

Sri Lanka as a Battleground for International Law

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When elephants fight, the proverb runs, the grass gets trampled. It is true in the case of Sri Lanka, a strategic island in the Indian Ocean, that has historically been a battleground of hegemonic powers. The recent events in Sri Lanka indicate the extent to which Sri Lanka is at the cross roads of competition between rival powers for influence and control over the country at a time of change from a unipolar world to a multipolar world.[†] Within one week in October, 2023, warships of Korea and Japan and a scientific vessel of China visited Sri Lanka, unusual activity for a small state. Though such competition has taken place in the past, the competition is more acute at present as it takes place in the context of a major change to the world order. When such changes take place, it is often the case that the existing world order which

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[†] The change is the focus of study in many works. Eg. John Ikenberry (ed.), *Power, Order and Change in World Politics* (OUP, London, 2014); Charles Kupchan, *No One's World: The West, The Rising Rest and the Coming Global Turn* (OUP, London, 2012); Paul Stephan, *World Crisis and International Law* (CUP, London, 2023).

contains normative values preferred by the hegemonic power expressed through international law is contested by the new hegemonic power which will seek to replace that world order through its own preferred set of normative values. It is evident that the dominance of the United States as the single hegemonic power since the end of the Cold War and the dissolution of the Soviet Union is being challenged by the rise of China as a competitor as well as the rise of smaller regional powers like India, Russia, Brazil, Indonesia and South Africa. The European Union, an association of states which adopts a common foreign and military policy, is a significant power in its own right. There is an evident change from a unipolar world to a multipolar world in which the existing normative values in international law[‡] shaped by the United State, existing hegemon, must necessarily undergo change. The rise of China, in particular, its Belt and Road Initiative reviving its historical relationship in the land and sea areas of Asia and Africa and its relationship with Russia affirmed during the ongoing Ukraine war[§] presages major changes to the world order. during which President Xi of China proclaimed that together with Russia, China will take care of the world order, presages major changes.

Sri Lanka is caught up in the normative conflicts that are taking place in the context of that change. The conflict is ongoing. Its outcome is not clear yet but it is possible to see the nature of that conflict. There is academic relevance in the identification of the nature of the conflict at this stage so that its future outcomes can be more clearly identified and its implications for Sri Lanka be discussed. Such a study obviously is a rejection of the positivist view of international law which presents international law as a set of clear, neutral rules.** International law is seen instead as being

[‡] The previous hegemon was the United Kingdom. The change in hegemonic power did not result in radical changes as the United States shared the same Anglo-Saxon values with the United Kingdom.

[§] Guardian, 20 March 2023.

** The positivist viewpoint favours the hegemon as an examination of values based on justice become irrelevant so that results that are achieved through the practices of the hegemonic power can be foisted on the rest of the world as international law. On the

shaped by power. Its purpose is to enhance hegemonic interests. Such power may be resisted either by a rising power or by a coalition of smaller states seeking just solutions, in which case the outcome of the rule reflects accommodation reached in the context of that contest. If power triumphs, its dictates are reflected as law. Sometimes, an accommodation is arrived at to resolve the conflict in which case the law reflects the balancing point reached. States, particularly weaker states, may be the theatres in which the conflict takes place.^{††} They provide the context in which the conflict is shaped and an accommodation is reached. Where there is a multiplicity of similar conflicts in many states and the same balancing principles are applied in the resolution of the dispute, it becomes clear that the accommodation so reached reflects the law.^{‡‡} The thesis can be applied to Sri Lanka. In the first section, the nature of the conflict is described in a historical context. It is shown that the European contact with Ceylon (Sri Lanka) was based on a one-sided formulation of rules favouring imperialism and that these early attitudes of hegemonic powers have continued to this day making Ceylon (Sri Lanka) a pawn in the hands of hegemonic powers. In the second section, the world order is seen as undergoing a change as a result of the decline in the power of the United States and the simultaneous rise of China. This will result in a contest between two sets of normative values. The contest will affect Sri Lanka. Its effects are already felt. The series of areas in which that contest is reflected in the context of the modern politics of Sri Lanka are identified. In the later sections, each of these conflicts are stated and analysed as to their nature and possible outcomes. The final section consists of a conclusion.

role of custom and power, see Peter Byers, *Custom, Power and the Power of Rules* (OUP, London, 1999).

^{††} This view of the role of power was stated by the present author in Muthucumaraswamy Sornarajah, “Power and Justice in International Law”

^{‡‡} This theory is used to interpret the developments in the international law of foreign investment in Muthucumaraswamy Sornarajah, *Power and Resistance in the International Law of Foreign Investment* (Cambridge University Press, Cambridge, 2017).

Imperial Hegemons and the Imposition of Their Global Orders on Sri Lanka

From 1505, when the Portuguese rule in Ceylon (Sri Lanka) began, until 1948 when the island of Ceylon nominally got independence from the British, the three hegemonic powers of the world ruled Ceylon imposing their will and their preferred order on Ceylon. The right of conquest and the right to trade were the normative bases on which the rule of the Portuguese (1505-1658), the Dutch (1659 – 1796) and the British (1696-1948) was imposed on the people. The Portuguese asserted their dominance ruthlessly without being constrained by niceties about normative constraints. The nature of the age was such that such niceties were not strictly observed in Europe and the need for the exercise of brutality without the provision of any justification was accepted. The Europeans used savagery on their own people. The Europeans burnt alleged witches at stake, killed those who did not belong to the right Church and fought extensive wars against those they considered heathens. They did not have anything by way of a standard of civilization. There was no basis for the much-vaunted moral superiority of the Europeans at any phase of imperialism. The Portuguese exercised ruthless power in Ceylon destroying Buddhist and Hindu temples, converting people to Catholicism and ensuring that they had a monopoly over the spice trade of Ceylon. Though the Spanish Catholic theologians attempted to construct constraints in a manner that justified the Spanish conquest of the Aztecs and the Mayas in earlier times, the Portuguese conquistadors did not see limits to their conquests or their brutalities. This was sheer power without principle.^{§§} By the time the Dutch rule was established in Ceylon, the Europeans had perhaps become sufficiently civilized to be conscious of the fact that the imposition of hegemonic power on peoples of other lands was not consistent with notions of justice.^{***} Rationalization had to be provided for the imposition of imperial rule.

^{§§} Tikiri Abeyasinghe, *Portuguese Rule in Ceylon 1594-1612* (Lake House, Colombo, 1966).

^{***} For the Dutch rule in Ceylon, see Sinnappah Arasaratnam, *Dutch Power in Ceylon* (Holland, 1998).

