



| MACMUN 2023



LEGAL

Background Guide

Welcome Letter

Dear Delegates,

It is our pleasure to welcome you all to the eighth annual McMaster Model United Nations (MACMUN) conference. Our names are Helen and Riya.

Helen is in her first year of Hons. Arts and Science (BArtsSc) and loves to read and play guitar in her spare time. Riya is in her fourth year of Hons. Life Sciences (B.Sc) and can be found either in the local coffee shop or baking at home.

We also have two crisis analysts with us: Paul and Michael. Michael is in his third year of the Hons. Life Science (B.Sc) and enjoys politics and scientific research. He also loves playing soccer. Paul is in his third year of the Honours Kinesiology program. In his spare time, he enjoys skiing and watching Formula 1.

We hope that through this committee, delegates will gain a better understanding of international law and the role of the United Nations General Assembly Sixth Committee on the world stage. We are all incredibly excited to see delegates in person this year, and we anticipate a committee filled with fruitful debate and diplomacy.

The topics given to you surround contentious international legal issues with legal documentation in need of revision and criticism. This Background Guide is yours to use as a preliminary source of research in preparation for the conference. Further research outside this guide is allowed and recommended. If you have any questions, please contact us at legal@macmun.org.

Sincerely,
Helen Wu & Riya Patel
Chairs, UN Sixth Committee
MACMUN 2023

Meet Your Committee Staff



Riya Patel - Chair
she/her



Helen Wu - Chair
she/her



Michael Zheng - Crisis Analyst
he/him



Paul Drakos - Crisis Analyst
he/him

Committee Mandate

The United Nations General Assembly Sixth Committee – also known as the Legal Committee – is the “primary forum for the consideration of legal questions in the General Assembly”.¹ Created in 1947, the committee supports the UN General Assembly in article 13 of the UN Charter, which supports the progression and codification of international law. Thus, the Committee directs its focus to drafting legal documents. One such document is the 1948 Genocide Convention, the Convention on the Prevention and Punishment of the Crime of Genocide, a commitment to prevent and punish genocide, created following the events of World War II. The convention is a foundational part of international criminal law and a famous example of the types of codified legal frameworks the Legal Committee can create.

The purpose of the Sixth Committee is to address international jurisprudence and create legal documents that align with article 13 of the UN Charter. The UN General Assembly allocates specific legal agenda items to the Sixth Committee to focus on. For the 77th session, some of the agenda items for the Sixth Committee include: Responsibility of States for internationally wrongful acts (item 73), Measures to eliminate international terrorism (item 112), and Crimes against humanity (item 78).²

It is important to note that the Legal Committee does not have authority over any actions of Member States. As a Committee of the General Assembly, the Legal Committee can only recommend states to pursue a commitment to certain international laws, but never force them to abide by legal documents it may create. The power of the General Assembly is limited to “recommendations on the general principles of cooperation for maintaining international peace and security”.³ Countries may choose to sign and ratify legal documents, but the Sixth Committee cannot enforce the law—it can only create and modify codified international law.

Simulation Style and Composition of the Committee

Two chairs will be present to moderate debate and ensure that a diplomatic environment is maintained. The chairs will have the authority to open and close committee sessions, will assist delegates with setting the agenda, and will manage the list of speakers. The dais will also recognize any points or motions made by delegates on the floor. Delegates must remember that the chairs have the final rule on any disputed points or motions, and that all draft resolutions must be approved by the dais before they are presented before the committee.

Pages will be present in the committee room to allow delegates to communicate with one another through the passing of notes. If used strategically, note passing can be used by delegates to work with others in the room to brainstorm ideas for potential draft resolutions. Delegates

¹ United Nations. (n.d.). United Sixth Committee (Legal). Retrieved December 23, 2022, from <https://www.un.org/en/ga/sixth/>.

² United Nations. (n.d.). United Sixth Committee (Legal).

³ United Nations. (n.d.). United Sixth Committee (Legal).

should be aware that all notes will be screened by the pages before they are delivered to the respective delegate.

Each delegate in this committee will represent a different member state of the Sixth Committee. Delegates will submit a position paper detailing their country-specific research on both topics prior to the conference. Individual research is important to ensure that delegates arrive to committee sessions prepared with sufficient knowledge that will allow them to actively engage in discussions.

Overall, delegates should remember to only raise points to the committee that agree with their country's foreign policy. This will ensure that the committee is best able to emulate potential real-world discussions.

Topic #1: Maritime Trade and Territorial Disputes

Introduction

The World Trade Organization reports that shipping is the most prominent form of transport for international trade. It encompasses above 80 percent of the methods of trade used internationally.⁴ Additionally, there are a plethora of natural resources within the earth's oceans. There is a great international demand for metals and minerals found in maritime areas—countries including the United States, United Kingdom, France, Japan, and China have specific maritime resource exploration contracts for certain minerals of interest.⁵ Fishing is also an exceedingly large industry internationally. International production of aquatic animals in 2020 was worth around US\$265 billion.⁶ Not only does this have significant environmental impacts,⁷ but it showcases the importance of the earth's waters as a resource for natural resources, trade transport, and creation of jobs within maritime trade and resource collection.

