LXIV
SIXTY-FOURTH SESSION

6th Legal

Berkeley Model United Nations

Hello wonderful delegates! I would like to extend a warm welcome to each and every one of you to the 64th session of BMUN. I would also like to welcome you to 6th Legal! My name is Kim Nguyen and I will be your Head Chair during the 64th session and throughout conference weekend. I am currently a junior completing degrees in Bioengineering and Public Health with a minor in Public Policy. I'm originally from sunny Southern California and can be found daydreaming about the beach. This will be my 7th year participating in MUN and I am so excited to share this experience you all. Outside of BMUN, I am a research assistant for a biomedical research lab at UCSF and Stanford University as well as a lay health worker at Berkeley Free Clinic. When I am not studying and working, I enjoy running, binge watching netflix, and fighting the patriarchy. If you have any questions or concerns, please feel free to contact me at: kimberlynguyen@berkeley.edu or knguyen@bmun.org.

Howdy delegates! My name is Trent Gomberg and I will be one of your co-chairs for 6th Legal at BMUN. Currently, I'm in my first year at Berkeley as a Molecular Cell Biology major. I practice Muay Thai among other martial Arts and spend some time rock climbing and playing the Didgeridoo. I also like hiking but my true passion out of all of these is napping which you can find me doing often in the early afternoon in Memorial Glade. I'm very very very excited for this opportunity to work with all of you and I look forward to seeing what you all can accomplish!

Hi! My name is Jessica and I am a Sophomore Intended Business Administration and Media and Film Studies double major. I hail from the great county of San Diego in an obscure city called San Marcos. I am pursuing a more comprehensive understanding of gender dynamics in the entertainment industry. Currently piquing my interest are the well-publicized accusations, led by the ACLU, against Hollywood for upholding sexism and racial discrimination. In my free time I enjoy reading film history, wasting time on Buzzfeed, exploring Southern California with my friends, hiking, and eating frozen yogurt.

Hi delegates! I am excited to meet you at this year's BMUN conference! My name is Winnie Itago and I am from Kenya. I am a junior majoring in Environmental Economics and Policy with a minor in Global Poverty Practice. I joined MUN in my freshman year at Cal and I have loved it ever since! When I'm not trying to make sense of my econ notes, I like hiking, practicing my spanish, trying out new foods and dancing salsa. See you soon!

Hi everyone! My name is Chelsea Evans and I am a first year at Cal studying Civil Engineering! I hail from Southern California but am definitely beginning to fall in love with the Bay Area. I have a deep obsession with cheese and my biggest dream is to be able to immerse myself in a pool filled with it. When I am not daydreaming about cheese, you can find me frolicking through fields or taking a nap on Memorial Glade. My passions include: MUN, stargazing, cuddling with cats, and engaging in thoughtful debates with my friends. I'm so excited to spend the weekend with you all!

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Introduction: International Law in Post-Conflict Regions

In its infant years, the United Nations eagerly sought opportunities to lead reconstruction and reconciliation efforts in war-torn countries. Ambitious operations such as the United Nations Transitional Authority in Cambodia and a two phase project in Somalia were pursued and, unfortunately, ended in the UN retreating from the countries before complete rehabilitation of these nations were achieved. While noble in intent, these projects, among many others, highlight the UN's inefficient and ineffective protocols. However, perceived failures should not be placed entirely on the United Nation's shoulders; complexity is the root of the issue in this case. International relations, in itself, is a complicated system to develop and control. Whether one is talking about relations between two regions, multiple nations, different cultural groups within a nation or a whole host of other scenarios, any form of interaction when it comes to international relations will ultimately be governed not only by international law, but different interest groups. In the case of providing aid in post-conflict regions, this issue becomes exacerbated because there are so many stakeholders; one wrong move could deprive a region in desperate need of life saving supplies or could tarnish the partnerships between two nations.

The League of Nations was the ambitious, idealistic brainchild of former US President Woodrow Wilson and the predecessor to the United Nations ("The League of Nations, 1920 - 1914–1920 - Milestones - Office of the Historian"). As the curtains were drawn for World War One, after resources had been ravaged and families had suffered immense loss of life, 32 countries congregated in Paris in 1919 to discuss preventive steps to another such costly war. Wilson suggested forming an international organization he called the League of Nations. The League of Nations ultimately failed for multiple reasons("The League of Nations, 1920 - 1914–1920 - Milestones - Office of the Historian"). Despite his passion which undoubtedly sped up his waning health, Wilson could not convince the U.S. Senate to accept membership; thus, one of the most powerful countries in the world would not be a player in the international organization. Second, the

League of Nations designed a veto power equally distributed among both small and large countries such that small countries had disproportionate power in pulling the strings. Other factors include ambiguous, unspecified responsibilities for each country, the imperialist nature of most West European countries, and lack of support from some of the world's most influential politicians (i.e Clemenceau, a French statesmen, told Wilson, "I like your League of Nations. I like it very much but I do not believe in it")("What Are the Causes for the Failure of the League of Nations?")

After World War Two, the United Nations arose, promising to have learned from the mistakes of the League of Nations. According to Article I, the duties of the organization include "maintain[ing] international peace and security", "tak[ing] effective collective measures for the prevention and removal of threats to the peace", "develop[ing] friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples", and "achiev[ing] international cooperation in solving international problems".("Charter of the United Nations | United Nations") The United Nations would be held together by its common goal for peace and order.

