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THE FOUNDATION for THE DEVELOPMENT of INTERNATIONAL LAW in ASIA

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ASIAN STATES' POTENTIAL LEADERSHIP IN INTERNATIONAL LAW

DILA-KOREA PROJECT:

NUCLEAR RADIOACTIVE WASTE TREATMENT IN ASIA-PACIFIC

The 2011 nuclear accident caused by the Tōhoku Earthquake and Tsunami in Japan is a potential disaster that can occur to any country that uses nuclear power at any time. Since the discharged contaminated water will be dispersed into the high seas, it will affect not only Japan's neighboring countries but also the interests of the entire international community.

The Fukushima contaminated water incident serves as a precedent that permitted the ocean disposal of nuclear waste resulting from circumstances such as natural disasters. Without clear scientific evidence supporting the safety of the nuclear wastewater, neighboring countries have continued to express their concerns regarding the discharge of wastewater from Fukushima. In light of the Fukushima wastewater discharge incident, there has been a growing recognition for the need to establish an international norm concerning the management of nuclear waste. Given the scientific uncertainty surrounding the situation, international regulations governing the ocean disposal of nuclear wastewater are necessary to prevent unpredictable harm. The establishment of international regulations will contribute to the preservation and sustainable management of the marine environment and prevent disputes between nations.

For the establishment of international regulations, the derivation of common international norms is an essential element: i) to develop international regulations based on common legal systems derived from investigating the domestic practices of major countries operating nuclear power plants (Phase 1) and ii) to promote collaborative studies among nations for the development of a model treaty based on investigated national practices (Phase 2).

Nuclear power regulations can be broadly categorized into those that concern i) nuclear utilization, ii) nuclear safety, iii) nuclear waste management, iv) nuclear liability, and v) information disclosure. Of the above five categories, an investigation into each nation's practices regarding nuclear waste management must be conducted, focusing on nuclear safety regulations. Although nuclear safety regulations generally govern the ocean discharge of nuclear waste, much like the current Fukushima wastewater incident, it is difficult to find legislative grounds as to whether ocean discharge is prohibited in case of accidents caused by extenuating circumstances.

In cases where scientific evidence is required, it is necessary to consider the high probability that prolonged litigation could fail to prevent the discharge of contaminated water. Even if the litigation is successful, there is no guarantee that it would effectively sanction Japan's discharge. Conversely, if the litigation were to end in defeat, there is concern about the potential legitimization of Japan's discharge. Furthermore, at present, it is unclear which sovereign state may bring suit in the context of these international legal proceedings. Recently, regarding climate change issues, the ICJ and the ITLOS have undertaken leading roles in developing advisory opinions and greater attention has been placed on the positions of the Pacific Island nations, which were formerly nuclear testing sites. Despite the legal significance of advisory opinions from international judicial bodies, it is difficult to consider such methods as effective means to prevent Japan's discharge of contaminated water.

Therefore, it is important to approach the issue with a long-term policy perspective rather than a narrow assessment solely focused on the current discharge decision. It is worth emphasizing once again that the nuclear accident Japan experienced during the 2011 Tōhoku Earthquake and Tsunami in Japan is a disaster that can occur in any country that uses nuclear power. History has proven this. And yet there is a clear lack of international norms specifically addressing the disposal of nuclear waste into the ocean. Hence, Japan's action regarding the discharge of contaminated water from the Fukushima nuclear power plant is a significant precedent that provides a valuable opportunity for the international community to dictate the direction it aims to pursue. Failing to seize such an opportunity would be a regrettable occurrence for the international community.

ASIAN STATES' POTENTIAL LEADERSHIP IN INTERNATIONAL LAW

DILA PROJECT:

ASIAN INTERNATIONAL LAW TEXTBOOK SERIE

Does "Asian international law" exist? If it exists, how does it manifest itself? The scholarly inquiry into the existence and nature of "Asian international law" has yielded negative outcomes when analyzed through the lens of domestic legislation processes and state practice. It is easy to point out and identify the essential issues of the international law practice of countries in Asia. While identifying crucial issues in the international law practice of Asian nations is straightforward, a comprehensive understanding demands the identification, conceptualization, materialization, and practical application/utilization of these issues. Until concrete results emerge from this ongoing discourse, the true essence and implications of Asian international law, distinct from Europe-centric international law, will remain unanswered.

The question remains open as to whether a distinct Asian approach to international law truly exists. Alternatively, one could contend that there exists a nuanced and subtle concept of an Asian approach within the continent. The diversity of approaches in Asia making it challenging to delineate a singular, definitive, and overarching Asian approach to international law.

The notion that Asia is predominantly a 'norm-taker" rather than a 'norm-maker" has been ingrained within the region's collective consciousness. This perspective is influenced by historical and geopolitical factors that have shaped Asia's interactions with the global order. While it is true that there exists a considerable number of international lawyers in Asia, their overall presence and impact on the international legal landscape are not as extensive as in other regions. Promoting closer cooperation among international lawyers in Asia is of paramount importance in challenging the prevailing perception of Asia as a mere 'norm-taker." By fostering collaboration and dialogue among legal experts in the region, a deeper understanding of the diverse legal traditions, perspectives, and contributions of Asian states can be cultivated. This collaborative effort can unveil the potential for Asia to emerge as a 'norm-maker" rather than a passive recipient of established norms.

