

Order Amidst Disorder: The Value and Challenges of Upholding the International Rule of Law

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I. Introduction

- 1 In a world fraught with geopolitical tension, public international law (“**PIL**”) plays a vital role in upholding the international rule of law (“**ROL**”). It sets clear, enforceable guidelines and norms for how states should deal with each other.¹ Further, it provides mechanisms to resolve inter-state disputes and to hold individuals or states accountable for transgressing PIL.² The vital role of PIL in upholding peace and stability becomes more apparent when safeguarding the interests of small states, such as Singapore, as they generally have fewer economic or military tools to rely on in protecting themselves.³
- 2 This article explores these intertwining concepts through five sections. **Sections I and II** will discuss the value of PIL, the definitions of the international ROL, and how these two concepts interact. **Section III** delves into the hard and soft law instruments in PIL and their respective contributions to the key pillars of the international ROL, providing examples of how they have been employed in practice. **Section IV** considers the role of non-legal mechanisms in promoting the international ROL where international law instruments fall short, and evaluates the complementary roles of PIL and non-legal mechanisms in upholding the international ROL. Finally, **Section V** concludes with reflections on the value of the international ROL in light of geopolitical developments in the recent years. These developments involve numerous breaches of PIL, and are by no means few and far between, casting PIL as nothing but a paper tiger. Nonetheless, this article maintains the overall position that PIL remains a foundational pillar of the international ROL by shaping norms, influencing state conduct positively, and reinforcing the global legal order. Ultimately, this article contributes to the existing literature by establishing how international legal and non-legal instruments contribute

¹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 2.

² Robert O. Keohane, Andrew Moravcsik & Anne-Marie Slaughter, “Legalized Dispute Resolution: Interstate and Transnational” (2000) 54(3) *International Organization* 457 at 457.

³ Adam Lupel & Lauri Mälksoo, “A Necessary Voice: Small States, International Law, and the UN Security Council”, *International Peace Institute*, April 2019 <https://www.ipinst.org/wp-content/uploads/2019/04/1904_A-Necessary-Voice_Final.pdf> (accessed 17 December 2023) at p 4.

or undermine the ideals of the international ROL—an issue that has not been examined in depth, but is pertinent given present-day volatilities.

II. Overview of key concepts

A. *Public International Law (“PIL”)*

(1) *What is PIL?*

- 3 PIL refers to a system of rules and principles that govern the conduct of states and inter-state relations.⁴ It is derived from various sources: mainly treaties, customary law, general principles of law and case law.⁵ PIL can be further categorised into hard and soft legal instruments.⁶

(2) *How is PIL enforced?*

- 4 There is no single global authority which enforces PIL.⁷ Instead, PIL is enforced through a combination of mechanisms and institutions, depending on the sources of law created between parties.⁸ Treaties, for instance, may be monitored by parties to the treaties themselves, or supervisory committees and/or international institutions established by the treaty.⁹ A prime example would be the United Nations (“UN”) Charter, the enforcement of which is overseen by the UN. Specifically, the UN Security Council (“UNSC”) is empowered by the UN Charter to impose legally binding sanctions on nations that have committed an act deemed to threaten international peace.¹⁰ The International Court of Justice (“ICJ”), a UN organ established under the UN Charter, is also tasked with adjudicating legal disputes arising from breaches of the same.¹¹

⁴ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 2.

⁵ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 52.

⁶ Felicia Maxim, “Hard Law versus Soft Law in International Law” (2020) *Conferința Internațională de Drept, Studii Europene și Relații Internaționale* 113 at 114.

⁷ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 34–35.

⁸ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 34–35.

⁹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 70 and 72; see Felicia Maxim, “Hard Law versus Soft Law in International Law” (2020) *Conferința Internațională de Drept, Studii Europene și Relații Internaționale* 113 at 114.

¹⁰ UN Charter (26 June 1945) Article 41; see Kristen E. Boon, “Terminating Security Council Sanctions”, *International Peace Institute*, April 2014 <https://www.ipinst.org/wp-content/uploads/publications/terminating_security_council_sanctions.pdf> at pp 2–3.

¹¹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 803–804.

(3) *Why do we need international law?*

- 5 International law is crucial because it sets standards for and regulates how states should conduct themselves vis-à-vis other states.¹² Further, it puts in place mechanisms for dispute resolution.¹³ Such mechanisms are vital owing to the inherent anarchy in our international system, where there is no central authority to enforce laws or maintain order between states.¹⁴ In addition, under the rational choice theory, sovereign states often pursue their own national interests without considering the interests of other states.¹⁵ Thus, international law seeks to strike the difficult balance between collective and individual state interests.
- 6 Admittedly, recent major violations of international law (such as the Russia-Ukraine Crisis) and the lack of any strong enforcement mechanisms to curtail such violations paint a bleak perception of international law as being ineffective.¹⁶ Such violations, however, are uncommon—it is much more often that states comply with international law and norms because of the expectation of reciprocal tolerance.¹⁷ This refers to states being incentivised or motivated to act reasonably in the expectation that such conduct would also encourage other states to “act reasonably and so avoid confrontations”.¹⁸ Consequently, the world we live in today has been described as “the most peaceful time in human history”.¹⁹

B. *The Rule of Law*

- 7 To demonstrate how PIL maintains the ROL in the *international* context (“**international ROL**”) despite the absence of a global governing authority, it is necessary to first understand what the ROL entails *in general*. This requires an examination of the concept in its original context—in the national and domestic sphere.

¹² Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 33.

¹³ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 764.

¹⁴ Carmen E. Pavel, “The Rule of Law and the Limits of Anarchy” (2021) 27(1) *Legal Theory* 70 at 71; see also Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 2–3.

¹⁵ Anne van Aaken & Betül Simsek, “Rewarding in International Law” (2021) 115(2) *The American Journal of International Law* 195 at 200.

¹⁶ Sofia Cavandoli & Gary Wilson, “Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia’s Invasion of Ukraine” (2022) 69 *Netherlands International Law Review* 383 at 404.

¹⁷ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 6; see Anne van Aaken & Betül Simsek, “Rewarding in International Law” (2021) 115(2) *The American Journal of International Law* 195 at 200.

¹⁸ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 6.

¹⁹ Mark Stephen Micale & Philip Dwyer, “Introduction: History, Violence, and Steven Pinker” in *On Violence in History* (Mark Stephen Micale & Philip Dwyer gen eds) (Berghahn Books, 1st Ed, 2020) at p 4.

- 8 There are two fundamental principles of the ROL which are generally agreed upon: first, the state may not exercise its powers arbitrarily;²⁰ second, the law applies to all persons equally.²¹ Consequently, laws are created and enforced with the aim of fair and consistent application across all stakeholders—irrespective of class, status, or power.
- 9 In line with this *general* definition, the ROL in the *domestic context* typically involves (a) “a government of laws (*i.e.*, that a state’s powers may not be exercised arbitrarily); (b) the supremacy of the law; and (c) equality before the law”.²² Therefore, broadly speaking, the international ROL should refer to rules that are clear, certain, transparent, and fair in governing the relations between states.²³ However, it should be noted that the domestic view is not entirely applicable to the international context, owing to the inherent differences between national and international legal systems. First, national legal systems are more hierarchical, since they govern the relationship between the individual and the state; on the other hand, international legal systems seek to coordinate relations between states,²⁴ which are presumed to be equal and sovereign entities (though practical realities differ). Second, and relatedly, the state is able to enforce the law by sanctioning individuals who contravene the law; however, there is no unified global authority internationally that can effectively enforce legal sanctions on states that violate rules of PIL.
- 10 In light of the differences between the international and domestic contexts, it may be more appropriate to instead define the international ROL with reference to its objectives, rather than its institutions or the ability to make and enforce the law. One such definition proposed by McCorquodale involves “legal order and stability; equality of application of the law; protection of human rights; and the settlement of disputes before an independent legal body”.²⁵ Academics have also stated that the international ROL

²⁰ Simon Chesterman, “An International Rule of Law?” (2008) 56(2) *The American Journal of Comparative Law* 331 at 342.

²¹ Simon Chesterman, “An International Rule of Law?” (2008) 56(2) *The American Journal of Comparative Law* 331 at 342; see also Brian Z. Tamanaha, “The History and Elements of the Rule of Law” (2012) *Singapore Journal of Legal Studies* 232 at 233.

²² Robert McCorquodale, “Defining the International Rule of Law: Defying Gravity?” (2016) 65(2) *International and Comparative Law Quarterly* 277 at 288, citing Simon Chesterman, “An International Rule of Law?” (2008) 56(2) *The American Journal of Comparative Law* 331 at 342.

²³ Robert McCorquodale, “Defining the International Rule of Law: Defying Gravity?” (2016) 65(2) *International and Comparative Law Quarterly* 277 at 288, citing Samantha Besson, ‘Sovereignty, International Law and Democracy’ (2011) 22(2) *European Journal of International Law* 373 at 385–386.

²⁴ Noora Arajärvi, “The Core Requirements of the International Rule of Law in the Practice of States” (2021) 13 *Hague Journal on the Rule of Law* 173 at 176.

²⁵ Robert McCorquodale, “Defining the International Rule of Law: Defying Gravity?” (2016) 65(2) *International and Comparative Law Quarterly* 277 at 292.

should be predictable and applied consistently to each case.²⁶ Relatedly, others have argued that the protection of human rights should not form the core definition of the international ROL because understandings of human rights differ across cultures and there is less unanimity on what rights should be protected.²⁷ Overall, given the merits in this last argument, we similarly take the view that the international ROL should be understood in terms of universal principles, instead of subjective values (for instance, the protection of less commonly accepted human rights, such as the freedom of speech).

- 11 In summary, two main ideas emerge—first, the international ROL should not be defined entirely with reference to the domestic ROL since their objectives differ; and second, the international ROL should be defined with reference to universal principles, instead of specific ideals which are more likely to be contested by different states, such as the protection of human rights.

III. To what extent does international law uphold the international ROL?

- 12 PIL is embodied in two forms—hard law and soft law. With its own advantages and disadvantages, these two forms of international law are pivotal in achieving peace and stability in the international legal order.

A. *Hard law*

- (1) *What is hard law?*

- 13 Hard law refers to legally binding agreements between states, such as treaties, that aim to create obligations in inter-state relations.²⁸ As mentioned, treaties usually establish a body to monitor the implementation of treaty provisions, to which states must report on their compliance.²⁹ A well-known example would be the UN Charter, which establishes the ICJ to adjudicate on legal disputes arising out of the treaty,³⁰ and the UNSC for the enforcement of the treaty.³¹

²⁶ Noora Arajärvi, “The Core Requirements of the International Rule of Law in the Practice of States” (2021) 13 *Hague Journal on the Rule of Law* 173 at 185.

