Buchbesprechungen

***Lowe, Vaughan*: International Law: A Very Short Introduction.** Oxford: Oxford University Press, 2015. ISBN 978-0-19923-933-7. 144 p. £ 7,99

Oxford University Press' series of Very Short Introductions started in 1995 and cover a wide range of topics, from the French Revolution to quantum theory. The series is intended to give an "introduction to subjects you previously knew nothing about", and is aimed as much at "general readers" as at "students and their lecturers" (OUP, Very Short Introductions, 2018, <https://global.oup.com>). The series currently counts more than 600 titles, and in 2015 a volume on international law was (finally) added to the catalogue. A Very Short Introduction to law (as such) was first published in 2008, and one to the philosophy of law already in 2006. A volume on human rights (written by *Andrew Clapham*) was first published in 2007, and one on European Union law in 2017.

The Very Short Introduction to international law is written by *Vaughan Lowe*, who was the Chichele Professor of International Law in Oxford from 1999 to 2012. *Lowe* is also the author of the popular 2007 volume International Law, also published by Oxford University Press, as well as a variety of other books and articles on international law. Given how well the 2007 book was received, and *Lowe's* undoubted expertise in the field, he was a logical choice to write the book under review.

International Law: A Very Short Introduction has six chapters: "Nations Under Law", "Where does international law come from?", "Freedom from external interference", "Sovereignty inside the State", "What international law does well", and "What international law does badly (or not at all)". The first chapter is an introduction to the concept of international law. It explains the basic idea of States being subject to legal rules, and how this works in practice. The second chapter discusses what in a book aimed at a more expert readership would be called "(the) sources of international law". The third chapter, on "freedom from external interference", focuses on international law's prohibitions on the use of force and intervention. The following chapter on "sovereignty inside the state", focuses on rules on jurisdiction as well as limitations on the exercise of jurisdiction, especially immunities and human rights law. The final two chapters contrast international law's successes with its failures and oversights. The successes highlighted in the book are grouped under four headings: "trade and economy", "humanitarian law and human rights", "environmental protection", and "crime and punishment". The limitations of international law that *Lowe* discusses are focused on political disputes, where the law can only facilitate, and not

force, agreements or solutions. Thus, the book's final words: "The Law can never establish a system so perfect that people do not need to be good" (p. 123).

The book's structure is different from that of a traditional international law textbook aimed at lawyers and law students. *Lowe's* focus is not primarily on discussing and interpreting the rules themselves, he rather writes about the rules. This explains why he asks, for example, "where international law comes from" rather than "what are the sources of international law and how are they applied". The book still manages to cover much of the same ground as a traditional textbook, including the sources of international law, jurisdiction, immunities, intervention, the use of force, as well as samples from more specialized areas of international law such as human rights law, humanitarian law, international criminal law, international environmental law, and international trade and investment law. These topics are not covered with the depth and breadth of sources that one would expect from a traditional textbook, but for a book like this that is a strength rather than a weakness. The book includes a section on "Further reading" (pp. 125-126), where interested readers are guided towards more in-depth analyses.

After dealing with sources, and before moving on to the rules on the use of force and intervention, *Lowe* writes that the book focuses on "the role of law in the control of international violence and in securing cooperation to address what are regarded as the major international problems of the day" (p. 57). This choice of perspective is based on the assumption "that most readers will want to increase their understanding of international law in a way that meshes with what they hear and read about in the English-language news media and in books written by scholars working in adjacent disciplines such as international relations" (p. 57). As other potential perspectives, *Lowe* mentions "ways in which [international law has] operated to support colonialism", its basis in "Eurocentric legal and political concepts", or "the way in which its principles reflect the preoccupations of male-dominated societies or of Western class structures" (p. 56). International lawyers recognize this as a focus on "positivist" international law, to the exclusion of more "critical" perspectives. In an introductory book that is also aimed at non-lawyers, that is a sensible choice, and *Lowe* justifies it well.

The term "State" is as central to the book as it is to the international legal system, but the book does not make any real attempt to define it. There is a subchapter on "the myth of the sovereign State" (pp. 2-4), where different forms of human organization and types of States are discussed, but the meaning of the term as such is not explored further. Given that the book is

aimed at non-lawyers, a (non-technical) definition would have been valuable, especially if it were contrasted with related terms such as "country", "nation", and "government".

There are also some substantive points in the book that can be discussed further.

Lowe writes that the UN Security Council's Chapter VII "power was used, for example, to authorize the US-led coalitions to take action against North Korea following its invasion of South Korea in 1950" (p. 71). This concerns United Nations Security Council Resolution 82 to 84. Resolution 82 "[d]etermines that [the armed attack on the Republic of Korea by forces from North Korea] constitutes a breach of the peace", "[r]equests the United Nations Commission on Korea [...] to observe the withdrawal of North Korean forces to the 38th parallel", and "calls upon all Member States to render every assistance to the United Nations in the execution of this resolution". Resolution 83 refers to Resolution 82, and "[r]ecommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack [...]". Because of the wording of Resolution 83, with the terms "recommends" and "assistance", the US-led action in Korea may be seen as collective self-defence on behalf of South Korea rather than as being authorized by the Security Council (*N. D. White*, The Korean War, in: T. Ruys/O. Corten (eds.), The Use of Force in International Law: A Case-Based Approach, 2018, 17, pp. 31-32 lists writers who come down on each side of the debate). This would be similar to Resolution 1368, which "[r]ecogniz[ed] the inherent right of individual or collective self-defence in accordance with the Charter" and "[c]all[ed] on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks". This was in practice an approval of the US-led 2001 invasion of Afghanistan, but not an authorization of that invasion under the UN Charter Chapter VII.

