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# ISIL YEARBOOK OF INTERNATIONAL HUMANITARIAN AND REFUGEE LAW



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## DECIPHERING CODES OF WARFARE: ANCIENT INDIAN HUMANITARIAN LAW AS A PRECURSOR OF MODERN HUMANITARIAN LAW

B.C. Nirmal\*  
NimmiShukla\*\*

### I. INTRODUCTION

The study of humanitarian law<sup>1</sup> in ancient India offers valuable insights into the ethical, social and legal principles that shaped human behaviour

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\*\* MA Political Science, Banaras Hindu University.

1 D. Fleck (ed.) *The Handbook of International Humanity and Law in Armed Conflict*, 3rd ed., Oxford Univ. Press (2013); J. M. Henckaerts & L. Doswald - Beck (eds.) *Customary International Humanitarian Law*, Cambridge Univ. Press (2005); T. Meron, *The Humanization of International Law*, The Hague Academy, Leiden (2006); D. Djukic & N. Pons (eds.) *The Companion to International Humanitarian Law*, The Hague Academy, Leiden (2018); Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 3rd edition Cambridge Univ. Press, 2016. <https://doi.org/10.1017/CBO9781316389591>; G. I. A. D. Draper, 'Implementation and Enforcement of the Geneva Conventions and of the second Additional Protocols,' 164 HR, 1979, page 1; B. C. Nirmal, "Sixtieth Anniversary of the Geneva Conventions: Lessons from the Past," *ISIL Year Book. Int'l Humanitarian & Refugee Law*. 1 (2009), pp. 1-46; B. C. Nirmal, "International Humanitarian Law: Its Nature and Scope" *The Banaras Law Journal*, 31 (2002), pp. 66-86; B. C. Nirmal, "Wars of National Liberation and International Humanitarian Law", No.2, *Indian Journal of International Law*, (1988), pp. 201-15.

Also see DOI: 10.1017/CBO9780511804700, Kolb, R., & Hyde, R. (2008). *An Introduction to the International Law of Armed Conflicts*. Hart Publishing., Sassòli, M., Bouvier, A. A., & Quintin, A. (2011). *How Does Law Protect in War? Cases, Documents, and Teaching Materials on Contemporary Practice in International Humanitarian Law* (3rd ed.). International Committee of the Red Cross., Dinstein, Y. (2016). *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd ed.). Cambridge University Press. DOI: 10.1017/CBO9781316493092, Clapham, A., Gaeta, P., & Sassòli, M. (Eds.). (2015). *The 1949 Geneva Conventions: A Commentary*. Oxford University Press, Bellal, A. (Ed.). (2018). *The War Report: Armed Conflict in 2017*. Oxford University Press, Meron, T. (1998). *The Humanization of International Law*. Brill | Nijhoff.

and governance in one of the world's oldest civilizations. My early article<sup>2</sup> on this subject explored foundational texts, including the *Dharmaśāstras*, *Arthashastra* and epics like the *Mahabharata* to decipher and unveil how concepts of justice, compassion and protection of non-combatants were articulated, institutionalized and realized to bring it into practice. It exhibited how these principles predate modern international humanitarian frameworks, emphasizing duties toward vulnerable populations, furtherance of benevolent actions, concept of belligerent occupation, rules of warfare and the sanctity of life. The most important conclusion drawn in the article was 'it (war) should be carried on only within the bounds of law and good faith.'<sup>3</sup>

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- 2 B. C. Nirmal, "International Humanitarian Law in Ancient India." *Oxford Handbook of International Humanitarian Law in South Asia*, edited by V. S. Mani, Oxford University Press, 2007, pp. 3–37. This work is referred to and cited in subsequent works: Sanoj Rajan, "Principles of Laws of War in Ancient India and the Concept of Mitigating Armed Conflict through Controlled Fights." *Journal of International Humanitarian Legal Studies*, (2014), 5(1-2), 333-351. <https://doi.org/10.1163/18781527-00501014>; Param Pandya, "Tracing the Evolution from the Antiquities – Hindu Tenets on the Law of War," *International Journal of Law and Legal Jurisprudence Studies*, (2014); Amritha V. Shenoy (2019), "International Humanitarian Law in Ancient India: A Multi civilisational Perspective", *Indian Journal of International Law*, 58(3): 425-451. *Indian Journal of International Law*, 2018; "Deciphering the Landscape of International Humanitarian Law in the Asia- Pacific," S. Linton, *International Review of the Red Cross*, 2019. <https://international-review.icrc.org/articles/deciphering-landscape-international-humanitarian-law-asia-pacific>; "The State Practice of India and the Development of International Law: Selected Areas," B.N. Patel, *Comparative Law*, 2001; "Exploiter Les Sources Hindoues Et Bouddhistes Comme," *Dictats De La Conscience Publique*>>: Un Moyen De Cernier les Lacunes. M. Wiener, 2024. Académie de Genève -LLM Paper, <https://prix-henry-dunant.org/wp-content/uploads/SHARMA-Wiener-LLM-Paper-23-24-FR.pdf>; Mohammad Azharul Islam and Maulana Obaid Ullah Hamzah. "Respect for the Dead: From the Perspective of International Humanitarian Law and Islam." *The International Committee of the Red Cross* (2016); "Humanitarian Law as a Source of Human Rights Law" in *The Oxford Handbook of International Human Rights Law*, 2013. <https://doi.org/10.1093/law/9780199640133.003.0012>; Jeroen van den Boogaard, *Proportionality in International Humanitarian Law: Refocusing the Balance in Practice*. Cambridge, United Kingdom; Cambridge University Press, 2023; Modh, Bhumika Mukesh, *International Humanitarian Law: An Ancient Indian Perspective* (January 12, 2011), Available at SSRN: <https://ssrn.com/abstract=1738806> or <http://dx.doi.org/10.2139/ssrn.1738806>.
  - 3 Henckaerts, J.-M., & Doswald-Beck, L., *Customary International Humanitarian Law: Volume I: Rules*. Cambridge University Press (2005).

While the early article provided a solid foundation, the revised study revisits these areas, integrating a more nuanced understanding of the socio-political and cultural dynamics of ancient India and the urgency to bring these understandings to force for conflict management and resolution. The subject is too vast and preparing a single comprehensive study on the same is not possible. This combined work attempts to present a more thorough and comprehensive view of how ancient Indian thought influenced humanitarian ideals. Humanization of war and the evolution of modern codes and notions of warfare illustrates the continuity and relevance of these principles and ideals for addressing contemporary global challenges. By weaving together, the initial findings and revised interpretations, the study not only addresses previous gaps but also provides a robust platform for further interdisciplinary research, situating ancient Indian humanitarian law within a broader historical and global context. This synthesis reflects the evolution of my research and reinforces the enduring legacy of ancient Indian thought in shaping humanitarian values that transcend time and space.

War, as a phenomenon, has been an inextinguishable part of the history of mankind, shaping societies, changing political interests, altering geopolitical landscapes and influencing socio-cultural narratives. From the earliest conflicts in ancient civilizations to the highly regulated warfare of the modern era, the practice and regulation of war have evolved notably. Comprehending the historical trajectory of war and the legal and moral frameworks associated with it, is essential for understanding the contemporary perspectives and issues related to conflict and peace.

Ancient Indian civilization provides one of the earliest documented traditions of ethical warfare, very much rooted in the concepts of *Dharma Yuddha* (just war) or *Yuddham Dharmyam* (righteous war) and *Niti* (moral conduct). The *Mahabharata* which is considered one of India's great epics that offers impressive discussion on war ethics emphasizing proportionality, necessity and the protection of non-combatants. For instance, the *Bhagavad Gita*, a philosophical discourse within the *Mahabharata* highlights the apprehension between duty (*dharma*) and the destructive consequences of war.<sup>4</sup>

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4 Davis, R. H, *The Bhagavad Gita: A Biography*, Princeton University Press (2014).

Ancient Indian texts such as the *Arthashastra*<sup>5</sup> by Kautilya also sketches out strategic and ethical guidelines for warfare, including espionage, alliances and rules of engagement, emphasizing restraint and diplomacy as preferable to outright conflict.

One of the prominent principles in Indian warfare was the prohibition against targeting or attacking unarmed soldiers, civilians and sacred spaces. Combat was often restricted to daylight hours and weapons deemed excessively cruel were discouraged. These principles reflected an early recognition of the need to balance military objectives and national interest with humanitarian considerations. The similar trends can be observed all over the world.<sup>6</sup>

The abovementioned way for the development of international law, culminating in the Hague Conventions (1899 and 1907) and the Geneva

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5 Kautilya., *Arthashastra* (L. N. Rangarajan, Trans.), Penguin Books India (1992).

6 For instance, in Mesopotamia, the Code of *Hammurabi* (circa 1754 BCE) represents one of the earliest known legal codes including provisions related to the conduct of war and the treatment of prisoners of war.

Moreover, in ancient Greece, the practice of war was deeply intertwined with notions of honour, citizenship and collective responsibility. The Greeks developed rudimentary laws of war, such as truces for religious festivals and protections for envoys. The Peloponnesian War (431–404 BCE) provides insights into the ethical dilemmas of war as chronicled by historians like Thucydides, who highlighted the tension between power and morality. Similarly, the Roman Empire contributed majorly to the legal and philosophical underpinnings of war. The *jus fetiale* system regulated declarations of war and treaties highlighting the sanctity of agreements and the need for just cause. Cicero, a Roman statesman and philosopher, argued for principles of *jus ad bellum* (justice in going to war) and *jus in bello* (justice in war), which resonate with contemporary just war theory. Roman practices also influenced the later development of international humanitarian law particularly regarding the treatment of prisoners and non-combatants.

In the Islamic world, principles of warfare were articulated in the *Quran* and *Hadith*, pointing up proportionality, the protection of non-combatants and the humane treatment of prisoners. The concept of *jihad* (struggle) was often interpreted within the framework of just war requiring legitimate authority and a just cause. The modern times have witnessed the codification of war laws into formal legal systems driven by the horrors of large-scale conflicts and the desire to mitigate human suffering. The Peace of Westphalia Treaty (1648) marked the beginning of the modern state system establishing sovereignty as a cornerstone of international relations.

Conventions (1949) and other significant treaties and conventions<sup>7</sup>, which codify the principles of *jus ad bellum* and *jus in bello*. While *jus ad bellum* governs the decision to go to war, *jus in bello* regulates the conduct of war. Importantly, the two are independent: even if a war is justified (*jus ad bellum*), it must still be fought ethically (*jus in bello*). Conversely, an unjust war does not excuse violations of *jus in bello*.

The 20th century, with its unprecedented levels of destruction during the two World Wars, further underscored the need for robust legal frameworks. The United Nations Charter (1945)<sup>8</sup> prohibits the use of force except in self-defence or with Security Council authorization. Meanwhile, the Geneva Conventions and their Additional Protocols continue to regulate the conduct of war, emphasizing the protection of civilians, prisoners, and medical personnel.<sup>9</sup>

Despite the evolution of war laws, many ancient principles remain relevant. The emphasis on proportionality, discrimination and necessity, evident in ancient Indian, Roman, and Islamic traditions, resonates with contemporary international humanitarian law.

## II. WAR: DEFINITION, CHARACTER, GROUNDS AND TYPES

War is typically defined as an organized and prolonged conflict between groups, such as states, nations, or organizations, characterized by extreme violence, destruction and disruption.<sup>10</sup> It is usually conducted through the use of military forces and involves a deliberate struggle over political, territorial, economic, or ideological objectives. War often

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7 UN Charter, 1945 - Art. 2(4), The Convention on the Prevention and Punishment of the Crime of Genocide (1948), Geneva Convention Relative to the Treatment of Prisoners of War (1949), The Refugee Convention (1951), Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), International Covenant on Civil and Political Rights (1966), The Rome Statute of the International Criminal Court (1998).

8 United Nations, 1945 *Charter of the United Nations and Statute of the International Court of Justice*.

9 Lowe, V., & Tzanakopoulos, A., "The United Nations Security Council and War", in M. Weller (Ed.), *The Oxford Handbook of the Use of Force in International Law*, Oxford University Press (2012).

10 H. S. Bhatia, *International law and Practice in Ancient India*, New Delhi: Deep & Deep Publications (1977), P Bandopadhyaya, *International law and Practice in Ancient India* (1920 Calcutta).

includes a formal declaration or recognition of hostilities and can occur at various scales, from regional skirmishes to global confrontations.

In international relations, war is often distinguished from other forms of conflict by its scale, organization and use of armed forces. Clausewitz, a prominent military theorist, famously defined war as “an act of force to compel our opponent to fulfil our will<sup>11</sup>” and as a continuation of political relations by other means.

Traditionally, wars were fought between states. However, contemporary conflicts often involve non-state actors, such as insurgent groups, terrorist organizations, and private military companies. Hybrid warfare, blending conventional and unconventional tactics, has become more common. Modern conflicts are shaped by the role of information, propaganda, and media, including real-time news coverage and the use of social media as a battlefield. There also lies a difference between war and warfare. War is a prolonged and organized armed conflict between political communities whereas warfare is the military action conducted during war which involves the application of science, art and will. The purpose if war is to weaken the enemy’s military potential, while the character of warfare is always changing, these tactics can affect the tactical and operational art of war.

*Kamandaka*, an ancient Indian scholar and author of the *Nitisara*, defines war within the framework of political strategy (*niti*) and statecraft. In his view, war (*yuddha*)<sup>12</sup> is a tool of state policy, justified only when it serves the interests of the ruler and the state. He emphasizes diplomacy, strategic alliances and the pursuit of peace but permits war when all other options are exhausted or when the state’s survival is at stake. “War is constituted by a relation between things and not between persons. Individuals are enemies only accidentally; not as men, nor even as citizens, but as soldiers.”<sup>13</sup> This perspective given by Rousseau provides humanistic stance emphasizing that war is an unnatural state imposed

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11 <https://www.militarystrategymagazine.com/article/clausewitzs-definition-of-war-and-its-limits/>.

12 सन्धि च युद्धं च विनिश्चितानि साध्यं च राजधर्मा

(Both diplomacy and war, carefully decided and executed, are appropriate methods of governance when aligned with the duties of kingship.)

13 Rousseau, J.-J., *The Social Contract and other later Political Writings* (V. Gourevitch, Ed. & Trans.), Cambridge University Press (1762/2002).

by political or institutional conflicts rather than human nature itself. His philosophy suggests that the violence of war should be limited to combatants, leaving civilians untouched by its devastation.

The character of war as a legal remedy can be understood as the right of state to make war as an ultimate means of self-help.<sup>14</sup> It can be recognised as the right of the individual state to take laws into its own hands and prosecute the offender in its own nature. War as a legal remedy aligns with the historical and legal understanding that war could be an instrument for resolving disputes or enforcing legal rights when no peaceful alternatives remained. This view was more prevalent in earlier legal traditions, such as the classical Roman and medieval periods where sovereign states were often seen as having the right to wage war to seek justice or resolve disputes. Medieval legal scholars like Francisco de Vitoria and Hugo Grotius formalized the idea that war could be used as a last resort for upholding justice under natural law.

The 20th century saw a significant shift away from the idea of war as a legitimate legal remedy. The establishment of the United Nations and the adoption of the UN Charter explicitly outlawed aggressive war, limiting the use of force to self-defense or actions authorized by the UN Security Council. The Kellogg-Briand Pact (1928) also aimed to renounce war as a tool for resolving international disputes.

In reality, war has consistently demonstrated its devastating impact on humanity, leaving in its wake physical destruction, psychological trauma and moral dilemmas. Throughout history, numerous thinkers, writers and leaders have reflected on the catastrophic consequences of war offering profound insights. “War is hell”, as believed by Tecumseh Sharman.<sup>15</sup> “War does not determine who is right-only who is left.” This anonymous aphorism critiques the futility of war, emphasizing its capacity to destroy rather than resolve. History is replete with examples,

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14 *Forcible Procedure by War*, International Law, Chapter XXVIII., p. 647.

15 Attributed to General William Tecumseh Sherman during the American Civil War, this stark declaration encapsulates the brutal reality of war. Sherman’s infamous “March to the Sea” left a trail of destruction as his forces implemented a scorched-earth policy, targeting not just Confederate armies but also the economic infrastructure supporting them. Sherman’s words reflect not only the physical devastation but also the moral complexities of war tactics that often blur the line between military necessity and civilian suffering.

from the senseless carnage of the World War I to the nuclear annihilation in Hiroshima and Nagasaki, where the loss of life far outweighed any moral or political justification.

In Professor H.H. Wilson's opinion on ancient Indian laws of war are very chivalrous and humane that prohibited the slaying of unarmed, of women, of the old and of the conquered.<sup>16</sup> The recent Israel-Palestine conflict can be seen a modern geopolitical struggle with deep roots in territorial, religious and political tensions. It is marked by violent confrontations, displacement of civilians and significant humanitarian crises. In contrast, ancient Indian conquests were often framed within the ethical and moral guidelines of *dharma* (righteousness) and focused on welfare and integration of the conquered people. These conquests aimed to minimize violence and prioritize governance, cultural exchange and public welfare.

The *Manu Samhita* strongly opines that war should be the last resort. A king should first try to conquer his foes by conciliation, by gift and by causing dissention if possible: if all these fail then and then only should he wage war.<sup>17</sup> Kautilya viewed war as a tool to achieve political and economic objectives, not an end in itself. It was a continuation of state policy when diplomacy and other measures failed. War was considered necessary for maintaining sovereignty, expanding territorial control and securing the state's prosperity. The foundation of the kingdom lies in *dharma*, wealth and desire, and it is protected by war. Therefore, war should only be undertaken to safeguard the kingdom, and it must be conducted in accordance with *dharma*.<sup>18</sup>

The *Arthashastras* were great advocates of the policy of state interest and yet they looked upon the establishment and continuation of peace as the only means of achieving national progress and national

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16 H.H. Wilson, *Essays and Lectures on the Religions of the Hindus*, Vol. II, Trubner & Co., London, p.302, 1861.

17 *Manu*, VII., 108.

18 धर्मार्थकाममूलं हि राज्यं युद्धेन रक्षितम् ।

तस्मात् धर्मेण युद्धं च कर्तव्यं राज्यरक्षणे ॥

(A kingdom which is the root of righteousness wealth and desire is protected by war  
Therefore, to protect the kingdom one should fight according to righteousness. -  
Google Translated) (*Arthashastra*, Book 7, Chapter 5)

prosperity.<sup>19</sup> The *Arthashastra* advised rulers to consolidate alliances and govern conquered territories with fairness to secure loyalty. Kautilya emphasized that a ruler should “treat the conquered people as his own, ensuring their happiness and security.”<sup>20</sup> Even when the advantages of peace and war are equal one should prefer peace, for war causes loss of power and wealth and is troublesome and sinful.<sup>21</sup> A solvent treasury and sage advice, declared *Kamandaka*, were much better expedients than mere display of power; he therefore condemned lavish use of gifts.<sup>22</sup> The *Dharmashastras* advised abstention from hostilities from a moral point of view. Similar notions of war can be traced from the histories of Greece and Rome; we find expressions of pacific intention of states amidst the prevailing clash of arms. Thus, *Aristophanes*<sup>23</sup> supplicated the gods to abolish the arbitrament of the sword and avoidance of war.

Roman writers also vehemently opposed wars. They agreed with Aristotle regarding peace as the ultimate goal or, say, dead-end of all wars. Likewise, *Silius Italicus* emphasises that peace is the best of all things given to mankind and that one peace is better than innumerable triumphs.<sup>24</sup> The motivations for war have been as varied as the civilizations and epochs in which they occurred. From territorial expansion and religious zeal to economic gain and ideological conflict, war has often been justified by leaders and thinkers with arguments deeply rooted in the historical and cultural contexts of their time.

In ancient civilizations such as Mesopotamia, Egypt, and Rome, war was often waged to expand territorial boundaries. The Epic of Gilgamesh, one of the earliest literary works, recounts conflicts that highlight the pursuit of glory and dominance. Similarly, Thucydides, the Greek historian, observed in his History of the Peloponnesian War that “the strong do what they can, and the weak suffer what they must,” reflecting the ancient worldview that power and might often dictated the grounds for war.

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19 *Ibid*, VII., 200.

20 *Arthashastra* 7.16.15

21 *Arthashastra*, VII., 12.

22 *Kamandaka*, XVII., 2-3.

23 Aves, 1591.

24 Cf. *Livy*: XXXVI., 3.

Ancient wars often invoked divine will as a justification. The Indian epics *Mahabharata* and *Ramayana* describe conflicts where *dharma* (moral duty) played a central role. "The causes which usually give rise to a war and the affronts which are usually amended through the arbitration of the sword, are, says the *Agnipurana*<sup>25</sup> (i) stealing away of a wife<sup>26</sup>, (ii) encroachment upon the capital, (iii) the territory, (iv) the kingdom, (v) or a sovereign right of a king by his adversary, (vi) pride, (vii) over sensitiveness as to the point of honour, (viii) loss of fortune, (ix) humiliation suffered by an ally or a friendly monarch, (x) death of an ally, (xi) the accretion to the domain of a foreign prince and a disturbance of the balance of power<sup>27</sup> among the monarchs of a circle.

In the West, the Hebrew Bible recounts wars of conquest led by figures like Joshua, portraying them as divinely sanctioned missions to establish a chosen people. Cicero argued in his treatise *De Officiis*<sup>28</sup> that war could only be justified as a means of defense or to avenge wrongs. This principle laid the groundwork for *jus ad bellum* in Roman jurisprudence emphasizing the moral obligation to respond proportionally to aggression. Warfare in the Middle Ages took a hideous form. All derations worthy of men and good Christians vanished.<sup>29</sup>

The Peace of Westphalia (1648) marked the beginning of modern state-centric warfare. The principle of sovereignty emerged, justifying wars as a means of defending or asserting the autonomy of states. Thomas Hobbes, in *Leviathan*, argued that the 'state of nature' was akin to a state of war, where self-preservation justified the use of force.

The Industrial revolution ushered in an era of economic imperialism, where wars were waged to secure resources and markets. Karl Marx,

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25 Ag., CCXL.

26 Eg, like the wars between the *Rama* and *Ravana*.

27 The theory of the *Mandala*.

28 <https://oll.libertyfund.org/titles/cicero-on-moral-duties-de-officiis>.

29 Milman, *History of Latin Christianity*, IV., 37.

(The medieval period saw the rise of religiously motivated wars, such as the Crusades, which Pope Urban II framed as a divine mandate to reclaim the Holy Land from Muslim rule. Leaders like Richard the Lionheart and Saladin became emblematic of the era's religious fervour, where war was seen as a path to spiritual redemption. Similarly, in the Islamic tradition, *jihad* (struggle) was interpreted as a defensive or offensive measure to protect and expand the faith, as outlined by scholars like *Al-Mawardi* in his treatise on governance.)

in his examination of capitalism, described colonial wars as a byproduct of economic exploitation, labelling them as tools of the bourgeoisie to expand their wealth.<sup>30</sup> The 19th and 20th centuries witnessed wars fueled by nationalism and ideology.<sup>31</sup> The 20th century also saw wars justified as struggles for liberation and self-determination.<sup>32</sup> The 21st century has been defined by the 'War on Terror', launched by the United States in the aftermath of the September 11, 2001, attacks.<sup>33</sup> Modern international law has increasingly recognized the legitimacy of humanitarian intervention.<sup>34</sup>

The grounds for war have evolved significantly over time, reflecting shifts in cultural, political and economic paradigms. While ancient wars were often justified by power and divine will, modern conflicts are increasingly framed in terms of legal and moral imperatives. However, as thinkers like Immanuel Kant in *Perpetual Peace* has argued that true progress lies not in refining the justifications for war but in creating systems that make war unnecessary. By examining the diverse grounds for war through history, we gain insight into humanity's enduring struggle to reconcile the inevitability of conflict with the pursuit of peace.

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30 The Opium Wars (1839–1842, 1856–1860) between Britain and China exemplify conflicts driven by economic motives masked under the guise of trade freedom.

31 World War I was justified by leaders like Kaiser Wilhelm II as a means of asserting national honour and protecting alliances. World War II, in contrast, became a moral crusade against fascism, with Franklin D. Roosevelt describing the conflict as a fight for 'four freedoms': freedom of speech, freedom of worship, freedom from want, and freedom from fear.

32 The Vietnamese leader Ho Chi Minh framed the Vietnam War as a fight against colonialism and imperialism, drawing parallels with the American Revolution. Similarly, Gandhi's philosophy of non-violent resistance highlighted the moral contradictions of colonial powers waging wars for freedom while suppressing independence movements.

33 President George W. Bush justified the invasions of Afghanistan and Iraq as pre-emptive measures to combat terrorism and prevent the proliferation of weapons of mass destruction. Critics, however, have questioned the validity of these grounds, citing the lack of evidence for Iraq's alleged weapons program.

34 The NATO intervention in Kosovo (1999) and the UN-backed action in Libya (2011) were justified on the grounds of preventing genocide and protecting civilian populations. Thinkers like Michael Walzer have debated the ethical boundaries of such interventions, emphasizing the need for multilateral consensus and clear objectives.

Wars can be categorized in many types depending on (i) the weapons used or (ii) the methods employed. *Shukracharya*<sup>35</sup> outlined three primary types of war in his treatise *Shukra Niti*. These classifications provide insight into the strategic and moral dimensions of conflict as understood in ancient Indian political thought. The three types of war he described are- (i) *Daivika*: This refers to warfare in which *mantra* was used, (ii) *Asura*: Warfare in which mechanical instruments were used, and (iii) *Manush*: Human warfare in which *Shastras* and hands were used.<sup>36</sup>

Kautilya also divided war into three types- (i) Open Battles: These wars involve direct confrontation between armies in a transparent and declared manner. Both sides are aware of the engagement, and the conflict adheres to established rules of warfare. Kautilya advocated for open battles when a kingdom possessed sufficient strength and resources to face its enemy directly. For Example, the *Mahabharata* describes the Kurukshetra war as an open war where both sides followed established rules, such as fighting only during daylight hours and avoiding attacks on unarmed warriors, (ii) Silent Battles (*Tushnimyuddha* or *Guptayuddha*): Also known as wars of attrition or passive strategies, silent battles involve weakening the opponent over time without engaging in open combat. This may include economic blockades, psychological tactics, or diplomatic isolation, forcing the enemy to surrender or negotiate under unfavourable conditions. Examples of such tactics can be seen in the strategies used by rulers like Chandragupta Maurya, who relied on espionage and subterfuge to establish the Mauryan Empire, and (iii) Treacherous Battles: Treacherous battles involve deception, espionage, and subterfuge to achieve victory. These strategies focus on undermining the enemy's morale, alliances, or internal stability. Kautilya emphasized the use of treacherous tactics when direct confrontation was impractical or when a decisive advantage could be gained through cunning methods.

*Indra*, one of the traditional authors of the *Arthashastra*, divided wars into four classes- (i) wars caused by invasion of one's territory, (ii) wars caused by something done by others prejudicial to the exercise of regal

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35 <https://www.wisdomlib.org/hinduism/book/shukra-niti-by-shukracharya/d/doc1238858.html>.

36 Sukra IV., vii.221.

powers, (iii) wars resulting from some disputes about boundaries, and (iv) wars caused by some disturbance in the *mandala*.<sup>37</sup>

In contrast, the foundations of modern warfare are shaped by a combination of technological advancements, geopolitical dynamics, strategic imperatives and ideological motivations. The first and foremost type of war fought these days are based on technological superiority. The integration of cutting-edge technologies is a defining characteristic of modern warfare. Nations now rely heavily on advanced military technologies, such as precision-guided munitions (PGMs), drones, cyber capabilities, artificial intelligence (AI) and autonomous systems. Technological superiority provides states with the ability to conduct operations with greater speed, accuracy and efficacy. The development of hypersonic weapons, stealth technology and satellite systems has further transformed military capabilities, providing an edge in both offensive and defensive operations.

Also, economic power and strength plays a pivotal role in modern warfare, as states with robust economies can afford to maintain large and technologically advanced military forces, sustain prolonged conflicts and fund the development of new weapons systems. Economic warfare, including sanctions, trade restrictions, and financial manipulation, has become a vital tool in modern conflicts. The globalized economy also means that wars often have far-reaching economic consequences, not only for the belligerents but also for global markets and supply chains.

In addition, geopolitical considerations are central to modern conflicts. Competition for resources, strategic territories, and influence in key regions often drives nations to engage in conflict.<sup>38</sup> Information warfare is another crucial aspect of modern conflicts. The ability to control narratives, shape public perception, and manipulate the media is now as important as military power. States and non-state actors use disinformation, propaganda and psychological operations to weaken the resolve of their enemies and influence the population's support. In this digital age, social media platforms play a significant role in

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<sup>37</sup> Kam., X., 16-17.

<sup>38</sup> For instance, territorial disputes in the South China Sea, competition for oil in the Middle East, and control over critical infrastructure such as shipping lanes and pipelines have all played significant roles in recent global tensions. Geopolitical rivalries, especially between major powers such as the United States, China and Russia, continue to shape the nature and outcomes of wars.

spreading information, propaganda and misinformation, often complicating traditional military strategies. The use of cyber-attacks, fake news and online manipulation has added a new layer to warfare. The involvement of non-state actors-such as insurgent groups, terrorists, militias and mercenaries have become a defining characteristic of modern warfare. These actors often employ irregular tactics such as guerilla warfare, terrorism and sabotage. They typically operate outside traditional state boundaries and can exploit weaknesses in state forces. The rise of non-state actors, especially in regions with weak or fragile governments, has made modern warfare more unpredictable and decentralized.

Access to natural resources and the environment also plays a key role in modern conflicts. Nations may go to war over strategic resources like oil, gas, minerals and water. Environmental degradation, climate change, and resource scarcity are increasingly seen as potential causes of conflict, as these factors strain geopolitical relationships and exacerbate regional tensions. The intersection of environmental stress and warfare is expected to intensify in the coming decades as global climate patterns shift and resources become scarcer.

Moreover, ideology and culture continue to play a central role in many modern wars. Conflicts rooted in religious, ethnic or political ideologies are very common. Nationalism, religious extremism and the quest for political and social autonomy often drive groups to engage in violent confrontations.<sup>39</sup>

As discussed earlier, ancient Indian texts emphasize the principle of righteous war which entails that war should only be waged as a last resort when all other avenues of reconciliation fail. The *Mahabharata* explicitly mentions that warriors must not attack those who are unarmed, fleeing, or wounded. These injunctions demonstrate an early recognition of the need to limit suffering during conflict. *Yudhishtira*, a central character in the epic, insists on waging war within the bounds of dharma, advocating ethical conduct even amidst intense conflict.

The *Manusmriti* mandates that a ruler should protect the inhabitants of conquered territories as he would to his own subjects, ensuring their

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<sup>39</sup> For example, the war on terror, centered on the ideological rivalry between democratic values and radical Islamism, has been a significant basis for conflict in the 21st century.

welfare and security. The *Laws of Manu* specify that warriors should avoid destroying crops, temples and places of cultural or religious significance during war. It prohibits the use of cruel or indiscriminate weapons, such as poisoned arrows, emphasizing proportionality in the use of force. In this way, the principles of warfare and humanitarian conduct enshrined in ancient Indian texts demonstrate an advanced understanding of human rights and dignity, and war as a last resort, long before the codification of modern international law. In this regard it is pertinent to quote the line which occurs in the Mahabharata.<sup>40</sup>

“शमा एव हि शौर्यं श्रेयो न हि युद्धं कदाचन।”

(Forgiveness is the true strength; war should not be waged without cause.)

Similarly, the *Manusmriti*<sup>41</sup> prescribes that a king must first attempt sandhi (peace) and only resort to war if all diplomatic efforts fail:

“संधि-विग्रहयोर राज्ञः प्रधानं धर्म उच्यते।”

(Peace and war are the king’s primary duties, but peace should be preferred over war.)

The protection of non-combatants, women, children, the elderly and nature itself was a cornerstone of ancient Indian warfare ethics. The *Mahabharata*<sup>42</sup> provides clear instructions to warriors:

“न हन्तव्यः स्त्रीयो बालो नैव वृद्ध न तपसा।”

(Women, children, the elderly and ascetics are not to be harmed in war.)

This aligns with the principles of international humanitarian law as enshrined in the Geneva Conventions. Additionally, *Manusmriti*<sup>43</sup> underscores the importance of protecting civilians during armed conflicts:

“राजनं धर्मतो युद्धं अनुतिष्ठन्तं रक्षेत् प्रजाः ॥”<sup>43</sup>

(A king must protect his subjects, even in war, according to dharma.)

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40 (Udyoga Parva, Chapter 33, Verse 33).

41 7.89.

42 Shanti Parva, Chapter 96, Verses 1-5.

43 7.91.

In the *Arthashastra*<sup>44</sup>, Kautilya advises humane treatment of prisoners of war and conquered populations:

“हित संस्कृतं वंश्य करोति।”

(One must win over people by ensuring their welfare.)

### III. TOWARD HUMANIZATION OF WARFARE: PRELIMINARY OBSERVATIONS

Making contemporary wars more ethical, requires adherence to international laws, the promotion of humanitarian principles and the application of strategies that minimize harm to civilians and infrastructure. The following techniques and approaches can be considered: Adherence to International Humanitarian Law, it includes, first, ‘Principle of Distinction.’ It means combatants must differentiate between military targets and civilians, ensuring that non-combatants and civilian infrastructure are spared. Second, ‘Principle of Proportionality’ means military actions should avoid excessive harm to civilians compared to the military advantage gained. Third, ‘Prohibition of Certain Weapons’ stressed on avoiding the use of weapons that cause indiscriminate harm (e.g., cluster bombs, chemical weapons).

In addition to this, protecting refugees and internally displaced persons (IDPs) through secured corridors and humanitarian aid is crucial. Advancements in precision-guided technologies, such as precision-guided munitions (PGMs) and the use of satellite imaging and artificial intelligence can minimize collateral damage by accurately targeting military objectives and monitoring civilian movements in conflict zones. Strict rules of engagement that prioritize civilian safety, even at the expense of military goals, and temporary ceasefires to facilitate humanitarian aid, evacuations, and medical support are vital measures. Deploying neutral observers can ensure adherence to ethical standards, while efforts to avoid damage to critical infrastructure, such as hospitals and water systems, and rapid reconstruction in collaboration with NGOs and international agencies can alleviate civilian suffering. Providing psychological support and establishing educational and recreational facilities for children in conflict zones can help maintain a sense of normalcy. Post-war rehabilitation should focus on rebuilding infrastructure, resettling displaced populations, restoring governance, and fostering reconciliation to address grievances and prevent future

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<sup>44</sup> Book 13, Chapter 5.

conflicts, with assistance from international organizations to promote long-term recovery and stability. Strengthening global institutions like the United Nations to mediate conflicts, enforce ethical warfare standards, and sanction violators of humanitarian laws can further enhance compliance and deter future transgressions. Also, incorporating ancient principles mainly drawing ethical guidelines from ancient Indian texts like the *Mahabharata* and *Arthashastra*: Prioritize diplomacy and peaceful resolution before engaging in warfare. Protect non-combatants, including women, children, and the elderly. Seek 'victory through righteousness' (*Dharma Vijaya*), focusing on justice rather than domination.

The prevention of POWs and the protection of combatants in armed conflicts are guided by various clauses and principles established in international law. These provisions are enshrined in treaties, conventions and customary international law, with the Geneva Conventions playing a pivotal role. The major clauses include Geneva Conventions (1949) and Additional Protocols form the cornerstone of international humanitarian law concerning POWs.<sup>45</sup> The Hague Convention IV

<sup>45</sup> The Third Geneva Convention of 1949 outlines the protection and humane treatment of prisoners of war (POWs) during armed conflicts, establishing key principles of international humanitarian law. POWs are defined in Article 4 as members of the armed forces, militias, or civilians accompanying military forces who fall into enemy hands during conflict. Article 13 mandates that POWs must be treated humanely, prohibiting torture, cruel treatment, and any form of public humiliation. They must be provided with adequate food, shelter, and medical care as specified in Articles 20–31, which ensure that their basic needs are met during captivity. Article 17 dictates that POWs are only required to provide their name, rank, date of birth, and serial number when interrogated, with additional information being protected from coercion. Article 16 prohibits any form of discrimination, ensuring that POWs are not treated differently based on race, nationality, religion, or political beliefs. Article 13 also prohibits reprisals against POWs, and Articles 69–74 guarantee their right to communicate with their families through recognized organizations like the International Committee of the Red Cross (ICRC). Labor requirements are governed by Articles 49–57, stipulating that work must be non-military, safe, and fairly compensated. At the end of hostilities, Articles 118–119 ensure that POWs are promptly repatriated, with seriously ill or wounded individuals prioritized for early release. The ICRC's role in monitoring POW conditions and ensuring compliance with the convention is outlined in Article 126. Violations of these provisions, including mistreatment of POWs, are considered war crimes under international law, and violators can be prosecuted through bodies like the International Criminal Court (ICC). The Geneva Convention, established after the brutal treatment of POWs in World War II, aims to ensure that individuals retain their human dignity even in war, and it has become a cornerstone of international law, promoting the protection of human rights during armed conflict.

(1907)<sup>46</sup> and Customary International Law which provide many principles related to POWs are binding even on states that have not ratified specific treaties such as: the prohibition of torture or degrading treatment and the obligation to provide medical care to injured combatants.

UNCLOS (1982) primarily governs the use of the seas and has provisions relevant to preventing or addressing POW situations in maritime conflicts<sup>47</sup> The United Nations Charter (1945) indirectly supports the prevention of POW situations by advocating for the peaceful resolution of disputes.<sup>48</sup> Biological Weapons Convention, 1971<sup>49</sup>; the Chemical Weapons Convention, 1993<sup>50</sup>; and the Treaty on the Prohibition of nuclear weapon 2017 are prominent source of *jus in*

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<sup>46</sup> Article 4 stipulates that POWs are in the custody of the capturing state and not individual soldiers, ensuring collective accountability. Article 7 states capturing states must provide POWs with the same food, clothing, and shelter as their own troops.

<sup>47</sup> United Nations Convention on the Law of the Sea, 1982 (UNCLOS). Retrieved from <https://www.un.org>.

Article 100 (Duty to Cooperate), states are obligated to cooperate in suppressing acts like piracy, which can lead to the capture of individuals and Article 110 (Right of Visit) addresses situations where vessels are intercepted, emphasizing the humane treatment of those on board, including combatants.

<sup>48</sup> United Nations, 1945, Charter of the United Nations. Article 2(4) prohibits the threat or use of force against territorial integrity or political independence, reducing the likelihood of armed conflict. Chapter VII provides a framework for the Security Council to address acts of aggression and maintain international peace.

<sup>49</sup> B. C. Nirmal, "Implementation of the Biological Weapon Convention and the Indian State Practice", *ISIL Yearbook of Humanitarian and Refugee Law*, pp. 107-138, (2011).

B. C. Nirmal, et al. "Concept of Statehood under International Law: Understanding in the Light of Situation in Palestine," *Indian Journal of International Law*, Vol. 61, pp. 53-83 (2021).

<sup>50</sup> B. C. Nirmal, Challenges on the Implementation of Chemical Weapons Convention with Special Reference to Syrian crisis, *ISIL Yearbook of Humanitarian and Refugee Law*, pp.44-85 (2013).

*vela*. Rome Statute of the International Criminal Court<sup>51</sup> (1998) criminalizes actions related to the mistreatment of POWs.<sup>52</sup>

#### IV. FUNDAMENTAL PRINCIPLES OF HUMANITARIAN LAW

International Humanitarian Law, an oldest branch of public international law, deals with humanitarian problems which arise directly or indirectly from international or non-international armed conflicts. Although humanitarian consideration has been at the heart of modern law of armed conflicts, until recently it was common for authors to divide the corpus of the law into two separate branches, the one dealing with the conduct of hostilities by belligerent states and the other humanitarian in nature protecting the victims of war and providing safeguards for disabled armed forces, personnels and persons not taking part in the hostilities.<sup>53</sup> IHL has a dual nature: It protects victims of armed conflict, including civilians, wounded soldiers, and prisoners of war and it imposes obligations on parties engaged in hostilities, regulating conduct and means of warfare.

The principles underlying IHL are- Humanity: The principle of humanity seeks to alleviate unnecessary suffering and ensure humane treatment for all affected by war; Distinction: Parties to conflicts must

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51 For a partial list of literature on ICC and Rome Statute, see, R. O'Keefe, *International Criminal Law*, Oxford 2015; W. Schabas (ed.), *The Cambridge Companion to International Criminal Law*, Cambridge Univ. Press, 2019; Casses and P. Geeta, eds. *International Criminal Law* third edition Oxford 2013, R. Cryen, D. Robinson and S. Vasiliev, *An Introduction to International Criminal Law and Procedure*, fourth edition, Cambridge 2019, W. Schabas, *The International Criminal Court*, 6th edition, Cambridge (2020). Also see, B. C. Nirmal, "Expanding Horizons of International Criminal Law" in *Chia Jui Cheng ed New Trends in International Law*, 2024, Brill, pp. 267-291; B.C. Nirmal, "Jurisdiction of International Criminal Court," *ISIL Year Book HRL*, 2003, pp. 116-134; B.C. Nirmal, "Crimes Within the Jurisdiction of International Criminal Court and the Indian Response," *ISIL Year Book Humanitarian and Refugee Law*, pp. 106-125 (2006); "International Criminal Courts' Trust Fund for Victims: Challenges and Opportunities", No. 4, *Indian Journal of International Law*, pp. 527-549, (2011). B.C Nirmal and AK Ajit, A Critical Evaluation of 20 Years of International Criminal Court, volume 22 (2022), P 1 etseq., *International Criminal Court* (1998).

52 The Rome Statute deals with Article 8 (War Crimes) includes unlawful confinement, torture, and inhumane treatment of POWs as prosecutable offense.

53 B. C. Nirmal, *International Humanitarian Law: Its Scope and Nature*, *Banaras Law Journal*, 31 (2002) 66-86. Henckaerts, Jean-Marie, and Louise Doswald-Beck, *Customary International Humanitarian Law. Volume I: Rules*. International Committee of the Red Cross, pp.66, (2005).

distinguish between combatants and civilians, ensuring civilians are not targeted; Proportionality: Attacks must not cause excessive harm to civilians relative to the anticipated military advantage; and Necessity: Military actions must be necessary to achieve a legitimate aim in warfare and must not cause unnecessary destruction.

Ancient humanitarian law, though not codified in the modern sense, is rooted in the customs, traditions, and religious doctrines of early civilizations. These principles sought to limit suffering during conflicts and provide protections to vulnerable populations. Here are the fundamental principles commonly reflected in ancient humanitarian practices<sup>54</sup>:

1. Protection of Non-Combatants: Many ancient societies emphasized the protection of civilians, particularly women, children and the elderly during times of war.<sup>55</sup>
2. Respect for the Enemy's Humanity: Respect for the dignity of adversaries was emphasized even in times of war.<sup>56</sup>
3. Prohibition of Unnecessary Suffering: Weapons and methods of warfare that caused undue suffering or destruction were often discouraged. The *Laws of Manu* in ancient India prohibited the use of certain types of weapons, such as those that caused excessive harm. The Hittite laws<sup>57</sup> and codes limited brutality in war and encouraged negotiated settlements to prevent unnecessary bloodshed.
4. Sacred Spaces and Times of Truce: Many ancient cultures established sacred spaces or

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54 The Code of Hammurabi prescribed certain protections for individuals, particularly slaves and women, limiting abuses during conflict. In ancient Hindu texts there are injunctions against harming non-combatants, including women, children, and the elderly. In ancient Chinese warfare, Confucian ideals stressed the ethical treatment of civilians during conflicts.

55 In Ancient Greek practices, prisoners of war were often enslaved rather than killed and ransoms were accepted in lieu of execution. The *Qur'an* emphasizes humane treatment of prisoners and providing for their needs, reflecting an extension of ancient tribal practices.

56 The Hittite laws, also known as the Code of the Nesilim, constitute an ancient legal code dating from c. 1650 – 1500 BCE. They have been preserved on a number of Hittite cuneiform tablets found at Hattusa (CTH 291–292, listing 200 laws).

57 In ancient Greece, the Olympic truce (*ekecheiria*) ensured that conflicts were suspended during the Olympic Games. In Hindu traditions, certain festivals or holy days were considered times of peace. In Mesopotamian and Egyptian cultures, temples and other religious sites were often considered off-limits for military activities.

times in which warfare was forbidden.<sup>58</sup> Provisions for the Vulnerable: Care for the injured and vulnerable was a recurring theme.<sup>59</sup> Buddhist teachings emphasized compassion and prohibited harm to all living beings, influencing the conduct of ancient rulers like Emperor *Ashoka*, who renounced violence and sought to protect the weak. 6. Proportionality in Warfare: The idea that force should be used proportionally and not exceed what is necessary to achieve military objectives is a principle evident in early legal codes.<sup>60</sup> 7. Humane Treatment of Prisoners: Prisoners of war were often granted certain rights.<sup>61</sup>

## V. LEGAL OBLIGATIONS AND CODIFICATION

The concepts of *jus ad bellum* and *jus in bello* come from the field of just war<sup>62</sup> theory which explores the ethical frameworks and principles governing the initiation and conduct of war.<sup>63</sup> It addresses when it is

58 The Hippocratic Oath is an oath of ethics historically taken by physicians. It is one of the most widely known of Greek medical texts. In its original form, it requires a new physician to swear, by a number of healing gods, to uphold specific ethical standards. The oath is the earliest expression of medical ethics in the Western world, establishing several principles of medical ethics which remain of paramount significance today. These include the principles of medical confidentiality and non-maleficence.

59 The Hittite treaties often included clauses ensuring proportional responses to transgressions. Ancient Chinese military strategist Sun Tzu emphasized restraint and the importance of achieving objectives without excessive destruction.

60 *Quran* 76:8-9

In Islamic teachings, prisoners were to be treated with dignity, fed, and not subjected to torture or inhumane treatment. The Romans recognized the rights of captives under the *jus fetiale*, which established guidelines for declaring war and treating prisoners.

61 नातिक्रमेत् धर्ममरंभावसने तथा ।

प्रजानां च हिते युक्तः कार्यमाचार्यधार्मिकम् ॥

(He should not transgress righteousness and in the seat of immortality.

Engaged in the welfare of the people he should perform the righteous duty of his teacher- Google Translated) (*Mahabharata*, *Shantiparva*, Chapter 69, Verse 23).

62 B. C. Nirmal, "Implementation of the Biological Weapon Convention and the Indian State Practice", *ISIL Yearbook of Humanitarian and Refugee Law*, pp. 107-138, (2011); "Challenges on the Implementation of Chemical Weapons Convention with Special Reference to Syrian crisis", *ISIL Yearbook of Humanitarian and Refugee Law*, pp.44-85 (2013).

63 Egyptian-Hittite Treaty (1259 BCE), One of the earliest recorded peace treaties, it stipulated mutual obligations between the Egyptian and Hittite empires, including the treatment of subjects and prisoners. Greek city-states often entered into alliances or imposed conditional surrender agreements where the victor was bound to protect the defeated population in exchange for tribute or allegiance.

morally or legally permissible for a state to initiate conflict. The principles of *jus ad bellum* typically include- (i) The war must address a wrong suffered, such as defense against aggression or protection of human rights, (ii) Only duly recognized and legitimate authorities (e.g. a state government) can declare war, (iii) The aim must be to promote peace, justice, or restore order — not for self-interest or revenge, (iv) The war should have a reasonable chance of achieving its goals, (v) The anticipated benefits of war must outweigh the expected harms, and (vi) All non-violent options (diplomacy, negotiation) must be exhausted before resorting war. *Jus in bello*, on the other hand, focuses on how war is conducted once it has started. It ensures that the means and methods used in war remain ethically constrained and in line with international law. Its principles include- (i) Combatants must distinguish between combatants and non-combatants; civilians must not be deliberately targeted, (ii) Proportionality: The force used should be proportional to the military objective and avoid excessive collateral damage, (iii) Only military actions necessary to achieve legitimate objectives are permissible, and (iv) Weapons or methods causing unnecessary suffering are prohibited. While ancient international law was largely customary, conquerors were often bound by treaties, oaths and other agreements.<sup>64</sup> The practice of taking along prisoner of war existed in various parts of the world. It existed in ancient India as well. Unlike other places, the treatment granted to them in India was generous and humane. According to the *Mahabharata*, “Enemies captured in the war were not to be killed but are to be treated as one’s own children.”<sup>65</sup> During Vedic times, the *Dasyus* or aborigines, were made slaves if taken as prisoners. In classical Sanskrit *dasa* means ‘bondsmen’, *dasi*, the feminine form. The *Puranas* also mention POWs being taken as slaves. Even women were captured and enslaved. According to *Mahabharata*, female POWs were included to marry someone of the victor’s choice, if they declined then they were sent back under escorts. Kautilya advised that all POWs should be released. The *Arthashastra* is permeated with the international consciousness of that

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<sup>64</sup> *Shantiparva*, 102.32.

<sup>65</sup> Penna, L. R., “Written and Customary Provisions Relating to the Conduct of Hostilities” *International Review of the Red Cross*, 24(244), 199–212, (1984). <https://doi.org/10.1017/S0020860400024171>.

age and exhorts the king not to “covet the land, property, sons, or wives of the slain one.”<sup>66</sup>

## VI. BELLIGERENT OCCUPATION, CONQUEST, ANNEXATION AND SUBJUGATION

Before we proceed to give a brief account of the rules governing occupation, annexation and conquest, it will be apt to mention that laws of warfare which developed in response to the exigencies of war in ancient India was older than its Western counterpart. Given the rudimentary and primitive nature of the evolving law of Warfare, non-existence of rules distinguishing belligerent occupation from conquest is not surprising. It is interesting to note that Apparent distinction between occupation and conquest was also not regarded until the Napoleonic wars in the 19th century. To put it specifically no distinction between belligerent occupation and conquest was neither recorded in the time of Grotius nor in the writings of the 17th century classics Jurists -Vattel, Rousseau and Martens. L. Oppenheim stressed on this fact in the following terms: “The distinction between mere temporary military occupation of territory, on the one hand, and, on the other, real acquisition of territory through conquest and subjugation, became more and more apparent, since Vattel had drawn attention to it. However, it was not till long after the Napoleonic wars in the nineteenth century that the consequences of these distinctions were carried out to their full extent by the theory and practice of International Law.”<sup>67</sup>

Although, the ancient law of warfare has been different from the western law of warfare and is perhaps more humanitarian than even modern rules of international humanitarian law, some of its concepts such as enemy occupation and benevolent conquest may be regarded as noteworthy continuation of ancient Indian law in the realm of humanitarian law. It does not need to be emphasized that laws of warfare in any society or civilization are primarily shaped by the

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66 During World War II, Nazi Germany occupied France after defeating French forces in 1940. The northern part of France was placed under direct German military control. Governed by international law, including the Hague Regulations (1907). The occupation ended with the Allied liberation of France in 1944. In 1931, Japan invaded and occupied the Manchuria region of China, setting up the puppet state of Manchukuo. Japan maintained control over Manchuria until its defeat in World War II.

67 Lassa Oppenheim, *International Law: A Treatise*, 1st ed. (London: Longmans, Green, 1905), 2:168.

definition, nature, and types of War and fundamental principles of warfare that that society adheres to at a given point of time. Be that as it may in the deliverance and effectiveness of the evolving norms of warfare at a given point of time in a particular civilization/ country need to be assessed in terms of inter temporal law.

Against this background norms and standards related to occupation, conquest and annexation will be discussed here in brief. The terms occupation, conquest, annexation and subjugation are often used interchangeably in discussions about power dynamics and international relations, most notably in European political thought where their meanings can overlap. However, ancient Indian texts, particularly those influenced by Dharmic traditions and *Arthashastra*, provide noticeable distinctions between the two emphasizing their moral and strategic implications.

**A-Belligerent Occupation**<sup>68</sup> typically refers to the physical control of a territory mostly through military conquest, without necessarily erasing the existing political, cultural or legal structures. It implies a temporary imposition of authority, such as during wartime, often justified by legal frameworks like the Hague Conventions or the Geneva Conventions. Occupation can be seen as invasion.

Thinkers like Carl von Clausewitz and Hans Morgenthau emphasize occupation as a strategic act of war or power projection but rarely address its moral distinction from subjugation. Indian texts view occupation as a condition of strategic control that allows the occupied state to retain some degree of autonomy. For instance, Kautilya's *Arthashastra* discusses *samgrahana* (annexation) as a form of occupation designed to maintain order while respecting local governance structures, as long as the ruler submits to the conqueror's authority. In this context, occupation is seen as less disruptive and more of a mutual agreement, possibly involving tribute or symbolic submission.

In the realm of international relations and international law, belligerent occupation refers to the control of a sovereign territory by a foreign power, typically through military force, during a conflict or war. Benvenisti defines occupation as "a situation where the authority of the

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<sup>68</sup> The Mongol Empire, under leaders such as Genghis Khan, used military force to conquer vast territories across Asia and Europe, including China, Persia, and parts of Eastern Europe.

legitimate sovereign is displaced, and the territory is placed under the effective control of a foreign military power.”<sup>69</sup> Benvenisti emphasizes the balance between the rights of the occupier and the protections due to the local population. Adam Roberts describes enemy occupation as “the effective control by a foreign power over a territory to which it has no sovereign title, without the sovereign state’s consent.”<sup>70</sup> He explores the tension between military necessity and the obligations of international law.

The concept of belligerent occupation<sup>71</sup> was principally an integral part of the 19<sup>th</sup> century European project the purpose of which was to ensure territorial status quo by prohibiting the transfer of sovereignty from the occupied to the occupying power but at the same time differentiate this kind of occupation from occupation by colonial power outside Europe in which transfer of sovereignty was allowed.<sup>72</sup> It would not be

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<sup>69</sup> See, Eyal Benvenisti, *The International Law of Occupation* (Princeton University, Princeton University Press, 1993); Eyal Benvenisti, “The Origin of the Concept of Belligerent Occupation”, *Law and History Review*, 26(3) (2008), 621-648.

<sup>70</sup> Roberts, A. (1985), “What is a Military Occupation?” *British Yearbook of International Law*, 55(1), 249–305. <https://doi.org/10.1093/bybil/55.1.249>. Also see, L. Oppenheim, *International Law: A Treatise* (London- Longmans Green, 1905) 2:168. For further details see, Grorg Schwarzenbager, ‘The Law of Beligerant Occupation: Basic Issues’ Ed. *Nordik Tidsskrift International Rev.* 30 (1960) 10; Yutaka Aral - Takahashi ‘Preoccupied with Occupation: Critical Examinations of the Historical Development of the Law of Occupation’; *International Review of Redcross*, 94 (885) (2012), 51 etseq. Charles G Fenwick. *International Law* (1975 Fourth Indian Reprint, Prentice Hall.

<sup>71</sup> *Construction of a Wall*, ICJ reports 2004 PP 136, 183- 84. See also, criticism of Israel policy of building settlements in territories it has occupied since 1967: UKMIL, 54 *BYIL* 1983, pp. 538-9. Note also Kretzmer, *Occupation of Justice*, chapter 5; and E. Kontorovich, ‘Unsettled: A Global Study of Settlements in Occupied Territories’, Northwestern University School of Law, *Public Law and Legal Theory Series*, No. 16 -20, 2016.

<sup>72</sup> Eyal Benvenisti, ‘The Origin of the Concept of Belligerent Occupation’, *Law and History Review*, 26(3) (2008), 621-648; A. Cassese, *Self -Determination of Peoples*, Cambridge, 1995, *BC Nirmal*, (1999), Deep & Deep Publication, New Delhi The Right to Self-Determination in International law, Karen Knop, Diversity and Self-determination in International Law, Cambridge, Cambridge University Press, 2002 ,U. O. Umozurike, *Self-Determination in International Law*, Hamden, 1972. Michla Pomerance, *Self-Determination in Law and Practice*, Leiden , 1982, A.B.Lorca, ‘Petitioning the International: A “Pre-history” of Self-determination’, 25 *EJIL*, 2014, p.497, J. Summers, *Peoples and International Law*, Leiden, 2014.

wrong to say that the concept of belligerent occupation was defined by the evolving concept of sovereignty. The new principles of self-determination,<sup>73</sup> democracy and human rights also affected and modified the concept of belligerent occupation in the 20<sup>th</sup> century.<sup>74</sup>

Articles 42 and 43 of the Hague Regulations throw ample light on when a territory can be treated as occupied. The ICJ jurisprudence is also illuminating in this regard and therefore needs a passing reference here. The International Court in *Congo V. Uganda*<sup>75</sup> noted that in order to determine whether a state whose forces are present on the territory of another state is an occupying power, one must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening state in the areas in question. The Court understood this to mean in practice that case that Ugandan forces in the Congo were stationed there in particular areas and that they had substituted their own authority for that of the Congolese government. According to MN Shaw the military occupation of enemy territory is termed 'belligerent occupation' and international law establishes a legal framework concerning the legal relations of occupier and occupied.<sup>76</sup> The International Court in the case of *Construction of a Wall* case stated that Article 49 of the Hague regulation provides that 'any measures taken by an occupying power in order to organized or increase transfer of parts of its own population into the occupied territory and that they Israeli settlements in the occupied territory including East Jerusalem have been established in breach of international law'<sup>77</sup>

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73 <https://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx%20and%20www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>.

74 Benvenisti, "Origins of the Concept of Belligerent Occupation", *Law and History Review*, Fall 2008, 621 at 623.

75 ICJ Reports, 2005, pp 168, 229.

76 MN Shaw, *International Law*, 9th edition, Cambridge U. P. 2021, pp 1039.

77 Benvenisti, E., *The International Law of Occupation*, Princeton University Press (2004).

In the recent advisory opinion (herein referred to as the Palestine Advisory Opinion 2024)<sup>78</sup> case the International Court of Justice has offered a new meaning and interpretation to the “belligerent occupation”. The ICJ determined that Israel’s continued presence in the Occupied Palestinian Territory is unlawful. The court emphasized that the occupation violates the Palestinian people’s right to self-determination and breaches international law, including international humanitarian and human rights law. The fact that an occupation is prolonged does not in itself changes legal status under international humanitarian law. Although premised on the temporary character of the occupation the law of occupation does not set temporal limits that would as such alter the legal status of the occupation. Power’s presence in occupier must be assessed in light of other rules.<sup>79</sup>

Turning to enemy occupation, Kautilya introduced the idea of temporary control of enemy territories (*paranigraha*), which aligns with the modern notion of occupation, as distinct from permanent annexation (*asantha-grahana*).<sup>80</sup> Yudhishtira, after winning the Kurukshetra War, is counseled by Bhishma about ruling with fairness, even over enemy territories. Bhishma advises maintaining the existing systems and fostering reconciliation rather than imposing harsh control. In the *Mahabharata*, especially in the *Shanti Parva*, discussions revolve around

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78 Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, “ICJ: Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion: The Prolonged Occupation and Annexation of Palestine, and Racial Discrimination of Palestinians” - *Bratislava Law Review*, Vol. 8 No. 2 (2024). “The Gaps and Failures of the ICJ’s 2024 Advisory Opinion on Palestine” - *BADIL Resource Center for Palestinian Residency and Refugee Rights (Position Paper; October 2024)*. “The Prohibition of Annexations and ICJ’s Advisory Opinion on the Occupied Palestinian Territory” - *EJIL: Talk!* (July 22, 2024). “The ICJ’s Advisory Opinion on Israeli Policies and Practices in the Occupied Palestinian Territory” - *Lawfare* (July 24, 2024). “Territorial Annexation of Palestine: Illegality, Third States Obligations and the ICJ’s 2024 Advisory Opinion” - *EJIL: Talk!* (February 28, 2025). “The 2024 ICJ Advisory Opinion on the Occupied Palestinian Territory - An Introduction” - *Verfassungsblog* (October 9, 2024). “The ICJ’s Paradigm Shift on Palestine” - *Carnegie Endowment for International Peace* (July 25, 2024).

79 Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, (JULY 19 2024) para 110.

80 “A king’s duty is not to destroy the defeated but to guide them back to the path of righteousness.” (*Ramayana, Yuddha Kanda*).

the ethics of governance after conquest. It distinguishes between legitimate rule over a defeated territory and outright subjugation or exploitation. In the *Ramayana*, after defeating *Ravana*, *Rama* restores *Vibhishana*, *Ravana*'s brother, as the ruler of Lanka instead of annexing the territory. This reflects the principle of allowing local governance under the guidance of the victor. *Rama*'s occupation is seen as morally just because it is temporary and aimed at restoring *dharma* (order and justice).<sup>81</sup>

The encounter between Porus and Alexander after the Battle of the Hydaspes (326 BCE) is often cited as a significant historical example of the principles of enemy occupation blended with respect and diplomacy.<sup>82</sup> Arrian's *Anabasis of Alexander* is the primary source that recounts the Battle of Hydaspes and the interaction between Porus and Alexander. "When [Alexander] asked Porus how he wished to be treated, Porus replied, 'Like a king.' Struck by his dignity and bravery, Alexander restored his kingdom to him and even granted him additional territory."<sup>83</sup> "Alexander, impressed by his [Porus's] noble bearing and courage, not only returned his territory but added more to it, treating him as a valued ally."<sup>84</sup> Enemy occupation is exclusively an Indic conception. Its purpose was to protect the interest of the occupied territory and its inhabitants.

In cases of enemy occupation, as mentioned earlier, ancient Indian texts emphasize justice, non-exploitation and the welfare of the occupied territory. They address the ethics and responsibilities during conflict and belligerent occupation. Unlike, belligerent occupation, the very idea of enemy occupation was not to support colonial occupation. Although, enemy occupation is an Indic conception, its outreach is not confined to *Aryavart* alone. While these texts don't explicitly use modern terminologies like 'belligerent occupation', yet it offers crucial guidelines and principles for rulers and warriors on how to treat conquered

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81 The dialogue between the two, as recorded in historical accounts, especially by Greek historians like Arrian and Plutarch, demonstrates Alexander's approach to governing a defeated territory while upholding the dignity of the defeated ruler.

82 Arrian. (1893). *Anabasis of Alexander* (E. J. Chinnock, Trans.). London: Hodder and Stoughton. (Book V, Chapter 19).

83 Plutarch. (1919). *Lives: Alexander* (B. Perrin, Trans.). Harvard University Press (Chapt. 60).

84 Manusmriti 7.201–202.

territories and populations. The *Manusmriti* outlines the duties of a ruler in war and governance which can be applied to belligerent occupation:

“न युद्धं अनुपायेन नयेत् प्राज्ञो कथं चना; पापानां एव तु श्रेयो हन्याद् अनुमतां राणे ॥”<sup>85</sup>

(A wise king should not wage war using unfair means. He must only destroy those who commit sinful acts or refuse to submit.)

आराध्य धर्मतो राज्यं विजितं स्तेयम् आत्मवान्; यथा-योगं च कुर्विता विजितेषु च रक्षणम् ॥”<sup>86</sup>

(Having conquered a kingdom justly, a ruler should remain self-controlled and govern the conquered territory righteously, ensuring its protection and well-being.)

It is mentioned in the *Mahabharata*:

“धर्म-युद्धे च यो जायत तस्य राज्यं भवेत् सदा; विजितेषु च सर्वेषु धर्मः कर्तव्यो नान्यथा ॥”<sup>87</sup>

(In a righteous war, the victor must always rule the conquered territories justly, adhering to dharma, without any deviation.)

“युद्धे जित्वा नरेन्द्राणां राष्ट्राणि च महाबलः; नापराधाम करोति एव भूमियाम् राजा महमतिः ॥”<sup>88</sup>

(A wise and powerful ruler who conquers the territories of other kings in war must not harm the land or its people unjustly.)

This reflects restraint and responsibility during and after occupation.

Kautilya further prescribes that an occupying king should govern the occupied land as a trustee, ensuring its prosperity and stability. It is evident in the following line:

“पराक्रमेण जीतमपि राजनं धर्मतः पलयितुम् ॥”<sup>89</sup>

(Even territories won through valour must be ruled according to dharma.)

“विजिगीशुर विजिगिशितं प्रजाः धर्मेण पालयेत् ॥”<sup>90</sup>

(A conqueror must protect and govern the people of the conquered land according to dharma.)

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85 Manusmriti 7.203.

86 Shanti Parva (Chapter 67, Verse 10).

87 Mahabharata, Shanti Parva (Chapter 72, Verse 9).

88 Arthashastra (Book 10, Chapter 3).

89 Arthashastra (Book 13, Chapter 5).

90 Bhagavad Gita 2.31.

While the *Bhagavad Gita* does not directly address belligerent occupation, its teachings on dharma (duty) and justice in war can be applied:

“स्वधर्मं अपि चावेक्यं न विकल्पितुम् अर्हसि; धर्म्याद् धी युद्धाच्च त्रेयोऽन्यत् क्षत्रियस्य न विद्यते ॥”<sup>91</sup>

(Considering your duty as a warrior, you should not waver. For a Kshatriya (warrior), there is nothing more auspicious than a righteous war.)

