Gujarat National Law University

GNLU CENTRE FOR PUBLIC AND PRIVATE INTERNATIONAL LAW

GNLU CPIL Magazine

VOL 1 ISSUE 1

FOREWORD

Prof. (Dr.) S. Shanthakumar

Centre Head,
Gujarat National Law University.

It is with immense pride and pleasure that I present this inaugural edition of the GNLU Centre for Public and Private International Law (CPIL) Magazine, a dedicated platform for scholarly engagement with contemporary and pressing issues in international law. The conceptualization and realization of this publication mark a significant milestone for the Centre, reflecting our steadfast commitment to fostering informed and meaningful discourse in the rapidly evolving field of international legal studies.

International law today stands at a critical juncture, shaped by the realities of deepening global interdependence and the complexities of modern challenges—ranging from climate change, transnational disputes, and developments in human rights to shifts in international trade and the pursuit of global peace and security. In response to these multifaceted dynamics, this magazine seeks to bridge academic scholarship and practical insights by offering a forum for rigorous, thought-provoking, and diverse contributions from students, researchers, and practitioners alike.

Through this initiative, we aspire to contribute to the growing dialogue on international law from both a national and global perspective, encouraging critical reflection and collaborative solutions to the pressing issues of our time. I extend my heartfelt appreciation to our editorial team and contributors, whose dedication and vision have made this publication possible.

ABOUT THE MAGAZINE

The GNLU CPIL Magazine is a flagship initiative of the GNLU Centre for Public International Law. Launched in 2025, the Magazine is a bi-annual, student-run publication dedicated to the study and dissemination of contemporary issues in public and private international law. It seeks to foster meaningful engagement with topics such as human rights, international humanitarian law, environmental law, international arbitration, and the interface between domestic and international legal regimes.

The Magazine is envisioned as a scholarly platform that facilitates critical engagement with the latest developments, landmark judicial pronouncements, and emerging global practices in the domain of international law. It endeavours to advance an interdisciplinary and comparative perspective on the evolving contours of the international legal order.

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NOTE FROM THE EDITORS

It gives us immense pleasure to present Volume I Issue I of the GNLU CPIL Magazine, the flagship publication of the GNLU Centre for Public and Private International Law. This inaugural edition represents a pioneering effort to foster critical engagement with both public and private international law, combining academic rigour with a socially conscious perspective. The Magazine is the culmination of the tireless efforts of our Editorial Board and the members of CPIL, whose dedication and vision have brought this initiative to life.

We extend our heartfelt gratitude to our Advisory Board members, whose invaluable guidance has shaped the contours of this publication, and to our Faculty Convenors for their constant support and mentorship throughout the process. Their contributions have been instrumental in transforming this idea into a meaningful scholarly platform.

The inaugural issue features a carefully curated selection of articles and commentaries that reflect the diversity and evolving dynamics of international law. The opening article, From Treaties to Tensions: The Struggle for Nuclear Disarmament in a Divided World, critically examines the fractured global consensus on disarmament, highlighting how geopolitical divides and security dilemmas continue to challenge the efficacy of international legal frameworks. The next piece, Protecting Climate Refugees: An Analytical Study of Global Initiatives, explores the urgent legal and policy vacuum surrounding climate-induced displacement, arguing for the evolution of international law to respond to the realities of environmental migration.

The third article, The Illusion of Justice in the Wake of Taliban's Withdrawal from the Rome Statute, interrogates the erosion of international criminal justice caused by strategic state withdrawals, exposing the tension between sovereignty and accountability in the modern global order. This is followed by a case comment on the North Sea Continental Shelf cases, offering a nuanced perspective on their enduring influence on the law of the sea and the formation of customary international law. The issue concludes with an insightful Op-Ed, More Questions than Answers, by a distinguished alumnus, a recent Cambridge University LLM graduate, who shares an interdisciplinary reflection on studying international law in a global academic environment, blending doctrinal insights with policy-oriented perspectives.

As we proudly launch this inaugural volume, we hope that the GNLU CPIL Magazine will serve as a vibrant forum for scholarly discourse, debate, and reflection, bridging academic inquiry with practice in both public and private international law. We look forward to building upon this foundation in the issues to come, inspiring students, scholars, and practitioners alike.

GNLU CPIL Magazine

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FROM TREATIES TO TENSIONS: THE STRUGGLE FOR NUCLEAR DISARMAMENT IN A DIVIDED WORLD.

AUTHORS

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IV Year, Jamia Millia Islamia.

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IV Year, Jamia Millia Islamia.

INTRODUCTION

There can never be a moment of consensus ad idem among mankind. It is as if people want different things at different times, driven by self-interest. This behavioural proclivity is further evident in discussions concerning nuclear weapons. While one viewpoint advocates for disarmament (mostly based on normative arguments), the other advocates for deterrence, grounded in security logic. Besides the disarmament commitments contained in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) of 1968 – a landmark international treaty aimed at preventing the spread of nuclear weapons, promoting cooperation in the peaceful uses of nuclear energy, and furthering the goal of achieving nuclear and general disarmament – there are additional international efforts that seek to further these objectives.[1] This includes the arguments in favour of disarmament, supported by the Treaty on the Prohibition of Nuclear Weapons (TPNW) of 2017, which lays down a comprehensive set of prohibitions on any nuclear weapon-related actions[2] such as undertakings not to develop, test, manufacture, acquire, hold, stockpile, use, or threaten to use nuclear weapons. The TPNW further reinforces nuclear deterrence, deeming it to be both immoral and unlawful.

[1] "Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – UNODA' (*UNODA – United Nations Office for Disarmament Affairs*) <https://disarmament.unoda.org/wmd/nuclear/npt/> accessed 11 July 2025 [hereinafter "UNODA"]

[2] "Treaty on the Prohibition of Nuclear Weapons – UNODA' (*UNODA – United Nations Office for Disarmament Affairs*) <https://disarmament.unoda.org/wmd/nuclear/tpnw/> accessed 11 July 2025

However, the aspiration for a nuclear-free world, enshrined in such legal and regulatory frameworks, contrasts sharply with the disturbing reality of an ever-present nuclear threat. A stark reminder of this is the Doomsday Clock maintained by the Bulletin of the Atomic Scientists' which now sits much closer to midnight than ever before.[3] The poignant illustration that the world is edging dangerously closer to self-destruction is the ongoing Russia-Ukraine crisis that offers the world the first taste of a contracted nuclear escalation since the Cold War. It reveals the vulnerability of atomic stability as a construct.[4]. Once more, we are back to square one, with the debate for the right course of action, seeming unending. However, in the current global context, the odds are against disarmament, and the prospects appear dim. This paper explores existence of nuclear weapons, the current state of global arms control, and the prospects for disarmament.

THE COLLAPSE OF GLOBAL ORDER

The end of the Cold war marked the beginning of the nuclear era, drastically transforming the conceptions of security. The Cold War depicted the paradox of nuclear deterrence: their possession helped the major powers avoid conflict, even as they threatened mutual devastation. Over the past few decades, efforts to reduce the world's nuclear arsenal have demonstrated a degree of both positive and negative change. One of the most significant moments came when Barack Obama, the first serving American president to visit Hiroshima, talked about how the world has changed after that catastrophic event. However, this was not the only time he mentioned nuclear disarmament; he reiterated his concerns even during his election campaigns.[5]. The US President didn't stop there; he further reaffirmed his position by signing the New Strategic Arms Reduction Treaty (New START) on April 8, 2010 along with Dmitri Medvedev, the then Russian President, which later came into force on February 5, 2011, succeeding the 1991 START I and substituting the 2002 Strategic Offensive Reductions Treaty (SORT). The New START was established to reduce the nuclear stockpile, lowering the warheads and bombs to 1,550 – a decrease of about 30% compared to SORT, which had its warhead limit up to 2,200.[6] Both leaders emphasized their desire to achieve total nuclear disarmament, which, even if transient, was a positive step forward to the global peace process.

[3]'Doomsday Clock' (*the Bulletin of the Atomic Scientists*) <https://thebulletin.org/doomsday-clock/> accessed 11 July 2025.
[4]Götz E and Ekman P, 'Russia's War Against Ukraine: Context, Causes, and Consequences' (2024) 71(3) Problems of Post-Communism 193 <http://dx.doi.org/10.1080/10758216.2024.2343640> accessed 11 July 2025
[5] Considine L, 'The 'standardization of catastrophe': Nuclear disarmament, the Humanitarian Initiative and the politics of the unthinkable' (2016) 23(3) European Journal of International Relations 681 <https://eprints.whiterose.ac.uk/103407/ > accessed s11 July 2025
[6]'New START at a Glance' (*Arms Control and Association*) <www.armscontrol.org/factsheets/new-start-glance> accessed 11 July 2025

These hopes were dashed when Russia invaded Crimea in 2014,[7] resulting in the indefinite suspension of Russia from the G8, exacerbating the tensions between Russia and the West. The aftermath? The talks for disarmament froze completely.

Things started to turn concerningly grim with the invasion of Ukraine by Russia, followed by what was an inevitable descent from the precarious slippery slope. This led to a cascade of crises, with the two largest nuclear powers increasing their nuclear arsenals. As of 2025, the United States modernization program continues and is currently replacing nearly every component of its strategic nuclear forces.[8] Meanwhile, in the east, the Pacific region, is witnessing a new arms race, as China expands its nuclear arsenal from 410 warheads in January 2023 to approximately 600 in March 2025, and military exercises in the Taiwan Strait – trends that are expected to continue.[9] The North Korea locus is quite the same, with nuclear arsenals increasing with Kim Jong-un intending to solidify the country's stance as a nuclear-armed power, and his position at its helm.[10]

Lastly, the involvement of the West in the Ukrainian invasion and continuous support of the US during the Biden administration, to Ukraine by providing financial as well as military assistance, which has resulted in Putin's innumerable threats of nuclear attack, ultimately led Russia to amend its nuclear doctrine.[11] Even before Russia's military occupation, the global non-proliferation landscape was under strain. The United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA), a landmark accord reached between Iran and major world powers in July 2015.[12] Under its terms, Iran agreed to dismantle much of its nuclear program and open its facilities for more thorough foreign inspections in exchange for a significant relief in sanctions.[13] The withdrawal gradually led Iran into various breaches of the deal. The incessant development of nuclear weapons by North Korea, despite various international sanctions, demonstrates the significant challenge for the P5 (the permanent members of the UNSC and also the leading nuclear arsenal holders), in effectively halting proliferation, thereby hindering nuclear disarmament. It would be unfair not to mention the Israeli

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[7]Oleksa Eliseyovich Zasenko and Andrij Makuch, "The Crisis in Crimea and Eastern Ukraine" (*Britannica*) <https://www.britannica.com/place/Ukraine/The-crisis-in-Crimea-and-eastern-Ukraine> accessed July 12, 2025 .
[8]'U.S. Nuclear Modernization Programs' (*Arms Control and Association*) <www.armscontrol.org/factsheets/us-modernization-2024-update> accessed 15 July 2025.
[9]Mathias Hammer, 'The Collapse of Global Arms Control' (*TIME*, 13 November 2023) <https://time.com/6334258/putin-nuclear-arms-control/> accessed 15 July 2025. [hereainfter "TIME"]
[10]Choe Sang-Hun, Victoria Kim, and John Yoon, 'North Korea's Arsenal Has Grown Rapidly' (*The New York Times*, 18 November 2022) <www.nytimes.com/article/north-korea-arsenal-nukes.html> accessed 15 July 2025.
[11]Mark Trevelyan, 'Russia says it will change nuclear doctrine because of Western role in Ukraine' (*Reuters*, 1 September 2024) <www.reuters.com/world/europe/russia-will-change-nuclear-doctrine-due-wests-actions-ukraine-official-says-2024-09-01/> accessed 15 July 2025.
[12]'The Joint Comprehensive Plan of Action (JCPOA) at a Glance' (*Arms Control and Association*) <www.armscontrol.org/factsheets/joint-comprehensive-plan-action-jcpoa-glance> accessed 19 July 2025.
[13]'Iran nuclear deal: What it all means' (*BBC News*, 23 November 2021) <www.bbc.com/news/world-middle-east-33521655> accessed 15 July 2025.

occupation of Palestine, which has further escalated the tension between the Middle East and the perception of nuclear power as a strategic asset for national security, and has regressed disarmament efforts.[14] Such instances demonstrate that the real threat lies not just in the weapons themselves but in the governmental actions and strategic decisions that influence their development and deployment, leading to the collapse of global order.