However, there exists a sort of arbitrary nature to waters that creates a great number of legal disputes between nations. Thus, the international community must determine what constitutes international waters, and what counts as a nation's sovereign territory. The United Nations Convention on the Law of the Sea (UNCLOS) outlines a legal framework for sovereign maritime territory and resource extraction.⁸ As a piece of international law, the convention does not come without contention. Some nations have not ratified the convention, which poses an issue for the international community. The caveat to international law is that a nation must willingly submit to a certain treaty's rules. Because prominent countries such as the U.S. have not ratified the current version of UNCLOS, there remain many maritime territorial disputes around the world. Even ratified countries come across disputes often, such as in the Caribbean Sea.⁹ Waters of importance to unratified nations are prone to severe disputes since these nations are not responsible for policy outline in UNCLOS. Countries may acknowledge the importance of UNCLOS as an international custom, however, if they never ratified the convention, they cannot be held to its standard. This is therefore bound to cause disputes. One dispute in particular demand-specific study due to the amount of involvement by other nations, and the possibility to use its resolution as precedent: the dispute within the South China Sea.

Furthermore, the environmental impacts of resource extraction in maritime regions must be investigated in accordance with UN Sustainable Development Goal 14: Conserve and

⁴ *World Trade Organization*. WTO. (n.d.). Retrieved December 1, 2022, from https://www.wto.org/english/tratop_e/serv_e/transport_e/transport_maritime_e.htm

⁵ Miller, K. A., Thompson, K. F., Johnston, P., & Santillo, D. (2018). An overview of seabed mining including the current state of development, environmental impacts, and knowledge gaps. *Frontiers in Marine Science*, 4. <https://doi.org/10.3389/fmars.2017.00418>

⁶ FAO, IFAD & WFP. 2015. The State of Food Insecurity in the World 2015. Meeting the 2015 international hunger targets: taking stock of uneven progress. Rome, FAO.

⁷ Miller et. al., "An overview of seabed mining," *Frontiers in Marine Science*.

⁸ Hoagland, P., Jacoby, J., & Schumacher, M. E. (2001). Law of the sea. *Encyclopedia of Ocean Sciences*, 1481–1492. <https://doi.org/10.1006/rwos.2001.0415>

⁹ Østhagen, A. (2021). Troubled seas? the changing politics of Maritime Boundary Disputes. *Ocean & Coastal Management*, 205, 105535. <https://doi.org/10.1016/j.ocecoaman.2021.105535>

sustainably use the oceans, seas, and marine resources for sustainable development. There may be an urgency to create practical international legislature on the topic of sustainable maritime resource use, however, it is also important to consider the economic impacts maritime resource markets—especially concerning the large job market it creates.

The topic of maritime trade and disputes demands the investigation of multiple topics, many of which intersect with each other and impact the global economy. It is imperative that the international community provide a more distinguished framework for maritime law—whether that be through more amendments of UNCLOS or the creation of new documents.

History

The History of Maritime Law and the Formation of the United Nations Convention on the Law of the Sea

Territorial disputes in maritime regions have been historically difficult conflicts to resolve. In the 18th and 19th century, coastal waters next to nations were generally understood to belong to the respective coastal nations, however there was no formal agreement on the exact bounds.¹⁰ There existed the general legal principle that a country would have sovereignty out to the middle of a body of water on their coast, and this was mostly followed despite its arbitrary nature.¹¹ However, as time passed, coastal nations became increasingly concerned with defining limits and enlarging their maritime territory. In 1945, United States (US) President Truman claimed the natural resources located on the continental shelf as U.S. jurisdiction. The principle of this action allowed all other coastal nations to follow precedent. They were able to claim sovereign rights of maritime regions when the 1958 Geneva Convention codified nations' right to "jurisdiction over offshore seabed resources".¹²

The aftermath of the Second World War also included the expansion of nations' territorial seas, with some nations expanding from three to twelve nautical miles.¹³ The international community eventually produced an international legal structure for regulating maritime zones: the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹⁴ The Convention established rules for the governance of all the oceans' uses and resources.¹⁵ Most UN member states, and Observer states have signed and ratified this convention, however a few countries have not yet ratified the current version of UNCLOS, despite negotiations. Some unratified countries include the US, Cambodia, and Iran.

There are several key parts to UNCLOS. One is the establishment of 12 nautical miles as the extent of a nation's territorial waters, and other nations have a right of innocent passage through

¹⁰ Rhee, S.-M. (1982). Sea boundary delimitation between states before World War II. *American Journal of International Law*, 76(3), 555–588. <https://doi.org/10.2307/2200786>

¹¹ Rhee, S.-M. (1982). Sea boundary delimitation between states before World War II. *American Journal of International Law*, 76(3), 555–588. <https://doi.org/10.2307/2200786>

¹² Østhagen, A. (2021). Troubled seas? The changing politics of maritime boundary disputes. *Ocean & Coastal Management*, 205, 105535.

¹³ Østhagen. (2021). "Troubled seas?"

¹⁴ Østhagen. (2021). "Troubled seas?"