One avenue for achieving this objective is to encourage research and scholarly engagement that explores the unique legal viewpoints and approaches adopted by Asian states. By delving into the historical and cultural underpinnings of Asian legal systems, international lawyers can identify instances where Asia has played an active role in shaping global norms and legal principles. Moreover, multilateral forums and institutions in Asia offer opportune platforms for fostering cooperation among international lawyers. By facilitating exchanges of ideas and expertise, these forums can facilitate a re-evaluation of Asia's role in international law and enhance the region's collective voice in shaping the future of global legal norms.

Emphasizing Asia's potential as a 'norm-maker" also underscores the significance of diversity in the international legal landscape. Recognizing and embracing the varied perspectives and experiences of Asian states can enrich the global discourse on legal matters and contribute to more inclusive and equitable legal frameworks. The promotion of closer cooperation among international lawyers in Asia is vital to challenge the perception of Asia as a mere 'norm-taker." By fostering collaboration, recognizing Asia's diverse legal traditions, and exploring the region's contributions to international law, a more accurate and comprehensive understanding of Asia's role as a potential 'norm-maker" can emerge. This re-evaluation will not only enrich the global legal discourse but also empower Asian states to actively shape and influence the development of international legal norms.

The question of whether "Asian International Law" exists or whether there is a distinct Asian approach to international law remains a subject of ongoing debate and exploration. The diverse cultures, histories, and geopolitical contexts within Asia have undoubtedly shaped the attitudes and practices of Asian states in the realm of international law. The dynamic and multifaceted nature of the Asian region, with its diverse cultures,

histories, and geopolitical interests, makes it challenging to paint a monolithic picture of Asian states' attitudes and practices in international law. While some scholars argue for the presence of a unique and coherent Asian approach, others emphasize the heterogeneity of perspectives and practices across the region. The evolving role of Asian states in global affairs, along with their increasing engagement with international organizations and treaties, suggests a growing importance of international law in shaping their interactions. However, it is crucial to recognize that any "Asian" approach to international law must be approached with caution, given the region's diversity and complexities. As Asian states continue to navigate their interests, engage in dispute settlements, and participate in international fora, further scholarly inquiry will be essential to discerning and understanding any distinct characteristics or commonalities that may define "Asian International Law." It necessitates a nuanced analysis that takes into account the interplay between domestic interests, regional dynamics, and global ambitions. Unravelling the intricacies of "Asian International Law" demands rigorous academic inquiry that delves into the cultural, historical, and geopolitical intricacies shaping the region's engagement with the international legal order.

Again, is there a so-called 'Asian International Law' that is rhetorically prevalent? If so, how is it manifested? Upon analyzing the national practices and the process of adopting international law, 'Asian International Law' seems to lack empirical validity. In other words, claiming the existence of a distinct Asian international law is not empirically justifiable. Identifying the lack of evidence of international legal practices of Asian countries can be done with relative ease. However, if such identification and criticism are not conceptualized, materialized, and subsequently applied/utilized, this type of critical discourse will continue. Understanding the substance and implications of an Asian international law distinct from Eurocentric international law can only be done through concrete progress in addressing the aforementioned inherent challenges.

If so, should an Asian international law with such an ambiguous presence in Asia be advocated? Or should Asia play a role in forming normative standards that can overcome the boundaries of Asia? What criteria and direction should be used in interpreting and applying international law? Does Asia lack awareness of their inability to take lead in developing international norms despite their national and geographic scale and status? The formation of norms requires both legality as well as the spirit of the times (Zeitgeist) and morality. Is there not a need for reflection on these aspects by Asian countries? In approaching the current issues faced by Asia, is it not necessary for Asia to play a more proactive role in shaping international norms that go beyond Asia?

Ultimately, for Asian countries to overcome their current limitations and contribute to the formation of international norms that align with their national status, they must foster a mutual understanding. Until the outstanding issues between these countries are first resolved, the collective leadership of Asia in shaping international norms will remain elusive. Achieving such leadership necessitates a shift in perception. Efforts must be made to engage in dialogue regarding the countries' differences and to embrace one another. Only through tangible outcomes from such efforts can the countries lead in the development of forward-looking international norms to position themselves as influential actors on the global stage. Mere adherence to existing norms does not confer leadership status; it requires a coalition of nations upholding established norms. Contributing to the development of international norms that reflect fundamental principles of international law as well as the spirit of the times (Zeitgeist) and morality is a challenging process. However, it is one that must be undertaken.

It is noted that while many speak of the need for an Asian perspective on international law, only a few have articulated about how it could be actually realized. This indicates that there is no fully developed conception of what an Asian perspective of international law is. For its part, it is emphasized that there should be a meticulous analysis of the key issues that Asian states face in relation to international law if there is to be thoughtful engagement in ascertaining what an Asian perspective of international law would be. This means that the key to developing an Asian perspective would be to uncover materials on international law practice and development from Asia. The use of mainstream Western-produced international law textbooks, with its very little or no coverage of Asian States and their practice and interests, fails to provide an adequate Asian account of international law.

On the methodology of such an endeavour, it is suggested that Asian scholars should first focus on their home state jurisdictions to identify pertinent international legal issues that have arisen along narrow topical lines – here, it would be essential to identify state practice, and to be as faithful to the methodology of empirical study as much as possible. Next, scholars should then conceptualize the issues arising out of the state practice they have identified, then materialize the concepts that they had developed through the drafting of scholarly works on the topic. Fortunately, the number of Asian journals and avenues for publication has increased, and scholars should seize the opportunity that these venues provide for enhancing discussions and dialogue to advance what Western scholars might classify as "outsiders' perspectives" to international law, which are currently not present within mainstream international law textbooks. Finally, they should apply/utilize these materials they produce by sharing and collaborating with other Asian scholars. Only in this way can an Asian perspective on international law be efficiently and collaboratively identified and developed.