Despite its noble goals, with the presence of the United Nations arises another issue: how much state sovereignty is eclipsed by international law? Ban Ki-Moon defended the superiority of international law, stating many current problems are transnational (from climate change to terrorism) and states should, thus, work in tandem with international goals, keeping its people accountable and upholding the rule of law in order to contribute positively to the interconnectedness of all the nation states. Ban Ki-Moon also stated that early action in countries recuperating or falling into turmoil could strengthen state sovereignty. However, member states have expressed that that "internal affairs of States and sovereign equality, were being violated through unilateral military, media and financial warfare"("Prospects for Protecting People Improve When Sovereignty Not Viewed as 'Wall or Shield', Secretary-General Tells Security Council in Ministerial Debate | Meetings Coverage and Press Releases")

Despite a rather controversial history, the United Nations continued and, to this day, is still continuing to provide resources to nations in need, especially in post-conflict regions. While there are many failures attributed to the UN, there are also

many successes to be celebrated. The United Nations has been at the center of expanding international peace building efforts and efforts to strengthen states in the Balkans, Afghanistan, Haiti, and Sudan. In terms of the world's newest country, South Sudan, the United Nations has been vigilant in ensuring that a post-conflict plan created would include, "integrated, coherent and coordinated support to South Sudan, consistent with national priorities"("UN Economic and Social Council") While the UN mission in south sudan has provided invaluable help to the new nation's citizens through "protecting civilians, monitoring human rights, delivering humanitarian assistance, and implementing the Cessation of Hostilities Agreement", there is still backfire with 13 UN workers being abducted by south Sudanese rebels("UN Economic and Social Council"). On a similar vein, the United Nations has been recently involved in monitoring the ceasefire in Ukraine. In dealing with ceasefire and peace in Ukraine, the Security Council has discussed the Minsk Agreement and how it will encourage peace through measures such as exchanging hostages, removing heavy weapons, and withdrawal of foreign military equipment among other action items that have been agreed upon by the parties involved ("Ukraine Ceasefire: New Minsk Agreement Key Points - BBC News"). While it is still too early to see the outcome of this relationship, it seems to be a step in the right direction.

      Taking a small step back in history to the UN's involvement in Cambodia in the 1990s and Somalia, we see cases where UN involvement has not been quite successful due to pushback from the nation. In Cambodia, the United States had the United Nations install an embargo act because Cambodia was trading with the communist Vietnam. Moreover, the ruler at the time, Khmer Rouge, refused to admit peacekeepers and to abide by the UN standards for demobilization. This taught the UN one valuable lesson: for a peace building operation to succeed, there often needs to be consent and support from those in charge ("UNITED NATIONS TRANSITIONAL AUTHORITY IN CAMBODIA (UNTAC) - Background (Summary)"). The UN also removed its peacekeepers prematurely from Somalia after it was clear the warlords weren't distributing resources and after the disastrous events of Black Hawk Down occurred ("United Nations Political Office for Somalia").

While there are many criticisms of the United Nations, the mere existence of the entity is a large step forward in global communication and international relations. In a time where globalizations seems to be the only unwavering force, it is important for international guidelines and laws to be established and promoted. However, especially in the case of post-conflict regions, it is especially important to respect state sovereignty ("Protection of Migrants' Rights and State Sovereignty"). In order to tip the scale from failures to successes, it is important for the United Nations to set forth some form of governing document on how to proceed when providing any form of aid to post-conflict regions, a code of conduct for reconciling international law and state sovereignty. Furthermore, tension often occurs when the UN becomes a figure that is not only providing aid, but also enforcing international laws. Countries may be more willing to open their borders when they are in need, but what happens when a country violates an international law? What would UN involvement look like in that situation? Ultimately, the question then becomes should UN involvement in different regions come to an end, and if not, is a code of conduct feasible?

UN Involvement

War-torn nations often emerge with a weak or infant government inexperienced in mollifying the wounds of war or overseeing large-scale reconciliation and reconstruction essential to preventing regression back into conflict. The United Nations is a leading actor and veteran in coming to the aid of fragile nations. According to the Secretary General, peacebuilding is "[the effort] to reduce a country's risk of lapsing or relapsing into conflict by strengthening national capacities for conflict management, and to lay the foundations for sustainable peace and development". The sheer number of countries struggling to recuperate after conflicts has broadened the definition to include "conflict prevention and conflict management" instead of just post-conflict aid. The United Nations does not have a set blueprint outlining actions to take during peacebuilding operations. Every nation requires a unique and customized strategy to deal with their varying issues ("United Nations Peacebuilding Commission").

Despite numerous operations, alternative strategizing, and analysis of lessons learned, peacebuilding remains a fragile undertaking with mixed results. Post-conflict peace is fleeting. 50% of post-conflict countries relapse into turmoil and half of those do so within five years of the initial struggle("United Nations Peacebuilding Commission"). Nonetheless, the UN is meticulous in recording lessons learned to prevent the resurrection of past horrors. During the peacebuilding mission in Sierra Leone, rural villages where aid was needed the most were neglected in an effort to rebuild the capital. This fact was noted and peacebuilders are wary of marginalizing communities on the outskirts of cities. And during one of the UN's earliest missions in Somalia, the UN commanded a premature removal of peacebuilders, virtually handing the state over to warlords, corruption, and poverty. The failure in Somalia taught the UN many lessons, one of them being a pre-planned exit strategy.

Although our understanding is still limited and we are far from establishing a formula applicable to all situations, after years of analyzing case studies and revising policies, international organizations are more prepared than ever to oversee post-conflict peace building. For one, the UN has learned that many pre-requisites exist before a

country is ripe for reconstruction. This includes, national ownership, referring to the government acceptance of responsibility to place the building blocks of sustainable peace through action and cooperation, and national capacity, the presence of infrastructure to take in and distribute aid ("UN Economic and Social Council").

