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No Humanitarian Intervention in Asian Genocides: How Possible and Legitimate?

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Abstract

This paper addresses an important empirical puzzle: why has the United States, without exception, chosen not to intervene in the six humanitarian catastrophes in post-war Asia, namely in Indonesia, East Pakistan/Bangladesh, Cambodia, East Timor, Sri Lanka and Myanmar? We use an eclectic approach that blends arguments about the international normative structure and geostrategic interests to examine what has made the absence of humanitarian intervention in Asia by the US possible and legitimate. Specifically, we focus on the paradox between calls for humanitarian intervention and the historically and geographically contingent social construction of the norms of humanity, national sovereignty and UN-backed multilateralism in conjunction with US and Chinese concerns over their regional geostrategic interests. The normative narratives about race, ‘communists’, ‘terrorists’, international order and inclusive multilateral process, and geostrategic interests of the US and China combine to make non-intervention possible and legitimate.

Keywords: Genocide, Humanitarian intervention, Asia, International norms, Analytical eclecticism

Introduction

This research was initially prompted by the Rohingya humanitarian catastrophe, which began to unfold in western Myanmar in August 2017 and is widely considered the most serious incident of genocide since Rwanda. In September 2018, the UN Independent International Fact-Finding Mission on Myanmar (UNFFM) accused Senior General Min Aung Hlaing, commander-in-chief of Myanmar's armed forces (*Tatmadaw*), and five other senior military officers of undertaking a campaign with 'genocidal intent'.¹ In January 2020, the International Court of Justice (ICJ) ruled that Myanmar must 'take all measures within its power', in accordance with its obligations under the Genocide Convention (1948), to protect the Rohingya from 'acts of genocide'.² Since the adoption of the Genocide Convention, Western liberal democratic countries have vowed *never* to let genocidal killings happen *again*.³ Nonetheless, despite the development of a normative regime on the condemnation of mass atrocities, the international community, particularly the US, has not intervened in the Rohingya genocide.

In explaining the failure of the Rohingya crisis to galvanise collective action, a common-sense argument is that Myanmar has an important friendly neighbour in China.⁴ China is said to have economic interests in Myanmar, linked to China's Belt and Road Initiative (BRI); it is the largest supplier of arms to the *Tatmadaw*; it shares concerns about Muslim radicalism; and as a champion of national sovereignty, it is opposed to humanitarian intervention on ideological grounds.⁵ Is this line of argument, focusing on the China factor, valid and tenable?

Prima facie, China (and Russia) blocked the United Nations Security Council (UNSC) from taking action to halt the violence. The United Kingdom and France initially put forward a UNSC resolution on the Myanmar crisis in October 2017. China and Russia did not endorse it until the UK and France watered down the wording and turned it into a presidential statement (6 November 2017).⁶ The latter only demands that Myanmar grant 'immediate, safe and unhindered access to UN agencies and their partners, as well as other domestic and international [NGOs], to provide *humanitarian assistance* in Rakhine State ...'⁷ Following the preliminary report by the UNFFM in August 2018, the UN Human Rights Council (UNHRC) created an international body to prepare 'case files for future criminal proceedings'. Nonetheless, China tried to block this body from any investigations regarding the Rohingya crisis.⁸ The China factor also seems to be applicable to international inaction on a similar mass

atrocities in the closing months of the Sri Lankan civil war in 2009 (as discussed in more detail below).

However, if we look at Asian genocides from a historical angle, we find that international inaction preceded China's emergence as a more 'assertive' actor on the international stage. The four other major genocides that occurred in Asia in the second half of the twentieth century (Indonesia in 1965-66, East Pakistan/Bangladesh in 1971, Cambodia in 1975-79 and East Timor in 1975-99) were not met with external intervention either. China was not always there to shield its allies from forcible humanitarian intervention. It did not support the Suharto-led military's use of brutal force against the Indonesian Communist Party (*Partai Komunis Indonesia*; PKI) and East Timorese. China did not have any say in the UNSC in 1965-66 and was politically and diplomatically harmed by the massacre of the PKI.⁹ When Indonesia invaded East Timor in 1975, Sino-Indonesian relations were still in the frozen stage because of the alleged PKI-involved coup. Western powers condemned the military interventions of India and Vietnam, which stopped the genocides in Bangladesh and Cambodia respectively.¹⁰ We therefore argue that the China factor has limited explanatory power when it comes to the *persistent* absence of humanitarian intervention in Asia; and turn the focus of this study to the United States, the most likely and capable intervening state since 1945. Although the domestic institutions of liberal states – free press, free civil society and representative government – are believed to generate pressures on their state leaders towards humanitarian intervention, the US has been unwilling to intervene in Asian genocides.¹¹ This paper aims to understand how it was possible for US political leaders, who rhetorically portray their country as the protector of freedom, democracy and human rights, to consider non-intervention in Asian genocides as a legitimate course of action. It argues that while material factors undoubtedly had an influence on US behaviour, normative factors were equally important in making US inaction possible and legitimate.

This paper proceeds in three major steps. It starts with a brief overview of the aforementioned five mass atrocities in Asia, focusing on the role of the US in them. Second, we set forth the theoretical framework and approach. This paper does not aim to ask the question of 'why' but 'how possible', thus attempting to understand how US inaction was possible while protecting the legitimacy of non-intervention. By adopting an eclectic approach, it considers both normative and material geostrategic factors. While the material factors have been identified in previous studies, this paper highlights that the normative structure that shapes how states

respond to mass killings does not converge unambiguously on a single direction towards humanitarian intervention. Finally, section 3 analyses how these normative and material factors have combined to make non-intervention both possible and legitimate in the six genocides in Asia.

