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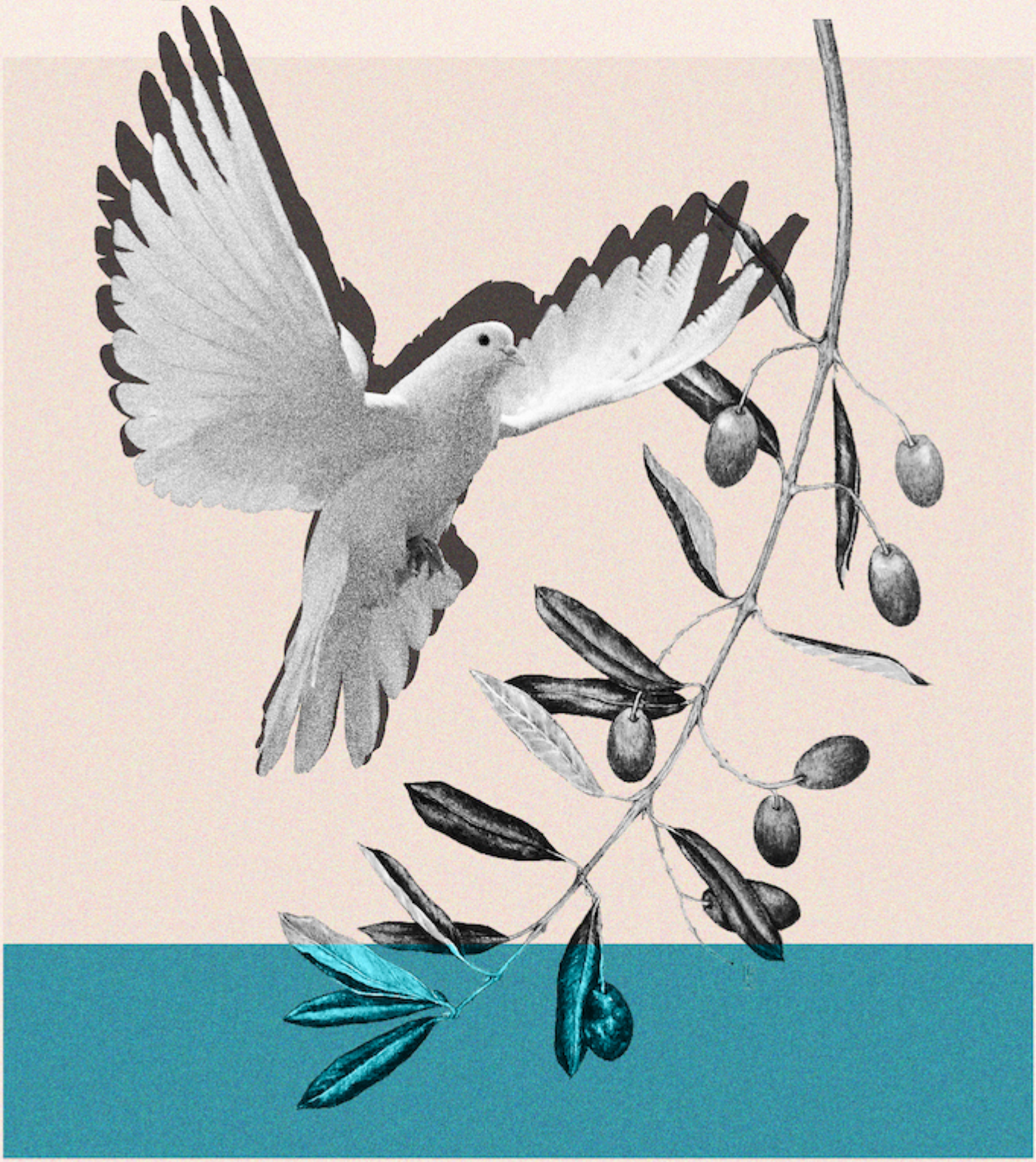

On Absolute Sovereignty

Aloysius Lee

What is sovereignty? Why is sovereignty? More importantly, how is sovereignty? The debate over the status of absolute sovereignty as a fundamental part of international law has been a particularly fiery one - in part due to conflicting definitions of the term.

The modern-day definition of sovereignty generally refers to the full right and power of a state over itself, without external influence or interference. (Encyclopaedia Britannica, 2019) Sovereignty is also widely recognised as an integral part of international law, specifically the peremptory norms of customary international law, *jus cogens*, due to the inclusion of sovereignty in a large number of international treaties, including the UN Charter. Under international law, there are several criteria that a state needs to fulfil in order to be recognised as sovereign: permanent population, defined territory, one government, and the capability to enter into relations with other sovereign states on an equal standing. (Crawford, 2007) It is also generally accepted that sovereignty should for the most part be respected by the international community and other states.

However, scholars have strived to specify this definition further by breaking down concepts within sovereignty itself. In "Problematic Sovereignty: Contested Rules and Political Possibilities", Stephen D. Krasner proposed the existence of four different types of sovereignty. Domestic sovereignty refers to the actual control exercised by an authority or governing body over a state. Interdependence sovereignty refers to the actual control of movement across state's borders (assuming that borders exist). International legal sovereignty refers to the recognition of state sovereignty by other states. Westphalian sovereignty refers to when a state has sole, exclusive authority over its territory. (Krasner, 2001)

Another widely accepted definition of sovereignty is the split between *de jure* (legal) and *de facto* (actual) sovereignty. *De jure* sovereignty refers to a body that is legally recognised as the rightful governing authority of a territory, regardless of whether they exercise actual control over said territory. *De facto* sovereignty refers to a governing body that has actual control over the country they govern, whether or not they have legal recognition. (Agnew, 2005)

Krasner's four concepts of sovereignty can be categorised under *de jure* and *de facto* sovereignty - *de facto* sovereignty comprises domestic, interdependence and Westphalian sovereignty as it concerns actual control over the state, while *de jure* sovereignty comprises international legal sovereignty since it is based on the recognition of sovereignty on an international basis. A governing body thus has absolute sovereignty when they possess both *de jure* and *de facto* sovereignty over a state.

However, countries do routinely concede some aspects of their sovereignty by being parties to certain international treaties or supranational bodies. Take the European Union, where member states cede a certain level of control over their own interdependence sovereignty (control over borders) by participating, for example, in the Schengen Area (which demands all member states abolish border controls at mutual borders). Another example would be the Eurozone, where member states cede control over monetary policy to the European Central Bank. However, these countries are still able to maintain sovereignty in the practical sense, as other areas of their sovereignty are upheld by the state itself.

Issues Arising From The Application Of Absolute Sovereignty

The application of absolute sovereignty can lead to certain quagmires. Notably, the principle of absolute sovereignty tends to clash with two other basic principles of customary international law and jus cogens: the right to self-determination and the championing of human rights under the principle of humanitarianism.

Right to Self-Determination

The right to self-determination refers to a person's inalienable right to make decisions regarding their own life. It is the right that undergirds democracy, and is protected by many international treaties; Notably, Article 2 of the UN Charter, which states that all people have the right to self-determination. Hence, it can be argued that this right should be a fundamental part of customary international law - or become a peremptory norm, in other words. Some see secession as an extension of this right - people have a right to choose to leave their existing country to form their own sovereign state, just as they have a right to choose who governs them. This, however, conflicts with the principle of

absolute sovereignty: many internationally recognised states see secessionist movements as a violation of their sovereignty, since both sides would claim absolute sovereignty over disputed territories. It is therefore unclear how secessionist movements, where people exercise their right to self-determination by violating the sovereignty of existing states, should be resolved under international law.

Thankfully, several notable contemporary case studies have established guiding principles that can help us resolve the problem of secessionist movements.

One of these is the question of Kosovo, a self-declared independent country located in Southeastern Europe. In 2008, the Kosovar Assembly passed a declaration of independence, officially seceding from Serbia. In the declaration, Kosovar leaders declared that the secession and formation of a new country "reflects the will of our people and [is] in full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his Comprehensive Proposal for the Kosovo Status Settlement." (Assembly of Kosovo, 2008). In other words, that the secession was an extension of Kosovars' collective right to self-determination, enshrined by international law. In contrast, Serbia refused to recognise the Kosovar declaration of independence. It argued that the secession was a violation of Serbian sovereignty as established by both the UN Charter and the Serbian Constitution. (UN, 2008)

The matter was eventually resolved when Serbia requested an advisory opinion from the International Court of Justice (ICJ). The Court ruled in favour of Kosovo, citing precedents set by past Security Council approaches towards secessionist movements. Specifically, Kosovo's declaration of independence involved neither unlawful force, nor violations of jus cogens - the criteria traditionally used to determine the legality of a secessionist movement. (Akande, 2010) Yet, international recognition of Kosovo (and its sovereignty) is limited: only 98 of the 193 members of the UN recognise Kosovo; in particular, Serbia and Russia have strongly rejected the notion of Kosovo's sovereignty. (Carney, 2019)

Although Kosovo has domestic sovereignty, interdependence sovereignty and partial international legal sovereignty, it lacks complete international legal sovereignty and Westphalian sovereignty, as it does not have complete international recognition, nor exclusive sovereignty over its territory. To this day, Kosovo's lack of a seat in the UN symbolises the disputed status of its sovereignty, and the unstable nature of Serbia-Kosovo relations continues to complicate trade and cross-border travel. Yet, relations between Serbia and Kosovo have slowly thawed. In September 2020, their respective heads of state signed an agreement to normalise economic relations (Kostreci, 2020), Serbia has acknowledged Kosovo's control over internal affairs such as the management of an economy distinct and separate from Serbia's own economy. This indicates a growing recognition of Kosovo's *de facto* sovereignty, which could pave the way for Kosovo to gain *de jure* sovereignty in the future.

Another case study is that of the Republic of Artsakh, otherwise known as the Nagorno-Karabakh region. Under the Azerbaijan Soviet Socialist Republic (today's Republic of Azerbaijan), Nagorno-Karabakh (now the Republic of Artsakh) was given the status of an Autonomous Oblast (an administrative region, like what Kashmir is to India); However, the dissolution of the Soviet Union in 1991 meant direct control over Nagorno-Karabakh reverted to Azerbaijan. (Kabineti, 2020) The large amount of ethnic Armenians living within the region and the alleged discrimination and mistreatment by the Azerbaijani government boosted the Armenian desire to reclaim the region and bring Nagorno-Karabakh under its sovereignty. However, this challenged Azerbaijani sovereignty since the region is recognised as part of Azerbaijan by Azerbaijanis and by the international community.

At the height of the Nagorno-Karabakh Conflict in the early 1990s, the Republic of Artsakh declared independence from Azerbaijan with the intention of reunifying with the newly independent Armenia; however, UN Security Council resolutions passed during the conflict recognised the sovereignty of Azerbaijan over the self-determination of Nagorno-Karabakh. In order to quell the violence, numerous summits were arranged, and talks were coordinated by the OSCE's Minsk Group. These failed - to this day, skirmishes break out along the line of contact between Armenian and Azerbaijani forces, and the Nagorno-Karabakh continues to be occupied by Armenian forces. (Global Conflict Tracker, 2020)

The Republic of Artsakh still exercises *de facto* control over the region, choosing to adopt the Armenian dram as its official currency, even though Azerbaijan retains *de jure* sovereignty. In this regard, the Republic of Artsakh and Armenia can claim domestic and interdependence sovereignty over Nagorno-Karabakh, but not international legal and Westphalian sovereignty. That belongs to Azerbaijan, which retains legal control over the region in the eyes of the international community.

Sovereignty in the case of secessionist movements remains a difficult topic. Most secessionist movements are backed by reasons many would consider valid - be it ethnic tensions or oppression. However, one can also understand why a government would want to maintain control over existing territories. This brings us back to the fundamental question: when should sovereignty bend to the right to self determination, and vice versa? It is clear that sovereignty should not take precedence over the right to self-determination in all cases: history is littered with the dissolution of nations and unions, and the creation of new states in its wake. But neither should sovereignty bend completely to this right - if every instance of secession was automatically considered to be valid, the sovereignty of existing nations (and indeed, newly created states) would be diluted, leading to constantly changing borders, international instability, and short-term, ineffectual governance. The balance should thus lie at a mid-point: apart from some circumstances, where sovereignty should change hands, it should otherwise remain inert.

So far, the international community has not been able to strike this balance for this matter. One need only consider the inconsistent international responses to secessionist movements: while Kosovo and Nagorno-Karabakh both declared sovereignty under similar circumstances, the former was recognised whilst the latter was rejected. The lack of a clear and equal standard, applied consistently when determining the validity of sovereignty claims, muddies the waters. The international community should thus try to attain

a more even and consistent approach towards secessionist movements. An attempt to balance the right to self-determination with sovereignty.