When discussing statehood, the book mentions Palestine. It argues that for Palestine, "the requirements [of statehood] are at least arguably as well met as they were in the case of some other entities when they were admitted to the UN as States" (p. 15), but also that "Palestine […] meet[s] the legal criteria for statehood" (p. 16). One issue with Palestine's statehood is, as the book notes, that "Israel is in military occupation of parts of Palestinian territory" (p. 15). Because of this, it is not crystal clear that Palestine fulfils the criteria for statehood. The first of the book's statements, that the requirements "are at least arguably as well met as they were in the case of some other entities when they were admitted to the UN as States" is correct, but

the second, that "Palestine […] meet[s] the legal criteria for statehood", may be too categorical.

In conclusion, the book does what it sets out to do, and does it well, by offering a concise and sophisticated introduction to international law. It covers a surprisingly wide array of topics, given the restricted format. The book also is well written. It contains some refreshing rhetorical flourishes that make it less dry than a book of this type could be. An example is when *Lowe* mentions "the nocturnal use of electric lawn-mowers" as a potential measure for dealing with "[a] dispute over a neighbour's garden hedge" (p. 45).

Sondre Torp Helmersen, Lillehammer (Norway)

Book Essay

***Onuma, Yasuaki*: International Law in a Transcivilizational World.** Cambridge UK: Cambridge University Press, 2017. ISBN 978-1-107-02473-1. XX, 666 p. £ 75,- (hardback)

On Tuesday, June 6, 2018, *Nikki Haley*, the United States (US) Ambassador to the United Nations (UN), announced that the US will leave the United Nations Human Rights Council. The reasons given troublingly seem to echo some of the core tenets of the criticism developed by *Yasuaki Onuma* in his latest treatise *International Law in a Transcivilizational World*. The US Ambassador to the United Nations has indeed stated, among others, that the UN Human Rights Council was hosting "human rights abusers" and "the world's worst inhumane regime", thus acting as their "protector" "for too long" and becoming "a cesspool of political bias".[1] Furthermore, this last US decision follows similar moves of this kind from the Paris COP 21 Agreement to the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the "Nuclear Iran Deal", which on the whole seem to constitute a good illustration of what this book opposes. Namely, crude unilateralism embedded in a self-centred vision of the world, which allows international law to be torn apart to satisfy the "national interests" of the moment, regardless of the ways in which this attitude might be perceived in the rest of the world. By contrast, in his monograph, *Yasuaki Onuma* praises the United Nations, including its Human Rights Council, for being the international body benefitting from the greatest level of global legitimacy due to its representativeness even though it is

[1] The Guardian, US Quits UN Human Rights Council – "a cesspool of political bias", 19.6.2018, available at <https://www.theguardian.com>.

not able to address situations involving grave human rights abuses with binding decisions.

All in all, the core claim of *Onuma's* book is that international society in the 21st century will change profoundly, in a manner that will see Western nations' influence over international law decrease significantly to the benefit of non-Western nations, in particular of South-Eastern Asian nations. This change should be positively welcomed, the argument goes, because it could lead to a reduction of the West-centric character of current international law and makes it possible to better address the great challenges faced by international society as a whole, whose population lives for the most part in non-Western nations. The main objective of this treatise is actually to give a sense of and try to tackle these great challenges. The author claims that the momentum of current processes of transformation results in serious instability and tensions. He maintains that two reasons among others are the discrepancy that will remain between the newly acquired material power of (re-)emerging non-Western nations – i.e. mainly in economic (and sometimes military) terms – and Western-centric ideational power, which will continue to exert its influence over international society and international law in the next decades (p. 53). As an answer, the author suggests making international law more inclusive, so as to ensure its transcivilisational legitimacy and effectiveness but also to better respond to a sense of global justice. This is one of the gists of the treatise: international law's normative force matters more than its positive force. In *Onuma's* perspective, this translates into the argument that international law does exist and matter, but less for the obligations it imposes than for the "shared normative consciousness" of the members of the international society. This consciousness may stem from inherited "perceptions of law" but also the "cognitive bases" used by various "participants" of the international legal system, which both impact on what international law can do. As we will see in the course of this essay, the author's approach to international law does not address only States. If *Onuma* acknowledges the fact that States constitute the primary "subjects" of international law, he pleads for taking a broad set of actors into account in the study of international law: organs of international organisations, indigenous peoples, ethnic or national minorities, religious organisations or groups, private companies, Non-Governmental Organisations (NGOs), the media, international lawyers, criminal or terrorist

groups, as well as ordinary citizens.[2] In parallel, he predicts that Statehood will remain a major figure in the decades to come, especially for non-Western countries and peoples. His position therefore clearly speaks out against the repeated announcements of the State's demise in the 21st century. *Onuma's* approach could be said to lie somewhere between some of the radical critical voices in the field, such as the Third World Approaches to International Law (TWAIL) movement, and more "centrist" sensitivities, which still encourage criticism without calling upon abandoning an engagement with positive international law.[3]

It is a traditional and also accurate statement that this book essay cannot give a due account of all the intricacies of *Onuma's* work. Rather, this essay's aim is to reconstruct some of the main threads of the monograph's theorisation of international law and to carve out some of the most innovative elements of this treatise, as compared to other traditional treatises dedicated to general international law. Although one could critically scrutinise *Onuma's* methodology and approach, the focus will be on engaging with the main argument from the inside, instead of trying to radically contest *Onuma's* basic choices. To this end, the essay will shed light on *Onuma's* core concepts before detailing his approach to international law and, finally in examining the book's central argument: that we should strive towards a reduced Western-centrism in international law, which should take a less legalistic and judicial-centric approach, with the goal of ensuring legal legitimacy and effectiveness. The essay will conclude with some brief critical thoughts.

