

Air Defence Identification Zone and South East Asian Region: An Instrument for Grey War Tactics?

- Anuradha Lawankar (II B.A.LL.B.)

Last month, Taiwan expressed concern over a record number of Chinese warplanes crossing the unofficial border, to which Beijing responded by denying the existence of such a line. The incident involved 103 Chinese fighter jets, 40 of which entered Taiwan's Air Defense Identification Zone (ADIZ), marking a further escalation of Chinese military maneuvers.

The concept of ADIZ was established in the 1950s by the United States to counter air threats. Over the years, ADIZs have become complex entities, embroiled in territorial and maritime disputes. While the 1944 Chicago Convention on International Civil Aviation (Convention) recognized the authority of States to regulate flights based on military necessity and public safety, disputes over overlapping ADIZs raised questions about their role in enforcing territorial claims.

The Convention, emphasizing the balance between national sovereignty and global aviation requirements, laid the foundation for international air transport regulations. According to Annex 15 of the Convention, an ADIZ is "a specially designated airspace of defined dimensions, in which aircraft must comply with special identification and/or reporting procedures." It can be unilaterally established by States, either within their sovereignty or in international waters, protecting national security interests or establishing reasonable conditions for entering their territory.

Sovereignty granted to States allows them to set and enforce rules within their territory. Although ADIZs are not specifically mentioned in the United Nations Convention on the Law of the Sea (UNCLOS), many States implement them based on the principle of self-defense described in Article 51 of the UN Charter.

Various scholars have debated the validity of the ADIZ. Murchison argues for their validity under the principles of self-defense, while Head disputes their classification as defensive measures, particularly

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The UN Human Rights Office (OHCHR) issued a statement urging Russia to retract arrest warrants the country issued against senior International Criminal Court (ICC) judges. For more information, see [here](#).

A UN special advisor expressed grave concern over the rising threat of genocide and related crimes in Ethiopia. UN Under-Secretary-General and Special Advisor on the Prevention of Genocide called attention to ongoing battles between government military forces and local militias, highlighting the critical need to address serious human rights violations such as mass executions, sexual assault and the destruction of property. For more information, see [here](#).

The UN Human Rights Council adopted five new resolutions and submitted one to the General Assembly, one of which extended the UN's mandate in Burundi, just days after the UN's mandate in Ethiopia expired. For more information, see [here](#).



in peacetime. Cuadra raises concerns about possible abuse of the self-defense justification, emphasizing the lack of necessity, proportionality, and imminent threat. In contrast, Lee and Abeyratne point to customary international law and the precautionary principle and emphasize the ADIZ as a precautionary measure in line with the emerging norm of customary international law.

ADIZs allow States to collect critical information from civilian aircraft and proactively identify potential threats before they violate sovereign airspace. Lamont's categorization sheds light on this diversity. In group 1, States view ADIZs as security mechanisms to ensure national sovereignty, imposing reporting obligations only on aircraft intending to enter their airspace, where their activities are consistent with the main purpose of the ADIZ.

Group 2 States perceive the ADIZ as an extension of territorial sovereignty, imposing broader reporting obligations on aircraft flying through the ADIZ without intending to enter national airspace. This approach raises

concerns because it allows States to exercise control over non-sovereign territory without clear justification, complicating the international landscape and potentially increasing territorial claims.

Different interpretations of ADIZs emphasize the need for a standardized understanding and alignment of their implementation with security interests or territorial ambitions. A balance between respect for the sovereignty of States and the responsible use of the ADIZ is essential for promoting international cooperation and stability. ADIZs, when applied responsibly, provide structured access to aircraft entering foreign territory, address security concerns, and preserve national sovereignty.