¹⁵ Hoagland et. al., Law of the sea

these waters. The convention also gives coastal states sovereign rights to explore and manage the resources of waters up to 200 nautical miles from their shore, called their Exclusive Economic Zone (EZ). Further clauses detail a nations' responsibility to preserve the sustainability of the marine environment.¹⁶

The formation of maritime law began centuries ago and has now developed into a more complex group of laws and regulations. The investigation of the development of maritime law as well as the key players in its formation is crucial to understanding which countries benefit from certain legal notions presented in documents such as UNCLOS. Countries who have not ratified the convention could pose a threat to international maritime law, and even those who are ratified may not be compliant with its terms. A pertinent dispute of maritime territory resides in the South China Sea.

The South China Sea

Perhaps the largest maritime dispute internationally is over the islands and waters within the South China Sea (SCS). The sea is located to the south of the People's Republic of China, and is surrounded by many south-east Asian countries, such as Vietnam, Indonesia, Brunei, the Philippines, and Malaysia – all of which lay claim on parts of the South China Sea. China has been particularly adamant on their claim to the SCS throughout history. In August of 1951, China's Premier Zhou Enlai announced that China had sovereignty over both the Spratly and Parcel Islands. Then, in 1958, during the Jinmen crisis, China asserted its sovereign rights to the actual territorial waters, the first time it claimed maritime rights to the sea¹⁷. China then started codifying maritime claims in its own legislation, in line with the UN Convention on the Law of the Sea. However, it is inconclusive as to if China's exact claims are accurate to the definitions laid out in UNCLOS. UNCLOS says that countries ought to resolve disputes when Exclusive Economic Zones overlap, as is the case for China and its neighboring southern nations. However, a resolution to this dispute has never been concretely produced. China has instead always reaffirmed its stance.

¹⁶ Treves, T. (2008). United Nations Convention on the Law of the sea. *United Nations Audiovisual Library of International Law*. http://untreaty.un.org/cod/avl/pdf/ha/uncls/uncls_e.pdf.

¹⁷ Fravel, T. M. (2011). China's Strategy in the South China Sea. *Contemporary Southeast Asia*, 33(3), 292–319. <https://doi.org/http://www.jstor.org/stable/41446232>



(BBC, 2015).

The infamous “nine dash line” was created sometime in the 1930s, and it was first found on an official Republic of China map in 1947.¹⁸ This map encircled around 90 percent of the South China Sea and portrays where China claims sovereign maritime territory.¹⁹ This arbitrary line has been criticized by nations surrounding the South China Sea, who have their own interest in the region. China has historically refused to specify the vague existence of the “nine dash line.” Instead, it claims a historical right to the sea, claiming that China had historically discovered the SCS’s islands and used the sea’s resources.²⁰ It is important to note, however, that in a 2016 ruling, the non-UN intergovernmental Permanent Court of Arbitration stated that the “nine dash line” and China’s historical claims were unlawful and invalid.²¹

Other south-east Asian countries also disagree with China’s claim and criticize China’s authoritative methods of maintaining their apparent sovereignty. The Association of Southeast Asian Nations (ASEAN) has, on many occasions, called upon a peaceful resolution to the conflict in the SCS, such as in a 2002 declaration.²² China has, conversely, gone on to heavily police the South China Sea. This can be seen through China’s Maritime Militia, which includes fishing vessels with fishermen-soldiers.²³ There are many examples of the People’s Liberation Army disturbing nearby ASEAN nations. In May of 2014, the Chinese National Offshore Oil Corporation put a drilling rig only 120 nautical miles from the coast of Vietnam, which was right inside Vietnam’s claimed Exclusive Economic Zone. Vietnam, in response, put out naval vessels into the SCS, which resulted in collisions between China’s and Vietnam’s vessels.²⁴ It

¹⁸ Fravel, “China’s Strategy”

¹⁹ Beech, H. (2016, July 19). *South China Sea: Where did China get its nine-dash line?* Time. Retrieved December 1, 2022, from <https://time.com/4412191/nine-dash-line-9-south-china-sea/>

²⁰ Beech. (2016). “South China Sea”

²¹ Beech. (2016). “South China Sea”

²² Erbas, Y. (2022, April 11). *The conflict in the South China Sea: A focus on a possible solution.* Beyond the Horizon ISSG. Retrieved December 1, 2022, from <https://behorizon.org/the-conflict-in-the-south-china-sea-a-focus-on-a-possible-solution/#:~:text=The%20Origin%20of%20the%20Conflict,an%2C%20later%2C%20colonial%20states>.

²³ Erickson, A. S., & Kennedy, C. M. (2022, October 27). *China’s Island Builders.* Foreign Affairs. Retrieved December 1, 2022, from <https://www.foreignaffairs.com/articles/east-asia/2015-04-09/china-s-island-builders>

²⁴ Yamaguchi, S. (2017, September 1). *Strategies of China’s maritime actors in the South China Sea.* China Perspectives. Retrieved December 1, 2022, from <https://journals.openedition.org/chinaperspectives/7022>

can be deduced that China remains fixed on their claim of sovereignty in the SCS, despite the military conflict in the region. There has yet to be longstanding cooperation between ASEAN and China in correspondence to the South China Sea.

