The effectiveness of legal and non-legal measures in promoting peace and resolving conflicts between nation states

“Order without freedom, even if sustained by momentary exaltation, eventually creates its own counterpoise; yet freedom cannot be secured or sustained without a framework of order to keep the peace.” — Henry Kissinger

World order is described as the balance of power, framed through international legal and non-legal agreements and instruments, among nation states which informs the way they regulate and order their interactions with each other. It is reshaped by new, often traumatic forces that realign the nature and spirit of international relations, necessary in maintaining a peaceful, global community whilst still protecting individual human rights and a nation's state sovereignty, especially in order to create interdependence in this globalised era. Achieving world order can be promoted by sovereign nations enforcing international law, however sovereign power can impede the development of world order by disregarding treaties and violating international law. Further issues include the principle of ‘Responsibility to Protect’ (R2P), regional and global situations that threaten peace and security, veto power, the success of global cooperation in achieving world order and rules regarding the conduct of hostilities. Hence, legal and non-legal measures are utilised to promote peace and resolve both intrastate and interstate conflict, with the extent of its effectiveness being highlighted in the contemporary cases of Libya, North Korea, Syria and East Timor.

The United Nations plays a prime role in upholding world peace, as expressed by Kofi Annan, stating that “The effectiveness of the UN relies on high-level political support and partnerships between governments,” through its prime organ, the Security Council, bestowed with the responsibility to maintain international peace and security, resolve international problems of economic, social or humanitarian nature and to facilitate friendly relations between nation states to strengthen universal peace, as expressed in Article 1 of the UN Charter. The effectiveness of the UNSC in achieving world order is augmented by Article 25 of the UN Charter compelling UN members to accept and carry out decisions, demonstrated in the Libyan Uprising in 2011, as a product of the “Arab Spring,” with UK’s Boris Johnson claiming the removal of Gaddafi is a ‘tragedy so far’ (Africa News e-newsletter 26 August 2017). In response to this escalating violence and deteriorating humanitarian situation, due to Gaddafi’s forces, the UNSC passed Resolution 1973, demanding an immediate ceasefire to protect civilians, under the principle of “Responsibility to Protect.” This international doctrine has shifted the onus of protection from the individual nation states to the international community, reaping effective results, initiating the World Summit in 2005, proving to be effective in addressing accessibility, yet being limited in effectiveness, due to being hindered by the Veto Power of the Permanent Five nations, as proven in the Syrian conflict, when Russia and China utilised their power to refuse a UN resolution to impose sanctions on Syria over the alleged use of chemical weapons during the six-year war, limiting humanitarian intervention, and hence undermining the rule of law. Although, there have been positive implications of R2P, as evident within the contemporary issue of East Timor, in which the foundation for a functioning democracy was established, demonstrating conflict resolution and an achievement of justice, with The Australian commending this positive achievement in August 2009, “A tough job done in East Timor.” A further impediment of the effectiveness of the United Nations is state sovereignty, as expressed in Article 2.7 of the UN Charter, with Gareth Evans questioning, “How can we possibly do worse flying under the flag of R2P than we did for centuries accepting, in effect, that state sovereignty was a license to kill?” This double-edged sword enables nations to enjoy exclusive jurisdiction, its severe limitation codified in the Montevideo Convention (1933) and the lack of political will of the members of the international community,
demonstrated by North Korea’s development of a nuclear weapons programme, regardless of jus cogens and UNSC Resolutions 1718, 1874 and 1985, which imposed a series of sanctions, targeting the country’s military enterprise and nuclear weapons programme, as reported in *The Guardian on the 12th of February 2013*, claiming, “North Korea stages nuclear test in defiance of bans.” This underlying concept of the Westphalian system enabled the nation state of Rwanda to oppose humanitarian intervention during its genocide in 2004, highlighting its ineffectiveness due to the lack of recognising individual rights, diminishing the obligation of assisting the UN in every action it takes in accordance with the Charter (*Article 2 (5)*)