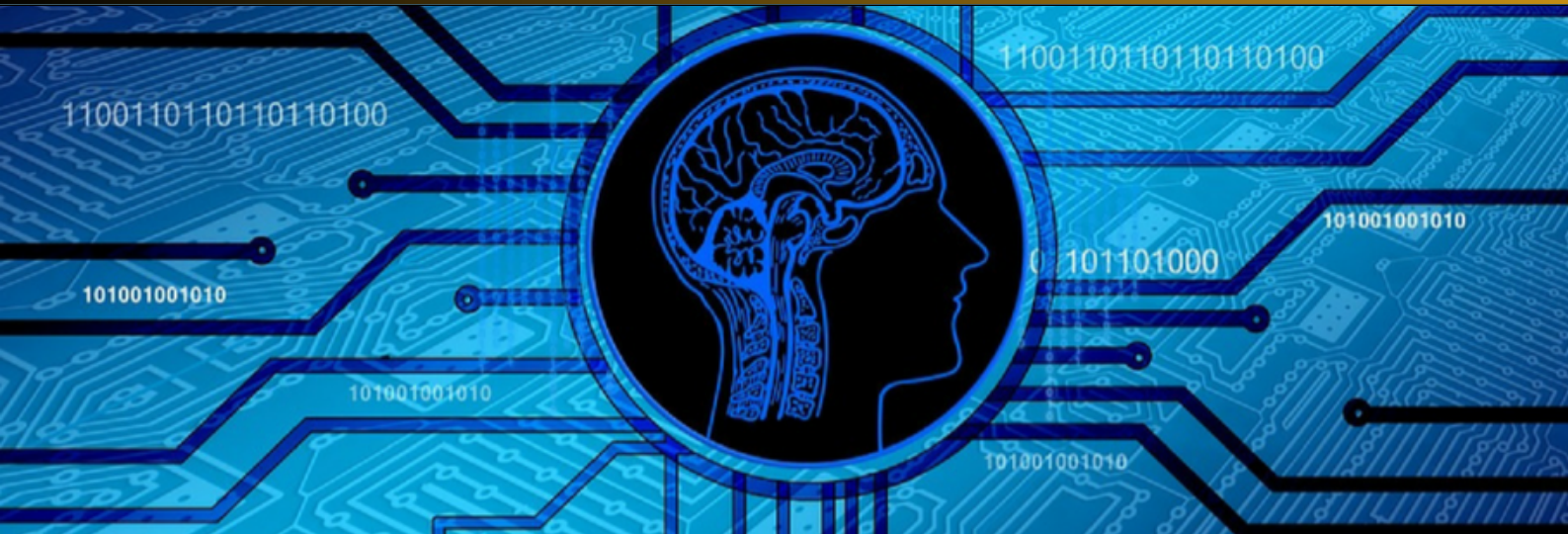
Due to the lack of specific international regulations, several countries such as Australia, Myanmar, Taiwan, and Canada have established broad ADIZ practices that exercise administrative control over non-sovereign territories without clear justification. The urgent need for a Regional Agreement on Standardization of procedures is evident, reflecting the ongoing

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The World Health Organization (WHO) and UN Human Rights Office launched new guidance to improve laws addressing human rights violations in mental health care. The guidance encourages countries to rethink their approach to mental health policy so that the individual's dignity and human rights are at the center of conversation and care. For more information, see [here](#).

The European Commission reversed course as it retracted a decision to immediately suspend funding for Palestine over Hamas's ongoing attacks on Israel. The Commission is Palestine's largest donor, with their current portfolio totaling over 691 million Euros. For more information, see [here](#).

Israel's Security Cabinet declared a state of war. The Israeli Prime Minister's office made the declaration public, stating that the war "was imposed on the State of Israel through a murderous terrorist attack from the Gaza Strip." For more information, see [here](#).



negotiations between ASEAN and China in the South China Sea. Such an agreement could bring predictability and transparency. Regional policy makers, while rejecting competing claims, still see expanded airspace as a means of consolidating territorial claims. Yet the inherent fragility and cost of establishing verticality outside the country, coupled with competing fields, casts doubt on the effectiveness of such efforts. Despite these challenges, emphasizing the defensive purposes of the ADIZ, particularly in the areas of counter-terrorism, nuclear security, and regional air traffic control, could pave the way for a more stable and cooperative regional airspace framework. Achieving this delicate balance will be essential to promoting lasting peace and security in the region.