Current Situation

Maritime Resources

A prominent legal issue in maritime disputes concerns the abuse of marine resources. The United Nations' 17 Sustainable Development Goals (SDGs) were adopted in 2015 to achieve the 2030 Agenda for Sustainable Development. In the context of maritime law, it is crucial to take note of SDG 14: Conserve and sustainably use the oceans, seas, and marine resources for sustainable development. Several articles in UNCLOS are dedicated towards the conservation of maritime ecosystems and wildlife. Article 119, “Conservation of the living resources of the high seas”, calls upon nations to “take measures to... maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors”.²⁵ With pollution increasing coastal eutrophication, the overgrowth of plants leading to a greater mortality of animals,²⁶ and overfishing deteriorating effects on maritime ecosystems this issue is growing. Within European territories, around 70% of fish populations in 2018 were being overfished, and 51% were not within “safe biological limits”.²⁷ These facts suggest the need for international legal cooperation to protect maritime life and resources to maintain a sustainable future in line with SDG 14.

The South China Sea

To this day, China maintains its position on their sovereignty to the South China Sea. In the light of ASEAN’s disagreement with this claim, ASEAN allies such as the United States have deployed navy vessels in the region. The U.S.’ Freedom of Navigation Operation (FONOP) has been roaming the South China Sea to promote their Freedom of Navigation principle.²⁸ China often claims in return that the U.S. is in violation of China’s sovereignty, and that the U.S. is trying to create a conflict.²⁹

In August of 2022, U.S. House Speaker Nancy Pelosi visited Taiwan — officially, the Republic of China. The purpose of her visit was to reaffirm U.S. support for Taiwan, who also claims territory in the SCS. The island is in dispute with the mainland, as it wishes to gain more sovereign power, which the People’s Republic of China (PRC) does not agree with.³⁰ The PRC therefore responded to Pelosi’s visit with an onslaught of military drills deployed in the SCS,

²⁵ Treves, T. (2008). United Nations Convention on the Law of the sea.

²⁶ United Nations. (n.d.). United Sixth Committee (Legal)

²⁷ Froese, R., Winker, H., Coro, G., Demirel, N., Tsikliras, A. C., Dimarchopoulou, D., Scarcella, G., Quaas, M., & Matz-Lück, N. (2018). Status and rebuilding of European Fisheries. *Marine Policy*, 93, 159–170.

<https://doi.org/10.1016/j.marpol.2018.04.018>

²⁸ Lamrani, M. (2012). The threat to the US 7th Fleet by the Chinese.

²⁹ Lendon, B. (2022, July 16). *US Navy challenges Chinese claims in South China Sea for second time in a Week*. CNN. Retrieved December 1, 2022, from <https://www.cnn.com/2022/07/16/asia/us-navy-freedom-of-navigation-spratly-islands-south-china-sea-intl-hnk-m1/index.html>

³⁰ Albert, E., & Maizland, L. (2019). Democracy in Hong Kong. *Council on Foreign Relations*, 30.

near the Taiwan Strait.³¹ China thus not only uses the SCS as a sovereign territory for recourses, but also for geopolitical action. Since China is not signed onto UNCLOS, they cannot be held legally responsible by international law for the current dispute. Therefore, certain countries pursue their own political actions to promote international law. Negotiations have been attempted between ASEAN and the PRC —however, due to a difference in ASEAN nations' interests, these negotiations have yet to be successful.³²

Implications of Maritime Trade

Article 150 of UNCLOS promotes the “healthy development of the world economy and balanced growth of international trade, and to promote international cooperation for the overall development of all countries, especially developing states”.³³ There are several issues to note in the scope of maritime trade.

First is the seafarer crisis. The UN claims that the COVID-19 pandemic has forced over 400,000 seafarers to be left stranded in seas.³⁴ Seafarers are critical in maintaining safe and organized maritime trade, however they are currently lacking proper medical care and safety equipment, especially amidst pandemic needs.³⁵

Additionally, the cost of shipping has greatly increased since COVID-19 began in 2020. Smaller countries are now paying more for shipping due to their distance from trade distance and poor trade organization.³⁶ Maritime shipping has been victim to greater delays, more blank sailings, and even trade conflicts between nations.

Trade routes are also often disputed due to disagreements of several nations' sovereign territory. UNCLOS does not seem to be enough of a framework to resolve trade disputes overseas since some countries are unable to agree on the territory's very ownership. It is imperative that safe and economically beneficial trade prospers in maritime regions internationally. However, the sustainability of such actions, both environmentally and diplomatically, must be taken into consideration.

Bloc Analysis

Western Bloc

Nations in the west are largely in support of maintaining international law within maritime regions. However, not all western nations are signed or ratified onto UNCLOS. The United States has not signed nor ratified UNCLOS after the 1944 amendment, out of the Republican party's concern that signing the convention would threaten U.S. sovereignty by giving up the

³¹ Simões, F. D. (2016). Consumer behavior and sustainable development in China: The role of behavioral sciences in environmental policymaking. *Sustainability*, 8(9), 897.

³² Simões. (2016). “Consumer behavior and sustainable development in China”.

