Yasuaki Onuma. ***A Transcivilizational Perspective on International Law.*** Leiden, Boston: Martinus Nijhoff, 2010. Pp. 480. €115. ISBN: 9789004186897.

As Brazil, Russia, India, China, and other emerging states ascend in economic and military might, they will inevitably want to have much more of a say in international affairs. Thus international law will not only have to address conflicts between different interpretations of law but will also need to accommodate and reconcile the often diverging interests of these states. For evidence of this, one need only look at recent debates in the UN Security Council about Syria. Such a multi-polar order is bound to challenge the existing international legal system. The book under review deals with this challenge and attempts to answer the question of how existing discourses within international law should adjust to this emerging 'multi-polar and multi-civilizational world' (at 11).

Yasuaki Onuma, Professor Emeritus at the University of Tokyo, makes a timely and important normative plea to adopt what he calls a 'trans-civilizational' perspective to deal with and resolve problems and conflicts that will transcend national boundaries in such a world (at 60). He argues that if international law is to remain relevant and if it is to even aspire to resolve problems faced by peoples across the globe, it must gradually free itself from a West-centric focus and be cognizant of the interests, culture, politics, and needs of other civilizations. The 'trans-civilizational' perspective Onuma proposes is an alternative cognitive framework (to the 'international and transnational' perspectives (at 30)) for understanding, interpreting, and assessing international law in a way that gives recognition to the plurality of civilizations and cultures (at 81). It gravitates towards a 'non-state centric, non-modernistic [and] non-west centric' discourse, so as to expand the 'narrowly defined discursive space' (at 32) that currently exists in international law. Onuma, understandably, does not define the term 'civilization'. Instead he opts to describe it broadly, arguing that it encompasses cultures, historical experiences, religions, and political experiences that may not only overlap with each other (at 83) but also be functional and changeable rather than monolithic (at 84). Onuma does not suggest that a trans-civilizational perspective is something novel or unprecedented. Indeed, he takes the reader on a rich journey, displaying his vast knowledge of the history of international law to demonstrate that culturally diverse competing normative systems of international law have always existed historically (at 290, 305, and 357). The historic comparisons attempt to explain to the reader how international law – as we take it for granted today – transformed into a highly legalized, West-centric system that is not *bona fide* representative or cognizant of global interests.

The book is divided into five chapters. In the first chapter, the author argues that the prevalent system of international law does not account for the ascent of states that represent different civilizations, and is therefore not a universal law – but a highly West-centric system which is dominated by the 'intellectual and informational hegemony' of the West (at 57). This system of international law will not be compatible with the rise of non-Western states, and is therefore bound to clash with the reconfigurations of power that are occurring in international relations. Yasuki accepts that trans-national actors such as NGOs, multinationals, and media organizations do try to alleviate this disparity by giving the 'south' a voice. Yet, he points out that these transnational actors mostly originate from, and reinforce and export the ideology of, the West (at 76), and that consequently their impact on moderating the discourse is limited (at 75 and 77).

In the second chapter Onuma takes up issues of power and legitimacy. International law, he argues, is no longer aligned with the power realities of the world since 'the very space … where thoughts, ideas claims and arguments are exchanged is overwhelmingly West-centric' (at 142) – that is, even the best idea, if it does not originate in the West or is not expressed in English, gets marginalized in discourse. In this chapter, Onuma also expresses, in a positive vein, that international law primarily 'exists and functions as norms prescribing the conducts of states'

(at 217) rather than a means to adjudicate disputes between states. An emphasis on legalism in international law, he argues, is a Western phenomenon, since it is particularly in Western societies that the idea of law is closely associated with the judiciary and adjudicative norms (at 163 and 223). Rather, according to Onuma, it is more important that international law is legitimate and serves as a standard for assessing the behaviour of states (at 170). The author also argues that, in the absence of judicial enforcement, international law must be 'self-enforcing'. This can be the case only if the diverse subjects of international law consider it to be legitimate (at 111). This legitimacy, in his view, derives from consistency, fairness, accountability, and equality (at 110). For Onuma a trans-civilizational perspective thus becomes necessary for reasons of legitimacy and fairness, and also to reduce conflict and clashes between competing perspectives that wish to impose their own vision. Unless this perspective is adopted, many states, especially emerging ones, will consider international law illegitimate and consequently will disregard it.