Failure to Protect Asians from Genocide

In this section we situate the Rohingya crisis in the wider context of Asian post-colonial history. The twentieth century is labelled the ‘century of genocide’, in which the lives of more than 250 million civilians were lost.¹² Although scholarly foci are often on the Holocaust and the genocides in Rwanda, Bosnia and Kosovo, Asia was no exception.¹³

Post-1945 genocides in Asia opened with the slaughter of 500,000-600,000 Indonesian Communists and their leftist followers in 1965-66 by a coalition of anti-communist armed forces, local militias and Muslims. With an intent to eliminate the Communists as a political group, the politicide happened after an alleged failed coup d’état initiated by a ‘30 September Movement’ on 1 October 1965, in which the PKI was implicated.¹⁴

Genocide happened more frequently in the 1970s. General Yahya Khan of Pakistan launched a genocidal crackdown on Bengali nationalists in East Pakistan in March 1971¹⁵ until India’s intervention in December.¹⁶ The atrocities in the Pakistani civil war brought the death toll on the Bengalis to three million and displaced, externally and internally, 40 million people. Sexual violence against as many as 250,000 girls and women was systematically used as a weapon of war.¹⁷ The appalling human rights abuse by the Pol Pot regime in Cambodia in 1975-79 killed 1.5 million people.¹⁸ The invasion of the Portuguese colony of East Timor by the Indonesian armed forces and the following genocide in 1975-99 killed between 90,000 and 200,000 people.¹⁹

The received wisdom has been that the end of the Cold War made ‘important normative and operational developments to prevent and halt mass atrocities’ possible.²⁰ Although the end of the Cold War seemed to have contributed to a decline in the outbreak of genocide in Asia, civilian suffering worsened in the final months of Sri Lanka’s civil war in 1983-2009 fought between the Sinhalese government and the secessionist Liberation Tigers of Tamil Eelam

(LTTE). When the war escalated in 2008, the warring parties committed grave mass atrocities but the government was, in particular, accused of attacking disproportionately Tamil civilians. As many as 40,000 Tamil civilians were killed by government forces in the final months of the war.²¹

The US was a bystander or complicit in these atrocity crimes.²² Using declassified US government documents, John Roosa posits that the US government had prepared the anti-communist Indonesian army for a war against the PKI and for wiping out the anti-Western Indonesian President Sukarno. They were simply ‘waiting for some sort of dramatic action from the PKI that would provide a justification for repressing it.’²³ According to Jeffrey Bachman, the US was initially concerned that the Indonesian army might *refrain* from mass violence against [the PKI’s] unarmed members and supporters.²⁴ The US encouraged the genocide by covertly providing the Indonesian army with a list of 5,000 PKI senior leaders and village cadres and ticked off the names of those killed.²⁵ Through clandestine channels, the US, the UK and their allies also provided the Indonesian army with economic and military assistance, which was increased ‘in tandem with evidence of army-supported violence.’²⁶ Declassified US documents, released in October 2017, show that American officials were well aware that most of the victims were innocent.²⁷

US complicity in the Bangladesh genocide was even more obvious. Aware of breaking the domestic embargo on arms sales to Pakistan, the Nixon administration continued to sell arms supplies to Pakistan via Jordan, Iran and Turkey. It even shared secret intelligence with China in the hope that China would increase troop deployment along the Sino-Indian border, forcing India to halt its intervention in the genocide. It finally dispatched the US Seventh Fleet to the Bay of Bengal to intimidate India.²⁸

Declassified archival materials reveal that Gerald Ford and Henry Kissinger in August 1975 green-lighted Indonesian plan for invading East Timor with two notes of caution to Suharto only: ‘[i]t is important that whatever you do succeeds quickly’ and ‘[w]e would be able to influence the reaction in America if whatever happens, happens after we return’ to the US.²⁹ An even stronger view is that the US was strongly implicated in the East Timor genocide; it was supported by the fact that the Indonesian army used US-supplied counter-insurgency aircraft to force East Timorese out of their villages. In the three years following the carnage, the sales of US weaponry to the Indonesian regime more than tripled.³⁰

After Vietnam's military action to stop violence in Cambodia in 1978, as said by Ben Kiernan, "most of the international community ... continued to recognize the 'legitimacy' of the Pol Pot regime" until 1991, and '[n]ot a single Western country has ever voted against the right of the Khmer Rouge government-in-exile to represent its former victims in international forums'.³¹ Instead of condemning the use of violence against civilians and bringing it to an end, the US tolerated or excused the atrocities committed by the foe of its arch-rival in the region, Vietnamese Communists.

In the post-Cold War era, the US continued the 'tradition' of not undertaking any coercive humanitarian intervention to prevent or halt mass atrocities in East Timor (1999), Sri Lanka (2009) and Myanmar (since 2017). Until President Clinton's about-face on the deployment of an international force to East Timor on 9 September 1999, Australians 'were mortified when ... the US declined to take any initiative on the question of peacekeeping in East Timor, or lend its diplomatic weight to Australia's efforts'.³² Given the consistency of the US in non-responding to mass atrocities in Asia, committed by a wide variety of regimes influenced by anti-communism, ethno-religious nationalism and radical communism, during and after the Cold War, we ask what has made the persistent absence of humanitarian intervention to protect civilians in Asia possible and legitimate. Drawing partly on Martha Finnemore, we answer this question by considering the international normative structure, geopolitical interests and the costs of intervention.³³

Theoretical framework

Ontologically, this paper does *not* seek to explain in a causal manner why the US has not intervened in all humanitarian emergencies in post-1945 Asia. There was no corroborative historical evidence to suggest that US presidents and their senior aides had ever debated the option of intervention and rejected it. Instead, it asks how it was possible and legitimate for the US to eschew humanitarian intervention in *all* major humanitarian crises while it was aware of the occurrence of the atrocities. In the paper, we specifically focus on the US and China and their reactions to the mass atrocities in Asia for the primary reason that they are permanent members of the UNSC, thus holding veto power over humanitarian military intervention, and more importantly, they represent the two most powerful geopolitically competing powers in

Asia. We argue that, in addition to China's blockade against intervention, non-intervention was possible due to US unwillingness to intervene. Their behaviour was shaped by the norms about legitimate intervention as well as geostrategic interests. To put it differently, we look at the 'conditions of possibility' under which US non-intervention could exist while protecting the legitimacy of inaction.³⁴

To answer the 'how possible' question, we first pay attention to the normative structure through which the major powers consider humanitarian intervention. The normative questions include: Who are deserving of humanitarian intervention? Should the norms of territorial integrity and non-intervention, enshrined in Articles 2(4) and 2(7) of the UN Charter, be regarded as inviolable? Would the adherence to the norms of UNSC-sanctioned multilateral intervention and of seeking consent from the target population paradoxically undermine the effectiveness of humanitarian intervention? Second, we consider US concerns over its geostrategic interests in Asia during the Cold War and China's growing interests there since the early twenty-first century.