²⁷ Brian Z. Tamanaha, “The History and Elements of the Rule of Law” (2012) *Singapore Journal of Legal Studies* 232 at 234.

²⁸ Felicia Maxim, “Hard Law versus Soft Law in International Law” (2020) *Conferința Internațională de Drept, Studii Europene și Relații Internaționale* 113 at 115.

²⁹ Felicia Maxim, “Hard Law versus Soft Law in International Law” (2020) *Conferința Internațională de Drept, Studii Europene și Relații Internaționale* 113 at 114.

³⁰ UN Charter (26 June 1945) Articles 92–96.

³¹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 70.

(2) *Benefits of hard law*

- 14 Hard law can be effective because it enhances the capacity for enforcing international law. First, it is often interpreted and applied by a judicial or quasi-judicial institution. For example, the European Human Rights regime is enforced by the European Court of Human Rights, while trade disputes involving contraventions of legal commitments made to the World Trade Organization (“WTO”) are decided by WTO panels which are appointed by the WTO Dispute Settlement Body (“DSB”).³² In the latter example, the WTO panel submits to the DSB a report containing its rulings or recommendations on the dispute, which can only be rejected with unanimous consensus of the DSB.³³ The presence of a centralised authority to legally review disputes helps create accepted norms and standards against which state behaviour may be assessed. This contributes to the international ROL because the rules governing inter-state relations become clearer, enforceable, and more accessible.
- 15 Secondly, hard law almost always outlines the consequences for legal violations. Returning to the example of the WTO, the DSB issues recommendations and rulings that the “losing” country of the dispute must comply with to rectify its fault.³⁴ The financial (and to some extent, reputational) costs of violating legal obligations may discourage states from behaving in ways which jeopardise international interests. Thus, hard law promulgates clear structures, rules and ramifications that promote “legal order and stability”, a key aspect of the international ROL.
- 16 Lastly, hard law possesses a form of legitimacy that commands obedience by states. The acts of formally signing, domestically approving, and ratifying an international agreement by a state symbolises that these norms are valid and authoritative in the state.³⁵ Therefore, there is a reciprocal expectation among participants in the legal system that binding promises are to be kept. This is embodied in the principle of *pacta sunt servanda*, a principle of international law which holds that treaties or contracts are binding upon the parties that entered into the treaty or contract.³⁶ Consequently, any

³² “WTO Bodies involved in the dispute settlement process”, *World Trade Organization* <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c3s1pl_e.htm> (accessed 15 June 2024).

³³ “Understanding the WTO: Settling Disputes – A unique contribution”, *World Trade Organization* <https://www.wto.org/english/thewto_e/whatise/tif_e/disp1_e.htm> (accessed 21 August 2024).

³⁴ “Understanding the WTO: Settling Disputes. A unique contribution” *World Trade Organization* <https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c3s1pl_e.htm> (accessed 15 June 2024).

³⁵ Jürgen Friedrich, *International Environmental “soft law”: The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law* (Springer Berlin Heidelberg, 1st Ed, 2013) at pp 253–254.

³⁶ Vienna Convention on the Law of Treaties (23 May 1969) Article 26.

violation of these promises would result in reputational costs to the violating state, even in the absence of binding sanctions imposed upon it. Hard law therefore creates a “compliance pull” over states, encouraging or pressuring them to comply with the legal obligations or norms they have committed themselves to.³⁷ In these ways, hard law is effective in promoting the international ROL.

- 17 Beyond treaties, hard law exists in the form of customary international law (“CIL”). CIL refers to international obligations that arise from established international practice, rather than written agreements.³⁸ Therefore, it does not derive its validity from the express consent of states. Instead, there must at least be consistent and widespread adoption of the obligation (the requirement of state practice).³⁹ The 1992 Rio Declaration is an example of a nonbinding instrument that has contributed to the progressive development of CIL on environmental conservation.⁴⁰
- 18 The value of CIL lies in its ability to hold states accountable for their actions even if the state has not consented via a written agreement. Moreover, CIL responds more readily to changing socio-political paradigms.⁴¹ In the ICJ’s *Pulp Mills on the River Uruguay* (“**Pulp Mills**”) judgment, CIL contributed to the development of environmental law which was still in its nascent stages.⁴² It required environmental impact assessments to be conducted, even before treaties or bilateral agreements had foreseen a need for such assessments to be done.⁴³
- 19 Other examples include the ICJ elevating the prohibition of use of force against another state as expressed in Article 2(4) of the UN Charter⁴⁴ to the status of a *jus cogens* norm, also known as a peremptory norm of general international law. *Jus cogens* norms are defined as norms “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified

³⁷ UN Charter (26 June 1945) Article 2(4).

³⁸ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 54.

³⁹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 55.

⁴⁰ Pierre-Marie Dupuy, Ginevra Le Moli & Jorge E. Viñuales, “Customary International Law and the Environment” in *Oxford Handbook of International Environmental Law* (Lavanya Rajamani & Jacqueline Peel eds) (Oxford University Press, 2nd Ed, 2021) ch 23 at p 390.

⁴¹ Joel P. Trachtman, “The Obsolescence of Customary International Law” in *Custom’s Future: International Law in a Changing World* (Curtis A. Bradley ed) (Cambridge University Press, 2016) ch 7 at p 193.

⁴² *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ 14 at [204].

⁴³ *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ 14 at [204].

⁴⁴ Pamela J. Stephens, “A Categorical Approach to Human Rights Claims: Jus Cogens as a Limitation of Enforcement?” (2009) 22(2) *Wisconsin International Law Journal* 245 at 254, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (Merits) [1984] ICJ 392 at [190]; see James Crawford, *Brownlie’s Principles of Public International Law* (Oxford University Press, 9th Ed, 2012) at p 581.

only by a subsequent norm of general international law (*jus cogens*) having the same character”.⁴⁵ This provision, however, only represents a general prohibition against the use of force. It bears noting that there are other provisions in the UN Charter which permit the use of force in certain circumstances, notably where authorised by the UNSC to maintain international peace and security,⁴⁶ and when used as self-defence in response to an armed attack by another state.⁴⁷ While these carveouts cast doubt on the scope of application of this norm,⁴⁸ and indeed whether it can even be considered a norm that applies without exception, the act of crowning the prohibition against the use of force as a *jus cogens* norm sends a strong signal to the international community that any unjustified use of force against another state is not to be tolerated. CIL thus seeks to promote an international ROL by creating a rules-based and norms-based international order.

(3) *Limitations of hard law*

- 20 Hard law, however, is not infallible and faces limitations in its enforcement. Further, it can be ignored in practice, particularly by more powerful states. A case in point would be Russia’s invasion of Ukraine. Through its invasion into Ukraine, Russia has clearly violated its international obligations under the UN Charter, namely the prohibition of the use of force and the principle of non-intervention in contravention of another state’s sovereignty and territorial integrity.⁴⁹ However, Russia, being one of the Permanent Five members of the UNSC, had the power to veto resolutions by the UNSC deploring the Russian invasion and demanding the withdrawal of Russian forces from Ukraine.⁵⁰
- 21 While the UNSC had attempted to circumvent this veto by invoking the “Uniting for Peace Resolution”, thereby allowing the UN General Assembly (“UNGA”) to pass the resolutions demanding for withdrawal of Russian troops with an overwhelming majority, these resolutions are by nature not binding on any stakeholder.⁵¹ Further, it

⁴⁵ Conclusion 3, *Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens), with commentaries*, International Law Commission, 73rd Sess, UN Doc A/77/10 (2022). See also James Crawford, *Brownlie’s Principles of Public International Law* (Oxford University Press, 9th Ed, 2012) at p 581.

⁴⁶ UN Charter (26 June 1945) Article 24 and 25.

⁴⁷ UN Charter (26 June 1945) Article 51.

⁴⁸ James A. Green, *Questioning the Peremptory Status of the Prohibition of the Use of Force*, 32 Mich. J. Int’l L. 215 (2011), 234-236.

⁴⁹ UN Charter (26 June 1945) Article 2(4).

⁵⁰ “UN Security Council Meetings & Outcomes Tables”, *United Nations Dag Hammarskjold Library* <<https://research.un.org/en/docs/sc/quick>> (accessed 15 June 2024).

⁵¹ “How Decisions are Made at the UN”, *United Nations* <<https://www.un.org/en/model-united-nations/how-decisions-are-made-un>> (accessed 10 June 2024).

has been, at the time of writing, almost three years since Russia had invaded Ukraine. The fact that no international body has been able to directly intervene in and end the conflict (apart from issuing public condemnations), illustrates the limitations of enforcement mechanisms when the transgressing state is a large and powerful one.

- 22 A similar conundrum is faced when the transgressing state is being protected by a member of the P5. An apt illustration of this would be the unequivocal protection of Israel offered by the US. From 1945 to 2023, 34 out of 36 UNSC draft resolutions relating to the Israel-Palestine conflict – specifically, Israel’s occupation of Palestine or Israel’s treatment of Palestinians – had been vetoed by the US.⁵² The US had also vetoed other resolutions pertaining to Israel, such as the latter’s invasion of Southern Lebanon and its annexation of the Syrian Golan Heights.⁵³ This elucidates the limitations of hard law in maintaining international peace. Notably, the US allowed a UNSC resolution calling for an immediate ceasefire in Gaza to pass in March 2024. However, it was only recently in January 2025, after months of painstaking negotiations between Israel and Hamas, that a ceasefire was finally agreed upon.⁵⁴
- 23 Moreover, hard law in the form of CIL has often been criticised for its broad scope.⁵⁵ Its ambiguity engenders uncertainty in how it should apply to prospective cases. This undermines a fundamental principle of the international ROL, whereby laws must be clearly drafted and consistent in their enforcement. For instance, in the ICJ’s *Pulp Mills* judgment, the Court noted that the customary rule mandating an environmental impact assessment to be conducted for industrial pollutive activities did not detail the procedures to conduct such an assessment.⁵⁶ Instead, it was for individual states to determine, through its national laws, the scope of the environmental impact

⁵² Hope O’Dell, “How the US has used its power in the UN to support Israel for decades”, *Chicago Council on Global Affairs*, 22 February 2024 <<https://globalaffairs.org/bluemarble/how-us-has-used-its-power-un-support-israel-decades>> (accessed on 21 August 2024). See also Shakeeb Asrar & Mohammed Hussein, “How the US has used its veto power at the UN in support of Israel”, *Al Jazeera*, 26 October 2023 <<https://www.aljazeera.com/news/2023/10/26/how-the-us-has-used-its-veto-power-at-the-un-in-support-of-israel>> (accessed on 21 August 2024).

⁵³ Shakeeb Asrar & Mohammed Hussein, “How the US has used its veto power at the UN in support of Israel”, *Al Jazeera*, 26 October 2023 <<https://www.aljazeera.com/news/2023/10/26/how-the-us-has-used-its-veto-power-at-the-un-in-support-of-israel>> (accessed on 21 August 2024).

