A TRANSCIVILIZATIONAL PERSPECTIVE ON INTERNATIONAL LAW

International Law in a Multi-polar and Multi-civilizational World

January 9th , 2009

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Lecture I

Theoretical Frameworks

With Special Reference to the Concept of General International Law

At the entrance to learning, however, as at the entrance to Hell, the demand must be posted:

Qui si convien lasciare agni sospetto;

Ogni vilta convien che qui sia morta.

[Here must be left behind all hesitation; Here must perish all cowardice.]

Dante, *Divine Comedy*

Karl Marx

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2 The Legitimacy Deficit in the Traditional Theory of "Customary" International Law

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II Reconceptualization of General International Law - continued -

3 The Greater Legitimacy of Multilateral Treaties and the UNGA Resolutions as the Cognitive Bases of General International Law

(1) Cognitive Bases of International Law

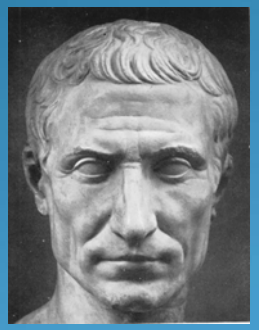
(2) Resolutions Adopted by the UNGA the and Major International Conferences

EUROPE

Far West?
OR
Center of
the Globe?

EAST ASIA

Far East?
OR
Middle Kingdom?



Julius Caesar

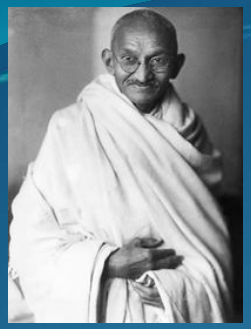
Confucius

Walt Disney

Introduction

Hugo Grotius

- The "Near East," the "Middle East" and the "Far East"
- Cognitive Frameworks Through Which We See Today's World
- Euro-America-centric ("West-centric") Power Structures and Cognitive Frameworks
- Greek philosophy, Thomas Aquinas and Kant vs. Shari'a, Confucius and Buddhism



Mahatma Gandhi

Introduction

- continued -

- An International Perspective
- A Transnational Perspective
- A Multi-polar World in the 21st Century
- A Transcivilizaitonal Perspective
- Problems of the Equation of General International Law with "Customary" International Law

I Civilizational Factors and Perspectives in International Law

1 Religious, Cultural and Civilizational Diversities and the Non-Intervention Principle

- The Sovereign States System and the Non-intervention Principle
- Globalization and the Deterioration of the Non-intervention Principle
- A “Clash of Civilizations” ?

I Civilizational Factors and Perspectives in International Law

- continued -

2 A Transcivilizational Perspective: From a Substantive to a Functional Notion of Civilization

- The Prevalence of a Monolithic, Substantive and Exclusive Notion of Civilization
- A West-centric Discursive Space

I Civilizational Factors and Perspectives in International Law

- continued -

2 A Transcivilizational Perspective: From a Substantive to a Functional Notion of Civilization

- continued -

- A Functional Notion of Civilization
- The Multilayered "Belonging" to Plural Civilizations
- The Changeability of Cultures and Civilizations

Wow!
Are we *Really* studying *International Law* ?

II Reconceptualization of General International Law

1 Theoretical Flaws in the Equation of General International Law with "Customary" International Law

- General International Law Constructed as "Customary" International Law
- Article 38 of the ICJ Statute as Indicating the "Sources" of International Law?

II Reconceptualization of General International Law

- continued -

1 Theoretical Flaws in the Equation of General International Law with Customary International Law - continued –

- International Law as Prescriptive Norms
- Adjudicative Norms as a *Useful Clue* to Identify Cognitive Bases of International Law
- The Categorical Difference between "Customary" International Law and General International Law

II Reconceptualization of General International Law

- continued -

2 The Legitimacy Deficit in the Traditional Theory of "Customary" International Law

- State Practice and *Opinio Juris* of Western Great Powers as Cognitive Bases of Traditional "Customary" International Law
- Effectiveness of the "Customary" Law Eclipsing its Lack of Universality

II Reconceptualization of General International Law

Great Walls

- continued -

2 The Legitimacy Deficit in the Traditional Theory of "Customary" International Law

- continued -

- West-centricity in the Study of International Law
- Ignorance of the State Practice and *Opinio Juris* of 80 % of Humanity

Taj Mahal

II Reconceptualization of General International Law

- continued -

3 The Greater Legitimacy of Multilateral Treaties and the UNGA Resolutions as the Cognitive Bases of General International Law