Charting the Ethical Course for AI: UNESCO's Draft Recommendation

- Soumik Ghosh (III B.A.LL.B.)

The recommendation is of paramount importance given the rapid development of Artificial Intelligence ("AI"). AI is already at the forefront of multiple controversies regarding ethical

practices relating to hiring, privacy, profiling, and many other aspects. This bill will help balance the scales by outlining the ethical requirements of development of AI whilst balancing the needs of developing and developed nations. This draft is the result of a holistic multidisciplinary approach thus is the most appropriately placed to build trust in AI systems.

However the recommendation has some obvious shortcomings. A precursory analysis reveals that the Bill has been drafted in an advisory nature as the word "should" has been used repeatedly thus, emphasizing on the voluntary nature of the bill. As a result, it does not require States to adopt specific laws or regulations to implement its principles. This text is a mere recommendation meant to supplant countries policy making decisions. This step has been taken to ensure that no infringement of sovereignty takes place. However this step turns the recommendation into soft law and thus, not binding.

This text is also a wasted opportunity in terms of regulating weaponization of AI. On the insistence of many member States,

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According to a Human Rights Watch report, Rwandan authorities and their proxies are using violence, judicial mechanisms, and intimidation to try to silence criticism from Rwandans living around the world. The moves aim to preserve Rwanda's coveted image, quash dissent that could emerge from abroad, and reinforce a chilling message of the price to be paid to critics within the country. For more information, see [here](#).

Pakistani authorities' threats to deport more than one million Afghans puts them at grave risk of being returned to persecution and other abuse. Pakistan's Interior Ministry announced that all migrants living without legal status in Pakistan had 28 days to leave voluntarily or face deportation. For more information, see [here](#).



this bill was kept to be of a civilian nature, thus the issues of surveillance and profiling were tackled. However weaponization of AI was left out of the ambit. This is particularly significant as Lethal Autonomous Weapons Systems are weapons which are capable of targeting and initiating use of lethal force against targets with minimal to no direct human supervision, organizations around the world are calling for a ban on these types of weapons or at least a regulatory framework due to their lethal nature.

Finally, accountability of humans in the decision-making process has been included; however, it needs to be made much more precise as AI components usually involve a black box decision-making process, leading to the inability of the user to trace the decision-making process followed by the AI. It should be made mandatory that if AI makes a decision with significant legal ramifications or has an impact on human rights, it needs to be accompanied with human oversight. "As a rule, life and death decisions should not be ceded to AI systems," is the exact wording used in the recommendation. However,

this makes the criteria too lax and instead it must be stressed that in any and all cases where AI decision-making might have an effect on the law or severely affect human rights, it is necessary to make sure such decisions are subject to human assessment and supervision.

In conclusion, UNESCO's draft recommendation on AI ethics is a significant first step in addressing the ethical challenges posed by rapid advancements in artificial intelligence. While the voluntary nature of the document and its omission of AI weaponization are notable limitations, it sets a critical precedent for international cooperation in this field as this is the first global venture to formulate an instrument specifically governing AI. This recommendation will serve as an important reference to the ongoing regional discussions about the same. The willingness of States to adopt these principles and the speed at which they incorporate them into domestic law remains to be seen. UNESCO tried to create a very conducive environment for the implementation of the guidelines by creating two forums - the

News at a Glance

Chinese authorities recently forcibly returned more than 500 people who had escaped North Korea. The returnees, mostly women, are at grave risk of being detained in forced labor camps, and face torture, sexual violence, enforced disappearance, and execution. For more information, see [here](#).