CHALLENGES AND PATHWAYS

One of the biggest uncovered issues of the contemporary world is the question of nuclear disarmament. The tensions rise in the world, which becomes even more hostile, and the use of nuclear weapons while uncertain, is still possible.[15] The efforts toward non-use of nuclear arms have been facing numerous obstacles. Although the path to disarmament is riddled with obstacles, there are tangible opportunities and processes through which mankind may choose a more beneficial course.

KEY CHALLENGES:

The current framework of nuclear disarmament is regulated by the Non-Proliferation Treaty.[16] This restricts the number of NWS (Nuclear Weapon States) to five — the USA, Russia, the United Kingdom, France, and China — also the Permanent Members (P5) at the United Nations Security Council. All other state parties renounced the option of nuclear weapons in exchange for two commitments: the "*inalienable right"* to use nuclear energy stated in Article IV and the commitment of NWS to desacralize the arms race and eliminate their nuclear stockpiles as prescribed by Article VI.[17] NPT has several limitations due to the discrimination of nuclear 'haves' and 'have-nots'. Additionally, the use of 'peaceful' nuclear energy for the generation of power, overseen by the IAEA (International Atomic Energy Agency, has contributed to the proliferation of nuclear weapons due to its dual-use application.[18] The NPT has failed to curb a nuclear arms race while the NWS remain armed with nuclear weapons. These shortcomings have challenged the effectiveness of the NPT right from the outset. While Israel, India, and Pakistan were able to conduct nuclear weapons activities outside the

[14]'Conference on Middle East Zone Free of Nuclear Weapons, AM Meeting' (*UN*, 13 November 2023) <https://press.un.org/en/2023/dc3863.doc.htm> accessed 15 July 2025.
[15]'International Court of Justice: Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons' (1996) 35(4) International Legal Materials 809,<http://dx.doi.org/10.1017/s0020782900023913> accessed 15 July 2025.
[16]Bunn George, 'The Nuclear Nonproliferation Treaty: History and Current Problems.' (2003) 33(10) Arms Control Today 4, <www.jstor.org/stable/23627136> accessed 15 July 2025.
[17] UNODA, supra note 1.
[18]'Publications' (*IAEA*) <www.iaea.org/Publications/Reports> accessed 15 July 2025.

regime, Iraq, North Korea, and Iran were able to hide their activities behind the garb of regime for years.

Laying out the goal of preservation and further progression of nuclear arms control and disarmament presents several considerable challenges. The growing great-power rivalry has resulted in a lack of political will, leading to the intensification of competition between the US and Russia, thus hampering progress on nuclear arms control.[19] Additionally, domestic leadership decision in these countries influences leadership decisions, making long-term commitments to disarmament harder to achieve. In regions such as the Middle East, East Asia, and South Asia, the threat of nuclear proliferation increases because of the regional conflicts.[20] A security imbalance exists in the Gulf region between Iran and its neighbouring Arab states, while a similar situation exists between Israel and its neighbouring Arab states. Furthermore, there is a lack of uniformity in the legal responsibilities assumed by the governments in those regions concerning weapons of mass destruction, including nuclear weapons with some having joined international treaties, and others opting not to.

THE SETBACK FOR ARMS CONTROL TREATIES

One of the major challenges to nuclear disarmament today is the unravelling of key arms control treaties mainly between the US and Russia. The collapse was further aggravated by the formal suspension of the New START treaty by Russia, which had been extended till 2026 — a safety check for both Russia and the USA for ensuring peace as they inspect each other's nuclear weapon sites.[21] However, this collapse of arms control treaties extends beyond the new START; the 1987 Intermediate-Range Nuclear Forces (INF) Treaty required the United States and the Soviet Union to eliminate and permanently forswear all of their nuclear and conventional ground-launched ballistic and cruise missiles with ranges of 500 to 5,500 kilometres.[22]. During the Strategic Arms Limitation Talks (SALT), the US and the USSR negotiated the now-defunct Anti-Ballistic Missile (ABM) Treaty, which prohibited Washington and Moscow from putting up national defences against strategic ballistic missiles. The Comprehensive Nuclear-Test-Ban Treaty (CTBT) bans all nuclear explosions,

[19]Götz Neuneck, 'The Deep Crisis of Nuclear Arms Control and Disarmament: The State of Play and the Challenges' (2019) 2(2) Journal for Peace and Nuclear Disarmament 431, <http://dx.doi.org/10.1080/25751654.2019.1701796> accessed 15 July 2025.
[20]Nina Tannenwald, 'The Nuclear Taboo The United States and the Non-Use of Nuclear Weapons Since 1945' (*Cambridge University Press*) <https://ir101.co.uk/wp-content/uploads/2018/10/tannenwald-the-nuclear-taboo-compressed.> accessed 15 July 2025.
[21]Shannon Bugos, 'Russia Suspends New START' (*Arms Control and Association*, March 2023) <www.armscontrol.org/act/2023-03/news/russia-suspends-new-start> accessed 15 July 2025.
[22]'The Intermediate-Range Nuclear Forces (INF) Treaty at a Glance' (*Arms Control and Association*) <www.armscontrol.org/factsheets/intermediate-range-nuclear-forces-inf-treaty-glance> accessed 15 July 2025.

whether for military or peaceful purposes.[23] The Vienna Document[24] and The Open Skies Treaty[25] — which were crucial in putting the clutch on nuclear proliferation, have been hampered, discarded, or are non-functional, which collectively concludes that "the Global Arms Control has collapsed,[26] bringing the hope for disarmament to the backseat.

THE ROLE OF MILITARY ALLIANCES

The emergence of Global Military alliances, akin to the NATO for the West and the other European nations that come together for nuclear sharing agreements, includes AUKUS (Australia-UK-US) and QUAD (US-Japan-India-Australia) which signals an era of new security pacts aimed at countering China, leading to indirect nuclear strategic posturing. These alliances make full-fledged nuclear disarmament hardly achievable, as members perceive deterrence as essential to collective security. Military Alliances that rely on nuclear weapons hinder disarmament efforts, as the nuclear deterrent strategy of alliances includes nuclear weapons because 'umbrella states' depend on nuclear-armed patrons for extended defence.[27] For instance, the United States engages in "nuclear assurance" activities to demonstrate its commitment to deploy nuclear weapons for allied protection, which enhances the status of nuclear weapons within these alliances. Multiple states that receive nuclear protection from major powers have started promoting the security benefits of nuclear weapons, such as Poland, along with South Korea, which has shown interest in acquiring non-strategic nuclear arms.[28] Nuclear deterrence practices can make conventional military strength less effective, which reduces efforts to eliminate nuclear weapons from military policies. Umbrella states should support their allies by urging them to limit their public declarations using 'no-first-use' approaches and sole-purpose goals to advance disarmament efforts. The support for nuclear sharing arrangements ought to be eliminated by NATO members as a method to diminish nuclear weapon roles. The USA, together with umbrella states, needs to shift its deterrence strategy away from ineffective nuclear threat models toward utilizing conventional military force to deter the use of nuclear weapons. The limitations of deterrence need awareness from allies who should seek confidence-building measures to reduce tensions across the region. The reduction of nuclear war risk requires nuclear nations to

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[23]'The Comprehensive Nuclear-Test-Ban Treaty (CTBT)' (*CTBTO*) <www.ctbto.org/our-mission/the-treaty> accessed 15 July 2025.
[24]'Overview of Vienna Document 2011' (*U.S. Department of State.*) <https://2009-2017.state.gov/t/avc/cca/c43837.htm> accessed 15 July 2025.
[25]'The Open Skies Treaty at a Glance' (*Arms control and association*, December 2021) <www.armscontrol.org/factsheets/openskies> accessed 15 July 2025.
[26] TIME, supra note 9.
[27]Tytti Erästö, 'Reducing the role of nuclear weapons in military alliance' (2024) SIPRI Insights on Peace and Security, 1/2024, <https://www.sipri.org/publications/2024/sipri-insights-peace-and security/reducing-role-nuclear-weapons-military-allianceshttp://> accessed 27 June 2025 [hereinafter "SIPRI"].
[28]Ibid.

implement both arms control measures and nuclear disarmament policies, that receiving nations can back through lowering their dependence on nuclear deterrence.

THE ECONOMIC BARRIERS TO NUCLEAR DISARMAMENT

Nuclear weapons are not just limited to military assets, but their industrial use extends beyond it and acts as a financial investment. Lumps of money as defence funds from worldwide sustain development and research-based projects, along with infrastructure expansion by nuclear industry activities. During the upcoming decade, the U.S. has dedicated $634 billion towards nuclear weapon system advancement.[29] The economic obligations force major nuclear nations to limit their commitment toward disarmament policies. The defence sector, along with defence manufacturing companies, actively works to perpetuate the development and enhancement of nuclear weapon systems. The network of private defence companies, together with government contracts and the political lobbying system, makes disarmament impossible from an economic perspective. The cost-benefits of nuclear weapons reach into technological development alongside regional economic development and geopolitical advantages. Countries possessing nuclear capabilities use their arsenals to secure better advantages during international negotiations and trade activities. North Korea, alongside other countries, relies on its nuclear power as a negotiation tool for economic benefits and thus sustains its weapons due to persistent economic advantages. The lack of viable economic alternatives to nuclear deterrence causes military and governmental institutions to hesitate from pursuing disarmament because they fear security risks after giving up their nuclear arsenals.[30]

DIGITAL THREATS AND WARFARE

AI technology integration within nuclear decision-making poses notable threat to worldwide security systems. The data processing capabilities of AI systems are quick, but they create three essential risks: first, automated system mistakes which occur when AI misinterprets data or acts in accordance of false alarms; second, there are system security threats essentially meaning the high probability of AI getting hacked or manipulated by foreign/hostile actors; and lastly, serious tactical miscalculations owing to lack of human perception and the ability to comprehend the nuance and emotional weight of geopolitics[31].

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[29]Swedish Physicians Against Nuclear Weapons, 'Economic Consequences' (*Learn About Nuclear Weapons*, 11 January 2023) <https://learnaboutnukes.com/consequences/economic-consequences/> accessed 27 June 2025

[30]Ibid.

[31]PONI Live Debate: AI Integration in NC3, *'Center for Strategic & International Studies'*, 24 January 2025) <https://www.csis.org/analysis/poni-live-debate-ai-integration-nc3> accessed 27 June 2025

The command and control and communication systems (NC3) present attractive targets for skilled cyber offenders who execute data counterfeit actions, distribute misleading wireless intel, and break national security protocols.[32] The system's weaknesses in NC3 components that use AI could enable attackers to trigger erroneous alerts and force unwanted procedures. Like other systems, AI platforms experience failures when adversaries launch poisoned data or adversarial examples, therefore causing reliability issues where complete precision is needed. The quick information processing power of AI in decision-making remains undisputed, yet experts have doubts about its stability when the situation becomes stressful. Genuine nuclear incidents, together with near disasters from history, show why human supervision continues to remain essential for nuclear systems.[33]

Other challenges include a lack of transparency, secrecy, and modernization by nuclear states; it also involves environmental concerns like that of "nuclear winter."[34] Thus, in addition to a strategic objective, the urgency of disarmament is a moral as well as existential imperative.[35]

THE PATHWAY TO GLOBAL ZERO:

The goal of nuclear disarmament on the international level is a challenging process that can be accomplished through both short-term and long-term goals. Among the various ways of de-escalating the risk of a nuclear confrontation is for the nuclear weapon states to declare 'No First Use' (NFU) policies. An NFU policy would pledge nations to respond to a nuclear attack by a nuclear attack, thus removing the chances of a first-strike and inadvertent nuclear war.[36] The trust among nations can be amplified by a defensive posture, leading to a decrease in the significance of nuclear weapons in national security.

Moreover, strategic bilateral agreements between nuclear-capable states like the US and Russia are crucial for promoting the cause of disarmament. In fact, earlier treaties like the New START have offered constraints on the employment of deployable nuclear warheads, thus offering accountability

[32]Vladislav Chernavskikh, 'Nuclear Weapons and Artificial Intelligence: Technological Promises and Practical Realities' (2024) SIPRI Insights on Peace and Security,<https://www.sipri.org/publications/2024/sipri-background-papers/nuclear-weapons-and-artificial-intelligence-technological-promises-and-practical-realities> accessed 27 March 2025
[33]Ibid.
[34]Wren Green, 'Nuclear Winter: The human and environmental consequences of nuclear war and the Nuclear Casebook: An illustrated guide' (1986) 16(3) Journal of the Royal Society of New Zealand 301,<http://dx.doi.org/10.1080/03036758.1986.10423349> accessed 15 July 2025.
[35]Joseph S Nye, 'Nuclear Ethics Revisited' (2023) 37(1) Ethics & International Affairs 5, <http://dx.doi.org/10.1017/s0892679423000047> accessed 15 July 2025.
[36] Dr Tytti Erästö, 'New Technologies and Nuclear Disarmament: Outlining a Way Forward' [2021] SIPRI, Stockholm13,<www.sipri.org/sites/default/files/2021-05/2105_new_technologies_and_nuclear_disarmament_0.pdf> accessed 19 July 2025.

and openness.[37] It is important to extend and update these treaties, to continue the work on the existing ones, or to conclude new ones.[38] Since these two states accumulated a large share of the world's nuclear arsenal, their cooperation is pivotal for the process of disarmament.