Considerations of both normative and material reasonings can also provide answers to how non-intervention in post-war Asia has been legitimate. The inaction has gained social legitimacy as soon as and as long as it was discursively connected to *some* of the prevailing international norms on humanitarian intervention, and to an international order deemed legitimate. Here, we echo Michael Barnett's remark that some constructivists tend to overplay the 'integrity of the normative structure.'³⁵ Although it is deemed socially appropriate to 'save strangers' from genocide, several norms are at work to shape how states should respond to mass killings. The norms are contingent, open to interpretations and contestation, and may undercut humanitarian intervention. They do not emerge and are socially recognised at the same time. Some recently embraced norms that would ideally shore up the legitimacy of humanitarian intervention indeed make military intervention less possible. In addition, states may have different understandings of the same norms, which result in different implementation practices.³⁶ Although state leaders are 'embedded in and circumscribed by a normative structure'³⁷ and cannot avoid recourse to norms to make their actions legitimate, they are given a space for a possible and legitimate course of action in the face of normative conflicts/tensions by attaching significance to *some* of them while downplaying or even disregarding the rest. This creates 'conflictual *norm-scapes*' where states can cherry-pick different norms with 'diverging understandings of appropriateness'.³⁸ In short, the various norms under

consideration do not always mutually reinforce nor complement each other, and do not converge unambiguously and uniformly on a morally desirable outcome or solution.

A few words on the interrelationships between humanitarian intervention and the norm of the Responsibility to Protect (R2P) are in order, as they are not synonymous with each other.³⁹ Humanitarian intervention, a practice dating back to the nineteenth century,⁴⁰ can be defined as the deployment of military force by a state, or a group of states, or an international organization across borders for the purpose of protecting foreign civilians from egregious violations of human rights.⁴¹ R2P's impact is on the legitimacy of humanitarian intervention. Sovereignty is reinterpreted as responsibility towards a state's population and towards the international community rather than as an absolute right of statehood. Humanitarian intervention is permissible only because a state where extreme human rights violations are occurring fails to meet its responsibilities towards its population.⁴² After the 2005 World Summit, the scope of humanitarian intervention is effectively redefined as covering genocide, war crimes, ethnic cleansing, and crimes against humanity; and the legitimacy of humanitarian intervention is predicated on the authorization of the UNSC to use force to protect foreign nationals from the four serious atrocity crimes. Within the R2P concept, humanitarian intervention is only mentioned in Pillar III as a tool of last resort when the state is unable or unwilling to protect its population and when other peaceful means prove ineffective or inadequate.⁴³

In applying this framework to analyse the aforementioned six cases of mass atrocities in Asia, we make two main contributions to the scholarship. First, while area studies or genocide specialists have studied the six cases *individually*, there are few comprehensive comparative studies of why the US has, without exception, paid scant attention to them across the Cold War and post-Cold War periods. Hence, this paper aims to highlight the continuity between the current case of the Rohingya genocide and the past cases in the same region. Second, we do not narrowly focus on the geostrategic interests of major powers, an approach favoured by neo-realist researchers and policy-oriented publications but, as mentioned above, we also draw on constructivist literature to study the international normative structure, including the tensions and paradoxes associated with the norms and practice of humanitarian intervention. Echoing Peter Katzenstein's argument that rationalist or constructivist accounts *alone* are incomplete and that it is futile to '[seek] to establish the superiority of one approach over another,' we adopt an analytical eclectic approach to the study of what has made the absence of humanitarian

intervention in Asia by the US possible and legitimate.⁴⁴ The absence of humanitarian intervention can be understood by considering both the normative and material factors that blended to influence the decisions to not intervene.

International Normative Structure and Geostategic Interests: An Eclectic Approach

The first normative issue revolves around the term ‘humanitarian crisis’: who is ‘human’ worthy of protection and whether observed human rights violations constitute a crisis that requires forcible response from other countries to save non-citizen ‘strangers’.⁴⁵ A second normative question is whether external humanitarian intervention would incur regime change or imposing external values on target populations, in conflict with their legitimate right to self-determination and national sovereignty. Third, since 2005 a legitimate humanitarian intervention would have to be undertaken and agreed upon multilaterally by the UNSC. Does the UNSC often come to the same understanding of the causes of humanitarian crises and act in concert swiftly to save the victims? Or instead does the norm lead to collective inaction, as debates and negotiations within the UNSC often reach stalemate? In addition, consent from target populations and states to interventions is preferable. However, do they welcome external interventions with open arms? Aside from being under the influence of these normative tensions, intervening countries are also concerned about the military and political costs of armed intervention and consider geopolitical interests. The following sections will thus analyse these factors to demonstrate the similarities between past cases of mass atrocities in Asia and the Rohingya case with regard to non-intervention.

Universal humanity vs. contingent humanity

Is humanity intrinsic to all human beings or is it created by bringing civilization to savages by the more ‘civilized’ Western states? Were victims in atrocities identified as the ‘other’ under some circumstances and in certain regions? Human rights are supposed to be universal in doctrine, as declared in the 1948 Universal Declaration of Human Rights. All humans are entitled to equal enjoyment and protection of human rights. However, humanity is, in practice, interpreted contingently whereby some groups of human beings have been deemed less worthy of protection.

The scope of humanity here is concerned with whether the US believes that the victims in Asia deserve to be saved by external intervention. According to Michael Hunt, US foreign policy ideology has traditionally been gripped by three core ideas: the pursuit of national greatness and liberty through activism abroad; a division of the world into a racial hierarchy, with Anglo-Saxons at the top, followed by Europeans, and with Asians, Latinos, and Africans further down the ladder; and an aversion to revolutionary changes.⁴⁶ Atrocities against Asian ‘radicals’ (‘communists’ or ‘terrorists’) might therefore not prompt the US to consider protection.