**B- Conquest**<sup>92</sup> involves the acquisition of territory through force. It often involved the imposition of the conqueror's will over a previously independent or rival state.<sup>93</sup> It is clear from the above that conquest was a legally recognized mode of acquisition of territory in Ancient India. The situation was not different in Europe too but today conquest is not legal and so is the case of annexation following conquest. M N Shaw stresses on the obvious saying that today the acquisition of territory by force alone is illegal under international law.<sup>94</sup>

91 Hammurabi, (1754 BCE). The Code of Hammurabi. (Mesopotamian rulers, such as *Hammurabi*, emphasized their role as stewards of justice responsible for the well-being of their subjects, including those newly conquered. *Hammurabi's* Code laid down principles for governance mentioning protection for vulnerable groups like widows and orphan. Similarly, the Persian Achaemenid Empire under Cyrus the Great is notable for the Cyrus Cylinder which pinpointed the rights of conquered peoples including religious freedom and the restoration of displaced communities).

92 For example, Alexander the Great's campaigns led to the creation of a vast empire, where he assumed the responsibilities of governance and cultural integration.

93 M N Shaw, *International Law*, 9th edition, Cambridge U. P. 2021, pp. 425. This is the result of Article 4, para 4 of the UN Charter, Security Council Resolution 242 and 1970 Declaration of Principles of international law adopted by the United Nations general assembly. And Article 5(3) of the Consensus definition of aggression adopted in 1974 by the United Nations general assembly, and article 52 of the Vienna convention on the law of treaties, 1969. For a critical analysis of article 5 para 3 of the definition of aggression, see B. C. Nirmal, “Aggregation as Defined by the General Assembly”, *Indian Year Book of International Affairs*, 437, et seq

94 On August 2, 1990, Iraq, under Saddam Hussein, invaded Kuwait, claiming historical ties and accusing Kuwait of economic warfare by overproducing oil and slant drilling into Iraqi oil reserves. The annexation was met with widespread condemnation. The United Nations Security Council (UNSC) passed Resolution 660, demanding Iraq's withdrawal and subsequent resolutions authorized the use of force (Operation Desert Storm), resulting in Iraq's expulsion in early 1991.

The Golan Heights, originally part of Syria, was captured by Israel during the Six-Day War in 1967. In 1981, Israel unilaterally extended its laws, jurisdiction, and administration to the Golan Heights, effectively annexing the territory through the *Golan Heights Law*. Israel argued the move was for security reasons, given the Golan Heights' strategic

Ancient India offers several examples of benevolent conquests where the focus was on spreading *dharma* (righteousness), fostering cultural assimilation and ensuring the welfare of the people in conquered territories. The army and the king which attacked a certain territory had to keep some moral, administrative and economic responsibilities of the captured in mind. It included- 1. In several ancient civilizations, conquest was justified through divine mandate.<sup>95</sup>

In India, the Mauryan Emperor Ashoka, after the Kalinga War, promoted the principle of dhamma (righteousness), emphasizing non-violence, tolerance, and welfare measures for all subjects, including the conquered.<sup>96</sup> 2. Conquerors often had to integrate diverse populations into their empires requiring systems of governance that balanced control with stability.<sup>97</sup> 3. Ancient conquerors were expected to ensure economic stability in conquered territories, as unrest could threaten the broader empire. This composed of- i. Restoring disrupted trade routes; ii. Rebuilding infrastructure, such as roads and irrigation systems, and iii. Redistributing land to secure loyalty among local elites.

Ancient Indian kings regularly inspected the army and were properly officered. It has been observed before, that the ancient Hindus

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importance overlooking northern Israel and its history of being a launch point for Syrian attacks. The annexation was widely condemned. UNSC Resolution 497 declared Israel's actions "null and void" with no legal effect, emphasizing that territory acquired by war cannot be annexed.

Russia annexed Crimea from Ukraine following a disputed referendum, claiming overwhelming local support. International law (UN Charter) deems the annexation illegal. The UN General Assembly (Resolution 68/262) affirmed Ukraine's territorial integrity. Crimea remains under Russian control, with ongoing tensions and sanctions imposed on Russia.

95 Thapar, R, *Ashoka and the Decline of the Mauryas*. Oxford University Press (1961).

96 Hulsewé, A. F. P. *Remnants of Han Law*. Brill (1955).

(For instance, the Roman Empire granted varying degrees of citizenship and self-governance to its provinces, ensuring loyalty through legal and economic integration. In China, the Han Dynasty implemented a system of bureaucratic governance that extended its Confucian principles to conquered regions, promoting social harmony and order.)

97 Combatants are individuals who are legally entitled to participate in hostilities. They are members of armed forces or organized armed groups directly engaged in a conflict.

understood the differences between combatants<sup>98</sup> and non-combatants<sup>99</sup> fully well and laws of war gave various kinds of protection to combatants. Thus, it was the paramount duties of the soldier to give quarter to enemy persons. Thus says the *Mahabharata*, “the victor should protect the land newly conquered, from acts of aggression. He should not cause his troops to pursue too much the routed foe. The onset is irresistible of persons that rally after rout and that despairing of safety, assail their pursuers. For this reason, o king, thou shouldst not cause thy troops to pursue too much the routed foe. Warriors of courage do not wish to strike them that run away with speed.”<sup>100</sup>

There are numerous such examples which can be drawn from the *Mahabharata*, Megasthenes’ *Indica*, *Arthashastra* and historical accounts that highlight the ethos of benevolent conquest: *Manusmriti* mentions “A king must never slay a man with joined palms, a man with loose hair, seated man, or one declaring surrender.”<sup>101</sup> The text also mentions “War should only be undertaken when all peaceful means have failed.”<sup>102</sup> It also talks about the concept of ‘just war’ “The king should avoid covetousness and conquer territories only for the welfare of his people.”<sup>103</sup> “The conquered subjects must be treated with fairness and their traditions should be respected.”<sup>104</sup> For Manu, the purpose of war was not territorial expansion but to extend mutual assistance, goodwill

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98 Non-combatants are individuals who do not directly participate in hostilities and are entitled to protection under international law. They include civilians, medical personnel, humanitarian workers, and others not actively involved in the war effort.

99 Justinian: *Inst.*, I., iii., 3.

100 Patrick Olivelle, *Manu’s Code of Law: A Critical Edition and Translation of the Manava Dharmasastra*, Oxford University Press, New Delhi, 2005, p.159.

101 धर्मयुद्धं च शूरस्य फलं स्वर्गोऽभिषेचनम्।

अधर्मेण विजेतारः पतन्ति नरकं यथा ॥

And the fight for righteousness is the reward of a brave man, and heaven is the coronation.

Those who conquer by unrighteousness fall down like hell.-GT)  
(*Manusmriti*, Chapter 7, Verse 96)

102 *Manusmriti* 7.99

103 *Manusmriti* 7.203

104 Penna, L. R. (1984). Written and customary provisions relating to the conduct of hostilities. *International Review of the Red Cross*, 24(244), 199–212. <https://doi.org/10.1017/S0020860400024171>

and to gain an ally. Therefore, he advised the conqueror to install a new king following the conquest, to respect the local laws, religions and customs and “to make authoritative their (conquered) laws as declared.”<sup>105</sup>

Bhishma (*Mahabharata*) observes that a Kshatriya who destroys righteousness and transgresses all wholesome barriers does not deserve to be reckoned as a kshatriya...<sup>106</sup> In the *Mahabharata*, Krishna’s mission to negotiate peace was governed by a strict code. His refusal to accept hospitality from Duryodhana until his mission succeeded and demonstrated adherence to diplomatic ethics. The text also mentions “Even in war, there is a Dharma of how a war is to be conducted in human terms.”

Sankha, *Yajnavalkya’s* commentator, states that one soldier should not kill another while the latter is drinking water, eating his meal, or taking off his shoes; nor should one kill a woman; a female elephant, a charioteer, a bard, or a Brahman; nor should one who is not a king kill one who is a king.”<sup>107</sup>

*Yudhishtira’s* Rule after the Kurukshetra War in the *Mahabharata*- After the *Pandavas’* victory in the Kurukshetra War, *Yudhishtira* ascended the throne of Hastinapura. Despite the war’s devastation, he prioritized justice, welfare and reconciliation. *Yudhishtira* embraced even his former enemies, such as Dhritarashtra and Gandhari, treating them with respect and care. He organized *Ashvamedha Yagna*, not to assert dominance but to promote unity and peace across the empire. He provided for the widows and families of those who perished in the war, ensuring their well-being. In the *Shantiparva* of *Mahabharata*: “A king must treat all his subjects like his own children, even those who opposed him.”<sup>108</sup>

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105 अशोअनुपस्कृतः प्रोक्तोयोधज्मः सनातनज

अस्माद्धृक्मरक्यवेत् क्षत्रियोघाना रारोऽरिपुना

(He who is unshaken by fear, the eternal warrior is proclaimed,  
From whom the faith of the Kshatriyas (warrior class) is protected,  
The one who is a terror to the enemy and the destroyer of their pride.-GT)

Manu, VII., 98.

106 P.V. Kane, *History of Dharmashastra*, Vol. III., 1973, p. 208.

107 *Shantiparva* 72.1–20.

108 *Arthashastra* 7.16.15.

Kautilya advised rulers, including Chandragupta Maurya, on ethical governance after conquest. Conquered territories should be governed in such a way that the people accept the new administration willingly. Respect for local customs, ensuring law and order and providing economic prosperity were emphasized. Rehabilitation of war-torn areas through public works, tax relief and promotion of trade and agriculture. The *Arthashastra* mentions “The king shall treat the conquered people as his own, ensuring their happiness and security to win their loyalty.”<sup>109</sup> The *Arthashastra* notes “Conquered territories should be governed with fairness to gain the loyalty of the people.”<sup>110</sup> “War should be the last resort, preceded by diplomacy, negotiation, and alliances”,<sup>111</sup> suggests Kautilya, consolidation of power must be done through conciliation in administration of the conquered territory. He further remarks “the king should rehabilitate the economy and administration of conquered territories”<sup>112</sup> and “victory without violence is the highest form of conquest.”<sup>113</sup> From *Yajnavalkya Smriti*, the same idea of a ruler must protect dharma and ensure justice even in conquered lands can be traced. It notes, “The king is bound to respect the customs of the people he rules.”<sup>114</sup> A king must protect all classes of people, including the vanquished.”<sup>115</sup> These excerpts reflect the ethical and pragmatic considerations of conquest and governance in ancient Indian thought emphasizing justice, compassion, and dharma as core responsibilities of a conqueror.

*Ashoka's Dhamma Campaigns* (3rd Century BCE), *Indica* by Megasthenes, quoted by Arrian: “The king takes personal interest in the welfare of his subjects, ensuring that justice is served without bias.”<sup>116</sup> After the Kalinga War (261 BCE), Emperor Ashoka renounced violent conquests and adopted a policy of *Dhamma Vijaya* (victory

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<sup>109</sup> *Arthashastra* 7.5.25.

<sup>110</sup> *Arthashastra* 7.1.19.

<sup>111</sup> *Arthashastra* 7.16.15.

<sup>112</sup> *Arthashastra* 10.3.3.

<sup>113</sup> *Yajnavalkya Smriti* 1.347.

<sup>114</sup> *Yajnavalkya Smriti* 1.309.

<sup>115</sup> *Indica* by Megasthenes, translated by J.W. McCrindle.

<sup>116</sup> Rock Edicts XIII and Pillar Edicts, Rock Edict XIII states that Ashoka regretted the bloodshed at Kalinga and resolved to spread dharma through compassion and welfare programs rather than war. The Edicts of Ashoka, translated by Romila Thapar.

through *dharma*). *Ashoka's* inscriptions<sup>117</sup> emphasize non-violence, religious tolerance and the welfare of all beings, including the conquered. Ashoka implemented welfare measures like hospitals, roads and education. He promoted religious tolerance and issued edicts focusing on compassion and harmony. His rehabilitation efforts are also of great prominence. Ashoka established hospitals, dug wells, planted trees and built roads in both his kingdom and conquered territories.

Gupta Empire's Integration Policies (4th–6th Century CE),<sup>118</sup> the Gupta rulers expanded their empire through diplomacy and military conquests but were known for their inclusive policies. The Guptas respected local customs, religions, and governance structures in conquered territories. They promoted Sanskrit as a unifying language without imposing it forcibly. "The Guptas were known for their benevolent rule, which extended peace and prosperity across the subcontinent."<sup>119</sup> Conquered regions thrived economically under Gupta rule due to investments in trade, education and infrastructure.

*Harsha's* Humanitarian Conquests (7th Century CE),<sup>120</sup> king Harsha of Kannauj expanded his territory across North India but focused on welfare and governance. Harsha established hospitals, monasteries, and educational institutions in newly conquered areas. He conducted large-scale assemblies (e.g., *Prayaga* Assembly) to distribute wealth to his subjects. Despite being a patron of Buddhism, Harsha supported diverse religions in his empire. Banabhatta's *Harshacharita* says, "Harsha's rule brought prosperity and peace to all regions, whether newly conquered or long-standing."

Ancient Indian rulers often adhered to ethical frameworks derived from texts like the *Dharmashastras*, *Arthashastra* and the *Mahabharata*. *Dharma* or the code of righteous conduct has to be implicitly obeyed. Respect for local customs and traditions, welfare of conquered people through infrastructure, education, and trade, promotion of *dharma* and

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117 A.L. Basham, *The Wonder That Was India*. (1954 Sidgwick and Jackson United Kingdom).

118 *Ibid*.

119 Banabhatta's *Harshacharita*, translated by E.B. Cowell.

120 The modern laws of war are developed mainly by The Hague Press Conference of 1899 and 1907, and in the four Geneva Conventions of 1949 and the two 1977 Additional Protocols thereto.

avoidance of unnecessary violence and rehabilitation of war-torn region were the primary overarching ethos of warfare and governance. Ancient Indian conquests often aimed to minimize civilian casualties and destruction, unlike many modern wars. It demonstrates that many ancient Indian conquests prioritized stability, cultural exchange and public welfare, reflecting a legacy of benevolent governance.

The ancient Indian texts are congruous to the provisions of Geneva Convention<sup>121</sup> "Persons hors de combat and those who do not take part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction."

In the *Shantiparva* of the Mahabharata, it is mentioned "This means to kill someone in combat; to rape a woman, or misbehave with her; in gratitude; to rob one devoted to learning and knowledge; to deprive another all he has- these are considered very low acts even among robbers."<sup>122</sup> It goes on to mention "The king must protect the weak and not exploit them after victory."<sup>123</sup> "The prosperity of *dharma* (righteousness) is upheld by dharma in return. By adhering to dharma, the king ensures the welfare of his people. When dharma is protected, it protects the protector."<sup>124</sup>

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121 आयुह्यमानस्य वधो दारामर्षः कृतदन्तलः ।

(The one who is engaged in battle, the killer of his wife's wrath, and the one who has earned his fangs.-GT)

122 *Shantiparva* 56.7

123 धर्मं च रक्षतां राजा धर्मेणैव प्रसज्यते ।

धर्मेण प्रजाः पालयेत् धर्मो रक्षति रक्षितः ॥

(A king should protect Dharma (righteousness); by Dharma, he himself is protected. The king should protect his subjects with Dharma, for Dharma protects one who protects it.-GT)

(*Mahabharata, Shantiparva*, Chapter 59, Verse 25)

124 अंततो दयन्ति ग्रहन्ति केचिदप्यपरे जनाहि तस्यग् बलि हनस्य पुरतां भ्रात्रिंदगानपश्चयतः

//उद्योग 72.52//

निर्वेयेदो जीविते कृष्ण सर्वतश् चोपजायते ।

(Some people, with compassion, bring about the end of those who are weak, While others, behind him, speak of his strength, both ahead and behind, In Krishna's life, everything is bestowed everywhere, good or bad.-GT)

**C- Annexation**,<sup>125</sup> on the other hand, refers to the formal incorporation of conquered territories into the conqueror's political and administrative framework. Unlike occupation, annexation implies a legal process, often recognized by the conqueror's legal system.<sup>126</sup> Annexation may be *de facto* and *de jure*. A distinction is also made between wartime annexation of an occupied territory and post conquest incorporation of a conquered territory into the conqueror's political and administrative system. Wartime annexation, according to Schwarzenberger, is illegal while post conquest annexation has recently become legal due to out lorry of war and related practice of United Nations.<sup>127</sup> The recent Palestine Advisory Opinion, 2024 is a landmark advisory opinion on the wartime annexation of occupied territory in Palestine. The court after explaining annexation in terms of the assertion of the permanent control over the occupied territory determined whether the policies and practices of Palestine in Israel amounted to an unlawful occupation and further whether that occupation amounted to annexation and concluded that Israel's policies and practices, including the maintenance and expansion of settlements, the construction of associated infrastructure, and the wall, the exploitation of natural resources, the proclamation of Jerusalem as Israel's capital, the comprehensive application of Israeli domestic law in East Jerusalem and its extensive application in the West Bank, entrench Israel's control of the Occupied Palestinian Territory, notably of East Jerusalem and of Area C of the West Bank. These policies and practices are designed to remain in place indefinitely and to create irreversible effects on the ground. Consequently, the Court considers that these policies and practices amount to annexation of large parts of the Occupied Palestinian Territory.<sup>128</sup>

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125 The Roman practice of provincial administration illustrates annexation, where newly conquered lands were integrated into the imperial structure.

126 Georg Schwarzenberger, "The Law of Belligerent Occupation: Basic Issues", 30 *Nordisk Tidsskrift INT'L RET* 10 (1960).

127 Liverani, M. *International Relations in the Ancient Near East, 1600–1100 BC* (2001). Palgrave Macmillan.

(It often left the conquered population in a subordinate or vassal-like position, as seen in the Assyrian Empire's imposition of tribute and military obligations on subject states.)

128 Advisory Opinion on Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem (paras 157-179).

**D- Subjugation** is somewhat similar to annexation. It generally implies the complete domination of one group or state by another, often erasing the former's sovereignty, cultural identity and political independence. It is closely associated with colonialism and imperialism where the goal is not just control but also the transformation of the subjugated society to serve the interests of the dominant power. Subjugation denotes the act of bringing a population under control without necessarily incorporating them into the conqueror's state.<sup>129</sup>

The lack of a clear distinction between occupation and subjugation in European writings often reflects the focus on the results of domination (control) rather than the process or moral implications. In contrast, ancient Indian texts draw a sharper distinction. Subjugation, often referred to as *vashikarana* (bringing under control), implies a harsher form of dominance that seeks to destroy or absorb the political, cultural, and social identity of the conquered. The *Arthashastra* contrasts this with *sama* (conciliation) and *danda* (force), highlighting subjugation as a last resort when other strategies fail. It is viewed as morally inferior to occupation because it leads to long-term instability and resentment. Subjugation, according to Indian philosophy, is akin to creating *asahya* (intolerable enmity) that destabilizes both the conqueror and the conquered, undermining the principle of *raja dharma* (duty of the king to maintain harmony). In brief, Occupation is temporary and doesn't transfer sovereignty. Conquest involves taking territory by force but is illegal as a basis for sovereignty today. Annexation involves permanently claiming sovereignty, which is prohibited under modern law.

In fact, ancient Indian military traditions and warfare ethos is the womb from where the modern Humanitarian Law has sprouted and flourished in the modern form. In the arguments against enmity and war, the great epic of *Mahabharata* states "By the time war ends, the defeated army would have killed the loved ones of many a soldier among the victorious. Thus, though the victorious, they are left with no strength. On seeing their sons and brothers killed, they lose concern with their one lives, withdrawn from everything."

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<sup>129</sup> The term is widely discussed within the framework of the Hague Conventions (1907) and the Geneva Conventions (1949), which outline the responsibilities and limits of an occupying power.

## VII. CONCLUSION

War has been a recurring phenomenon in human history but the ethics and principles governing it have varied across civilizations. Ancient Indian texts offer great insights into the moral conduct of war, addressing issues such as the necessity of war, the protection of non-combatants and the duties of an occupying force.

The responsibilities of conquerors in ancient international law were shaped by a complex interplay of moral, political and practical considerations. While conquest was often achieved through force, its sustainability depended on the conqueror's ability to govern justly, integrate diverse populations and uphold certain ethical standards. In nutshell this study underscores the relevance of ancient practices in understanding the evolution of international law and the enduring principles of justice and responsibility in interstate relations. While war inevitably causes suffering, implementing these strategies can reduce its impact on civilians and infrastructure. Ethical conduct in warfare not only aligns with humanitarian values but also fosters long-term peace and stability, making post-war recovery and reconciliation more achievable. The methods and objectives of war must align with ethical principles, avoiding actions that violate *dharma*. War should always be the last resort, undertaken only after all other options are exhausted. In this regard it would be apt to quote a shloka from the most ancient vedic text *Rigveda*:

सन्ति देवा यदृच्याः । यां छन्दसां महान्ति यां विश्वानि । यां यत्र यं प्रजामनुज्ञां । यां विश्वमेतद् बृहति पदानि ॥

# NEW AND EMERGING TECHNOLOGY-BASED WEAPON SYSTEMS IN MODERN WARFARE AND THE INTERNATIONAL HUMANITARIAN LAW

BENARJI CHAKKA\* & RUPAL MALIK\*\*

## ABSTRACT

With the progressive advancement of technology, society is undergoing a profound transformation, increasingly shaped by cutting-edge innovations. Technological developments have permeated nearly every facet of human life, revolutionizing industries and redefining daily experiences. In the healthcare sector, robotic-assisted surgeries enhance precision and efficiency, while automation in the food service industry streamlines operations and improves customer experiences. The technology integration has extended beyond civilian applications into military and defence sectors, underscoring the growing interdependence between human progress and technological advancements. Initially, technological advancements in the military arenas were employed for non-lethal purposes, such as surveillance, reconnaissance, and logistical support in remote areas. However, in the recent decade, there has been a significant shift towards incorporating new and emerging technologies into the weapon arsenal of modern warfare. States, as well as non-state actors, are increasingly leveraging artificial intelligence (AI), machine learning (ML), nanotechnology, and deep learning algorithms to develop high-tech weapon systems, including armed drones, cyber weapons, autonomous weapon systems (AWS), hypersonic weapons, and nano weapons.

While technologically advanced weapon systems offer numerous advantages, such as enhanced target accuracy, increased protection for human combatants, and greater precision in attacks, they also present several legal and humanitarian challenges when deployed on the battlefield. The operations of these weapons, with minimal human intervention, raise critical concerns regarding their compatibility with international humanitarian law (IHL). IHL, which has conventionally regulated the conduct of armed conflict involving human combatants, is encountering concerns with

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respect to implementation and interpretation due to the emergence of AI-driven weapon systems.

Against this backdrop, it becomes imperative to assess the legal compatibility and compliance of technology-based weapon systems within the IHL framework and to determine the appropriate attribution framework for violations arising from their development and deployment. In this context, the present research examines the inherent characteristics of weapon systems based on new and emerging technologies and analyses the challenges they pose to the implementation and enforcement of IHL. Furthermore, it evaluates the extent to which these advanced weapon systems can adhere to IHL principles and identifies possible mechanisms for attributing responsibility for violations associated with their development and use.

Finally, the research asserts that while technological progress in the defence sector is irreversible, it is essential to ensure that the fundamental principles of IHL remain uncompromised. In light of this, the international community must engage in meaningful discourse to establish regulatory frameworks and policy guidelines governing the development and deployment of technology-based weapon systems. Such measures are necessary to mitigate the humanitarian consequences of technologically advanced weapon systems and safeguard human dignity in the context of modern warfare.

**Key-words:** *New and Emerging Technology, Weapon Systems, International Humanitarian Law (IHL), Compliance, Human Control, Attribution.*

## I. INTRODUCTION

Over the past few decades, the rapid and unprecedented advancements in technology have significantly transformed human society across various domains. Innovations such as robotic-assisted surgeries and automated service systems in hospitality exemplify the permeation of new and emerging technologies in nearly every facet of daily life. The defence sector has likewise experienced the profound influence of technological evolution. Initially, the incorporation of advanced technologies into military operations was largely confined to non-lethal applications, including surveillance, reconnaissance, intelligence gathering, border security, and logistical support to personnel operating in inaccessible terrains.<sup>1</sup> However, in recent years, states have

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<sup>1</sup> Roy, Kaushik, ed., “AI, Ethics and The Future of Warfare: Global Perspectives”, *Taylor & Francis*, 2024.

increasingly recognized the transformative and strategic potential of such technologies within military contexts. This recognition has led to a paradigm shift wherein both state and non-state actors have actively pursued the development and operationalization of technologically enhanced weapon systems. Consequently, the international security landscape has witnessed the emergence of a new generation of armaments, such as armed unmanned aerial vehicles, autonomous weapon systems, hypersonic missile technologies, and sophisticated cyber weapons.

The evolving trend of investment into new and emerging technology-based weapon systems raises pressing legal issues, particularly concerning the conformity of these weapon systems with the established norms and principles of IHL. Although proponents of these technologies assert that such systems are capable of enhancing compliance with the core principles of IHL by reducing human error and enabling more precise targeting.<sup>2</sup> Numerous scholars, practitioners, and humanitarian organizations have expressed concerns about the reliability, accountability, and legality of these systems under existing international legal frameworks. In particular, several advocated campaigns calling for their pre-emptive prohibition due to their potential to operate without meaningful human control and the corresponding risks to civilian populations.<sup>3</sup>

The evolution of technology-driven weapon systems has led to significant advancements in capabilities, including homing, navigation, target acquisition and identification, target prioritization, autonomous communication, operational persistence, and loitering functionalities.<sup>4</sup> These systems exhibit varying degrees of autonomy, enabling them to navigate toward specific spatial coordinates or designated targets, and,

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2 Roberts, Anastasia, and Adrian Venables, “The role of AI in Kinetic Targeting from the Perspective of International Humanitarian Law.” In 2021 13th International Conference on Cyber Conflict (CyCon), pp. 43-57. IEEE, 2021.

3 Amoroso, Daniele, and Guglielmo Tamburrini, “Autonomy in Weapons Systems and its Meaningful Human Control: a Differentiated and Prudential Approach,” *Technology and International Relations*, pp. 45-66. Edward Elgar Publishing, 2021.

4 Mahoney, Rob, “Transformation and Transition: DARPA’s Role in Fostering an Emerging Revolution” *Military Affairs* Volume 1-Overall Assessment (2003).

in certain cases, to independently identify and engage such targets or communicate with human operators during the process.<sup>5</sup>

On the basis of their functional characteristics and levels of autonomy, these weapon systems may be broadly categorized into two distinct classes.<sup>6</sup> The first category comprises systems with limited autonomous functions, lacking the capability to conduct the targeting cycle independently and thus relying substantially on human operators to initiate or authorize any action.<sup>7</sup> The second category, however, includes systems enhanced by contemporary AI and ML algorithms. These are capable of executing complex targeting operations autonomously once activated, often without the need for further human intervention.<sup>8</sup> Notably, such systems possess adaptive learning capabilities, enabling them to modify their behaviour based on real-time environmental inputs.<sup>9</sup> This heightened level of autonomy, while operationally advantageous, introduces significant concerns regarding compliance with the legal obligations enshrined under IHL. Even in the case of highly advanced weapon systems, the foundational programming, including the construction of target databases, is designed and encoded by human developers.<sup>10</sup> Consequently, these systems are initially

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- 5 Jentsch, Florian, “Human-robot interactions in future military operations”, CRC Press, 2016.
  - 6 Liu, Hin-Yan, “From the Autonomy Framework Towards Networks and Systems Approaches for ‘Autonomous’ Weapons Systems.” *Journal of International Humanitarian Legal Studies* 10, no. 1 (2019): 89-110.
  - 7 Marra, William C., and Sonia K. McNeil, “Understanding the Loop: Regulating the Next Generation of War Machines.” *Harvard Journal of Law & Public Policy* 36 (2013): 1139.
  - 8 Abaimov, Stanislav, and Maurizio Martellini, “AI in Autonomous Weapon Systems,” 21st Century Prometheus: Managing CBRN safety and security affected by cutting-edge technologies (2020): 141-177.
  - 9 Rashid, Adib Bin, Ashfakul Karim Kausik, Ahamed Al Hassan Sunny, and Mehedy Hassan Bappy. “AI in the Military: An Overview of the Capabilities, Applications, and Challenges.” *International Journal of Intelligent Systems* 2023, no. 1 (2023): 8676366.
  - 10 Tymchuk, Volodymyr, and Vasyl Trysnyuk. “The systematic Review of Variety of Military, Weapon, Combat and Warfare System-of-Systems with their New Classification and Ontology Depiction for further Concept and Design Development for the Armed Forces of Ukraine.” (2024) *Military Science*, Vol. 2, no. 1.- P. 102-116. <https://doi.org/10.62524/msj.2024.2.1.09>.

restricted to targeting parameters predetermined by their programmers. In specific domains, such as anti-ship missiles, sensor-driven mechanisms are utilized to facilitate navigation, localization, and target identification.<sup>11</sup> However, the final selection of targets typically adheres to criteria that have been pre-established during the system's design phase.

Historically, attempts to develop self-guiding and semi-autonomous weapon platforms date back several decades.<sup>12</sup> Nevertheless, the contemporary context is marked by an intensified integration of emerging technologies, including AI, ML, advanced data algorithms, large language models, situational awareness frameworks, and nanotechnology, by both state and non-state actors. These technologies are being harnessed to create increasingly autonomous systems intended for deployment in armed conflicts, with the aim of attaining operational superiority over adversaries. One of the most significant advancements facilitating this trend is the enhancement of ML techniques in the domain of image recognition and classification, which are now being leveraged for automatic target recognition (ATR).<sup>13</sup> The incorporation of AI enables such systems to dynamically adapt to new threat profiles or changes in enemy tactics.<sup>14</sup> Furthermore, as adversaries develop capabilities that constrain the use of conventional standoff weapons or hinder manoeuvrability, militaries are concurrently exploring innovations in electronics miniaturization, robotics, and swarming methodologies.<sup>15</sup> These developments aim to facilitate cooperative autonomous behaviour among groups of unmanned vehicles or aerial

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- 11 Vagias Ioannis (2016) *A Game of Hide and Seek*, Defence Procurement International, Winter 2015/16, pp. 61-67.
  - 12 Wagner, Markus, "The Dehumanization of International Humanitarian Law: Legal, Ethical, And Political Implications of Autonomous Weapon Systems." *Vand. J. Transnat'l L.* 47 (2014): 1371.
  - 13 Majumder, Uttam K., Erik P. Blasch, and David A. Garren, "Deep learning for radar and communications automatic target recognition," Artech House, 2020.
  - 14 Johnson, James, "AI & Future Warfare: Implications for International Security." *Defense & Security Analysis* 35, no. 2 (2019): 147-169.
  - 15 Del Monte, Louis A, "War at the Speed of Light: Directed-Energy Weapons and the Future of Twenty-First-Century Warfare," U of Nebraska Press, 2021.

systems, enabling them to execute coordinated attacks even in the absence of continuous communication links.<sup>16</sup>

The cardinal principles of IHL governing the conduct of hostilities, distinction, proportionality, and precaution, are normatively directed toward human agents. While the principal subjects of IHL are states, these specific rules are addressed to individuals who plan, decide upon, and execute attacks.<sup>17</sup> Accordingly, they impose legal obligations upon human combatants, who bear the responsibility for compliance and may be held individually responsible for violations. A central legal concern that arises in this context is the necessity of human judgment for the effective application of the IHL principles. This concern gains heightened significance in relation to weapon systems incorporating new and emerging technologies, particularly those operating with high levels of autonomy, as it remains uncertain the way human judgment will be preserved or operationalized in such systems.<sup>18</sup> A further issue pertains to the circumstances in which they are intended or expected to be used, these weapon systems are capable of functioning in a manner that is consistent with the legal framework established by IHL. Ensuring compliance becomes particularly challenging when such systems are deployed for complex tasks or within dynamic and unpredictable operational environments, conditions that typically demand nuanced contextual understanding and ongoing evaluative reasoning.<sup>19</sup>

The deployment of technology-based weapon systems raises several critical legal and operational issues. Foremost among them is the system's ability to distinguish between military objectives and civilian objects, combatants and civilians, and active combatants and those rendered

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16 Chai, Runqi, Yunlong Guo, Zongyu Zuo, Kaiyuan Chen, Hyo-Sang Shin, and Antonios Tsourdos, "Cooperative Motion Planning and Control for Aerial-Ground Autonomous Systems: Methods and Applications," *Progress in Aerospace Sciences* 146 (2024): 101005.

17 Sassòli, Marco, "State Responsibility for Violations of International Humanitarian Law," *International Review of the Red Cross* 84, no. 846 (2002): 401-434.

18 Firlej, Mikolaj, and Araz Taeihagh, "Regulating Human Control over Autonomous Systems," *Regulation & Governance* 15, no. 4 (2021): 1071-1091.

19 Lekea, Ioanna, George Lekeas, and Pavlos Topalnakos. "Exploring Enhanced Military Ethics and Legal Compliance through Automated Insights: An Experiment on Military Decision-making in Extremis," *Conatus-Journal of Philosophy* 8, no. 2 (2023): 345-372.

hors de combat.<sup>20</sup> Equally pressing concern is the system's capacity to assess contextual variables in anticipating incidental civilian harm in relation to the concrete and direct military advantage, as mandated by the principle of proportionality.<sup>21</sup> Additionally, the principle of precaution in attack requires that an attack be cancelled or suspended if it becomes apparent that the target is not a lawful military objective or is otherwise subject to special protection, or that the attack may violate the proportionality principle.<sup>22</sup> The ability of a technology-based weapon system to conduct such real-time reassessments is highly contestable.

Collectively, these concerns underscore the inherent difficulty in ensuring that technology-based weapon systems can perform the qualitative, context-dependent assessments that IHL principles require. These assessments demand a continuous and informed application of judgment grounded in an appreciation of the factual and situational realities of the battlefield, capacities that, as of yet, remain uniquely human. Consequently, the legal compatibility of such systems with IHL and the extent to which they can ensure sustained compliance demands rigorous and ongoing scrutiny, particularly in light of the profound legal implications of delegating life-and-death decisions to machines.

In light of the increasing integration of advanced and technology-driven weapon systems into modern warfare, the present research undertakes a critical examination of the weapon systems' legal compatibility with the established norms of IHL. The study aims to assess the extent to which the development, deployment, and operational use of such weapon systems, particularly those incorporating new and emerging technologies, conform to the foundational principles of IHL, including distinction, proportionality, precaution, and military necessity. The prominent issue analysed is the identification and evaluation of the legal and practical challenges these systems pose to the effective implementation and enforcement of IHL obligations during armed conflict. Moreover, the research investigates the complexities

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20 Article 48, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (hereinafter AP-I), Geneva, 8 June 1977. CDDH, Official Records, Vol. VI, CDDH/SR.41, 26 May 1977, p. 161.

21 Article 51(5)(b) AP-I.

22 Rule 15: Principle of Precautions in Attack, Customary IHL.

surrounding the attribution of responsibility for violations arising from the use of algorithm-driven weapon technologies.

## II. INHERENT ATTRIBUTES OF THE TECHNOLOGY-BASED WEAPON SYSTEMS

Weapon systems incorporating new and emerging technologies primarily depend on AI, ML, sensor technologies, and robotics, enabling them to perform decision-making functions traditionally executed by human operators. The classification of a technology as “emerging” within the context of weapon systems is not solely determined by its novelty but also by its specific application and potential impact on the conduct of warfare.<sup>23</sup> The advancement and deployment of such technologies give rise to critical legal considerations, particularly concerning their compliance with IHL. Consequently, it is imperative to ensure that their development and use remain consistent with established humanitarian principles and normative frameworks. Technological Characteristics of Weapon Systems Based on New and Emerging Technologies include:

1. AI and ML: The integration of AI and ML within weapon systems enables the processing of information, decision-making, and execution of actions based on pre-programmed or learned parameters.<sup>24</sup> The effective deployment of such systems necessitates the development of advanced algorithms and software frameworks, which facilitate critical operational functions, including but not limited to navigation, target identification, and engagement.
2. Robotics: The application of robotics serves as the structural and functional foundation for technology-based weapon systems, providing the necessary mobility, operational flexibility, and physical execution of assigned tasks.<sup>25</sup> This category encompasses

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23 Bousquet, Antoine J, “The Scientific Way of Warfare: Order and Chaos on the Battlefields of Modernity” Oxford University Press, 2022.

24 Abbas, Tahir, Wajid Ali, Irfan Ali Khan, and Suleman Saleem, “Revolutionizing Warfare: The Role of AI in the Future of Defense,” *The Regional Tribune* 3, no. 1 (2024): 192-200.

25 Ivanova, Ksenia, and Guy Edward Gallasch, “Analysis of Emerging Technologies and Trends for ADF Combat Service Support 2016,” DST Group Report DST-Group-GD-0946, Defence Science and Technology Group Land Division, Edinburgh SA 5111 (2016).

Unmanned Aerial Vehicles (UAVs), Unmanned Ground Vehicles (UGVs), and Unmanned Underwater Vehicles (UUVs), among others, which are designed to operate independently or under remote supervision.

3. **Sensor Technologies:** Advanced sensor and detection mechanisms constitute an essential component of technology-based weapon systems, enabling environmental perception, target identification, and engagement decision-making. These technologies include radar, Light Detection and Ranging (LiDAR), infrared detection, and acoustic sensors, all of which enhance situational awareness by facilitating target detection and classification through AI and ML driven analytical processes.<sup>26</sup>
4. **Autonomy:** Autonomy in technology-based weapon systems refers to the extent to which such systems can execute critical functions, including target selection and engagement, without direct human intervention. This capability is fundamentally dependent on the system's programming, sensor inputs, and algorithmic decision-making processes. It is crucial to recognize that autonomy is not a binary attribute but rather exists along a spectrum, where the degree of human control varies depending on the operational context and specific functions performed by the system.<sup>27</sup> Weapon systems incorporating ML algorithms can modify their responses based on data acquired during operations, thereby introducing dynamic elements into their autonomous functionalities.<sup>28</sup> This evolving nature of autonomy raises profound concerns, particularly with respect to the predictability of actions.

The discourse on autonomy remains nuanced, acknowledging that not all autonomous functions within a weapon system pose the same level

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26 Ersü, Can, Eduard Petlenkov, and Karl Janson, "A Systematic Review of Cutting-Edge Radar Technologies: Applications for Unmanned Ground Vehicles (UGVs)," *Sensors* 24, no. 23 (2024): 7807.

27 Valavanis, Kimon P, "The Entropy Based Approach to Modeling and Evaluating Autonomy and Intelligence of Robotic Systems." *Journal of Intelligent & Robotic Systems* 91, no. 1 (2018): 7-22.

28 Longpre, Shayne, Marcus Storm, and Rishi Shah, "Lethal Autonomous Weapons Systems & AI: Trends, challenges, and policies." Edited by Kevin McDermott, *MIT Science Policy Review* 3 (2022): 47-56.

of legal concern. The most significant challenges include IHL compliance, especially in relation to the attribution of responsibility, the preservation of human dignity, and adherence to the principles of distinction, proportionality, and precaution. While aspects such as autonomous navigation and mission adaptation contribute to the operational efficiency of such systems, they do not constitute the core issues under legal scrutiny. Rather, the critical legal examination is pertinent to those functions that are directly implicated in lethal decision-making processes, particularly target selection and target engagement.

- a) Target Selection: The autonomous capability to identify and select targets independently, without human oversight, presents substantial legal challenges. Foremost among these concerns is the system's ability to reliably distinguish between combatants and non-combatants, in strict conformity with the principle of distinction, a cornerstone of IHL. The ability of an autonomous system to perform this function with a level of accuracy comparable to, or exceeding, human operators remain a matter of significant legal concern. Any failure in this regard risks not only unlawful targeting but also severe humanitarian consequences.
- b) Target Engagement: The subsequent stage, autonomously executing the decision to engage a selected target with lethal force, raises additional and equally pressing legal concerns. This function has direct implications for the principles of proportionality and precaution, both of which necessitate rigorous efforts to minimize civilian harm. Within these principles, the notion of "constant care" is intrinsic, thereby imposing significant constraints on the use of force by technology-based weapon systems. In particular, legal standards demand meaningful human oversight in critical decision-making processes concerning the application of lethal force.<sup>29</sup>

Accordingly, the emphasis is placed on ensuring that autonomy in weapon systems is constrained in a manner that guarantees compliance with IHL. This necessitates a clear distinction between ineffective human

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29 de Oliveira Fornasier, Mateus, "The Regulation of the Use of AI (AI) in Warfare: Between International Humanitarian Law (IHL) and Meaningful Human Control." *Revista Jurídica da Presidência* 23, no. 129 (2021): 67-93.

oversight and meaningful human control over critical operational functions. The objective is to ensure that the technology-based weapon systems are developed and deployed in a manner that upholds fundamental legal obligations, preserving human dignity, ensuring responsibility, and maintaining adherence to the established legal norms governing the use of force in armed conflict.

### III. PREDICTABILITY IN WEAPON SYSTEMS

Weapon systems that operate on ML algorithms function by identifying statistical correlations within training datasets. As a consequence, a significant challenge arises in the form of operational unpredictability.<sup>30</sup> On the battlefield, these systems may encounter scenarios and stimuli that diverge substantially from the data on which they were trained. In such instances, it becomes inherently difficult to reliably predict the outcome of the targeting process. This issue is particularly acute in the context of critical, real-time decision-making in armed conflict, where the opaque nature of ML processes precludes a clear understanding of decisions made during the hostilities.<sup>31</sup> The non-deterministic character of such algorithms, compounded by the complexity of the combat environment, undermines the capacity to ensure that targeting decisions conform to the requisite legal standards of predictability and accountability under IHL.

Furthermore, the increasing degrees of autonomy embedded in contemporary weapon systems introduce an additional dimension of uncertainty. As the system's reliance on real-time data and its capacity for adaptive behaviour expand, the predictability of its operational outcomes correspondingly diminishes.<sup>32</sup> The elevated autonomy thus not only complicates efforts to maintain effective human oversight but also exacerbates the difficulty in ensuring compliance with the principles of distinction, proportionality, and precaution mandated under the IHL framework.

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30 Ahmed, Nizam Uddin, "Integrating ML In Military Intelligence Process: Study of Futuristic Approaches Towards Human-Machine Collaboration." *NDC e-Journal* 2, no. 1 (2022): 59-89.

31 Milaninia, Nema, "Biases in ML Models and Big Data Analytics: The International Criminal and Humanitarian Law Implications," *International Review of the Red Cross* 102, no. 913 (2020): 199-234.

32 Feldman, Philip, Aaron Dant, and Aaron Massey, "Integrating AI into Weapon Systems." arXiv preprint arXiv:1905.03899 (2019).

The OODA loop, comprising the sequential processes of observation, orientation, decision, and action, serves as a foundational conceptual framework within technology-driven weapon systems. Within this decision-making cycle, certain operational functions are often delegated to the weapon systems, raising substantial concerns regarding compliance with the core principles of IHL. In such configurations, the system is entrusted with critical tasks, pertaining to cognitive authority, such as adaptive learning algorithms or pre-programmed operational logic, or physical capacities, such as extended loitering capabilities.<sup>33</sup> The central concern with respect to IHL compliance thus shifts from the autonomous capability of the weapon system to select and engage targets to the functional transfer of decision to employ lethal force from a human operator to the machine.<sup>34</sup> Whereby the weapon system is capable of distinguishing targets with precision based on characteristics and spatiotemporal coordinates encoded in a pre-defined target database, and subsequently engages such targets autonomously, the responsibility for those targeting decisions remains legally attributable to the human programmer or authorising authority.<sup>35</sup>

Therefore, the legal inquiry pivots on the attribution of acts undertaken by the system, which can be reasonably traced back to a human decision-maker authorising the strike or validating the target database. Under IHL, targeting decisions inherently involve normative assessments, including the legality, proportionality, and necessity of the use of force. These assessments must be made by human actors, particularly in view of their temporal and spatial proximity to the kinetic execution of the attack.

Crucially, the delegation of targeting functions to a machine may be mitigated through robust computer programming or by instituting tethered control mechanisms, thereby preserving a human role in the

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33 Heng, Leo, “Strategic Overview of Applying AI on the Future Battlefield.” (2024).

34 Hewathanthri, Uchitha Samadhi Sahampath, “The Ambiguity of Achieving Military Objectives in The Age of Automation: A Review on The Applicability of Principles of International Humanitarian Law on The Modern Battlefield.” PhD diss., University of Colombo, 2024.

35 Bode, Ingvald, and Thomas Frank Arthur Watts, “Loitering Munitions and Unpredictability: Autonomy in Weapon Systems and Challenges to Human Control” (2023).

decision-making loop.<sup>36</sup> Within this context, the concept of predictability becomes paramount, not in the sense that every action of the system must be anticipated, but that its conduct must remain within a spectrum of outcomes that are foreseeable and assessable under a standard of reasonableness within IHL. While advanced ML techniques enhance operational efficacy and offer military advantages, their application shall be limited to functions that do not implicate core IHL obligations. Accordingly, any system functionalities that bear directly upon the ability to ensure compliance with IHL, either in their operational effects or in their internal logic, must be subject to rigorous pre-deployment scrutiny and legal review under Article 36 of AP-I (Additional Protocol-I).

The legal standard of reasonable predictability functions as a proxy for effective human control.<sup>37</sup> It does not necessitate real-time human intervention at the moment of lethal force application, but requires that the weapon system's performance remain within legally acceptable parameters established by IHL. Where such predictability is assured, meaningful human accountability and lawful deployment of the technology-based weapon systems will be preserved, notwithstanding the nature or degree of human-machine interaction. Conversely, a lack of predictability threatens to undermine the normative thresholds established by IHL, thereby rendering the deployment of such systems legally questionable. In this regard, embedding reasonable predictability within the OODA loop, particularly where critical targeting functions are entrusted to the system, is essential for maintaining the integrity of the IHL framework and mitigating the risks inherent in weapon systems based on new and emerging technologies.

#### IV. THE AUTONOMY FEATURE

Autonomy in technology-based weapon systems is a function-specific property rather than a uniform characteristic. Across various weapons systems and platforms, different functions may be subject to varying degrees and types of human control. For instance, an unmanned aerial

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36 Johnson, James, "Automating the OODA Loop in the age of Intelligent Machines: Reaffirming the Role of Humans in Command-And-Control Decision-Making in the Digital Age," *Defence Studies* 23, no. 1 (2023): 43-67.

37 Amoroso, Daniele, and Guglielmo Tamburrini, "Toward a Normative Model of Meaningful Human Control Over Weapons Systems," *Ethics & International Affairs* 35, no. 2 (2021): 245-272.

combat vehicle may operate with a high degree of autonomy in movement, such as take-off, navigation, and landing, while retaining no autonomous capability in targeting decisions.<sup>38</sup> This functional differentiation underscores the importance of analysing autonomy in a task-specific manner rather than as a binary classification.

The concept of full autonomy to weapon systems, therefore, has limited utility, as weapons systems typically exist along a continuum of autonomy, even concerning a single function.<sup>39</sup> The distinction between semi-autonomy and full autonomy is not easily delineated, given that autonomy itself is a spectrum.<sup>40</sup> Autonomy is understood as a system's ability to execute assigned tasks in a self-sufficient and self-governing manner, incorporating elements of self-planning for both primary tasks and their associated subtasks. In essence, the design and control mechanisms underpinning AI systems are primarily focused on task execution rather than absolute autonomy. It is important to recognize that autonomy is not an on or off feature. A weapon system may be considered autonomous when it can, through the integration of sensors, computational processing, and algorithmic decision-making, independently perform critical functions,<sup>41</sup> such as target selection and engagement, without direct human intervention or continuous human oversight.

The integration of autonomous capabilities within weapons systems is an incremental process rather than an instantaneous transformation. While autonomy is often associated with self-governance or self-determination, its scope varies depending on the application, either to an entire system or specific functions within that system. Generally, the concept of autonomy is absolute, and when used without further clarification, it is commonly understood to refer to full autonomy. The

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38 Finn, Anthony, and Steve Scheduling, "Developments and Challenges for Autonomous Unmanned Vehicles," *Intelligent Systems Reference Library* 3 (2010): 128-154.

39 Scharre, Paul, and Michael C. Horowitz, "Autonomy in Weapon Systems." Centre for a New American Security Working Paper (2015).

40 Panneerselvam, Prakash, "Autonomous Weapon System: Debating Legal–Ethical Consideration and Meaningful Human Control Challenges in the Military Environment," *AI, Consciousness and The New Humanism: Fundamental Reflections on Minds and Machines*, pp. 243-258. Singapore: Springer Nature Singapore, 2024.

41 Schwarz, Elke, "Autonomous Weapons Systems, AI, and the Problem of Meaningful Human Control." *Philosophical Journal of Conflict and Violence* (2021).

weapon systems with full autonomy, particularly those capable of lethal force application, not only execute complex actions independently but also adapt by formulating new operational parameters without human validation.<sup>42</sup> Such systems function entirely beyond human control, raising profound legal concerns. The autonomy in weapon systems remains subject to contextual interpretation. It may refer to a system's capability to execute specific functions without human intervention or, alternatively, to the manner in which an operator relies on the system's autonomous capabilities without engaging in direct control.

From a legal perspective, autonomy is critical in ensuring compliance with IHL; the deployment and development of weapon systems based on autonomy need to be carefully assessed to ensure that they align with fundamental principles of IHL. The challenge lies in maintaining meaningful human control over critical decision-making processes while recognizing the operational advantages and legal constraints associated with autonomous capabilities in modern warfare.

## V. THE INTEGRATION OF TECHNOLOGY-BASED WEAPON SYSTEMS INTO DEFENCE

Contemporary technology-based weapon systems are characterised as either automated or autonomous. Once activated, these systems possess the capability to identify and engage targets, either subject to human confirmation or, in some cases, entirely without human intervention.<sup>43</sup> Nonetheless, even in the case of completely autonomous systems, the notion of independent decision-making by the system to initiate engagement remains technically and legally contestable. These systems are incapable of initiating hostilities *sua sponte*; rather, their capacity to act is inherently constrained by the parameters within which they have been programmed.

Presently, the most technologically advanced weapon systems known to be deployed in the targeting and interception processes include counter-rocket, artillery, and mortar defence systems, such as the Iron

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42 Corn, Geoffrey S, "Autonomous Weapon Systems: Managing the Inevitability of Taking the Man out of the Loop," Available at SSRN 2450640 (2014).

43 Amoroso, Daniele, and Guglielmo Tamburrini, "Toward a Normative Model of Meaningful Human Control over Weapons Systems," *Ethics & International Affairs* 35, no. 2 (2021): 245-272.

Dome, as well as anti-ballistic missile systems like the Terminal High Altitude Area Defence (THAAD) and the Russian S-400 system.<sup>44</sup> In these platforms, following the initial identification of a threat, subsequent targeting and engagement processes are predominantly executed by integrated guidance systems. These systems typically combine satellite-based navigation mechanisms, computational trajectory analyses, and automated control modules.<sup>45</sup> Specifically, target detection is achieved through land-based radar in the case of short-range threats, or through satellite-based sensors for long-range incoming projectiles. The collected data is transmitted to a central control unit that computes the trajectory of the threat and selects the most optimal interceptor unit. This unit is then activated to neutralise the threat.<sup>46</sup> AI components, including control algorithms and guidance systems, govern the operational flow and are capable of distinguishing between hostile projectiles and friendly assets.<sup>47</sup> Interception occurs either within the Earth's atmosphere, endo-atmospheric or beyond it, exo-atmospheric, depending on the threat's altitude and range.

Nevertheless, existing technological limitations persist, particularly in addressing low-flying cruise missile threats and in scenarios involving saturation attacks, where the volume of incoming projectiles may exceed the system's capacity, thereby diminishing its efficacy.<sup>48</sup> The increasing development of non-kinetic technologies, including cyber weapons and directed-energy platforms such as lasers, may offer alternative or supplementary defensive capabilities. Yet, current missile defence systems continue to encounter performance constraints, particularly

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44 Lele, Ajey, "Debating Lethal Autonomous Weapon Systems." *Journal of Defence Studies* 13, no. 1 (2019): 51-70.

45 McKeen, Patrick, "Computational Methods to Improve Satellite Attitude Determination and Control with a Focus on Autonomy, Generalizability, and Underactuation," PhD diss., Massachusetts Institute of Technology, 2025.

46 Lele, Ajey, *Supra* no. 46.

47 Zohuri, Bahman, "Harnessing AI for Countering Hypersonic Weapons: A New Frontier in Battlefield Offense and Defense (A Short Review)" *Journal of Energy and Power Engineering* 18 (2024): 139-145.

48 Kueter, Jeff, and Howard Kleinberg, "The Cruise Missile Challenge: Designing a Defence against Asymmetric Threats. Arlington", VA, USA: George C. Marshall Institute, 2007.

against emerging high-speed, manoeuvrable threats.<sup>49</sup> The Iron Dome system exemplifies a short-range defence platform capable of autonomously intercepting multiple incoming projectiles. Its integrated guidance and control mechanisms are designed to engage only those projectiles assessed as high-priority threats based on pre-configured system criteria.<sup>50</sup> For longer-range threats, systems such as THAAD provide more comprehensive protection. Upon launch, an adversarial missile emits a thermal signature detected by infrared satellite sensors, which transmit data to terrestrial control units. The system then verifies the threat and coordinates the appropriate response. Ground-based radars further refine tracking and trajectory predictions, and the most effective interceptor unit from among the available is then deployed for interception.<sup>51</sup> The entirety of this targeting and engagement process operates autonomously, and its conceptual design reflects a high degree of technical efficiency. Nonetheless, the performance of such systems may be compromised by various operational factors, including the architecture of computational subsystems, the resolution of tracking radars, latency in inter-unit communication, and the responsiveness of missile control algorithms.

Significantly, the trajectory of current missile defence and technology-based weapons development is demonstrably leaning toward greater autonomy. For some states, such capabilities are increasingly central to strategic defence doctrines. In other contexts, these systems are deployed with the intent to achieve geopolitical leverage or deterrent effect. Consequently, investments, both financial and technological, are intensifying, driving advancements in the autonomy and operational sophistication of missile defence systems and related technology-based platforms.

## VI. EXTENT OF COMPLIANCE CONCERNING IHL

International law in general, and in particular the framework established by IHL, provides critical guidance in addressing the challenges posed

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49 Karako, Tom, and Masao Dahlgren, “Complex Air Defense: Countering the Hypersonic Missile Threat”, Rowman & Littlefield, 2022.

50 Block, Joel, “A Laws of War Review of Contemporary Land-Based Missile Defence System ‘Iron Dome’,” *Scientia Militaria: South African Journal of Military Studies*, 45, no. 2 (2017): 105-128.

51 Fontana, Simone, and Federica Di Lauro, “An overview of Sensors for Long Range Missile Defence.” *Sensors* 22, no. 24 (2022): 9871.

by weapon systems based on new and emerging technologies, including their development and potential deployment. The International Court of Justice has affirmed that the fundamental principles of IHL apply universally to all forms of warfare and all categories of weapons, whether conventional, contemporary, or those yet to be developed.<sup>52</sup> The cardinal principles of IHL, derived from established customary norms, the principles of humanity, and the dictates of public conscience, continue to impose legal obligations to safeguard both civilians and combatants.<sup>53</sup> These principles remain equally applicable to weapon systems incorporating new and emerging technologies.

However, when assessing the compliance of technology-based weapon systems with IHL, it is imperative to determine the preclusion of lawful use by their inherent characteristics. Specifically, if the weapon systems are of such a nature that they cause superfluous injury or unnecessary suffering, are inherently indiscriminate, or otherwise cannot be employed in conformity with IHL, their development and deployment must be prohibited.<sup>54</sup> To ensure adherence to IHL, such weapon systems must not be designed to target civilians or civilian objects, instil terror among the civilian population, or conduct attacks that would invariably result in excessive civilian casualties, injuries, or damage to civilian infrastructure.<sup>55</sup> Furthermore, these systems must not operate in a manner that lacks sufficient human oversight and control, as such deficiencies raise serious concerns regarding the attribution of responsibility.

To ensure compliance with the principles of IHL, technology-based weapon systems must be designed and developed in a manner that allows for the anticipation and control of their effects during an attack.<sup>56</sup>

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52 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, July 8, 1996, ICJ Rep. 1996, p. 226; available on <http://www.icj-cij.org>.

53 Bidali, Felix, “Protection of Civilian Population by International Humanitarian Law During International Armed Conflict.” (2016).

54 Townley, Stephen, “Indiscriminate Attacks and the Past, Present, and Future of the Rules/Standards and Objective/Subjective Debates in International Humanitarian Law.” *Vand. J. Transnat’l L.* 50 (2017): 1223.

55 Pedrazzi, M “Strengthening IHL Compliance: The Conduct of Hostilities, The Protection of Essential Services and Humanitarian Assistance in Contemporary Armed Conflict.” (2024).

56 Jafariandehkordi, Mahshad, “The AI Battlefield: Legal Challenges of Autonomous Weapon Systems under International Humanitarian Law.” (2024).

To this end, rigorous testing and evaluation are essential to assess the performance of such systems under the anticipated conditions of their deployment. Additionally, a comprehensive legal review under Article 36 of AP-I is crucial in determining the extent to which these weapon systems align with the normative framework of IHL, as well as with established customary principles of humanitarian law.

Moreover, precautionary measures in the design and deployment of technology-based weapon systems are necessary to mitigate the risk of harm to civilians and civilian objects.<sup>57</sup> Such measures should include strict controls over the types of targets the system may engage, operational limitations concerning duration and geographical scope, and safeguards against deployment in densely populated civilian areas.<sup>58</sup> In this regard, certain features, such as self-destruction, self-deactivation, or self-neutralization mechanisms, along with efforts to minimize automation bias in system operations, contribute to enhanced human oversight and improved decision-making regarding the use of force.<sup>59</sup>

The application of IHL is central to the two-tiered approach that seeks both to prohibit technology-based weapon systems that are inherently incapable of complying with IHL and to regulate those that can be employed in accordance with its framework. The legality of such weapon systems must be assessed in relation to the specific operational environment in which they are deployed, as well as the nature of their potential targets.<sup>60</sup> The deployment of these systems in operational contexts characterized by minimal or no civilian presence, such as the high seas, undersea domains, or outer space, where military objectives are more readily identifiable, is more conducive to ensuring compliance with IHL obligations. However, contemporary armed conflicts, whether of an international or non-international character, predominantly occur in densely populated urban areas, where the presence of civilians is

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57 Articles 57 and 58 AP-I.

58 International Committee of the Red Cross (ICRC), *Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons* (Geneva: ICRC, 2016), 70–71.

59 Bills, Gwendolynn, “LAWS unto themselves: Controlling the Development and Use of Lethal Autonomous Weapons Systems,” *Geo. Wash. L. Rev.* 83 (2014): 176.

60 Christie, Edward Hunter, Amy Ertan, Laurynas Adomaitis, and Matthias Klaus, “Regulating Lethal Autonomous Weapon Systems: Exploring the Challenges of Explainability and Traceability,” *AI and Ethics* 4, no. 2 (2024): 229–245.

constant and unavoidable. The use of technology-based weapon systems in such complex operational settings significantly heightens the risk of IHL violations, particularly concerning the cardinal principles. Given these challenges, there is a pressing need for enhanced regulatory measures to mitigate the potential humanitarian consequences associated with the deployment of such weaponry in urban warfare.

Technology-based weapon systems, regardless of their specific functionalities, must be deployed strictly in accordance with international law, with particular adherence to the principles and obligations set forth under IHL. As a well-established and evolving legal framework, IHL provides a robust regulatory regime capable of addressing the legal challenges posed by emerging technologies in warfare. Its adaptability ensures that new and advanced weapon systems remain subject to fundamental humanitarian principles, reinforcing the imperative of lawful and responsible use in armed conflict.

## **VII. LEGAL COMPATIBILITY WITH RESPECT TO THE CARDINAL PRINCIPLES OF IHL**

States, as well as non-state actors involved in the development and deployment of weapon systems incorporating new and emerging technologies, are obligated to ensure that such systems do not possess characteristics that would render them incapable of compliance with IHL. Specifically, these weapon systems must not be of a nature that causes superfluous injury or unnecessary suffering, are inherently indiscriminate, or cannot be employed within the framework of IHL.<sup>61</sup> Furthermore, their development and deployment must adhere to the fundamental principles of distinction, proportionality, and precautions, which serve as the legal criteria for assessing the compatibility of weapon systems with IHL.

The principle of distinction mandates that civilians and civilian objects must never be targeted as the object of attack. Military operations must be directed exclusively against combatants and military objectives that, by virtue of their nature, location, purpose, or use, contribute effectively to military action and whose destruction, capture, or neutralization, under the prevailing circumstances, yields a concrete military

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61 Kvasòovský, Tomáš, “Autonomous Weapon Systems as the Next Revolution in Warfare and Implications of Technology Deployment For Global Security.” (2020).

advantage.<sup>62</sup> To ensure compliance with the distinction principle in the deployment of technology-based weapon systems, commanders must ensure that attacks are confined to specific military objectives within clearly defined locations. Additionally, the reliability of such weapon systems must be ensured so that their force is directed exclusively at legitimate targets within pre-designated operational areas.

The principle of proportionality prohibits attacks in which the expected loss of civilian life, injury to civilians, or damage to civilian objects would be excessive in relation to the concrete and direct military advantage anticipated. In accordance with this principle, a commander must not authorize or direct the use of a weapon system if, following a comprehensive assessment, they have reason to believe that the anticipated civilian harm would be disproportionate to the military gain.<sup>63</sup> When conducting such an assessment, commanders are required to consider the presence of civilians and civilian objects within the operational area and the timeframe in which the weapon system is expected to function.<sup>64</sup> Additionally, before launching an attack, commanders must evaluate and implement all feasible precautions to minimize harm to civilians and civilian objects, while also ensuring the protection of friendly forces.

The precautionary principle mandates that, during the planning and execution of any attack, all feasible precautions must be taken to minimize harm to civilians and civilian objects, including loss of life, injury, and destruction. Feasible precautions are those measures that are practicable or realistically possible under the prevailing circumstances, taking into account both humanitarian and military considerations.<sup>65</sup> To ensure effective compliance with the principle of precaution, military planners and commanders must rigorously assess the precautions available when employing technology-based weapon systems.<sup>66</sup> This assessment may include identifying the precise location and timing of the system's operation to minimize the risk of civilian

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<sup>62</sup> Articles 48 and 52(2), AP-I.

<sup>63</sup> Articles 51(5)(b) and 57(2)(a)(iii), AP-I.

<sup>64</sup> Henderson, Ian, and Kate Reece, "Proportionality under International Humanitarian Law: The Reasonable Military Commander Standard and Reverberating Effects," *Vand. J. Transnat'l L.* 51 (2018): 835.

<sup>65</sup> Articles 57(1) and 57(2), AP-I.

<sup>66</sup> Jafariandehkordi, Mahshad, *supra* 58.

presence, issuing appropriate warnings to protected persons, and implementing strict monitoring and control measures to reduce potential harm to civilians and civilian objects while maintaining the intended military advantage.

Based on these attributes, a commander is obligated to reconsider the use of technology-based weapon systems in favour of alternative weapon systems if the available precautions are insufficient to mitigate civilian harm. Consequently, as a necessary precondition for deployment, planners and commanders must ensure that alternative weapon systems are available during the planning phase itself, thereby preventing potential violations of IHL principles that could arise from the use of technology-based weapon systems under circumstances where feasible precautions cannot be effectively implemented.

### VIII. HUMAN-MACHINE INTERACTION

Human-machine interaction, implemented in various forms and at multiple stages throughout the life cycle of a weapon system, plays a critical role in ensuring that the deployment and use of weapon systems incorporating new and emerging technologies comply with applicable international law, particularly IHL. The quality and extent of human-machine interaction need to be assessed in light of a range of factors, including the specific operational context and the overall characteristics and capabilities of the weapon system.<sup>67</sup> To maintain lawful and responsible oversight, human-machine interaction must be integrated at every phase of the weapon system's development and use. This includes the pre-development phase, research and development, testing, evaluation, and certification, as well as deployment, training, command and control, operational use, abort functions, and post-use assessment.<sup>68</sup> By ensuring meaningful human oversight at each stage, the risks associated with tech-based weapon systems can be mitigated, thereby enhancing compliance with the fundamental principles of IHL.