⁵⁴ “Key events that led to Israel-Hamas ceasefire deal in Gaza”, BBC, 19 January 2025 <<https://www.bbc.com/news/articles/cvg4ryde7q5o>> (accessed on 8 February 2025).

⁵⁵ Joel P. Trachtman, “The Obsolescence of Customary International Law” in *Custom’s Future: International Law in a Changing World* (Curtis A. Bradley ed) (Cambridge University Press, 2016) ch 7 at p 183.

⁵⁶ Joel P. Trachtman, “The Obsolescence of Customary International Law” in *Custom’s Future: International Law in a Changing World* (Curtis A. Bradley ed) (Cambridge University Press, 2016) ch 7 at p 183, citing *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ 14 at [205].

assessment.⁵⁷ The result is that the requirements of an environmental impact assessment often vary across states. Courts and/or states may therefore face difficulties determining whether an environmental impact assessment has been conducted adequately to satisfy the customary obligation.

B. *Soft law*

(1) What is soft law?

24 Soft law is conventionally defined as non-binding instruments such as resolutions, treaties that are not officially in force, codes of conduct and guidelines.⁵⁸ These are common in international environmental law, in which soft law sets out goals to be achieved and guidelines to be followed, rather than strict obligations to be met.⁵⁹

(2) Benefits of soft law in maintaining the international ROL

25 The benefits of having non-binding mechanisms are multi-fold. First, soft law's non-binding nature encourages greater compliance among states. Generally, states are hesitant to agree to binding obligations as this may constrain the ways in which states act.⁶⁰ To address this, soft law instruments allow states to "reflect a political intention to act in a certain way", while not being bound by obligations.⁶¹ In turn, states are more likely to comply with these non-binding obligations, owing to expectations of state conduct which have been shaped by international norms, and not out of fear of repercussions from a violation of said obligations.⁶²

26 Second, soft law gives states greater latitude in determining how they wish to achieve the goals and principles set by soft law instruments. This allows states to implement standards which are suitable to their domestic context, sovereign needs, as well as level of economic development, while still abiding by international norms.⁶³ A prominent example of how soft law shapes norm creation is the application of environmental

⁵⁷ *Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment)* [2010] ICJ 14 at [205].

⁵⁸ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 87–88.

⁵⁹ Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment" (1991) 12(2) *Michigan Journal of International Law* 420 at 428.

⁶⁰ Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment" (1991) 12(2) *Michigan Journal of International Law* 420 at 430.

⁶¹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 88.

⁶² Andrew T. Guzman & Timothy L. Meyer, "International Common Law: The Soft Law of International Tribunals" (2009) 9(2) *Chicago Journal of International Law* 515 at 534.

⁶³ Alexandre Kiss, "Commentary and Conclusions" in *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Dinah Shelton ed) (Oxford Academic, 2010) at 238.

protection principles developed at the 1992 Rio de Janeiro Conference on Environment and Development (“**Rio Principles**”) in various states across the world.⁶⁴ Similar acts of incorporation have taken place in New Zealand’s political (albeit non-legal) policies, such as the Environment 2010 Strategy.⁶⁵ The gist of the Rio Principles has also been implemented in Hungary’s national legislation.⁶⁶ Although soft law principles are technically non-binding on states, the non-compliance with these principles would nonetheless threaten the reputation of non-complying states and state actors.⁶⁷ To prevent such reputational consequences, states are pressured by to adhere to PIL and uphold the international ROL. Evidently, the value of soft law lies precisely in its non-binding nature.

- 27 Third, soft law guides the development and application of the law, leading to greater certainty. For instance, ICJ case precedents are not binding on a court of international law.⁶⁸ However, prior decisions are still relevant in guiding international and domestic tribunals’ interpretations of PIL.⁶⁹ Further, case precedents define and clarify legally acceptable behaviour which states should take heed of.⁷⁰
- 28 Apart from case precedents, the General Comments drafted by various human rights committees are another illustration of a soft law instrument which contributes to a better understanding of international norms and their developments. These constitute soft law instruments as states may choose to adopt or dismiss such General Comments at their discretion.⁷¹ While they are non-binding in nature, they nevertheless contribute to the body of international practice that moulds and reinforces international geopolitical expectations.⁷² For instance, General Comment no. 15 adopted by the Committee on

⁶⁴ Alexandre Kiss, “Commentary and Conclusions” in *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Dinah Shelton ed) (Oxford Academic, 2010) at 231.

⁶⁵ Alexandre Kiss, “Commentary and Conclusions” in *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Dinah Shelton ed) (Oxford Academic, 2010) at 232.

⁶⁶ Alexandre Kiss, “Commentary and Conclusions” in *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System* (Dinah Shelton ed) (Oxford Academic, 2010) at 232.

⁶⁷ Andrew T. Guzman & Timothy L. Meyer, “International Common Law: The Soft Law of International Tribunals” (2009) 9(2) *Chicago Journal of International Law* 515 at 516–517.

⁶⁸ Statute of the International Court of Justice (26 June 1945), 33 UNTS 993, Article 59 (entered into force 24 October 1945); see Andrew T. Guzman & Timothy L. Meyer, “International Common Law: The Soft Law of International Tribunals” (2009) 9(2) *Chicago Journal of International Law* 515 at 525.

⁶⁹ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at p 82; see Pierre-Marie Dupuy, “Soft Law and the International Law of the Environment” (1991) 12(2) *Michigan Journal of International Law* 435.

⁷⁰ Andrew T. Guzman & Timothy L. Meyer, “International Common Law: The Soft Law of International Tribunals” (2009) 9(2) *Chicago Journal of International Law* 515 at 527.

⁷¹ Andrew T. Guzman & Timothy L. Meyer, “International Common Law: The Soft Law of International Tribunals” (2009) 9(2) *Chicago Journal of International Law* 515 at 534.

⁷² Andrew T. Guzman & Timothy L. Meyer, “International Common Law: The Soft Law of International Tribunals” (2009) 9(2) *Chicago Journal of International Law* 515 at 525.

Economic, Social and Cultural Rights, pronounced that a novel right—the right to water—should be recognised as a human right,⁷³ even though this was not included in the pre-existing rights to an adequate standard of living,⁷⁴ and physical health,⁷⁵ under the International Covenant on Economic, Social and Cultural Rights.⁷⁶

- 29 Besides introducing specific rights to pre-existing ones, General Comments also further clarify and reinforce the scope of vague obligations.⁷⁷ For example, General Comment no. 2 adopted by the UN Committee against Torture underscored that there are strictly no exceptions to the prohibition against torture, including “*any threat of terrorist acts or violent crime*”, “*means to protect public safety*” and “*religious*” justifications.⁷⁸ This adds greater specificity to Article 2 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which in itself only rejects a short list of circumstances as justifications for torture.⁷⁹
- 30 These examples illustrate how soft law instruments are valuable in clarifying the likely interpretation of international laws. This is especially valuable in developing a coherent system of rules, which is responsive to rapid developments in the geopolitical landscape (for instance, the rise of terrorist threats and regulating state conduct towards the treatment of suspects, and the safeguarding of fundamental rights to support development needs).

⁷³ Max Lesch and Nina Reiners, “Informal human rights law-making: How treaty bodies use ‘General Comments’ to develop international law” (2023) 12(2) *Global Constitutionalism* 378 at 388 and 390; see also Committee on Economic, Social and Cultural Rights, 29th Sess, General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), Agenda Item 3 at para 3, E/C.12/2002/11 (2003).

⁷⁴ International Covenant on Economic, Social and Cultural Rights (16 December 1966), 993 UNTS 3, Article 11 (entered into force 3 January 1976).

⁷⁵ International Covenant on Economic, Social and Cultural Rights (16 December 1966), 993 UNTS 3, Article 11 (entered into force 3 January 1976).

⁷⁶ Max Lesch and Nina Reiners, “Informal human rights law-making: How treaty bodies use ‘General Comments’ to develop international law” (2023) 12(2) *Global Constitutionalism* 378 at 391; see also Committee on Economic, Social and Cultural Rights, 29th Sess, General Comment No. 15 (2002) The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), Agenda Item 3 at para 3, E/C.12/2002/11 (2003).

⁷⁷ Max Lesch and Nina Reiners, “Informal human rights law-making: How treaty bodies use ‘General Comments’ to develop international law” (2023) 12(2) *Global Constitutionalism* 378 at 388 and 393–394.

⁷⁸ Committee Against Torture, General Comment No. 2 (2008) Implementation of article 2 by State parties, at paras 5–6, CAT/C/GC/2 (2008).

⁷⁹ Max Lesch and Nina Reiners, “Informal human rights law-making: How treaty bodies use ‘General Comments’ to develop international law” (2023) 12(2) *Global Constitutionalism* 378 at 388 and 393–394; see also Committee Against Torture, General Comment No. 2 (2008) Implementation of article 2 by State parties, at paras 5–6, CAT/C/GC/2 (2008); see also Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (4 February 1985), 1465 UNTS 85, Article 2(2) (entered into force 26 June 1987).

- 31 Fourth, soft law is useful in coordinating state's actions and cooperation internationally,⁸⁰ particularly in areas of law which are vulnerable to volatility and uncertainty.⁸¹ The prime example is in the area of international financial law, where there are hurdles to obtaining sufficient and relevant information about financial risks of banks, or potential fraud and money-laundering activities.⁸² In this context, soft law, in the form of enforcement cooperation agreements, aids in interstate cooperation and coordination. For instance, State Party A may enlist the help of State Party B to obtain evidence and the proceeds from a fraudulent activity, which was committed by a national of State Party B, in the territory of State Party A.⁸³ Again, soft law's coordination function enables the states to efficiently address transnational financial misconduct, reducing evidential gaps and difficulties enforcing financial regulations against errant individuals. In turn, this has contributed to the orderly functioning of international financial law, upholding one of the key tenets of the international ROL.
- 32 Finally, soft law paves the way to create future binding laws by providing a common understanding and foundation for such laws to be developed. For instance, the 1972 Stockholm Declaration was monumental in articulating the principles of environmental conservation.⁸⁴ These principles were later used as a basis for the conclusion of multilateral treaties, such as the 1979 Convention of Migratory Species of Wild Animals and the 1992 UN Framework Convention on Climate Change.⁸⁵ Evidently, such principles unify states through the common goal of environmental conservation. These principles subsequently justify the enactment of prospective binding laws.
- (3) *Limitations of soft law*
- 33 Despite soft law's positive contributions in strengthening the international ROL, it inevitably has its own shortcomings. Soft law is often characterised by the use of vague

⁸⁰ Chris Brummer, "The Architecture of International Financial Law" in *Soft Law and the Global Financial System* (Chris Brummer ed) (Cambridge University Press, 2nd Ed, 2015) ch 2 at p 116.