The effectiveness of the UN is limited due to this, as nations have the power to create laws within their own country as well as choose whether to abide by international obligations, hence making the ratification of international treaties and laws a major determinant of its enforceability, as evident in *North Korea*, yet there is no international body to ensure that this is completed. This is further exemplified through the denial of the *UN Convention on the Law of Sea (UNCLS)* by China through state sovereignty to claim islands within the Exclusive Economic Zone. However, most nation states comply with international law due to their influence of reciprocity amongst other nations and legal responsibility. In addition to this, peacekeeping forces within the UN utilised to withstand blatant acts of aggression, and consequently appearing as an improvement on the League of Nations, as it provided the UNSC with the legal right to use peace enforcement with the presence of a peacekeeper in post-conflict areas to maintain lasting peace and deter a vicious relapse, as demonstrated within East Timor, which had effectively decreased conflict, following its tragedy. Although this system lacks funding, it has proven to be effective with 29 of 45 peacekeeping missions being successful since 1948, according to a UN fact sheet, yet are relatively cost efficient, with its *average annual cost ranging between $2-$3 billion.* The effectiveness of this peacekeeping nation is further highlighted though its binding and enforceable *International Bill of Rights*, inspiring over hundreds of different international treaties, conventions, declarations and constitutions. However, its unresponsiveness is exemplified within the 28 years it was established, and the 30 countries that are still not signatory to it, failing to fulfil these obligations due to state sovereignty. The UN’s unresponsiveness is further manifested through its failure to respond conflict within Yemen and Bahrain at the same time, due to a lack of resources. Also, the UN measures are generally weak and are mostly on a basis of moral pressure through soft law, unless an immediate threat exists, manifested in the case of Korea, on the 21st of March 2013, *when the UNHRC established a Commission of Inquiry* mandating a body to investigate peace violations. The UN’s role was further delineated on the 19th of May 2018 *when the UN condemned an attack in eastern Afghanistan that killed at least eight people and injured at least 55 at a cricket stadium*, with Mr Yamamoto, the head of the UN Assistance Mission in Afghanistan (UNAMA), claiming “*The United Nations stands with Afghans in solidarity and remains committed to an Afghan-led peace process that will end the war and enable Afghanistan to allocate more resources to protect all citizens from such atrocities,*** highlighting the responsiveness of the UN in humanitarian intervention.