One of the most important revelations was the realization that peacebuilding is too complex and demands too much attention and resources for a sole organization to handle. It requires the support of many including donors, the national government, and other communities. This is because the basis for successfully forging sustainable peace in a war torn country calls for consistency, resources, coordination, and communication. Consistency refers to the ability of many organizations to follow through till the end goal is reached. Before the General Assembly and Security Council conceived the PBC in December 2005, peacebuilding was an "orphan" – handled by various organizations but with limited capacity to communicate and collaborate effectively. One of the greatest lessons learned, and a core cause for many failures, was how lack of communication begets duplications and wasted resources. For the best results, all organizations must strategize before entering and to continuously communicate while in operation. Before any motions for international aid can be made, it must be understood as pre-requisites that the PBC or any other organization must commit fully and consistently to a country's recovery, cooperating invariably and collaborating transparently ("United Nations Peacebuilding Commission").

The task of peacebuilding is a collective effort, divided among different UN bodies to draw from many fields of expertise. This is a brief review of some important organizations. These groups share information to collaborate on "joint programming initiatives". The UNDP (United Nations Development Programme) has "programming expertise and financial support" and often works alongside the DPKO (Department for Peacekeeping Operations) and OHCHR (Office of the High Commissioner of Human Rights), which provide staff. UNICEF (United Nations Children's Fund) and UNIFEM (United Nations Development Fund for Women) are, respectively, geared towards juvenile justice and gender issues. DESA (Department of Economic and Social Affairs) puts in place a long-term development plan following emergency relief("United Nations - DESA's Ongoing Activities in the Area of Conflict Prevention and Resolution"). It

addresses social and economic factors that reignite conflict and thus, must collaborate with ECOSOC (Economic and Social Council), which prevents the deterioration of human security. ECOSOC hosts Ad Hoc Advisory Groups, which were long term programmes for post conflict countries. ECOSOC once handled economic development projects in Guinea Bissau and Burundi before handing them off to the Peacebuilding Commission ("United Nations Peacebuilding Commission").

Apart from just providing aid to post-conflict regions, there are several international laws that govern the interactions between member stats such as the principle of universal jurisdiction and rule of law. The principle of universal jurisdiction was founded on the hopes to prevent perpetrators of serious crimes from slipping through the impunity gap and to give victims of such crimes access to justice. Although Augusto Pinochet could not be prosecuted in Chile under the protection of national amnesty laws, victims of his dictatorship who fled to Spain were able to hold him accountable for his multiple crimes by exercising universal jurisdiction. This illustrates how corrupt leaders, especially those who committed state-sponsored crimes, can fortify themselves behind layers of self-imposed amnesties, domestic immunities, and de factor impunity. Universal jurisdiction provides a system to hold them accountable. With access to justice, reconciliation in post-conflict countries is more viable.

There exist many flaws in the principal and scope of universal jurisdiction that have incited debate on whether it can be judiciously applied to all sovereign nations. Should universal jurisdiction be a last resort or should it be applied to all exceptional cases? Are all UN countries obliged to practice the principal in the face of serious crime? And what constitutes a "serious" crime? There could be a wide range of crimes falling under this category of "serious". Some delegates argue "serious" crimes can comprehensively be listed, while others refute a list would be inflexible to future, unpredictable crimes against humanity. Moreover, can it really be exercised fairly in the presence of political interests? Many nations find it intrusive, arguing that universal jurisdiction can only be practiced on the condition that "the State be unable or unwilling to exercise these forms of jurisdiction" and that the State give consent.[1]
Equally up for debate is the concept of rule of law. According to the Secretary-General, the rule of law is "a principle of governance in which all persons, institutions and entities,

public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards". On the national level, rule of law declares the state's Constitution as the ultimate rule of the land while on the international level, rule of law allows for cordial, regulated state to state relations. In response to the Secretary General's latest report on rule of law, many UN delegates pointed out that "it attempted to impose a uniform model and indicators of the rule of law in the absence of consensus on this concept". These laws that the people of a state are held accountable to, in essence, are to uphold justice but there is much debate on what this entails in a government's Constitution and infrastructure. Most people can agree that all citizens should have non-discrimination and equal protection of the law, but there is fewer consensuses on whether women's access to justice should be explicitly protected under law ("The Scope and Application of the Principle of Universal Jurisdiction - Sixty-Ninth Session - Sixth Committee (Legal) - UN General Assembly").

Case studies

1. The Minsk Agreement

The New Minsk Agreement, implemented to take full effect on February 12, 2015, drafted major peace negotiations to decrease the violence seen in the Ukraine crisis. The agreement was settled in the Belarusian capital in Minsk between President Vladimir Putin, Ukrainian President Petro Poroshenko, French President Francois Hollande, and German Chancellor Angela Merkel. After 16 hours of discussions ensued, the agreement formed to cover 7 main points within the Ukrainian crisis ("Ukraine Ceasefire Agreed at Belarus Talks | World News | The Guardian").