Such a framework would only go so far. Even if it was clear in theory when sovereignty over a territory should change hands, it will be tougher to put into practice. In cases of secession, the original state is likely to cling on to power - fighting the secessionists' claims in court, and backed by allies in the international community. This leads to a transitory vacuum, in which neither side exercises absolute or complete sovereignty. Rather, the four components of absolute sovereignty are split between the original state and the seceding nation. Both, however, are able to claim absolute sovereignty over the region, and will strive to attain it. Hence, issues of independence or secession often have little room for peaceful negotiation. Disputes over sovereignty thus often result in bloodshed and conflict. An international framework must thus be backed by a clear and effectual process which peacefully transfers sovereignty from the original to the newly created state, with effective deterrents against violence by either party.

Humanitarianism and the Championing of Human Rights

Sovereignty can interfere with humanitarianism in two cases: the indictment of individuals for war crimes and humanitarian intervention.

Consider the former. In 1998, the UN General Assembly adopted the Rome Statute - the treaty that established the International Criminal Court (ICC), and bestowed upon it the authority to investigate and prosecute criminals for genocide, crimes against humanity, war crimes and crimes of aggression when national courts would not. (Rome Statute, 1999) However, the ICC was - and still is - only allowed to prosecute criminals from its member states, i.e. states which signed and ratified the Rome Statute. This poses a problem because this prevents the ICC from prosecuting criminals from countries that have not signed and ratified the Rome Statute, which include China, India, the USA, and Russia, limiting its effectiveness.

Of these countries, some have vocally opposed the creation of the ICC, claiming that it violates their sovereignty. During the indictment process, those recognised as criminals by the ICC have to be escorted out of their country into international custody, contradicting a fundamental tenet of state sovereignty: the ability to shield against international action on its population. Critics thus see the ICC as a violation of interdependence sovereignty, which allows unlawful intrusions into nation-states by the international community.

This is the argument cited by the United States. The White House website has a page entitled "Protecting American Constitutionalism and Sovereignty from the International Criminal Court" (National Security and Defense, 2018) where it is stated that "the United States' view was grounded in concerns over the broad, unaccountable powers granted to the ICC and its Chief Prosecutor by the Rome Statute, powers that posed a significant threat to United States sovereignty and our constitutional protections". In layman's terms, the United States is protecting its citizens from prosecution by the ICC - even those against whom prosecution is justified - citing interdependence sovereignty as its justification.

Other notable examples are China and Russia. Although China and Russia have accepted that the creation of such an institution is a positive addition to the international legal architecture, they have thus far refused to join the ICC, for various reasons. Prominently, Russia is concerned that membership could result in the indictment of soldiers who have committed war crimes, and disruptions in the enactment of state policies. China, meanwhile, is worried that ratification could result in the indictment of individuals from key strategic allies (namely Syria). Though the specifics differ, these criticisms all concern the ICC's ability to intrude upon the countries' sovereignty. (Henderson, 2019)

In this case, we see how absolute sovereignty can interfere with the championing of human rights, by blocking the indictment of criminals. As countries are able to use sovereignty as an excuse to reject the Rome Statute, they are able to avoid membership in the ICC, limiting the powers of the court to indict individuals for crimes against humanity. The inclusion of sovereignty as part of international law can thus result in multiple contradictions within international law itself.

Sovereignty can also interfere with humanitarian intervention. It is generally agreed that other countries should be allowed to intervene militarily in domestic affairs of a state under certain extreme circumstances - mostly humanitarian crises. In the United Nations, this has taken shape under the framework of the Responsibility to Protect (R2P), which was adopted in 2005. (Bellamy, 2018)

The R2P framework progresses through three stages of humanitarian responsibilities, corresponding to different stages of humanitarian crises: (I) The responsibility to prevent; (II) The responsibility to react - *humanitarian intervention falls under this*; and (III) The responsibility to rebuild.

R2P also has various stages of action, where different state actors can take different types of actions linked to the three stages above. These include: (I) The responsibility of a state to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement; (II) The commitment of the international community to assist states in meeting these obligations; and (III) The responsibility of the UN members to respond in a timely and decisive manner using Chapters VI, VII and VIII of the UN Charter when a state is manifestly failing to provide such protection, with access to tools in the following order: (i) Diplomatic; (ii) Economic; (iii) Legal; and (iv)Military - *humanitarian intervention falls under this*.

As can be seen, military intervention is listed as a last resort to protect populations against the four major crimes listed under the Rome Statute. However, multiple countries have raised concerns that the R2P framework can be abused: in particular, that unregulated military intervention, disguised as humanitarian aid, could infringe upon a state's sovereignty.

The most prominent example of this is China, which has criticised the R2P on two counts.

The first is theoretical: it argues that the UN Charter should consider sovereignty sacrosanct - in other words, except in cases of self-defense, sovereignty should never be challenged or infringed upon. The second is more practical in nature - that the R2P can and will be abused by states operating in self-interest. Despite a recent change of heart (China has since begun supporting the framework, albeit cautiously), its usage of the R2P remains limited, bound by its long-standing concerns. (Fung, 2016)

Proponents of the R2P counter such arguments by suggesting that sovereignty should be viewed as a responsibility - essentially adding another criterion to defining a state as sovereign. This was first suggested by Kofi Annan, who said that "states are now widely understood to be instruments at the service of their peoples, and not vice-versa" and that "[the UN Charter's] aim is to protect individual human beings, not to protect those who abuse them". In other words, only if an authority takes upon itself the responsibility to protect citizens of a country will it be recognised as having sovereignty over that nation. (Bellamy, 2018)

In practice, the R2P has been reaffirmed and used by the UN Security Council in more than 80 resolutions. However, the effectiveness of these interventions has been inconsistent, and in some cases even questionable. Two case studies, that of Côte D'Ivoire and Libya, illustrate this point.

In the case of Côte D'Ivoire (2011), a Security Council resolution invoked R2P and called for a UN Operation (UNOCI) to use all necessary means to protect life and property. The humanitarian intervention that resulted brought a swift end to the conflict, succeeded in enforcing the results of the UN-authorised 2010 election, and put an end to human rights violations by both belligerents. UN and French forces also destroyed heavy weaponry such as tanks, rockets and grenade launchers to prevent any more harm to civilians. (Oved, 2011) Within 6 years, UNOCI was able to stabilise Côte D'Ivoire and withdrew from the country, marking a case of successful humanitarian intervention.

The First Libyan Civil War (2011), on the other hand, saw the Security Council authorise NATO air strikes and bombing campaigns under the banner of the R2P. Some countries (mostly NATO and its allies) have claimed that the humanitarian intervention was a success, citing two factors. First, it put a stop to the fighting. Second, it toppled a dictatorship that had committed crimes against humanity by allegedly firing upon its citizens. NATO humanitarian intervention thus saved civilian lives. However, it has been observed that NATO forces gradually shifted their focus away from saving lives and towards supporting the rebel cause and unseating Muammar Gaddafi. UN reports have since shown that the civilian population was treated no better by the rebels than by Gaddafi's dictatorship - under both, they were subjected to repression, torture, and rape. Although it succeeded in overthrowing Gaddafi, NATO's intervention was thus a failure. Further, the justification for military intervention under R2P was later found to be as flawed, as reports of Gaddafi ordering warplanes to fire on Libyans were found to be false. (Green, 2019) Hence, humanitarian intervention under the doctrine of R2P failed in the case of the First Libyan Civil War.

The failed humanitarian intervention in Libya increased Russian and Chinese suspicion regarding the use of R2P for military intervention. Both countries vetoed American-sponsored Security Council resolutions which tried to invoke R2P for the purpose of humanitarian intervention in Syria. Both countries also released a statement about their decision, justifying their use of veto power by accusing NATO of abusing the R2P for the purpose of regime change in Libya. (Russo, 2017)

From the aforementioned case studies, we can conclude that theoretically, should one see sovereignty as a responsibility rather than a right, humanitarian intervention can be used to justify infringements of state sovereignty. The practical implementation of this principle has proven to be less clear cut. It is important to note that there was a difference in the effectiveness of R2P-approved humanitarian intervention depending on the troops that were sent to enforce Security Council resolutions: UN troops were able to achieve success in Côte D'Ivoire, whereas NATO troops veered off course in Libya. This is a potential example of how countries' personal interests - or the interest of a certain bloc - can overshadow the initial aim of humanitarian intervention.

As a result, the concerns raised by Russia and China do have a place in the application of the R2P framework - any humanitarian intervention should closely adhere to the principles of protection of civilians from crimes against humanity. This could potentially be done through the commanding of troops being handled by an international organisation such as the UN so that national or bloc interests are largely diluted; However, challenges remain in terms of practical implementation, and some nations' uneasy relationship with the R2P framework. (Adigbuo, 2019)

Application to a MUN Context

The issue of sovereignty is a pertinent issue that is discussed in many MUN councils. It concerns a wide variety of debates in a wide variety of councils, ranging from the South China Sea dispute in the ASEAN Regional Forum to the issue of Donbass in the UN Security Council. In any case, delegates can argue on either side of the degree to which sovereignty should be absolute, depending on council and stance. However, the main issues with regards to sovereignty will often be related to the aforementioned points - how it clashes with the right to self-determination and humanitarianism.

When Forwarding Arguments

As in real life, the conflicts between sovereignty and other aspects of international law are often brought out through secessionist movements / territorial disputes and humanitarian intervention. In such cases, it is useful to frame your delegation's arguments along the possession of *de jure* or *de facto* sovereignty, more specifically the four different conceptions of sovereignty (domestic sovereignty, interdependence sovereignty, international legal sovereignty and Westphalian sovereignty).

For example, borrowing the aforementioned case of the Nagorno-Karabakh conflict, the delegation of Armenia could argue that the Republic of Artsakh should be recognised as a legitimate state due to its possession of *de facto* sovereignty in terms of its control over

its own state affairs and the lack of involvement of Azerbaijan in the governance of the territory. It could be argued that the Republic of Artsakh's legitimacy has been established through its possession of sovereignty in this aspect, and that it should hence be granted complete sovereignty over the territory of Nagorno-Karabakh. On the other hand, the delegation of Azerbaijan would argue its own case that Nagorno-Karabakh should remain as part of Azerbaijan due to the international legal sovereignty it enjoys, with all members of the United Nations recognising the territory as part of Azerbaijan. Thus, Azerbaijan can argue that Armenian military intervention in Nagorno-Karabakh constitutes a violation of their internationally recognised sovereignty, strengthening their argument that Armenian forces should be withdrawn from the region.

Although using different conceptions of sovereignty can be used to strengthen arguments in cases that involve issues of sovereignty, the most important thing is to stick to your guns and use evidence to build up your delegation's case. Such evidence could include precedents which: (I) are *similar to the issue* being discussed in the council, (II) support the case you are arguing, and (III) are recognised in the eyes of legitimate legal bodies such as the ICJ.

When Criticising Arguments and Defending Your Stance

While the application of the concepts mentioned in this paper are most obvious when they are ingrained into the topics being discussed within the council, they can also be applied to the criticism of others' arguments in defence of your own stance.

Whether it is a real concern or an excuse for other ulterior motives, countries have often used the protection of sovereignty (which may take any of the four aforementioned forms) can be used to argue against a variety of measures from military intervention to economic development and environmental protection. Conventional examples of this include the United States, China and Russia protesting against becoming member states of the ICC in order to protect their citizens and their sovereignty (specifically, interdependence sovereignty).

One unique example would be that of Sri Lanka's response to Indian transboundary environmental pollution along the Laccadive Sea and the Bay of Bengal. Complications arose over India's plans to create the Sethusamudram Shipping Canal, a channel that would create a shipping route in the straits between India and Sri Lanka, due to Sri Lankan fears that it would adversely affect the environment and maritime resources under Sri Lankan sovereignty, especially fishery resources. Sri Lanka argued that if India did not implement measures to mitigate these impacts, it would constitute a violation of Sri Lankan territorial sovereignty (a part of Westphalian sovereignty). In addition to its economic and environmental interests, this would also enable Sri Lanka to defend its strategic interests in the region as well. (Mendis, 2006)

This goes to show that our application of sovereignty is not solely limited to military issues, and that it can be extended to include all issues that pertain to the affairs of the state your delegation is representing - that is to say, most issues. Hence, sovereignty can be one of the things that can be considered when firing back at your fellow delegates (in a respectful and courteous manner, no less) in order to upend their argument and convince other delegates to take your side of the debate, no matter what the council or topic being debated might be.

