection remained dysfunctional.[186] In this regard, not only does membership in the CoE – and, consequently, a seat in the ECtHR – open the door for post-Soviet Eurasian lawyers to work in the bodies of the CoE and the Court *per se*, but it also creates new openings in the national job market for lawyers to engage with locally based non-governmental organizations that focus on human rights protection.[187]

Alternatively, in post-Soviet Eurasia, the practice of international law now predominantly occurs in the secretariats of administrative bodies of regional organizations headquartered in Moscow and Shanghai – to name a few, the EAEU Commission, the CIS Administrative Body, the CSTO Secretariat and the Shanghai Cooperation Organization Secretariat. However, in all these organizations, national representation of the working personnel is determined by the financial contributions of their member

[184] Comparatively more figures from post-Soviet Eurasia are engaged in researching and practising private international law. For example, Hayk Kupelyants, a graduate of the French University in Armenia, published a book with the reputable publisher Oxford University Press. H. Kupelyants, *Sovereign Defaults before Domestic Courts* (2018).

[185] Following 2023 recent elections, even Russia does not have a judge at the International Court of Justice.

[186] The CIS Convention on Human Rights and Fundamental Freedoms has been ratified by Russia, Tajikistan, Kyrgyzstan and Belarus. See Convention of the Commonwealth of Independent States on the Rights and Fundamental Freedoms of the Person, signed in Minsk, 26 May 1995, available at refworld.org/legal/agreements/radr/1995/en/65739.

[187] On the role of domestic actors, see Remezaite, 'Challenging the Unconditional: Partial Compliance with ECtHR Judgments in the South Caucasus States', 52 *Israel Law Review* (2019) 169.

states.[188] Therefore, Russian and Chinese citizens are represented proportionally more than lawyers from other post-Soviet Eurasian states. The structural shortcomings and hierarchical nexus between regional organizations and their member states hinder the constitution of a supra-state society such as the EU, where the *dédoublement fonctionnelle*, imagined originally by George Scelle, could be a feasible project.[189] Instead, in these institutions, functionality is determined through *po poniatiiam* (informal) method,[190] and, as the EAEU is not a community of law (*union de droit*) like the EU,[191] lawyers are not necessarily the most critical figures in the organization.

A compelling novelty is the advent of judicial bodies within regional organizations in Eurasia. Following the dysfunctionality of the CIS Court,[192] the EAEU Treaty stipulated that the EAEU Court must be established and headquartered in Minsk.[193] The relative newness of the Court obscures a full review of the Court's practices, but '[t]he general conclusion is that at present the potential of the Court has not been fully opened, and its general practice is characterized by caution, predictability, passivity and an apologetic stance towards the interests of States and the Commission'.[194] Apart from its formal activity, the Court annually convenes conferences on Eurasian law where scholars and practitioners from the member states gather, enabling a *pénétration pacifique* of ideas to occur. As the president of the Court, Zholymbet Baishev, avouched, '[t]he Court must be receptive to the views of the scientific community'.[195]

Annual conferences organized by the judicial body of the EAEU are not a novelty. In the post-Soviet Eurasian space, the Constitutional Courts of Armenia, Russia and Belarus have been organizing annual conferences where scholars from all post-Soviet Eurasian states gather and discuss national law developments, leading to publications of conference proceedings, mainly in the Russian language.[196] As a result of these

[188] Charter of the Collective Security Treaty Organization, signed in Chisinau, 7 October 2002, Art. 18; Treaty on Eurasian Economic Union, signed in Astana, entered into force on 1 January 2015, Art. 9; Agreement on Procedure for Formation and Execution of the Budget of the Shanghai Cooperation Organization 2003.

[189] Cassese, 'Remarks on Scelle's Theory of "Role Splitting" (Dédoublement Fonctionnet) in International Law', 1 *EJIL* (1990) 210, at 231.

[190] Simonyan, *supra* note 180, at 63.

[191] On the EU being a community of law and lawyers' role therein, see generally C. Piernas (ed.), *The Legal Practice in International Law and European Community Law: A Spanish Perspective* (2007).

[192] Following the establishment of the Commonwealth of Independent States (CIS), the member states also founded an Economic Court, which remained a non-visible adjudicative body within legal systems of CIS states. On the Economic Court, see Danilenko, 'The Economic Court of the Commonwealth of Independent States Symposium Issue: The Proliferation of International Tribunals: Piecing Together the Puzzle', 31 *NYUJILP* (1998) 893.

[193] Treaty on Eurasian Economic Union, *supra* note 188, Art. 19.

[194] Tolstykh, 'Ot Apologii k Apologii: Nekotoryye Obshchiye Problemy Deyatel'nosti Suda Yevraziyskogo Ekonomicheskogo Soyuza' [From Apology to Apology: General Problems Arising from the Activity of the Eurasian Economic Union Court], 27 *Meždunarodnoe pravosudie* (2018) 66, at 74.

[195] K. Ėntin, *Meždunarodnoe pravosudie i ukreplenie integracionnych processov: Meždunarodnaja konferencija (18-19 oktjabrja 2018 goda, g. Minsk): sbornik materialov* (2019), at 6.