Looking at the current scenario, in the interim, one can name minimal deterrence as a possibility to achieve a complete elimination of weapons without causing any threats.[39] According to this policy, the states possessing nuclear weapons would keep just the necessary number of these weapons to discourage an enemy attack while not accumulating vast quantities of them, and also, conventional precision-strike weapons offer an alternative to nuclear deterrence, especially in regional conflicts.[40]

Nuclear disarmament calls for a multilateral approach in order to respond to the security interests of all countries, especially the non-nuclear states. International and Multilayer organisations like the UN[41], NATO[42], IAEA[43] can work towards furnishing a platform for communication. Further, other important ways of addressing the underlying security concerns leading to nuclear proliferation inter alia include regional confidence-building measures and diplomatic initiatives, while paying special attention to regional conflicts in the Middle East and the Korean Peninsula.

Economic sanctions can clearly act as a major instrument that can be used to put pressure on nuclear-armed states. The option of targeted sanctions may deter countries that break the disarmament treaties or decide to maintain or even develop their nuclear weapons systems by inflicting serious economic damages to compel respect for international law norms. For instance, the Society for Worldwide Interbank Financial Telecommunication (SWIFT),[44] isolates a country from the international money transferring system. This segregation and isolation result in targeted countries unable to freely engage in international trade, receive FDIs, or conduct any cross-border transactions,

[37]Plesch, Daniel T. and Stephen W Young, '"NON-PROLIFERATION: WHERE TO NOW?' (1996) 27(1) Security Dialogue 112, <www.jstor.org/stable/44471506> accessed 15 July 2025.
[38]Amy F Woolf, 'Promoting Nuclear Disarmament through Bilateral Arms Control: Will New START Extension Pave the Path to Disarmament?' (2021) 4(2) Journal for Peace and Nuclear Disarmament 309, <http://dx.doi.org/10.1080/25751654.2021.1992217> accessed 15 July 2025.
[39]Nalebuff Barry, "Minimal Nuclear Deterrence."' (1998) 32(3) The Journal of Conflict Resolution 411, <www.jstor.org/stable/174211> accessed 19 July 2025.
[40]SIPRI, supra note 27.
[41]'Disarmament' (*Un*) <www.un.org/en/global-issues/disarmament> accessed 19 July 2025.
[42]'Arms control, disarmament and non-proliferation in NATO' (*NATO*) <www.nato.int/cps/en/natohq/topics_48895.htm> accessed 19 July 2025.
[43] 'The IAEA and the Non-Proliferation Treaty' (*IAEA*) <www.iaea.org/topics/non-proliferation-treaty> accessed 19 July 2025.
[44]'About Us' (*SWIFT*) <www.swift.com/about-us> accessed 15 July 2025.

thereby pressuring the economies. It was imposed on Russia right after the Ukrainian invasion, and it decimated the economy, with rampant inflation and many technological bans.[45]

Last of all, technology in monitoring and verification is critical in ensuring that states comply with the disarmament agreements.[46] The new technologies, such as AI and machine learning, provide tools of great help in monitoring nuclear activities and improving the adherence to the disarmament treaties. Nonetheless, they are able to reinforce the verification mechanisms, they will not be able to resolve the deeper issues rooted in political instability. Therefore, as much as such instruments are important to the objective of creating a nuclear-free world, they are not a panacea.

CONCLUSION

Maintaining peace in the world requires the urge for nuclear disarmament; however, the issue is not merely the elimination of arms. Indeed, nuclear weapons are dangerous, but the problem is to solve the conflicts and tensions, sustaining these weapons. Strategies towards disarmament should now aim at establishing confidence, encouraging commitment, and forming treaties such as the New START and the CTBT. As the US presidential election concluded and Donald Trump assumed office, his administration may unfold new dynamics for nuclear and conventional disarmament and his emphasis on 'Peace Through Strength' and a possibility for reconsideration and re-evaluation of traditional arms control measures, will significantly shape future efforts;[47] however, cooperation with non-nuclear weapon states and with the help of organisations like the International Campaign to Abolish Nuclear Weapons (ICAN)[48] would play a prominent role in the coming days.

Apart from the treaties, countries need to minimize their dependence on possessing nuclear weapons for reliable security, instead using other security mechanisms. The attainment of nuclear disarmament is a process that can be achieved in the long run by following small steps, like solving the political and security issues, bringing humanity closer to the protection of the future. The world needs to focus on the broader aspect of diplomacy, cooperation, and communication instead of viewing the possession of possessing these weapons as a ploy for unconditional safety and security.

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[45]'Ukraine conflict: What is Swift and why is banning Russia so significant?' (*BBC*, 4 May 2022) <www.bbc.com/news/business-60521822> accessed 19 July 2025.
[46]Scott D Sagan, 'Just and Unjust Nuclear Deterrence' (2023) 37(1) Ethics & International Affairs 19, <http://dx.doi.org/10.1017/s0892679423000035> accessed 19 July 2025.
[47]'The 2024 Presidential Race and the Nuclear Weapons Threat' (*Arms control and association*, 25 June 2024) <www.armscontrol.org/issue-briefs/2024-06/2024-presidential-race-and-nuclear-weapons-threat> accessed 19 July 2025.
[48](*Ican*) <www.icanw.org/> accessed 19 July 2025.

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PROTECTING CLIMATE REFUGEES: AN ANALYTICAL STUDY OF GLOBAL INITIATIVES

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"We need to invest now in preparedness to mitigate future protection needs and prevent further climate caused displacement. Waiting for disaster to strike is not an option."[1]

Filippo Grandi, the UN High Commissioner for Refugees

INTRODUCTION

Climate change causes human displacement because of climatic phenomena such as storms, increasing sea levels, and drought, among others.[2] As the situation of climate change refugees grows, it is critical to define climate refugees, including collecting complete data on internally displaced individuals (IDPs),[3] and to establish an international framework to safeguard them. People who have been displaced and forced to relocate within or outside of their homeland as a result of climate change, such as extreme temperatures, widespread floods and droughts, rising sea levels, tsunamis, rising sea

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[1] UNHCR, *Climate Change and Displacement* https://www.unhcr.org/in/what-we-do/how-we-work/environment-disasters-and-climate-change/climate-change-and-disaster accessed 30 July 2025.

[2] UNHCR, *Climate Change and Disaster Displacement* (23 February 2022) https://www.unhcr.org/climate-change-and-disasters.html accessed 30 July 2025.

[3] Internally displaced persons (also known as "IDPs") are defined as "persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, human rights violations, natural or human-made disasters, and who have not crossed an internationally recognised border."
OHCHR, *About Internally Displaced Persons* (21 May 2022) https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/about-internally-displaced-persons accessed 30 July 2025.

erosion, desertification, and other natural disasters, are known as climate refugees.[4] Asian Tsunami, Hurricane Katrina and earthquakes in Pakistan, Iran, Chile, Haiti, Japan, New Zealand, and Italy, to mention a few, have all struck in recent years. Natural disasters, combined with increased concern about the impact of climate change and natural resource depletion, have prompted the international community to place a higher priority on forced migration for environmental reasons. As a result, a variety of problems have been highlighted by international and non-governmental organisations, scholars, and, most crucially, populations who may be affected by various aspects of climate change and environmental degradation.

Climate change could result in the world's largest refugee crisis. Millions of people, especially in Africa and Asia, may be forced to escape their homes and seek refuge in other locations or countries over the course of the century.[5]

Looking at the current situation of thousands of people in the South Pacific, they are at risk of being displaced as sea levels rise and due to many other climatological factors. Many of these small Pacific Island nations lack sufficient land to accommodate internally displaced people. If proper land rights are not secured, thousands of "climate change victims" from these Islands may be forced to abandon their Island homes and will most certainly end up in refugee camps in neighbouring countries.[6] There are constant arguments about who is to blame for climate change, and since there is evidence that one country emits more carbon than another, the conclusion is that wealthy nations emit a disproportionate amount of greenhouse gases, while developing nations lack the resources to adapt to these changes. As a result, developing and underdeveloped nations continue to suffer the most from climate change. As developed countries are legally obligated to aid developing countries in adapting to climate change under international accords but still the hotness of the debates get diluted once the discussion is over.[7]

When examining relevant legal frameworks in this regard , majority of those treaties, on the other hand, underserve weak Pacific countries like Kiribati[8], a low-lying South Pacific Island republic. The Kiribati-United States Friendship Treaty[9], the South Pacific Regional Environment Programme

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[4] International Organization for Migration, *Migration and Climate Change* (18 March 2022) https://www.ipcc.ch/apps/njlite/srex/njlite_download.php?id=5866 accessed 30 July 2025.
[5] International Organization for Migration, *Climate Change and Disaster Displacement* (IOM Publication Series, 2008) https://www.unhcr.org/climate-change-and-disasters.html accessed 30 July 2025.
[6] IPCC, *Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities, Special Report on the Ocean and Cryosphere in a Changing Climate* https://www.ipcc.ch/srocc/chapter/chapter-4-sea-level-rise-and-implications-for-low-lying-islands-coasts-and-communities/ accessed 30 July 2025.
[7] UNFCCC, *The Paris Agreement* (2015) https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement accessed 30 July 2025.
[8] Encyclopaedia Britannica, *Kiribati* https://www.britannica.com/place/Kiribati accessed 30 July 2025.
[9] *Kiribati-United States Friendship Treaty* (1979) https://www.state.gov/u-s-relations-with-kiribati/ accessed 30 July 2025.

Agreement[10], and the United Nations Framework Convention on Climate Change[11] all suggest legal obligations for the US and other developed countries to assist Kiribati with climate adaptation efforts, but each agreement regime keeps failing to evoke international reaction since the terms are vague and lack enforcement mechanisms.

According to extensive study in this field, a future treaty regime based on National Adaptation Programmes of Action (NAPAs) [12] must contain suitable land-rights provisions in order to respond to displacement caused by climate change.

Since there is no worldwide legal obligation to assist these Environmentally Displaced Persons (EDPs),[13]only a few countries have begun to enact legislation to provide relief to people fleeing natural disasters. There is no meaning for the phrase "climate refugees," and there is no agreement or consensus on the status of those who have been forced to relocate as a result of climate change. While refugees typically cross national borders, climate change will increasingly force those affected to relocate within their own countries. As a result, it is critical to protect and acknowledge these individuals, as well as to develop legislation that will benefit them.[14] Although it is uncertain how climate change may effect migration patterns in Asia and the Pacific, there is no doubt that the region's already high levels and complexity of human mobility will be exacerbated. [15] While estimates differ, the magnitude of the world's migration crisis in the next decades is staggering. As the decades-old Refugee Convention that provides neither protection nor the right to resettle in a more habitable location, in addition to losing their homes. It is high time to give serious effective efforts to be taken in this line.

STATUS OF CLIMATE REFUGEE

[10] *South Pacific Regional Environment Programme Agreement* (1970) https://iea.uoregon.edu/treaty-text/3161 accessed 30 July 2025.
[11] UNFCCC, *United Nations Framework Convention on Climate Change* (1992) https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change accessed 30 July 2025.
[12]UNFCCC, National Adaptation Programmes of Action (NAPAs) https://unfccc.int/topics/resilience/workstreams/national-adaptation-programmes-of-action/introduction accessed 30 July 2025.
[13]UNHCR, *Environmentally Displaced Persons* https://www.researchgate.net/publication/334540351_The_UNHCR_and_Environmentally_Displaced_Persons accessed 30 July 2025.
[14] International Organization for Migration, *Climate Change and Disaster Displacement* (IOM Publication Series, 2008) https://www.unhcr.org/climate-change-and-disasters.html accessed 30 July 2025.
[15] Sincy Wilson, 'India's Policy on Recognition of Climate Refugees' (2021) *NIU International Journal of Human Rights* accessed 30 July 2025.