The Dutch jurist, Hugo Grotius, floated by some as the father of international law,^{†††} formulated justifications for the presence of the Dutch, the people of a small state with a powerful navy, as rulers of many states of South and South East Asia. The rule was established not by the Dutch monarch but the Dutch East India Company. His tract *De Iure Praedae*, in which he defended the right of the Dutch navy to sink and capture a Portuguese merchant vessel, the Santa Katerina, is the foundation of the doctrine of the freedom of the seas (*mare liberum*) which replaced the idea of closed seas (*mare clausum*), maintained by earlier jurists.^{‡‡‡} The freedom of the high seas was central to the establishment and maintenance of Dutch rule in the colonies, begun by a trading company, the Dutch East India Company, which, with its British counterpart, the British East India company, were among the first multinational corporations of the world. Despite the enormous role the two corporations played in conquering and ruling colonies while conducting trade in spices, these corporations had no personality in international law and were not accountable under any system for the plunder and pillage they practised over the peoples of Asia. Multinational corporations still lack personality in modern international law and are still largely unaccountable for their misdeeds. Grotius, now trumpeted as a founder of the natural law tradition within international law that asserted ethical

^{†††} Hugo Grotius, *De Jure Belli Ac Pacis* (1625) is considered the foundational text of European international law. Martine van Ittersum, *Hugo Grotius, Natural Rights Theories and the Rise of Dutch Power in the East Indies 1595–1615*. (Brill,Boston, 2006).

^{‡‡‡} The contemporary British jurist, John Selden defended the theory of closed seas. For the view that wide claims to exclusive economic zones in modern law may be a return of the closed seas, see Wolfgang Friedman, “Selden *Redivivus*: Towards a Partition of the Seas (1971) AJIL 763. Also see for the history of the law, Ram Prakash Anand, *The Law of the Sea in Historical Perspective* (Martinus Nijhoff, Leiden, 2006). Anand believed that the doctrine of the freedom of the seas was recognized among Asian states long before Grotius. They operated a distinct system of international law among themselves. Anand began a new tradition in international law identifying the development of a distinct Asian international law.

foundations, can alternatively be seen as masquerading, like the early Spanish jurists who justified their Spanish conquest of Latin America, as a charlatan making an instrumental use of international law in order to justify the ethically unjustifiable conquest of Asian peoples of Ceylon and Indonesia.

The Dutch signed treaties with Asian rulers. Grotius is again elevated in rectitude for regarding the Asian sovereigns as equal to the European counterparts. But, many of these treaties were signed by the Dutch East India Company which had established central administrations in Batavia in Indonesia and Pulicat in India.^{§§§} They would probably fall under unequal treaties in that the Dutch obtained monopolies over spice trade in exchange for favours to the local ruler who obtained protection of a powerful force against enemies to his rule. Such was the treaty between Rajasinghe II and the Dutch East India Company. Rajasinghe's rise to kingship was through fratricide. He had a need to stabilise his kingship and oust contenders who had Portuguese support. His treaty with the Dutch in 1638, nominally between him and the Dutch King, but signed by two admirals employed by the Dutch East India Company was that the Dutch would attempt the ouster of the Portuguese in exchange for which they would have a monopoly on the spice trade, the right to station troops and retain land that was taken as compensation for their efforts. The Dutch, thus, gained a foothold in the island which they extended into the conquest of the maritime areas of Ceylon. They introduced labour into Ceylon from India for peeling cinnamon and plucking coconuts, very much as the British later did to work their tea plantations. This labour became Sinhalicised and were the foundation of two castes among the Sinhala people.

^{§§§} These treaties are the focus of the book by Alexandrowicz who maintains that they were based on the equality of the Asian sovereigns who made them. Charles Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (OUP, Oxford, 1967).

The Dutch not only affected the social structure of the Sinhalese but left their law, the Roman Dutch Law, as the residual law of the country. They spread Protestant Christianity through the Dutch Reformed Church but did not exclude Buddhism and Hinduism as the Portuguese did. But, more importantly to this article, the imposition of dominance through international law is readily apparent. The exclusion of the French from Trincomalee and the acquisition of a foothold in Batticaloa through the treaty with Rajasinghe II were interventionary. Later activities were in pursuit of the right of conquest that sat uneasily with the so-called Grotian tradition.^{****} The role of the East India Company was a constant in these happenings. The absence of corporate liability shielded the Dutch from any accountability. Ceylon was a strategic point with plenty of resources and became a battlefield for European powers. The battles were fought with arms no doubt but the laws were not silent.^{†††} They backed up the results that were achieved through the force of arms. The much-debated theory of the just war which was found in European religions and stated as a justification for war by Grotius became the foundation for the international law on the use of force stated by hegemonic states for practising interventionary politics. Ceylon provided a laboratory for the working out of these ideas. The justification for Dutch rule in Ceylon was based on a duplicitous rectitude provided by the Grotian theory of the just war while maintaining myths like the brotherhood of man justifying free commerce and the freedom of the seas. Seas are always free to those who have powerful armies and commerce is always free to those who can open markets of other states by force if necessary.

British rule, the consequence of Britannia ruling the waves with its powerful steamships, began with the ousting of the Dutch in 1796.

^{****} The Grotian tradition is founded on morality and is contrasted with the realist tradition that extols power. Claire Cutler, "The 'Grotian Tradition' in International Relations" (1991) 17 *Review of International Studies* 41; Marti Koskenniemi,

^{†††} Vergil's quote that the laws are silent when arms clash (*inter arma, leges silent*) was not accurate. The laws became the purveyors for justification of wars. The formulation of the just

It had a French involvement due to control over Holland by the French during this period. European politics had repercussions in Ceylon. The Dutch were ousted from the maritime provinces. The British were the only colonial power which conquered the Kandyan Kingdom after inspiring dissensions against the King of Kandy by a part of the Kandyan aristocracy. The comprador class among the Ceylonese became firmly established with titles being bestowed on the aristocrats and high caste Sinhalese and Tamils, a practice begun by the Dutch and continued by the British in a more vigorous form. Elite complicity with the imperial powers has a long history. The comprador class in Ceylon continued this practice well after independence ensuring that conditions favourable to the hegemonic powers existed within Sri Lanka.***

The British were more active in enforcing their world values in the colonies. The superiority of British values was inculcated in chosen natives, who usually belonged to the high caste aristocracy among the Sinhalese and Tamils so that they would interpose as arbiters of the British order. The educational policy of the British was geared to the creation of persons in their own mould who would promote the interests of the British Empire. Open trade was mandated. The agriculture of Ceylon was displaced by tea and rubber plantations. As with the Dutch, labour for these plantations were imported from India creating a class of Indian Tamils, many of them deported to India after independence. The imperial hegemonic order of the British depended on freedom of trade and of the high seas. The freedoms ensured the maintenance of British rule on a global scale. One sided treaties were made like the Kandy Convention which was made between Kandyan aristocrats and the British. It can hardly be a Convention as two states were not involved. It was made between the representative of the British Crown and Kandyan Chiefs. It preserved certain rights of the Kandyans. Sri Lanka was given independence in 1948 with a

*** The current entry of the IMF through loans in a Sri Lanka blighted by an economic crisis is an example. The continuing role of patronage is referred to in Shyami Jayasundera, *Uneasy Hegemony: Politics of State Building and the Struggle for Justice in Sri Lanka* (Cambridge University Press, Cambridge, 2023).

democratic constitution and franchise for all citizens, initiating thereby a spiral of conflict and violence.

