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Towards Remedying the Transcivilizational Neglect: Revisiting the Story of the Spanish *Requerimiento*

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International law suffers from the malady of solipsism (Rojas at 375). This is more evident when we discuss its universalistic features. The projection of the Euro-Christian mould of law as the "universal" has done more harm to the discipline of international law than benefitting it. The Euro-Christian mould of law has rendered the discipline's universalistic claims hegemonic and indifferent, at the same time: hegemonic by allowing only one vision of the 'international' to prosper; and indifferent in its continuous disengagement with the 'other'. Yasuaki Onuma argues that West-centric international law should be viewed from a transcivilizational angle to overcome the civilizational neglect held by the non-Western world (at 11).

This article traces the story behind the emergence of the infamous Spanish *Requerimiento* in the early 16th century. Designed by the eminent Spanish legal scholar Juan López de Palacios Rubios in 1513, *Requerimiento* was created due to a crisis in establishing Spanish authority in the New World (at 72). The document declared that the Pope could dissolve the jurisdictions of heathens and pagans and confer them on Christian monarchs. Accordingly, it informed the Indians that they could either accept Christianity and Spanish imperial hegemony or be destroyed (at 90).

Some scholars, like Antony Anghie and Martti Koskenniemi, have argued that the modern history of international law begins with the discovery of the Americas. In this context, the Spanish *Requerimiento* becomes one of the most crucial documents. It opens up newer imaginations about how the discussions concerning 'authority over territory' were negotiated and forged right at the time when the discipline began to be imagined.

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A Questionable Historiography of International Law

International law, from the beginning, has been a discourse that enforced a structure of power, justifying the conquest and control of Europe's normatively divergent 'other' (at 44-45). Despite its evident linkages to Early Modernity, European international law's encounter with its Muslim other remains curiously absent from the historiography of the subject (at 3).

Antony Anghie argues that international law was created out of the unique issues generated by the encounter between the Spanish and the Indians – an encounter through conquest. He further argues that the issue of accounting for Spanish title over the Indies was conventionally decided by applying the jurisprudence developed by the Church to deal with the Saracens (Muslims) in the Indies. Within this framework, the Indians could be characterized as Saracens, as heathens, and their rights and duties determined accordingly (at 17). However, Andrew argues that Islamic empires (*Dar al-Islam)* occupied a different space in the Spanish political thought than did the lands of Americas. For 16th century Spanish jurist, Palacios Rubios, the basis of Spanish claims to Iberian territories rested on the illegitimacy of Muslim rule due to their status as *usurpers*. On the other hand, 16th century Spanish historian, Las Casas, argued it was the act of usurpation that invalidated the rights of Muslims to exercise *dominion*. The difference is clearer in Vitoria's rejection of the subjective belief in the 'just war'. Vitoria argued that even Turks and Saracens might wage just war against Christians, as they think they are rendering the service of God (at 26).

Martti Koskenniemi argues that the history of the legal imagination, capturing actions and policies outside the domestic sphere, began roughly in 1300. He highlights Columbus' alleged discovery, persecution and racial discrimination in the Americas, which also led to the academic beginning of the discipline at the hands of the Spanish Jesuit Francisco Vitoria. However, his narrative again misses out on explaining the background and context in which Columbus undertook the voyage – why was he so keen to explore the Atlantic route to Asia? This fact, we believe, cannot be shrugged off as irrelevant. Alan Mikhail argues that Columbus' expedition was primarily fed by his deep-rooted desire to support the Crusades against the Ottomans.

An assessment of the role played by the Muslim 'other' is crucial in this narrative of international law. No other civilization had such a massive presence during the colonial expansion of the West. Muslims in the seven decades following the death of Prophet Muhammad in 632 AD had swept out of the Arabian Peninsula. Having conquered the whole of coastal North Africa, by 711, they had extended their rule

over Spain and Portugal. North Africa, which in Roman times had been an early centre of Christianity, also became Muslim during this period (at 7).

The *Reconquista* (reconquest) from the 8th to 14th centuries demonstrated instances where the Christian states made a series of campaigns to recapture territories from the Muslims who had occupied most of the Iberian Peninsula. Europeans consistently interacted with the Muslim other, for instance, the Ottoman Empire (14th century) and Mughal Empire (15th century), as they continued to extend their colonies. A collection by David Thomas & Others shows the intimate connections which these civilisations share even today.