⁸¹ Timothy Meyer, "Shifting Sands: Power, Uncertainty and the Form of International Legal Cooperation" (2016) 27(1) *The European Journal of International Law* 161 at p 175.

⁸² Chris Brummer, "Why Soft Law Dominates International Finance—And Not Trade" (2010) 13(3) *Journal of International Economic Law* 623 at p 630.

⁸³ Chris Brummer, "Why Soft Law Dominates International Finance—And Not Trade" (2010) 13(3) *Journal of International Economic Law* 623 at p 630.

⁸⁴ Pierre-Marie Dupuy, "Soft Law and the International Law of the Environment" (1991) 12(2) *Michigan Journal of International Law* 420 at 422.

⁸⁵ Pamela Chasek, "The Legacies of the Stockholm Conference", *IISD Earth Negotiations Bulletin*, June 2022 <<https://www.iisd.org/system/files/2022-05/still-one-earth-conference-legacy.pdf>> at p 3.

phrases and broad commitments.⁸⁶ While this allows states to determine their degree of participation in international norm creation as discussed above, it also generates unpredictability.⁸⁷ This is undesirable in the context of regulations pertaining to international security threats, where imprecise drafting generates loopholes for non-compliant states to exploit,⁸⁸ thereby endangering international stability,⁸⁹ and undermining accountability for their actions. The rules pertaining to arms control illustrates this, since prohibited conduct such as cheating and instances of cheating, are not clearly defined and are disputed among states.⁹⁰

- 34 To conclude, soft law is a double-edged sword—on one hand, its flexibility might promote the development of a stable legal order, where the law is responsive to and satisfactorily addresses changing needs (*e.g.*, stability and environmental issues); on the other, soft law could also be phrased or interpreted imprecisely, creating uncertainty in its application.⁹¹ In the context of containing global weaponisation and security threats, the latter is a bane for a stable international ROL.
- 35 Ultimately, given the different advantages of soft and hard law, both are complementary instruments that should be adopted in tandem to promote the international ROL. Whether to implement hard or soft law, or both, is dependent on the types of geopolitical issues involved. Hard law and stricter terms might be necessitated in situations where mass destruction is involved. In other situations, given its greater flexibility, soft law generates more impetus for collaboration and future negotiations among states.⁹² This will more likely culminate in binding agreements and norms,⁹³ thereby reinforcing the rules-based order.

⁸⁶ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 346.

⁸⁷ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 362.

⁸⁸ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 362.

⁸⁹ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 361.

⁹⁰ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 362.

⁹¹ Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 367.

⁹² Jack M. Beard, “Soft Law’s Failure on the Horizon: The International Code of Conduct for Outer Space Activities” (2017) *University of Pennsylvania Journal of International Law* 38(2) 335 at 346.

⁹³ Jürgen Friedrich, *International Environmental “soft law”: The Functions and Limits of Nonbinding Instruments in International Environmental Governance and Law* (Springer Berlin Heidelberg, 1st Ed, 2013) at pp 158–159.

C. Overarching limitations of PIL: non-compliance and lack of enforceability

36 Apart from difficulties in procuring states to undertake certain international obligations, there are two further limitations of PIL in general: first, non-compliance; and second, lack of enforceability.

37 Non-compliance refers to the state's inability or, more commonly, refusal to comply with international legal rules. This is rampant in PIL. In addition to the examples raised in the earlier sections, another pervasive example of this would be situations where the ICJ has the power to resolve a dispute, and a state subsequently refuses to accept the ICJ's ruling, even though the ruling is a pronouncement of accepted international norms. An exemplification of this would be the United States choosing to *reject* the ICJ's decision and opposing the UNSC's enforcement of ICJ judgments, following the court's ruling in favour of Nicaragua in 1986.⁹⁴ This was despite the fact that the ICJ established that it had jurisdiction to hear the case.⁹⁵ This was also coupled with the fact that the US had agreed to accept the compulsory jurisdiction of the ICJ, in accordance with Article 36 of the Statute of the ICJ.⁹⁶

38 Moreover, the *enforceability* of PIL in the event of a breach is far from guaranteed. The International Criminal Court ("ICC") aptly illustrates the limited reach that international organisations have over states. The powers of the ICC to hear cases on individual criminal responsibility are derived from the Rome Statute of the International Criminal Court ("**Rome Statute**").⁹⁷ In most cases, the ICC has jurisdiction to hear a case only where the alleged crime was committed on the territory of a State Party to the Rome Statute, or if the accused individual is a national of a State Party to the statute.⁹⁸ The ICC as a judicial institution does not possess an enforcement body and lacks the coercive power for enforcement.⁹⁹ Therefore, it *mainly* depends on

⁹⁴ Michael J. Berlin, "U.S. Vetoes Nicaraguan Resolution on Compliance with Court Decision", *The Washington Post*, 31 July 1986 <<https://www.washingtonpost.com/archive/politics/1986/08/01/us-vetoes-nicaraguan-resolution-on-compliance-with-court-decision/ecdf20d6-cf3a-4761-ba23-5c49a9fa379a/>> (accessed 15 June 2024).

⁹⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Jurisdiction of the Court and Admissibility of the Application)* [1984] ICJ 392 at [83] and [113]; see also Statute of the International Court of Justice (26 June 1945), 33 UNTS 993, Articles 36(2) and 36(5) (entered into force on 24 October 1945).

⁹⁶ Theodore M. Lieberman, "Law and Power: Some Reflections on Nicaragua, the United States, and the World Court" (1986) 10(2) *Maryland Journal of International Law* 295 at 297.

⁹⁷ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 298–299.

⁹⁸ Malcolm Shaw, *International Law* (Cambridge University Press, 8th Ed, 2017) at pp 298–299.

⁹⁹ Philippe Kirsch, "The Role of the International Criminal Court in Enforcing International Criminal Law" (2007) 22(4) *American University International Law Review* 539 at 546; see Maryam Jamshidi, "The enforcement gap:

the support of State Parties worldwide to enforce the sentences it metes out on contravening individuals and/or states.¹⁰⁰

- 39 Unfortunately, it is widely acknowledged that state cooperation is difficult to secure in many cases, since cooperation is “often hampered by political realities both in the national and international spheres”.¹⁰¹ Therefore, it has unsurprisingly attracted the criticism of being a paper tiger, without effective mechanisms to concretely enforce the ICC’s judgments.¹⁰² For example, the ICC issued an arrest warrant for Russian President Vladimir Putin’s war crimes, involving the unlawful deportation of children, during the Russia-Ukraine Crisis.¹⁰³ However, the ICC relies heavily on parties to the Rome Statute to arrest top political leaders.¹⁰⁴ Thus, Putin evaded arrest by refusing to step foot in South Africa, a party to the Rome Statute, which had to support arrest efforts.¹⁰⁵ Even if Putin did not deliberately avoid arrest, South Africa was unlikely to follow through with its commitments, to avoid taking sides in the war or antagonising Putin.¹⁰⁶ Notably, complex political relations frequently impede the enforcement of PIL.

How the International Criminal Court failed in Darfur”, *Al Jazeera*, 25 March 2013 <<https://www.aljazeera.com/opinions/2013/3/25/the-enforcement-gap-how-the-international-criminal-court-failed-in-darfur>> (accessed 15 June 2024).

¹⁰⁰ Philippe Kirsch, “The Role of the International Criminal Court in Enforcing International Criminal Law” (2007) 22(4) *American University International Law Review* 539 at 546; see Maryam Jamshidi, “The enforcement gap: How the International Criminal Court failed in Darfur”, *Al Jazeera*, 25 March 2013 <<https://www.aljazeera.com/opinions/2013/3/25/the-enforcement-gap-how-the-international-criminal-court-failed-in-darfur>> (accessed 15 June 2024).

¹⁰¹ Ali Nada, “Bringing the Guilty to Justice: Can the ICC be Self-Enforcing?” (2014) 14(2) *Chicago Journal of International Law* 408 at 415, citing Mary M. Penrose, “Lest we fail: the importance of enforcement in international criminal law” (1999) 15(2) *American University International Law Review* 321 at 363, Antonio Cassese, “On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law” (1998) 9(1) *European Journal of International Law* 2 at 13–15 and Michael P. Scharf, “The Tools for Enforcing International Criminal Justice in the New Millennium: Lessons from the Yugoslavia Tribunal” (1999) 49(4) *DePaul Law Review* 925 at 978-979; see also Mary M. Penrose, “Lest we fail: the importance of enforcement in international criminal law” (1999) 15(2) *American University International Law Review* 321 at 359–364.

¹⁰² Ali Nada, “Bringing the Guilty to Justice: Can the ICC be Self-Enforcing?” (2014) 14(2) *Chicago Journal of International Law* 408 at 415, citing Mary M. Penrose, “Lest we fail: the importance of enforcement in international criminal law” (1999) 15(2) *American University International Law Review* 321 at 363.

¹⁰³ “Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova”, *International Criminal Court*, 17 March 2023 <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> (accessed 15 June 2024).

¹⁰⁴ Philippe Kirsch, “The Role of the International Criminal Court in Enforcing International Criminal Law” (2007) 22(4) *American University International Law Review* 539 at 546.

¹⁰⁵ Roman Goncharenko, “Putin’s self-isolation: Lavrov attends the G20” *Deutsche Welle, DW*, 9 August 2023 <<https://www.dw.com/en/putins-self-isolation-lavrov-attends-the-g20/a-66762527>> (accessed 15 June 2024).

¹⁰⁶ “Putin to miss BRICS summit by mutual agreement, South Africa says”, *Al Jazeera*, 19 July 2023 <<https://www.aljazeera.com/news/2023/7/19/south-africa-putin-to-miss-brics-summit-by-mutual-agreement>> (accessed 15 June 2024).

- 40 While there is merit in these criticisms, this does not invalidate PIL's signalling effect. PIL still clearly sets out the rules of conduct which states should *aspire* towards. Further, it is difficult to envision the ICC possessing a policing mechanism. In fact, this might give rise to more troubling questions, including who qualifies to police the conduct of other states and whether this creates a hierarchical international order which interferes excessively with state sovereignty.
- 41 With the widespread limitations and problems accompanying PIL, it is no wonder scholars argue that the idea of an international ROL is illusory because international law is "ultimately limited by power, politics and the rule of force".¹⁰⁷ Such a criticism is not unfounded. Internationally, there is no centralised authority governing all states in the same way that states have authority over the citizens.¹⁰⁸ Further, there is a lack of an effective, universal system which ensures that states comply with international rules.¹⁰⁹ Hence, there is no guarantee that states will behave in a manner envisioned by international law, nor will they face legal sanctions should they fail to do so. Consequently, the presence of an international rulebook may not necessarily uphold the international ROL.