The absence of meaningful human control over weapon systems would render them inherently incompatible with IHL. Meaningful human

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67 Bode, Ingvild, "Human-Machine Interaction and Human Agency in the Military Domain." (2025).

68 Boutin, Berenice, and Taylor Woodcock, "Aspects of Realizing (Meaningful) Human Control: A Legal Perspective," *Research Handbook on Warfare and Artificial Intelligence*, pp. 179-196, Edward Elgar Publishing, 2024.

control constitutes a fundamental mechanism embedded within such systems to ensure that human operators retain ultimate decision-making authority over the critical functions, particularly in relation to targeting decisions and, most crucially, prior to the actual use of force.<sup>69</sup> This principle is essential to uphold responsibility, ensure compliance with IHL, and protect human dignity in armed conflict. Weapon systems that cannot be subjected to human control tend to compromise the framework of IHL, as they would be incapable of adhering to its fundamental principles.<sup>70</sup> Specifically, such systems would violate IHL if their use:

- Cannot be directed at a specific military objective<sup>71</sup>;
- May cause superfluous injury or unnecessary suffering<sup>72</sup>; or
- Produces effects that cannot be limited as required by IHL, particularly when their functions are insufficiently understood, predicted, or explained.<sup>73</sup>

Furthermore, weapon systems would be deemed incompatible with IHL if their use precludes the attribution of state and individual legal responsibilities for their consequences.<sup>74</sup> Therefore, positive obligations in the form of regulations are required to be established to ensure that human operators exercise meaningful control over technology-based weapon systems, in accordance with the normative framework of IHL. This is particularly critical with respect to key functions such as target selection and the application of potentially lethal force.<sup>75</sup> Recognizing

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69 Wagner, Ben, “Liable, but not in Control? Ensuring Meaningful Human Agency In Automated DecisionMaking Systems,” *Policy & Internet* 11, no. 1 (2019): 104-122.

70 Amoroso, Daniele, and Guglielmo Tamburrini, “Toward a Normative Model of Meaningful Human Control Over Weapons Systems,” *Ethics & International Affairs* 35, no. 2 (2021): 245-272.

71 Articles 51(4)(b) and 51(4)(c), AP-I.

72 Article 35(2), AP-I.

73 Article 51(4)(c), AP-I, and International Committee of the Red Cross (ICRC), “Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons” (Geneva: ICRC, 2016), 70–71.

74 Zerbe, Yannick, “Autonomous Weapons Systems and International Law: Aspects of International Humanitarian Law, Individual Accountability and State Responsibility,” *Swiss. Rev. Int’l & Eur. L.* 29 (2019): 581.

75 Horowitz, Michael C., and Paul Scharre, “Meaningful Human Control in Weapon Systems,” (2015).

that the nature and degree of human control may vary across different stages of a weapon system's development and deployment, the use of such systems must remain compliant with IHL. To achieve this, human operators must be able to:

- Establish and impose adequate environmental constraints, including spatial and temporal limitations;
- Approve operational decisions with a sufficient level of situational awareness;
- Ensure the reliability and predictability of target identification, selection, and engagement;
- Implement necessary precautions during the conduct of operations to prevent the modification of mission parameters without human validation;
- Supervise operations and intervene as necessary to interrupt or deactivate the system during its operational phase, while also ensuring that auto-deactivation functions operate in accordance with legal requirements.

It remains the responsibility of commanders and operators to ensure that the deployment of such systems complies with the IHL framework. Any deviation from the IHL principles risks undermining the core humanitarian protections and, therefore, is subject to stringent oversight and regulation.<sup>76</sup> The exercise of human control is fundamental to ensuring that technology-based weapon systems comply with IHL. Such control must be maintained throughout the life cycle of a weapon system, from its initial research and development stages to its validation and eventual deployment.<sup>77</sup> The continuous oversight is essential to guaranteeing that the use of the weapon systems remains consistent with the IHL framework. In particular, human-machine interaction plays a critical role at various stages, including the targeting cycle, where decisions on the use of force are made.

The responsibility for decisions related to the use of force in armed conflict must ultimately rest with human operators. Individuals must retain

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76 Pedrazzi, M, "Strengthening IHL Compliance: The conduct of Hostilities, the Protection of Essential Services and Humanitarian Assistance in Contemporary Armed Conflict." (2024).

77 Amoroso, Daniele, and Guglielmo Tamburrini, 72.

the authority to make final determinations regarding the application of lethal force, exercise sufficient control over technology-based weapon systems, and remain accountable for any violations of IHL arising from their use.<sup>78</sup> The necessity of human control is not derived from a singular, explicit rule within IHL; rather, it serves as a practical mechanism for ensuring compliance with the cardinal principles of distinction, proportionality, and precaution. However, further deliberation is required to establish universally accepted technical standards that define the nature and extent of control deemed meaningful or appropriate.

The precise level of human control will inevitably depend on the specific characteristics of a given weapon system, the circumstances of its deployment, and the operational environment in which it is used.<sup>79</sup> Ensuring compliance with IHL will require a series of human interactions with the weapon system, rather than reliance on any single measure in isolation. In some operational contexts, embedding strict rules of engagement within a weapon's programming may significantly limit its function, thereby ensuring compliance with legal norms. In more complex scenarios, however, continuous human supervision may be indispensable. Ultimately, it is the collective set of human interventions, rather than any single act, that constitutes the necessary level of control required to uphold compliance with IHL.

### **IX. Framework for the Attribution of Responsibility**

The attribution of responsibility for violations arising from the development or deployment of technology-based weapon systems constitutes a nuanced and evolving legal issue within the framework of international law. Nevertheless, the established doctrines of individual and state responsibility remain applicable and can be effectively adapted to address the unique features of such systems. Central to this adaptation is the reaffirmation that legal responsibility, under IHL and broader international legal standards, remains inherently human. Accountability cannot be displaced onto machines or autonomous systems, irrespective

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78 Bo, Marta, "Are Programmers In or 'Out of ' Control? The Individual Criminal Responsibility of Programmers of Autonomous Weapons and Self-driving Cars." (2022).

79 Beard, Jack M, "Autonomous Weapons and Human Responsibilities." *Geo. J. Int'l L.* 45 (2013): 617.

of the degree of technological sophistication involved.<sup>80</sup> Despite the technological strides, a central legal challenge arises with respect to the attribution of responsibility for unlawful conduct perpetrated through the use of such systems. The inherently distributed nature of accountability, encompassing programmers, engineers, manufacturers, operators, military commanders, and the authorizing state, renders it increasingly difficult to isolate individual attribution. As many of these systems function with minimal or no human oversight during critical operational phases, identifying a singular agent responsible for the violation of IHL becomes a highly complex task.<sup>81</sup> This challenge is further exacerbated by the operational deployment of technology-based weapon systems in unpredictable, fluid combat environments, which necessitate a high degree of contextual awareness to ensure conformity with IHL principles.<sup>82</sup> It is neither feasible nor realistic for human developers to anticipate and encode all possible battlefield scenarios into a system's algorithmic framework.<sup>83</sup> The need for such contextual discernment, while essential for lawful conduct, compounds the difficulties of ensuring legal compliance and complicates the process of attributing responsibility for violations arising from the use of technology-based weapon systems in dynamic and often opaque battlefields.

The lawful deployment and use of the weapon systems necessitate the maintenance of a responsible and traceable chain of command. Commanders and other individuals involved in the planning and execution of attacks must retain the ability to exercise meaningful control over these systems, thereby ensuring adherence to the principles

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80 Novelli, Claudio, Mariarosaria Taddeo, and Luciano Floridi, "Accountability in Artificial Intelligence: What it is and How it Works." *AI & Society* 39, no. 4 (2024): 1871-1882.

81 Jafariandehkordi, Mahshad, *supra*-58.

82 Morales Mendoza, Ivan Emmanuel, "The Transformative Capacity of Artificial Intelligence: A Critical Approach to Alignment in Security Studies." (2022).

83 Schaefer, Kristin E., Brandon Perelman, Joe Rexwinkle, Jonroy Canady, Catherine Neubauer, Nicholas Waytowich, Gabriella Larkin et al, "Human-Autonomy Teaming for the Tactical Edge: The Importance of Humans In Artificial Intelligence Research And Development," In *Systems engineering and artificial intelligence*, pp. 115-148. Cham: Springer International Publishing, 2021.

of IHL.<sup>84</sup> Any dilution of human oversight risks undermining the integrity of IHL and jeopardising civilian protection. The retention of human responsibility throughout the life cycle of a weapon system, spanning its design, development, testing, deployment, and operational use, is essential to ensuring legal responsibility.<sup>85</sup> To this end, states must institute robust institutional and procedural frameworks designed to uphold IHL obligations in the context of emerging military technologies. Such frameworks must incorporate targeted training on IHL as it pertains to technology-based weapons, effective human oversight mechanisms, clearly articulated rules of engagement, and domestic legal provisions capable of attributing responsibility for unlawful conduct.

Accordingly, the challenge of ensuring accountability in the use of advanced weapon technologies must be addressed not through the creation of new legal doctrines, but through the consistent and context-sensitive application of existing principles. By reinforcing the legal responsibility of human actors, including designers, programmers, commanders, or operators, international law provides a coherent and effective framework for regulating the use of technology-based weapon systems in armed conflict.

### **X. State Responsibility**

The threshold for invoking state responsibility in the context of weapon systems based on new and emerging technologies remains comparatively low. This is primarily because states are typically the principal actors in the development, acquisition, and deployment of such technologies, including through outsourcing to private military and defence contractors. Under the rules of attribution established in international law, particularly those codified in the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), a violation of IHL is imputable to a state where the wrongful act is committed by a person or entity acting on behalf of the state, or where

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84 Sassoli, Marco, “Autonomous weapons and International Humanitarian Law: Advantages, Open Technical Questions and Legal Issues to be Clarified,” *International Law Studies* 90, no. 1 (2014): 1.

85 Wood, Nathan Gabriel, “Autonomous weapon systems and responsibility gaps: A taxonomy,” *Ethics and Information Technology* 25, no. 1 (2023): 16.

a weapon system was deployed under its authority or control.<sup>86</sup> In such instances, the state incurs responsibility without the necessity of demonstrating intent or negligence.

A state may seek to invoke force majeure as a ground for excluding wrongfulness under Article 23 of the ARSIWA. However, the threshold for establishing force majeure is exceptionally stringent. It requires proof of an unforeseeable and irresistible event beyond the control of the state that renders compliance with international obligations materially impossible. Routine technical malfunctions or foreseeable risks associated with the operation of weapon systems do not meet this standard.<sup>87</sup> Only wholly unanticipated occurrences, against which no reasonable precaution could have been taken, would qualify, and the burden of establishing such a defence lies squarely with the state asserting it.

State responsibility also carries with it a corresponding obligation to provide full reparation for the injury caused, as articulated in Article 31 of the ARSIWA. This includes restitution, compensation, and satisfaction, thereby ensuring that victims of IHL violations are afforded redress.<sup>88</sup> In this respect, the framework of state responsibility is more robust than international criminal law mechanisms, where victim compensation is limited, most notably to the reparation regime established under the Rome Statute of the ICC. As such, the regime of state responsibility not only facilitates a clearer attribution of responsibility but also holds substantial potential as a deterrent, encouraging states to ensure that the deployment and use of technology-based weapon systems remain in strict compliance with the norms and principles of IHL.

## **XII. Legal Review under Article 36 AP-I**

In accordance with Article 36 of AP-I to the Geneva Conventions, each state party bears the legal obligation to determine, during the study, development, acquisition, or adoption of a new weapon, means, or

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86 Marty Eriksson, Johanna, “Responsibility for Aiding or Assisting in the Commission of a Wrongful Act: Examining State Responsibility under Article 16 ARSIWA.” (2024).

87 Barbosa, Lutiana Valadares Fernandes, “Autonomous Weapons Systems and the Responsibility of States: Challenges and Possibilities” (2024).

88 Liu, Yang, “Compensation in the Jurisprudence of the International Court of Justice: Towards an Equitable Approach.” *Journal Of International Dispute Settlement* 15, no. 1, 73-105, (2024).

method of warfare, whether its deployment would be prohibited under international law in certain or all circumstances. This obligation is equally applicable to weapon systems incorporating new and emerging technologies, including those driven by autonomous functions, ML, or AI.<sup>89</sup> The legal review mandated under Article 36 serves as a critical safeguard to ensure that such technologies are designed and utilized in conformity with the principles and obligations of IHL.

In discharging this obligation, states must undertake a rigorous and context-specific assessment of each system's compatibility with IHL, particularly with respect to the principles of distinction, proportionality, and precaution. This process must account not only for the system's design features and operational parameters but also for its anticipated use in real-world combat scenarios. For weapon systems characterized by a high degree of autonomy or algorithmic complexity, this task becomes especially demanding, as predicting their behaviour and ensuring legal compliance may be fraught with technical and operational uncertainties.<sup>90</sup> In such cases, legal reviews must reach a heightened threshold of assurance, demonstrating that the system can reliably perform its functions within the confines of IHL.

Furthermore, effective legal review requires the integration of multidisciplinary expertise, encompassing legal scholars, military practitioners, engineers, and technical experts. This collaboration is vital to ensuring that legal evaluations are grounded in an accurate understanding of the weapon's capabilities and limitations. In addition to legal compliance, States must also address related operational and security risks, including physical and cybersecurity measures, the potential for unauthorized acquisition or misuse, and the proliferation of such technologies to non-state actors. These concerns necessitate the incorporation of comprehensive risk assessments and mitigation strategies throughout the entire life cycle of the weapon system, from conceptual design and development to testing, deployment, and potential modification in the field.

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89 Hartridge, Samuel, and Brendan Walker-Munro, "Autonomous Weapons Systems and the AI Alignment Problem," *Journal of International Humanitarian Legal Studies* 1, no. aop 1-28, (2025).

90 Jessup, Thomas, "'Avengers, [Lawfully] Assemble!' –Military Human Enhancement and the Disruption of Fundamental Principles of International Humanitarian Law." *Military Human Enhancement and the Disruption of Fundamental Principles of International Humanitarian Law* (May 17, 2021) (2021).

Particular attention must also be given to the challenge of maintaining meaningful human control over weapon systems with autonomous functionalities. Where a system's capacity to make decisions regarding the use of force is largely or wholly independent, the traditional framework of command responsibility under IHL may be rendered insufficient.<sup>91</sup> The unpredictability of such systems may impair a commander's ability to ensure compliance with legal norms, thereby elevating the risk of unlawful conduct. In circumstances where predictability cannot be assured, the system's use may need to be restricted or prohibited altogether.

Finally, the lack of standardized international methodologies or benchmarks for evaluating the legality and operational reliability of technology-based weapon systems represents a significant practical impediment.<sup>92</sup> The absence of harmonized review protocols complicates efforts to assess the legality of new technologies in a consistent and transparent manner. As such, states must invest in the development of robust legal and technical review mechanisms, supported by institutional frameworks capable of adapting to technological change. Additionally, systems subject to post-deployment modifications, such as those involving ML or adaptive behaviour, may require renewed or continuous legal review to ensure sustained compliance with IHL. In light of the rapid pace of military innovation, the implementation of such dynamic and comprehensive review processes is essential to safeguarding the fundamental principles of humanitarian law in contemporary and future conflicts.

## **XII. Criminal Responsibility**

At the International Criminal Court (ICC), the threshold for establishing *mens rea* in relation to the commission of war crimes is stringent. Pursuant to Article 30 of the Rome Statute, as well as specific war crimes provisions, such as those prohibiting the intentional targeting of civilians, the requisite mental element necessitates that the perpetrator act with intent and knowledge. These offences are construed as crimes of conduct rather than crimes of result, which implies that responsibility arises from the deliberate nature of the act itself, irrespective of whether actual

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91 Beard, Jack M, *supra*, 81.

92 Rao, Bharat, Adam J. Harrison, and Bala Mulloth, "Defense Technological Innovation: Issues and challenges in an Era of Converging Technologies." (2020).

civilian harm ensued.<sup>93</sup> Consequently, a finding of mens rea under the Rome Statute presupposes that the perpetrator either intended to violate the principles of IHL, or, at a minimum, had actual knowledge that such a violation would inevitably occur in the course of their actions.<sup>94</sup>

Nevertheless, a more nuanced standard of criminal responsibility is reflected in Article 85 of AP-I to the Geneva Conventions, which governs grave breaches. This provision requires that civilian populations not be “wilfully” targeted. Jurisprudence from the International Criminal Tribunal for the former Yugoslavia (ICTY) has interpreted the notion of wilfulness to include *dolus eventualis*, or indirect intent.<sup>95</sup> Under this standard, the mental element is satisfied where the perpetrator is aware of a substantial risk that their conduct could lead to a prohibited outcome and nonetheless proceeds with that conduct, thereby accepting the foreseeable consequences. The International Committee of the Red Cross (ICRC), in its authoritative Commentary on AP-I, endorses this interpretation of wilfulness, affirming that state parties remain bound by the corresponding obligations under the Protocol. Moreover, Article 85 obliges all state parties to criminalize grave breaches through their domestic legal systems, thereby binding them to this lower threshold of mens rea, even where their obligations under the Rome Statute may differ in scope or intensity.

This framework thus provides a viable pathway for establishing individual criminal responsibility, particularly in national jurisdictions where domestic legislation has been enacted pursuant to Article 85. Furthermore, under customary international law, indirect intent is generally deemed sufficient to attribute criminal responsibility for serious violations, unless a higher threshold is explicitly required.<sup>96</sup> As such, international tribunals applying customary international law may

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93 Article 30; Article 8(2)(b)(i), Rome Statute of the International Criminal Court, 17 July 1998.

94 Marchuk, Iryna, and Iryna Marchuk. “Evolution of the Mens Rea Doctrine in International Criminal Law.” *The Fundamental Concept of Crime in International Criminal Law: A Comparative Law Analysis* (2014): 115-157.

95 Badar, Mohamed Elewa, “Drawing the boundaries of mens rea in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia,” *International Criminal Law Review* 6, no. 3 (2006): 313-348.

96 Ohlin, Jens David, “Targeting and the Concept of Intent.” *Mich. J. Int’l L.* 35 (2013): 79.

similarly infer *mens rea* through evidence of recklessness or acceptance of risk, thereby enabling accountability even in circumstances where the evidentiary burden under the Rome Statute may not be met.

### XIII. CONCLUSION

While contemporary weapon systems rooted in new and emerging technologies are not explicitly governed by existing treaty provisions of IHL, their development, deployment, and use in armed conflict do not take place in a normative void. As with all conventional means and methods of warfare, these technologies remain subject to the foundational principles of IHL, particularly those governing the conduct of hostilities. The obligation to ensure compliance with IHL rests primarily with individual states that design, develop, or deploy such systems. Although there is a general consensus that these weapon systems must be capable of lawful use under IHL, challenges persist in interpreting and applying existing legal norms to their novel features, operational contexts, and potential humanitarian impact. These challenges underscore the pressing question of the adequacy of the current legal framework to regulate technologies or the necessity of refinement or expansion. Accordingly, there is an urgent and growing imperative to critically examine and, where necessary, enhance the regulatory standards governing weapon systems based on new and emerging technologies.

The present research underscores the requirement that, while technological advancement in weapon systems is both inevitable and largely irreversible, such progress must not be permitted to erode or circumvent the foundational principles of IHL. Accordingly, it is essential that the international community engages in sustained and substantive discourse aimed at the formulation of regulatory frameworks and policy guidelines that effectively govern the development and deployment of technology-based weapon systems. These regulatory measures are critical to mitigating the adverse humanitarian consequences associated with the employment of technologically sophisticated weapons and to preserving the core tenets of human dignity in the conduct of contemporary armed conflict.

In this context, it is evident that although weapon systems based on new and emerging technologies may, in certain instances, introduce novel complexities with respect to the application and enforcement of IHL principles, particularly concerning the principles of distinction,

proportionality, and precaution, their increasing presence and operational deployment in modern warfare cannot be overlooked or denied. Nonetheless, the enduring relevance and non-derogable character of the existing normative framework of IHL must be reaffirmed. Therefore, the regulation of such weapon systems must strive to strike a careful balance, on one hand, acknowledging their unique technological attributes, and on the other, ensuring legal compliance with the precepts of IHL.

To this end, the legal review of new weapon systems, as mandated under Article 36 of AP-I, becomes of central importance. Such a review must be undertaken not merely as a procedural formality but as a substantive obligation to assess the specific features of a weapon system, such as the precision, reliability, and algorithmic accuracy embedded within its design, and compatibility with IHL standards. In parallel, the broader obligations of states under customary and treaty-based IHL remain paramount, requiring rigorous oversight throughout the lifecycle of these weapons, from development to deployment.

With respect to the attribution of responsibility for violations arising from the use of technology-based weapons, the traditional doctrines of state and individual responsibility under international law remain applicable. However, given the complexity and potential autonomy of these systems, these doctrines may require interpretative refinements or supplementary mechanisms to adequately address accountability gaps. Such recalibrations would ensure that responsibility for wrongful acts, either committed through direct use or defective programming and deployment, is appropriately ascribed, thereby reinforcing the normative integrity and operational effectiveness of the IHL regime in the age of emerging military technologies.

**COMMENTARY ON: “NO ESCAPE: ON THE  
FRONTLINES OF CLIMATE CHANGE, CONFLICT  
AND FORCED DISPLACEMENT”- UNHCR  
REPORT AT COP 29 NOVEMBER 2024**

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**ABSTRACT**

Realities and existence of climate induced forced displacement first nudged the legal fraternity with the *Teitiota vs. New Zealand*<sup>1</sup> case at the Human Rights Committee of ICCPR when Mr. Tieotia, a national of Kiribati approached this treaty body in exercise of the power of individual complaints available under the Protocol to the treaty. This case was significant and landmarking for two reasons. *First*, it recognized the reality of climate induced displacement and *second*, having recognised it, could not protect the right of such displaced persons because the law did not accord for such protection. In this sense, there is an ancillary significance attached to this; i.e. New Zealand rejects the application of refugee status, a country that houses the maximum share and burden of refugees and/or displaced persons in the world. This shocked the world because it depicted how limits of intake of displaced persons could affect such helpless persons. In other words, the fact that countries could close borders on procedural and legal grounds since there was no obligation to house such displaced persons became vividly clear. Climate change induced displaced persons is one such victimisation that has no requirement or obligation from countries to open doors to accept them. The Global Compact adopted by the UNHCR in 2018 was a milestone that attempted to bridge this gap between legal ambiguities on grounds of providing refugee status to displaced persons and the realities of climate change induced displaced persons knocking at the doors of the UNHCR and other countries requesting their protection. In furtherance to this and in the backdrop of this, the UNHCR recently launched and tabled the report titled “No Escape: On the frontlines of Climate Change,

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1 CCPR/C/127/D/2728/2016.

Conflict and Forced Displacement” at the COP 29 in November 2024. The authors attempt to provide a commentary to that.

## I. INTRODUCTION

The term “climate refugees” was then coined to encompass the escalating incidents of large-scale movement and cross border mass movement of people occasioned in part by natural calamities. The data was released by the UNHCR in April mentioned that natural climate-related disasters have forced 21.5 million people to leave their homes since 2010; “the ‘slow’ onset of climate change manifests not only in sudden disasters, while the other is in access to food and water shortages and difficulties in accessing nonrenewable natural resources.” Other prospective losses are sea-level fluctuations. The global population at risk has doubled over the last 30 years from 160 million to 260 million living in coastal regions most exposed to SLR, with 90% of these being from the least developed countries and small island states. For example, rising sea levels are expected to flood 17% of Bangladesh by 2050, displacing 20 million people.

In its Ecosystem Threat Register revealed in September 2018, Institute for Economics and Peace, an Australian international think tank intended these threats to displace at least 1.2 billion people by 2050. In this setting, the measures against the problem all over the world have been gradually developing and starting to go forward.

## II. REFUGEE STATUS

The relationship between the environment and other human rights, such as the right to life, health, food, water, and housing, is recognized by international human rights treaties, even though they do not specifically mention a right to a safe and healthy environment. According to the International Bill of Rights, countries must provide wholesome food and clean drinking water to combat illness and hunger while also taking environmental contamination risks into account. Regretfully, it is challenging to exercise the rights guaranteed by these agreements. However, the effects of climate change include desertification, water stress, food competition, and limited access to clean water, all of which exacerbate already-existing violence and conflicts in unstable areas.

OHCHR studied how climate change impacts human rights in 2008 and arrived at a notion that before asserting that climate change results in human rights abuse, three essential questions must be answered.

- demonstrating the occurrence of a link between one nation's emission levels and another's
- establishing that there is now strong evidence that climate system is warming and about 90% of average global temperatures have risen since the mid-point of the twentieth century has been caused by humans.
- while climate change regulation focuses on potential future harm, the human rights framework frequently addresses violations.

Most affected areas over 21 million people have already been displaced from their homes or native places during the previous 20 years as a result of climate change and extreme weather.

The 1951 Refugee Convention governs a very specific type of protection, which varies widely from one jurisdiction to another. For people who are forced to go permanently or for a long time with no chance of returning, complementary forms of protection can be required. According to article 1 of the 1951 Refugees Convention, environmental migrants are not considered refugees. The nations most impacted by environmental displacement face a number of difficulties, including changing climates and difficulties related to social, economic, and security concerns. So, international law does not protect environmental refugees or climate displacement, and they are not eligible to apply for refugee status on the ground of ongoing or sudden climate calamity or a generalised climate change. The available grounds for refugee status under Refugee Convention 1951 or other regional refugee law conventions that have contributed to the refugee law jurisprudence, concern some sort of violence or upheaval or war or conflict that propels fear, threat and persecution. The archaic understanding of why people would and could require "refuge" or shelter still lingers in the contemporary world and so the climate induced displacement and/or environmentally displaced persons who are also colloquially termed as "climate refugees" find no succour. However, a foundation for protecting natural disaster victims who do not travel across international borders is established by the UN Guiding Principles on Internal Displacement. To establish a global framework for safeguarding displaced individuals who are crossing borders because of climate change and natural disasters, the Council of Europe suggested in 2009 that these principles be adopted as a model. The Kampala Convention was established to protect and assist internally displaced individuals in Africa, even though

these principles do not address cross-border displacement. The agreement states that in situations not covered by the 1951 Refugee Agreement and its 1967 counterpart, supplemental measures of protection enable countries to offer protection on human rights grounds to individuals who face the possibility of repatriation.

Experts disagree on whether the phrase “environmental refugee” is correct and ignores people who are compelled to relocate within their own nation, while others support its use to aid environmental migrants obtain legal protection. As a result, the majority of climate refugees are internal migrants who relocate within their nation.

### III. WHAT DOES THE REPORT STATE?

The report is an extension of the already mentioned commitments of UNHCR, including its expanded focus on IDPs and to protect their rights, which is extremely relevant for the climate induced displacement. In that sense, the report sheds light to climate induced displacement that crosses international borders and those who do not cross the borders but resides away from home (internally displaced persons), who are tied together by the strand of communities affected by climate disasters or risks. Accordingly, claim for protection arises before UNHCR, whereby the report opines- “Assessing asylum claims arising in the context of climate change impacts and disasters requires a comprehensive, forward-looking analysis of all relevant circumstances” due to the reasons mentioned above. So, the claim for a successful application for such cases is dependent on the fulfilment of the traditional grounds *and* (emphasis added) climate change or disaster as a result of such war or conflict propelling displacement and no chance of return.

The report shed light on the increasing risk of protracted, recurrent and onward displacement that people face as a result of climate change. Towards that end, it has quoted reports have stated that 70% of refugees and asylum seekers came from climate vulnerable countries which also have no resilience to improve the conditions for making it better for the people to return. It has also stated that it is over 220 million people have been displaced in the last 10 years due to climate change which is about 60000 displacement per day.

Interestingly, the report has not only shed light on the plight of displaced persons from climate vulnerable countries, like that of *Teitiota* as mentioned earlier, the report gave insights into kind-of-a not so known

fact of 3 out of 4 *already* (emphasis added) displaced persons living in countries that are themselves vulnerable to climate change.

#### IV. SCENARIO OF CLIMATE INDUCED DISPLACEMENT

This report examines how disasters and effects of climate change exacerbate vulnerabilities of displaced peoples and their hosts especially in post conflict and fragile states. It describes how to improve the capacity of displaced people and their communities and allocate funds based on need about the resources that are scarce. It presents strategies to enhance the resilience and inclusion of displaced individuals and their hosts while addressing resource gaps by adopting a needs-based approach to guide financial decisions. These recommendations follow the framework of evidence-based climate science with case histories that demonstrate the obstacles to efficacious intervention as well as glimpses of actionable steps that might alter the larger calculus for those on the ground experiencing the impacts of climate change.

##### *Trends Or Patterns Identified in the Report*

The report denotes that the climate crisis not only displaces, it affects and weakens the foundations that help or at least aid to rebuild lives and livelihoods aiding the refugees and/or IDPs to return or get integrated. It has presented a few case studies, scenarios and trends that have been observed over the past few decades, and an attempt has been made to provide a summary of that.

1. Protracted forced displacement is projected to increase internally and across borders, as more frequent severe climatic shocks add to the causes of fragility and conflict.
2. The humanitarian needs of affected communities are expected to deteriorate as a result of armed conflict, state failure, environment, and the impacts of climate change.
3. With malnutrition and food insecurity, they are going to come by very soon.
4. The persons who are least responsible for climate change are the most vulnerable and are often the most underprepared to prepare, adapt and recover from its impacts, which includes the IDPs, refugees and displaced people.
5. The host countries and the countries where relocation is usually undertaken are the most vulnerable countries that are facing

extreme weather conditions presently which makes it difficult to implement the durable solutions of local integration and resettlement.

6. The countries with refugee camps are the most affected and settlements are experiencing severe heat wave, like Senegal and Ethiopia making it concerning for the present refugee population.
7. Due to the rising global warming crisis, returning of refugees is becoming impossible, even if voluntarily they wish to go back and/or legally and procedurally the situations in their home countries are better because there is no future, they envisage due to massive desertification or excessive rains.
8. The governmental condescending attitude is accelerating the effects of climate change and their unwillingness to fulfill its commitments is making it difficult to *“allow communities to create necessary adaptive capacities to become resilient to the impacts of climate change, including in displacement contexts”*.

#### V. WHAT HAS THE REPORT MISSED?

The report has been drafted in a case-study method approach leaving aside several important locations, especially in South Asia that are facing the wrath of climate change and are witnessing climate induced displacement. The following are some of the top nations impacted by the environmental displacement issue which the report has missed. These are only a few of the many such countries that are facing such displacement.

*Bangladesh-* The native people of Bangladesh has always struggled with extreme weather conditions. According to a report almost 35 million who reside beside the bank of Ganga have been facing tremendous storms, floods and droughts. It is further assumed that the people living in the coastal region of Afghanistan have learned to cope up with the continuous climatic conditions. Another major issue is of rising sea level, which is not only causing harm to residential areas and soil but also cause contamination of fresh water. These climatic conditions force people to leave their native areas. According to a report in 2020 almost 20,000 Bangladeshi refugees were found in Europe. From which many of them would have failed in immigrating to Europe.

*Afghanistan-* This country is considered as the most affected country in the context of climate change and environmental displacement.

According to a report over one-third of the population has already left Afghanistan ever since 2012. By the end of 2019, about one million people had already emigrated from Afghanistan because of natural calamities. The agricultural activities were severely affected in Afghanistan as in the second major drought in this country lead to the loss of 40 percent of the agricultural crop. People were unable to eat food and according to UN report over fourteen million people faced food shortage and almost 3.2 million children were discovered with malnutrition.

*Philippines*- Philippines is the only country who has confronted almost 20 storms or typhoons each year in the world. According to a statement by the Internal Displacement Monitoring Centre that around 4.4 million people have internally migrated because of the disasters. Philippines is on the top of the list of countries affected by internal displacement. People are forced to level their homes due to natural calamities and because of the harm or damage caused by the disasters. It is estimated that more than 8.6 million people residing in Philippines would be affected by rising sea level in next thirty years.

*Haiti*- In Latin America and the Caribbean Haiti is considered as one of the most vulnerable countries, because of the geographical position of the country. It faces extremely vulnerable climatic change as it is positioned on hurricane belt. According to some report in 2020 there was an earthquake of 7.2 magnitude that took life of almost 1400 people, along with extremely heavy rain and destruction.

*Senegal*-the main problem in this region is rising sea level and the major population of this country lives in the coastal area. According to the UN Intergovernmental Panel on Climate Change the sea level is rising by 3.5 or 4 millimeters each year. This situation is rising threat to the livelihood and the lives of the population and also increasing environmental refugees.

## V. CONCLUSION AND RECOMMENDATIONS

The report highlights how the various international human rights instruments have been of help in providing the adequate protection of rights of such persons until now, alongside the constant activism of UNHCR to accord protection. Of the suggestive legal protection that UNHCR believes could be made possible, is interpreting the terms used,

at least in the regional refugee conventions like OAU Convention of 1969 and Cartagena Declaration of 1984. The report suggests- “public order” disruptions- common to both the Conventions be made to *“encompass situations where climate change impacts, environmental degradation, and disaster impacts disrupt societal stability”* propelling displacement. In other words, the conditions for leaving a place of habitual residence under these Conventions be now *“associated with sudden or slow onset events or other climate change impacts”*. In fact, the report has quoted UNHCR 2018 report titled *“In Harm’s Way: International Protection in the Context of Nexus Dynamics Between Conflict or Violence and Disaster or Climate Change”* whereby it substantiated its suggestion by adding that Somalis were taken in to Kenya and Ethiopia in the context of drought and conflict and Mexico embraced the displacement of Haitians after the 2010 earthquake and the subsequent human violations that broke out in the country by applying these conventions in this manner.

The report has called for international cooperation *“to break the cycle of onward and protracted displacement and to help forcibly displaced people return to their homes and communities.”* Towards this end, the report has emphasised on the importance of Durable Solutions, which have to be beyond the conventional understanding that emerges from the refugee law jurisprudence. Accordingly, the report mentions that temporary arrangements like shelters and short-term interventions cannot be of much helpful, instead, *“facilitating permanent resettlement, bolstering community resilience, including through decent work, and integrating climate adaptation into national policies”* will have to be undertaken. Towards this end, the report also highlights the difficulties faced by the displaced persons who are not resilient to adapt to climate change which leads to physical and mental health problems. However, the report also raises concern on the sensitivity that requires to be adopted in developing these durable solutions, in a manner that would be conflict-sensitive and conflict-preventive in nature. The report in that sense also points at the overall governmental ignorance of its commitments to the Paris Agreement whereby it has failed to meet up to the necessary strategies to even aid such displaced people.

Accordingly, it has recommended a model of protect, include, invest and accelerate to mitigate the effects of climate change displaced and/or already displaced persons like refugees. The UNHCR report requests the governments of all countries to follow this model.

*“PROTECT displaced people fleeing in the context of climate change impacts and disasters by applying and adapting existing legal tools*

*INCLUDE the voices and specific needs of displaced populations and host communities in climate finance and policy decisions.*

*INVEST in building climate resilience where needs are greatest, especially in fragile and conflict-affected settings.*

*ACCELERATE the reduction of carbon emissions to prevent climate disaster and to avert and minimize further displacement.”*

Towards the end, UNHCR has called for climate change impact-related considerations, and conflict-sensitive and peace-responsive climate actions to be undertaken to ensure that above commitments are fulfilled.

## SATELLITE INTERNET AND HUMANITARIAN AID: A LIFELINE FOR WAR AND CRISIS ZONES

NITESH KUMAR\* & DR. RASHWET SHRINKHAL\*\*

### ABSTRACT

This study examines the transformative role of satellite internet in advancing humanitarian aid, particularly in regions afflicted by armed conflict and catastrophic emergencies. It underscores the indispensability of satellite-enabled connectivity in facilitating the transmission of critical information, operational coordination, and the delivery of essential services amidst infrastructural collapse. While highlighting its application in conflict zones such as Syria, Ukraine, Yemen, and disaster-stricken areas like Haiti, the analysis explores the dual dimensions of satellite internet's immediate utility in emergency response and its extended contributions to refugee and displaced populations through access to education, legal aid, and digital inclusion.

The research further delves into the complex legal and regulatory challenges surrounding the deployment of satellite internet, particularly issues of state sovereignty, extraterritorial jurisdiction, and cybersecurity. Using Ukraine's reliance on satellite internet to maintain connectivity during armed conflict as a case study, the study elucidates the geopolitical sensitivities and international law implications inherent in such deployments. The need for a cohesive international legal framework to address licensing, spectrum allocation, and the ethical dimensions of data usage is emphasized, with specific attention to the roles of international organizations such as the International Telecommunication Union (ITU) and the United Nations.

Moreover, the study raises critical questions about data privacy, surveillance risks, and the ethical use of biometric information, advocating for robust regulatory mechanisms to safeguard individual rights and uphold humanitarian principles. It concludes that the future of humanitarian assistance is inextricably linked to the resolution of legal ambiguities, the establishment of governance frameworks, and the implementation of ethical data practices, thereby ensuring that satellite internet serves as a neutral, effective, and rights-compliant enabler of humanitarian aid.

**Keywords:** *Internet, Sovereignty, Cyber security, Privacy, Surveillance*

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## I. INTRODUCTION

Satellite Internet has fundamentally altered humanitarian response around the world. Particularly in areas devastated by war or catastrophe, the scene of humanitarian assistance has been fundamentally changed by the arrival of satellite internet. Satellite technology becomes a vital lifeline as wars and natural disasters progressively disturb conventional communication systems allow humanitarian organisations to maintain connected and properly coordinate relief operations.<sup>1</sup> In a time where knowledge is valued highly, for vulnerable groups the capacity to communicate in real-time can make the difference between life and death. Including satellite internet into humanitarian activities not only helps to distribute vital information but also improves the operational effectiveness of relief organisations functioning in difficult surroundings.

Technology's contribution to humanitarian response has changed drastically historically. From the early 1960s use of satellite communication by groups such as Médecins Sans Frontières (MSF) to the present uses of sophisticated digital technologies, the humanitarian sector has welcomed advances that increase coordination and resource allocation. Particularly in cases when terrestrial networks are disrupted or non-existent, satellite internet has become very essential for guaranteeing that relief reaches people in need quickly.<sup>2</sup> This technology lets field personnel, headquarters, and other stakeholders communicate seamlessly, therefore promoting a more agile reaction to emergencies.

This paper's goals are many. It first seeks to investigate how satellite internet may revolutionise the provision of humanitarian relief in disaster areas. Important issues include: How may satellite internet raise operational effectiveness for humanitarian agencies? Regarding its usage in war zones, what legal ramifications follow? This study also tries to assess the ethical issues related to using satellite technology in delicate surroundings. Through addressing these issues, this article emphasises the significance of satellite internet inside the context of international law, especially with humanitarian concepts and the protection of impacted communities.

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- 1 I. Brownlie, *Principles of Public International Law*, 7th Edition (Oxford University Press, Oxford, 2008), p. 45.
  - 2 F. Mégret, "The Technology of Humanitarian Space: Satellite Internet and Global Solidarity", *International Review of the Red Cross*, vol. 88 (2006), pp. 863-890 at p. 870.

The extent of this study is a thorough evaluation of the body of current material on satellite technology and its uses in humanitarian situations. The study technique comprises qualitative analysis via case studies that highlight effective deployments of satellite internet during current crises, such as those experienced in Syria and Haiti. Furthermore, legal frameworks controlling satellite communications will be investigated method guarantees a comprehensive knowledge of technology contention of this article is that satellite internet is an indispensable instrument for improving the efficiency and efficacy of humanitarian relief in areas under crisis or conflict. According to the theory, even if there are some difficulties like high expenses and security flaws—such as which the advantages of real-time communication capabilities far exceed. Satellite internet not only enhances instantaneous reaction efforts but also supports long-term recovery plans by allowing fast data exchange and coordination among many participants.

Finally, this introduction prepares readers for a thorough investigation of how, in some of the most difficult settings on Earth, satellite internet serves as a lifeline for humanitarian assistance. These parts will explore particular case studies, examine legal systems, and provide suggestions meant to maximise the use of satellite technologies in next humanitarian projects. By means of this study, we want to highlight the important junction of technology and international law in forming appropriate responses to humanitarian situations.

## II. ROLE OF SATELLITE INTERNET IN HUMANITARIAN AID

In contemporary crisis response, satellite internet's value in providing humanitarian relief has grown ever more essential. Typical communication infrastructure is often destroyed or rendered useless in conflict areas, during natural disasters, and in other humanitarian crises.<sup>3</sup> For many of these problems, satellite internet provides a strong, adaptable, and usually instantaneous fix. Beyond only allowing for communication, it helps displaced people, improves transparency and responsibility in aid distribution, and facilitates logistics. The several ways in which satellite internet supports humanitarian activities, closes

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3 Ugwu, O.P.C., Alum, E.U., Ugwu, J.N., Eze, V.H.U., Ugwu, C.N., Ogenyi, F.C. and Okon, M.B., 2024. "Harnessing Technology for Infectious Disease Response in Conflict Zones: Challenges, Innovations, and Policy Implications." *Medicine*, 103(28), p.e38834.

communication gaps, helps refugees, and guarantees openness and responsibility in crisis areas is discussed in this part.

### III. BRIDGING THE COMMUNICATION GAP

When conventional infrastructure collapses, satellite internet's most important function in humanitarian relief is filling up communication gaps. Terrestrial communication networks are often destroyed by disasters such earthquakes, floods, and armed conflicts, therefore isolating the impacted populations and humanitarian responders from access to essential channels. In these circumstances, satellite internet is very vital as it provides quick, on-site access free from depending on ground-based infrastructure.

Satellite technology guarantees that humanitarian organisations may establish command centres, organise reaction teams, and keep touch with local and international stakeholders by means of real-time internet connectivity. Even in the most far-off and dangerous conditions, portable satellite internet equipment such satellite hotspots and Very Small Aperture Terminals (VSATs) are simply installable. For example, satellite internet services like Starlink were crucial for preserving civilian and military communications after Russian strikes on Ukraine's telecoms infrastructure during the 2022 Russia-Ukraine conflict. The speed and efficiency of humanitarian reactions were much improved by this real-time communication capacity.<sup>4</sup>

Satellite internet also helps early warning systems in places prone to disasters. Satellite internet lets early warnings be sent to at-risk populations by providing continuous monitoring of geological activity, weather patterns, and security concerns. By then, humanitarian organisations may pre-position supplies and organise evacuations, therefore lowering fatalities and lessening the effect of catastrophes. In areas where early warning systems are either missing or weak, this ability for anticipatory action is extremely important.

### IV. SUPPORTING HUMANITARIAN OPERATIONS

Particularly in the coordination of supplies, health services, and emergency response activities, satellite internet is crucial in enabling humanitarian operations. Timely and efficient assistance in

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4 L. Thompson, "Communication Technologies in Disaster Relief," *Journal of Humanitarian Technology*, vol. 15 (2023), pp. 112-130 at p. 118.

humanitarian situations depends on efficient coordination among many actors — governments, non-governmental organisations (NGRs), and commercial sector partners. Real-time decision-making is made possible by satellite internet, which also helps all of these stakeholders to smoothly flow with information.

One such instance is the way satellite internet helps to coordinate supply chains. Humanitarian logistics include difficult tasks like food, medical equipment, and relief supplies monitoring and transit. Real-time data on shipment locations made possible by satellite-enabled tracking systems guarantees that supplies reach impacted populations more quickly, therefore optimising their impact. Furthermore, satellite connectivity lets humanitarian players identify other supply routes or reroute cargo in cases where natural catastrophes or conflicts disturb the supply chain.

Furthermore much benefited by satellite internet are health services. Emergency field hospitals can depend on satellite internet to access medical databases, confer with distant medical specialists, and plan patient transfers in regions of war or disaster-stricken when hospitals and medical infrastructure are devastated.<sup>5</sup> Telemedicine systems, for instance, let physicians diagnose ailments, perform remote consultations, and write prescriptions. In places impacted by epidemics like cholera or Ebola, when quick medical action may save thousands of lives, this capacity is especially important.

Moreover, satellite internet helps search-and-rescue personnel to provide command centres real-time updates and geographical data during emergency response operations. Equipped with cameras, drones and unmanned aerial vehicles (UAVs) may photograph impacted regions and send photographs over satellite internet, therefore enabling rescue teams to pinpoint and rank the most urgently needed locations. These activities greatly improve their efficiency, therefore assuring speedier help delivery and maybe saving lives.

## **V. USE OF SATELLITE INTERNET BY REFUGEES AND DISPLACED PERSONS**

Access to satellite internet gives refugees and displaced people not only a means of connection to the outside world but also agency, dignity,

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5 B. Johnson, “Satellite Communications and Humanitarian Efforts,” *Journal of Humanitarian Technology*, vol. 15 (2023), pp. 112-130 at p. 115

and autonomy. In crisis areas when people must leave their homes, knowledge becomes a lifeline. By allowing displaced people to contact loved ones, get necessary services, and seek legal help, satellite internet empowers them. When moved to camps or makeshift shelters, refugees sometimes experience isolation—especially in cases when conventional mobile networks are either non-functional or absent. By enabling refugees to remain in contact with family members, get updates on the state of affairs back home, and access information on their rights and legal protections, satellite internet closes this distance.<sup>6</sup> Internet access also helps displaced children in refugee camps engage in distance learning, allowing them to finish their education even in the most difficult conditions.

Another vital issue where satellite internet proves so helpful is legal aid for refugees. Asylum or refugee seekers from displaced people sometimes negotiate difficult legal procedures requiring timely access to legal information, documentation, and legal representatives. They can interact with solicitors, humanitarian groups, and support systems offering legal advice and documentation tools using satellite internet. Apps and platforms meant to assist asylum seekers, for example, can only operate with consistent internet access—which satellite services enable in places lacking other network choices.

Apart from empowering people, satellite internet is quite important for improving the larger operations of refugee response systems. Satellite connectivity is used by aid agencies such as the United Nations High Commissioner for Refugees (UNHCR) to oversee systems of refugee registration. Digital identification records for refugees are created using biometrics, such as fingerprint or facial recognition data, facilitating improved tracking of aid recipients. This digital identity system guarantees that refugees obtain food, healthcare, and financial help in a timely and effective way, so simplifying the delivery of humanitarian aid.

## VI. ENHANCING TRANSPARENCY AND ACCOUNTABILITY

Especially in situations where large resources are dedicated to disaster response, transparency and responsibility are fundamental values in the delivery of humanitarian relief. By means of real-time data collecting,

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6 N. Garcia, “Legal Support for Refugees through Technology,” *Refugee Studies Quarterly*, vol. 39 (2020), pp. 85-100 at p. 90.

remote monitoring, and reporting systems allowing supervision of humanitarian operations, satellite internet improves openness and responsibility. Donors, governments, and the public are pushing humanitarian organisations more and more to show that resources are reaching those most in need and that help is being spent wisely. Real-time reporting tools enabled by satellite internet let companies record and distribute data on continuous aid operations. These solutions let field staff immediately enter reports, images, and geotagged updates straight to cloud-based systems, which stakeholders and decision-makers all around may then view. This real-time reporting builds responsibility, raises donor trust, and lowers the possibility of money abuse or corruption.

For food aid distribution, for example, companies like the World Food Program (WFP) track using satellite-enabled technologies. Mobile apps linked via satellite internet enable humanitarian workers to real-time scan and track food package movement.<sup>7</sup> This mechanism guarantees that help reaches its intended recipients and is not diverted or stolen. Remote sensing technologies—such as drones and satellite images—that help to improve responsibility in crisis areas also benefit from satellite internet. High-resolution pictures of impacted areas allow humanitarian agencies to visually evaluate damage, monitor recovery initiatives, and measure the influence of their interventions. This visual data provides proof for the claims of assistance efficiency and helps to justify ongoing financing. Satellite internet also helps community feedback systems wherein impacted groups may document their complaints and experiences. Beneficiaries may express concerns about assistance distribution, point out areas of unmet need, or document cases of abuse or exploitation by means of online questionnaires or mobile applications.<sup>8</sup> This feedback method guarantees that humanitarian organisations answer to the people they assist and that the opinions of impacted populations are heard.

Furthermore, bolstering anti-corruption initiatives in the delivery of humanitarian relief is satellite internet. By facilitating the digitalisation of assistance transactions, such as mobile money transfers, satellite

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7 R. Lee, “Transparency and Accountability in Humanitarian Aid,” *Global Governance Review*, vol. 9 (2022), pp. 34-50 at p. 40.

8 D. Patel, “Transparency in Humanitarian Aid Delivery,” *International Journal of Human Rights*, vol. 22 (2022), pp. 75-90 at p. 80.

internet decreases the need for physical currency transactions, which are more prone to theft and diversion. The adoption of cashless payment systems guarantees that monies are distributed directly to recipients, with digital records monitoring each transaction. This technique not only promotes transparency but also decreases operating expenses related with cash management.

## VII. SATELLITE INTERNET IN KEY GLOBAL HUMANITARIAN CONTEXTS

First victim in war and crisis areas is often the infrastructure supporting communication. Political unrest, armed conflicts, and natural disasters all throw off established systems and leave impacted people isolated. In these settings, satellite internet has become an indispensable technological fix. Satellite internet is more durable to damage than conventional infrastructure-dependent communication since it depends on satellites orbiting the Earth. With an eye on its deployment in many nations during times of disaster, this article investigates the role satellite internet plays in humanitarian relief. Satellite internet has become a lifeline in war-torn and disaster-stricken areas by offering critical connectivity for emergency response, operational coordination, and support of displaced populations.<sup>9</sup>

### 1. Ukraine: Connectivity Amidst a Conflict

The continuous fighting in Ukraine shows how much satellite internet may be a vital tool in areas under active warfare. Ukraine's telecom infrastructure was attacked after the Russian invasion in 2022, therefore depriving millions of people of basic communication tools. SpaceX responded by deploying their Starlink satellite internet system to maintain connection for both commercial and military use.<sup>10</sup> Starlink's deployment in Ukraine allowed armed units, humanitarian organisations, and the Ukrainian government real-time communication capability. This was in line with the decision of the International Court

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9 Delmonteil, François-Xavier, and Marie-Ève Rancourt. "The Role of Satellite Technologies in Relief Logistics." *Journal of Humanitarian Logistics and Supply Chain Management* 7.1 (2017): 57-78.

10 Aviv, I. and Ferri, U., 2023. "Russian-Ukraine Armed Conflict: Lessons Learned on the Digital Ecosystem." *International Journal of Critical Infrastructure Protection*, 43, p.100637.

of Justice in the case of *France vs Turkey*<sup>11</sup>, also known as the *SS Lotus* case in which the court reiterated the authority of sovereign governments to act in any way they wish so long as an explicit prohibition is not contravened. Portable satellite kits would let Ukrainian field agents set up communication centres in places devastated by fighting. Rapid connection let humanitarian players organise medical help, provide timely support, and enable evacuations.

Satellite internet allowed displaced people access to essential information like legal and asylum services, emergency notifications, and evacuation routes. Ukrainian people might also keep in touch with relatives, provide emotional support during tough times. The example of Ukraine emphasises the need of pre-positioning satellite internet infrastructure in areas prone to violence.<sup>12</sup> It also begs issues of data security and sovereignty as foreign businesses like SpaceX significantly helped to meet the connection requirements of the Ukrainian government.

## 2. Syria: Refugee Connectivity and Humanitarian Support

Beginning in 2011, the Syrian war uprooted millions of people and resulted in one of the most major refugee crises of the twenty-first century. Large numbers of people need internet connectivity to stay in touch with loved ones, seek legal help, and find information on asylum procedures settled in refugee camps in Turkey, Jordan, and Lebanon. Refugee camps set up by the United Nations High Commissioner for Refugees (UNHCR) depended largely on satellite internet. Connectivity lets refugees utilise chat applications, access e-learning systems for kids, and take part in initiatives for livelihood development. Often enabled in refugee environments by portable, deployable satellite terminals called Very Small Aperture Terminals, or VSAT, is satellite internet. The right to innocent use of channels of communication has been reiterated in the case of *UK vs Albania*.<sup>13</sup>

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11 Dakshinie Ruwanthika Gunaratne, "Lotus Case (Summary)," *Public International Law* (July 27, 2012), available at <https://ruwanthikagunaratne.wordpress.com/2012/07/27/lotus-case-summary/> (last visited Apr. 7, 2025).

12 Moallin, Z., Hargrave, K. and Saez, P., 2023. Navigating narratives in Ukraine: humanitarian response amid solidarity and resistance available at: <[https://odi.cdn.ngo/media/documents/Narratives\\_in\\_Ukraine\\_WP\\_HPG\\_final1909\\_tNmSZR.pdf](https://odi.cdn.ngo/media/documents/Narratives_in_Ukraine_WP_HPG_final1909_tNmSZR.pdf)> accessed on 12 December 2024.

13 International Court of Justice, *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of Apr. 9, 1949, available at <https://www.icj-cij.org/case/1> (last visited Apr. 7, 2025).

Although connection gives migrants more power, it also begs issues about data privacy and monitoring. Refugee camps have evolved into locations for biometric data collecting, wherein individual information is kept in centralised databases run under UNHCR management.<sup>14</sup> While satellite internet helps this process, it also begs questions over the use of private information. Syria's experience emphasises the need of making sure displaced people have digital rights safeguards and data privacy is respected. The UNHCR's biometric data collecting policies have drawn criticism, which emphasises the necessity of more openness and responsibility in humanitarian online governance.

### **3. Haiti: Satellite Internet in Disaster Response**

Haiti was devastated by a terrible earthquake in 2010, therefore compromising its communication system. The situation proved the instant post-disaster usefulness of satellite internet. Deploying emergency communication centres powered by satellite internet was much aided by Télécoms Sans Frontières (TSF) and NetHope.

Damage to terrestrial networks let satellite connection allow humanitarian organisations to build emergency command centres. Coordinating search-and-rescue efforts, giving medical assistance first priority, and real-time supply chain management, aid organisations Visualising the degree of damage and guiding response activities also depended much on geospatial mapping data from satellites.

Apart from helping humanitarian organisations, satellite internet provided local populations with emergency information like assistance distribution plans, health warnings, and shelter sites. It also gave survivors looking to reach out to family members overseas a lifeline. The situation of Haiti emphasises the importance of pre-positioning satellite internet terminals in regions prone to disasters and creating fast deployment procedures. Pre-arranged agreements with satellite providers such as TSF and NetHope will help governments and non-governmental organisations alike.

### **4. Yemen: Transparency in Aid Distribution**

The ongoing turmoil in Yemen has interfered with even fundamental utilities as telephones. Using satellite internet, humanitarian

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14 Terrey, S.M. and Münichsdorfer, A., 2024. "Humanitarian Exemptions: Illusive Progress in Safeguarding Humanitarian Assistance in the International Counterterrorism Architecture." *Journal of Conflict and Security Law*, 29(2), pp.249-272.

organisations have improved supply chain openness and tracked relief delivery. Under limited access to combat areas, humanitarian organisations tracked assistance shipments using remote monitoring systems run under satellite internet. Linked to satellite systems are RFID (radio-frequency identification) and GPS monitoring, which lets companies track relief supply transit.<sup>15</sup> The way armed groups divert help presents one of the main hazards in crisis areas like Yemen. Real-time reporting made possible by satellite internet lets humanitarian players record and document incidences of theft or abuse. Blockchain-based tracking solutions improve openness even further so that any participant may see assistance flow in real-time. Using satellite internet in Yemen shows how anti-corruption systems may be used for relief distribution. Blockchain technology and real-time observation help to guarantee more responsibility in humanitarian logistics.

### **5. Afghanistan: Digital Connectivity and Development**

After 2001, the U.S.-led invasion in Afghanistan brought attention to how important satellite internet is for both humanitarian rebuilding and warfighting. Commercial VSAT systems allowed NGOs, international organisations, and coalition forces—all of which helped to preserve operational continuity. Using satellite internet, the Afghanistan Ministry of Communications (MoC) created ICT infrastructure including VSAT centres and fiber-optic backbones. E-governance platforms, educational programs, and telemedicine services grew out of connectivity. Programs for digital education were started especially for rural women and children. The U.S. and coalition troops' pullout in 2021 exposed the frailty of ICT infrastructure in areas of turmoil. Many online businesses depended on foreign capital and knowledge, which vanished with the departure. A sustained development depends on local control of satellite internet infrastructure.

## **VIII. INTERNATIONAL HUMANITARIAN LAW (IHL) AND ACCESS TO COMMUNICATION**

During armed situations, the right to communicate is crucial as it helps impacted people to seek help, contact relatives, and get important knowledge about their rights and the availability of humanitarian relief.

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15 2023 Country Reports on Human Rights Practices: Yemen available at: < <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/yemen/> > accessed on 11 December 2024.

Under International Humanitarian Law (IHL), which is embodied in the Geneva Conventions (1949) and its Additional Protocols, impacted people have a right to obtain humanitarian aid, which includes the ability to contact humanitarian agents.

The Geneva Conventions' Article 3 requires warring parties to allow and enable the delivery of humanitarian aid. Although the original language did not specifically address internet access, recent readings contend that in the digital era of today, the right to communication encompasses access to fundamental digital communication services like satellite internet. For example, the ICRC (International Committee of the Red Cross) acknowledges that as it helps people to contact relatives, apply for refuge, or document IHL breaches, communication is very vital for the protection of civilians. Humanitarian actors include the United Nations (UN) and NGOs like the International Rescue Committee (IRC) regularly strive to guarantee that impacted communities have access to internet-enabled communication channels. For refugees, displaced people, and citizens living in conflict areas, satellite internet enables the supply of information as aid, therefore enabling access to medical advice, legal support, and evacuation routes.

Although IHL offers a good foundation for access to communication, it also begs issues concerning military necessity and national security.<sup>16</sup> Warring parties would argue that enabling satellite internet connection to impacted communities presents a security risk as militant organisations might also use the same services to plan their operations.<sup>17</sup> Conflicts like Syria and Yemen clearly show this delicate balance between guaranteeing humanitarian access to communication and handling security issues: nations have limited internet access, claiming national security reasons.

### **IX. International Telecommunications Law**

Use of satellite frequencies and orbital slots is under control of the United Nations specialised body, the International Telecommunication Union (ITU). The ITU specifies frequency distribution, satellite coordination, and spectrum utilisation using the Radio Regulations (RR) and International Telecommunication Regulations (ITR). These rules are

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16 Saxon, D. ed., 2013. *International Humanitarian Law and the Changing Technology of War* (Vol. 41). Martinus Nijhoff Publishers.

17 Carrillo, A.J., 2022. "Between a Rock and a Hard Place? ICT Companies, Armed Conflict, and International Law." *Fordham Int'l LJ*, 46, p.59.

crucial in guaranteeing the orderly use of the radio spectrum and in avoiding negative interference between satellite operations.

When launching satellites for humanitarian reasons, satellite internet companies such as Starlink, OneWeb, and Inmarsat have to follow ITU rules. Before launching a satellite, for example, providers must obtain spectrum licenses and orbital slots to prevent interference with ground-based communication networks and other satellites. The ITU helps nations coordinate in order to avoid spectrum disputes and “orbital congestion.” Apart from ITU rules, satellite internet deployment is governed by treaties like the Tampere Convention (1998) and the Outer Space Treaty (1967).

Establishing that space—including satellite orbits—must be utilised for peaceful purposes and for the benefit of all people, the Outer Space Treaty (1967). This convention emphasises the right of humanitarian actors to utilise space-based internet services for delivery of relief. Particularly addressing the use of communication technology—including satellite internet—in disaster response, the Tampere Convention on the Provision of Telecommunications Resources for Disaster Mitigating and Relief Operations (1998) It forces signatories to eliminate legal and regulatory obstacles to the use of telecommunications resources during emergencies, therefore facilitating speedier satellite internet access to impacted regions.<sup>18</sup>

Although ITU rules provide the international framework, every nation has a licensing system for satellite internet companies. Starlink’s providers have to seek for operating permits from different states. This may cause satellite internet to be delayed in crisis deployment. For example, fast regulatory permission from the Ukrainian government let Starlink operate throughout the conflict in Ukraine. In more limited regimes like China or Iran, however, national laws forbid satellite internet companies from functioning without official supervision, therefore posing issues about censorship and control.

## **X. CHALLENGES AND ISSUES IN SATELLITE INTERNET FOR HUMANITARIAN AID**

A breakthrough development allowing life-saving interventions in war-torn and crisis-affected areas is the use of satellite internet in

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18 Hutchins, T.E., 2020. “Safeguarding Civilian Internet Access during Armed Conflict: Protecting Humanity’s Most Important Resource in War.” *Colum. Sci. & Tech. L. Rev.*, 22, p.127.

humanitarian relief efforts. Satellite internet improves the efficiency of humanitarian reactions by means of emergency communication, operational coordination, and data-driven decision-making. Though its great potential is evident, the usage of satellite internet is plagued with difficult problems that influence its availability, legality, and ethical deployment.

These difficulties include problems of sovereignty, jurisdiction, cybersecurity, data privacy, and fair access, therefore beyond technical limitations. Satellite internet presents fresh problems for global governance and responsibility as international humanitarian law struggles with the fast changing character of information technology. With an eye towards how these important concerns impact humanitarian operations and the welfare of impacted communities, this part offers a thorough analysis of each.

## **1. Sovereignty and Jurisdiction Challenges**

### **(a) Cross-Border Connectivity and State Sovereignty**

The ability of satellite internet to offer cross-border connectivity questions the conventional wisdom about sovereignty. Unlike terrestrial networks under the control of particular states, satellite internet can avoid national infrastructure, so allowing access in nations where governments might otherwise limit connectivity.<sup>19</sup> The humanitarian need to keep connectivity in crisis areas clashes with the principle of state sovereignty.

For example, SpaceX's Starlink terminals' deployment during the Ukraine-Russia conflict begged issues regarding the legality of granting cross-border internet access without the consent of the host state. Russia saw the intervention as an infringement on her sovereign right to control her information environment, while Ukraine welcomed it.<sup>20</sup> This case emphasises how, especially in disputed areas or occupied territory, the availability of satellite internet might be considered as a breach of territorial integrity.

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19 Ólafsson, G.R., 2024. *The Role of Technology in Humanitarian Assistance: Opportunities and Challenges*.

20 Abels, J., 2024. "Private Infrastructure in Geopolitical Conflicts: the Case of Starlink and the War in Ukraine." *European Journal of International Relations*, p.13540661241260653.

### **(b) Legal Disputes and Regulatory Complexities**

China and Russia among other nations have been outspoken about the possible threat satellite internet poses to national sovereignty. They contend that businesses like Starlink, OneWeb, and Amazon's Project Kuiper could help to distribute foreign-owned knowledge inside their borders, so negating domestic censorship rules. These states have demanded tougher ITU (International Telecommunication Union) rules to limit satellite frequency and orbital slot use.

The problem is especially severe in areas where autocratic governments impose internet blackouts meant to quell opposition. Human rights activists demanded satellite providers to restore connectivity when Iran went nationwide with internet closures in response to demonstrations.<sup>21</sup> Although this intervention might empower people, it also runs the danger of upsetting diplomatic ties and starting claims of meddling in national affairs.

### **Impact on International Law and Humanitarian Principles**

#### **2. Cybersecurity Concerns in Humanitarian Use of Satellite Internet**

Providing satellite internet for humanitarian relief has to be precisely in line with international humanitarian law (IHL). If the deployment of satellite services seems to favour one side in a conflict, IHL concepts including neutrality and impartiality could be at danger. For instance, if humanitarian actors teamed with a state-aligned internet provider, their neutrality could be called into doubt, so erasing confidence among relevant parties.

Moreover, the Tampere Convention on Emergency Telecommunications offers a structure for easing cross-border communications in disaster relief efforts. The convention does, however, leave opportunity for interpretation as it does not precisely handle problems with satellite internet. This regulatory disparity has to be closed to offer clarity on how satellite internet might be used during humanitarian crises.

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21 Sharma, P. and Joshi, A., 2020. "Challenges of Using Big Data for Humanitarian Relief: Lessons from the Literature." *Journal of Humanitarian Logistics and Supply Chain Management*, 10(4), pp.423-446.

**(a) Risk of Cyber Attacks and Disruption of Connectivity**

One of the biggest issues confronting satellite internet in humanitarian assistance is cybersecurity. Dependency on satellite technology exposes humanitarian activities to cyberattacks, jamming, and spoofing, so compromising data integrity and connectivity. To disturb important emergency response operations, hackers can use weaknesses in satellite ground stations, communication links, or satellite equipment.

The experience Ukraine had during the Russian invasion highlights this threat. Reportedly launching cyberattacks on Ukrainian communication systems, Russian forces drove the Ukrainian government to look to satellite providers like Starlink for assistance. Although Starlink offered necessary backup connection, the system itself turned into a possible target for cyberattacks. The vulnerability of satellite internet to attacks emphasises the need of improved cybersecurity mechanisms to protect humanitarian communications.