Conclusion

The world has, through the aforementioned examples and more, seen how the basic interpretation of absolute sovereignty inevitably clashes with international law, especially in terms of secessionist movements where sovereignty is disputed. However, we have also seen how the basic interpretation of absolute sovereignty can be altered to accommodate for other aspects of international law, particular with regards to humanitarianism.

The current interpretation of state sovereignty posits that sovereignty is absolute, with the exception of intervention on the part of the international community for a humanitarian cause - although that too is often disputed. However, it is safe to say that several aspects of the relationship between international law and sovereignty require further tweaks and amendments moving forward. Further discussions on the resolution of sovereignty with the right to self-determination need to be made in order to set a consistent international response towards secessionist movements: whether one form of sovereignty should prevail over another.

Between sovereignty and humanitarianism, humanitarianism must take precedence in order to safeguard human lives. Challenges that sovereignty pose towards practical implementations of humanitarianism must also be eliminated (as best as the international community can). Regarding the indictment of war criminals under international law, entry into the ICC remains a tense subject due to the great power status that many non-parties to the Rome Statute hold (United States, China, Russia, India) and thus, it remains difficult to prosecute war criminals under the protection of these countries, hindering the pursuit of international justice. However, humanitarian intervention shows more promise for reform and normalisation within international law in the future. Moving forward, operations involving military intervention can be closely monitored by appropriate authorities and with a much heavier emphasis on the protection of civilians from crimes against humanity to increase its effectiveness.

Sovereignty has existed as a fundamental part of international law for the past seventy years, and will continue to exist as such for the foreseeable future. However, its relationship with other aspects of international law will continue to change as the international community struggles to reconcile issues of sovereignty with the right to self-determination and humanitarianism.

About Aloysius

Having sold his soul to the MUN circuit and the Starbucks Coffee Company®, Aloysius maintains an indubitably bemused perspective on life - perpetually tuned in sync with the sweet synths of The 1975 and Carly Rae Jepsen. Simultaneously in relentless pursuit of continuous self-improvement and a simple Epicurean philosophy, Aloysius makes it a

point to maintain the essential work-life balance through his various extracurricular pursuits, such as stretching his raw singing skills, learning Debussy for piano, reading more fiction than non-fiction and swimming the breaststroke. His article aims to shed light on the tenuous, yet critical relationship between sovereignty and other peremptory norms of international law and the necessity of resolution between the two in an increasingly volatile geopolitical landscape.

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Growth v Sustainability

Samuel Quay

To have effective discourse on sustainability, the term must first be defined clearly. Though multiple definitions exist, this article will define sustainability as the "balance, resilience, and interconnectedness that allows human society to satisfy its needs while not exceeding the capacity of its supporting ecosystems to continue regenerating services necessary to meet those needs." In layman's terms, sustainability occurs when mankind uses resources in such a way that does not deplete or degrade these resources. Consider fishing. Sustainable fishing refers to a manner of fishing that does not reduce the number of fish, or the quality of fish. Sustainable fishing is therefore not just a function of the rate at which fish are caught, but also whether younger fish are released, where fish are caught, and whether boats pollute the oceans, affecting the health of fish.

Many increasingly view sustainability as essential to the very survival of humanity: around the world, countries are pledging to reduce emissions, businesses are announcing investments into greener technologies, and banks are shifting towards greener portfolios - making more loans to firms that pollute less. Despite this progress, pitfalls lurk. They can be broadly placed into two categories. The first relates to setting targets: it is difficult to properly quantify sustainability. The second has to do with economics - where certain companies and countries prioritise maximising short term profits and growth over sustainable practices. This article will provide an in-depth analysis of some of these obstacles, whilst also highlighting positive examples which could be emulated to stimulate progress.

The European Green Deal

First consider the European Green Deal. Unveiled in December 2019, the deal aims to reduce carbon emissions by 50% by 2030 and achieve carbon neutrality by 2050. This attempt by the EU to decouple natural resource depletion from economic growth is especially significant, considering that sustainability and growth have always been viewed as opposing components of a zero-sum game. While extensive literature and political discussions have already been dedicated to past climate treaties such as the Kyoto Protocol and Paris Climate Agreement, this article's analysis of the European Green Deal would reveal that the issues which plagued the past agreements and protocols still manifest themselves in the present. Considering that the European Green Deal has yet to be implemented and that no results surrounding the deal's success exists, this analysis mainly assesses certain very apparent flaws in the deal's initiatives.

Examining aforementioned past climate treaties revealed issues of over-reliance on unsustainable resources, underlying inconsistencies in the treaties and an over-attachment to conservative economic values — ever-present in the modern-day European Union (EU). A deal of this scale requires extensive monetary resources and needs to overcome political barriers within the EU — especially amongst countries whose existing economies are heavily reliant on 'resource-depletion'. For instance, Poland remains uncommitted to the deal as its coal-reliant GDP would likely face reduction should the EU pursue its 2050 goal. Hence, when it comes to the context of Model United Nations, before attempting to gather allies and forming blocs for resolutions, it would be vital to identify if there are particular nations that have economies that would structurally suffer should an over-reaching agreement or policy on sustainability be proposed. However, should such an instance be found, that itself should not serve as a hindrance to any success, as there are many facets to sustainability - in other words, compromise can always be found even if specific areas lead to disagreements.

Continuing the discussion on the European Green Deal, we shall now look at two vital portions that address how the EU intends to allocate its monetary resources: the Just Transition Mechanism (JTM) and InvestEu.

Just Transition Mechanism

The JTM's purpose is "financing modernisation of local economies and mitigating negative repercussions on employment". The JTM will supposedly inject 7.5 billion euros in "fresh money," which the EU expects to enlarge to 50 billion euros through investments and loans. While funding required for the JTM lacks estimates, an underlying issue is whether the money is indeed "fresh". Many believe that the JTM is merely reallocating funds from other essential programs. Given this concern, think-tank Bruegel proposed a set of specific amendments and proposals to the deal, such as utilising the European Globalisation Fund (EGF). The EGF aims to support structurally-unemployed workers, and may be triggered when 500 or more workers per firm are retrenched. However, given the EGF's underutil-

isation by an average of 110 million euros annually since its conception, its utilisation to offset JTM costs could better enable sustainability in economies like Poland where it may presently be improbable.

InvestEU

The European Green Deal also includes InvestEU, an investment fund seeking to catalyse the technologies and infrastructure necessary to attain its carbon goals. The primary issue with this initiative stems from the European Investment Bank (EIB) — which some argue is in need of reformation. Since the Juncker Plan (the predecessor of InvestEu), the EIB's record of loans to fund green projects have generally not been positive. This issue stems primarily from the EIB's tendency to underrate green projects, and this has been attributed to its over-attachment to overall risk and cost reduction. For instance, the relative infancy of green technology and its high variance costs leads to an inherent difficulty in predicting the risk of providing loans for such endeavours. The dwindling loan dispersal rate also reflects a conservative stance which defeats the primary purpose of InvestEu — green risk-taking. This reflects a systemic failure on the EU's part, as it should delegate the rating of these projects to an independent body which might be less green-risk averse as compared to the status quo.

While this conclusion may seem premature given the relative infancy of the deal, a common takeaway from the analysis of these case studies is that the EU does have sufficient monetary resources to implement their grand policy initiatives. Assuming that these initiatives are sufficient to promote sustainability (another rather large assumption), the EU's goal of decoupling resource depletion from economic growth is certainly a possibility. However, before we discuss the effectiveness of these policies, the existing issues plaguing the Green Deal to allow these monetary resources to be properly allocated are substantial. Ultimately, these barriers can be attributed to a desire to preserve the status quo, as well as a conservative attachment to existing values such as risk-aversion. While economic growth is not necessarily in conflict with sustainability, it is time that our institutions acknowledge that their approaches and mindsets reflect otherwise.

FDI Into Africa

The second portion of this article shall analyse Foreign Direct Investment into Africa. A foreign direct investment (FDI) is an investment made by a firm or individual in one country into business interests located in another country while Africa in this instance refers to the states present within the African continent.

Why Africa and FDI?

The first half of this article primarily dealt with an economic agreement (The Green New Deal) spanning the European Union; nations considered to be of substantial economic development. This is in steep contrast to Africa, which according to the United Nations has 33 of the 46 Least-Developed Countries in the world. Analysing Africa would hence provide a meaningful contrast to Europe, revealing to us how the relationship between growth and sustainability is heavily-reliant on the economic circumstances of the country involved. FDI agreements are particularly strong case studies in this discussion, since they not only support growth in many African nations but also affect the overall sustainable resource usage within these nations.

Pollution Haven Hypothesis

An examination of Africa's economic situation revealed a systemic over-reliance on FDI to prop up the economies of African nations. This makes any attempt to improve its level of green governance intractable, and this is supported by the Pollution Haven Hypothesis. The hypothesis predicts that "trade liberalisation leads to relocation of pollution intensive production from high-income countries with stringent environmental regulations, to low-income countries with lax environmental regulation." Consequently, enforcing green governance may deter FDI, impacting economic development in Africa. For example, Chinese Multinational Corporations (MNCs) might lessen investments into Africa should regulatory boards stipulate stricter sustainable measures, as China is largely incentivised by the relative regulatory freedom to reap the rich natural resources of African nations.

Multilateral Agreement on Investment

From an international macro-policy standpoint, the Multilateral Agreement on Investment (MAI) was chosen as it represented the first instance of a multilateral investment agreement between African nations and foreign investors. However, when the MAI's secretly-negotiated contents were released, it controversially sacrificed national sovereignty of the FDI-receiving countries, potentially driving them towards rapid resource depletion. The MAI was never implemented, but prior to its dissolution, substantial pressures from climate activists resulted in the OECD Secretariat examining the relationship between the MAI and selected Multilateral Environmental Agreements.

Findings concluded that there were no prima facie legal incompatibilities due to the lack of overlap between the MAI and the environmental agreements. However, it did highlight issues within the MAI like a lack of assertiveness in the transference of green technologies by investing bodies, and reducing domestic governments' ability to gain a fair share of resource utilisation. Considering that proponents of the MAI, like the UK, still establish bilateral agreements along these lines, it is unlikely that MNCs value sustainable resource usage in the countries that they invest in. This technically makes sense, as the primary reasons for their investments are often the reduced labour costs, as well as the substantial empowerment and freedom that they have while conducting business and their activities in these countries.

What the hypothesis and the MAI highlights is how sustainability conflicts with development in Africa. The sheer lack of institutional frameworks and diversification in various African nations restrict their bargaining power in imposing green governance on FDI.

Hence, in contrast to the European Union, where bureaucracy and politics have driven a wedge into the proper allocation of monetary resources to achieve goals pertaining to sustainability, Africa is fundamentally not equipped to pursue such aims.

This distinction will definitely present itself in any sustainability related forum in the United Nations, and by extension, in Model United Nations. Rather unfortunately, this means that countries which fall under the category of Less-Developed Countries (LDCs), will generally take on the stance and positions that prioritize growth and development of their nations, with sustainability being a secondary concern. This means that those who end up as delegates of More-Developed Countries (MDCs) should take note of the distinction between the approaches that MDCs and LDCs take and their various priorities. While there are no one-size-fits-all solutions that will satisfy both categories of nations, MDCs should ensure that their sustainability policy proposals do not come at the expense of the growth and development of LDCs, while the ideal approach for LDCs would be to find areas in which particular sustainability goals can be achieved while broadly still keeping their priority focus on growth and development.

Limitations

While a discussion of sustainability and its relationship with economic growth is an important one, it is important to be cognizant that both concepts themselves inherently have limitations and are not complete per se.

Firstly, we need to understand how the measuring and eventual targeting of economic growth was conceptualised, and this can be dated to the 1944 Bretton Woods Conference. Following the disastrous consequences of World War Two, countries desired an easily calculable metric to base their rebuild plans upon. The result was Gross Domestic Product, a derivative of Gross National Product formulated by Simon Kuznets. While meant to be taken as a baseline, the support for GDP (mainly by libertarian economists and politicians) eventually catapulted it to become a gold standard for measuring economic prosperity. Kuznets later critiqued the very metric that he had formulated, stating that "The welfare of a nation can scarcely be inferred from a measurement of national income as defined by the GDP." GDP is indeed fallible as it does not take into account the sustainability of the growth that it aims to maximise. In other words, the concept fails to portray the complete picture about the true costs and gains that a country experiences as a result of economic activities.

On the note of sustainability, the concept suffers from a lack of consensus amongst scientists and governments as to what criteria, indicators and metrics determine whether a policy or action is sustainable. A report by the University of Columbia found some 557 distinct sustainability indicators as of 2014, with the list compounding rapidly even till today. The innumerable metrics makes the formulation of policy to achieve sustainability extremely difficult as any metric could very quickly become outdated or heavily disputed. Sustainability thus suffers from having too many possible metrics, quite contrary to that of growth which is based only on GDP.