International instruments, sourced from international law, such as treaties or declarations also hinder the effective promotion of world peace, through the ratification and incorporation of these legal agreements. Under *Article 102 of the UN Charter*, it is a requirement that all treaties are registered by the UN, accumulating to the registration of *158000 treaties and agreements since 1946.* However, there is a difference between being signatory to a treaty and ratifying it, with a responsibility to enforce laws within instrument, an issue posed by state sovereignty. One of the few most enforceable agreements of the 20th century, that was almost applied universally was the *Atlantic Charter of 1941*, which abandoned the use of force, effectively providing the right to democracy. This was followed by the *UN Charter of 1945*, a significant document with the aim of preventing war and preserving peace, as highlighted in *Article 2 (3) and Article 2 (4)*, encouraging the settlement of international disputes by peaceful means, with the refrainment from threat or use of force, evident through the unauthorised UNSC decision of utilising armed force until the *invasion of Kuwait by Iraq*
in 1990, when the UNSC passed Resolution 678 authorising use of force and requesting all member states to provide necessary support to a force operating in cooperation with Kuwait to ensure Iraq’s withdrawal, further authorising force in peacekeeping and humanitarian interventions, notably, in Former Yugoslavia and Somalia. The Geneva Conventions are also a series of treaties on the treatment of civilians, prisoners of war and soldiers rendered incompetent of fighting, proven to be applicable to a signatory nation even if the opposing nation is not a signatory, but only if the opposing nation “accepts and applies the provisions” of the Conventions (1952 Commentary on the Geneva Conventions by Jean Pictet). Its enforceability is determined by its doctrine of universal jurisdiction based on the notion that genocide, crimes against humanity, torture and war crimes are exceptionally grave, affecting the fundamental interests of the international community as a whole; yet there are notable and often-criticized U.S. cases involving conduct that would otherwise be prohibited by the Conventions, such as Hamdi v. Rumsfield (2004), and further highlighted through the torture of Iraqi prisoners by American soldiers. Furthermore, the Non-Proliferation Treaty (NPT) (1968), was a law reform landmark treaty to limit the spread of nuclear weapons, which many states have ratified, leading to disarmament. However, it only takes one rogue nation to create threat, as evident with nations refusing to sign, foreshadowing world order, such as the withdrawal of North Korea in 2003, categorised by the Sydney Morning Herald in 2011 as “An act of aggression,” after nuclear testing, resulting in UNSC Resolutions 2087 and 2094 in 2013, placing sanctions on this sovereign state. The 2005 World Summit to strengthen the NPT failed despite 5 weeks of negotiation, with India, Pakistan, Israel and Sudan still not being signatory to this treaty. Contrastingly, declarations aren’t legally binding and therefore only show principle support from a nation state that ratifies them, yet ascertaining whether a state is taking action to support the values outlined in it, may initiate the negotiation of a treaty, like in the Declaration of a New World Order (1975 and 2014). In addition, international customary law, which eventually becomes accepted as legally binding, is incorporated into treaties and declarations, such as the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, making all nation states subject to it, with organisations, such as the UN sponsoring them. Through this, jus cogens was first embodied in the 1969 Vienna Convention on the Law of Treaties, with this international doctrine emphasising that states cannot be absolutely free in their contractual relations but must respect certain fundamental principles deeply rooted in the international community, hence making these peremptory norms overriding state sovereignty, making them enforceable. Another effective treaty developed by the United Nations General Assembly is the multilateral Arms Trade Treaty (ATT) in 2013, to regulate the international trade in conventional weapons, resulting in the adoption of Resolutions ‘61 and ‘89 with 154 voting yes, 3 voting no (North Korea, Iran and Syria) and 23 abstaining. Consequently, 116 nation states became signatory, with 12 ratifying, proving the effectiveness of this international treaty due to its accessibility and enforceability in achieving justice for all, through the balance of individual and community rights. However, according to The Economic Insider in May 2018, the US withdrew from a Joint Comprehensive Plan of Action, first implemented in 2016, between Iran and the Permanent 5, which lifted international sanctions on Iran, enabling the country to reintegrate into the global economy in return for the suspension of its nuclear ambitions, further highlighting the detrimental effects (labelled as the “Trump effect”) of state sovereignty in regards to treaties, with Iran warning Trump “You’ve made a mistake” (BBC News).