This section showed how international law in its rudimentary stages was used to influence the course of a small island and its people. Their lives and their economy and social structures were altered to suit the convenience of foreign powers. The European conveyance of moral justifications for the enormity of the subversion of the lives of other peoples to serve their interests through international law characterised that system. It was presented down the ages as a neutral system but it was, in fact, a perfidious instrument employed to further the interests of the powerful. This system has been continued during periods of imperial orders where single hegemonic powers dictated the course of events. That order crumbled after the Second World War with the dissolution of imperialism. But, international law continued to be fashioned by hegemonic powers to suit their interests. As a consequence, international law produced conditions analogous to imperialism.^{§§§§} Its present contest in the global order is the subject of the next section followed by sections which deal with how Sri Lanka is a battlefield for the conflicts that are currently developing.

The Changing World Order

The Second World War ended British imperialism and brought about the Cold War between the United States, which had succeeded Britain as the leader of the democratic world and the Soviet Union, which espoused communism. The Cold War resulted in two distinct systems of international law, with the Soviet Union basing its notion of international law on notions of wars of national liberations justifying the spread of communism through revolutions which the Soviet Union would support, the refusal to recognize the right to property so as to deny compensation for

^{§§§§} Joachen van Berstoff and Philipp Dann (Eds.), *The Battle for International Law: South North Perspectives in the Decolonization Era* (OUP, Oxford, 2019). The chapters indicate how, after decolonization, international law shaped rule that served the interests of developed states to the disadvantage of the newly decolonized states.

expropriation and generally denying the hallmarks of the democratic order advocated by the United States. During this time, the newly independent states of Africa and Asia, along with Latin American states, formed the non-aligned group of nations. They advocated a separate system of norms, principally through the Bandung Conference.**** Their preferred system of economic relations was articulated through the UN Resolutions on the New International Economic Order. During the period of the Cold War (1948 to 1989), Ceylon was ambivalent in its support of the non-aligned group, its right wing governments inclining towards the United States. During the period it was ruled by the Bandaranaiques, it took a non-aligned policy with leanings towards India. Its reflection of this policy was to be found in its efforts to promote the Indian Ocean as a zone of peace and in supporting the different resolutions associated with the New International Economic Order. Bandaranaike nationalized oil companies and tea estates. On the issue of compensation, he took the view of Afro-Asian nations that only adequate compensation and not the standard of prompt, adequate and effective compensation required by Western international law need to be paid. Ceylon did contribute to the formation of a non-aligned international law during the period of the rule of the Bandaranaiques.

It is the two periods after the ending of the Cold War with the dissolution of the Soviet Union in 1989 that are significant to the understanding of Sri Lanka (as Ceylon had now become) as a battlefield of international law. The first period was between 1989 and roughly 2008, the date identified as the year of the “global” economic crisis. The dates are not set in stone for periods drawn for purposes of discussion are not inflexible. The rules that are shaped in a period can continue into the next unless rejected. The second period stretched from 2008 to the present. The principal

**** Luis Eslava, Michael Fakhri and Vasuki Nesiah, *Bandung, Global History and International Law: Critical Pasts and Pending Futures* (Cambridge University Press, Cambridge, 2017). The Sri Lankan Prime Minister played a destructive role trying to state a pro-American point of view. It indicated an early ambivalence in foreign policy.

distinction is that the unipolar world created by US hegemony in the first period comes to be challenged by the rise of China in particular and other industrialising states like India and Russia. These two periods and the manner in which Sri Lanka was affected during these periods are dealt with in the two sub-sections below. The subsections identify the changes and indicate how the changes were reflected in or affected Sri Lanka.

(i) American Hegemony in a Unipolar World (1989-2008)

The fall of the Soviet Union was met with rapturous glee by American political thinkers who presaged a new world in which the twin ideas on which the United States was founded—democracy and the free market—will create a new world order led by the United States.^{††††} During the short period in which the United States was the single hegemon in the world, these twin ideas shaped its vision of world order. This order was achieved through the instrumental use of international law. It is good to indicate the nature of the changes the US made using its hegemonic power.

In the economic sphere, it adopted a neoliberal philosophy that had permeated its domestic economy. It internationalized that philosophy through changes to international law. It liberalized the rules on international trade by constituting the World Trade Organization with an effective system of dispute settlement through setting up a Dispute Settlement Board. It attached a document on intellectual property (TRIPS) to the WTO making what were essentially the rules on intellectual protection in US law applicable universally so that the products of the US could be protected in other countries, its pharmaceutical innovations were granted patents and the films generated by its productive film industry is protected by copyright, again rules of American law universalized through the WTO and the use of trade sanctions.^{††††}

^{††††} Francis Fukuyama, *The End of History and the Last Man* (Penguin, London, 1990). The book was greeted with enthusiasm but its predictions were to soon turn false. Michael Mandelbaum, *The Ideas that Conquered the World : Peace, Democracy and Free Markets* (Public Affairs, New York, 1990) was another book with a short shelf-life.

^{††††} Susan Sell, *Power and Ideas : North South Politics of Intellectual Property* (CUP, Cambridge, 1998).

It ensured that investment treaties were widely made so that the flows of investment were protected through investment treaties that included compulsory arbitration of disputes. Both these measures were intended to benefit the large multinational corporations which were headquartered in the United States. Like in the case of the Dutch and British East India Company, their power stretched into many countries and they were purveyors of power both at home and overseas. Their home state made laws that protected their interests.

On the political front, the United States claimed wide powers of intervention to ensure the spread of democracy, the political system that had proved triumphant over communism. It justified military intervention in Haiti on the ground that it was asserting the right of the democratically elected Prime Minister to return to administration. In Serbia, it supported the humanitarian intervention of the NATO forces to prevent the massacre of Muslims in the region, the intervention leading to the creation of Bosnia and Kosovo. Later, when the Twin Towers were attacked in September 11, 2001, the law on the use of force was extended to include a wide notion of preventive use of force and the use of force to eradicate terrorism. The attack on Afghanistan and later on Iraq both involved wide grounds for the use of force. The hegemonic power used force and rationalised it on broad grounds undermining considerably the carefully built up Charter prohibitions on the use of force. The reformulation of humanitarian intervention in the form of a Responsibility to Protect (R2P) doctrine kept alive that principle which enables the rationalisation of the use of force by the hegemonic power. The law that has been made frenetically during this unipolar period of US hegemony still remains.^{§§§§§} The emergence of a multipolar world will create competing norms but it would take a long time for these norms to become accepted such as to displace the US created norms. The active interest that the United States took in promoting human

^{§§§§§} During the Trump era, the US withdrew from many of its positions such as commitment to the WTO and its support for humanitarian law.

rights and humanitarian law was dented when its own record in dealing with terrorism became tainted.