Armenia made submissions to the ICJ requesting provisional measures against Azerbaijan for what Armenia calls "ethnic cleansing" in the ethnic Armenian region of Nagorno-Karabakh. Armenia requested that Azerbaijan refrain from any actions which might breach Azerbaijan's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. For more information, see [here](#).



Readiness Assessment Methodology, and the Ethical Impact Assessment - ready to complement member State's efforts to incorporate the recommendation into domestic law. The next logical step for member States is to target niche areas of AI which have direct human rights implications such as laws, the impact of AI on employment, etc. and develop a binding treaty to regulate and ensure adherence to the same.

Comity and Characterisation - A Doctrinal Study of Private International Law viz-a-viz the Civil Procedure Code, 1908

- Anish Padhye (II B.A.LL.B.)

Private International Law or conflict of laws insofar as its scope and enforcement are concerned, is multifaceted and operates under a regime where a foreign element pertaining to civil, commercial, marital, property (movable and immovable) matters ensues. That foreign element usually deals with the uncertainty around the enforcement and recognition of foreign judgements and decrees. The conflict of laws rests primarily on three factors while dealing with a matter having a foreign element

- jurisdiction of courts, recognition of foreign judgements, and choice of law. This helps domestic courts adjudicate on the competency, validity, and maintainability of foreign judgements.

The principle of comity of courts is the oldest theory governing the recognition of foreign judgements and stipulates that res judicata shall apply to all foreign judgements and that they shall be unequivocally enforced. As in, no trial shall further ensue after a foreign judgment on the same cause has been delivered. Thus, it excludes any scope for reciprocity. The only exception to comity of courts is the public policy of a country, which is invoked only in the most extenuating of circumstances.

Section 13 of the Code of Civil Procedure, 1908 (CPC), presumes every foreign judgment to be conclusive, categorically incorporating this doctrine. It is interesting to note, however, the evolution of this doctrine in private international law. Ulrich Huber's theory conflicted with the common law principle of in personam jurisdiction. But, it was later consolidated as a legal principle.

Upcoming Activities

Call for Papers: Global Constitutionalism and Supranational Adjudicative Bodies – Global South Experiences vis-à-vis Hegemony Seminar

The Norwegian Centre for Human Rights, University of Oslo is hosting the webinar on 16th -17th November, 2023. Participants are invited to submit an abstract (max. 300 words) and a short bio by 21st August, 2023. Selected papers will be published in a special issue of a peer-reviewed international journal and/or in an edited book. For more information, see [here](#).

Call for Papers: Groningen Journal of International Law

The journal is open to all papers on international law. The word limit for accepted articles is 7,000 to 15,000 words (excluding footnotes) and the deadline is 1st August, 2023. For more information, see [here](#).



Famously, in a landmark case of *Hilton v Guyot*, the US Supreme Court defined comity: Comity does not require, in absence of treaty or statute, that judgments of a foreign country be recognized as conclusive in this country, where such foreign country does not give like effect to our own judgments.

The doctrine of characterization, however, realistically addresses the issues that arise during the interplay between foreign law and domiciled law as both function under distinct legal systems. A court is discretionarily supposed to take cognizance by characterizing the facts and applying the law on the basis of *lex domicilii* (law of the domicile), *lex loci* (law wherein cause of action arises), or *lex fori* (law wherein legal action is brought).

Thus, characterization is the determination of the nature of the problem and classification of which conflict of law principle is to be applied to govern a particular dispute. Generally, the principles of characterization are used. Section 13 prescribes a test of conclusiveness.