Furthermore, international courts are fundamentally ineffective, as there is no plausibility to compliance, with their power being fragmented and dispersed. The International Court of Justice produces binding rulings to states, yet although being the principal judicial organ of the UN, it has limited jurisdiction, and hence effectiveness, nation states bound to its rulings can be parties to cases brought before this court. Therefore, it interprets treaties between states but only if given consent to arbitration by states, with its effectiveness is portrayed in Australia v. Japan (2010), which was the first time a nation has utilised an international court to stop whaling, revealing effective reliance upon international measures, due to its
accessibility, and its enforceability as Japan claims that it will “abide by the ruling of the court” (News Corp Australia- April 2014). In addition, Payam Akhavan claims the International Criminal Court (ICC), whose precedent was set by the Nuremberg Trials of 1945-46, is equally as important, as it is “A unique empirical basis for evaluating the impact of international criminal justice on post-conflict peace building.” It is only responsive as a last resort, due to a national system’s ingenuity, as evident within the military and paramilitary guerrilla warfare in Nicaragua v USA (1986). However, this Court has been deemed ineffective due to the 22 out of 32 indictments being African convictions (for example Germain Katanga), highlighting Western-bias and racial discrimination, and hence a lack of application of rule of law. Therefore, the neo-colonial African Union encouraged member states to not comply with the ICC, highlighting ineffectiveness, as Omar Al-Bashir (from Sudan) has still not been convicted, demonstrating a lack of responsiveness by the ICC, as well as Burundi withdrawing recently in October 2017. The ineffectiveness is further hindered through the inability of enforceability, and its high expenses, yet insufficient four convictions. Contrastingly, Steven Freeland states that the ICC is effective, as 180 million people were killed during 1945-1990 due to genocide, yet “No one was held accountable.” However this has improved, as evident within the ICC’s first conviction in 2012 of Thomas Lubanga Dyilo (Congo), due to war crimes. Additionally, the UN Criminal Tribunals have proved the strength of international accountability, the power of international law and the consequences of violating them, as exemplified in the International Criminal Tribunal for Rwanda’s ‘Trial Against Hate Media’ in August 2003 and the International Criminal Tribunal for the Former Yugoslavia’s indictment of 161 individuals for crimes against humanity and the prosecution of Serbian leader Milosevic who killed the Bosnians, acting as a deterrent for further war crimes through initiating a response and manifested by consistency, the rule of law and natural justice, which sought justice for the thousands of individuals affected by the conflicts. However, ICTR’s prosecutor Hassan Jallow claimed that this was not enough, stating “You need to put in place a diversity of mechanisms in order to deal with all aspects of the problem.” Although ad-hoc tribunals were inconsistent and only dealt with crimes committed in a country during a specific period of time, costing the ICTR $257m in 2010-2011 and consuming more than $250 million p.a. by 2004, which is approximately 15% of the UN’s general budget, they were significant in reaffirming the values delineated by international law.

Intergovernmental organisations’ significance in maintaining world peace is manifested through mutual benefits and is evident within the European Union, the most effective unifying force, which has been successful in preventing war. However, its effectiveness has been compromised with the recent BREXIT has seen economic stagnation, (“EU and US impose sweeping economic sanctions in Russia applying political pressure” – The Guardian 2014, preventing the supply of arms to Ukraine rebels), with Europe’s political power being fractured, limiting its power and heightening terrorism concerns, due to Russian revanchism, with Julianne Smith of the Center for a New American Society stating “In recent years, Putin has attempted to fracture and divide Europe.” The EU has a powerful influence through the threat of expulsion, demonstrated by monitoring Turkey for compliance to enter it, with Allison Burrell, claiming they “Have to “adopt strong proactive programmes to prevent violation of human rights,” with its enforceability effectively portrayed within Turkey’s ratification of three additional protocols to the EU Convention on Human Rights. The Northern Atlantic Treaty Organisation (NATO) demonstrates how the peace may be achieved at the expense of international law violation, through its support of the EU with transport assistance in Darfur, and in Afghanistan, with military forces assisting in effectively resolving conflict in Kosovo and Bosnia. The Group of 77 is also a loose coalition in the UNGA which has effectively provided resources to negotiate with other developing nations.

Non-governmental organisations (NGOs), such as the International Committee of the Red Cross (ICRC) and Amnesty International can push for the introduction of new international law, assisting in the promotion of peace and resolution of conflict. These NGOs are part of a
larger global effort involving Dalai Lama and Oxfam International, which have effectively reduced the transport of weapons, under the Arms Trade Treaty. The International Crisis Group (ICG) is a leading NGO analysing and reforming policies to prevent deadly conflict by investigating and communicating with people on multiple levels, balancing individual and community rights, and avoiding bias. Their affiliation with the UNSC is manifested through their activity in troublesome global regions, and their support of the R2P, as evident in the Pakistan and Iraq crises, in which they contributed approximately $19 million, according to a case study by Professor Gareth Evans in April 2016. The effectiveness of NGOs was emphasised through TAPOL which monitored the human rights issues in Indonesia, increasing their assistance in East Timor after the Santa Cruz massacre, proving to be responsive. An NGO’s effectiveness is further augmented through the International Campaign to Abolish Nuclear Weapons through implementing the Treaty on the Prohibition of Nuclear Weapons, demonstrating the enforceability of international law, as well as AusAID’s contribution of $37 million to East Timor, demonstrating NGOs’ responsiveness in achieving justice and resolving conflict. These efforts indicate how although NGOs have no legal enforceability, they can assist the legal system by investigating breaches of the Geneva Convention and pressuring governments to make alterations to positively adapt to the changing values and ethical standards of society.