As clearly shown in the PKI genocide in the midst of the Cold War, the US was not concerned about the human rights of Indonesian communists. Robert Martens of the US embassy in Jakarta during the extermination of the PKI admitted in 1990 that the name list of the PKI leaders and members ‘really was a big help to the army’ and that the Indonesian army ‘probably killed a lot of people, and I probably have a lot of blood on my hands, but that is not all bad.’ When asked if those arrested were killed, Howard Federspiel, an Indonesia expert in the US State Department, responded, ‘No one cared, so long as they were communists, that they were being butchered,’ and ‘[n]o one was getting very worked up about it.’⁴⁷ The only reason why the American responsibility for the genocide was not discussed in the past literature is that ‘the victims were communists’.⁴⁸ The Indonesian Suharto government, which was given substantial political and material support by the US and the UK in crushing the PKI in 1965-66, likewise framed the pro-independence Fretilin in East Timor as ‘communists’ with links to China and Vietnam.⁴⁹ As James Dunn argues, ‘the Suharto regime’s Western friends encouraged the annexation by accepting as credible Jakarta’s alleged fears of Communist insurgency in the post-Vietnam years.’⁵⁰

As alluded to above, civilizational and racial hierarchies might also matter. When asked in June 1999 why the US intervened in Kosovo but not in Rwanda, George Kennan responded that ‘Europe, naturally, is another matter’ and that Slobodan Milošević’s killings ‘strike at the roots of a European civilization of which we are still largely a part.’⁵¹ In contrast, US policy-makers perceived Southeast Asia ‘as part of an alien and, in important ways, inferior community.’⁵² The American post-war foreign policy bureaucracy, dominated by the ‘Eastern Establishment’ coming from north-eastern US, maintained that the US-European community was built on a common civilization, historical memories, religion, democratic values and race; in contrast, the differences between East and West in these aspects were often stressed in US dealings with Southeast Asia.⁵³ Even the ‘Asia-firsters,’ who opposed the Eastern Establishment over the

American foreign policy priorities, were of the view that Asians were ‘backward,’ ‘barbarian but obedient’ people who ‘could still be saved under American tutelage.’⁵⁴ Stephen Solarz (Dem Rep) attributed the inaction of the US during the Cambodian genocide to an ‘implicit racism,’ as Cambodians ‘are not white or Jews or westerners who are being murdered, but Orientals. Perhaps to us, oriental life is not worth as much as Western life.’⁵⁵ These hierarchical thoughts contributed to US belief that self-determination was not a fundamental, *universal* human right. Between 1977 and 1980 the US cast negative votes three times against UN General Assembly resolutions which rejected Indonesia’s annexation of East Timor and affirmed East Timorese’s right to determination. Brad Simpson concludes that the US had dismissed East Timor and its people as ‘too backward to merit self-government’.⁵⁶

Second, are ‘terrorist’ humans entitled to the enjoyment and protection of human rights? The Sri Lankan government framed the insurgent LTTE as ‘terrorists’ and the struggle against them as counter-terrorism measures inspired by the then War on Terror.⁵⁷ It also widened the interpretation of R2P into one that would include the responsibility to protect its civilian citizens from terrorism by the use of ‘legitimate’ force.⁵⁸ The counter-terrorism frame won the buy-in of the US, considerably reducing the likelihood of a humanitarian intervention. Then-US Secretary of State Hillary Clinton and the US Senate Committee on Foreign Relations praised Sri Lanka for its efforts in ‘defeating terrorism’, an aim shared by China and India.⁵⁹ India justified its military assistance to Sri Lanka as a sign of its support for counter-terrorism.⁶⁰ Accordingly, the LTTE’s international support began to feign and its network of financing and trafficking was blocked.⁶¹ Similar to Sri Lanka, Myanmar, following the August 2017 attacks by the Arakan Rohingya Salvation Army (ARSA), has framed the Rohingya as ‘terrorists’, a narrative also supported by the majority Buddhist population, as well as China (as discussed in more detail below).⁶²

In short, Asians have not been prioritized when it comes to external protection, especially when they were/are believed to be revolutionary radicals such as ‘communists’ or ‘terrorists’. That partly explains why US non-intervention in less ‘civilized’ Asia has been made possible. Non-intervention has also been justifiable for its ‘positive’ effect on protecting a legitimate liberal international order from the harmful and destructive influence of ‘communists’ or ‘terrorists’.

Humanitarian intervention vs. national sovereignty and non-intervention norms

Since the Bandung Conference in April 1955 the norm of non-intervention in other states' internal affairs has taken root in Asia (and Africa).⁶³ It has given rise to a historical tradition that humanitarian intervention has not been on the agenda of Asian states. External powers must take this regional norm into consideration when they ponder the feasibility of military intervention. The plea of humanitarian intervention by India did not succeed in transforming international norms on the sanctity of national sovereignty.⁶⁴ In April 1971, U Thant, then Secretary General of the UN, accepted Pakistan's defence that the conflict was an internal Pakistani affair, and because of Article 2(7) the UN consequently had little role to play. Even though U Thant later in July 1971 warned the UNSC that the internal conflict could escalate into a regional war, potentially threatening international peace and security, the UNSC had, since the outbreak of violence in March 1971, failed to convene to discuss the Bangladesh crisis until 4 December 1971, the day after India's intervention.⁶⁵ Under the influence of Articles 2(4) and 2(7), the vast majority of the UNSC member states only called for an immediate ceasefire and mutual withdrawal of forces.⁶⁶ Kissinger argued that the 'attempt to dismember a sovereign state, a member of the United Nations' would lead to 'international anarchy', jeopardizing international peace.⁶⁷ In a similar vein, France's ambassador to the UN repudiated in January 1979 the legitimacy of Vietnam's intervention in Cambodia on humanitarian grounds, even if the latter claimed so, by stating, 'The notion that because a regime is detestable foreign intervention is justified and forcible overthrow is legitimate is extremely dangerous.'⁶⁸

The protection of national sovereignty is one of the founding principles of the Association of Southeast Asian Nations (ASEAN).⁶⁹ Initially aimed at forbidding foreign interference in order to consolidate the states after decolonization,⁷⁰ this principle has, however, increasingly been used by Southeast Asian countries to shield themselves from foreign intervention and Western criticisms over human rights violations.⁷¹ This is particularly true in the Australian-led operation in East Timor in September 1999 and the Rohingya crisis. The norm of humanitarian intervention did not emerge in the Australian-led operation, INTERFET, after the outbreak of post-independence referendum violence in East Timor. The fact that the UN Secretary-General Kofi Annan, the UNSC mission to Jakarta and Dili, and the US brought pressure to bear on Indonesian President Habibie to give 'consent' to the deployment of an international peacekeeping force bore the testimony of the sanctity of the principle of national sovereignty, although Indonesian claim of sovereignty over East Timor was dubious in international law.⁷² Not only has Myanmar highlighted non-interference vis-à-vis Malaysia's condemnation of the