1. *Onuma's* Core Premises and Concepts

Onuma embraces a view of international law that emphasises its socio-political and historical aspects without ignoring some of the most basic concepts and doctrines of the discipline, which he nonetheless wishes to enrich with his own concepts. He continues to resort to the latter, albeit rather sporadically, throughout this treatise. *Onuma's* own concepts will thus be reconstructed here in order to grasp what makes his approach to interna-

[2] This actually directly relates to the very first article published in the American Journal of International Law by *Elihu Root* in 1907 "The Need of Popular Understanding of International Law".

[3] Indeed, the author definitely shares common themes with the TWAIL movement, although *Onuma* also departs from some of their sensitivities as in the case, for example, of his approach to international economic law.

tional law both interesting and challenging. First, we will address three premises that the author offers, namely the central role he ascribes to the "perceptions of law", the "cognitive bases" of international law, and the "normative consciousness by the members of international society". These three themes all inform the author's core concept of transcivilisation (1.1.). Secondly, we will turn to the similarly central concepts of "international legal participants" and "international legal phenomena" and "processes", briefly addressing the particularly original concept of the "combination of the 'North Wind' and the 'Sun'" approaches (1.2.).

1.1. Cognitive Bases, Normative Consciousness, Perceptions of Law, and Transcivilisation

The concept of transcivilisation relies on several premises in *Onuma's* depiction. The "cognitive bases" of international law raise the question of who decides on what international law is. *Onuma* uses "normative consciousness" to answer that question, a concept that seems intimately connected to what he calls the "perceptions of law".

The aforementioned concepts are all central premises in this treatise, whose aim is to study international law through a transcivilisational perspective. Such a viewpoint is defined as the "perspective from which people see, sense, (re)cognise, interpret, assess, and seek to propose solutions for the ideas, activities, phenomena and problems transcending national boundaries by adopting a cognitive and evaluative framework based on the recognition of the plurality of civilizations and cultures that have long existed throughout human history" (p. 19). *Onuma* further specifies that "transcivilizational perspective does not mean that one should think in terms of 'great' civilizations, negating 'minor' cultures. The term 'civilization' adopted here assumes that there are diverse cultures both within a civilization (intra-civilizational diversity) and transcending civilizations (inter-civilizational cultures)." (p. 19, note 14)

Beyond that, *Onuma* develops and defends a fundamentally pluralistic account of international law. He also repeatedly claims that international law is relative and dependent on context and culture (p. 21, pp. 43-44, p. 109, p. 111). This relativity and context-dependency has a temporal dimension as well, so that international law must not be interpreted as being frozen in a particular time. In like manner, the author's approach emphasises that "international law is constantly changing, but the way, degree and speed of its change depends on the behaviour of its participants", the very

behaviour – "from inaction to action" – which depends in turn on how international participants perceive international law and other matters relevant to it (p. 660).

The perceptions of law are crucial to *Onuma's* understanding of international law, because most of his concepts concerning the role of international law in a transcivilisational world flow from that concept. In the same vein as "a king can be a king as long as others perceive him to be a king", *Onuma* argues that "international law is law as long as people perceive it as such" (p. 44) and asks what common perceptions of law allow international law to be perceived as law in international society. His answer is that there cannot be one "single rigid concept of law that is universally and trans-historically valid independent of context and forum", but rather that one may identify several "common perceptions". Presumably, people share a broad – though for the most part unconscious – understanding of common features of law. *Onuma's* conception of law is that of a "social construct", (p. 48) whose relativity and contextual dependency are inescapable. This is contrasted with any attempt to "(p)ursu[e] an 'essential', 'inherent' or 'universal' concept of law, applicable to any law at any time and place, and in any context", which "invariably fails" (pp. 47-48).[4]

Onuma employs the term "normative consciousness" to demonstrate that in his view, international law does not primarily signify legal sources, mechanisms, and processes, but rather reflects the sense of justice of the members of a society governed by law, fulfilling their interests and other various expectations. One of the main messages here is that for *Onuma*, international law is not primarily about the obligations that it entails and the mechanisms which ensure its implementation, sometimes with the use of binding rules, but about something broader and perhaps vaguer. Normative consciousness intervenes with a conditioning effect: *Onuma* tells us that if most members of a given society "regard some law as illegitimate or unjust, such law cannot work in the long run" (p. 9). In turn, it appears that international law can also shape the normative consciousness of its members to some extent. The author illustrates his claim, markedly in international environmental law, arguing that multilateral treaties are actual devices for universalising the duty to protect the environment by disseminating a normative consciousness across the world through the imposition of *erga omnes* obligations, the common heritage and concerns of humankind (p. 497), or the protection of cultural heritage (pp. 522-524). Interestingly, *Onuma*

[4] See also, in a similar vein but concerning the "shared perception of international law", pp. 119-120.

briefly ventures into some forms of global constitutionalism discourses by arguing that the prohibition of the use of force, as embodied in Art. 2(4) of the UN Charter, expresses a "shared understanding of the constitutional structure and common aspirations of the global community" (pp. 597-598). All these instances demonstrate reliance on the idea of normative consciousness in order to indicate that international law can only exert an influence insofar as it captures the "social" at the international level, regardless of the binding character of its norms and in spite of its recurring violations.