First, and most importantly, the Minsk Agreement called for an immediate and full bilateral ceasefire to take effect within the Donetsk and Luhansk regions. Previously, when the Minsk ceasefire signed on September 5th was put into action, it crumbled within days of being put into place due to the heavy fighting between the Ukrainian army and the pro-Russian rebels who had been controlling large portions of Donetsk and Luhansk ("Ukraine Ceasefire: New Minsk Agreement Key Points - BBC News"). In order to ensure a successful ceasefire, the leaders decided to implement other points within the agreement to resolve the crisis in a more effective way. Along with the ceasefire, it was agreed upon that heavy weapons would be withdrawn from the fighting for a two-week period starting on February 17th. To deplete the violence even further, a withdrawal of all of the foreign militias within Ukraine's territory along with the disarmament of all illegal groups were put into place ("Minsk Agreement on Ukraine Crisis: Text in Full - Telegraph"). On a separate note, the Minsk Agreement also granted amnesty to all prisoners who were involved within the fighting, along with lifting the restrictions within rebel areas of Ukraine and decentralizing the rebel regions ("Ukraine Ceasefire Agreed at Belarus Talks | World News | The Guardian"). The final point of the agreement gave Ukraine control of its border with Russia until the end of 2015; however, such border control will be granted if the government makes political concessions, including the adoption of constitutional amendments to decentralize power. For the entirety of the

Minsk Agreement, the OSCE is designated to monitor the ceasefire and any elections held in the rebel territory within 2015, but the agreement itself will only hold if both Russia and Ukraine stand by it("Details of the Ukraine Cease-Fire Negotiated in Minsk - The New York Times"). The Security Council has discussed the Minsk Agreement and has mapped out tentative steps on how to encourage peace. Called upon by Ukraine, the Security Council adopted a resolution that supported the "Package of measures for the Implementation of the Minsk Agreement" which include declarations that Ukraine will be able to reclaim its borders and to "ensure safe access, delivery, storage, and distribution of humanitarian assistance to those in need, on the basis of an international mechanism."[2] While there have been clear precedents where the United Nations have stepped in to help a post-conflict region such as when the UNDP intervened in helping post-conflict countries prevent electoral violence, the UN's involvement is still a point of contention in this area ("Unanimously Adopting Resolution 2202 (2015), Security Council Calls on Parties to Implement Accords Aimed at Peaceful Settlement in Eastern Ukraine | Meetings Coverage and Press Releases").

Although the Minsk Agreement covers many facets of the Ukrainian crisis, there are still qualms within it that may leave room for issues to arise in the future. Regarding the humanitarian situation, the government in Kiev agreed to continue granting the payment of pensions and social benefits to the people within southeastern Ukraine; however, Ukrainian president Poroshenko claimed this act is levying an economic blockade. Although these benefits will help the people in war zones, it bolsters the stance of rebel governments while continuing to drain the budget of Ukraine("Electoral Systems and Processes").

Due to the volatility of this situation, when this ceasefire was imposed, even though it thoroughly covered many issues within the Ukraine crisis, the ceasefire was immediately breached. The Minsk agreement, which had been settled on and agreed upon by all parties within the issue, became nothing more than a ceasefire on paper only. After it was implemented for only a week, there were more than 300 violations of the ceasefire. As stated by Donald Tusk, President of the European Council, "We are clearly reaching a point when further diplomatic efforts will be fruitless unless credibly backed up by

further action" ("Details of the Ukraine Cease-Fire Negotiated in Minsk - The New York Times").

2. Post-Conflict Somalia

After decades of unstable governance due to a constant fighting between rival warlords for control of Somalia, the country itself did not have the means to cope with a massive drought and famine leading to slow development("The Minsk Ceasefire Has Failed. What Now For Ukraine? - Forbes"). The history of Somalia, following their independence in 1960 from Britain and Italy, is full of conflict and power struggle. This conflict can be seen to have stated arising in 1969. After elected president Abdi Rashid Ali Shermarke was assassinated, a coup led by Muhammad Siad Barre assumed power of Somalia in 1969 and declared it a socialist nation in 1970("United Nations Political Office for Somalia").Short after, the drought of 1974 occurring during political chaos destroyed Somalian populations, resulting in more than half a million people dying from famines between 1992 and 2010("United Nations Political Office for Somalia").

After Muhammad Siad Barre was ousted from control, an intense power struggle between competing warlords and militia groups ensued until 2000. In the years of lawlessness, thousands of Somali civilians died, and various missions such as UN peacekeeping forces and US Marines in Mogadishu failed due to offensive strikes of Somali militia groups. By 2000, Somali clan leaders met in Djibouti and created a transitional government led by Abdulkassim Salat Hassan. However, by April of 2001, Somali warlords, backed by Ethiopia, refused to acknowledge the legitimacy of the government, causing even more power struggles and shifts until 2006, when Islamic groups advanced into Somalia.

By 2007, when the Islamist groups retreated due to retaliation by President Abdullahi Yusef, Ethiopia, and US military intervention, the issue of piracy started to arise. However, by 2008, the Security Council gave permission to multiple nations to send in warships in order to deal with the Somalian piracy issue. The issue of piracy is multi-faceted in that it can be linked to political and economic issues. Politically, piracy was able to erupt because of lack of governance within the nation. However, the existence of piracy was due to a fishing deficit that caused Somali fishermen to resort to piracy in

order to be able to financially support themselves and their families because their government had no means of alternative support("United Nations Political Office for Somalia").

Throughout these issues within Somalia, the UN has employed multiple peacekeeping missions: UNOSOM I and UNOSOM II. UNOSOM I was installed with a mandate to provide humanitarian assistance to the population facing the threat of famine in 1993. Although this humanitarian mission was deemed to be successful, its subsequent missions, UNOSOM II and UNITAF (Unified Task Force), did not meet their goals of national reconciliation, disarmament, and demobilization("The Other Side of Somalia's Pirates - Al Jazeera English").

Currently, in order to structure a stable governing system for Post-Conflict Somalia, the New Deal Compact has been put in place to serve as a set of priorities that directs political, security, and development efforts in the time frame of 2014 to 2016("Transitional Justice Mechanism: A Model for Somalia"). Specifically, within the New Deal Compact, it has a Sectoral focus across 5 Peacebuilding and Statebuilding Goals (PSGs): inclusive politics, security and rule of law, justice, economic foundations, and revenue and services. However, one of the key aspects to the New Deal is that it is essentially a guide to partnership between all of its parties within the international community to assist Somalia in its transition out of fragility("About | A New Deal for Somalia - Brussels Conference").