The term 'refugee' has been defined under Refuge Convention 1951, albeit the term "climate refugees" is not internationally recognised yet. The UNHCR[16] has expressed concern that environmentally displaced persons (EDPs)[17] are not included by the 1951 Refugee Convention[18] and hence are not protected under the UNHCR's charter.[19] EDPs are frequently referred to as "climate refugees" by the media and politicians, but due to their legal uncertainty, there is no consensus among politicians, international organisations, or scholars that they are necessarily refugees. A legal protection vacuum has resulted from the absence of unanimity and clear legal recognition of EDPs. Environmental displacement is more than just an environmental issue. It's a multi-cause issue in which ecological and socioeconomic vulnerabilities combine to push underprivileged people out.

Using refugee framework to address EDPs risks adopting an uncritical relationship between climate change and human relocation. People are not displaced by climate change alone; it exacerbates social vulnerability, which contributes to displacement. While treating environmental displacement as a refugee catastrophe provides a sense of urgency, it is insufficient to address the problem. Climate change isn't the only source of persecution that causes people to flee their homes.

The legal concerns of environmental displacement are complex. 'Internally displaced' people are those that relocate to a secure and safe location within their own country. These people remain under their own government's protection and should be managed through local laws and policy decisions, but many countries do not have such regulations in place to deal with internally displaced people as a result of climate change. When those displaced persons cross the border into another nation, the situation gets more complicated, raising the question of whether they can seek protection in their new home country, and if so, under what legal framework. Despite the growing necessity to recognise cross-border displacement as a result of climate change, experts are divided on how to respond to such a disaster. Countries like the Maldives and Bangladesh have advocated amending the 1951 Convention to include "climate refugees" in their missions in the past, but some scholars believe this would jeopardise existing refugee protection.[20]

As a result, reaching a worldwide agreement on climate change issues has been challenging. As it would place additional burden on states to take care of climate refugees along with refugees and no

[16] UNHCR, *Official Website* https://www.unhcr.org/ accessed 30 July 2025.
[17] *Convention Relating to the Status of Refugees* (1951) https://www.unhcr.org/1951-refugee-convention.html accessed 30 July 2025.
[18] The Convention Relating to the Status of Refugees, 1951 ,https://www.unhcr.org/1951-refugee-convention.html. March 30, 2022.
[19] UNHCR, *Charter* https://www.unhcr.org/3b66c39e1.pdf accessed 30 July 2025.
[20] UNHCR, *Climate Change and Disaster Displacement* (23 February 2022) https://www.unhcr.org/climate-change-and-disasters.html accessed 30 July 2025.

country would agree to take up this seriously as they have already taking care of refugees due to legal obligation created through UDHR and Refugee Convention,1951. The concept of environmental refugees, as well as the notion of shared responsibility and protection, must yet be agreed upon. Without this agreement, a regional framework for South Asia would be a viable alternative.[21]

TEITIOTA CASE- AN ILLUSTRATION

The human rights committee correctly draws attention to the fact that this is the most recent ruling regarding the status of climate refugees and how they must be cared for.

The case of Mr. Teitiota[22] exemplifies how courts are attempting to define and address the confusing legal status of "climate refugees." In *Teitiota v. Chief Executive Ministry of Business, Innovation and Employment*, Teitiota, a citizen of Kiribati, requested refugee status in New Zealand. He argued that because he had been residing in the country unlawfully since his visa had expired, he should be granted refugee protection.

After Teitiota's application for refugee status in New Zealand was turned down, he and his family were deported back to Kiribati. He then petitioned the UN Human Rights Committee, alleging that by deporting him, New Zealand had violated his right to life as guaranteed by the International Covenant on Civil and Political Rights (ICCPR). He further argued that Kiribati's whole population was no longer able to live there due to increasing sea levels and other effects of climate change. The Human Rights Committee found that Teitiota's court in New Zealand did not infringe upon his right to life under the International Covenant on Civil and Political Rights (ICCPR)[23] and under refugee law" because Teitiota "did not objectively face a severe risk of being persecuted if returned to Kiribati."

The ruling has been hailed as a "landmark" judgement that the UN Human Rights Committee's resolution, which states that governments shouldn't send refugees back to nations where their lives are in danger due to climate change, is correct. Despite rejecting Teitiota, the Committee acknowledged that environmental deterioration and climate change pose a serious threat to both

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[21] Hamsa Vijayaraghavan and Deepti Somani, 'As Climate Change Worsens, India Must Consider a Policy on Environmental Migration' (3 March 2022) *The Wire* https://thewire.in/environment/environmental-migration-india-need-policy accessed 30 July 2025.

[22] *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* (2015) https://climatecasechart.com/non-us-case/ioane-teitiota-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/ accessed 30 July 2025.

[23] *International Covenant on Civil and Political Rights* (adopted 16 December 1966) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights accessed 30 July 2025.

present and future generations. The Committee stated that "without national and international action on climate change, impacts could grow serious enough to jeopardise the right to life, making it unlawful for countries accepting climate refugees to turn them away."

The Committee acknowledges that, despite the fact that nations like Kiribati still have time to protect their own citizens, "climate change may threaten the right to life" if "strong national and international action is not taken."

The Committee acknowledges that, despite the fact that some nations, like Kiribati, still have time to take steps to protect their own citizens, "climate change may undermine the right to life, "thus triggering the non-refoulement obligations" of countries receiving climate refugees, in the absence of strong national and international action." As a result, the UN Human Rights Committee recognized the rights of climate refugees, which was a significant step forward. Examining some of the actions that the world community has already taken and yet to take in coming years to assist climate refugees in this connection are the following. [24]

STATES' PRACTICES

a**. Temporary Protected Status (TPS)**[25] in the United States is a discretionary status designed to provide a safe haven for those fleeing or unwilling to return to potentially perilous situations in their native country.

b. European Union: The EU Temporary Protection Directive[26] was created as a one-of-a-kind response to major influxes caused by armed conflict, chronic violence, or widespread abuses of human rights.

The Refugee Convention of 1951:

[24] *Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107, SC 7/2015 http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2015/20150720_2015-NZSC-107_judgment-1.pdf accessed 30 July 2025.
[25] American Immigration Council, *Temporary Protected Status* (10 February 2022) https://www.americanimmigrationcouncil.org/research/temporary-protected-status-overview accessed 30 July 2025.
[26] European Commission, *EU Temporary Protection Directive* (25 March 2022) https://ec.europa.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en accessed 30 July 2025.

The term "refugee" has legal meaning. The 1951 Refugee Convention relating to the Status of Refugees, read in conjunction with its 1967 Protocol, establishes the legal definition of a "refugee" as well as the rights and entitlements owing to a refugee.

The Case of **Mr. Teitiota: Courts and Climate Migrants**[27] in this Mr. Teitiota illustrates how courts are grappling with the ambiguous legal status and notion of "climate refugees."

The court had to determine whether Teitiota matched the requirements for refugee status under the Refugee Convention. The lower court in New Zealand initially found no major harm or breach of human rights, but voiced worry about "expanding the scope of the Refugee Convention and opening the door to millions of people suffering as a result of climate change." Despite the fact that climate change is a major and developing concern, the applicant did not qualify as a refugee under international human rights law under the 1951 Refugee Convention since climate change was not addressed. Despite the fact that Teitiota's asylum claim was ultimately denied, both the Court of Appeals and the New Zealand Supreme Court acknowledged the "gravity of climate change" and the possibility that "environmental degradation resulting from climate change or other natural disasters could create a pathway into the Refugee Convention or protected person jurisdiction." Teitiota and his family were deported back to Kiribati after their refugee claim in New Zealand was denied. He subsequently went to the UN Human Rights Committee, claiming that New Zealand's deportation had breached his right to life under the International Covenant on Civil and Political Rights ("ICCPR")[28]. Mr. Teitiota continued, "Rising sea levels and other climate change effects have rendered Kiribati uninhabitable for the whole population." According to Committee Member Dunan Laki Muhumuza's dissenting opinion, the current conditions in the Republic of Kiribati "are unusually severe, and represent a genuine, personal, and reasonably foreseeable risk of a threat to his life under Article 6(1) of the ICCPR."[29] He argued that the hazards to Kiribati were more urgent and clear than the majority thought climate change effects would be.

The UN Human Rights Committee's resolution, which declares that governments should not return refugees to countries where their lives are threatened by climate change, has been hailed as a "watershed" moment. When it comes to basic rights violations caused to persons displaced due to climate change, this ruling undoubtedly raises many thought-provoking occasions.

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[27] *Supra Note 25.*
[28] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 https://treaties.un.org/ accessed 30 July 2025.
[29] I*nternational Covenant on Civil and Political Rights*, art 6(1) https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights accessed 30 July 2025.

The Universal Declaration of Human Rights,[30] the International Covenant on Civil and Political Rights,[31] and other human rights treaties oblige states to provide effective remedies for human rights violations. Climate change and its effects, such as rising sea levels, extreme weather events, and droughts, have already damaged the human rights of millions of people. States and towns on the front lines are fighting for survival. Those who have been harmed must have access to effective remedies, such as judicial and other forms of redress, both now and in the future. States have obligations to all rights-holders and to harm that occurs both within and outside their boundaries in the context of climate change and other environmental challenges.[32]

The international human rights framework is currently aimed toward establishing obligations on the part of the State of origin for persons who reside on its territory or are subject to its jurisdiction. International aid and cooperation obligations in the area of economic, social, and cultural rights (ESCR)[33] can result in third-country extraterritoriality; these obligations are in addition to those of the State of origin.

The existence of extraterritorial obligations in relation to the obligation to respect human rights is widely acknowledged (for example, a commitment by third States not to engage in any activities that could have negative consequences for the realisation of ESCR in the State of origin - particularly development projects, which are outside the scope of this study); however, the extent of positive obligations, particularly the obligation to fulfil ESCR, is widely debated.

The following obligations are especially pertinent to the origin state's commitments: Until date, nations' environmental human rights duties were based on a substantive right to a healthy environment, procedural rights (e.g., rights to information and participation), or rights that presuppose a healthy environment. As a result, no clear universal State obligations can be defined. A substantive right to a healthy environment is now only established at the regional level (contractual and customary law); this right has yet to be effectively stated on a worldwide basis (yet).

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[30] United Nations, *Universal Declaration of Human Rights* (adopted 10 December 1948) https://www.un.org/en/about-us/universal-declaration-of-human-rights accessed 30 July 2025.

[31] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) https://www.ohchr.org/en/ProfessionalInterest/Pages/CCPR.aspx accessed 30 July 2025.

[32] OHCHR, *Understanding Human Rights and Climate Change: Submission to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change*https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf accessed 30 July 2025.

[33] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx accessed 27 July 2025.

Environmental obligations are obviously in force only when changes in the environment have a negative impact on an individual's rights.

CONCLUSIONS AND SUGGESTIONS

Since no particular nation or group of people is untouched by the effects of climate change, we all need to take a more active role in addressing this issue. Many people have already witnessed a number of climatic catastrophes. This research work advocates that an evolutionary interpretation and a humanitarian rights-based approach require that climatic change refugees be considered under the Refugee Convention. An evolutionary interpretation requires "persecution" and "social group" to be interpreted in an evaluative manner taking into account changing circumstances. The human rights analysis under persecution focuses on the harm inflicted or threatened, namely the infringement of the right to life and other associated rights. The analysis under the "particular social group" focuses on the human right that is pursued, namely healthy environment rights. Utilizing an evolutionary interpretation together with a humanitarian rights-based approach to justifying the extension of protection for climatic change refugees is also in line with the humanitarian essence of the Convention. Such an interpretation ensures that the Refugee Convention withstands the test of time.

Despite the frivolity of climate vulnerabilities and the current and future projections of millions of people migration due to climatic change, it is very important to stress upon the rights-based solutions. Most climate displaced persons will be internally displaced and will not flee international borders. As a result, the state has a major obligation to uphold the rights of those who have been displaced as a result of climate change. According to the international agreements to which they are parties and their domestic laws, all people who have been displaced by climate change are entitled to a variety of human rights protections.

It is understood that climate refugees are not covered under any documents and it is high time to accept them by all the nations and prepare a common accord based on their experiences and the challenges they face in receiving climate refugees and dealing with them during such a process. Where are these individuals and have they received any protection by the international community so far. The answer is a big no, still the policy makers are waiting for a good time to come. The impacts of climate change worsen by the day resulting in huge numbers of people displaced internally and externally. Where is the way out for them? Unless and until to create a legally binding document that defines who these climate refugees are and what immediate protection they should be provided once they get to face climate challenges within the country or when they migrate to neighboring countries

for that what planning to be done in prior. Internationally agreed policy formulation only can help make the entire nations obligatory in extending care and support to the climate refugees for which the developing and underdeveloped nations should be provided monetary and infrastructural support by the United Nations. A specific pact for them would really make everyone who is a victim of climatic change and those who are going to become victims of climate change tomorrow to face without pressure or mental trauma. Hope all these changes will happen soon without delay so that justice will be done to them for the struggle they undergo for years and years.