³³ Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

³⁴ “Convention on the Law of the Sea”

³⁵ “Convention on the Law of the Sea”

³⁶ “Convention on the Law of the Sea”

high seas to the United Nations.³⁷ However, the U.S. and its allies are still opposed to China's assertion of sovereignty over the South China Sea. The U.S. conducts FONOPs (Freedom of Navigation Operation) through the South China Sea to support its allies in ASEAN, asserting the view that all nations should have the freedom to enter the SCS. The U.S. furthermore wishes to defy China's sovereignty claims. The United Kingdom also has navy vessels located in the SCS in the pursuit of similar values. The European Union backs the ASEAN nations in their process to create a significant Code of Conduct in the SCS. Canada is also concerned with China's claims of sovereignty on the SCS and supports ASEAN in its negotiations to resolve the territorial dispute.

Additionally, western nations have stated their support for sustainable maritime transport. For example, in 2011, Transport Canada worked to implement the North American Emission Control Area within the *Canada Shipping Act, 2001*³⁸. The purpose of this was to regulate emissions for vessels within the Great Lakes. The EU has also stated their support for the creation of clean sources of energy for navigation ports in maritime regions.

South Asia and ASEAN

The Association of East Asian Nations (ASEAN) is a bloc of nations including Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Cambodia, Lao People's Democratic Republic, Myanmar, and Vietnam. ASEAN has attempted to negotiate with China over sovereign rights in the SCS. They wish to create a peaceful environment in the South China Sea, however only some members vehemently oppose China's claims. Most of the ASEAN nations have ratified UNCLOS, however Cambodia signed but never ratified the convention.³⁹ South Asian nations have attempted to defend their certain claims over the Paracel and Spratly Islands, where the Spratly islands hold the greatest number of conflicting claims of the region. ASEAN members have their own position on the SCS, considering these overlapping claims. Not all the countries claim part of the SCS, and in some disputes, China's claims are not even involved.⁴⁰ It has thus been difficult for ASEAN to effectively unite against China, as their territorial disputes may conflict with one another.⁴¹ While Vietnam, the Philippines, Malaysia, and Brunei are claimants within the SCS, while Indonesia, Singapore, Thailand, Laos, Myanmar, and Cambodia are not. Some of the ASEAN nations such as Thailand refrain from overly criticizing China's claims due to strong economic ties. However, claimants such as Vietnam have been attempting to fight back against China's claims publicly for decades.⁴²

Furthermore, many South Asian nations rely greatly on the fishing industry to grow their economy. Southeast Asia contributed around 52% of global fishery production in 2018.⁴³ Trade

³⁷ Nelson, L. D. M. (2001). Declarations, Statements and 'Disguised Reservations' with respect to the Convention on the Law of the Sea. *International & Comparative Law Quarterly*, 50(4), 767-786.

³⁸ Clark, L. (2008). Canada's oversight of Arctic shipping: the need for reform. *Tul. Mar. L.J.*, 33, 79.

³⁹ Simões (2016). "Consumer behavior and sustainable development in China".

⁴⁰ Simões (2016). "Consumer behavior and sustainable development in China".

⁴¹ Simões (2016). "Consumer behavior and sustainable development in China".

⁴² Simões (2016). "Consumer behavior and sustainable development in China".

⁴³ Nelson (2001). "Declarations, Statements and 'Disguised Reservations'"

within maritime regions is thus a very crucial topic for Southeast Asian countries, and many nations are inclined to maintain rights over their EEZs in order to gather maritime recourses to export.

Eastern Bloc

Out of all the claimants in the SCS, China asserts their sovereignty over the most territory.⁴⁴ China is signed and ratified onto UNCLOS, although its claims within the SCS may surpass what is codified in UNCLOS. In reaction to the disputes within the SCS, China puts accountability upon other claimants such as the nations in ASEAN. China claims that the other claimants acted in ways that escalated the presence of the U.S. in the SCS, which causes further tension. China has also often stated their contention against the US' FONOPs within the SCS, claiming that they were violating China's national security and sovereignty. China has support for their claim within Southern Asian nations. Cambodia, for example, supports China in their discussions with other ASEAN members about the SCS disputes.

Other Eastern nations have varied opinions about the SCS. Japan has become more outspoken in challenging the vast claims made by China. In 2021, Japan created a diplomatic note to the United Nations, which described Japan's dismissal of Chinas claims in the SCS.⁴⁵ Contrastingly, North Korea has supported China in its endeavors within the SCS and rejects Western involvement in the area. Russia has a complicated involvement in the SCS. On one hand, Russia supports China against Western powers. On the other, Russia has previously armed other SCS claimants such as Vietnam and Malaysia.⁴⁶ It seems to some researchers that Russia is attempting to balance the powers of China in the East, however, to others, such as Dikarev and Lukin,⁴⁷ Russia's intentions with the SCS are based on purely economic concerns.

Research & Preparation Questions

1. *Study the United Nations Convention on the Law of the Sea (UNCLOS), analyzing its strengths and weaknesses.*
2. *What are the possible resolutions for countries involved in maritime disputes that cannot be held accountable because they refuse to ratify the UNCLOS?*
3. *What are the outcomes for countries that deny the court's ruling over an unlawful drawing of maritime territory while interfering with other nations' maritime economic activities based on their claims of sovereignty over the region?*
4. *What are the resolutions to hold countries attempting to expand their maritime territory for trade and political purposes while not being governed by the UNCLOS?*

⁴⁴ Simões (2016). "Consumer behavior and sustainable development in China"

⁴⁵ Long, D. (2001). *China's new claims in the South China Sea*. Radio Free Asia. Retrieved January 30, 2023, from <https://www.rfa.org/english/news/special/scs-80/>

⁴⁶ Heydarian, R. J. (2018). Mare Liberum: Aquino, Duterte, and The Philippines' Evolving Lawfare Strategy in the South China Sea. *Asian Politics & Policy*, 10(2), 283-299.