IV. Is PIL necessary when extra-legal options are available?

A. *The role of other extra-legal solutions in complementing international law*

The foregoing discussion reveals the value and limitations of both hard and soft law. International organisations are often incapacitated from taking timely action to restore the international order. This is clear from the inability of the UN to directly interfere with the war in Ukraine, which has already entered its third year at the time of writing. The UN is similarly handicapped in the war between Israel and Palestine, where its actions are confined merely to expressions of condemnations on the attack by Israel and appeals for humanitarian aid access to be allowed into the Gaza Strip.¹¹⁰

¹⁰⁷ Sundaresh Menon, Chief Justice of the Supreme Court of Singapore, "S Rajaratnam Lecture 2019 by The Honourable Chief Justice Sundaresh Menon – The Rule of Law, the International Legal Order, and the Foreign Policy of Small States", speech at the S Rajaratnam Lecture 2019 (15 October 2019, *Ministry of Foreign Affairs*) <<https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2019/10/20191015-S-Raj-Lecture>> (accessed 16 December 2023) at para 12, citing Georg Schwarzenberger & E. D. Brown, *A Manual of International Law* (Professional Books Ltd, 6th Ed, 1976).

¹⁰⁸ Carmen E. Pavel, "The Rule of Law and the Limits of Anarchy" (2021) 27(1) *Legal Theory* 70 at 71.

¹⁰⁹ Carmen E. Pavel, "The Rule of Law and the Limits of Anarchy" (2021) 27(1) *Legal Theory* 70 at 71.

¹¹⁰ "What has the UN done and said on the Israel-Palestine conflict?", *Al Jazeera*, 25 October 2023 <<https://www.aljazeera.com/news/2023/10/25/what-has-the-un-done-on-the-israel-palestine-conflict>> (accessed 15 June 2024).

42 Where international law falls short, extra-legal approaches may be resorted to because they are often less constrained by procedural issues and formalities. Therefore, it is necessary to consider whether extra-legal solutions are necessary to complement PIL or whether they can, in fact, completely displace PIL in its role of upholding the international ROL. The three main solutions to be discussed are economic sanctions, military action, and various forms of diplomacy.

(4) *Economic sanctions*

States may attempt to coerce another state's compliance with international law by imposing sanctions on it. Sanctions refer to "penalties introduced to alter political and/or military behaviour".¹¹¹ The most common form of sanctions would be economic sanctions.

Preliminarily, it is important to highlight that sanctions, when taken as a countermeasure, may constitute a legal right under public international law. This would be the case where the sanctions are implemented by states which are directly affected by the breach of international law or, in the case of obligations owed to a group of states or the international community as a whole, states specially affected by the breach of international law.¹¹²

However, it is presently less clear whether non-injured states are similarly entitled under international law to take such countermeasures against the breaching state.¹¹³ While non-injured states have in practice imposed sanctions on breaching states to procure the cessation of their breach of international law, international law so far only regulates countermeasures by an injured state,¹¹⁴ and neither state practice nor opinion juris on countermeasures by non-injured states has been sufficiently established yet.¹¹⁵ For now, non-injured states are merely entitled to take "lawful measures" to procure the cessation of the breach. This is provided for by Article 54 of the Draft articles on Responsibility of States for Internationally Wrongful Acts

¹¹¹ Richard N. Haass, "Economic Sanctions: Too Much of a Bad Thing", *Brookings*, 1 June 1998 <<https://www.brookings.edu/articles/economic-sanctions-too-much-of-a-bad-thing/>> (accessed 17 December 2023).

¹¹² Articles 42 of the Draft articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA").

¹¹³ *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, International Law Commission, 53rd Sess, UN Doc A/56/10 (2001), at pp. 137-139. See also Talita Dias, "Countermeasures in international law and their role in cyberspace" (2024) *London: Royal Institute of International Affairs*, at p. 37-48.

¹¹⁴ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 1st Ed, 2013) at p 706.

¹¹⁵ *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, International Law Commission, 53rd Sess, UN Doc A/56/10 (2001), at pp. 137-139. See also Talita Dias, "Countermeasures in international law and their role in cyberspace" (2024) *London: Royal Institute of International Affairs*, at p. 37-48.

(“**ARSIWA**”), which was intended as a “saving clause”¹¹⁶ in order to not “prejudice any position concerning measures taken by [s]tates other than the injured [s]tate in response to breaches of obligations for the protection of the collective interest or those owed to the international community as a whole.”¹¹⁷ As many economic sanctions imposed fall into this grey area of “lawful measures” this section shall analyse the role of economic sanctions from a political, extra-legal perspective.

Economic sanctions come in several forms—some restrict or disrupt trade flow, while others aim to cut the sanctioned state off from the financial system. Economic sanctions have been effective in compelling states to comply with international law and norms. For example, sanctions were implemented after the Gulf War to compel Iraq’s compliance with resolutions ordering a complete elimination of its weapons of mass destruction; these sanctions eventually had the effect of curtailing Iraq’s export of weapons.¹¹⁸ It has also been shown that UN economic sanctions had a statistically significant impact on targeted states by reducing their GDP growth by an average of 2.3–3.5% per year—and more than 5% per year in the case of comprehensive UN embargoes (that is, embargoes on nearly all economic activity between UN member states and sanctioned countries)—with the negative effects typically persisting for a period of ten years.¹¹⁹ Unilateral US sanctions, on the other hand, had a considerably smaller but nonetheless significant impact on the targeted states’ GDP growth, restricting it by 0.5–0.9% per year, with an average duration of seven years.¹²⁰

However, the efficacy of economic sanctions often depends on various factors, such as the scope and duration of the sanction, and the power as well as resourcefulness of the target state. In the Russia-Ukraine Crisis, Western allies have imposed a vast array of economic sanctions on Russia. The main sanctions include freezing the foreign reserves of the Central Bank of the Russian Federation,¹²¹ and prohibiting transactions involving the Russian Ruble by removing major Russian banks from the international financial messaging system—the Society for Worldwide Interbank Financial Telecommunications (“**SWIFT**”), a banking platform that

¹¹⁶ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, 1st Ed, 2013) at p 371 and 706.

¹¹⁷ *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, International Law Commission, 53rd Sess, UN Doc A/56/10 (2001).

¹¹⁸ George A. Lopez & David Cortright, “Containing Iraq: Sanctions Worked” (2004) 83(4) *Foreign Affairs* 90 at 95–96.

¹¹⁹ Vienna, FIW – Research Centre International Economics, *The Impact of UN and US Economic Sanctions on GDP Growth* (FIW Working Paper No 138, 2015) at pp 4–5, 15 and 21.

¹²⁰ Vienna, FIW – Research Centre International Economics, *The Impact of UN and US Economic Sanctions on GDP Growth* (FIW Working Paper No 138, 2015) at pp 5, 19 and 22.

¹²¹ Lucia Quaglia & Amy Verdun, “Weaponisation of finance: the role of European central banks and financial sanctions against Russia” (2023) 46(5) *West European Politics* 872 at 879.

coordinates global financial transactions.¹²² However, while the Russian economy took a short-term hit, it had nonetheless managed to withstand the sanctions.¹²³ For instance, Russia had simply chosen to export commodities, such as oil, to countries such as China and India, countries that are less opposed to the war than the West is.¹²⁴ Further, many Western allies had included carve-outs to the SWIFT sanctions that enabled most energy-related transactions to take place, since many European countries were still heavily reliant on oil exports from Russia for their energy needs.¹²⁵ Moreover, Russia had simply used an equivalent of SWIFT to make daily transactions.¹²⁶ Therefore, sanctions can have limited effects where the target state in question is resourceful and powerful, and where other states remain dependent on it.

43 Large and powerful countries aside, however, sanctions generally remain effective when dealing with the occasional rogue nation. It would thus be tempting to draw the conclusion that PIL is not entirely necessary since sanctions have a relatively greater impact on the compliance of states with international law. However, the imposition of economic sanctions cannot be viewed in isolation from the network of international legal rules discussed earlier—these sanctions often derive their legitimacy from the rules and norms in PIL. Specifically, sanctions function as signals of disapproval towards certain negative behaviour, such as unprovoked acts of aggression.¹²⁷ Therefore, even if the enforcement of hard law cannot be guaranteed, hard law nonetheless shapes states’ attitudes toward certain types of conduct, thereby legitimising certain countermeasures that states take in response to transgressing conduct.

(5) *Military action*

44 Another approach would be military action. While military action provides an alternative in situations of dire necessity, it has the potential to undermine the value and

¹²² Russell Hotten, “Ukraine conflict: What is Swift and why is banning Russia so significant?”, *BBC*, 4 May 2022 <<https://www.bbc.com/news/business-60521822>> (accessed 15 February 2024).

¹²³ “Why the West’s oil sanctions on Russia are proving to be underwhelming”, *The Economist*, 1 February 2023 <<https://www-economist-com.libproxy.smu.edu.sg/leaders/2023/02/01/why-the-wests-oil-sanctions-on-russia-are-proving-to-be-underwhelming>> (accessed 17 December 2023).

¹²⁴ Vladimir Soldatkin & Olesya Astakhova, “Russia exports almost all its oil to China and India – Novak”, *Reuters*, 27 December 2023 <<https://www.reuters.com/business/energy/half-russias-2023-oil-petroleum-exports-went-china-russias-novak-2023-12-27/>> (accessed 15 February 2024).

¹²⁵ Lucia Quaglia & Amy Verdun, “Weaponisation of finance: the role of European central banks and financial sanctions against Russia” (2023) 46(5) *West European Politics* 872 at 881–882.

¹²⁶ “Russia’s VTB launches transfers in Chinese yuan bypassing SWIFT”, *Reuters*, 6 September 2022 <<https://www.reuters.com/markets/currencies/russias-vtb-launches-transfers-chinese-yuan-bypassing-swift-2022-09-06/>> (accessed 15 June 2024).

¹²⁷ Catherine Jones, “Sanctions as Tools to Signal, Constrain, and Coerce” (2018) 13(3) *Asia Policy* 20 at 21.

credibility of international law. Under the UN Charter, the use of military action is only permitted where the Security Council sanctions its use.¹²⁸ This was not the case in the Kosovo crisis.

Around 1997 to 1998, when armed hostilities occurred between Serbian forces and the Yugoslav Army in the Kosovo crisis, the Security Council attempted to adopt several resolutions to sanction the use of military action and stabilise the threat.¹²⁹ However, Russia was likely to veto the resolutions given its support for the Federal Republic of Yugoslavia.¹³⁰ Amidst the deadlock, the North Atlantic Treaty Organisation (“NATO”) threatened to engage in air strikes in Yugoslavia, with the approval of its members, if the Federal Republic of Yugoslavia did not comply with prior Security Council resolutions.¹³¹ However, this act was not authorised by the Security Council.¹³²

45 NATO’s threats of military operations were contrary to the upholding of international order and stability. On one hand, NATO had earlier justified any extra-legal intervention on the basis that this was necessary to protect against human rights violations by Yugoslavia, especially when the UNSC was shackled by vetoes.¹³³ This was argued to be in line with the goals of the UN and the shortcomings of the UN Charter.¹³⁴ The UN subsequently adopted a few resolutions in support of NATO’s actions.¹³⁵ However, the operations were a clear breach of the UN Charter, irrespective of the justification for its use.¹³⁶ Ultimately, unauthorised military action weakens the international rules-based order, and thus arguably contravenes instead of complements PIL.