It makes a foreign judgment contingent on the following

conditions: i) competency of jurisdiction; ii) merits of the case; iii) incorrect view of international law; iv) opposed to natural justice; v) obtained by fraud; vi) breach of *lex domicilii*. Section 13 suggests that by granting civil courts the authority to decide a foreign court's jurisdiction, appropriate interpretation of the Indian law, and merits of the case, allows them to characterize the foreign judgment. In *Ruchi Majoo vs Sanjeev Majoo* (paras 47, 63 and 67) emanating from a child custody matter, the Supreme Court (SC) held that Indian courts are duty-bound to independently apply the Indian law, cater to the interests of the aggrieved parties, and not surrender to the comity of courts. The comity doctrine is merely a consideration.

With respect to the intersection of Section 13, its exceptions, and the doctrines of private international law, diverging judicial interpretations need to be considered. In *Alcon Electronics Pvt Ltd vs Celem SA and Anr*, the SC propounds comity as the foundation of private international law and the conclusiveness of a foreign judgment u/s. 13. On the other hand, *Ruchi Majoo* mandates

Upcoming Activities

Call for Papers: China and Europe in the African Continent – Economic, Legal, and Political Perspectives

Sant'Anna School of Advanced Studies has announced a call for papers for the Conference on 'China and Europe in the African Continent: Economic, Legal and Political Perspectives.' This event will take place from 30th November - 1st December, 2023. The deadline for submitting an abstract is 15th July, 2023. For more information, see [here](#).

Trade, Law & Development – Call for Submissions

The Board of Editors is pleased to invite original, unpublished manuscripts for publication in the General Issue of the Journal (Vol. XV, No. 2). The submission deadline is 5th August, 2023 for manuscripts pertaining to any area within the purview of international economic law. For more information, see [here](#).



Indian courts to characterize facts and the principles of law according to the Indian legal system.

Though Section 13 allows the courts to characterize the facts and the law by adopting exceptions, the core principle of Section 13 is conclusiveness. This has a heavy influence on reading decisions of English courts, which have applied comity, in the CPC.

Developed or Developing Country? A Conundrum of International Law

- Mahi Jaiswal (II B.A.LL.B.)

Recently, an issue about the status of developing and developed countries came to the limelight when the US House of Representatives unanimously passed a bill to strip China's developing nation status. The US argued that China is trying to avail the preferential treatment provided to developing nations "to seek profit and avoid responsibility." In counter, China argued that its status as a developing country is not determined by bills or documents unilaterally passed by the US. China's per capita income is just \$12,000 while that of developed

countries like the US is \$80,000. China, thus, still considers itself a developing country. While addressing the BRICS Summit 2023, Chinese President Xi Jinping affirmed that China will always remain part of the developing world.

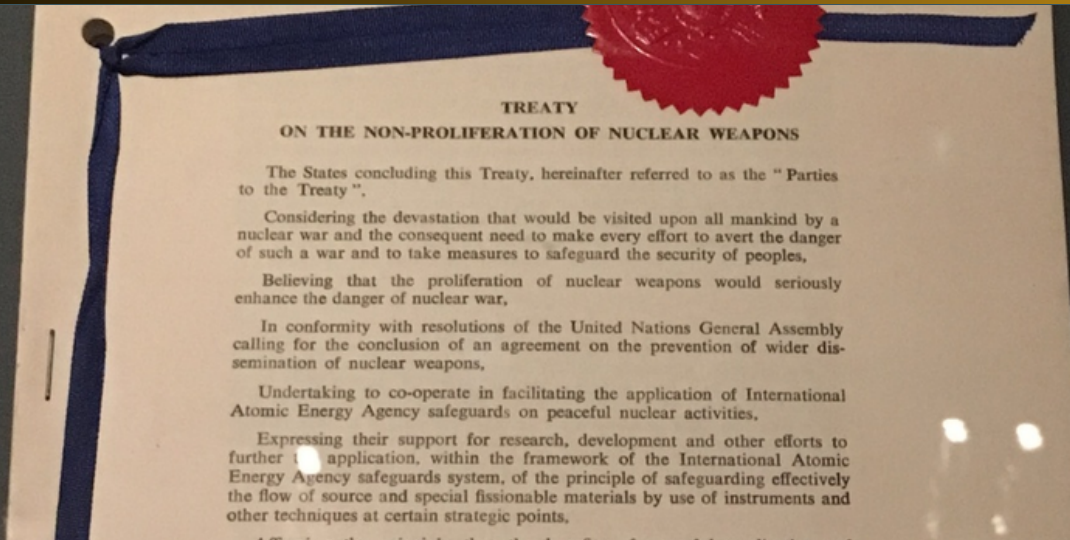
The question that arises in this scenario is: who decides or allots this status of developed, developing, and underdeveloped