**(b) Impact on Humanitarian Supply Chains**

Monitoring humanitarian supplies chains and tracking aid shipments depend on satellite internet. But in recent years, ransomware attacks aiming at aid organisations have proliferated. Hackers can take over tracking data, compromise humanitarian logistics systems, and demand pay-back. This compromises the timely availability of supplies meant to save lives in areas of conflict. The risk is higher since satellite communication usually supports blockchain-based tracking systems, which attracts cybercriminals especially.

**(c) Data Integrity and Spoofing**

spoofing or jamming satellite signals alters GPS and location-based services' accuracy. Such disturbances can have disastrous consequences for rescue operations and evacuation attempts in war areas.<sup>22</sup> Should humanitarian players depend on fake GPS signals, they might be lured into dangerous regions and jeopardise lives. Affected populations depending on geolocation applications for evacuation routes may also be sent into risky areas.

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22 Guida, E., 2021. The Use of Satellites in Humanitarian Contexts available at <<https://open.cmi.no/cmi-xmlui/handle/11250/2832183>> accessed on 11 December 2024.

### **3. Data Privacy and Ethical Dilemmas**

#### **(a) Collection and Processing of Refugee Data**

The gathering and use of personal data is one of the most divisive questions about satellite internet in humanitarian assistance. In refugee camps, displaced people and refugees often utilise satellite-enabled Wi-Fi in order to contact relatives, get legal advice, or search asylum information. But this procedure produces enormous volumes of biometric and personal data that humanitarian groups have to handle, store, and guard.

For instance, the UNHCR's biometric data collecting system logs refugees using iris scans, face recognition, and fingerprints. These technologies broadcast data to safe databases via satellite internet.<sup>23</sup> This technology begs issues regarding the right to privacy even as it enhances help delivery. Critics contend that many times left with no option but to agree to biometric data collecting, migrants create an imbalance of power.

#### **(b) Data Ownership and the Role of Private Actors**

Growingly important in humanitarian connection are private satellite companies as SpaceX, OneWeb, and Amazon. Still unresolved, however, is who owns the data gathered via satellite technologies. Humanitarian organisations working with businesses might unintentionally provide them access to private data about underprivileged groups. Given private businesses run on economic reasons and may not be constrained by humanitarian values, this scenario creates moral conundrums. Emphasising the requirement of clear permission and data minimisation, the General Data Protection Regulation (GDPR) controls data privacy in the European Union. It is unclear, meantime, how GDPR relates to refugee data gathered via satellite internet—especially in non-EU crisis areas. Clear rules are required as cross-border data flows rise to guarantee that impacted communities have ownership of their personal data.

#### **(c) Surveillance and Mass Data Collection**

Particularly under totalitarian governments, satellite internet may also be utilised for surveillance purposes. For instance, there are concerns in

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23 Madianou, M., 2019. "Technocolonialism: Digital Innovation and Data Practices in the Humanitarian Response to Refugee Crises." *Social media+ society*, 5(3), p.2056305119863146.

Syria, where opposition activists depend on satellite internet for coordination, about surveillance instruments tracking user behaviour. Should hostile parties get information on satellite internet use and whereabouts, activists, reporters, and humanitarian workers risk reprisals.<sup>24</sup> Mass monitoring carries much greater danger in refugee camps. The access that satellite internet offers hosts nations might be used to monitor displaced people's whereabouts and activities. Satellite internet may support state-sponsored monitoring and repression without appropriate control and responsibility systems.

#### **4. Global Perspective on Governance and Policy Gaps**

Unlike local rules guiding terrestrial communications, satellite internet runs on a worldwide basis. This creates a regulatory hole as no one body has control over satellite connection. The International Telecommunication Union (ITU) controls orbital slots and satellite frequencies; it has no control over the content of communications. Russia, China, and Iran among other nations have demanded more robust rules to stop satellite internet usage inside their borders.<sup>25</sup> Western democracies counter, meanwhile, that human rights depend on unrestricted access to satellite internet, especially in situations where governments censor free expression. These conflicting points of view make it difficult to get an agreement on how satellite internet should be run.

Humanitarian actors advocate for the unrestricted deployment of satellite internet to ensure timely aid delivery. However, the rights of affected populations must be balanced with the principle of state sovereignty. This tension raises questions about how to reconcile sovereign control with the need for neutral humanitarian access. The absence of a global legal framework for satellite internet has prompted calls for a new international treaty. Such a treaty would establish standards for privacy, sovereignty, and cybersecurity while ensuring that satellite internet remains a tool for humanitarian good. Humanitarian actors argue that access to information is a human right

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24 Hosein, G. and Nyst, C., 2013. Aiding surveillance: an exploration of how development and humanitarian aid initiatives are enabling surveillance in developing countries.

25 ESCAP, U., 2013. Space applications for improving disaster management. Available at <<https://repository.unescap.org/handle/20.500.12870/3098>>accessed on 12 December 2024.

and that satellite internet is essential for upholding that right during crises.

The increasing recognition of internet access and digital communication tools as enablers of humanitarian assistance has gained substantial attention within international legal and policy circles. Notably, the United Nations Human Rights Council, in its landmark Resolution A/HRC/32/L.20 (2016), explicitly affirmed that “the same rights that people have offline must also be protected online,” including during situations of conflict. This declaration, though not binding per se, reflects a growing normative consensus that access to the internet forms an integral part of the right to freedom of expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and may, in certain circumstances, be essential for the realization of other fundamental rights such as the right to life, health, and access to humanitarian assistance. Furthermore, David Kaye, former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, has consistently underscored in his thematic reports (notably A/HRC/29/32 and A/70/361) that disruptions to communication services during conflict not only impair democratic participation but also obstruct humanitarian coordination and civilian protection—both core concerns of International Humanitarian Law.

## **XI. RELEVANT LEGAL FRAMEWORK**

### **1. Fourth Geneva Convention – Protection of Civilians in Armed Conflict**

The Fourth Geneva Convention of 1949, formally titled *Geneva Convention relative to the Protection of Civilian Persons in Time of War*, constitutes a pivotal instrument within the corpus of International Humanitarian Law (IHL), explicitly devoted to the protection of civilian populations in situations of armed conflict, whether international or non-international in nature. The Convention imposes binding obligations upon State parties to ensure that civilians are not subjected to violence, inhumane treatment, or deprivation of essential humanitarian aid. In the context of modern technological advancements and digital warfare, the provision of satellite internet and communication services assumes a critical role in upholding the humanitarian imperatives enshrined under the Convention. Specifically, Article 3, common to all four Geneva Conventions, mandates humane treatment without adverse distinction and prohibits outrages upon

personal dignity. The inability to access communication tools or digital infrastructure in war zones, especially when such access could facilitate coordination of relief efforts, dissemination of critical information, or contact with humanitarian agencies, may potentially constitute an indirect violation of these obligations. The modern interpretation of “protection” under IHL must therefore be expansive enough to include not only physical safety but also infrastructural and technological access that safeguards the dignity, survival, and well-being of civilian populations. Accordingly, the deployment of satellite internet in conflict areas should be viewed as a legitimate extension of humanitarian relief, the denial of which could raise serious legal and ethical concerns under the Geneva regime.

## **2. Protocol I Additional to the Geneva Conventions – Civilian Objects and Humanitarian Assistance**

Protocol I Additional to the Geneva Conventions of 1977 elaborates on and strengthens the legal protections afforded to civilian populations and civilian objects during international armed conflicts. Article 48 sets forth the principle of distinction, obligating parties to distinguish at all times between civilian populations and combatants, as well as between civilian objects and military objectives. Under Articles 51 and 52, indiscriminate attacks and destruction of objects indispensable to the survival of the civilian population—such as communication infrastructure—are expressly prohibited. In this context, satellite internet infrastructure, though intangible, may fall within the ambit of civilian objects essential for the operation of medical services, coordination of humanitarian relief, and communication with displaced populations. Moreover, Article 70 mandates that relief actions, including those necessary for the delivery of essential supplies, be undertaken with the consent of the concerned parties, but imposes a corollary duty not to arbitrarily withhold such consent when humanitarian needs are evident. This legal obligation may be invoked to argue for the facilitation, rather than obstruction, of satellite-based internet services as part of humanitarian relief in war-torn areas. In cases where terrestrial communication networks have been damaged or destroyed due to military operations, satellite communication becomes not merely beneficial but indispensable. Thus, from a legal standpoint, the provisioning of satellite internet in conflict zones aligns with and supports the humanitarian objectives of Protocol I, and any act aimed

at impeding such access may warrant scrutiny under international humanitarian law.

### **3. International Telecommunication Union (ITU) Regulations – Legal Governance of Satellite Communication**

The International Telecommunication Union (ITU), a specialized agency of the United Nations established under the ITU Constitution and Convention, regulates global radio-frequency spectrum and satellite orbits to avoid interference between countries' communication systems. The ITU's legal framework, particularly the ITU Radio Regulations and the Constitution of the ITU (as amended by the Plenipotentiary Conferences), sets forth binding obligations on member states regarding the allocation and use of frequency bands, licensing of satellite services, and coordination procedures for orbital slots. In humanitarian contexts, especially during armed conflicts and natural disasters, satellite internet services are subject to these regulations, including the requirement of obtaining "landing rights" or host-nation consent before operation within national territories. However, in situations of armed conflict or humanitarian crises where the host state is unwilling or unable to grant such permissions, the doctrine of necessity and evolving interpretations of international customary law may support a limited derogation from these requirements. Moreover, the ITU's own framework acknowledges the importance of telecommunication infrastructure in emergency situations, as reflected in Resolution 136 (Rev. Busan, 2014), which urges member states to facilitate the deployment of telecommunication and information and communication technologies (ICTs) for disaster relief and emergency response. Therefore, a legal interpretation that harmonizes ITU norms with international humanitarian obligations would suggest that access to satellite internet for humanitarian purposes cannot be unjustifiably obstructed by regulatory barriers, particularly when such access is critical to preserving human life and dignity. The intersection of ITU norms with IHL thereby underscores the need for a cooperative and facilitative regulatory approach during crises.

## **XII. POLICY RECOMMENDATIONS FOR ADDRESSING CHALLENGES IN SATELLITE INTERNET AND HUMANITARIAN AID**

Using satellite internet for humanitarian relief has evolved into a transforming power providing a lifeline for those impacted by conflict, natural disasters, and relocation. Although the technology has greatly

enhanced the ability of humanitarian players to react to emergencies, its use presents some difficulties. Legal, ethical, and operational questions about sovereignty, jurisdiction, cybersecurity, data privacy, and corporate responsibility have been generated by issues of these matters. Dealing with these problems calls for a coordinated effort to provide thorough policy recommendations encouraging ethical, safe, and effective usage of satellite internet in humanitarian settings. Key policy recommendations targeted at enhancing legal frameworks, setting ethical standards for humanitarian actors, encouraging responsible actions among commercial enterprises, and rethinking the function of international organisations in global governance are presented in this part.

Lack of a thorough and unambiguous legal framework is one of the most urgent issues of employing satellite internet in humanitarian help. Modern international legal mechanisms include the Tampere Convention on Emergency Telecommunications concentrate mostly on disaster assistance and cross-border communication for humanitarian reasons. They neglect, however, the particular complexity of satellite internet, including problems of sovereignty, data privacy, and cross-border jurisdiction.<sup>26</sup> New legislative mechanisms specifically acknowledging satellite internet as a vital humanitarian tool will help to close these gaps. A major component of this strategy is revising and extending current treaties and conventions to include the particular features of satellite internet. Access to satellite internet should clearly be recognised as a human right under international humanitarian law (IHL) during humanitarian events.<sup>27</sup> This awareness would demand state parties to provide, even in conflict areas, continuous access to satellite-based communication for humanitarian actors and impacted communities. Moreover, the International Telecommunication Union (ITU) can be assigned to define guidelines on the distribution of satellite internet services during armed situations, thereby defining the responsibilities of state and non-state players.

Dealing with state sovereignty is another essential element in enhancing the legal system. When satellite internet providers give direct access to

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26 Gutierrez, C.X., 2013. *The Netted Humanitarian: Improving The Information And Communications Technology Assessment Process For Humanitarian Assistance/ Disaster Relief (Ha/Dr) Missions C*.

27 Hollenhorst, O., 2017. *A Rights-Based Evaluation of Humanitarian Information and Communication Technology Policy*.

residents within a nation and avoid state-owned networks, sovereignty issues arise. In war areas such as Syria and Yemen, where governments can see satellite internet as a threat to their information control, this difficulty is especially pertinent. Under the United Nations' auspices, an international convention on "Cross-Border Satellite Internet for Humanitarian Purposes" might be presented to help to address this problem. With well defined standards for state approval, data security, and monitoring systems, this convention would provide a foundation for offering satellite internet services in conflict-torn regions.

Stronger legal safeguards also are demanded by privacy and cybersecurity issues. Adopting international guidelines for the safety of satellite internet infrastructure is crucial in reaction to the increasing danger of cyberattacks, jamming, and spoofing of satellite signals. These rules may be formed as a stand-alone international agreement or included into already-existing cybersecurity treaties like the Budapest Convention on Cybercrime. The new rules should mandate signatories to take actions safeguarding satellite ground stations, ensuring data transmission routes are secure, and stopping the use of satellite internet by hostile actors.

Apart from legal frameworks, ethical standards for the use of satellite internet in humanitarian situations are important to guarantee the appropriate and moral use of this technology.<sup>28</sup> Humanitarian actors have to run under the fundamental values of humanism, neutrality, impartiality, and independence. Using satellite internet begs ethical questions about privacy, data security, and the possible abuse of connection for uses unrelated to humanitarian relief.

Personal data gathering and usage provide one of the most pressing ethical issues. Critics of refugee registration systems depending on satellite internet for biometric data collecting have attacked its invasions of displaced people's private rights. Ethical rules for the proper gathering, processing, and storage of personal data acquired via satellite-enabled technologies should therefore be developed to handle this. Existing ideas from the General Data Protection Regulation (GDPR) and the ICRC's Handbook on Data Protection in Humanitarian Action should form basis for these rules. These rules centre on the informed

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28 Sargent, J., 2003. The Digital Aid Framework: A Conceptual, End-to-End Technology Integration Platform for Humanitarian (refugee) Relief Operations.

consent principle, which mandates that before gathering personal data, humanitarian actors must have voluntary, clear permission from impacted communities.

Humanitarian players also have to consider the moral conundrum of providing satellite internet connectivity in territory under military control. Under such circumstances, there is a major ethical dilemma about dual-use — that is, when the same internet connection may be utilised for military or militant reasons as well as for humanitarian ones. Ethical rules should mandate that humanitarian groups do risk analyses before providing satellite internet in areas of war. These tests should take into account the possibility for abuse and suggest mitigating strategies include encrypting important messages or restricting access to certain platforms.

Essential elements of ethical standards also include openness and responsibility. Humanitarian organisations have to make sure their relationships with satellite internet providers are open and that the details of these agreements are freely shared. Particularly in politically delicate situations, this openness would foster public confidence and help to avoid charges of favouritism. Guidelines should also mandate that humanitarian players document any events of ethical transgression, data leaks, or abuse resulting from satellite internet deployment. The provision of connection in conflict and crisis areas is much aided by private sector players, especially satellite internet providers Starlink, OneWeb, and Amazon's Project Kuiper. These businesses run with commercial goals that might contradict humanitarian values even when they provide technological knowledge and financial means. Policy suggestions have to address the obligations of private actors in order to match their activities with world humanitarian norms.

Developing a "Code of Conduct for Satellite Internet Providers in Humanitarian Aid" would be a crucial suggestion because it would define the moral responsibilities of businesses offering access in areas of disaster. Development of this code should include humanitarian organisations, the United Nations, and civil society players in concert. It ought to encompass ideas of corporate responsibility, privacy, and neutrality. Private businesses could, for instance, be obliged to uphold the neutrality principle by making sure that, independent of political background, their products are accessible to all humanitarian players.

Businesses should also be obliged to offer reasonably priced satellite internet connectivity during humanitarian emergencies. Public-private cooperation wherein businesses commit to provide subsidised or free services for disaster response and emergency assistance would help to accomplish this. SpaceX's Starlink, for example, has been hailed for providing free terminals to Ukraine during the 2022 invasion, but such donations should be institutionalised rather than reliant on ad hoc kindness. Establishing a formal system for humanitarian access to satellite services will guarantee that emergency connection is assured whenever necessary.

Adopting data protection policies commensurate with international standards, including the GDPR and the ICRC Data Protection Handbook, is another very vital advice for private sector players. To stop illegal access or usage, companies should make sure user data gathered by satellite-enabled equipment is encrypted, anonymised, and securely kept. Especially in totalitarian environments, clear procedures should be devised for how satellite providers manage demands for access to customer data by governments.

Global governance for satellite internet in humanitarian relief is created in great part by international organisations, so its importance is great. Promoting regulatory change, establishing ethical standards, and guaranteeing responsibility falls on groups such as the United Nations (UN), International Telecommunication Union (ITU), and international non-governmental organisations (NGOs). Although it manages the distribution of satellite orbital slots and radio frequencies primarily, the ITU may help to provide access to emergency satellite communication. The ITU is advised to create an Emergency Satellite Internet Protocol akin to the emergency frequency allotment used in disaster communications. With well defined policies on how to seek access and prevent interference, this protocol would guarantee that satellite frequencies are instantly accessible for use during humanitarian disasters.

Coordinating satellite internet connectivity for humanitarian actors should be a more active responsibility of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). OCHA might create a centralised mechanism to monitor which nations and areas call for emergency connection, therefore facilitating a quicker reaction. OCHA might also help satellite providers and humanitarian players to

guarantee timely deployment of connectivity solutions by means of collaborations. Emergency satellite internet has already been extensively deployed in disaster-torn areas thanks in great part to international NGOs as NetHope and Télécoms Sans Frontières. International NGOs should therefore have greater help from UN agencies and states if they are to have more influence. Funds such as the UN Central Emergency Response Fund (CERF) might be used especially for satellite internet deployment. At last, worldwide norms on responsibility and openness should be created for the use of satellite internet in humanitarian relief. Annual transparency reports covering the use of satellite internet in crisis response should be published by international organisations along with case studies, ethical conundrums faced, and the results attained. Such studies would increase responsibility and provide a means of instruction for further initiatives.

These policy suggestions provide a road map for overcoming obstacles related to satellite internet for use in humanitarian relief. The humanitarian sector can fully utilise satellite internet while protecting the rights, privacy, and dignity of impacted populations by improving legal frameworks, supporting ethical standards, guaranteeing responsible corporate behaviour, and so strengthening the function of international organisations. These laws will help to build an inclusive, ethical, and more efficient humanitarian system free from leaving anybody behind.

While there is a scarcity of court judgments directly addressing the use of satellite internet in humanitarian aid within conflict zones, several legal cases and incidents provide insight into the complexities surrounding this issue.

### **1. Unauthorized Use of Satellite Internet in Myanmar**

In November 2023, Myanmar's military junta initiated legal proceedings against individuals using satellite internet services without proper authorization. The junta's Ministry of Transport and Communication warned that operating satellite communication services without a license, including equipment installation and possession, would lead to prosecution under Section 67 of the Telecommunication Law, which carries a maximum penalty of one year in prison. Despite these restrictions, satellite internet services like Starlink were reportedly used in areas with restricted internet access, highlighting the tension

between governmental control and the necessity for communication in conflict zones.<sup>29</sup>

## **2. Dispute Over Satellite Spectrum Allocation in India**

The case of *Devas Multimedia Private Limited v. Antrix Corporation Limited*<sup>30</sup> centers on a dispute over the lease of satellite spectrum for broadband services. The Indian government annulled the agreement, citing concerns over national security and the allocation of valuable spectrum resources. The arbitration tribunal ruled that the annulment was wrongful, awarding Devas significant damages. However, subsequent legal challenges in India led to the setting aside of the arbitration award, with the Supreme Court citing issues of fraud. This case underscores the legal complexities involved in satellite communications and their regulation.

## **3. Cyberattack on Satellite Internet Services in Ukraine**

In February 2022, a cyberattack targeted the KA-SAT satellite's ground infrastructure, disrupting satellite internet connections across Europe, including Ukraine. The attack coincided with Russia's invasion of Ukraine, affecting thousands of users and highlighting vulnerabilities in satellite communication systems during conflicts. This incident raises questions about the protection of satellite infrastructure under international law and the implications for civilian and military communications in conflict zones<sup>31</sup>.

## **4. Legal Challenges of Satellite Internet Use in Sudan**

In Sudan, the use of satellite internet services like Starlink operates in a legal gray area. The government has previously confiscated Starlink equipment and arrested users, citing the lack of official authorization. Despite this, many humanitarian organizations rely on satellite internet to coordinate aid in regions affected by conflict, emphasizing the tension

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29 *Telecommunication Law* (Myanmar), s 67.

30 *Devas Multimedia Pvt Ltd v Antrix Corporation Ltd* (2022) 5 SCC 254 (Supreme Court of India).

31 The Tahrir Institute for Middle East Policy, *Internet in Conflict: Sudan's Battle for Connection* (19 September 2024) <https://timep.org/2024/09/19/internet-in-conflict-sudans-battle-for-connection/>.

between regulatory frameworks and the necessity of communication for humanitarian assistance.<sup>32</sup>

### **5. Allegations of Satellite Internet Use to Evade National Regulations in India**

Starlink devices have reportedly been used in India without official authorization, leading to legal scrutiny. In December 2024, Elon Musk confirmed that Starlink satellite internet services were inactive in India following the seizure of two of the company's devices by Indian authorities. One device was confiscated during a search operation in Manipur, where it was reportedly used by a militant group. The other was seized during a police operation against drug smugglers at sea. These incidents highlight the challenges of regulating satellite internet usage and the potential for such services to be used to bypass national controls.

These cases illustrate the multifaceted legal challenges surrounding the use of satellite internet in conflict and crisis zones, encompassing issues of national sovereignty, regulatory compliance, cybersecurity, and the imperative to maintain communication for humanitarian purposes.

## **XIII. CONCLUSION**

The deployment of satellite internet in the realm of humanitarian aid constitutes a pivotal innovation, effectuating unparalleled advancements in connectivity and communicative efficacy within zones afflicted by armed conflict and catastrophic crises. This emergent technology functions as an indispensable conduit, facilitating the timely transmission of critical information, the orchestration of operational strategies, and the provision of essential services to populations rendered vulnerable by displacement or devastation. Exemplified by its deployment in conflict zones such as Syria, Ukraine, Yemen, and disaster-stricken locales like Haiti, satellite internet underscores its indispensability in ameliorating humanitarian exigencies, optimizing emergency response protocols, and fortifying mechanisms of accountability in aid delivery.

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32 Ministry of Communications (India), 'Advisory to the Public Regarding the Use of Starlink Satellite Internet Services' (26 November 2021) [https://dot.gov.in/sites/default/files/2021\\_11\\_26%20Advisory%20Starlink%20%281%29.pdf](https://dot.gov.in/sites/default/files/2021_11_26%20Advisory%20Starlink%20%281%29.pdf).

The polyvalent utility of satellite internet is manifest in its capacity to bridge communicative lacunae engendered by the decimation of traditional infrastructures. In contexts where terrestrial networks are rendered inoperable due to armed hostilities or natural calamities, satellite internet ensures the continuity of real-time, unimpeded data exchanges among humanitarian actors, state entities, and affected localities. This unbroken connectivity catalyzes expeditious decision-making processes, rationalizes resource distribution, and augments the responsiveness of emergency interventions, thereby effectuating measurable reductions in morbidity and mortality.

Beyond the immediate exigencies of crisis management, satellite internet delineates a broader ambit of applicability, particularly in empowering displaced and refugee populations. It provides critical access to informational repositories, educational platforms, and legal assistance frameworks, thereby fostering communicative linkages with familial networks, facilitating engagement in remote pedagogical opportunities, and enabling the utilization of digital resources conducive to self-sufficiency and human dignity. However, such digital inclusivity is fraught with profound concerns pertaining to data privacy, surveillance practices, and the ethical deployment of biometric identifiers. The imperative for robust regulatory interventions to mitigate these risks is evident, necessitating the establishment of comprehensive frameworks to uphold the principles of data protection and individual autonomy.

From a juridical perspective, the deployment of satellite internet within humanitarian contexts is beset with intricate legal conundrums. These encompass questions of state sovereignty, extraterritorial jurisdiction, and cybersecurity vulnerabilities. The utilization of Starlink by Ukraine amidst hostilities with the Russian Federation exemplifies the geopolitical complexities and legal sensitivities inherent in the operationalization of satellite internet. To safeguard the neutrality, impartiality, and efficacy of humanitarian endeavors, it is incumbent upon the international community to delineate a cogent and universally applicable legal framework. Such a framework must reconcile the prerogatives of state sovereignty with the imperatives of humanitarianism, ensuring that satellite-enabled connectivity adheres to principles of international humanitarian law and does not exacerbate geopolitical tensions.

Further compounding the legal discourse is the delineation of roles and responsibilities among international organizations, private enterprises,

and regulatory authorities. The International Telecommunication Union (ITU), in concert with United Nations agencies, is uniquely positioned to spearhead the formulation of a governance architecture. This should encompass licensing protocols, spectrum allocation policies, and guidelines for the ethical utilization of satellite communications within humanitarian paradigms. An overarching framework of this nature would ensure coherence, equity, and predictability in the deployment of satellite internet for humanitarian purposes.

## ANALYZING THE LEGAL FRAMEWORK OF RECOGNIZING ROHINGYA GENOCIDE AND ITS IMPACT ON BANGLADESH: A CALL FOR PROGRESS

KANAK KANTI KARMAKAR\*  
SWARNA RANI KARMAKAR\*\*

### ABSTRACT

A Muslim ethnic group from Arakan in Myanmar is known as the Rohingya. The Arakan region of Myanmar has been striving for independence over more than fifty years. Numerous Rohingyas have been compelled to escape to neighboring countries as a result of persecution by successive Burmese government during the past fifty years.<sup>1</sup> The Rohingya are one ethnic community that has faced systematic brutality as a result of historical and religious issues. Bangladesh was the destination for Rohingya refugees from Myanmar. In this paper, Author investigates whether this situation is under the periphery of Genocide recognition, its impact on Bangladesh and also discusses potential solutions to repatriate the Rohingya Refugees.

**Keywords:** *Rohingya Crisis, Refugee Influx, Non-Refoulment, Rohingya Genocide, Repatriation Procedures*

### I. INTRODUCTION

#### 1.1 Background of this Study

On November 11, 2019, the International Court of Justice (ICJ) heard a lawsuit against the Republic of the Union of Myanmar for violating the Genocide Convention by committing genocide against the Rohingya minority, with the support of 57 Organization of Islamic Cooperation

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1 Md. Nazmul Houda, "The Genesis of the Rohingya Crisis and Role of International Actors: Possible Sustainable Solutions", 25(12) (2020) *IOSR Journal of Humanities And Social Science*, pp. 01-08, at p. 1-2 available at: [https://www.academia.edu/44699954/The\\_Genesis\\_of\\_the\\_Rohingya\\_Crisis\\_and\\_Role\\_of\\_International\\_Actors\\_Possible\\_Sustainable\\_Solutions](https://www.academia.edu/44699954/The_Genesis_of_the_Rohingya_Crisis_and_Role_of_International_Actors_Possible_Sustainable_Solutions) (accessed on 25 May 2024).

(OIC) nations.<sup>2</sup> The UN has designated the Rohingya Community as ‘*The Most Persecuted Minority in the World*’.<sup>3</sup> However, this historic case highlights Myanmar’s government’s global culpability in the Rohingya genocide. This study attempts to focus on Myanmar’s commitment to genocide by examining articles by significant public figures. It also explains how the *Gambia v. Myanmar* case comes under the jurisdiction of the ICJ. It also evaluates whether Myanmar and Gambia have a valid dispute and how Gambia might seek the International Court of Justice without being affected. The most important aspect of this study is the examination of the potential outcomes of this case by the International Court of Justice in favor of Gambia.

## 1.2 Methodology

Primary and secondary data sources are used for this paper to analyze the cross-border water conflicts between Bangladesh and India. Therefore, Acts, case laws, articles, blog, journals, websites, conference papers, and newspaper articles are used during the whole work process. Discussion and conclusion are completely the author’s understanding based on qualitative research methodology of the existing literature and analysis available on this issue.

## II. UNDERSTANDING THE DEFINITION OF GENOCIDE

### 2.1 Genocide Stands for:

Fundamentally, ‘Genocide’ refers to the intentional death of a population. No race, ethnicity, country, or religion should be invoked to justify this persecution. Committing genocide is against the legal philosophy of the International Criminal Court. To put it another way, it views the prohibition of genocide to be a *peremptory rule of international law*.<sup>4</sup> The concept of genocide in international law has shifted dramatically over time.

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2 Md. Rizwanul Islam, “The Gambia v. Myanmar: An Analysis of the ICJ’S Decision on Jurisdiction under the Genocide Convention”, 26(9), (2022) *American Society of International Law*, available at: <<https://www.asil.org/insights/volume/26/issue/9>> accessed on August 30, 2024.

3 Staff Reporter, “Who are the Rohingya?” *AL JAZEERA*, April 18, 2018, available at: <<https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya>> accessed on August 25, 2024.

4 The Vienna Convention on the Law of Treaties (VCLT) 1969, Art. 53

*“Genocide begins with the killing of one man — not for what he has done, but because of who he is. A campaign of ‘ethnic cleansing’ begins with one neighbor turning on another. Poverty begins when even one child is denied his or her fundamental right to education. What begins with the failure to uphold the dignity of one life, all too often ends with a calamity for entire nations”*<sup>5</sup>

According to Raphael Lemkin<sup>6</sup>, *the Genocide has Latin and Greek origins. Latin “cide” means to kill, while the Greek word “Genos” refers to a ‘Race or Tribe’*. The eradication of a country or an ethnic group is referred to as genocide. Unless it is done by the wholesale death of all citizens of a country, Genocide does not usually imply the complete extinction of a nation. Instead, it is intended to imply a systematic program of numerous tactics targeted at eroding the essential foundations of national groups’ existence in order to eliminate the organizations themselves.<sup>7</sup> This policy would try to destroy the political and social institutions of culture, language, national emotion, religion, etc., as well as the personal freedom, security, health, and dignity of people who belong to such groups, including their lives.<sup>8</sup>

According to UNGA Resolution<sup>9</sup>, genocide is the denial of the right to life of a whole human community, in the same way as murder or homicide denies the right to life of a single individual. The very thought of such a denial of the right to life shocks the conscience of humanity. It also contradicts the UN’s moral ideals and aims. The United Nations General Assembly has recognized genocide as a crime under international law. The UNGA adopted the Genocide Convention<sup>10</sup> in 1948, and it went into effect on January 12, 1951. This agreement formalized the legal principles of genocide, giving it global validity.

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5 Kofi Annan, ‘Nobel Prize Lecture’ (Speech in Oslo at Nobel Peace Center, (December 10, 2001), para 13, available at: <<https://www.nobelprize.org/prizes/peace/2001/annan/lecture/>> accessed on June 29, 2024.

6 Raphael Lemkin, “Key Writings of Raphael Lemkin on Genocide”, compiled by *Prevent Genocide Organization* available at: <http://www.preventgenocide.org/lemkin/> accessed on June 29, 2024

7 *Ibid.*

8 *Ibid.*

9 United Nations General Assembly, ‘The Crime of Genocide’, Resolution 96 (I) adopted on December 11th, 1946

10 The Convention on the Prevention and Punishment of the Crime of Genocide, 1948

## 2.2 Status of Genocide in Rome Statute:

Article 6<sup>11</sup> of this Statute states that “*Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group*” as such:

- *By killing members of the group*
- *By causing serious bodily or mental harm*
- *By deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part*
- *By imposing measures intended to prevent births within the group*
- *By forcibly transferring children of the group to another group*<sup>12</sup>

## 2.3 Phases of Genocide:

Ten phases of genocide have been recognized by Gregory H. Stanton.<sup>13</sup> Such as:

### 2.3.1 Classification:

All societies use ethnicity, race, religion, etc. to divide individuals into “we and them”. Too much segregation causes genocide. Developing possibilities for individuals from diverse ethnic, socioeconomic, national, or religious backgrounds to work and live together is the key to averting genocide early on. This will increase tolerance and understanding.<sup>14</sup>

### 2.3.2 Symbolization:

Ethnicity, race, religion, etc. are named or symbolized. We call groups ‘*Jews*’ or ‘*Gypsies*’ or differentiate them by color or attire. Classification and symbolization are generally human and don’t cause genocide until they dehumanize.<sup>15</sup>

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11 The Rome Statute of the International Criminal Court 1998, Art 6

12 The Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art II

13 Gregory H Stanton, “Ten Stages of Genocide”, (The Genocide Education Project), available at: [https://genocideeducation.org/wp-content/uploads/2016/03/ten\\_stages\\_of\\_genocide.pdf](https://genocideeducation.org/wp-content/uploads/2016/03/ten_stages_of_genocide.pdf) (accessed on June 23, 2024).

14 *Ibid.*

15 *Ibid.*

**2.3.3 Discrimination:**

A dominating group denies other groups' rights via law, culture, and politics. The powerless group may not get citizenship or civil rights. Nationality, ethnicity, race, and religion-based discrimination must end. State, businesses, and people should be sued.<sup>16</sup>

**2.3.4 Dehumanization:**

One group dehumanizes another by treating them as second-class citizens. Persecuted groups are likened to animals, parasites, and insects. Hate propaganda in print and on hate radio is used to portray victims as culprits. In opposing dehumanization, remember that you can't instruct people to kill. Immediately punish hate acts and horrors.

**2.3.5 Organization:**

Genocide is usually premeditated, mostly by the government but occasionally by terrorist groups or other governmental entities. Militarism and specific army organizations with weapons and training are widespread. Plans for genocide are being made.<sup>17</sup>

**2.3.6 Polarization:**

Hate organizations spread hateful messages. Intermarriage and social contact may be illegal. Terrorism intimidates moderates into silence. Moderate leaders can best avoid genocide, but they're generally the first to die.<sup>18</sup>

**2.3.7 Preparation:**

Leaders of national or perpetrator groups frequently use acronyms like ethnic cleansing, purification, or anti-terrorism to mask the true intentions of the victim. They organize armies, train their militias and soldiers, and buy weaponry.<sup>19</sup>

**2.3.8 Persecution:**

Victim groups may be forced to wear identifying badges during state-sponsored genocide. Their possessions are frequently taken. Sometimes they are even confined to famine-stricken areas and starve to death

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

before genocide horrors begin, deported into concentration camps, or segregated into ghettos.<sup>20</sup>

#### **2.3.9 Extermination:**

Because the offenders do not believe their victims are human, they should be killed. The military services frequently partner with private armies to carry out the killing when it is authorized by the government.<sup>21</sup>

#### **2.3.10 Denial:**

Denial is the tenth stage that always comes after genocide. Genocide criminals attempt to conceal evidence, burn corpses, dig up mass graves, and coerce witnesses. They frequently admit they did nothing wrong and blame the victims for what happened. Genocide leaders will keep denying their crimes until they are found and a legal framework is established to try them.

### **III. THE POLITICS OF GENOCIDE RECOGNITION**

#### **3.1 Does the Current State of Affairs in Myanmar Fulfill the Legal Parameter of Genocide?**

The intent to entirely or partially eliminate a group is required for the crime of genocide. This term might apply to a national or ethnic group, as well as religious groups.<sup>22</sup> The conduct we observe in the Burmese military's so-called counter-insurgency effort appears to be evidence of such an objective. It is unclear if they are seeking to just remove them off their territory or to eliminate them. These are the obvious hallmarks of a genocidal campaign, particularly especially severe types of sexual assault and targeted attacks on young infants and newborns.<sup>23</sup>

When we examine earlier genocides<sup>24</sup>, like the one in Rwanda, we see this comparable, very severe, and extremely devastating sexual violence,

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Kanak kanti karmakar, "The Rohingya Crisis: The Stateless Predicament, Genocide, and Geopolitics" (2024) 5(1) *Journal of Governance Security & Development* <<https://jgsd.cgs-bd.com/Journal/JournalAbstract?id=70076>> accessed on 15 July 2024.

<sup>23</sup> Camilla Siazon, 'The Rohingya Crisis and the Meaning of Genocide', Council on Foreign Relations (8 May 2018) available at: <https://www.cfr.org/interview/rohingya-crisis-and-meaning-genocide> (accessed on July 15, 2023)

<sup>24</sup> Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art II.

which may be intended to undermine a nation's ability for reproduction. It seems organized and very destructive. This all pertains to determining whether this behavior satisfies the definition of genocide under the 1948 UN treaty. The same goes for small children and newborns. The lengthy history of how the Rohingya have been treated by Myanmar also leans in this manner.<sup>25</sup>

### 3.1.1 Rohingya as a Protected Group:

According to the Genocide Convention, '*genocide is defined as acts of violence committed against a certain ethnic, racial, or religious group*'. The Rohingyas are a protected religious community and the only Muslims in a mostly Buddhist culture. They can be categorized as a racial group due to arbitrary judgments about race, but they can also be called an ethnic group since they have distinct customs, cultures, and languages. For these reasons, the Rohingya are recognized as a distinct 'race' in Myanmar from the general people.<sup>26</sup>

### 3.1.2 Components of Genocide:

The Genocide Convention states that the state has to demonstrate both a genocidal purpose and genocidal acts to establish genocide. This implies the state must have the aim to completely or partially eradicate a national, ethnic, racial, or religious group. Two elements are necessary for a crime to qualify as genocide. They are

*"the extraordinary desire of the perpetrators to fully or partially eradicate a group that is considered to be protected, such as an ethnic, racial, or religious group, and the actions taken against members of the designated group"*<sup>27</sup>

In Article 2 of the Genocide Convention and Article 6 of the Rome Statute<sup>28</sup>, respectively, define the term "genocide" as well. The first element is the physical element. Rape and other sexual assault can be used as predicate actions for genocide, according to the ICTR (International Criminal Tribunal for Rwanda). As a step towards the group's extinction, the theory states that these acts cause the victim to suffer from terrible bodily pain, psychological misery, and potentially

25 Harun Ur Rashid, "*Refugee Law*", (Second Edition), Unique Law Book House, 2018

26 *Prosecutor v. Rutaganda* (Judgment) ICTR-96-3-A ( May 26, 2003)

27 Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art II

28 The Rome Statute of the International Criminal Court 1998, Art 6

even death. In order to cause physical chaos, the Burmese military has ruthlessly killed thousands of civilians, sexually molested and raped women and girls, and demolished cities. Professor Penny Green and colleagues at the International State Crime Initiative claim that the Rohingya have been the target of difficult-to-implement coercive methods that takes a long time to create.

The persecution was especially directed at the Rohingya Muslim population, which accounts for the vast majority of Myanmar's Muslims. Rohingya Muslims were denied citizenship and their ethnicity was not recognized.<sup>29</sup> The aim against that community is made clear and shown, fulfilling the mental component of the definition of genocide. According to the Stanton's 10 phases of genocide<sup>30</sup>, the circumstance concerning the Rohingya people in Myanmar was shown to constitute genocide. As per the components of genocide, Beth Van Schaack<sup>31</sup> also classified the persecution as genocide.

### **3.2 The Reasons behind the Reluctance of Classification to Consider this Event as Genocide:**

Several things are happening. One is the view, which is not legal, that genocide is the most terrible crime and that the world community has a moral duty to respond. In 1994, elements of the Clinton administration in the U.S. tried to avoid using the word genocide because they feared it would require action. We've seen this before: if it's genocide, we must act, therefore let's not call it that.<sup>32</sup>

Myanmar has China's backing; therefore any action would be tough. If Myanmar doesn't want UNSC intervention, China won't back it, then that's a significant problem.<sup>33</sup> How much US leadership absence

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29 Md. Khalid Rahman, 'Citizenship of the Rohingya in Myanmar: A historical account', *The Daily Star*, September 18, 2023, available at: <https://www.thedailystar.net/law-our-rights/news/citizenship-the-rohingya-myanmar-historical-account-2159176> accessed on October 20, 2023

30 Stanton, (n 13)

31 Beth Van Schaack, "Determining the Commission of Genocide in Myanmar: Legal and Policy Considerations" 17(2) (2018) Stanford Public Law Working Paper, at p. (285-323) SSRN [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3256591](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3256591) (accessed on July 17, 2023)

32 Rashid, (n 25) at p. 39

33 *Ibid.*, at p. 45

damages are unclear. Under Obama, the US wasn't eager to halt huge crimes militarily. The Syria discussion lasted years, and it's not like we're doing anything now under a new administration. I believe the fact that the U.S. isn't interested in supporting human rights emboldens authoritarian countries to do more than they used to.<sup>34</sup>

#### IV. ROHINGYA CRISIS IN BANGLADESH

##### 4.1 Criteria for claiming as Refugee:

According to the 1951 Convention<sup>35</sup>, a refugee is someone who has

- *A well-founded fear of persecution because of race, religion, nationality, membership of a particular social group, or political opinion.*
- *A person who is outside of his country*
- *A person who is unable or unwilling himself of the protect that country*
- *Individuals who are not specifically prohibited from receiving refugee protection*

As per Organization of African Unity 1969 Convention: "Refugee" shall mean

*"Every person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".*

To put it briefly, a person is considered a refugee if they are forced to flee their home country due to external attack, occupation, or foreign dominance in all or part of their home country.<sup>36</sup>

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<sup>34</sup> *Ibid.*

<sup>35</sup> The Refugee Convention, 1951, Art 1.

<sup>36</sup> Convention on Organization of African Unity (OAU), 1969 Art: 1.

According to the **Cartagena Declaration on Refugees in 1984**,

*“Persons who flee their countries because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, and internal conflicts”*.<sup>37</sup>

#### 4.2 Rohingya and Refugee Crisis:

*“Once they had left their homeland they remained homeless, once they had left their state they became stateless; once they had been deprived of their human rights they were right-less, the scum of the earth.”*

- Hannah Arendt<sup>38</sup>

Living in a country where over 90% of the population is Buddhist<sup>39</sup>, throughout the colonial and post-colonial eras, the socio-historically created and enforced identity of the majority of Buddhists has dehumanized the Rohingya people.<sup>40</sup>

People refer to them as Rohingya to deny them of their ethnic origin and therefore they are viewed as illegal and undesirable outsiders.<sup>41</sup> The discriminatory 1982 citizenship legislation, which denied the Rohingyas fair access to full citizenship in Myanmar and thus turned

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37 Cartagena Declaration on Refugees, 1984

38 Hannah Arendt, *“The Origins of Totalitarianism,”* (Second Edition), The World Publishing Company, 1958 available at: <https://cheirif.files.wordpress.com/2014/08/hannah-arendt-the-origins-of-totalitarianism-meridian-1962.pdf> (accessed on June 15, 2023)

39 Michelle J. Lee, “Media influence on humanitarian interventions: analysis of the Rohingya refugee crisis and international media coverage”, 6(20) (2021) *International Journal of Humanitarian Action*, pp. 01-11, at p. 2-3 available at: <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-021-00108-5> (accessed on June 25, 2023).

40 Md. Ali Siddiquee, “The portrayal of the Rohingya genocide and refugee crisis in the age OF post-truth politics”, 5(2) (2019), *Asian Journal of Comparative Politics*, pp 89-103 <https://journals.sagepub.com/doi/10.1177/2057891119864454> (accessed on June 18, 2023)

41 Gert Rosenthal, “A brief and independent inquiry into the involvement of the United Nations in Myanmar from 2010 to 2018,” (UNOCHA: relief web, March 15, 2022), available at: <https://reliefweb.int/report/myanmar/brief-and-independent-inquiry-involvement-united-nations-myanmar-2010-2018-report> (accessed on June 16, 2023)

one in seven people worldwide stateless, is among the most terrible systematic crimes against the Rohingyas.<sup>42</sup>

According to the 1982 Myanmar Citizenship Act, ancestors who lived in Burma before 1823 are awarded citizenship, while those who moved there after 1823 are not. The Burmese government passed this legislation in 1982 to de-regulate the Rohingyas.<sup>43</sup>

This suggests that the present leadership in Myanmar, or Burma at the time never desired the integration of the Rohingyas. The Rohingya Muslim community in Rakhine has been subjected to pre-textual massacres since 1960. Human Rights Watch said in February 2018 that bulldozers destroyed 50 Rohingya communities. All military human rights violations are eliminated. Local militants and hard-line Buddhists have joined the Myanmar army in this brutal killing. The 2014 census, which was supported by the UN, is another significant instance of systematic erasing. In order to avoid using the term 'Rohingya', the administration changed it to people who believe in Islam in Rakhine State, which resulted in the exclusion of over a million people from the national census.<sup>44</sup>

Evidence of this was exposed by Thomson & Reuters, which resulted in the imprisonment of two of its journalists. The world has recognized the recent massacre by the Myanmar army as a purposeful and brutal genocide against ethnic minorities, as recognized by the UN. Despite murder, rape, torture, burning houses, gunfire, landmines along the border, and the killing of innocent people by army helicopters, there is nothing wrong with the Rohingyas. Myanmar's government, Buddhist extremists, and army didn't. Rohingyas fled to Bangladesh to avoid slaughter. Many perished at sea.<sup>45</sup>

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42 Clara Tran, "South-East Asian migrant crisis: Who are the Rohingyas fleeing Myanmar by boat?", (ABC NEWS, May 21, 2015), available at: <https://www.abc.net.au/news/2015-05-21/explainer-who-are-the-rohingya-fleeing-myanmar/6487130> (accessed on June 15, 2023)

43 Ken MacLean, "The Rohingya Crisis and the Practices of Erasure," (2019) *Journal of Genocide Research* p. (83-95) available at: <https://www.tandfonline.com/doi/full/10.1080/14623528.2018.1506628> (accessed on June 16, 2023)

44 J.M. Ferguson, "Who's Counting? Ethnicity, Belonging, and the National Census in Burma/Myanmar", (2015) *Journal of the Humanities and Social Sciences of Southeast Asia and Oceania*, pp. 1-28 available at: <https://researchprofiles.anu.edu.au/en/publications/whos-counting-ethnicity-belonging-and-the-national-census-in-burm> (accessed on June 26, 2023)

45 Houda, (n 01) at p. 02

The Myanmar government's persecution of the Rohingya is not new; it has been going on for 60 years. The Rohingya are an unofficial immigrant group from Bangladesh or a Muslim minority in Myanmar. In order to go to Teknaf, Ukhia Upazila in Cox's Bazar, the Rohingya must cross the Naf River from Rakhine and, in certain cases, the Bay of Bengal. Refugees from Myanmar arrived in Bangladesh. Rohingyas lack nationality due to Bangladesh's refusal to grant them citizenship.<sup>46</sup>

#### 4.3 Bangladesh and the Refugee Issue:

A person from Bangladesh knows a decent amount about the refugee problem. The Bangladeshi people were the victims of genocide and crimes against humanity carried out by the Pakistani military regime in 1971. Ten million people were forced to escape to India in order to escape the Pakistani army's murders. Prior to Bangladesh's independence on December 16, 1971, a large number of Bangladeshis sought safety in India for nine months.<sup>47</sup>

It might be claimed that the Biharies in Bangladesh should be treated as refugees since many of them are said to have cooperated with the Pakistani military administration and because they chose to identify as Pakistanis.<sup>48</sup> In 1978 and 1991, Bangladesh provided safety to Myanmar refugees. Another group of refugees, totaling roughly 270000, arrived in Bangladesh in the winter of 1991–1992; they were housed in 17 camps before being returned to Myanmar.<sup>49</sup>

Article 25<sup>50</sup> says that

*"The State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes and respect for international law and the principles enunciated in the United Nations Charter."*

Article 32<sup>51</sup> mentions regarding "No person shall be deprived of life or personal liberty saves in accordance with law." It implies that no one

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<sup>46</sup> *Ibid.*

<sup>47</sup> Rashid, (n 25) at p. 39

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> The Constitution of the People's Republic of Bangladesh, 1972 Article 25

can be deprived of their life or liberty, regardless of whether they are a citizen of Bangladesh.

It seems that Bangladesh has been welcoming refugees from other countries following international law and its constitutional commitments. Bangladesh is overpopulated and not a wealthy nation. Bangladesh might thus serve as, at most, a transitory refugee country. Bangladesh evaluates refugee claims according to the 1951 Convention's definition despite not being a party to it.<sup>52</sup>

It's a horrifying tale of the people that flood into the Bangladeshi refugee camp of Cox's Bazar. Over a million Rohingya families live in Kutupalong, the biggest refugee camp in the world, which is located in Bangladesh. The Rohingyas are an ethnic minority group in mostly Buddhist Myanmar who are majority Muslim. They are not protected from past persecution and human rights violations in both law and practice.<sup>53</sup>

#### 4.4 The Status of Rohingya Refugee in Bangladesh:

There are no international agreements about the protection of refugees to which Bangladesh has been a party. Furthermore, local law forbids the granting of asylum or refugee status, and there is no institutional protection structure in place for refugees. The domestic legal framework that oversees refugees has not grown steadily or intentionally. In the lack of a national asylum system, the 1946 Foreigners Act remains the principal legislation governing the status of refugees and other individuals covered by UNHCR's mission.<sup>54</sup>

Although the Foreigners Act<sup>55</sup> fails to acknowledge that refugees are a specific category of vulnerable people who require protection, the

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51 *Ibid.*

52 Rashid, (n 25)

53 Staff Report, "MSF surveys estimate that at least 6,700 Rohingya were killed during the attacks in Myanmar", MEDECINS SANS FRONTIERES (12 December 2017) available at: <https://www.msf.org/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks-myanmar> (accessed on July 15, 2023)

54 Borhan Uddin Khan & Muhammad Mahbubur Rahman, "Global Asylum Governance and the European Union's Role as to Rohingya Crisis", ASILE: Country Fiche Bangladesh (October 2020) available at: [https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche\\_Bangladesh\\_Final\\_Pub.pdf](https://www.asileproject.eu/wp-content/uploads/2021/03/Country-Fiche_Bangladesh_Final_Pub.pdf) (accessed on June 15, 2023)

55 The Foreigners Act, 1946

Bangladesh Constitution guarantees that foreigners access to some basic human rights. However, Bangladesh has accepted the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment without protest or statement regarding its non-refoulement clause. Bangladesh thereby explicitly maintains the non-refoulement principle.<sup>56</sup>

Furthermore, in the case of *RMMRU v. Government of Bangladesh*<sup>57</sup>, Bangladesh is bound by the High Court Division of the Supreme Court of Bangladesh's decision that Article 33 of the 1951 Convention on the Status of Refugees has established customary international law. This ruling made it abundantly evident that, in the case of a non-refoulement violation, Rohingya refugees are entitled to legal protection.

#### 4.5 Non-Refoulement in Refugee Influx:

The word 'Refouler' refers to 'Drive Back.' It is the root of the English phrase non-refoulement. No asylum seeker or refugee should be sent back to a place where they run the risk of being persecuted or facing immediate danger to their life.<sup>58</sup> Article 33 of the Refugee Convention states that

*"No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion."*<sup>59</sup>

The Doctrine of Non-Refoulement is a Customary International Law. Though Bangladesh is not a party to this convention in general speaking, Bangladesh is not bound to provide refugee status. Moreover, Bangladesh is a dualist country, after ratifying a convention it needs to enact laws according to this convention. Besides, the signatory country can give reservations upon their choice.

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<sup>56</sup> Khan, (n 54) at p. 19

<sup>57</sup> *Refugee and Migratory Movements Research Unit (RMMRU) v. Government of Bangladesh* (2017) HCD [Writ petition no. 10504 of 2016]

<sup>58</sup> Rashid, (n 25) at p 64

<sup>59</sup> The Convention Relating to the Status of Refugees 1951, Art: 33

#### 4.6 Sub-human Life situations of Rohingya Refugee:

The term Sub-human Life<sup>60</sup> demonstrates that

*“Despite not having a place in the human community, a person is born into human society. Although subhumans are born into the world, no sovereign organization in the world is the owner” of them.* Sub-human life includes 5 categories. Such as:

- Atrocities in living condition
- Considered an illegal object
- Homeless at home
- Free license of killed
- A life worthy of extinction

It argues that Rohingyas are now in a situation of subhuman life. Because all these above mentioned criteria are fulfilled by the Myanmar to create this refugee crisis.

#### 4.7 What historical treatment did the Rohingya receive?

The Rohingya are the world's most persecuted minority. They are denied citizenship in their country. They cannot go to school, marry, or bear children. Rakhine State had massive interethnic riots in 2012 between Rohingya and state-facilitated local Buddhist populations. Burmese security officers armed Rakhine Buddhists, took them on buses, and destroyed communities, among other things<sup>61</sup> this is long-term, severe governmental persecution of a vulnerable group.<sup>62</sup> The Rohingyas have constantly been denied access to essential social services including as the internet, health care, education, and reproductive services, thereby preventing them from getting critical information and assistance from

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<sup>60</sup> Nasir Uddin, *The Rohingya: An Ethnography of Subhuman' Life* (Online Edition), Oxford University Press, 2020, available at: <https://academic.oup.com/book/33498> (accessed on July 15, 2023)

<sup>61</sup> Camilla, (n 23)

<sup>62</sup> Amit Ranjan, “*The Rohingya Crisis: A Challenge for India and Bangladesh*”, Institute of South Asian Studies by National University of Singapore, (25 September 2017) p. 3 available at: <https://www.isas.nus.edu.sg/papers/271-the-rohingya-crisis-oco-a-challenge-for-india-and-bangladesh/> (accessed on July 20, 2023)

international humanitarian organizations.<sup>63</sup> Prior to 2017, just two percent of Rohingya women gave birth in hospitals<sup>64</sup>, and more than seventy percentages of them lacked access to proper water<sup>65</sup> and sanitation facilities.<sup>66</sup> In addition to decades of systemic discrimination, persecution, and statelessness, the Rohingya were compelled to escape Myanmar and enter Bangladesh as a result of violence between 1978 and 2017.<sup>67</sup>

The Tatmadaw, the state's armed forces, has launched many major military operations against the Rohingyas, indicating that the 2017 Rohingya refugee crisis is not a unique episode. In 1978, Operation Dragon King (Nagamin) was established to fight "illegal immigrants".<sup>68</sup> More than 200,000 Rohingya were forcibly displaced and forced to migrate to Bangladesh as a result of the Tatmadaw's aggression and abuses of human rights.<sup>69</sup>

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63 Khin Tun, "Rohingya: A Preventable Genocide Allowed to Happen", Insight Turkey, 1(4) (2017) available at: [https://www.researchgate.net/publication/321047663\\_Rohingya\\_A\\_Preventable\\_Genocide\\_Allowed\\_to\\_Happen](https://www.researchgate.net/publication/321047663_Rohingya_A_Preventable_Genocide_Allowed_to_Happen) (accessed on July 20, 2023)

64 Rosenthal, (n 41)

65 Naved Bakali & Shujaat Wasty, "Identity, Social Mobility, and Trauma: Post-Conflict Educational Realities for Survivors of the Rohingya Genocide", (2020) available at: [https://www.researchgate.net/publication/341339551\\_Identity\\_Social\\_Mobility\\_and\\_Trauma\\_Post-Conflict\\_Educational\\_Realities\\_for\\_Survivors\\_of\\_the\\_Rohingya\\_Genocide](https://www.researchgate.net/publication/341339551_Identity_Social_Mobility_and_Trauma_Post-Conflict_Educational_Realities_for_Survivors_of_the_Rohingya_Genocide) (accessed on July 20, 2023)

66 Khin, (n 63)

67 M. Mobarak and others, "The Impact of Large-Scale Forced Displacement on Rohingya Refugees and Host communities in Cox's Bazar, Bangladesh", (2020) <https://www.gage.odi.org/publication/the-impact-of-large-scale-forced-displacement-on-rohingya-refugees-and-host-communities-in-coxs-bazar-bangladesh/> (accessed on July 20, 2023)

68 Human Rights Watch, Human Rights Watch World Report 1993- Burma (Myanmar) ( UNHCR: refworld January 1, 1993) available at: <https://www.refworld.org/reference/annualreport/hrw/1993/en/43659> (accessed on July 20, 2023)

69 Moslem Uddin Khan & M.H. Munshi, "Clinical Illnesses and Causes of Death in a Burmese Refugee Camp in Bangladesh," 12(4) (1983) *International Journal of Epidemiology*, OXFORD University Press, at pp. 460-464 available at: <https://academic.oup.com/ije/article-abstract/12/4/460/685302?redirectedFrom=fulltext> (accessed on July 20, 2023)

## V. GEOPOLITICAL IMPEDIMENTS OF ROHINGYA CRISIS & IMPACTS ON BANGLADESH

### 5.1 Geo-Politics Hindering a Resolution of the Rohingya Crisis:

The Rohingya situation is being made worse by regional geopolitics, with China and India's neighbors playing a major role.<sup>70</sup> The Rohingya crisis was addressed by the United Nations Security Council which was boycotted by both China and Russia in December 2018. China's actions stand out since it has consistently protected Myanmar from UN resolutions intended to address the Rohingya issue.<sup>71</sup>

When the UN attempted to impose sanctions on Myanmar in 2020 based on the ruling of the International Court of Justice (ICJ) over the Rohingya crisis, China used its veto power to thwart the initiatives. China's approach to the Rohingya situation seems to place a higher priority on defending its interests in Myanmar, which include the development of a deep-sea port and gas and oil pipelines in the province of Rakhine. So, China puts its interests before dealing with the humanitarian aspects of the Rohingya situation.<sup>72</sup>

India has taken a critical position in response to the Rohingya issue as a neighboring nation to both Bangladesh and Myanmar. India declined to sign this proclamation, demonstrating its prudence in handling the problem. During the Rohingya massacre in 2017, a World Parliamentary Forum met and endorsed the 'Bali Declaration'<sup>73</sup> as a gesture of support

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70 Kanak Kanti Karmakar, "The Rohingya Crisis: The Stateless Predicament, Genocide, and Geopolitics" (2024) 5(1) *Journal of Governance Security & Development*, available at: [https://www.researchgate.net/publication/383313424\\_The\\_Rohingya\\_Crisis\\_The\\_Stateless\\_Predicament\\_Genocide\\_and\\_Geopolitics](https://www.researchgate.net/publication/383313424_The_Rohingya_Crisis_The_Stateless_Predicament_Genocide_and_Geopolitics) accessed on 15 July 2024

71 Michelle Nichols, "UN Security Council mulls Myanmar action; Russia, China boycott talks" (REUTERS, December 18, 2018) available at: <https://www.reuters.com/article/us-myanmar-rohingya-un-idUSKBN1OG2CJ/> (accessed on August 20, 2023)

72 Staff Reporter, "UN fails to take action on order against Myanmar on Rohingya", *AL JAZEERA*, February 05, 2020, available at: <https://www.aljazeera.com/news/2020/2/5/un-fails-to-take-action-on-order-against-myanmar-on-rohingya> (accessed on August 25, 2023).

73 The White House, "G20 Bali Leaders' Declaration", (16 November 2022) available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/16/g20-bali-leaders-declaration/> (accessed on August 25, 2023).

for the Rohingya people.<sup>74</sup> In addition to developing the highway between India Myanmar and Thailand, India is putting its strategic project (the *Kaladan Multi-Modal Transit Transport Project*<sup>75</sup>) into action in Rakhine state. These goals help India take a proactive stance in the Rohingya situation.

## 5.2 Rohingya posing a Threat to Bangladesh's National Security:

Bangladesh is surrounded by India on three sides, with a single border with Myanmar of 271 kilometers long. The geopolitical context, as well as the country's commitment to and plans for fostering peace with its neighbors, have led the government to seek friendly foreign policy goals with its two neighbors. However, their recent contacts do not appear to be particularly welcoming.<sup>76</sup>

Bangladesh faces a danger from the Rohingya refugee issue in the form of increased militancy along the border. Despite recent tremendous progress in the fight against militancy in Bangladesh, the country has not eliminated the threat. Over the past ten years, the country has had several militancy-related assaults that are thought to have connections to other countries. Global jihadism has been acknowledged as its initiator, even though most militant organizations in Bangladesh are perceived as domestic organizations. When Jamaat-ul-Mujahideen Bangladesh (JMB) demonstrated its might in August 2005 by detonating over 500 bombs at 300 places throughout 63 of Bangladesh's 64 districts, the whole nation shook.<sup>77</sup>

The majority of JMB's senior executives were tried and eventually put to death, and the group currently seems fragmented and weaker. The

74 Staff Reporter, "Violence in Rakhine: India keeps off the Bali declaration", *the Daily Star*, September 09, 2017, available at <https://www.thedailystar.net/frontpage/violence-rakhine-india-keeps-the-bali-declaration-1459504> (accessed on August 25, 2023).

75 Staff Reporter, "Kaladan Multi-Modal Transit Transport Project", (02 April 2008) available at: [https://www.mpa.gov.mm/development\\_projects/kaladan-multi-modal-transit-transport-project/](https://www.mpa.gov.mm/development_projects/kaladan-multi-modal-transit-transport-project/) (accessed on August 25, 2024)

76 Mohammad Sajedur Rahman & Nurul Huda Sakib, "Statelessness forced migration and the security dilemma along borders: An Investigation of the Foreign Policy Stance of Bangladesh on the Rohingya Influx", 1(160) (2021) SN Social Sciences, available at <https://link.springer.com/article/10.1007/s43545-021-00173-y> (accessed on August 25, 2023).

77 *Ibid.*

death of bloggers and the slaughter of holy artisans have seriously damaged the nation's reputation and raised national security problems. With its law enforcement agency displaying maturity in handling the issue, the country has demonstrated its strength in battling militancy. New forms of militancy are still a possibility<sup>78</sup>, though. Given this context, Bangladesh's security may be at risk due to the Rohingya crisis.

## VI. ROHINGYA ISSUE AT THE INTERNATIONAL COURT OF JUSTICE

### 6.1 Eligibility of Gambia to pursue a Case before ICJ:

In November 2019, The Gambia filed a complaint against Myanmar before the International Court of Justice for breaching the Genocide Convention. Myanmar lodged preliminary challenges to the Court's jurisdiction and the Application's admissibility. Before making a judgment, the ICJ must establish its jurisdiction over the case. Following the preliminary hearings, the court determined that the subject was admissible to the ICJ.<sup>79</sup>

According to Judge Elihu Lauterpacht, "*all state parties are responsible for averting genocide, and each state owes to the others of this obligation.*"<sup>80</sup> The International Court of Justice (ICJ) makes it plain in the Bosnian case that the Genocide Convention authorizes the court to exercise its jurisdiction over a matter when a state is committing genocide.<sup>81</sup>

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78 Staff Reporter, "Countering Jihadist Militancy in Bangladesh", International Crisis Group (28 February 2018) available at: <https://www.crisisgroup.org/asia/south-asia/bangladesh/295-countering-jihadist-militancy-bangladesh> (accessed on August 25, 2023)

79 Islam, (n 2)

80 Jordan J. Paust, J., "Applicability of International Criminal Laws to Events in the Former Yugoslavia", 9(2) (1994) *American University International Law Review* pp. 499-523 available at: <https://core.ac.uk/reader/235402290> (accessed on August 26, 2023)

81 John Quigley, "Genocide: A Useful Legal Category?" 19(2) (2009) *International Criminal Justice Review* available at: <https://journals.sagepub.com/doi/10.1177/1057567709335396> (accessed on August 26, 2023)

## 6.2 The Present Scenario of the Gambia v. Myanmar Case:

On November 11, 2019, The Gambia filed a formal case against Myanmar<sup>82</sup> in the International Court of Justice (ICJ), alleging that Myanmar breached the Genocide Convention 1948.<sup>83</sup> The Court has previously decided that it is competent to consider the matter under Article IX of the Genocide Convention.<sup>84</sup> Unquestionably, Bangladesh is interested in the result of the Gambia v Myanmar case. Nonetheless, it is sad that Bangladesh has not yet sought to properly participate in this action. Though Bangladesh is not a disputed party; hence the only option for it to get engaged is by intervention under Articles 62 or 63 of the Statute.<sup>85</sup>

Article 63 is an interpretive intervention instrument that allows third countries to safeguard their shared collective interests within the bilateral framework of dispute settlement. This was one of the Court's least utilized rules until *Ukraine v Russia*<sup>86</sup>, in which 33 states party to the Genocide Convention made declarations of intervention. In the most recent ruling, dated June 5, 2023, the Court ruled on the admission of these declarations, finding all of them acceptable in terms of the interpretation of Article IX and other articles of the Genocide Convention, with the exception of the declaration by the US.