With respect to the concept of cognitive bases, *Onuma* calls for replacing the "antiquated sources of international law" with a larger set of "forms and cognitive bases of international law" (pp. 103-106), because it is ultimately the "globally shared perception of international law as legitimate and indispensable for the management of global affairs that guarantees (its) validity and effectiveness" (p. 54). This idea has to do with *Onuma's* approach to power and legitimacy in the context of international law understood as a frame of mind, which serves his aim to investigate the "global legitimacy of the prevalent concepts and frameworks of international law" (p. 53). Indeed, he argues that international law's most elaborate and leading ideas and concepts are used as cognitive and interpretative frameworks by people across the world, despite the fact that they were basically developed by mere "male international lawyers from powerful Western nations" (pp. 52-53). This constitutes a great challenge for the effectiveness of international law, because *Onuma* predicts a discrepancy between the actual power constellation within powerful non-Western nations and the current cognitive and ideational frameworks of international law. In other words, international law could completely lose touch with the shared normative consciousness of international society.

1.2. International Legal Participants, Phenomena, Processes and the "North Wind" and "Sun" Approaches

Following the idea that transcivilisation is about the people who live, experience, and participate in international law, the author proposes the concept of "international legal participants" as a "new" category[5] instead of the

[5] *Onuma* actually acknowledges that this concept was developed and used in particular by the "Yale School", whose major figures include *McDougal*, *Rosalyn Higgins* or *W. Michael Reisman*, but claims that his concept "does not presuppose the Yale School methodology". See p. 187, note 1.

traditional legal categories of persons or subjects. This conception enlarges the scope of investigation of international legal studies – one of *Onuma's* core claims – and takes into account the role played by a large variety of actors, including individuals and communities. The concept of participants is independent from the qualification of a particular entity as a "primary" or "secondary" subject under positive international law (pp. 190-191). Furthermore, non-State international participants – other than international organisations – include parties to civil wars and the International Committee of the Red Cross (ICRC) (pp. 235-236), minorities and indigenous peoples (pp. 236-239), private companies or enterprises (pp. 239-241), and NGOs (pp. 241-244). Another interesting illustration of this "opening" may be found in the study of the negative consequences on ordinary citizens of a State violating international law and against which there are reactions by other States (pp. 272-274). This shift has important consequences for determining the legality of behaviour under international law, given that it should not only be based on the perspective of States. The author consequently stresses the pivotal role played by the exchange of views between various subjects and participants of international law, as well as diverse forums, for deciding what is legal or illegal in international law (pp. 290-291). The opening is therefore an opportunity to make international law more inclusive by taking into account "multi-faceted and multi-layered international legal processes" (pp. 292-293).

Onuma expresses similar concern with regard to the objects of the study of international law. For this purpose, he relies on his concepts of "international legal phenomena" and "processes" in order to "invite readers to see international law in action, acting in political settings, carrying out numerous societal functions not limited to an adjudicative or arbitral function". He further argues that "international law changes its forms and roles over its historical development". The contribution of international law to international society is ambiguous in *Onuma's* treatise, because international law "contributes to the well-being of humanity" on the one hand but also "carries out an ideological function justifying actual power relations" on the other hand. Thus, for *Onuma*, these multi-faceted aspects of international law constitute the totality of "international legal phenomena", which he calls "international legal processes" when "seen from a developmental perspective of social processes" (p. 23), in an otherwise dynamic viewpoint.[6]

[6] See more on *Onuma's* understanding of international legal processes with respect to international treaty law, pp. 114 and following.

Finally, in several instances, *Onuma* pleads for embracing the "North Wind" and the "Sun" approaches, terms that he draws from an *Aesop* fable. These concepts are meant to capture both the penalising effect ("the North Wind") of international law – for example through various sanctions – and its facilitating effect ("the Sun") – through various incentives. *Onuma* uses this concept to explain how the penalising approach can be more effective when undertaken together with an approach that aims to facilitate changes, like in the fight against climate change (511-514),[7] in the context of the functions assumed by international law with regard to conflict resolution (p. 584), and in the case of collective security (p. 649).

2. *Onuma's* Overall Approach to International Law

Onuma's approach is characterised by the acknowledgement of power structures both in terms of material and ideational power, yet without being limited to a purely realist position, as will be shown. In this sense, he recognises that a whole series of factors favours the interests of the most powerful actors of international society. Precisely, historically and until today, these most powerful actors mostly originate from the West. Throughout the book, the power structure is acknowledged repeatedly, yet without depicting international law as useless or non-existent (pp. 48-52). This is done in a historical fashion, for instance, by analysing the development of the international law of the sea (pp. 314-328) or the development of the post-World War II international economic system (pp. 428-432). But *Onuma's* approach is not limited to mere historical accounts. He also examines current trends in international society. One particularly interesting illustration of this is his analysis of the impact that China might have on the international law of the 21st century (pp. 4-7, pp. 464-465, pp. 475-479).