¹²⁸ UN Charter (26 June 1945) Article 42.

¹²⁹ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 6–7.

¹³⁰ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 7.

¹³¹ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 7–8.

¹³² Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 11.

¹³³ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 7 and 12.

¹³⁴ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 12.

¹³⁵ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 12.

¹³⁶ Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1 at 12.

46 Nevertheless, there could be a possible development of the international ROL, which could embrace similar acts of “humanitarian intervention”.¹³⁷ However, it was suggested that a new international ROL can only be accepted if it fulfils certain criteria, such as the lack of other available remedies against the humanitarian breaches concerned and situations where authorisation has been sought from the UNSC but to no avail.¹³⁸ Thus, “humanitarian intervention” might be permitted in the future, but is limited to the most severe circumstances.¹³⁹ This prevents the potential for abuse,¹⁴⁰ unlike taking the position where humanitarian intervention is justified in every situation. Even so, some academics were unable to accept that NATO’s actions in Kosovo would satisfy any of these criteria to be aligned with a developed international ROL.¹⁴¹

47 Nevertheless, the lack of an established international ROL to assess acceptable forms of “humanitarian intervention” in the Kosovo crisis, emphasises the importance of having clear and consistent guidelines for foreign intervention where there are grave violations of human rights in the future.¹⁴² This ensures states act within acceptable boundaries, which might uphold a newly evolved international ROL someday.¹⁴³

(6) *Diplomacy: Sporting diplomacy*

48 Apart from confrontational sanctions, diplomatic manoeuvres supplement PIL to secure compliance with the international ROL. An apt example would be the Olympic Winter Games 2018 held in PyeongChang (“**PyeongChang Games**”). The PyeongChang Games created the impetus for discussions between North and South Korea despite historical tensions.¹⁴⁴ This culminated in the PyeongChang Declaration for Peace 2019,

¹³⁷ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1242–1243.

¹³⁸ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1243–1245.

¹³⁹ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1244.

¹⁴⁰ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1244.

¹⁴¹ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1245, citing generally Antonio Cassese, “Ex iniuria ius oritur: Are We Moving Towards International Legitimization of Forcible Humanitarian Countermeasures in the World Community?” (1999) 10(1) *European Journal of International Law* 23 and Bruno Simma, “NATO, the UN and the Use of Force: Legal Aspects” (1999) 10(1) *European Journal of International Law* 1.

¹⁴² Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1247.

¹⁴³ Jonathan I. Charney, “Anticipatory Humanitarian Intervention in Kosovo” (1999) 32(5) *Vanderbilt Journal of Transnational Law* 1231 at 1248.

¹⁴⁴ “PyeongChang Peace Forum sets out vision for a better world”, *International Olympic Committee News*, 15 February 2019 <<https://olympics.com/ioc/news/pyeongchang-peace-forum-sets-out-vision-for-a-better-world>> (accessed 17 December 2023).

which advocated for adherence to international disarmament laws and resolution of conflict between the Koreans.¹⁴⁵ The PyeongChang Games thus de-escalated prior tensions which arose from North Korea's nuclear tests and the UN's imposition of sanctions.¹⁴⁶ Leaders from the three countries concerned (*i.e.*, North Korea, the United States and South Korea) also met at a historic meeting at the Korean Demilitarised Zone in 2019.¹⁴⁷ This marked a monumental event, as it was the first time a President of the United States had entered into North Korea,¹⁴⁸ symbolising a physical step towards peace and reconciliation between the Koreans and a big global power. Further, the move kickstarted plans to denuclearise and move towards formally ending the Korean War.¹⁴⁹

- 49 Evidently, sport encourages compliance with the international ROL, which makes up for the shortcomings of PIL. It defuses conflict by unifying people through common sporting values, creating a climate of cross-cultural understanding on the ground, thereby setting the stage for higher-level, governmental cooperation.¹⁵⁰ Thus, sport is a symbolic unification of states across their differences.¹⁵¹ It also provides common ground and justification for states to peacefully negotiate with each other.¹⁵² By

¹⁴⁵ "PyeongChang Peace Forum sets out vision for a better world", *International Olympic Committee News*, 15 February 2019 <<https://olympics.com/ioc/news/pyeongchang-peace-forum-sets-out-vision-for-a-better-world>> (accessed 17 December 2023).

¹⁴⁶ Kwangho Park, Gi Yong Koo & Minkil Kim, "The effect of the United Nations resolution for Olympic Truce on peace based on functionalism" (2023) 18(1) *Journal of Human Sport & Exercise* 107 at 108.

¹⁴⁷ Kwangho Park, Gi Yong Koo & Minkil Kim, "The effect of the United Nations resolution for Olympic Truce on peace based on functionalism" (2023) 18(1) *Journal of Human Sport & Exercise* 107 at 108, citing Steve George et al, "DMZ: Donald Trump steps into North Korea with Kim Jong Un", *CNN*, 30 June 2019 <https://edition.cnn.com/politics/live-news/trump-dmz-kim-live-intl-hnk#h_8f4b268b1827c8c3d43909e24456f216> (accessed 17 December 2023).

¹⁴⁸ Kwangho Park, Gi Yong Koo & Minkil Kim, "The effect of the United Nations resolution for Olympic Truce on peace based on functionalism" (2023) 18(1) *Journal of Human Sport & Exercise* 107 at 108, citing Steve George et al, "DMZ: Donald Trump steps into North Korea with Kim Jong Un", *CNN*, 30 June 2019 <https://edition.cnn.com/politics/live-news/trump-dmz-kim-live-intl-hnk#h_8f4b268b1827c8c3d43909e24456f216> (accessed 17 December 2023).

¹⁴⁹ Kwangho Park, Gi Yong Koo & Minkil Kim, "The effect of the United Nations resolution for Olympic Truce on peace based on functionalism" (2023) 18(1) *Journal of Human Sport & Exercise* 107 at 108, citing Joshua Berlinger & Yoonjung Seo, "North and South Korea commit to 'era of no war'", *CNN*, 19 September 2018 <<https://edition.cnn.com/2018/09/18/asia/north-korea-south-korea-summit-intl/index.html>> (accessed 17 December 2023).

¹⁵⁰ Stuart Murray, "The Two Halves of Sports-Diplomacy" (2012) 23(3) *Diplomacy & Statecraft* 576 at 582, citing J. Cain, "The Power of the Ball: A Foreign Policy Tool that Beats the Carrot and the Stick" (in possession of author) and "Conference Report: The 2nd Hague Diplomacy Conference. 18–20 June 2009", *Netherlands Institute of International Relations – Clingendael*, 2009 <www.clingendael.nl/cdsp/events/20090618/20090600_cdsp_conference_report_second_the_hague_diplomacy_conference.pdf> (accessed 17 December 2023).

¹⁵¹ Jung Woo Lee, "Olympic Winter Games in Non-Western Cities: State, Sport and Cultural Diplomacy in Sochi 2014, PyeongChang 2018 and Beijing 2022" (2021) 38(13–14) *The International Journal of the History of Sport* 1494 at 1502–1503, citing Brian Bridges, *The Two Koreas and the Politics of Global Sport* (Global Oriental, 2012).

¹⁵² Kwangho Park, Gi Yong Koo & Minkil Kim, "The effect of the United Nations resolution for Olympic Truce on peace based on functionalism" (2023) 18(1) *Journal of Human Sport & Exercise* 107 at 119.

bringing willing parties to the negotiating table before conflicts escalate further, this prevents threats to the international ROL in a timely fashion.

(7) *Diplomacy: Prisoner exchanges*

50 Apart from encouraging discussions post-sporting events, prisoner swaps are another way to catalyse the negotiation process between countries. In December 2023, Azerbaijan agreed to release 32 prisoners of war in exchange for two of their prisoners from Armenia.¹⁵³ This marked a monumental step towards formalising a peace treaty, to address the long-standing conflict over the Nagorno-Karabakh region between both states.¹⁵⁴ Further, the prisoner swap would build confidence and trust between the countries.¹⁵⁵ Evidently, as part of the negotiations process, prisoner swaps are an expression of compromise and goodwill. This incentivises states to formalise agreements and act according to mutually agreed codes of conduct, instead of personal whims. In turn, legal order and stability are strengthened.

51 On the other hand, prisoner exchanges might not effectively achieve the overall aim of the international ROL. Amid the Russia-Ukraine Crisis, 63 Russian soldiers and 116 Ukrainian servicemen were released as part of a prisoner exchange following negotiations.¹⁵⁶ However, this has not been effective on two fronts. First, prisoner exchanges have limited effect in achieving long-term peace and stability—even as Russia and Ukraine have reached a consensus on humanitarian issues, negotiations to end the crisis have not progressed.¹⁵⁷ This represents limited developments towards legal order and stability. Second, prisoner exchanges might even threaten the international ROL. This issue arises when prisoners are released with impunity and cannot be tried for their crimes.¹⁵⁸ However, this second limitation may be inevitable,

¹⁵³ Angela Dewan, “Azerbaijan and Armenia agree to prisoner swap and to work towards peace deal”, *CNN*, 8 December 2023 <<https://edition.cnn.com/2023/12/08/europe/azerbaijan-armenia-conflict-prisoner-swap-cop28-climate-intl/index.html>> (accessed 16 December 2023).

¹⁵⁴ Angela Dewan, “Azerbaijan and Armenia agree to prisoner swap and to work towards peace deal”, *CNN*, 8 December 2023 <<https://edition.cnn.com/2023/12/08/europe/azerbaijan-armenia-conflict-prisoner-swap-cop28-climate-intl/index.html>> (accessed 16 December 2023).

¹⁵⁵ Angela Dewan, “Azerbaijan and Armenia agree to prisoner swap and to work towards peace deal”, *CNN*, 8 December 2023 <<https://edition.cnn.com/2023/12/08/europe/azerbaijan-armenia-conflict-prisoner-swap-cop28-climate-intl/index.html>> (accessed 16 December 2023).

¹⁵⁶ “Russia, Ukraine swap prisoners as battle for Bakhmut rages”, *Al Jazeera*, 4 February 2023 <<https://www.aljazeera.com/news/2023/2/4/dozens-of-soldiers-freed-in-russia-ukraine-prisoner-swap>> (accessed 16 December 2023).