(ii) The American Unipolar World: The Impact on Sri Lanka

Sri Lanka was swept along with these changes, adopting them quite compliantly. President Jayawardene willingly adopted neoliberal economic policies. He was known to be pro-American. He adopted neoliberal economic policies well before they became popular. His strategy to attract foreign investment was manifested in the form of the Greater Colombo Economic Zone, a free trade zone to encourage foreign investors to enter and establish in the zone. The Board of Investment was set up to encourage the flow of foreign investment. Several investment treaties were made. Sri Lanka also faced the adverse consequences of many arbitrations brought on the basis of these treaties. It had the dubious distinction of being the first country against which an arbitration was brought on the basis of a jurisdictional provision in an investment treaty.^{*****} Thereafter, it faced several arbitrations involving huge claims exceeding several millions of dollars. The most dramatic of these were the claims brought about by hedging transactions made with foreign banks by the Ceylon Petroleum Corporation. Sri Lanka's foreign investment policies have followed the policies advocated by the World Bank and the International Monetary Fund, institutions dominated by the US.⁺⁺⁺⁺⁺ Successive economic difficulties ensured that Sri Lanka sought assistance from the IMF which meant that the conditionalities imposed made Sri Lanka firmly tied to the adoption of neoliberal policies. The dominance of Jayawardene and his nephew, Ranil Wickremasinghe, both right wing leaders, ensured that the economy was guided by neoliberalism. The interludes of another combination, Sirimavo Bandaranaike and her daughter,

^{*****} In 1991, it was held in *Asian Agricultural Products Ltd v Sri Lanka* (1991) ICSID Rpts. 1 that a foreign investor could unilaterally bring an arbitration against a state on the basis of an appropriately worded dispute resolution clause in an investment treaty. That decision triggered off over 1200 arbitrations based on investment treaties.

⁺⁺⁺⁺⁺ The triumvirate (the US, the World Bank and the IMF) are referred to as the Washington Consensus advocating the adoption of neoliberal policies.

Chandrika Kumaranatunga who had left leanings, did not do much to change the picture. Another family combination, the Rajapakses had no firm economic policies that could alter this course that had been set. Sri Lanka was wedded to neoliberalism in its economic approach. There were no serious efforts made to shake off these trends. Membership of the WTO, the enactment of strong intellectual property laws, the making of investment treaties and free trade agreements ensured that during the era of the unipolar world, Sri Lanka was integrated into the world economy. On the economic front, Sri Lanka had firmly implanted itself in the US camp though a later tilt towards China to secure loans and promote infrastructure projects could be seen. Sri Lanka was firmly integrated with global capitalism during this period and despite its interlude with China, has remained so. *****

As in other states which adopted neoliberal policies,^{§§§§§§} the gap between the rich and the poor has grown within Sri Lanka, resulting in populist politics through which the rich are able to manipulate politics and mask the inequalities through the rousing of ethnic and religious passions or narrow nationalistic prejudices. The rise of such inequalities will throw up human rights issues when the poor realise the political charade that has taken place. Conflicts between classes and repression of dissent would intensify. Sri Lanka will be a country in which many issues of international human rights law are played out.

Sri Lanka was in the throes of a protracted civil war during the unipolar period. The war concerned the assertion of the right to secession by the Tamil minority which regarded the NorthEast of the island as its traditional homeland. The exercise of the right to

***** Sunil Bastian, "The International Dimension of Sri Lankan State Formation" *Sri Lanka Brief* 08.02.2023. In 2022, Sri Lanka refused a Millenium Grant of 500 Million Dollars on grounds that its sovereignty would be compromised but it had to get an IMF loan of 2.9 billion dollars in 2023.

§§§§§§ The rising inequalities resulting from neoliberalism has been widely studied. See, e.g, Thomas Pikety, *Capital in the Twenty First Century* (Harvard University Press, Cambridge, Mass., 2014);

secession by an ethnic minority is a continuing issue in international law. The claim to secession by the Tamils is an instance in the development of the international law on the issue. The war was preceded by state discrimination of the Tamil minority and government inspired violence against this community.***** The war involved gross violations of humanitarian law by both sides. It ended in 2009 with the defeat of the Liberation Tigers of Tamil Eelam. During the final days, several thousand civilians were killed allegedly by army action. The episode of the civil war raises many issues relating to international law that will hang around for a long time. It has made Sri Lanka a focus of attention of the United Nations Human Rights Council which reviews the human rights record of Sri Lanka annually. The accountability of political leaders and of the armed forces for violations of humanitarian law, the continued detention of alleged terrorists under the draconian Prevention of Terrorism Act, the concern of the United Nations Human Rights Council with incidents of the war as well as those after it and sanctions imposed on individuals allegedly involved in atrocities during the war are issues that will continue to be discussed in terms of international law for a long time. Though the civil war ended, the ethnic problem still remains unresolved with a large section of the armed forces being stationed in the North and East of the island. Militarisation, consequent on the civil war, and the climate of triumphalism making the political and military leaders who won the war as heroes means that the state has to take the view that no violations of human rights took place in Sri Lanka, a stance the international community refuses to believe. Human rights will remain an area of conflict which will affect Sri Lanka both internally and externally.

***** The Sinhala Only Act was passed in 1956. The first riots against Tamils took place in 1958. The events are recorded in Tarzie Vittachi, *Emergency 58* (Andre Deutsch, London, 1958); The riots in July 1983 involved the complicity of government politicians and the police. The Jaffna Public Library was burnt down on 1 June 1981 with state ministers allegedly in attendance.

The extent to which internal self-determination may provide solutions to this problem has been discussed.^{††††††} Sri Lanka, along with many other states in which there are secessionist movements, is an experiment in the development of the principle of self-determination as embracing a right to secession in circumstances of gross violations of the right to equality of minority peoples.

Interventionary politics is a feature of Sri Lanka. During this period, India intervened in the civil war in Sri Lanka, first by dropping food packages (“the parippu drop”) from air to the besieged Tamil forces^{††††††} and then, through direct presence of the Indian Peace Keeping Force (IPKF).^{§§§§§§} The Indo-Sri Lanka Agreement (29 July, 1987) permitted the stationing of the IPKF and mandated devolution of power to the Tamils. Wide formulations of justification for military intervention pose threats to small states.

This has been but a cursory look at the many issues of international law that have arisen during the unipolar order. The engagement in the suppression of terrorism and the official rhetoric that was generated in the US and the West aided the Sri Lankan state in its own violation of human rights. While the US Supreme Court stood against excesses of the American state, there were no similar restraints in Sri Lanka. While the American led unipolar world existed, there was a move to maintain strong human rights standards.^{*****} It stood as a restraint but that restraint was dimmed during the Bush era which gave prominence

^{††††††} Kalana Senaratne, *Internal Self-Determination: History, Theory and Practice* (CUP, Cambridge, 2021) has a chapter on Sri Lanka. The Indo-Sri Lanka Accord in 1987 resulted in the enactment of the 13th Amendment which gave limited self-government to the Provinces of Sri Lanka but it has not been fully implemented. The federal solution is rejected by the majority on the ground that it divides the unitary state.