While there have been no requests for intervention in this case, which was started in November 2019, 33 interventions have already been made in the *Ukraine v. Russia* case, which was started in February 2022. Canada and the Netherlands have promised on several occasions to file their joint declaration of intervention in the *GAMBIA v. MYANMAR*

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82 International Court of Justice, 'Application of the Convention on the Prevention and Punishment of the Crime of Genocide The *GAMBIA v. MYANMAR*' (2022) available at: <https://www.icj-cij.org/sites/default/files/case-related/178/178-20231116-pre-01-00-en.pdf> (accessed on August 28, 2023)

83 Khan Khalid Adnan, "Bangladesh & the Gambia v Myanmar", *The Daily Star*, September 08, 2023, available at: <https://www.thedailystar.net/law-our-rights/news/bangladesh-the-gambia-v-myanmar-3413701> (accessed on August 28, 2023)

84 Convention on the Prevention and Punishment of the Crime of Genocide 1948, Art IX

85 Statute of the International Court of Justice, 1945 Art 62,63

86 *Ukraine v. Russian Federation* (2024) ICJ, available at: <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-ord-01-00-en.pdf> (accessed on February 29, 2024)

case, but they haven't done so as of yet. This sort of illustrates how Bangladesh, The Gambia, and other interested parties have failed to cooperate diplomatically. It is past due that Bangladesh makes use of its diplomatic connections with other nations now that the lawsuit has moved into the merits phase.

Under Article 62<sup>87</sup>, intervention is only permitted to preserve 'interests of a legal nature.' Bangladesh's main hurdle will be to prove that it has a legitimate interest that the court's ruling might impact. Furthermore, the Court's precedent on Article 62 suggests a somewhat constrictive approach. On the other hand, Bangladesh's perspective may benefit from the following points:

- Firstly, in this decision, the Court noted the huge influx of members of the Rohingya community faced by Bangladesh.<sup>88</sup>
- Secondly, among other countries, The Gambia requested relief, ordering Myanmar to fulfill its reparations duties by permitting the safe and dignified return of the Rohingya population that had been forcefully expelled. Bangladesh would suffer greatly if the Court denies this plea since the country is directly impacted by the massive migration.
- Thirdly, the court's expanding compensation culture in recent years undoubtedly adds a new dimension to this case if Myanmar continues to breach the court's previous provisional restrictions.
- Finally, with provisional measures against Myanmar already in place, the Court's decision to dismiss Myanmar's preliminary objections may provide some indication of future developments.

Although it is too late to apply under Article 62<sup>89</sup> of the Statute, given the time frame specified in Article 81 of the Rules<sup>90</sup>, Bangladesh may be able to meet the exceptional criteria. Bangladesh's lack of substantive expertise in international procedures makes the Court likely to accept this. If Bangladesh does not participate in the proceedings, even a favorable judgment for The Gambia may be of little practical advantage

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87 Statute of the International Court of Justice, *supra* note 85

88 *Gambia v. Myanmar* (n 82)

89 Statute of the International Court of Justice, (n 85)

90 RULES OF COURT 1978, Art 81 available at: <https://www.icj-cij.org/rules> (accessed on September 28, 2024)

to Bangladesh. There is no reason why Bangladesh should not make an attempt to apply under Article 62 when the stakes are exceptionally high.

### 6.3 Rohingya Crisis at the ICJ and its Limitation:

Even though The Gambia's application to the ICJ has received widespread praise, the fact remains that the ICJ frequently struggles to ensure just outcomes in geopolitically sensitive cases such as the current one due to limitations arising from its Statute and broader international law. If we look at some of the Court's fundamental limitations, we can see a few, such as the Court's inability to ensure state compliance with its orders unless the UN Security Council intervenes, and the ICJ's decision to address politically sensitive questions.<sup>91</sup>

According to Alexianu<sup>92</sup>, the Rohingya genocide case is one among 15 cases in which the Court's rulings were not followed at all. Thus, the Security Council's readiness to back up the ICJ in politically charged cases by giving appropriate assistance and resources is critical. While this may be viewed as one of the Court's true constraints, it also reflects the fundamental truth that the ICJ is part of a larger global system and cannot operate in isolation.

Regardless, the Rohingya situation is still rising, even after the International Court of Justice imposed many pro-Rohingya interim measures. According to Human Rights Watch<sup>93</sup>, approximately 18,000 additional Rohingya refugees entered Bangladesh in August-September 'to escape abuses amid the surging fighting between Myanmar's military

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91 Emraan Azad, "The Rohingya Crisis at the ICJ: Caught between Legal Technicalities and Limits of the Court", Centre for International Law at National University of Singapore, (18 October 2024), available at: [https://cil.nus.edu.sg/blogs/the-rohingya-crisis-at-the-icj-caught-between-legal-technicalities-and-limits-of-the-court/?fbclid=IwY2xjawGI2G5leHRuA2FlbQIxMAABHVso5oxxfPgSCn0wvfEgumun7CQv5f6W6lPP14yJr9KDH55ohB5cuL2wcQ\\_aem\\_a8WrSMuhqCrpeVvivI6IDw](https://cil.nus.edu.sg/blogs/the-rohingya-crisis-at-the-icj-caught-between-legal-technicalities-and-limits-of-the-court/?fbclid=IwY2xjawGI2G5leHRuA2FlbQIxMAABHVso5oxxfPgSCn0wvfEgumun7CQv5f6W6lPP14yJr9KDH55ohB5cuL2wcQ_aem_a8WrSMuhqCrpeVvivI6IDw) accessed on 25 October 2024

92 Matei Alexianu, "Provisional, but Not (Always) Pointless: Compliance with ICJ Provisional Measures" *European Journal of International Law* (EJIL: Talk) 03 November 2023, available at: <https://www.ejiltalk.org/provisional-but-not-always-pointless-compliance-with-icj-provisional-measures/> accessed on 18 October 2024

93 Staff Reporter, "Bangladesh: New Rohingya Refugees Lack Protection, Aid" Human Rights Watch (25 September 2024) available at: <https://www.hrw.org/news/2024/09/25/bangladesh-new-rohingya-refugees-lack-protection-aid>

*junta and the ethnic Arakan Army, while another 10,000 are reportedly waiting at the border.'*

Four 'technical' challenges<sup>94</sup> to the Court's jurisdiction and the admissibility of The Gambia's application were made by Myanmar in 2022. The Gambia responded to Myanmar's initial objections by bringing up reparations and repatriation, arguing that Myanmar has a duty under international law to provide compensation to victims of genocidal crimes and to permit the safe and dignified return of Rohingyas who have been forcibly displaced. In addition to being in line with human rights, granting full citizenship and eradicating prejudice are also consistent with the obligation to prevent genocide.

The ICJ had the opportunity to address the reparations and repatriation problems in its Preliminary Objections Judgment of July 22, 2022, but it chose not to. One may argue that this was done because the ICJ wished to stay within the bounds of legal technicalities pertaining to the jurisdiction or admissibility debate until it decided the case on its merits. However, repatriation and restitution have so far seemed to be incidental issues for the ICJ, and its exclusive emphasis on legal complexities may ultimately weaken the ICJ's position within the larger framework of international adjudication.

## VII. REPATRIATION PROCEDURE OF ROHINGYA REFUGEES

### 7.1 Why Repatriation is the long term solution for the Rohingya Refugees:

It is becoming more and more difficult to keep the displaced Rohingyas in the camps in Bangladesh because of a number of serious issues, such as limitations on their freedom of movement, a lack of employment prospects, and rising hostilities. The Rohingya population is forced to live in overcrowded camps with little opportunities for self-sufficiency, work, or education, which increases their dissatisfaction and instability. There are now more disputes in Cox's Bazar between the local inhabitants and the Rohingya as a result of this situation. The protracted presence of such a huge refugee population has increased competition

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<sup>94</sup> The Gambia v. Myanmar, ICJ 2021(Preliminary objections of the Republic of the Union of Myanmar) available at: <https://www.icj-cij.org/sites/default/files/case-related/178/178-20210120-WRI-01-00-EN.pdf> accessed on 18 October 2024.

for employment and services, put a strain on local resources, and heightened social tensions.<sup>95</sup>

This problem is made worse by the decrease in international financing, which puts the provision of sufficient services and humanitarian support in the camps in jeopardy.<sup>96</sup> The lack of money has resulted in worsening living circumstances, which has increased resentment and raised the possibility of unrest in the camps and the communities nearby.

## 7.2 The Present Situation of Repatriation Procedure:

Three efforts to repatriate Rohingyas have been made after the largest inflow of the group from Myanmar's Rakhine State in 2017, in 2018, in 2019, and most recently in 2023. All the attempts were unsuccessful because the Rohingyas insisted that returning would not ensure their safety or citizenship.<sup>97</sup>

Officials from the Foreign Ministry stated that about 12,000 Rohingyas were scheduled to return home in 2023 as part of the pilot program. Nevertheless, the plan was thwarted, first by "Cyclone Hamoon" and then by the battle that broke out in February 2021 between the armed opposition groups in Myanmar and the military government.<sup>98</sup>

In October of 2023, the 'Myanmar National Democratic Alliance Army', 'Ta'ang National Liberation Army', and 'Arakan Army' (AA) from Myanmar's Shan State joined forces and launched a massive onslaught known as "Operation 1027."<sup>99</sup>

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95 Abdul mannan , "Seven Years into the Rohingya Humanitarian Crisis: Assessing Progress Toward Repatriation – Challenges and the Way Forward", Refugee Law Initiative (4 September 2024) <https://rli.blogs.sas.ac.uk/2024/09/04/seven-years-into-the-rohingya-humanitarian-crisis-assessing-progress-toward-repatriation-challenges-and-the-way-forward/> accessed 20 September 2024

96 Jake porter, "The Silent Decay of International Aid to Rohingya Refugees", Humanitarian Advisory Group (June 2023) <https://humanitarianadvisorygroup.org/the-silent-decay-of-international-aid-to-rohingya-refugees/> accessed 7 August 2024

97 Porimol Palma & Mohammad Al- Masum Molla 'Wait for Rohingya repatriation gets even longer', *The Daily Star*, January 29, 2024, available at: <https://www.thedailystar.net/rohingya-influx/news/wait-rohingya-repatriation-gets-even-longer-3530701> (accessed on September 5, 2024)

98 *Ibid*

99 *Ibid*

However, conditions in Myanmar are still far from favorable to a safe, voluntary, and dignified return. Repeated attempts to begin the repatriation process have failed owing to Myanmar's political instability and a lack of assurances for the Rohingyas safety and citizenship rights. The humanitarian community, along with Bangladesh and international allies, has emphasized Myanmar's responsibility to secure the Rohingyas protection and rights in Rakhine State. Until these promises are satisfied, all repatriation attempts will be symbolic rather than substantial.<sup>100</sup>

## VIII. RECOMMENDATIONS & CONCLUSION

### 8.1 Recommendations to Progress:

To make substantial progress towards repatriation, Bangladesh must pursue many regional and global diplomatic options to support the return of Rohingya refugees. Key measures include using international alliances, engaging regional organizations, developing bilateral relations, and utilizing global institutions to impose pressure on Myanmar and ensure a long-term, dignified solution to the crisis. Therefore, several stages should be prioritized.

#### 8.1.1 Broader Strategies:

**8.1.1.1 Applying diplomatic pressure to Myanmar:** The international community, especially ASEAN and regional powers, must step up diplomatic efforts to ensure Myanmar commits to building an atmosphere of safety and security for the Rohingyas return. This entails placing constant pressure on Myanmar to comply with pledges and take significant action.

**8.1.1.2 Monitoring of Human Rights:** For any return to be secure, dignified, and long-lasting, there must be constant international surveillance of the state of human rights in Rakhine State. In order to evaluate the situation and make sure that returning refugees are not targeted for additional persecution or marginalization, a strong and impartial monitoring system might be helpful.

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100 Staff reporter, "Crisis Mounts for Rohingya Refugees in Bangladesh", *International Crisis Group* (6 December 2023) <https://www.crisisgroup.org/asia/south-asia/bangladesh/355-crisis-mounts-rohingya-refugees-bangladesh> accessed on 15 July 2024

**8.1.1.3 Developing Skills and Capabilities through Reintegration:**

The Rohingya population has to be educated and given skills that correspond with the opportunities in Rakhine State in order to be ready for their ultimate reintegration into Myanmar. Programs for education and vocational training that improve employment and community reintegration fall under this category.

**8.1.2 Bilateral Strategies:**

Beyond these larger efforts, enhancing bilateral ties remains a vital component in moving the repatriation process forward. Such as:

**8.1.2.1 India:** Given its influence in Myanmar and strategic interests in the area, Bangladesh should engage in high-level conversations with India, advocating a more active role in promoting engagement with Myanmar. Highlighting the advantages of a stable and secure Rakhine State for regional security can help India align its interests with Bangladesh's objectives.

**8.1.2.2 China:** China is an important diplomatically of Myanmar and one of its most important strategic and economic partners. Bangladesh may underscore how settling the Rohingya issue will bolster China's Belt and Road Initiative and improve regional stability, so encouraging China to assist in applying pressure to Myanmar.

**8.1.2.3 Japan:** As an important development partner for Myanmar, Japan might function as an influential mediator. Bangladesh should use the diplomatic avenues available to Japan to put pressure on Myanmar to provide safe circumstances for the Rohingya to return, including offers of help for the reconstruction of Rakhine State's infrastructure.

Apart from those strategies the concerned authority may also follow these pathways:

- In order for this return to be permanent, long-term and sustainable, it is necessary to create a comfortable environment for the people of their communities to sincerely accept and welcome the returned and repatriated refugees.
- In order to meet the needs of returned or repatriated refugees, Myanmar should provide adequate financial, material and other support.

- To repatriate the Rohingya to Myanmar, Bangladesh has to take further, forceful diplomatic measures. It must also maintain negotiating with Myanmar until the Rohingya's return is perfectly accommodated. The Myanmar government is bound to fix the issue as a result of international pressure.
- NGOs and Bangladesh's civil society should be more active in the country and throughout the world, rather than concentrating on making more money and conducting business in the midst of the Rohingya issue.
- There should be stronger security so that Rohingya people don't pollute the environment. For the sake of environmental protection, it ought to be regarded as a crime.
- Bangladesh should internationalize the issue at every opportunity, with the creation of an international commission being one potential means of applying pressure on Myanmar. Although it is believed that bilateral dispute resolution with Myanmar is unsuccessful, international arbitration can be a valuable tool.<sup>101</sup>
- UNHCR is able to fulfill its mandate because of its active presence. However, a certain conditions must be met before UNHCR actively promotes return. Particularly: The terms and circumstances of the return must be stated in a formal, written agreement signed by UNHCR and the parties concerned, and the nation of origin must have offered enough assurances for the refugee's safety, including legislative or legal guarantees where possible. These are but a handful of the conditions that need to be fulfilled for the majority of refugees to be allowed to securely and honorably return to their home nations.
- If the International Court of Justice issues an order directing the repatriation of the Rohingya people to Myanmar, the UN General Assembly and Human Rights Council may adopt measures

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101 A.K.M. Moinuddin, "Bangladesh needs Internationalization of the Rohingya issue in a stronger way", United News of Bangladesh (25 August 2019) available at: <https://unb.com.bd/category/Special/bangladesh-needs-internationalisation-of-rohingya-issue-in-stronger-way/26719> (accessed on 5 October, 2024)

102 Kofi Annan Foundation, "Advisory Commission on Rakhine State: Final Report", (2017) <https://www.kofiannanfoundation.org/mediation-and-crisis-resolution/rakhine-final-report/> (accessed on 5 September 2023)

compelling Myanmar to fulfill its obligations and allow the Rohingya to return to their place of habitual residence.

- Under the guidance of former UN Secretary-General Kofi Annan, the Rakhine Advisory Commission (RAC) report<sup>102</sup> which was released in August 2017 can be a helpful tool for exerting pressure on Myanmar to enable refugee returns.

## IX. CONCLUSION

First and foremost, according to accepted definitions of genocide, Myanmar has committed genocide. It may be inferred from the prior records of the genocide cases that the court will construe the genocide by the term provided by the Genocide Convention. Numerous well-known individuals have referred to the persecution of Myanmar as genocide based mostly on its stages and components.

The ICJ adjudicated these problems first and established its competence on July 22, 2022 after Myanmar made preliminary objections<sup>103</sup> regarding the ICJ's jurisdiction, the admissibility of the case, and the existence of a real dispute. The verdict in this case will act as a deterrent to nations that flagrantly violate international law. Justice must be served in this instance if the statement 'never again' is to have any meaning. The international community may put pressure on Myanmar to abide by the decision and carry out its responsibilities if the International Court of Justice holds it accountable for the genocide.

Following the start of widespread crimes against the Rohingyas on August 25, 2017, hundreds of them arrived in Bangladesh and, at different points in time, fled to neighboring nations. The Rohingyas are now stateless and refugees in several nations, including Bangladesh, as a result of the continued persecution. Whether the treatment of the Rohingya people constituted ethnic cleansing or genocide is the most significant question. Given that the persecution of the Rohingya people is without a doubt a kind of genocide, Myanmar cannot avoid its responsibility as a state and yet punish those responsible in isolation. Myanmar's breach of its obligations under the Genocide Convention can currently only be brought before the International Court of Justice. The other parties to the Conventions should gather together and adopt a concerted posture to hold Myanmar accountable for its appalling

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103 *Gambia v. Myanmar* (n 82)

atrocities against minorities, as the Gambia has previously appealed to the International Court of Justice. The Rohingya people would never have had a just remedy if the case had been dismissed at the preliminary stage after Myanmar's initial objection to the case's admission, and Myanmar may have been released from all legal obligations.

The Rohingya people have been arriving in Bangladesh as refugees since 1978. Then, in 2017, there was an abrupt inflow that threatened Bangladesh's environment, especially in the local area. Overcrowding in a small area increases the risk of environmental harm and jeopardizes biodiversity and ecology. Bangladesh, being the country with the highest number of environmental disasters, needs significant assistance from the international community in protecting its environment. The large-scale refugee migration has made Bangladesh more vulnerable, necessitating more security measures. To integrate the Rohingya perspective, greater policy formulation and engagement are required. The Rohingya people have to return home as soon as possible to safeguard the environment, as nobody knows what the future holds for Bangladesh.

## THE GLOBAL COMPACT ON REFUGEES: A PROMISE OF NON-REFOULEMENT OR A FAILED RHETORIC PRETENCE?

DR. BALAJINAIKA B. G.\* AND AISHWARYA M S\*\*

### ABSTRACT

The United Nations General Assembly, by a unanimous resolution in 2018, adopted the Global Compact on Refugees (GCR) with the aim of addressing the systematic inequalities in international refugee protection by means of principles of burden-responsibility sharing, multistakeholder participation and the reinforced principle of non-refoulement. This paper critically examines the GCR's development, objectives, frameworks such as the Comprehensive Refugee Response Framework (CRRF), and its non-binding nature. Moreover, it questions the reaffirmation of the policy of non-refoulement through its objectives and framework or merely a rhetorical reassertion of the present existing norms without its non-binding enforceable commitments. This paper focuses on the critiques regarding the dilution of international refugee law, insufficient measures for protection of vulnerable groups, its non-binding nature and related matters. Regardless of the aforementioned shortcomings, the Compact also fosters new opportunities for cooperation, innovation and norm-building in the refugee convention. Through an analytical perspective, this paper examines and argues that although the GCR marks a significant normative step, continued political will, equitable burden-responsibility sharing and enhanced accountability measures are crucial for its practical success.

**Keywords:** *Non-refoulement, international refugee law, Burden-sharing, Multi-stakeholder approach, Refugee protection mechanisms, Non-binding*

### I. INTRODUCTION

Forced human displacement has emerged as a global crisis, which poses an increasing threat to human security and international stability as the displacement figures continue to rise at an alarming rate in recent years. As per the United Nations High Commissioner for Refugees (UNHCR), at the end of June 2024, the global displaced population

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driven by persecution, conflict, violence, human rights violations or events seriously disturbing public order, 122.6 million people worldwide were forcibly displaced. Among them, roughly 31.96 million are refugees recognised under the UNHCR's mandate, and 5.98 million are Palestinian refugees under the United Nations Relief and Works Agency (UNRWA), a specialised UN agency set up to provide humanitarian aid and development support to Palestinian refugees. According to UNHCR, there are 4.4 million stateless people who are deprived of their nationality, fundamental rights and access to basic human necessities such as food, shelter, education, healthcare and employment opportunities.<sup>1</sup>

The term "refugee" in an ordinary sense means a person who is forced to flee their own country for a reason beyond their personal choice. However, the term "refugee" entails not only descriptive connotations but also legal and international standards. The 1951 Convention provides the most universally endorsed and predominantly accepted wide definition of refugee. It incorporates the five well-founded fears of persecution, i.e., race, religion, nationality, membership of a particular social group or political group, and opinion of a person forced to flee their own country and crossing an international border.<sup>2</sup> In addition to the physical and mental hardships faced by refugees, which forced them to abandon their homes from the fear of persecution, they are further frequently subjected to social exclusion and political marginalisation. Long-term displacement, legal ambiguity, statelessness, poverty and restricted access to employment opportunities, education and healthcare are some of the common problems faced by refugees. The situation is further exacerbated, if the refugee belongs to a vulnerable group, such as women, children, persons with disabilities, etc. The misalignment established in the modern refugee regime of rich and developed countries granting asylum and the low-income and developing countries sharing responsibility is clearly evident. To address this deep-rooted, persistent flaw, the Global Compact on Refugees was adopted. In 2018, the United Nations General Assembly adopted the Global Compact on Refugees to restructure the international refugee administration.

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1 UNHCR, Figures at a Glance, (<https://www.unhcr.org/about-unhcr/overview/figures-glance>) (last visited May 3, 2025).

2 *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137.

## II. GLOBAL COMPACT ON REFUGEES (GCR)

Background: In 2016, Ban Ki-moon introduced the concept of the Global Compact on Refugees in his report “In Safety and Dignity” with an objective to address the growing issue of lack of global cooperation in international refugee law. In order to achieve this, he promoted the creation of a framework with the idea of responsibility sharing through the application of standards in the 1951 Refugee Convention, the 1967 Protocol, pertinent regional instruments, and more general international human rights and humanitarian legal frameworks serving as a guide. It is hence pertinent to understand the Global Compact on Refugees and break it down and explore its various objectives and ambits.<sup>3</sup> The term ‘global’ in international refugee law carries several implications as to the universal applicability of norms such as the 1951 Refugee Convention, the 1967 Protocol, shared and collective responsibility across the states, international solidarity and cooperation and the multistakeholder approach.<sup>4</sup> The word ‘compact’ has a more complex connotation. ‘Compact’ in the last 18 years has become more often used in international diplomacy to denote a non-binding, flexible framework for cooperation amongst various parties. Originating from the UN’s Global Compact on corporate social responsibility. Since then, the term has encompassed a number of regional and thematic agreements, such as the Global Compact for Migration and the Global Compact on Refugees. These frameworks are in line with previous regional agreements, such as those made in 2016 with Jordan and Lebanon, which served as negotiated agreements to promote the rights and livelihoods of refugees in return for trade advantages, international aid, and policy collaboration.<sup>5</sup> Commonly used by the EU under the European Agenda for Migration, these compacts are meant to operate below the level of formal international treaties, allowing for quick adoption without legislative approval. Practical engagement, political cooperation, and problem linkage are usually given more weight in compacts than legal promises. They are characterised by the involvement of multiple parties and often serve as supplemental tools

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3 ‘Thomas Gammeltoft-Hansen, “The Normative Impact of the Global Compact on Refugees”, 30 *International Journal of Refugee Law* 605 vol. (2018).

4 Hadeel Al Fara, *Global Compact on Refugees: A Transformative Moment in Refugee Policy?*, Bath Papers in Int’l Dev. & Wellbeing, No. 71, *Centre for Dev. Stud.* (2022).

5 Gammeltoft-Hansen, *supra* note 3, at 10.

to existing international legal frameworks, setting technical and practical guidelines in areas where formal reciprocity is minimal.<sup>6</sup> International solidarity and fundamental humanitarian principles are the basic founding principles of the Global Compact on Refugees. It aims to put into practice the principles of burden and responsibility sharing in order to improve protection and assistance for refugees, host states and communities. Even while the compact is in line with the objectives of the UN Charter, it remains non-political in its implementation. It builds upon the 1951 Refugee Convention, the 1967 Protocol and the fundamental non-refoulement principle. Recognised as a manifestation of political will, the Compact aims to inspire better-coordinated and efficient responses to displacement crises and to mobilise international collaboration. Following two years of extensive, far-reaching consultations led by UNHCR engaging the member states, international organisations, refugees, non-governmental organisations, the private sector and experts, on 17th December, 2018, the Global Compact on Refugees was adopted. The historical evolution of GCR is briefly highlighted below:

The United Nations General Assembly endorsed the New York Declaration for Refugees and Migrants in September 2016, which set the stage for the Global Compact on Refugees. Safeguarding those who are compelled to flee and assisting the countries that host them are common international obligations that need to be shared more equitably and reliably. They also stated that how the global community reacts to mass movements of refugees and migrants needs to be improved. It also emphasised that supporting host countries and safeguarding refugees are common global responsibilities. The UNHCR was assigned the task of developing a compact that would allow the declaration's commitments to be operationalised.<sup>7</sup> Shortly thereafter, the UNHCR initiated a two-year consultative process to prepare the Compact as a response to the New York Declaration's mandate. The thematic discussion, regional and international stakeholder consultations, and the call for written submissions from member states, international organisations, non-governmental organisations and refugee

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6 *Id.*

7 United Nations, Global Compact on Refugees – Refugees and Migrants, (<https://refugeesmigrants.un.org/refugees-compact#:~:text=UN%20Photo/UNHCR,refugees%20and%20protracted%20refugee%20situations>) (last visited May 3, 2025).

representatives were all included in this. The Compact would consider diverse experiences and address the structural as well as humanitarian dimensions of displacement due to these extensive consultations. The process aimed at formulating a comprehensive framework drawing from the 1951 Convention and its 1967 Protocol, along with other prevailing international refugee law.<sup>8</sup>

In December 2018, the UNGA officially reaffirmed the Global Compact on Refugees. The compact is an important milestone in the international management of refugees, though it is not legally binding. Besides offering a formal framework to achieve its four core goals.<sup>9</sup> The initial major vehicle for its implementation was the inaugural Global Refugee Forum in December 2019. Ranging from financial contributions and legislative changes to technical assistance and resettlement commitments, states and partners everywhere came together to make concrete commitments. This event illustrated how the precepts of the Compact could be applied and served as a way of facilitating responsibility and tracking progress.<sup>10</sup> As a living accord, the Global Compact on Refugees continues to guide global cooperation in the struggle against forced migration. The Compact hopes to sustain global energy by providing lasting solutions for refugees and equitable support for host communities via regular meetings, reporting mechanisms, and multilateral engagement.<sup>11</sup>

### III. GCR SALIENT FEATURES

#### III.1 Comprehensive Refugee Responsive Framework

The Comprehensive Refugee Responsive Framework was developed and initiated by the United Nations High Commissioner for Refugees to address the dire situation of widespread and complex refugee

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8 *Id.*

9 UNHCR India, *The Global Compact on Refugees*, (<https://www.unhcr.org/in/who-we-are/global-compact-refugees#:~:text=On%2017%20December%202018%2C%20the,the%20communities%20that%20host%20them.&text=%E2%80%9C%5BThe%20Global%20Compact%5D%20represents,refugees%20and%20affected%20host%20countries.%E2%80%9D>) (last visited May 3, 2025).

10 UNHCR, *The Global Refugee Forum 2019*, (<https://globalcompactrefugees.org/about/global-refugee-forum/global-refugee-forum-2019>) (last visited May 3, 2025).

11 UNHCR, *The Global Compact on Refugees*, (<https://www.unhcr.org/about-unhcr/overview/global-compact-refugees>) (last visited May 3, 2025).

displacement and to necessitate a comprehensive framework in international response. CRRF is based on the fundamental foundational principles of international cooperation, burden and responsibility sharing and multistakeholder engagement.

Prior to the formal adoption of the Global Compact on Refugees, the CRRF initially underwent evaluation in several countries as a revolutionary approach to refugee administration. In contrast to ad hoc emergency situations, the CRRF promotes a consistent, sustained and coordinated action which commences at the onset of displacement and persists into longer-term development planning. Moreover, it incorporates a wide range of stakeholders including but not limited to Host states, Relevant UN organs and agencies, International financial institutions, Regional organisations, Local authorities, Civil societies, Academia, Commercial sector actors, Media, Faith based organisations, Refugees : Taking into account the unique and context-specific refugee situation, the CRRF provides a uniform framework on best practices and international law. It extends to both short-term humanitarian crises and long-term protracted displacement situations. Significantly, in order to guarantee that refugee needs are more incorporated within the broader protection and development strategies, the CRRF is designed to be a separate yet integral component of a wider humanitarian response. In its application and practicability, the CRRF places a strong emphasis on long-term solutions based on a people-centric approach that promotes refugee protection and host community support. The international community benefits from attaining equitable outcomes if the resources, capabilities and responsibilities are aligned in an effective manner.<sup>12</sup> The principle of non-refoulement, enshrined in Article 33 of the 1951 Refugee Convention<sup>13</sup>, is a cornerstone of CRRF. According to the principle of non-refoulement, the host country is prohibited from expelling or returning (refoulement) a refugee to their country where they were compelled to leave due to the well-founded fear of persecution, i.e., race, religion, nationality, membership of a particular social group or political group, and opinion of a person. As a fundamental component

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12 *New York Declaration for Refugees and Migrants*, G.A. Res. 71/1, U.N. Doc. A/RES/71/1 (Sept. 19, 2016).

13 *Convention Relating to the Status of Refugees* art. 33, July 28, 1951, 189 U.N.T.S. 137.

of international refugee law, non-refoulement reflects the core humanitarian need to safeguard those escaping oppression and violence. By encouraging coordinated international efforts to make sure that the refugee protection is not compromised, the CRRF implements this principle. It seeks to avoid situations where resource-constrained states would feel pressurised to violate non-refoulement obligations due to overwhelming refugee influx by promoting responsibility sharing among states and lowering the disproportionate demand on countries of first asylum. Thus, the CRRF acts as a policy instrument to enable the consistent and efficient implementation of refugee protection, even if non-refoulement presents a legal basis for it. Collectively, they strengthen the global refugee protection regime's practical and normative aspects.

### **III.2 Programme of Action**

For a better tomorrow, it is pertinent to bring the GCR principles to reality. The Programme Action serves as a guide for implementation and offers practical mechanisms. It promotes approaches by giving national ownership, sustainability, and adaptability. Instead of providing binding instructions, the programme offers a range of possibilities from which states and partners may choose based on their own contexts and capacities. Building effective institutions, developing sound legal frameworks, and ensuring access to services benefiting refugees and host communities are all important areas of focus.<sup>14</sup>

### **III.3 Burden and Responsibility-Sharing**

The Global Compact on Refugees fundamentally transforms the international approach regarding refugee administration and the institutionalisation of burden-sharing responsibility. The compact brings to light the situation of disproportionate burden on front host states, mostly the global south countries, while the rich developed countries have evaded their responsibilities by merely providing financial assistance instead of offering assistance to refugees. Hence, to rebalance this disparity in burden sharing, the GCR calls for equitable distribution of responsibilities and resources through multilateral commitment solidarity. This is put into action with the help of several mechanisms, including but not limited to pledges made at the Global Refugee Forum,

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<sup>14</sup> *Global Compact on Refugees*, U.N. GAOR, 73d Sess., Agenda Item 13, U.N. Doc. A/73/12 (Part II), at 6 (Dec. 17, 2018).

the setting up of Support Platforms and the strengthening of National Arrangements. Owing to the establishment of these platforms, the political, financial and technical support is mobilised for host countries, ultimately leading to responsibilities being shared rather than concentrated.<sup>15</sup> According to UNHCR's latest report, out of the countries that hosted the world's refugees and others in need of international protection, 71% were hosted in low-income and middle-income countries. This statistic projects the need for more proactive involvement and engagement of rich and upper-middle-income countries to ease the burden on the developing and low-income countries.<sup>16</sup> As of the mid-2024 trends report, a significant proportion of the global refugee population, i.e., over one third, were concentrated in these five countries:

- a. Islamic Republic of Iran- 3.8 million refugees (predominantly Afghans)
- b. Turkey- 3.1 million refugees (majority being Syrians)
- c. Colombia- 2.8 million refugees (mostly Venezuelan)
- d. Germany- 2.7 million refugees (nearly 43% originating from Ukraine)
- e. Uganda- 1.7 million refugees (primarily South Sudanese)

This has been consistent with the previously observed trend in 2023.<sup>17</sup>

Despite these figures, there is still a glaring inequality of responsibility regarding refugee protection. The responsibility of refugee protection continues to be borne by low-income countries relative to their economic capabilities. While they represent only 9% of the world's population and only have 0.6% of the global gross domestic product (GDP), low-income countries are still hosting 18% of the world's refugees. Examples of low-income countries with large refugee caseloads that lack funding and resources are Uganda, Chad, the Democratic Republic of Congo, Ethiopia and Sudan. The distribution of refugee hosting is further complicated because the waves of socioeconomic classifications issued

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15 Eva Dick and Markus Rudolf, "How the Global Compact on Refugees Can Be Implemented Successfully", The Current Column (German Development Institute) (2019).

16 UNHCR, *supra* note 1 at 3.

17 UNHCR, *Mid-Year Trends 2024* (Oct. 9, 2024), (<https://www.unhcr.org/mid-year-trends-report-2024>)

by the World Bank have shifted the share of refugees in lower-middle-income countries from 28 % of the global total, in the first half of 2024, to 17%, as the Islamic Republic of Iran has now been classified as an upper-middle-income country. This resulted in 37 % of refugees being in upper-middle-income countries (including notable hosts such as Turkey, Colombia and Peru), with only 29 % of refugees being hosted in high-income countries which control the majority of the wealth in the world. This was a significantly small increase from the previous year, partially due to the reclassification of the Russian Federation as a high-income nation.<sup>18</sup> The data reveals a continuing disparity in equitable burden and responsibility sharing, illustrating that countries with the least economic capacities often shoulder the greatest obligations and calling into question the effectiveness of the current mechanisms.

In reality, burden and responsibility sharing may be realised through multiple forms. Some of them are –

- a. Financial contribution from donor countries to support the infrastructure development
- b. Capacity building in host states
- c. Public service delivery
- d. Technical support in the form of development of asylum systems, training for border officials and creation of inclusive education and health programs
- e. Expansion of third world country solutions such as complementary pathways, resettlement of refugees, humanitarian visas, educational scholarships, etc.

However, it is pertinent to take note of the fact that the voluntary nature of the GCR raises concerns about the effectiveness and reliability of burden-sharing responsibilities. Lack of binding nature of the commitments enshrined in the GCR, there exists a risk of rhetorical support not translating into meaningful action. These shortcomings have been evidently apparent in situations of financial and resettlement quota shortages resulting from donor weariness and political fluctuations. Although critics argue that while GCR provides a robust normative

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18 *Id.*

framework, its effective implementation widely depends upon the political will and continuous international community engagements.<sup>19</sup>

In addition, there are also global imbalances in power, which add more complexity to the dynamics of sharing responsibilities. Wealthier states often prefer contributing financial rewards rather than resettling refugees in the home country's territory, thus externalising physical hosting to less-resourced nations. This further perpetuates a system by which dollars take the place of the more concrete, long-term efforts involved in integration and protection.

Despite many challenges, there still exist promising examples that show the promise of fair responsibility-sharing in spite of these challenges. For example, the Support Platform for the Solutions Strategy for Afghan Refugees (SSAR)<sup>20</sup> promotes coordinated international support to such host countries as Pakistan and Iran. An even greater case of regional leadership for fostering solidarity-based solutions is the Intergovernmental Authority of Development (IGAD) Nairobi Declaration<sup>21</sup> on durable solutions for Somali refugees. The GCR paradigm, which seeks to deliver on burden-and-responsibility sharing, is perceived as fundamentally transformational for making progress on issues of sustainability, equity, and collective responsibility in the refugee governance spectrum. If this is to be successful, states must move beyond the rhetoric of voluntary action and demonstrate good faith with measurable and tangible contributions to support cohesion and capacity. Only then will sharing the costs of displacement in an equitable manner and putting in place sustainable solutions become realities for host communities and refugees alike.

### III.4 Multi-Stakeholder Approach<sup>22</sup>

While respecting the sovereign authority of states and primacy of state responsibility, the GCR favours a stronger multi-stakeholder and

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19 Al Fara, *supra* note 4, at 4.

20 UNHCR, *Support Platform for the Solutions Strategy for Afghan Refugees (SSAR)*, (<https://www.unhcr.org/ssar-support-platform>) (last visited May 3, 2025).

21 Intergovernmental Authority on Development (IGAD), *Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of Returnees in Somalia* (Mar. 25, 2017), (<https://igad.int/communique/nairobi-declaration>) (last visited May 3, 2025)

22 *Global Compact on Refugees*, *supra* note 12, at 6.

partnership approach in keeping with international legal systems and in coordination with national authorities. Within this framework, UNHCR implements its mandates while playing a catalytic role in creating and sustaining the structure for inclusive partnership. The GCR calls for establishing inclusive processes where refugees and hosts have a genuine voice, thus emphasising the effectiveness of any response mechanism. Stakeholders should also support consultative mechanisms through which the participation of different groups—like women, youth, persons with disabilities, and diasporas—in planning, implementation, and evaluation can be enhanced. Furthermore, these mechanisms should put in place accountability safeguards through feedback and complaint mechanisms to counter fraud, abuse, and corruption.

Coordination between humanitarian and development actors must occur from the onset of the refugee situation, particularly in prolonged contexts. Their collaboration is to ensure complementarity, accentuating the host country's capacities in line with national development objectives. This needs to be with respect for national leadership so that support from the multilateral and bilateral actors to national efforts will be seen as reinforcing rather than diverting wider development aid. UN agencies, notably the UN Sustainable Development Group and country teams, will particularly support the operationalisation of this collaboration in keeping with national frameworks and the Secretary-General's UN reform agenda. Local authorities, often the first responders, feel the direct impact of influxes of refugees. Accordingly, the GCR calls for support for international assistance to further strengthen local governance structures and service delivery. Targeted capacity building and recruitment of personnel from local communities are considered. Cities and urban municipalities are invited to exchange best practices and innovative responses in conjunction with UNHCR and partners by joining forum platforms, city networks, and twinning arrangements. So as to enhance the national ownership for the implementation of the Compact, engagement of Parliament is hence encouraged, which is based on frameworks such as these developed by the Inter-Parliamentary Union (IPU). Furthermore, the civil societies, particularly those led by refugees and marginalised groups, play a crucial role in identifying the needs, developing inclusive programme frameworks and providing services. Moreover, the efforts of these organisations are further reinforced by the work of faith-based

organisations involved in peacebuilding, humanitarian assistance and reconciliation and other relevant areas. The private sector is considered a key stakeholder in providing solutions towards sustainability. Public-private partnerships offer the opportunity to promote employment for refugees, economic inclusion, and labour mobility for refugees. Exploring ethical investment practices, tools to assess market opportunities and facilitating platforms at the country level are intended to boost involvement from the private sector in host country engagement. Academia and research institutions will form the global academic network for refugee, displacement, and stateless studies. This network, which has been jointly created by UNHCR, aims to promote training, research, and model scholarship that are policy-relevant but at the same time also contextualised by regional diversity and interdisciplinary collaboration. Finally, the Compact recognises cultural and sports initiatives as crucial to refugee welfare, social inclusion, and cohesion. Partnerships will be instituted that broaden access to cultural and recreational activities for the benefit particularly of children, young people, and persons with disabilities. Such breadth and collective integrated effort within multi-stakeholders definitely reflect the GCR's ambition to break from traditional state-centred models and bring society at large to bear on the formidable complexity of forced displacement.

### **III.5 GCR as A Non-Binding Agreement**

Paragraph 4 of the GCR speaks of its non-binding nature, indicating that the GCR does not constitute any formal legal obligations for states and other relevant actors. The interpretation and practical application of the compact are significantly impacted due to the lack of legal implications. Nevertheless, the GCR seeks to operationalise some important principles, especially the equitable distribution of responsibilities and burdens that come with refugee protection. The aspirations centre on the improved protection and promotion of refugees alongside increased support for host countries and communities that bear a disproportionate share of the burden. Though the Compact endorses a more predictable and fair burden-sharing among the international community, that being said, it does not make any of these objectives legally binding. The absence of legal compulsion has added critical constraints to the implementation, as the Compact commitments rely on strong voluntary compliance with its obligations rather than

being legally mandated.<sup>23</sup> Taking into consideration the fact that the main objective of GCR is to operationalise the principle of burden-responsibility sharing, the non-binding status of GCR creates a central dilemma. Paragraph 49 of the Global Compact on Refugees calls for the “concrete contributions” from states and other supporting actors; however, the non-enforceability of the principles enshrined in the GCR calls into question how these contributions will come into fruition. Given the lack of the aforementioned non-enforceability, the implementation relies heavily on the voluntary actions of the states and such other various stakeholders, thereby defeating the purpose it seeks to accomplish in its objectives. Hence, without any legal accountability and obligations, states are hesitant to participate in meaningful burden-responsibility-sharing, thereby consequently leading to disparities among states regarding refugee administration and burden-responsibility-sharing.<sup>24</sup>

However, despite its non-binding nature, it continues to bear some normative values. Soft law, commonly understood as non-legally enforceable agreements or instruments, has significantly contributed to shaping international law, particularly in domains where treaty law is either incomplete or absent. While the GCR does not create legally binding obligations, the principles revolving around it can still create a normative impact. The development of customary international law, the inspiring of legal precedents and the guiding of future legal reforms may all be influenced by soft law, such as the GCR. A notable key strength of the GCR is its ability to serve as a flexible tool for the development of international legal norms. In turn, the GCR, as a soft law instrument, can help shape international refugee law by promoting the formulation of norms that could eventually lead to binding legal commitments.<sup>25</sup> The flexible and broad scope of the GCR facilitates its normative impact to transcend beyond the traditional state actors. Over the last few years, non-state actors such as private companies, global organisations, and NGOs have emerged to play crucial roles in

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23 Ranabir Samaddar, “The Global Gaze of Protection, Care, and Power”, 36 Calcutta Research Group (2020).

24 C. Osborn and P. Wall, “The Global Compact on Refugees Three Years On: Navigating Barriers and Maximizing Incentives in Support of Refugees and Host Countries”, DRC, IRC, and NRC Report (2021).

25 Samaddar, *supra* note 24, at 12.

protecting refugees. The GCR, therefore, opens avenues for the involvement of such actors in the refugee protection framework and the actualisation of its principles. This is important because responsibility for protecting refugees can no longer be the sole purview of states. The engagement of a wider variety of actors within the framework of the Compact renders it a more comprehensive approach for refugee protection that goes beyond conventional borders of international law. One of the most significant aspects of the GCR is its capacity to assign responsibility to a broader set of stakeholders, particularly in light of the growing involvement of non-state actors in global governance.<sup>26</sup> Another aspect that is significant relating to GCR's non-binding nature is its capacity to play a norm-creating or norm-filling function. By clarification of existing legal norms and provision of new interpretations of international refugee law, the GCR can facilitate the filling of gaps in the legal regime and ensure more consistency in the interpretation of international refugee law. This is especially necessary where international refugee law is open to interpretation by different states. The GCR gives space to unpack the interface between international refugee law and other fields of international law, including human rights law and international migration law. In addition, the GCR can contribute to the consolidation of the broad range of international standards into a coherent structure, making it easier to interpret and implement existing refugee protection obligations.<sup>27</sup>

Despite the advantages that GCR demonstrates, it also faces certain limitations with regard to delivering meaningful change in the refugee protection regime. The scope of the Compact is certainly limited, and its wording deliberately abstains from imposing specific obligations on the states. For instance, vital issues such as resettlement or cost-sharing are touched upon only at an abstract level, without tangible commitments or quantifiable results. The language of the GCR contains mention of mechanisms like the Global Refugee Forum and regional Support Platforms for large-scale refugee influxes, but these are not binding and do not lay down tangible responsibilities on states. Consequently, even though the GCR sets out an international cooperation

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26 Osborn & Wall, *supra* note 25, at 12.

27 Samaddar, *supra* note 24, at 12.

framework, it is short of legal teeth to make states act firmly on key matters.<sup>28</sup>

Perhaps the most notable failing of the GCR is its inability to address significant issues in international refugee law, particularly those addressing refugee detention and the freedom to work. States have regularly utilised stringent interpretations of these standards to support deterrent or restrictive policies towards refugees, making these areas extremely controversial. Despite the importance of these issues in refugee protection, the GCR's language does not provide more authoritative interpretations or more robust recommendations on these issues. For example, although the GCR reaffirms fundamental principles like the principle of non-refoulement, it does not make available stronger wording or guidance concerning the interpretation of these contentious questions. Moreover, socio-economic rights like the right to employment or education are touched upon only peripherally, with no explicit promise to fill these gaps in refugee protection.<sup>29</sup> In conclusion, although the Global Compact on Refugees is not a binding document, it still has a very important role to play in the continuous evolution of international refugee law. By providing a framework for collaboration, establishing principles of burden-responsibility-sharing, and engaging in normative debates, the GCR is an important tool in determining the future of refugee protection. Nonetheless, its non-binding status restricts its ability to bind specific commitments and casts doubts over its long-term effect on the development of binding international law. As such, the GCR is an essential but flawed development in the evolution of the world refugee protection regime.<sup>30</sup>

#### IV. NATIONAL ARRANGEMENTS AND SUPPORT PLATFORMS

Establishment of National Arrangements and Support Platforms is one of the most fundamental components to strengthen refugee responses. National Arrangements – They are headed by host governments and aim to facilitate coordination among relevant stakeholders at the national level. Such arrangements and functions as coordination

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28 Gillian D. Triggs and Patrick C. J. Wall, “‘The Makings of a Success’: The Global Compact on Refugees and the Inaugural Global Refugee Forum”, 32 *International Journal of Refugee Law* 283 vol. (2020).

29 *Id.*

30 Samaddar, *supra* note 24, at 12.

mechanisms, aligning refugee protection and assistance with national development plans to ensure a comprehensive approach. They also function as bodies of coordination that ensure humanitarian development and peace actors act in accordance with national leadership.<sup>31</sup> Support Platforms- While National Arrangements function at a national level, support platforms function at global or regional levels to mobilise political, financial and material support to specific situations of refugee crises. They are an adaptable instrument for mobilising contributions from states, international organisations, private sector actors, and civil society entities. Furthermore, they function as a crucial matchmaker of needs with resources, especially during emergencies, and nurture a more equitable environment of sharing responsibilities.<sup>32</sup> For instance, Solutions Strategy for Afghan Refugees (SSAR)<sup>33</sup> Support Platform and IGAD<sup>34</sup> Support Platform for Somali refugees are a few examples of Support Platforms. They facilitate burden-sharing and highlight the importance of collective action beyond immediate humanitarian relief.

#### IV.1 Global Refugee Forums and Monitoring Pledges

The Global Refugee Forum (GRF)<sup>35</sup> is held every four years and is the main platform states and other stakeholders announce public pledges and contributions towards achieving the aims and objectives of the GCR. The Forum ensures a culture of shared responsibility and offers an orderly setting for commitment-making in such areas as resettlement, resources, legal change, and development support. Pledge tracking is done using a voluntary reporting system by UNHCR, which gathers information on progress and challenges. Reports increase transparency, promote peer accountability, and promote good practices. While the reporting mechanism is non-binding, it induces normative pressure and reputational incentives that can induce compliance.<sup>36</sup> Furthermore, other noteworthy accomplishments from the first edition of GRF in 2019 include more than 1,400 promises from a plethora of actors, including

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31 *Global Compact on Refugees*, *supra* note 12, at 6.

32 *Id.*

33 *SSAR Support Platform*, *supra* note 21, at 10.

34 IGAD, *supra* note 22, at 10.

35 UNHCR, *Global Refugee Forum*, (<https://www.unhcr.org/about-unhcr/overview/global-compact-refugees/global-refugee-forum>) (last visited May 3, 2025)

36 Dick & Rudolf, *supra* note 16, at 8.

but not limited to private sector businesses, governments, academic institutions, and refugee-led organisations. The commitments were made in areas such as education, work, access to energy, and responses to statelessness.<sup>37</sup> In 2023, from 168 countries, over 4000 participants attended the Forum, including 320 refugee delegates. Additionally, around 10,000 people followed the proceedings online. States and other non-state actors announced pledges estimated 2.2 billion USD in new financial commitments. The GRF 2023 was co-convened by 5 states, namely- Columbia, France, Japan, Jordan and Uganda, and co-hosted by the Government of Switzerland and UNHCR.<sup>38</sup>

#### **IV.2 Role of Regional and Sub-Regional Approaches**

Regional and subregional institutions are becoming increasingly seen as key players in the application of the GCR. Regional Cooperation – They are seen as an aid in addressing issues of displacement that cut across national borders and encourage responses based on specific regional contexts.<sup>39</sup> Projects such as the Comprehensive Regional Protection and Solutions Frameworks (MIRPS)<sup>40</sup> in Central America and the IGAD Nairobi Declaration<sup>41</sup> in the East African Region are a few examples of the ways regional actors can offer a framework for coordinated action. Moreover, these mechanisms assist states to share information, harmonise asylum policies, support durable solutions and enhance protection standards. Subregional Cooperation – Similar to regional cooperation, they also assist and encourage solidarity among neighbouring countries, countering unilateral actions that may aggravate refugee crises. By establishing responses within regional frameworks, states create more politically and sustainably orientated solutions.<sup>42</sup>

#### **IV.3. Integration of Host Communities and Refugees**

One of the core principles of the GCR is the promotion and development of refugee self-reliance and socio-economic integration of refugees into

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37 *Global Refugee Forum 2019*, *supra* note 10, at 6.

38 UNHCR, *Global Refugee Forum 2023*, (<https://www.unhcr.org/events/global-refugee-forum-2023>) (last visited May 3, 2025).

39 *Global Compact on Refugees*, *supra* note 12, at 6.

40 MIRPS, *What Is the MIRPS?*, (<https://mirps-platform.org/en/what-is-the-mirps>) (last visited May 3, 2025).

41 IGAD, *supra* note 22, at 10.

42 *Global Compact on Refugees*, *supra* note 12, at 6.

the host countries. The Compact emphasises the fact that assistance that is provided to the refugees must be integrated into national service delivery systems—like health, education, and labour—rather than operating through parallel humanitarian systems. Both the host countries and the displaced benefit by including refugees. Social cohesiveness is promoted, dependence is reduced, and the potential for economic and social contribution by the refugees is unlocked. It is also urged that the development partners facilitate this by enhancing public facilities, increasing opportunities for livelihoods, and fulfilling infrastructure needs. Projects such as Uganda's Self-Reliance Strategy<sup>43</sup> and Ethiopia's Jobs Compact<sup>44</sup> illustrate how inclusive policy can transform refugee assistance models. In Uganda, refugees enjoy the right to work, freedom of movement, and access to national health and education services, promoting a more dignified and sustainable protection approach. Overcoming impediments, such as discrimination, legal challenges, and lack of resources, is necessary for the successful integration of the refugees. Equal access to services and opportunities is also pertinent so as to avoid sentiments of resentment and tension, which is another reason why host community support is crucial. Investment in both refugees and host communities are therefore imperative for the success of inclusive refugee policies.<sup>45</sup>

#### **V. GCR: A FAILED ATTEMPT AT NON-REFOULEMENT OR A RIGHT STEP TOWARDS REFUGEE POLICY?**

GCR has emerged as a landmark in the realm of international refugee protection, but it has also attracted a significant amount of criticism. This section outlines the major criticisms put forth by eminent scholars. The Compact discusses in detail the root causes of displacement and attributes the responsibility to the countries of origin. Thereby ignoring the role and influence of external powerful-state interventions. Hence, the GCR is criticised for its failure to recognise third-party interventions in creating refugee flows. In Afghanistan, Iraq, Libya and Syria, military intervention by the West is the main cause of huge refugee outflows.

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43 UNHCR, *Uganda Self-Reliance Strategy*, (<https://www.unhcr.org/sites/default/files/legacy-pdf/41c6a19b4.pdf>) (last visited May 3, 2025).

44 World Bank, *New Hope: Ethiopia's Bold Move Grants Refugees the Right to Work*, (<https://www.worldbank.org/en/news/feature/2024/11/07/ethiopia-grants-refugees-the-right-to-work>) (last visited May 3, 2025).

45 Al Fara, *supra* note 4, at 4.

The omission of this context offers a partial and biased assessment of forced displacement and effectively shields the majority of external actors from being held accountable. In addition to encouraging peacebuilding in fragile nations, addressing the underlying reasons necessitates a critical analysis of the activities of international powers that destabilise areas through sanctions, proxy conflicts, and interventions. This silence runs the danger of restricting effective remedies and extending cycles of displacement.<sup>46</sup>

### **V.1. Dilution of International Refugee Law Principles**

Critics argue that the Global Compact on Refugees steers the focus away from the core principles of refugee and human rights law towards a more pragmatic and state-centred management of refugee flows. By giving priority to “easing pressure on host countries”<sup>47</sup> as a core objective, the Compact runs a risk of downgrading the importance of the right to seek asylum, the cornerstone of international refugee protection. As a result, the right to seek asylum risks getting sidelined, and as a secondary matter, restrictive border practices, de facto get affirmed, similar to the practices which have become increasingly common in Europe and North America. This management approach might entail the legitimisation of techniques like pushbacks, externalisation of the asylum process, and general deterrence practices.<sup>48</sup> These trends risk undermining the normative system enshrined in the 1951 Refugee Convention.

### **V.2. Compromising the Principle of Voluntary Repatriation**

The treatment of the Compact relating to voluntary repatriation also introduces significant risks for refugee protection. By proposing that repatriation can proceed without political solutions in the country of origin<sup>49</sup>, the legitimacy of what is supposed to be a voluntary, safe and dignified return is undermined. History has been a witness that premature and coercive returns have led to the re-displacement of refugees and the repetition of the cycle of violence and fear of persecution. In addition to this, the removal of non-refoulement

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<sup>46</sup> B. S. Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back”, 30 *International Journal of Refugee Law* 630 vol. (2018).

<sup>47</sup> *Global Compact on Refugees*, *supra* note 12, at 6.

<sup>48</sup> Chimni, *supra* note 47, at 17.

<sup>49</sup> *Global Compact on Refugees*, *supra* note 12, at 6.

mentions in between the drafts of the GCR has sparked concerns that it provides a political cover to states to avoid their responsibilities and send back refugees to their countries of origin, regardless of the prevailing conditions.<sup>50</sup> Hence, protecting the principles of non-refoulement proves to be a central theme of the refugee protection framework.

### **V.3. Insufficient Protection for Refugee Women and Children**

Women and children are vulnerable groups among the already vulnerable status of refugees. Although few provisions on the protection of women and children are present in the GCR, they are criticised for the lack of enforceability and precision. While alternatives for child detention are present, they are not explicitly linked to their legally binding counterpart conventions, such as the Convention on the Rights of the Child (CRC) or UNHCR's own guidelines on child protection.<sup>51</sup> In the same manner, the Compact's wording concerning women's rights is still aspirational and not operational. Given that women and children make up a majority among refugee populations, omitting to firmly secure their rights in legally enforceable frameworks and platforms have the possibility of maintaining conditions of persistent vulnerability, violence, and marginalisation within refugee responses. Protection frameworks are required to rise above rhetorical obligations and confront deep-seated structural inequalities that unduly impact disadvantaged groups.

### **V.4. Weak Mechanisms for Responsibility Sharing**

Despite introducing comprehensive mechanisms for responsibility sharing, such as the Support Platform and the GCF, it is argued that the GCR fails to meaningfully alter the voluntary nature of international burden-responsibility sharing. The Compact falls short of making binding obligations or enforceable quotas for the resettlement of refugees.<sup>52</sup> Phrases such as "taking into account the absorption capacity"<sup>53</sup> are intentionally ambiguous, allowing states to exercise broad discretion in limiting their commitments. In reality, this

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<sup>50</sup> Chimni, *supra* note 47, at 17.

<sup>51</sup> *Id.*

<sup>52</sup> Chimni, *supra* note 47, at 17.

<sup>53</sup> *Global Compact on Refugees*, *supra* note 12, at 6.

perpetuates the status quo whereby a few nations—usually within the Global South—shoulder a disproportionate burden to take in refugees while richer nations make symbolic economic pledges or conditional resettlement offers. Effective sharing of burden must be accompanied by more transparent indicators, binding commitments, and international accountability mechanisms.

### **V.5. Inadequate Regional Focus**

The generalised terminology used in the GCR for regional and subregional cooperation is not sufficient to capture the distinctive challenges that many regions face. For instance, refugees often remain in a state of legal limbo without government protection mechanisms in Asia, where few countries have acceded to the 1951 Convention or its 1967 Protocol. North American and European policies are transferring protection responsibilities to other actors increasingly, diluting the spirit of global solidarity.<sup>54</sup> Regional annexes that had identified specific operational, political, and legal shortcomings and provided tailored solutions for enhancing regional refugee protection would have been an integral part of a truly successful compact.

### **V.6. Questionable Role Of UNHCR**

Another criticism revolves around the duality of UNHCR as both the architect and the implementer of the GCR. The dependence of UNHCR on major countries' voluntary contributions jeopardises its independence, further raising concerns about its ability to observe state behaviour without bias.<sup>55</sup> Additionally, relying solely on UNHCR for supervision could limit external scrutiny regarding the proper implementation of the Compact. According to critics, an independent monitoring organisation which is similar to human rights treaty-monitoring committees should be established so as to objectively evaluate compliance and provide refugee opinions more weight within the accountability framework.

### **V.7. Inadequate Protection for Forced Migrants outside the 1951 Refugee Convention**

Aleinikoff, highlights the Global Compact for Refugees (GCR)'s inability to include protection for displaced individuals beyond the traditional

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<sup>54</sup> Chimni, *supra* note 47, at 17

<sup>55</sup> *Id.*

definition of refugees in the 1951 Convention. Despite the shift in the understanding of international perception of who requires protection, tens of millions of displaced individuals still do not have official international protection through current legal regimes. The GCR originally contained more robust language to acknowledge wider categories but eventually diluted such commitments in the face of pressure from states concerned about widening legal obligations. The final version of the GCR avoids substantive extension of protection categories and defers decisions on protection to state discretion. Internally displaced persons (IDPs) are also given only brief mention in the GCR, fragmenting protection efforts across two separate international instruments.<sup>56</sup>

## VI. ACHIEVEMENTS

Despite all the shortcomings, it is also pertinent to take note of all the achievements of the GCR. In December 2019, the world's first Global Refugee Forum (GRF) relaunched the response to displacement and assistance for host communities, generating around 1,400 commitments and donations.<sup>57</sup> Till now, 3421 pledges have been raised, and out of them, 588 (17.19%) have been fulfilled, and 1225 (36.88%) are in the planning stage.<sup>58</sup> Here are some examples that show notable progress. Malawi obtained a 10 million USD grant from the Global Partnership for Education's Accelerated Education COVID-19 Response Grant Fund in March 2020 and incorporated refugees into its national Education COVID-19 Preparedness and Response Plan. This helped Malawi carry out its larger commitment to include refugees in its National Development Agenda, which benefitted the host community as well as the refugees.<sup>59</sup> In response to the COVID-19 outbreak, Sesame Workshop created a special broadcast of Ahlan Simsim in Arabic, a brand-new Arabic-language version of Sesame Street that debuted in February 2020. Children impacted by the Rohingya and Syria crises get high-

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<sup>56</sup> T. Alexander Aleinikoff, "The Unfinished Work of the Global Compact on Refugees", 30 *International Journal of Refugee Law* 611 vol. (2018).

<sup>57</sup> *Global Refugee Forum 2019*, *supra* note 10, at 6.

<sup>58</sup> *Global Refugee Forum 2023*, *supra* note 39, at 15.

<sup>59</sup> UNHCR, *Successes, Challenges and Progress: The Impact of Pledges on the Lives of Refugees and Host Communities*, (<https://globalcompactrefugees.org/news-stories/successes-challenges-and-progress-impact-pledges-lives-refugees-and-host>) (last visited May 3, 2025).

quality early childhood education through this Sesame Street adaptation.<sup>60</sup> Following Germany's promise at the Forum to offer the programme to other partners, inviting and encouraging other states to participate, the Albert Einstein German Academic Refugee Initiative, or DAFI programme, has broadened its base of support during the past six months. In response to this offer, the Czech Republic and Denmark now encourage refugees to pursue higher education in nations that host them.<sup>61</sup>

On July 16, 2020, the University of Essex and UNHCR held a high-level online signing ceremony and debate to officially start the Secretariat of the Global Academic Interdisciplinary Network (GAIN). In order to further research, education, and scholarships in support of the four goals of the Global Compact, the Network aims to bring together academics from the global south and north.<sup>62</sup> By offering more than 6,000 hours of legal assistance and representation to refugees in Nairobi, Garissa, the Daadab and Kakuma refugee camps, Kalobeyei, and other urban areas in Kenya this year alone, the Refugee Consortium of Kenya (RCK) reported progress towards their commitment to meaningful refugee participation. RCK has used technology to continue offering free legal help remotely over the phone and sharing legal material online, even in the face of the COVID-19 pandemic's hurdles.<sup>63</sup> In March 2020, the National Durable Solutions Secretariat and the Federal Government of Somalia, through the National Commission for Refugees and Internally Displaced Persons (NCRI), organised a "whole of government" assessment to determine the causes of flooding in the country's south-central regions, which is a major source of frequent displacement for millions of people. Important progress on the commitment to create sustainable flood management has been made possible by a development strategy and long-term vision to confront (and prevent) forced relocation, including local leaders and guaranteeing local ownership of potential answers. The pledge's ultimate goal is to prevent further displacement and establish long-term employment possibilities

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

for all people, including host communities, internally displaced people, and returnees.<sup>64</sup>

## VII. CONCLUSION

The Global Compact on Refugees is a transformative yet inadequate step within the realm of international refugee governance. Despite the encouragement of principles of solidarity, sharing of responsibility-burden, and reaffirmation of the policy of non-refoulement, its lack of legally binding obligations which assure systematic and equitable assistance to host states and displaced persons remains an ongoing concern. The GCR's aspirational language raises questions about the capacity of the GCR to achieve any real change beyond symbolism, especially in light of its voluntary and non-binding nature and the various ambiguities tied to its implementation. Despite this, the GCR has made important attempts to demonstrate its normative potential in the international sphere through its achievements, including the mobilisation of multi-stakeholder cooperation and the launching of a number of concrete projects and engagements. Ultimately, the success of the GCR is conditional on the political will of the international community to decisively and collectively transition promises into continued action on behalf of the millions globally who are affected by forced displacement.

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<sup>64</sup> *Id.*

## THE HUMAN RIGHTS PARADIGM OF REFUGEE PROTECTION AND WOMEN REFUGEES

PRIYA ANURAGINI\*

### ABSTRACT

This paper traces the linkages between international refugee regime and international human rights law. The aim is to assess how the human rights regime has been utilized in order to fill the “grey areas of refugee regime”.<sup>1</sup> It is argued that the developments in the international human rights regime starting from the late 1960s has been particularly useful in recognition of women refugees and enhancing the scope of international protection available to them. This is most visible in the definition of refugee and the scope of non-refoulement. In regard to the definition of the refugee, the paper examines the impact of human rights on the understanding of persecution and the establishment of the causal relationship between the persecution and the grounds given in the 1951 Refugee Convention. Furthermore, the paper examines the principle of non-refoulement and its broader scope in human rights instruments. Assessment of non-refoulement as a principle of customary international law is also made. Particularly, in the context of difficulties posed by non-entrée regimes for women refugees in seeking protection, the paper investigates if the principle of non-refoulement ensures that asylum seekers/ refugees have access to a safe country of refuge and a prompt access to refugee status determination process. The paper serves an important purpose in the Indian context as it underlines India’s obligations towards women refugees within the broader human rights regime despite not being a signatory to the 1951 Refugee Convention.