Yet, this finding does not lead the author to abandon a critical perspective on non-Western States' actions and perspectives. For example, he points out that the lacking transnational character of the New International Economic Order is one of the reasons for its failure (pp. 469-470). More broadly, he also mentions several times that the responsibility of developing nations' leaders for the state of their national economy, noting for example the tendency "to externalize causes of underdevelopment maintaining that their

[7] In particular, see p. 512, where *Onuma* stresses the following point: "(T)he need for the combined approach of the 'North Wind' and the 'Sun' is common to all fields of law, although international environmental law draws even more attention to facilitative aspects than other fields of international law."

failures result from Western colonialism, capitalism and imperialism" (pp. 474-475). Similarly, while observing the suspicion with which the West is perceived in these countries because of instances when the West has interfered, under the guise of humanitarian intervention and the like, *Onuma* is critical of the tendency among some non-Western governments to "always blame 'Western (neo-)colonialism and imperialism'" and to avoid facing "their own responsibilities" (pp. 657-658).

However, it is not the sole role of international law to mirror power games at the international level, as *Onuma's* argument demonstrates that international law should be approached in a functionalist manner,[8] thus assigning it a more constructive role. For instance, the author maintains, the functions of international law in conflict resolution boil down to the vital role of constituting a point of reference for conflicting parties, without the question of legality/illegality needing to be settled in the first place (pp. 550-553). In this context, the functions of international law as "point of reference" are made possible because of some of what are often considered its major features ("shared perception of international law"), namely its legitimacy, fairness, determinacy, formalism, relative neutrality, precision and global authority (p. 551, note 21 and 22).

More generally, *Onuma* attributes seven functions to international law. The primary function is to prescribe State conduct on the international plane through a set of norms (p. 48). Secondly, international law provides a "normative criterion and framework for assessing the legality of the conduct of a state", doing so through various criteria, which can then be used by a plurality of actors: national governments, organs of international organisations, media, etc. (p. 49). Thirdly, international law settles conflicts by providing normative frameworks.[9] Fourthly, it fulfils the function of providing "the critical basis for international organisations, whose activities are indispensable for the life of people all across the world" (p. 50). Fifthly, it has the purpose of legitimating and justifying State conduct through reputational mechanisms (p. 50). Sixthly, international law serves as a communi-

[8] See, in general, pp. 25-29. But see also with regard to the sources of international law, p. 111; on international legal participants, pp. 187-189 and p. 192; on sovereignty and jurisdiction, p. 217; on the spatial ordering of the world, p. 312; on the concept of nationality, pp. 340-343; on the global environment and international law, p. 531; on the role of the UN in the regulation of force and the realisation of peace, p. 648.

[9] *Onuma* warns, however, that international society has not developed "sufficient mechanisms for allowing international law to work effectively as a set of adjudicative functions", and that consequently one should not over-evaluate international law's "conflict resolution" function, especially in its adjudicative version. See p. 50.

cative vessel crucial for an international society characterised by the diversity of its traditions, cultures, values, and legal systems, a communicative function that will become increasingly important due to "the ongoing multi-centralization or multi-polarization of international society" (p. 50). Finally, international law expresses "shared understandings of the constitutional structure and legitimate aspirations of the international community", through which the common principles of conduct held by its diverse members are indicated and therefore induce the convergence of their behaviours (p. 51). For *Onuma*, the fact that people often see international law as an institution for "settling disputes rather than as ideas tacitly construing and constructing social realities" stems from the fact that one focuses more on what goes wrong – the exception – than on ways in which international law is routinely applied and respected (p. 52).

3. The Central Thesis of *Onuma's* Treatise

Onuma's core argument is that one should seek to reduce the Western-centric character of international law, in particular by going beyond the Western-legalistic approach to international law. He himself attempts to do so, in order not only to deconstruct international law but also to provide an alternative for implementing his vision of what could make international law more effective and legitimate in a transcivilisational world.

3.1. *Onuma's* Plea to Further Reduce the West-Centric Character of International Law

As already mentioned, this monograph repeatedly refers to the author's prediction that international law's Euro- and West-centrism will decline in favour of a more multi-centred and multi-civilisational world (pp. 477-478). Yet ultimately, this is not a mere prediction but rather a criticism directed at both international legal practice and scholarship. For example, *Onuma* qualifies the 1993 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, as a milestone for the development of a more transcivilisational perspective on human rights, in spite of its unfair marginalisation by Western academics, given its lack of binding force (pp. 383-388).[10] In several parts of his treatise, *Onuma* returns to

[10] Contrast *Onuma* with *C. Tomuschat*, Human Rights Between Idealism and Realism, 2014, at p. 2, p. 51, pp. 55-56.

methodological issues connected to the role of international scholars in the changing constellation of the 21st century. For instance, he provides a roadmap for the study of the transformation of international economic law in the 21st century (pp. 478-479). In this field, the core argument translates into the yardstick of "power (and burden) sharing" between the pre-existing economic powers and the (re)emerging powers (p. 478). However, *Onuma* still clearly negatively evaluates the contribution of the current "model of international law under West-centric leadership", because it would have failed the great challenge of "rectifying the gap between the rich and the poor and eradicating absolute poverty" (p. 478).

He furthermore remarkably addresses human rights with this aim (pp. 361-363), without yet concluding that it is necessary to give up the concept of human rights as a "Western product". *Onuma* clearly indicates that his transcivilisational perspective on human rights does not imply that one must support the "clash of civilisation" arguments. On the contrary, he stresses that one must approach human rights bearing in mind the double contradictory trend that sees an increasing sensitivity towards egregious violations of human rights in non-Western States (p. 406, note 68), while simultaneously noting that resentful feelings are still common among non-Western people. The crucial question then is: "(h)ow should one find common ground for human rights between nations encompassing diverse cultures, religions, civilizations and perceptions of the self and others, and the world at large?" – a question that the author raises but leaves unanswered, while explicitly rejecting the essentialisation of the concept of civilisation (p. 416, see also p. 20, p. 60, p. 420).