[196] Back in 1997, Armenia, Belarus, Kazakhstan, Kirgizstan, Russia and Tajikistan established the Conference of Organs of Constitutional Control of the States of New Democracy. Over the years, constitutional bodies of respective states have been organizing conferences to discuss pressing issues of constitutional and other legal matters. See, e.g., 'S. D. Hratarakutyun|"Konstitutsionnoye Pravosudiye"', *Constitutional Justice*, available at www.concourt.am/library/constitutional-justice/konstitutsionnoe-pravosudie.

conferences in 2019, the Eurasian Association of Organs of Constitutional Control was established.[197] This institutional history corroborates the interaction between legal scholars who observe that domestic law takes place more intensely than it does between international legal scholars. More far-reaching educational institutionalization was planned for the CSTO. In 2013, the member states of the CSTO decided to establish a CSTO Academy in Yerevan, Armenia, to also provide legal education to the CSTO Secretariat's staff. However, the establishment of the academy has been suspended since 2015.[198]

These patterns reaffirm the early assumption that, where public international law is concerned, post-Soviet Eurasian lawyers have remained under-represented in global institutions and that the existing social arrangements are controlled, or at least dominated, by Russia. However, the problem is figuring out not only how to quantify their representation but also how to understand the structural underpinnings. As rightly captured by Rosalyn Higgins, legal education and international law practice are structurally linked in the global environment.[199] In post-Soviet Eurasia, however, international law 'remains unknown among law professionals', which alters the nexus between scholarship and practice and, by marginalizing lawyers preoccupied with international law, pushes them further towards divisibility.[200]

5 Conclusion: Within Russia's Sphere of Influence but Not Russian Hagiographers

Between 1977 and 2023 – from Cold War rivalry to early enthusiasm for liberalism's triumph in 1991 – international law has endured different structural adjustments. The invisible college of international lawyers, epitomized by Oscar Schachter in 1977, also passed through these transformations and, although gradually widening its geographical composition, also faced structural shortcomings. Notably, in the past decades, the discussion about an invisible college has oscillated between methods of raising inclusivity and the visibility of marginalized groups – discriminated based on gender, race, class and generally their non-Westernity – and the identification of persistent objectors who act antithetically against that invisible construct by pushing

[197] 'Konstïtwcïyaliq Baqilaw Organdari Ewrazïyaliq Qawimdastiğiniñ Qurilw Tarïxi Jäne Damwi' [Constitutional Control Bodies History and Development of the Eurasian Community], gov.kz, available at https://www.gov.kz/memleket/entities/ksrk/activities/14642?lang=en.

[198] 'O Sozdanii v Respublike Armeniya "Akademii ODKB"' [On the Establishment of the 'CSTO Academy' in the Republic of Armenia], available at https://odkb-csto.org/news/news_odkb/o_sozdanii_v_respublike_armeniya_akademii_odkb/#loaded; 'V Yerevane otkrylas' Akademiya ODKB i YEAES | Yevraziya ekspert' [CSTO and EAEU Academy Opened in Yerevan | Eurasia Expert], available at https://eurasia.expert/v-erevane-otkrylas-akademiya-odkb-i-eaes/.

[199] Higgins, 'Teaching and Practicing International Law in a Global Environment: Toward a Common Language of International Law', 104 *Proceedings of the Annual Meeting of the American Society of International Law* (2010) 196.

[200] S. Sayapin, 'The Post-Soviet Central Asia and International Law: Practice, Research and Teaching', *Afronomicslaw.org*, available at www.afronomicslaw.org/2020/09/15/the-post-soviet-central-asia-and-international-law-practice-research-and-teaching.

forward some sort of divisibility. Under the pressure of these structural shortcomings, many contemporary international lawyers from marginalized 'peripheries' have been forced to make the undemocratic choice of being either an eternal student or a member of the 'lower tier' of an epistemic community.

Post-Soviet Eurasians international lawyers are a case in point. The class structure of the invisible college makes post-Soviet Eurasian pundits ever less represented in deliberations of contemporary international law. There has been an evolving need to overcome this disempowerment. One solution for post-Soviet Eurasian lawyers has unfortunately been the recognition of a sphere of influence of a Russia-centred divisible college of international lawyers where they can interact, approach and analyse international law without thinking about their marginalized role or the high standards set for inclusion in the Western elitist group.

In the post-Soviet period, the Soviet legal culture has exercised direct influence over newly independent states. In particular, the role of the Russian language in the architecture of the newly established legal system and legal education has been visible. The internationalization of Western universals and participation in West-centred social arrangements have not been successful either, which I have depicted when analysing marginalization processes. As a result, several preconditions have been set for post-Soviet Eurasian scholars to approach, understand and analyse international law through the same prism of positionality, no matter their Russian, Belarusian, Armenian, Kyrgyz, Kazakh or Tajik origin. This marginalization is institutionalized within the divisible college of post-Soviet Eurasian international lawyers, who interact in the same transnational milieus and publish in the same journals. However, even if such institutionalization has contributed to the development of a shared legal consciousness, the post-Soviet Eurasian scholar's positionality in this divisible college can be described as representing national foreign policy choices in a milieu where they are comparatively more visible, are published more easily and can participate in conferences and other events burden free. And even if this divisible college may be regarded in Moscow as one of the structural environments where recognition of Russia's *primus inter pares* status is affirmed, for the newly independent post-Soviet Eurasian states, it is only considered as an agora to proclaim the '*vox populi*' of their respective nations,[201] which they cannot effectively disseminate in the invisible college of the global North. These patterns speak for themselves. Post-Soviet Eurasian lawyers – marginalized in the West but having found accommodation in Russia-centred social arrangements – simultaneously remain silent on Russia's foreign policy conduct and minimally showcase their *Russlandversteher* behaviour, even if it could be there on the psychological level or during informal conversations.

[201] Latin maxim: 'Voice of the people'.