^{††††††} “That Infamous Parippu Drop” Sunday Times, 6 February 2023. Sri Lanka took solace in the tacit support of China and Pakistan.

^{§§§§§§} India did not justify the intervention on humanitarian grounds. The IPKF was sent with the consent of the Sri Lankan government.

^{*****} During the time of President Trump, the US withdrew from the UNHRC.

to the “war” against terrorism. The Sri Lankan government acted under the cover it provided in desecrating the human rights of civilians. Trump accentuated the decline of concern with human rights, which became subverted by neoliberal projects which gave prominence to the right to property. But, there is now a return to concern with human rights in American foreign policy.

Human rights will be an issue for Sri Lanka. The events leading to the civil war and the issues generated such as the non-accountability for missing persons surrendered to the forces by relatives, the arrest of persons under the Prevention of Terrorism Act⁺⁺⁺⁺⁺ and the continuing occupation of lands of Tamil people will continue to attract attention of the United Nations Human Rights Council.⁺⁺⁺⁺⁺ The problem is no longer a problem of the minorities as recent governments have used forceful means of dealing with protests, principally the Aragalaya movement. Its tendency to use methods of suppression of human rights to deal with dissent will keep Sri Lanka in the focus of the international community. The internal battles that take place will be reflected at the international sphere with increasing appeals to the international community to concern itself with issues of suppression of dissent by the state. This may drive Sri Lanka into the hands of non-democratic powers like China which stress sovereignty and regard violations of human rights as a matter that fall within domestic jurisdiction and hence, outside the purview of the United Nations. But, it would appear that the dissidents who are young leftists, are more comfortable with the idea that they should have the protection of the human rights bodies of the United Nations and oversight by human rights NGOs. Concern has also been expressed by the UN Human Rights Council with the current economic crisis and its impact on newer human rights like

⁺⁺⁺⁺⁺ Particularly disconcerting is the fact that the much condemned Prevention of Terrorism Act is to be replaced by the Anti-Terrorism Bill, gazetted on 27th March 2023, which contains harsh provisions aimed at suppressing dissent.

⁺⁺⁺⁺⁺ Tamil Venthana Ananthavinayagam, *Sri Lanka, Human Rights and the United Nations: A Scrutiny into the International Human Rights Engagement with a Third World State* (Springer, Singapore, 2019).

the right to food. Human rights law makes Sri Lanka a battlefield for the clash between many competing ideas in international law.

The Coming Multipolar World? Its Impact On Sri Lanka

From Portuguese rule to present times, Sri Lanka has seen a succession of changing order which, with the exception of the period of the Cold War (1948-1989), involved orders that were dominated by single hegemonic states. The first three orders were imperial orders led by the Portuguese, the Dutch and the British. After independence, there was the Cold War, and then the unipolar order led by the United States. A theory is that overstretch of power leads to decline of hegemonic states. Many writers in international relations see a decline in the power of the United States even as there is a rise in the power of other states, principally China but also, perhaps to a lesser extent, India, Russia and Brazil. This supposes the world becoming multipolar or polycentric. It may yet be too early to see the dismantling of the American order. The declining power will seek to forestall the rise of the new power. The theory of the Thucydides trap^{§§§§§§§§} that the old hegemon will go to war with the rising power which seeks to replace it may not eventuate. A war between the US and China that the theory predicts may not come about as its consequences would be too severe event to contemplate. The theory is not taken seriously. It will still take decades for China to equal the military power of the United States though its economy may overtake that of the United States and, on this too there are doubts, ^{*****} it is not certain that

^{§§§§§§§§} Graham Allison, “The Thucydides Trap: Are the US and China Headed for War” *The Atlantic*, 24 September, 2015. The theory that a war is inevitable where an existing hegemon is threatened by the rise of a new hegemon was formulated by the Greek historian, Thucydides to explain the Peloponnesian war which resulted when the rise of Athens was seen as a threat by Sparta.

^{*****} The prediction that China’s economy will double in size by 2035 is now doubted due to a greying and decreasing population and tariff policies denying markets in the West to Chinese goods. Mismanagement of the Covid pandemic also shook faith in the Chinese economy. Increasing defaults on Chinese loans constitute a problem. The much-heralded Belt Road Initiative created more problems than benefits for China. Simon Cox, “Will

China will become a rival military power any time soon. It will not be fought with arms but there will be a contest of normative values and attempts to create spheres of influence and increase these spheres. International law will feature strongly in this contest. There is already visible a struggle for influence in smaller countries like Sri Lanka and an effort by the rising hegemon to influence the smaller states to accept its normative values. The regional hegemon, India, will also play a role in the formation of normative values in Sri Lanka. Sri Lanka will become a major battleground once more because of its strategic location. The next few sections identify some of the clashes of normative values of the different hegemonic states of the future multipolar world and how this clash will affect Sri Lanka. Before that, the potential hallmarks of a Chinese normative order indicated in China's history, culture and present practice is stated briefly. Then, the possible normative clashes and their potential to affect Sri Lanka will be considered.

(i) Constructing the Chinese World Order.

The Chinese view extolled the virtues of China and its people as belonging to the Middle Kingdom, the centre of the world. Like many other people, the Chinese looked down upon other people. Their contact with the world outside was limited. Sea faring was rare. Under Admiral Cheng Ho, naval expeditions visited Asia and Africa but they ended with him. After the Opium War in 1848, China was opened to trade, particularly opium trade which financed British administration in India. The British and Western domination that was imposed by the treaties following the Opium War was regarded as a period of humiliation by the Chinese people. Within China, harmony was stressed between people over conflict. Harmony was a strong part of Confucian ethics. After the communist revolution, many of these attitudes were carried over despite the fact that there was a new ideology that underlay the governance of the country. Initially, communism was strictly practised. No right to property was recognized. Foreign property was nationalized without compensation.

China's Economy Ever Overtake America's in Size?" *The Economist: The World Ahead* 2023.

But, China began a new chapter when President Deng Xiao Peng announced the open door policy in 1978 permitting entry of foreign investment. The rise of China thereafter was spectacular. It is now an economic power that is expected to rival the United States. During its rise, China was rather dormant following the advice of President Deng to hide China's power and bide its time. A confident China after its rise has relinquished that policy under President Xi Jin Ping who has become more assertive in articulating a policy that will ensure that China will play a more dominant role in international affairs and seek to influence global events. It is this more adventurous policy that will present a challenge to the existing world order. The features of this challenge need to be stated so that the normative challenges to the existing liberal order maintained by the United States could be assessed.