Hence, for a productive and meaningful discussion to take place on the matter of sustainability, countries should first agree on the specific metrics or indicators that they wish to employ for a particular policy discussion before commencing on the policy itself. In the context of a MUN, delegates should therefore research carefully on the specific areas of concern that apply to their given sustainability topic and find metrics or indicators that will best suit the discussion.

Conclusion

While the article is heavily dependent on a host of assumptions, the ever-changing nature of the economic discipline demands for most discussions to be of this nature. The juxtaposition between Europe and Africa showcased the importance of a country's economic circumstances, such as LDCs and MDCs, in determining the feasibility of sustainability as a goal - as a country struggling from a development standpoint may realistically only treat such a goal as a luxury. Conversely, countries with strong institutional frameworks are far better positioned to pursue the goal, but will struggle to balance it with the traditional metrics like growth as these metrics were responsible for much of their advancement in the first place. Sustainability ultimately boils down to the degree of sacrifice that a nation is willing to endure, be it continued growth and prosperity along traditional lines or the wellbeing of its people and the environment.

About Samuel

Samuel is currently close to finishing his national service with the Singapore Armed Forces. He's passionate about economics and intends to pursue it at an undergraduate level. In particular, he has spent most of his time studying environmental and behavioural Economics, intending to discover solutions to make sustainability a viable goal. His article aims to educate others on the current obstacles to sustainability and how such obstacles defer greatly depending on the development of the country involved.

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The International Legal Framework

Joshua Ng

What exactly is International Law? Why can't it be enforced all the time, like what countries do with their domestic laws? In this article, we'll be taking a look at international law, and instances where enforcement has succeeded and failed.

International Law is, broadly speaking, a framework of standardized rules and guidelines by which states operate and manage relations with other states (Bentham, 1780). This has its obvious benefits -- upholding a rules-based international order is critical for preventing unnecessary spillage of blood when nations pursue goals that require them to act outside of their national borders. Today, these rules and guidelines take the form of multilateral treaties, and are governed by the United Nations.

This reliance on multilateral treaties which seek to uphold lofty ideals like human rights is incredibly unique in the history of humanity. Previous forms of international or regional organisation (e.g. Congress of Vienna, Peace of Westphalia, Tributary System with successive Chinese Dynasties) did not have or could not enforce the universality that many UN conventions today have. For example, even powerful countries like China and the United States are willing to uphold some treaties with a commonly-accepted moral basis (e.g. prohibitions against biological/chemical warfare, or restrictions on types of munitions (e.g. cluster munitions), or a prohibition on using child soldiers. The enforceability of international law, either through cooperation, compliance or coercion, is therefore critical to the success of the modern framework.

This brings us to our next question: why isn't International Law always enforced? To understand why this isn't the case, we have to first recognize that the United Nations operates on the fundamental principle of "the sovereign equality of all member nations" (United Nations, 1945). Ergo, the system of guidelines and rules that make up International Law are based upon, and sometimes subordinate to, this overriding principle of sovereignty. This in turn means that when the goals of respecting a nation's sovereignty and enforcing international law come into conflict with each other, sovereignty is often prioritized over enforcement -- an unfortunate drawback of the current system.

Now that we have a rough idea of what International Law is and why it cannot always be enforced, we can take a closer look at specific cases where the enforcement of international law has succeeded and where it has failed, along with the lessons they can hold for diplomacy.

The Gulf War

On 2nd August 1990, the Iraqi Army, at that time the fifth largest in the world, launched a ground invasion of the oil-rich Persian Gulf monarchy of Kuwaiti (Gordon, 1990). Within days, 20 percent of the world's oil reserves came under the control of the Iraqi dictatorship. The act was a flagrant violation of international law and article 2 of the UN Charter, through the complete annexation of Kuwait against the sovereignty of the State and the wishes of her people (United Nations, 1990). Almost immediately, the United Nations Security Council condemned the invasion, calling upon Iraq to withdraw from Kuwait (Dinstein, 2001). The United States soon deployed extensive military forces to protect Saudi Arabia which neighboured Kuwait and to whom the invasion had been a major threat. In January 1991, a coalition military force led by the United States launched an operation to liberate Kuwait, destroying most of the heavy equipment of the Iraqi military with comparatively few casualties (Cable News Network, 2001).

The "First Gulf War", as it was soon referred to; was a huge political success and strengthened the international order. Compared to previous eras of human history, it was unprecedented to have an act of aggression by a militarily powerful nation to be successfully countered swiftly with most of the international community's support. However there are specific reasons why international law, in the form of the restoration of Kuwaiti sovereignty, was enforced successfully.

The role of the United States, the predominant power at the time with the collapse of the Soviet bloc, was decisive due to its contribution of resources, military forces and overall leadership of the coalition. At the same time however, the efforts to restore international law were successful because of a UN mandate accompanied by an extensive diplomatic tour incorporating many US allies, such as Egypt and France; as well as countries the US was willing to collaborate with despite tensions, such as Syria (Cable News Network, 2001).

It certainly helped the United States that Ba'athist Iraq's behaviour was that of a rogue state and its belligerence alienated many of its Arab neighbours. The Soviet Union and China, which both held permanent seats and veto powers on the UN Security Council, did not oppose successive resolutions against Iraq. There was little ambiguity over the motivations of Iraq's actions, and it was believed that Iraq intended to target Saudi Arabia and the remainder of the monarchies of the Persian Gulf (Lynch, 2006). Iraq had made itself out to be a clear "villain" of the international order.

Despite this success, some of the limitations of the UN were highlighted. The UN was reliant on the initiative and cooperation of individual member states despite the clear breach of international law. This was due to the fact that the governing institutions of the UN themselves did not, and still do not, have the authority to enforce relevant laws. As such, the international response to Iraqi aggression was still predicated on the United States' ability to form and lead the coalition. This in turn was only possible because the Iraqi annexation of Kuwait was such a cut and dried violation of international laws.

This is, of course, rarely the case in Model UN. Council topics are designed to be contentious, and the issues being debated will often have many equally valid perspectives, as we will see in later examples. There will rarely ever be a clear "villain" of the council, as Iraq was in this case study. Instead, delegates will have to reconcile these competing perspectives in order to achieve an outcome that preserves the spirit of the United Nations while being acceptable to all.

This is not to say that there is nothing positive to learn from this case study. The United States' ability to coordinate an effective coalition showcases some emulatable practices that can be adopted for aspiring Model UN delegates. For instance, this issue highlights the importance of focusing on the common ground. In this case, the "common ground" was the Arab world's collective fear of Iraq, which overrode any pre-existing animosity between states such as Syria and the U.S. In a broader sense, when applied to the MUN context, this would entail doing research on other delegates' stances to find this "common ground"; as well as attempting to form good personal ties with the delegates in your council. Finding common ground first allows one to develop functional working relationships with other delegates, even ones from normally opposed nations, and will lead to quicker bloc and resolution forming, with the end goal being faster resolution of the issue at hand.

The Crimean Referendum

The international system is well geared to respond, when consensus is obtained, against rogue states or terrorist groups, at least compared to the systems which preceded it. It is less suited in tackling core members of the international order which might hold significant economic and political power.

From November 2013 to February 2014, Ukraine faced political turmoil due to anti-government protests and anger against the perceived pro-Russian government following its rejection of a trade agreement with the European Union (Smith-Spark; Gumuchian; Magnay, 2014). What followed was a political transition in February 2014 to a more pro-European Union government and a backlash in parts of Ukraine with higher proportions of Russian speakers (Sullivan, 2014). As civil unrest rose and the government's authority weakened, unmarked military forces seized control of the Crimean peninsula, a strategic part of Ukraine. These forces, believed to have been the armed forces of the Russian Federation, enforced a referendum of dubious veracity which confirmed the Russian annexation of Crimea (Macias, 2015). Subsequently, pro-Russian separatists in the Donbass and Luhansk region of Ukraine rose up against the Ukrainian government, with assistance from the Russian government, which has continued to the present (Walker; Grytsenko; Ragozin, 2014).

The international response to the seizure and annexation of the territory of a UN member state was rapid yet divided. The European Union and the United States imposed various forms of sanctions on Russian businesses and officials and controls on trade with Russia. These measures, combined with a concurrent but coincidental drop in the price of oil, Russia's main export and a large source of government revenue (Overland; Kubaveya, 2018). The economic effects were severe due to Russian reliance on trade with the European Union and the drop in oil prices, with Russian economy entering a recession from which it would only recover in 2016 (Christie, 2015).

Despite the economic impact, the goal of enforcing international law in restoring Ukrainian sovereignty over their own territory was not achieved. Successive efforts by the United States and Western European countries to obtain a UN Security Council Resolution condemning Russian actions were vetoed by Russia, which holds permanent membership. This was despite 13 out of the 15 members backing the resolution with one abstention from China (United Nations, 2014). At the same time, there was little international legitimacy afforded to the referendum due to the lack of international observers and accusations of electoral fraud (Chappell, 2014).

The military might of Russia precluded any unilateral military action against it while a complete embargo was not undertaken by the European Union due to the latter's reliance on natural gas imports from Russia (Svyatets, 2016). Russia thus continued to consolidate its control over Crimea with no polity being able to enforce international law.

There were various reasons for the failure of the international community to enforce international law. Firstly, the Russians were more adept than the Iraqis at managing the international backlash against their actions and the much greater Russian political and economic influence reduced the willingness of countries to confront Russia. Secondly, unmarked military forces allowed for plausible deniability to be maintained initially while the presence of Russian speakers in much of the areas impacted raised ambiguity; unlike with Iraq, there was no clear "villain" to unite everybody against. Most importantly, because the extent of Russian interference in the referendum cannot be officially determined, it must be assumed that Crimea's decision to join the Russian Federation was a wholly-sovereign decision. As we established in the introduction, sovereignty often trumps the enforcement of international law when the two are in conflict -- usually to the detriment of the international order.

The issue of Russian expansionism, with Crimea as a case study, is an example of a gray-area topic that delegates will typically encounter in Model UN. Because the extent and details of Russian influence in Crimea, if any, cannot easily be determined, and because Russia is a member of the P5, it is difficult to directly resolve the issue. Unlike the Iraqi example, and because Russia has plausible deniability and veto power, uniting the council and passing a UNSC resolution directly opposing Russia would be nigh-impossible.

Delegates facing "gray" issues such as this are encouraged to instead adopt a forward-thinking approach. Rather than focusing on resolving the Crimean issue, the goal should be preventing the ambiguity that we see in this issue from cropping up again, and reinforcing existing systems such that there are fewer exploitable loopholes. For instance, results from nationwide polls relating to a national identity can be used as a check to aid in determining the veracity of future referendums on matters of national importance; in the case of Ukraine this could be a poll on the true successor to Kievan Rus (Rejting, 2018). Given that national referendums altering Ukrainian territory are "All-Ukrainian" and thus have to be a collective decision by the entire Ukrainian citizenry as per the constitution (Verkhovna Rada of Ukraine, 1996), the aforementioned Kievan Rus poll would serve as a good gauge of popular sentiment. If the majority of Ukrainians believe that Ukraine is the true successor to Kievan Rus, then it follows that this same majority would oppose annexation by Russia considering the fact that Russia is a competitor to succeed this legacy. Although a competent opposition delegate might make moves to prevent even these future-proofing measures from being implemented, significant diplomatic pressure can be applied to push through measures that are manipulated to appear less controversial.

Interestingly enough, opportunistic delegates in crisis simulations can take pages out of Russia's playbook. Covert Russian action in the annexation of Crimea, such as the use of unmarked actors to perform "dirty jobs", is a good example of subversive tactics that can be exploited by delegates looking to undermine their opposition and gain an edge in a crisis council. In addition, creating ambiguities in international law in the first place — such as through lobbying for less specific or restrictive clauses in a resolution — may be a possible approach that delegates in regular councils may wish to take when it comes to divisive issues such as the environment.

Intervention in Somalia

The Iraqi and Russian case studies serve to reinforce the notion that the enforcement of international law is always subordinate to the respect for another nation's sovereignty. However, as we will see from this example, that is not always the case.

The Somali Civil War is long and complex, having gone through several stages since its start following the collapse of the Somali government in 1991 (Central Intelligence Agency, 2011). Since 2007, the main peacekeeping effort to stabilize the country against terrorists and warlords has been the African Union Mission in Somalia (AMISOM) supported by the United Nations. AMISOM, backed by the militaries of Somalia's East African neighbours, has achieved significant success in overthrowing the Islamic Courts Union widely controlling much of Somalia and implementing a UN backed government (Rubin, 2019). Prior to AMISOM, UN interventions were undertaken by the United States, and other Western European countries, from 1992 to 1994, though none succeeded in restoring stability to the country.