countries at the international level? This designation depends on international institutions and varies accordingly. The World Trade Organization (WTO) gives autonomous power to the country to decide its 'status,' while other international organizations have different criteria to decide the status, such as life expectancy, human development index, national income, etc. China recognizes itself as a developing country in the WTO. While other international organizations like the World Bank and IMF classify China as an 'upper middle-income country' and an 'emerging and developing country.'

But why is this status important for a country? The status of a country

decides whether a country can be entertained by preferential treatment. The developing country status brings out various advantages and relaxations to the country. For instance, the WTO provides a longer time span for executing WTO Agreements. The UNDP provides scientific and technical assistance to developing countries on issues like poverty, climate change, etc. to achieve the Sustainable Development Goals. China uses its status to avail subsidies to fishing and other industries. Some observers argue that China's claim as a developing country is fair because of its income inequality which makes 17% of its population live below the poverty line, and more than 13% are without clean cooking technologies. On the other hand, some observers claim that China is a major global power and wants to stay poor on paper so that it can obtain loans from developed countries at low interest rates.

An unclear and imprecise definition of developed and developing countries in international law results in such issues at the global level as different countries use the same term with different



understandings. There are many issues that arise as a result of such imprecise categorization. Poor and less developed countries have less bargaining power and hence they are denied loans for example, Yemen, Ethiopia, and Bangladesh. Like China, other developing countries such as India are accused of taking advantage of their status. Thus, there is a crucial need for uniform and universal definitions of developed and developing countries.

Analyzing Trust and its Impact on the Non-Proliferation Treaty - Arya Mitkari (II B.A.LL.B.)

The Non- Proliferation Treaty (NPT) is designed to uphold nuclear non-proliferation with the objective to prevent the spread of nuclear weapons and nuclear technology, promote peaceful uses of nuclear energy, and achieve complete nuclear disarmament.

As per Article I and II, the Nuclear Weapon States (NWS) agreed to refrain from assisting Non-Nuclear Weapon States (NNWS) in developing and acquiring nuclear weapons. The NWS clearly got the better half of the bargain as the NPT permits only the P5 nations,

i.e, USA, UK, China, Russia, and France to possess nuclear capabilities, leading to the 'cartel theory,' suggesting that the aim of the P5 nations is to maintain the nuclear oligopoly and have strong means of influence against other nations, contrary to the euphoric belief of trust and co- operation.

The concept of trust can be looked at in two ways. The Rationalist approach, according to Russel Hardin, is that of encapsulated interest, i.e. "I trust you because I think it is in your interest to take my interests in the relevant matter seriously." The defining feature of this is that actors do not provide any normative value to this relationship. On the contrary, the Binding approach, as captured by Martin Hollis, revolves around the concept of attaching the relationship with a normative value, i.e., to trust is to expect that the other party will honor their promise and do what is required to maintain and enhance their relationship.

The States clearly showcase both approaches when it comes to ratifying and signing the treaty. The consequence of trust is that the actors make themselves

vulnerable to the other States, whose actions they do not control. Germany and Japan might have been pressured into accepting the treaty as their denuclearization would be essential for world peace, while others like USA and Russia, who believed in the treaties' payoffs and ideals, signed of their own accord. However, no country falls completely under one category.