Key Words: *Women Refugees, Non -Refoulement, Persecution, 1951 Refugee Convention, Human Rights*

### I. EVOLUTION OF THE RELATIONSHIP BETWEEN REFUGEE PROTECTION REGIME AND INTERNATIONAL HUMAN RIGHTS LAW

While it is established now that there are intimate linkages between international refugee law and international human rights law, modern international refugee regime was conceived distinctly from the

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1 Alice Edwards, *Human Rights, Refugees, and the Right to Enjoy Asylum* (OUP 2005).

international human rights regime.<sup>2</sup> In fact, the need for an international refugee regime was felt not because of the innate respect for human dignity but because of states asserting their sovereignty aggressively through “generalization of the migration controls during the interwar period”.<sup>3</sup> The earliest version of international refugee regime emerged as a “humanitarian exception to the protectionist norm”.<sup>4</sup> James C. Hathaway has argued that the pre-1950 refugee protection regimes had a “selective human rights focus” in as much the protection was afforded only to persons who claimed violation of civil and political rights.<sup>5</sup> However, the same protection was not available to those who claimed violation of human dignity in some other manner. Thus, even the selective human rights focus of the pre-modern refugee agreements was only to accommodate and reinforce the “economic and political hegemony of the major western states during this time.”<sup>6</sup>

Usually, the beginning of the modern refugee regime is traced to the drafting of the 1951 Refugee Convention (Convention).<sup>7</sup> The drafting of the Convention was necessitated by the urgent problems of the refugees and stateless persons in the aftermath of the second world war. While, the human rights dimension of the refugee protection was invoked and some of the delegations also referred to the Universal Declaration of Human Rights (UDHR) during the deliberations on the Convention, it did not incorporate a human rights centric vision of refugee protection.<sup>8</sup> The debates during the drafting of the Convention and

2 James Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law”, *Harvard International Law Journal*, vol. 31, no. 1 (1990), pp. 129-183.

3 Vincent Chetail, ‘Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law’ in Ruth Rubio-Marín (ed.), *Human Rights and Immigration* (OUP 2014), pp.19-72 at p. 28.

4 Hathaway, *note 2*, p. 137.

5 *Ibid.*, p. 134.

6 *Ibid.*, p. 142.

7 Alexander Betts, “The Normative Terrain of the Global Refugee Regime”, *Ethics and International Affairs*, vol.29, no. 4 (2015) pp. 363-375.

8 As per the delegate of the Yugoslavia, the introduction of temporal restriction in the Convention was discriminatory and not in accordance with the principles of the UDHR or the Charter of the UN. However, Yugoslav recommendation on the same was negated during the drafting of the Refugee Convention.

*Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, Summary record of the 21st meeting, held at the Palais des Nations, Geneva, on Saturday, (14 July 1951), UN Doc., A/CONF.2/SR.21.

adoption of the final text, which remained limited in scope, clearly indicates that the Convention was intended to herald a restrictive, partial, and selective refugee regime which only limited the state's unfettered sovereignty to the bare minimum.

Notably, the UDHR was adopted in the 183<sup>rd</sup> Plenary meeting of the General Assembly on December 10, 1948. However, the conference of plenipotentiaries which began in July, 1951 to finalize the draft of the Convention does not even consider the possibility of making the relevant rights granted by the UDHR enforceable for the refugees.<sup>9</sup> In fact it was pointed out during the deliberations on the Convention that the UDHR "dealt only with principles and ideals and as such was not an instrument to which reference could satisfactorily be made in a legal text".<sup>10</sup> Thus, the rights granted by the UDHR particularly the right to seek and enjoy asylum from persecution – a very important right for the modern refugee- was never conceived to be within the purview of the Convention.<sup>11</sup> Even the "implementation of the Refugee Convention took place in splendid isolation from the developing corpus of international human rights law for much of its early life".<sup>12</sup>

However, the expansion of the international human rights law since the mid twentieth century has ensured that different aspects of the Refugee Convention have been understood and defined by "reference to the new and growing body of human rights standards".<sup>13</sup> The human rights based roots of the Convention has been traced by referring to its Preamble which provides as follows:

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9 UDHR, consisting of a preamble and thirty articles, is not a Convention by which states are bound to give effect to fundamental human rights.

10 *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the 29th Meeting*, Palais des Nations, Geneva (19 July 1951) UN Doc A/CONF.2/SR.29.

11 In the 29th meeting the French delegation had pointed that the right of asylum was "infinitely more important than the grant of refugee status". However he conceded that the text of the Refugee Convention did not recognize that right. See *Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons: Summary Record of the 29th Meeting*, Palais des Nations, Geneva (19 July 1951) UN Doc A/CONF.2/SR.29.

12 V. Chetail, *note 3*, p. 27.

13 *Ibid.*

“Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to **assure refugees the widest possible exercise of these fundamental freedoms**”. (Emphasis Supplied)<sup>14</sup>

Chetail has argued that “this evasive but symbolic reference to human rights [ in the preamble of the Refugee Convention] has been retrospectively interpreted by domestic jurisdictions as informing the whole rationale of the Geneva Convention”.<sup>15</sup>

While traditionally, this inter-relationship between the two disciplines was limited to a “causal link”<sup>16</sup> with human rights violations seen as the cause of refugee flows, gradually the relationship of two disciplines “ has shifted to an integrative one which concentrates on the complementary protection to the refugee status”<sup>17</sup> under the 1951 Refugee Convention. In fact, regarding the relationship between two disciplines and its effects on the rights of refugees, Chetail has argued that the human rights law can no longer be seen as supplementary and secondary source of law in case of refugee protection rather “ human rights law has radically informed and transformed the distinctive tenets of Geneva Convention to such an extent that the normative frame of forced migration has been displaced from refugee law to human rights law ... This assertion is grounded on three major pillars of the refugee protection regime namely the access to international protection, the content of such protection and its implementation scheme”.<sup>18</sup>

## II. RECOGNITION AND EXPANSION IN WOMEN’S HUMAN RIGHTS AND WOMEN REFUGEES

The reference to human rights standards in interpretation of the 1951 Refugee Convention has been particularly relevant in case of women

14 Preamble, Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137.

15 Vincent Chetail, *note 3*, p. 20.

16 *Ibid.*, p. 19.

17 *Ibid.*, p. 20.

18 *Ibid.*, p.22.

refugees. International women's movement had led to significant expansion of "international and regional human rights instruments that provide women with specific rights".<sup>19</sup> In the article "Becoming Human: The origin and development of women's human rights",<sup>20</sup> Arnone Fraser has described late 1960s to be "second wave of an openly feminist international women's movement"<sup>21</sup> which culminated in the United Nations organizing four world conferences on women<sup>22</sup> and designation of the year 1975 as the International year of women.<sup>23</sup> The period from 1976- 1985 was declared as the "UN Decade for Women : Equality Development, and Peace."<sup>24</sup> It was in this decade that the United Nations "Convention on the Elimination of all Forms of Discrimination Against Women(CEDAW)"<sup>25</sup> which is of "special significance in the context of women refugees"<sup>26</sup> was adopted. The third World Conference on Women held in Nairobi in 1985 led to the adoption of the "Nairobi Forward -Looking Strategies for the Advancement of Women"<sup>27</sup> which recognized the situation of women refugees as an area of special concern and stated that the

"refugee and displaced women are exposed to a variety of difficult situations affecting their physical and legal protection as well as their

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19 Tuuli Karjala, "Sixty Years of Silence: Gender Discrimination under International Refugee Law" PhD Dissertation at Stellenbosch University, (2016), p.48.

20 Arvonne S Fraser, 'Becoming Human: The Origins and Development of Women's Human Rights', *Human Rights Quarterly* Vol. 21, no. 4 (1999), pp. 853-906.

21 *Ibid.*, p. 893.

22 The four world conferences on Women took place in Mexico in 1975, Copenhagen in 1980, Nairobi in 1985, and Beijing in 1995 available at: <<https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>> accessed 20 July 2023.

23 UNGA Res 3010 (XXVII) (18 December 1972).

24 UNGA Res 3250 (XXX) (15 December 1975).

25 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979) 1249 UNTS 13 available at: <<https://www.refworld.org/legal/agreements/unga/1979/en/13757>> accessed on 04 August 2024.

26 UN High Commissioner for Refugees (UNHCR), "Note on Refugee Women and International Protection" 28 August 1990 EC/SCP/59 available at :< <https://www.refworld.org/reference/annualreport/unhcr/1990/en/41816>> accessed on 04 August 2023.

27 United Nations, World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, 1985.

psychological and material well-being. Problems of physical debility, physical safety, emotional stress and socio-psychological effects of separation or death in the family, as well as changes in women's roles, together with limitations often found in the new environment including lack of adequate food, shelter, health care and social services call for specialized and enlarged assistance. Special attention has to be offered to women with special needs. **Furthermore, the potential and capacities of refugee and displaced women should be recognized and enhanced**".<sup>28</sup> (Emphasis Supplied)

Vienna Declaration and Programme of Action, adopted in the World Conference on Human Rights in Vienna in 1993, also recognized that "gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated."<sup>29</sup> It was also emphatically pronounced in the Programme of Action that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights".<sup>30</sup>

The Fourth World Conference on Women held in Beijing recognized that women refugees face additional barriers to full equality and advancement and "continue to be vulnerable to human rights abuse during and after the flight".<sup>31</sup> Accordingly, one of the strategic objectives of the Conference was to "provide protection, assistance, and training to women refugees".<sup>32</sup> The World Conference also recognized the importance of close linkage between human rights and protection of

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28 UN, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development, and Peace*, 15-26 July 1985, UN Doc A/CONF.116/28/Rev.1, para 298.

29 UN, Vienna Declaration and Programme of Action (World Conference on Human Rights, Vienna, 14-25 June 1993) UN Doc A/CONF.157/23, para 18 available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>> accessed 20 July 2023.

30 *Ibid.*

31 United Nations, *Report of the Fourth World Conference on Women* (4-15 September 1995) UN Doc A/CONF.177/20, p. 92. available at: : <<https://documents.un.org/doc/undoc/gen/n96/273/01/pdf/n9627301.pdf?token=bCiyTXDGTJMdXV7xWh&fe=true>> accessed on 20 July 2023.

32 *Ibid.*, p. 62.

women refugees and suggested to “establish effective cooperation between the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees and other relevant bodies, within their respective mandates, taking into account the close link between massive violations of human rights, especially in the form of genocide, ethnic cleansing, systematic rape of women in war situations and refugee flows and other displacements, and the fact that refugee, displaced and returnee women may be subject to particular human rights abuse”.<sup>33</sup> The Conference also proposed that women refugees be made aware of their “human rights and recourse mechanisms available to them”.<sup>34</sup>

Thus, “the momentum created by UN decade on Women 1976-1985 and the Declaration of the world Conference on Human Rights that **women’s rights are human rights** began to filter into other areas of International Law including International Refugee Law.”<sup>35</sup> International human rights instruments such as CEDAW “facilitated the incorporation of women’s perspectives into the interpretation of the 1951 Convention and acknowledgement of gender-related persecution in the international plane”<sup>36</sup>

In 1985, the Executive Committee of the UNHCR(EXCOM) welcomed the “recommendations of the World Conference regarding the situation of refugee women”.<sup>37</sup> The EXCOM also explicitly recognized for the first time that the “refugee women and girls constitute the majority of the world refugee population and that many of them are exposed to special problems such as physical violence, sexual abuse, and

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33 *Ibid.*, p. 95.

34 *Ibid.*, p. 99.

35 Alice Edwards, 'Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950–2010' *Refugee Survey Quarterly*, vol.29, no.2, (2010), pp. 21-45. In this paper Alice Edwards discusses the feminist engagement with international refugee law and policy in five historical periods beginning from the “complete exclusion of women in the drafting of the main refugee instruments” to the contemporary focus on gender mainstreaming”.

36 *Ibid.*

37 Executive Committee of the High Commissioner’s Programme, ‘Refugee Women and International Protection’ No 39 (XXXVI) (18 October 1985), para (b) <<https://www.refworld.org/policy/exconc/excom/1985/en/41720>> accessed 22 May 2024

discrimination resulting from their vulnerable situation”.<sup>38</sup> EXCOM also clarified that it is open to the States.

“in exercise of their sovereignty to consider women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live as a **particular social group** within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention”.<sup>39</sup> (Emphasis in the original text).

Further, EXCOM highlighted the need for more involvement of women refugees in programmes meant for ensuring their “physical integrity, safety, and equality of treatment” and enjoined states to support UNHCR programmes aimed at making women refugees “self sufficient through educational and income generating projects”.<sup>40</sup> In due course, the UNHCR issued a number of guidelines focussing on the protection of women refugees including “Guidelines on the Protection of Refugee Women”,<sup>41</sup> “Guidelines on Gender-Related Persecution”,<sup>42</sup> “Guidelines on Membership of a Particular Social Group”,<sup>43</sup> and “Guidelines on Sexual violence against Refugees”.<sup>44</sup>

Accordingly, to assess the level of international protection available to women refugees, it is important to assess the scope of the 1951 Refugee Convention in view of the expansion led by the International human

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<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on the Protection of Refugee Women (Geneva, July 1991).

<sup>42</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (7 May 2002) HCR/GIP/02/01 available at :< <https://www.refworld.org/policy/legalguidance/unhcr/2002/en/31754>> accessed on 05 August 2024.

<sup>43</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 2: ‘Membership of a Particular Social Group Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees (7 May 2002): HCR/GIP/02/02 available at: <<https://www.refworld.org/policy/legalguidance/unhcr/2002/en/31818>> accessed on 05 August 2024.

<sup>44</sup> UN High Commissioner for Refugees (UNHCR), Sexual Violence Against Refugees: Guidelines on Prevention and Response (8 March 1995) available at :< <https://www.refworld.org/policy/opguidance/unhcr/1995/en/36317>> accessed on 05 August 2024.

rights regime. Accordingly, the next part of the paper looks at the two of the most important tenets of the refugee conventions – the definition of refugee, and the obligation of non-refoulment and examines the scope of these two obligations in view of the integral connection between refugee law and international human rights regime.

### III. REFUGEE STATUS AND WOMEN

To access protection within the Refugee Convention, the first and foremost requirement is to be a refugee within the meaning of the Convention. To qualify to be a refugee, the following four prerequisites need to be met:

- Persons claiming refugee status shall be outside their country of origin
- They should be unable or unwilling to avail themselves of the protection of their country
- Such unwillingness or inability shall be attributable to a well-founded fear of persecution
- Persecution must be based on the five grounds mentioned in the Convention namely race, religion, nationality, membership of a particular social group, and political opinion

In view of these requirements, there are three issues that women refugees face in accessing refugee status under the Convention.

The first issue is the ambit of persecution within the definition and whether it includes violence faced by women- including domestic, sexual violence perpetrated by non-state agents- within its ambit. The second issue pertains to the lack of explicit mention of gender as a ground from which “well-founded fear of persecution” may result and its impact on refugee status claims by women. The final is the stipulation that requires them to be outside their country of origin and puts the burden of getting recognized as a refugee on women. The final stipulation assumes that women have freedom of movement and that they can safely reach the territory of another state willing to recognize them as a refugee and grant protection. However, this usually is not the case particularly in the contemporary times when the states construct non-entrée regimes to prevent refugees from entering their barriers.

In view of these issues it is important to assess to what extent the developments in the refugee regime primarily led by the human rights

framework have been able to resolve these issues faced by women and enable them to access protection as a refugee. The first two issues pertaining to the ambit of persecution and the requirement of a causal link between persecution and the enumerated ground in the convention shall be discussed first and the final issue will be discussed in the section on non-refoulement.

#### **IV. SCOPE OF PERSECUTION & VIOLENCE FACED BY WOMEN**

As discussed earlier, the colonial and gendered nature of the definition of refugee often kept the “violations and persecutions pertinent primarily to women”<sup>45</sup> outside the scope of the ambit of persecution as mentioned in the Convention. The Convention constructs a male refugee, however, the human rights framework has led to an evolved understanding of persecution which “has provided the basis for the incorporation of many types of harm specific to women, including domestic violence and female genital mutilation”<sup>46</sup> into the ambit of the definition of refugee in the 1951 Convention. This section investigates the relationship between persecution and human rights violations to examine whether violence against women amounts to persecution within the Convention.

##### **IV.A Relationship Between Human Rights Violations and Persecution**

Persecution is one of the most important tenets of the refugee definition in the 1951 Refugee Convention. Usually to decide “whether an individual faces a risk of persecution requires identification of the serious harm faced in the country of origin and an assessment of the State’s ability and willingness to respond effectively to that risk”.<sup>47</sup>

To assess whether a restriction amounts to persecution within the meaning of the convention, “assessment of the complex set of factors is

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45 Jane Freedman, “Mainstreaming Gender in Refugee Protection” *Cambridge Review of International Affairs*, Volume 23, no.4, (2010), pp. 589-607.

46 Michelle Foster, *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation* (Cambridge University Press 2007).

47 Rodger Haines, *Gender-Related Persecution* (Cambridge University Press, June 2003).

required which includes nature of the freedom threatened, the nature and severity of the restriction, and the likelihood of the restriction eventuating in the individual case".<sup>48</sup>

However the convention does not define the term and according to Goodwin Gill & Jane McAdam "a margin of appreciation is left to States in interpreting this fundamental term and the jurisprudence, not surprisingly, is sometimes inconsistent".<sup>49</sup> To that end, it is useful to refer to uniform standards provided by "international human rights principles to interpret persecution".<sup>50</sup> According to Goodwin and McAdam "content of persecution is related to developments within the broader field of human rights".<sup>51</sup> James Hathaway has developed a human rights model to assess persecution.<sup>52</sup> For Hathaway, "International bill of rights comprising the UDHR, the ICCPR(International Covenant on Civil and Political Rights), and the ICESCR(International Covenant on Economic, Social, and Cultural Rights) constitutes a persuasive and compelling guide to the interpretation of being persecuted".<sup>53</sup> According to Hathaway "in assessing whether a particular act constitutes persecution, it is necessary to keep in mind that the international covenants impose different levels of obligation on state parties; thus assessment of whether a right has been breached varies according to the nature of the rights".<sup>54</sup> Accordingly, Hathaway defines persecution as "sustained or systemic failure of state protection in relation to one of the core entitlements".<sup>55</sup> Then, Hathaway suggests a "four level model to explain in what circumstances violation of such core entitlements will amount to persecution."<sup>56</sup> In the hierarchical model "four distinct types of obligations exist".<sup>57</sup> At the top in the hierarchy "are the rights contained

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48 Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed., (Oxford University Press 2007), p. 92.

49 *Ibid.*, p. 91.

50 Michelle Foster, *note 46*.

51 Guy S. Goodwin Gill and Jane McAdam, *note 48*.

52 Michelle Foster *note, 46*, p. 113.

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*, p. 114

56 *Ibid.*

57 *Ibid.*

in the UDHR that were codified into immediately binding form in the ICCPR and from which no derogation is permitted whatsoever, even in times of compelling national emergency. These rights include freedom from arbitrary deprivation of life, freedom from slavery, prohibition on criminal prosecution from ex-post facto offences, freedom of thought, conscience, and religion, protection against torture or cruel, inhuman or degrading punishment or treatment, and protection from imprisonment on the ground of failure to uphold a contractual obligation".<sup>58</sup> Hathaway has posited that "serious possibility of a **violation of a first category right will always** constitute a risk of persecution".<sup>59</sup> (Emphasis given)

In the second category are the rights recognized in the UDHR and "codified in binding form in the ICCPR, but from which states are permitted to derogate during a public emergency"<sup>60</sup> provided that the "derogation is to the extent strictly required by the exigencies of the situation and the measures taken are not inconsistent with other obligations of the states in international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin".<sup>61</sup> These rights include "freedom from arbitrary arrest or detention, the right to equal protection for all including children and minorities, the protection of personal and family privacy and integrity, the right in criminal proceedings to a fair and public hearing and to be presumed innocent unless guilt is proved, the right to internal movement, and choice of residence; the freedom to leave and return to one's country, liberty of opinion, expression, assembly and association, the right to form and join trade unions, and the ability to partake in government, access public employment, without discrimination, and vote in periodic and genuine elections".<sup>62</sup> As per Hathaway "failure to ensure any of these rights will generally constitute violation of state's basic duty of protection, unless it is demonstrated that the government's derogation was strictly required by the exigencies of a real emergency situation, was not inconsistent with other aspects of international law,

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<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171, Art. 4(1)

<sup>62</sup> Michelle Foster, *note 46*, p. 115.

and was not applied in a discriminatory way.<sup>63</sup> In the third category Hathaway puts those rights which are “contained in the UDHR and codified in the ICESCR such as the right to work including just and favourable conditions of employment, remuneration and rest, entitlement to food, clothing, housing, medical care, social security, and basic education, protection of the family, and the freedom to engage and benefit from cultural, scientific, literary and artistic expression”.<sup>64</sup> For Hathaway, “ICESCR does not impose absolute and immediately binding standards of entitlement, but rather requires states to take steps to the maximum of their available resources to progressively realize rights in a non-discriminatory way.”<sup>65</sup> and state may said to be in breach of the obligations in the third category “where it either ignores these interests notwithstanding the fiscal ability to respond, or where it excludes a minority of the population from their enjoyment”.<sup>66</sup> The fourth and the final category “comprises two rights contained in the UDHR which were not codified into either the ICCPR or ICESCR namely the right to own, and be free from arbitrary deprivation of property, and the right to protected against unemployment. These rights will not ordinarily suffice in and of themselves as the foundation for a claim of failure of state protection because they are not subject to binding legal obligation”.<sup>67</sup>

Thus, Hathaway’s four – level model defines persecution with reference to core human rights which has been adopted in some jurisdictions such as New Zealand, Canada, and UK.<sup>68</sup> Violation of economic and social rights may also amount to persecution in this model thus enabling greater recognition to the refugee status claims of women. However, as per Tuuli Karjala, Hathaway’s model “creates a hierarchy of rights in which economic, social and cultural rights are less significant, and

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63 According to Michelle Foster “others derogable provisions of the ICCPR are also included in the second category such as the right to self-determination, the right to be treated with humanity and dignity when deprived of liberty and the right of minorities to enjoy their own culture and language”. See Michelle Foster, *note 46*, p. 115.

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 *Ibid.*, p. 116.

68 *Ibid.*

consequently their protection is less absolute than the protection of civil and political rights".<sup>69</sup> Thus, the model seems to conform to the dominant gendered assumption of 1951 Refugee Convention and even the international human rights law and reinforces the public-private distinction.

According to Ekaterina Yahyaoui Krivenko "Hathaway's classification creates in the mind of decision makers a hierarchy of rights and values attached to them, reinforcing the much criticized public/private distinction in human rights law. It also creates an impression that civil and political rights are more important for the protection of the human dignity than economic and social rights. This, in turn, places an additional burden on many non-traditional claimants, including women".<sup>70</sup>

Though Michelle Foster has argued that "hierarchical model in the Hathaway scheme was intended to convey the point that measuring implementation of a right and consequently the question whether a relevant right has been breached, is less straightforward in the context of economic and social rights; not that such rights are regarded as normatively less important than non-derogable civil and political rights".<sup>71</sup>

The importance of Hathaway's model lies in linking human rights violations to persecution but in as much as model prima facie seems hierarchical, its utility for women refugees may be limited.

#### IV.B Violence against Women and Persecution

Women endure violence on a day-to-day basis. As per data from UN Women, "an estimated 736 million women -almost one in three- have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their life."<sup>72</sup> Thus, it may be

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<sup>69</sup> Tuuli Karjala, *note 19*, p. 85.

<sup>70</sup> Ekaterina Yahyaoui Krivenko, 'Muslim Women's Claims to Refugee Status Within the Context of Child Custody Upon Divorce Under Islamic Law', *International Journal of Refugee Law*, vol. 22, no.1 (2010), pp. 48-71.

<sup>71</sup> Michelle Foster, *note 46*, p. 120.

<sup>72</sup> UN Women, Facts and figures: Ending violence against women available at: <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>> accessed on 20 July 2024.

said that violence against women is a pervasive phenomenon and universal in scope. Important for our purposes, however, is the question that which forms of violence or gender-related persecution is considered as persecution for the purposes of the 1951 Refugee Convention.

A huge percentage of violence endured by women is gender related. Thus its important to understand gender related persecution. As per Jane Freedman, “gender-related persecution encompasses persecution which is done to women because they are women, but also persecution which is carried out for other reasons but takes a particular form because the victim is a woman”.<sup>73</sup> The link between gender and persecution may be present in different ways – gender may be a reason of persecution or gender may be responsible for the form of persecution or gender may be a “risk factor that makes a woman fears of persecution more well founded than that of a man in similar circumstances”.<sup>74</sup> However conceptually these cases are different i.e. persecution as a woman is different from persecution because they are women. For instance, if a woman is arrested in a protest rally and raped in prison, the form of persecution is gendered but not the reason for persecution. In case of honour killing of a woman related to her choice of partner for marriage, the woman is persecuted because she is a woman who does not conform to the normative obligation imposed by the society or family but the form of persecution may not necessarily be gendered. In certain instances, a woman is persecuted both because she is a woman and also as a woman. Like in case of FGM, both the cause and the form of persecution is gendered. Thus, FGM is carried out on women because they are women and also it “is a type of persecution which can only physically happen to women”.<sup>75</sup>

It is important that both persecution because of being a woman and persecution as a woman are included within the scope of persecution as understood in the Convention or the broader international human rights regime. However as discussed in the next paragraph there are many challenges in the recognition of the same.

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73 Jane Freedman, *Gendering the International Asylum and Refugee Debate* (2nd edn, Palgrave Macmillan 2016) p. 47.

74 *Ibid.*

75 *Ibid.*, p.48.

#### IV.C Issues in Recognition of Gender-Related Persecution

There are primarily three issues that have diluted the recognition of gender-related persecution within the 1951 Refugee Convention and the broader international human rights regime. The first is the normalization of violence against women as “natural resulting from women’s vulnerability”.<sup>76</sup> In many instances, gender-related persecution is not recognized as the violence faced by women is often normalized and “considered as part of the universal relations between men and women”.<sup>77</sup> Thus the violence is considered “less serious and less worthy of official attention”.<sup>78</sup> For instance, intimate partner violence faced by women may be seen more as “acceptable form of social control within the family”<sup>79</sup> rather as persecution within the 1951 Refugee Convention. However, as per Jane Freedman, “gender-related persecution occurs because of gendered relations of power within different societies and they are not merely the result of individual acts of violence or private matters but part of larger structures and ideologies within which women have unequal shares of political, economic, and social power”.<sup>80</sup> In this regard, it is important to recognize that a woman who is being beaten in her home every day by her husband or other relatives may be as much a victim of persecution as a political prisoner who is being beaten inside the prison.<sup>81</sup> Similarly, sexual violence against women should also not be seen as a result of “private feelings of lust or desire”<sup>82</sup> but rather linked to the subordinate position of women in the society like most other violence faced by women are. However, the gendered nature of the Convention has often led to these types of violence not being considered as political oppression rather deemed as private.

The second issue that may have an adverse impact on women’s claim of persecution is attributing violence faced by women to their cultures which may then be characterized as regressive in comparison to what may be referred as “western progressive culture”. The problem with

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<sup>76</sup> Tuuli Karjala, *note 19*, p. 76

<sup>77</sup> Jane Freedman, *note 73*, p.79.

<sup>78</sup> *Ibid.*, p.78.

<sup>79</sup> *Ibid.*, p. 57.

<sup>80</sup> *Ibid.*, p. 49.

<sup>81</sup> *Ibid.*, p. 78

<sup>82</sup> *Ibid.*, p. 79.

this approach is that it pits women against their culture. Thus, women seeking refugee status are co-opted to paint a particular culture or a country as regressive. While this may sometimes be beneficial for women in accessing refugees status, when the form of violence perpetrated is considered “exotic” in the host country or suit its political narratives, it may undermine the claims of large number of women, violence endured by whom may simply be characterized as routine or normal. According to Freedman “to ascribe persecution or violence merely to the result of other cultures is to miss the extent to which these persecutions are a product of gendered relations of power which underlie all cultures and societies, manifesting themselves in differing ways at different times and in different places”.<sup>83</sup> The fact that “women are seen as bearers of national identity...explains why the control of their bodies and their sexuality is deemed so important in many instances. This control will take different forms and will affect women, from different ethnic classes and ethnic groups in different ways”.<sup>84</sup>

The third issue is the perpetration of violence by non-state actors not directly covered by the Convention. In many societies women inhabit what is considered as a private space. Thus, the persecution against them is carried by private actors and not by the agents of the state. This issue is a direct manifestation of the public-private distinction reproduced in the convention where “public persecution falls under the jurisdiction of refugee law framework while the private persecution does not”.<sup>85</sup> Gradually, with the advent of human of human rights standards, there has been normative shift in this requirement. As per the UNHCR Handbook – “where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection”.<sup>86</sup>

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83 Alice Edwards, *Violence Against Women Under International Human Rights Law* (Cambridge University Press 2011), p. 49.

84 *Ibid.*, p. 50.

85 Tuuli Karjala, *note 19*, p. 87.

86 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, February 2019, available at: <<https://www.unhcr.org/in/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>> last accessed on January 25, 2024.

#### IV.D Developments in International Human Rights Regime & Wider Recognition to Gender Related Persecution for Refugee Status

Having identified the issues that limit recognition to gender-related persecution faced by women refugees, this section discusses the developments in the international human rights regime which have led to incorporation of violence faced by women as persecution for the purposes of seeking refugee status

As discussed earlier, persecution is usually understood as “serious harm in the country of origin and state’s inability or unwillingness to respond effectively to that risk”.<sup>87</sup> In order to get violence against women recognized as serious harm and consequently as persecution, intervention “has to be constructed in the language of the state and of human rights violations. Persecution is thus linked to “serious human rights violations”.<sup>88</sup>

As per Alice Edwards, when she “began working for the UNHCR in the 1990s in Sarajevo, Bosnia, and Herzegovina at the end of violent conflict there”, her job was “to find solutions for the Kosova, Albanian, and Roman refugees who had sought asylum in Bosnia, in particular the many victims of rape and sexual violence”.<sup>89</sup> However, Alice Edwards could not “proceed directly from the violence the women and girls had suffered to a finding of persecution”; rather “she had to travel indirectly via an explicit human rights provision because rape and sexual violence committed against women in times of war was seen as an unfortunate consequence of war, or as personal rather than political and thus outside the boundaries of international law. Thus, for counting as persecution, violation had to be linked to explicit violation of human rights. Understanding of persecution “remained mostly confined to instances of torture and inhuman treatment, carried out against political dissidents by public authorities in state custody, and not to victims of rape that took place in their homes, in hotels turned into rape camps, or on military bases”.<sup>90</sup>

Also, at that time there was no “international prohibition on violence against women”.<sup>91</sup> Even the CEDAW, one of the nine core international

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<sup>87</sup> Guy S. Goodwin Gill and Jane McAdam, *note 48*, p. 92.

<sup>88</sup> Tuuli Karjala, *note 19*, p. 81.

<sup>89</sup> Alice Edwards, *note 83*.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

human rights instruments, at the time of its adoption, primarily covered only sex discrimination against women.<sup>92</sup> In fact the text of CEDAW does not mention ‘violence’ even once.<sup>93</sup> As there was no “explicit prohibition on violence against women within any international instrument, the Committee on the Elimination of Discrimination against Women ( hereinafter referred to as the committee)<sup>94</sup> issued “its **first general recommendation 12** on violence against women”<sup>95</sup> in 1989. The committee referred to Articles 2, 5, 11, 12, and 16 of the CEDAW as “requiring the States parties to act to protect women against violence of any kind occurring within the family, at the work place or in any other area of social life”.<sup>96</sup> The general recommendation “required the state parties to inform the committee in their periodic reports about the legislation in force to protect women against the incidence of all kinds of violence in everyday life including sexual violence, abuses in the family, sexual harassment at the work place etc”.<sup>97</sup> However, despite the Committee’s General Recommendation 12, the Committee noticed that not “ all state party reports adequately reflected the close connection between discrimination against women, gender based violence, and violations of human rights and fundamental freedoms”.<sup>98</sup> So, the Committee “adopted a more comprehensive General Recommendation

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92 Alice Edwards *note* 83, p. 154.

93 Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979) 1249 UNTS 13.

94 The Committee is a UN expert body which was established in 1982. The committee has “23 experts on women’s issues around the world”. The committee is mandated to monitor the progress made by the state parties to CEDAW. The Committee “reviews States’ reports on the legislative, judicial, administrative or other measures they have adopted to give effect to the Convention and also issues general recommendations and hears communications from individuals who believe that their CEDAW-protected rights have been violated”.

95 Alice Edwards, *note* 83, p. 179.

96 UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No 12: Violence Against Women(1989) available at: <<https://www.refworld.org/legal/general/cedaw/1989/en/53527>>accessed on 29 May, 2024.

97 Convention on the Elimination of All Forms of Discrimination Against Women, *note* 93, para 1.

98 Alice Edwards, *note* 83, p. 179.

19 in 1992 in which it dealt with individual treaty provisions and links between sexual discrimination and violence against women".<sup>99</sup>

In the General Recommendation, the committee unequivocally pronounced that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".<sup>100</sup>

Thus the committee equated the violence against women (VAW) with sexual discrimination (SD), i.e. VAW = SD. As per the Committee the definition of discrimination in Art. 1 of the Convention "includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".<sup>101</sup>

The Committee categorically stated that "gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence". The committee recognized that traditional attitudes which regards women as subordinate to men may be responsible for "gender based violence such as family violence and abuse, forced marriage, dowry deaths, acid attacks, and female circumcision which deprive women from enjoying their fundamental freedoms and human rights".<sup>102</sup>

Further, the committee explained that the "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention".<sup>103</sup> The Committee identified the following

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<sup>99</sup> *Ibid.*

<sup>100</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW) General Recommendation No. 19 : Violence Against Women (1992) para 1, available at: <<https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>> last accessed on January 25, 2024.

<sup>101</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *note 93*, para 6

<sup>102</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *note 93*, para 11

<sup>103</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *note 93*, para 7

as the fundamental freedoms – “right to life, the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, the right to equal protection according to humanitarian norms in time of international or internal armed conflict, the right to liberty and security of person, The right to equal protection under the law, the right to equality in the family, the right to the highest standard attainable of physical and mental health, the right to just and favourable conditions of work”.<sup>104</sup>

In addition to CEDAW’s General Recommendation incorporating violence against women as sexual discrimination, another important development took place in the year 1993 when “the UN Declaration on Elimination of Violence against Women (DEVAW) was adopted”.<sup>105</sup> The declaration though non-binding was significant in the sense that it was the first international instrument that explicitly dealt with violence against women.<sup>106</sup> The Declaration defines violence against women in non-exhaustive terms and includes “violence considered as private such as sexual abuse of female children in the household, dowry- related violence, marital rape, female genital mutilation and other traditional practices harmful to women”.<sup>107</sup> The definition given in DEVAW has been “reconfirmed by the UN General Assembly in their 2006 resolution on violence against women and is the leading definition relied upon in the international discourse”.<sup>108</sup>

#### IV.E CEDAW’S General Recommendation 32

Particularly, in regard to women refugees, characterizing violence against women as sexual discrimination and recognizing it as persecution filled an important gap in their protection. Now there is an explicit and binding human rights provision on violence against women, violation of which may lead to a finding of persecution. This was clearly recognized in the General Recommendation 32 of the Committee. In the General Recommendation, the committee recognized the

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<sup>104</sup> *Ibid.*

<sup>105</sup> Alice Edwards, *note 83*, p. 9.

<sup>106</sup> A King, “UN Declaration on the Elimination of Violence against Women”, in F P Bernat and K Frailing (eds.), *The Encyclopedia of Women and Crime* (2024)

<sup>107</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *note 93*, Art. 2.

<sup>108</sup> Alice Edwards, *note 83*, p. 21.

relationship between the “Convention, international human rights law and international refugee law and stated that the “ the Convention is part of a comprehensive international human rights legal framework that operates simultaneously with international refugee law... Shared objective of the two protection regimes should ensure the complementary and cumulative protection of refugees, asylum seekers and stateless persons”.<sup>109</sup> Noting the absence of gender -equality provisions in the Refugee Convention, the Recommendation provided that the “ the provisions of the Convention reinforce and complement the international legal protection regime for refugees and stateless women and girls”.<sup>110</sup> In view of the prevalence of gender-related persecution experienced by women refugees, the Recommendation observed that the “ understanding the way in which women’s rights are violated is critical to the identification of those forms of persecution”.<sup>111</sup> Further, the Recommendation noted that “violence against women that is a prohibited form of discrimination against women is one of the major forms of persecution experienced by women in the context of refugee status and asylum. Such violence, just as other gender-related forms of persecution, may breach specific provisions of the Convention. Such forms are recognized as legitimate grounds for international protection in law and in practice. They may include the threat of female genital mutilation, forced/early marriage, threat of violence and/or so-called “honour crimes”, trafficking in women, acid attacks, rape and other forms of sexual assault, serious forms of domestic violence, the imposition of the death penalty or other physical punishments existing in discriminatory justice systems, forced sterilization, political or religious persecution for holding feminist or other views and the persecutory consequences of failing to conform to gender-prescribed social norms and mores or for claiming their rights under the Convention”.<sup>112</sup> (Emphasis Supplied)

As per the General Recommendation, the specific provisions of the Convention impose the following obligation in regard to persecution faced by women refugees:

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109 UN Committee on the Elimination of All Forms of Discrimination Against Women, General Recommendation no. 32, 2014, CEDAW/C/GC/32, para 9 available at :< <https://digitallibrary.un.org/record/807254?ln=en&v=pdf>> accessed on January 15, 2024.

110 *Ibid.*, para 10.

111 *Ibid.*, para 15.

112 *Ibid.*

- Under Articles “1-3, 5(a), and 15, State Parties are required to ensure that women are not discriminated during the entire asylum process beginning from the moment of arrival at the borders. Women asylum seekers are entitled to have their rights under the Convention respected; they are entitled to be treated in a non-discriminatory manner and with respect and dignity at all times during the asylum procedure and thereafter”.<sup>113</sup>
- Art. 2 (c) of the “Convention requires that State asylum procedures allow women’s claims to asylum to be presented and assessed on the basis of equality in a fair, impartial and timely manner. A gender-sensitive approach should be applied at every stage of the asylum process. This means that women’s claims to asylum should be determined by an asylum system that is informed, in all aspects of its policy and operations, by a thorough understanding of the particular forms of discrimination or persecution and human rights abuses that women experience on grounds of gender or sex. Owing to shame, stigma or trauma, some women may be reluctant to disclose or identify the true extent of the persecution that they have suffered or fear. Account needs to be taken of the fact that they may continue to fear persons in authority or rejection and/or reprisals from their family and/or community”.<sup>114</sup>
- Article 2 (e) of the “Convention requires that States parties assume their due diligence obligation and ensure that women are effectively protected from harm that may be inflicted by non-State actors. Harm perpetrated by non-State actors is persecution where the State is unable or unwilling to prevent such harm or protect the claimant because of discriminatory governmental policies or practices”.<sup>115</sup>

Gradually, the UNHCR has also begun to recognize “severe gender discrimination as a form of persecution in its various policy documents”.<sup>116</sup> In the 1991 “guidelines on the protection of refugee women”,<sup>117</sup> UNHCR recognized that “protection from sexual

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113 *Ibid.*, para 24.

114 *Ibid.*, para 25.

115 *Ibid.*, para 27.

116 Tuuli Karjala, *note* 76, p. 129.

117 UNHCR, *Guidelines on the Protection of Refugee Women*, (Geneva, July 1991).

discrimination is a basic right of all women and is enshrined in a number of international declarations and conventions. While the universal right to freedom from discrimination on grounds of sex is recognized, and discrimination can constitute persecution under certain circumstances, the dividing line between discrimination and persecution is not a clear one".<sup>118</sup> Further, the 2002 UNHCR Guidelines on International Protection state that

"mere' discrimination may not, in the normal course, amount to persecution in and of itself, a pattern of discrimination or less favourable treatment could, on cumulative grounds, amount to persecution and warrant international protection... Significant to gender-related claims is also an analysis of forms of discrimination by the State in failing to extend protection to individuals against certain types of harm. If the State, as a matter of policy or practice, does not accord certain rights or protection from serious abuse, then the discrimination in extending protection, which results in serious harm inflicted with impunity, could amount to persecution. Particular cases of domestic violence, or of abuse for reasons of one's differing sexual orientation, could, for example, be analysed in this context".<sup>119</sup>

Thus, it may be said that VAW=SD strategy has afforded greater recognition to the gender-related persecution. Clearly the strategy has a lot of value. Particularly, in as much as the strategy constructs violence against women as sex discrimination, "it turns what may otherwise be characterised as a private indiscretion or merely criminal activity into political violence. It deconstructs public-private dichotomy in so far as so-called private violence is turned into a public issue because it is set against the structural or public context of sexual inequality".<sup>120</sup> However, as per Alice Edwards, "VAW=SD results in unequal treatment of men and women in international law. The formula does not recognize violence against women per se...Female victims of violence are protected

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118 *Ibid.*, para 55.

119 UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (7 May 2002) HCR/GIP/02/01 available at: <<https://www.unhcr.org/sites/default/files/legacy-pdf/3d58ddef4.pdf>> accessed on July 20, 2023.

120 Alice Edwards, *note 83*, p.189.

by international human rights law only to the extent that they can establish that the violence is discriminatory".<sup>121</sup>

In this regard, an important development pertaining to violence against women and refugee women at the regional level merit our attention. In 2011, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) was adopted which became the first legally binding treaty in Europe to specifically address violence against women including female genital mutilation. The Convention explicitly recognizes violence against women to be human rights violation unlike any other treaty.<sup>122</sup>

Negotiated between member states of the Council of Europe, the convention entered into force in 2014 and is particularly significant for women asylum seekers and refugees. As per Tuuli "the Convention was created following the acknowledgement that half of the world's refugees are women and girls, many of whose asylum claims involve fear of gender-based violence... but application of the 1951 Geneva Convention by the States ... fails to acknowledge the differences in how women and men experience persecution ... that deprives many women of international protection".<sup>123</sup> Accordingly Art. 60 of the Convention states that "Parties shall take the necessary legislative or other measures to ensure that **gender-based violence against women may be recognised as a form of persecution** within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection".<sup>124</sup> (Emphasis Added)

The Convention's clear and direct stipulation that "gender based violence is persecution" is a big step in the right direction and gives hope for real change in how women and girls are protected from gender based violence".<sup>125</sup>

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121 *Ibid*, p. 194.

122 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210, art 3(a)

123 Tuuli Karjala, *note 19*, p. 66.

124 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence *note 122*, Art 60(1).

125 Tuuli Karjala, *note 19*, p.242

## V. ESTABLISHING CAUSAL RELATIONSHIP BETWEEN PERSECUTION AND 1951 REFUGEE CONVENTION GROUNDS

To qualify as a refugee, it has to be established that persecution or fear or persecution results from one of the five grounds mentioned in the definition of refugee in the 1951 Refugee Convention namely “race, religion, nationality, membership of a particular social group or political opinion”.<sup>126</sup>

Importantly, the 1951 Refugee Convention “makes no explicit reference to persecution on the grounds of gender; indeed, the whole question of gender was far from the minds of those who drafted the Convention, and there have been no subsequent modifications to remedy this absence”.<sup>127</sup>

How does this absence impact the refugee status claims of women? Is it possible to cover refugee status claims of women based on gender-related persecution to the five enumerated grounds in the Convention conveniently without any adverse effects on the claims? Or is it necessary to add gender as a “sixth ground of persecution in addition to the five already mentioned in Art. 1(A)2?”<sup>128</sup>

Many scholars believe that the absence of gender as a ground in the Convention acts as a barrier for women in claiming refugee status.<sup>129</sup> Consequently, they argue for addition of gender as the sixth ground in the Convention so as to “recognize the unique problems that women face, as opposed to trying to fit them into pre-existing categories that do not consider women’s needs and often work against them”.<sup>130</sup> Priscilla F. Warren has argued that “an expansion of the term “refugee” to include “gender-based persecution could offer protection to women in

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126 Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137, art 1(A)(2)

127 Jane Freedman, *note* 73, p.75.

128 *Ibid.*, p.75.

129 Mattie L Stevens, ‘Reorganizing Gender-Specific Persecution: A Proposal to Add Gender as a Sixth Refugee Category’, *Cornell Journal of Law and Public Policy*, vol. 3, no. 1, (1993), pp. 179-219.

130 Priscilla F Warren, “Women Are Human: Gender-Based Persecution Is a Human Rights Violation Against Women”, *UC Law SF Gender & Just. L.J.*, Vol.5, no.2, (1994), pp. 281-315.

circumstances which are normally considered within the 'private' sphere of international law" and as such, are normally ignored.<sup>131</sup> It has also been emphasized that the real cause of the persecution of women is their gender and till the "inclusion of gender as an independent ground of persecution, women seeking refuge on the basis of gender-related crimes have no proper outlet to seek such sanctity".<sup>132</sup> It has also been pointed that "not naming gender related persecution as such trivialises this type of persecution and demonstrates that it is taken less seriously than other forms of persecution such as race, religion, or political opinion...And adds to the process of **invisibilization** of victims of gender-related persecution".<sup>133</sup> (Emphasis in the Original text).<sup>134</sup>

However as per many scholars the problem is not so much as the absence of gender in the Convention rather "the failure of decision makers to acknowledge and respond to the gendering of politics and of women's relationship to the states when applying that definition to the individual cases". As per them difficulties faced by women in getting access to the refugee status results from the Convention "privileging male dominated public activities over the activities of women, which take place largely in the private sphere. The public-private distinction renders irrelevant what women do and what is done to them".<sup>135</sup> Further, it has been argued that "adding a separate ground of gender might cause confusion between persecution because of gender and persecution which takes a gendered form and this confusion might result in all persecution of women being subsumed into one category leading to the perception that women's persecution was always fundamentally different (and perhaps even less serious) than that of men". Merely adding gender would also tends to ignore that "gender relations and gender differences are historically, geographically, and culturally specific so that what it is to be a woman or man varies through space and over time".<sup>136</sup> This may result in women being treated as a homogenous category ignoring critical differences "between women within and

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131 *Ibid.*

132 Tuuli Karjala, *note 19*, p.171.

133 Jane Freedman, *note 73*, p. 75.

134 *Ibid.*

135 Heaven Crawley, "Gender, Persecution and the Concept of Politics in the Asylum Determination Process", Vol 9, *Forced Migration Review*, (2000), pp. 17-20

136 *Ibid.*

137 *Ibid.*

different particular countries and contexts leading to refugee women always coming across as “uniformly poor, powerless, and vulnerable while western women are the reference point for modern, educated, sexually liberated womanhood. This in turn leads to the depoliticization, and decontextualization of women’s experiences of persecution and to women being viewed as passive victims of male oppression, or oppressive cultures, religions or traditions”.<sup>137</sup> According as per Moira Dustin “women’s diverse experiences of persecution can be met using the existing Convention grounds if those are interpreted through a gendered lens”.<sup>138</sup> Underlying problems “experienced by women stem not simply from the fact that they are women per se but from the conceptualization of key elements of the Refugee convention, and, in particular the concept of politics”.<sup>139</sup>

Thus, it needs to be recognized that “all the five convention grounds are as applicable to women as they are to men: although they may take different forms; taking religion as a ground, for example, girls may be denied access to education on religious grounds in a different way to boys”.<sup>140</sup> Heaven Crawley has argued that “both political opinion and membership of a social group can and should provide a basis for the recognition of women as Convention refugees”. The understanding of what constitutes political participation and resistance must include women’s resistance to “social or cultural dominance of men in her society by refusing to marry, providing unsatisfactory dowry, refusal to have children or even wearing a certain dress”. Failure to comply with social norms may be devastating for women and this resistance should be “regarded as political activity since woman is perceived within the established political/social structure as expressing politically antagonistic views through her actions or failure to act”.<sup>141</sup>

The UNHCR has also acknowledged in its guidelines that “even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee

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138 Moira Dustin, “Pathways to Refugee Protection for Women: Victims of Violence or Genuine Lesbians?”, *Refugee Survey Quarterly*, Vol 41, no. 3, (2022) 41(3), pp. 393-419.

139 Heaven Crawley, *note 135*.

140 Moira Dustin, *note 138*.

141 Heaven Crawley, *note 135*.

definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition".<sup>142</sup>

CEDAW, however, in its General recommendation 32 has recommended to the State Parties to "introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers".<sup>143</sup> Many countries including "South Africa, Spain, Costa Rica, El Salvador, Guatemala, Mexico, Nicaragua, Paraguay, Uruguay, and Venezuela have added gender as an independent ground for persecution in their domestic refugee legislation".<sup>144</sup> Even amongst the Regional Conventions, the Istanbul Convention provides that "Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments".<sup>145</sup>

Thus, it may be concluded that whilst the already given Convention grounds need to be given a gender-sensitive interpretation so as to ensure that refugee status claims of women are covered within them, addition of gender as an independent ground, would "remove any doubts about the applicability of refugee protection to gender-related asylum claims". This is particularly useful as it makes women more visible and ensures that refugee status determination authorities will not reject the claims of women even if they are not abreast with interpretation related developments in case of 1951 Refugee Convention.

## VI. NON-REFOULEMENT AND WOMEN REFUGEES

The principle of non-refoulement is the cornerstone of the 1951 Refugee Convention. Broadly, the principle "prescribes that no refugee should be returned to any country where they are likely to face persecution,

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<sup>142</sup> UNHCR, *note 119*.

<sup>143</sup> CEDAW, General Recommendation No 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women' (2014), para 13.

<sup>144</sup> Tuuli Karjala, *note 76*, p. 240.

<sup>145</sup> Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210, Art 60(2).

other ill-treatment or torture".<sup>146</sup> The content of the principle is also encapsulated in Article 33 of the Convention which states the following- "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".<sup>147</sup>

The importance of the principle to the 1951 Refugee convention can be gauged from the fact that the state parties are not allowed to make reservations to the obligation of non-refoulement provided under the 1951 Refugee Convention.<sup>148</sup> Importantly, the principle has also been incorporated in the international human rights treaty - the 1984 UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment(UNCAT). Article 3 of the Convention states- "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".<sup>149</sup>

The obligation of non-refoulement provided in UNCAT is wider than the 1951 Refugee Convention as Article 3 of UNCAT does not allow for derogation or exceptions in cases involving national security unlike Article 33 of the 1951 Refugee Convention.<sup>150</sup> Thus, UNCAT provides for absolute obligation of non-refoulement. Principle of non-refoulement

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146 Guy S. Goodwin Gill and Jane McAdam, *note 48*, p. 201.

147 Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137, Art 33(1).

148 *Ibid.*, Art. 42.

149 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, Art 3.

150 European Database of Asylum Law, 'Beyond Non-Refoulement: Status and International Human Rights Law' (2015) available at: <<https://www.asylumlawdatabase.eu/en/journal/beyond-non-refoulement-status-and-international-human-rights-law>> accessed on 20 July 2023.

is also incorporated in the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED)<sup>151</sup> and regional conventions such as “Inter-American Convention on the Prevention of Torture, the American Convention on Human Rights, and the Charter of Fundamental Rights of the European Union”.<sup>152</sup>

An important issue regarding non-refoulement is whether the principle forms a part of customary international law<sup>153</sup> and accordingly is binding even on the States that are not parties to the 1951 Refugee Convention. As per the International Court of Justice (ICJ) “even if customary international law obligations are identical to those in a treaty, a non-signatory state cannot dilute or vitiate its customary international law obligations on the grounds that it has chosen not to sign the treaty”.<sup>154</sup>

To be recognized as customary international law, satisfaction of two elements are necessary. First, “state practice internationally must adhere to this rule”.<sup>155</sup> Second, “the practice must be supported by a subjective element – *opinion juris sive necessitatis*, which refers to the notion that states express that they adhere to the practice because they believe that they have a legal obligation to do so”.<sup>156</sup>

It has been argued that the principle of non-refoulement fulfils both the requirements in view of the conclusions drawn by Cathryn Costello and Michelle Foster “based on the practice of a number of states which incorporated the principle of non-refoulement in their domestic

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151 International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006) 2716 UNTS 3, Art 16.

152 OHCHR, *The Principle of Non-Refoulement under International Human Rights Law*, available at: <<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>> accessed on 20 July 2023.

153 Art 38, Para 1 of the statute of the International Court of Justice refers to customary international law as a source of international law.

154 *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America)*; Merits (1986) International Court of Justice (ICJ).

155 Ravi Nair, “Rohingya Refugees in India: Governmental and Judicial Attitude”, in S Irudaya Rajan (ed), *The Routledge Handbook of Refugees in India* (Routledge 2022), p.118.

156 *Ibid.*

legislation".<sup>157</sup> Even the UNHCR has stated that the principle of non-refoulement is recognized as part of customary international law. As per the UNHCR "the view that the principle of non-refoulement has become a rule of international customary law is based on a consistent practice combined with a recognition on the part of States that the principle has a normative character. This conclusion is supported by the fact that the principle has been incorporated in international treaties adopted at the universal and regional levels to which a very large number of States have now become parties. The principle has, moreover, been reaffirmed in the "1967 United Nations Declaration on Territorial Asylum".<sup>158</sup> Finally, the principle has been "systematically reaffirmed in conclusions of the UNHCR Executive Committee and in resolutions adopted by the United Nations General Assembly".<sup>159</sup>

UNHCR has also relied on the "practice of non-signatory states including India hosting large number of refugees, often in mass influx situations". Thus, it has been argued that "India's practice of hosting a large number of refugees despite not being a party to the Refugee Convention points to the fact that India's practice contributed to the principle of non-refoulement becoming a norm of customary international law".<sup>160</sup>

Accordingly, it is clear that the principle of non-refoulement is recognized as customary international law and India, in fact, has played an important role in the same.

## VII. GAPS IN INTERNATIONAL PROTECTION: LACK OF RIGHT TO ASYLUM

Having established that the principle of non-refoulement is part of customary international law, it is important to assess the scope of the

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157 Srinivas Burra, "India's Refugee Protection Obligations Beyond the 1951 Refugee Convention and the 1967 Protocol" in S Irudaya Rajan (ed.), *The Routledge Handbook of Refugees in India* (Routledge 2022), p. 186.

158 UNGA, Declaration on Territorial Asylum (14 December 1967) UN Doc A/RES/2312(XXII).

159 UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93* (31 January 1994).

160 Srinivas Burra, *note 157*, p. 187.

principle of non-refoulement. The scope of the principle of non-refoulement assumes importance because of two important limitations that circumscribe the refugee regime.

First, there is no stipulation in the refugee regime that recognizes the right of a refugee to be granted asylum. In international human rights regime, Article 14(1) of UDHR provides “everyone has the right to seek and to enjoy in other countries asylum from persecution”. Importantly, the right to be granted asylum was deleted from the text of the Article after the states objected to its inclusion.<sup>161</sup> And later no right on asylum was included in the binding ICCPR.<sup>162</sup> The United Nations General Assembly “unanimously adopted Declaration on Territorial Asylum on December 14, 1967”.<sup>163</sup> However, the Declaration did not contain the right to be granted asylum though it reiterated the principle of non-refoulement.<sup>164</sup>

Second, to be recognized as a refugee, any asylum seeker<sup>165</sup> needs to be outside their country of origin and the asylum seeker “has the burden of establishing the veracity of his/her allegations about the accuracy of the facts on which the refugee claim is based”.<sup>166</sup> Thus, refugees require “access to the territory of the receiving state (the country in whose jurisdiction refuge is sought) and also to the Refugee Status

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161 Klaus Neumann, “Territorial Asylum : In the Spirit of International solidarity” (*Australian Outlook*, 14 December 2017) available at: < <https://www.internationalaffairs.org.au/australianoutlook/spirit-international-solidarity/>> accessed on 20 July 2023.

162 *Ibid.*

163 Guy S. Goodwin -Gill, “Declaration on Territorial Asylum”, available at :<<https://legal.un.org/avl/ha/dtadta.html#:~:text=Its%20final%2C%20equivocal%20wording%20%E2%80%93%20there,well%20as%20the%20involvement%20or>> accessed on 20 July 2023.

164 UNGA, Declaration on Territorial Asylum (14 December 1967) UN Doc A/RES/2312(XXII), Art 3.

165 Individuals fleeing their state and seeking refuge in another state apply for asylum. While their asylum claims are being assessed, they are referred to as asylum seekers. If asylum claims are assessed successfully, they are known as refugee, a term which has been defined in the United Nations Convention relating to the status of Refugees.

166 UN High Commissioner for Refugees (UNHCR), *Note on Burden and Standard of Proof in Refugee Claims* (16 December 1998) available at:<<https://www.refworld.org/policy/legalguidance/unhcr/1998/en/23696>>accessed on 02 June 2024.

Determination(RSD) process of the receiving state or the UNHCR".<sup>167</sup> Once the receiving state or the UNHCR confirms the refugee status, refugees are eligible to have access to the catena of rights provided by the 1951 Refugee Convention or the legal regime of the receiving country.<sup>168</sup> However, "if refugees do not have such access to the territory of the receiving status or the RSD, their rights are in a limbo for "most rights in the Refugee Convention inhere only when the refugee is within the territory of the asylum country".<sup>169</sup> While asylum seekers " already have the status of refugee if the conditions of the 1951 Convention are met, the receiving state or the UNHCR confirm the status in RSD.<sup>170</sup> Thus, "recognition of the refugee status is merely declaratory".<sup>171</sup> In fact, "the UNHCR unequivocally states that a person does not become a refugee because of recognition but is recognized because she is a refugee".<sup>172</sup> Despite the refugee status merely being declaratory, securing access to the territory of the receiving state and procedure of RSD remains extreme challenging for the asylum seekers in absence of the right to asylum . Recognizing "the importance of RSD, the UNHCR has issued the "Procedural Standards for Refugee Status Determination"

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167 The UNHCR Statute and the 1951 Refugee Convention contain very similar definitions of the term refugee. The UNHCR recognizes refugee status according to its Statute and the refugees so recognized are known as mandate refugees. This is usually done in the instance where the refugees are in a non contracting state to the Refugee Convention. The state parties to the Convention determine refugee status as per the definition in the Convention and refugees so recognized are known as Convention Refugees.

168 Priya Anuragini and Abdullah Nasir, "COVID-19 and Border Closures: Loss of Protection to Refugees", *ISIL Yearbook International Humanitarian and Refugee Law*, vol. 22, (2022), pp. 118-131.

169 A L Hirsch and N Bell, "The Right to Have Rights as a Right to Enter: Addressing a Lacuna in the International Refugee Protection Regime", *Human Rights Review*, vol 18, no.4, (2017) pp. 417-437

170 James C Hathaway, *The Rights of Refugees under International Law* (1st edn, Cambridge University Press 2005), p. 11.

171 Rohaida Nordin, Norilyani Hj Md Nor, and Rosmainie Rofee, "Ineffective Refugee Status Determination Process: Hindrance to Durable Solution for Refugees Rights and Protection", *Indonesia Law Review*, vol.11, no. 1, (2021), pp. 73-91.

172 UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (2019).

173 Priya Anuragini and Abdullah Nasir, *note 168*.

to establish minimum procedural standards and harmonize RSD operations across UNHCR operations.<sup>173</sup>

However, the import of the discussed “limitations is that it is the refugee/asylum seeker who has the onus of leaving their country, finding a safe country of refuge and then establishing that they indeed are “refugees” within the meaning of the Convention”.<sup>174</sup> Considering that the grant of asylum remains a sovereign privilege, the “individual in flight, in search of a solution and unable to return to his or her country can often fall into legal limbo – protected against a certain risk of harm, but unable, as a matter of law, effectively to enjoy even the minimum conditions for a meaningful life”.<sup>175</sup> Thus, it is important to assess if asylum seekers/refugees are required to be given entry at the border of the country in which they seek refuge. It is here that the principle of non-refoulement becomes important. How does the absence of the right to asylum impact the obligation of non-refoulement? Does the principle of non-refoulement ensure that asylum seekers/refugees have access to a safe country of refuge and a prompt access to refugee status determination process?

#### VIII. NON- ENTRÉE REGIMES AND CHALLENGES FACED BY WOMEN REFUGEES

The questions posed in the earlier paragraph becomes significant when seen in the light of evolution of non-entrée regimes. As per Hathaway “the developed world does not wish to be faced with the expectation that follows from the duty of non-refoulement, namely that refugees who manage to get to their jurisdiction are entitled to assert protection claims against them”.<sup>176</sup> Thus, states “have worked assiduously to design and implement non -entrée policies that seek to keep most refugees from accessing their jurisdiction”.<sup>177</sup> There are different forms of non-entrée practices employed by the states. The earliest and most basic form of non-entrée policies include “visa control and carrier sanctions wherein carriers transporting persons without valid visas are subject to significant fines and even to having aircraft or other vessels

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<sup>174</sup> *Ibid.*

<sup>175</sup> Guy S. Goodwin -Gill, *note 163*.

<sup>176</sup> James C Hathaway and T Gammeltoft-Hansen, “Non-Refoulement in a World of Cooperative Deterrence”, *Columbia J Transnat'l L*, vol.53, no., 2 (2015), pp. 235- 284

<sup>177</sup> *Ibid.*, p. 241.

impounded".<sup>178</sup> This leads to "airline companies and other carriers carrying out increasingly elaborate documents and immigration checks thereby denying refugees the right to travel and hence to advance their claims to protection".<sup>179</sup> As per Asher Lazarus Hirsch and Nathan Bell "migration controls effectively make it impossible for potential asylum claimants to enter a state regularly, forcing them to remain in their country of origin, seek out dangerous and unauthorised pathways to seek protection".<sup>180</sup> In "Border Vigils: Keeping Migrants out of the Rich World", Jeremy Harding writes

"for most asylum seekers who wish to reach Europe, being smuggled to sanctuary has become the only option".<sup>181</sup>

The usage of the non-entrée regimes by the states couple with the earlier discussed limitations makes it particularly difficult for women refugees to access the protection offered by non-refoulement. While "right to leave one's own country" is recognised as a human right and included in the ICCPR<sup>182</sup>, many countries prevent women from travelling abroad without permission of a male guardian.<sup>183</sup> As per a World Bank Report "in six of 173 economies covered, a married woman cannot travel outside the country in the same way as a married man".<sup>184</sup> In many instances, women may not have the financial resources to make the journey owing

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178 *Ibid.*, p.245.

179 *Ibid.*, p. 245.

180 A L Hirsch and N Bell, *note 169*.

181 Jeremy Harding, *Border Vigils: Keeping Migrants Out of the Rich World* (1st edn, Verso 2012), p. 20.

182 International Covenant on Civil and Political Rights (adopted 16 December 1966) 999 UNTS 171, Art. 12.

183 Human Rights Watch, 'Middle East and North Africa: End Curbs on Women's Mobility' (18 July 2023), available at:

<://www.hrw.org/news/2023/07/18/middle-east-and-north-africa-end-curbs-womens-mobility> accessed on 20 July 2024.

184 Katrin Schulz, Shutting doors on women: How countries are legally preventing half their population from reaching their full economic potential, (*World Bank Blogs*, 27 October 2015) available at: <https://blogs.worldbank.org/en/psd/shutting-doors-women-how-countries-are-legally-preventing-half-their-population-reaching-their-full> accessed on 20 October 2023.

to economic dependence.<sup>185</sup> This has been well explained by a Saudi woman seeking refuge in Canada

“It’s not easy for the woman to do things by herself. Women are raised to be incapable of doing anything. One pays a big price to come here and the woman who is willing to do that is rare”.<sup>186</sup>

Thus, even if women face “well founded fear of persecution”, it remains difficult for them to leave their country of origin. This coupled with lack of right of asylum, burden of establishing refugee status, and non-entrée regimes act as substantial barriers for women refugees in accessing any protection whatsoever offered by any legal regime.

#### **IX. SCOPE OF NON-REFOULEMENT: DOES IT HAVE THE CAPACITY TO REDUCE BARRIERS FOR WOMEN REFUGEES?**

Having identified the limitations of both the 1951 refugee convention and the broader human right regime and the barriers posed by non-entrée regimes on women refugees, it becomes important to evaluate if the scope of non-refoulement surpasses those limitations and ensures that women refugees are able to access the international protection. A major “issue pertaining to the scope of non-refoulement is whether it imposes a duty on the states to admit refugees/asylum seekers in their territory particularly when no binding international law instrument recognizes the right of refugees to seek asylum”.<sup>187</sup> Only if the refugees/asylum seekers are admitted in the territories of the states, the refugee status determination may take place and international or national protection takes effect. However as stated earlier, states try their best to ensure that refugees are not able to enter their territory so that non-refoulement does not become binding on the states. Even the “state practice indicates that the scope of principle of non-refoulement under the Refugee Convention has often been interpreted to only include

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185 Priya Anuragini, “70 Years of Refugee Convention: Where Are the Women?”, *RMLNLUJ*, vol. 13, (2021) *RMLNLUJ*, pp. 158-167.