Rohingya genocide,⁷³ but it has also defended itself from the International Criminal Court prosecutor's investigations by claiming that such action would be a grave violation of Myanmar's national sovereignty.⁷⁴

The norms of national sovereignty and non-intervention in humanitarian emergencies resonate strongly with China in the Rohingya crisis. Because of its painful historical encounters with colonial powers, China perceives the crisis through the prism of decolonization and anti-colonialism. China's narrative of the Rohingya crisis, in particular, attributes it to the British-Indian colonial policy of the nineteenth century and is therefore sympathetic to the current post-colonial Myanmar government in upholding its national sovereignty.⁷⁵

US non-intervention in all genocides has also been justifiable for averting a disintegration of an existing UN member state and protecting a legitimate international order that honours the principles of national sovereignty, territorial integrity and self-determination. This concern was the most prominent in the Bangladesh case (among the six) because Pakistan was dismembered as a result of India's humanitarian intervention.⁷⁶

Legitimacy vs collective inaction

A great obstacle to humanitarian intervention arises from the normative dilemma which stems from the intrinsic tension within multilateralism; while it would ideally strengthen the legitimacy of intervention by making the process inclusive, this norm at the same time may also render collective inaction highly possible. This is particularly evident in Asia, where major actors have almost always held divergent views about how to tackle mass atrocities.

ASEAN as a whole and Thailand were opposed to external military intervention in Cambodia. Thailand's stance was, in particular, pivotal because any humanitarian intervention, if carried out by Western forces, would have been launched from the country. Aligning with the anti-communist ASEAN after the Vietnam fiasco was given precedence over human rights protection by US leaders.⁷⁷ In meeting ASEAN officials in September 1978, US State Department officials declared that the US 'will not support military intervention in [Cambodia] under any circumstances ... [and] clearly separates its human rights concerns from its strategic policies.'⁷⁸

Present-day ASEAN and its member states are not supportive of humanitarian intervention in Myanmar either. Contrary to the role played by regional organizations in the interventions in Libya, Côte d'Ivoire and Mali,⁷⁹ which contributed to the legitimacy of the interventions and the UNSC's approval, ASEAN's opposition represents an additional obstacle to multilateral intervention. Having historically been opposed to foreign interference in its regional affairs, ASEAN has downplayed the Rohingya crisis to a mere case of illegal migration and human trafficking, and limited its actions to providing material aid and bringing the issue to the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.⁸⁰ ASEAN's refraining from undertaking any forcible action is also due to the status of the Rohingya, who are not recognized as legal citizens of Myanmar. Not using the term 'Rohingya' in its official documents and statements,⁸¹ ASEAN has not denounced Myanmar's discrimination of the minority; it has instead showed its support for their repatriation despite the ongoing mass atrocity crimes.⁸² The stance of regional organizations is particularly important for China, which is generally supportive of regional resolution of regional problems.⁸³ ASEAN's rejection of humanitarian intervention in Myanmar further justifies China's position on the normative legitimacy of non-action.

India's support for non-intervention in Sri Lanka was imperative from a practical point of view. India changed its policy towards Sri Lanka substantially in 2007. While continuing to encourage peace negotiations rhetorically, in practice it politically and materially helped Sri Lanka carry out its counter-offense on the LTTE to the point of facilitating the mass killings of Tamils.⁸⁴ India supported Sri Lanka in several ways: it cracked down on LTTE networks in the South Indian state of Tamil Nadu; provided 'military hardware' to Colombo; and supported Sri Lanka at the UNHRC against international investigations on human rights violations. India's support for Sri Lanka was motivated by both its fear of spill-over effects of secessionist claims in Tamil Nadu and its concern over China's growing influence in South Asia, but was nonetheless justified as a counter-terrorist effort.⁸⁵

Since 2005 multilateralism has been given a further refinement as it needs UNSC-sanctioned multilateral intervention. China kept the Sri Lankan civil war off the UNSC agenda and was supportive of Sri Lanka in the UNHRC. Both China and Pakistan provided Sri Lanka with armaments and economic assistance.⁸⁶ China also perceived the Sri Lankan civil war through the lens of separatism, territorial integrity and terrorism, in addition to geostrategic interests. After Mahinda Rajapaksa's visit to Beijing in February 2007, both countries issued a joint

communiqué which states, '[t]he two sides resolved to fight tirelessly against the *three evil forces of terrorism, separatism and extremism* ...'⁸⁷ Similarly, the US Obama administration at that time was reluctant to get directly involved, as it perceived the conflict as a matter of terrorism, and so did Ramesh Thakur, a prominent R2P scholar.⁸⁸

The fact that Myanmar's narrative has managed to gain the sympathy of China (and Russia) presents another obstacle to UNSC-sanctioned intervention.⁸⁹ Chinese Foreign Minister Wang Yi stated that the international community should understand Myanmar's efforts to restore social stability in the country and to implement the recommendations of the Advisory Commission on Rakhine State,⁹⁰ thus justifying the government's counter-terrorism operations after the ARSA attacks in August 2017.⁹¹ Russia blamed colonialism for the current crisis and urged the UNSC 'to refrain from counterproductive condemnations against Myanmar'.⁹² The US, France and the UK have not turned political rhetoric into action either. Rather, their main foci of attention are humanitarian aid provision, engagement with the nascent democratic regime in Myanmar and measured sanctions against the *Tatmadaw*. Human rights diplomacy is not high on the agenda of US foreign policy towards Myanmar. Both the Trump administration and Congress show scant interest in mass atrocity prevention.⁹³ Although Trump formally 'supports efforts to end the violence', he has been reticent about the Rohingya crisis.⁹⁴ In September 2018, the US State Department released its survey of the first-hand experience of Rohingya refugees in Bangladesh. While the survey identified the *Tatmadaw* as the main perpetrator of violence against the Rohingya, it does not describe the atrocities as genocide, ethnic cleansing, or crimes against humanity, unlike what Tillerson said in November 2017.⁹⁵ This narrative has enabled Washington to refrain from considering any humanitarian intervention; it has instead focused on humanitarian assistance and imposing travel sanctions on senior military commanders.⁹⁶

The post-Cold War crises in Sri Lanka and Myanmar show that the lack of agreement among major powers in the UNSC, India and ASEAN has posed a serious obstacle to the coordination of any international action to stop the mass atrocities.

