Book Review

Lauri Mälksoo


In the era of globalisation one could presume that international law scholars from many countries participate actively in international discussion. That is what the situation was, especially in the 1970s and early 1980s. For example, my own dissertation on *jus cogens* included, in its bibliography, authors from tens of countries.

At present, the situation has deteroriated. Anglo-American scholarship dominates the scene overwhelmingly. One of the few influential exceptions is the *European Journal of International Law* which features authors from many European countries. However, one significant shortcoming is the virtual absence of Russian scholars among the authors in the Journal. Clearly, the Russian scholars of international law appear to contribute very little to the international discussion. Correspondingly, Russian authors are seldom referred to in leading publications.

One of those few experts of international law outside of Russia who follow developments in Russia closely is Lauri Mälksoo, professor of international law at the University of Tartu, Estonia. He has published a number of articles on Russian international law in international journals, and recently published a monograph. In this review, I will first engage with and scrutinise Mälksoo’s book before offering some comments on a review of the same book by Professors Marochin and Nelaeva that was published in the issue 85:4 of this Journal.

Mälksoo focuses in his monograph on Russian scholars. This compact book contains a lot of relevant information and analysis in its 195 pages. The

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introduction (Chapter 1) is followed by Chapter 2 on the history of international legal scholarship in Russia, predominantly in imperial Russia (p. 40). Chapter 3, which is the longest chapter in the book, contains a comprehensive analysis on the theory of international law in contemporary Russia (p. 70). A very useful Chapter 4 goes beyond the main theme of the book and discusses the patterns of post-Soviet Russian state practice in international law (p. 50). A concluding chapter draws together the main findings of the book.

Already in the introduction, Mäklsoo raises a relevant question: how ably can an Estonian scholar treat Russian international law doctrine in an objective way? He writes, “I have sometimes been asked by friends and colleagues whether I as an Estonian can ‘objectively’ study Russian approaches to international law”. He does not provide any direct answer, but clearly he is a strongly Western-oriented scholar. That is no surprise, when one recalls the aggressive annexation of Estonia by the Soviet Union in 1940 and suppression of the Estonian peoples’ self-determination for some 50 years. Add to that the regrettable fact that, unlike non-Russian experts, most Russian experts of international law do not regard Estonia’s annexation in 1940 as illegal.

Moving away from himself, Mäklsoo introduces the leading Estonian experts of international law during the times of imperial Russia. Estonia’s leading figures Fyodor Fyodorovich Martens (‘father’ of the Martens Clause) and Baron Michael von Taube were influential experts in imperial Russia, and were in fact directing Russia in its international law doctrine closer to Europe. From the Soviet period, one could mention Boris Meissner and Rein Müllerson. About the latter, Mäklsoo writes that he introduced liberal Western ideas to Soviet international law scholarship during the perestroika period and advised President Gorbachev on international legal matters – “and later on, occasionally, defended Putin’s Russia from being unjustly criticized in the West, including in Estonia”.

1 Chapter 2

In Chapter 2 on history, a central theme is to study two different approaches to international law in imperial Russia – the West-oriented and the Slavophile/Eurasian school. Mäklsoo addresses the theme by first examining the works of five important scholars: “I use mostly the narrative method of letting .... scholars speak and argue with each other”. The first scholar is N.Y. Danilevsky, who in his book on Europe and Russia (1865) regarded Europe and Russia as two distinct and mutually hostile historical-cultural civilisations. The second scholar, F.F. Martens, is regarded by Mäklsoo as the founder of the European