In chapter three, the author touches upon sources of international law that he considers 'globally legitimate'; he gives examples of treaties agreed multi-nationally (at 231), such as the UN Charter and the Geneva Conventions of 1949 (at 232), along with UNGA resolutions as an important 'cognitive basis of international law' (at 238) due to their universality. Conversely, Onuma views critically the fact that many international lawyers take for granted that the sources of international law are those listed in Article 38 of the Statute of the International Court of Justice – his point being that Article 38 refers only to the sources of adjudicative norms (at 204), and not to international law's prescriptive norms which form the bulk of international law (at 209). Similarly, in his view, although much of customary international law may be effective, it suffers from a lack of 'global legitimacy', since it has historically been shaped by the interests of powerful states in the West (at 219). While he acknowledges the International Court of Justice as an important forum, he stresses the great importance of diplomatic forums, international organizations, and the media in discovering international law, for there international law is being invoked, discussed, and criticized on a global scale (at 248).

In chapter four Onuma turns his attention to the history of international law. Readers who are not privy to the many historical debates in international law will find this concise discussion particularly helpful. He explains how some of the concepts we take for granted today – such as *pacta sunt servanda,* statehood, sovereignty, treaty, and strict demarcation between the international and domestic spheres gained significance only as late as the 19th century (at 358–359) – as a result of European dominance and colonization. This process also meant that 'competing political entities in various regions were forced to participate in the European, which is a regional, not a global international society' (at 366). Onuma provides insights into how different and influential regional systems (in parallel to European international law) persisted and indeed flourished before this period; in this context he discusses the Sinocentric tribute system (at 305) and the Islamic *siyaar* (at 289). He describes how the current system of international law, the state-centric system, became 'universal' *after* Europeans ensured that their international law would come to replace these two systems – by imposition and coerced negotiation. He argues that the 19th century was the era of the globalization of 'European' international law – the system of international law we have inherited today is thus a product of that period. Like the other parts of the book, this chapter, too, makes a plea to abandon the Euro-centric or West-centric lens with which international law is viewed and to adopt a trans-civilizational perspective. He makes the case that today's system of international law was only one of many systems in the past (at 357), and that this history is often ignored.

In chapter five, Onuma uses the example of international human rights law to illustrate his argument. He suggests that despite the fact that not a great many people in the developing world care much about human rights (at 372), human rights remain central in international legal discourse due to a Western obsession. The reason, according to Onuma is that current human rights law is constituted primarily by individual liberties to which Western societies

give priority over economic rights which people in the developing world actually wish to realize (at 402). The author is careful to acknowledge that human rights law plays a very important role, in that it protects individuals against both state power and the free market (at 390). Ultimately, he argues, however, that its value is instrumental – that human rights are a means to an end of spiritual and material well-being – rather than an absolute end in themselves (at 388). Again he makes the point that for human rights to be legitimate, they must be identified and interpreted through a trans-civilizational lens in order to account for the fact that different societies value different rights and have varying needs. He accordingly argues that the Vienna Declaration and Programme of Action of 1993, although under-appreciated, embodies a more representative and legitimate vision of human rights than the Universal Declaration of Human Rights (at 413), which is overly West-centric and liberty-centric, having been drafted by a small number of states in a largely unfree world where even transnational NGOs did not have much say.

The book makes very strong normative propositions and is thus bound to be controversial. It is no doubt meant as a warning by Yasuaki Onuma, an influential international legal scholar who has taught in several countries and has extensive knowledge of different cultures, for international lawyers that they must adapt international legal discourse to major changes in the international configuration of power if international law is to remain useful and serve its purpose. He thus engages in a bold attempt to identify the inadequacies in current international law and makes a call to refine the lens with which international law is analysed – especially in dominant states such as the United States, where the assumption sometimes tends to be that what is American *must* be universal. The book, at its heart, is a call for objectivity and respect for the perspectives of other civilizations in international legal discourse. The author's thesis is that if weaker and emerging states of the world are to be attracted to the very idea of international law, they must perceive it as legitimate.