⁴⁷ Dikarev, A., & Lukin, A. (2022). Russia's approach to South China Sea territorial dispute: it's only business, nothing personal. *The Pacific Review*, 35(4), 617-646.

Topic #2: Responsibility of States for Internationally Wrongful Acts

Introduction

The Law of State Responsibility is a current and crucial part of International Law, especially in terms of the 21st century, wherein globalism ensures frequent contact and communication between states. Though the draft Articles on the Responsibility of States for Internationally Wrongful Acts are an important part of international law, the official documentation is relatively new. The codification of these articles was published at the beginning of the 21st century despite developing initially in the late 20th century.⁴⁸

The codified Articles on State Responsibility for Internationally Wrongful Acts outline that ‘Every internationally wrongful act of a State entails the international responsibility of that State.’⁴⁹ However, although the definition implies the guarantee of a State taking responsibility for its’ actions, the extent and definition of the ‘wrongdoing’ in question has no minimum requirement and that the concept of ‘fault’ is not a requirement or prerequisite for responsibility. The lack of these Articles’ implementation undermines the purpose of the codification of these articles, despite the potential they post to judicially considering the consequences of States upon committing internationally wrongful acts. These articles also pose another ambiguity in reference to unrecognized States. Third states are those not part of nor formally recognized by international treaties and/or agreements.⁵⁰ These states, often referred to as “third states”, may still be considered to have a legal interest in international matters as well as retaining obligations to the entire international community.⁵¹ In addition, these Articles were meant to aid and assist in challenges including counterterrorism, further emphasizing the importance of their successful implementation on an international scale.⁵²

History

Part of the Legal Counsel, the International Law Commission (ILC) first addressed the idea of state responsibility as how it is viewed currently in its very first session in 1949 and the importance of its codification (*International Law Commission*, n.d).⁵³ However, further research and reports on this topic were brought up without codification repeatedly in the upcoming sessions. The fourteenth session in 1962 held a debate, specifying that the topic of State responsibility should be a priority but recognized that discordant views on approaching said topic.⁵⁴ The product of this session was a Subcommittee to submit a preliminary report

⁴⁸ Kolb, R. (2017). Concept and history. In *The International Law of State Responsibility* (pp. 1–33). Edward Elgar Publishing. https://www.elgaronline.com/view/9781786434708/08_chapter1.xhtml

⁴⁹ Kolb, “Concept and history”

⁵⁰ Bird, A. (2010). Third State Responsibility for Human Rights Violations. *European Journal of International Law*, 21(4), 883–900. <https://doi.org/10.1093/ejil/chq066>

⁵¹ Bird, “Third State Responsibility”

⁵² Moynihan, H. (n.d.). *Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism*. 54.

⁵³ Moynihan (n.d.). “Aiding and Assisting”

⁵⁴ United Nations. (n.d.). International Law Commission. Retrieved December 23, 2022, from <https://www.un.org/en/ga/sixth/>.

concerning future study on the topic at the next session in 1963.⁵⁵ This fifteenth session outlined general conclusions that were agreed upon by all members of the ILC as outlined below:

1. That priority should be given to the definitions of the general rules governing the international responsibility of the State
2. That, in defining these general rules, the experience and material gathered in certain special sectors, especially that of responsibility for injuries to the persons or property of aliens, should not be overlooked and that careful attention should be paid to the possible repercussions which developments in international law may have had on State responsibility

Following this, the General Assembly included encouragement and prioritization of the future of State responsibility in the 1902 (XVIII) resolution.⁵⁶ By the twenty-second session in 1970, there was the presentation of a second report as well as draft articles to outline fundamental rules and described to have relevance to the responsibility of States for internationally wrongful acts. Furthermore, there was a distinction made between the former and responsibility for internationally wrongful acts, citing the limitation of the initial drafts in doing both.⁵⁷

Throughout the decades, consistent debate took place over the Commission sessions until the entire set of the final draft articles were adopted by the commission in 53rd session in 2001.⁵⁸ These articles consisted of four parts: (Part I) The internationally wrongful act of a State, (Part II) Content of the international responsibility of a State, (Part III) The implementation of the international responsibility of a State, (Part IV) General provisions.⁵⁹

The ratification of these articles allowed other bodies such as international courts, tribunals, and such to refer to them in practice, and are considered to be a core component of International Law globally.

Current Situation

Taliban Occupation of Afghanistan

The current occupation of Afghanistan circa 2021 by various terrorist groups, with primary organizations such as the Taliban and Al Qaeda thrown the country into turmoil.⁶⁰ The former has completely taken over Afghanistan by force with small regions in control of the latter; yet both have long been inciting economic and humanitarian crisis in Afghanistan. The Taliban insurgency is currently an internationally unrecognized body of control, following their rule over the land by restricting women's rights and violating human rights.⁶¹ Thus far, this rulership has increased divide between ethnic groups in the region, with oppression and

⁵⁵ United Nations. (n.d.). "International Law Commission."