It is crucial to put this enduring concept into action, notably by expanding the base of support beyond those nations that have historically supported the refugee cause by receiving refugees or via other methods. In light of this, the global compact on refugees seeks to establish a framework for predictable and equitable burden and responsibility sharing among all United Nations Member States, as well as other pertinent parties as necessary, such as but not limited to: international organisations both inside and outside the United Nations system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development acts. A rights-based approach examines responsibilities, disparities, and vulnerabilities and works to correct unfair power dynamics and discriminatory practices. Plans and programs are anchored in a system of international law-established rights and associated obligations.

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THE ILLUSION OF JUSTICE IN THE WAKE OF TALIBAN'S WITHDRAWAL FROM THE ROME STATUTE

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INTRODUCTION

On February 19, 2025, Hamdullah Fitrat, the deputy spokesman for the Islamic Emirate of Afghanistan (*hereinafter "**Afghanistan**"*), announced on his social media handle[1] that the Rome Statute of the International Criminal Court[2] (*hereinafter "**Statute**"*) no longer binds Afghanistan. The announcement came in response to reports[3] that International Criminal Court (*hereinafter "**ICC**"*) Prosecutor Karim Khan sought arrest warrants for key Taliban figures, including Hibatullah Akhundzada, the supreme leader. This is not the first time the Rome Statue has faced political resistance. In separate incidents, Burundi (2017)[4] and the Philippines (2019)[5] have withdrawn from the Statute in the last decade. These withdrawals highlight the growing tensions between state sovereignty and global accountability.

[1] Hamdullah Fitrat, 'The Position of the Islamic Emirate of Afghanistan on the Institution known as the "International Criminal Court"' (X, 19 February 2025) <https://x.com/FitratHamd/status/1892452095237804273> accessed 25 March 2025.

[2] 'Rome Statute of the International Criminal Court' (International Criminal Court) <https://www.icc-cpi.int/publications/core-legal-texts/rome-statute-international-criminal-court> [hereinafter "Rome Statute"]

[3] 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in Afghanistan' (International Criminal Court, 23 January 2025) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-afghanistan> accessed 25 March 2025.

[4] 'Burundi leaves International Criminal Court amid row' (BBC, 27 October 2017) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-afghanistan> accessed 25 March 2025.

[5] Jason Gutierrez, 'Philippines Officially leaves the International Criminal Court' (The New York Times, 17 March 2019) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-afghanistan> accessed 25 March 2025.

While Article 127 of the Rome Statute[6] permits a State Party to withdraw through formal notification voluntarily, the Taliban's withdrawal raises unique legal concerns. Afghanistan's 2003 accession to the Rome Statute occurred under a transitional government after the overthrow of the Taliban. Afghanistan voluntarily accepted the ICC's jurisdiction. The Taliban's unilateral decision to withdraw not only has implications over the *jus cogens* norms but also poses a broader question of whether the current legal framework is sufficient to address issues if the state parties are non-compliant.

This paper explores the legal ambiguities surrounding the state withdrawal from the Statute, focusing on the enforcement gap when the states are non-compliant. It focuses on the ICC's problems when it relies heavily on state cooperation in a consent-based regime. Lastly, it aims to provide for the situation that could be moved from state-dependent resources to a different enforcement mechanism.

THE EVOLUTION AND JURISDICTION OF ICC

The ICC was established in Rome, Italy, on July 1, 2002, by enforcing the Rome Statute. The establishment was hailed as a transformative moment in the realm of international law. This was to ensure accountability for the gravest crimes known to humanity. They are, namely, crimes against humanity, crimes of aggression, genocide and war crimes.[7] Its formation was motivated by the perceived inefficiencies and selective justice of ad hoc tribunals, such as the Nuremberg Trials for punishing the Nazi leaders and the International Criminal Tribunal for Rwanda (ICTR) for the 1994 Genocide. While these tribunals played a historical role in shaping international criminal justice, they were limited by their temporal and geographic scope and dependence on the UN Security Council. These tribunals were formed only after significant international pressure. As a matter of fact, their creation often followed a pattern of "justice after the fact", rather than constituting a universal preventive mechanism. This fragmented approach to justice led to calls for a permanent, impartial, and independent court, which resulted in the adoption of the Rome Statute.[8] Thus came the ICC.

However, the Rome Statute itself was the product of deep political compromises, especially pertaining to its jurisdiction. The drafters rejected the model of universal jurisdiction, opting instead for a consent-based regime. The emphasis on universal jurisdiction was denied, and the ICC has jurisdiction only for

[6] Rome Statute, art 127.
[7] Art. 5, Rome Statute, supra note 2.
[8] William A. Schabas, *An Introduction to the International Criminal Court* (first published 2001, Cambridge University Press) 13.

the party states.[9] As per Article 12 of the Rome Statute, the Court may exercise jurisdiction only if: (a) the crime is committed on the territory of a State Party, or (b) the accused is a national of a State Party, or (c) the situation is referred by the United National Security Council (*hereinafter "**UNSC**"*), under Chapter VII of the United Nations Charter.[10] This means that the powerful non-party states, such as the United States, Russia, China and India, are effectively shielded from the Court's jurisdiction unless referred by the UNSC. UNSC is itself a politicised body with veto powers. The Statute had thus long been debated over its jurisdiction and raised valid criticisms time and again, being called "ICC: a court for the weak, not the wicked".[11] .

Moreover, the court has a complementary jurisdiction.[12] Article 17 respects national sovereignty by allowing domestic courts the first opportunity to investigate and prosecute for international crimes.[13] The ICC intervenes only when the national system is "unwilling or unable genuinely" to carry out proceedings.[14] While this is intended to avoid infringing on domestic jurisdiction and prevent double jeopardy, in practice, it often results in denied justice, as many regimes manipulate legal processes to shield perpetrators.

The grey area of "unwillingness or inability" has been criticised for ambiguity and under-enforcement. For instance, in the Kenya situation, the inability of the national judiciary to prosecute those responsible for post-election violence in 2007-08 led the ICC to open cases against President Uhuru Kenyatta and Deputy President William Ruto. However, due to a lack of cooperation, witness interference and political backlash, the prosecution eventually failed.[15] These situations are exacerbated in cases involving non-state actors or de facto regimes, such as the Taliban in Afghanistan.

TALIBAN'S PUSH TO EXIT THE ROME STATUTE

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[9] Melissa K. Marler, 'The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute' (1999) 49 DLJ 825, 832.
[10] Art. 12, Rome Statute, supra note 2.
[11] 'Show Off Africa' (*Facebook,* 26 June 2025) <https://www.facebook.com/showoffafrica/posts/-why-has-the-icc-only-prosecuted-african-leaders-lets-talk-about-it-%EF%B8%8Ffor-years-t/1136993451795218/> accessed 22 July 2025.
[12] 'The International Criminal Court' (Human Rights Watch, 10 September 2004) <https://www.hrw.org/report/2004/09/10/international-criminal-court/how-nongovernmental-organizations-can-contribute> accessed 25 March 2025.
[13] Art. 17, Rome Statute, supra note 2.
[14] Abdul Mahir Hazim, 'A Critical Analysis of the Rome Statute Implementation in Afghanistan' (2021) 31 FJIL 1, 17.
[15] 'ICC: Kenya Deputy President's Case Ends' (*Human Rights Watch,* 5 April 2016) <https://www.hrw.org/news/2016/04/05/icc-kenya-deputy-presidents-case-ends> accessed 22 July 2025.

ICC had the power to have jurisdiction over Afghanistan to prosecute for the crimes committed from May 1, 2003.[16] An observation affirmed that the national government takes no genuine steps to prosecute criminals for these international crimes in their national courts.[17] The ICC prosecutor also withheld it.[18] In this scenario, the ICC had the authority to try the criminals, who had reportedly faced attempts by the Afghan government to be stopped.[19] The Pre-Trial Chamber permitted the investigation, and the prosecutor, Karim Khan, sought warrants of arrest for two members of the Taliban.[20]

Karim and his office are alleged criminal responsibility under Article 7(1)(h) of the Rome Statute on the grounds of gendered persecution by the Taliban as a crime against humanity.[21] The development was significant as it built upon the ICC's 2022 Policy Paper on Gender Persecution, which calls for stronger prosecution of crimes that target individuals based on their gender.[22] The Taliban's sweeping restrictions on women's education, employment, and movement under their regime and strict punishments for violating dress codes, etc.,[23] formed a stark backdrop to the ICC's move.

The Taliban, however, rejected these claims and denied accepting the authority of the ICC. They supported their retraction by the following reasons: (1) That Afghanistan no longer bears obligations under the Rome Statute as it has an Islamic Sharia framework. (2) That the ICC has been ineffective in protecting Afghan nationals from foreign aggression and international crimes, casting doubt on its institutional legitimacy.[24]

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[16] 'Information for Victims- Situation in the Islamic Republic of Afghanistan' (International Criminal Court, 20 February 2025) <https://www.icc-cpi.int/victims/situation-islamic-republic-afghanistan> accessed 25 March 2025.
[17] Abdul Mahir Hazim, 'A Critical Analysis of the Rome Statute Implementation in Afghanistan' (2021) 31 FJIL 1, 12.
[18] Situation in the Islamic Republic of Afghanistan, ICC-02/17.
[19] Ehsan Qaane, 'Investigating Post- 2003 War crimes: Afghan Government wants "one more year" from the ICC' (Afghanistan Analysts Network, 27 June 2017) <https://www.afghanistan-analysts.org/en/reports/rights-freedom/investigating-post-2003-war-crimes-afghan-government-wants-one-more-year-from-the-icc/> accessed 25 March 2025.
[20] 'Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in Afghanistan' (International Criminal Court, 23 January 2025) <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-afghanistan> accessed 25 March 2025.
[21] 'Policy on the Crime of Gender Persecution' (International Criminal Court, 7 December 2022) <https://www.icc-cpi.int/news/policy-crime-gender-persecution> accessed 25 March 2025.
[22] 'Policy on the Crime of Gender Persecution' (*International Criminal Court*, 7 December 2022) <https://www.icc-cpi.int/news/policy-crime-gender-persecution> accessed 25 March 2025.
[23] 'Taliban Restrictions on Women's Rights Deepen Afghanistan's Crisis' (*International Crisis Group*, 23 February 2023) <https://www.crisisgroup.org/asia/south-asia/afghanistan/329-taliban-restrictions-womens-rights-deepen-afghanistans-crisis> accessed 22 July 2025.
[24] Hamdullah Fitrat, 'The Position of the Islamic Emirate of Afghanistan on the Institution known as the "International Criminal Court"' (X, 19 February 2025) <https://x.com/FitratHamd/status/1892452095237804273> accessed 25 March 2025.

Both arguments are legally flawed and politically motivated. Firstly, Article 127(2) of the Rome Statute explicitly provides that a state's withdrawal does not affect the Court's jurisdiction over crimes committed while it was still a party, and that withdrawal only takes effect one year after notification. Afghanistan, via its official Ministry of Foreign Affairs social media account, announced that it no longer considered itself bound by the Statute. While this may amount to a declaration of intent to withdraw, such statements are not automatically accepted as valid notifications under Article 127 of the Rome Statute. The withdrawal process begins with a formal written notification to the UN Secretary-General.

Second, the Taliban's reference to Sharia law as a justification to unilaterally override international treaty obligations is an incorrect approach. According to the UN Special Rapporteur on Cultural Rights, no one may invoke cultural diversity to limit the scope or violate human rights guaranteed by international law.[25] The rejection of ICC's jurisdiction is not a neutral move, but a strategic political attempt to evade international criminal liability.

The Taliban likely perceives that remaining under the ICC scrutiny could expose it to prosecution for systemic crimes, including those documented in the United Nations Assistance Mission in Afghanistan (UNAMA) has provided biennial reports.[26] The report showcased around 37% of civilian casualties were caused by the Taliban forces in January- December 2018.[27]

This withdrawal raises critical concerns about the ability of de facto regimes to have the same powers as any other de jure regimes. In cases involving de facto regimes like the Taliban, there are several legal concerns regarding state cooperation, access to evidence and execution of arrest warrants. These hurdles for international justice are analysed in detail in the following sections of this study.

