

## CONTEXTUALISING INTERNATIONAL LAW IN NORTH EAST ASIA

Asif H Qureshi (2018) ISBN: HB: 978-1-50991-531-6

While there is an expanding volume of literature on China's legal system and, especially, on its expansionist trade and investment policies and much more modest volume of scholarly legal works on Japan and Korea (but see EEP Korean Law series); Professor Qureshi's volume offers a new, welcome, and original insight into the international legal relationships between China, Japan and Korea (the three countries constituting North East Asia -NEA) and the framework of international law where these and external international relations take place. The book invites the reader to join Qureshi's enquiry -from a contextualised *and* (emphasis added by the writer) 'transcivilizational perspective' on international law<sup>1</sup> - on the regions' recent past, regional disputes and, more important, on the role that the region and, especially China, is to play in any future world order – however this new world order is to be: hegemonic, precarious, post-nuclear or transcivilizational and poly-centric.

This is a book that covers a surprisingly large range of concerns both from a conceptual and historical regional perspective on international law (Part I) to its practical and contextual application (Part II) and, finally, and perhaps more familiarly for the international economic law lawyer, from a trade and monetary perspective (Part III). One of the first claims of the book, early into its introduction, is that international law and its potential for advancing its promise of peace, justice, freedom and support for the rule of law, can only be understood and can only really reach its transformative potential by paying sufficient attention to the domestic legal, cultural and political environment. In other words, International Law needs to be contextualised. Professor Qureshi does so in three main parts.

Part One of the book covers quite an extensive ground, explaining both filters and approaches to international law as well as the historical relations within the region and between its three members - China, Japan and Korea, and the outside world. Among those relations, unavoidably, the 'international law encounter' to paraphrase Anghie, comes to light, in the form of the unfair treaties imposed by the West during the Opium wars, and the expansion, by force or treachery of the European powers and the US into the Northeastern markets in the XIX Century. This part - 'Theory and Fundamental Themes', introduces general themes such as regionalism in international law and defines the scope of Northeast Asia (NEA) to the reader in terms that go beyond geography and encapsulate notions of racial, religious, cultural and linguistic commonalities (these in turn are used to explain the exclusion of Mongolia and Russia as integral parts of NEA). It also devotes a considerable effort to setting up the scope and meaning of what Professor Qureshi means by 'contextualising' for the purposes of this project and the importance of 'context' in international law in more general terms. The context at this point both frames and distinguishes the 'space' of enquiry as a complex assemblage that incorporates territory, history, customs, ethnicity and a shared past. The 'regional context' arises thus from the already described common anthropological, ethnic and cultural traits; but 'context', as we learn later, especially when we reach the end of the book

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<sup>1</sup> Onuma Yasuaki *A Transcivilizational Perspective on International Law* (Leiden, Martinus Nijhoff, 2010) and Onuma Yasuaki *International Law in a Transcivilizational World* (Cambridge, CUP, 2017)

also means something else. Something which appears and disappears from the text periodically, often in unsuspected places and which traces, like an embedded songline, the argument and contribution of this volume to a growing and fragmented literature on 'justice' in international law (LatCrit/TWAIL/ Deconstructionist International law, Race theory). Qureshi's contextual approach is, first and foremost, concerned with notions of justice on norm creation and implementation although this remains unspoken until the end of the second part, when he foregrounds perspectives and conceptions of justice (from a Rawlsian lens) in his analysis of regional problems. He extends his preoccupation with justice not only to the different approaches in the resolution of historical disputes in NEA in Part II (including some intractable disputes such as maritime boundary claims, comfort women and denuclearisation); but, quite pertinently, to the discussion of international economic law topics in Part III (Foreign Economic Relations) such as monetary relations (and where he offers a considered 'ethical discourse'), or free trade agreements on the region. In doing so he argues that 'contextualising' international law can offer new and different insights into the creation and application of international law as it focusses more on 'justice' considerations' and, he claims, goes beyond Onuma Yasuaki's much celebrated 'transcivilizational perspective'(at 187).

Although 'regionalism' in international law has not been given much attention given the building assumptions of the discipline in modern times such as the nature of the state as the central subject of international law and the fear that a regional approach may undermine a much aspired to multilateralism or the notion of 'universality'. However, as Qureshi points out, regionalism is coeval with the emergence of modern international law and crucial when contextualising rules and historical conflicts. Context, on the other hand, operates implicitly in various mechanisms in International law. The principle of good faith; in the anatomy of the main sources of international law; the contextualization of disputes in the adjudication of the ICJ (at p 24). So ubiquitous is contextualization in international law that the reader questions whether 'regionalism' adds anything to 'context' and how can this combination contribute to justice in normative formulations, adjudication or resolution of disputes? The second and third part of the book navigate us through a variety of settings where this approach is suggested as an unlocking mechanism.

Some of the best insights from the book are to be found in Part II. It is indeed within a regional setting that most conflicts begin and where history, pregnant with grievances and parallel recollections of a shared past, obscures more than facilitates the way forward. Prof Qureshi explains how most of the conflicts in NEA have their origin in the historical recent past. Many stem from Japan's Imperial past and the atrocities committed during WWII while others relate to the post war division of Korea and its nuclearisation and de-nuclearisation. In the first chapter of this part several disputes between the NEA countries are described, most of them maritime given the strategic importance of the sea to the three nations. The common thread through this enquiry is the fact that historical enmities and feuds complicate resolution. Historical regional systems of dispute resolution in NEA favour compromise in an informal setting an approach which inevitably clash with a rule-orientated and adversarial system of Eurocentric international law. The denuclearisation of Korea is skilfully situated not just as a modern day concern but also as the legacy of the post-war division of Korea and its geopolitical implications. The US, Russia and China's interests are as present as those of the 'two' Koreas. Prof Qureshi's concludes that international law has offered very little helpful

guidance and much biased intervention in respect of the de-nuclearisation of the Korean Peninsula. The hypocritical approach of the United Nations Security Council (UNSC) and the NPT's uneven and calibrated rights between nuclear and non-nuclear states, not only render international law useless but, more disappointingly, point out to a system written by (and for) a selected group of states that serves to justify imperialistic ambitions and to subjugate, under a cloak of legality, other peoples, regions and territories, imposing today, as it did during the Opium wars, despicable double standards. Under the rubric 'Approaches to Resolving Historical Conflicts in a Regional Setting' Qureshi brings his expertise in international economic law and dispute resolution and suggests different ways to reconsider the historical dispute. First, he suggests that a proper economic analysis must be made of the cost of continuing with the current state of affairs (at 118). In most cases, he point out, it becomes clear that the victims are used as pawns in a larger and more complex set of disagreements while a variety of counsel, experts, even military operations are building, as it is often the case in many other dispute and dispute resolution sites, an industry that flourishes with the perpetuation of conflict. Forgiveness, true and reconciliation, distributive and rectificatory justice ... all play an important part in the resolution of historical disputes (119)

The third part of book considers monetary relations and free trade agreements bringing in Professor Qureshi's considerable experience in these topics and would be of interest to the trade lawyer especially.

The legitimacy crises of international law and its Eurocentric, imperial impulses and the disintegrating Western hegemony through the multiple cress of neoliberal globalisation make a poly-centric, transcivilizational and contextual legal order a tempting, albeit perhaps utopian, possibility. The axis of the world could, as in Professor's Qureshi's anecdote about the world map in his office, move to the Pacific, or could, more generally rotate in a constant, evolving and multifaceted polarity.

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