(a) The Economic Front

On the economic front, China has not asserted any normative change. It has been quite content with the process of liberal flows of assets as it has benefitted from inward flows of foreign investment as well as increasing outward flows as it gathered economic strength. It has also benefitted from the liberal trade norms of the WTO which it joined after being forced to make changes to its domestic laws on intellectual property. It has made investment treaties. In its older treaties, it confined dispute settlement only to the amount of compensation that is payable for expropriation. But, its newer treaty practice indicates that this restriction is no longer accepted. The change is simply due to the fact that China, being now an exporter of investment abroad, seeks the same standards of protection that the Western capital exporting states sought. In the area of trade, it has resorted to the dispute settlement board of the WTO often to the chagrin of the US so much so that the Trump administration effectively truncated

China has made 145 investment treaties. Its early treaties have been weak and consequently, China has been able to win cases brought against it on jurisdictional grounds. Eg. *AsiaPhos v China* (ICSID Award, 20 February 2023).

Nine cases have been brought against China. Fifteen cases have been brought by Chinese companies against other states. <https://investmentpolicy.unctad.org/investment-dispute-settlement/country/42/china/investor> (Visited on 4 March 2023).

the WTO. It joined with the developing countries in the Doha Round of the WTO to bring about changes to the TRIPS regime ensuring that there could be cheaper drugs available to developing countries through parallel imports of cloned drugs. The thrust that China has made through its Belt Road Initiative has both economic, strategic and legal dimensions. It is dealt with in a separate section. State planning within China and openness at the global level seems to be the Chinese strategy. It will go along with the global rules inspired by the West as it promises access to markets and entry for investments. But, this is likely to be shut off for China through sanctions and national security claims.

On the political front, China has made many claims that involve normative assumptions that clash with Western norms.. The claim to the South China Sea which cordons off large area of the seas that are adjacent to several South East Asian States and does indirectly connect the Indian and Pacific Oceans require explanations that fall outside the accepted rules of international law on freedom of navigation. China also has territorial claims against India on a border fixed during the British rule in India. The Chinese arguments relating to unequal treaties are employed in challenging the border claims of India. The dispute between Japan relating to the Senkaku and Diyayou Islands also involve novel claims. China's claims to Tibet and to Taiwan raise issues regarding self-determination and title to territory. China regards these disputes as affecting the core interests of China which would be protected by the use of force if necessary. To use force in these situations, China will have to partake in some creative argument like the use of preventive force. We have not any indication of Chinese practice apart from the use of force on the Indian border. Sri Lanka will be implicated in the formation of the preferred norms articulated by China. How this clash between the new Chinese norms and the existing norms supported by the US and the West including the European Union which generally supports the US position will affect Sri Lanka are the focus of the sections that follow.

Normative Conflicts in The Changing World Order and Sri Lanka

This section analyses some of the norm conflicts that are taking place as the world order changes from a unipolar world dominated by the United States as the single hegemon and the diffusion of power that takes place as a result, principally of China, but also other states like India which is the dominant regional power in South Asia, as well as other states that are gathering strength, Russia, Brazil, Indonesia and South Africa. The power of China will come to be forestalled by alliance such as the QUAD, the quadrilateral alliance between the US, Japan, Australia and India which is floated as a cooperative structure but is designed as a security measure against China. Internal issues within China such as the Covid policy, an aging population and minority problems may hinder China's growth. But, despite these possible set-backs China's ascendancy cannot be stopped and its impact on the world order will be substantial. This change will affect Sri Lanka in many ways. These are studied in the sections that follow.

(i) Democratic Constitutionalism v Authoritarianism: The Choice for Sri Lanka.

China will assertively present its model of political governance to the rest of the world. It has already commenced doing so. The change of policy is attributed to President Xi Jin Peng who became President in November 2012. At the 19th People's Congress, President Xi suggested that other states could learn from China's model particularly in the context of increasing disenchantment with liberal democracy. With the global economic crisis of 2008 and Trump's antics as President of the United States, the contrast between the economic rise of China under its system of governance which had lifted some 800 million people out of poverty

Elizabeth Economy, *The World According to China* (Polity Press, Cambridge, 2021); Elizabeth Economy, "China's Assertive Authoritarianism" *Democracy* (2022) No.62; <https://democracyjournal.org/magazine/62-special-issue/chinas-assertive-authoritarianism/> (Visited on 5 March 2023).

and the American system that was in economic decline with its society riven with divisions, became marked. China's belief that its model will appeal to developing countries was well founded.

The liberal world order that the United States created as a single hegemon emphasised the spread of democracy as one of its tenets. It translated that preference into a doctrine of international law in many ways. It argued that there was a right to intervene to protect democracy and in fact, justified its interference in Haiti to restore the democratically elected leader on these grounds. The intervention in Iraq to depose Saddam Hussein had the restoration of democracy as a justification though this did not eventuate. Scholarly arguments were made that international law mandated democratic governance***** It was not only the US that acted to support democracy. ECOWAS moved troops to the Gambian border in an operation named "an Operation Restore Democracy" to issue an ultimatum to a President who had been defeated at the polls requiring him to relinquish office. The elected leader was installed after a brief military intervention. There is considerable support for the view that democracy being a part of self-determination, is a rule of international law.

China seeks to displace this view on the ground that fast development, which it achieved, would not have been possible in the face of continuous political dissent which democracy asserts. The economic progress in China was possible because of its single-minded pursuit by the Communist Party and the authoritarian methods it employed. Advocating similar methods is seen by China as necessary for the betterment of the people of the underdeveloped world. There is considerable acceptance of that view. Particularly at a time when democracy has been subverted in what have been regarded as its traditional homes- Trump in the United States and Boris Johnson in the UK-, there is an attraction that the Chinese method of governance provides. Pushing its

***** Gregory Fox and Brad Roth (Eds.) *Democracy and International Law* (Cambridge University Press, London, 2008). Tom Ginsburg, *Democracies and International Law* (Cambridge University Press, London, 2021).

method of governance to other states would be to the advantage of China. States adopting it will favour China in the taking of international stances and vote in favour of China at international institutions, thereby enhancing the influence of China. The world will be faced with an alternative model with a distinctly attractive features in that poverty eradication is a proven fact that resulted from its adoption. The change from a unipolar world to a multipolar world brings with it a choice of different constitutional systems.

Sri Lanka is faced with a choice between these two models. Democracy was bequeathed it by the British when they granted independence to Ceylon. But, later, a right-wing leader, JR Jayawardene, professing admiration for Lee Kwan Yew of Singapore, changed the Westminster Parliamentary system which operated under the Soulbury Constitution drafted at the time of independence for a presidential system. The clear object of this change was to introduce authoritarianism into Sri Lanka, Jayawardene seeking to imitate the authoritarian model that Lee Kwan Yew had used to lift Singapore from a backwater into a prosperous city-state. Lee Kwan Yew resisted the possible onset of communism in Singapore in his early career. But, later, he became an advisor to China because China admired his approach to politics. Jayawardene want to follow the authoritarian constitutionalism that Lee Kwan Yew had used. China had nothing to do with this choice as it had not emerged as a power or as an exemplar to other states at that time.