¹⁵⁷ Sabine Fischer, “Diplomacy in the Context of the Russian Invasion of Ukraine” (2023) 53 *SWP Comment* 1 at 3.

¹⁵⁸ Freedom House, “Ukraine: Prisoner Exchange Welcome, but Reveals Unfulfilled Demands for Justice”, press release (9 January 2020) <<https://freedomhouse.org/article/ukraine-prisoner-exchange-welcome-reveals-unfulfilled-demands-justice>> (accessed 16 December 2023).

especially since prisoner exchanges exemplify mutual goodwill and compromise. Despite its shortcomings, the ability of prisoner exchanges to uphold certain elements of the international ROL, such as adherence to international humanitarian rules, must be acknowledged.

(8) *Diplomacy through the ASEAN Way*

52 The Association of Southeast Asian Nations (“ASEAN”) currently comprises of Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Myanmar, Laos, Brunei and Cambodia.¹⁵⁹ ASEAN was set up to facilitate economic growth and cooperation among states to promote regional peace and security.¹⁶⁰ To achieve these aims, the organisation has adopted the ASEAN Way in managing diplomatic relations.¹⁶¹ This refers to a less confrontational, and more consensus-based approach.¹⁶² Unlike the European Communities, ASEAN is inherently less hierarchical.¹⁶³ Thus, ASEAN prioritises unanimous decision-making and compromise through formal and informal discussions and consultations among states.¹⁶⁴ This creates room for negotiations instead of deterring parties from collaboration.

53 One such effort was during Vietnam’s invasion of Kampuchea in 1978. ASEAN advocated for Cambodia’s Democratic Kampuchea government to retain its seat in the UN.¹⁶⁵ ASEAN further gathered the support of third-world nations in the UNGA against seating the Vietnamese-supported People’s Republic of Kampuchea (“PRK”).¹⁶⁶ Ultimately, 74 out of 109 UNGA votes supported the legitimacy of the Democratic Kampuchea government.¹⁶⁷ Evidently, ASEAN used its rhetoric of non-

¹⁵⁹ The ASEAN Charter (20 November 2007) Preamble.

¹⁶⁰ The ASEAN Charter (20 November 2007) Article 1.

¹⁶¹ Paul J. Davison, “The ASEAN Way and the Role of Law in ASEAN Economic Cooperation” (2004) 8 *Singapore Year Book of International Law and Contributors* 165 at 166.

¹⁶² Paul J. Davison, “The ASEAN Way and the Role of Law in ASEAN Economic Cooperation” (2004) 8 *Singapore Year Book of International Law and Contributors* 165 at 166.

¹⁶³ Paul J. Davison, “The ASEAN Way and the Role of Law in ASEAN Economic Cooperation” (2004) 8 *Singapore Year Book of International Law and Contributors* 165 at 167, citing Estrella D. Solidum, “The Role of Certain Sectors in Shaping and Articulating the ASEAN Way” in *ASEAN Identity, Development and Culture* (R.P. Anand & Purificacion V. Quisumbing eds) (U.P. Law Center and East West Center Culture Learning Institute, 1981) 130 at 138 and Estrella D. Solidum, “An ASEAN Perspective on the Decision-Making Process in the European Community” in *EEC and ASEAN: Two Regional Community Experiences* (Purificacion V. Quisumbing & Benjamin B. Domingo eds) (Foreign Service Institute and UP Law Center, 1983) at 127.

¹⁶⁴ Paul J. Davison, “The ASEAN Way and the Role of Law in ASEAN Economic Cooperation” (2004) 8 *Singapore Year Book of International Law and Contributors* 165 at 167.

¹⁶⁵ Lee Jones, “ASEAN intervention in Cambodia from Cold War to conditionality” (2007) 20(4) *The Pacific Review* 523 at 527.

¹⁶⁶ Lee Jones, “ASEAN intervention in Cambodia from Cold War to conditionality” (2007) 20(4) *The Pacific Review* 523 at 527–528.

¹⁶⁷ Lau Teik Soon, “ASEAN and the Cambodian Problem” (1982) 22(6) *Asian Survey* 548 at 549.

intervention in sovereign states to galvanise political support from the UNGA. Further, ASEAN's use of political persuasion prevented the distribution of aid from the IMF and World Bank to the Vietnamese-supported PRK.¹⁶⁸ By its use of political and economic pressure, it compelled Vietnam to participate in negotiations over the situation in Cambodia.¹⁶⁹ Therefore, ASEAN's use of negotiation strategies and political alliances effectively influenced how other states reacted and behaved.

- 54 The ASEAN Way has also spurred negotiations with China over the South China Sea dispute.¹⁷⁰ This is underscored in ASEAN's ongoing efforts to negotiate for and encourage acceptance of a potentially binding Code of Conduct with China.¹⁷¹ ASEAN's use of non-legalistic approaches, such as through virtual talks and discussions,¹⁷² has created room for mutually beneficial solutions to develop, with China hoping to "accelerate" the discussions.¹⁷³ This has enabled ASEAN-China relations to move past a stalemate on how states should conduct themselves in the region.
- 55 China's current attitudes towards ASEAN can be juxtaposed with more legalistic approaches in the past. In 2016, an arbitral award over part of the South China Sea was granted in favour of the Philippines.¹⁷⁴ While the Philippines has not enforced the award,¹⁷⁵ this recourse to legal remedies has ironically caused China to react with greater hostility than conciliation;¹⁷⁶ China responded with more land reclamations in

¹⁶⁸ Lee Jones, "ASEAN intervention in Cambodia from Cold War to conditionality" (2007) 20(4) *The Pacific Review* 523 at 528, citing Muthiah Alagappa, "The bases of legitimacy" in *Political Legitimacy in Southeast Asia: The Quest for Moral Authority* (Muthiah Alagappa gen ed) (Stanford University Press, 1st Ed, 1995) at pp 11–30.

¹⁶⁹ Lee Jones, "ASEAN intervention in Cambodia from Cold War to conditionality" (2007) 20(4) *The Pacific Review* 523 at 528.

¹⁷⁰ Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137–138.

¹⁷¹ Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 127.

¹⁷² Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137–138.

¹⁷³ Kiki Siregar, "ASEAN, China agree on guidelines to accelerate South China Sea code of conduct negotiations", *Channel News Asia*, 13 July 2023 <<https://www.channelnewsasia.com/asia/asean-china-south-china-sea-code-conduct-wang-yi-3626306>> (accessed 16 December 2023); see also Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137–138.

¹⁷⁴ *In the Matter of the South China Sea Arbitration (The Republic of the Philippines v The People's Republic of China) (Award)* 2016 PCA Case No 2013-19, <<https://www.pcacases.com/pcadocs/PH-CN%20-%2020160712%20-%20Award.pdf>> (accessed 17 December 2023) at [716], [757], [814], [992]–[993], [1043], [1109] and [1181]; see also Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137.

¹⁷⁵ "Philippines to 'set aside' South China Sea tribunal ruling to avoid imposing on Beijing", *The Guardian*, 17 December 2016 <<https://www.theguardian.com/world/2016/dec/17/philippines-to-set-aside-south-china-sea-tribunal-ruling-to-avoid-imposing-on-beijing>> (accessed 17 December 2023).

¹⁷⁶ Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137.

the Spratly Islands, coupled with threats of war against the Philippines if the latter enforced the arbitral award.¹⁷⁷ Legalistic methods often exacerbate tensions and trigger aggressive responses that sour inter-state relations. As opposed to legalistic methods, a collaborative approach could encourage greater compliance with the international ROL.

- 56 Given that legalistic approaches might not always succeed in enhancing relations between states, ASEAN's primary focus on developing a consensus might provide a better non-legal alternative, especially for highly contentious issues. As gleaned from the foregoing discussion, this has reduced inter-state conflict especially when states feel respected and sensitive matters can be discussed in a safe, informal space.¹⁷⁸ Ultimately, the ASEAN Way has created a more stable legal order, one where states resort to established processes for the peaceful settlement of disputes, such as negotiation, instead of aggression.
- 57 ASEAN's role in upholding the international ROL seems promising in these historical and contemporaneous examples. However, its effectiveness has not always been consistent due to two reasons.
- 58 First, it is indubitable that ASEAN has some power to hold other states *outside* of the organisation accountable. This was the case for Vietnam, which was not yet an ASEAN member during its invasion of Cambodia. However, this applies to a lesser degree when one of its members' conduct is scrutinised. To illustrate, ASEAN's silence amidst the 2021 Myanmar military coup signifies its failure to promote stability in the region and to ensure those who breach international norms face the consequences.¹⁷⁹ At most, ASEAN has chosen not to acknowledge the military junta of Myanmar as the legitimate government by prohibiting the military junta from attending the ASEAN summit.¹⁸⁰ However, the mere barring of the junta from attending a summit underscores ASEAN's

¹⁷⁷ Le Hu, "Examining ASEAN's effectiveness in managing South China Sea disputes" (2021) 36(1) *The Pacific Review* 119 at 137, citing 学习时报特约评论员, "习近平总书记的成长之路【3】", 中国共产党新闻网, 28 July 2017 <<http://cpc.people.com.cn/n1/2017/0728/c64094-29433685-3.html>> (accessed 16 December 2023) and Manuel Mogato, "Duterte says China's Xi threatened war if Philippines drills for oil", *Reuters*, 19 May 2017 <<https://www.reuters.com/article/us-southchinasea-philippines-china-idUSKCN18F1DJ/>> (accessed 16 December 2023).

¹⁷⁸ Niklas Swanström, "Conflict Management and Negotiations in the South China Sea The ASEAN Way", *Institute for Security & Development Policy*, January 1999 <https://isdp.eu/wp-content/uploads/publications/2001_swanstrom_conflict-management-and-egotiations.pdf> (accessed 16 December 2023) at 113.

¹⁷⁹ Mely Caballero-Anthony, "The ASEAN way and the changing security environment: navigating challenges to informality and centrality" (2022) *International Politics* 1 at 16.

¹⁸⁰ Mely Caballero-Anthony, "The ASEAN way and the changing security environment: navigating challenges to informality and centrality" (2022) *International Politics* 1 at 16.

relatively passive response.¹⁸¹ Thus, the need to respect each state's sovereignty has led to a deadlock in response to Myanmar's infringement of international norms.¹⁸²

- 59 Second, ASEAN's non-confrontational nature prioritises respecting individual state's views over decisive action. ASEAN member states failed to act collectively in the 2012 ASEAN Foreign Ministers' Meeting, due to diverging opinions on China's interference in the South China Sea.¹⁸³ Evidently, non-confrontation often engenders paralysis *within* ASEAN, between its member states. Arguably in these circumstances, the ASEAN Way might fall short in promoting the international ROL given the lack of a fixed and certain set of regional laws which could be applied equally to all states, and the lack of an independent dispute settlement body to actively enforce its rules.
- 60 Thus, the ASEAN Way has served as a double-edged sword for the organisation. It oscillates between paralysing and propelling the organisation towards promoting the international ROL, depending on whether its member states, or external and more powerful actors, are implicated. Ultimately, the ASEAN Way is still viable, to the extent that other parties are willing to engage in long-term discussions. However, where stricter and urgent measures are necessitated, the conservative ASEAN Way might not be sufficient to compel states to act for collective interests.
- 61 This section exemplifies how a multitude of factors coalesce to influence the international political environment. Thus, PIL and non-legal solutions are complementary, and neither can displace the other. This is because each tool is effective in addressing different aspects of inter-state conflict. PIL and non-legal solutions also regulate actors with different levels of bargaining power on the international playing field.