UNPACKING THE CHALLENGES AHEAD

Afghanistan's withdrawal from the Statute leads to the cessation of its obligations under the Statute. Afghanistan is no longer bound to investigate and prosecute the categories of international crime provided in the Statute, cooperate with the ICC, or integrate provisions in domestic laws.[28] This departure

[25] United Nations General Assembly, 'Report of the Special Rapporteur in the field of cultural rights, Karim Bennoune' (2 August 2012) UN Doc A/67/287 <https://docs.un.org/en/A/67/287> accessed 22 July 2025.
[26] Abdul Mahir Hazim, 'A Critical Analysis of the Rome Statute Implementation in Afghanistan' (2021) 31 FJIL 1, 9.
[27] Abdul Mahir Hazim, 'A Critical Analysis of the Rome Statute Implementation in Afghanistan' (2021) 31 FJIL 1, 8.
[28] Abdul Mahir Hazim, 'A Critical Analysis of the Rome Statute Implementation in Afghanistan' (2021) 31 FJIL 1, 10.

weakens the legal framework to enforce warrants and seek cooperation from the state and sets a dangerous precedent for other regimes seeking to evade accountability.

This section will deal with the specific problems arising from this withdrawal situation and broadly allow non-compliant states to escape legal scrutiny under the Statute.

Illusion of Accountability-

According to Article 127(2) of the Statute, a state's withdrawal does not affect the Court's jurisdiction or a state's duty to cooperate regarding investigations and proceedings initiated before the withdrawal takes effect. This provision is intended to prevent strategic withdrawals from evading accountability. However, the ICC lacks direct enforcement powers. It depends entirely on state cooperation for actions like arrest and surrender, evidence and witness protection, etc.[29] When a regime, such as the Taliban, categorically rejects the authority of the Court, this cooperation collapses, rendering the jurisdictional continuity practically unenforceable.

The concern has been raised time and again by scholars. States may cooperate with ICC if their enemies are held on trial or if it benefits the current regime, but if the government itself is accused, the same is not foreseeable.[30] The ICC's dependence on political will and state actors has created a "cooperation paradox", where legal authority exists but it is often paralysed by realpolitik.

According to the doctrine of state continuity, obligations under international law remain binding despite changes in government.[31] However, the obligations stand severely compromised if the state refuses to recognise or engage with the treaty framework.

Afghanistan's history of Non-Cooperation with the ICC-

Despite being a state party to the Statute, Afghanistan has shown a lack of cooperation with the ICC in its history. The situation is grim as Afghanistan, on its own, has only tried two high-ranking members in its court. Article 17 of the Statute provides the complementarity principle of the ICC. This means that only the ICC can act if a state is unwilling or unable to prosecute. Afghanistan's consistent failure to meet

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[29] Dr Miles Jackson and Dr Asad Kiyani, 'Antonio Cassese Prize for International Criminal Law Studies 2015-2016' (2017) 15(3) JICJ <https://academic.oup.com/jicj/article/15/3/613/4107441> accessed 22 July 2025.

[30] Sarah MH Nouwen and Wouter Werner, 'Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity' (2014) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2531638> accessed 22 July 2025, 18.

[31] Philip Noonan, 'Revolutions and Treaty Termination' (1984) 2(2) PSILR <https://insight.dickinsonlaw.psu.edu/cgi/viewcontent.cgi?article=1014&context=psilr#:~:text=It%20is%20a%20widely%20accepted,anoma%2D%20lous%20and%20unreasonable%20results> accessed 25 July 2025, 301.

these obligations justifies ICC intervention. Afghanistan provided no meaningful evidence during the preliminary examination, even as a state party.[32] It has also tried to delay the investigation and stop the ICC from exercising its jurisdiction.[33] In a 2017 report by the Former ICC Prosecutor Fatou Bensouda, Afghanistan's government repeatedly refused to facilitate the witness's access.[34] Afghanistan's previous government petitioned the Pre-Trial Chamber to defer the investigation, arguing that they were conducting their domestic inquiries. However, the claim was unsubstantiated.[35] Thus, Afghanistan's withdrawal effectively renders these provisions unenforceable because the Taliban government openly rejected the ICC's authority. Such defiance makes practical cooperation unlikely, making ICC's authority only on paper.

The referral mechanism is a hollow remedy-

When a state party fails to cooperate, the ICC may refer the matter to the United Nations Security Council (UNSC) or the Assembly of State Parties (ASP) under Article 87(7). Although the provision was incorporated to uphold compliance, the referral mechanism has consistently failed to produce tangible outcomes. The case of Libya was referred to the ICC by the UNSC through Resolution 1970 (2011).[36] Here, after the fall of Gaddafi, Libya's transitional authorities repeatedly refused to surrender accused individuals like Saif-al-Islam Gaddafi to the Court, despite warrants. Although the ICC made multiple non-compliance findings under Article 87(7), the UNSC took no meaningful action against Libya.

Again in 2014, a proposal to refer Syria to the ICC for atrocities committed during the civil war was made. However, despite widespread support of other Council members and the High Commissioner of Human Rights, the motion failed as it was vetoed by Russia and China.[37] This blocked any potential ICC investigation. These examples demonstrate that the veto power held by permanent members can block

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[32] Report on Preliminary Examination Activities, 2016.
[33] Ehsan Qaane, 'Investigating Post- 2003 War crimes: Afghan Government wants "one more year" from the ICC' (Afghanistan Analysts Network, 27 June 2017) <https://www.afghanistan-analysts.org/en/reports/rights-freedom/investigating-post-2003-war-crimes-afghan-government-wants-one-more-year-from-the-icc/> accessed 25 March 2025.
[34] 'Statement of ICC Prosecutor, Fatou Bensouda, regarding her decision to request judicial authorisation to commence an investigation into the situation in the Islamic Republic of Afghanistan' (International Criminal Court, 3 November 2017) <https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-regarding-her-decision-request-judicial-authorisation> accessed 25 March 2025.
[35] 'Statement by H.E. Mahmoud Saikal' (7 December 2017), <https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP16/ASP-16-AFG.pdf> accessed 25 March 2025.
[36] Security Council Resolution 1970 (2011), S/RES/1970 (2011) <https://www.icc-cpi.int/sites/default/files/1970Eng.pdf> accessed 22 July 2025.
[37] United Nations Security Council, 'Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution (SC/11407)' (*UN Press Release*, 22 May 2014) <https://press.un.org/en/2014/sc11407.doc.htm> accessed 22 July 2025.

any enforcement effort and override international legal scrutiny, as the ICC's referral power is not self-executing. Once the matter is transmitted to the UNSC, the Court loses control over the consequences. Political interests, especially the veto power held by permanent members, can block any enforcement effort and override international legal scrutiny.

These precedents are particularly relevant for Afghanistan, where China has cultivated increasingly close ties with the Taliban. Since 2021, China has engaged with the Taliban, giving it recognition.[38] China has vested interests in Afghanistan,[39] and it would not like to upset the Taliban on an international platform when, in fact, it was the first country to host a Taliban Ambassador in 2023. It would also not be a one-of-a-kind act for China, as it vetoed UNSC resolutions to refer Bashar al-Assad's regime to the ICC[40] for 'personal' reasons.[41] This over-reliance of the ICC on the UNSC has long undermined its credibility as an independent judicial institution. If enforcement is left to institutions that can be managed by some powerful authorities, and their decisions could be biased, the referral system is not left as a solution, but a hollow gesture.

In the best possible conditions of getting a referral by the UNSC, it still does not guarantee that the Statute would be paid heed to. A notable example is Omar al-Bashir. ICC, with the UNSC referral, issued an arrest warrant for genocide and crimes against humanity. However, since then, Bashir has freely travelled to many countries without arrest.[42] Just as that, the enforcement of arrest warrants against the Taliban may prove disregarded.

PROPOSALS FOR THE WAY FORWARD

There is a need to have practical, resource-friendly solutions to address the problem faced by the ICC when states try to evade its jurisdiction.

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[38] Ruchi Kumar, 'Why has China recognised Taliban's envoy to Beijing?' (*Aljazeera*, 14 February 2024) <https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP16/ASP-16-AFG.pdf> accessed 25 March 2025.
[39] Xie Huanchi, 'Beijing manifests vested interest in stabilising Afghanistan' (Intelligence Online, 18 February 2025) <https://www.intelligenceonline.com/government-intelligence/2025/02/18/beijing-manifests-vested-interest-in-stabilising-afghanistan,110376577-art> accessed 25 March 2025.
[40] 'Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council form Adopting Draft Resolution' (United Nations, 22 May 2014) <https://press.un.org/en/2014/sc11407.doc.htm> accessed 25 March 2025.
[41] Xie Huanchi, 'Beijing manifests vested interest in stabilising Afghanistan' (Intelligence Online, 18 February 2025) <https://www.intelligenceonline.com/government-intelligence/2025/02/18/beijing-manifests-vested-interest-in-stabilising-afghanistan,110376577-art> accessed 25 March 2025.
[42] '75 Trips to 22 Countries in 7 Years: An indicted war criminal's travels' (Nuba Reports, 7 March 2016) <https://nubareports.org/bashir-travels/index.html> accessed 25 March 2025.

Empowering Civil Society Organisations:

As international law is a consent-based regime, state cooperation cannot be ignored.[43] However, the case of Afghanistan illustrated the fragility of this dependence. With the Taliban's outright rejection of the ICC's jurisdiction, any expectation of cooperation is not just unrealistic, but institutionally misplaced. This makes it imperative to explore the non-state channels, such as civil society organisations (CSOs) and international human rights (IHR) network, including non-governmental organisations (NGOs), etc. These can play a critical role in ensuring that evidence of international crimes is documented and preserved. There should be a formalised framework for collaborating with them.

However, in the case of Afghanistan, it would not be easy. Since the Taliban's return to power in 2021, they have systematically dismantled independent media, intimidated activists, and stopped women-led initiatives. Additionally, the lack of legal protections, surveillance and unpredictability of the Taliban's informal justice system make it nearly impossible for domestic organisations to gather and transmit information without endangering themselves or the survivors involved.

Recognising these limitations, there could be a three-pronged approach.

First, a digital evidence repository. A secure, encrypted digital archive, maintained under ICC. This would serve as archiving testimonies, photographic evidence, reports, etc. For instance, The Syrian portal, International, Impartial and Independent Mechanism (IIIM), but it could be physically and legally hosted outside the conflict zones.[44]

Second, regional CSO liaison hubs. The ICC can have regional liaison units to work closely with local NGOs, who may operate from neighbouring countries and could partner with the country's refugee-led organisations. These units could facilitate cross-border evidence collection by assisting NGOs in documenting crimes, verifying evidence, etc.

Third, anonymous victim testimony networks. Platforms modelled after the Witness Protection and Support Unit[45] within the ICC should be scaled up. This, via collaboration with international human rights networks, can provide safe channels for victims to share their experiences whileensuring anonymity and safety. This should be provided with strict security protocols and custody.

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[43] Anthony Aust, Handbook of International Law (Cambridge University Press, 2005).
[44] 'International, Impartial and Independent Mechanism' <https://iiim.un.org/> accessed 25 March 2025.
[45] 'Witness Protection and Support' (United Nations) <https://www.unitad.un.org/content/witness-protection-and-support> accessed 25 March 2025.

Facilitating Universal Jurisdiction prosecutions:

In contrast to the hurdles faced by civil society engagement inside Afghanistan, universal jurisdiction (UJ) prosecutions offer a stronger and more immediate enforcement mechanism. Universal jurisdiction allows states and their national courts to prosecute individuals for the most serious iteration crimes, like genocide, war crimes, etc. It is regardless of where the crime was committed or to which country the accused belonged to. This principle is codified in several legal systems.

The success of UJ prosecutions in Germany's Koblenz Trial against former Syrian intelligence officials is one such example. That trial was initiated with evidence submitted by Syrian refugees and civil society organisations like the European Centre for Constitutional and Human Rights (ECHR). This trial resulted in the world's first conviction for state-sponsored torture in Syria.[46]

Afghanistan's extensive refugee diaspora in Germany, France, Sweden, Canada, etc., countries with robust UJ statutes, makes similar prosecutions a viable option. CSOs in exile can partner with national prosecutors to bring charges against Taliban commanders known to travel internationally, or against those present in the refugee-hosting countries. Encouraging the Statute's member states to invoke universal jurisdiction is particularly relevant when dealing with non-cooperative regimes like the Taliban. This legal avenue will enable national courts to act independently of the ICC's resource constraints.