On the other hand, media, as expressed in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as a means of “freedom of expression” is an ineffective non-legal measure due to its lack of legal assistance and the ease with which it can be manipulated. Its inability to take physical action also limits its effectiveness, yet it fearlessly publicises controversial issues and raises awareness, as evident within the contentious boundary between the concept of R2P and invading the sovereignty of a state (Libya and Syria) in “Responsibility to Protect or Right to Meddle?” by Gregg Carlstrom (Al Jazeera 2011). However, media can be inaccurate, as falsely portrayed by Onya Magazine in 2009 by Beth Wilson titled ‘How Australia Betrayed East Timor,’ discussing how Australia failed to assist their neighbours, contradicting and undermining their support through their $37 million AusAID contribution. Contrastingly, in 1991 publicised footage of a massacre in the Capital Dili had effectively prompted action, expressed once again in Onya Magazine, claiming “It was the increasing visual evidence of violence in East Timor which played a major part in changing Australia's foreign policy,” confirming the ultimate importance of media in initiating responses to resolve conflict and promote world peace. Similarly, in 2014 7 News provided a vivid description of ISIS beheading journalist James Foley sparking a public outcry, through heightening fear, as well as the “Abu Ghairab photo scandal” portraying torture, and the ‘Twitter Revolution' witnessed after the 2009 Iranian elections, all initiatives to apply political pressure to the international community to deal with the issue.

Various other non-legal measures utilised include political negotiation requiring direct communication due to the lack of a third party, thus granting this measure an increased scope for greater cooperation. However, despite this, sovereignty has the ability to deconstruct these efforts, as evident in Israel, Pakistan, India and North Korea not being signatory to the Non-Proliferation Treaty. A major limitation to this being effective is mutual goodwill, as well as the lengthy process in dealing with it, making it unresponsive, as expressed by ABC News in 2013 (Syria will implement US-Russian Chemical Weapons Deal once It has UN approval), yet was effective when Israel refused to abide by court ruling of building wall in Palestine however agreed to ruling ‘Israel rethink barrier’ (SMH) and through the Egyptian ceasefire framework (The Wall Street Journal August 2014). When this fails, persuasion, through international sanctions and ‘naming and shaming’ (particularly by NGOs) occurs, as shown in Zimbabwe for mass atrocity crimes, and positively being reinforced in Turkey, through the improvement of its political system and compliance with human rights and ethical standards to join the UN, as well as Serbia handing over Mladic to the ICTY in 2011, which was positive but poses the question as to whether its consistent. The use of force is often a last resort, with Article 51 of the UN Charter stating that force can
be utilised in self defence (e.g. the US’s argument for the invasion of Afghanistan) and Article 42 stating that the UNSC can ‘take action…as may be necessary to maintain or restore international peace and security’ (e.g. the Iran/ Iraq war). IGOs can also use multilateral force which is authorised by international law if the threat to peace is serious enough. (Eg: 1998 ethnic cleansing of Kosov).

Overall, legal and non-legal measures have been partially effective in reshaping new and traumatic forces to realign and promote world peace and order, while still protecting individual rights and attempting to limit the impediment of state sovereignty. This is achieved mainly through the deterrence and UN peacekeeping efforts; however its ability to resolve conflict is limited by the principles of state sovereignty. In regards to the ICJ, the biggest challenge to effectiveness is gaining authorisation from the UNSC to intervene in conflict, due to veto power for self-interest. Intergovernmental organisations also provide a forum for discussion, making it less costly for states and NGOs are effective in reducing causes of conflict through the promotion of equality and the deliverance of resources, yet are limited by the lack of legal support and authority, yet media biasedly portrays the progression of world order and peace. In addition, negotiation and persuasion are satisfactory promoters of peace, but lack the enforceability to be effective in resolving conflict, similar to the use of force.