By looking at the past of Somalia and its current state, it is important to look at the successes and failures of international intervention and the influence and jurisdiction that the international community has when dealing with post-conflict nations.

Questions to Consider

1. Does the United Nations even have jurisdiction to interfere/provide aid to countries throughout the world?

2. Is the United Nations an institution that can continue to operate the way it has been?

3. Should there be systematic changes done to the structure of the United Nations? Should something like the United Nations continue to exist?

4. What should the protocol be for a third party like the United Nations when dealing with post-conflict regions?

5. How should the international community approach this issue? What would happen if there were no longer an entity to provide aid for countries in need? How would that system work?

6. What incentives and motives are present in issues like this? What are the interest groups involved?

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Introduction: Cultural Law in a Time of Western Law

Globalization is a process by which national and regional economies, societies, and cultures have become integrated through the global network of trade, communication, immigration and transportation. This has resulted in our lives being intertwined with people in all parts of the world via the food we eat, the clothing we wear, the music we listen to, the information we get and the ideas we hold("UNESCO | Teaching and Learning for a Sustainable Future | Module 18: Globalisation"). When we discuss globalization, it is almost difficult to separate the "Westernization" talk, which is the process by which societies and countries come under or adopt a western culture in areas such as Industry, Economy, Law and Policy Making ("Westernization | Define Westernization at Dictionary.com"). As more countries move towards globalization, they tend to question the foundations of the society, especially those that contradict the Western Norm. In the face of international law, there are norms that contradict set standards of human rights and violate the protection of specific persons that have been defined as marginalized and/or disenfranchised. This includes women, children, and the LGBTQIA. For instance, consider a country like Nigeria which is renown for its developed oil industry and technological inventions, yet a person proven to be gay under the law could be sentenced to 14 years in prison; or incarcerated for 10 years for supporting the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings. Nigeria is one of the 38 countries in the 54 African states that prohibit different forms of same-sex relationships("'Current Laws with Human Rights' by Stacey Alicia Maalej Rusnak"). This is not just confined to Africa, since many other countries like Russia have enacted laws that prohibit same-sex relationships and pedophilia in one sentence. Thus from the eye of International, westernized law, to what extent is this law relevant to countries that have different cultural histories? What are the downfalls of this law when we consider the non-conventional traditional law codes?

The question we are forced to reconcile with is when cultural practices conflicts with law, does it the law right win? The creation of the United Nations after the WWII saw countries signing to a consensus on the protection of basic human rights. However, even with the existence of multinational agency that ideally stands for equity and equality for all, it is still unclear whether the issues of a country's sovereignty and protection of human rights are mutually exclusive entities. There still exists a traditional law code that is not only considered backward, but also infringes on the basic human rights of citizens (mostly women and children). These controversial cultural practices, still need to be reconciled and it is up to individual governments to pass into law bills that whereas they would be upholding human rights, they would thwart a people's culture. Female Genital Mutilation is one of these practices that many governments and activists are working to end in their societies.

Female Genital Mutilation (FGM) has affected more than 125 million girls and women alive today. The practice of female genital mutilation, concentrated in 29 countries in Africa and the Middle East, is done between the age of infancy and around the onset of puberty for most women (15 yrs) ("Publications | Child Protection from Violence, Exploitation and Abuse"). FGM is recognized by the members of the respective communities within which it is practiced as a rite of passage and prevention of pre-marital sex amongst teenagers. However, the practice has resulted in increased risk of infection, complications during childbirth, increased risk for transmission of HIV/AIDS if instruments are not sterilized, and potential deaths from associated complications. In the case of countries where there is emigration and immigration like the UK, there is a newfound soar of multiculturalism. Granted that in the UK FGM is illegal, what happens to a community that partakes in the controversial practice and claims that assimilation should not be imposed? That upholding that law in such a case would be outright 'white man's savior complex'?

Other cultural practices usually compared to FGM are African Widowhood Rites and Sharia laws for women's behavior and engagement with the public. They are both interpreted as anti-feminist and contradictory to basic human rights, from a western law perspective. Tasie's study on the African widowhood practice led to the conclusion that the practices served:

[F]irst, to severe the ties between a dead husband and his living wife…
[They] believe that at the immediate aftermath of death, the ghost spirit
lurk around the homestead to haunt the living and to continue to perform
his duties to his living relations. Second, some aspects of the rites are
aimed at equipping the widow with the necessary courage and bravery to
cope with the life of self-reliance, which the death of the breadwinner has
exposed her to (Eboh and Boye).

Thus what seems to be a dehumanizing process to an outsider is a process
perfectly entwined in the mourning process that ensures a widow leads a life of normalcy
after the demise of her husband. This western view on the widowhood rites mirrors that
of Sharia as one that infringes on women's rights since in some Islamic/Sharia countries,
women are not allowed to drive, and have to adhere to a strict dress code. However, there
exists Muslim feminists who ascribe their choice of wearing the hijab to agency.
Abdulraheem concludes that opposition to the *hijab* violates the [sole] "means of
securing personal liberty in a world that constantly judges women based on their
appearance". She antagonizes (non-Muslim) feminists who theorize the hijab as
"bondage of antiquated religion", and refers to this westocentric position as "an
expression of cultural imperialism and as an insult to [women's] right of choice and a
denial of [women's] freedom to comply with the tenets of their religion" (11)("Between
Orientalism and Fundamentalism: The Politics of Muslim Women's Feminist
Engagement : Muslim World Journal of Human Rights"). Clearly, there exists an enigma
within the society as to how emphasizing Western values/law may sometimes distort or
exaggerate human rights violations. In the macro level, societies with non(semi)-
westernized laws seems to have made greater strides in gender equity. Countries like
India, Pakistan, Liberia and Argentina have had female presidents, yet the USA, which is
considered progressive, has not had a woman president or a president of color until now.
Nicaragua, Rwanda, and the Philippines have also ranked higher (6, 7 & 9th respectively)
than the USA(23) and UK (28) in Global Gender Gap ranking("The Global Gender Gap

Report 2014"). Thus Western law may not necessarily be the best form of law for everyone in the international community.