It would not be wrong to say that the very presence of Islamic empires around the world having similar legal and political culture (i.e. *Shari'a*), and Europe's early engagement with the Muslim world, proved to be a boon for the development of the discipline (at 35).

Cardinal and Megret argue that Christians' early treatment of Muslims constituted a veritable laboratory of international law ideas, which continued until the discipline adopted its more recent colonial dimensions (at 2). Onuma writes that the Islamo-centric normative system, not (European) natural or international law, generally regulated the relations between the Europeans and the Muslims up to the early 18th century (at 58). Christopher Weeramantry and Henry Wheaton have similarly highlighted the probable influence of the Islamic civilization on the discipline (respectively, at 110; at 555).

Carl Schmitt argues that a meaningful imperialism is its ability to determine the content of political and legal concepts. Hewitt writes that European international law utilises the indigenous forms of law-making, while denying the sovereignty of the same indigenous nations. Like European international law that is deeply influenced from its most dominant 'other' during the colonial expansion, the Islamic legal practices were also influenced from existing pre-Islamic and other indigenous practices in newer territories conquered by Muslims. As Hassan Khalilieh writes,

> it is a truism that the formulation of international law arises from confrontation of alien cultures and their struggle to forge common principles with which to govern interactions between their peoples. In the cases where one culture subjugates another and institutes its legal system in place of its predecessor's, some degree of assimilation of the legal practices and customs of the subjugated culture inevitably occurs and establishes its contribution to the ongoing development of the jurisprudence of the region over which it ruled.

Thus, Milka Levy-Rubin argues, for example, that the surrender agreements made between the Muslim conquerors and the representatives of the various conquered territories have their origin in an ancient tradition of international diplomacy and law which was prevalent throughout the territories when conquered by Muslims.

The Missing Link

In the historiography of international law, the *Reconquista*, and medieval Europe's continued dealings with Muslims in its midst and on its frontiers, are not mentioned. It seems as if the 'discovery' alone marked a fundamental break in the normative interaction between the people. Orford discusses the emergence of universal jurisdiction and its territorial implications by employing historiography. However, she misses highlighting the role played by either the *Requerimiento* or its impending transcivilizational context.

Koskenniemi, in his latest work, discusses *Requerimiento* and acknowledges its Islamic connection. However, here again, he only takes a cursory look over the subject matter as if the civilizational context is not much relevant. It is a travesty that works in history intending to cover the legal imagination spread over many centuries, overlook detailing something as fundamental as the Spanish instrument of conquest. This relative neglect raises intriguing questions about the construction of the discipline: If we think of the historiography of international law as one of the praxis, why is such a foundational element in this praxis ever neglected? Thus, if our understanding of the discipline is indeed shaped by its history, why is there a transcivilizational disconnect? There are already attempts underway to both re-imagine and globalize the history of international law. However, Nahed Samour critiques the territorialisation of Islamic international law to Arabia, Africa or Ottoman Empire. She argues that significant contributions to Islamic legal thought and legal practices also came from Persia, India, South Asia etc.

Protocol for Territorial Possession through Conquest

The initiation of war under the *Requerimiento* was a unique feature of Spanish colonialism as no other European state employed a fully ritualized protocol for declaring war. Spaniards were required to read the *Requerimiento* before subjecting the people of the New World to the Crown of Castile. The reading of this document became a mechanism for enacting Spanish political authority over the peoples of the New World. Since it was created and implemented by the Spanish Crown, the *Requerimiento* provided an official procedure for launching a war. It set the aims of the warfare not as mere surrender but as submission to Catholicism and its legitimate representatives, the Spaniards. The Requirement was thus both a military and a political ritual.

It would be wrong to say that the Euro-Christian world developed the campaign of *Reconquista* and the instrument of *Requerimiento* in abject isolation. It was developed through an interaction of the 'self' with the 'other' – an interaction between the Christian and the Islamic worlds. The *bricolage* that Koskenniemi referred to concerning the European imagination of international law was already practiced by the 'other' (at 2). As James Muldoon has pointed out, the later 13th century was the first time the church systematically applied its statutes of Roman and Canon Law to the question of infidels other than the Muslims, with whom Christian Europe had dealt for centuries.