⁵⁶ United Nations. (n.d.). "International Law Commission."

⁵⁷ United Nations. (n.d.). "International Law Commission."

⁵⁸ United Nations. (n.d.). "International Law Commission."

⁵⁹ United Nations. (n.d.). "International Law Commission."

⁶⁰ Boni, F. (2022). Afghanistan 2021: US Withdrawal, the Taliban return and regional geopolitics. *Asia Maior*, 32, 375-391.

⁶¹ Boni, (2022). "Afghanistan 2021: US Withdrawal"

alienation of ethnic Tajiks and Uzbeks over favoring Pashtuns.⁶² Furthermore, the United Nations Credentials Committee has refused to state a formal decision over the current Taliban government's UN representation on behalf of Afghanistan.⁶³

Human Rights Infringement in Hong Kong

Yet another case where the Articles may be too vague to apply are the Hong Kong-China relations. The “One Country, Two Systems” brought upon by an agreement between the United Kingdom and China in the 1980s was an effort to assimilate the region in mainland China after over a century of operating as a British colony. This agreement was followed by another, extending this system for an additional 50 years until 2047, to allow a much higher degree of autonomy and individual freedoms in Hong Kong without intervention by mainland China. However, various attempts by China to expand influence over Hong Kong, including the National Security Law aims to violate the existing agreement, inciting riots and protests by Hong Kong residents over their potential loss of freedom. Despite the UN citing these claims to violate international laws and advises China to review counterterrorism policies in full compliance, China has denied any such action and actively deflects by stating that crimes in and by the West must be addressed instead.⁶⁴

The Security Law, passed into effect in June of 2020, enables Beijing to key powers over Hong Kong citizens that were not possible prior.⁶⁵ Such power includes enabling the maximum sentence over individuals suspected of terrorism and collusion, sending cases to mainland China for trial, having suspicious individuals wire-tapped and under surveillance, amongst many more.⁶⁶ The implications of this law grant Beijing Law precedence over Hong Kong’s pre-existing legislation, essentially allowing the former to interpret the latter as seen fit.⁶⁷ Already, hundreds of individuals protesting or criticizing the law have been arrested. These arrests have been facilitated through the law in question, enabling activists and protesters to be detained on charges of collusion. These arrests are a clear demonstration to the world of the restriction of free speech, association, and press.⁶⁸

Not only do the arrests of activists infringe upon fundamental human rights as outlined in the Charter, experts from the Office of the United Nations High Commissioner for Human Rights (OHCHR) experts have called into question the National Security Law’s incompatibility with International Law in the context of China’s human rights obligations.⁶⁹

These current issues all highlight the support and necessitate the need of Goal 16 of the UN Sustainable Development Goals, that is Peace, Justice, and Strong Institutions. The increasing

⁶² Boni, (2022). “Afghanistan 2021: US Withdrawal”

⁶³ Boni, (2022). “Afghanistan 2021: US Withdrawal”

⁶⁴ United Nations. (n.d.). International Law Commission.

⁶⁵ Rudolf, M. (2020). The Hong Kong national security law: A harbinger of China's emerging international legal discourse power.

⁶⁶ Rudolf (2020). “The Hong Kong national security law.”

⁶⁷ Rudolf (2020). “The Hong Kong national security law.”

⁶⁸ Rudolf (2020). “The Hong Kong national security law.”

⁶⁹ Rudolf (2020). “The Hong Kong national security law.”

number of global conflicts in the world have been worsening human crises as experienced by at least over a quarter of people living in these regions. To strive for sustainable development, the goals are to end armed conflict, strengthen institutions and disseminate corruption, and implement legislation to protect human rights of all.

Bloc Analysis

Subtopic: Taliban Issues

Western Bloc

Western countries largely condemn the current state of Afghanistan because of the Taliban occupation. NATO and Allies in particular, were involved in counterterrorism within Afghanistan following the 9/11 terrorist attacks on the United States. These attacks prompted them to enter Afghanistan in 2001 and enabled them to lead the UN International Security Assistance Force (ISAF) by 2003.⁷⁰ This force was meant to allow the Afghan government to increase and exercise its authority in addition to increasing its own national security force throughout the country.⁷¹ The stabilization of the Afghan governments through such conditions due to ISAF was realized in 2014 as the Afghan National Defense took full control.⁷²

The Resolute Support Mission (RSM) was launched by NATO in 2015 as a measure of further ensuring Afghan security forces were able to counter terrorism.⁷³ However, this mission was terminated in September of 2021 following the withdrawal of NATO forces.⁷⁴

NATO has currently suspended all support to Afghanistan.⁷⁵ NATO and Allies coordinated one of the largest evacuation missions to date, flying out over 120 000 people on Allied flights with the assistance of troops from the US, UK, Turkey, and Norway.⁷⁶

Southwest Asia and North African (SWANA) Bloc

The Southwest Asia and North African countries serve to prioritize their countries' relative national security and stability. Countries in this region have historically been the focal point of terrorism, with the shift occurring from 1970 to present date.⁷⁷ The main contributing factors to this rise in terrorism has been democracy and the post-Arab Spring era, during which violent uprisings in SWANA countries initiated great change.⁷⁸

Democracy was thought to be the solution to ending the violence and uprisings, most especially meant to target countries with active terrorist groups. However, these countries lacked stability

⁷⁰ Simma, B. (1999). NATO, the UN and the Use of Force: Legal Aspects. European Journal of international law, 10(1), 1-22.