V. Relevance of the international ROL to Singapore

¹⁸¹ Mely Caballero-Anthony, "The ASEAN way and the changing security environment: navigating challenges to informality and centrality" (2022) *International Politics* 1 at 16.

¹⁸² Yusa Djuyandi, Arfin Sudirman & Wawan Budi Darmawan, "Myanmar and the Dilemma of ASEAN Interventions that Do Not Find the Bright Spot" (2022) 15(1) *Baltic Journal of Law & Politics* 618 at 626–627, citing Robin Ramcharan, "ASEAN and Non-interference: A Principle Maintained" (2000) 22(1) *Contemporary Southeast Asia* 60 at 60–88.

¹⁸³ Mely Caballero-Anthony, "The ASEAN way and the changing security environment: navigating challenges to informality and centrality" (2022) *International Politics* 1 at 15–16.

62 Having canvassed the various mechanisms that strengthen the international ROL, Singapore's role in leveraging on these mechanisms to promote a rules-based approach will be expounded on below.

A. *Singapore's attitude towards international law*

63 Singapore adopts a dualist approach towards international treaties and domestic law.¹⁸⁴ This means that treaties are not self-executing and must be expressly incorporated into domestic law by Parliament.¹⁸⁵ Notably, the Court of Appeal in *Yong Vui Kong v Public Prosecutor* acknowledged that domestic law should, as far as possible, be interpreted consistently with Singapore's international legal obligations.¹⁸⁶ However, there are limitations to this. The Singapore Constitution cannot be governed by international norms without qualification.¹⁸⁷ Further, where there is an "irreconcilable conflict" between domestic legislation and international law, the court is obliged to apply the former.¹⁸⁸ This begs the question: is international law and the international ROL truly that important if countries nonetheless prioritise their domestic laws?

B. *Singapore's efforts in upholding the international ROL*

64 Small states like Singapore are often affected the most by power struggles between more powerful states,¹⁸⁹ or remain vulnerable to the latter's interference.¹⁹⁰ To defend the security of small states, it is increasingly important that states abide by rationale, instead of brute force.¹⁹¹

(1) *Hard law approaches*

65 Singapore actively promotes the international ROL through the creation of international agreements in pursuit of a global, common purpose. Singapore has been actively involved in the negotiations and drafting of international agreements, such as the recent

¹⁸⁴ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) at [29].

¹⁸⁵ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) at [28]–[29].

¹⁸⁶ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) at [28]–[30].

¹⁸⁷ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) at [38].

¹⁸⁸ *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 (CA) at [35].

¹⁸⁹ Tom Long, "Small States, Great Power? Gaining Influence Through Intrinsic, Derivative, and Collective Power" (2017) 19(2) *International Studies Review* 185 at 188–189, citing Robert L. Rothstein, *Alliances and Small Powers* (Columbia University Press, 1968) at pp 14–15.

¹⁹⁰ *Singapore Parliamentary Debates, Official Report* (28 February 2022) vol 95 (Dr Vivian Balakrishnan, Minister for Foreign Affairs).

¹⁹¹ Grace Ho, "International rule of law an existential necessity for small states like Singapore: CJ Sundaresh Menon", *The Straits Times*, 15 October 2019 <<https://www.straitstimes.com/singapore/international-rule-of-law-an-existential-necessity-for-small-states-like-singapore-cj>> (accessed 8 December 2023).

Singapore Convention on Mediation,¹⁹² and the Treaty on Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction.¹⁹³ These underscore Singapore's active participation in building a climate of respect, diplomatic negotiations, and reason, rather than resorting to force,¹⁹⁴ thereby adhering to a stable, rules-based international order.

(2) *Soft law approaches*

Notably, Singapore has also signed a Joint Declaration with the International Tribunal for the Law of the Sea to sit in Singapore and hear disputes arising from breaches of the United Nations Convention on the Law of the Sea.¹⁹⁵ This model agreement illustrates Singapore's commitment to provide increased access to independent dispute resolution mechanisms in the region.¹⁹⁶ Singapore's collaboration with international institutions is aligned with the international ROL principles of "legal order" and dispute resolution via independent legal institutions.

(3) *Extra-legal approaches*

66 Singapore's promotion of the international ROL is also reflected in extra-legal approaches, such as Minister Shanmugam's condemnation of Russia's use of military force against Ukraine, which effectively undermined Ukraine's sovereignty.¹⁹⁷ Apart

¹⁹² Cara Wong, "46 countries sign international mediation treaty named after Singapore", *The Straits Times*, 9 August 2019 <<https://www.straitstimes.com/singapore/key-facts-about-the-singapore-convention-on-mediation>> (accessed 8 December 2023).

¹⁹³ "UN states agree on deal to protect high seas after over 15 years of discussion", *The Straits Times*, 5 March 2023 <<https://www.straitstimes.com/world/united-states/un-states-agree-on-deal-to-protect-high-seas-after-over-15-years-of-discussion>> (accessed 9 December 2023).

¹⁹⁴ Grace Ho, "International rule of law an existential necessity for small states like Singapore: CJ Sundaresh Menon", *The Straits Times*, 15 October 2019 <<https://www.straitstimes.com/singapore/international-rule-of-law-an-existential-necessity-for-small-states-like-singapore-cj>> (accessed 8 December 2023).

¹⁹⁵ K Shanmugam SC, Minister for Law, "Statement by Mr K Shanmugam SC, Minister for Law, at the Adoption Ceremony for the Singapore-ITLOS Model Agreement", speech at the Adoption Ceremony for the Singapore-ITLOS Model Agreement (11 June 2020) <<https://www.mlaw.gov.sg/news/speeches/statement-by-mr-k-shanmugam-sc-minister-for-law-at-the-adoption-ceremony-for-the-singapore-itlos-model-agreement/>> (accessed 9 December 2023) at para 1.

¹⁹⁶ K Shanmugam SC, Minister for Law, "Statement by Mr K Shanmugam SC, Minister for Law, at the Adoption Ceremony for the Singapore-ITLOS Model Agreement", speech at the Adoption Ceremony for the Singapore-ITLOS Model Agreement (11 June 2020), <<https://www.mlaw.gov.sg/news/speeches/statement-by-mr-k-shanmugam-sc-minister-for-law-at-the-adoption-ceremony-for-the-singapore-itlos-model-agreement/>> (accessed 9 December 2023) at paras 5 and 11.

¹⁹⁷ "Amid Russia-Ukraine war, small countries like Singapore must keep a sober mind and look beyond headlines: Shanmugam", *Channel News Asia*, 8 March 2023 <<https://www.channelnewsasia.com/singapore/russia-ukraine-singapore-shanmugam-small-countries-regional-cooperation-rivalry-3333796>> (accessed 9 December 2023).

from public condemnation, the government has also contributed to efforts such as imposing sanctions against Russia.¹⁹⁸

- 67 Singapore has also played a vital role in improving ASEAN's relations with China in the South China Sea dispute. It prioritises cooperation and respect in negotiations with China.¹⁹⁹ Thus, Singapore seems to exemplify and perpetuate the ASEAN Way. This is because Singapore's non-confrontational attitude towards the dispute seeks to achieve adherence to the international ROL and stability which takes the form of the code of conduct on the South China Sea. In turn this protects Singapore's own vital economic interests of free navigation and trade.²⁰⁰

Beyond responding to changes in the socio-political climate, Singapore has also constantly participated in knowledge-sharing initiatives. For instance, the Judicial Integrity Initiative seeks to combat corruption in various legal systems and promulgate best practices, and the Singapore Judicial College conducts judicial training workshops in various countries.²⁰¹ These initiatives allow Singapore to share its best practices with the international community and help build a more robust international legal system.

- 68 Ensuring states adhere to rules of conduct instead of acting solely to further national interests is prioritised in Singapore. Thus, it consistently participates in shaping the international legal order through a myriad of legal and non-legal initiatives.

VI. Conclusion

- 69 PIL, comprising both hard law and soft law, plays a vital role in upholding the international ROL by facilitating states' compliance with international obligations, as well as through norm creation. Detractors of this view may cite rampant non-compliance with PIL by various states, arguing that frequent breaches of PIL by various states are illustrative of the inefficacies and limitations of PIL. However, the authors posit that PIL is still valuable insofar as it provides both objective and moral standards

¹⁹⁸ Ministry of Foreign Affairs, "Sanctions and Restrictions Against Russia in Response to its Invasion of Ukraine", press statement (5 March 2022) <<https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2022/03/20220305-sanctions>> (accessed 9 December 2023).

¹⁹⁹ Abigail Ng, "South China Sea issues not easy to resolve, code of conduct negotiations will take time: PM Lee", *Channel News Asia*, 5 March 2024 <<https://www.channelnewsasia.com/singapore/pm-lee-south-china-sea-cptpp-australia-visit-4171671>> (accessed 16 May 2024).

²⁰⁰ Abigail Ng, "South China Sea issues not easy to resolve, code of conduct negotiations will take time: PM Lee", *Channel News Asia*, 5 March 2024 <<https://www.channelnewsasia.com/singapore/pm-lee-south-china-sea-cptpp-australia-visit-4171671>> (accessed 16 May 2024).

²⁰¹ Chief Justice Sundaresh Menon, "The Rule of Law: The Path to Exceptionalism" (2016) 28 SAcLJ 413 at paras 41–42.

by which the international community is able to judge state conduct. It is difficult to imagine an international order without PIL to keep the powerful in check or to guard against the inherent anarchy in the system. Further, extra-legal measures complement PIL by providing a less stringent and more socio-politically sensitive approach.

- 70 Perhaps the numerous conflicts today, such as the Russia-Ukraine war, paint international laws as inadequate and the international ROL as little more than a chimera. However, the international community's response to the Russia-Ukraine war shows that there, at the very least, remains a belief in the value of the international ROL,²⁰² which states should strive towards through legal rules, norms, and extra-legal solutions.

²⁰² Sofia Cavandoli & Gary Wilson, "Distorting Fundamental Norms of International Law to Resurrect the Soviet Union: The International Law Context of Russia's Invasion of Ukraine" (2022) 69 *Netherlands International Law Review* 383 at 405.