With respect to the global protection of the environment, *Onuma* presents his core argument as vital. He criticises the fact that a growing part of humankind is striving to achieve the values and vices of Western-centric modernity ("consumerist lifestyle"), which will perpetuate the greatest dangers for our global environment (pp. 511-514). Against this backdrop, he advocates rehabilitating lifestyles and values other than the Western ones, with their focus on progressive and materialistic well-being. For instance, he claims that modernity had a destructive impact on an inter-generational and transhistorical understanding of the world, "existing long before the West-centric modernity", but which is still indispensable for protecting the natural and cultural environment (pp. 524-533). Acknowledging that nature and non-humans should also be protected, he objects that if international law does matter, one must understand its limitations. In this vein, he is critical of "misguided attempts" to address certain environmental challenges by framing those issues with an "excessively preoccupied", "right-centric legalistic

and individualistic" thinking, citing as examples the conceptualisation of intergenerational solidarity through rights and animal rights (pp. 528-533). This criticism of the excessively legalistic, right-centric, and judicial-centric nature of current international law constitutes by itself an important criticism that this treatise makes and to which we will now turn.

3.2. *Onuma's* Suggested Alternative to His Criticism of the Excessive Legalism and Judicial-Centrism of International Law

This criticism is identifiable in many instances, albeit in various forms, depending on what exactly the author is dealing with in his treatise.[11] With respect to general international law, a central point is that international lawyers rely too much on frameworks of domestic law when approaching international law (p. 23)[12] or its sources (pp. 151-153), with the model of those domestic laws coming from the West, due to the West-centric nature of positive international law. In human rights[13] or environmental matters (p. 532),[14] *Onuma's* critical points also target the Western focus on individualism and liberty. However, most of the time, his criticism is concerned with judicial-centrism.[15] The overall idea is that in international law, the legal bindingness of norms and their coercive enforcement are accorded too

[11] See, for example, on the nature of law, p. 110; on the ICL Articles on State responsibility, pp. 258-259.

[12] "Because many international lawyers assume that law should primarily work in the judiciary – *tacitly following West-centric* (*in particular, Anglo-American*) domestic law model thinking – they tend to construct their theories by assuming international legal norms as adjudicative norms."

[13] See, for example, with respect to human rights: "The prevailing concept of human rights formulates the value of human dignity as the *rights of individuals* enforceable by legal mechanisms. Such a way of thinking and pattern of behavior has its own problematic features. (…) Negative aspects of human rights associated with West-centric liberty-centrism, individual-centrism and legalism, especially judicial-centrism, must always be borne in mind when discussing human rights (…). One should constantly seek to *re-conceptualize human rights* to minimize its negative aspects.", pp. 420-421.

[14] "If one takes an excessively narrow view of law qualified by the perspective of equating law merely with prescriptive adjudicative norms in terms of individualistic 'rights' and 'obligations', it would be difficult to appreciate a wide range of functions that international law has been playing in the field of global environment protection."

[15] Contrast *Onuma's* approach with the one developed in *A. von Bogdandy/I. Venzke*, In Whose Name? A Public Law Theory of International Adjudication, 2014.

much importance. We will therefore then turn to aspects concerning this issue.[16]

Indeed, this treatise repeatedly criticises the "legalistic approach" to international law, which puts too much emphasis on international judicial adjudication mechanisms. It does so to the detriment of other forms of international mechanisms, which offers more effective means to reflect and tackle some of the challenges that the world and especially non-Western peoples face (pp. 26-28).[17] As an alternative, *Onuma* proposes resorting to other forums and mechanisms, which will enjoy more legitimacy and effectiveness.[18] In this way, *Onuma* claims not to completely reject the relevance of the role that international adjudicative judicial settlements mechanisms play, even though he aims to highlight that their intervention in the everyday business of international law is the exception rather than the rule. However, even under "exceptional circumstances", where international settlement mechanisms can intervene and are utilised, *Onuma* still insists on the inherent limits of these processes, which cannot alone settle disputes unequivocally (pp. 126-127).

Onuma's study of the regionalisation of human rights offers another, "softer" variant of this criticism. He argues that regionalisation in the human rights field is too focused on the European model (p. 177), while recognising that it is the most advanced regional system for their effective guarantee (p. 393). This criticism extends to the dominant "judicial-centric" model for realising international human rights in domestic settings (pp. 408-410) and, in particular, to coercive reactions against human rights violations: for the author, coerciveness is too often conflated with effectiveness (pp. 413-414). In contradistinction, the author more surprisingly highlights that the extraterritorial application of domestic legislations is still better received in non-Western States when aimed at implementing human rights than when used to ensure the application of trade law.[19] Moreover, conditionality

16 We will exclude the other recurring criticism of State-centrism, which is at times associated with judicial-centrism, but without that *Onuma* clearly connects the former to West-centrism. See, for example, with regard to territorial problems: "The prevalent theory of international law on territorial problem has tended to be state-centric and judiciary-centric in carrying out this task,", p. 300.

17 See also, about the responses to the violations of international law, p. 252.

18 As "leading examples," the author refers to the UN General Assembly, the UN Security Council, the reports of the Panels and the Appellate Body of the WTO, and the views and recommendations of the monitoring of various multilateral treaties, such as human rights ones. See pp. 117-118.

19 More precisely, the author seems here to be thinking of some human rights experts, activists and NGOs in non-Western countries. See, p. 411.

is presented as part of a trend demonstrating a "radical change in the normative consciousness on human rights held by citizens" in recipient countries (pp. 412-413).