From its beginning up until the intervention of AMISOM, the Somali Civil War saw the fracturing of central government authority into regional warlord governments. This was accompanied by the rise of Islamist governments such as the Islamic Courts Union, or ICU (Kaplan, 2006). Few of these governments received recognition from major diplomatic powers, with only the ICU receiving international support from Al-Qaeda through its Somalian affiliate Al-Shabaab (Schmitt; Dahir, 2020). The lack of governmental authority caused a collapse of living standards and a rise in lawlessness and piracy. To exacerbate matters, Somalia, lacking a government with international legitimacy, was hit by a humanitarian crisis in 2011 after being struck by famine. This in turn caused a large exodus of its population (Fleming, 2011) .

In 2007, the Ethiopian military, backed by the Kenyan military and other members of the African Union, launched a military operation against the Islamic Courts Union. The objectives were primarily to expel the government of the Islamic Courts and to back the nascent Transitional Federal Government. The Ethiopian operation was motivated by geopolitical self interest, as the activities of Somalian warlords and Islamist groups were potential fuel to an insurgency in Ethiopia's Ogaden region, known for its ethnic Somali majority (Allo, 2020). Nevertheless, the initial invasion and subsequent occupation and counterinsurgency campaign received backing from both the African Union and the United Nations. The ICU was effectively a rogue state and the UN sought to support a UN recognised state in the Transitional Government of Somalia, which despite its international legitimacy, did not have control over significant territory in the country (Turner; England, 2006).

Somalia is an interesting case study: It is an example of a scenario whereby the sovereignty of a country is violated -- in this case by a UN-backed Ethiopian invasion -- in order to enforce international law. This was possible because the United Nations was able to get the international community and all major countries to back the Federal Somali Government rather than other political groups, which in turn was only possible because doing so would have been in the interests of all involved. In addition, by de-emphasizing the issue of Somalian sovereignty, and instead emphasizing the importance of upholding the international rule of law, the case for an invasion was only strengthened.

Here we see a partial answer to the sovereignty question posed by the first two case studies. The fundamental principle of sovereignty is not so rigid as to be an ironclad rule that prevents any action from happening; instead it can be circumvented when the relevant parties want these international laws to be enforced, and when this principle of sovereignty is de-emphasized. The challenge for delegates and diplomacy, therefore, is not to impose what is correct on other nations; rather it is to aim to reach a conclusion that states involved will want to implement on their own. A delegate may wish to emphasize and de-emphasize concepts that may contradict one another (such as sovereignty and upholding international law) accordingly, in order to achieve this end.

Conclusion

International laws are not easily enforced, and oftentimes the enforcement of said laws is hampered by the respect for existing conventions and concepts. However, it is still fundamentally possible to reach solutions that will, at the very least, aid in preventing future breaches from happening. The onus is on prospective delegates to find common ground, focus on creating future-proof solutions, and to come up with solutions that member nations will want to implement on their own.

About Joshua

Joshua is a 20-year old full-time national serviceman. He developed an interest in International Law after spending two years in the Model UN circuit lamenting the non-enforceability of UN resolutions. He hopes that this article will shed just a tiny bit of light on the complexities of the rules-based international system that we live in today.

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Appendix

Contained in this appendix are potential case studies for further reading.

Human Rights Law

- Successes: War criminals of the Bosnian Genocide
- Failures: The issue of Uighur treatment in China

International Standards for Intellectual Property

- Successes: Common Standards across borders for trademarks. Copyright infringement in piracy, although widespread due to the proliferation of the internet, is not condoned in any jurisdiction. Legal remedies can be sought across much of the world against copyright infringers.
- Failures: Accusations of Intellectual Property infringement by China and other developing countries; persistence of transfer of technology.

UNCLOS

- Successes: International compliance with UNCLOS has been high; states cooperate with each other to enforce such provisions. For instance, anti-piracy operations in Somalia and the Gulf of Aden are examples of states cooperating to achieve mutually-beneficial outcomes
- Failures: The South China Sea issue

Laws on the Environment

- Interestingly, while international environment law is governed by the UNEA, and agreements have been reached in Stockholm, Rio and most recently Paris, these laws are not subject to any form of external enforcement mechanism. Rather, these laws are entirely dependent on individual states' compliance with these standards, relying on domestic enforcement mechanisms and mutual capacity-building.
- Successes: The European Union is set to reduce its emissions by 40% from 1990 levels by 2030, meeting the target it has set for itself following the Paris Agreement by 2030. It is expected to set a more ambitious target for itself.
- Failures: The reliance on individual states to enforce environmental standards domestically leads to varying levels of compliance. For instance, 80% of the illegal logging industry is based in Peru, and largely thrives due to poor domestic enforcement.
- Food for thought: Compliance ratings with the Paris Agreement are high, with more than 50 parties to the Agreement accounting for more than 55% of emissions having ratified the provisions. However, could this be due to the fact that parties are allowed to set their own emissions targets? Is the lack of enforcement therefore simply due to there being no need to enforce laws that states can effectively change to suit their circumstances?

Superpower Rivalry

Tarun Niketan Rao

The past few years have been an eventful period for the relationship between the United States and China. Senior Chinese government figures have accused the United States of engaging in 'Economic Terrorism' while American Secretary of State Mike Pompeo has characterized China as "want[ing] to... [spread] its authoritarian vision for society and its corrupt practices worldwide" (Taylor, 2019). The shifts and changes in the relationship between the most powerful country in the world and the second most powerful country in the world will define the news headlines and geopolitical environment of the world. It is thus worth exploring; what are the reasons why these two nations have been unable to reconcile their differences and peacefully coexist with an escalating trade war, sanctions on firms of the other countries, and a war of words and rhetoric between the two countries political leadership.

Nicholas Spykman coined the term "superpower" to describe nations who could, in a post-WW2 era, project significant cultural, political, economic, and perhaps most importantly, military might (Gray, 2015). Only a few polities from the various eras of history ever graduated into powers which dominated their regions. Since the end of the first and second world wars, the United States has emerged as the preeminent economic and industrial superpower. Following the collapse of the Soviet Union, the United States emerged as the single most powerful military power, being several times more powerful than many of the other world powers combined.

At the same time as the emergence of American power, China has emerged, following its economic liberalisation and industrialisation, as a superpower. It does not have close to the same capabilities as the United States militarily or economically, however with its Leninist ideology precluding an independent civil society, the Chinese Communist Party is able to mobilize its government, society, and economy in normal circumstances far more efficiently than the decentralised, federal, government of the United States. The question if two superpowers can peacefully coexist in the modern era is best answered by examining the relationship between the two countries and determining if peaceful coexistence exists or if it does not, and the reasons why this is the case.

Defining Peaceful Coexistence

What does peaceful coexistence mean in the modern age? It has been 30 years since the collapse of the Soviet Union and the declaration of a "New World Order" by US President George H.W. Bush in 1991 following the Gulf War (Nye, 1992). Hence, it is easy to forget that historically, fluctuations in strength between different regional powers across the world were a constant source of inter-state conflict, with all prior time periods in recorded history being more violent than the post-Cold War era. Of course, not every relationship between powers was one of conflict; instances abound of eras of peaceful coexistence between large powers. Hence a definition of peaceful coexistence is necessary to differentiate peaceful coexistence from conflict of some sort and determine in which category the Sino-US relationship lies in.

It would be absurd in a modern world to solely define peaceful coexistence as the lack of a military conflict between the two concerned powers. Here we can adopt an expansive definition of peaceful coexistence that contains various elements. This definition of peaceful coexistence consists of economic relationships being of a competitive, rather than destructive, nature; diplomatic collaboration; and considers the rhetoric adopted by the leadership of both countries. Of course, many other elements exist in a the relationship between two ordinary countries, let alone two superpowers, however these elements provide an easy-to-apply heuristic which is able to determine whether two polities are able to peacefully coexist, in addition to being applicable to various historical great power and regional power relationships.

Does Peaceful Coexistence Exist Between the United States and China?

Although we have defined peaceful coexistence, a key question remains: are the United States and China in a state of peaceful coexistence with each other? While basic intuition might suggest that the two nations are not presently in peaceful coexistence with each other, a deeper look at each element of peaceful coexistence in the Sino-US context gives a more objective answer.

The economic relationship between the United The world is interconnected to the point where sanctions, blockades, and prohibitions on trade are often the main vehicles for achieving other aggressive goals one might reasonably consider to not be peaceful coex-

istence, such as regime change. Earlier stages of the Sino-US relationship were cooperative, with the US accepting China's accession to the World Trade Organisation in 2001 and granting permanent normal trade relations (PNTR) in 2000 (Baden, 2013). In recent years however, the relationship has gained some destructive elements, although far short of explicit economic warfare targeting a nation's entire economy, in contrast to US economic warfare against Iran (Fleming, 2019). While at the moment the high amount of bilateral trade and investment illustrates the relationship to be mostly peaceful; there has been a significant deterioration in relations between the two and there is a significant chance the relationship will cease to have this element of peaceful coexistence. Already, the United States has targeted a select few high profile Chinese firms with sanctions such as the semiconductor manufacturer SMIC (Yang et al., 2020), and telecoms equipment manufacturers Huawei and ZTE (Kawakami & Hoyama, 2020), among other firms (Swanson, 2020). While it remains to be seen as to the approach President elect Joe Biden will take in managing Sino-US economic relationships, his announcement that tariffs imposed by President Trump on China will not be removed (Wang, 2020), indicates that the approach to China as an economic competitor is unlikely to change. Thus, while the two countries may be large trade partners, there is a clear shift away from peaceful economic coexistence with Sino-US trade differences founded not only on economic contentions, but also on geopolitical matters.

Alongside economic relationships, another defining element of the modern nation-state is the role of diplomatic agencies and national participation in international forums. The cooperation of two superpowers indicates not only a degree of trust that is necessary for peaceful coexistence, but is itself likely to guarantee a peaceful and collaborative relationship between two superpowers. While most regional or global powers were displaced by competitors, notable peaceful exceptions exist such as the decline of the British Empire as a superpower alongside the rise of the United States. Even as British power declined relative to the United State's emergence, the two powers continued to collaborate such as in the Washington Naval Treaty (Mckercher, 1993) and in the establishment of the United Nations and the North Atlantic Treaty Organisation. While the United States and China might not share the common political threats as the British and US did in the Soviets, there are very real threats which would provide avenues for cooperation. Climate Change and Ecological degradation poses an existential threat to the living standards of all countries.

At the same time, despite the existence of common political ground across both the United States and China, international forums and means for diplomatic collaboration have instead become avenues for diplomatic conflict between the United States and China (Mauldin & Areddy, 2020). The desire to use international forums as a tool to confront or contain China is not limited to President Trump, but is also a key element of President elect Joe Biden's policy of using multilateral alliances to pressure China on various issues (Mauldin & Areddy, 2020). On the grounds of diplomacy, there is thus a clear lack of peaceful coexistence.

The last and most crucial indicator of peaceful coexistence between superpowers is the views of, and rhetoric adopted by the leadership of both countries. It is impossible to quantify or otherwise assess the beliefs and rhetoric of a country's leadership, yet in an era where foreign policy is based on policies and bureaucracies, it is the best measure to intuitively infer the nature of the relationship. The foreign policy views of a nation's political leadership will seldom change without major external changes, unanticipated negative consequences or political backlash. Former Chinese leader Hu Jintao's declared policy of seeking to facilitate China's "peaceful rise" manifested itself in a less confrontational approach to geopolitics as well as diplomatic largesse to nations in Asia, the Middle East, and Africa (Okuda, 2016). Rhetoric often accompanies real policy action, such as President Trump's repeated criticisms of alleged Chinese currency manipulation and cheating being accompanied by the prolonged trade war and deterioration of relations. In this case, the increasing bipartisan consensus in US politics, in which consensus on any issue is rare, of China's status as a strategic competitor and conflict over Chinese policies in Xinjiang and Hong Kong (Pamuk, 2020), indicates a deepening war of rhetoric and negative perceptions. Thus, rhetoric and perceptions within the Sino-US relationship indicate a lack of peaceful coexistence.

While as per the three metrics of assessing peaceful coexistence, the United States and China do not share a relationship of peaceful coexistence, the key element is the deteriorating nature of Sino-US relations. At the moment, there is no indication that Sino-US relations would reverse their deteriorating course even under a presidency of Joe Biden with all three elements of a relationship of peaceful coexistence being likely to worsen as described earlier.