186 Jane Freedman, *Gendering the International Asylum and Refugee Debate* (2nd edn, Palgrave Macmillan 2016).

187 Priya Anuragini and Abduallh Nasir, *note 168*

refugees already present within state territory".<sup>188</sup> But refugees can be present within the territory only they have the requisite travel document including visa which may not be always available. As Asher Lazarus Hirsch and Nathan Bell explain "a refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry into the country of refuge".<sup>189</sup>

Importantly, the 1951 Refugee convention recognizes this and provides that asylum seekers/refugees are not to be penalized for their illegal entry in the country of refuge.<sup>190</sup> Non-entrée regimes implemented by the states, however, makes illegal entry highly dangerous and improbable. In regard to the scope of non-refoulement and whether it permits entry at the border to asylum seekers/refugees, the Executive Committee of the UNHCR has stated that the principle of non-refoulement "needs to be observed both at the border and within the territory of states in respect of persons in respect of persons who may be subjected to persecution if returned to country of origin irrespective of whether or not they have been formally recognized as refugees".<sup>191</sup> Later conclusions of the UNHCR Executive Committee "have stressed that the principle of non-rejection at the border requires access to fair and efficient procedures for determining refugee status and protection needs".<sup>192</sup> UNHCR has also stressed that "the principle of non-refoulement is of particular relevance to asylum-seekers. As such persons may be refugees, it is an established principle of international refugee law that they should not be returned or expelled pending a final

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188 *Sale, Acting Commissioner INS vs. Haitian Centres Council*, 509 US 155 (1993). The U. S Supreme Court ruled that U.S President or the coast guard had the power to repatriate undocumented aliens, including refugees, on the high seas. It further held Article 33 of the Convention did not limit this power in any manner

189 A L Hirsch and N Bell, *note 169*

190 Convention Relating to the Status of Refugees (adopted 28 July 1951) 189 UNTS 137, Art 31.

191 Executive Committee of the High Commissioner's Programme, *Conclusion No 6 (XXVIII): Non-Refoulement* (1977).

192 Executive Committee of the High Commissioner's Programme, *Conclusion No 99 (LV): General* (2004).

determination of their status".<sup>193</sup> This requires access to the territories of the state. Further, "human rights based non-refoulement obligations stipulate that " states have a duty to establish, prior to implementing any removal measure, that the person whom it intends to remove from their territory or jurisdiction would not be exposed to a danger of serious human rights violations such as torture, cruel, inhuman or degrading treatment or punishment , arbitrary deprivation of life. If such a risk exists, the State is precluded from forcibly removing the individual concerned".<sup>194</sup> Also the obligation of non-refoulement within the human rights regime is not limited by territorial restrictions. Rather to assess whether a state is bound by the principle of non-refoulement " the decisive criterion is not whether that person is on the State's national territory, or within a territory which is *de jure* under the sovereign control of the State, but rather whether or not he or she is subject to that State's effective authority and control".<sup>195</sup> Importantly, the CEDAW committee has stated that the

"States parties bear the primary responsibility for ensuring that asylum-seeking women, refugee women, women nationality applicants and stateless women within their territory or under their effective control or jurisdiction, even if not situated within their territory, are not exposed to violations of their rights under the Convention, including when such violations are committed by private persons and non-State actors".<sup>196</sup> (Emphasis Added)

Thus, non -entrée regimes are not in consonance with the international human rights obligations of the states and non-refoulement obligations require states to admit asylum seekers and ensure access to fair and effective RSD. However, many of the states have refrained from providing such access.<sup>197</sup> During the Covid-19, many of the "states

193 UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at:<<https://www.refworld.org/policy/legalguidance/unhcr/2007/en/40854>>accessed on 05 August 2024.

194 *Ibid.*

195 *Ibid.*

196 CEDAW Committee, *note 109*, para 7.

197 Zolan Kanno Youngs and Hamed Aleaziz, 'In shift, Biden Issues Order Allowing Temporary Border Closures to Migrants', *The New York Times*, (June 4, 2024), available at:< <https://www.nytimes.com/2024/06/04/us/politics/biden-executive-order-border-asylum.html> >accessed on 20 July 2024.

closed their borders to contain the spread of the virus, without taking into account the rights of the refugees to access protection".<sup>198</sup>

## X. CONCLUSION

The paper establishes that gender related developments in the human rights regime have been beneficial for women refugees in access to the refugee status and non-refoulement. In regard to the refugee status, the paper discusses the relevance of CEDAW for women refugees. It is submitted that by characterizing Violence against Women (VAW) as Sexual Discrimination (SD), CEDAW has afforded greater recognition to the gender related persecution faced by women refugees which has enabled them a greater access to the refugee status. This is also visible in the UNHCR guidelines that have begun to recognize severe instances of sexual discrimination as persecution. Thus, there is greater recognition now that many forms of violence against women amount to persecution and satisfy the requirements of refugee status. In addition to this, CEDAW, particularly its general recommendation 32, requires state parties to ensure dignified treatment of women, non-discrimination against women refugees, access to the refugee status determination process, and recognition of violence by non-state actors. In reference to gender not being present as a causal ground based on which well founded fear of being persecuted can be established, it is submitted that gender can be added as a sixth ground in the Convention. However, it is more important to ensure that already given Convention grounds such as political opinion are given a gender-sensitive interpretation so as to ensure that refugee status claims of women are covered within them. The paper then assesses the scope of the non-refoulement obligations of the states in absence of right to asylum for refugees. It is submitted that lack of right of asylum, burden of establishing refugee status, and non-entrée regimes pose insurmountable barriers for women refugees in accessing any protection whatsoever offered by any legal regime. Considering that the grant of asylum remains a sovereign privilege, the "individual in flight, in search of a solution and unable to return to his or her country can often fall into legal limbo – protected against a certain risk of harm, but unable, as a matter of law, effectively

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198 UNHCR & IOM, *Covid -19 : Access Challenges and the implications of the border restrictions*, 9 May 2020, available at: <<https://reliefweb.int/report/world/covid-19-access-challenges-and-implications-border-restrictionslast>> accessed on 31 May 2024.

to enjoy even the minimum conditions for a meaningful life".<sup>199</sup> Thus, it is important to assess if asylum seekers/ refugees are required to be given entry at the border of the country in which they seek refuge. It is here that the principle of non-refoulement becomes important. How does the absence of the right to asylum impact the obligation of non-refoulement? Does the principle of non-refoulement ensure that asylum seekers/ refugees have access to a safe country of refuge and a prompt access to refugee status determination process? It is submitted that despite the non-binding nature of right to asylum in international legal instruments, non -entrée regimes are not in consonance with the international human rights obligations of the states and non-refoulement obligations require states to admit asylum seekers and ensure access to fair and effective RSD. However, many of the states have refrained from providing such access.<sup>200</sup>

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199 Guy S. Goodwin -Gill, *note 163*

200 Zolan Kanno Youngs and Hamed Aleaziz, *note 197*

TREATIES AND OTHER INTERNATIONAL ACTS SERIES 24-613

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**DEFENSE**

**Agreement Between the  
UNITED STATES OF AMERICA  
and UKRAINE**

**With Annex**

Signed at Puglia June 13, 2024

Entered into force June 13, 2024



## NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966  
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

**BILATERAL SECURITY AGREEMENT  
BETWEEN THE UNITED STATES OF AMERICA AND UKRAINE**

**Preamble**

The United States of America and Ukraine (hereinafter, the “Parties”):

Underscoring their shared commitment to a Europe that is whole, free, and at peace;

Affirming that the security of Ukraine is integral to the security of the Euro-Atlantic region;

Recognizing the need to preserve and promote Ukraine’s sovereignty, democracy, and capacity to deter and respond to current and future external threats;

Affirming their desire to expand their defense and security cooperation and their trade and investment ties, and to deepen the overall friendly relations between them;

Building on the existing security partnership with Ukraine facilitated under the Strategic Defense Framework between the United States Department of Defense and the Ministry of Defense of Ukraine, signed August 31, 2021, and the U.S.-Ukraine Charter on Strategic Partnership, signed November 10, 2021;

Recalling longstanding security cooperation between the Parties and the United States’ provision of military and security assistance, supporting Ukraine with the arms, equipment, and training necessary to defend itself against Russia’s aggression;

Welcoming Ukraine’s efforts to attain a just and sustainable peace and emphasizing the Parties’ commitment to seeking a just end to the war, founded on the principles of the United Nations (UN) Charter and a respect

## 2

for the sovereignty, independence, and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters, and recognizing Ukraine's inherent right of self-defense as enshrined in Article 51 of the UN Charter;

Reaffirming that Ukraine's future is in the North Atlantic Treaty Organization (NATO); reiterating their support for the declaration of Allies at the 2023 Vilnius Summit that Allies will be in a position to extend an invitation to Ukraine to join the Alliance when Allies agree and conditions are met emphasizing the importance of its deepening integration into the Euro-Atlantic community; and underlining the centrality of reform to support and strengthen Ukraine's defense, prosperity, recovery, rule of law, and democracy;

Emphasizing the importance of holding Russia to account for its aggression against Ukraine, including by supporting Ukraine in seeking compensation for the damage, loss, and injury resulting from Russia's aggression, such as support envisaged by the Statute of the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine and holding accountable those responsible for war crimes and other international crimes committed in or against Ukraine, consistent with international law;

Highlighting the United States' ongoing efforts to use sanctions and export controls to increase the costs to Russia for its aggression against Ukraine and to work with its partners to explore all possible avenues by which immobilized Russian sovereign assets could be made use of to support Ukraine, consistent with domestic and international law; and

Upholding the shared commitments made under the Joint Declaration of Support for Ukraine on July 12, 2023 (hereinafter "Joint Declaration of 2023");

Have agreed to the following:

**Article I: Principles of Cooperation**

This Agreement is based on the following principles and beliefs shared by the Parties:

1. Cooperation between the Parties is based on the principle of full respect for the independence and sovereignty of each of the Parties, and full respect for obligations of the Parties under international law and for the purposes and principles of the UN Charter.
2. Cooperation between the Parties is enhanced by their shared commitment to democracy, the rule of law, human rights, transparency, and accountability.
3. Cooperation between the Parties is intended to bolster Euro-Atlantic security, stability, and prosperity by enhancing deterrence and defense integration and interoperability.

#### **Article II: Defense and Security Cooperation**

The Parties' cooperation in the areas of defense and security is based on their shared commitment to stability and peace in Europe.

It is the policy of the Parties to work together to help deter and confront any future aggression against the territorial integrity of either Party. The security-related commitments in this Agreement are intended to support Ukraine's efforts to win today's war and deter future Russian military aggression. It is the policy of the United States to assist Ukraine in maintaining a credible defense and deterrence capability.

Any future aggression or threat of aggression against the sovereignty, independence, and territorial integrity of either Party would be a matter of grave concern to the other Party.

In the event of future armed attack or threat of armed attack against Ukraine, the Parties shall, at the request of either Party and in accordance with their respective laws, immediately meet, where possible within 24 hours, at the most senior levels to determine appropriate next steps and additional defense needs. The Parties may mutually decide to develop and implement additional appropriate defense and deterrent responses, including in the economic, military, and/or political realms. Such responses

may include the imposition of economic and other costs on the aggressor state through steps that may include, among other things, potential sanctions or export controls. The Parties stand ready to share available and appropriate information and intelligence immediately in response to such an event, and to consult with signatory countries of the Joint Declaration of 2023 on additional, joint responses.

In order to further strengthen the security of the Parties and stability in Europe, and to deter threats against them, the Parties agree:

1. To further implementation of existing security agreements and arrangements, including those concerning research and development, science and technology cooperation, manufacturing of defense products, the protection of classified defense information, and end-use monitoring.
2. To meet on a regular basis to further mutual awareness of emerging threats, with a view to working towards enhancing the integration of defensive systems and deterrent capacities of the Parties across all domains, and furthering Ukraine's interoperability with NATO.
3. To further bolster their defense and security cooperation as a means of building a Ukrainian future force that maintains a credible defense and deterrence capability, which may include:
  - a) Training and military education programs;
  - b) Provision of defense articles and services;
  - c) Combined military maneuvers and exercises;
  - d) Increased defense industrial cooperation consistent with applicable agreements and arrangements between the Parties;
  - e) Continued joint planning to confront threats to the Parties, including guiding principles, respective rules of engagement, and command and control, as appropriate;

## 5

- f) Cooperation to promote cybersecurity and protection of critical infrastructure;
  - g) Cooperation to develop Ukraine's capabilities to counter Russian and any other propaganda and disinformation;
  - h) Cooperation to promote regional peace and security in the Black Sea;
  - i) Cooperation to support unexploded ordnance removal and demining;  
and
  - j) Other cooperation as may be mutually decided upon by the Parties.
4. To coordinate on a regular basis – and no less than annually – on military and defense matters, including defense industrial base development. This coordination shall include a particular focus on combined efforts to deter and confront threats of aggression against Ukraine.

The Parties agree to advance the appropriate sharing of intelligence and to promote enhanced cooperation between their intelligence services, with the scope and procedure of cooperation determined by their respective entities responsible for intelligence and security. The United States intends to assist with capacity building for Ukraine's intelligence institutions, including with respect to counterintelligence capabilities.

Each Party reaffirms its commitments to comply with its obligations under international law, including the law of armed conflict.

It is the policy of the United States to support providing sustainable levels of security assistance for Ukraine in support of the objectives outlined in the Bilateral Security Agreement and associated implementation arrangements. To this end, the United States intends to seek from the United States Congress appropriation of funds to help sustain a Ukrainian credible defense and deterrent capability, in war and peace.

**Article III: Cooperation on Economic Recovery and Reform**

## 6

Recalling the trade and investment agreements and arrangements in place between the Parties, the Parties intend to cooperate to:

1. Seek opportunities to provide technical assistance and build capacity to support Ukraine's economic needs stemming from Russia's war of aggression.
2. Support recovery efforts to strengthen Ukraine's economic stability and resilience, including by supporting Ukraine's energy security and its vision of a modern, cleaner, more decentralized energy system that is integrated with Europe.
3. Strengthen the resilience and security of Ukraine's civilian nuclear energy sector, cognizant of their collaboration under the September 21, 2023, Memorandum of Understanding between the Government of Ukraine and the Government of the United States regarding Collaboration on Ukrainian Energy System Resilience.
4. Identify strategic investment opportunities that mutually benefit the Parties, and encourage the development of projects, including those that can attract private and public investment in Ukraine, that support Ukrainian and American economic development and partnership, such as in the areas of defense production and infrastructure.
5. Continue support for implementation of Ukraine's effective reform agenda, including strengthened good governance, anti-corruption, respect for human rights, and rule of law necessary to advance towards its Euro-Atlantic aspirations.

**Article IV: Institutional Reforms to Advance Euro-Atlantic Integration**

The Parties shall cooperate to advance Ukraine's democratic, economic, defense, and security institutions in order to advance Ukraine's Euro-Atlantic integration and modernization according to European Union (EU) and NATO democratic principles and standards, and to prioritize NATO's shared values and the interoperability of Ukraine's security and defense forces.

## 7

The Parties shall cooperate to advance Ukraine's implementation of reforms to its democratic, economic, defense, and security institutions in line with its EU accession goals, NATO adapted Annual National Program priorities, and obligations and commitments under agreements and arrangements with the International Monetary Fund.

Accordingly, among other reforms, Ukraine shall undertake efforts towards:

- Strengthening Ukrainian justice sector reform to promote the independence and integrity of the judiciary;
- Implementing robust anti-corruption measures, including strengthening all independent state anti-corruption institutions such as the Specialized Anti-Corruption Prosecutor and the National Anti-Corruption Bureau of Ukraine;
- Implementing reforms in law enforcement, security, tax, and customs institutions to resolve jurisdictional issues, and to improve transparency and accountability and strengthen the rule of law;
- Bolstering corporate governance to meet Organization for Economic Cooperation and Development principles in state-owned and defense enterprises to encourage foreign investor confidence and investment;
- Adopting NATO standards of transparency, accountability, and competition in the management and oversight of security and procurement policy and practice;
- Transforming defense planning and resource management systems to increase transparency, improve efficiency, and increase interoperability with NATO;
- Reorganizing command and control structures in accordance with NATO principles to increase interoperability and ensure effective civilian oversight; and
- Modernizing defense human resource management and military education systems to align with NATO principles and standards.

The Parties reaffirm their support for Ukraine's right to choose its own security arrangements. The United States reaffirms that Ukraine's future is in NATO.

**Article V: Just Peace**

The Parties recognize that Ukraine will not be secure until its sovereignty and territorial integrity are fully restored through a just peace that respects Ukraine's rights under international law, including the UN Charter. The Parties therefore shall cooperate to advance a just and lasting peace that has broad global support. The United States welcomes Ukraine's ongoing efforts, including through Ukraine's Peace Formula, to engage the international community in establishing the principles of a just and sustainable peace.

**Article VI: Annexes and Implementing Arrangements**

The Parties may enter into further agreements or arrangements as necessary and appropriate to implement this Agreement.

The Parties intend that cooperation in the specific areas described in Articles II and III, including support for Ukraine's Armed Forces and other security and defense forces, be implemented in accordance with the provisions of the attached annex and with any separate implementing arrangements entered into by the Parties.

**Article VII: Disputes and Implementation**

1. Any divergence in views or disputes regarding the interpretation or application of this Agreement shall be resolved only through consultation between the Parties and shall not be referred to any national or international court, tribunal, or other similar body, or any third party for settlement.
2. All cooperation and activities under this Agreement shall be carried out in accordance with the respective domestic laws of the Parties and shall be subject to the availability of funds.

3. The Parties intend for this Agreement to reinforce other agreements and arrangements that exist between the Parties. The Parties shall implement this Agreement in a manner consistent with those other agreements, and taking into account those other arrangements.

**Article VIII: Amendment**

This Agreement may be amended and supplemented through mutual written agreement of the Parties.

**Article IX: Entry Into Force**

This Agreement shall enter into force upon signature by both Parties. This Agreement shall remain in force 10 years from entry into force and may be extended by mutual written agreement of the Parties.

**Article X: Registration With the United Nations**

The Parties intend to register this Agreement with the United Nations in accordance with Article 102 of the UN Charter within 60 days of its entry into force.

**Article XI: Termination**

Either Party may terminate this Agreement by providing a written notification through diplomatic channels to the other Party of its intent to terminate this Agreement. The termination shall take effect 6 months after the date of such notification.

In this regard, although a Party may terminate this Agreement, any implementing agreement or arrangement entered into between the Parties consistent with the terms of this Agreement shall continue to remain in effect under its own terms, unless otherwise specified in the terms of the specific implementing agreement or arrangement.

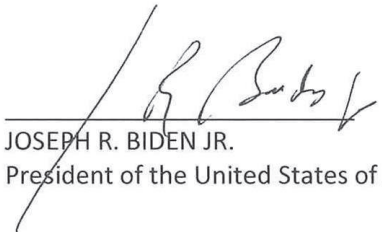
The Parties recognize this Agreement as supporting a bridge to Ukraine's eventual membership in the NATO Alliance.

In the event that Ukraine becomes a member of NATO, the Parties shall meet and confer on the future status of this Agreement.

Done at Puglia, Italy, this 13th day of June, 2024, in two originals in the English language, being an authentic version of the Agreement. A Ukrainian language version of the Agreement shall be prepared, which shall be considered equally authentic upon an exchange of diplomatic notes between the Parties confirming that the Ukrainian version of the Agreement attached to the notes conforms with the signed English version of the Agreement. Thereafter, in the event of divergence or ambiguity between the two language texts, the English version shall prevail.

FOR THE UNITED STATES OF AMERICA:

FOR UKRAINE:



JOSEPH R. BIDEN JR.  
President of the United States of America



VOLODYMYR ZELENSKYY  
President of Ukraine

**Annex to the Bilateral Security Agreement  
Between the United States of America and Ukraine**

Pursuant to Article VI of the Bilateral Security Agreement Between the United States of America and Ukraine (Agreement) and in implementation of the provisions of Articles II and III of the Agreement,

The United States of America (United States) and Ukraine (together, Participants or both sides) have reached the following understandings:

**Implementation of Article II: Defense and Security Cooperation**

The United States reaffirms its unwavering support for Ukraine's defense of its sovereignty and territorial integrity within its internationally recognized borders. To ensure Ukraine's security, both sides recognize Ukraine needs a significant military force, robust capabilities, and sustained investments in its defense industrial base that are consistent with North Atlantic Treaty Organization (NATO) standards. The United States intends to provide long-term materiel, training and advising, sustainment, intelligence, security, defense industrial, institutional, and other support to develop Ukrainian security and defense forces that are capable of defending a sovereign, independent, democratic Ukraine and deterring future aggression.

Ukraine deeply appreciates the significant assistance the United States has provided since the beginning of Russia's full-scale invasion. In addition to United States bilateral support, both sides acknowledge the critical and substantial contributions of the security assistance that other partner nations intend to provide Ukraine and the need for coordination among Ukraine's partners to synchronize support and appropriately share the responsibility for meeting shared goals. Both sides also recognize the need for Ukraine's security and defense forces to be sustainable over time, and expect Ukraine to gradually assume responsibility for an increasing share of its defense needs.

To implement this annex, the Participants intend to consult on security and defense forces requirements through channels such as the U.S.-Ukraine Bilateral Defense Consultations process to ensure Ukraine adopts a Western-based military

standard, interoperable with NATO. Security assistance requests are expected to be evaluated for sustainability, alignment with a jointly understood future force structure, effectiveness in meeting defense objectives, and complementarity with assistance from other allies and partners.

**A. Ukraine's Future Force Capabilities**

The United States commits to support Ukraine in developing a modern, NATO-interoperable force that can credibly deter and, if necessary, defend against future aggression. Ukraine's future force is expected to rely on both modern and legacy equipment. To support the sustainability of Ukraine's security and defense forces, both sides intend to standardize equipment across its formations.

The United States intends to support Ukraine's military strength and the development and transformation of its military capabilities across the full spectrum of combat functions through the supply of weapons, equipment, training, and other assistance, in coordination with partners, including in the following domains:

- Air and Missile Defense: Building upon the range of air defense capabilities that the United States has provided to date, including the Patriot system, the United States commits to support Ukraine's development of a layered, integrated air and missile defense system. Both sides intend to pursue further steps to transition to a modern air defense architecture for Ukraine over time, with associated radars, interceptors, and support equipment across the spectrum of tactical- to strategic-level capabilities.
- Fires: The United States commits to support Ukraine's development of a joint fires capability, to include the acquisition of ground-based systems, munitions, and targeting capabilities to employ indirect and long-range fires, as well as unmanned aerial systems. Both sides intend to pursue the procurement of stockpiles of ammunition for Ukraine's use, in coordination with allies and partners, while developing Ukraine's domestic ammunition production capacity.

- Ground Maneuver: The United States commits to support Ukraine's development of movement and maneuver doctrine and capabilities, to include sustainment of legacy armored, mechanized, and motorized capabilities, and to work with allies and partners to support the acquisition of modern platforms to support Ukraine's maneuver force requirements.
- Air: The United States commits to coordinate with Ukraine, and work principally through an allied consortium, on the modernization of Ukraine's Air Force, including working toward procurement of squadrons of modern fighter aircraft, sustainment, armament, and associated training to support fourth generation fighter capability (including, but not limited to, F-16 multi-role aircraft), as well as other air domain capabilities such as transport and intelligence, surveillance, and reconnaissance platforms (including unmanned).
- Maritime: The United States, in coordination with allies and partners, commits to support the improvement of Ukraine's capacity to defend its territorial waters and promote Black Sea regional security through capabilities that could include coastal defense systems; maritime domain awareness; unmanned systems; and surface vessels, including patrol and riverine craft, naval firepower, maritime mine countermeasures, and other weapons that will help strengthen maritime security in the Black and Azov Seas and help Ukraine exercise sovereignty over its territorial seas and sovereign rights and jurisdiction in its exclusive economic zone.
- Cybersecurity and Critical Infrastructure Protection: The United States commits to support Ukraine's capacity to increase the cybersecurity and protection of its critical infrastructure and government information resources, including by strengthening its cyber defenses against malicious cyber activities by Russia and other hostile state and non-state actors. Both sides commit to work together to improve Ukraine's ability to detect and remediate intrusions by malicious actors, including through technical assistance from the United States. The United States intends to assist Ukraine to improve the cyber resilience of its critical infrastructure, especially energy facilities, against aerial strikes, and to support the quick restoration of destroyed infrastructure, including by providing material and technical assistance.

- Command and Control: The United States commits to support Ukraine's development of command and control capability through both materiel and non-materiel support. Both sides recognize that incorporating NATO-interoperable communications systems, doctrine, and organization are needed to improve sensing, early warning, and timely resource allocation for Ukraine's combat operations.
- Sustainment: The United States, in coordination with allies and partners, commits to support Ukraine's capacity to sustain and independently support its forces over the long term, maximizing its operational freedom of action. Such efforts could include support to logistics, personnel services, and health service support, in line with Western force generation models.

The United States and Ukraine intend to collaborate on force development through a range of multi-national capability coalitions, including through air force and artillery coalitions co-led by the United States.

The United States additionally commits to consideration of support for Ukraine's civilian-defense forces, which are critical components of Ukraine's overall defense. The United States and Ukraine commit to deepening partnerships between national guard and border security services.

In furtherance of Article II of the Agreement, in the event of future armed attack or the threat of armed attack against Ukraine, the United States, at the request of the Government of Ukraine and in consultation with allies and partners, intends to coordinate on the potential need to rapidly increase the scope or scale of United States security assistance to Ukraine, including potentially the provision of additional weapon systems and equipment, and other materiel, as well as the exchange of information with Ukraine.

#### **B. Training and Exercises**

The United States intends to pursue a long-term training program for the Ukrainian Armed Forces and other security and defense forces throughout the

term of this annex. The United States plans to expand its capacity to provide both individual and collective training, and to coordinate with allies and partners to ensure complementarity of training programs. The United States intends to incorporate Ukrainian trainers and subject matter experts into the program, promote institutionalization of Western training practices and doctrine, and create the conditions for the transition of training efforts to Ukrainian territory and Ukrainian service members.

Training is intended to be supported by an extensive exercise program to build interoperability. The United States plans to invite Ukrainian security and defense forces to join United States exercises and to support Ukrainian participation in multilateral exercises when appropriate.

The United States intends to consider opportunities for training Ukrainian service members in the United States as appropriate.

If and when security conditions allow, both sides plan to consult on possible training and exercise programs in Ukraine.

In line with this training, Ukraine commits to incorporating standard NATO doctrine and combined arms concepts at all echelons of its security and defense forces, and to ensuring the proper employment and sustainment of new capabilities.

The United States supports enabling increased Ukrainian attendance at Department of Defense (DOD) institutions of professional military education, including through the International Military Education and Training program.

### **C. Defense Industrial Base Development Cooperation**

Both sides recognize that the recovery of Ukraine's economy and industry would support Ukraine's ability to shoulder more of the material and financial burdens of its defense over time. The United States commits to work with allies and partners to support Ukraine's economic recovery and bolster Ukraine's defense industrial base, including through cooperative defense research and

development. Ukraine commits to developing and reforming its defense industry to support and sustain the needs of its security and defense forces.

Both sides intend to engage with international partners and their respective defense industries to support increased Ukrainian production over the long term of necessary armaments, ammunition, and equipment, supporting Ukraine's development of a level of readiness for and deterrence against future aggression. The United States intends to work with Ukraine to enable Ukrainian entities to repair key systems and produce parts to facilitate efficient repair through the provision of raw materials and technical expertise, financing, and licensing for technology transfer. The United States intends to support Ukraine in solving challenges, including in the supply of critical materials and components needed for weapons, military equipment, and munitions manufacturing.

Both sides commit to implementing the Statement of Intent on Co-production and Technical Data Exchange, signed December 6, 2023, at the United States-Ukraine Defense Industrial Base Conference in Washington, D.C., working to increase cooperation between the United States and Ukraine and facilitating the movement of investment deals more quickly through systems.

Ukraine commits to strengthen foreign direct investment controls based on national security considerations.

The Participants intend to seek private industry partnerships in key priority areas of defense production, including but not limited to the manufacturing of air defense systems and supporting munitions, artillery ammunition of multiple calibers, supporting barrels and other components, and manufacturing of unmanned aerial vehicles.

The United States intends to facilitate United States-Ukraine defense industrial cooperation, including codevelopment, coproduction, and supply of Ukraine's defense industrial base requirements.

Ukraine commits to continuing its reform of state defense conglomerate JSC Ukrainian Defense Industry to align with international business best practices and Organization for Economic Cooperation and Development standards.

Both sides commit to implement their Research, Development, Testing, and Evaluation Agreement.

**D. End Use Monitoring/Accountability**

The United States reaffirms its commitment to work with allies and partners to facilitate international coordination to mitigate the risk of diversion of advanced conventional weapons through the U.S. Plan to Counter Illicit Diversion of Certain Advanced Conventional Weapons in Eastern Europe. This includes supporting Ukrainian, allied, and partner efforts to conduct end-use monitoring. To implement Article II of the Agreement, Ukraine further reaffirms its commitment to ensuring the security of United States-provided defense articles and technology in accordance with DOD's Golden Sentry enhanced end-use monitoring (EEUM) requirements.

This includes:

- Providing timely and comprehensive expenditure and loss reports for all EEUM items on at least a quarterly basis;
- Continuing to afford United States DOD personnel maximum access and transparency in support of EEUM verification activities, including site visits to Ukrainian weapons depots, as appropriate, and full visibility into Ukrainian logistics management platforms; and
- Fully implementing the concept of operations for the use of handheld scanning devices to self-report EEUM inventories at locations where United States personnel are unable to travel.

As security conditions allow, Ukraine further commits to:

- Conducting a comprehensive inventory of all remaining EEUM items in Ukraine's possession;

- Providing DOD with access to military installations across Ukraine at which EEUM items are stored, to allow for the resumption of all in-person verification activities; and
- Supporting future EEUM requirements the United States may identify to maintain reasonable assurances of the security of advanced conventional weapons in a postwar environment.

The Participants intend to continue the exchange of information on threats related to illicit arms proliferation.

**E. Unexploded Ordnance Removal and Demining**

The United States intends to coordinate with international partners to support unexploded ordnance removal and demining assistance in affected regions in Ukraine, encompassing both humanitarian and combat demining efforts. This support may include assisting civilian populations affected by landmines, explosive remnants of war, and the hazardous effects of unexploded ordnance, through developing Ukraine's domestic capacity for humanitarian demining, land-based and underwater explosive ordnance disposal, and physical security and stockpile management of conventional munitions.

Both sides recognize the importance of a coordinated and robust demining program to Ukraine's long-term recovery potential, due to the contamination of Ukraine's territory with explosive ordnance as a result of Russia's war.

**F. Other Areas of Security and Defense Cooperation**

The Participants intend to deepen their close cooperation on additional areas of mutual concern, in support of their national security and to enhance Ukraine's overall interoperability with NATO and other relevant international security bodies. These additional areas include but are not limited to countering disinformation and malign influence campaigns; counterterrorism efforts against international terrorist organizations; arms control; the nonproliferation of

weapons of mass destruction; and cooperation to strengthen resilience against chemical, biological, radiological, and nuclear risks.

The Participants intend to further develop their intelligence cooperation through information sharing, education, training, experience exchanges, and other forms of cooperation as appropriate.

### **Implementation of Article III: Cooperation on Economic Recovery and Reform**

#### **A. Accountability**

The Participants reaffirm their commitment to holding the Russian Federation to account for its actions in Ukraine, including damage, loss, and injury caused to individuals and entities, as well as to the state of Ukraine, as a result of Russia's internationally wrongful acts in or against Ukraine, including its aggression in violation of the UN Charter.

The Participants intend to seek to hold accountable those responsible for war crimes and other international crimes committed in or against Ukraine, consistent with international law, and to support the full and fair investigation of alleged international crimes through independent, effective, and robust legal mechanisms.

The United States intends to support Ukraine in seeking the immediate release and return of all unlawfully detained and forcibly transferred civilians, primarily Ukrainian children, and to contribute to international efforts to hold accountable, consistent with international law, those responsible for the illegal deportation and displacement of Ukrainian civilians.

#### **B. Immobilization of Russian Sovereign Assets**

The United States intends to hold Russian sovereign assets in United States jurisdiction immobilized until Russia pays for the damage it has caused to Ukraine. The United States, working with its partners, intends to explore all possible avenues by which immobilized Russian sovereign assets could be made use of to support Ukraine, consistent with domestic and international law.

**C. Sanctions Actions**

The Participants recognize the value of sanctions in raising the cost of Russia's war of aggression, degrading Russia's sources of revenue, and impeding Russia's effort to build its capability for aggression, including by restricting the Russian Federation's access to the finance, goods, technology, and services it is utilizing in its aggression.

The Participants intend to continue to work to ensure that the costs to Russia for its aggression continue to rise, including through sanctions and export controls.

**Final Provisions****A. Periodic Review**

The United States and Ukraine commit to periodic, high-level review of the cooperation described in this annex. The United States supports the use of existing mechanisms, such as the Strategic Partnership Dialogue, Bilateral Defense Consultations, and other bilateral engagements, to track regular progress. Both sides support engagements at higher levels once every 12-18 months dedicated to reviewing joint progress of this annex as a whole, and to charting specific objectives for future cooperation under this annex.

This periodic review process should be used to evaluate progress on mutually decided elements of cooperation and to establish new objectives once each side has successfully achieved their mutually decided goals. Specific objectives should be established on at least an annual basis through civilian or military channels as appropriate.

**B. Legal Status and Funding of Annex**

Nothing in this annex is intended to give rise to rights or obligations under domestic or international law.

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The United States and Ukraine intend to implement the commitments under this annex consistent with applicable law and subject to the availability of appropriated funds.



2024/1350

22.5.2024

**REGULATION (EU) 2024/1350 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 14 May 2024****establishing a Union Resettlement and Humanitarian Admission Framework, and amending  
Regulation (EU) 2021/1147**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), points (d) and (g), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) In its conclusions on 'Taking action to better manage migratory flows' of 10 October 2014, the Council acknowledged that, while taking into account the efforts carried out by Member States affected by migratory flows, all Member States should give their contribution to resettlement in a fair and balanced manner.
- (2) This Regulation is based on the full and inclusive application of the United Nations Convention Relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31 January 1967 (the 'Geneva Convention').
- (3) A Union Resettlement and Humanitarian Admission Framework (the 'Union Framework') should be established to complement other legal pathways. The Union Framework should offer the most vulnerable third-country nationals or stateless persons in need of international protection access to a durable solution in accordance with Union and national law.
- (4) On 19 September 2016, the United Nations (UN) General Assembly urged States to scale up resettlement efforts and envisaged a comprehensive refugee response framework in which States aim to provide resettlement places and other legal pathways on a scale that would enable the annual resettlement needs identified by the Office of the United Nations High Commissioner for Refugees (UNHCR) to be met. The Global Compact on Refugees adopted by the UN General Assembly on 17 December 2018 provides that voluntary contributions will be sought from States to establish or enlarge the scope, size, and quality of resettlement programmes.
- (5) In its communication of 13 May 2015 on a European Agenda on Migration, the Commission set out the need for a common approach to granting protection to displaced persons in need of protection through resettlement.
- (6) In its Recommendation to the Member States of 8 June 2015 on a European Resettlement Scheme, the Commission recommended that resettlement should be based on an equitable distribution key. This was followed by conclusions of the Representatives of the Governments of the Member States meeting within the Council of 20 July 2015 to resettle, through multilateral and national schemes, 22 504 persons in clear need of international protection. The

<sup>(1)</sup> OJ C 125, 21.4.2017, p. 40.

<sup>(2)</sup> OJ C 207, 30.6.2017, p. 67.

<sup>(3)</sup> Position of the European Parliament of 10 April 2024 (not yet published in the Official Journal) and decision of the Council of 14 May 2024.

resettlement places were distributed among Member States and Iceland, Liechtenstein, Norway and Switzerland in accordance with the commitments set out in the Annex to those conclusions.

- (7) On 15 December 2015, the Commission addressed a Recommendation for a voluntary humanitarian admission scheme with Turkey to the Member States and associated States, recommending that participating States admit persons displaced by the conflict in Syria who are in need of international protection.
- (8) In its communication of 6 April 2016 entitled 'Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe', the Commission announced that it would set out a proposal for a structured resettlement system framing the Union's policy on resettlement and providing a common approach to safe and legal arrival to the Union for persons in need of international protection.
- (9) In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament underlined the need for a permanent Union-wide resettlement programme which provides resettlement for a meaningful number of refugees, having regard to the overall number of refugees seeking protection in the Union.
- (10) On 27 September 2017, the Commission addressed a Recommendation to the Member States on enhancing legal pathways for persons in need of international protection. In response, Member States pledged to offer 50 039 resettlement places.
- (11) Building on existing initiatives, and in the context of the existing international architecture, a stable and reliable Union Framework should be established for the admission of third-country nationals or stateless persons who are in need of international protection to be implemented in accordance with a Union Resettlement and Humanitarian Admission Plan (the 'Union Plan'), which should fully respect Member States' concrete indications with regard to their commitments.
- (12) The Union Framework should be placed in the context of international resettlement and humanitarian admission efforts. The contribution of the Union Framework to meeting global resettlement and humanitarian admission needs should help strengthen the Union's partnership with third countries with the objective of showing solidarity with countries in regions to which a large number of persons in need of international protection has been displaced by helping to alleviate the pressure on those countries, fostering those countries' capacity to improve reception and international protection conditions, and reducing irregular and dangerous onward movements of third-country nationals and stateless persons in need of international protection, in the context of migration.
- (13) In order to contribute to increasing resettlement and humanitarian admission efforts and reduce divergences among the national resettlement practices and procedures, a common procedure together with common eligibility criteria and grounds for refusal of admission should be laid down, as well as common principles regarding the status to be granted to persons admitted.
- (14) The common admission procedure should build on the existing resettlement and humanitarian admission experience and standards of the Member States and, if applicable, of the UNHCR.
- (15) The admission of family members of third-country nationals or stateless persons who are legally residing in a Member State, or of Union citizens, should be without prejudice to the rights laid down in Council Directive 2003/86/EC<sup>(4)</sup>, Directive 2004/38/EC of the European Parliament and of the Council<sup>(5)</sup> or to national law concerning family reunification. Such admission should therefore focus on the family members who fall outside the scope of those Directives or relevant national law, or who could not be reunited with their families for other reasons.

<sup>(4)</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ L 251, 3.10.2003, p. 12).

<sup>(5)</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (16) In order to ensure family unity, all family members in relation to whom a Member State intends to conduct an admission procedure, who are eligible and who do not fall under the grounds for refusal should, as a rule and to the extent possible, be admitted together. Should this not be possible, family members not admitted together should be admitted as soon as possible at a later stage. In the process of determining the parameters of a given family on whom a third-country national or stateless person is dependent, as referred to in this Regulation, Member States should recognise that the extended relations may be the last line of defence for individuals who rely exclusively on the family for survival, psychological support, and emotional care.
- (17) Member States should be able to choose in relation to whom to conduct an admission procedure, including on the basis of considerations relating to family composition. When making that choice, Member States should respect the principle of family unity. Member States should be able to require third-country nationals or stateless persons to demonstrate the existence of a family relationship.
- (18) The concept of danger to public health is understood as a disease with epidemic potential within the meaning of the International Health Regulations of the World Health Organization.
- (19) An admission procedure consists of the following stages: referral, where applicable, identification, registration, assessment and a conclusion on admission, as well as, in the case of resettlement, a decision on granting international protection or, in the case of humanitarian admission, a decision on granting international protection or humanitarian status under national law.
- (20) A positive conclusion on admission means that a person in relation to whom an admission procedure has been carried out for the purpose of resettlement or humanitarian admission has been accepted for admission by the Member State that reached that conclusion. A negative conclusion on admission means that such a person has not been accepted for admission by the Member State concerned.
- (21) Before granting international protection, a full assessment of the international protection needs of the third-country national or stateless person should be carried out.
- (22) In the case of an emergency admission, the assessment of the admission requirements established under this Regulation should be accelerated. Emergency admission should not necessarily be linked to the regions or third countries from which admission is to occur pursuant to this Regulation. All Member States should be encouraged to offer emergency admission places.
- (23) An admission procedure should be concluded as soon as possible, while ensuring that Member States have sufficient time for an adequate examination of each case. Member States should make every effort to ensure that a third-country national or stateless person in relation to whom a positive conclusion on admission was reached enters their territory no later than twelve months from the date of that conclusion.
- (24) Any personal data of persons granted international protection or a national humanitarian status in accordance with this Regulation should be stored for five years from the date of registration at national level. That five-year period should be considered to be sufficient for the purposes of the admission procedure, given that the majority of such persons will have resided for several years in the Union and will have obtained citizenship of a Member State. Given that third-country nationals or stateless persons who, during the three years before admission, were refused admission to a Member State because there were reasonable grounds for considering that they would be a danger to the community, public policy, security or public health of the Member State examining the admission file or on the ground that an alert has been issued in the Schengen Information System or in a national database of a Member State for the purposes of refusing entry should be refused admission pursuant to this Regulation their data should be stored for a period of three years from the date on which the negative conclusion on admission was reached. Given that third-country nationals who, during the three years before admission, have not given or have withdrawn their consent to be admitted to a particular Member State could be refused admission under the terms of this Regulation, the data should be stored for a period of three years from the date of discontinuation. The storage period should be shorter in certain special situations where there is no need to keep personal data for that length of time. Personal data belonging to a third-country national or to a stateless person should be erased immediately and permanently once that person obtains citizenship of a Member State.
- (25) There is no right to request admission or to be admitted by a Member State. Moreover, there is no obligation on Member States to admit a person pursuant to this Regulation.

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- (26) Resettlement should be the primary type of admission, complemented by humanitarian admission and emergency admission, as appropriate, to address specific circumstances.
- (27) The Union Framework should aim to have all Member States contributing to the implementation of the Union Plan and scaling up their resettlement and humanitarian admission efforts with a view to contributing significantly to meeting the Global Resettlement Needs, including emergency cases.
- (28) To that end, the Asylum, Migration and Integration Fund established by Regulation (EU) 2021/1147 of the European Parliament and of the Council<sup>(6)</sup> should provide targeted assistance in the form of financial incentives for each person admitted in accordance with the Union Framework, as well as for actions to establish appropriate infrastructure and services for the implementation of the Union Framework.
- (29) The European Union Agency for Asylum (the 'Asylum Agency') established by Regulation (EU) 2021/2303 of the European Parliament and of the Council<sup>(7)</sup> should support Member States, on their request and in accordance with its mandate, in implementing the Union Plan, such as by assisting them in the implementation of certain elements of the admission procedure and by coordinating technical cooperation and facilitating the sharing of infrastructure between them.
- (30) The sharing of good practices among resettlement and humanitarian admission actors in relevant fora, including in the Consultations on Resettlement and Complementary Pathways, should be promoted.
- (31) In order to ensure uniform conditions for the implementation of the Union Framework, implementing powers should be conferred on the Council for establishing and amending the two-year Union Plan, fixing the total number of persons to be admitted and indicating what part of that number should be dedicated to resettlement, humanitarian admission and emergency admission, details about the participation of the Member States in the Union Plan and their contributions to the total number of persons to be admitted, a description of the specific group or groups of persons to which the Union Plan should apply, and the specification of the regions or third countries from which admission is to occur.
- (32) Conferring such implementing powers on the Council is justified in view of the fact that those implementing powers relate to national executive powers regarding the admission of third-country nationals on the territory of the Member States.
- (33) Amendments to the Union Plan to address new circumstances could include contributions to new regions or third countries that fully respect indications on a voluntary basis made by Member States at the High-Level Resettlement and Humanitarian Admission Committee (High-Level Committee) through the reallocation of existing or new contributions.
- (34) Those implementing powers should be exercised on a proposal from the Commission on the total number of persons to be admitted and the specification of the regions or third countries from which admission is to occur fully respecting indications on a voluntary basis made by Member States before the proposal at the High-Level Committee. The Commission should make its proposal for the Union Plan simultaneously with its proposal on the draft Union annual budget in the year before the two-year period in which the Union Plan is to be implemented. The Commission should make its proposal for an amendment to the Union Plan simultaneously with a corresponding proposal on the draft amending budget, where necessary. The Council should aim to adopt the proposal within two months.
- (35) The provisions on the content of international protection contained in the asylum *acquis* should apply from the moment when a person admitted who is granted international protection arrives on the territory of the Member State concerned or, where international protection is granted after the person concerned arrives on the territory of the Member State, from the moment when that person is granted international protection.

<sup>(6)</sup> Regulation (EU) 2021/1147 of the European Parliament and of the Council of 7 July 2021 establishing the Asylum, Migration and Integration Fund (OJ L 251, 15.7.2021, p. 1).

<sup>(7)</sup> Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (OJ L 468, 30.12.2021, p. 1).

- (36) The integration of persons admitted in their host society is important for a successful admission procedure. Persons admitted should have the same access to integration measures as beneficiaries of international protection in accordance with Regulation (EU) 2024/1347 of the European Parliament and of the Council<sup>(9)</sup>. Member States should be able to require participation in such integration measures only if those integration measures are easily accessible, available and free of charge. Member States should also offer, where considered to be feasible, a pre-departure orientation programme to third-country nationals or stateless persons. Such a programme could include information about their rights and obligations, language classes, and information about the social, cultural and political situation in the Member State. Such information could also be provided after entry to the territory of the Member State concerned or be included in integration measures, taking into account the particular vulnerabilities of the person admitted. Member States should also be able to arrange post-arrival orientation programmes tailored to the needs of persons admitted in order to provide those persons with guidance concerning, in particular, the learning of the language of the host Member State, education and access to the labour market, taking account of their specific vulnerabilities. In arrangements to be set by Member States the bodies and persons concerned, such as local authorities and persons who have already been admitted, should, as far as possible, be involved in implementing such programmes.
- (37) The secondary movement of all persons who have been admitted under this Regulation, including where humanitarian status under national law has been granted, should be discouraged. Member States, within the framework of Union law and policy, should cooperate effectively and without undue delay readmit persons who have been admitted in accordance with this Regulation and found in a Member State where they have no right to stay.
- (38) Without prejudice to the right to apply for international protection, Member States may, in the case of humanitarian admission, reach a conclusion on the admission of a third-country national or stateless person to its territory based on an initial evaluation and grant that person humanitarian status under national law.
- (39) The humanitarian status under national law should provide for rights and obligations equivalent to those of Articles 20 to 26 and 28 to 35 of Regulation (EU) 2024/1347 for beneficiaries of subsidiary protection. Such a status should be withdrawn only in the event that new circumstances or new evidence arise concerning the person's eligibility following the decision on granting the status.
- (40) In accordance with the Regulation (EU) 2024/1351 of the European Parliament and of the Council<sup>(10)</sup>, in order to comprehensively reflect the efforts of each Member State, the number of third-country nationals admitted by the Member States through Union and national resettlement or humanitarian admission schemes should be taken into account in the assessment of the overall situation of the Union as part of the European Annual Asylum and Migration Report.
- (41) Given the expertise of the UNHCR in facilitating the different forms of admission of persons in need of international protection from third countries, to which they have been displaced, to Member States willing to admit them, the UNHCR should continue to play a key role under the Union Framework. It should be possible to call upon international actors in addition to the UNHCR, such as the International Organization for Migration, to assist Member States in the implementation of the Union Framework.
- (42) A High-Level Committee should be established to consult with stakeholders on the implementation of the Union Framework. The High-Level Committee should advise the Commission on issues related to the implementation of the Union Framework, including on a recommended number of persons to be admitted and the regions or third countries from which admission should be undertaken, taking into account the UNHCR Projected Global Resettlement Needs. The High-Level Committee should be able to make recommendations. The Commission should invite Member States to indicate, on a voluntary basis, at the meeting of the High-Level Committee, the details of their participation, including the type of admission and the countries from which admission is to take place, and their contributions to the total number of persons to be admitted under the Union Plan.

<sup>(9)</sup> Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (OJ L, 2024/1347, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1347/oj>).

<sup>(10)</sup> Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No 604/2013 (OJ L, 2024/1351, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1351/oj>).

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- (43) Resettlement and humanitarian admission efforts by Member States under this Regulation should be supported by appropriate funding from the Union's general budget. In order to enable a proper and sustainable functioning of the Union Framework, Regulation (EU) 2021/1147 should be amended.
- (44) This Regulation does not affect the ability of the Member States to adopt or implement national resettlement schemes for example where they contribute an additional number of admission places to the total number of persons to be admitted under the Union Plan.
- (45) Complementarity with ongoing resettlement and humanitarian admission initiatives undertaken in the Union framework should be ensured.
- (46) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should therefore be applied in a manner consistent with those rights and principles, in particular as regards the rights of the child, the right to respect for family life and the general principle of non-discrimination.
- (47) Any processing of personal data by the authorities of the Member States within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(10)</sup>.
- (48) Any processing of personal data by the Asylum Agency within the framework of this Regulation should be conducted in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(11)</sup> as well as with Regulation (EU) 2021/2303 and should respect the principles of necessity and proportionality.
- (49) Since the objective of this Regulation, namely to establish a Union Framework, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the Union Resettlement Framework, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (50) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (51) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Subject matter**

1. This Regulation:
- (a) establishes a Union Resettlement and Humanitarian Admission Framework (the 'Union Framework') for the admission of third-country nationals or stateless persons to the territory of the Member States with a view to granting them, in accordance with this Regulation:
- (i) international protection; or

<sup>(10)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(11)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (ii) humanitarian status under national law which provides for rights and obligations equivalent to those established in Articles 20 to 26 and 28 to 35 of Regulation (EU) 2024/1347 for beneficiaries of subsidiary protection; and
  - (b) lays down rules on the admission, by means of resettlement or humanitarian admission, of third-country nationals or stateless persons to the territory of the Member States for the purpose of implementing this Regulation.
2. This Regulation does not establish a right of third-country nationals or stateless persons to request admission, or to be admitted, to the territory of a Member State.
3. This Regulation does not impose an obligation on Member States to admit a third-country national or a stateless person.
4. Member States shall contribute to the Union Resettlement and Humanitarian Admission Plan (the 'Union Plan') referred to in Article 8 on a voluntary basis. The indications made by the Member States in the High-Level Resettlement and Humanitarian Admission Committee, established pursuant to Article 11, in relation to the details of their participation, including the type of admission and the regions or third countries from which admission is to take place, and of their contribution to the total number of persons to be admitted under the Union Plan, shall be voluntary.

#### Article 2

#### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'resettlement' means the admission to the territory of a Member State, following a referral from the United Nations High Commissioner for Refugees (UNHCR), of a third-country national or a stateless person, from a third country to which that person has been displaced, who:
- (a) is eligible for admission pursuant to Article 5(1);
  - (b) does not fall under the grounds for refusal set out in Article 6; and
  - (c) is granted international protection in accordance with Union and national law and has access to a durable solution;
- (2) 'international protection' means international protection as defined in Article 3, point (3), of Regulation (EU) 2024/1347;
- (3) 'humanitarian admission' means the admission to the territory of a Member State, following, where requested by a Member State, a referral from the European Union Agency for Asylum (the 'Asylum Agency'), from the UNHCR, or from another relevant international body, of a third-country national or a stateless person from a third country to which that person has been forcibly displaced and, at least on the basis of an initial evaluation, who:
- (a) is eligible for admission pursuant to Article 5(2);
  - (b) does not fall under the grounds for refusal set out in Article 6; and
  - (c) is granted international protection in accordance with Article 9(17) of this Regulation or humanitarian status under national law, which provides for rights and obligations equivalent to those established in Article 20 to 26 and 28 to 35 of Regulation (EU) 2024/1347 for beneficiaries of subsidiary protection;
- (4) 'emergency admission' means the admission by means of resettlement or humanitarian admission of persons with urgent legal or physical protection needs or with immediate medical needs.

*Article 3***Union Resettlement and Humanitarian Admission Framework**

The Union Framework shall:

- (a) provide for the legal and safe arrival to the territory of a Member State of third-country nationals or stateless persons who are eligible for admission and who do not fall under the grounds for refusal under this Regulation with a view to granting them international protection in accordance with this Regulation or humanitarian status under national law referred to in Article 2, point (3)(c), and encourage all Member States to scale up their efforts to that end;
- (b) contribute to increasing the Union's contribution to international resettlement and humanitarian admission initiatives with a view to increasing the overall number of available places for resettlement and humanitarian admission;
- (c) contribute to strengthening the Union's partnerships with third countries in regions to which a large number of persons in need of international protection has been displaced.

*Article 4***Determination of regions or third countries from which Union resettlement or humanitarian admission is to occur**

The determination of the regions or third countries from which Union resettlement or humanitarian admission occurs shall primarily have as a basis:

- (a) the UNHCR Projected Global Resettlement Needs;
- (b) the scope for improving the protection environment and increasing the protection space in third countries;
- (c) the scale and content of commitments to resettlement or humanitarian admission undertaken by third countries with a view to collectively contributing to meeting the UNHCR Global Resettlement Needs.

*Article 5***Eligibility for admission**

1. For the purpose of resettlement, the following third-country nationals or stateless persons shall be eligible for admission, provided that they also fall within at least one of the categories referred to in paragraph 3, point (a):

- (a) third-country nationals who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, as defined in Article 10 of Regulation (EU) 2024/1347, are outside their country of nationality and are unable or, owing to such a fear, are unwilling to avail themselves of the protection of that country, or stateless persons, who, being outside the country of former habitual residence for the same reasons, are unable or, owing to such a fear, are unwilling to return to that country; or
- (b) third-country nationals who are outside the country of nationality or stateless persons who are outside the country of their former habitual residence and in respect of whom substantial grounds have been shown for believing that they, if returned to their country of origin or, in the case of stateless persons, to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Regulation (EU) 2024/1347, and are unable or, owing to such risk, are unwilling to avail themselves of the protection of that country.

Persons whose protection or assistance from organs or agencies of the UN other than the UNHCR has ceased for any reason without their position being definitively settled in accordance with the relevant resolutions adopted by the UN General Assembly shall be deemed to meet the eligibility criteria set out in this paragraph.

2. For the purpose of humanitarian admission, the following third-country nationals or stateless persons shall be eligible for admission, provided that, at least on the basis of an initial evaluation, they also fall within at least one of the categories referred to in paragraph 3:

- (a) third-country nationals who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, as defined in Article 10 of Regulation (EU) 2024/1347 are outside the country of nationality and are unable or, owing to such a fear, are unwilling to avail themselves of the protection of that country, or stateless persons who, being outside the country of former habitual residence for the same reasons, are unable or, owing to such a fear, unwilling to return to it; or
- (b) third-country nationals who are outside the country of nationality or stateless persons who are outside the country of former habitual residence, and in respect of whom substantial grounds have been shown for believing that they, if returned to their country of origin or, in the case of stateless persons, to their country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 of Regulation (EU) 2024/1347, and are unable or, owing to such risk, are unwilling to avail themselves of the protection of that country.

Persons whose protection or assistance from organs or agencies of the UN other than the UNHCR has ceased for any reason without their position being definitively settled in accordance with the relevant resolutions adopted by the UN General Assembly, shall be deemed to meet the eligibility criteria set out in this paragraph.

3. To be eligible for admission pursuant to this Article, a third-country national or stateless person shall also fall within at least one of the following categories:

- (a) vulnerable persons, comprising:
  - (i) women and girls at risk;
  - (ii) minors, including unaccompanied minors;
  - (iii) survivors of violence or torture, including on the basis of gender or sexual orientation;
  - (iv) persons with legal and/or physical protection needs, including as regards protection from refoulement;
  - (v) persons with medical needs, including where life-saving treatment is unavailable in the country to which they have been forcibly displaced;
  - (vi) persons with disabilities;
  - (vii) persons who lack a foreseeable alternative durable solution, in particular those in a protracted refugee situation;
- (b) in the case of humanitarian admission, the family members, as referred to in paragraph 4, of third-country nationals or stateless persons legally residing in a Member State, or of Union citizens.

4. In order to ensure family unity, the following family members of third-country nationals or stateless persons to be admitted shall also be eligible for admission:

- (a) the spouse or unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to that of married couples under its law relating to third-country nationals or stateless persons;
- (b) the minor children on the condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted or recognised as defined under national law;
- (c) the father, mother or another adult responsible for an unmarried minor, whether by law or by the practice of the Member State concerned;

- (d) the sibling or siblings;
- (e) third-country nationals or stateless persons who are dependent on their child, parent or other family member for assistance as a result of pregnancy, a new-born child, serious mental or physical illness, severe disability or old age, provided that family ties existed in the country of origin, that the child, parent or other family member is able to take care of the dependent person, and that the persons concerned expressed their desire in writing.

When applying this paragraph, Member States shall take due account of the best interests of the child. Where the third-country national or stateless person is a married minor but not accompanied by his or her spouse, the best interests of the minor may be seen to lie with the minor's original family.

#### Article 6

#### Grounds for refusing admission

1. The following third-country nationals or stateless persons shall be refused admission under this Regulation:
  - (a) persons who are recognised by the competent authorities of the country in which they have taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or equivalent rights and obligations;
  - (b) persons in relation to whom there are reasonable grounds for considering that they have:
    - (i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
    - (ii) committed a serious crime;
    - (iii) been guilty of acts contrary to the purposes and principles of the UN as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (c) persons for whom there are reasonable grounds for considering that they are a danger to the community, public policy, security or public health of the Member State examining the admission file;
  - (d) persons for whom an alert has been issued in the Schengen Information System or in a national database of a Member State for the purpose of refusing entry;
  - (e) persons who have been granted international protection by Member States or humanitarian status under national law as referred to in Article 2, point (3)(c);
  - (f) persons whom a Member State has, during the three years before admission, refused admission pursuant to point (c) or (d) of this subparagraph.

Point (b) of the first subparagraph shall also apply to persons who incite, or who otherwise participate in, the commission of the crimes or acts mentioned therein.

2. The following third-country nationals or stateless persons may be refused admission:
  - (a) persons who, during the three years before admission, have not given or have withdrawn consent to be admitted to a particular Member State, as referred to in Article 7, provided that they have been informed of the consequences of such withdrawal in accordance with Article 9(4), point (b);
  - (b) persons who have committed one or more crimes outside the scope of paragraph 1, first subparagraph, point (b), which would be punishable with a maximum sentence of at least one year of imprisonment had they been committed in the Member State examining the admission file, unless the prosecution or the punishment would have been statute-barred or, in the case of a conviction for such a crime, an entry relating to that conviction would have been removed from the national criminal record, according to the law of the Member State examining the admission file;

- (c) persons who refuse to participate in a pre-departure orientation programme referred to in Article 9(22);
  - (d) persons in relation to whom a Member State cannot provide the adequate support needed on the basis of those persons' vulnerability.
3. The grounds provided for in this Article shall apply provided that they are implemented without discrimination on the basis of, inter alia, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

#### Article 7

##### Consent

1. The admission procedure laid down in Article 9 shall apply to third-country nationals or stateless persons who have given their consent to be admitted and who have not subsequently withdrawn their consent, including by refusing admission to a particular Member State.
2. Where a third-country national or a stateless person fails to provide available data or information essential to the conduct of the procedure provided for in Article 9(3) or fails to attend the personal interview provided for in Article 9(6) that person may be considered to have implicitly withdrawn consent to be admitted as referred to in paragraph 1 of this Article, unless the person was not informed in accordance with Article 9(4), complies with the obligations within a reasonable period of time, or can demonstrate that the failure to provide data or information or to attend the personal interview was due to circumstances beyond that person's control.

#### Article 8

##### Union Resettlement and Humanitarian Admission Plan

1. On the basis of a proposal from the Commission, the Council shall adopt, by means of an implementing act, a two-year Union Resettlement and Humanitarian Admission Plan (Union Plan) in the year before the two-year period in which it is to be implemented.

The Commission shall inform the European Parliament of its proposed draft Union Plan without delay, and the Council shall keep the European Parliament regularly informed of progress relating to the adoption of the Union Plan.

The Council shall inform the European Parliament and the Commission of the final draft Union Plan without delay. The Council shall transmit the Union Plan to the European Parliament without delay upon its adoption.

2. When implementing this Article, the Council and the Commission shall take due account of the outcome of meetings of the High-Level Resettlement and Humanitarian Admission Committee established pursuant to Article 11 and of the UNHCR Projected Global Resettlement Needs.

3. The Union Plan shall include:

- (a) the total number of persons to be admitted to the territory of the Member States, indicating, respectively, the proportion of persons who are to be subject to resettlement, to humanitarian admission and to emergency admission, the proportion of persons subject to resettlement being not less than approximately 60 % of the total number of persons to be admitted;
- (b) details about the participation of the Member States and their contributions to the total number of persons to be admitted and the proportion of the persons who are to be subject to resettlement, to humanitarian admission and to emergency admission in accordance with point (a) of this paragraph, fully respecting the indications made by Member States at the High-Level Resettlement and Humanitarian Admission Committee established pursuant to Article 11;
- (c) a specification of the regions or third countries from which resettlement or humanitarian admission is to occur pursuant to Article 4.

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4. The Union Plan may, where necessary, include:
  - (a) a description of the specific group or groups of third-country nationals or stateless persons to whom the Union Plan is to apply;
  - (b) local coordination, as well as practical cooperation arrangements among Member States, supported by the Asylum Agency in accordance with Article 10, and with third countries, the UNHCR and other relevant partners.
5. Emergency admission shall be applied irrespective of the regions or third countries from which resettlement or humanitarian admission is to occur.
6. Where required by new circumstances, such as an unforeseen humanitarian crisis outside the regions or third countries referred to in the Union Plan, the Council, on a proposal from the Commission, shall, where appropriate, amend the Union Plan such as by adding regions or third countries to those from which admission is to occur pursuant to Article 4.

*Article 9*

**Admission procedure**

1. In the case of resettlement, for the purpose of implementing the Union Plan, Member States shall request the UNHCR to refer third-country nationals or stateless persons to them.

In the case of humanitarian admission, for the purpose of implementing the Union Plan, Member States may request that the Asylum Agency, the UNHCR, or another relevant international body refer third-country nationals or stateless persons to them.

2. A Member State shall assess whether a third-country national or a stateless person as referred to in paragraph 1 falls within the scope of the Union Plan.

A Member State may give preference to a third-country national or a stateless person who has:

- (a) family links with third-country nationals or stateless persons legally residing in a Member State or with Union citizens;
- (b) demonstrated social links or other characteristics that can facilitate integration in the Member State conducting an admission procedure, including appropriate language skills or previous residence in that Member State;
- (c) particular protection needs or vulnerabilities.

3. After identifying a third-country national or a stateless person who falls within the scope of the Union Plan and in relation to whom it intends to conduct an admission procedure, a Member State shall register the following information in relation to that person:

- (a) the third-country national's or the stateless person's name, date of birth, gender and nationality;
- (b) the type and number of any identity or travel document of the third-country national or stateless person; and
- (c) the date and place of the registration and the authority making the registration.

Additional data necessary for the implementation of paragraphs 6 and 9 may be collected at the time of registration.

4. Member States shall inform the third-country nationals or stateless persons in relation to whom they conduct an admission procedure of:

- (a) the objectives of and the different steps in the admission procedure;
- (b) the consequences of withdrawing consent as referred to in Article 7, and of a refusal to participate in any pre-departure orientation programme as referred to in paragraph 22 of this Article.

5. Member States shall provide the third-country nationals or stateless persons in relation to whom they conduct an admission procedure, at the time when personal data are collected, in writing, and, where necessary, orally, with the information that they are required to provide under Regulation (EU) 2016/679. That information shall be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language, adapted to the needs of minors and of persons with specific needs and in a language that the third-country nationals or stateless persons understand or are reasonably supposed to understand.

6. Member States shall assess whether the third-country nationals or the stateless persons in relation to whom they conduct an admission procedure meet the eligibility criteria set out in Article 5 and do not fall under the grounds for refusal set out in Article 6.

Member States shall make that assessment in particular on the basis of documentary evidence, including, where applicable, information from the UNHCR on whether the third-country nationals or the stateless persons qualify as refugees, on the basis of a personal interview, or a combination of both.

7. In the case of resettlement, Member States shall request that the UNHCR conduct a full assessment of whether the third-country nationals or the stateless persons subject to an admission procedure:

- (a) fall within the scope of the Union Plan;
- (b) fall under one of the categories of vulnerability set out in Article 5(3), point (a) or have family links in accordance with Article 5(4), and the reasons for such an assessment;
- (c) qualify as refugees within the meaning of Article 1 of the Geneva Convention.

Member States may request that the criteria set out in paragraph 2, second subparagraph, be taken into account.

8. In the case of humanitarian admission, Member States may request that the UNHCR assess whether the third-country nationals or stateless persons referred to them by the UNHCR:

- (a) qualify as refugees within the meaning of Article 1 of the Geneva Convention;
- (b) fall under one of the categories of vulnerability set out in Article 5(3), point (a) or have family links in accordance with Article 5(3), point (b).

Member States may request that the criteria set out in paragraph 2, second subparagraph, be taken into account.