Cultural and Western law do not only conflict when it comes to human rights but in a variety of different ways. Recently, the Supreme Court denied to hear the appeal of a group of environmentalists and animal rights activist against Japanese whale hunters off the waters of Antarctica. Whaling, a practice that dates as far back as 3000BC can be considered a violation of animal rights. Japan has been engaged in scientific whaling since 1987, a year after the international Whaling Commission's (IWC) moratorium on commercial whaling began. Iceland recently began "scientific whaling" in 2003 before resuming their commercial hunt in 2006. These countries claim that the catches are essential to obtain necessary information for research and future cetacean management(Springer et al.). In Faroe Islands, whaling is a 1000 year tradition that brings the community together in an effort to provide for themselves. Thus, even though the Islands are considered a Western Nation, they may not necessarily abide by western standards.

For global citizens, in a changing world, our culture is what defines us and what we identify with. Thus cultural identity is important to the definition of persona. The UN has been involved with many campaigns to respect and protect culture, but where do we draw the line?

UN Involvement

The United Nations has been both involved in protecting culture and preventing certain practices that are deemed inhumane. The UN is undoubtedly an active player in the preservation of culture and prevention of inhumane practices. Shortly after World War Two on May 14, 1954, UNESCO adopted the Convention for the Protection of Cultural Property in the Event of Armed Conflict. This international treaty was the precedent to all legislation aimed at protecting cultural heritage in the face of armed conflict. To combat the permanent destruction of priceless relics, the treaty set up peacetime safeguarding measures as well as prohibitions against hostile acts targeting such property. The treaty also called for special units within the military equipped to protect these pieces of human history("The Hague Convention | United Nations Educational, Scientific and Cultural Organization").

The organization has created the convention for the protection of cultural property in the event of armed conflict, banned female genital mutilation (FGM), been involved in the protection of the rights and cultures of indigenous people, and held conventions on the rights of a child to be protected from child labor and child marriage. In regards to FGM, the United Nations has developed a very clear stance on the procedure even though the practice remains popular in more than 30 African and Middle Eastern countries. With February 6th, dedicated as international "Zero Tolerance of Female Gender Mutilation" day("Refworld | Intensifying Global Efforts for the Elimination of Female Genital Mutilations").

Other UN policies that deal with protecting people against inhumane treatment include the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of a Child. On September 13th, 2007, the UN, with support from the Human Rights Council, passed a resolution called the United Nations Declaration on the Rights of Indigenous Peoples, which acknowledged indigenous peoples were victims of arbitrary violence and injustice and ceded to them their right to self-determination as well as a promise to respect their culture, knowledge, right to nationality("Declaration on the Rights of Indigenous Peoples"). Another often-exploited

group is children. The UN made strides to protect this vulnerable population through the 1959 Convention on the Rights of a Child, which among many other things, explicitly protects children against "neglect, cruelty and exploitation, trafficking, underage labor, and discrimination"(Zeldin).

In 2001, UNESCO adopted the universal declaration on cultural diversity and May 21 was declared as World Day for Cultural Diversity. In 2011, a grassroots campaign 'Do One Thing For Diversity and Inclusion', celebrating the annual World Day for Cultural Diversity was launched by UNESCO and the UN Alliance of Civilizations. By encouraging people and organizations from around the world to take concrete action to support diversity, the campaign aimed to:

- To raise awareness worldwide about the importance of intercultural dialogue, diversity and inclusion.
- To build a world community of individuals committed to support diversity with real and every day-life gestures.
- To combat polarization and stereotypes to improve understanding and cooperation among
- People from different cultures ("World Day for Cultural Diversity for Dialogue and Development - 21 May").

In an effort to combat discrimination and polarization, UNESCO established May 21st as World Day for Cultural Diversity for Dialogue and Development after adopting the Universal Declaration of Cultural Diversity("World Day for Cultural Diversity for Dialogue and Development - 21 May"). The aim of dedicating an entire day to intercultural dialogue is to instill an appreciation and respect for all cultures, peoples, and values. Despite the fact that the UN has significant political capital, and a mandate to take moral, not merely consensus positions on human rights in general, and women's rights in particular, the organization has persistently sidestepped Islamist misogyny amongst its members. Last years' "16 Days of Activism Against Gender-Based Violence Campaign" aimed for groups and individuals to focus on militarism and gender-based violence. The Office of the United Nations High Commissioner for Human Rights (OHCHR) did not

focus on Islamist mistreatment of women in the "16 Days of Activism" campaign, and also overlooked persecution of female apostates, Christians, Kurds and Baha'is. Therefore many discredit the world body as a travesty of the universal values it claims to uphold.