The other impact of multilateralism is that although it is not enshrined in the UN Charter, the consent of the hosting country has a decisive role on whether an intervention takes place in Asia.⁹⁷ For example, compared to the case of Kosovo where China strongly opposed

intervention, INTERFET (in East Timor) managed to win China's support partly because of Indonesia's consent to the UN-supported intervention.⁹⁸

As Myanmar is in democratic transition, Aung San Suu Kyi and her party, National League for Democracy (NLD), have to garner popular votes in the general elections to remain in power. Consent from Myanmar's leaders to external military intervention is contingent on how Buddhists, accounting for 89% of Myanmar's total population, perceive the Rohingya minority. The *Tatmadaw*, government and nationalistic Buddhist organisations, particularly the 969 Movement and the Patriotic Association of Myanmar (MaBaTha), have promoted a discourse based on ethno-religious nationalism and Islamophobia, facilitating mobilization against the Rohingya.⁹⁹ Buddhism is presented as a defining characteristic of the Burmese nation in the form of Buddhist Burmanism. Ultranationalist groups have constructed the identity of the Rohingya not only as the 'other' who are ethnically alien to the Burmese nation, but also as the 'fearsome other', an existential threat to Buddhist Burmanism.¹⁰⁰ Hence, an external humanitarian intervention would appear to be illegitimate in the eyes of the majority of the population. As their support is crucial for the success of post-intervention reconstruction process,¹⁰¹ external powers have further grounds for being hesitant about intervention.

Geostrategic interests

Undoubtedly, geopolitical interest matters in the decision-making process of the US and China. The human rights abusers in the Cold War era were either anti-Communist/pro-US (the Indonesian and Pakistani military) or anti-Soviet (the Khmer Rouge), and they were regarded as allies of the American anti-Communist/Soviet front. This ideological alignment made moral indifference or ethical blindness possible. As a major leader of the Non-Aligned Movement, India was not on the side of the US in the Cold War. After India invited the Soviet Foreign Minister Andrei Gromyko to visit New Delhi to sign an Indo-Soviet Treaty of Peace, Friendship and Cooperation in August 1971 in the midst of the Bangladesh genocide, Nixon and Kissinger interpreted India as a Soviet client state determined to dismantle Pakistan fatally, and they were dismayed by India's intervention later in December.¹⁰² A US-led humanitarian intervention against the Pakistani military would certainly weaken Pakistan vis-à-vis India. In addition, Nixon and Kissinger were preoccupied with using the Pakistani channel to seek rapprochement with China. Similarly, after the South Vietnam fiasco, the United States regarded Suharto's Indonesia as a crucial bulwark against communism in the region. The

Indonesian annexation of East Timor, believed to be in danger of being ruled by the allegedly pro-communist Fretilin, would be in American interests.

China's opposition to humanitarian intervention in Myanmar is not only shaped by its post-colonial identity and the post-Libya disillusionment with R2P-enabled humanitarian intervention, but also by its geostrategic and commercial interest in the country. China is building the China-Myanmar Economic Corridor (CMEC), from China's southwestern province of Yunnan to Mandalay, Yangon, and Kyaukphyu Special Economic Zone (in Rakhine State), as part of its BRI.¹⁰³ The Myanmar economy is heavily dominated by the *Tatmadaw*, which not only owns and operates its own business conglomerates, namely Myanmar Economic Holdings Ltd and Myanmar Economic Corporation, but also has close ties with state-owned enterprises and large private firms. Two Chinese companies have joint ventures with the two conglomerates, while 19 Chinese companies have contractual or commercial links with them. Much of the lucrative jade trade is made with China through smuggling.¹⁰⁴ Consequently, China has strong incentives to maintain good relations with Myanmar by protecting the *Tatmadaw* and the government from international censure.

Costs of humanitarian intervention

Facing a rising China, which is rapidly expanding its influence in Southeast Asia and shares a border with Myanmar, major Western powers are concerned about the military and political costs of forcible intervention in Myanmar. These may include: armed resistance from Myanmar's military; undermining of the authority of the fledging democratic regime and pushing it into China's sphere of influence; and post-intervention political unrest, reminiscent of Libya's descent into political turmoil after the 2011 intervention. Carrying out an intervention in Myanmar would be costly because intervening powers would have to deploy a large number of troops to counter the army, organized armed groups, as well as the anti-Rohingya local population because of the widespread ownership of small arms.¹⁰⁵

Partly out of the concern about the cost of military action, US policy towards Myanmar is to engage with the current Suu Kyi government to draw the country into the fold of the liberal international order and not to undermine the fledging democratization of the country. Patrick Murphy, Principal Deputy Assistant Secretary in the US Department of State, said, "It is in our interests, and those of the diverse populations of Burma, including the Rohingya, to see the new, elected government succeed."¹⁰⁶

Conclusion

This article has illustrated that in the six incidents of genocide in post-war Asia, which killed more than five million civilians, the US has not assumed a leading role in ceasing the violence, despite its international reputation as the most likely and most capable intervening state as well as the state that has championed building a liberal international order, which includes human rights protection. This paper therefore asked: how was it possible and legitimate for the US not to consider humanitarian intervention in the six genocides?

We first argued that although the claim that resistance to humanitarian intervention in Sri Lanka and Myanmar has come primarily from a rising China is partly true, the China factor fails to explain the persistent passive role of the US in *all* atrocities in Asia. Being a bystander or complicit to genocide has long been a 'normal' practice of the US whenever bloody massacres take place in Asia.

While the West has recognised the social appropriateness of humanitarian intervention since the nineteenth century, a space has been created to make a long-standing indifference of the US to genocides in Asia both possible and legitimate. The space has been filled by both normative ideas (the historically and geographically contingent social construction of the normative meanings of humanity, national sovereignty and UNSC-backed multilateral intervention), and American and Chinese prevailing geostrategic interests in the region. As demonstrated in both Sri Lanka and Myanmar, an adherence to the multilateralist norm has paradoxically led to deadlock over humanitarian intervention. The paralysis in UN multilateralism provides a pretext for the US, which has not considered intervention in Asia, to lay the blame for the continuation of humanitarian catastrophes on China (and Russia). In addition, US geostrategic interests in fighting against 'communism' in the Cold War and 'terrorism' in the post-9/11 era, and China's growing interests in creating its regional sphere of influence have equally mattered. Non-intervention has been deemed legitimate for the US for its contribution to the preservation of a liberal (or, to be more precise, non-communist or non-revolutionary) order in Asia.