Indeed, all three metrics have seen a continued shift, in recent years, away from a relationship of peaceful coexistence, and towards one of increasing conflict. If nothing else, this suggests that the status of superpower relations need not be predestined or set in stone, and although China and the US might not presently peacefully coexist with each other, they might not necessarily be doomed to conflict either. Thus, to answer the question of this article, whether two superpowers can peacefully coexist with each other, it is necessary to look at the two perspectives which explain this change.

There are two perspectives on the reason for this deterioration. The first holds that the two powers were doomed to conflict due to structural factors and the conflicting nature of two superpowers existing at the same time. This view, based on prior conflicts between superpowers, thus ascribes the current deterioration in relations between the United States and China as being an inevitable consequence of the latter's emergence. The alternative perspective, explored subsequently, looks at other factors arguing that the deterioration and shift away from peaceful coexistence between the two superpowers was not inevitable.

Long Term Perspectives

The belief that China and the United States are doomed to inevitable conflict is based on the idea of the "Thucydides Trap" and geopolitical competition. Under this framework, geopolitical competition for resources can already be seen through China's extensive Belt and Road Initiative (BRI). An estimated 200 billion has already been invested in extensive

infrastructure, energy, and industrial projects across Asia, the Middle East, Africa, and Europe (Chatzky & McBride, 2020). The US response has been incredibly critical, with former US Defence Secretary Jim Mattis describing how "no one nation should put itself into a position of dictating 'one belt, one road'" in October 2017 (Gan & Delaney, 2019).

Alongside geopolitical competition, the ideological conflict between the United States and China, combined with lingering distrust and bitterness from both sides, has been described as a major catalyst for a geopolitical conflict between the United States and China. Examples abound in world history of regional and global powers which were drawn into conflict due to their differing ideologies. The seminal example given is in the Thucydides trap where autocratic Sparta was drawn into conflict with democratic Athens, a fellow city state, due to fears of Athenian democracy spreading into other autocratic city states such as its own. The rhetoric of the Sino-US leadership indicates some degree of ideological conflict between the two countries. The United States has long had contentions with China over the latter's authoritarian system (Poznansky & Haas, 2020). The US political leadership has often offered ideological and political support to 'colour-revolutions' in Georgia (Welt et al., 2009) and Ukraine (Berger, 2019) seeking to establish more devolved and representative forms of governance holding onto the key tenets of Western liberalism. The Chinese leadership by contrast, do not hold onto the same notion of western political rights and view colour-revolutions as destabilizing and a potential threat to their sovereignty. In all, the Chinese are wary of supposed western intentions to weaken their country economically with parallels being made by Chinese officials and State Media between the Sino-US trade war and the unequal treaties imposed on China during Western colonisation (Nakazawa, 2019).

At the same time however, this long term view of Sino-US relationships is an oversimplification and many of its key tenets, while certainly useful in explaining other historical examples of superpower conflict, do not fit well in the current Sino-US relationship.

Competition for resources has been a source of conflict between superpowers in the past. However, following the 2014 commodities crash, which occured in the backdrop of increasing Sino-US tensions, there is little indication that such a scarcity of resources has been the source of the deterioration in Sino-US relations (Insana, 2014). Modern economic systems have evolved to the point where new sources for key resources or technological substitutes can be obtained over time. The modern world is far different from preceding eras and there is little evidence that it is a concern, at the present, in the Sino-US relationship. Much of the direct tensions in the bilateral economic relationship between the United States and China is over the latter's treatment of intellectual property and accusations from the Trump Presidency of unfair trading practices, rather than tensions over access to resources (The White House, 2020). The scope and central direction of China's Belt and Road Initiative (BRI) is also significantly exaggerated, with much of the project being driven by private and state enterprises already engaging in commercial activities (Greer, 2018). Decreasing amounts lent by both privately owned and state owned Chinese banks also indicate that the policy itself is subject to economic and commercial conditions (Schrader, 2018). Thus, the initiative is based not on some grand design by China of seizing control of resources, as the preceding argument suggests, but instead a scheme to achieve far more limited diplomatic and economic goals and redirecting overcapacity in certain industries (Feng, 2017). A key factor is the independence of the United States in key sectors such as energy (IER, 2020), and its economic power being derived not from resources, but from its technology and finance industries. This is in stark contrast to any other economic power in world history; unlike previous eras of world history, great powers in the modern age do not derive their wealth from controlling a few key resources due to the existence of international markets. The result of this is that it is entirely possible for the United States and China to peacefully coexist with each other since they do not share fundamental differences.

Furthermore, while cultural and political differences are likely to be a source of tension in the Sino-US relationship, it does not preclude peaceful coexistence from emerging between the two superpowers. While ideological differences may exist between the two nations, they are not an insurmountable barrier to engagement and collaboration between the two nations. The Chinese Communist Party (CCP) has largely abandoned many of the Marxist Principles which cemented its rule in earlier years in favour of a system which is a synthesis of Western (including Marxist) styles of governance and indigenous forms of political thought and structure (Kai, 2014). There is a fundamental contradiction between the pretense of being a Communist party claiming legitimacy from its promotion of Chinese culture and nationalism whilst being reliant on free markets for economic prosperity. The effect of this is to make any form of ideological warfare difficult due to the lack of any coherent ideology (Sino Insider, 2019); there is little willingness in China to spread the Chinese political system, built on centuries of indigenous political thought, to other governments across the world. On the American side, while domestic demands to protect human rights play a role in American foreign policy, their importance has been overshadowed in recent years under the Trump administration even as Sino-US relations have deteriorated. President Trump's tolerance, relative to his predecessors, of autocratic governments has challenged much of the idealistic approach to US foreign policy.

There is a temptation to draw analogies to historical diplomatic events and focus exclusively on the interests of states, especially among students in Model UN which often fixates on the representation of nation states. At the same time however, it is important to recognise that in the modern world, non-state actors, including multinational corporations and social movements, can be significant if not the primary drivers of policy. The American business community has been the driver of peaceful relations between China and the United States; however, with complaints of intellectual property abuse and the international emergence of Chinese rivals to their firms, their response to the trade war has been somewhat muted. However trade tensions are not a factor making peaceful coexistence impossible. The United States competes economically, even imposing tariffs and quotas, with close political and diplomatic allies Japan and Germany, such as in the Plaza Accord under President Reagan, and tariffs on steel imports by President George W. Bush (Sanger, 2002). Both countries emerged from post-world war devastation to match, and in certain areas, even exceed US capabilities economically and industrially. However, the

relationship with these countries is one of economic competition, not necessarily economic destructiveness which characterises US economic actions against rogue states such as Venezuela, North Korea, and Iran (Cortright, 2019). Whether the economic relationship is constructive, and by extension, whether the United States can coexist with China, has not been preordained, but will depend on the actions taken and willingness of both country's leaderships to resolve various trade issues.

It is overly simplistic to thus conclude that peaceful coexistence is an impossibility simply by citing long term structural factors. The real reason for the deterioration of relations between the United States and China, and the mistakes made by both countries' leaderships.

Short Term Factors and the Actions of National Leaders

Neither conflict, nor the current deterioration in relations between the United States and China, is inevitable. Rather it is due to a series of misjudgements and mistakes made by the leaderships of both the United States and China in managing their relationship. In Model UN, we are accustomed to seeing nations as individual, monolithic entities, rather than as a complex composite of politicians, institutions, and interest groups which might cause the nations they reside in to possess antithetical interests and pursue seemingly contradictory policies.

To examine the reason for the deterioration in Sino-US relations in the last decade, the leadership and changes of it within both countries provides useful insight. China saw a leadership transformation from a very decentralised and technocratic system of governance under Hu Jintao to a more centralised, personality-based rule on Xi Jinping (Zhou Mantesso, 2019) while the United States saw two very different approaches under President Obama and President Trump.

Throughout this time period, the Chinese leadership made key errors which would contribute to resentment and bitterness in the Sino-US relationship. These ranged from somewhat minor infractions such as publicly affronting President Obama during his first visit as President, to more serious mistakes, such as the treatment of the American business community. American firms have complained of onerous treatment by local and provincial governments, being forced to enter unfavourable technology transfer agreements, and the presence of various non-tariff barriers to trade. American businesses, previously staunch supporters of further cooperation between the United States and China, Politically, China's increased assertiveness in the South China Sea was another key error, with its extensive land reclamation projects far outstripping other claimants (Venzon, 2018), and its undermining of the ASEAN Regional Forum (ARF) in its 2012 meeting hosted by Cambodia (Hunt, 2012). These actions engendered bitterness and raised the suspicions of the United States and member states of the Association of Southeast Asian Nations (ASEAN) for marginal benefits. The foreign policy of China, rather than reassuring the United States and other nations in the Asia-Pacific region that China would continue her 'peaceful rise' as described by Hu Jintao, allowed China to be viewed as a potentially expansionist power (Trofimov, 2019). Instead of reassuring other nations of their (presumably peaceful) intentions, the Chinese leadership raised suspicions of their intentions right as China's emergence as a technological and industrial powerhouse disrupted the international landscape.

This perception has worsened in recent years alongside the consolidation of power by Xi Jinping as paramount leader of China. Suspicions of the BRI, Xi's signature foreign policy initiative, rose not only in the United States, but also in many of the BRI's target countries due to its poor execution, with accusations of corruption in key projects in the Maldives, Malaysia, and Kenya (Balding, 2018). The poor execution of foreign policy initiatives has recently coincided with the gradual shift away from a more cooperative form of diplomacy, to 'Wolf Warrior' diplomacy (Zhu, 2020). By promoting more combative and confrontational diplomats such as Zhao Lijian (Westcott & Jiang, 2020), in addition to a more bellicose attitude to other nations in the world, the result is the emergence of a deeper fear of China's emergence. The creation of such an atmosphere breeds ideal grounds for the emergence of geopolitical flashpoints and continuous conflicts between the United States and China.

As participants in Model UN, we are often accustomed to looking solely at resolutions, documents, and historical events to shape the stances for the countries we represent. At the same time however, we must understand that the actions and words of individual diplomats, in addition to adherence to or breaches of diplomatic custom, play a major role in shaping the interactions of various nations. Model UN often cannot illustrate the side effect of rhetoric we might make in speeches which has deeper consequences on the relationship with a country or the perception of the country whose diplomats make the statement.

While the Chinese leadership made key errors and mistakes, this does not absolve the US leadership of its own, which has made key mistakes under the Presidencies of Barack Obama and Trump. Renewed American focus on Asia under the 'Pivot to Asia' was necessary as the economic significance of Asia became apparent by the time of President Obama's inauguration. At the same time, the actual policy impact of Obama's pivot to Asia has seen a few sustained successes, with many failures and poor executions of policy (Cha, 2016). The Pivot to Asia has succeeded in neither consolidating America's position in the Asia Pacific where China would not risk challenging it, nor building a collaborative relationship with a resurgent China and assuage fears of American intentions. Instead the perception emerged, with shifts in US military doctrine (Perry, 2015), that the United States was seeking to militarily and geopolitically contain China, though with limited effectiveness (Ford, 2017). The central economic tenet of the Pivot to Asia, the Trans-Pacific Partnership, was not followed through by Obama's successor, President Trump, who withdrew from the agreement (Cha, 2016). The Pivot to Asia, from the Chinese perspective, resembled less of a diplomatic and economic effort to establish a system of norms and rules in Asia, and more of a blunt instrument to militarily contain China, earning suspicion of America's foreign policy towards China (Gazis, 2018).

Although Sino-US relations were deteriorating towards the end of the Obama administration (Cha, 2016), the actions of the Trump administration have worsened the mutual distrust. The signature policy of the Trump administration, in its approach to China, has had

contradicting and opposing goals, (Spross, 2019). Furthermore, there has been a continuous lack of clarity or coherence as to what areas the trade war encompasses, and which elements, such as the approach to the telecoms firm Huawei, are actually part of the trade war (Kharpal, 2019). With the lack of clearly defined national interests, and escalating actions against key Chinese firms (Yang et al., 2020), economic retaliation from China and increasingly deep suspicion are inevitable. The cumulative impact of the mistakes made by the Obama administration and the lack of coherence of the Trump administration has been to fail to deter Chinese opportunism, while simultaneously building mistrust as to American intentions.

The United States and China are, in the words of the esteemed diplomat Henry Kissinger, "too large to be dominated, too special to be transformed, and too necessary to each other to be able to afford isolation" (Kissinger, 2012). It is entirely possible for both nations, the two superpowers of this era, to peacefully coexist with each other. In fact, peaceful coexistence has been the status quo until the recent deterioration in relations. The two do not share irreconcilable differences but rather the need to understand the interests of the other nation and how they will respond.

About Tarun

An aspiring Law student, Tarun's keen interest in economics, governments, and culture led him to a topic involving the two most powerful countries in the world today; the United States and China. Keenly conscious of the importance of the relationship between the two countries, and worried at the prospects of having to fight in a potential third world war, Tarun hopes his article sheds insight into the dynamics between two superpowers.