9. Member States shall reach a conclusion on the admission of third-country nationals or stateless persons on the basis of the assessment referred to in paragraph 6 as soon as possible and no later than seven months from the date of registration. Member States may extend that time-limit by up to three months in the event of complex issues of fact or law.

10. In the case of an emergency admission, Member States shall reach a conclusion as soon as possible and endeavour to do so no later than one month from the date of registration.

11. Member States shall discontinue an admission procedure in which third-country nationals or stateless persons have withdrawn their consent as referred to in Article 7.

A Member State may discontinue an admission procedure in the following circumstances:

- (a) where it has concluded that the total number of third-country nationals or stateless persons admitted exceeds its contribution set out in the Union Plan;
- (b) where it has concluded to give preference to the third-country nationals or stateless persons in accordance with paragraph 2, point (c);
- (c) where it has concluded that it is not able to comply with the time limits referred to in paragraph 9 for reasons beyond its control.

Subject to Chapter V of Regulation (EU) 2016/679, the reason for discontinuation shall be communicated to the UNHCR where necessary to enable the UNHCR to carry out its tasks regarding referrals of third-country nationals or stateless persons to Member States or to third countries in accordance with this Regulation or with its mandate, unless there are overriding reasons of public interest for not doing so.

12. Member States shall store the data of persons to whom they grant international protection or humanitarian status under national law in accordance with this Regulation for five years from the date of registration. In the case of persons who have been refused admission on any of the grounds referred to in Article 6(1), first subparagraph, point (f), such data shall be stored for a period of three years from the date on which the negative conclusion on admission was reached.

Upon expiry of the applicable period, the Member States shall erase the data. Member States shall erase the data relating to a person who has acquired citizenship of any Member State before the expiry of that period as soon as they become aware that the person concerned has acquired such citizenship.

Where a Member State discontinues an admission procedure pursuant to paragraph 11, first subparagraph, the Member State shall store the data related to the person concerned for three years from the date of that discontinuation. Where a Member State discontinues an admission procedure pursuant to paragraph 11, second subparagraph, the Member State shall erase the data relating to the person concerned on the date of that discontinuation.

13. Where a Member State's conclusion pursuant to paragraph 9 is negative, the third-country national or stateless person concerned shall not be admitted to that Member State.

Subject to Chapter V of Regulation (EU) 2016/679, the reason for a negative conclusion shall be communicated to the UNHCR, where necessary to enable the UNHCR to carry out its tasks regarding referrals of third-country nationals or stateless persons to Member States or to third countries in accordance with this Regulation or with its mandate, unless there are overriding reasons of public interest for not doing so.

Any Member State that has reached a negative conclusion as referred to in the first subparagraph may require that it be consulted by another Member State during that other Member State's examination of the admission file.

14. Where a Member State's conclusion pursuant to paragraph 9 is positive paragraphs 15 to 22 shall apply before or after the entry of the person concerned to its territory.

15. Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to grant refugee status where the third-country national or the stateless person concerned qualifies as a refugee, or subsidiary protection status where the third-country national or the stateless person concerned is eligible for subsidiary protection.

Such a decision shall have the same effect as a decision granting refugee status or subsidiary protection status as referred to in Articles 13 or 18 of Regulation (EU) 2024/1347, after the person concerned has entered the territory of a Member State.

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable in accordance with Article 13 of Council Directive 2003/109/EC<sup>(12)</sup>.

16. Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to issue a residence permit in the case of a family member of the third-country national or stateless person concerned, pursuant to Article 5(4), who does not qualify individually for international protection.

Such a decision shall have the same effect as a decision to issue a residence permit as referred to in Article 23(1) of Regulation (EU) 2024/1347, after the person concerned has entered the territory of a Member State.

17. Pursuant to paragraph 14 of this Article, a Member State as referred to therein may, in the case of humanitarian admission, grant international protection or, without prejudice to the right to apply for international protection, humanitarian status under national law that provides for rights and obligations equivalent to those of Articles 20 to 26 and 28 to 35 of Regulation (EU) 2024/1347 for beneficiaries of subsidiary protection.

Such a decision shall take effect after the person concerned has entered the territory of the Member State.

<sup>(12)</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

18. Pursuant to paragraph 14 of this Article, a Member State as referred to therein shall take a decision to issue a residence permit in the case of a family member of the third-country national or stateless person concerned, pursuant to Article 5(4), who does not qualify individually for international protection or for humanitarian status under national law as referred to in Article 2, point (3)(c).

Such a decision shall have the same effect as a decision to issue a residence permit as referred to Article 23(1) of Regulation (EU) 2024/1347, after the person concerned has entered the territory of a Member State.

19. Pursuant to paragraph 14 of this Article, a Member State as referred to therein, or the relevant partner on behalf of the Member State in accordance with Article 10(3) shall notify the third-country nationals or stateless persons concerned of any decision pursuant to paragraphs 15 and 17 of this Article.

Where such a decision was taken before the person concerned entered the territory of the Member State, that a notification may take place after such entry.

20. Pursuant to paragraph 14, a Member State as referred to therein shall make every effort to ensure entry to its territory as soon as possible and no later than 12 months from the date of the conclusion.

In the case of an emergency admission, the Member State shall ensure the swift transfer of the third-country national or the stateless person after the date of the positive conclusion pursuant to paragraph 9.

21. Pursuant to paragraph 14, a Member State as referred to therein shall offer, where necessary, to make travel arrangements, including fit-to-travel medical checks and provide transfer to their territory free of charge, including, where necessary, the facilitation of exit procedures in the third country from where the third-country national or the stateless person concerned is admitted.

Where a Member State organises travel arrangements pursuant to the first subparagraph, it shall take into account the specific needs of the persons concerned with regard to any vulnerabilities that they may have.

22. Pursuant to paragraph 14, a Member State as referred to therein shall, where feasible, offer pre-departure orientation programmes to the third-country nationals or stateless persons concerned, which shall be free of charge and easily accessible and may include information about their rights and obligations, language classes, and information about the Member State's social, cultural and political situation.

Where it is not feasible to provide such orientation programmes, Member States shall provide at least information about their rights and obligations to third-country nationals or stateless persons.

23. Personal data processed by a Member State pursuant to this Article shall not be transferred or made available to any third country, international body or private entity established in the Union or in a third country in cases other than those provided for in this Article.

24. Member States shall transmit the data of the persons falling within the scope of this Regulation in accordance with Article 18 of Regulation (EU) 2024/1358 of the European Parliament and of the Council <sup>(1)</sup>.

25. At all stages of the procedure, Member States shall not discriminate against persons on grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

<sup>(1)</sup> Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council (OJ L, 2024/1358, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1358/oj>).

## Article 10

**Operational cooperation**

1. To facilitate the implementation of the Union Plan, Member States shall appoint national contact points and may decide to appoint liaison officers in third countries.

2. The Asylum Agency may support Member States upon their request in accordance with Article 9(1) of this Regulation, or where provided for in a Union Plan in accordance with Article 8(4), point (b), of this Regulation. That support may include coordinating technical cooperation between Member States, assisting Member States in the implementation of the Union Plan, the training of personnel conducting admission procedures, providing information to third-country nationals or stateless persons as referred to in Article 9(4), (5) and (25) of this Regulation, facilitating the sharing of infrastructure, and assisting Member States in cooperating with third countries for the purpose of conducting admission procedures pursuant to Regulation (EU) 2021/2303.

The Asylum Agency may also coordinate an exchange of good practices between Member States for the purpose of the implementation of this Regulation and the integration of resettled persons in their host society.

3. For the purpose of implementing the Union Plan, and in particular of notifying the third-country nationals or stateless persons concerned of the decision taken by Member States in accordance with Article 9(15) and (17) and of conducting pre-departure orientation programmes, fit-to-travel medical checks, travel arrangements and other practical arrangements, Member States may be assisted by relevant partners upon the request of the Member State or in accordance with local coordination and practical cooperation arrangements for a Union Plan established in accordance with Article 8(4), point (b).

## Article 11

**High-Level Resettlement and Humanitarian Admission Committee**

1. A High-Level Resettlement and Humanitarian Admission Committee (High-Level Committee) shall be established. It shall be composed of representatives of the European Parliament, the Council, the Commission and the Member States.

The Asylum Agency, the UNHCR and the International Organization for Migration shall be invited to attend the meetings of the High-Level Committee.

Other relevant organisations, including civil society organisations, may be invited to attend the meetings of the High-Level Committee in areas of their expertise.

Representatives of Iceland, Liechtenstein, Norway, and Switzerland shall be invited to attend the meetings of the High-Level Committee where they have indicated their intention to be associated with the implementation of the Union Plan.

2. The High-Level Committee shall be chaired by the Commission. It shall meet at least once a year and whenever necessary at the invitation of the Commission or at a request of a Member State or of the European Parliament.

3. The High-Level Committee shall advise the Commission on issues related to the implementation of the Union Framework, including on a recommended number of persons to be admitted and the regions or third countries from which such admission is to be undertaken, taking into account the UNHCR Projected Global Resettlement Needs. It may make recommendations.

The Commission shall publish the minutes of the meetings of the High-Level Committee, unless such publication would undermine the protection of any public or private interest as provided for in Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>(4)</sup>.

4. The Commission shall consult the High-Level Committee and shall take into account the outcome of the meetings of the High-Level Committee with regard to issues related to the implementation of the Union Framework.

<sup>(4)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

5. Following the outcome of the meetings of the High-Level Committee pursuant to this Article, the Commission shall invite Member States to indicate the details of their participation and of their contribution on a voluntary basis to the total number of persons to be admitted including the type of admission and the regions or third countries from which admission shall take place in accordance with Articles 4 and 8.

6. The Commission, on its own initiative or following a recommendation by one or more Member States or the European Parliament, shall convene a meeting of the High-Level Committee for the purpose of discussing the possible admission of persons pursuant to Article 8(6), with a view to responding to new circumstances, such as an unforeseen humanitarian crisis in regions or third countries that are not included in the Union Plan.

7. The High-Level Committee may, if necessary, establish its rules of procedure.

#### Article 12

##### **Association with Iceland, Liechtenstein, Norway, and Switzerland**

Iceland, Liechtenstein, Norway, and Switzerland shall be invited to be associated with the implementation of the Union Plan. Such association shall duly take this Regulation into account, in particular with regard to the procedure laid down in Article 9 and the rights and obligations of persons admitted.

#### Article 13

##### **Financial support**

Financial support to the Member States for resettlement and humanitarian admission shall be implemented in accordance with Regulation (EU) 2021/1147.

#### Article 14

##### **Amendments to Regulation (EU) 2021/1147**

Regulation (EU) 2021/1147 is amended as follows:

(1) Article 2 is amended as follows:

(a) point (5) is replaced by the following:

‘(5) “humanitarian admission” means humanitarian admission as defined in Article 2, point (3), of Regulation (EU) 2024/1350 of the European Parliament and of the Council (\*);

(\*) Regulation (EU) 2024/1350 of the European Parliament and the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework, and amending Regulation (EU) 2021/1147 (OJ L, 2024/1350, 22.5.2024, ELI: <http://data.europa.eu/eli/reg/2024/1350/oj>).’;

(b) point (8) is replaced by the following:

‘(8) “resettlement” means resettlement as defined in Article 2, point (1), of Regulation (EU) 2024/1350’;

(2) in Article 19, paragraphs (1), (2) and (3) are replaced by the following:

‘1. Member States shall receive, in addition to their allocation under Article 13(1), point (a), of this Regulation an amount of EUR 10 000 for each person admitted through resettlement under the Union Resettlement and Humanitarian Admission Framework established by Regulation (EU) 2024/1350.

2. Member States shall receive, in addition to their allocation under Article 13(1), point (a) of this Regulation, an amount of EUR 6 000 for each person admitted through humanitarian admission under the Union Resettlement and Humanitarian Admission Framework established by Regulation (EU) 2024/1350 or admitted under a national resettlement scheme.

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3. The amount referred to in paragraph 2 shall be increased to EUR 8 000 for each person admitted through humanitarian admission or admitted under a national resettlement scheme who belongs to one or more of the following vulnerable groups:

- (a) women and children at risk;
- (b) unaccompanied minors;
- (c) persons having medical needs that can be addressed only through humanitarian admission;
- (d) persons in need of humanitarian admission for legal or physical protection needs, including victims of violence or torture.’.

*Article 15*

**Evaluation and Review**

1. By 12 June 2028, the Commission shall submit a report to the European Parliament and to the Council on the application of this Regulation, including Article 9(2), point (b), and on the contributions made by Member States to the implementation of the Union Plan, in accordance with Article 8, and on the efforts of all Member States to scale up their resettlement and humanitarian admission efforts with a view to significantly contributing to meeting the global resettlement needs. The report shall be accompanied, where appropriate, by proposals to achieve that aim.
2. Member States shall provide the Commission and the Asylum Agency with the necessary information for drawing up the Commission's report for the purpose of paragraph 1.
3. The European Parliament and the Council shall, on the basis of a proposal of the Commission, review this Regulation within two years of submission of the Commission report pursuant to paragraph 1, taking into account the content of that report.

*Article 16*

**Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. Article 9(24) shall apply from 12 June 2026.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 14 May 2024.

*For the European Parliament*

*The President*

R. METSOLA

*For the Council*

*The President*

H. LAHBIB

United Nations

S/RES/2730 (2024)

**Security Council**Distr.: General  
24 May 2024

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**Resolution 2730 (2024)****Adopted by the Security Council at its 9634th meeting, on  
24 May 2024***The Security Council,*

*Reiterating* its primary responsibility for the maintenance of international peace and security and, in this context, the need to promote and ensure respect for the rules and principles of international humanitarian law,

*Recalling* Security Council resolutions [1502 \(2003\)](#) and [2175 \(2014\)](#) on the Protection of Humanitarian Personnel and United Nations and associated personnel, as well as other relevant resolutions and statements of its President,

*Recalling also* all relevant General Assembly resolutions, including resolutions entitled *Safety and security of humanitarian personnel and protection of United Nations personnel*, and entitled *Strengthening the Coordination of humanitarian emergency assistance of the United Nations*, including resolution [46/182 on the strengthening of the coordination of humanitarian emergency assistance of the United Nations](#) as well as resolution [59/276 XI](#) entitled *Strengthened and unified security management system for the United Nations*,

*Recalling* the Geneva Conventions of 1949 and their Additional Protocols, and the obligations of parties to armed conflict to respect international humanitarian law in all circumstances, and also *recalling* the obligation of all State Parties to the 1949 Geneva Conventions to respect and ensure respect for the Conventions in all circumstances,

*Recalling* that the primary responsibility under international law for the security and protection of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, lies with the Government hosting humanitarian operations or a United Nations operation conducted under the Charter of the United Nations or its agreements with relevant organizations,

*Noting* that this year marks the 25th anniversary of the progressive consideration by the Security Council of the protection of civilians in armed conflict as a thematic issue, and *acknowledging* the enduring need for the Security Council and Member States to redouble efforts to strengthen the protection of civilians in armed conflict and *noting* the important role played by humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, in conducting humanitarian activities,

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*Taking note* of the contribution of the updated Aide Memoire for the consideration of issues pertaining to the protection of civilians in armed conflict,<sup>1</sup>

*Deeply concerned* by continuous disregard for and violations of international humanitarian law,

*Gravely concerned* about the growing number of attacks, acts of violence, and threats against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, including those involving landmines, explosive remnants of war, and improvised explosive devices, and the impact of hostilities and violations related to the conduct of hostilities on such personnel, its premises and assets, as well as the adverse impact of such violence on humanitarian activities,

*Deeply concerned* about the particular vulnerability of national and locally recruited humanitarian personnel to threats and acts of violence, who accounted in recent years for the majority of safety and security incidents, and *underscoring* the need for concerted efforts and concrete risk mitigation strategies to enhance their safety and security,

*Recalling* the obligation of all parties to armed conflict to comply with international humanitarian law, in particular their obligations under the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 to respect and protect humanitarian personnel, and that attacks intentionally directed against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law, are considered a war crime under international law,

*Underlining* the obligations of all parties to armed conflict under international humanitarian law related to protecting civilians and civilian objects, which include humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, entitled to such protection, to meeting the basic needs of the civilian population within their territory or under their control, and allowing and facilitating the rapid, safe and unhindered passage of humanitarian relief to all those in need,

*Recognizing* the role of the United Nations Security Management System and humanitarian organizations' access, safety and security management systems to enable a stay-and-deliver approach to deliver the most critical programmes, while focusing on effectively managing the risks to which personnel are exposed, even in high-threat environments,

*Reaffirming* the need for all parties to armed conflict to preserve the ability of humanitarian organizations to act in a manner consistent with the humanitarian principles of humanity, neutrality, impartiality and independence in order to provide their activities to all persons in need and to provide for the protection and safety of those persons and of the humanitarian personnel delivering such humanitarian activities,

*Recalling* that in line with international humanitarian law impartial humanitarian organizations may offer their services to any party to armed conflict; *recognizing* the importance of consistent engagement by humanitarian organizations with all parties to armed conflict for humanitarian purposes, including activities aimed at ensuring respect for international humanitarian law and *condemning* the targeting, killing, harassment, intimidation, reprisal, criminalization, prosecutions,

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<sup>1</sup> The initial Aide Memoire was adopted on 15 March 2002 in S/PRST/2002/6.

arbitrary arrest and arbitrary detentions of humanitarian personnel for humanitarian activities, *gravely concerned* with the increase in incidents of violence against humanitarian personnel, United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, in urban conflict settings, and *stressing* the importance of continuous training, monitoring and adaptation of security risk management measures to protect those delivering humanitarian activities in high-risk environments,

*Recognizing* with deep appreciation the essential role of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel in conducting humanitarian activities, commending them for operating even in dangerous environments, emphasizing the need to support their health and well-being, and paying tribute to all of them, in particular those who have sacrificed their lives in the service of humanity,

*Reaffirming* the importance of full, equal, safe and meaningful participation of women in humanitarian and United Nations activities, and the importance of conducting and integrating gender-sensitive assessments when considering the safety and security of personnel, premises and assets,

*Expressing deep concern* at the exposure of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, to certain forms of crime and acts of intimidation and harassment, including sexual violence and other forms of sexual and gender-based violence, and *equally concerned* at the significant number of reported sexual assaults against both male and female United Nations personnel,

*Expressing serious concern* regarding challenges in bringing to justice those allegedly responsible for the deliberate targeting and other unlawful acts against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, and *emphasizing* the responsibility of States to comply with their obligations to thoroughly investigate and prosecute persons responsible for serious violations of international law and other international crimes, in order to prevent these crimes, avoid their recurrence and seek sustainable peace, justice, truth and reconciliation, and, in this regard, *reaffirming* the need to end impunity for serious violations of international humanitarian law and other international crimes, including those involving attacks against humanitarian personnel and United Nations and associated personnel,

*Expressing* concern about the increase in malicious information and communication technologies activities, including data breaches, information operations, that target humanitarian organizations, disrupt their relief operations, undermine trust in humanitarian organizations and United Nations activities, and threaten the safety and security of their personnel, premises and assets, and ultimately their access and ability to carry out humanitarian activities,

*Noting with concern* the increasing threat of disinformation campaigns and misinformation that undermine trust in United Nations and humanitarian organizations and put humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, at risk,

*Recognizing* that better integration of existing and new technologies, especially digital technologies, can also support the safety and security of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets,

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1. *Calls upon* all States to respect and protect humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, in accordance with their obligations under international law;
2. *Calls upon* all States and parties to armed conflict to respect and to ensure respect for applicable international humanitarian law in all circumstances; and *recalls* the obligations under the Geneva Conventions of 1949 and their Additional Protocols;
3. *Demands* that all parties to armed conflict fully comply with their obligations under international law, including international human rights law, as applicable, and international humanitarian law; including their obligations related to the respect and protection of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, as long as they are entitled to the protection given to civilians or civilian objects under international humanitarian law;
4. *Urges* all States that have not yet done so to consider ratifying the Additional Protocols of 1977 and 2005 to the Geneva Conventions of 1949; and *notes* that this year marks the 75th anniversary of the Geneva Conventions of 1949;
5. *Calls upon* all States to consider becoming parties to the Convention on the Safety of United Nations and Associated Personnel and its Optional Protocol, and *urges* States parties to take steps to enable its effective implementation;
6. *Strongly condemns* attacks and all forms of violence, including sexual and gender-based violence, threats, and intimidation, against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, including humanitarian supplies, facilities and transports, in violation of international humanitarian law; in particular *urges* parties to armed conflict to respect the principles of distinction, proportionality and precaution in the conduct of hostilities and refrain from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population;
7. *Calls on* all parties to armed conflict to end immediately and definitively any indiscriminate use of explosive devices in violation of international humanitarian law, and *stresses* the need to take appropriate measures to mitigate this danger effectively, including through their clearance and other measures set out in Resolution 2365 (2017);
8. *Strongly condemns* the unlawful denial of humanitarian access and depriving civilians of objects indispensable to their survival, which impede relief supplies and access for responses to conflict-induced food insecurity in situations of armed conflict, which may constitute violations of international humanitarian law;
9. *Urges* all parties to armed conflict to allow and facilitate, in a manner consistent with relevant provisions of international humanitarian law, full, safe, rapid and unhindered humanitarian access to all civilians in need, and to promote the safety, security and freedom of movement of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and the safety and security of their premises and assets;
10. *Calls upon* all States to ensure the full, equal, safe and meaningful participation of female humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, in humanitarian activities, including in decisions related to their safety and security, without any discrimination and to mainstream a gender perspective into humanitarian crises and post-conflict reconstruction activities;

11. *Condemns* disinformation, information manipulation, and incitement to violence against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, and *expresses concern* over the impact of misinformation on such personnel;

12. *Encourages* Member States and the United Nations system to take appropriate action to address the increasing threat of disinformation campaigns and misinformation that undermine trust in United Nations and humanitarian organizations and put humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, at risk and hinder humanitarian activities;

13. *Urges* States to conduct, in an independent manner, full, prompt, impartial and effective investigations within their jurisdiction of violations of international humanitarian law and international human rights law committed against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets and where appropriate, take action against those responsible in accordance with domestic and international law, with a view to reinforcing preventive measures, ensuring accountability and addressing the grievances of victims; further *urges* States to prosecute persons allegedly responsible for serious violations of international humanitarian law; *urges* States to cooperate with domestic, regional and international courts and tribunals in accordance with States' respective obligations;

14. *Reaffirms* the obligation of all humanitarian personnel and United Nations and its associated personnel, including national and locally recruited personnel, to observe and respect the laws of the country in which they are operating, in accordance with international law and the Charter of the United Nations, and underlines the importance for humanitarian organizations to uphold the principles of humanity, neutrality, impartiality and independence in their humanitarian activities;

15. *Expresses its determination* to take appropriate steps in order to provide for the safety and security of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, in order for them to be able to fulfill their activities and mandate, including, inter alia, steps taken by the Secretary-General thus far to strengthen partnerships, and *encourages* further efforts to enhance coordination, cooperation and information-sharing, at both the headquarters and field levels, between States, the United Nations, regional organizations and humanitarian organizations, including non-governmental organizations, on matters relating to the safety and security of such personnel and their premises and assets, with a view to addressing mutual security concerns in the field, and in this regard *requests* States to share information, monitor and investigate attacks against such personnel and their premises and assets and to share challenges and good practices in this regard;

16. *Requests* the Secretary-General to:

(a) Provide the Security Council, based on reported attacks, including intimidation, detention, harassment and bodily harm against humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, within six months, with recommendations on measures to prevent and respond to incidents of the kind described in the above paragraphs, to ensure accountability and enhance the protection of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets;

(b) Provide a briefing to the Security Council on this matter, including on the challenges, opportunities, and progress made toward further enhancing protection, the

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safety and security of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, as a core part of the stay-and-deliver strategy, no later than 12 months after the adoption of this resolution and on a yearly basis thereafter;

(c) Continue to provide, as part of his regular reporting on country-specific situations and other relevant reports which address the protection of civilians, information on the issue of the safety and security of humanitarian personnel and United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets, including recording specific acts of violence against such personnel, remedial actions taken to prevent similar incidents and actions taken to identify and hold accountable those who commit such acts, and to provide the Security Council with recommendations on measures to prevent similar incidents, ensure accountability and enhance the safety and security of such personnel;

(d) Report swiftly to the Council when widespread issues regarding the safety and security of humanitarian personnel, United Nations and associated personnel, including national and locally recruited personnel, and their premises and assets occur, and expresses its intention to give its full attention to such information provided by the Secretary-General when those situations are brought to its attention.

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United Nations

S/RES/2764 (2024)



Security Council

Distr.: General  
20 December 2024**Resolution 2764 (2024)****Adopted by the Security Council at its 9823rd meeting, on  
20 December 2024***The Security Council,*

*Reaffirming* its commitment to the continuing and full implementation of resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), 2143 (2014), 2225 (2015), 2427 (2018), and 2601 (2021), and all relevant Statements of its President, which contribute to a comprehensive framework for addressing the protection of children affected by armed conflict,

*Reiterating* its primary responsibility for the maintenance of international peace and security in accordance with the Charter of the United Nations and, in this connection, its commitment to address the widespread impact of armed conflict on children, and the long-term consequences this has for durable peace, security and development,

*Stressing* the primary role and responsibility of Governments in providing protection and relief to all children affected by armed conflict and *recognising* the importance of strengthening national capacities in this regard,

*Recalling* that all parties to armed conflict must comply strictly with the obligations applicable to them under international law for the protection of children in armed conflict, including those contained in the Convention on the Rights of the Child and its Optional Protocol on the involvement of Children in armed conflict, as well as the Geneva Conventions of 12th August 1949 and the Additional Protocols of 1977,

*Expressing deep concern* over the lack of progress on the ground in some situations, where parties to conflict continue to violate with impunity the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict, and *emphasising* the importance of sustainable child protection capacity, including during transition phases of relevant United Nations peace operations, understood as peacekeeping operations and special political missions,

*Recognising* the serious and long-lasting impact of armed conflict on children and the importance of treating children primarily as victims of violations of international law and providing them with sustainable, timely and appropriate community-based reintegration assistance, while ensuring that the specific needs and

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vulnerabilities of girls and boys, including children with disabilities, are addressed, such as access to health care, psychosocial support, and education programmes that centre on the best interests of the child, contribute to their well-being and to sustainable peace and security; *underlining* the importance of addressing the root causes of vulnerabilities of children, including poverty, deprivation and inequality, and of promoting education for all, to prevent and protect children from all violations and abuses in particular in the context of armed conflict,

*Recognising* the need for sustainable child protection capacities to end and prevent violations and abuses against children in conflict and post-conflict settings, including in cases of transition to or from United Nations Peace operations; *emphasising* the crucial role of dedicated child protection advisers and specialists in relevant United Nations peace operations, as well as within UNICEF and other UN agencies, funds and programmes, in line with their respective mandates, for monitoring, prevention, reporting, and dialogue with parties efforts for the benefit of the protection of children; and *welcoming* the continued efforts of the Department of Peace Operations in mainstreaming child protection into missions, in line with the Policy on Child Protection in United Nations Peace Operations,

*Stressing* the important role of the Special Representative of the Secretary-General for Children and Armed Conflict in carrying out her mandate, in accordance with relevant Security Council resolutions, and in particular the importance of facilitating collaboration and dialogue among United Nations partners at the field level, with national Governments, parties to armed conflicts, and regional and subregional organisations, including by securing concrete commitments and advocating for appropriate response mechanisms,

*Also stressing* the crucial role of the Special Representatives of the Secretary-General and Heads of UN peace operations, and that of the Resident Coordinator and UNICEF as Co-Chairs of the country task forces on monitoring and reporting on Children and Armed Conflict in ensuring sustained UN child protection efforts and enhanced coordination among UN entities including in pre and post transition contexts to UN missions,

*Acknowledging* the important roles of both local and religious leaders to publicly condemn and advocate ending and preventing violations and abuses against children, and to engage with governments, the United Nations and other relevant stakeholders to support the reintegration of children formerly associated with armed groups or armed forces and affected by armed conflict in their communities, and raise awareness to avoid stigmatisation of these children,

1. *Strongly condemns* all violations of applicable international law involving the recruitment and use of children by parties to armed conflict as well as their re-recruitment, killing and maiming, rape and other forms of sexual violence, abductions, attacks against schools and hospitals, as well as denial of humanitarian access by parties to armed conflict and all other violations of international law, including international humanitarian law, human rights law and refugee law, as well as human rights abuses committed against children in situations of armed conflict and demands that all relevant parties immediately put an end to such practices and take special measures to protect children;

2. *Calls upon* all parties concerned to abide by the international obligations applicable to them relating to the protection of children affected by armed conflict, as well as the concrete commitments they have made to the Special Representative of the Secretary-General for Children and Armed Conflict, to UNICEF and other United Nations agencies, and to cooperate fully with the United Nations peace operations and the United Nations country teams, where appropriate in the context of the

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cooperation framework between the United Nations and the concerned government, in the follow-up and implementation of these commitments;

3. *Stresses* the importance of accountability for all violations and abuses against children in armed conflict and call on States to continue to address impunity by efforts to strengthen national accountability mechanism, including building investigative and prosecutorial capacities, ensuring that those responsible for violations and abuses against children are brought to justice and held accountable without undue delay, including through timely and systematic investigation and prosecution, the results of which are made public, and ensure that all victims have access to justice as well as to the medical and support services they need;

4. *Calls upon* States and the United Nations to mainstream child protection into all relevant activities in conflict prevention, conflict and post-conflict situations with the aim of sustaining peace and preventing conflict;

5. *Stresses* the responsibility of United Nations peace operations and United Nations country teams, consistent with their respective mandates, to ensure effective follow-up to Security Council resolutions, and a coordinated response to children and armed conflict concerns and to monitor and report to the Secretary-General;

6. *Recognises* the role of United Nations peace operations in the protection of children, particularly the crucial role of dedicated child protection advisers in mainstreaming child protection as a crosscutting issue throughout their mandates including through leading monitoring, prevention, reporting, and dialogue with parties, and in this regard reiterates its decision to continue the inclusion of specific provisions for the protection of children in the mandates of all relevant United Nations peace operations, and encourages the deployment of child protection advisers to such missions, in accordance with their mandates;

7. *Calls upon* the Secretary-General, through his Special Representatives and Heads of UN peace operations, the Department of Peace Operations and the Department of Political and Peacebuilding Affairs, in coordination with his Special Representative for Children and Armed Conflict, the Resident Coordinator and UNICEF as well as relevant United Nations agencies, funds and programmes and child protection actors, to ensure that the need for and the number and roles of child protection advisers are systematically assessed during the preparation and renewal of each United Nations peace operations, or in the context of transitions to or from UN missions, and that child protection advisers are speedily recruited, expeditiously deployed, and properly resourced where appointed, in a transparent manner, and to ensure the sustainable implementation of the children and armed conflict mandate;

8. *Encourages* all parties concerned, including Member States, United Nations programmes and funds, as well as financial institutions to support, as appropriate, bearing in mind national ownership, the development and strengthening of the capacities of national institutions and local civil society networks for advocacy, protection, and the reintegration and rehabilitation of children affected by armed conflict, particularly children released from armed forces and non-State armed groups, taking into account the specific needs of girls and boys, including children with disabilities, as well as national accountability mechanisms with timely, sustained and adequate resources, and funding including through voluntary contributions;

9. *Stresses* the important role of regional and subregional organisations on child protection, in particular the African Union, and the strengthening of the AU-UN partnership on children and armed conflict and recognises progress made in this regard, and encourages these organisations to continue the mainstreaming of child protection in their peace and security efforts at all levels, and further encourages all parties concerned to strengthen child protection capacity in regional and subregional

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peace support operations, or field operations, including in transition contexts from UN missions, especially through the early identification of partners including UN agencies, funds and programmes and national institutions that can support child protection as missions draw down, capacity-building and training initiatives, and coordination mechanisms with the United Nations partners on the ground;

10. *Reaffirms* the central role of the Special Representative of the Secretary-General for Children and Armed Conflict in cooperation with the Co-Chairs of the Country Task Forces on Monitoring and Reporting in coordinating and leading the United Nations efforts on monitoring, verification and reporting on violations and abuses against children in situations of armed conflict, and in engaging with national Governments and parties to conflict, including during mission withdrawals or transitions of UN missions, or in post-transition contexts, in accordance with their mandates;

11. *Requests* the Secretary-General to continue to take the necessary measures including, where applicable, to bring the monitoring and reporting mechanism to its full capacity, to allow for prompt advocacy and effective response to all violations and abuses committed against children and to ensure that information collected and communicated by the mechanism is accurate, objective, reliable and verifiable;

12. *Calls upon* the Special Representatives of the Secretary-General and Heads of UN peace operations, in line with their respective mandates, to ensure that the appointed child protection advisers are trained and integrated into mission planning and implementation processes, including in transition contexts;

13. *Calls for* strengthened coordination amongst the heads of UN peace operations, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Co-Chairs of the Country Task Forces on Monitoring and Reporting, as well as relevant government/authorities, to ensure the continuity, effectiveness, and sustainability of child protection activities, and in cases of mission transitions or withdrawals ensuring a smooth and responsible transfer of the mission responsibilities on child protection, including the transfer of core child protection tasks to the UN country team;

14. *Decides* to remain actively seized of this matter.

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## BOOK REVIEWS

**Heritage Under Siege: Protection of Cultural Property in War by U.C. Jha and Kishore Kumar Khera, Vij Books (New Delhi, India), 2024. ISBN: 978-81-19438-08-2 (available in print and e-book format).**

*"Each rock tells a story... a story of the dignity of people who lived their lives in this land of civilization."*(Syria)<sup>1</sup>

### Introduction

Culture gives an individual their identity and ties their existence to a group or community, distinguishing life in one group from life in another. The word 'culture' can be defined as "a set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions, and beliefs."<sup>2</sup>

With the recent judgments pronounced by two prominent international forums emphasising the responsibility of the state and individual criminal liability in the protection of cultural property and cultural heritage, they set new precedents in the protection of cultural heritage. The International Court of Justice in *Armenia v. Azerbaijan* has identified the 'right to equal participation in cultural activities' to include the right to tangible cultural heritage under the Convention to eliminate racial discrimination (CERD)<sup>3</sup> while the International Criminal Court in *Prosecutor v. Al Mahdi* ruled the destruction of cultural heritage as a war crime and built the entire case around the destruction of cultural and heritage property by the terrorist movement linked to Al-Qaeda. The *Al Mahdi* case, though criticised, holds significance in recognizing

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1 Attacks on our cultural property are attacks on our humanity, International Committee of the Red Cross (ICRC), dated 30.10.2017, available at <https://www.icrc.org/en/document/attacks-our-cultural-property-are-attacks-our-humanity>

2 UNESCO Universal Declaration on Cultural Diversity, Adopted in the General Conference of UNESCO, Paris, on 2 November 2001 at its thirty-first session, (31 C/ Res. 15)

3 Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Armenia v. Azerbaijan*), 12 November 2024, available at <https://www.icj-cij.org/case/180>

the destruction of cultural heritage as a stand-alone war crime and not an accompanying crime to more recognized offenses.<sup>4</sup>

This book is a promising and timely contribution to laying out not only the normative structure of international law in the realm of cultural property and cultural heritage, rather also explores the application of law in practice through the case studies from different parts of the world, which are marked with ongoing conflict and war. Some prominent examples are cited from history, including the destruction of Nalanda University in India and vandalism of *Koh-hi-noor* by the British Empire, to drive home the point on the rampant practices of destruction of cultural heritage and cultural property as something not new or unfamiliar to anyone. However, most of the examples have been taken from contemporary and continuing war crimes and armed conflict to highlight the main features of the 'Hague regime'<sup>5</sup> and lacunas in its implementation and the need to strengthen the determination of the international community to safeguard the cultural heritage that belongs to all mankind.<sup>6</sup>

The relevance of the work lies in its effective balance between theory and practice. The authors lay out the relevant laws, tracing the legal progress through historical evolution, and events marked by the destruction of cultural heritage and property worldwide. In addition, they offer practical insights into the role of military commanders and military manuals by critically analysing the features of military manuals of 18 nations, including military doctrines adopted by NATO.

Such a balance between theory and practice, as well as a firm and stable approach, not only produces a primer for policymaking on the protection of cultural property during peace and wartime but also provides a critical outlook on the working of countries and international communities in ensuring such protection, is possible, mainly due to the author's background in the field.

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4 The Prosecutor v. Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15

5 U.C. Jha and Kishore Kumar Khera, *Heritage Under Siege: Protection of Cultural Property in War*, (Vij Books, New Delhi, India 2024), p. 13.

6 Preamble to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, available at <https://www.unesco.org/en/legal-affairs/convention-protection-cultural-property-event-armed-conflict-regulations-execution-convention>

This book is a joint endeavour by two authors with years of field experience, having observed the law in practice during peace and conflict. Wing Commander Dr. U.C. Jha (Retd.) is a distinguished air veteran with 24 years as an officer in the Indian Air Force's administrative branch, holding a Ph.D. from Jawaharlal Nehru University, and possessing expertise in international humanitarian and military law. Group Captain Kishore Kumar Khera (Retd.) is a strategic analyst in military and aviation with 33 years as a group captain and former fighter pilot in the Indian Air Force. Their experience is reflected in the clarity with which they discuss the working of laws of armed conflict in relation to cultural property and heritage, as well as the challenges posed by balancing military necessity, proportionality, and the protection of both combatants' lives and cultural objects.

### **Simplifying the Concept and ensuring the dissemination**

The book consists of nine chapters divided into three sections. The strength of the books lies in bringing conceptual clarity to the concept of cultural heritage and its protection, with the aim of disseminating the obligations on the protection of cultural property and heritage during armed conflict. Thus, the book is relevant for students, law professors, and would also be a pertinent resource for policymakers seeking operational guidance.

The book is divided into three sections, each consisting of three chapters. The first section covers definitions, their analysis, and the overarching legal framework, and conducts a brief comparative analysis of the term's cultural heritage and cultural property.

### **Definition conundrum and implementation impasse**

The authors highlight the difficulty of insufficient definition and the overlapping of the concepts of cultural heritage and cultural property. However, the author underlines the fact that cultural property is an object that embody the culture and that the real sense of heritage is not so much in the possession of an object but in the act of passing on and receiving memories and knowledge<sup>7</sup>. Thus, the phrase heritage in the title of the book is used as an umbrella term to cover not only cultural heritage as tangible places, moveable artefacts, but also intangible

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7 U.C. Jha and Kishore Kumar Khera, *Heritage Under Siege: Protection of Cultural Property in War*, (Vij Books, New Delhi, India 2024), p. 18.

elements of a community, wherein the destruction is intended not only towards isolated artefacts, buildings, or illicit trafficking in cultural objects, but also targeting a whole city, leading to *urbicide*.

The destruction of cultural property as weapon of war, as a violation of rules of war and as a form of iconoclasm by both state and non-state actors is discussed through eight recent situations including the Sri Lankan civil war, the US invasion of Iraq, the Bosnia-Kosovo war, the Taliban's destruction of Bamiyan Buddhas and on-going conflicts including the conflict in Syria, Israel-Gaza and Russia-Ukraine war.

### **Legal Framework for the protection and its lacunas**

The legal regime seeking to protect cultural property during the armed conflict as well as peace time, has been referred to by the authors as the 'Hague Regime' includes customary international law, rules of international humanitarian law, the 1954 Hague convention, and two protocols, as well as the international criminal law. This bulwark of the regime remains the cornerstone for the protection of cultural heritage against the indiscriminate, disproportionate, and intentional attacks during armed conflict and prepares for the protection of valuable cultural property in peacetime.

Authors critically appraises the development of legal regime from the ancient history, rules of warfare emerging from every culture, tradition and religion including ancient Indian rules of warfare to the present context of 'Hague Regime' which strengthens the protection of the cultural property in times of war and preventing exportation and providing for the restitution of illegally exported objects under the aegis of the United Nations Educational, Scientific, and Cultural Organisation (UNESCO). Authors examined the protection under international criminal law relating to the protection of cultural property and underline the relevance as well as omissions in the *Al Mahdi* case as an interesting development in the field of international criminal law to hold future perpetrators responsible for attacks on cultural property.

### **Functional and operational facets of the protection**

This marks the last section of the book and showcases the on-field experience of the authors in balancing the theory with practice by highlighting the role of combatants in ensuring the respect and protection of cultural property, analysing the military manuals of 18 nations, and recommending for military manual on the laws of war to

contain explicit provisions relating to the protection of cultural property. Further, the authors recommended that India needs to draft a manual incorporating its existing ancient rules on warfare, including obligations under the 1954 Hague Convention and its protocols. The section also highlights the operational difficulties emerging not only in the training aspects but also concerning emerging issues in the protection of cultural property, which includes the impact of explosive weapons on cultural property, nuclear disarmament, and protection of cultural property in the UN peacekeeping operations, and the positive and negative impact of social media on cultural heritage and its protection.

### **Gesmtalt**

The authors incorporated the principle of Gestalt to place significant emphasis on the ethical parity between human lives and cultural heritage. That human being is more than sum of its flesh and body parts and 'shares a sense of meaning and custom that are represented in things made around us and ideas believed between us'<sup>8</sup>. Authors shared the examples of emergence of City of Venice and Cambridge University to reiterate that even though cultural heritage is irreplaceable, yet it is renewable, nonetheless, authors believed that cultural heritage is inseparable from the protection of people and that protecting cultural heritage can result in saved lives. Since the rules of International Humanitarian Law are constructed on a compromise between two fundamental principles of humanity and military necessity, authors in the conclusion stress the urgency to increase the state ratification of the treaties under the 'Hague Regime', enhancing implementation and establishing monitoring and sanctioning mechanisms.

- *Bhumika Nanda*

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8 U.C. Jha and Kishore Kumar Khara, *Heritage Under Siege: Protection of Cultural Property in War*, (Vij Books, New Delhi, India 2024), p. 300.

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## Select Articles on International Humanitarian and Refugee Law

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### Articles:

Abraksia, Nicholas. "The Killing of Ayman al-Zawahiri: On Its Legality and Why the U.N. Should Clarify the 'Unable or Unwilling' Doctrine." *Case Western Reserve Journal of International Law*, vol. 56, no. 1–2 (2024), pp. 545–568.

Abuloye, Ayoola. "The Legal Protection of Children as Victims of Armed Conflict." *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 91–103.

Argren, Rigmor. "The Obligation to Prevent Environmental Harm in Relation to Armed Conflict." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1208–1226.

Askary, Pouria, and Katayoun Hosseinnejad. "A Possible Legal Framework for the Exploitation of Natural Resources by Non-State Armed Groups." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1522–1542.

Baago-Rasmussen, Line, and others. "Building the Case for a Social and Behaviour Change Approach to Prevent and Respond to the Recruitment and Use of Children by Armed Forces and Armed Groups." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1729–1757.

Bagheri, Saeed. "Turkey's Extraterritorial Use of Force against Armed Non-State Actors", *Israel Law Review*, vol. 56, no. 2 (2024), pp.142-170.

Bagshaw, Simon. "The 2022 Political Declaration on the Use of Explosive Weapons in Populated Areas: A Tool for Protecting the Environment in Armed Conflict." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1293–1312.

Barale, C. "Empowering Refugee Claimants and Their Lawyers: Using Machine Learning to Examine Decision-Making in Refugee Law." Aug. 2023, <https://arxiv.org/abs/2308.11531>.

---

\* Librarian, Indian Society of International Law, New Delhi

Barale, C., and others. "Automated Refugee Case Analysis: An NLP Pipeline for Supporting Legal Practitioners." May 2023. Available online at <https://arxiv.org/abs/2305.15533>.

Bast, Jürgen, Pauline Endres de Oliveira, and Janna Wessels. "Enhancing the Rights of Protection-Seeking Migrants through the Global Compact for Migration: The Case of EU Asylum Policy." *International Journal of Refugee Law*, Mar. 2024. Forced Migration OA. Available online at <https://forcedmigration.oa.blogspot.com/p/ijrl.html#bast>.

Benslama-Dabdoub, Malak. "Epistemic Violence and Colonial Legacies in the Representation of Refugee Women." *International Journal of Law in Context*, vol. 20, Mar. 2024, Available online at <https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/epistemic-violence-and-colonial-legacies-in-the-representation-of-refugee-women/FB4B44A310117C59E8366F69044B9A2D>.

Briddick, Catherine. "Resisting Domestic Violence: Gender, Migration Status, and International Protection." *International Journal of Refugee Law*, vol. 36, no. 1–2, 2024, pp. 83–106. Available online at <https://academic.oup.com/ijrl/article/36/1-2/83/7668384>.

Carraro, Valentina. "The Effects of the COVID-19 Pandemic on Violations of the Right to Integrity of the Person." *Journal of International Humanitarian Action*, vol. 9, 2024, article 5, Available online at <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-024-00153-8>.

Chakka, Benarji and Bitar, Mohammad "Combating Human Trafficking A Study of Anti-Human Trafficking Law and Policies in Cambodia Myanmar and Thailand", *ISIL Yearbook of International Humanitarian and Refugee Law*, vol 23 (2023), pp. 18-58.

Demeke, Saba. "A Human Rights-Based Approach for Effective Criminal Justice Response to Human Trafficking." *Journal of International Humanitarian Action*, vol. 9, 2024, article 4, Available online at <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-024-00152-9>.

Deplano, Rossana. "Inclusive Space Law: The Concept of Benefit Sharing in the Outer Space Treaty." *International and Comparative Law Quarterly*, vol. 72, no. 3, (2023), pp. 671–714.

Djanaralieva, Kheda. "Prohibition of the Use of Nuclear Weapons under Islamic Law: Filling the Gap of International Humanitarian Law?" *AsiaPacific Journal of International Humanitarian Law*, vol. 4, 2023, published Sep. 2023, APJIHL Admin, <https://apjhl.org/issue/2023-edition//apjhl.org>)

Earlywine, Aaron. "The Shield and the Jab: How NATO Can Bypass the UN and World Health Organization to Help Control and Prevent Future Pandemics." *Brooklyn Journal of International Law*, vol. 49, no. 1, (2023), pp. 132–360.

Fabiano, Joao. "Should Weaponised Moral Enhancement Replace Lethal Aggression in War?" *Israel Law Review*, vol. 56, no. 2, (2024), pp. 201–224.

Francis Gemmy, Aleena, and others. "Refugee Policy: The Path to a Better India", *ISIL Yearbook of International Humanitarian and Refugee Law* 2023, pp. 154-167.

Frank, Ahimbisibwe. "Respecting Her International Obligations Analyzing Rwanda's 2014 Law Relating to Refugees", *ISIL Yearbook of International Humanitarian and Refugee Law*, vol 23, (2023), pp. 127-153.

Gacka, Gacka. "Injuring Family Relations through Gross Violations of International Human Rights and Humanitarian Law." *Israel Law Review*, vol. 55, no. 2, (2022), pp. 248–284.

Gillett, Matthew. "Criminalizing Reprisals Against the Natural Environment." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1463–1496.

Grayson, Catherine-Lune, and others. "The Climate and Environmental Charter for Humanitarian Organizations: Strengthening the Humanitarian Response to the Climate and Environment Crises." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1227-1237.

Greenman, Kathryn. "Of War and International Investment Law." *International and Comparative Law Quarterly*, vol. 73, no. 3(2024), pp. 579–608.

Grimberg, Shontelle. "Modern Interpretations of International Humanitarian Law's Martens Clause: Opening the Door to Strategies to Better Protect the Environment and Indigenous Peoples During

Armed Conflict." *AsiaPacific Journal of International Humanitarian Law*, vol. 5, (2024), Available online at <https://apjihl.org/issue/2024-edition//apjihl.org>

Grundler, Maja. "The Locus of Persecution Reconsidered: Risk of Re-Trafficking, Cumulative Harm, and Failure of State Protection." *International Journal of Refugee Law*, Dec. 2023. Forced Migration OA, Available online at <https://forcedmigrationoa.blogspot.com/p/ijrl.html#grundler>.

Grundler, Maja. "Route Causes' and Consequences of Irregular (Re-)Migration: Vulnerability as an Indicator of Future Risk in Refugee Law." *International Journal of Law in Context*, vol. 20, Mar. 2024, Available online at <https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/route-causes-and-consequences-of-irregular-remigration-vulnerability-as-an-indicator-of-future-risk-in-refugee-law/0B4812B5F8C4AB5B38B7E5F6975CB37E>.

Gunawan, Y., Q. Z. Gultom, M. H. Amarulia, and Arumbinang. "Russian-Ukrainian Conflict: International Humanitarian Law and Civilian Settlements." *Substantive Justice International Journal of Law*, vol. 6, no. 2 (2023), pp. 108–117, Available online at <https://doi.org/10.56087/substantivejustice.v6i2.253>.

Hamidah, Fitry Nabiilah, and Fajri Matahati Muhammadin. "Improving Compliance towards International Humanitarian Law: Filling in the Gaps?" *Al-Daulah: Jurnal Hukum Pidana dan Ketatanegaraan*, vol. 13, no. 1 (2024), <https://doi.org/10.24252/al-daulah.v13i1.48847>.

Hemptinne de, Jerome. "Increasing the Safeguarding of Protected Areas Threatened by Warfare Through International Environmental Law." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1392–1411.

Henderson, Christian. "US and UK Military Strikes in Yemen and the Jus ad Bellum." *International and Comparative Law Quarterly*, vol. 73, no. 3(2024), pp. 767–792.

Hrnjaz, Milos, and Radoncic, Mina. "Geneva, We Have a Problem: Internationalisation of Armed Conflicts Through Indirect Intervention Remains a Dead Letter." *Israel Law Review*, vol. 57, no. 1(2024), pp. 102–134.

Hsiao, (Lan Yin) Elaine, and others. "Protected Zones in Context: Exploring the Complexity of Armed Conflicts and Their Impacts on the Protection of Biodiversity." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1412–1440.

Hungler, Sara. "Destined to Stay-A Case Study of Roma Refugees from Ukraine", *University of Detroit Mercy Law Review*, vol. 100, no.3 (2023), pp.477-501.

Hungler, Sara. "Destined to Stay: A Case Study of Roma Refugees from Ukraine." *University of Detroit Mercy Law Review*, vol. 100, no. 3(2023), pp. 477–500.

Jha, Anupam, and Shabnam Khan. "International Refugee Law and India's Practice: Contextualizing Professor B. C. Nirmal's Writing." *Indian Journal of International Law*, vol. 64, nos. 3–4 (2024), pp. 317–344.

Jha, U. C. "Lawfare – To Win Without Fighting." *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 1–17.

Kapoor, Radhika, and Lewis, Dustin A. "The Practice of the UN Security Council Pertaining to the Environment and Armed Conflict, 1945–2021." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1646–1667.

Kaya, Hülya. "Afghan Women Are Under Threat from the Taliban: A Great Test of the Turkish Government and the Courts." *International Journal of Refugee Law*, vol. 36, no. 1–2, (2024), pp. 41–60. Available online at, <https://academic.oup.com/ijrl/article/36/1-2/41/7668383>.

Khan, Tousif. "International Humanitarian Law: An Overview." *International Journal of Law, Management & Humanities*, vol. 6, no. 6 (2023), pp. 1192–1201, Available online at <https://ijlmh.com/paper/international-humanitarian-law-an-overview/>.

Kong, Lingjie, and Zhao, Yuqing. "Remedying the Environmental Impacts of War: Challenges and Perspective for Full Reparation." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1441–1462.

Krebs, Shiri. "Above the Law? Drones, Aerial Vision, and the Law of Armed Conflict – A Socio-technical Approach." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1690–1728.

Kron, Amanda. "At the Frontlines of Implementing the Right to a Healthy Environment: Understanding Human Rights and Environment Due Diligence in Relation to Armed Conflicts." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1623–1645.

Lloyd, Rebecca. "Child Soldier to Warlord Overnight: Sentencing Ongwen in the International Criminal Court." *AsiaPacific Journal of International Humanitarian Law*, vol. 4(2023), published 4 Apr. 2023, Available online at, <https://apjhl.org/issue/2023-edition//apjhl.org>

Macak, Kubo, and Policinski, Ellen. "In Pursuit of a Treaty's Soul: A Study of the Object and Purpose of the Fourth Geneva Convention." *International and Comparative Law Quarterly*, vol. 73, no. 2(2024), pp. 385–416.

Maginnis, Rose. "Cultural Cleansing as an Emerging Form of Mass Atrocity: A Comparative Analysis of the Protection Against Intentional Destruction of Cultural Heritage under International Law and Islamic Law." *AsiaPacific Journal of International Humanitarian Law*, vol. /5, (2024), Available online at, <https://apjhl.org/issue/2024-edition//apjhl.org>

Malik, Rupal, and Chakka, Benarji. "Autonomous Weapon System: Exploring the Autonomy and Accountability Under International Humanitarian Law." *Indian Journal of International Law*, vol. 63, no. 3–4(2023), pp. 307–333.

Massingham, Eve, and others. "War in Cities: Why the Protection of the Natural Environment Matters Even When Fighting in Urban Areas and What Can Be Done to Ensure Protection." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1313–1336.

Mehraj, Mehvish, and Anna Bashir. "The Impact of Language of Instruction on the Education of Refugees: A Study of Afghan Refugees in India." *Indian Journal of International Law*, vol. 64, nos. 3–4, (2024), pp. 416–432.

Mitre, Agustina, and Matthew P. Cavedon. "Background Noise: Lessons about Media Influence, Mitigation Measures, and *Mens Rea* from Argentine and US Criminal Cases." *Brooklyn Journal of International Law*, vol. 49, no. 1 (2023), pp. 1–49.

O'Reilly, Claire F., and Caroline Jagoe. "Disaggregation of Humanitarian Data by Disability: A Realist Evaluation of the Use of the Washington Group Questions to Support More Inclusive Practices." *Journal of International Humanitarian Action*, vol. 9, (2024), Available online at <https://jhumanitarianaction.springeropen.com/articles/10.1186/s41018-024-00154-7>.

O'Rourke, Catherine, and Martin, Ana. "Gender, Conflict and the Environment: Surfacing Connections in International Humanitarian Law." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1600–1622.

Palasmith, Pimchanok. "Ethical Paradigm of Buddhism: A Buttress for Compliance with International Humanitarian Law." *AsiaPacific Journal of International Humanitarian Law*, vol. 4, (2023), Available online at, <https://apjhl.org/issue/2023-edition//apjhl.org>

Perera, Ramindu. "Environmental Destruction during Armed Conflict, Anthropocentrism Ecocentrism Divide and Defining Ecocide." *AsiaPacific Journal of International Humanitarian Law*, vol. 4, (2023), <https://apjhl.org/issue/2023-edition//apjhl.org>

Put de Van, Steven. "In Search of Humanity: The Moral and Legal Discrepancy in the Redress of Violations in International Humanitarian Law." *Israel Law Review*, vol. 56, no. 2(2023), pp. 171–200.

Rajan, Sanoj. "The New Frontier of War: International Counterterrorism Regime and Criminalising Humanitarian Action in India." *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 59–90.

Rikhof, Joseph.. "The Influence of International Criminal Law on Refugee Law." *Frontiers in Human Dynamics*, vol. 5, Apr. 2023, Available online at <https://www.frontiersin.org/articles/10.3389/fhumd.2023.1088033/full>.

Roels, Lore. "Rape Myths in the European Court of Human Rights' Non-Refoulement Case Law on Sexual and Gender-Based Violence." *International Journal of Refugee Law*, vol. 36, no. 1–2, (2024), pp. 124–145. Available online at, <https://academic.oup.com/ijrl/article-abstract/36/1-2/124/7668386>.

Scolari, Michele. "The Relevance of the Islamic Principle of Humane Treatment of Prisoners of War (POWs) in Contemporary Practice: An

Overview." *AsiaPacific Journal of International Humanitarian Law*, vol. 5, (2024), Available online at , <https://apjihl.org/issue/2024-edition/> (apjihl.org)

Seiler, Kimberly R. "Ransomware Cyberattacks, Terrorism, and the American People: A Call for a United Response to Ransomware." *Houston Journal of International Law*, vol. 45, no. 2, (2023), pp. 181–206.

Serafeimidi, Dimitra, and others. "Bridging the Gap: Reparations in Refugee Camps", *Israel Law Review*, vol. 57, no.1 (2024), pp. 63-101.

Shahav, Sigal. "Anti-Terrorism Criminal Law: Where Emergency Regime Meets the Investigative Agenda." *Israel Law Review*, vol. 56, no. 2, (2024), pp. 225–262.

Sharma, Kanika. "Climate Change and Displacement: Policy Challenges for Climate Refugees." *Indian Journal of International Law*, vol. 63, no. 3–4(2023), pp. 334–350.

Sjostedt, Brotta, and Hulme, Karen. "Re-Evaluating International Humanitarian Law in a Triple Planetary Crisis: New Challenges, New Tools." *International Review of the Red Cross*, vol. 105, no. 924(2023), pp. 1238–1266.

Steenberghe Van, Raphael. "International Environmental Law as a Means for Enhancing the Protection of the Environment in Warfare: A Critical Assessment of Scholarly Theoretical Frameworks." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1568–1599.

Tan Feith, Nikolas, and others. "Group-Based Protection of Afghan Women and Girls Under the Refugee Convention", *International and Comparative Law Quarterly*, vol. 72, no. 3 (2023), pp.793-818.

Tignino, Mara, and Kebebw, Tadesse. "A Galaxy of Norms: UN Peace Operations and Protection of the Environment in Relation to Armed Conflict." *International Review of the Red Cross*, vol. 105, no. 924, (2023), pp. 1543–1567.

Timmer, Andria D. "A Home for All: The Challenge of Housing in Refugee Resettlement." *Laws*, vol. 13, no. 1, 2024, Available online at <https://www.mdpi.com/2075-471X/13/1/9>.

Upadhyay, Santosh K. "Natural Environment During Armed Conflicts and International Humanitarian Law: A Legal Analysis of

Protective Ambits." *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 104–126.

Uzma, MahNashit. "Dominating Demography, Altering Destiny: India's SettlerColonialism in Kashmir." *AsiaPacific Journal of International Humanitarian Law*, vol./5, (2024), Available online at <https://apjhl.org/issue/2024-edition//apjhl.org>

Villarosa, Lance Ryan J. "Protecting the Child Who Bears Arms: How the Status of Zones of Peace for Children under Philippine Act No./11188 Distorts International Humanitarian Law." *AsiaPacific Journal of International Humanitarian Law*, vol. 4, (2023), Available online at, <https://apjhl.org/issue/2023-edition//apjhl.org>, [apjhl.org](https://apjhl.org)

Wartiainen, Felicia. "Time for 'Environmentarian' Corridors? Investigating the Concept of Safe Passage to Protect the Environment During Armed Conflict." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1365–1391.

Xueke, Fan. "China and Humanitarian Law: Evolution, Contemporary Influence and Prospects of Traditional Ethics in Modernday Practice." *AsiaPacific Journal of International Humanitarian Law*, vol./5, (2024), Available online at <https://apjhl.org/issue/2024-edition//apjhl.org>

Zakir, Muhammad Hamza, and others. "Adapting International Humanitarian Law for the Digital Battlefield: Navigating Cyber Warfare and Technological Advancements." *ResearchGate*, Mar. 2024, Available online at [https://www.researchgate.net/publication/379506293\\_Adapting\\_International\\_Humanitarian\\_Law\\_for\\_the\\_Digital\\_Battlefield\\_Navigating\\_Cyber\\_Warfare\\_and\\_Technological\\_Advancements](https://www.researchgate.net/publication/379506293_Adapting_International_Humanitarian_Law_for_the_Digital_Battlefield_Navigating_Cyber_Warfare_and_Technological_Advancements).

Zambelli, Pia. "Internal Flight Anarchy: Points of Divergence from UNHCR Guidelines in Canadian Decision Making." *International Journal of Refugee Law*, advance article, July 2024. Available online at <https://academic.oup.com/ijrl/advance-article/doi/10.1093/ijrl/eeae008/7680772>.

Zwijnenburg, Wim, and Ballinger, Ollie. "Leveraging Emerging Technologies to Enable Environmental Monitoring and Accountability in Conflict Zones." *International Review of the Red Cross*, vol. 105, no. 924 (2023), pp. 1497–1521.

### Official Documents and Reports

“Additional Protocol to the Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals 2023.” *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 265–271.

“General Assembly Resolution on the Arms Trade Treaty 2023.” *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 272–275.

“MLA Diplomatic Conference 2023.” *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 170–264.

“Public Law 117-351, 117th Congress, an Act.” *ISIL Yearbook of International Humanitarian and Refugee Law*, vol. 23(2023), pp. 168–169.

34th International Conference of the Red Cross and Red Crescent. *Resolutions of the 34th International Conference*. Geneva, Dec. 2024, Available online at <https://rcrcconference.org/about/34th-international-conference/documents-34th-international-conference>.

International Committee of the Red Cross. *Challenges Report 2024*. 26 Sept. 2024, Available online at <https://www.icrc.org/en/report/2024-icrc-report-ihl-challenges>.

International Committee of the Red Cross. *Global Initiative on International Humanitarian Law: Frequently Asked Questions*. 27 Sept. 2024, Available online at <https://www.icrc.org/en/article/global-initiative-international-humanitarian-law-FAQ>

International Committee of the Red Cross. *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: 2024 Report*. ICRC, Sept. 2024, Available online at <https://www.icrc.org/en/document/ihl-challenges-report-2024>.

International Committee of the Red Cross. *Rules of Engagement for Civilian Hackers in Armed Conflicts (Geneva Code of Cyber War)*. Oct. 2023, Available online at [https://en.wikipedia.org/wiki/International\\_Committee\\_of\\_the\\_Red\\_Cross\\_rules\\_of\\_engagement\\_for\\_civilian\\_hackers](https://en.wikipedia.org/wiki/International_Committee_of_the_Red_Cross_rules_of_engagement_for_civilian_hackers).

Switzerland. Federal Department of Foreign Affairs. *Second Voluntary Report on the Implementation of International Humanitarian Law*. 23 Oct. 2024, Available online at <https://www.fdfa.admin.ch>.

Switzerland. Federal Department of Foreign Affairs. *Second Voluntary Report on the Implementation of International Humanitarian Law*. 23 Oct. 2024, Available online at <https://www.fdfa.admin.ch/countries/syria/en/home/news/news.html/content/eda/en/meta/news/2024/10/23/102880>.

United Kingdom. Foreign, Commonwealth & Development Office. *Voluntary Report on the Implementation of International Humanitarian Law at the Domestic Level: Second Edition*. Gov.uk, Jan. 2024, Available online at <https://www.gov.uk/government/publications/implementation-of-international-humanitarian-law-at-domestic-level-2024-voluntary-report>.

United Nations General Assembly. *Resolution ES-10/21*. 27 Oct. 2023, Available online at [https://en.wikipedia.org/wiki/United\\_Nations\\_General\\_Assembly\\_Resolution\\_ES-10/21](https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_ES-10/21).

United Nations General Assembly. *Resolution ES-10/22*. 12 Dec. 2023, Available online at [https://en.wikipedia.org/wiki/United\\_Nations\\_General\\_Assembly\\_Resolution\\_ES-10/22](https://en.wikipedia.org/wiki/United_Nations_General_Assembly_Resolution_ES-10/22).

United Nations High Commissioner for Refugees. *Global Report 2023*. UNHCR, June 2024, Available online at <https://reporting.unhcr.org/global-report-2023>.

United Nations High Commissioner for Refugees. *Global Report 2024*. June 2025, Available online at <https://www.unhcr.org/publications/global-report-2024>.

United Nations High Commissioner for Refugees. *Global Trends: Forced Displacement in 2023*. UNHCR, June 2024, Available online at <https://www.unhcr.org/statistics>.

United Nations High Commissioner for Refugees. *Note on Climate Change, International Refugee Law, and UNHCR's Mandate*. Dec. 2023, Available online at <https://www.unhcr.org/media/unhcr-note-climate-change-international-refugee-law-and-unhcrs-mandate-dec-2023>.

United Nations High Commissioner for Refugees. *Protection Policy and Law 2023*. UNHCR, 2023, Available online at <https://www.unhcr.org>.

United Nations High Commissioner for Refugees. *UNHCR Indicator Report 2023: Progress Towards the Objectives of the Global Compact on Refugees*. UNHCR, Dec. 2023, Available online at <https://www.unhcr.org/indicator-report-2023>.

United Nations Security Council. *Resolution 2720*. 22 Dec. 2023, Available online at [https://en.wikipedia.org/wiki/United\\_Nations\\_Security\\_Council\\_Resolution\\_2720](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2720).

United Nations Security Council. *Resolution 2736*. 13 June 2024, Available online at [https://en.wikipedia.org/wiki/United\\_Nations\\_Security\\_Council\\_Resolution\\_2736](https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2736).