More generally, the importance that *Onuma* accords the UN throughout this book is noteworthy.[20] Interestingly, he claims that even though the UN does not play the role of human rights guarantor, since its main goal is to preserve international peace and security, it has been more successful with the spreading of human rights globally than the first objective (p. 371). With respect to international law in conflict resolution, *Onuma* later reiterates his argument that there is a widely shared perception of the UN as being the representative institution with the greatest legitimacy in the post-World War II era (p. 578).

Subsequently, he extends his criticism of the excessive reliance on international adjudication by claiming that international law, when it works as adjudicative norms in the judicial settlement of disputes, poses a number of important problems (pp. 580-584). In his view, considering the status, functions, and raisons d'être of international law in conflict resolution, one cannot simply assume that the judicial settlement enabled by international law is always a good thing: "international law may function positively by confirming the legitimate state of affairs, but also negatively by confirming an illegitimate state of affairs" (p. 581). In response to the question whether all conflicts should be settled by the International Court of Justice and other judicial courts, *Onuma* clearly answers in the negative. Addressing the issues of the authority of the International Court of Justice and the rule of law in international law, he claims that adjudication is certainly the most visible part of the law but is not the law itself. He thereby calls upon liberating the study of international law from the domestic-model thinking of modern Western societies, where the assumed supremacy of adjudication has its roots, suggesting to opt instead for a holistic and functional approach to international law (pp. 581-583). His alternative relies on the many functions that international law performs beyond international adjudication, such as good offices, mediation, conciliation, or arbitration. Indeed, he argues that international law can contribute by exerting influence on a whole range of actors involved in a given conflict or simply impacting them as members of a global community. That is why for him, the diverse involvement of non-State participants in comprehensive international legal processes on conflict resolution must be understood as a sign of the "democratisa-

[20] See, with respect to *Onuma's* analysis of customary international law, and why he sees the UN as possessing more of a global legitimacy, pp. 161-171.

tion" of diplomacy – in this sense no longer considered a secret art reserved for a small number of diplomats or legal experts, but instead now affected by politisation. This democratisation manifests itself more generally in civil society's increased influence at the international level (p. 587).

Likewise, the author confers the supreme role in regulating force and realising peace on the UN (pp. 588-589). This does not mean that he does not consider the UN to possess serious flaws (pp. 588-589). With respect to collective security and its legitimation, for which the UN is a cornerstone, *Onuma* thoroughly analyses the reasons why this collective system does not function as originally expected but remains nonetheless central for international society. In *Onuma's* holistic and functional approach, the role that "the UN can play better than any other party in a conflict is the legitimation of – including providing legal bases for – the activities to be carried out by parties concerned" (p. 644). He specifies this by claiming that the UN "should primarily engage in judging the situation from legal and other normative perspectives, and legitimate certain acts of states and other subjects when these subjects seek to suppress military activities of the wrongdoing parties" (pp. 645-650). This articulates one of the conceptual threads that run through this monograph: the plea for a solution that would be a lesser evil,[21] constituted by what *Onuma* labels the combination of the "North Wind" and the "Sun" approaches. Within the context of the regulation of the use of force, these approaches entail "negative responses of both military and non-military nature", that are "indispensable for the maintenance of peace" (pp. 648-649). Crucially, however, these negative responses should be undertaken in parallel with "positive policies represented by economic, social, educational and technical aid" to the actual or possible wrongdoing actor "in exchange for the commitment to peace by such actor" (pp. 648-649).

[21] We find also some instances wherein the "lesser evil" solution is used in a more circumscribed manner, such as with respect to the principle of equality of nations, pp. 95-96, and to the role of the UN in the post-World War II global order, pp. 230-231. It is also used in the introduction of this treatise as an overall yardstick for the study of international law, which for *Onuma* "must contribute to revealing unjust or illegitimate normative realities and to proposing alternative realities to be socially constructed for a better, or at least less evil, world", p. 26.

4. Concluding Observations

Onuma's book is written very lucidly. Readers will appreciate that he emphasises many core ideas with italics. Interestingly, many accounts of historical facts or situations are depicted in a way that includes very straight-forward characterisations of famous episodes.[22] It is worth noting that *Onuma's* impressive monograph does not repeat references in the footnotes. It seldom refers to other authors, although there are some casual but careful allusions made to fundamental authors in the main text. One might note here, somewhat ironically given the core message of that treatise, that the references to other authors are not entirely distinguishable from traditional types of bibliographies found in Western authors' writings. This might stem from the very fact that the discipline, as it has been developed to date, makes it impossible not to cite mainly Western international lawyers or thinkers. Let us recall that one of *Onuma's* first objectives is seemingly to call for a broader understanding of the processes – which the author calls "international legal processes" – and actors – whom he refers to as "international participants" – involved in the shaping and making of international law in the 21st century. To support this aim, he privileges broad considerations, which are overlooked or even ignored in traditional general studies of international law. Yet honesty commands that we recognise the difficulty of properly testing the reality of these considerations, when they are not supported by clear references for very complex and controversial matters.[23] In any case, this allows the reader to grasp the treatise's arguments in an efficient way, since one can focus on the main ideas, with some complementary observations in some of the footnotes. More generally, akin to other critical scholars, *Onuma* repeatedly points out that certain viewpoints are marginalised in scholarship. This is a fair point, yet *Onuma* regrettably makes it without clearly developing the precise point of reference. Do these scholars address the short-comings and *lacunae* of the most authoritative textbooks published in English (*Shaw*, *Brownlie*), or also in French or in German or in Spanish, or do they broaden their criticism to the entire academic production that comes out of Western institutions and journals? Fairness com-

[22] See the connection that the author draws between the failure of the NIEO initiated by the Non-Aligned Movement and the subsequent rise of international investment law, pp. 451-455; see also his account of the US intervention in support of South Vietnam against North Vietnam from 1960 to 1975, with the dubious use of the collective self-defense justification by the US, p. 621.