The book, however, does have some weaknesses. First, Onuma is too quick to dismiss the value of international judicial organs in achieving a more representative international legal order. The ICJ is certainly not considered to be West-centric in its adjudication: this is at least partly the reason why an increasing number of claims are initiated by developing countries.[1] Similarly, Onuma does not discuss the International Criminal Court – whether it is an institution that is representative of developing countries in a desirable way and, if so, whether it complies, at least somewhat, with his demand for a trans-civilizational perspective. Second, it is not clear how a trans-civilizational perspective is to be implemented. While the book is highly persuasive in highlighting that rising powers and multi-polarity in international law will create complexities and challenges in international law (some being already visible in the debates surrounding humanitarian intervention and the Arab Spring), the author might have better illustrated what the adoption of a trans-civilizational perspective would entail practically and how its adoption would play out to address multi-polarity or West-centrism. Without such elaboration, one is left wondering how the project of adopting a trans-civilizational perspective can be specified, or whether it remains an unattainable ideal. In fact, in response to the author's claim, it could be argued that a proliferation of trans-civilizational perspectives in international legal discourse may actually lead to more, rather than less, conflicts between states due to a lack of consensus. We can all agree in principle that only legitimate and transparent UN General Assembly resolutions should be indicative of international law, but how do we define which resolutions are 'objectively' legitimate if two culturally divergent civilizations – say Islamic or Buddhist – adopt different interpretations and are not willing to compromise? Third, some of the empirical claims,

[1] See, e.g., Posner, 'The Decline of the International Court of Justice', in S. Voigt, M. Albert, and D. Schmidtchen (eds), *International Conflict Resolution* (2005), at 111.

for example, that most people in developing countries do not care as much about human rights than people in Western societies (at 372), could be challenged.

Despite these criticisms, the book under review merits praise, for it draws necessary attention to the notable lacuna between international legal discourse as currently conducted and the normative ideal of a legitimate and representative international law that adapts to the shifting paradigm of power in international relations. In elaborating on the 'trans-civilizational' perspective as a solution, Yasuaki Onuma undoubtedly makes a thought-provoking and original contribution to extant debates about the legitimacy and constitutionalization of international law.

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Philip Liste. ***Völkerrecht-Sprechen: Die Konstruktion demokratischer Völkerrechtspolitik in den USA und der Bundesrepublik Deutschland [Speaking International Law: The Construction of Democratic Politics of International Law in the US and the Federal Republic of Germany]***. Baden-Baden: Nomos, 2012. Pp. 304. €46. ISBN 9783832966225.

Ingo Venzke. ***How Interpretation Makes International Law. On Semantic Change and Normative Twists***. Oxford: Oxford University Press, 2012. Pp. 352. £70. ISBN: 9780199657674.

Once upon a time, quite a long time actually, international lawyers were not terribly interested in the linguistic aspects of their craft. Treaties, obviously, would depend on language, and sometimes the two or more languages would be designated as equally authentic, but, even so, international lawyers trusted that their professional skills would enable them to solve linguistic issues without too many problems. Occasionally scholars would write something on the interpretation of treaties, typically in the form of fairly brief articles and often inspired by a particular episode or incident, but there was fairly little attention to doctrines of interpretation in the abstract, and little enthusiasm for establishing firm legal rules to structure the process of interpretation. Grotius and Vattel both formulated a handful of guidelines, but no hard and fast rules (despite the occasional use of the term 'rules') emerged. And many would agree that the guidelines or maxims identified served mainly as justifications *ex post facto*, having arrived at a preferred interpretation through more intuitive means.

When codifying the law of treaties, the four special rapporteurs appointed by the ILC were remarkably sanguine about possible rules for interpretation. Brierly, the first of the special rapporteurs on the law of treaties, never got round to discussing interpretation, and probably would not have been terribly enthusiastic at any rate, given his general aversion to legislating common sense.[1] Likewise, Lauterpacht never got round to discussing interpretation, although he did write several reports on the topic in a different capacity, as rapporteur for the Institut de Droit International.[2] Fitzmaurice positively opposed the idea that interpretation could ever be

[1] See Brierly, 'The Codification of International Law', 47 *Michigan L Rev* (1948) 2.

[2] In these, he essentially questioned the doctrine of the 'plain meaning' of texts, and advocated a broad recourse to the *travaux préparatoires* without, however, thinking of interpretation as being something that can meaningfully be subjected to legal instruction. Lauterpacht's work on interpretation is largely brought together in E. Lauterpacht (ed.), *Hersch Lauterpacht. International Law: Collected Papers* (1978), iv.