Patricia Seed argues that the historical roots of the *Requerimiento* lie in the history of the Muslim conquest of the Iberian Peninsula. It closely resembles the unique ritual demand for submission, characteristic of the military expeditions of the Islamic empire.

The Spanish *Requerimiento* was based on the Maliki School of jurisprudence's interpretation of the legal requirements for the conquest, i.e., *jihad.* An envoy should be sent to the enemy based on the Quran's injunction 'summon them to Islam'; the verb 'to summon' (*da'ā:* 'to invite', 'call for', 'implore', 'demand') is translated in Spanish as *requerir:* hence *Requerimiento*. The document's title invites people to accept a new religion, a Catholic summons to God.

Sherwood remarks that the *Requerimiento* was a hybrid of the Bible and the Quran. At the same time, Camilo Gomez concludes that the Spanish imperial protocols of possession, evident in the text of the *Requerimiento,* do not seem to be transplantations from the Arab-Islamic culture. However, the context of negotiation between the Christian and Muslim neighbours is still apparent.

The Limitations of the Islamic Influence

From its early years, Islam did not separate political from religious rule. Maliki jurisprudence is noted for two distinctive characteristics in this area: its emphasis on a legal ritual for initiating a *jihad* (a summons); and its liberal treatment of the defeated peoples. Spaniards adopted both features in governing the New World. The Islamic rituals, however, significantly differed from the *Requerimiento.* Unlike *Requerimiento,* the immediate conversion to Islam was not required – 'There shall be no compulsion in [acceptance of] the religion'(2:256).

Unlike the Christian monarchs, for Muslims to make a lawful claim over a conquered territory, there were more requirements than a 'just war'. Al-Shaybani says that occupation during war and occupation for short periods cannot suffice the transfer of ownership to the new possessor. Therefore, if the war has not ended and the

occupation was only for a short period, the land will still be subject to the original owner's ownership before the war started (at 210). Muhammad Hamidullah also provides that mere conquest does not amount to annexation; it requires an 'intention to annex' combined with continuous and uninterrupted governance, i.e., exercising sovereign rights and firm possession over the territory (at 89-90).

Conclusion

The Christian-Muslim interaction during the conquest of the Iberian Peninsula laid one of the foundations of modern international law, which lies in the 'justification of conquest'. The protocol of territorial possession followed by both the Muslims and the Christians, to begin with, ultimately constituted the juridical basis for the claim over territories that initially fell outside the scope of the domestic jurisdiction. We believe that the scholars working in the history of international law must engage with the transcivilizational aspects of the subject. This is necessary to overcome the feeling of alienation towards international law held by non-Western people (at 57). Thus, we invoked a re-imagination of the 'constitutive rhetoric' of international law as its foundations concerning territory, sovereignty and authority were laid down (James White). This is where the transcivilizational character of the Spanish *Requerimiento* becomes extremely important; and the absence of the Muslim 'other', a tragic story.

Lastly, as we argue that the *Requerimiento* has an Islamic origin, the violence and spoliation followed by it may not have been similar to Islamic practices. To argue that both Muslims and Christians gave the same treatments to people of conquered territories requires further investigation. The nature and purpose of the expansion of both the civilizations seems different. For example, in case of Islamic civilizations, we do not find 'commerce' as dominant cause for conquering new territories, nor 'discovery' as a legitimate ground for claiming a political dominion over new territory. It was more for expanding the Islamic empires. On the other hand, except in the case of *Reconquista,* the voyages for discovery were based on profit. Jérémie Gilbert argues that the colonial powers created a specific branch of international law of conquest based on Christianity, Commerce and Civilization. This is the reason that Columbus employed natives in gold mines instituting a coerced-labor policy, backed effectively by Spanish army that ultimately resulted in his termination from governorship in 1500 (at 82). It was this treatment that encouraged Vitoria to humanize the existing Spanish law in the treatment of natives in the Indies. However, this does not mean there was no violence or subjugation during Islamic military expansion. Nor does it mean that one system of military expansion was better or less violent than the other. But the focus here is more on the acculturation of legal and political ideas in midst of violence and chaos.