[23] For instance, on the role of religion and secularisation with the creation of human rights, see p. 364.

mands the qualification that the scale and magnitude with which international scholarship has developed in the last years renders this task almost – but not completely – impossible.

The author rather successfully carries out his aim to offer an alternative perspective on some important questions of international law dealt with in many other textbooks in the field (pp. 28-29). *Onuma's* mainly positive account of the role assumed by UN peacekeeping forces in international society is one of these instances (pp. 631-634). Another is the straight-forward understanding of terrorism as "ultimately associated with the well- and malfunctioning of the current international order", which must be put in relation to critical problems that lie in the "perception of the current order held by some non-Western people who regarded themselves as attacked and humiliated by an aggressive and powerful modern Western civilization" (p. 637). A last instance worth citing here is *Onuma's* approach to the very notion of peace during the Cold War period (pp. 641-644). His approach departs from the traditional narrative describing this period, which is often characterised as one of enormous tension, but without any conflict actually occurring between the two super-powers of that time. In contradistinction, *Onuma* highlights a criticism voiced by intellectuals as early as the 1960s and the 1970s, who argued that there were "hidden violences under the name of peace". Indeed, this understanding of peace would be merely negative, disregarding the fact that massive and egregious acts of violence and conflicts occurred between the proxy powers, or "peripheral countries", whereas the two superpowers of the time did indeed avoid nuclear war.[24] Returning here to our aforementioned observation that *Onuma's* vision of the field oscillates between a critical reading of international law and a certain appraisal of its achievements – revealed for instance by the fact that he does not deeply and consistently challenge the capitalist nature of the model with which international law is historically and contemporaneously deeply interrelated – one may ask whether this kind of middle-ground positioning can really serve the aim of making international law more inclusive, legitimate, and effective, or whether it is in fact a contradiction. An alternative explanation of the same issue is to see *Onuma's* treatise as one particularly

[24] *Onuma* asks the following forceful question: "But if 'peace' is maintained at the cost of overlooking millions of deaths within states, is this peace really as valuable or desirable as the term 'peace' generally connotes?", p. 642.

original form of a "Japanese" contribution to the field, which reflects a unique positioning between Westernisation and Asia.[25]

It is a significant achievement that the author employs his accumulated academic experience throughout the work with the explicit aim of reconceptualising international law, in a textbook format and with a focus on rather classical questions of international law. In light of this, we must here also attempt to connect some of the aforementioned core concepts of this treatise – international law as a "cognitive basis for humankind" and the search for a "shared understanding" of a "normative consciousness for humankind", which could reflect the "transcivilisational nature of the world" – with the fact that the concluding chapter deals with "war and peace" in the 21st century. Is the enterprise that the author proposes destined to be doomed at the outset?

Onuma actually warns us at the end of the introduction that the overall picture of international law that he offers is gloomy rather than bright (p. 28). Nonetheless, his aim remains to pique the reader's curiosity by challenging his or her "own views and assumptions about international law, modernity and the world at large" (p. 29). Surely, this is a vast enterprise. This undertaking leads the reader through several conceptual premises or tools developed by the author, which this essay has but very partially unravelled. The final destination of this (relatively long) journey is marked by the affirmation of the modesty and patience required to understand international law's role in today's world in fair terms. *Onuma* declares,

"Fundamentally, what law can do is limited. Even in a society where people, based on a shared normative consciousness, behave according to law relatively at a high level, the role that law can play for the realization of the well-being of humanity is limited. In international society, where the level of such normative consciousness is much lower than in most domestic societies, the role that international law can play is even more limited. It is wrong to expect international law to realize 'justice' by completely restraining the use of force in international society. One should not dream of such an excessive expectation in international law. There is always a discrepancy between what law prescribes and how things are. Law is fictitious. It always accompanies hypocrisy." (pp. 665-666).

This hypocrisy should nonetheless be embraced for its vital functions in international society, the author argues. But is he not rather asking whether

[25] See, for this reading of *Onuma's* work, the preface and presentation by respectively *Mireille Delmas-Marty* and *Frederic Megret* to *Y. Onuma*, Le droit international et le Japon: une vision trans-civilisationnelle du monde, 2016.

a lie is preferable to the crude truth? Not really. On the one hand, *Onuma* tells us that "one should not indulge in wishful thinking by over-evaluating the role that international law can play in this world where countless evils prevail". On the other hand, "such cognizance should not be an excuse of despair or cynicism" but lead instead to "activism" (p. 666).

Should these objectives constitute a fundamental goal that international lawyers and studies of international law should acknowledge? And this despite the fact that, past and current international developments might show that the lack of reflection on the perceptions and normative expectations of those affected by international law, has caused and continuously nourishes international violence and instabilities? In other words, does this work capture one of the greatest overall challenges that international law is currently failing to deal with in the 21st century? Is war the only possible outcome of the continuous failure of this project? No answer can be provided, but the very fact of asking this question highlights one of the most powerful merits of this book.

Milan Nebyl Tahraoui, Heidelberg