CONCLUSION

The Taliban's withdrawal from the Rome Statute presents a critical test for the ICC. Article 127(2) of the Rome Statute asserts the ICC's jurisdiction in certain conditions even after the withdrawal of state parties. However, the court's dependence on state cooperation weakens its ability to hold perpetrators accountable, especially when a state is reluctant to cooperate. This paper has demonstrated that the current legal framework under the Rome Statute cannot prevent obstruction without stronger mechanisms beyond state cooperation. The court needs more than just rules, it needs tools. Strengthening collaboration with civil society organisations and evidence submission portals, and encouraging universal jurisdiction prosecutions, could ensure a better reach to the countries trying to evade the ICC. Justice

[46] Marc Tiernan & Ahmad Al-Zien, 'Domestic Modes of Liability in Universal Jurisdiction Cases: The Case of Eyad Al-Gharib in Koblenz, Germany' (Rethinking SLIC, 11 April 2022) <https://rethinkingslic.org/blog/criminal-law/150-domestic-modes-of-liability-in-universal-jurisdiction-cases-the-case-of-eyad-al-gharib-in-koblenz-germany#:~:text=On%2024%20February%202021%2C%20a,in%20Germany%20under%20universal%20jurisdiction.> accessed 25 March 2025.

should not depend on whether a regime agrees to it. If the world continues to ignore the Taliban's refusal to cooperate, it sends the wrong message that powerful groups can commit crimes and walk away. The ICC must find ways to act even when states pull back. Ultimately, if the international community continues to overlook the challenges posed by the Taliban's withdrawal, the ICC risks being reduced to a toothless tiger.

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CASE COMMENT: THE NORTH SEA CONTINENTAL SHELF CASES

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FACTS OF THE CASE

This dispute was submitted before the International Court of Justice ("Court") on 20th February 1967, with the cardinal issue revolving around the delimitation of the Continental Shelf between the Federal Republic of Germany (hereinafter, "Germany") and the Kingdom of Denmark (hereinafter, "Denmark"), and simultaneously between the Federal Republic of Germany and the Kingdom of Netherlands (hereinafter, "Netherlands").[1]

By the Order of 26 April 1968, the Court ordered the consolidation of the proceedings.

The dispute was governed by the 1958 Geneva Convention on the Continental Shelf, particularly Article 6, which addresses the use of the equidistance principle for maritime boundary delimitation. By 1 January 1969, the Convention had been ratified or acceded to by 39 States; however, Germany was not a party to the Convention. Denmark and the Netherlands undertook partial delimitation of the continental shelf by drawing boundary lines A–B and C–D on the basis of the equidistance principle. However, difficulties arose when the delimitation had to be extended seaward, requiring the drawing of lines B–E and D–E to complete the boundaries. Denmark and the Netherlands proposed continuing the equidistance method, whereas Germany objected, contending that such an approach would be inequitable.

[1] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ

Germany's objection was based on the geographical configuration of its North Sea coastline, which is concave. It argued that applying strict equidistance would unfairly reduce the area of continental shelf available to Germany, as compared to its proportional coastal frontage.[2] This disagreement over the method of delimitation led Denmark and the Netherlands to institute proceedings against Germany before the International Court of Justice, which subsequently joined the cases by its Order of 26 April 1968

This dispute led the parties to the Court to State the principles and rules of international law applicable and thereafter, facilitate the delimitation on those grounds. The task of declaring the said rules was a huge aspect, and To do so, the Court had to decide if the principles espoused by the parties were binding on them through the treaty law or customary international law.[3]

ARGUMENTS BY THE PARTIES

Denmark and the Netherlands argued that the principle of equidistance should be used for delimitation purposes, which meant that each country could claim a sovereign right over the areas closest to them. It was not merely a Conventional obligation, but also a well-established rule which formed part of the corpus of general international law and, like all other rules of general or customary international law.[4] However, Germany opposed this and countered the contention with the argument that it was entirely unjust, and furthered it with the notion that the size of each country's adjacent land should be considered instead. Not to forget, Germany wasn't a signatory to the Geneva Convention, and thus, wasn't bound by it.[5]

In response, Denmark and the Netherlands argued that, despite Germany not being a party to the Convention, it was still be bound by Article 6. Their contentions were:

"…(1) by conduct, by public Statements and proclamations, and in other ways, the Republic has unilaterally assumed the obligations of the Convention; or has manifested its acceptance of the Conventional regime; or has recognized it as being generally applicable to the delimitation of Continental Shelf areas…

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[2] *Ibid.*
[3] Dakshinie Ruwanthika Gunaratne, 'North Sea Continental Shelf Cases (Summary)' (2014) <https://ruwanthikagunaratne.wordpress.com/2014/02/28/north-sea-continental-shelf-cases-summary/> accessed 29 July 2025.
[4] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ
[5] Atulitraj, 'The Delicate Dance of Prosperity and Preservation: An Analysis of the North Sea Continental Shelf' (Legal Service India E-Journal) accessed 29 July 2025.

(2) the Federal Republic had held itself out as so assuming, accepting or recognizing, in such a manner as to cause other States, and in particular Denmark and the Netherlands, to rely on the attitude thus taken up" (the latter is called the principle of estoppel).[6]

Assertion was placed on Article 6 and "the acknowledged principle of general international law concerning Continental Shelf delimitation" and was therefore distinct from the Convention itself. As a result, Germany should be made bound by the subject matter of Article 6 through customary international law, regardless of its status as a non-signatory.[7]

ISSUES

The central legal question in the *North Sea Continental Shelf* case concerned the proper method for delimiting the continental shelf between adjacent States and the legal obligations of a State that had not ratified the 1958 Geneva Convention on the Continental Shelf. Specifically, the International Court of Justice was called upon to determine:

1. *Whether the 1958 Geneva Convention on the Continental Shelf, in particular Article 6 concerning the equidistance principle, was binding upon the Federal Republic of Germany despite its non-ratification.*
2. *Whether the equidistance method of delimitation, as set out in Article 6 of the 1958 Convention, had crystallized into a rule of customary international law applicable to all States, including non-parties.*
3. *Whether principles of equity and the unique geographical configuration of coastlines—such as the concavity of Germany's North Sea coast—should influence the delimitation of continental shelf boundaries between neighbouring States.*

COURT'S REASONING

The Court opined that the Continental Shelf was a natural extension of the land territory of the coastal State, rather than something created by occupation or proclamation. The Court, however, held that the 1958 Geneva Convention on the Continental Shelf (especially Article 6 on equidistance) could not automatically bind the Federal Republic of Germany because it had not ratified the Convention.

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[6] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ

[7] Dakshinie Ruwanthika Gunaratne, 'North Sea Continental Shelf Cases (Summary)' (2014) <https://ruwanthikagunaratne.wordpress.com/2014/02/28/north-sea-continental-shelf-cases-summary/\> accessed 29 July 2025.

The first argument of the State Parties(*refer 'Issues')* was rejected by the Court on the reasoning that a State could only be presumed to have been bound by a treaty (other than through formal ratification) if there was a "very definite and consistent course of conduct on the part of the State" and the State was "at all times fully able and entitled to... accept the treaty commitments formally."[8] The Court held that the Federal Republic of Germany had not unilaterally assumed any obligations under the 1958 Geneva Convention on the Continental Shelf. It further observed that, even if Germany had ratified the Convention, it could have entered reservations with respect to Article 6, thereby avoiding any binding effect of its equidistance provisions. Consequently, the mere assumption that Germany intended to become a party to the Convention did not automatically entail acceptance of the specific obligations contained in Article 6.[9]

The Court determined that the existence of an estoppel circumstance would have made Article 6 enforceable against Germany; nonetheless, the Court determined that Germany's conduct did not support the case for estoppel. Furthermore, the Court decided that Germany is not now bound by the equidistance concept as stated in Article 6 only because it may not have expressly objected to the notion before.[10] The Court held that the equidistance principle contained in Article 6 of the 1958 Geneva Convention on the Continental Shelf had not crystallized into a rule of customary international law. Accordingly, it could not bind the Federal Republic of Germany as a non-party to the Convention. The Court further emphasized that the legal concept of the continental shelf is based on the natural prolongation of the land territory of the coastal State and does not, in itself, prescribe any mandatory method of delimitation.[11]

The Court affirmed that each coastal State possesses an original and vested right over those areas of the continental shelf which constitute the natural prolongation of its land territory into and under the sea. Consequently, the task before the Court was not one of apportioning or distributing the continental shelf into equitable shares but of delimiting the existing rights of the States concerned. In rejecting the contentions of the Federal Republic of Germany, the Court held that Germany's approach effectively sought an apportionment of the continental shelf according to notions of

[8] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ
[9] *Ibid.*
[10] Dakshinie Ruwanthika Gunaratne, 'North Sea Continental Shelf Cases (Summary)' (2014) <https://ruwanthikagunaratne.wordpress.com/2014/02/28/north-sea-continental-shelf-cases-summary/\> accessed 29 July 2025.
[11] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ

fairness, whereas international law recognizes pre-existing rights derived from natural prolongation rather than any principle of distributive allocation.[12]

When addressing the second issue-whether Germany could be bound by Article 6 of the 1958 Geneva Convention on the Continental Shelf insofar as it reflected customary international law-the Court examined the status of the equidistance principle both at the time of the Convention's drafting and in the period following its entry into force.

The Court first considered whether the equidistance principle had already formed part of existing or emerging customary international law during the drafting of the Convention. It concluded that it had not. The Court relied on several indicators: the International Law Commission's hesitation to treat the equidistance principle as obligatory, the drafting history showing it as a negotiated compromise rather than a universally accepted rule, and the Convention's own provision allowing States to enter reservations to Article 6, indicating the absence of an obligatory customary rule at that time.

The Court then turned to the question of whether, after the entry into force of the Convention, subsequent State practice had elevated the equidistance principle to the level of customary international law. It held that no such rule had crystallized. In articulating the requirements for the formation of customary international law, the Court emphasized that: (1) the practice must be extensive and representative, particularly among States whose interests are specially affected—in this case, coastal States; (2) the practice must be virtually uniform; and (3) it must be accompanied by a sense of legal obligation, or *opinio juris*. The Court also noted that some duration of practice is necessary for a customary norm to emerge.

Applying these criteria, the Court concluded that the first requirement had not been satisfied. By 1969, only 39 States had ratified or acceded to the Convention, a number insufficient to demonstrate extensive and representative practice, especially given the limited participation of States most directly concerned with continental shelf delimitation. Consequently, the equidistance principle under Article 6 had not attained the status of customary international law and could not bind the Federal Republic of Germany as a non-party to the Convention.[13]

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[12] *Ibid.*

[13] Dakshinie Ruwanthika Gunaratne, 'North Sea Continental Shelf Cases (Summary)' (2014) <https://ruwanthikagunaratne.wordpress.com/2014/02/28/north-sea-continental-shelf-cases-summary/\> accessed 29 July 2025.

The Court emphasized that the emergence of a customary international law norm depends primarily on the existence of consistent and uniform State practice, widespread and representative participation by States-particularly those whose interests are specially affected-and the presence of *opinio juris*. The duration of the practice, while relevant, is of lesser significance than these substantive factors. It stated as follows:

"Although the passage of only a short period (in this case, 3 – 5 years) is not necessarily, or of itself, a bar to the formation of a new rule of customary international law based on what was originally a purely Conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved."[14]

Opinio juris is reflected in the acts or omissions of States, insofar as those acts or omissions were carried out with the idea that the said State is compelled by law to act or refrain from acting in a specific manner.[15]

The Court evaluated 15 examples in which States used the equidistance method to specify their borders after the Convention entered into force. The Court settled that, even if certain State practices supported the equidistance principle, the Court could not deduce the requisite opinio juris from it. The North Sea Continental Shelf Cases established that State practice (the objective element) and opinio juris (the subjective element) are required for the genesis of a customary law rule. This is consistent with Article 38 (1) (b) of the Statute of the International Court of Justice. The Court detailed the meaning of opinio juris and the distinction between customs (i.e., habits) and customary law:

"Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be ***evidence of a belief*** *that this practice is rendered* ***obligatory*** *by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necessitatis.* ***The States concerned must, therefore, feel that they are conforming to what amounts to a legal obligation.*** *The frequency, or even habitual character, of the acts is not in itself enough. There are many international acts, e.g., in the field of ceremonial and protocol, which are performed almost*

[14] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ
[15] *Ibid.*

invariably, but which are motivated only by considerations of Courtesy, convenience, or tradition, and not by any sense of legal duty."[16]

ANALYSIS & CONCLUSION

The Earth is flat, not round. The geographical limits are nowhere near identical. The mountains and the coastlines are natural and not a by-product of some laboratory experiment or a chemical reaction. In the present case, Germany argued that, unlike the Netherlands and Denmark, whose coastlines were convex, its concave coastline would result in an inequitable outcome if the equidistance principle were applied- a distinction based solely on naturally occurring geographic features. The Court clarified that Germany's non-ratification of the 1958 Geneva Convention on the Continental Shelf was not, by itself, sufficient to bind it to Article 6. The principle of estoppel could have made Article 6 enforceable against Germany if its conduct had clearly demonstrated an acceptance of the equidistance method, leading other States, particularly Denmark and the Netherlands, to rely on that position. However, the Court found no such conduct, and therefore no estoppel arose. In the absence of both treaty obligations and estoppel, the equidistance principle could not be imposed upon the Federal Republic of Germany.