⁷¹ Simma (1999). "NATO, the UN and the Use of Force"

⁷² Simma (1999). "NATO, the UN and the Use of Force"

⁷³ Simma (1999). "NATO, the UN and the Use of Force"

⁷⁴ Simma (1999). "NATO, the UN and the Use of Force"

⁷⁵ Simma (1999). "NATO, the UN and the Use of Force"

⁷⁶ Simma (1999). "NATO, the UN and the Use of Force"

⁷⁷ Kim, W., & Sandler, T. (2020). Middle East and North Africa: terrorism and conflicts. *Global Policy*, 11(4), 424-438.

⁷⁸ Kim & Sandler. (2020). "Middle East and North Africa"

and the secure infrastructure to support democracy as through the lens of the West.⁷⁹ The Arab Spring era refers to a time during which waves of violent protests occurred in Bahrain, Egypt, Libya, Syria, Tunisia, and Yemen, amongst many others⁸⁰ These protests were in favor of the citizens gaining dignity and human rights.⁸¹

International peacekeeping troops have been spread throughout various countries in an effort to ameliorate domestic terrorism, currently one of the most pressing issues faced by these countries.⁸² These efforts align with counterterrorism and are vital in mitigating terrorism (domestic and transnational) but must be done carefully to prevent further undue violence or civil war.

Subtopic: Hong Kong Issues

Western Bloc

Western countries tend to focus on an individualistic society, wherein individual freedoms are prioritized and advocated for. The escalation of the National Security law in Hong Kong resulted in waves of protests, growing into riots as conflicts escalated between the activists and Chinese authorities. These riots made international news and incited sanctions from notable countries of the Western bloc, primarily the United States. The U.S. passed forth the bills, the Hong Kong Rights and Democracy Act of 2019, and another Act prohibiting commercial exports of munitions to Hong Kong.⁸³ The U.S. accuse the Chinese government of undermining Hong Kong authority in spite of the agreed “One Country, Two Systems” structure in place.⁸⁴

Furthermore, NATO called upon China to address Beijing pertaining to respecting human rights and upholding fundamental freedoms as well as a high degree of autonomy for Hong Kong.⁸⁵

Eastern Bloc

This bloc includes countries situated in East, Southeast, and South Asia. The enactment of the National Security Law in June of 2020 thrust China further into the international spotlight as protests and pushback from Hong Kong residents began to break out.⁸⁶ China views Western intervention and commentary on its dealings with Hong Kong as a blatant act of vilification of the Chinese government.⁸⁷

⁷⁹ Kim & Sandler. (2020). “Middle East and North Africa”

⁸⁰ Demczuk, A. (2012). Democracy and the Arab Spring. The effects of the revolutions in the Arab world. *Journal of International Issues*, 16(4), 144.

⁸¹ Demczuk (2012). “Democracy and the Arab Spring.”

⁸² Kim, W., & Sandler, T. (2020). Middle East and North Africa: terrorism and conflicts.

⁸³ *Fact Sheet: U.S. Interference in Hong Kong Affairs and Support for Anti-China, Destabilizing Forces*, 2021. Retrieved from https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/202109/t20210924_9580296.html

⁸⁴ “Fact Sheet: U.S. Interference in Hong Kong Affairs”

⁸⁵ “Fact Sheet: U.S. Interference in Hong Kong Affairs”

⁸⁶ “Fact Sheet: U.S. Interference in Hong Kong Affairs”

⁸⁷ Demczuk (2012). “Democracy and the Arab Spring.”

The countries within the Eastern bloc tend to follow a collectivist society. Furthermore, China has been largely involved in increasing Chinese activism within some of these countries, rallying support and allies.⁸⁸ As the world's largest trader and manufacturer, China has assisted and economically benefitted several of these countries in a bid to increase influence and foster friendly relations and image.⁸⁹

Research & Preparation Questions

1. *Carefully study and examine the Responsibility of State for Internationally Wrongful Acts (2001) and analyze its strengths and weaknesses.*
2. *How is the Responsibility of State for Internationally Wrongful Acts (2001) tied to the sustainable development goal 16 of the UN, or what is its significance?*
3. *What are the solutions or outcomes for states that are attributable for their violations of the UN obligations they are agreed to enforce?*
4. *What could the UN legal committee do in dealing with organizations not affiliated with any state, thus unattributable for their alleged crimes?*
5. *What could we do when the state/organization is attributable, and is a UN member state but denies UN or third party's open investigation in determining if alleged crimes that violate UN obligations are indeed being carried out?*

⁸⁸ Demczuk (2012). "Democracy and the Arab Spring."

⁸⁹ Demczuk (2012). "Democracy and the Arab Spring."