But the fact that a presidential system had been introduced enabled two later presidents to show a distinct preference for courting the Chinese. It is unclear whether they had a clear understanding of the model or whether they made a conscious choice of the model. There is evidence that the Chinese did make presentations of their political model to the politicians who were in the party of the two presidents. Even then, it is unclear whether the tilt towards China was made for the good of the country or for the pursuit of the narrow aims of the two presidents, Mahinda Rajapakse and Gothabaya Rajapakse. It is unfortunate for China

that the tilt towards China was made by these two individuals, one of whom had to leave Sri Lanka after political demonstrations against him and the other lost his political support. Both are alleged to have profited from massive corruption. Courting China was also a opportunistic choice for them as they had war crimes charges and charges of violations of human rights. China could be seen as a possible avenue of protection. Their successor, President Ranil Wickremesinghe, is a nephew of President Jayawardene. His leanings would be towards the West. The Sri Lankan people traditionally have favoured democracy. It would be difficult to wean them from a preference towards democracy. It is unlikely that he would continue with the tilt towards China. There is little evidence that China has actively courted a favourable position from Sri Lanka rather it is that the Rajapakses believed that China would provide them with cover. Nevertheless, the fact is that the alternative Chinese model has made its appearance on the Sri Lankan political scene and remains as an alternative choice in the future.

(ii) Human Rights Considerations

The liberal model emphasizes fidelity to human rights. It is an aspect of America foreign policy to ensure the protection of human rights. Its modern origins are in the work of Eleanor Roosevelt at the United Nations and its later developments are greatly influenced by American espousal of human rights in its foreign policy. This long concern with human rights promotion was dented during the four years of the Trump presidency when Trump withdrew from participation in the UN Human Rights Council. But, this interlude has ended under Biden. There has been a return in US policy of concern for human rights. The concern is also reflected in the area of international humanitarian law. The US has pursued a policy of imposing sanctions on those who violate provisions of humanitarian laws. The US has imposed sanctions against the officer leading the Sri Lankan army.^{††††††††††} China has

^{††††††††††} This was done during the Trump administration which was not very concerned with human rights or humanitarian law. The assumption made is that it was a way of showing displeasure with the Sri Lankan government's courting of China.

not participated fully in the human rights campaigns. Its espousal of domestic sovereignty to screen its own domestic record on human rights has been consistent. With Xinjiang, Tibet and now, Hong Kong, China has many theatres in which violations of human rights occur. China's defence of territorial sovereignty is generally used as an example by other violators of human rights. Again, there is a contest between norms when the change to a multipolar world occurs. There is a strong fidelity to human rights presented by the liberal order (though the United States is often a violator on its own domestic front of human rights violations particularly of its black people) and the Chinese lack of concern for human rights especially when it suppresses dissent in Xinjiang, Tibet and Hong Kong.

Sri Lanka has had to face condemnation for violations of human rights in the context of the suppression of the rights of the Tamil and Muslim minorities. Charges of war crimes and genocide have been made against those who led the armed forces during the civil war and the political leaders as well. The two Presidents, Mahinda and Gotabhaya Rajapakse have been named in UN reports as liable for war crimes in UN Reports. The Sri Lankan government has routinely denied liability though there is evidence in the reports of the Sri Lankan government commissions of such violations. China's attitude to human rights violations as denying need for international concern on the ground that they fall within the domestic jurisdiction of states has offered comfort to successive Sri Lankan governments. They have routinely resorted to sovereignty-based arguments to deflect criticisms of human rights violations at the United Nations Human Rights Council.***** The Chinese position is that it sees interference on human rights as a means of the West putting pressure on countries (while it has its own human

***** A resolution titled 'Promoting reconciliation, accountability and human rights in Sri Lanka', which was tabled at the 51st Regular Session of the United Nations Human Rights Council was adopted with majority votes on the 6th of October 2022. China and Pakistan voted against its adoption. 20 countries including the US voted for it.

rights violations).§§§§§§§§§§ The Chinese approach is stated in a White Paper issued in November 1991 as follows:*****

Over a long period in the UN activities in the human rights field, China has firmly opposed to any country making use of the issue of human rights to sell its own values, ideology, political standards and mode of development, and to any country interfering in the internal affairs of other countries on the pretext of human rights, the internal affairs of developing countries in particular, and so hurting the sovereignty and dignity of many developing countries. Together with other developing countries, China has waged a resolute struggle against all such acts of interference, and upheld justice by speaking out from a sense of fairness. China has always maintained that human rights are essentially matters within the domestic jurisdiction of a country. Respect for each country's sovereignty and non-interference in internal affairs are universally recognized principles of international law, which are applicable to all fields of international relations, and of course applicable to the field of human rights as well.”

It reads very much like the statements that Sri Lanka makes to the Human Rights Council annually in defending itself from alleged violations of human rights.

§§§§§§§§§§ The Chinese White Paper on Human Rights stated: “The argument that principle of non interference in internal affairs does not apply to the issue of human rights is, in essence, a demand that sovereign states give up their state sovereignty in the field of human rights, a demand that is contrary to international law. Using human rights issue for the political purpose of imposing the ideology of one country on another is no longer a question of human rights, but manifestation of power politics in the form of interference in the internal affairs of other countries. Such abnormal practice in the international human rights activities must be eliminated.....” The White Paper is at section X. It appears at the website:

<http://china.org.cn/e-white/7/index.htm>

***** Information Office of the State Council of the People's Republic of China, November 1991, Beijing

<http://www.china.org.cn/e-white/7/index.htm>

The Belt Road Initiative

President Xi Jinping's flagship project through which he wishes to push China onto the global stage is the revival of the historical silk route and the maritime belt once traversed by the Chinese Admiral Chen Ho. Elected to an unprecedented third term in office, President Xi declared that China is on an "irreversible path" to dominate the world stage.^{††††††††††} The Silk Route extends landwards into Europe. The maritime belt goes through South East Asia into the Indian Ocean touching Sri Lanka into coastal Africa. The BRI project is seen as a means by which China extends its power and influence into countries through which the silk route and the maritime route ran. This extends overland from Xian in China across Asia into Europe. The maritime belt goes into the South China Sea, the Indian Ocean and touches many African states. The Indian Ocean becomes a scene of Chinese activity. The activity generated by the BRI has been significant. It has had positive and negative effects involving on the positive side, the building of many infrastructure projects such as ports and roads, the building of railways and the linking of transport through massive highways that China has experience with in its own country. On the negative side are massive debts that have resulted in the states touched by the BRI and the social disruption that the projects have created as well as the political divisions and instability that has been generated. The ensuing discussion concentrates on developments in Sri Lanka.