When it came to the determination of whether or not Germany was bound by the customary rule of international law, the Court took into consideration three major factors, namely,

1. Widespread and representative participation
2. Uniformity
3. Opinio Juris

The Court, while dealing with the aforementioned criteria, stated that the first criterion was not met, given it had only been ratified by 39 States then, and therefore, was not appropriately represented or widespread. Furthermore, the Court ruled that for a customary rule to surface as a customary rule of international law, the duration is not as significant as the widespread and representative participation, usage, and existence of opinio juris are considered to be. Therefore, 11 years was not held to be long enough for it to constitute a part of a healthy duration.

Opinio Juris refers to when a State feels that it is legally obligated or bound by law to do something.

[16] North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ

Thus, the Court scrutinized 15 cases where equidistance as an approach was used to demarcate the borders. However, it was observed that although State Practice existed, there was no evidence of Opinio Juris. The Court ultimately deduced from various inspections that "equidistance was not, a priori rule in international law. It was urged by the Court to consider it as one of the many options available for delimitation for creating equitable demarcations of maritime boundaries.

The Court was correct in rejecting Germany's argument of apportionment. Had it been in such a manner that the size of the Continental Shelf was fixed in proportion to a State's coastline, it would have denied the States the right to claim "the natural prolongation of their Continental Shelf". The Court's proposal that delimitation be done based on "equitable principles", given that certain factors are mulled over, first, to ensure that each State was granted a fair portion, was noteworthy. It aimed to ensure that each State's contested claim was met, and equity was preferred over equality.

The consequence of this ruling of the Court led to the signing of agreements by Germany with both Denmark and the Netherlands, which led to the issues being resolved. The dispute was finally brought to an end on January 28, 1971. As a consequence, the United Kingdom was required to adjust the endpoints of its Continental Shelf boundaries with Denmark and the Netherlands, resulting in the creation of an entirely new Continental Shelf boundary with Germany.

All things considered, Court's ruling in the North Sea Continental Shelf Cases *(Federal Republic of Germany v. Netherlands & Federal Republic of Germany v. Denmark)* was, and still is, an utterly pronounced decision in the realm of international law. It is so because the findings and inspections help in associating how Conventions and agreements enter the corpus of the legal framework of international law. Although equidistance delimitation is still frequently utilized, the Court's preference for equity over equidistance established a new precedent for boundary negotiations starting in 1969.

By rejecting the automatic application of the equidistance principle and emphasizing the need for an equitable solution based on relevant circumstances, the Court shifted the legal landscape away from rigid formulaic approaches toward more flexible, case-specific analyses. The Court's emphasis on natural prolongation, equity, and customary international law formation has been cited in several subsequent decisions, where the Court not only recognized the principle of equi-distance, it also said that "under existing law, it must be demonstrated that the equi-distance method leads to an equitable result. The decision reaffirmed that no single method such as equidistance, holds automatic preference, and that equitable principles must guide delimitation processes.

MORE QUESTIONS THAN ANSWERS[1][2]

Aditya Dalal

Studying international human rights law is an interesting exercise. While different areas of commercial law are often regarded as pragmatic and executable, some view international human rights law ('**IHRL**') as "soft law", in the sense that it is considered to be appealing to morals and the belief in collective humanity and lacking effective mechanisms of implementation. I cannot disagree that regional and international human rights law suffers from an implementation problem characterized by the lack of appropriate national laws to give effect to the provisions of international human rights conventions, lack or inadequacy of domestic remedies for human rights violations, the inability to effectively reach international mechanisms for justiciability, and the domination of the Western influence — particularly Eurocentrism. Nevertheless, as a student of IHRL, I cannot deny that IHRL is a potent agent to tackle the most puzzling challenges gripping humanity today — world poverty and rising inequalities, gender equality, discrimination based on sexual orientation and gender identity, rights of persons with disabilities, and climate change.

At the University of Cambridge, IHRL is one of subjects I am studying as part of my LLM. Through a thoughtfully designed course outline, we have discussed philosophical topics

[1] I express my gratitude to Dr. Lena Holzer, Prof. Sandesh Sivakumaran, Prof. Surabhi Ranganathan, Dr. Rumiana Yotova and the Faculty of Law, University of Cambridge for developing and teaching the International Human Rights Law paper on the LLM.
[2] I express my gratitude to Dr. Harsha Rajwanshi for this opportunity to share my perspective as a student of International Human Rights Law in this opinion piece.

such as the need for recognizing human rights, twisted histories shaping what we know as modern IHRL, justifications of IHRL in terms of human dignity, equality, liberty, and fraternity, and the critiques of IHRL. We discussed foundational aspects such as sources of IHRL and the international (United Nations) and regional (inter-American, African and European) mechanisms for the protection of human rights before moving on to substantive human rights *inter alia* the freedom of expression, the right to democracy, the prohibition against torture, and the right to life. Towards the end of the teaching period, we moved to contemporary aspects of IHRL — the right to health, the right to benefit from scientific development, human rights in pandemics, world poverty, inequality, gender identities and sexual orientations, the intersection of human rights and sports law, and the role of human rights in fighting climate change.

After detailed deliberations about these various nuances, our cohort had agreements and disagreements; we sometimes looked at the ends of IHRL similarly but could not agree on the means to attain those ends. We knew the destination was the enjoyment of human rights by all, but the path to be taken for its realization was often strongly debated. The most surprising part for me was that while I went into these classes seeking answers to my unnerving questions, I found myself with even more questions; I was prompted to think and ponder about different possibilities and modalities for the effective realization of human rights. When one question was answered, several others emerged. We were never forced to think of solutions; there is no one-size-fits-all approach for IHRL. Instead, we were asked to keep thinking and view the world differently. We were encouraged to view global affairs from the lens of IHRL and think deeply about issues and concerns rather than accepting the ones appearing at the surface, akin to the tip of an iceberg.

Moving to the substantive discussions and the questions I faced, my initial worry was about the ratification of and reservations regarding IHRL treaties by India. Did India ratify CEDAW[3]? Or the CRPD[4]? Or the CAT[5]? If so, was this ratification with or without

[3] Convention on Elimination of All Forms of Discrimination Against Women
[4] Convention on the Rights of Persons with Disabilities
[5] Convention Against Torture

significant reservations? Knowing my country's legal stance on the nine core human rights treaties was indispensable for me to understand what actions Indian lawmakers and jurists can take to guarantee human rights better. I appreciated the novel approaches that regional human rights courts like IACtHR[6], ECtHR[7], and AfCHPR[8], adopted. A sound regional mechanism can promote human rights by adding a layer of checks and balances without directly resorting to charter-based or treaty-based bodies. Regional mechanisms can further the cause of the universality of human rights while allowing room for subsidiarity or deference for states on some issues. With the Arab Charter on Human Rights and the ASEAN Human Rights Declaration being on the path to implementation, I wondered why India and its south Asian neighbors do not have a similar regional human rights mechanism. An immediate and instinctive answer would be the geopolitical tensions prevailing in the area. Yet, many states with significant geopolitical issues have often joined hands regarding human rights, such as Ethiopia and Eritrea who have, despite long-standing conflicts, are both parties to the Banjul Charter. Can South Asia not follow suit?

When I read the provisions of the CRPD — the Convention on the Rights of Persons with Disabilities — I looked up from the text and, for a moment, looked around. My classroom in Cambridge, my accommodation in Cambridge, the city of Cambridge — how accessible was it for differently-abled persons? How far would it allow persons with disabilities to effectively enjoy and exercise the same fundamental freedoms as any other? And then I thought about India. Gandhinagar, in particular. I realised that back home, where ableism is rampant, accessibility remains a major problem. What would solve this problem? Should every "disabled" person send an individual communication to the CRPD treaty body? Or should a Special Rapporteur be sent to India to investigate the ineffective implementation of the CRPD?

When we came across the UN Convention Against Torture, my professor highlighted that the definition of torture requires that torture be meted out by a person acting in an official

[6] Inter-American Court of Human Rights
[7] European Court of Human Rights
[8] African Court on Human and Peoples' Rights

capacity, for example, on behalf of the government. He then asked us if this requirement makes sense in present times, when torture may be perpetrated by private gangs, powerful non-state actors or even by husbands upon wives behind closed doors through domestic violence. Shouldn't this requirement be considered obsolete and an amendment be preferred to the UNCAT?

When we studied the right to life, we agreed about the broadest interpretation of the contours of this right — the right not to mere animal existence but a right to life with dignity. But why has capital punishment not yet been abolished in many countries like India? Does a foetus have a right to life? Will the right to life of a pregnant person prevail over the right to life of their foetus? Does the right to life include the right to die with dignity? If euthanasia is allowed, does this mean that every person has the right to assisted suicide?

The right to life includes the right to attain the highest standard of physical and mental health for every individual. Does this mean that the government must provide free health care to everyone using the best possible technologies and possibly cure every disease? Will the government be responsible for finding a liver for every person requiring a transplant? Will the government have to provide free mental health services to all? Will the government compulsorily have to station ambulances and trained nurses and doctors at every public institution?

Another facet of the right to life is the right to benefit from scientific advancement. Every person has the right to benefit equally from scientific advancement. How exactly do we implement this right? Due to rising inequalities between and within states, how can we ensure that the benefits of progress are not skewed disproportionately? If MNCs innovate ground-breaking technologies, should the government neglect the IPRs of the MNCs and adopt compulsory licensing so these technologies can be made available for all? Will this disincentivise scientific research conducted by private companies? Will this stifle innovation?

Everyone has the right to take part in scientific research. But how far can everyone conduct scientific research? What is the dividing line between acceptable and unacceptable forms of research? In our class on human germline editing, we saw the risks of creating designer babies, i.e. editing the genes of the foetus to develop characteristics preferred by the parents. This can have disastrous ramifications for the planet — even eliminating a few races or perhaps involving such a blunder, which, if spread in society through reproduction, can lead to a genetic failure in all humans and ultimately wipe out humanity from the face of the Earth.

In our class on gender and human rights, we asked a question: has the existing international mechanism on human rights, particularly the CEDAW, achieved complete gender equality? Does a gender binary and a hierarchy still exist in international law? With the recognition of multiple gender identities and different non-heteronormative sexualities, is CEDAW even enough? How should human rights protections be extended to the LGBTQ+ community? Should they be offered mainstream protection in all human rights treaties? Should a separate treaty be drafted, or can they be given protection alongside women in CEDAW? How to stop gender-based discrimination in sports? Are current sports laws about the determination of the gender of an athlete discriminatory?

The last topic for discussion was the human rights of the rivers, mountains, and other elements of nature. Based on Christopher Stone's writing[9], we asked ourselves whether rivers should be given human rights. If an MNC pollutes a river can a legal guardian of a river sue the MNC and ask for compensation based on the river's right to be unpolluted? If this argument is accepted and rivers are given human rights, what about their liabilities? How will rivers be held liable when they flood their surrounding areas? Who will pay the damages?

Thus, with every class came more questions and fewer answers, a reassuring bewilderment, a glimpse of which I have given above. More questions meant more thinking, and more

[9] Christopher Stone, "Should Trees Have Standing? — Toward Legal Rights for Natural Objects," Southern California Law Review 45 (1972), 450–501.

thinking meant an opportunity to be more inclusive and equitable in remodelling human rights jurisprudence. I would not have it any other way. As students of IHRL, we cannot expect to be comfortable with having plain facts or case laws thrown upon us from a textbook. We must dwell on the more uncomfortable issues that bother humanity, question human rights, talk about them, view them differently, and progress sustainably towards full and equitable realisation.

IHRL is not a panacea to all issues surrounding humanity, but human rights, with all their flaws and limitations, are still better than having no rights at all! Just like we cannot not have air and water to sustain life, we cannot eschew human rights if we want civilisation to thrive and coexist equitably. Only when we measure the wealth of a country in the currency of human rights can we unearth the real prosperity its people enjoy.

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