Despite non-interventions in Sri Lanka and Myanmar, R2P supporters claim that the R2P norm should be considered a “‘duty of conduct’ ... to identify when atrocity crimes are being committed or are imminent and to deliberate on how different actors ... can and should respond.”¹⁰⁷ Therefore, the success of the norm is not judged by whether there is humanitarian intervention because not only does the norm entail a broad range of possible measures, but also its real impact should be seen at whether it leads to any international debate on the atrocities.¹⁰⁸ However, in 2009 the R2P norm sparked off neither international condemnation of the Sri Lankan atrocities nor debate on possible (soft) measures that could be taken to address the crisis; on the contrary, powerful democratic states like the US and India helped foment the violence by supporting the ruling regime. Despite the recent ICJ ruling on the protection of the Rohingya, what must be noted is that no Western country felt the ‘duty of conduct’ to bring the case to the ICJ; this was instead done by The Gambia, a small Western African state. Thus, an aftermath of present-day humanitarian crisis in Myanmar is that various stakeholders can only manage to reach limited consensus on imposing sanctions on individual military leaders of Myanmar as well as increasing humanitarian aid to Bangladesh which is hosting the Rohingya refugees.¹⁰⁹ Whether humanitarian intervention will keep being off their agenda, not only in Myanmar but also throughout Asia, is a matter that future research should examine.

¹ Independent International Fact-Finding Mission on Myanmar, *Report of the Detailed Findings*, paragraphs 1411-41.

² ICJ, ‘Application of the Convention on the Prevention and Punishment of the Crime of Genocide,’ 23.

³ See, e.g. Ronayne, *Never Again?*

⁴ ICG, *The Long Haul Ahead for Myanmar’s Rohingya Refugee Crisis*, 15.

⁵ Fair, ‘The Making of the Rohingya Genocide’; Guilloux, ‘Myanmar.’

⁶ ICG, *Myanmar’s Rohingya Crisis*, 15.

⁷ UN Security Council, S/PRST/2017/22, 6 November 2017 (emphasis added).

⁸ HRW, ‘Myanmar’; Charbonneau, ‘UN Members Thwart China’s Bid.’

⁹ The anti-PKI politicicide brought about a break-up of China’s alliance with the PKI and President Sukarno. Mazingo, *Chinese Policy toward Indonesia*, 234-263.

¹⁰ Krain, ‘International Intervention,’ 366.

¹¹ Bass, *Freedom’s Battle*, 6-7, 28.

¹² Levene, ‘Why Is the Twentieth Century the Century of Genocide?’

¹³ Mayersen and Pohlman, ‘Introduction’, gives a good overview of the major genocides in Asia.

¹⁴ Bachman, *The United States and Genocide*, 78-80; Bellamy, ‘The Other Asian Miracle?’ 4; Cribb, ‘Genocide in Indonesia’.

¹⁵ Cordera, ‘India’s Response to the 1971 East Pakistan Crisis,’ 48.

¹⁶ Jahan, ‘Genocide in Bangladesh,’ 290-295.

¹⁷ *Ibid.*, 291.

¹⁸ Bellamy, ‘The Other Asian Miracle?’ 3; Hinton, *Why Did They Kill?*, 1; Kiernan, ‘The Cambodian Genocide.’

¹⁹ Bellamy, ‘The Other Asian Miracle?’ 4; Dunn, ‘Genocide in East Timor,’ 265.

²⁰ Dunne and Staunton, ‘The Genocide Convention,’ 39.

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- ²¹ ICG, *War Crimes in Sri Lanka*; Kurtz and Jaganathan, 'Protection in Peril'; Nackers, 'Sri Lanka,' 76, 79.
- ²² Jones, *Genocide, War Crimes and the West*.
- ²³ Roosa, *Pretext for Mass Murder*, 176-201, at 191.
- ²⁴ Bachman, *The United States and Genocide*, 86 (emphasis in original).
- ²⁵ *Ibid.*, 84-89; Kadane, 'U.S. Officials' Lists.'
- ²⁶ Robinson, *The Killing Season*, 196-206, at 204.
- ²⁷ Bevins, 'What the United States Did in Indonesia.'
- ²⁸ Bass, *The Blood Telegram*, 289-324; Ganguly, 'Pakistan's Forgotten Genocide,' 171-173.
- ²⁹ Robinson, *"If You Leave Us Here, We Will Die"*, 60.
- ³⁰ Miller, 'Why Sovereignty Matters Despite Injustice', 39.
- ³¹ Kiernan, 'The Cambodian Genocide,' 346.
- ³² Jago, 'InterFET,' 384; Robinson, *"If You Leave Us Here, We Will Die"*, 193.
- ³³ Finnemore, "Paradoxes in Humanitarian Intervention".
- ³⁴ Barnett, 'Culture, Strategy and Foreign Policy Change,' 5.
- ³⁵ *Ibid.*, 7.
- ³⁶ Bode and Karlsrud, 'Implementation in Practice,' 460.
- ³⁷ Barnett, 'Culture, Strategy and Foreign Policy Change,' 7.
- ³⁸ Bode and Karlsrud, 'Implementation in Practice,' 460.
- ³⁹ Bellamy and Williams, 'On the Limits of Moral Hazard,' 545.
- ⁴⁰ Bass, *Freedom's Battle*; Finnemore, *The Purpose of Intervention*, 58-66.
- ⁴¹ Badescu, *Humanitarian Intervention and the Responsibility to Protect*, 9; Finnemore, *The Purpose of Intervention*, 53; Pattison, *Humanitarian Intervention and the Responsibility to Protect*, 28.
- ⁴² Badescu, *Humanitarian Intervention and the Responsibility to Protect*, 41.
- ⁴³ The paragraph above also draws on Lee and Chan, 'China's and India's Perspectives on Military Intervention'.
- ⁴⁴ Hemmer and Katzenstein, 'Why Is There No NATO in Asia?' 583.
- ⁴⁵ Finnemore, 'Paradoxes in Humanitarian Intervention,' 201.
- ⁴⁶ Hunt, *Ideology and U.S. Foreign Policy*.
- ⁴⁷ Kadane, 'U.S. Officials' Lists'.
- ⁴⁸ Bachman, *The United States and Genocide*, 91.
- ⁴⁹ Dunn, 'Genocide in East Timor', 269.
- ⁵⁰ *Ibid.*, 281-282.
- ⁵¹ Cited in Hemmer and Katzenstein, 'Why Is There No NATO in Asia?' 602.
- ⁵² *Ibid.*, 575.
- ⁵³ *Ibid.*, 594.
- ⁵⁴ *Ibid.*, 596.
- ⁵⁵ Cited in Ronayne, *Never Again?*, 66.
- ⁵⁶ Simpson, "'Illegally and Beautifully,'" 304.
- ⁵⁷ Nackers, 'Sri Lanka,' 878.
- ⁵⁸ Nackers, 'Framing the Responsibility to Protect,' 93-97.
- ⁵⁹ Nackers, 'Sri Lanka,' 880.
- ⁶⁰ Destradi, 'India and the Civil War in Sri Lanka,' 15.
- ⁶¹ Weiss, *The Cage*, xxii.
- ⁶² Suan, 'Statement by Ambassador U Hau Do Suan.'
- ⁶³ Acharya, *Constructing Global Order*, 74-85.
- ⁶⁴ Wheeler, *Saving Strangers*, 65-71.
- ⁶⁵ *Ibid.*, 58-59; Nanda, 'A Critique of the United Nations Inaction,' 63.
- ⁶⁶ Jackson, *South Asian Crisis*, 126-28; Nanda, 'A Critique of the United Nations Inaction,' 60-62.
- ⁶⁷ Jackson, *South Asian Crisis*, 125.
- ⁶⁸ Cited in Wheeler, *Saving Strangers*, 93.
- ⁶⁹ Bellamy and Drummond, 'The Responsibility to Protect in Southeast Asia,' 184.