(1) Cognitive Bases of International Law

- *De facto* Admission of the Comparatively Greater Legitimacy of Multilateral Treaties etc. by International Lawyers
- Omnipresence of Non-adjudicative yet Legal Norms of Conduct in International Law

II Reconceptualization of General International Law

- continued -

3 The Greater Legitimacy of Multilateral Treaties and the UNGA Resolutions as the Cognitive Bases of General International Law - continued -

(2) Resolutions Adopted by the UNGA and the Major International Conferences as Cognitive Bases of International Law

- The Voting of States for UNGA Resolutions
- The Political Nature of "State Practice"

II Reconceptualization of General International Law

- continued -

3 The Greater Legitimacy of Multilateral Treaties and the UNGA Resolutions as the Cognitive Bases of General International Law - continued -

(2) Resolutions Adopted by the UNGA and the Major International Conferences as Cognitive Bases of International Law - continued -

- The Common Need for Selecting Juridical Elements from "Political" Acts of "State Practice" and of UNGA Voting

II Reconceptualization of General International Law

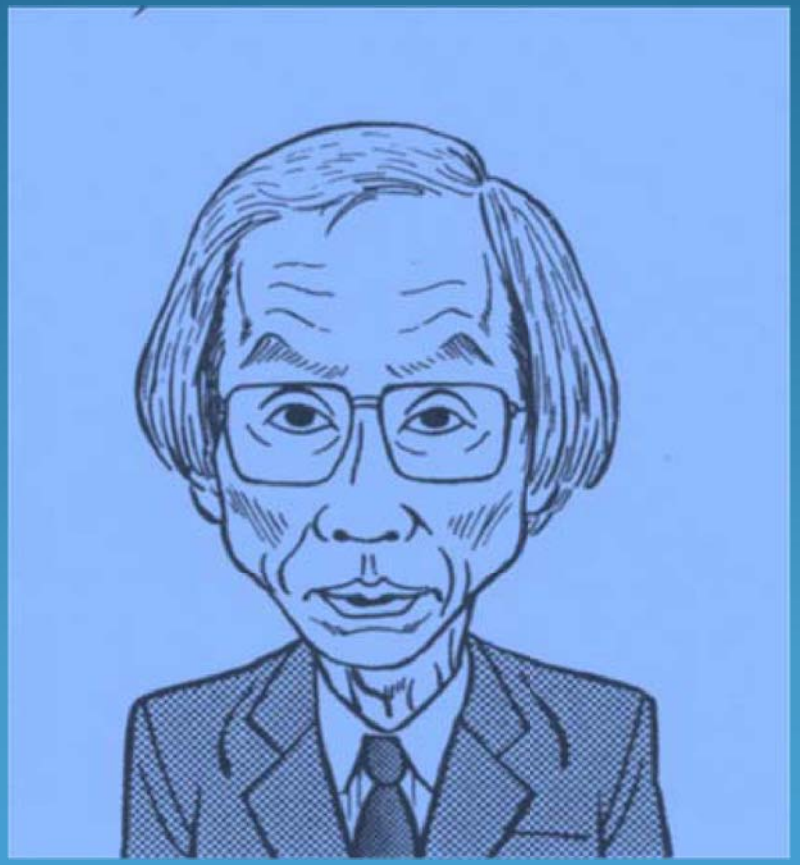
- continued -

3 The Greater Legitimacy of Multilateral Treaties and the UNGA Resolutions as the Cognitive Bases of General International Law - continued –

(2) Resolutions Adopted by the UNGA and the Major International Conferences as Cognitive Bases of International Law - continued –

- The Declaration on Friendly Relations of 1970 Embodying Norms of General International Law

Who am I ?



Prof ONUMA
Drawn by
One of the
Most Popular
Right-wing
Cartoonists,
KOBAYASHI
Yoshinori

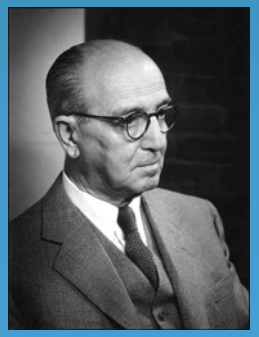
And, Who am I ?

Prof ONUMA
Drawn by
MAKIMURA
Satoru,
a Leading
Feminist
Cartoonist

The Conclusion

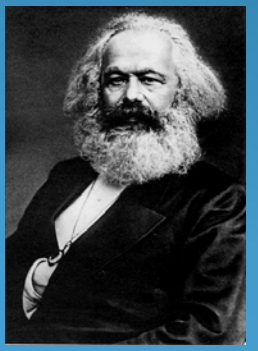
A Perspective Matters !

Nelson Mandela



Hans Kelsen

Der Nomos der Erde



Karl Marx

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