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ASEAN's Place in the World

Jordan Ang

The formation of regional bodies of close geographic community was a phenomenon that occurred after the end of WWII, as newly independent states of the newly free world found themselves navigating an increasingly polarised climate headed by the United States (USA) and the Soviet Union (USSR). The desire to find strong geopolitical ties amongst these states culminated in the formation of various regional bodies, such as the 1952 European Coal and Steel Community, later the European Union (EU) and the 1945 Arab League.

One organisation however stood out above the rest in its diversity and spontaneity, in a region traditionally split along the borders of their colonial masters - the Association of Southeast Asian Nations (ASEAN) was formed in 1967. This article explores the role of ASEAN, and regional bodies as a whole, in global diplomacy and fostering good relations with others.

Impartiality and ASEAN's Beginnings

Understanding ASEAN's beginnings is key to understanding its style and peculiarities in engaging the world. ASEAN started out in a volatile political climate where the powers of the USA, USSR, and the newly established People's Republic of China (PRC) were looking to extend their spheres of influence far beyond their borders. The leaders of ASEAN were determined to depoliticise and neutralise the region, and secure it from becoming proxies to the worldly powers. (Ford, 2018)

The terms laid out in the 1967 ASEAN Declaration thus embodied collective self reliance with the goals of "peace and stability". ASEAN was founded as a cooperative organism of the international ecosystem, espousing global ideals of fairness and egalitarianism in the world order, through "abiding respect for justice and the role of law in the relationship among countries of the region"; with this a legal and fair playing field was enshrined in the ASEAN Declaration.

The diplomatic parameters were designed to include broad strokes of economic and social-cultural cooperation, but glaringly absent was any mention of political cooperation. (Anwar, 1994) This stemmed from Southeast Asian leaders' understanding that any attempt to bridge any political differences at this stage would ultimately bring their differences to the forefront and challenge the very fragile relationship they had. The Sabah conflict, Thai cross-border communists, and differences in engaging China were all touchy subjects that ASEAN leaders recognised to be taboo if they were to ensure the organisation's sustainability.

Thus came a crucial ethos of ASEAN's existence: to function as a paradoxical platform for cooperation without any real space nor time for conflict resolution, at least not within the organisation itself. It was the safe way or the highway, and the use of safe, palatable projects to overcome mutual suspicions was how ASEAN came to be. (Melchor, 1978)

In 1967 the leaders of Malaysia, Indonesia, Thailand, Singapore, and the Philippines founded themselves a globally cooperative regional body that was, though lofty, mature enough to understand the need to tip-toe and start small in regional cooperation. That is "The ASEAN Way" - a unique dynamic where members of the community focused on broad common goals and avoided direct and open conflict with one another to prevent splintering or division.

At this time we see a regional body that complemented the United Nations' vision for the maintenance of international peace and security.

The Rule of Law

ASEAN's strength comes from its numbers and cohesiveness as an organisation of various small states. It stands in contrast against larger countries with much more economic and political influence - for example, it does not possess the political influence of the United States across the vastness of Western Europe and North America (the Western bloc). The small states in ASEAN therefore understood that in order to hold their ground and coercion from the greater powers, they had to both band together and establish an international, or at the very least a regional, order of conduct through the rule of law.

The rule of law when referring to international law often means that states have to act in accordance to set laws and treaties - that everyone is bound by the same rules in how they act towards one another. As the late Lord Chief Justice Thomas Bingham puts, "The

rule of law requires compliance by the state with its obligations in international law as in national law". (110, 2010)

This also means that all behaviour precludes violence and force amongst each other. ASEAN's most historically significant treaty that exemplified this was perhaps the Treaty of Amity and Cooperation (TAC) of 1976. This was ASEAN's attempt to solidify a conflict-resolution mechanism for itself, which would later also set the stage for its engagement with the rest of the world.

TAC aimed to apply a code of conduct to the region and those who engaged with it and this was a far cry from its position of traditional closed-door and primarily bilateral conflict resolution. This was signalled by Article 2d and Article 2e, which called for the establishment of a High Court to arbitrate disputes between 2 states, showing how much ASEAN leaders were shifting from their original stances of non-intervention in the actions of the Southeast Asian nations.

More importantly Article 2a mandated the "mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all nations". (ASEAN, 2016)

This set the stage for ASEAN's fierce response to Vietnam's vicious invasion and occupation of the Khmer Rouge-held Cambodia in 1978, which was a clear contravention of the TAC despite the fact that Vietnam was not even an ASEAN state. ASEAN saw a clear duty to enforce the TAC across the whole of Southeast Asia to maintain its fragile peace, because while the TAC was only ratified by the ASEAN nations, it outlined lawful and unlawful activities of "all nations". This would naturally include Vietnam and Cambodia. In addition, its member state Thailand's close proximity to the conflict was cause for serious concern in the case of spillover skirmishes. This was the time for ASEAN to fulfil its promise to the United Nations Charter.

ASEAN saw this need to keep the Southeast Asian region, inclusive of the volatile and often pariah region of Indochina, in order since its very inception. ASEAN could not achieve its peace without interpreting the peace that the TAC provides as its mandate for ensuring peace throughout the region. The Deputy Prime Minister of Malaysia in 1967 Tun Abdul Razak noted:

> *"The countries of the region should recognize that unless they assumed their common responsibility... Southeast Asia would remain fraught with danger and tension. And unless they took decisive and collective action to prevent the eruption of intra-regional conflicts, the nations of Southeast Asia would remain susceptible to manipulation, one against another."*
>
> (Seung et al, 2017)

In March 1979 the five ASEAN countries tabled a resolution in the United Nations Security Council that condemned Vietnamese action in Cambodia, though it ultimately fell through due to USSR veto action. ASEAN states then took it to the United Nations General Assembly (UNGA), requesting it be included in the 34th UNGA agenda . ASEAN diplomats realised that while there was collective agreement amongst ASEAN countries, the issue was small and insignificant to everyone else. After all, the American mission to Vietnam had failed just 4 years earlier and approaching the region had become somewhat of a political taboo. And yet, no ASEAN country except perhaps Thailand was interested in engaging in either side of a Soviet-Chinese proxy war. ASEAN members had to tap on the consciousness of the international community and use them to exert pressure on the parties involved to halt the violence, and as such the UNGA was used.

Throughout the 1980s ASEAN diplomats pushed the issue through relentlessly, with each year international support for the UNGA resolution condemning Vietnamese occupation increasing steadily in tandem - a clear result of ASEAN diplomacy and sign-boarding of a very Southeast Asian issue.

By 1989, the ASEAN position on the occupation of Cambodia had become synonymous with the de facto UN position, with 124 in favour, 17 against, and 12 abstentions for that year's resolutions.

The role of ASEAN in global diplomacy was not to be trivialised. Former Minister for Foreign Affairs Wong Kan Seng highlights the relentless efforts that ASEAN took to tie the global community into the crisis:

> *"China had objected to ASEAN's call for the disarmament of the Khmer Rouge... strong words ensued with the Chinese delegation when we tried to accommodate China's perspective without compromising our own. We were, however surprised when the US refused to support ASEAN but tried to focus us to back down... [they even went] so far as to claim that there would be "blood on the floor" if Singapore did not compromise.*
>
> *Our goal was to keep the issue in the international consciousness and persuade Vietnam to come to the negotiating table... the annual ASEAN reception on the sidelines of the General Assembly.... became a ritual at the UN.... [and through it] we created an informal setting to work the ground, convincing various players of our cause and ensuring that the little things like food and flowers would ensure an accurate and long-lasting memory of our efforts."*
>
> (Ministry of Foreign Affairs, 2011)

ASEAN's efforts in the UN were exemplary in showing how a regional body would work in the framework of an already interconnected and sizable United Nations, where regional blocs would give credibility and influence others with regards to a regional cause. The political will to rally behind their member states, such as Thailand during the Third Indochina War, further showed that this was a crisis worthy of attention and urgency, winning over the support of the world. This all the more enhanced the promulgation of international rule of law.

Building Confidence in the Asia-Pacific

In 1987, TAC granted a significant amendment that allowed for signatories outside of the ASEAN states, scoring ASEAN's vision of engaging more with partners outside. This paved the way for Vietnamese ratification in 1992 and its membership in 1995.

As the world became increasingly more interconnected ASEAN saw the need to expand its connections with Asia and the Pacific as a whole. Its next major challenge was the Chinese claims on the South China Sea, stretching into the 21st century. While China had not ratified the TAC until recently, ASEAN still pushed for a code of conduct at sea, in response to situations like the 1995 Mischief Reef incident where China had destroyed Filipino military structures in the Spratlys region. More importantly, ASEAN realised the need to negotiate as a bloc vis-a-vis China, as opposed to China's preference for bilateralism. ASEAN continues to negotiate with China today.

ASEAN's role in negotiating with China fell within its expanding role of engaging the rest of the Asia-Pacific. Since the 1970s, the ASEAN Post-Ministerial Conferences (ASEAN PMC) were meetings held by ASEAN and various dialogue partners that expanded gradually to include big world players such as the USA, EU, Australia, Japan, South Korea, and importantly China. Its agenda has primarily included economic and political issues, such as the Cambodia conflict and contesting claims in the South China Sea.

The ASEAN PMC paved the way for the formation of the more prominent ASEAN Regional Forum (ARF) in 1994 Bangkok, which was an informal multilateral dialogue platform in the Asia Pacific region. Initially, ARF was intended to promote confidence-building measures, develop preventive diplomacy mechanisms and develop conflict resolution mechanisms, but the last objective was deemphasised to specifically prevent ARF's involvement in conflict resolution from internationalising disputes. This was true to the ASEAN Way of managing conflicts, by emphasising instead on closed-door bilateral discussion and instead on political goodwill amongst the bloc.

Of significance is the discussion and focus on Asian security matters, such as tensions across the Taiwanese straits and of course the South China Sea dispute. In discussing these issues 18 founding members were brought together, including the original ASEAN five, Japan, South Korea, China, USA, the EU, Russia, Australia.

ASEAN is thus credited with creating the first truly multilateral security forum across wider Asia-Pacific region. Till today, it is the only security framework in the world that is both regional and also includes the major players of the international system.

ARF has been useful in providing opportunities for its members to collaborate and support each other. This is done by hosting inter-sessional support groups and meetings on confidence-building measures, engaging them in activities such as drug trafficking information exchange, development of maritime databases, and coordination of peacekeeping operations. For example, in tackling cross-border human trafficking in Indochina, the ARF has championed greater cooperation between the countries involved culminating in 74 Border Liaison Offices (BLOs) in Thailand, Laos, Cambodia, Vietnam, and Myanmar that have been conducting thorough border checks and security since 2015. (ARF, 2016) These efforts are amongst the many projects supported by the United Nations Office of Drugs and Crime, made possible with ARF political will.

These practices inject transparency and openness in a region where it is not the traditional culture, where it is more common to focus on domestic issues and not see Asia as a regional bloc - certainly ARF has brought in an element of comfort in multilateral diplomacy in the Asia Pacific. (Ford, 2012)

It is common to find criticism against ASEAN and the ARF in its lack of courage and political will to deal directly with the heavy, dark issues of denuclearisation of the Northeast and the South China Sea through hard-handed measures, concrete mechanisms to actually seek solutions. Such measures are what the West is accustomed to in platforms such as the UNSC and NATO, which famously implemented military action in previous missions in Iraq and Kosovo.

Criticisms like this lack a twofold appreciation of the vision that ASEAN has for ARF and the unique style of diplomacy that characterised ASEAN states from its very inception, with reference to our first section. Firstly, is that ASEAN leaders have always favoured and relied on interpersonal and informal ties to quell disputes and reach a mutual understanding, rather than a mutual solution, to its issues. After all, ASEAN leaders traditionally bet on their closeness as old friends and buddies in discussions and meetings - this was how Malaysia and Thailand felt with separatists along the border, and how Indonesia and Singapore mended post-Sukarno ties. This is sometimes culturally at odds with the Western members of the ARF, where it is labelled as a "talk-shop" and "useless". Secondly, that the development of a proper conflict resolution mechanism was perhaps never a priority of ASEAN. Never has the High Council of the TAC been invoked and some argue that it has never been necessary, because of states' pre-existing closeness. The ARF leans heavily towards preventive diplomacy over conflict resolution. They "sustain the visibility of a range of security challenges and also form part of the early-warning system should these challenges threaten to exacerbate tension between major powers" (Milner & Huisken, 2019), tenderizing the issues and stakeholders before misunderstanding and tensions rise.