Case Study

Sharia Law, the law of Islam, has been adopted by several nations since its creation in the 8th-9th century. Considered a law given from god by Muhammed, Sharia law dictates public behavior, private behavior, and private beliefs("BBC - Religions - Islam"). As with many other religious ordinances, it has been interpreted by members of the faith for secular and religious actions; it is interpreted in different ways called "figh"(*War Crimes and Human Rights*). Governments have interpreted Sharia Law to govern all aspects of life including commercial regulations to punishments for premarital sex. Critics of Sharia law have surfaced because some interpretations of the text have been viewed as harsh, at times, can go against international human rights. Some well cited examples would be punishments some nations have for petty theft and the systematic marginalization of women in these nations. The law has spread through much of the Muslim world; Saudi Arabia, Iran, Sudan Afghanistan, Brunei, Iraq, Maldives, Pakistan, Qatar, Yemen, Aceh and parts of Nigeria and the United Arab Emirates all strictly follow Sharia law from a personal to private level("BBC - Religions - Islam"). In contrast, many other nations have adopted the law on the domestic level, using it to resolve disputes like marriage and small claims; these nations include Jordan, Algeria, Djibouti, Ethiopia, and Syria("BBC - Religions - Islam").

Throughout the world, 40 nations have officially adopted Sharia law on some level, but these regulations usually cover mostly domestic and private affairs. While the presence of Sharia law in these nations is constant across the board, the way in which Sharia law is practiced and interpreted largely depends on the individual nation. Each nation adopts a different "figh" and thus, each set of laws is different from one country to the next. Moreover, the ways in which the laws are enforced vary from nation to nation. These factors highlight that, while there is Sharia law, there is not one version of Sharia law that is practiced by every single nation. This is clearly defined by the stark differences between nations that practice Sharia law such as Indonesia versus Saudi Arabia; while both are nations that practice and enforce Sharia law, the way in which

both of those actions are carried out are decidedly different("How Saudi Arabia's Harsh Legal Punishments Compare to the Islamic State's - The Washington Post").

Many individuals feel that the Universal Declaration of Human Rights(UDHR) fails to dictate religious and personal regulations enough and have attempted campaigns to integrate into international law("The Universal Declaration of Human Rights | United Nations"). Muslims in Great Britain have attempted to have it integrated into the law of the land. In fact, many, such as the Iranian president have stated that international law is simply Sharia law that fails to regulate personal and religious relationships enough and that integration is necessary. Many nations are against the spread of Sharia, such as the US where several state legislatures have banned the implementation of Sharia law("Ban on Sharia Law - Wikipedia, the Free Encyclopedia"). In nations like Britain, there is a strong push from certain groups of the Islamic faith for Sharia law to be adopted as the law of the land("The UK's Sharia 'courts'").

While certain interpretations of Sharia law have gone against international human rights and has aided in the silencing of some groups, it is also important to recognize that Sharia law is an integral part of a culture, an identity. Also, equally if not more important, is recognizing that there is a culture of islamaphobia throughout much of the western world; that individuals that identify as Muslim suffer from blatant islamaphobia xenophobia, racism, discrimination and hate crimes on a day to day basis. If they are not suffering from these blatant acts, they are forced to endure the microaggressions that have been made acceptable by society. Even when all of these factors are considered, many tend to forget, in times of tragedy, that Muslims are also the victims of Islamic terrorism; they are deemed target, very often by those who claim to be members of the same religion clearly providing that there is not one clear cohesive message when it comes to a culture, to a religion, and definitely not to a law based upon both of those factors such as Sharia Law. If the international community is going to make a stance about Sharia law, it must be one that takes into account all aspects of the issue. While allowing some interpretations of Sharia law to exist can lead to the continual marginalization of some groups, banning Sharia law could also add to the marginalization of the Muslim community.

FGM is performed in 29 African countries, in certain ethnic groups in Asian countries, in the Middle East, South America, and even in western countries where "diaspora populations from areas where the practice is common" preserve it (UNPF). It is the act of altering or injuring the female genitalia (Althaus). Less serious forms of FGM include cauterization, pricking, piercing, incising, or scraping. From here, non-medical surgical alterations of female genitalia can range from a clitoridectomy (where the clitoris and/or prepuce are/is removed) to excision (removal of the clitoris and labia minora) to what is considered the worst in terms of mortality: infibulation, the "narrowing of the vaginal orifice with a covering seal…formed by cutting and re-positioning the lab minora and/or the labia majora". About 10% of all reported FGM cases are infibulation, a practice most popular in Somalia, northern Sudan, and Djibouti (UNPF).

FGM is a clear violation of human rights but tradition and deep-rooted gender inequalities have sustained such a practice into the 21st century. Those who repudiate the practice in countries where it is performed face rebuke and social exclusion. In many countries, the practice is performed to preserve a woman's virginity prenuptial and her fidelity after marriage. For numerous marriages, FGM is a prerequisite to ensure the wife is "unsullied". Failure to remove or partially remove genitalia may make a woman indubitably unappealing or unhygienic, as genitilia are considered "unattractive" or "dirty" female traits. Furthermore, FGM is sometimes a rite of passage into womanhood - girls who are not lacerated often face the challenges that accompany this cultural stigma. For these reasons, galvanizing reform is extremely difficult (*Eliminating Female Genital Mutilation* 4-7).

To better comprehend how FGM poses as a flagrant violation of human rights, it is important to be well informed of the numerous side effects. Consequences can be broken down into short-term and long-term. Short-term effects include severe pain, shock, hemorrhages, tetanus or infection, and inability to urinate. Long-term effects range from anemia to the formation of cysts and abscesses and keloid scar formation. More serious and potentially fatal results are childbirth complications, HIV infections, and psychological damage (UNPF).

FGM complicates childbearing, increasing the risks for requiring a Caesarean section and episiotomy (UNPF). Women who have been infibulated will experience a

"prolonged and obstructed labour", resulting in perineal tears and injury of the fetus (UNPF; *Eradication…in Somalia*). According to the UNFPA, "two high-FGM-prevalence countries are among the four countries with the highest numbers of maternal death globally (UNPF)".