Sri Lanka is relevant as an important staging point in the Indian Ocean. In earlier history, Cheng Ho, who gives the historical relevance to the project, visited Ceylon. The Galle Stone, in the Colombo Museum, in which the inscription is in Tamil, Arabic and Mandarin, is evidence of his visit. He also effected a regime change capturing the King of the region, Alagiyaawanna and taking him to Beijing. He was later returned but was assassinated within days and replaced by Parakramabahu, who was still a boy. History does

^{††††††††††} Amy Hawkins, "After Years of Isolation, China Seeks to Dominate the World Stage" *Guardian* 14 March 2023.

not indicate that Chinese presence in Asia was peaceful as is made out. Though China presents itself as a peaceful nation, it has announced that it will use force to preserve its core interests, like any big power. The BRI is an area of its interest. China has recently stated that it will, along with Russia, protect the international order.##### China must be taken seriously as a world power. Its announced intention of operating in the area of BRI must be taken as an indication of its belief that it is the natural region for China to exercise power. This has consequences for Sri Lanka and these consequences in the context of international law are indicated in the paragraphs that follow.

(i) Economic Considerations

Chinese penetration of the economy of Sri Lanka has been swiftly achieved. This was done largely while the Rajapakses were in power. During the regime of Mahinda Rajapakse, China was assiduously courted by Mahinda Rajapakse. This may be to ward off the human rights concerns that attended him as well as the armed forces when it came to the fighting of the civil war which had ended in 2009. Continuous concern with the manner in which the Rajapakse administration conducted the hostilities was maintained at the United Nations Human Rights Council. The Chinese view that such matters fell within the domestic jurisdiction of the state greatly aided the Rajapakse government as an argument to use. The tilt towards China may have been due to these considerations. Once the Sri Lankan government showed that it was hospitable, it was easy to establish relationships. The new economic might of China was employed to achieve this. The Chinese state-owned enterprises entered Sri Lanka to construct many projects.

A common feature of these projects, apart from the building of the national highways, was that they were connected with the advancement of the interests of the Rajapakse family's political aims. Some were megalomaniac projects designed to promote a

Guardian, 20 March 2023.

personality cult around Mahinda Rajapakse. The Nelun Pokuna Mahinda Rajapakse Theatre, a replica of a structure built by Parakrama Bahu in Polonnaruwa, the Mattarla Rajapaksa International airport, branded the most unused airport in the world, the Mahinda Rajapaksa International Cricket Stadium at Sooriyawewa and the other projects serving the area in which the Rajapaksa family had political support were built with Chinese loans by Chinese SOEs. These resulted in great debt to Sri Lanka. Though much has been written about the debt trap that China is supposed to have created in the BRI region, the debt that was created in Sri Lanka did not exceed more than 10% of the debt that Sri Lanka had run up resulting in economic crisis in the country in 2023.

The repayment of the debts will be a problem for Sri Lanka. It has been agreed due to the intervention of the IMF that the debts will be restructured. This may be the conventional way of dealing with economic crises but increasingly, there are calls for change in international law. They suggest an alternative which does not approve the idea that some repayment has to be made but requires each debt to be analysed as to its utility and legal validity. The doctrine of an odious debt in international law regards certain sovereign debts that visibly could not have had a public interest should be regarded as legally invalid. The loans given by the Chinese state owned banks for trophy projects that were designed to please a narcissistic President and brought no public benefit qualify as odious debts. Alternately, they were debts that could not have been approved by a discerning public servant who was committed to ensuring that the debts incurred by the state serve the public interest. They are ultra vires transactions and have no validity in law. The UNCTAD principle on the Restructuring of Sovereign Debts contain alternative principles for the evaluation of the debts. The Sri Lankan debts are not all alike. The IMF view is that there must be some payment made on debts favouring a view that promotes the interests of rich lenders. It ensures transfer of assets to the rich states from the poor even where the lender may have been at fault in granting the loan. Sri Lanka has preferred to follow the IMF way. China has set up a development bank and

other aid facilities. Sri Lanka did not use them. China was a latecomer to agree to restructuring its loans, thereby delaying IMF approval of its own loan. Here, there is visible a incipient conflict of solutions being played out.

(ii) Security Issues.

Chinese presence in Sri Lanka has presented security issues to India and the United States so that Sri Lanka and the seas surrounding it have become scenes of conflict between large powers. Sri Lanka had played a leading role in the past in seeking the declaration of the Indian Ocean as a peace zone^{§§§§§§§§§§} but has now permitted access by China into its ports at Hambantota and Colombo converting it to a zone of potential conflict. Chinese submarines visited the Colombo Harbour and the visit of a research ship to the Hambantota Port caused consternation in India. Since the non-payment of loans led to the grant of 99 year leases on parts of the Hambantota Port and the Colombo Port City, Chinese presence on the island is assured. Reaction to this from India and other powers is bound to make the country a scene of contest. Sri Lankan sovereignty will become heavily compromised as a result. The existing alliance between the US, Japan, Australia and India, the Quad powers, is designed to counter the presence of China in the Indo-Pacific. The contest will implicate conflicts between several normative propositions. The freedom of transit will clash with Chinese claims to exclusivity in the South China Seas, transit through which is necessary to reach the Indian Ocean and Colombo. The extensive claims Sri Lanka makes to the surrounding seas may increasingly come to be contested.

Sri Lanka must define her seas with great precision, demarcate its exclusive economic zone and its continental shelf. It must acquire the capacity to ensure that these seas are protected. The coastal fisheries as well as fisheries beyond the territorial sea within the exclusive zone must be preserved. The threat of pollution of these areas by foreign vessels, like in the recent Xpress Pearl disaster,

^{§§§§§§§§§§} Muthucumaraswamy Sornarajah, “The Framework for the Indian Ocean as a Zone of Peace” (1971) 12 *Indian Journal of International Law* 89.h

must be subject to clear laws. If it does occur, there must be adequate laws to ensure that local courts can order sufficient compensation to the affected people. The Xpress Pearl situation shows the inadequacy of mechanism to deal with such situations. It is necessary to ensure that sufficient domestic machinery exists to deal with such problems.

Conclusion

This incomplete paper is on a large subject. There has been a highlighting of issues which need to be researched further. For Sri Lanka, as for other small states, international law provides the ultimate refuge but in times of change when the normative structures undergo changes due to transformation of power balances, international law itself becomes subject to uncertainty as its norms become unsettled due to challenges mounted by the preferences of rising powers. Domestic reactions also become relevant. The choices that domestic leaders make will have repercussions both on the country committing it to its choice and to international law as it may evidence practice in a particular area with along with similar practice by other states shape rules of international law. During the Cold War, it was evident that there were two systems of international law and with the advent of the non-aligned movement with its call for an NIEO and other normative claims, there were three different systems of international law. The West taught only its own system in its universities and wanted the rest to believe that there was only one system. In modern times, it is clear that there are several systems of international law emerging. Small states are caught between these systems and have to steer a course for themselves between these systems. Sri Lanka must make astute choices knowing that there are these different systems. A start must be made to ensure that there is a sufficient understanding on which wise choices could be based.