In all meetings of the ARF, ASEAN hosts, chairs, and presides over all. In this we observe a careful balance of power between the ARF members maintained by ASEAN, because if not them then who else? A chairmanship by any other host nation would invite controversy and even abandonment, as Southeast Asia's diplomatic relationships have shown itself to be neutral and impartial towards all members, even as the rift between the US and China deepens.

> *"the Southeast Asian leaderships have demonstrated a talent for maintaining "equidistance" between contending powers.*
> (Milner & Huisken, 2019)

China, interestingly, is all for ASEAN leadership in the ARF, as it would prevent the US or other world powers from manipulating the regional bloc. Its suspicion of ASEAN falling into Western hands would be certainly worse than an independent ASEAN and an independent ARF. China understands the need for ASEAN to hold on to the leadership more than anyone - after all, it is China's very own backyard. It thus supports the ASEAN Way, with incremental and cautious progress in the security agenda.

The Region and the World

ASEAN's ability to strike a careful balance between the divergent wills of the world powers, yet provide a useful platform for its main goal of confidence building and preventive diplomacy is its strength. When we ponder on the ability of a regional body to build strong ties with everyone we look at how the region has tied and brought the world together.

Perhaps the most laudable aspect of ASEAN is its knowledge of its limitations. It cannot, for example, call for military action against China. Neither can it take legal action against pariah states like North Korea. ASEAN, however, understands that its deep ties to others allows it to rally the world in cooperation and mutual exchange, in building confidence with each other. Through the ARF, PMC, and various other ways in which ASEAN has connected the world ASEAN presents itself as the role model as to how a regional body works within its means to bring about change through diplomacy.

About Jordan

Jordan is an incoming Social Sciences freshman at NUS, and in the meantime is serving his scholarship bond with the Singapore Police Force. Fondly remembering his time studying Southeast Asian history in junior college, he wants more students to understand more about our region and our ties to there. His article seeks to underscore the accomplishments of ASEAN in the world, and hopes to see more of his peers supporting the institution and involving our youth in its growth.

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A Responsibility to Protect

Ariel Wee

From 1992 to 1995, hundreds of thousands of Bosnian Muslims and Bosnian Croats were massacred through systematic ethnic cleansing. (History.com Editors, 2009) Meanwhile, in 1994, 800 000 Rwandans were massacred in just 100 days during the 1994 Rwandan genocide. ("Rwanda genocide: 100 days of slaughter", 2019) In both these cases, the international community failed to prevent these atrocities. (Daalder, 2016) Humanitarian intervention as a justifiable measure had to be reexamined, hence begging the question: should, and must, the international community have intervened?

This was answered by an International Commission on Intervention and State Sovereignty 2001 report on "The Responsibility to Protect", or R2P. ("United Nations Office on Genocide Prevention and the Responsibility to Protect", n.d.) R2P entails a "political commitment to end the worst forms of violence and persecution" where international human rights laws are violated such as cases of genocide, war crimes etc. ("United Nations Office on Genocide Prevention and the Responsibility to Protect", n.d.) Member States of the UN were committed to the principle of R2P in a 2005 UN World Summit meeting. ("United Nations Office on Genocide Prevention and the Responsibility to Protect", n.d.)

Commitment to R2P was hailed as "the most important shift in our conception of sovereignty since the Treaty of Westphalia in 1648", the treaty from which principles of inviolability of borders and non-interference originated from. (May, 2014) R2P created space for exceptions with regard to the principle of non-intervention upheld as a facet of sovereignty since the end of World War II. (Getachew, 2018) Instead, it emphasises that a state has a responsibility to protect its citizens, failing which the international community must instead assume this role. (Getachew, 2018) In other words, "if a state is unable or unwilling to end [humanitarian] harm, or is itself the perpetrator, the responsibility to protect falls on the international community". (Evans et al., 2001)

Still, R2P is an ideal that cannot be implemented in a vacuum. Its aspirations notwithstanding, R2P is still subordinate to national interests. For instance, the Security Council is unable to implement R2P in Syria due to the veto of Russia; this signifies that regardless of Russia's attitude toward R2P, national interests still take precedence. (Holmes, 2014) Practically speaking, states then only protect citizens which are not their own when national interests are not at stake, suggesting that R2P is neither law nor a well-established principle. Furthermore, while the altruistic motivations for R2P legitimises intervention, the inclusion of self-interest in the decision to intervene undermines the legitimacy of the intervention. (Paris, 2019)

Case Study 1: Libya

Qaddafi's regime in Libya has long been plagued by allegations of human rights abuses, including torture, violent repression and mass killings since Qaddafi rose to power in 1969. ("Factbox: Gaddafi rule marked by abuses, rights groups say", 2011) In February 2011, however, a rebellion against Qaddafi arose, prompting Gaddafi to declare war on the uprising. (Zifcak, 2012) The autocrat threatened the "extinction" of Benghazi's population, where the rebellion was highly concentrated. (Zifcak, 2012) The threat caused substantial alarm within the international community, and the Security Council authorised military intervention in Libya under the banner of R2P. (Zifcak, 2012)

Following this authorisation, media commentators began labelling the action a form of humanitarian intervention. On the other hand, some declared the inviolability of Libya's national sovereignty and the consequent illegality of the intervention. (Adams, 2012) However, humanitarian intervention is different from R2P intervention in that actions under R2P have been internationally sanctioned and conducted with UN authorisation. (Adams, 2012) Hence, while it is debatable if the principle of R2P itself undermines a nation's sovereignty, intervention in this case was sanctioned by the Security Council and therefore legal.

However, while the initial intervention may have been legal, the scope of intervention quickly expanded to regime change as the USA, UK and France declared that the fall of Qaddafi's regime was necessary to ensure the protection of Libyans. (Getachew, 2018) Some suggest that this expansion in scope follows a trend of military intervention in the Middle East and North Africa through which the US and her allies aim to guarantee their interests in these regions. (Getachew, 2018) The legality of the expansion is dubious, with Resolution 1973's provision for "all necessary measures" in the protection of Libyan people vaguely appearing to sanction NATO's move to overthrow the regime. (Getachew, 2018) It demonstrates the inseparability of R2P and self-interest, potentially suggesting

that R2P is merely an altruistic facade for self-interest. This calls into question the extent to which a country has responsibility for citizens not of its own when national interest is not at stake.

Furthermore, the case of Libya illustrated the lack of moral accountability associated with R2P. Though NATO claims that all air strike targets were military, it has not provided sufficient evidence to support this claim, and the fact remains that civilian casualties resulted from the air strikes. ("Unacknowledged Deaths", 2015) There were eight instances of NATO air strikes striking residential areas, two of which the Human Rights Watch is still unable to confirm has a valid military target. ("Unacknowledged Deaths", 2015)

Moreover, the dire situation in which post-war Libya finds herself in may suggest a greater responsibility for the international community in rebuilding and restoring rule of law after intervention. Following the death of Qaddafi, Libya has faced economic and political collapse. (Neu & Dunford, 2020) Between 2012 and 2018, 2578 violent deaths have been recorded, hundreds of thousands have been forced from their homes while weapons proliferated through Libya. (Neu & Dunford, 2020) Given that these issues arose post-intervention, is there a responsibility to prevent further atrocities and facilitate rebuilding? In other words, how far does the responsibility to protect extend?

When first authorised, the use of R2P in the case of Libya was praised as a humanitarian success for having avoided a massacre in Benghazi. However, the use of R2P is undermined not only by the presence of mixed motives that point toward R2P as a facade for parallel motives, the lack of moral accountability and the uncertainty that undermines the legitimacy of an international responsibility to protect the citizens of other nations.

Case Study 2: Kenya

Following the December 2007 presidential election in Kenya, unprecedented ethnic violence broke out, resulting in 500 000 people displaced and over 1000 dead. ("Q&A: The Responsibility to Protect (RtoP) and Kenya", n.d.) The two main coalitions that dominated the election were each backed by political bases defined along ethnic lines; upon the victory of one coalition, the result was contested by the other, and violence between the Kikuyu ethnic group against the Luo, Luhya and Kalenjin ethnic groups spread across the country. ("Q&A: The Responsibility to Protect (RtoP) and Kenya", n.d.)

Swift action was taken by the international community. Extensive mediation efforts led by the African Union and supported by the UN commenced, resulting in a power-sharing agreement that successfully halted the wave of violence. ("The Responsibility to Protect and Kenya: Past Successes and Current Challenges", 2010) The process was hailed a diplomatic success, with the Human Rights Watch referring to the response as "a model of diplomatic action under the responsibility to protect". ("The Responsibility to Protect and Kenya: Past Successes and Current Challenges", 2010)

It is true that solutions presented by mediation are imperfect—mediation is focussed on short-term measures and neglects the prevention of the future resurgence of violence. (Sharma, 2010) Nevertheless, the success of the role played by the international community demonstrates that the implementation of R2P in real-life scenarios is possible, shifting R2P from mere aspirations to more concrete ground.

However, R2P was invoked only marginally during the mediation process, suggesting that the intervention by the wider international community was due not to serious considerations in R2P but a general moral consensus in preventing the escalation of atrocities as well as political interest in maintaining stability in the region. Success of the intervention was therefore not dependent on any tangible responsibility for the citizens of Kenya, instead hinging on the political will of the international community. This damages the argument for a presence of principled and structured responsibility to protect the citizens of other states.

Case Study 3: Myanmar

In August 2017, Myanmar's army began a brutal crackdown on Rohingya Muslims, resulting in hundreds of thousands of refugees escaping into Bangladesh. ("Myanmar Rohingya: What you need to know about the crisis", 2020) This followed a long history of ethnic tensions between the Rohingya Muslims and Myanmar's Buddhist majority, culminating in at least 288 villages partially or fully destroyed in Rakhine after August 2017. ("Myanmar Rohingya: What you need to know about the crisis", 2020) With 10 000 Rohingya killed, 730 000 fleeing for Bangladesh to join another 300 000 who had previously fled oppression in Myanmar, Myanmar has been accused of genocide against the Rohingya minority. (Holmes, 2019)

Thus far, international action working to protect Rohingya Muslims has been lukewarm. In 2019, an ICJ case was lodged against Myanmar for the alleged genocide of Rohingya Muslims. The ICJ case is ongoing, with charges denied by Myanmar. ASEAN has focussed largely on providing humanitarian relief, avoiding criticism of the Myanmar government and standing by the ASEAN time-honoured principle of non-interference. (Nishikawa, 2019)

Nevertheless, though UN investigators have declared Myanmar's military guilty of mass killings and rapes with "genocidal intent", R2P has yet to have been invoked. ("Myanmar Rohingya: What you need to know about the crisis", 2020) One possible reason for this is the ASEAN policy of non-interference in the interest of maintaining domestic and regional stability. (Nishikawa, 2019) ASEAN non-interference is essentially the non-involvement of ASEAN in the domestic affairs of member states. (Molthof, 2012) This runs counter to R2P which suggests an obligation to intervene in the domestic affairs of a state to prevent atrocities against the people of the state. As a result, ASEAN itself lacks the necessary political will to intervene in the persecution of Rohingya Muslims.

Along with other instances of atrocities where R2P failed to be invoked (e.g. Syria, where Russia and China resisted a multilateral response against Assad's regime sanctioned by the Security Council), the failure to invoke R2P in this case demonstrates clear inconsistency in its application. Why would R2P be invoked in Kenya or Libya, but not in Myanmar or Syria? The answer lies in the political will of international actors. Simply summarised:

(a) in Kenya, the AU was willing to take action; (b) in Libya, the strategic interests of NATO were at stake, prompting intervention; (c) in Myanmar, taking action is against the collective interest of ASEAN. In each case, the political will and national interest of intervening or non-intervening states take precedence over any obligation to protect peoples of another state.

Conclusion

R2P today seems more like an ideal to aspire to or a justification for regime change rather than a genuine altruistic responsibility. Though the international community has attempted to institutionalise R2P as an international norm, these efforts are undermined by the placement of national interest above any moral responsibility in practical examples. Moreover, intervention, particularly military intervention, lacks necessary moral accountability, renders the responsibility to protect morally ambiguous and therefore difficult to justify. Though R2P may be a step towards the prevention of atrocities, its implementation thus far has been inconsistent and often insufficient, suggesting that states may yet have an institutionalised and tangible obligation to protect the peoples of other states.

About Ariel

Ariel is a 17-year-old ACS(I) student with a strong interest in international affairs and rock music. Currently a student under the Humanities Scholarship Programme, she intends to pursue a degree in political science in university, followed by a career in civil service. Having encountered the concept of Responsibility to Protect as one of her first few formal introductions to International Relations, she researches her topic passionately and aims to spark a similar interest in International Relations in others.

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