Girls may contract HIV through increased incidence of reproductive tract infections, but are also more vulnerable to HIV infection through unsanitary medical procedures, such as reusing equipment without sterilization (*Eradication…in Somalia*).

Still, circumcised women are also susceptible to a fleet of psychological effects including anxiety, depression, and sexual dysfunction (UNPF). In Somalia, for instance, men who cannot deinfibulate their wives with just their penis are ridiculed. This in, itself, may lead to the husband's depression. But it can also provoke the husband to perform forcibly rough intercourse with the wife. Under such excruciating pain, women may be traumatized for life (*Eradication…in Somalia*).

FGM gained international attention in 1992 with the Convention on the Elimination of all Forms of Discrimination Against Women and the World Conference on Human Rights. But as early as 1979, international health organizations, namely the WHO, condemned medicalization of FGM (Muthumbi et al. 32). Other forms of international legislative action followed, such as the Maputo Protocol in 2003, the Convention of the Rights of the Child in 1989, and the "adoption of UN resolution A/RES/67/146 - Intensifying global efforts for the elimination of female genital mutilation in December 2012 by all 194 members of the General Assembly" (Muthumbi et al. 32). Through international pressure for national leaders to pass and regulate legislation criminalizing these violations of women and girls' rights, the UN hoped to remove the cultural stigma against untreated women and girls (Muthumbi et al. 33). However, the pervasiveness of FGM today is a testimony to the failures of legislation to fully abrogate the practice. Although 25 countries in Africa ratified the Maputo Protocol (which included among other things an elimination of FGM), and although 10 countries plus Yemen have acceded to CEDAW, and although 18 of the 29 countries have enacted national laws outlawing FGM, it remains prevalent. In Côte d'Ivoire, Egypt, Eritrea and Mali, there are no significant differences between how many younger women and older women have undergone circumcision, indicating the rate of practice is almost unchanged

(Althaus). Somalia signed the Maputo Protocol, yet 98% women and girls ages 15 to 49 years old there have undergone FGM (*Female Genital Mutilation/Cutting: A Statistical Overview*).

Although the number of girls and women undergoing FGM has not seen any substantial improvements, it is evident that attitudes and practices may be changing. In Somalia, health policies prohibit medicalization and the community is undergoing a mobilization effort to completely eradicate the practice by shutting down "underground avenues" (*Eliminating Female Genital Mutilation*). A national law criminalizing FGM is currently being addressed, and many Somalians are putting pressure on the government to swiftly pass one. A similar story is heard in Gambia, where just recently, President Yahya Jammeh banned FGM, but has yet to pass a law; anti-FGM activists are rallying the people to spur the President to construct legislation enforcing the ban. *A* law is better than *no* law (Guilbert).

Gambia, Mali, Mauritania, Liberia, Sierra Leone, and Yemen still have not established national laws and the consequences of their inaction are glaring. In Liberia, 66% of girls and women, ages 15-49, have undergone FGM (Muthumbi et al. 34). The numbers are 69% in Mauritania, 76% in Gambia, 88% in Sierra Leone, and 89% in Mali. This is compared to 27% in Nigeria where in May 2015, FGM was banned. A huge improvement since 2012 when a quarter of the 125 million circumcised women were Nigerian, meaning it had the highest absolute number of FGM worldwide (Okeke et al.). But not all countries have experienced success in reducing FGM cases. According to Frances A. Althaus of *International Family Planning Perspectives*, "while legislation may be enforceable in countries where only a small minority adhere to the practice, that is unlikely to be the case when the majority follow the tradition". In Mali, 94% of girls and women have been circumcised, but only 17% of them identify as Tamachek ethnically. Preventing a small group of people from the practice is more plausible than convincing an entire society rooted in tradition that FGM is against the common good. Resistance to outlawing FGM also has its roots during colonial rule of Africa. Anti-FGM movements are associated with cultural imperialism — a Western attempt to coerce its influence on Africa's long-established and highly diverse culture (Althaus). Somalian

women have voiced their distaste of aggressive western feminist activities and protests, claiming their forceful tactics are patronizing and derogatory toward their culture. Scholars and researchers are still searching for an answer explaining why Nigeria has been so successful in curtailing this "inhumane, degrading treatment and discrimination" while other countries are struggling to implement their national laws. In Ghana, prevalence rates are still high due to weak political will and impractical action (Muthumbi et al. 36). However, most international organizations would point to the lack of education and subjugation of women as the largest obstacle to true eradication of the practice.

Educating the masses about the dangers of FGM and empowering women may be most effective. WHO has developed publications and advocacy tools to help eradicate FGM within a generation (WHO). Data collected from "Female Circumcision: Attitudes and Practices in Sudan" by Kumar and Cross illustrates that: "in most countries, women with higher levels of education and those who have income of their own are less likely than other women to have been circumcised and are also less likely to have had their daughters circumcised" (Althaus).

Even better than health education is women emancipation. Most women who undergo circumcision disapprove of the practice, but those in countries with high prevalence rates are often socially and economically dependent on their husbands. UNFPA and UNICEF have mobilized religious leaders, parliamentarians, non-governmental organizations, youth and human rights activists to campaign for abandoning FGM and have created programs to educate and empower women (UNPF).

Questions to Consider

1. How is international/Western law relevant to countries that have different cultural histories?

2. What are the downfalls of considering the non-conventional traditional law codes?

3. How are we able to decide whether or not westernized values are the true determination of human rights?

4. When are we able to draw the line between disregarding a cultural practice in the name of protecting human rights?

5. What law code should the international community use to develop international human rights? Who do we, as the international community, give agency to determine what is "right" and what is "wrong"?

6. What incentives and motives are present in issues like this? What are the interest groups involved?

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