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- ⁷⁰ Thakur, ‘Developing Countries and the Intervention-Sovereignty Debate,’ 195.
- ⁷¹ Yuwaka, ‘The ASEAN Way as a Symbol.’
- ⁷² Jago, ‘InterFET’; Robinson, “*If You Leave Us Here, We Will Die*”, 58, 185-204.
- ⁷³ Ibrahim, *The Rohingyas*, 75.
- ⁷⁴ Reuters, “Myanmar Says ‘Seriously Concerned’.”
- ⁷⁵ Sun, ‘China Finds Opportunity in Myanmar Crisis.’
- ⁷⁶ Franck, *Recourse to Force*, 142.
- ⁷⁷ Metz, *Western Responses to Human Rights Abuses*, 87, 130.
- ⁷⁸ Cited in *ibid.*, 124.
- ⁷⁹ Lee and Chan, ‘China’s and India’s Perspectives on Military Intervention’; Bellamy and Williams, ‘The New Politics of Protection?’
- ⁸⁰ AHA Centre, ‘The AHA Centre Deployed ASEAN-ERAT’; New Humanitarian, ‘In Search of a Regional Rohingya Solution.’ See: <https://www.baliprocess.net/> for the Bali Process.
- ⁸¹ Iskandar, ‘Non-Citizen Rights in ASEAN’; McAuliffe, *Resolving Policy Conundrums*.
- ⁸² ASEAN, ‘Press Statement by the Chairman’; Frelick, ‘Call Them What They Are.’
- ⁸³ Author 2016.
- ⁸⁴ Destradi, ‘India and the Civil War in Sri Lanka.’
- ⁸⁵ *Ibid.*, 12, 13, 15, 18.
- ⁸⁶ Nackers, ‘Framing the Responsibility to Protect,’ 98.
- ⁸⁷ Weiss, *The Cage*, 200, 202 (emphasis added).
- ⁸⁸ Nackers, ‘Sri Lanka,’ 879-880; Thakur, *The People vs. the State*, 203-205.
- ⁸⁹ UN Security Council, S/PV.8133, 12 December 2017.
- ⁹⁰ The Advisory Commission on Rakhine State, chaired by Kofi Annan, submitted its final report and policy recommendations to Myanmar’s government in August 2017, <http://www.rakhinecommission.org/the-final-report/>.
- ⁹¹ Reuters, ‘China Calls for Understanding.’
- ⁹² *Ibid.*
- ⁹³ Hulse, ‘The Rohingya, R2P, and Civilian Protection.’
- ⁹⁴ Toosi, ‘The Genocide the U.S. Didn’t See Coming.’
- ⁹⁵ Bureau of Democracy, Human Rights, and Labor, *Documentation of Atrocities in Northern Rakhine State*.
- ⁹⁶ Toosi, ‘The Genocide the U.S. Didn’t See Coming’; Reuters, ‘US Imposes Sanctions on Myanmar’s Military Leaders.’
- ⁹⁷ Lancaster, ‘Intervening Interests.’
- ⁹⁸ Welsh, ‘Authorizing Humanitarian Intervention,’ 187.
- ⁹⁹ Schissler et al., ‘Reconciling Contradictions.’
- ¹⁰⁰ *Ibid.*, 378.
- ¹⁰¹ Finnemore, ‘Paradoxes in Humanitarian Intervention,’ 221; Ibrahim, *The Rohingyas*, 2, 63-70.
- ¹⁰² Bass, *The Blood Telegram*, 218-221; Burr, “Nixon/Kissinger Saw India as ‘Soviet Stooge’.”
- ¹⁰³ Peel, ‘The Great Land Rush’; Dutta, ‘North East and the China-Myanmar Economic Corridor (CMEC).’
- ¹⁰⁴ The two huge enterprises own at least 120 subsidiary companies involving in a wide range of business activities in the country. Independent International Fact-Finding Mission on Myanmar, *The Economic Interests of the Myanmar Military*.
- ¹⁰⁵ Guilloux, ‘Myanmar’, 391-392.
- ¹⁰⁶ Hulse, ‘The Rohingya, R2P, and Civilian Protection’.
- ¹⁰⁷ Welsh, ‘The Responsibility to Protect after Libya and Syria,’ 80.
- ¹⁰⁸ *Ibid.*
- ¹⁰⁹ The US has also imposed travel restriction on Sri Lankan Commander of the Army, Lt. Gen. Shavendra Silva, over his alleged role in the genocide of 2009. Abi-Habib and Bastians, ‘U.S. Bar Sri Lankan Army Chief Accused of War Crimes.’

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