The more significant aspect is the relationship between the signatories and the non-signatories, primarily because the members outside the treaty get the benefits and the pay-offs without the actual participation. From this, arises the classic problem of "free-riding." This problem of universality is not new in the field, it means that the non-signatories enjoy the rights that the signatories have, without having to restrict their own rights of developing nuclear weapons while the other signatories are bound by the treaty. India and Pakistan can reap the benefits of the treaty, i.e. preventing other States from acquiring nuclear capabilities without actually being bound by its obligations, i.e. having to give up the development of



their own nuclear capabilities. By understanding the two concepts of trust, we can try to understand how the treaty can be revitalised, either by extending the grand bargain, i.e. introducing non-signatories, with nuclear capabilities, as NWS or by building a binding relationship with the non-signatories. If distrust continues to be dominant in international relations, the effects could be catastrophic, as we would not only observe nations falling out, rather the increased tensions could bring us closer to nuclear armageddon. The goal of nuclear disarmament can be achieved only with trust, but, we need to realise that there are no risk-free nuclear futures.

UNSC Report - 4th Year Intra-Batch Model United Nations, 2023

- Arya Mitkari (II B.A.LL.B.)

On 9th October 2023, the Centre for International Law conducted its Annual 4th Year Intra-Batch Model United Nations for the students of 4th year B.A.LL.B. The UNSC committee agenda revolved around the Yemen Humanitarian Crisis and taking efficient steps to sustain peace in the region.

The committee started off by each delegate discussing their stance on the agenda and giving their insights as to what their nation would do to support the cause. The first moderated caucus was then introduced to talk about the setting up of a consortium for revitalizing Yemen's economy. Inputs as to what could be done to revitalize the economy were discussed by the delegates; the main focus was placed on restoring the energy stores and work on the oil and gas sector. Delegates discussed the aid delivery to Yemen in the second moderated caucus, where the countries suggested implementing block chain technology to increase

transparency of the program.

The second session saw a formation of two blocs - one of which comprised the P5 nations, and the other comprising primarily the middle eastern nations. The first bloc suggested a "Madagascar Agreement"- which had elements such as, ceasefire by both parties and the transfer of prisoners of war. It was also suggested that an advisory council be formed and an arbitration committee be set up. This agreement was drafted to be a new and improved version of the Riyadh Agreement, countering its flaws, and not involving any of the parties that are actually affected by the conflict.

Since, the P5 bloc was unable to attain majority, it failed to discuss the Working Paper. However, the fine speeches given by the delegates really showcased their vast knowledge in the field and their problem-solving abilities.



UNHRC Report - 4th Year Intra-Batch Model United Nations, 2023

- Soumik Ghoshi (III B.A.LL.B.)

In the HRC Committee of the 4th Year Intra-Batch Model United Nations 2023, enlightening proceedings unfolded regarding the Sudan Crisis as Japan abstained from voting and the chairs enforced an internet-free environment. Intentions to pass a draft resolution spurred further discussions. Egypt raised a motion concerning education, and a motion was proposed by the Central African Republic (CAF) to provide aid in cross-border disputes. The opening speeches, delivered alphabetically, touched upon various global issues.

China evaluated the humanitarian response to the Sudan crisis, while the CAF delved into issues of instability and statelessness. Egypt aimed to unite African countries through increased funding, Ethiopia focused on climate change, and India underscored the importance of inclusivity and respecting Sudan's sovereignty. Discussions covered access to food, water, and

humanitarian responses, with Japan emphasizing civilian control and Kenya expressing concerns about regional stability.

The Committee addressed the grave problems in Libya, cooperation with Sudan, and ongoing negotiation efforts. Russia advocated for removal of sanctions imposed on Sudan by the U.S.A., while Sudan took a stance of the crisis being an internal matter and proposed the set-up of a committee to evaluate damages. The General Speakers' List discussions touched on sanctions, power blocs, and investigation processes. The HRC Committee presented a working paper, reflecting the depth of deliberations during the session.

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